

**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

**EUAN CHARLES CHISHOLM,
Solicitor of "Fars Hatt", 12
Westburn Court, Buckie,
Aberdeenshire**

1. A Complaint dated 17 April 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Euan Charles Chisholm, Solicitor of "Fars Hatt" 12 Westburn Court, Buckie, Aberdeenshire (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 by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 17 June 2009 and notice thereof was duly served on the Respondent.

4. The hearing took place on 17 June 2009. The Complainers were represented by their Fiscal Jim Reid, Solicitor, Glasgow. The Respondent was not present or represented.
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 accordingly led.
6. The Tribunal found the following facts established:
 - 6.1 The Respondent was born on 2 March 1953. He was admitted as a solicitor on 30 July 1975 and enrolled on 13 August 1975. He was a partner in the firm of Antons, 14 East Church Street, Buckie, between 1 November 1979 and 31 December 2007. He resides at "Fars Hatt", 12 Westburn Court, Buckie. He remains on the roll of solicitors in Scotland.
 - 6.2 On 16 August 2005 the Respondent's former business partner, Ms B, wrote to the Respondent to inform him that, due to her health problems, she was not able to deal with any further business matters. She asked that her name be deleted from any documents held by the firm of Antons.
 - 6.3 The late Mrs A died on 3 February 2007. Her will had named the Respondent and Ms B as co-executors. On 27 March 2007 the Respondent obtained Confirmation in favour of the two executors named in the will.
 - 6.4 By letter 5 April 2007 the Respondent wrote to Ms B to ask her to sign withdrawal forms in relation to the estate of the late Mrs A. By letter dated 11 April 2007 Ms B replied to the Respondent to inform him that due to health problems she did not wish to act as an executor, and she requested a Minute of

Resignation. The Respondent replied to Ms B by letter dated 8 May 2007 in which he informed her that the administration of the estate was practically completed. He enclosed withdrawal forms for signature by Ms B.

6.5 Ms B replied to the Respondent by letter dated 12 May 2007 in which she reiterated that she did not wish to act as executor and requested that the Respondent confirm that Confirmation had not been applied for in her name without her knowledge and authority. The Respondent wrote to Ms B by letter dated 15 May 2007 to advise her that Confirmation had indeed been obtained, and he enclosed a letter of resignation for her signature.

6.6 The Confirmation in relation to the estate of the late Mrs A stated that Ms B was appointed as an executor. It stated that she was a solicitor when the true position was that her name had been removed from roll on 31 March 2006 and therefore did not have the benefit of professional indemnity insurance. It did not state her correct address.

7. Having heard submissions on behalf of the Respondent and having noted the Respondent's Answers, the Tribunal could not be satisfied beyond reasonable doubt that the Respondent's conduct was sufficiently serious and reprehensible to amount to professional misconduct.

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

Edinburgh 17 June 2009. The Tribunal having considered the Complaint dated 17 April 2009 at the instance of the Council of the Law Society of Scotland against Euan Charles Chisholm, Solicitor of "Fars Hatt" 12 Westburn Court, Buckie, Aberdeenshire; Make no Finding of Professional Misconduct; Make no Finding of expenses due to or by either party; and Direct that publicity will be given to this

decision and that this publicity should include the name of the Respondent.

(signed)

David C Coull
Vice 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

Vice Chairman

NOTE

The fiscal advised that he had received an email from the Respondent indicating that he did not intend to attend the Tribunal hearing. The Respondent had lodged Answers admitting the terms of the Complaint and a Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid explained that the background was that the Respondent had been in partnership with Ms B and that the partnership had ended in 2002. On 16 August 2005 Ms B wrote to the Respondent informing him that she was ill and was not able to deal with any further business matters. Mr Reid indicated that Production 1 was that letter and it was written in response to matters relating to an estate. Mr Reid submitted that the Respondent was accordingly on notice in 2005 that Ms B did not wish her name on documents and did not wish to be an executor. Despite this on 27 March 2007 the Respondent obtained confirmation in his name and in the name of Ms B in relation to Mrs A's executry as per the terms of the will. The Respondent then wrote on 5 April 2007 asking Ms B to confirm that she would sign withdrawal forms in connection with Mrs A's estate as she was appointed executor in the will. Ms B wrote back on 11 April 2007 indicating that she did not wish to act as executor and asking that the Respondent forward a Minute of Resignation. Mr Reid then referred the Tribunal to Production 4, being a letter from the Respondent to Ms B dated 8 May 2007 which did not mention that Ms B had been confirmed as an executor. Production 5 was a letter from Ms B indicating that she hoped she was not confirmed as an executor as she did not wish to be responsible for an executor's duties. It was only at this time that the Respondent informed her that confirmation had been obtained. Mr Reid stated that Ms B did not have a practising certificate at the time and was not on the Roll of Solicitors and accordingly was not covered by professional indemnity insurance. He however accepted that the Respondent was unaware of this at the time. The Respondent however took no steps to find out. Mr Reid submitted

that the Respondent's conduct amounted to professional misconduct because he knew that Ms B was not willing or able to act as an executor but he still had her confirmed as an executor and when he wrote to her on 8 May 2007 he did not inform her of the true position. Mr Reid pointed out that an executor can become personally liable to beneficiaries in certain circumstances and that there were risks associated with being an executor. Mr Reid submitted that the Respondent tried to slip it past Ms B that she had been confirmed an executor. In response to a question from the Tribunal, Mr Reid indicated that his view was that it was deliberate rather than just being a mess up due to the terms of the letter of 8 May. Mr Reid submitted that the Respondent had not explained why he did not take instructions from Ms B with regard to whether or not she was prepared to accept her appointment as an executor and the Respondent accepted that he had had a responsibility to do this.

DECISION

The Tribunal noted the terms of the Respondent's Answers and did not find it proved beyond reasonable doubt that the Respondent's actions were deliberate rather than being as a result of an oversight. The Tribunal also noted that the Complaint related to one single incident rather than a series of incidents. The Tribunal also noted that there was a period of 1 year and 8 months between the letter sent by Ms B in August 2005 and a letter sent by her in 11 April 2007. The Tribunal also noted that when the Respondent and Ms B practised together they would not bother to check with each other with regard to whether an appointment as an executor was accepted. The Tribunal also considered that the Respondent's letter of 8 May 2007 contained an implication that Ms B had been confirmed as an executor because the letter refers to the administration of the estate as being practically completed and the Tribunal consider that an experienced solicitor would have known that this must have meant that confirmation had been granted. The Tribunal noted the position with regard to Ms B no longer being a practising solicitor and not having professional indemnity insurance in place but considered that the Respondent's professional indemnity insurance would have covered the situation should any liabilities have arisen from her position as an executor. The Tribunal also noted that the Respondent did not know at the time that Ms B no longer held a practising certificate and had no professional indemnity insurance cover. In the circumstances, although the Tribunal had some

concerns with regard to the Respondent's conduct and considered that his conduct would in all probability be sufficient to amount to unsatisfactory professional conduct, the Tribunal did not consider that this single incident was sufficiently serious to meet the serious and reprehensible test as set out in the Sharp case.

Given that the Tribunal recognises that the Law Society requires to bring these cases in the public interest and given that the Tribunal consider that the Respondent's actions may well be unsatisfactory professional conduct, the Tribunal made no award of expenses due to or by either party. The Tribunal made the usual order with regard to publicity.

Vice Chairman