

THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

FINDINGS

in Complaint
by

THE COUNCIL OF THE LAW SOCIETY
OF SCOTLAND

against

NEIL ALEXANDER McINTOSH MOWAT, Solicitor,
56/58 St John's Road, Corstorphine, Edinburgh.

1. A Complaint dated August 1996 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") requesting that Neil Alexander McIntosh Mowat, Solicitor, 56/58 St John's Road, Corstorphine, Edinburgh (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the Statement of Facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as they might think right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged by the Respondent or on his behalf within the *induciae*.
3. In terms of their Rules, the Tribunal appointed the Complaint to be heard on 30th October 1996 and notice thereof was duly served upon the Respondent.

4. The Hearing took place on 30th October 1996. The Complainers were represented by Mr Brian A. Murphy, Solicitor, Ayr and the Respondent by Mr William Macreath, Solicitor, Messrs Levy & McRae, Glasgow. A Joint Minute was lodged wherein material facts were admitted. No evidence was led and the Tribunal found the following facts established:-

(1) The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was admitted on 14th November 1974. Since 1977, he has practised as a partner with the firm of Messrs Mackenzie & Dunn, latterly of 56/58 St John's Road, Corstorphine, Edinburgh. The Respondent is 45 years of age.

“A”

(2) In or about September 1990, Mr “A” of “P.1” instructed the Respondent to act for him in the purchase of his Council house.

(3) Payment of the purchase price of £14,200 was made to the Respondent on 26th November 1990. The plan which was initially prepared for the conveyance was inaccurate and around November 1991, a substitute plan was agreed and received by the Respondent. However per incuriam the original plan was attached to the Feu Disposition. The error became apparent in November 1992. There was delay on the part of the Respondent in rectifying the error and it was not until October 1995 that the Land Certificate became available and the transaction was concluded.

- (4) In the meantime, Mr “A” had written to the Law Society of Scotland on 13th November 1992. From that date, the Law Society corresponded with the Respondent but they had difficulty in obtaining information and progress reports from him. In particular a letter which was sent to him on 15th February 1993 followed by a reminder was not responded to until the Respondent telephoned the Law Society in April 1993. The Respondent initially failed to reply to a letter dated 30th July 1993 and only replied following a reminder dated 30th August 1993. The Respondent similarly failed to reply to a letter of 3rd November 1993 until a reminder dated 16th December 1993 had been sent to him. The Respondent did not reply until 16th September 1994 to a letter dated 7th July 1994 and a reminder dated 16th August 1994. On 27th March 1995, the Law Society asked the Respondent to provide certain information which was then available to the Respondent but he did not provide this information to the Law Society until 17th August 1995.

“B”

- (5) Mr “B” was the sole beneficiary and executor on the Estate of his late father who had died on 16th February 1994 and on 18th February 1994, Mr “B” consulted the Respondent in connection with the winding up of the Estate. The details of the Estate were discussed at that meeting and Mr “B” was asked to hand in various papers. The deceased's house had been rented from “P.2” District Council and Mr “B” informed the Respondent that he had paid the rent for the house for the following three week period. On 28th February 1994, Mr “B” handed into the Respondent the keys to his

father's house and asked the Respondent to arrange for redirection of mail for three months. On 19th March 1994, Mr "B" sent the funeral account to the Respondent for payment together with a claim form in respect of his father's "C" Bank Account.

- (6) The Respondent ascertained that the Post Office would not accept re-direction instructions from a deceased person's address but he failed to convey this information to Mr "B" nor did he take any other action in relation to winding up his father's Estate.
- (7) Mr "B" instructed Messrs Bennett & Robertson to take over the administration of the Estate. The Respondent received a Mandate on 12th May 1994 and released his file to that firm on 31st May 1994.
- (8) The Respondent's failure to return the keys to "P.2" District Council prior to Messrs Bennett & Robertson being instructed, resulted in rent arrears of £179.18 and an electricity account of £101.64 in respect of the period from 22nd March 1994.
- (9) On 8th October 1994, Mr "B" made a complaint to the Law Society of Scotland and the Respondent thereafter made payment of a sum of £225 reflecting the aggregate of additional rent and electricity charges arising from his failures.

- (10) Eventually on 10th March 1995, the Law Society wrote to the Respondent asking him for a full response to the matter raised in Mr "B's" letter of 8th October 1994. A reminder was sent to the Respondent on 15th May 1995 but he did not reply until 5th June 1995.

"D"

- (11) Mrs "E" died on 19th February 1994. The Trustees on the Estate were Mr "F" and the Respondent. There were no complexities in relation to the Estate and the deceased's Will provided for certain legacies and for the residue to be transferred to the deceased's husband Mr "D".
- (12) The Respondent made initial enquiries regarding the Estate but failed to instruct a valuation of shares from a stockbroker until 5th October 1994.
- (13) On 21st February 1994, the "G" Assurance Company (the "G") wrote to the Respondent asking for a certified copy of the Death Certificate. The Respondent failed to send this and they sent a reminder on 21st April 1994. Thereafter there was further delay on the part of the Respondent and the proceeds of the life policy were not paid until 28th June 1994. The "G" paid ex gratia interest on the proceeds of the policy up to the date of settlement.

- (14) It had been intended to repay a “H” Building Society Mortgage from the proceeds of the life policy and the Respondent's delay in obtaining the proceeds of the “G” policy resulted in Mr “D” having to continue to pay the mortgage instalments. The Building Society was in correspondence with the Respondent prior to the loan being discharged on 30th June 1994.
- (15) In the meantime, Mr “D” had written to the Respondent on 19th April 1994 asking for a progress report. The Respondent did not reply until 9th June 1994, when he indicated that he would provide such a report shortly. In the continued absence of any report, Mr “D” wrote to the Respondent again on 26th July 1994. The Respondent failed to reply until 13th September 1994 indicating that he hoped to write shortly to effect that the winding up of the Estate was nearing completion. However at the time of writing that letter, the Inventory of the Estate had still not been drafted and the Inventory was not sworn by the Respondent as deponing executor until December 1994. Confirmation was issued on 22nd December 1994 but the Respondent did not intimate Certificates of Confirmation until two months later. Over this period the Respondent had failed to keep Mr “F” informed regarding progress.
- (16) In the meantime, the “H” Building Society had written on 13th September 1994 with the titles to the house in order that a Discharge could be prepared. The Respondent failed to progress the matter. The Building Society sent reminders on 17th November 1994 and 9th January 1995 but the Respondent did not send out a Discharge until 3rd March 1995.

(17) The matter was reported to the Law Society. The Respondent failed to reply to letters from the Law Society dated 3rd and 25th May 1995, a formal notice dated 15th June 1995 and a further reminder, resulting in the Law Society making a request to the Respondent on 17th August 1995 for him to deliver his file on the matter.

“I”

(18) The Respondent acted for Miss “J” who died on 2nd November 1993. On the day following her death, the Respondent was instructed by her nephew Mr “I” to wind up her estate. At that time, Mr “I” provided the Respondent with the necessary documentation. There was no heritable property and only a few items of moveable estate.

(19) On 10th January 1994, the Respondent asked Mr “I” for further information regarding Miss “J’s” tenancy and miscellaneous issues and Mr “I” spoke to the Respondent by telephone at that time. Miss “J’s” small holding in the “K” was not realised until December 1994.

(20) The Respondent failed to correspond with Mr “I” and failed to reply to the family’s enquiries; and Mr “I”, sent a letter of complaint to the Law Society on 6th January 1995. The estate was not finalised until March 1995.

“L”

- (21) Mrs “M” died on 16th April 1991. The Respondent was responsible for the Executry but failed to make reasonable progress in winding up the Estate. On 11th February 1994, the Capital Taxes office wrote personally to Mrs “M's” daughter Mrs “L” with a view to expediting matters. Mrs “L” herself had considerable difficulty in obtaining information from the Respondent and on 7th April 1995, Mrs “L” wrote a letter of complaint to the Law Society. The Law Society wrote to the Respondent's partner by letter dated 24th April 1995 but received no reply. They then wrote to the Respondent by letter dated 19th June 1995; and at a meeting on 3rd July 1995, the Law Society emphasised to the Respondent the need for an early response. Following reminders of 20th and 28th July 1996, the Respondent reported that he was making progress, that all that was then required was to obtain an Inheritance Tax Clearance Certificate and that the estate should be wound up by the end of August 1995.
- (22) On 12th October 1995, the Law Society wrote to the Respondent pointing out that the Executry had still not been finalised. The Respondent did not reply to this letter and the Law Society sent a formal notice to the Respondent on the 6th November 1995. Payments were made to various beneficiaries in mid-November 1995 but the Estate was not finally wound up until July 1996.

- (23) The Respondent had also previously acted for Mrs “L”. When she instructed a new solicitor, she requested the Respondent to forward her Will to the new solicitor. By letter dated 20th January 1994, the Respondent had informed that solicitor that Mrs “L’s” Will could not be located. There was no further communication from the Respondent in regard to that matter and Mrs “L” also referred to the matter of the Will in her letter of complaint to the Law Society dated 7th April 1995. The Respondent informed the Law Society and Mrs “L” on 6th November 1995 that he was still unable to relocate her Will.

“P.3” District Council

- (24) The Respondent acted for Mrs “N” on the purchase of her Council house at “P.4”
- (25) The date of entry was 18th October 1994, and whilst payment of the purchase price was made about that date, various additional outlays remained outstanding. The Respondent failed to reply to letters addressed to him on this matter from “P.3” District Council dated 19th and 24th October 1994, 19th June 1995 and 10th July 1995. The District Council also made telephone calls to the Respondent on the matter. On three occasions, he failed to return the call. Finally he gave an assurance that he would attend to the matter but failed to do so.

- (26) Eventually on 19th September 1995, “P.3” District Council wrote a letter of complaint to the Law Society. The Law Society wrote to the Respondent on 29th September 1995. Reminders were sent to him on 17th October and 3rd November 1995 but he did not reply to the Law Society until 14th November 1995 when he reported that matters had been resolved and that he had sent a cheque to “P.3” District Council.

“O”/”P”

- (27) Mr “Q” died on 4th January 1994. The Respondent accepted instructions to wind up his Estate but in the following eighteen months, he failed to make adequate progress and had not informed the beneficiaries what they would receive from the Estate.
- (28) On 9th June 1995, Mr “O” a nephew of the deceased and an Executor on the Estate, wrote a letter of complaint to the Law Society. The Law Society wrote to the Respondent on 20th June 1995 and also referred to the matter at a meeting with the Respondent on 3rd July 1995. A reminder was issued on 20th July 1995. On 28th July 1995, the Respondent wrote to Mr “O” expressing his regret at the length of time taken in the administration of the Estate and setting out the progress which he had made. At about the same time, another beneficiary, Mrs “P”, had also written to the Law Society. By 27th October 1995, the Respondent had concluded the matter.

“R”

- (29) The Respondent acted on the Estate of the late Miss “S”. Her brother Mr “R” was the sole Executor. The Respondent failed to make reasonable progress in winding up the Estate. He had also failed to respond to Mr “R's” enquiries thereon.
- (30) On 19th June 1995, Mr “R” wrote to the Law Society concerning the Respondent's delay and failure to communicate in relation to his late sister's estate. The Respondent did not reply to the Law Society's letter of 20th July 1995 or to reminders dated 3rd October and 18th October 1995. In response to a formal notice sent on 6th November 1995, the Respondent replied on 29th November 1995 setting out a history of the matter and indicating that the winding up of the Estate was nearing completion.

Mr & Mrs “T”

- (31) Mr & Mrs “T” reside in Western Australia. They instructed the Respondent to act for them in the sale of property at “P.5”. Settlement of the sale transaction took place on 18th November 1994. The Respondent remitted funds which were received by Mr & Mrs “T” on 5th December 1994 but he retained the sum of £2000 from the sale proceeds pending preparation of his detailed account and payment of various outlays.
- (32) Subsequently Mr & Mrs “T” could obtain no response from the Respondent. They telephoned the Respondent, and on 1st March 1995, at his request they sent him a fax containing their present address. Mr & Mrs “T”

subsequently phoned on several occasions. Each time, the Respondent was not available and he failed to return their calls.

- (33) On 5th May 1995, Mr & Mrs "T" wrote to the Law Society and in particular requested an itemised account. The Law Society wrote to the Respondent on 19th May 1995. He failed to reply to this letter and his only response to reminders dated 20th and 26th July 1995 was a communication on 28th July 1995 to the effect that he would give a detailed reply on his return from holiday. The Respondent did not communicate further, despite reminders dated 11th August and 29th September 1995.
- (34) In the absence of any detailed explanation, the Law Society issued a formal notice to the Respondent on 29th September 1995 calling upon him to produce his file. The Respondent failed to comply with this notice but in response to a further letter, the Respondent wrote on 18th October 1995 claiming that he had delayed forwarding a detailed account "as he was awaiting some final accounts and did not have a permanent address for his clients." This was incorrect as precise instructions from Mr & Mrs "T" were contained in his file. On 23rd October 1995, the Respondent wrote to Mr & Mrs "T" with a detailed account and payment of the balance of £287.95.

5. Having considered the foregoing, the Tribunal found the Respondent guilty of professional misconduct in cumulo in respect of the following:-

- (i) His failure and unreasonable delay in replying to correspondence from the Law Society in relation to “A”,
- (ii) His failure and unreasonable delay in replying to correspondence from the Law Society in relation to “B”,
- (iii) His unreasonable delay in winding up the Estate of Mrs “E”, his failure to respond to enquiries from the deceased's husband and his failure and unreasonable delay in replying to correspondence from the Law Society in relation thereto,
- (iv) His unreasonable delay in winding up the Estate of the late Miss “J”, and his failure to respond to the enquiries by the “I” family,
- (v) His unreasonable delay in winding up the Estate of the late Mrs “M”, his failure to respond to enquiries from the deceased's daughter, and his failure and unreasonable delay in replying to correspondence from the Law Society in relation thereto,
- (vi) His failure and unreasonable delay in replying to correspondence from “P.3” District Council and the Law Society in relation thereto,
- (vii) His unreasonable delay in winding up the Estate of the late “Q”, and his failure to respond to enquiries by Mr “O” and Mrs “P” in relation thereto,

- (viii) His unreasonable delay in winding up the Estate of Miss “S”, his failure to respond to enquiries made by the deceased's brother and his failure and unreasonable delay in replying to correspondence from the Law Society in relation thereto, and
 - (ix) His failure to account to Mr & Mrs “T” in relation to the sale of their property at “P.5”, his failure to respond to enquiries made by them and his failure and unreasonable delay in replying to correspondence from the Law Society in relation thereto.
6. The Tribunal further found that the Respondent had provided an inadequate professional service to
- (i) “A” in respect of his failure adequately to attend to and progress Mr “A’s” purchase of his Council house and the relative conveyancing,
 - (ii) “B” in respect of his failure to adequately attend to and progress the winding up of his father's Estate,
 - (iii) “D” in respect of his failure to advise Mr “D” and to respond to reasonable requests for information and progress in the winding up of his late wife's estate,
 - (iv) The “I” family in respect of his failure to advise them, to respond to their reasonable enquiries and to progress the winding up of Miss “J’s” estate,
 - (v) Mrs “L” in respect of his failure to advise Mrs “L”, and to respond to her reasonable enquiries and to progress the winding up of her mother's Estate,

- (vi) “O” and Mrs “P” in respect of his failure to advise them in relation to “Q's” Estate to respond to their reasonable enquiries and to progress the winding up of his Estate,
 - (vii) “R” in respect of his failure to advise Mr “R” in relation to his late sister's Estate, to respond to his reasonable enquiries and to progress the winding up of her Estate, and
 - (viii) Mr and Mrs “T” in respect of his failure to advise them relating to the sale of property at “P.5” and to respond to their reasonable enquiries and to complete the transaction.
7. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 30th October 1996. The Tribunal having considered the Complaint dated August 1996 at the instance of the Council of the Law Society of Scotland against Neil Alexander McIntosh Mowat, Solicitor, 56-58 St John's Road, Corstorphine, Edinburgh, find the Respondent guilty of professional misconduct in cumulo in respect of his failure to attend to the affairs of clients, to respond to enquiries and to reply to correspondence from the Law Society of Scotland and others; Censure the Respondent and fine him in the sum of one thousand pounds to be forfeit to Her Majesty: Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of two years, any Practising Certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such

employer as may be approved by the Council of the Law Society of Scotland; In respect that professional services provided by the Respondent were inadequate, Direct the Respondent in terms of Section 53A(2)(d) of the said Act to pay to “A” by way of compensation the sum of £100; to pay to “B” by way of compensation the sum of £250; and to pay to Mr & Mrs “T” by way of compensation the sum of £250; Quoad ultra, make no other determination or direction in respect of findings of inadequate professional services; Find the Respondent liable in the expenses of the Complainers and of the Tribunal as the same may be taxed by the Auditor of the Court of Session on a solicitor and client indemnity basis in terms of Chapter Six of the Law Society's Table of Fees for general business together with a reasonable sum for posts and incidental outlays; and Direct that publicity to include the name of the Respondent be given to this decision.

(Signed) JOHN W LAUGHLAND

Chairman

8. A copy of the foregoing Interlocutor together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 12th December 1996.

IN NAME OF THE TRIBUNAL

Chairman

NOTE

At the commencement of the Hearing of this Complaint, a Joint Minute was lodged wherein the Respondent admitted professional misconduct in cumulo in respect of all the charges in the Complaint with the exception of that relating to “U”, and with the same exception, the Respondent admitted all the charges that he had provided an inadequate professional service. The Fiscal intimated that he was not insisting on the remaining charges, and this was accepted by the Tribunal.

In his statement in mitigation, Mr Macreath pointed out that the Respondent had been in practice for 21 years and that he had not been the subject of any claim on the Master Policy. In 1991 there had been four partners in the Respondent's firm but in that year his father (the senior partner) had retired, and another partner had withdrawn about the same time. The consequences of these changes had put considerable pressure on the Respondent and it was significant that it was in this period that the various matters arose which are the subject of the present Complaint.

Mr Macreath commented in relation to the individual charges. In particular, he observed in relation to Mr “A” that there had been no heritable creditor, that the Respondent had failed to keep Mr “A” informed about the cause of the delay and that the fee charged to Mr “A” had not been abated. Mr Macreath added that the Respondent had made an ex gratia payment of £100 to Mr “A” as compensation. It was set out in the Complaint that Mr “B” had declined successive offers of £100 and £200 as compensation and Mr Macreath reported that Mr “B” had not accepted the Respondent's most recent offer of £250. The Tribunal was informed that the Respondent's charges in relation to Mrs “E's” Estate would have been in the region of £3000 to £3500 and that the Respondent had waived his fee in this matter. The fee chargeable in relation to Miss “J's” Estate would have been

£545 and the Respondent had reduced this to £150 exclusive of VAT. Mrs “L” had for many years, been an employee of the Respondent's firm and the fee of £5000 which might have been charged in relation to her mother's Estate had been restricted by 50%. The Respondent's fee in relation to “Q”'s Estate would have been £450 and this had been waived. Miss “S”'s Estate had been substantial. Mr Macreath reported that the winding up of the Estate would be completed shortly and that the Respondent was restricting his fee from £2000 to £750 (exclusive of VAT). There had also been a substantial reduction in the fees charged to Mr & Mrs “T”.

Mr Macreath pointed to the Respondent's problem with his health and that he had latterly been assisted by the Law Society's Practice Advisory Service. The Respondent's remaining partner was a Court practitioner and the Respondent had been largely responsible for the administration of the firm. Mr Macreath suggested that the Respondent's position might improve if he had suitable support in the running of a practice. Having regard to these considerations, arrangements had been made for the Respondent's present partnership to be dissolved and for the practice to be incorporated into the business of two other Edinburgh firms which were amalgamating at the same time: and a letter signed by the partners of these firms was produced from which it was apparent that the Respondent had made a full disclosure of his difficulties and that these solicitors were willing to accommodate the Respondent within their new practice whether as a partner or otherwise, and provide the necessary support and supervision. Reference was also made to the Respondent's voluntary work within the community.

The Tribunal cannot overlook that during the material period, the Respondent was responsible for a catalogue of failures which caused considerable distress to individual clients and which was damaging to the reputation of the profession. These circumstances might have caused the Tribunal to suspend the Respondent. However it has been taken into account that arrangements have now been made for the long term management of the Respondent's practice and that the partners of the new firm are willing to provide the Respondent with the support which he undoubtedly requires. The Tribunal is of the opinion that the Respondent should have the benefit of supervision for a significant period before he might resume practice as a principal and it is with these considerations that the present order has been made; and the Tribunal has taken into account the effect of this restriction in determining the level of fine to be paid by the Respondent.

On the basis of the said letter produced to the Tribunal indicating that the the new firm were prepared to provide the necessary supervision and support, the Council of the Law Society may look favourably upon that firm as a suitable employer for the Respondent, but the Tribunal acknowledge that this is a decision for the Council to take in light of the circumstances which are presented to them.

In terms of Section 53A of the Solicitors (Scotland) Act 1980, the Tribunal is separately required to take into consideration the various findings of inadequate professional services. There was serious and inexcusable delay in satisfactorily completing Mr "A"'s title and there had been no abatement of fees. Nearly three years passed between Mr "A" writing to the Law Society and the Land Certificate becoming available. In the opinion of the Tribunal, the £100 which has been paid to Mr "A" is inadequate compensation for the Respondent's neglect and it is for this reason that the Respondent is now required to pay a

further £100. The Respondent paid £225 to Mr “B” to cover the additional rent and the electricity charges which were attributable to the Respondent's delay. Mr “B” had apparently not responded to the most recent proposal whereby he was offered the sum of £250 as compensation. In all the circumstances, it is reasonable that this should be paid by the Respondent and the appropriate order has accordingly been made. There was an indication that there had been some restriction in the fees charged to Mr & Mrs “T”, but their concern must have been compounded by the distance involved and this has been taken into account in deciding that they should also be separately compensated.

In the other cases where it was established that the Respondent had provided an inadequate professional service, there had been a significant reduction in the fees which might otherwise have been charged and in the opinion of the Tribunal, the circumstances do not require any further abatement or a compensation order.

No circumstances were disclosed which might have caused the Tribunal to exercise its limited discretion regarding publicity and accordingly publicity to include the name of the Respondent will be given to this decision.

Chairman