

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

DECISION

in Appeal under Section 42A of the
Solicitors (Scotland) Act 1980

by

MESSRS PETER T. McCANN & Co, Solicitors
Gordon Chambers, 90 Mitchell Street, Glasgow.

APPELLANTS

against

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND
FIRST RESPONDENT and

MRS "A",
"P.1"

SECOND RESPONDENT

1. An Appeal was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42A(7) of the Solicitors (Scotland) Act 1980 by Messrs Peter T. McCann & Co, Solicitors, Gordon Chambers, 90 Mitchell Street, Glasgow ("the Appellants") against a finding by the Council of the Law Society of Scotland ("The Law Society") that the Appellants provided inadequate professional services in relation to their client Mrs "A" ("Mrs A") and a determination that the Appellants should make a payment to Mrs "A" of £1,000 as compensation.
2. In accordance with the provisions of the Rules of the Tribunal, the Appeal was formally intimated to the Law Society and Mrs "A" and separate Answers were lodged on behalf of the Law Society and Mrs "A".

3. Having considered the Appeal with the respective Answers, the Tribunal resolved to set the Appeal down for Hearing and appointed that the Appeal should be heard on 11th June 1997.
4. At the Hearing on 11th June 1997, the Appellants were represented by the now sole practitioner of the firm, Mr Peter T. McCann. The Law Society was represented by Mr I.L.S. Balfour S.S.C., Edinburgh and Mrs "A" was represented by Mr Graham R. Bryson, solicitor of Messrs McIntosh & Maclachan, Solicitors, Shawlands, Glasgow.
5. Having considered the submissions for the parties and the productions lodged, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 11th June 1997. The Tribunal having considered the Appeal by Messrs Peter T. McCann & Co, Solicitors, Gordon Chambers, 90 Mitchell Street, Glasgow ("the Appellants") against a finding of inadequate professional services by the Council of the Law Society of Scotland ("the Law Society") in relation to Mrs "A", "P.1" ("Mrs A") and a determination that the Appellants should make a payment to Mrs "A" of £1,000 by way of compensation, and having heard parties, dismiss the Appeal; Find the Appellants liable in the expenses of the Law Society and Mrs "A" 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 Appellants be given to this

decision but that this publicity will not include the name of Mrs “A” or otherwise identify her.

(Signed) J.W. LAUGHLAND

Chairman

6. A certified copy of this Decision together of a copy of the foregoing Interlocutor were sent to each party by recorded 17th July 1997

IN NAME OF THE TRIBUNAL

Chairman

NOTE

This Appeal relates to a finding by the Law Society that the Appellant firm Messrs Peter T. McCann & Co had provided inadequate professional services to Mrs “A”, and a determination that the Appellants should make payment to Mrs “A” of the sum of £1,000 as compensation.

The material background was that in or about July 1994, Mrs “A” consulted Mr Brian D. Moreland who was then a partner in the Appellant firm regarding her liability for Community Charge and Council Tax. Subsequently Mrs “A” became dissatisfied and in or about June 1995, she wrote a letter of complaint to the Law Society. The Law Society involved Mr Peter T. McCann, the senior partner of the Appellant firm and thereafter Mr McCann communicated with Mrs “A” direct. Mrs “A's” dissatisfaction continued. The matter was placed before a Law Society Complaints Committee. On 5th September 1996, that Committee considered a Report by one of its members and on 3rd October 1996, the Law Society wrote inter alia to the Appellants enclosing a copy of the Report and a Statement setting out the deliberations of the Law Society Committee. In that letter of 3rd October 1996, the Appellants were informed that the Committee considered that an inadequate professional service might have been provided and the Appellants were invited, before a final view was reached, to make further representations in writing. A corresponding letter was also sent to Mr Moreland setting out the proposed decision in relation to him, and also to Messrs McIntosh & Maclachlan, the new solicitors for Mrs “A”. On 4th October 1996, Messrs McIntosh & Maclachlan replied to the letter which they received but neither the Appellants nor Mr Moreland responded to the respective letters sent to them and eventually on 24th December 1996, the Law Society wrote formally to the Appellants intimating that the Law Society had made a finding of inadequate professional services and had

determined that the above mentioned sum of £1,000 be paid to Mrs “A” by way of compensation. The letter was accompanied by a copy of the said Report and a revised Statement of the Committee's deliberations concluding with the decision in the following terms:-

Having considered the written representations which had been received from the Complainer's agents and having noted that no written representations had been made by Mr Moreland or Messrs Peter T. McCann & Co the Committee found no reason to depart from its previous view and accordingly find that Mr Moreland's conduct in apparently misleading the Complainer as to progress was so serious and reprehensible as to amount to professional misconduct. They reprimanded him.

In addition the Committee determined that an inadequate professional service had been provided to the Complainer by Messrs Peter T. McCann & Co in that there appeared to have been a failure to follow the Complainers' instructions, a failure to advise her adequately and a delay in progressing matters. The Committee determined that Messrs Peter T. McCann & Co should make a payment to the Complainer of £1,000 by way of compensation in terms of Section 42A(2)(d) of the 1980 Act.

The Appellants lodged an Appeal in terms of Section 42A(7) of the Solicitors (Scotland) Act 1980.

The document of Appeal commented on the various considerations of the Committee and the said Report and concluded

1. We therefore ask that the complaint be dismissed against the firm.
2. That if it is not to be dismissed then a Hearing be made permitting the firm the right to lodge productions and to call evidence, particularly to include officers of the former Region and their file and notes of their meetings and that of the Regional Councillor in the pursuit of Mrs “A's” case.
3. Separatim. It is also requested that a justification of the sum of £1,000 be made with details.

In his address to the Tribunal, Mr McCann submitted that any determination by the Law Society should have been made against Mr Moreland and not the Appellant firm; and that in any event no case had been made out to show that Mrs “A” was not due the Community Charge and Council Tax which had been claimed by “B” Regional Council.

Section 42A(1) of the said Act provides that where

- (a) the Council (of the Law Society) receive, from any person having an interest, a complaint that professional services provided by a solicitor in connection with any matter in which he has been instructed by a client were inadequate; and
- (b) the Council, after inquiry and after giving the solicitor an opportunity to make representations, uphold the complaint,

they may take such of the steps mentioned in subsection (2) as they think fit.

The provisions in Subsection (2) include the power "to direct the solicitor to pay to the client by way of compensation such sum, not exceeding £1,000, as the Council may specify".

The Report produced to the Law Society Committee was in effect the "inquiry". Neither Mr Moreland nor the Appellants took the opportunity to make representations, and the Law Society accordingly appear to have proceeded on the basis of the Report. It was stated in gremio of the Report that the member of the Law Society Committee who prepared the Report, had access to the files of the Appellant firm and the Law Society. The material papers from each file were produced to the Tribunal by the Law Society.

Having regard to the grounds of the Appeal, it is appropriate that the Tribunal should consider the whole background as set out in the Report and the relative correspondence.

Mrs "A's" difficulties with Community Charge and Council Tax arose after she started work in June 1994, and a demand from Sheriff Officers caused her to "put the matter in the hands of Mr Moreland of Peter T. McCann & Co." It was not disclosed when she first consulted Mr Moreland but the Respondent's file contained a copy of two letters both dated 29th July 1994 and bearing Mr Moreland's reference, to the Director of Finance of "B" Regional Council in relation to

Community Charge for the years 1991/92 and 1992/93 and for Council Tax for the year 1993/94. It is related in the Report that each time Mrs "A" received demands for outstanding (Local Authority) Tax, she took them immediately to Mr Moreland who assured her that there was nothing to worry about. It is further recorded that Mrs "A" claimed to have made many visits to Mr Moreland's office and suffered frequent cancellations or postponement of meetings, on one occasion three times in one week. Mrs "A's" anxiety at this time was also reflected in her letter dated 2nd September 1994 to Mr Moreland when she wrote

Yet another letter about my Poll Tax. Copy enclosed. Can you PLEASE PLEASE tell me what is going on. I thought it was being sorted out. I don't think I can take much more of this ...

I would like a meeting with both yourself and Mr McCann to thrash out just what is going on ...

I would like all this sorted out once and for all when I visit you next week as I cannot cope for much longer with my finances being in such a mess ...

In relation to the outstanding Community Charge the Finance Department of "B" Regional Council replied to Peter T. McCann & Co on 28th September 1994. In that letter it was observed that there was no trace of any rebate application form having been received and that as the legislation precluded any rebate being granted in retrospect, no amendment could be made to reduce Mrs "A's" outstanding arrears. The Finance Department added that the arrears would remain with the Sheriff Officers for collection in accordance with the terms of the Summary Warrant which had previously been issued. Mr Moreland forwarded this letter to Mrs "A" on 30th September 1994. In a reply dated 5th October Mrs "A" insisted to Mr Moreland that she did not owe any Poll Tax for the years in question and she concluded

I have no idea when I will be able to come and see you unless it can be arranged after I finish at 5.30pm as I do not have any annual leave left. I have used up every single day of my entitlement in futile visits to your office trying to get this and the other matters cleared up. If you can let me know what nights you will be working late I will see if I will be available.

The productions from the Appellants' file at this time disclose sundry correspondence with the Sheriff Officers but no other communication with the Finance Department of "B" Regional Council.

The Report discloses

Towards the end of 1995 Sheriff Officers called while Mrs "A's" mother was alone in the house and served a notice of poinding. This happened twice, despite Mr Moreland's assertions that he was dealing with matters. Each time it caused Mrs "A's" elderly mother considerable distress.

The Report further disclosed that at a subsequent meeting, Mr Moreland again reassured Mrs "A" that everything would be sorted out. The Report then relates that

In February 1996 Mrs "A" received notice that her wages were to be arrested for non-payment of tax for the year 1992/93. Mr Moreland assured her he would deal with it and subsequently said he had been to court and a stop had been put on the arrestment. Two weeks later she received another notice of arrestment, again for 1992/93 and this time for two or three other years as well. Again Mr Moreland told her the arrestment had been rescinded and, if the arrestment did go ahead, she would be reimbursed. The money was in fact deducted from Mrs "A's" pay.

The correspondence disclosed a further letter from Mr Moreland to "B" Regional Council dated 7th March 1995 but there was no indication that Mr Moreland took any other action prior to Mrs "A" writing to the Law Society in June 1995. The Report recorded that

On 19th June 1996 the Law Society asked Mr McCann to contact Mrs "A" to see if conciliation was possible. On 20 July Mrs "A" phoned the Law Society because she had heard nothing from Mr McCann and was advised to contact Mr McCann direct. This she did and was given an appointment for 21 July. This appointment was changed five times and when Mrs "A" wrote on 26th July to update the Law Society on events, (the meeting) had still not taken place. All these contacts were with Mr Moreland, and Mrs "A" had no contact with Mr McCann himself.

The Reporter appears to have overlooked that there was a record of an entry in the Law Society file to the effect that Mr McCann had spoken with a member of the Law Society secretariat on 3rd July 1995, when he, Mr McCann, claimed that he had not received the letter of 19th June from the Law Society and when it was arranged that the Law Society would send to him a copy of the letter and complaint. The Report continued.

The meeting with Mr McCann was again postponed and finally took place on 29 July. During this meeting it became apparent to Mrs "A" that no action had been taken by Mr Moreland. A further meeting with Mr McCann was scheduled for 4 August 1995 and at this meeting it was confirmed that Mr Moreland had not pursued Mrs "A's" case, and also that he appeared to have been intercepting letters from Mrs "A" and the Law Society to Mr McCann.

Subsequent correspondence from the Law Society to Mr McCann was copied to his home address. It was apparent from a letter dated 14th August 1995 written by Mr McCann to "B" Regional Council that he had initially telephoned the Regional Council when Mrs "A" had been with him on 4th August. The letter of 14th August set out details of payments which had been made by Mrs "A" to the Regional Council and invited an early response. A further letter from the Appellants' file disclosed that Mr McCann had written to Mrs "A" on 1st September 1995 with a copy of a reply dated 30th August 1995 from the Regional Council, but the Regional Council letter was not produced to the Tribunal. In this connection, it is perhaps significant that the Reporter recorded that the Appellants' file appeared to be incomplete in that references were made to letters apparently received by them but which did not appear on the file.

The Report subsequently disclosed that the Law Society advised Mrs "A" to consult another firm of solicitors; and it was evident that she had then consulted the firm of Messrs McIntosh & Maclachan.

In his submissions to the Tribunal at the Hearing, Mr McCann was in general terms critical of the Report which had been produced to the Law Society Committee. He indicated that Mrs "A's" concern had been with the amounts which had been paid by her towards her Community Charge liability. He questioned whether Mr Moreland could have done more than he did. The Local Authority proceedings had been taken by Summary Warrant and Mrs "A" would have had no prospect of success in any action of suspension and interdict or judicial review. Mr McCann had a high regard for the financial recording of the Local Authority and he enquired whether Mrs "A's" new agents had been able to achieve further benefit for her.

Mr McCann noted that the narrative of the Further Considerations of the Law Society Committee as set down in the Statement which accompanied the letter of 24th December 1996, differed from the corresponding narrative in the Committee Minute of 7th November 1996, and with consent of parties, Mr Balfour produced an extract from the Minute of a further Committee Meeting on 5th December 1996 which disclosed that the Council of the Law Society, at their meeting on 29th November 1996, had remitted the matter back to the Committee to consider whether the finding of inadequate professional service should be a finding against the Appellant firm or Mr Moreland personally. The Minute of 5th December 1996 recorded that the Committee, in confirming that the finding should be "against the firm rather than against the individual solicitor personally", took into consideration that whilst Mr Moreland had been the solicitor principally dealing with matters, Mr McCann had himself been involved at various stages; and that if the Appellants had chosen to charge a fee, it would have been the firm that would have benefited from such fee. It was added that the Committee was mindful of the fact that the firm "may well have a right of relief against Mr Moreland should they wish to pursue that avenue".

Mr McCann explained that at the time he had not been aware of what was said by Mr Moreland to Mrs "A" and he questioned why he should be held responsible and have his reputation affected in respect of matters which were outwith his knowledge. Mr McCann implied that Mr Moreland had withheld correspondence from him and that he had made enquiries immediately the matter had been drawn to his attention. His firm had not charged any fee to Mrs "A", and he explained that this was not uncommon for him, especially in local government matters.

Mr McCann also challenged the figure of £1,000 which his firm had been required to pay to Mr "A". He pointed to the letter of 4th October 1996 from Mrs "A's" solicitors to the Law Society in response to the preliminary decision of the Committee, in which it had been suggested that compensation should be paid to Mrs "A" and that this compensation should be in the region of £1,000; and Mr McCann implied that the Committee had merely acceded to her agents' suggestion.

Mr McCann referred to the particular wording of the Law Society's letter intimating the preliminary decision

Before a final view is reached, the Committee invites you to make further representations in writing. If you wish to make representations you must lodge these in writing within 14 days of the date of this letter. Your representations will be considered by the Committee.

Mr McCann concluded from the foregoing that he was not under any obligation to a reply.

In reply, Mr Balfour confirmed that the Reporter had access to the whole of the Appellants' file and that all material correspondence and other papers had been produced to the Tribunal. He pointed out that there had been a duty to communicate effectively with Mrs "A". He referred in particular to the plea contained in her letter of 2nd September 1994 and the continuing difficulty as set out in her letter of 5th October 1994

referred to above, and the claim by Mr Moreland (recorded in Mrs "A's" letter to the Law Society of 7th July 1995 and referred to in the Report) to the effect that Mr Moreland had "been to court and a stop had been put on the arrestment". Indeed in his letter of 26th May 1995, Mr Moreland had apologised to Mrs "A" for the delay. Mr Balfour also referred to the apparent failure on the part of Mr McCann during June and July to communicate with Mrs "A". Mr Balfour refuted the suggestion that nothing more could have been done for Mrs "A". He submitted that Mr McCann's own involvement in August 1995 had been ineffective and he referred to the comments of Mrs "A" in her letter to the Law Society dated 1st November 1995 when she said

Despite having had numerous telephone conversations and either two or three face to face meetings, I feel we are no further on. Mr McCann seems to be much more concerned with how much the whole thing is costing him than solving the problem. He has now put it in the hands of my Regional Councillor (I have already tried him) and is awaiting results. At no time do I feel has he really tried to solve the problem, while all the time more and more is being taken from my salary, and I am now in a very difficult financial position.

Mr McCann did not trouble to reply to the Law Society letters of 5th December 1995 and 15th January 1996; and in a telephone call with the Law Society on 5th February 1996 it had been recorded that "he's aghast this complaint is being taken seriously".

It was pointed out by Mr Balfour that members of the public perceive the relationship as being between "a firm" and the client, that Mr McCann who founded the firm of Peter McCann & Co had been identified with the firm in a prominent way for many years, and that members of the public were entitled to regard him as not only the principal but also as the directing figure in the firm which bears his name. Mr Balfour reminded the Tribunal that Section 42A(8)(b) provides that a "solicitor" for the purposes of this section of the Act included a firm of solicitors. In regard to the matter of compensation, Mr Balfour observed that the

stress which Mrs "A" had suffered was the responsibility of Mr Moreland and the Appellant firm.

Mr Bryson of Messrs McIntosh & Maclachan, the solicitor who appeared on behalf of Mrs "A", submitted that for Mr McCann to succeed in his Appeal, he had to show that the Law Society had come to an unwarrantable decision or that they had taken some action which they were not entitled to do. There had been no criticism of the Reporter's account of Mr Moreland's conduct and in particular of how Mrs "A" had been misled by Mr Moreland regarding what he claimed to have been doing on her behalf. Mr Moreland had not challenged the findings against him. He had in effect accepted that the services provided by him were inadequate and on the basis of the definition of a "solicitor" in Section 42A(8)(b) it was therefore in order for the Law Society to make a finding of inadequate professional services against the Appellants. The right of relief was a normal incident of partnership and Mr Bryson submitted that this is what the Law Society Committee had in mind.

Regarding the liability to Community Charge, Mr Bryson explained that certain receipts had been provided, but not all of them as some had been destroyed when Mrs "A's" house had been flooded; whereas up until that time, "B" Regional Council had maintained that Mrs "A" had made no payments. There was no suggestion that Mr Moreland had prepared any Legal Aid application for Mrs "A" to take Court proceedings.

Mr Bryson claimed that the amount of the compensation was a matter for the discretion of the Law Society and he submitted that Mr McCann had not made out any case why the Law Society should not have awarded the maximum sum. He referred to the manner in which Mrs "A" had been misled and in particular to the apparent distress as reflected in Mrs

“A's” letter to the Law Society of 7th July 1995. Mrs Barclay had claimed that all her rebate applications had been submitted and Mr Bryson submitted that even the loss of the expectation of a claim, can ordinarily give rise to a claim for damages. He added that since he had been consulted in April 1996, the outstanding issues had been crystallised. Further diligence had been suspended and he appeared hopeful of resolving the remaining issues.

Section 42A(1) empowers the Law Society to take action in relation to a Complaint of inadequate professional services "after inquiry and after giving the solicitor an opportunity to make representations". These words do not require the Law Society either to have an open enquiry or to receive oral representations. The Law Society Committee properly delegated the investigative process to one of their members who prepared the abovementioned Report. This was sent both to Mr Moreland and to the Appellant firm with an indication of the Law Society's proposed determination; and an opportunity was given to respond but Mr McCann chose not to reply. The Law Society produced the material papers from the Appellants' file and the Law Society file which had been before the Reporter but, even at the Hearing, Mr McCann did not make any specific criticism which might have caused the Tribunal to question the gravity of the matter and the Tribunal has accordingly accepted the terms of the Report as reflecting the relationship between Mrs “A” and the Appellant firm.

It appeared that Mrs “A” initially consulted the firm, and Mr Moreland in particular, in or about July 1994. Despite Mr McCann's protestations that correspondence was withheld from him, there is a record of him speaking to the Law Society on 3rd July 1995. Mr Bryson stated that his firm commenced acting for Mrs “A” in April 1996 but there is no indication that the Appellant firm maintained active representation for Mrs “A” beyond 1st September 1995 when Mr McCann wrote to her with a letter from the Regional Council. Nevertheless

there is within that period from July 1994 to September 1995 a record of Mrs "A" being pressed by "B" Regional Council for outstanding Community Charge and Council Tax, of diligence being taken and arrestments being made on Mrs "A's" wages. There was ample evidence of the distress which these proceedings caused to Mrs "A" and that she repeatedly communicated with the Appellant firm and conveyed her concern. There was also evidence that Mrs "A" was given to understand that positive action was being taken whereas in fact the only action was a series of ineffectual letters to the Regional Council and the Sheriff Officers who had been instructed by the Local Authority.

Section 42A(1) required the Law Society to consider whether the professional service provided to Mrs "A" was adequate. The word "service" covers the whole range of the solicitor/client relationship including the advice given to the client, the response to enquiries, any necessary action and keeping the client fully informed. The appropriateness of the action which might be taken or withheld is only one of the considerations in the provision of a professional service by a solicitor. Mr McCann claimed that there was no action which Mr Moreland could reasonably have taken. However this did not excuse the absence of advice to Mrs "A" on the prospects of her challenging the demands of the Regional Council. Her instructions were clearly to resist the procedures adopted and pursued by the Local Authority which were becoming an increasing embarrassment to her. There was not even the initial step of preparing a Legal Aid application, and matters were allowed to drift to the continued embarrassment of Mrs "A". It is in this context that the Tribunal is satisfied that the Law Society acted fairly and reasonably in making a finding of inadequate professional services.

Mr McCann's further submission was to the effect that any such finding should have been against Mr Moreland alone as it was Mr Moreland who was personally attending to Mrs "A". Section 42A(1) and the immediately following subsections refer to "a solicitor" but exceptionally it is made clear in subsection(8)(b) that for the purposes of Section 42A the term "solicitor" includes a firm of solicitors. It is therefore competent for the Law Society to make a finding of inadequate professional services against a firm. It was apparent from the Minute of the Law Society Council Meeting of 29th November 1996 that the question whether any decision should be against Mr Moreland only or whether it should also involve the Appellant firm was a matter of concern, and it was noted that a material factor in the subsequent Committee deliberations was that if any fee were to have been charged, it would have been received by the Appellant firm. There was also a reference to a possible set off, but it is significant that Mr Balfour in his address to the Tribunal, did not seek to place reliance on the matter of fee entitlement.

It is therefore appropriate that the Tribunal should look at the actual decision which is the subject of Appeal namely "that an inadequate professional service had been provided to the complainer (Mrs "A") by Messrs Peter T. McCann & Co in that there appeared to have been a failure to follow the complainer's instructions, a failure to advise her adequately and a delay in progressing matters". Who was Mrs "A"'s "solicitor" for the purposes of Section 42A(1)? Was it solely Mr Moreland or was it indeed the Appellant firm? In the opinion of the Tribunal it is not sufficient to look merely at the ultimate destination of any possible fee: it is necessary to have regard to the whole relationship.

It was never disclosed how Mrs "A" was first introduced to Mr Moreland. Undoubtedly between June 1994 and June 1995, Mrs "A" seems to have communicated almost solely with Mr Moreland; but it is significant that throughout this period, Mr Moreland was a partner of the Appellant firm. Ordinarily it is the practice of individual partners in a legal practice to regard themselves as practising within the partnership. Mrs "A" addressed her communications to Mr Moreland at the address of the Appellant firm and Mr Moreland appears to have involved the facilities of the firm in providing to Mrs "A" such services as he did, and those letters which were sent to "B" Regional Council and the Sheriff Officers were written in the name of the firm.

It is with these considerations that the Tribunal concludes that it was the Appellant firm and not merely Mr Moreland who was Mrs "A's" solicitor for the purposes of Section 42A.

Mr McCann was the senior partner of the firm and at the initial stages, he would have appeared to have known little about Mrs "A's" affairs. Indeed it is ordinarily not practicable for a partner to be familiar with the day to day representation of a client by another partner. Mr McCann expressed concern that he was taking the blame for matters which were outwith his knowledge but such an approach is to misconstrue the nature of the inadequate professional service provisions as set out in Section 42A. The test to be applied is an objective one in relation to the client and the "solicitor" was in this case the firm of Messrs Peter T. McCann & Co as constituted at the relevant time. Since the material events took place, Mr Moreland is no longer a partner. However Mr McCann has chosen to continue the firm as a sole practitioner. He has all the benefits of the continuing goodwill and correspondingly must accept any outstanding responsibilities of the firm

as previously constituted. Whether indeed there is a right to relief is a matter for Mr McCann himself to consider and the existence or absence of such right is not a material factor for the Tribunal in considering the present matter.

There was some evidence that Mr McCann became directly involved with Mr "A" early in July 1995; and he met with her on the following month. The Reporter observed that about this time "Mr McCann seemed merely to have referred the matter to (Mrs "A's") Regional Councillor to whom she had already spoken and in the meantime arremtsments from her pay continued to be made." The foregoing suggests that Mr McCann apparently perpetuated the earlier neglect and this further confirms the view of the Tribunal that the Law Society properly made a finding of inadequate professional services against the firm of Peter T. McCann & Co.

There remains the matter of the amount of the compensation awarded by the Law Society under the provisions of Section 42A(2)(d). The wording of that subsection is in simple terms and appears to give the Council of the Law Society a wide discretion, enabling them to go beyond what might ordinarily be considered by a Court in a reparation action. Having regard to the specific circumstances, it is apparent that the Appellants could have given Mrs "A" proper advice or taken appropriate action at a much earlier stage and that Mrs "A" suffered considerable distress over a lengthy period as a result of the diligence and arremtsments. However Mr McCann did not convey to the Tribunal any particular matters which might have caused the Tribunal to restrict the award and according the Tribunal allows the direction to stand.

Mr Balfour, on behalf of the Law Society and Mr Bryson on behalf of Mrs “A”, invited the Tribunal to find the Appellants liable in expenses. As set out in paragraph 19, as extended by paragraph 23 of the Fourth Schedule to the said Act, the matter of expenses is within the discretion of the Tribunal. In the circumstances, the Tribunal could find no reason for varying their usual practice of awarding expenses to follow success and accordingly the Appellants have been found liable in the whole expenses of the Appeal proceedings.

Paragraph 14, as extended by paragraph 23 of the said Schedule, requires the Tribunal to give consideration to the matter of publicity. No circumstances were disclosed which might have caused the Tribunal to withhold the name of the Appellants. However Mr Bryson indicated to the Tribunal that Mrs “A” had already suffered considerably from the sequence of events. He asked that her name be excluded from such publicity. This request is reasonable and the appropriate order has accordingly been made.

Chairman