

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2005 AND PROCEDURE RULES 2008)**

FINDINGS

in Complaints

by

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

against

**COLIN GEORGE HORNE
WILSON, 25 Jamaica Street,
Aberdeen
Respondent**

AND

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

On behalf of

**(First) Katrina Lovie, Poldhu,
Logie Coldstone Aboyne,
Aberdeenshire and (Second)
Gaynor Cowie, Brewis, 7 Islay
Court, Ellon, Aberdeenshire
Secondary Complainers**

against

**COLIN GEORGE HORNE
WILSON, 25 Jamaica Street,
Aberdeen
Respondent**

1. Two Complaints were lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as

“the Complainers”) one of which was also on behalf of Secondary Complainers, Katrina Lovie and Gaynor Cowie. These Complaints requested that Colin George Horne Wilson, 25 Jamaica Street, Aberdeen (hereinafter referred to as “the Respondent”) be required to answer the allegations contained in the statements of facts which accompanied the Complaints and that the Tribunal should issue such order in the matters as it thinks right.

2. The Tribunal caused copies of the Complaints as lodged to be served upon the Respondent. Answers were lodged for the Respondent in respect of both Complaints.
3. In terms of its Rules the Tribunal appointed a procedural hearing in respect of both Complaints to be heard on 19 November 2012 and notices thereof were duly served on the Respondent.
4. The hearings of 19 November 2012 were postponed at the request of the Respondent and further procedural hearings were fixed for 1 February 2013.
5. When the matters called on the 1 February 2013 the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and unrepresented. Both parties requested that the matters be further continued to allow the Respondent the opportunity of obtaining legal representation and for the parties to agree Joint Minutes. The matters were adjourned to further procedural hearings on 28 March 2013. Both Secondary Complainers were present for the hearing.
6. At the procedural hearings on 28 March 2013 the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and unrepresented. Neither of the Secondary Complainers were present. Both parties requested that substantive

hearings be fixed. Accordingly the Tribunal ordered that the cases call on 11 June 2013 for substantive hearings.

7. When the matters called on 11 June 2013. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and unrepresented. The Secondary Complainers were present. The Complainers lodged two amended Complaints and asked that they be received by the Tribunal. Joint Minutes between the parties were lodged in respect of both amended Complaints agreeing the statements of fact, averments of duty and professional misconduct. Given the full admissions by the Respondent, no evidence required to be led. The Tribunal heard submissions from both parties and considered the Respondent's personal bar / double jeopardy submissions.

8. The Tribunal found the following facts established:

8.1 The Respondent is a solicitor. His date of birth is 5 September 1962. He was admitted as a solicitor on 24 September 1985 and enrolled as a solicitor in the Register of Solicitors in Scotland on 11 October 1985. He was the holder of a Practising Certificate until 31 October 2011. His Practising Certificate had been suspended with effect from 2 December 2009 when he was sequestrated at Aberdeen Sheriff Court but that suspension was uplifted and a restriction was applied to his Practising Certificate with effect from 4 May 2010. He has not worked since 23rd December 2011 due to ill health and has not held a Practising Certificate since 31st October 2012. He received permission from the Law Society of Scotland to resume employment as a solicitor with Michael S Allan, Solicitors, Aberdeen with effect from 7th February 2013 but has, thus far, been unable to do so due to continuing ill health.

8.2 From on or about October 2006, the Respondent, whilst a partner with Messrs Stuart Wilson Dickson & Co., acted for a Mr A of

property 1 and that in relation to divorce proceedings commenced and conducted at Banff Sheriff Court. The grounds of divorce as narrated within those proceedings were Mr A's wife's adultery although the Respondent failed to engather and lodge any evidence with the Court in support of those grounds. Mr A also instructed the Respondent to proceed with a substantial capital claim as part of those proceedings. The case ultimately proceeded to Proof in September 2007 and the Respondent represented Mr A at said Proof. Following the conclusion of the Proof, the presiding Sheriff wrote his Judgement in draft form but could not issue it as he required to see Affidavit evidence establishing the adultery. The Respondent undertook to the Court to provide the requisite Affidavits.

- 8.3 On 14th September 2007, the Respondent sent an email to the agents acting for Mr A's wife, Messrs Ledingham Chalmers, confirming that the requisite Affidavits on the merits would be ready within a short space of time. The Respondent knew that that statement was untrue. On 21st November 2007, the Respondent wrote to Mr A advising that he was waiting for the Sheriff's Judgement to be issued. The Respondent knew that statement to be untrue as he had failed to provide the requisite Affidavits for the Court. A similar misrepresentation was forwarded to Mr A in a letter dated 21st December 2007. On 18th January 2008 a reminder was received from the Sheriff Clerk at Banff Sheriff Court in respect of the requirement to provide Affidavits to establish the merits and allow the Sheriff to issue his Judgement. On 25th January 2008 the Respondent issued a letter to Ledingham Chalmers indicating that he could not obtain a suitable Affidavit from a private investigator and therefore proposed amending the grounds of divorce to two years separation. Said letter misrepresented the position in respect that the Respondent had not approached any private investigator to obtain evidence of Mr A's wife's adultery. On 4th February 2008 the Respondent then

prepared Affidavits to establish the amended grounds of divorce and these were lodged at Banff Sheriff Court. On 27th February they were returned by the Court on the basis that there was insufficient evidence within those Affidavits to allow Decree of Divorce to be granted and on 11th April 2008 a Supplementary Affidavit was prepared by the Respondent, signed by Mr A, and lodged with the Sheriff Court at Banff.

8.4 On 19th May 2008 the Sheriff's Judgement was issued. Although granting Decree of Divorce, the financial claim made by Mr A was unsuccessful in that he was only awarded a sum of £450 out of the sum craved of £250,000. By the date of the issue of the Sheriff's Judgement, the Respondent's former firm had merged with another firm of solicitors, Messrs Peterkins, but the Respondent continued to act for Mr A. On 18th June 2008 there was a hearing on expenses, which the Respondent failed to intimate to Mr A, the outcome of which was that Mr A was found liable for 80% of his wife's expenses and the Court also allowed an uplift of 25% in favour of Mr A's wife. The Respondent was also found personally liable for a small amount of additional expenses of £200 which he subsequently paid to Ledingham Chalmers. The Account of Expenses intimated by Ledingham Chalmers following the expenses hearing totalled £24,378.02. A Diet of Taxation was assigned for 22nd October 2008 in relation to those expenses and on 21st October the Respondent wrote to Ledingham Chalmers advising that he was not instructed by Mr A to appear in person at the Taxation. That correspondence was not copied to Mr A. The Taxation duly took place and on 18th November 2008 an Extract Decree for Payment was issued against Mr A for the sum of £25,312.73.

8.5 On or about 1st July 2009, Mr A lodged a complaint with the Scottish Legal Complaints Commission alleging *inter alia* misconduct on the part of the Respondent, which was then referred

to the Complainers. As the alleged misconduct arose whilst the Respondent was with two separate firms of solicitors, the Complainers initially corresponded with Messrs Peterkins in relation to one complaint and with the Respondent himself in relation to the other. Separate intimations were issued by the Complainers on 7th January 2010 and 7th December 2010 to both of which he failed to formally respond. The Complainers then issued Notices under Sections 15(2)(i)(i) and 42C of the Solicitor's Scotland Act 1980 on 22 February and 21st December, both 2010. The Respondent failed to respond. The Complainers issued a further Notice under Section 15(2)(i)(i) of the said Act on 10th March 2011. The Respondent again failed to respond.

KATRINA LOVIE

- 8.6 Ms Lovie consulted the Respondent in or around June 2007 when he was then a partner with Messrs Stuart Wilson Dickson & Company and that in relation to issues which arose at her place of employment. Respondent continued to act for Ms Lovie when that firm merged with Messrs Peterkins in May 2008. Ms Lovie resigned from her employment and thereafter instructed the Respondent to lodge an application with the Employment Tribunal claiming she had been constructively dismissed by her employers. Ms Lovie continued to instruct the Respondent in relation to that matter. The Respondent left Messrs Peterkins on 18 March 2009 and intimated to Ms Lovie that he intended setting up a practice on his own account. He did not formally set up practice on his own account. He continued to act but as an Employment Consultant but did not formally intimate that to his client. On 11 May 2009 he commenced employment as a Consultant Solicitor with another firm, Messrs Michael S Allan. He continued to be employed in that capacity with that firm until 2 December 2009 when he was sequestrated at Aberdeen Sheriff Court. The Respondent informed the complainers of his sequestration in an email dated 2 December

2009. He was, accordingly, in terms of Section 18 (1) (c) of the Solicitors (Scotland) Act 1980, suspended from practice as a solicitor on that date.

8.7 Prior to the date upon which the Respondent left the employ of Messrs Peterkins on 18 March, the Employment Tribunal by letter dated 16 March had intimated that a hearing of Ms Lovie's application would take place on 2 and 5 June 2009. By order dated 17 March 2009 the Employment Judge issued formal orders requiring certain information to be provided to the Tribunal and to the opponents in the application. The Respondent failed to respond to the letter and order from the Employment Tribunal and failed to advise Ms Lovie of the contents and implications of these documents. Ms Lovie was advised by Messrs Peterkins on 27 March that the Respondent had left their employ and that she would require to instruct new agents. Ms Lovie was then requested by the Respondent, on 13 April 2009, to make a payment to him of £1,000 to cover the costs of preparing for her evidential hearing. As at that date, the Respondent was not in the employ of a firm of solicitors nor had he had formally commenced practice on his own account.

8.8 On 29 May the Respondent sent an email to the Employment Tribunal advising that he would be unable to conduct the hearing on 2 June as he had an opportunity to undergo a medical procedure. The opponents in the Tribunal application did not object to the request for a postponement. He failed to advise Ms Lovie of his request for a postponement until the same had been granted and failed to provide Ms Lovie with an accurate explanation of the reasons for the postponement being requested. On 11 June, the Employment Tribunal assigned new dates for the hearing of Ms Lovie's application and that for 20, 21, 24 and 25 August 2009. The Respondent failed to advise Ms Lovie that these dates had been assigned. He also failed to advise Ms Lovie

that there were outstanding matters to be addressed from the order issued by the Employment Tribunal on 17 March 2009 and as a consequence, the opponents in the application were seeking to have the application struck out. The Employment Tribunal then intimated that the opponent's strike out application would be considered on 20 August, being the first date of the hearing of the application. On 18 August 2009 the Respondent sent an email to Ms Lovie and to the Employment Tribunal indicating that he would be withdrawing from acting with immediate effect for medical reasons. In light of that the Employment Tribunal postponed the hearing assigned for 20 August. In a further email sent to the Employment Tribunal on 21 August, the Respondent advised that he had been conducting the work on behalf of Ms Lovie as "Colin Wilson, Employment Consultant, Burnside, Alford". The Respondent had, however, met Ms Lovie in connection with her instructions previously in the offices of Michael S Allan Solicitors and had failed to advise Ms Lovie until that email of his employment status insofar as her instructions and her application were concerned.

- 8.9 On or about 3 December 2009, Ms Lovie lodged a complaint with the Complainers in connection with his actings on her behalf whilst a partner with the firm of Messrs Stuart Wilson Dickson & Company. That complaint was intimated to the Respondent by letter dated 27 July 2010 to which the Respondent failed to respond. The Complainers then issued notices under Section 15(2)(i)(i) and 42C of the Solicitors (Scotland) Act 1980 on 16 November 2010. The Respondent failed to respond. The Complainers issued a further notice under Section 15 (2)(i)(i) of said Act on 17 December 2010 and a further notice under that section on 26 January 2011. The Respondent failed to formally respond.

8.10 Separately, on or about 9 August 2010, Ms Lovie lodged a complaint with the Scottish Legal Complaints Commission alleging *inter alia* misconduct on the part of the Respondent which complaint was then referred to the complainers. Intimation of that complaint was sent by letter to the Respondent on 9 August 2010. The Respondent failed to respond. The Complainers then issued a notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 on 16 November 2010. The Respondent failed to respond. Further notices in terms of that section were issued to the Respondent by the complainers on 17 December 2010 and 26 January 2011. The Respondent again failed to formally respond.

GAYNOR COWIE

8.11 Ms Cowie consulted the Respondent in or around June 2007 when he was then a partner with Messrs Stuart Wilson Dickson & Company and that in relation to issues which arose at her place of employment. Respondent continued to act for Ms Cowie when that firm merged with Messrs Peterkins in May 2008. Ms Cowie resigned from her employment and thereafter instructed the Respondent to lodge an application with the Employment Tribunal claiming she had been constructively dismissed by her employers. Ms Cowie continued to instruct the Respondent in relation to that matter. The Respondent left Messrs Peterkins on 18 March 2009 and intimated to Ms Cowie that he intended setting up a practice on his own account. He did not formally set up practice on his own account. He continued to act but as an Employment Consultant but did not formally intimate that to his client. On 11 May 2009 he commenced employment as a Consultant Solicitor with another firm, Messrs Michael S Allan. He continued to be employed in that capacity with that firm until 2 December 2009 when he was sequestrated at Aberdeen Sheriff Court. The Respondent informed the Complainers of his sequestration in an email dated 2 December 2009. He was, accordingly, in terms of

Section 18 (1) (c) of the Solicitors (Scotland) Act 1980, suspended from practice as a solicitor on that date.

8.12 Prior to the date upon which the Respondent left the employ of Messrs Peterkins on 18 March, the Employment Tribunal had intimated a hearing of Ms Cowie's application would take place on 28 and 29 April 2009. By order dated 20 February 2009 the Employment Judge issued formal orders requiring certain information to be provided to the Tribunal and to the opponents in the application. The Respondent failed to respond to the letter and order from the Employment Tribunal and failed to advise Ms Cowie of the contents and implications of these documents. She was advised of the hearing dates. Ms Cowie was advised by Messrs Peterkins on 27 March that the Respondent had left their employ and that she would require to instruct new agents. That firm, however, made an application to postpone the hearing set for 28 and 29 April. The Respondent also wrote to the Tribunal seeking a postponement on the ground that Ms Cowie had university examinations, when he knew that information was not accurate. Ms Cowie was then requested by the Respondent, on 13 April 2009, to make a payment to him of £1,000 to cover the costs of preparing for her evidential hearing. As at that date, the Respondent was not in the employ of a firm of solicitors nor had he had formally commenced practice on his own account.

8.13 The opponents made an application to strike out Ms Cowie's application. The Respondent failed to advise her of this application but persuaded the Tribunal to adjourn the hearing on 28 April. In doing so, the Respondent advised that Tribunal that Ms Cowie, who was not present, had medical grounds for not being present. The application was set down for a new hearing on 10 and 11 August 2009. The Respondent did not have Ms Cowie sign a mandate to allow him to approach her GP until 17 June. The Respondent received a striking out warning letter from the

Tribunal dated 18 June. He failed to advise Ms Cowie of this. A reminder was sent by the Tribunal to the Respondent on 21 July. He failed to respond and failed to advise Ms Cowie. Ms Cowie's application was struck out on 30 July 2009. The Respondent met Ms Cowie on 7 August and requested a further payment of £450 towards the cost of presenting her application, knowing that it had been struck out on 30 July. On 18 August 2009 the Respondent sent an email to Ms Cowie and to the Employment Tribunal indicating that he would be withdrawing from acting with immediate effect for medical reasons.

- 8.14 On or about 25 June 2010, Ms Cowie lodged a complaint with the Scottish Legal Complaints commission alleging *inter alia* misconduct on the part of the Respondent which complaint was then referred to the Complainers. Intimation of that complaint was sent by letter to the Respondent on 6 September 2010. The Respondent failed to respond. The Complainers then issued a notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 on 16 November 2010. The Respondent failed to respond. A further notice in terms of that section was issued to the Respondent by the Complainers on 17 December 2010. The Respondent again failed to formally respond.

MS B

- 8.15 In or around August 2009, Ms B consulted the Respondent in relation to proceedings ongoing at Aberdeen Sheriff Court. Said proceedings had been raised by her former partner in which he sought a residence order in relation to their daughter. Ms B originally consulted a solicitor in another firm, Messrs George Mathers & Company, who represented her until she consulted the Respondent. That other firm had no knowledge of Ms B having consulted the Respondent. It came to their knowledge on 16 November 2009 at which they intimated their withdrawal of

agency to the Court. The Respondent had advised Ms B that he had requested her file from her former solicitors but that her former solicitors had refused to release the file. The Respondent knew that that statement was untrue as he had failed to correspond with Ms B's former solicitors and had failed to forward to them any mandate requesting the file from them. Further, the Respondent intimated to Ms B that he had appeared on her behalf at Aberdeen Sheriff Court on 30 October 2009. The Respondent was aware that that statement was untrue as there was no hearing scheduled for the case involving Ms B for 30 October 2009.

8.16 Ms B sought advice from the Respondent regarding the possibility of seeking an interim contact order for the Christmas period 2009. The Respondent advised Ms B that he had lodged a motion on her behalf in that regard but then telephoned Ms B on 23 December to indicate that he had mistakenly lodged that motion with the wrong organisation. The Respondent knew those statements to be untrue as he failed to lodge any motion on behalf of Ms B as instructed. Ms B received a letter from Michael S Allan Solicitors dated 11 January 2010 advising that her case had been continued until 15 January and that the Respondent was off due to ill health and sought her further instructions. Ms B then consulted another firm of solicitors who wrote to Michael S Allan Solicitors with a mandate and thereafter conducted matters on behalf of Ms B.

8.17 On or about 28 July 2010, Ms B lodged a complaint with the Scottish Legal Complaints Commission alleging *inter alia* misconduct on the part of the Respondent which complaint was then referred to the Complainers. The Complainers then intimated Ms B's complaint to the Respondent by letter dated 6 September 2010. The Respondent failed to respond. A reminder was sent to the Respondent by the Complainers on 12 November. The Respondent failed to respond. The Complainers then issued a notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act

1980 on 20 December 2010. The Respondent again failed to respond.

LAW SOCIETY OF SCOTLAND

8.18 On 2 December 2009, the Respondent sent an email to the Complainers advising that he was due to be sequestered at Aberdeen Sheriff Court that day and that he was aware of the provisions of Section 18 of the Solicitors (Scotland) Act 1980. He further advised that his then employers, Michael S Allan Solicitors, were prepared to continue to employ him notwithstanding his sequestration and he sought to make an application for a restricted Practising Certificate in terms of Section 19 of the said Act. The Respondent was sequestered at Aberdeen Sheriff Court on 2 December 2009 and as a result, his Practising Certificate was immediately suspended. The Respondent had in the period up to 2 December 2009 been employed by the firm of Messrs Michael S Allan Solicitors as a Consultant Solicitor and held an unrestricted Practising Certificate.

8.19 Following receipt of the Respondent's email the Deputy Registrar of the Complainers replied to the Respondent requesting confirmation of the outcome of the sequestration proceedings and a supporting letter from his employers and also confirmation of the address to where the necessary application form could be sent. The Respondent failed to respond to those requests. The Respondent wrote to the said Deputy Registrar by email on 19 February referring to previous email correspondence and stating that he was aware that his Practising Certificate had been suspended with effect from 12 February and that he could not practice or hold himself out as a solicitor until such times as a restricted Practising Certificate had been authorised by the complainers. The said Deputy Registrar replied the same day by

email advising the Respondent that his Practising Certificate had been suspended with effect from 2 December 2009.

8.20 The Respondent duly applied for a restricted Practising Certificate and attended the Practising Certificate Committee of the Complainers on 22 April 2010. During the course of said interview, the Respondent admitted that he had held himself out as a solicitor between 2 December 2009 and 12 February 2010 by appearing in Court on at least twelve occasions during that period. He also admitted having held himself out as a solicitor in the period of 12 to 18 February 2010 but could not recall the number of occasions when he had done so.

8.21 The Complainers thereafter lodged a complaint with the Scottish Legal Complaints Commission alleging *inter alia* misconduct on the part of the Respondent which complaint was then referred back to the Complainers and then intimated the Respondent by letter dated 3 February 2011. The Respondent failed to respond. The Complainers then issued a notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 on 18 March 2011. The Respondent failed to respond. A further notice under said Section was issued by the Complainers on 13 May 2011. The Respondent then failed to formally respond.

9. Having given careful consideration to the facts as admitted and the submissions made by both parties, the Tribunal rejected the submissions of double jeopardy and personal bar made by the Respondent. The Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of:

9.1 his conduct amounting to misrepresentation, deception and misleading of Mr A in respect that:-

- (i) he intimated to Mr A that the delay in obtaining Decree of Divorce was due to the Sheriff taking time to consider the evidence following the Diet of Proof, whereas the real reason, as the Respondent knew, was that the Sheriff was awaiting the Respondent preparing and lodging Affidavits in support of the merits of the divorce action;
- (ii) he intimated to Mr A that there was evidence of adultery in support of the merits crave whereas the Respondent knew that there was no such evidence either obtained or available; and
- (iii) he failed to advise Mr A of the Decree for expenses being granted against him following the Hearing on 18th June 2008 and subsequently awarded following Taxation on 18th November 2008.

9.2 his conduct amounting to misrepresentation, deception and misleading of the solicitors, Messrs Ledingham Chalmers in respect that:-

- (i) He intimated to those agents on 14th September 2007 that Affidavits would be prepared and lodged with the Court following the Diet of Proof whereas the Respondent knew that no such Affidavits were available nor prepared; and
- (ii) he intimated to said agents that he had no instructions from Mr A to attend the Diet of Taxation when the Respondent knew he had not sought any instructions from Mr A in the full knowledge that the Taxation was taking place on 22nd October 2008.

- 9.3 his conduct amounting to misrepresentation, deception and misleading of his client, Ms Lovie in respect that: he failed to advise her that between 17 March and 11 May 2009 he was not acting as her solicitor; he failed to advise her of the developments and dates in the pursuit of her application to the Employment Tribunal; and misled her in relation to said developments and dates;
- 9.4 his conduct amounting to misrepresentation, deception and misleading of his client, Ms Cowie in respect that: he failed to advise her that between 17 March and 11 May 2009 he was not acting as her solicitor; he failed to advise her of the developments and dates in the pursuit of her application to the Employment Tribunal; he misled her in relation to said developments and dates; and failed to advise her that her application had been struck out on 30 July 2009;
- 9.5 his conduct amounting to misrepresentation, deception and misleading of his client, Ms B in respect that: he advised her that he had appeared in Court on her behalf on a date when her action had not called; he falsely advised her that he had lodged a motion on her instructions; and he falsely advised her that there was a delay in him progressing her case due to her former solicitors failing to release her file;
- 9.6 his conduct amounting to misrepresentation, deception and misleading of the Employment Tribunal insofar as when acting for his client, Ms Cowie, he falsely in support of a position, advanced on behalf of his client, that she had university examinations and that a medical report was awaited from her GP when he knew these statements to be inaccurate;
- 9.7 his misrepresentation, deception and misleading of clients and the courts, and his breach of Section 23 of the Solicitors

(Scotland) Act 1980 *et separatim* his breach of Articles 6 & 7 of the Code of Conduct for Scottish Solicitors 2002, and that in respect of holding himself out as a solicitor between 2 December 2009 and 18 February 2010 in the knowledge that his Practising Certificate had been suspended on 2 December 2009;

- 9.8 his acting on behalf of clients without the benefit of professional indemnity insurance and intromitting with funds from those clients without operating a designated client account; and
- 9.9 his failure or delay in responding to correspondence and statutory notices issued by the Complainers.

10. Having heard from the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 11 June 2013. The Tribunal having considered the amended Complaints at the instance of the Council of the Law Society of Scotland and the Law Society on behalf of Ms Katrina Lovie and Ms Gaynor Cowie against Colin George Horne Wilson, 25 Jamaica Street, Aberdeen; Find the Respondent guilty of Professional Misconduct in cumulo in respect of his misrepresentation, deception and misleading of four separate clients, colleagues and the Employment Tribunal; his breach of Section 23 of the Solicitors (Scotland) Act 1980 and Articles 6 and 7 of the Code of Conduct for Scottish Solicitors 2002 and his misrepresentation, deception and misleading of clients and the courts in relation thereto; his acting on behalf of clients without the benefit of professional indemnity insurance and intromitting with funds from those clients without operating a designated client account; and his failure or delay in responding to correspondence and statutory notices issued by the Complainers; Order that the name of the Respondent be Struck Off the

Roll of Solicitors in 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)

Malcolm McPherson

Vice Chairman

11. 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

These matters called before the Tribunal on 11 June 2013 as substantive hearings. Two amended Complaints were lodged by the Complainers to reflect the agreed terms between the parties, together with associated Joint Minutes. Separate Complaints were necessary simply because the dates of the conduct complained of fell both under the old Rules (The Scottish Solicitors Discipline Tribunal Procedure Rules 2005) and under the new Rules (The Scottish Solicitors Discipline Tribunal Procedure Rules 2008). Given the extent of the admissions by the Respondent, the Tribunal felt it appropriate to deal with both Complaints together issuing one set of Findings relating to both amended Complaints.

The Joint Minutes were extensive in their terms agreeing all facts, averments of duty and professional misconduct. Accordingly no evidence required to be led and the hearing could proceed on the basis of submissions on behalf of both parties.

SUBMISSIONS FOR THE COMPLAINERS

Mr Knight began his submissions to the Tribunal by lodging both amended Complaints, both Joint Minutes and a Second List of Productions for the 2008 Complaint asking that the Tribunal allow these to be received. In relation to the Respondent's conduct relating to his client Mr A, Mr Knight lodged an Affidavit for the client and confirmed that the Respondent had no issue with its content. The Complaint and Affidavit disclosed that for a period from September 2007 until November 2008 the Respondent misrepresented the position to his client, and deceived his own client and agents for his opponent. His conduct resulted in a complaint being lodged and the Respondent failed to deal with correspondence from the Law Society. The Complainers' position was that the main issue in connection with this complaint was that solicitors must be honest and trustworthy at all times with their clients, opponents, courts and tribunals. The Respondent was less than trustworthy or honest in relation to his dealings in this matter. Mr Knight invited the Tribunal to make Findings of professional misconduct in cumulo in respect of the averments in the Complaint under the 2005 Rules. He confirmed that there was no

Secondary Complainer and that Mr A was pursuing an action for professional negligence and damages in a separate forum. He made the usual motion for expenses.

In relation to the 2008 Complaint, Mr Knight indicated that there were five areas where the Complainers submitted that the Respondent's conduct amounted to misconduct. His actings in relation to three separate clients were less than honest. The Respondent had held himself out as a solicitor when his practising certificate had been suspended. The Respondent had failed to deal with correspondence from the Society. The conduct on the part of the Respondent had involved him misleading and deceiving three separate clients and the Employment Tribunal. Additionally, he had misled the courts by holding himself out as a solicitor by appearing when he should not have. In itself failures to deal with correspondence from the Law Society has in the past been held by the Tribunal to amount to misconduct.

Mr Knight submitted that solicitors must be honest and trustworthy at all times. Mr Wilson had crossed the line. He invited the Tribunal to hold that the conduct in cumulo amounted to professional misconduct. He indicated that the Respondent accepted that his conduct had amounted to professional misconduct but it was clearly still a matter for the Tribunal to make such a finding. He made the usual motion for expenses.

Mr Knight then confirmed that the two Secondary Complainers had been asked to attend by him in order to give evidence. They had been spared that ordeal by the Respondent agreeing the Joint Minutes. The Secondary Complainers had lodged a claim for compensation but have confirmed that they wanted to await the Tribunal's decision regarding professional misconduct before deciding how they would proceed. The Secondary Complainers had indicated to him that their proposition was that they wanted the Respondent to be held accountable for his actions.

SUBMISSIONS FOR THE RESPONDENT

The Respondent confirmed that he took no issue with anything that had so far been said by the Fiscal for the Complainers. He indicated he had one argument he wished to put forward and that that was limited to paragraph 2.14 to 2.16 of the second

Complaint where he wanted to argue that the Law Society were personally barred from proceeding with the allegations of misconduct relating to his practising certificate and that there was an issue of double jeopardy. The Respondent submitted that in the course of 2009 he had been in contemplation of sequestration and had telephoned Bruce Ritchie of the Law Society in autumn 2009 for advice. Mr Ritchie had advised him of the effect sequestration would have on his practising certificate but had explained to the Respondent that he would be in a position to apply for a restricted practising certificate. On the 2 December 2009 the Respondent had sent an email to the Law Society indicating that he anticipated being sequestered that day – that email had been lodged with the Tribunal by Mr Knight in his Supplementary List of Productions. The Respondent confirmed that he was in fact sequestered on 2 December 2009. He confirmed that he had continued practising without his certificate until 18 February 2010. On that day he had received a phone call from the Law Society telling him that his practising certificate had been suspended with effect from the 2 December 2009. The Respondent conceded that with the benefit of a clear mind given the contents of his telephone call with Bruce Ritchie and correspondence thereafter he should have realised that his certificate automatically was suspended following his sequestration in terms of the 1980 Act. His anticipation however had been that the Law Society would intimate the suspension to him. He conceded this was a naïve belief and was in no way supported by the correspondence. Following the telephone call of the 18 February he had applied to the Law Society for a restricted practising certificate. He was invited to attend the Professional Practice Sub Committee in relation to this application. At this meeting he spoke with James Ness and two other members of the Committee. The Respondent submitted that he had given the Committee a full and frank admission of his behaviour. The members he had spoken to indicated that they would take their report to the full Committee and thereafter report back to him. The Respondent had been anxious to know the outcome of the meeting and Mr Ness had agreed that he would telephone the Respondent in advance of the written correspondence being issued. The Respondent was involved in a long running High Court case and he needed to know if he was going to be in a position to continue with it. Following the meeting, Mr Ness telephoned the Respondent and intimated to him that he was being granted a restricted practising certificate. Mr Ness had intimated to the Respondent that normally where a solicitor was sequestered his practising certificate would be restricted for the period of the

sequestration. However, in the Respondent's case the restriction was to be for five years because of him holding himself out as a solicitor. The Respondent also submitted that Mr Ness had indicated that the Society would take no further action but he could not speak for the criminal authorities. The Respondent submitted that the undertaking by Mr Ness that the Society would take no further action and the length of the sanction imposed meant that it would be inequitable for the Tribunal to punish him further in connection with these matters and it would amount to a breach of natural justice.

In relation to the four other matters, the Respondent said these had all occurred within a two year period. He conceded he could offer no excuse for his conduct. The Respondent confirmed that he was sorry, ashamed and embarrassed at this phase in his career. He conceded that his conduct fell far short of the conduct expected of a solicitor by clients, tribunals and fellow solicitors. He had practised for at least 20 years prior to these matters occurring. There had been no previous issues with his conduct. In relation to these matters there was no suggestion of financial impropriety.

The Respondent confirmed that he had been enrolled as a solicitor in 1985 and had been a principal in private practice between 1992 and 2009. He submitted that he believed that he had practiced diligently, competently and without incident prior to these matters arising. He conceded that the matters he was describing to the Tribunal were in mitigation and were not in any way an excuse for his conduct. The prevailing factors affecting his behaviour at the time of these incidents were domestic in nature rather than professional. He had lost a child who died in infancy in December 2001. He and his wife had embarked upon a disastrous action against Grampian Health Board Trust – against advice but under great pressure from his wife. They had lost that action in 2006 resulting in an award of expenses amounting to six figures. This had created huge domestic tension and financial crisis. It had also resulted in his divorce from his wife. The Respondent had concluded that his only course of action was for him to cooperate with his own sequestration. He had fully cooperated with the sequestration on 2 December 2009 and believed that his creditors have been paid very nearly in full – he believed 93% of their claims had been settled. His sequestration had been discharged on 2 November 2010. Had it not been for the additional penalty from the Law Society with regard to the restriction of his practising certificate, he

could have applied for a full certificate. He had lost his matrimonial home and the capital in his former firm. He has been living in rented furnished accommodation and since February 2012 has been in receipt of benefits due to ill-health. His practising certificate was restored to him in May 2010. He had continued to work for Michael Allan doing purely criminal work. From 5 October 2010 to the end of 2011 he had practised as an assistant entirely without incident and with some degree of success. He had conducted numerous summary trials, Sheriff and jury trials and had been involved in a number of High Court cases. The Respondent conceded that the matters before the Tribunal were serious and could be dealt with by a whole range of sanctions. He asked the Tribunal to consider the interests of all interested parties and reach a conclusion that the matters could be dealt with other than by way of a striking off. In particular he asked the Tribunal to have regard to his lengthy good record prior to these incidents and his good record since. There had been no financial propriety in connection with these matters. His work record since these incidents has only been interrupted by his ill-health. He suffers from an aggressive form of osteomyelitis. He had suffered from this condition for 30 years and although this had been well controlled from the time he was a teenager until about 2010 the condition had flared up again at that time. At the end of 2011 he had not been fit to work. He has had three major surgical interventions in connection with his pelvis. He confirmed he was now on the mend. In January 2013 he felt he was fit to return to work on a part time basis. Michael Allan had confirmed that he was prepared to employ him again and had made an application to the Law Society for the Respondent's employment to resume. That application was granted on the 7 February 2013 subject to the condition that the Respondent would be a qualified assistant. Unfortunately the Respondent had not been able to return to work because of his medical condition. The Respondent anticipated, dependant on the Tribunal's decision that he would be fit to return to work in the late summer initially on a part time basis only. The Respondent emphasised that he was sorry, ashamed and embarrassed by this whole episode. Although this conduct was not a brief window, it was in his submission a series of aberrations which should be set in context with his 20 years of previous good conduct. He was embarrassed to be in receipt of state benefits. The issues that had troubled him at the time were now behind him and he was now in a different set of circumstances. He was living in rented accommodation together with his 14 year old son. His other 9 year old son lived with his mother, the Respondent's estranged divorced wife.

With regard to his failure to correspond with the Law Society, he explained that at the time he had been living in a residential caravan where there had been a central reception area for mail. He had been in and out of hospital at the time. He did not have sight of all of the Law Society correspondence. He did however have to concede that he knew that the correspondence was to come, was expecting correspondence and did not seek it out. He had simply buried his head in the sand.

The Respondent confirmed that he could not resist the Complainer's motion for expenses.

The Tribunal asked the Respondent whether he would concede that the restriction on his practising certificate was a consequence of his sequestration and not a penalty. The Respondent confirmed that he would concede that a restriction was a normal consequence that would flow from a sequestration but that the length of his restriction was more extensive than usual.

The Tribunal asked Mr Knight what his position was with regard to the Respondent's submissions that amounted to a plea in bar in relation to the practising certificate issues. Mr Knight indicated that the position of the Society was simply that the Tribunal had before it the two amended Complaints and two Joint Minutes. The Respondent had held himself out as a solicitor. The Complainers were asking the Tribunal to hold that the conduct in the Complaints was professional misconduct in cumulo. He submitted that the issue of double jeopardy did not arise – whether or not the Respondent's practising certificate had been restricted over that time was irrelevant.

With regard to the Respondent's other submissions, Mr Knight indicated that he would accept that it could be said that there was no financial impropriety. However, the Respondent had admitted that he had taken payments from clients when he was holding himself out as a solicitor, had no professional indemnity insurance and no client account. So there was a financial nature to these irregularities. The Respondent's record card which had been lodged as a Production for the Complainers confirmed that there were no other transgressions on his part.

DECISION

The first issue to be considered by the Tribunal was the submission of personal bar/double jeopardy made on behalf of the Respondent. Whilst the Tribunal felt it was somewhat unusual for these issues to be raised after the agreement and lodging of a Joint Minute agreeing the averments now objected to by the Respondent, it was nonetheless prepared to consider the submissions.

The Tribunal held that the Respondent's submission in relation to double jeopardy was not well founded. The restriction on his practising certificate was an administrative matter relating to an application for a restricted practising certificate following the suspension of his full practising certificate as a result of his sequestration. The Tribunal held that this could not be considered as penalty/punishment for the conduct complained of in this forum. The Respondent's submission in relation to personal bar appeared to relate to the contents of a telephone conversation between the Respondent and a member of staff of the Society who was connected to the Practising Certificate Committee, where that member of staff was said to have agreed to help the Respondent by giving him early notice of the result of his application for a restricted practising certificate. This was a Committee simply dealing with the application for a practising certificate. There was no suggestion that any correspondence following this telephone conversation had confirmed what the Respondent was suggesting. Even taking the Respondent's submissions at its highest, it could not be said that what was described was a declaration of relinquishment or discharge of the right to prosecute, which would be the test the Respondent required to meet. Accordingly his submission could not be upheld.

The Tribunal then went on to consider whether the conduct described and admitted by the Respondent met the Sharp Test for professional misconduct. The Tribunal was presented with a course of conduct involving significant misrepresentations and deceptions of four separate clients, the Employment Tribunal and a fellow solicitor. The Respondent had held himself out as a solicitor for a period of time when he had no professional indemnity insurance and had had intruded with client funds without having a client account. He had appeared in Court when he was not in receipt of a

practising certificate and he accepted that this amounted to him misleading the Court as to his status. Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. The Respondent had acted in a dishonest manner in relation to clients, courts and fellow solicitors. This conduct fell well below the conduct expected of a competent and reputable solicitor. His lack of honesty could only be regarded as serious and reprehensible. He had then gone on to add to this catalogue of reprehensible behaviour by failing or delaying to respond to correspondence from the Society in relation to all of the individual complaints. The only conclusion that could be reached in all of these circumstances was that the Respondent was guilty of professional misconduct, in cumulo.

The Tribunal thereafter gave careful consideration to the submissions made on behalf of the Respondent in mitigation of his conduct. The Tribunal accepted that the Respondent had had a previously good record that had extended for 20 years. The Tribunal also accepted that the Respondent was embarrassed and ashamed by the conduct that had resulted in him appearing before it. They also had regard to the Respondent's cooperation with these proceedings by entering into extensive Joint Minutes. It accepted that the conduct occurred during a particularly difficult time in the Respondent's private life. The medical issues raised by the Respondent related only to his correspondence with the Law Society and his current personal circumstances.

The difficulty faced by the Respondent in these matters was that the conduct persisted over a significant period of time and could not be said to be a spontaneous aberration. There were many incidences of deliberate misrepresentations/deceptions. The recipients had been of several different categories – clients, colleagues, tribunals and courts. His conduct could only be classified as dishonest. It was an ongoing course of conduct over a long period of time – in excess of two years. It was clearly conduct which presented a danger to the public and was likely to be seriously damaging to the reputation of the legal profession. There were a number of areas where the solicitor had acted dishonestly. This was not one isolated incident. Not only had he made misrepresentations or deceived four separate clients, there were several incidences of misrepresentations or deceptions.

The conclusion of the Tribunal was that the conduct was so serious and so reprehensible that the only penalty possible was striking the Respondent's name from the Roll of Solicitors.

In reaching this conclusion, the Tribunal noted that even if they had put aside the question of the Respondent practising without a certificate, its conclusion as to penalty would have been the same. The Respondent's conduct in relation to his four clients, fellow solicitors and the Employment Tribunal was a very serious and reprehensible example of protracted dishonest conduct on behalf of the Respondent. The Respondent had been prepared to resort to misrepresentations/deceptions repeatedly over a lengthy period of time in such a manner that it demonstrated that he was not a fit person to be a solicitor.

COMPENSATION

The Tribunal reconvened to intimate its Findings to the parties and invited the Secondary Complainers to address it in relation to compensation. After a further adjournment the Secondary Complainers confirmed they were withdrawing their applications for compensation.

Thereafter the Tribunal confirmed the Respondent's position with regard to the Complainer's motion for expenses and confirmed that the Respondent was aware of the Rules relating to publicity and had no submissions to make.

In consequence the Tribunal made the usual order with regard to expenses and publicity.

Vice Chairman