

**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

**CATRIONA MARGARET
MACFARLANE, Solicitor,
Highfield Cottage, Loganswell,
Newton Mearns, Glasgow**

1. A Complaint dated 27 March 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Catriona Margaret MacFarlane, Solicitor, Highfield Cottage, Loganswell, Newton Mearns, 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 it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 9 July 2009 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 9 July 2009 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented. A letter had been received from the Respondent two days before the Tribunal hearing requesting

that the matter be adjourned so that she could obtain representation. The Tribunal adjourned the hearing to 20 August 2009.

5. When the Complaint called on 20 August 2009 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct subject to a slight amendment to the Complaint. The Respondent indicated in a letter to the Tribunal that she did not intend to attend. The Tribunal accordingly proceeded to deal with the Complaint in the absence of the Respondent. No evidence was led.

6. The Tribunal found the following facts established:-

6.1 The Respondent was born on 13th June 1960. She was admitted as a Solicitor on 17th September 1982 and enrolled as such on 4th October 1982. She resides at Highfield Cottage, Loganswell, Newton Mearns, Glasgow. She is currently employed by Messrs. Hasties, Solicitors, Lynedoch Crescent, Glasgow.

Mr A

6.2 In May 2006 Mr. A contacted Ideal Mortgages with a view to obtaining a mortgage to buy a house. Ideal Mortgages was a firm owned by Mr B. Mr B employed Nigel Macfarlane. Mr. Macfarlane is the respondent's husband. Mr. Macfarlane dealt with Mr. A's mortgage application. In August 2006, Mr. A gave Mr Macfarlane a sum of cash to be used as a deposit on a property. That transaction did not proceed. In November 2006 Mr. A decided to purchase Property 1. In that connection he gave Mr Macfarlane a further sum of cash. The total of these sums was £24,150. Shortly thereafter Mr. A gave instructions to the Respondent, who at the time was employed by Hasties, in connection with the proposed purchase. Mr. A was unaware at

that stage that Mr Macfarlane and the Respondent were husband and wife.

- 6.3 The Respondent received instructions concerning the purchase of Property 1 on or about 1st December 2006. An offer to sell was submitted by the sellers' Solicitors to Hasties which was forwarded by the Respondent to Mr. A on 1st December 2006 with a request that Mr. A contact her. A qualified acceptance was sent by the Respondent to the sellers' Solicitors on 22nd December 2006. On the same day the Respondent wrote to Mr. A enclosing a copy of the Land Certificate with a request that he read the burdens section and check the extent of the property. Also on 22nd December 2006, the sellers' Solicitors issued a letter which concluded the contract. On 3rd January 2007 the Respondent wrote to Mr. A to advise him that a contract had been concluded. The date of entry was to be 12th January 2007. Also on 3rd January 2007 the Respondent issued to Mr. A a letter setting out Hasties' terms and conditions and estimate of fees.
- 6.4 The Complainer was in contact thereafter with Mr Macfarlane regarding the mortgage. No offer of loan was forthcoming. The date of entry passed without settlement taking place. Hasties' discloses telephone calls between the respondent and "the broker" when the latter advised that there were problems with the mortgage which appeared to have been resolved and that the offer of loan was to be issued shortly. The Respondent advised the sellers' solicitors that settlement would take place on 8th February.
- 6.5 In early February 2007 Mr. A telephoned the Respondent and told her that he had given Mr Macfarlane cash of £24,150. The Respondent said only that she would call back. The Respondent called back to Mr. A a short time later. She said that, having spoken to the broker she was able to confirm that Mr. A's money was safe and could be returned to him at any time and that the

loan would be available very soon. Despite that assurance the respondent advised the sellers' solicitors on 7 February 2007 that her client "had been badly let down by his broker" and was unable to complete the transaction. By this stage the respondent was aware that, as hereinafter condescended upon, her husband had misappropriated Mr A's money.

- 6.6 Mr. A in the meantime spoke to another mortgage broker at whose suggestion he telephoned the respondent and requested that she contact Mr Macfarlane to get his money back and she agreed to do this. The second broker made enquiries from which it was established that the Bank of Scotland (the lender to whom Mr. A understood his case had been referred) had received no mortgage application by or on his behalf.
- 6.7 On 19th February 2007 Mr Macfarlane came to Mr. A's house and confessed that he had misappropriated and spent his money. He promised "to sort things out".
- 6.8 Mr. A and his wife were by this time suspicious. Although Mr. MacFarlane and the Respondent referred to each other respectively as "the broker" and "the solicitor" they shared the same surname. Mr. A and his wife confronted the Respondent on 19 February 2007. She confirmed that she and Mr. Macfarlane were married. She said that she "would sort things out".
- 6.9 On 26th February 2007 the Respondent advised Mr. A that she could no longer act for him and that he should seek separate representation. Mr. A was thereafter represented by new Solicitors. The transaction was completed in April 2007. All additional costs including penalty interest due to the sellers of the property were recovered from Nigel Macfarlane. The sums misappropriated by him were repaid in full

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

7.1 Her failure to disclose to her client the extent of her knowledge of her husband's actings and her failure to timeously a) advise her client to seek separate independent advice and b) to withdraw from acting for her client, all in breach of the Code of Conduct for Scottish Solicitors promulgated in 2002.

8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 20 August 2009. The Tribunal having considered the Complaint dated 27 March 2009 at the instance of the Council of the Law Society of Scotland against Catriona Margaret MacFarlane, Solicitor, Highfield Cottage, Loganswell, Newton Mearns, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of her failure to disclose to her client the extent of her knowledge of her husband's actings and her failure to timeously advise her client to seek separate independent advice and her failure to withdraw from acting for her client, all in breach of the Code of Conduct for Scottish Solicitors 2002; Censure the Respondent; Fine the Respondent in the sum of £2500 to be forfeit to Her Majesty and Direct in terms of Section 53 (5) of the Solicitors (Scotland) Act 1980 that for a period of 3 years, any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit her to acting as a qualified assistant to and to being supervised by such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland; 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)

Kirsteen Keyden

Vice Chairman

10. 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

Vice Chairman

NOTE

The Respondent originally lodged Answers to the Complaint and the matter was set down for hearing on 9 July 2009. Two days before the Tribunal hearing the Respondent requested an adjournment to allow her to obtain legal advice. This adjournment was opposed by the fiscal but was reluctantly agreed to by the Tribunal to avoid any possible prejudice to the Respondent. The matter was adjourned to 20 August 2009. On 19 August 2009 a letter was received from the Respondent indicating that she had been unable to obtain representation but that she had signed a Joint Minute and was withdrawing her Answers. The Respondent indicated in her letter that she felt unable to attend the Tribunal. The Tribunal had some concerns with regard to the reference in the Respondent's letter to her entering into the Joint Minute reluctantly. The Tribunal however noted that the plea had been accepted by the fiscal and that the Respondent had already been given the opportunity of one adjournment in order to obtain representation and appear at the Tribunal. The Tribunal also noted that the Lay Complainers had attended the Tribunal on the last occasion and were again in attendance at the Tribunal hearing. The Tribunal accordingly agreed to proceed in the Respondent's absence on the basis of the Joint Minute.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch clarified that paragraph 2.1 of the Complaint was to be amended to reflect the fact that the total sum of cash was £24,150. Mr Lynch referred the members to the Code of Conduct which had recently been written following the new Ethical Standards in Public Life which suggested that it was necessary to declare an interest in relation to a spouse.

Mr Lynch indicated that there was the clearest evidence in this case of a conflict as the Respondent was aware of her husband's dishonesty by 7 February 2007 and she did not take any steps to come out of the case until 26 February 2007. This meant that for 19 days Mr and Mrs A were deprived of their right to independent legal advice. Mr Lynch submitted that they might have been told to go to the police, take an action for recovery or inhibition etc. and they could not take any of these steps because the Respondent failed to disclose the conflict of interest and did not remove herself from

the case. Mr Lynch stated that he did not have any up to date information with regard to the Respondent's personal circumstances but that as far as he was aware she continued to be employed as a solicitor. He indicated that he understood that she was sequestered but had not seen any evidence with regard to this.

In response to a question from the Tribunal Mr Lynch stated that the money was eventually refunded to Mr and Mrs A and that the losses had been made good but no damages had been received. It was clarified that although the Respondent indicated that she was attaching a CV to the letter, no such CV was included. The Tribunal requested that Mr Lynch enquire of the Law Society what the up to date position was with regard to the Respondent's employment. Mr Lynch checked and then advised the Tribunal that the Respondent had been suspended from practice on 8 July 2008 but had then been given permission to work as a qualified assistant at Hasties in October 2008 and she continued to be employed by that firm.

DECISION

It was clear to the Tribunal that the Respondent's conduct amounted to professional misconduct. The Respondent had a duty by 7 February 2007 to give a full disclosure to her client of her state of knowledge about the missing funds and the fact that she was married to Mr MacFarlane. The Tribunal considered that there was not only a conflict of interest in this situation but also an absolute duty on the Respondent to advise her client to seek separate independent advice. The Respondent's conduct left her client in a vulnerable position for 19 days, which clearly caused a lot of distress to her client and his wife and left them exposed to an unacceptable risk. The Tribunal considered that the Respondent had acted very irresponsibly and that her conduct was completely contrary to the standards of conduct expected of a solicitor. The Tribunal noted that the Respondent made mention of health difficulties but has not provided any medical evidence to the Tribunal. The Tribunal considered that a restriction on the Respondent's practising certificate was required in order to ensure protection for the public and to ensure that the Respondent is properly supervised. The Tribunal also imposed a fine of £2500 to reflect the seriousness with which the Tribunal views the Respondent's behaviour. The Tribunal noted that the Respondent was still in employment. The Tribunal made the usual Order with regard to publicity and expenses.

Vice Chairman