

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

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND, 26  
Drumsheugh Gardens, Edinburgh**

**against**

**ALASDAIR DAVID MACKIE of  
Messrs Mailers, Solicitors, 2a King  
Street, Stirling**

1. A Complaint dated 29 June 2010 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alasdair David Mackie, of Messrs Mailers Solicitors, 2a King Street, Stirling (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 it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 9 September 2010 and notice thereof was duly served on the Respondent.
4. The hearing took place on 9 September 2010. The Complainers were represented by their Fiscal, Paul Reid Solicitor-Advocate, Glasgow. The

Respondent was present and represented by Mr Macreath, Solicitor, Glasgow.

5. On behalf of the Respondent Mr Macreath confirmed that all the facts and averments in the Complaint were admitted and that the Respondent accepted that he was guilty of professional misconduct. No evidence was required to be led.

6. The Tribunal found the following facts established

6.1 The Respondent is a Solicitor enrolled in Scotland. He was born on 12 July 1958 and admitted as a Solicitor on 6 October 1981. He was enrolled as a solicitor in the Roll of Solicitors practising in Scotland on 26 October 1981. He is presently a partner in the firm of Messrs Mailers, Solicitors, 2a King Street, Stirling.

#### **Mrs A**

6.2 Mrs A resides at Property 1. She formerly resided in the Dundee area with her husband. Along with her husband, Mrs A was a Director of a Limited Company that supplied kitchen goods and stoves. The company had established premises in the Dundee area. The Directors decided to relocate to the Bridge of Allan area. In advance of the move, Mrs A attended at the village of Bridge of Allan and identified commercial premises which would be suitable for the company situated at Property 2. The Respondent carried on business from a branch office which was situated next door to the commercial premises identified by Mrs A. Neither Mrs A nor her husband who was her fellow Director had previously any personal or professional dealings with the Respondent or with the firm of Messrs Mailers, Solicitors. Having identified that the Respondent was carrying on business next door to the commercial premises, Mrs A consulted with the

Respondent regarding him acting on behalf of the company with a view to securing a lease of the commercial premises at Property 2. She consulted with the Respondent in respect of the commercial premises on 14 July 2006. This was the first occasion that she had met or consulted with the Respondent. Following that consultation, the Respondent submitted an offer on behalf of the company. On 26 July 2006, the Respondent informed Mrs A that the offer was to be accepted. However, the landlord of the commercial premises would not accept a lease in the name of a limited company and required personal guarantees from Mrs A and her husband.

6.3 Following the termination of the lease, a number of issues arose as a result of which Mrs A intimated a formal complaint to the Law Society. In the course of investigating the complaint, the file of the Respondent was recovered. Examination of the file reveals that on 8 August 2006 there was an internal memorandum between partners in the firm of Messrs Mailers in terms of which the Respondent was advised that the landlords of the commercial premises at Property 2 were in actual fact represented by another partner in the firm of Messrs Mailers, Solicitors. A formal letter of engagement was issued by the Respondent to Mrs A on 9 August 2006. With that formal letter, the Respondent issued a further letter in terms of Rule 5(2) of the Solicitors (Scotland) Practice Rules 1986. This was the first occasion that Mrs A was aware of a potential conflict of interest situation. Further enquiry by the Law Society revealed that two separate solicitors in the firm of Messrs Mailers, Solicitors, acted on behalf of Mrs A and the landlords

7. Having considered the foregoing circumstances and submissions by both parties the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His breach of the common law precedent principle relating to conflict of interest and his breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 by acting for the tenants in a commercial leasing transaction when he was aware that a partner in his firm was acting for the landlords,

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

Edinburgh 9 September 2010. The Tribunal having considered the Complaint dated 29 June 2010 at the instance of the Council of the Law Society of Scotland against Alasdair David Mackie of Messrs Mailers Solicitors, 2a King Street, Stirling; Find the Respondent guilty of Professional Misconduct in respect of his breach of the common law precedent principle relating to conflict of interest and his breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986; Censure the Respondent and Fine him in the sum of £2000 to be Forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**Alistair Cockburn**

**Chairman**

9. A copy of the foregoing 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

**IN THE NAME OF THE TRIBUNAL**

**Chairman**

**NOTE**

Mr Macreath on behalf of the Respondent advised that his client admitted the facts and averments in the Complaint and accepted that he was guilty of professional misconduct. No evidence therefore required to be led.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid stated that the Respondent has been in practice for 29 years. He was acting in a transaction on behalf of Mr & Mrs A who had decided to relocate their business to the Bridge of Allan area. They identified premises next door to the Respondent's office. They had had no previous dealings with the Respondent. They instructed him and an offer of lease was submitted to the letting agents. A memorandum dated 8 August 2006 was sent to the Respondent by one of his partners advising that he acted on behalf of the owners of the premises. That memorandum was lodged as Respondent's Production 1.

Mr Reid advised that a finding of Inadequate Professional Service was made by the Law Society in relation to this matter and the compensation arising from that finding was paid by the firm. Mr Reid stated that he had no knowledge of any other service or disciplinary matters involving the Respondent. He invited the Tribunal to make a finding of misconduct in relation to the Respondent's breach of the rules regarding conflict of interest and to award expenses in favour of the Complainers.

In response to a question from the Tribunal, Mr Reid indicated that there were several Inadequate Professional Service claims made. However, he advised that the only one which was upheld was in relation to the conflict of interest issue and compensation of £700 was awarded.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath advised the Tribunal that Mr & Mrs A were directors of a limited company in Dundee. They sold their business and relocated to Bridge of Allan. They had never used the firm of Mailers before. Mailers had three offices in Stirling,

Bridge of Allan and in Alloa. The Bridge of Allan office is managed by the Respondent. He is assisted in that office by one paralegal and one administrative assistant. Mr & Mrs A identified shop premises next door to the Respondent's offices which were being advertised for let by J & E Shepherd. The premises had previously been occupied by Company A and had been rented by family B, who owned a large property portfolio in the Bridge of Allan area. Most of the business arising from the portfolio was dealt with by Glasgow solicitors; however some was dealt with by the Respondent's firm.

Mr & Mrs A instructed the Respondent to make an offer to lease the premises to the letting agents. The Respondent did not ask if any of the Stirling partners of his firm would be acting in the transaction before he sent the offer.

On 8 August 2006 the internal memo was issued by the Respondent's partner. Notwithstanding this a draft offer was issued by Mailers on behalf of the landlords and on 9 August 2006 a terms of engagement letter was issued by the Respondent to Mr & Mrs A together with a letter advising that the firm also acted for the landlords. That letter stated that there was a general rule that solicitors should not act for both parties, however the Respondent's proposition was that they were established clients by this stage. The Respondent now accepts that that view was wrong and that in order to have been established clients, a file would have had to have been opened for a previous piece of business where a fee could have been charged.

In response to a question from the Tribunal Mr Macreath confirmed that at the time of the issuing of the terms of engagement letter the Respondent believed that there was an argument that they were existing clients. However, the Respondent now accepts that this view was incorrect. Mr Macreath advised that the firm have paid compensation of £700 in relation to the finding of Inadequate Professional Service and in addition their fees were abated by ten per cent.

Mr Macreath advised that the Respondent is aged 52 and was apprenticed at Lindsays in Edinburgh prior to joining Mailers in 1981. He became a partner in 1988 and has been the resident partner in the Bridge of Allan office since then. Mr Macreath stated that although the Bridge of Allan office is only 3 miles from the main Stirling office it

is quite separate. Mr Macreath advised that the Respondent's practice mainly consists of family law, trusts, executries and residential conveyancing. He advised that the Bridge of Allan premises are very visible in the High Street and the Respondent is well known in the area. He is a church elder and a session clerk. Mr Macreath submitted a letter from Mr Andrew James of McLean & Stewart Solicitors, Dunblane, providing a character reference. This letter is marked as Respondent's Production 2.

Mr Macreath asked the Tribunal to take into account the Respondent's previous unblemished character and his length of experience in the profession. In addition, he urged the Tribunal to take account of the insight shown by the Respondent in relation to this matter by co-operating fully with the Complainers and accepting that he has breached the terms of this strict rule. Mr Macreath asked the Tribunal to find that this failure is very much at the lower end of the scale of professional misconduct.

In response to a question from the Tribunal, Mr Macreath advised that this matter came to light when a dispute arose between Mr & Mrs A and the landlords. Litigation was considered and at that stage the Mr & Mrs A went to another firm of solicitors.

In response to another question from the Tribunal, Mr Macreath advised that the firm do have mechanisms in place to identify possible conflicts of interest.

In response to a further question from the Tribunal, Mr Reid accepted that there was no suggestion that any advice which was given was contrary to Mr & Mrs A's interests.

## **DECISION**

The Tribunal considered the terms of the Complaint, the submissions made by both parties and the productions lodged. The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v- The Council of the Law Society of Scotland [1984 SC 129]. The Tribunal was of the view that the actings of the Respondent involved a clear conflict of interest and breach of the 1986 Practice Rules. The Tribunal considered that the Respondent's behaviour by acting for the tenants in a commercial leasing transaction when he was aware that a partner in his



firm was acting for the landlords, amounted to a serious and reprehensible departure from the standards expected from a competent and reputable solicitor. The Tribunal therefore considered that the Respondent's conduct amounted to professional misconduct.

The Tribunal found it difficult to accept the Respondent's suggestion that he understood that the client was established by virtue of having acted for that client in the same transaction for three weeks. The Tribunal were led to believe that no enquiries were made by the partner acting for the landlords as to whether the Mr & Mrs A were established clients. In the circumstances the Tribunal found it difficult to understand why the partner acting for the landlords has not been criticised by his professional body. The Tribunal took into account that this matter involved a single failure in relation to one transaction and was of the view that the misconduct was at the lower end of the scale of professional misconduct.

The Tribunal had regard to the Respondent's lengthy experience as a solicitor and his previously unblemished record. The Tribunal took into account that the Respondent co-operated with the Complainers and had shown insight into his error of judgement. The Tribunal had also noted that the Respondent had appeared personally before the Tribunal and admitted his failure and that no loss was averred.

The Tribunal was of the view that as the Respondent is a partner in a successful firm and his failure was commercially motivated that a fine was an appropriate sanction and Censured the Respondent and imposed a fine of £2000. The Tribunal ordered that the Respondent be liable for the expenses of the Tribunal and of the Law Society in respect of this Complaint and made the usual order in relation to publicity.

**Chairman**