

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

## FINDINGS

in Complaints  
dated 23 January 1998 and 21 April 1998

by

THE COUNCIL OF THE LAW SOCIETY  
OF THE SCOTLAND

against

JOHN SCANLON, Solicitor,  
Suite 411-415, Baltic Chambers,  
50 Wellington Street, Glasgow.

1. A Complaint dated 23rd January 1998 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 John Scanlon, Solicitor, Suite 411-415, Baltic Chambers, 50 Wellington Street, Glasgow be required to answer the allegations contained in the Statement of Facts which accompanied the Complaint and that the Tribunal should issue such orders in the matter as they might think right.
2. The Tribunal caused a copy of this 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 said Complaint to be heard on 8th May 1998.
4. In the meantime, a further Complaint dated 21st April 1998 was lodged by the Complainers requesting that the Respondent be required to answer the allegations contained in the Statement of Facts which accompanied that Complaint. The Tribunal caused a copy of this further Complaint to be served upon the Respondent. Answers were thereafter lodged in respect of both Complaints.

5. The Hearing took place on 8th May 1998. The Complainers were represented by Mr D.C.W. Pyle W.S., Edinburgh on behalf of Ms Valerie Johnston, Solicitor, Dumfermline as Fiscal and the Respondent by Mr D.S Williamson W.S., Edinburgh on behalf of Mr William Macreath, Solicitor, Glasgow. The Tribunal allowed the hearing of the Complaints to be conjoined, and a Joint Minute was lodged in respect of each Complaint. In respect that the outstanding charges in each Complaint 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 born on 3rd January 1958. He was admitted as a solicitor on 14th and enrolled on 31st both days in August 1981. After employment with Clydebank District Council, the Respondent commenced practice on his own account on 1st February 1991 under the name of Messrs John Scanlon & Co.

“A”

(2) The Respondent acted for Mr and Mrs “B”, the purchasers of “P.1” and for their lenders the “A” Building Society. The property was purchased from “C” District Council. The mortgage completion date was 16th March 1993. Thereafter the Respondent presented the Feu Disposition and the Standard Security to the Keeper for recording. Receipt was acknowledged by the Keeper on 25th March 1993. The deeds were returned to the Respondent for alteration and the Respondent failed to carry out the alteration or return the deeds to the Keeper.

- (3) By letter dated 11th October 1994, Messrs Brechin Robb, Scottish Solicitors for the “A” Building Society, received copies of the Keeper's acknowledgement slips from the Respondent. On 12th October 1994 they wrote to the Respondent enquiring why the recording process had not been completed. This query was followed up but not replied to by the Respondent. On 11th April 1995 he wrote to Brechin Robb advising that his recollection was that the deeds had been returned by the Keeper for amendment. He thereafter continually failed to address the issue or to reply to letters from Brechin Robb seeking an explanation of the up to date position. On 18th April the Respondent advised that he was checking the current situation with the Keeper and would reply with the required information "immediately we receive a reply". He failed to reply to further letters dated 18th May and 21st June 1995.
- (4) By letter dated 30th August 1995 Brechin Robb wrote to the Law Society. The Law Society thereafter wrote to the Respondent by letter dated 11th September 1995.
- (5) On 19th September 1995, the Respondent had sent a brief reply to the Law Society's letter of 11th September 1995. He advised that the delay in recording deeds was due to the necessity of having a deed amended at the request of the Keeper and he promised a full reply at an early date.
- (6) On 4th October 1995 a reminder was sent to the Respondent by the Deputy Secretary and on 11th October 1995 this was followed up by a phone call to the Respondent's Office. The Respondent advised that he had been on holiday but

had dictated a response on tape which would be faxed that day. The fax which was subsequently received, repeated that the Keeper required an amendment of the deed granted in favour of the purchasers by the local authority and stated that he had written to the Keeper to enquire as to the position. He stated he had had no reply and a reminder was being sent to the Keeper.

- (7) On 19th October 1995 a reminder was sent by the Law Society specifically asking for confirmation that the deeds had been sent for recording. A further reminder was sent on 8th November 1995. Telephone calls were made by the Law Society to the Respondent's Office on 13th, 23rd, and 27th November 1995. On 23rd November the Respondent indicated that a letter had been dictated. On 27th November he stated that the letter had contained an error and promised that the amended letter would be sent immediately. On 28th November 1995 a fax was received from the Respondent stating that a detailed reply was being prepared.
- (8) After a number of further phone calls from the Law Society, the Respondent sent a letter dated 29th November 1995 explaining there had been an error in the Feu Disposition relating to the description of the subjects of which the property had formed part. This had been amended and he claimed that the deed had been returned to the Registers of Scotland.
- (9) On 11th January 1996 the Law Society sent to the Respondent a copy of a detailed letter from Brechin Robb, seeking a fuller explanation of the Respondent's actings,

confirmation that the deeds had in fact been presented for recording and copies of the Keeper's acknowledgement slips, and the Law Society invited the Respondent to comment thereon. The Respondent did not reply to this letter or to a reminder dated 31st January 1996.

- (10) On 19th March 1996, the Law Society sent to the Respondent a formal Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980. A letter was received from the Respondent dated 1st April 1996 advising that he was on holiday and would reply fully at an early date. Reminders were sent to the Respondent on 17th April 1996 and 2nd May 1996.
- (11) Brechin Robb continued to write to the Respondent for confirmation of the true position. He failed to supply this information and eventually Brechin Robb commissioned an interim report on Search from Messrs Millar & Bryce Limited, Searchers. Their interim report disclosed that no deed had been recorded on behalf of the purchaser and no security had been recorded on behalf of the "A" Building Society. No application was pending in the Presentment Book. By letter dated 19th June 1996 a copy of the report was sent to the Respondent for his comment. He did not make any substantive response.
- (12) On 4th September 1996 the Feu Disposition and the Standard Security were submitted to the Keeper for recording. Although a Notice of Title had been recorded on 12th August 1996 when "C" District Council became "D" Council, the Keeper accepted the deeds for recording and an effective security was put in place,

three years and six months after the mortgage completion date. During this time the purchasers had been uninfert and the Building Society had no security.

- (13) The Respondent indicated to the Law Society that he was consulting Messrs Livingston Brown, Solicitors, in relation to the complaint. Livingston Brown wrote on his behalf on 26th September 1996 advising that after extensive enquiries the Respondent had discovered the title documents still within his office and they confirmed that the deeds had been presented to the Registers of Scotland. On 4th January 1997 the Law Society issued a formal Notice under Section 42C of the said Act which called on the Respondent to produce all books, accounts, deeds, securities, papers and other documents in his possession or control relating to Mr and Mrs "B", "P.1" and the "A" Building Society. The Respondent did not reply to this Notice or to a reminder dated 6th March 1997.

"E"

- (14) "F" died on 21st September 1992. His son "E", as Executor Nominate, instructed the Respondent in or about the first week of October 1992 to deal with the administration of the Estate.
- (15) Over a period of three years Mr "E" became increasingly dissatisfied with the Respondent's failure to progress the administration of the Estate and his failure to reply to letters or phone calls seeking information. On 30th August 1995 Mr "E" faxed a letter to the Respondent requesting a reply by 1st September 1995. He received no reply and Mr "E" sought assistance from an acquaintance

within the firm of Messrs Currie Gilmour & Company. At their intervention, the Respondent eventually arranged a meeting with Mr “E” and apologised about the delay, explaining that the file had been with a trainee. The Respondent assured Mr “E” that he would now progress the case speedily. This did not occur and by letter dated 19th January 1996 a Mandate signed by Mr “E” and dated 16th January 1996, was sent to the Respondent authorising and instructing him to deliver to Currie Gilmour & Company the Will of the late “F”, the titles to the property owned by him, and all other papers in relation to the Estate.

- (16) The Respondent failed to deliver the said papers and failed to reply to the letter of 19th January or to a reminder dated 1st February 1996. The new solicitors were obliged to obtain copies of the Extract Registered Will and the title deeds to enable them to administer the Estate. A formal complaint dated 21st February 1996 was sent to the Law Society by Currie Gilmour & Company. The Law Society wrote to the Respondent by letter dated 6th March 1996.
- (17) On 8th March 1996 the Respondent replied to the Law Society's letter of 6th March and he promised a detailed response in early course, advising that he was going away on business then on holiday and that he would return to the office on 18th March 1996. Following on a reminder from the Law Society, the Respondent wrote on 1st April 1996 promising a full response in the course of that week. He did not write as promised, notwithstanding a reminder dated 24th April 1996.

- (18) On 10th May 1996, the Law Society served a formal Notice on the Respondent by recorded delivery under Section 15(2)(i)(i) of the said Act requiring an explanation for the delay in replying and allowing 14 days for the reply. The Respondent did not comply with the terms of Notice.
- (19) On 3rd July 1996 the Respondent advised that he was arranging a meeting with Livingston Brown who were to act on his behalf. A further letter from the Respondent dated 26th July 1996 advised he had an appointment with that firm. On 26th September 1996 Livingston Brown wrote to the Law Society accepting that there was no excuse for the Respondent's delay in this matter. No further substantive response was received from the Respondent. By a subsequent faxed letter, the Respondent asked for his case to be continued as he wished to seek medical advice.
- (20) Livingston Brown had sought to assist in resolving matters but the Respondent failed to reply to a letter from them and they withdrew their agency. Due to the Respondent's failure to administer the Estate and then to pass all papers to the new solicitors, the funeral account remained unpaid and the creditor passed the file to solicitors for recovery proceedings to be instituted against the Estate. In March 1997 some papers were sent to the new solicitors with a compliment slip and by letter dated 3rd April 1997 the Respondent delivered a cheque for sums uplifted by him from "G" Assurance Society with interest added. As at the date of the particular Complaint namely 23rd January 1998, the full file had not been delivered in implement of the mandate nor had the Respondent produced a full accounting of his intromissions as requested.

“H”

- (21) In 1995 Mr “H” instructed the Respondent in relation to his matrimonial affairs. In June or July 1995 he instructed the Respondent to submit an application for Legal Aid to enable him to raise proceedings against his wife for divorce. Mr “H” then received intimation of an application for Legal Aid by his wife and Mr “H” instructed the Respondent to lodge objections to his wife's application.
- (22) Mr “H” heard nothing further from the Respondent. In about October 1995 he received service of a divorce writ at the instance of his wife. He was dissatisfied with the service received from the Respondent and his failure to communicate with him and he instructed new solicitors, Messrs Ruthven Keenan Pollock & Company. They sent a Mandate signed by Mr “H” to the Respondent by letter dated 5th October 1995 instructing him to send all papers he held in relation to Mr “H's” matrimonial affairs. The Respondent failed to reply to that letter or obtemper the terms of the Mandate. Further letters were sent to him on 13th and 25th October and 23rd November 1995. The Respondent replied by telephone on 1st December 1995 stating that he was attending to matters and would reply by the following Monday. No letter was received by the new solicitors and reminders were sent on 8th and 16th December 1995.
- (23) By letter dated 21st December 1995 the Respondent sent to Ruthven Keenan Pollock & Company a copy of certain Legal Aid forms, a precognition of Mr “H” and a copy of a letter from his wife's solicitors dated 29th March 1995.

In the letter of 21st December 1995, the Respondent apologised for the delay and claimed that problems had arisen when he submitted a full Legal Aid application to the Scottish Legal Aid Board on Mr “H's” behalf. The Respondent added that he was making further enquiries. In fact, no Legal Aid application for divorce proceedings was ever made by the Respondent on behalf of Mr “H”. The Respondent failed to reply to further letters dated 12th and 19th January 1996 other than to send a holding letter dated 19th January 1996. As at the date of the particular Complaint, namely 23rd January 1998, no other papers were forwarded by the Respondent in accordance with the Mandate.

- (24) On 6th March 1996 the Law Society asked the Respondent to comment on a complaint made on behalf of Mr “H” about the Respondent's delay and his failure to implement the Mandate. On 8th March 1996 a letter was received from the Respondent promising a detailed response in early course and advising that he was going away on business and then on holiday and would return to his office on 18th March 1996. A reminder was sent on 26th March 1996. The Respondent wrote on 1st April 1996 promising a full response in the course of that week. A further reminder was sent on 24th April 1996.
- (25) As the Respondent did not make any response to Mr “H's” complaint, the Law Society served a formal Notice on 10th May 1996 under Section 15(2)(i)(i) of the said Act requiring an explanation for the delay in replying and allowing 14 days for a response. The

Respondent did not comply with the terms of the Notice. On 3rd July 1996 the Respondent advised that he was arranging a meeting with Livingston Brown who were to act on his behalf. A further letter from the Respondent dated 26th July 1996 advised that he had an appointment with that firm. On 26th September 1996 a letter was received from Livingston Brown indicating that the matter had been dealt with by a trainee in the Respondent's firm who had left in the Summer, and that the case had not been progressed, remaining static until the Mandate was received. It was stated that the Respondent had had difficulty tracing papers other than the Legal Aid forms, the precognition and the letter which had been forwarded to Ruthven Keenan Pollock & Company. No further substantive response was received from the Respondent. By a subsequent faxed letter, the Respondent asked for his case to be continued as he wished to seek medical advice.

“I”

- (26) On or about 18th June 1992 “I” instructed the Respondent to act on his behalf in connection with a claim for personal injury arising from a road traffic accident on 17th June 1992. Mr “I” received confirmation that a claim had been submitted on his behalf by letter from the Respondent dated 19th June 1992. A further letter dated 13th July 1992 from the Respondent enclosed an acknowledgement from “J”. Thereafter the Respondent failed to progress the claim and failed to reply to telephone enquiries about progress. On 12th February 1993 “J” paid out the sum of £285 in settlement of the claim and closed their file. Mr “I” received no payment either

from the Respondent or direct from “J” in settlement of the claim. By letter dated 15th May 1996 he wrote to the Law Society with a view to resolving the matter.

- (27) By letter dated 29th May 1996 the Law Society called on the Respondent to confirm what moves had been made to ensure that the triennium did not expire without anything being done for Mr “T”. The Law Society also sent a copy of Mr “T’s” letter of complaint to the Respondent. The Respondent did not reply. Follow up telephone calls were made on 21st June 1996, 25th June 1996, 27th June 1996 and 3rd July 1996. On the last mentioned date the Respondent indicated that a letter had been dictated and should arrive the next day and that it could be discussed then. No letter was received and five reminders were sent between 8th July 1996 and 18th September 1996. The Respondent did not reply. On 9th October 1996, the Law Society served a formal Notice on the Respondent under Section 15(2)(i)(i) of the said Act calling upon him to give an explanation for the delay in replying and allowing 14 days for reply. On 30th October 1996 the Law Society served a formal Notice on the Respondent under Section 42C of the said Act calling upon him to produce within 14 days, all books, accounts, deeds, securities, papers and other documents in his possession or control relating to “T”. The Respondent did not comply with either Notice.

Unrecorded Deeds

- (28) The Respondent acted for a Mr and Mrs “K” in a purchase transaction which was completed on 30th November 1995. The Stamp duty on the property was not paid until 16th February 1996. The lender was not advised of the delay in having the deeds for the purchase stamped and recorded.
- (29) In 1993, the Respondent acted for “L” in a purchase transaction. The consideration was £83,000 and at that time a loan of £72,780 was obtained from the “A” Building Society. A cheque for stamp duty drawn in 1993 was never presented and was written back into the ledger for the client “L” in April 1996. This increased the credit balance to £1,458.55 when added to funds already held for recording dues. In October 1996 the stamp duty had still not been paid and the deeds had not been recorded.

“M” District Court

- (30) The Respondent acted for two persons charged by the Procurator Fiscal at Dunoon with contraventions of Section 67, 68(1) and 68(7) of the Licensing (Scotland) Act 1976. Letters pleading not guilty were submitted and a trial was scheduled for 15th January 1997. This was intimated to the Respondent. Thereafter the Respondent and the Procurator Fiscal agreed to discharge this trial diet to enable the Respondent to meet other commitments and also as the entitlement to Legal Aid had not been determined. No witnesses were inconvenienced.

- (31) A fresh diet of trial was scheduled for 19th March 1997 and intimated to the Respondent. On that date the Respondent and his clients failed to appear. A local agent appeared on behalf of the Respondent and moved for discharge of the trial. The diet was discharged and a new date was scheduled for 30th April 1997. The new date was intimated to the Respondent. Witnesses had attended Court on 19th March and had to be sent away.
- (32) On 30th April 1997 the Respondent and his clients failed to attend Court for the trial. No local agent appeared on behalf of the Respondent and the Clerk of Court contacted him by telephone to ascertain why he was not present. The Respondent advised the Clerk that he no longer acted for the clients and that he had intimated that to them along with the trial date. The Respondent had failed to intimate his withdrawal to the Court or to the Procurator Fiscal and witnesses were in attendance. As a result of the information he gave on the phone, non appearance arrest warrants were issued in respect of the two accused.
- (33) On 21st May 1997 by arrangement with the Procurator Fiscal the said accused appeared to answer the warrant. They were represented by a local agent on the instruction of the Respondent and the accused adhered to their "not guilty" pleas. A fresh trial was fixed for 11th June 1997. As a result of the inadequate explanation about the failure to attend on 30th April, the Clerk to the Court wrote to the Respondent on 29th May requesting a written explanation as to why the said accused had failed to appear on 30th April.

- (34) By letter dated 10th June 1997 the Respondent intimated that he had again withdrawn from the agency in respect of both accused. He indicated to the Court that the delays caused in the case and the lack of preparation, were due to his own problems as a sole practitioner as he had failed to progress matters to the extent where the case could proceed to trial. He emphasised that the situation was solely due to his failure and not that of the clients. He also advised that on the same day namely 10th June 1997 he had told one of the clients that she would require to seek independent legal advice elsewhere without delay.
- (35) As a result of the Respondent's failure to intimate his withdrawal timeously and his failure to advise his clients timeously that he was withdrawing, the trial diet scheduled for 11th June 1997 again had to be discharged to enable the two accused to obtain legal representation. Witnesses had attended for the trial on that date and for the third time again had to be sent away.
- (36) The Court, the accused and Crown witnesses were all seriously inconvenienced over many months as a result of the conduct of the Respondent, his failure to communicate properly with the Court and his clients, and his failure to progress matters in what was a relatively complex case involving juvenile witnesses and which could have affected the livelihood of a licensee who was one of the accused,
- (37) On 9th July 1997 the Law Society called on the Respondent to comment on allegations made against him by the Clerk of the Court, about his failure to comply with his duties to the Court. The Respondent failed to reply to this letter

or to reminders dated 13th August 1997 and 1st September 1997. On 23rd September 1997 the Law Society served a formal Notice on the Respondent under Section 15(2)(i)(i) of the said Act requiring an explanation for the delay in replying and allowing 14 days for the reply. On the same date, the Law Society served a formal Notice on the Respondent by Recorded Delivery under Section 42C of the said Act requiring production of all papers relating to the said case. The Respondent did not comply with the terms of the Notices.

“N”

- (38) On 20th May 1997 Mr & Mrs “N” instructed the Respondent in relation to a new tenancy agreement between themselves and “O” for a flat at “P.2”. The Respondent was also instructed in the sale of Mr & Mrs “N's” previous flat at “P.3”.
- (39) On 4th July 1997, an offer for the flat at “P.3” was submitted to the Respondent by Messrs Stirling & Gilmour, Solicitors on behalf of a Miss “P”. The Respondent did not communicate with Mr & Mrs “N”. On 18th July 1997 Mr & Mrs “N” received a telephone call from the purchaser enquiring as to why there had been no response from their solicitors to her offer. The Respondent was immediately contacted by telephone and he explained that his wife had just had a baby but that he would fax Miss “P's” solicitors that day. A date of entry was scheduled for 25th July 1997 and Mr & Mrs “N” were advised to attend at the Respondent's office on 23rd July to sign the relevant papers.

- (40) At the meeting on 23rd July 1997 Mr & Mrs “N” were advised by the Respondent they would be able to move on 25th July which was two days later. The “Ns” continued with their arrangements for removal on that date and arranged for disconnection of the telephone line. Settlement did not take place on 25th July as promised. Mr & Mrs “N” contacted the Respondent several times that day and were assured that settlement would take place. Over the following eleven days they made numerous phone calls to the Respondent who continued to assure them that settlement would take place. Settlement was not effected.
- (41) Mr & Mrs “N” thereafter transferred agency to Messrs Armour, Queen Street, Glasgow who requested the file and papers from the Respondent. The Respondent delayed in the transfer for a period of one week. As a result of the delay in progressing their business, Mr & Mrs “N” incurred considerable stress and inconvenience and additional costs by way of mobile phone bills and loss of frozen food in their fridge/freezer.
- (42) On 29th September 1997 the Law Society asked the Respondent to comment on a complaint made by Mr “N” about delay, failure to communicate adequately and failure to prepare adequately in respect of the foregoing. The Law Society sent reminders to the Respondent on 22nd October 1997 and on 16th November 1997. He did not reply. On 19th November 1997 the Law Society served a formal Notice on the Respondent under Section 15(2)(i)(i) of the said Act requiring an explanation for the delay in replying and allowing 14 days for the reply. On the same

date, the Law Society served a formal Notice on the Respondent under Section 42C of the said Act requiring production of all papers held relating to Mr “N”. The Respondent did not comply with the terms of the Notices.

Mr & Mrs “Q”

- (43) On 7th July 1995 the Law Society called upon the Respondent to comment on allegations made against him by Messrs Adair & Bryden, Solicitors about delay in dealing with a civil court dispute, failure to communicate with his former clients, Mr and Mrs “Q” and his failure to implement a Mandate. A reminder was sent on 1st September 1995. The Respondent replied stating that he had been on holiday and would be in touch once he had confirmed with Adair & Bryden, Solicitors what papers they required. The Respondent did not write again and reminders were sent to the Respondent by the Law Society on 19th October 1995 and on 14th November 1995. Thereafter the matter was referred to the professional indemnity insurers for consideration. The professional indemnity insurers dealt with the financial aspect of the claim leaving a conduct complaint on the basis of the Respondent's failure to communicate with Mr & Mrs “Q” and his delay in dealing with a civil court action against them. The Law Society asked the Respondent to comment on the complaint. A letter dated 1st April 1996 was received from the Respondent stating that he had been on holiday and would issue a full response within that week. No response was received by the Law Society and a reminder was sent to him on 23rd April 1996. The Respondent did not reply.

- (44) On 10th May 1996 the Law Society served a formal Notice on the Respondent under Section 15(2)(i)(i) of the said Act requiring an explanation for the delay and allowing 14 days for the reply. The Respondent did not comply with the terms of the Notice.
- (45) By letter dated 3rd July 1996 the Respondent sought time to make written representations in connection with the complaint. A continuation was granted and written representations were received from Livingston Brown by letter dated 26th September 1996. That firm acknowledged that there had been unacceptable delay on the part of Respondent in replying to the Law Society's initial letters and Notices.
- (46) The Respondent failed to reply to further letters from the Law Society dated 16th September 1997, 8th October 1997 and 23rd October 1997. A formal notice was served on the Respondent on 7th November 1997 under Section 15(2)(i)(i) of the said Act requiring an explanation for the delay in replying and allowing 14 days for the reply. In addition a formal Notice under Section 42C of the said Act was served on the same date. This required the production of all documents held by the Respondent relating to Mr & Mrs "Q". The Respondent did not comply with these Notices.
6. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct singly and in cumulo in that

- (i) He delayed unreasonably from the time he paid the price for heritable property, to record or register a title in favour of his clients, Mr & Mrs “B”, Mr & Mrs “K” and “L” who thereby remained uninfert for significant periods; and he failed to record or register a standard security in favour of the lenders over the heritable property purchased by the said clients who were thus unsecured for those periods.
- (ii) He delayed unconscionably and ultimately failed to complete his administration of the Executry of the late “F” from October 1992 until the file was taken over by other Solicitors in January 1996; and he retained funds due to the Executry until 3rd April 1997.
- (iii) He delayed unconscionably and ultimately failed altogether to reply to the reasonable requests of Messrs Currie Gilmour & Company, Solicitors, for information about the Executry of the late “F” or to deliver estate papers to them, in spite of numerous letters from them and a formal Mandate.
- (iv) He delayed unconscionably and ultimately failed altogether to reply to the reasonable requests of Messrs Ruthven Keenan Pollock & Company for information about the matrimonial matters involving “H” or to deliver the file to them, despite letters from them and a formal Mandate.

- (v) He delayed unreasonably between 11th September 1995 and the date of the relevant Complaint namely 23rd January 1998 to respond to the reasonable enquiries of the Law Society about the “A” Building Society, and to comply with Notices served on him.
- (vi) He delayed unreasonably between 6th March 1996 and 23rd January 1998 to respond to the reasonable enquiries of the Law Society about “E”, and to comply with Notices served on him.
- (vii) He delayed unreasonably between 6th March 1996 and 23rd January 1998 to respond to the reasonable enquiries of the Law Society about “H”, and to comply with Notices served on him.
- (viii) He delayed unreasonably between 29th May 1996 and 23rd January 1998 to respond to the reasonable enquiries of the Law Society about “I”, and to comply with Notices served on him.
- (ix) He delayed unconscionably, and ultimately failed altogether in his representation of two clients before “M” District Court in that he failed to make all necessary preparation for the conduct of the case, he failed to communicate adequately with the Court and his clients and, on two occasions, he ceased to act for the clients at short notice in a manner which was prejudicial to the course of justice.

- (x) He delayed unreasonably between 9th July 1997 and the date of the second Complaint namely 21st April 1998, to respond to the reasonable enquiries of the Law Society about “R” District Council and to comply with Notices served on him.
- (xi) He delayed unreasonably between 29th September 1997 and 21st April 1998 to respond to the reasonable enquiries of the Law Society about “N” and to comply with Notices served on him.
- (xii) He delayed unreasonably between 7th July 1995 and 21st April 1998 to respond to the reasonable enquiries of the Law Society about Mr and Mrs “Q” and to comply with Notices served on him.

7. The Tribunal upheld the charges that the Respondent provided an inadequate professional service in respect of

- (i) his failure to progress the administration of the estate of the late “F”, to obtemper a mandate, and to reply to the new solicitors,
- (ii) his failure from the Summer of 1995 to 5th October 1995 to carry through the instructions of “H” or to communicate adequately with him, his failure to obtemper a mandate and to reply to his new solicitors, and

(iii) his failure from 20th May 1997 to August 1997 to carry through the instructions of Mr & Mrs “N”, to communicate adequately with them, or to prepare adequately for the settlement of the transaction in which he was instructed.

8. Having heard the solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 8th May 1998. The Tribunal having considered the Complaints dated 23rd January 1998 and 21st April 1998 at the instance of the Council of the Law Society of Scotland against John Scanlon, Solicitor, Suite 411-415 Baltic Chambers, 50 Wellington Street, Glasgow, Find the Respondent guilty of professional misconduct in respect of his failure to attend to the business of his clients, and to reply to correspondence thereon, Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of ten years with effect from 1st August 1998 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; Find that professional services provided by the Respondent were inadequate, Determine in terms of Section 53A(2)(a) of the said Act that the amount of fees and outlays to which the Respondent shall be entitled for the services to the Executor of the late “F”, “H” and Mr and Mrs “N” shall be reduced to nil and Direct the Respondent in terms of Section 53A(2)(d) of the said Act to pay the following sums by way of compensation,

namely to the Executor of the late “F” £500, to “H” £500 and to Mr and Mrs “N” £300, 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 to include the name of the Respondent be given to this decision.

(Signed) J.W. Laughland

Chairman

9. 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 23<sup>rd</sup> June 1998

IN NAME OF THE TRIBUNAL

Chairman

NOTE

Joint Minutes were lodged in respect of each Complaint and the effect of these Joint Minutes was that the averments of fact in each Complaint were admitted in full, and that all the charges of professional misconduct and inadequate professional services were admitted with the exception of a charge relating to an accident claim for “T” and a charge that the Respondent had been breach of Rules 6 and 12 of the Solicitors (Scotland) Accounts Rules 1995. There was accordingly no evidence and the proceedings were confined to an address by the Fiscal summarising the material facts, and a statement in mitigation from Mr D.S. Williamson, the solicitor for the Respondent. Also before the Tribunal were the Answers which had been previously lodged and which contained certain detailed explanations.

Mr Williamson observed that the Respondent had originally not intended to practise as a sole practitioner. He gave up salaried employment in 1991 in expectation of joining a firm in private practice, but following a sudden change of circumstances, he commenced practice on his own. Since that time, he had been practising with the minimum of assistance. As a result, he became over-committed and the consequent pressure of work was compounded in 1995 when he took over another legal business. In particular, Mr Williamson explained that the matter relating to the “A” Building Society had gone slightly wrong, and that the difficulty with the winding up of “F's” Estate and the divorce proceedings for “H” was that in each case, the work was outwith the mainstream of the Respondent's practice. More than three quarters of the Respondent's practice related to conveyancing, and the Respondent only dealt with one or two executries each year. The Respondent had charged no fee against either “F's” Estate or Mr “H”, and Mr Williamson invited the Tribunal to make no order beyond this. In relation to Mr and Mrs “N”, Mr Williamson commented

that the Respondent's failure was in not advising the "N's" of the extent of the difficulties in the transaction, as a result of which they were left with expectations which could not be fulfilled. Mr Williamson added that as a result of discussions with Ms Johnston, the Fiscal originally instructed for the Complainers, it had been agreed that £300 was an appropriate figure to compensate Mr and Mrs "N". The Respondent had charged no fee to Mr and Mrs "N" and his outlay of £50 in this matter had been written off.

Mr Williamson acknowledged that the Complaints reflected a catalogue of problems with a common origin and that the Respondent could not expect to continue in practice as a principal. Mr Williamson invited the Tribunal to allow a period for the orderly winding down and disposal of the Respondent's practice.

Mr Williamson had pointed out that there had been no dishonesty on the part of the Respondent, but nevertheless the catalogue of neglect undoubtedly caused considerable distress to the various clients and inconvenienced and embarrassed the Law Society in that in the absence of replies, they were unable to respond to the various complaints. With this background, it is appropriate that the Respondent should not be permitted to continue in practice as a principal. Indeed consideration was given to suspending the Respondent's Practising Certificate. However having regard to the Respondent's own acknowledgement that he should not continue in practice as a principal and his formal undertaking to that effect, the Tribunal resolved that the appropriate disposal should be for a direction under the provisions of Section 53(5) of the Solicitors (Scotland) Act 1980 which will have the effect of limiting the Respondent to employment within the profession; and no doubt the Council of the Law Society, in considering the suitability of any employment, will take into account

such arrangements as may be proposed for the supervision of his work. Having regard to the extent of the Respondent's neglect and the need for the Respondent to work under supervision for a significant period, the direction will subsist for a period of ten years.

Section 53A(2)(d) confers power on the Tribunal in the event of the professional services by a solicitor having been found to be inadequate, to direct the solicitor to pay to the client by way of compensation such sum, not exceeding £1000, as the Tribunal may specify. The Act does not contain any guidance regarding the amount which may be appropriate in any particular case. It was clear that both the late Mr "F"'s son and Mr "H" had been considerably inconvenienced over a significant period, but the Tribunal took into account that in each case the Respondent had waived his fees and it is with these considerations that a figure of £500 has been determined in each case. It was noted that the figure of £300 in relation to Mr and Mrs "N" had been negotiated. Again, the Respondent had waived his fees in the matter and with this background the Tribunal accepted that £300 was a reasonable figure.

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

Chairman