

**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

**WILLIAM GRAHAM
SUTHERLAND, Solicitor, of
Drever & Heddle Solicitors, 56A
Albert Street, Kirkwall**

1. A Complaint dated 7 January 2010 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Graham Sutherland, Solicitor, of Drever & Heddle, Solicitors, 56A Albert Street, Kirkwall (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 on behalf of the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 28 April 2010 and notice thereof was duly served on the Respondent.
4. The hearing took place on 28 April 2010. The Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented by David Clapham, Solicitor, Glasgow.

5. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. No evidence was led.

6. The Tribunal found the following facts established:

6.1 The Respondent was born 5th August 1962. He was admitted as a solicitor on 20th November 1985. He was enrolled as a solicitor in the Roll of Solicitors Practising in Scotland on 10th December 1985. He was employed with the solicitors, Baird & Company from 5th October 1988 until 27th October 1989. Thereafter he was associated with the firm Drever & Heddle, Solicitors initially as an employee and latterly as a partner between 30th October 1989 through to 3rd April 1996. Thereafter he was a partner in the firm Sutherland, Solicitors from 15th April 1996 until 31st March 2005. Thereafter he was a partner in Drever & Heddle, Solicitors from 1st April 2005 until 3rd April 2006. Thereafter he was a partner in the firm Macpherson & Company, Solicitors from 4th April 2006 until 4th January 2008. From 4th January 2008 he has been a partner in the firm Drever & Heddle, Solicitors, 56A Albert Street, Kirkwall.

Mrs A

6.2 The Respondent was instructed by Mrs A to act on her behalf in connection with a number of matters arising from the breakdown of her marriage. She was dissatisfied with the level of service provided by the Respondent on her behalf. In particular she was concerned at the delay on the part of the Respondent to achieve implementation of obligations owed by her husband arising from a Minute of Agreement. By letter dated 23rd November 2007, she invoked the aid of the Complainers regarding the manner in which the Respondent dealt with her affairs. The Complainers obtained from Mrs A

sufficient detail and information to allow them to formulate the extent of her complaint. A formal letter dated 17th April 2008 was intimated to the Respondent identifying a number of heads of complaint. In terms of that letter, a request was made of the Respondent to provide a response and to deliver his files in order that they may be examined as part of the complaints process. The letter requested delivery of the files within a period of 21 days and emphasised to the Respondent that the 21 day deadline was absolute and would only be waived in exceptional circumstances. The files of Mrs A were with a firm of solicitors whom she had instructed having parted company with the Respondent. The files were delivered to the Complainers who in turn by letter dated 1st May 2008 returned them to the Respondent to allow him to provide a detailed reply to the original letter containing heads of complaint. The Respondent did not reply and accordingly the Complainers required to intimate by recorded delivery statutory notices in terms of Section 15(2)(i)(i) and 42C of the Solicitors (Scotland) Act 1980 on 27th May 2008. A further statutory notice in terms of Section 15(2)(i)(i) of the said 1980 Act was intimated to the Respondent by recorded delivery dated 24th June 2008. A copy of that Notice was passed to a solicitor instructed on behalf of the Respondent. This prompted a reply to be made on behalf of the Respondent by his instructed solicitor. The files were returned to the Complainers by the solicitor on behalf of the Respondent to allow the complaint process to proceed. A Reporter was instructed. In the course of his examination, the Reporter sought clarification of certain aspects of the work carried out by the Respondent on behalf of Mrs A. Information was sought from the Respondent who required return of the files in order to clarify the enquiry. The files were returned to the Respondent by letter dated 8th October 2008. Within that letter the Respondent was asked to return the files within the next 21 days as they were still required by the Reporter. A copy of this letter and request was passed to the agent acting on

behalf of the Respondent. An extension of the time allowed to the Respondent was granted having regard to his holiday commitments. This allowed the Respondent the opportunity to reply until 3rd November 2008. Unfortunately the files were not returned nor was there a reply from the Respondent as a consequence of which the Complainers wrote to him on 5th December 2008 asking for return of the files. This prompted a reply from the Respondent dated 18th December 2008 advising that he was preparing a response to the heads of complaint and would send the files back by the end of the week. Nothing was received from the Respondent and a further reminder was intimated by the Complainers to the Respondent dated 21st January 2009 asking for return of the files. Nothing was received from the Respondent as a consequence of which a formal statutory notice in terms of Section 42C of the said 1980 Act was intimated to the Respondent by recorded delivery dated 19th February 2009. A copy of this notice was passed to the solicitor instructed on behalf of the Respondent. Nothing was received in reply. On 11th March 2009, the Complainers advised the agent acting on behalf of the Respondent that if the files were not returned by the beginning of the following week then consideration would be given to an additional conduct complaint being added to the existing complaints against the Respondent. No reply was received and on 18th March 2009, a formal notice in terms of Section 15(2)(i)(i) of the said 1980 Act was intimated to the Respondent by recorded delivery. In addition a letter was sent by post enclosing an amended list of issues and asking for return of the files. A copy of the formal notice was passed to solicitors acting on behalf of the Respondent. Eventually the files were delivered to the Complainers by letter dated 20th March 2009.

7. Having heard submissions from the Complainers and on behalf of the Respondent the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His failure to respond promptly to the reasonable enquiries made of him by the Complainers concerning the affairs of his client, despite repeated and numerous reminders sent to him by the Complainers.

8. Having heard mitigation on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms;

Edinburgh 28 April 2010. The Tribunal having considered the Complaint dated 7 January 2010 at the instance of the Council of the Law Society of Scotland against William Graham Sutherland, Solicitor, of Drever & Heddle, Solicitors, 56A Albert Street, Kirkwall; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond promptly to the reasonable enquiries made of him by the Law Society in respect of the affairs of a client despite repeated and numerous reminders sent to him by the Law Society; Censure the Respondent; 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

As the Respondent entered into a Joint Minute admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint it was not necessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid thanked the Respondent for his cooperation in entering into a Joint Minute at an early stage in the proceedings. Mr Reid referred the Tribunal to Complainer's Production No1, being the letter of complaint by Mrs A to the Law Society. Production No 2, was a letter of 17 April 2008 intimating this Complaint to the Respondent. There was no reply. A reminder was sent on 27 May 2008 and a Section 42C notice was also sent. The Respondent did not reply. The second half of the statutory notice was then sent to the Respondent by recorded delivery. The Respondent at this stage consulted Mr Clapham and some progress was made and the files delivered. The files were then returned to the Respondent as he required them but he was asked to pass them back to the Law Society within 21 days. This was not done and a reminder was sent. Despite this the files were not sent back and another notice had to be sent. Mr Reid pointed out that 4 formal notices had been sent to the Respondent and had been ignored and a number of letters had been sent to the Respondent and his solicitor. Mr Reid submitted that in the circumstances there was sufficient failure on behalf of the Respondent to amount to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Clapham clarified that the Respondent accepted that his conduct amounted to professional misconduct.

The Tribunal considered that given that there were two separate failures by the Respondent to reply to correspondence from the Law Society, albeit in respect of the same matter, the Respondent's conduct was sufficiently serious and reprehensible so as to amount to professional misconduct.

MITIGATION

Mr Clapham addressed the Tribunal in mitigation. He advised that the Respondent apologised to the Tribunal and the Law Society and accepted full responsibility for what had happened. Mr Clapham explained that the Respondent was under pressure of work and found it difficult to give his attention to this particular matter which kept being put to the bottom of the pile as it was hard to deal with. Mr Clapham explained that the Respondent did ask his assistant to go through the files but this did not result in the matter being resolved. Mr Clapham pointed out that the Respondent did not completely ignore the Law Society as he did give information to Mr Clapham on 28 June which allowed Mr Clapham to reply to the Law Society on the Respondent's behalf. Mr Clapham explained that the Respondent was no longer involved in the partnership but had no intention of setting up on his own. Mr Clapham pointed out that this was not a case which involved a pattern of behaviour as it only related to one particular case. Mr Clapham further pointed out that the Respondent would have to bear the expenses of the proceedings and would also suffer from the publicity which must be given to the Decision. He suggested that the Tribunal could deal with the matter by way of a Censure. Mr Clapham lodged a number of references on behalf of the Respondent.

DECISION

The Tribunal considered that the Respondent's conduct fell at the lower end of the scale of professional misconduct. His failure to respond related only to one client and the Tribunal considered it unfortunate that the Respondent had ended up before the Tribunal. In the circumstances the Tribunal imposed the sanction of a Censure and made the usual Order with regard to publicity and expenses.

Chairman