

**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**

**BRIAN TRAVERS, Solicitor,  
Marshall Wilson Law Group  
Limited, 2 High Street, Falkirk**

1. A Complaint dated 13 July 2010 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Brian Travers, Solicitor, Marshall Law Group Limited, 2 High Street, Falkirk (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 23 September 2010 and notice thereof was duly served on the Respondent.
4. The hearing took place on 23 September 2010. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The

Respondent was present and represented by Mr Biggam, Solicitor, Falkirk.

5. A Joint Minute was lodged admitting some of the facts, averments of duty and averments of professional misconduct in the Complaint.
6. After a short adjournment the Respondent confirmed that he was now pleading guilty to all of the averments of professional misconduct in the Complaint. No evidence was accordingly led. The Tribunal found the following facts established

- 6.1 The Respondent was born on 2 October 1957. He was admitted as a Solicitor on 23 April 1996 and enrolled as a Solicitor in the Register of Solicitors in Scotland on 25 April 1996.

From 1 May 1996 to 12 March 1997 he was an employee of Young & Co. From 13 March 1997 to 1 April 1997 he was an employee with Smith & Co and thereafter, from 2 April 1997 to 31 December 1997 a partner with Smith & Co. From 5 January 1998 to 31 October 2000 he was a partner with Travers & Co. From 1 February 1999 to 28 August 2006 he was with Russel & Aitken as an employee from 1 February 1999 to 31 October 2000, as an Associate from 1 November 2000 to 31 January 2004 and as a partner from 1 February 2004 to 28 August 2006.

From 12 September 2006 to 31 March 2007 he was an employee of Marshall Wilson, Solicitors and from 1 April 2007 until 2 November 2008 a Partner with that firm. Since 3 November 2008 he has been a Director of the Marshall Wilson Law Group Limited.

- 6.2 In or about November 2008 Mr A made a complaint to the Scottish Legal Complaints Commission in respect of the

Respondent's actings on his behalf in the recovery of a debt. The Commission referred the matter to the Complainers.

- 6.3 In April 2008 Mr A, Managing Director of Company 1 consulted the Respondent in respect of invoices rendered to the Association 1. The Respondent agreed to act on behalf of Company 1 and thereafter continued to act until in or about November 2008.

Mr A wrote to the Respondent on 26 September 2008 but received no reply and no court action was raised. Mr A wrote to Raymond Morton of Marshall Wilson Law Group complaining about the Respondents' handling of the case on 26 October and 12 November 2008 but received no reply to either letter.

Mr A instructed Kevin Douglas, Solicitor of Gair & Gibson, Solicitors, Falkirk to act on his behalf and signed a Mandate dated 2 December 2008 requesting the Respondent to transfer all papers held in connection with the dispute between Company 1 and Association 1 to Messrs Gair & Gibson. On 9 December 2008 Messrs Gair & Gibson sent the Mandate to the Respondent who acknowledged it in a letter dated 12 December 2008.

The papers were not at any stage produced to Messrs Gair & Gibson in terms of the mandate, nor did the Respondent send any fee note to Messrs Gair & Gibson or Company 1. Mr Douglas continued to deal with the dispute in the absence of the papers retained by the Respondent and ultimately in or about November 2009 settlement of the dispute was agreed with a payment to Company 1 by Association 1 of £2410.04 in respect of two hundred and fifty-eight medals.

- 6.4 On 9 January 2009 the said Mr A telephoned the Complainers to advise that the Mandate had not been implemented. On 26 January 2009 Messrs Gair and Gibson wrote to the Complainers advising that the Mandate had not been implemented.
- 6.5 On 28 January 2009 the Client Relations Partner of Marshall Wilson Law Group wrote to the Complainers advising that the Respondent had spoken to the said Mr A's current Solicitor and had made various proposals.
- 6.6 On 5 February 2009 the Complainers wrote to the Respondent intimating a complaint in respect of failure/delay in implementing the Mandate of 2 December 2008 and inter alia requesting the Respondent's written response and business file or files relating to the matter, all to be provided within twenty-one days.
- 6.7 The Complainers did not receive any response from the Respondent and on 2 March 2009 a Statutory Notice in terms of the Solicitors (Scotland) Act 1980 Section 42C was intimated by recorded delivery to the Respondent. He failed to reply to the Statutory Notice.

The Complainers wrote separately to the Respondent by recorded delivery also on 2 March 2009 intimating Notice in terms of the Solicitors (Scotland) Act 1980, Section 15(2)(i)(i).

There was no response from the Respondent to either of the two Notices intimated on 2 March 2009

- 6.8 In the absence of any response, the Complainers wrote to the Respondent by recorded delivery on 25 March 2009 intimating

a Notice in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(ii).

6.9 In the continued absence of any response from the Respondent, the Complainers wrote to the Respondent on 31 March 2009 intimating a further complaint of professional misconduct in that the Respondent had failed to reply to the Complainers' correspondence in respect of the complaint and had failed to respond to the Notices issued under Section 15 and Section 42C of the 1980 Act, as averred above.

6.10 The Complainers instructed a Report from a Reporter. The matter was subsequently considered by the Complainers' Client Relations Committee at a meeting on 3 December 2009 when that Committee recommended that the Professional Conduct Committee should consider the conduct issues. The decision of the Client Relations Committee was intimated to the Respondent.

On 28 January 2010 the Complainers' Professional Conduct Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that it could amount to professional misconduct and a Fiscal should be appointed in terms of the Solicitor (Scotland) Act 1980 Section 51.

6.11 As at 1 March 2010, the Mandate remained unimplemented by the Respondent.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 7.1 Having received a Mandate on 9 December 2008, his delay and failure to implement the Mandate.
- 7.2 His failure to provide his business file or files to the Complainers and failure to provide any explanation as to why the papers had not been produced timeously or otherwise.
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23 September 2010. The Tribunal having considered the Complaint dated 13 July 2010 at the instance of the Council of the Law Society of Scotland against Brian Travers, Solicitor, Marshall Wilson Law Group Limited, 2 High Street, Falkirk; Find the Respondent guilty of Professional Misconduct in respect of his delay and failure in implementing a Mandate and his failure to provide his business file or files to the Law Society and failure to provide any explanation as to why the papers had not been produced timeously or otherwise; 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)**  
**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**

When the case called on 23 September 2010 a Joint Minute of admissions was lodged admitting the majority of the facts in the Complaint and admitting the averment of professional misconduct in respect of failure to produce the file. It was clarified that the issue of the failure to implement the Mandate was still in dispute. Mr Reid advised that he did not require to call his two witnesses given the admissions and what was contained in the Answers. Mr Reid however indicated that he had spoken to the Respondent's witness, Mr Douglas, and had now lodged his file as a Third Inventory of Productions. Mr Reid clarified that he did not accept what was contained in Answer 2.9 and may wish to call Mr Douglas to give evidence.

Mr Biggam stated that as Mr Douglas's file has now been produced and he was happy to agree the contents of the file, he did not think it was necessary to lead Mr Douglas as a witness.

The Chairman queried whether the matter should be proceeding by way of debate, given the fact that a lien is a security of something eg. a fee and if there was no fee could there be a lien? The Chairman stated that a reasonable period could be allowed after the ending of the solicitor/client relationship to raise a fee and therefore a lien could perhaps be exercised for a fee that was intended to be raised but otherwise he had difficulty in seeing how there could be a lien in this case having regard to the absence of any fee note and the length of time that had elapsed since the ending of the solicitor/client relationship. The Chairman indicated that in the circumstances parties may wish to consider whether or not it was necessary for evidence to be led. Mr Biggam stated that Mr Travers had wanted to give evidence to explain his thinking but he accepted that there was a difficulty and thought that it might be better to proceed by way of a debate. An adjournment was granted so that Mr Biggam could discuss matters with his client.

After the adjournment Mr Biggam indicated that the Respondent had now focused on the issue and accepted that his failure to respond to the Mandate did amount to professional misconduct. It was accordingly agreed that there would be no requirement for evidence or for a debate.



Mr Reid moved to amend the Complaint to change the date that the Respondent received the Mandate to 9 December 2008 and this date was also changed in the Joint Minute. This was agreed.

### **SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid stated that it was not known why the Respondent had not implemented the Mandate. Mr Douglas had dealt with matters in the absence of the file and the end result did not cause any prejudice to the client. Mr Reid stated that it was also not known why the Respondent did not respond to the Law Society and that failure to respond to the Law Society could lead to serious consequences, although in this case it had not done so.

### **SUBMISSIONS FOR THE RESPONDENT**

In respect of the Mandate, Mr Biggam stated that matters had been progressed well by the Respondent up to a point. There had been discussions and an offer had been received and transmitted to Mr A. He however was not happy with the offer and wished matters to escalate to court action. The Respondent believed that this would result in a negative outcome, which led to problems in the relationship between the Respondent and Mr A and Mr A then instructed Mr Douglas. Mr Biggam pointed out that the Respondent had provided Mr A with copies of all the correspondence and the stumbling block in connection with the Mandate was that Mr A already had all the relevant information. It was clear from the file of Gair & Gibson that Mr Douglas already had all the correspondence because Mr A had copies of it. The Respondent's position was that he would look at the file to see if he had anything extra that was needed to progress the case. The Respondent however accepted that he should have handed the whole file over.

In connection with rendering a fee note, by this time it was clear that the case had gone to the Law Society and this raised the issue of whether a fee note would be paid. The Respondent then decided that there was no point in raising a fee note as it would inflame matters.

In connection with the failure to respond, the Respondent had accepted culpability with regard to this matter from an early stage. Mr Biggam explained that there had been internal strife in the Respondent's firm and he was heavily involved in dealing with all the matters arising from this. These matters affected the survival of the firm and the Respondent put other matters on the back burner. Mr Biggam pointed out that there had been no prejudice caused to Mr A and at the end of the day Mr Douglas had achieved a slight enhancement on behalf of Mr A. Mr Biggam confirmed that there had already been a negotiated figure of £1000 paid in respect of Inadequate Professional Service in respect of the same matter.

## **DECISION**

The Tribunal has held on a number of occasions that failure to respond to the Law Society and failure or delay in implementing Mandates amounts to professional misconduct. If solicitors do not respond to the Law Society it hampers the Law Society in the performance of their statutory duty and is prejudicial to the reputation of the legal profession. The Tribunal made a finding of misconduct to demonstrate the Tribunal's continued attempts to require individual members of the profession to respond to their professional body when requests are made of them. Failure to implement a Mandate is a breach of a solicitor's obligations and hampers the new solicitor in implementing a client's instructions which in turn is prejudicial to the legal profession. The Tribunal however consider that the Respondent's misconduct in this case falls at the lower end of the scale of professional misconduct given that there was not much contained in the file that the client did not already have. The Tribunal also took account of the fact that the matter had already cost the Respondent's firm £1000 in respect of an Inadequate Professional Service award and the Tribunal accordingly did not consider it necessary to impose a further financial penalty. The Tribunal considers it unfortunate that the Respondent, given his age and time on the roll, had to appear before it in this case. The Tribunal made the usual order with regard to publicity and expenses.

**Chairman**