

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

FINDINGS

in Complaint

by

THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND

against

MANUS GERARD TOLLAND,
Solicitor of 138 Eastwood Mains
Road, Clarkston, Glasgow G76 7HN

1. A Complaint dated 23rd March 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Manus Gerard Tolland, Solicitor, of 138 Eastwood Mains Road, Clarkston, 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. No answers were lodged by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 19th May 2005 and notice thereof was duly served on the Respondent.
4. The Complaint was heard on 19th May 2005. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented himself.

5. A Joint Minute was lodged admitting the facts, the averments of duty and the averment of professional misconduct in the Complaint.

6. In respect of these admissions no evidence was led and the Tribunal found the following facts established :-

6. 1. The Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born 2nd September 1956. He was admitted as a solicitor on 16th January 1981. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 3rd February 1981. He was a Partner in the firm of Robertson & Ross, Solicitors, Paisley from 1st July 1987 until 31st March 2004. Thereafter from 1st April 2004 he was employed with the firm Ferguson Dewar, Solicitors, Glasgow. He was assumed as a Partner in that firm on 14th June 2004. He ceased to be a Partner of the firm Ferguson Dewar on 31st March 2005. He is currently employed by PSM Law Group in Falkirk having commenced employment with them on 9th May 2005.

6. 2. The Estate of the late Mr A

Mr A died on 29th December 1999. On or about 7th January 2000 the Respondent whilst employed by the firm Messrs Robertson & Ross, Solicitors, Paisley was instructed by the Executors of the late Mr A to administer the Estate. The Respondent was personally responsible for carrying out the work and administration in relation to the Estate. For a number of reasons the Executors were dissatisfied with the manner in which the Estate was administered. As a result of their dissatisfaction they determined to consult an alternative firm of solicitors to act on their behalf. In or about March 2001 the Executors made contact with the firm of Messrs McVey & Murrice, Solicitors, of 13th Bath Street, Glasgow. They were instructed to write to the Respondent to recover from him the file in connection with the administration of the Estate.

6.3. Having received these instructions Messrs McVey & Murrigane by letter dated 20th August 2001 wrote to the Respondent requesting that he forward to them the file of papers which he operated in connection with the Estate of the late Mr A. The Respondent refused to implement the Mandate. He replied that he was prepared to allow examination of the file but only provided that such examination took place within his office. The firm of McVey & Murrigane considered the demand made by the Respondent to be wrong and forwarded to him a copy of an article which had appeared in the Journal of the Law Society of Scotland which related to the implementation of Mandates and indicated what paperwork should be delivered when a Mandate is received. Despite having been provided with this information the Respondent again replied rejecting the advice offered and renewed his offer to allow the file to be inspected within his office. As a result of the attitude displayed by the Respondent, the firm McVey & Murrigane, Solicitors thereafter invoked the assistance of the Complainers. The Complainers obtained sufficient information from McVey & Murrigane to formulate the basis of a Complaint. The Complaint was intimated to the Respondent. Only when the Complaint was referred to the Respondent did this prompt a change of stance on his part. Having received the Complaint the Respondent thereafter delivered the file in terms of the Mandate which he had received. The Respondent did not implement the terms of the Mandate received until 22nd March 2002. The Respondent allowed a period of some seven months to elapse before he implemented the Mandate.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of his unreasonable delay of seven months in implementing a Mandate from another firm of solicitors requesting that a file of papers in relation to an executry be forwarded to them.

8. Having heard the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms: -

Edinburgh 19th May 2005. The Tribunal having considered the Complaint dated 23rd March 2005 at the instance of the Council of the Law Society against Manus Gerard Tolland, Solicitor, of 138 Eastwood Mains Road, Clarkston, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his unreasonable delay of seven months in implementing a Mandate from another firm of solicitors requesting that a file of papers in relation to an executry be forwarded to them; Censure the Respondent, and Find him liable in the expenses of the Complainers and in the expenses of the Tribunal, as the same may be taxed by the auditor of the Court of Session on an agent and client basis in terms of Chapter Three of the Law Society's Table of Fees for general business, and Direct that publicity be given to this decision and that this publicity should include the name of the Respondent.

(signed) Kenneth R Robb
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 lodged a Joint Minute admitting the facts, the averments of duty and the averment of Professional Misconduct as detailed in the Complaint. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that the Respondent is 49 years old and was admitted as a solicitor in 1981 and has been in practice for 24 years. He stated that the Respondent's employment history is as stated in article 1 of the Complaint but he has since then secured alternative employment.

Mr Reid advised that the subject matter of the complaint arose when the Respondent was a partner in the firm of Messrs Robertson & Ross Solicitors. The Respondent was acting in connection with the estate of Mr A. The executors of that estate were unhappy with the work the Respondent was carrying out for them for a number of reasons. They approached Messrs McVey & Murrricane, Solicitors, who wrote to the Respondent by letter, dated 20 August 2001 enclosing a Mandate requesting that the file be transferred to them. The Respondent refused to comply with the Mandate and advised that the file could be inspected at his office. Messrs McVey & Murrricane were unhappy with this response and wrote again to the Respondent enclosing an article from the Journal of the Law Society providing guidance on the implementation of Mandates. The Respondent again refused to implement the Mandate. Messrs McVey & Murrricane complained to the Law Society. Following the complaint the Law Society wrote to the Respondent. Only after receiving the letter from the Law Society did the Respondent implement the Mandate. There was accordingly a delay of approximately seven months. This delay was aggravated by his ignoring the guidance sent to him by Messrs McVey & Murrricane. Mr Reid invited the Tribunal to find the Respondent guilty of professional misconduct. He referred to Smith & Barton's book on The Procedures and Decisions of the Scottish Solicitors' Discipline Tribunal at page 66 where there is a passage from the Tribunal's judgement in case 636/84 –

“ Furthermore it’s the Solicitor’s duty to effect delivery as soon as practicable. The new Solicitor will not have the same knowledge of the client’s affairs and it is appropriate that he should have access to such papers as may be available in order to assist him in advising the client. In the interests of the relationship between the new Solicitor and the client, it is essential that the papers should be transmitted as soon as possible in order that the client can be adequately advised by the new Solicitor and it is quite inappropriate for the former Solicitor himself to determine whether or not the delivery of papers should be effected with any degree of urgency.”

Mr Reid also referred to page 68 of the same book, which refers to case 822/91 previously decided by the Tribunal. The decision in that case was that failure to timeously implement a Mandate from a new Solicitor for a client and to forward the client’s papers to the new Solicitor as well as to deal with reasonable enquiries of that Solicitor amounted to professional misconduct. Mr Reid invited the Tribunal to decide that the facts in this case also amounted to professional misconduct.

Mr Reid advised that the Respondent had made contact with him as soon he was aware of the Complaint. Mr Reid further advised that the Respondent had immediately indicated that there was no necessity for evidence to be led and had agreed to enter into a Joint Minute. In doing so the Respondent had saved a good deal of inconvenience and expense. Mr Reid stated that there had been technical difficulties in relation to the service of the Complaint, but that to his credit the Respondent had not chosen to rely on these as a reason to delay the hearing.

SUBMISSIONS FOR THE RESPONDENT

The Respondent stated that he did not disagree with anything said by Mr Reid apart from his age, he stated that he is 48. He wished the Tribunal to be aware why he was appearing before them unrepresented. He advised that the Complaint had been served at the offices of Ferguson Dewar. However, he explained that at the time of service he was in the process of leaving the firm and was not there on a full time basis. He advised that the papers were not redirected to him. The Respondent stated that the first he knew of the matter was when he got a letter from Mr Reid sent to him at his

home address asking that he contact Mr Reid to discuss the state of preparation of the case. The Respondent advised that he received that letter on 5th May, just two weeks ago, and that he went to see Mr Reid on 6th May to discuss matters. The Respondent advised that he agreed with the facts and circumstances as stated in the Complaint and accordingly was prepared to enter into a Joint Minute. The Respondent stated that he is currently being advised by Mr Macreath of Messrs Levy & McRae, in relation to a matter concerning his former partners. However, he stated that Mr Macreath was not available to represent him today. Mr Macreath had suggested that Mr McCann be instructed but the Respondent felt that it would have been unfair to have instructed him at such short notice and stated that he had no wish to prolong matters by seeking an adjournment. The Respondent advised that the letter from Mr Reid arrived on the day he was offered a new position. He advised that he started work in his new job on 9th May and has informed his new employers of this Complaint. The Respondent stated that he felt it was necessary to go into all this background in order that the Tribunal would see that he was not in any way treating this matter lightly.

The Respondent then turned to the subject matter of the Complaint. He stated that it was his belief that the position he stated to Messrs McVey & Murrice was a stance he was entitled to adopt. He advised that his former partners supported him in that stance. However, he stated that it was his responsibility given his seniority in his former firm to follow the correct procedure to the letter. He explained that that was why he accepts his culpability. He stated that this background was only barely mitigation and was not intended to be exculpatory or to excuse his conduct. The Respondent stated that it was somewhat embarrassing to find himself before the Tribunal in these circumstances and that this was his first appearance before the Tribunal. He stated that he had been in the profession since 1978 when he commenced his apprenticeship and that this appearance was totally out of character for him.

The Respondent advised that he left Ferguson & Dewar at the end of March this year and is now employed by PSM Law Group in Falkirk having started work on 9th May. He advised that he would not receive a salary until the end of May. He stated he had limited resources. He advised that he is currently employed as an assistant engaged wholly in domestic conveyancing and that his employers have a full support system

and employ around one hundred staff in three locations. He advised the Tribunal of his income and family circumstances.

The Respondent concluded by stating that this had been a lesson sharply learned and had caused him and his wife anxiety over the last few weeks.

In response to a question from the Tribunal the Respondent stated that at present his income equals his outgoings until the problems with Robertson & Ross are resolved. He advised that his wife works part time as a physiotherapist. He advised that he does not have a great deal of free income at present.

In response to another question from the Tribunal the Respondent stated that the outcome of this hearing would not be likely to have an adverse effect on his employment.

DECISION

The Tribunal took account of both submissions made. The Tribunal consider that there is a strict duty on a Solicitor to implement a duly delivered Mandate and the fact that the Respondent had misunderstood the legal position regarding this duty was not an excuse. The Tribunal considered that to have delayed for seven months and thus to have delayed the administration of the estate was grossly unreasonable. The Tribunal was satisfied that the Respondent had seriously departed from the standards of conduct to be expected of a competent and reputable Solicitor and considered that in the circumstances the Respondent was guilty of professional misconduct. The Tribunal considered however, that this offence was at the lower end of the scale of professional misconduct. The Tribunal recognised that there was no suggestion that there were any other delays on the part of the Respondent in the administration of the estate. The Tribunal took into account that the Respondent has been in practice for 24 years and has not previously appeared before the Tribunal. The Tribunal was satisfied that the Respondent fully co-operated with the disposal of the Complaint and fully appreciated the culpability of his failure. In all the circumstances the Tribunal considered that Censure was a sufficient and proportionate disposal to mark the

Respondent's failure. The Tribunal made the usual order for publicity and found the Respondent liable in the expenses of the Complainers and of the Tribunal.

Vice Chairman