

**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

**ALASTAIR KEITH CHRISTIE,
Solicitor, of Cullen Kilshaw tlb,
Cuddy Bridge, Peebles**

1. An undated Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alastair Keith Christie, Solicitor, of Cullen Kilshaw tlb, Cuddy Bridge, Peebles (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 for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 6 May 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 6 May 2008. The Complainers were represented by their Fiscal, Andrew Lothian, Solicitor, Edinburgh. The Respondent was present and represented by his solicitor, David Burnside, Solicitor, Aberdeen.

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

6. In respect of these admissions, no evidence was led.

7. The Tribunal found the following facts established

7.1 The Respondent was born on 18 July 1944. He was admitted as a solicitor on 25 November 1969. He was enrolled as a solicitor in the Registers of Scotland on 19 December 1969. The Respondent was a partner in the firm of Thorburn & Lyon WS of 3 Cuddy Bridge, Greenside, Peebles from 1 July 1971 until 13 May 1999. The Respondent was then a partner in the firm of Thorburn, Lyon & Buchan of the same address from 14 May 1999 until 31 May 2007. On 1 June 2007 the Respondent became a consultant to the firm of Cullen Kilshaw tlb, Cuddy Bridge, Peebles.

7.2 **Ms A**

In or about 2006, Ms A instructed the Respondent who was then a partner in the firm of Thorburn Lyon & Buchan *inter alia* in connection with the conveyancing of certain heritable property. On 7 February 2007, Ms A invoked the aid of the Complainers regarding the manner in which the Respondent dealt with the instructions received from her. The Complainers obtained sufficient information to allow them to formulate and intimate a Complaint to the Respondent.

7.3 **Failure to respond to correspondence**

The Complainers wrote to the Respondent by letter dated 4 May 2007 intimating the Complaint by Ms A in terms of an attached list of issues. In addition to having been the subject of the Complaint, the Respondent was at that time the sole principal and client relations partner in the firm of Thorburn

Lyon & Buchan (prior to its merger with Cullen Kilshaw). The Complainers sought, within 21 days of the date of that letter: the Respondent's written response; any further background information the Respondent wished to provide; the Respondent's business file or files relating to the matter; and details of any fees charged or to be charged. No response was received from the Respondent.

- 7.4 On 4 June 2007 the Complainers served on the Respondent a Notice in terms of section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980, requiring from the Respondent within 14 days a response as requested previously and an explanation for the delay. No response to that notice was received.
- 7.5 On 4 June 2007 the Complainers also served on the Respondent a Notice in terms of section 42C of the Solicitors (Scotland) Act 1980, calling upon the Respondent to produce the documents requested within 21 days and provide an explanation for the delay. By letter dated 11 June 2007 the Respondent send to the Complainers the documents Ms A had given to him. No further information was provided.
- 7.6 On 6 July 2007 the Complainers wrote to the Respondent to remind him that no response had been received to the list of issues intimated to him under cover of the Complainers' letter of 4 May 2007. The Complainers requested a response within 14 days. No response was received.
- 7.7 On 25 July 2007 the Complainers wrote again to the Respondent, stating that their investigation into the (service) Complaint could not proceed in a meaningful fashion without the Respondent's comments. The Complainers requested a response within seven days. No response was received.

- 7.8 On 13 August 2007 the Complainers wrote to the Respondent to intimate a Complaint of professional misconduct and requesting the Respondent's response, and his response to the service Complaint, within 14 days. No response was received.
- 7.9 On 13 August 2007 the Complainers wrote to the Respondent to intimate a Complaint of professional misconduct and requesting the Respondent's response, and his response to the service Complaint, within 14 days. No response was received.
- 7.10 On 5 September 2007 the Complainers wrote to the Respondent to inform him that a Reporter would be instructed to compile a Report on the basis of the information available.
- 7.11 On 18 September 2007 the Complainers wrote to the Respondent to inform him that a Reporter had been appointed.
- 7.12 On 5 October 2007 the Complainers wrote to the Respondent to inform him that the report had been completed and that the Complaint would be placed before the Client Relations Committee on 13 November 2007. A copy of the report was enclosed. The Respondent was asked for any comments he wished to make in relation to the "conduct complaint" (i.e. the failure to respond to correspondence) and the "service complaint" (i.e. the complaints made by Ms A) by 19 October 2007. No response was received.
- 7.13 **Repeated breaches**
Between May and December 2007 the Complainers required to carry out a investigations into the complaint made by Ms A. These investigations required the appointment of a Reporter. The Complainers repeatedly requested a response from the Respondent in order that they might progress investigation of the complaint. The Respondent repeatedly failed to comply

with the reasonable requests made of him by the Complainers and the section 15 Notice served upon him.

8. Having considered the foregoing circumstances and having listened to submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 His failure to respond timeously, openly and accurately to the reasonable enquiries made of him and the Statutory Notice served upon him by the Complainers in connection with the complaint made by Ms A.

9. Having heard the solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6 May 2008. The Tribunal having considered the undated Complaint at the instance of the Council of the Law Society of Scotland against Alastair Keith Christie, Solicitor, of Cullen Kilshaw tlb, Cuddy Bridge, Peebles; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond timeously, openly and accurately to the reasonable enquiries made of him and the Statutory Notice served upon him by the Law Society in connection with a complaint from a client; Censure the Respondent; Fine the Respondent the sum of £500 to be forfeit to Her Majesty; 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 agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business at a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Kenneth R Robb

Vice Chairman

10. 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

A Joint Minute of admissions was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the complaint, subject to various deletions and amendments.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lothian advised that on 4 May 2007 the Law Society intimated a complaint to the Respondent and for a period of five and a half months, he failed to respond to letters and to a statutory notice. Only one letter was sent by the Respondent enclosing papers but this letter did not provide a written response to the complaint. The Respondent also did not produce the files or information requested with regard to fees. The Law Society had to instruct a Reporter and were hampered in the performance of their statutory duties due to the Respondent's failure to respond. Mr Lothian however recorded his appreciation for the full co-operation from the Respondent in entering into the Joint Minute in respect of this matter.

SUBMISSIONS FOR THE RESPONDENT

Mr Burnside submitted that the Respondent's conduct fell at the lower end of the scale of professional misconduct. He explained that the Respondent took on work at a difficult time for him. He had a long established business in the Borders and amalgamated with another firm which resulted in him being left trying to run a business that was bigger but with no more resources. The Respondent should have declined work but he did not. He also should have returned the papers to the client. The Respondent thought that as he had sent the papers he had nothing further to add. Mr Burnside stated that he was naive in this respect. The Respondent now knew that this was not the approach to take. Mr Burnside advised the Tribunal that at the time the Respondent's father had been ill and he had been visiting him in hospital regularly. The Respondent was behind in his work, he had lost the services of a consultant and an assistant had gone on maternity leave, which had led to an increase in pressure. The Respondent had adopted a "head in the sand" approach. Mr

Burnside stated that it was appreciated that the Law Society have a duty to perform and if a solicitor does not respond it makes its statutory function difficult. Mr Burnside however submitted that it would have been more helpful if the Law Society had phoned the Respondent or got the local member in the Borders to contact him or had the Dean of the local faculty discuss matters with the Respondent. This may have resulted in a more fruitful outcome. Mr Burnside said that it was appreciated that the Law Society had no obligation to do this.

Mr Burnside advised that the Respondent was presently a consultant due to retire in June 2009. Mr Burnside pointed out the Respondent's long career in the profession and referred the Tribunal to the various references lodged. It was a matter of great regret that the Respondent found himself at the Tribunal at the end of a long career. Mr Burnside asked the Tribunal to consider the length of the Respondent's record of service to the profession and the community and accept that the stresses in connection with the amalgamation of the business and his staffing issues, at a difficult time for him personally, resulted in his failure to respond. In response to a question from the Tribunal, Mr Burnside indicated that he was unable to advise whether the question of the right of access had been resolved because the Respondent had passed the papers to the Law Society who were to refer the matter to another firm of solicitors.

DECISION

The Respondent failed to reply to a number of letters between May and October 2007. The Tribunal consider that his failure to respond over a period of five and a half months amounts to professional misconduct. Solicitors' failure to respond to the Law Society hampers the Law Society in the performance of its statutory duty and brings the profession into disrepute. The Respondent explained that he did not respond because he thought that he had dealt with the matter by sending the papers but he should have responded to the Law Society and explained why he was not responding. Solicitors have a duty to assist the Law Society and co-operate with the investigation. The Tribunal however noted that the Respondent had fully co-operated with the fiscal once the Complaint was raised and had entered into a Joint Minute. The Tribunal also noted the Respondent's long record in the profession. In the circumstances, the

Tribunal considered a Censure plus a fine of £500 to be sufficient sanction. The Tribunal made the usual with regard to publicity and expenses.

Vice Chairman