

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

F I N D I N G S

in Complaint

THE COUNCIL OF THE LAW SOCIETY  
OF SCOTLAND

against

KEVIN JOHN McINNES GOLDIE, Solicitor,  
98 West George Street, Glasgow.

1. A Complaint dated 8th September 1997 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 Kevin John McInnes Goldie, Solicitor, 98 West George Street, Glasgow (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. Answers were lodged by the Respondent.
3. In terms of their Rules, the Tribunal appointed the Complaint to be heard on 10th December 1997 and notice thereof was duly served upon the Respondent.
4. The Hearing took place on 10th December 1997. The Complainers were represented by Mr B.A. Murphy, Solicitor, Ayr as Fiscal and the Respondent was represented by Mr J.A. McCann, Solicitor, Clydebank. A Joint Minute was lodged wherein material facts were admitted and no evidence was led. The Tribunal found the following facts established:

- (1) The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 10th January 1957. He was admitted as a solicitor on 9th December 1982 and enrolled on 6th January 1983. Since then he has been an employee, and since 1st January 1995 a partner with Messrs Elder McKenzie & Co, Solicitors, 98 West George Street, Glasgow.
- (2) For several years prior to 1994 the Respondent had within his employer's firm acted for Mr "A" in respect of his business interests. In particular Mr "A" had consulted the Respondent's firm concerning the collection of trade debts. At all material times Mr "A" had met with and received advice from the Respondent. In or about January 1994 Mr "A" consulted Messrs Andrew Macallan & Son, Solicitors, Rutherglen, with regard to an outstanding account due by "B". On 5th January 1994 Andrew Macallan & Son wrote to the Respondent's firm with a Mandate signed by Mr "A" requesting delivery of Mr "A's" file. The Respondent failed to reply to the said letter of 5th January or to further letters dated 14th February, 2nd March and 7th June 1994.
- (3) On 8th July 1994 the Law Society wrote to the Respondent's firm with regard to their apparent failure to obtemper the Mandate. The Respondent replied on 15th July 1994 enclosing a copy of his letter of 12th July 1994 to Andrew Macallan & Son. On 25th August 1994, the Respondent replied to a subsequent letter from the Law Society dated 16th August 1994.

- (4) By letter dated 5th April 1995 Mr “A” made a complaint on the subject matter of the Respondent's handling of court proceedings brought against Mr “A”. The Law Society forwarded the relevant parts of Mr “A's” letter to the Respondent's firm on 17th April requesting a formal response within 10 days. A reminder was sent on 18th May 1995 and a reply on 30th May 1995 was received from the firm reporting that the Respondent had been on holiday when the letter of 17th April was received but that the firm was preparing a detailed response and intended to reply in the following week. However no response was sent by the Respondent or his firm. A reminder was issued on 9th January 1996 and on 17th January 1996 the Law Society issued a Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 as amended and a Notice under Section 42C of the said Act calling for all papers and files relating to Mr “A”. On the same date the Respondent acknowledged the Law Society's letter of 9th inst and promised a detailed reply by the end of that week. On 22nd January 1996 the Respondent replied with comments on the Law Society's letter. He added that he was copying his file and would forward it. When acknowledging that reply on 24th January 1996 the Law Society requested an explanation for the delay on the part of the Respondent in responding to their correspondence. Further reminders were issued on 28th March and 12th April 1996. By letter dated 11th April 1996 (received on 15th April 1996) the Respondent promised a detailed reply in the following week and by letters dated 19th April and 25th April 1996 he provided further comments in explanation of the delay in replying to correspondence,

adding that he had previously drafted a reply but that this had accidentally been put on file without being issued and that this had not been realised until after receipt of a communication from the Law Society in January 1996. The files however were still not sent by the Respondent and on 3rd May 1996 the Law Society made a further request for the appropriate files. Eventually the Respondent forwarded the files relating to Mr “A” on 21st August 1996.

- (5) The Law Society accordingly experienced the following delays
  - (a) from 17th April 1995 to 22nd January 1996 in obtaining a response
  - (b) from 24th January 1996 to 25th April 1996 to explain the delay, and
  - (c) from 17th January 1996 to 21st August 1996 to produce files.
- (6) Mrs “C” had been joint proprietor along with her sister “D” of the property at “P.1”. Their title was registered on 12th April 1989 and they granted a Standard Security in favour of the Governor & Company of the “E” Bank which was also registered on 12th April 1989.
- (7) In early 1993 the Respondent was instructed by Mrs “C” to act for her in respect of her wish to dispose of her interest in the property at “P.1”, to “D”.

- (8) On 27th April 1993 the “P.2” Branch of the “E” Bank wrote to the Respondent's firm on the understanding that the Respondent's firm acted inter alia for “D” and that the title was to be transferred into her sole name. The Bank indicated that they were agreeable to the transfer, subject to a Deed of Variation relative to the Standard Security being signed. The Respondent acknowledged this letter on 30th June 1993 and requested the title deeds. The title deeds were sent on 1st July 1993 and acknowledged by the Respondent on 6th July 1993. On 17th July 1993 the Respondent sent a Deed of Variation to the Bank for execution and this deed was returned on 30th August 1993 duly executed on behalf of the Bank. A cheque for £3000 was also forwarded by the Bank being the amount to be paid to Mrs “C” and she received funds after deduction of fees and outlays on or about 3rd September 1993. In the meantime, the Disposition had been executed on 4th August 1993. Eventually both the Disposition and Deed of Variation were presented for registration on 7th August 1995.
5. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in cumulo in respect of
- (i) his unreasonable delay in responding to enquiries made by Mr “A's” new solicitors,
  - (ii) his unreasonable delay in replying to correspondence from the Law Society in relation to Mr “A's” complaint, and
  - (iii) his failure to register deeds timeously following upon settlement of the transaction relating to “P.1”

6. The Respondent provided an inadequate professional service in respect of his failure to record deeds timeously following upon settlement of the conveyancing transaction relating to “P.1”.
7. Having heard the solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms-

Edinburgh 10th December 1997. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Kevin John McInnes Goldie, Solicitor, 98 West George Street, Glasgow, Find the Respondent guilty of professional misconduct in cumulo in respect of his unreasonable delay in replying to correspondence and his failure to record deeds timeously; Censure the Respondent and Fine him in the sum of £500 to be forfeit to Her Majesty; Find that the Respondent provided an inadequate professional service in respect of his failure to record deeds timeously but quoad ultra make no order; 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 an agent 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 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 14<sup>th</sup> January 1998.

IN NAME OF THE TRIBUNAL

Chairman

NOTE

This Complaint contained three charges of professional misconduct arising from the Respondent's representation of Mr "A" and a charge of inadequate professional services in relation to the same and there were separate charges of professional misconduct and inadequate professional services in relation to the Respondent's delay in completing a conveyancing transaction. A Joint Minute was lodged wherein the material facts were agreed. It was also disclosed in the Joint Minute that the Complainers were not insisting on a charge of professional misconduct arising from the Respondent's alleged failure to obtemper a mandate by Mr "A" or a charge that the Respondent had provided inadequate professional services to Mr "A". The Fiscal explained that the charge relating to the mandate was being withdrawn as there had been unpaid fees at the time. The Respondent had apparently not claimed any lien, but notwithstanding this it was acknowledged that the Respondent would have had cause to retain papers. In relation to the inadequate professional services, it was explained that when the Complaint had been prepared, it had been overlooked that the Council of the Law Society had already made a determination under Section 42A of the Solicitors (Scotland) 1980 resulting in the Respondent's firm having to make payment of the sum of £750 as compensation, and that it was therefore inappropriate that the Tribunal should consider the matter further under the provisions of Section 53A of the same Act.

It was explained in mitigation that although the Respondent had been merely an assistant prior to becoming a partner on 1st January 1995, his senior partner had previously been a sole practitioner. Because of the structure of the business, the Respondent had been exceptionally involved and this had effected his other work. In particular it was explained that the firm's cashier had been taken ill in September 1993, and died in December that year, and that the Respondent had to take over the day to day cash postings; and in the following April there was further disruption involving the Respondent's secretary. The

Respondent's assumption as a partner coincided with his principal experiencing a period of extended illness. Indeed at the time of the Hearing, the senior partner has still not fully recovered and the Respondent is himself now in effect a sole practitioner. There was a further disruption in January 1996 when the firm was obliged to vacate the premises which had been continuously occupied since 1953. The firm has a small staff with a relatively low turn-over and is engaged mainly in conveyancing.

In relation to the subject matter of the Complaint, it was explained that not only had £750 been paid to Mr "A" as compensation but that £760 had also been written off in fees. The delay in recording the conveyancing deeds had arisen through inadvertence. As no part of the Bank's security was being discharged and the transaction only necessitated a variation of the same, the Security to the Bank had never been at risk. At the material time, neither of the parties to the transaction had been aware of the delay and in these circumstances, the Tribunal was invited not to make any determination in relation to the inadequate professional services.

The Tribunal has had regard to the whole circumstances. It was apparent that the Respondent, by neglecting to reply to correspondence, caused considerable trouble and concern to both Mr "A" and his new solicitor and this neglect was compounded by the Respondent's repeated failure to reply to the Law Society. The Respondent's delay in recording the conveyancing deeds, namely a Disposition and a Deed of Variation, did not result in any inconvenience to either party nor was the security at risk. However when solicitors are entrusted to carry out procedures, it is expected that such work will be performed diligently, and although it was explained that the Respondent had overlooked the transaction, he must accept responsibility for not having a system which would have alerted him to the outstanding matter. It is with these considerations,

that the Tribunal makes an in cumulo finding of professional misconduct. Whilst the Respondent may have merely been an assistant for part of the relevant time, he had accepted personal responsibility and it is appropriate that this Tribunal recognises his neglect by imposing a fine.

It was not disputed that the Respondent had provided an inadequate professional service as a result of his delay in recording deeds and it would have been open to the Tribunal to make an order within the powers conferred by Section 53A(2) of the Solicitor (Scotland) Act 1980.

However taking into account that the Respondent is already being punished under the heading of professional misconduct and that none of the parties suffered any loss or distress, the Tribunal consider it inappropriate to make any determination or other order under Section 53A.

No circumstances were disclosed which required the Tribunal to consider exercising the limited discretion in regard to publicity and accordingly publicity, to include the name of the Respondent, will be given to the decision.

Chairman