

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

D E C I S I O N

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

by

GEORGE LAW, Solicitor, sometime of
9 Princes Street, Falkirk
and now residing at Devon Lodge, Dollar.
APPELLANT

against

THE COUNCIL OF THE LAW SOCIETY
OF SCOTLAND
FIRST RESPONDENT

and

MRS "A", c/o Gerard Brophy, Solicitor,
13 Cockburn Street, Falkirk.
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 George Law, Solicitor, 9 Princes Street, Falkirk ("Mr Law") against a finding by the Council of the Law Society of Scotland ("the Law Society") that Mr Law's former firm of Messrs Graham Marr & McLachlan ("Mr Law's firm") had provided inadequate professional services in relation to a former client Mrs "A", c/o Gerard Brophy, Solicitor, Falkirk ("Mrs "A") and a determination that Mr Law should make payment of a sum of £1000 to Mrs "A".
2. In accordance with the provisions of the Rules of the Tribunal, the Appeal was formally intimated to the Law Society and Mrs "A". Answers were lodged on behalf of the Law Society. No Answers were lodged for Mrs "A".

3. Having considered the Appeal with the Answers for the Law Society, the Tribunal resolved to set the Appeal down for Hearing and appointed that the Appeal should be heard on 18th February 1998.
4. On 18th February 1998, Mr Law appeared on his own behalf and the Law Society was represented by Mr I.L.S. Balfour S.S.C., Edinburgh. Mrs "A" was not present or represented.
5. Having considered the submissions for the parties and the productions lodged, the Tribunal resolved to dismiss the Appeal and pronounced an Interlocutor in the following terms:

Edinburgh 18th February 1998. The Tribunal having considered the Appeal by George Law, Solicitor, sometime of 9 Princes Street and now of Devon Lodge, Dollar ("Mr Law") against a finding of inadequate professional services by the Council of the Law Society of Scotland ("the Law Society") in relation to Mrs "A" c/o Gerard Brophy, Solicitor, Falkirk ("Mrs A") and a determination that Mr Law should make payment of a sum of £1000 to Mrs "A"; and having heard parties, dismiss the Appeal; Find Mr Law liable in the expenses of the Law Society 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 6 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 Mr Law be given to this decision.

(signed) IAN S SMITH

Vice Chairman

6. A certified copy of this decision together with a copy of the foregoing Interlocutor were sent to each party by recorded delivery post on 25th March 1998

IN NAME OF THE TRIBUNAL

Vice Chairman

NOTE

This Appeal relates to a finding by the Law Society that Mr Law's firm had provided an inadequate professional service to Mrs "A".

The matter arose from a complaint by Mrs "A" to the Law Society. The original letter of complaint was not produced to the Tribunal but from the documents lodged with the Appeal, it was disclosed that a Complaints Committee of the Law Society identified Mrs "A's" complaints as

1. delay
2. failure to communicate
3. failure to advise adequately

in connection with Mrs "A's" intended action of divorce.

The Committee referred the matter to a lay member to act as Reporter. The Reporter considered the facts and circumstances as they were contained in the relevant files namely, the file of the Law Society and a copy file of Mr Law's firm. It was explained that the original of the letter file had been sent to Mr Law in 1995 and that it had not been received back from Mr Law.

Subsequently the Reporter prepared a Report setting out the facts and circumstances of Mrs "A's" complaint and a copy of this Report was sent to Mr Law by letter dated 26th May 1997. In the covering letter, Mr Law was invited to make representations on the matter, in writing, within fourteen days of that date. Mr Law did not immediately reply to this letter or to a reminder dated 2nd July 1997. The Law Society wrote again on 26th August 1997 intimating that they had received the Reporter's Opinion and that the Opinion would go to the Committee in September and that they would make a determination in this matter; the letter also said "The Reporter has specifically noted in coming to his

view that you have had an opportunity of commenting on the facts and circumstances of the matter in letters sent to you on 26th May and 2nd July but that you have not taken the opportunity to comment". On the following day (27th August) the Law Society received a letter from Mr Law bearing to be dated 6th August 1997. The last mentioned letter was not produced but it does not appear to have contained any matter of substance in that the Law Society in their acknowledgement dated 3rd September 1997 stated that he was to be allowed until 22nd September 1997 to provide his further comments. Mr Law wrote again on 15th October 1997 stating that he had been unable to find Mrs "A's" file in his office and that he could only assume that it was with Mr Brophy, Mrs "A's" present solicitor. He also observed

I cannot see how this Report will help anyone to come to a conclusion as to whether or not the Complaint is justified. The Reporter refers frequently to parts of the file being illegible and if he is unable to read these notes he does not have full information as to what transpired which probably explains why his Report comes to no conclusion.

I find it interesting that at the end of his Report the Law Society thought it necessary to telephone Mr Brophy and that the date of the telephone call is not disclosed and that the Law Society later thought fit to communicate (whether by letter or telephone call is not stated) to remind Mr. Brophy that he was to consult Mrs "A" with regard to the question of inferior professional service. This appears to me to be an invitation by the Society to invite a client to make a complaint against a solicitor. What I would have expected the Law Society to do would be to write to Mr. Brophy to the effect that unless the Society heard from Mr Brophy or Mrs "A" within fourteen days the Society would assume that she did not wish to proceed.

On the same day, Mr Law also wrote to Mr Brophy regarding the outstanding file. Mr Brophy replied on 21st October 1997 indicating that the file was with the Law Society and Mr Law wrote to the Law Society on 29th October seeking return of the said file.

In the meantime the Law Society's Committee had reached a determination which was ratified by the Council of the Law Society and the narrative of events was recorded in the Law Society's letter of 7th November 1997 intimating the said determination which was to the effect that in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980

...the Council of the Law Society of Scotland have considered a complaint of inadequate professional services against you at the instance of the above named (Mrs "A") and have found the complaint to be justified and therefore uphold the complaint.

In terms of Section 42A(2)(d) of the Act, the Council have DETERMINED that an inadequate professional service had been provided by Messrs Graham Marr & McLachlan to the complainer in that there had been delay, failure to communicate and failure to advise adequately in relation to divorce proceedings. The Committee determined that the solicitor should make payment to the complainer in the sum of £1000.

The Appeal has been made by Mr Law under the provisions of Section 42A(7) in response to the foregoing.

The grounds of Appeal as stated by Mr Law were that

- (1) On 18th July 1996 he replied to the Law Society in connection with the complaint and on 22nd July 1996 in response to a request by the Law Society he forwarded to them his file in connection with Mrs "A". Thereafter, he received a copy of the Reporter's Report. As he was not the person who had dealt with Mrs "A's" business, he was in no position to make any detailed observations on the Report without the file.
- (2) The Reporter considered the facts and circumstances of the complaint as they were contained in the Law Society's file and a copy file of Mr Law's firm and the Reporter commented that the copy file was somewhat unsatisfactory in that photocopies of notes were illegible.
- (3) If the Reporter was unable to read all the notes on the file then he was not in a position to say whether or not the original complaint was justified.

Mr Law, in his Appeal made reference to separate considerations by a "Reporter" and a "Lay Reporter" but there was no indication in the papers that there was more than one Reporter, who was indeed a lay member of the particular Law Society Committee. Mr Law also claimed that he never received his file back from the Law Society.

In the Answers for the Law Society it was explained that they had obtained the original file from Mr Brophy on 6th February 1995 that they had sent it to Mr Law on 15th February 1995 but that they had never, to the best of their knowledge, received that file back from Mr Law. Because of his apparent failure to return that file to them despite their requests for it, the Law Society of Scotland obtained a copy of the file from Mr Brophy which he had made before sending the original file on 3rd February 1995. Any imperfections in the papers from which the Reporter worked were because Mr Law refused or delayed to return to the Law Society of Scotland the original file which they had sent to him on 15th February 1995. The Law Society of Scotland wrote to Mr Law on 16th August and 14th October 1996 and again on 12th March and 16th April 1997 all four letters in effect asking him to return the file to them and stating plainly that the Law Society was not in possession of the original file and Mr Law had not suggested in reply to any of these letters that he had already returned the file to the Law Society on 22nd July 1996. It was also explained that although Mr Law was not the person who dealt primarily with Mrs "A's" business, the person who did namely Miss Nanette Marr, did not renew her Practising Certificate on 1st November 1994 and ceased to practise, although she continued for some time to attend the office to tidy up files. From 1st November 1994 Mr Law was the sole proprietor of his firm and the only qualified solicitor practising from that address.

In addressing the Tribunal, Mr Law emphasised that the outstanding question was solely directed to the quality of the professional advice given by his firm to Mrs “A”. He pointed out that within the Report, there were twenty one entries which were noted as being either illegible or partially legible and he submitted that the Reporter was accordingly not in a position to adjudicate upon the complaint. Mr Law had originally delivered his file to Mr Brophy who passed it to the Law Society. The Law Society then sent the file to Mr Law and he claimed that he had thereafter returned-it to the Law Society. Mr Law explained his subsequent failure in 1997 to respond to the Reporter's report by pointing out that he had by then been retired for two years; he had not originally acted in the matter and he was obliged to look for the file. He explained that there had been a lack of progress in Mrs “A's” case because she had initially not produced any witness; and eventually when a relevant entry was traced in the Register of Births, Mr Law claimed that Mrs “A” was unwilling to sign the Legal Aid Forms.

In response, Mr Balfour submitted that the determination had properly been made against Mr Law's firm. He explained that when the particular file has been sent by Mr Brophy to the Law Society on 3rd February 1995, Mr Brophy had retained a photocopy of the same. The Law Society forwarded the file to Mr Law's firm on 15th February 1995 and the file was not seen by the Law Society thereafter. Mr Balfour particularly founded on the correspondence which the Law Society had sent to Mr Law between August 1996 and August 1997, initially requesting the return of the file and latterly inviting Mr Law to comment on the Report. Throughout this period, there was no suggestion by Mr Law that he had in fact returned the file to the Law Society. The Law Society had proceeded on the basis of the photocopy file which had been retained by Mr Brophy in that this was the best available material. Mr Balfour

accepted that the Reporter had found various notes to be illegible but nevertheless the Reporter had been able to make findings in fact and had "no hesitation" in finding that the professional service provided in connection with Mrs "A's" affairs was inadequate.

Section 42A of the Solicitors (Scotland) Act 1980 provides that

(1) Where -

(a) the Council 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.

and this Appeal has been made under subsection 42A(7) which provides that "A solicitor in respect of whom a determination or direction has been made ... may ... appeal to the Tribunal against the determination or direction." In this case, the determination was made in relation to Mr Law's firm but it is specifically set out in Section 42 that "solicitor" includes a firm of solicitors and Mr Law did not dispute that the determination had in effect been made against him personally.

Section 42A requires the Law Society to make "inquiry" and this procedure was in effect carried out by a lay member of the appropriate Committee who prepared the very full Report. For the reasons already set out, the Reporter did not have access to the file of Mr Law's firm relating to Mrs "A" but there was available to the Reporter the photocopy of the file which had been made by Mr Brophy in 1995 and the Reporter also had access to the Law Society's own file. It was not apparent whether the illegibility of certain notes in the copy file was attributable to the handwriting or the quality of photocopying or a combination of both. The Reporter very properly identified the particular items which were difficult or impossible to read but it is

significant that the Reporter was nevertheless able to reach a conclusion regarding the adequacy of the service provided to Mrs “A”.

The second obligation on the Law Society contained in Section 42A is to give "the solicitor an opportunity to make representations". It is apparent that the Law Society fulfilled this requirement in that they wrote to Mr Law with a copy of the Report on 26th May 1997 seeking comments within fourteen days and indeed sent out a reminder on 2nd July 1997 allowing a further seven days for response. It was only following the Law Society's letter dated 26th August 1997 that the Law Society received on 27th August 1997 Mr Law's letter dated 6th August 1997 and although in their response dated 3rd September 1997 the Law Society allowed Mr Law until 22nd September 1997 to provide his further comments there was no substantive reply until mid-October by which time a decision had been made in relation to Mrs “A's” Complaint.

It is with this background that the Tribunal concludes that the Law Society properly carried out the procedures required of them by Section 42A and that there was sufficient material to enable the Law Society to come to the conclusion which was set out in their letter of 7th November 1997. The Appeal is accordingly dismissed.

The Fourth Schedule to the Solicitors (Scotland) Act 1980 confers power on the Tribunal to award expenses in such appeals. There were no circumstances disclosed which might have caused the Tribunal to vary from the normal practice of finding the unsuccessful party liable and an appropriate order has accordingly been made.

The Tribunal only has a limited discretion regarding publicity. The Tribunal is not aware of any circumstances which might have caused the limited discretion to be exercised and accordingly publicity to include the name of Mr Law and his former firm will be given to this decision.

Vice Chairman