

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

FINDINGS

in Complaint

by

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

against

**ALEXANDER JACK
MORRISON, Solicitor, Cartys
Solicitors, 3 Cadzow Street,
Hamilton**

1. A Complaint dated 19 May 2011 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alexander Jack Morrison, Solicitor, Cartys Solicitors, 3 Cadzow Street, Hamilton (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. There is no secondary Complainer.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 12 August 2011 and notice thereof was duly served on the Respondent.
4. The hearing took place on 12 August 2011. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by Mr Macreath, Solicitor, Glasgow.

5. Mr Macreath pled guilty on behalf of the Respondent to the averments of fact, averments of duty and averments 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 was born on 26 June 1962. From 1 November 2004 to 26 October 2009 he was a partner with Cartys Solicitors in their Larkhall Office. He is currently a Solicitor with Cartys.
 - 6.2 The Complainers received a complaint from a client of Cartys Solicitors in respect of inadequate professional service. On 20 May 2009 the Complainers wrote to Messrs Cartys' Client Relations Partner, Kenneth Bonnington, at the Solicitors' Larkhall Office in respect of conciliation. There was no response and on 12 June 2009 the Complainers wrote to Mr Bonnington at the Larkhall Office seeking an explanation.
 - 6.3 In the continuing absence of any response, on 7 July 2009 the Complainers wrote to Mr Bonnington at the Larkhall Office intimating a Complaint. On 7 August 2009 the Complainers wrote to Mr Bonnington advising that they were serving formal Notices under the Solicitors (Scotland) Act 1980 Sections 15 and 42C. A Statutory Notice in terms of the Solicitors (Scotland) Act 1980, Section 42C, was intimated to Mr Bonnington. The Complainers wrote separately to Mr Bonnington on 7 August 2009 intimating a Notice in terms of the Solicitors (Scotland) Act 1980, Section 15(2)(i)(i). There was no response to the letter of 7 August 2009 or either of the two Notices.

- 6.4 In the continued absence of any response, the Complainers wrote to Mr Bonnington by Recorded Delivery on 28 August 2009 intimating a Notice in terms of the Solicitors (Scotland) Act 1980, Section 15(2)(i)(ii). They further intimated a complaint in respect of Mr Bonnington's failure to respond. The correspondence was sent to the Larkhall Office.
- 6.5 On 11 September 2009 the Complainers wrote to Mr Bonnington at the Larkhall Office asking for delivery of the files. On 25 September 2009 the Complainers again wrote to Mr Bonnington at the Larkhall Office requesting a response.
- 6.6 On 15 October 2009 the Complainers telephoned Mr Bonnington. He advised he had no idea what the call was about and asked for copies of the relevant correspondence to be emailed to him.
- 6.7 On 16 October 2009 Mr Bonnington wrote to the Complainers advising that the correspondence had been withheld from him. On 28 October 2009 the new Client Relations Partner at Cartys, Mr Mohan, wrote to the Complainers advising that Cartys had conducted an investigation. They discovered that the relevant correspondence had been intercepted and that the Respondent had confirmed he and a member of staff did not disclose the intercepted mail to Mr Bonnington.
- 6.8 The Complainers submitted a Complaint Form to the Scottish Legal Complaints Commission. The SLCC considered the complaint and in terms of the Legal Profession and Legal Aid (Scotland) Act 2007, Section 6, remitted the complaint to the Complainers to investigate.
- 6.9 By letter dated 9 March 2010 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act

Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on the alleged interception and hiding of mail by the Respondent from Cartys' former Client Relations Partner, Mr Bonnington, over a period from May to September 2009.

6.10 By letter dated 29 March 2010 the Respondent replied to the Complainers confirming he had had an opportunity to consider the documentation provided to him and that he accepted the grounds of complaint set out in the Complainers' letter of 9 March 2010.

6.11 The Complainers compiled an Investigation Report, a copy of which was intimated to the Respondent by letter dated 6 January 2011. By letter dated 19 January 2011 the Respondent acknowledged that letter.

6.12 On 3 March 2011 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 appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Scottish Solicitors Discipline Tribunal.

7. Having considered the foregoing circumstances and having heard submissions from the parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His retention of correspondence addressed to Kenneth Bonnington, another partner in the firm of Cartys.

7.2 His failure to disclose that correspondence to the said Kenneth Bonnington.

8. Having heard the Solicitor for the Respondent in mitigation and having noted a previous Finding of misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 12 August 2011. The Tribunal having considered the Complaint dated 19 May 2011 at the instance of the Council of the Law Society of Scotland against Alexander Jack Morrison, Solicitor, Cartys Solicitors, 3 Cadzow Street, Hamilton; Find the Respondent guilty of Professional Misconduct in respect of his retention of correspondence addressed to another partner in his firm and his failure to disclose that correspondence to the said partner; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors' (Scotland) Act 1980, that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to (and to being supervised by) such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Law Society of Scotland and that for an aggregate period of at least 3 years and thereafter until such times as he satisfies the Tribunal that he is fit to hold a full practising certificate; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including the 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)

Alan McDonald

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

Mr Macreath confirmed that the Respondent pled guilty to the Complaint as libelled. Mr Reid lodged a previous Finding of misconduct against the Respondent which was admitted by the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid explained that the Law Society received a Complaint from a client of the firm of Cartys and the Law Society wrote to Mr Bonnington, a partner with Cartys, but there was no response. A number of other letters and notices were sent again with no response. Eventually a Complaint against Mr Bonnington for failure to respond was intimated. The file was also asked for and nothing was received. On 15 October 2009 the Complainers telephoned Mr Bonnington and it then came to light that he had not received any of the previous correspondence. This had been withheld by the Respondent and a member of his staff, who had intercepted Mr Bonnington's mail. Mr Bonnington was unaware of the mail and the Respondent's conduct put Mr Bonnington at risk. Mr Reid referred to the previous Finding of misconduct against the Respondent in 2006. He indicated that the Complainers were concerned that there was a common thread because the Respondent had previously been convicted of misleading a client.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath outlined the Respondent's family situation and explained that he had been a sole practitioner for two and a half years from 2002 but then joined Cartys as a partner on 1 November 2004. He was working with Mr Bonnington in the Larkhall office. The Respondent had stopped being a sole practitioner as he was not coping. Mr Macreath stated that it was accepted that intercepting mail and keeping it from Mr Bonnington was a grave act, especially as the firm of Cartys had been so supportive of the Respondent. Mr Macreath explained that the Respondent's secretary had come with him to Cartys and assisted him with the interception. She was no longer with the firm. Mr Macreath referred to his inventory of productions, including background

information and references. Mr Macreath emphasised that the Respondent immediately accepted that his behaviour was improper and resigned as a partner and sought medical assistance. The senior partner Mr Carty had brought him back as an assistant and the Respondent now worked in the main office under Mr Carty's supervision. Mr Macreath asked the Tribunal to take account of the fact that the professional misconduct had occurred while the Respondent was suffering from a depressive disorder and he referred the Tribunal to the psychiatric evidence lodged. Mr Macreath also explained the difficulties caused for the Respondent by his son's illness. His son had had to have a number of operations in recent years and had required a lot of care. With hindsight the Respondent now recognised that his mood had been affected from 2006/7 and that he had not been coping. Mr Macreath explained that the inadequate professional service complaint had been withdrawn, The Respondent was now working under direct supervision and had no access to mail which was delivered to him by a partner. When the IPS complaint came in he went into denial and could not face showing the letter to Mr Bonnington, who is a highly regarded solicitor. Cartys now only allow the Respondent to deal with criminal work and there is a daily log of all incoming phone calls so that the firm can monitor if there are any complaints from clients or if calls are not answered. Cartys have been very supportive of the Respondent and there is a safety net in place. Mr Macreath referred to the references and pointed out that the Respondent was well thought of by senior members of the Hamilton Bar and local Sheriffs.

Mr Macreath submitted that professional discipline was not about punishment but was about protection of the public and the good name of the profession. In this case the Respondent was undergoing all appropriate treatment for his depression and knew how to recognise the signs and if similar problems arose in future he would go to his partners and to his GP. Mr Macreath pointed out that the Respondent would not have been re-engaged by Cartys if they had any doubts with regard to his ongoing integrity. Mr Macreath referred to the previous Finding of misconduct and pointed out that the Lay Complainer in that case was quite happy with the outcome. Mr Macreath stated that it was accepted that the two incidents together did show a systematic problem but Cartys had systems in place to ensure that this would not happen again. Mr Macreath asked the Tribunal to consider whether it would be possible to give publicity to the decision without naming the firm of Cartys, who had been the victim in this case and

very supportive. In response to a question from the Tribunal it was clarified that Mr Carty saw the mail for all the solicitors working within the firm. Also in response to a question from the Tribunal the Respondent explained that he had received counselling and had been given advice by his GP and he knew what to look out for and what to do and who to go to. He explained that since he had been back at work he had occasionally found things difficult but he had recognised this and had had support from Cartys. He indicated that he felt he was now able to cope with the workload that he had and that he would let his colleagues know if things were getting on top of him.

DECISION

The Tribunal was extremely concerned by the Respondent's conduct which put the Respondent's partner, Mr Bonnington, at risk. The Respondent's actings in intercepting correspondence addressed to his partner, are not in accordance with the accepted ethical standards of the profession and the Tribunal considered that the Respondent's conduct would be likely to bring the profession into disrepute and amounted to professional misconduct in terms of the Sharp Test. The Tribunal was further concerned by the fact that the Respondent had a previous Finding of misconduct in 2006, which included the misleading of a client. This shows a common thread and suggests a systematic problem.

The Tribunal however took account of the extensive mitigation put forward by the Respondent's solicitor. The Respondent had had extremely difficult things to deal with in his family life and it was clear from the medical evidence that he had been suffering from a depressive illness at the time the conduct occurred. The Respondent's firm have demonstrated faith in him by taking him back on as an assistant and have put in place an effective plan of supervision. The Tribunal is particularly impressed by the action taken by the firm of Cartys in supporting the Respondent in these particular circumstances. The Tribunal took account of the fact that Cartys clearly consider the Respondent worthy of retaining and a good solicitor. It was also clear from the references lodged that the Respondent is good at the work that he does, his problem appears to have been more with administration than the actual day to day work of a solicitor. The Tribunal note that the Respondent is now only undertaking criminal work under strict supervision.

The Tribunal further note that Cartys have in place a regime of supervision. However if the Respondent left this firm he would at present be able to go and work for another firm without supervision and the Tribunal consider that this may put the public at risk. In the circumstances the Tribunal consider it necessary to impose a restriction on the Respondent's practising certificate for an aggregate period of 3 years, which means that the Respondent must work under supervision for the 3 year period before he can regain a full practising certificate. The Tribunal will also require the Respondent come back to the Tribunal after he has worked for an aggregate period of 3 years and satisfy the Tribunal that he has completed the 3 years to his employers' satisfaction and that there has been an improvement in his medical condition. The Tribunal made the usual order with regard to expenses.

Mr Macreath asked the Tribunal to consider not giving publicity to the firm of Cartys given that they had been so supportive of the Respondent and had really been the victim in this case. Mr Macreath asked the Tribunal to consider whether in terms of Schedule 4 paragraph 14 and 14A of the 1980 Act, the Tribunal could refrain from publishing details of Cartys given that the Respondent was a partner in Cartys at the time the misconduct occurred but was now no longer a partner. Paragraph 14A states that the Tribunal can refrain from publishing names, places or other facts which would in its opinion damage or be likely to damage the interests of persons other than the solicitor against whom the Complaint was made, his partners or his or their family. Mr Reid for the Law Society submitted that publicity must be relevant to the point in time when the misconduct arose and that Cartys were the Respondent's partners at that time.

The Tribunal had great sympathy for the firm of Cartys who are not only the victims in this case but have been very supportive of the Respondent and have, in the Tribunal's view, behaved admirably. The Tribunal however are not persuaded that Section 14A can be interpreted so that it only relates to partners at the time of the Decision rather than partners at the time of the offence.

In the circumstances, the Tribunal did not feel able to exclude Cartys name from publicity in this case. The Tribunal however would hope that the giving of publicity

would not have a detrimental effect on this firm given their exemplary behaviour in this whole matter.

Chairman