

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND**

against

**ALEXANDER GILMOUR MALCOLM,
Solicitor, formerly of 23 Tarvit
Drive, Cupar, Fife now at 14
Melgund Place, Lochgelly, Fife**

1. A Complaint dated 7 June 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Alexander Gilmour Malcolm, Solicitor, formerly of 23 Tarvit Drive, Cupar, Fife now at 14 Melgund Place, Lochgelly, Fife (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 24 August 2005 and notice thereof was duly served on the Respondent.
4. When the case called on 24 August 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 in which the facts, some of the averments of duty and some of the averments of professional misconduct in the Complaint were admitted. The fiscal confirmed that the Law Society was not to proceed with the averments of duty and averments of professional misconduct which were not admitted.

6. The Tribunal found the following facts established :-

6. 1. The Respondent was born 15th July 1952. He was admitted as a solicitor on 10th September 1976. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 30th September 1976. Following his admission as a solicitor, the Respondent obtained employment with the firm Campbell Brooke & Myles, Solicitors from 1st April 1984 until 31st December 1998. Thereafter he was a partner in the firm of Burns & Company from 1st January 1999 until 11th May 2001. Thereafter he was a partner in the firm Messrs Clark & Ross, Solicitors from 14th May 2001 until 31st October 2001. From 1st November 2001 until 31st May 2002 he was a Consultant with the firm, J & G Wilson, Solicitors. He was thereafter a partner in the said firm J & G Wilson, Solicitors from 1st June 2002 until 30th September 2003. From 1st October 2003 until 3rd September 2004 he became an employee of the said firm Wilson, Solicitors. At present the Respondent is not practising as a solicitor.

6. 2. **Ms A**

Ms A formerly resided at Property 1. She now resides at care of Property 2. Following a breakdown in her marriage, Ms A consulted with the Respondent in respect of matters arising from her separation. The Respondent accepted these instructions. In or about April 2000, Ms A met with the Respondent at his then place of employment, the firm of Messrs R & J Burns & Company. The Respondent proceeded to act on behalf of the said Ms A and in accordance with her

instructions. On or about 1st November 2001 the Respondent moved from the firm of R & J Burns & Company to the firm of J & G Wilson. He contacted Ms A and sought her consent to transfer her file with him to his new employment. She agreed to this course.

6.3. Ms A was anxious to finalise matters arising from her separation. She was anxious that she be divorced. She constantly and on a repeated basis communicated to the Respondent her desire to be divorced. The Respondent assured Ms A that a divorce action at her instance had been raised. In or about August 2002 Ms A had been on holiday and returned to her address. She received a communication from the Respondent to attend at his office. She duly attended his office. At that meeting the Respondent assured her that the divorce was shortly to be finalised and that she required to sign paperwork to allow the divorce to be finalised. She was provided with an Affidavit for her signature and asked to sign a docquet attached to the rear of Birth and Marriage Certificates. She duly did so. Her mother was present and she too was a witness and was required to sign an Affidavit in connection with the divorce. Thereafter despite repeatedly making contact with the Respondent, the said Ms A heard nothing further in connection with her divorce.

6.4 She was disappointed at the apparent delay in the divorce being finalised. She sought and obtained independent representation from the firm R & J Burns. In or about August 2003 that firm agreed to act on behalf of Ms A. On 11th August 2003 Ms A wrote to the Respondent advising him that she wished all files in connection with her affairs to be transferred to the firm R & J Burns & Company. In response the next day the Respondent attended at the address of Ms A to try to speak with her. Ms A was not at home. When she returned home later that day a note had been passed under her door from the Respondent asking that she make contact with him. Ms A declined to do so. The day after this, unannounced and uninvited, the Respondent attended at the address of Ms A and engaged her in conversation. He assured Ms

A once again that the divorce action had been raised and asked Ms A to allow him to continue to act on her behalf with a view to bringing matters to a conclusion. Ms A declined his invitation. The Respondent did not implement the Mandate timeously. Eventually after some time had elapsed the file of papers were transferred to Messrs R & J Burns. Subsequent enquiry by that firm revealed that despite the assurances by the Respondent to Ms A, a divorce action had never been raised at her instance and that the assurances given to Ms A by the Respondent were false and misleading.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of his deliberately deceiving and misleading his client by assuring her that on her behalf he had raised a divorce action when he knew that this was not true, all contrary to Article 7 of the Code of Conduct for Solicitors Holding Practising Certificates issued by the Law Society of Scotland in 2002.
8. Having heard the Respondent in mitigation and having noted a previous finding of professional misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms: -

Edinburgh 24 August 2005. The Tribunal having considered the Complaint dated 7 June 2005 at the instance of the Council of the Law Society against Alexander Gilmour Malcolm, Solicitor, formerly of 23 Tarvit Drive, Cupar, Fife now at 14 Melgund Place, Lochgelly, Fife; Find the Respondent guilty of Professional Misconduct in respect of his act of deception by providing his client with deliberately untrue information contrary to Article 7 of the Code of Conduct for Solicitors Holding Practising Certificates issued by the Law Society of Scotland in 2002; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of five years any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland; Find the

Respondent liable in the expenses of the Complainers and 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 indemnity basis in terms of the last published Law Society Table of Fees for general business, with a unit rate of £11.85 and Direct that publicity be given to this decision and that this publicity should include the name of the Respondent.

(signed) Alistair M Cockburn
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

A Joint Minute was lodged in which the facts, some of the averments of duty and some of the averments of Professional Misconduct in the Complaint were admitted. The remaining averments of duty and averments of professional misconduct were withdrawn by the fiscal. No evidence was accordingly led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that the client was upset by the Respondent's deception in connection with his failure to raise an action of divorce on her behalf. Mr Reid indicated that the Respondent had co-operated with the Law Society and entered into a Joint Minute. Mr Reid referred the Tribunal to the previous Findings made on 23 March 2005 where the Respondent had been Censured and Restricted until the expiry of his sequestration. Mr Reid pointed out that these Findings related to analogous matters. Mr Reid asked for expenses to be awarded on the same level as the previous Law Society Table of Fees.

SUBMISSIONS FOR THE RESPONDENT

The Respondent advised the Tribunal of his new address. He indicated that he was very ashamed with regard to what had happened and regretted the inconvenience and trouble caused to the client. The Respondent stated that he had apologised to his client and had fully co-operated with the Law Society. The Respondent emphasised that there had been no financial gain for himself as a result of his actings. The Respondent explained the background, indicating that there was an issue in connection with the husband's former partnership in a farm, which had complicated matters. The Respondent also indicated that he had doubts with regard to whether the marriage had completely broken down. The Respondent explained the difficulties that he had had in 2000, 2001 and 2002, at the time when the matters which are the subject of this Complaint, and also the previous Complaint dealt with by the Tribunal, occurred. The Respondent confirmed that he had not been working as a solicitor since he left the firm of Wilson Solicitors in September 2004. The Respondent also advised the Tribunal of his difficult personal circumstances in 2002. He indicated that

he had no plans to return to the law. In response to a question from the chairman he indicated that he had had his client sign the affidavits because he had hoped to buy time and he had hoped that the husband could still be persuaded to pay a capital sum to his client.

DECISION

The public is entitled to expect a solicitor to be a person of integrity. In this case the Respondent misled his client by stating to his client that he had carried out a particular act where in fact he had not done so and was aware that he had not done so. This caused his client distress and inconvenience. This clearly amounts to professional misconduct. The Respondent had previously been found guilty of professional misconduct by the Tribunal in connection with analogous matters, although the Tribunal noted that the events in this Complaint were proximate in time to the conduct concerned in the previous Findings. The Tribunal noted that the Respondent was already subject to a Restriction on his practising certificate until August 2007. The Tribunal considered that the most appropriate way of dealing with this case was to increase the length of the Respondent's Restriction. Accordingly the Tribunal Censured the Respondent and Ordered a Restriction for a period of five years, to run concurrent with the existing Restriction. The Tribunal made the usual order for publicity and advised parties that it intended to award expenses on the basis of the last published Law Society Table of Fees with a unit rate of £11.85. There were no alternative submissions made with regard to expenses and the Tribunal awarded expenses on this basis.

Chairman