

**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**

**JOHN GERARD O'DONNELL,  
Solicitor, 15 Clarkston Road,  
Glasgow**

1. A Complaint dated 23 June 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, John Gerard O'Donnell, 15 Clarkston Road, 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. Answers were lodged for the Respondent.
3. A Complaint dated 29 August 2008 was lodged with The Scottish Solicitors Discipline Tribunal by the Complainers, requesting that 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.
4. A copy of this Complaint as lodged was served upon the Respondent. No Answers were lodged for the Respondent.

5. In respect of the Complaint dated 23 June 2008 a procedural hearing was fixed for 15 October 2008. Thereafter another procedural hearing was fixed in respect of both Complaints for 11 December 2008 and a further procedural hearing was held on 13 January 2009 in respect of both Complaints.
6. In terms of its Rules the Tribunal appointed both Complaints to be set down for a further procedural hearing on 29 January 2009. The Complainers were represented by their fiscal Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but represented by Catrina Stewart, Solicitor, Edinburgh. It was agreed that the matters proceed to a substantive hearing on 17 February 2009.
7. When the case called on 17 February 2009 the Complainers were represented by their fiscal Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Mr Anderson, Solicitor, Edinburgh.
8. Joint Minutes were lodged admitting the averments of fact, the averments of duty and the averments of professional misconduct in both Complaints. It was accordingly not necessary for any evidence to be led.
9. The Tribunal found the following facts established
  - 9.1 The Respondent is a solicitor enrolled in the Registers of Scotland. He was born on 14.9.50. He was admitted on 25.3.77 and enrolled in the Register of Solicitors in Scotland on 15.4.77.
  - 9.2 He formerly practised as a partner of firm of O'Donnell Vaughan. He became a partner in that business on 01.10.79 and ceased to be a partner on 31.10.02. He commenced practice

on his own account as John G O'Donnell & Co on 1.11.02 ("the firm")

9.3 **Mr A**

The Respondent acted on behalf of a client who was the Tenant of part of Property 1. The owner and therefore Landlord of that property was Mr A.

9.4 On 29 November 2005 the Respondent wrote to Mr A indicating that the Respondent's client, the Tenant, wished to continue the Lease on Property 1, ("the Lease"). On 16 January 2006, having clarified some outstanding issues, the Respondent confirmed to Mr A that his client was ready to proceed with the renewal of the Lease.

9.5 On 31 January 2006 Mr A sent a revised draft Lease to the Respondent.

9.6 On 20 March 2006 the Respondent advised the Lease had been sent to his client on 13 March, 7 weeks after receipt of the draft.

9.7 On 31 March 2006 the Respondent returned the revised draft Lease to Mr A. It was subsequently agreed between the Respondent and Mr A that the Respondent would deal with the SDLT and registration of the Lease to reduce costs for the Tenant.

9.8 On 18 April 2006 the Respondent wrote to Mr A stating "I'll be happy to have the Lease completed by .... and thereafter I will deal with the Registration. I'll request two extracts of the Lease and be happy to forward a copy to your good self".

- 9.9 By letter of 13 July 2006 Mr A requested an Extract of the Lease urgently. He requested the Respondent contact him if there was any difficulty in actioning the request.
- 9.10 By letter of 18 July 2006 the Respondent indicated that he would contact Mr A's solicitor. No contact was made.
- 9.11 On 3 August 2006 Mr A telephoned the Respondent and was assured that a copy of the Lease would be sent to his solicitor that day. That did not occur.
- 9.12 By letter of 8 August 2006 Mr A requested confirmation that the Lease would be sent to his solicitors within the next 48 hours failing which the matter would be referred to the Law Society. In said letter he made reference to a telephone discussion between the Respondent and himself when an assurance was made that the Extract Lease was being sent to Mr A's solicitor on 3 August.
- 9.13 By letter of 9 August 2006 the Respondent indicated to Mr A that he was dealing with the SDLT Form for the Registration of the Lease. No issue was taken in that letter to the assertions made in Mr A's letter of 8 August and in particular to the telephone discussion of 3 August.
- 9.14 By letter of 9 August 2006 Mr A again wrote to the Respondent referring again to the telephone discussion of 3 August 2006 and the understanding that he had in relation to the finalisation of the Lease. Mr A received no response to that letter.
- 9.15 On 17 August 2006 Mr A's solicitors, MacArthur Stewart, contacted the Respondent by telephone and were told that the Lease would be sent out to them that day.

- 9.16 On 18 August 2006 Mr A contacted the Respondent by telephone and was also assured that the Lease would be sent that day.
- 9.17 By letter of 18 August 2006 Mr A's solicitors, MacArthur Stewart advised their client of the conversation with the Respondent on 17 August 2006 (as outlined in paragraph 9.16 above) indicating that the Respondent had agreed to send the Lease out in the post on 17 August.
- 9.18 By letter of 9 September 2006 Mr A wrote to the Respondent referring to a telephone conversation on Friday 18 August. Reference was also made to the assurance to MacArthur Stewart hereinbefore narrated.
- 9.19 By letter of 26 September 2006 to Mr A the Respondent enclosed "the completed Lease". He indicated the Lease was executed on 11 August before the Respondent. The Lease was not "completed". It had not been witnessed. It had not been registered and accordingly had not been extracted.
- 9.20 At no stage between the letter of 18 April 2006 and the letter of 26 September 2006 did the Respondent advise Mr A of any difficulty in complying with the undertaking set out in his letter of 18 April 2006.
- 9.21 By letter of 15 January 2007 the Respondent requested clarification as to when his client signed the Lease and commented that "I sent on the Executed Lease to Mr A quite quickly after receiving it back from my client".
- 9.22 By letter of 10 April 2007 to the Law Society the Respondent indicated "that the Lease had been executed on 11 August ... I received it on or around 11 August".

- 9.23 Mr A subsequently obtained a fresh Lease from the Tenant and this was registered in October 2006. The Respondent was not involved in that process.
- 9.24 From 13 June 2006 the property was under offer. The proposed purchaser withdrew from the transaction around October 2006. The basis of doing so was put down to the lack of disclosure of the Lease outlined above. The property was remarketed and subsequently sold at a lower price than agreed on 13 June 2006. Mr A's correspondence seeking the Extract Lease referred to above was with this background.
- 9.25 Accordingly the Respondent failed to comply with his undertaking set out in his letter to Mr A of 18 April 2006. In addition he failed to honour an undertaking provided in a telephone call with Mr A on 3 August 2006. He further failed to comply with verbal undertakings provided to Mr A's solicitor on 17 August and Mr A on 18 August both 2006.
- 9.26 **Law Society re Mr A**
- The Complainers wrote to the Respondent by letter of 30 January 2007 requesting, *inter alia*, his business file or files in relation to the matter outlined in Section 2 above. No response was received. Notices in terms of Section 40(2) and 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 were issued to the Respondent on 5 March 2007.
- 9.27 By letter of 6 March 2007 the Respondent acknowledged receipt of said Notices but made no mention of the file.
- 9.28 By further letter of 8 March 2007 the Respondent advised the Complainers that "I have gone through my file in this matter".

Despite this, neither the file was produced nor an undertaking to forward the file.

- 9.29 By letter of 10 April 2007 the Respondent provided comments on the Complaint but made no reference to sending the file.
- 9.30 By letter of 17 April 2007 the Complainers allowed the Respondent a further 7 days to provide the file. The file was not provided within that period.
- 9.31 By letter of 8 May 2007 the Respondent advised the Complainers that he required a “further 14 days to put together the file for onward transmission to your Department”.
- 9.32 By faxed letter of 18 June 2007 the Respondent advised the Complainers that “I should be in a position to deliver the file (such as it is) no later than Friday of this week”.
- 9.33 By fax of 28 June 2007 the Complainers again requested the Respondent to deliver the file by the end of the week. No response was received.
- 6.34 By further letter of 10 July 2007 the Complainers called upon the Respondent to produce the file within 5 days. No response or file was received within that period.
- 9.35 By letter of 23 July 2007 the Respondent indicated “I am hopeful that I will recover this file in the course of this week. As previously advised, there is nothing in the file that will give me any difficulty”.
- 9.36 By letter of 14 August 2007 the Respondent advised the Complainers that he had “been unable to trace ... the file”.

Accordingly no file has been delivered to the Complainers by the Respondent.

9.37 **Law Society re Mr B**

The Complainers wrote to the Respondent by letter of 19 April 2007 requesting, inter alia, his business file or files in relation to the Complaint by Mr B. By letter of 24 April the Respondent indicated that he had sent off extracts from his file and requested return of those. The Complainers returned said extracts by letter of 1 May 2007. As no further response had been received the Complainers sent a further letter to the Respondent on 28 May and then Section 42C and Section 15 Notices by recorded delivery on 11 June. A further Section 15 Notice was sent on 4 July.

9.38 By letter of 10 July 2007 the Respondent indicated that he was attempting “to recover the file and hopefully should be able to send this no later than the end of this week. We do not have a difficulty in exhibiting the purchase and sale files in this matter.”

9.39 By letter of 23 July 2007 the Respondent purported to enclose his files. However the documentation provided did not include the sale transaction file and by letter of 17 August 2007 the Complainer sought this from the Respondent. On 28 August 2007 a further Section 42.C Notice was served on the Respondent by the Complainer. By faxed letter of 12 September 2007 the Respondent purported to enclose this file and sought clarification by letter of 19 September that the Complainers were satisfied with the documentation having sent on “the necessary parts of the file”.



- 9.40 By letter of 24 September 2007 the Complainers advised the Respondent that the documentation had not been received and by letter of 2 October 2007 the Respondent indicated he would check with the postal services.
- 9.41 By letter of 3 October 2007 the Respondent sought clarification that the Complainers held an abbreviated file and he would look into the existence of the full file itself.
- 9.42 By letter of 18 October 2007 the Complainers confirmed that they had not received the file in relation to the sale transaction. No response was received to that letter and accordingly a further letter of 6 November 2007 was sent to the Respondent by the Complainers. The Respondent replied by way of letter of 5 November 2007 and further letter of 14 November 2007, requested clarification that the Complainers held “extracts from both files”.
- 9.43 By letter of 3 December 2007 the Complainers again confirmed that they only had documentation for the purchase transaction and that the whole of both of the files were required. No response was received to that letter and accordingly the IPS Complaint by Mr B was determined in the absence of said complete files.
- 9.44 **Digby Brown**  
The Respondent acted on behalf of a Miss A. By letter of 25 June 2007 Digby Brown, Solicitors wrote to the Respondent enclosing a Mandate for release of Miss A's file. No response was received.
- 9.45 By letter 16 July 2007 Digby Brown again requested implementation of the Mandate. No response was received.

- 9.46 By letter 10 August 2007 Digby Brown reported the matter to the Complainer's indicating that as at that date they had not received a response.
- 9.47 By letter 17 September 2007 the Complainer's wrote to the Respondent requesting an explanation for the failure to respond or implement the Mandate. No response was received.
- 9.48 By letter 1 October 2007 the Complainer's sent a reminder to the Respondent reference to Section 15 of the 1980 Act.
- 9.49 By letter 3 October 2007 the Respondent advised the Complainer's that he would be in a position to answer the matter within seven days.
- 6.50 By letter 11 October 2007 the Complainer's again wrote to the Respondent noting that no response had been received within the timescale referred to in the preceding paragraph.
- 9.51 By fax 12 October 2007 the Respondent indicated that the Complainer's would have a full response by Tuesday 16 October.
- 9.52 By letter 17 October 2007 the Respondent advised the Complainer's that *"I have now obtained the Mandate and sent the file on to Digby Brown. I regret the delay."*
- 9.53 By letter of 31 October 2007 Digby Brown advised the Complainer's that they had not received the file from the Respondent.
- 9.54 By letter of 6 November 2007 the Complainers wrote to the respondent, *inter alia*, advising that the file had not been received by Digby Brown and requesting confirmation of the

date the file was sent. No response to that request has been received by the Complainers.

9.55 By further letter of 25 March 2008 the Respondent advised the Complainer's that he had "now recovered the file (such as it is). I am arranging to send this to Digby Brown this week and I will confirm once delivery has been completed."

9.56 By letter of 26 March 2008 the Respondent advised that the file would be delivered to Digby Brown by the end of the week, namely by 28 March 2008 and the Respondent will no doubt confirm the position to the Complainers. No such confirmation was received.

9.57 The Respondent has still failed to implement the Mandate and failed to respond timeously to the mandate.

9.58 **Law Society re Digby Brown**

By letter 17 October 2007 the Respondent advised the Complainer's in clear terms that he had now obtained the Mandate and sent the file on to Digby Brown. The Respondent knew or ought to have known that information was incorrect and was likely to mislead the Complainer's in relation to the outstanding complaint. He took no steps to immediately correct or provide an explanation for the contents of said letter despite being advised by the Complainer's by letter of 6 November 2007 that the file had not been received by Digby Brown.

9.59 It was not until 10 March 2008 that the Respondent indicated "*I would hopefully be in a position to pass to Digby Brown their file.*" No further explanation was provided.

9.60 By further letter 25 March 2008 the Respondent advised the Complainer's that he had "now recovered the file (such as it is).

I am arranging to send this to Digby Brown this week and I will confirm once delivery has been completed." Again no explanation was provided.

9.61 By letter 26 March 2008 the Respondent advised that the file would be delivered to Digby Brown by the end of the week, namely by 28 March 2008 and the Respondent will no doubt confirm the position to the Complainer's. No such confirmation was received.

9.62 **Law Society re Digby Brown - Failure to Respond**

By letter 14 November 2007 the Complainer's wrote to the Respondent enclosing a complaint relating to the matters set out in Section 2 above. No response was received.

9.63 By letters 10 December 2007 Notices in terms of Section 15(2)(i)(i) and Section 42C of the Solicitors (Scotland) Act 1980 were sent by the Complainer's to the Respondent. No response was received.

9.64 By letter 11 January 2008 the Complainer's served a further Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980.

9.65 By letter 17 January 2008 the Respondent acknowledged receipt of the letters referred to in the preceding paragraphs of this section indicating that a full response would be provided by Monday of the following week, namely 21 January 2008. No response was received within the timescale.

9.66 By further letter 23 January 2008 the Respondent advised the Complainer's that he would deliver the necessary correspondence by Monday of the following week, namely 28 January 2008. No response was received within said timescale.

10. Having considered the foregoing circumstances and submissions the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
- 10.1 His failure to comply with an undertaking given to Mr A to deal with the SDLT payable in relation to the Lease and to provide Mr A with an Extract of said Lease all as set out in his letter of 18 April 2006.
  - 10.2 His failure to comply with a verbal undertaking given to Mr A on 3 August 2006 to deliver to Mr A's solicitor a copy of the Extract Lease.
  - 10.3 His unreasonable delay, given the undertaking provided in the letter of 18 April 2006, to have the Lease completed and registered and in so doing his misleading Mr A and Mr A's solicitor in that regard.
  - 10.4 His failure to act on a verbal undertaking to Mr A's solicitor on 17 August 2007 that he would send the Lease document out that night.
  - 10.5 His throughout the period from 18 April 2006 until 26 September 2006 at no stage advising either Mr A or Mr A's solicitor of the true position namely that he was not in a position to deliver an Extract of a duly completed and Registered Lease in terms of his undertaking of 18 April 2006.
  - 10.6 His unreasonable delay from 30 January 2007 to 14 August 2007 and from 19 April 2007 to 23 June 2008 to respond to the reasonable enquiries of the Law Society.

- 10.7 His failure to comply with the Guidelines on Mandates 1998 issued by the Law Society.
- 10.8 His misleading by his letter of 17 October 2007 the Law Society in relation to the provision of the relevant file to Digby Brown in circumstances where the Respondent knew or ought to have known that the said file had not been sent. He took no steps to correct that misleading information or to provide an explanation for the incorrect content of said letter.
- 10.9 His unreasonable delay from 14 November 2007 to 17 January 2008 to respond to the reasonable enquiries of the Law Society.
11. Having heard the Solicitor for the Respondent in mitigation and having noted previous Findings of misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 17 February 2009. The Tribunal having considered the Complaints dated 23 June 2008 and 29 August 2008 at the instance of the Council of the Law Society of Scotland against John Gerard O'Donnell, 15 Clarkston Road, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his failure to comply with undertakings given to an individual and that individual's solicitor, his unreasonable delay in having a lease completed and registered and his misleading the individual and the individual's solicitor in that regard and his failure to advise the individual and the individual's solicitor of the true position, his failure to comply with the guidelines on mandates 1998, his misleading the Law Society and his unreasonable delay on a number of occasions in responding to the reasonable enquiries of the Law Society; Censure the Respondent; and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of five years, with effect from 1<sup>st</sup> June 2009, 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 of or the Practising Certificate Committee 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 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)**

**Vice Chairman**

12. 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**

There had originally been four Complaints before the Tribunal. Two were however withdrawn on the day of the Tribunal. Joint Minutes were lodged in respect of the remaining two Complaints admitting the averments of fact, averments of duty and averments of professional misconduct. Slight amendments were made to the Complaint dated 23 June 2008. There was no objection to this by the Respondent.

**SUBMISSIONS FOR THE COMPLAINERS**

Mrs Motion referred to the various productions lodged. She explained that in relation to Mr A he was not the Respondent's client, he was on the other side of the transaction. Mrs Motion stated that there was a phone call by the Respondent on 3 August 2006, when he assured Mr A that a copy of the lease would be sent to his solicitor that day. This did not happen. Production 9 was a letter from Mr A dated 8 August indicating that it was unacceptable that his solicitor had still not received a copy of the lease. Production 10 was a letter from the Respondent saying that he was dealing with the SDLT form in connection with the registration of the lease. On 17 August Mr A's solicitors contacted the Respondent by phone and were told that the lease would be sent that day. This did not happen. Mrs Motion stated that the lease was executed on 11 August and yet the Respondent had sent a letter on 9 August saying he was dealing with the SDLT with regard to registration which was two days before the lease was executed by his client. At no stage between 18 April 2006 and 20 September 2006 did the Respondent advise of any problems in complying with the undertaking given in his letter of 18 April, that he would deal with the registration and completion of the lease. Mrs Motion stated that it was 6 weeks before the lease was sent on to Mr A after it had been signed. A fresh lease was obtained from the tenant and registered with no involvement by the Respondent. By letter of 8 March 2007 the Respondent advised the Law Society that he had gone through his file in respect of the matter but he did not produce the file. By letter of 8 May 2007 the Respondent advised the Law Society that he required a further 14 days to put together the file. These were two different versions of the position. Mrs Motion then referred to Production 28, being a letter of 14 August 2007, by the Respondent saying that he

was unable to trace the file. This was inconsistent with his previous explanation. Mrs Motion stated that the file had still not been produced.

In connection with Mr B, Mrs Motion stated that the inadequate professional service Complaint had been upheld and the Law Society sent a letter requesting the files. The Respondent sent extracts and stated that he was dealing with the matter. There was no further response despite reminders and statutory notices. Mrs Motion referred to Production 35 being a letter of 4 July 2007 by the Respondent saying he was attempting to recover the file. His letter of 23 July stated that he was enclosing the files but the sale file was not included. He sent a fax letter on 12 September purporting to enclose the file but the file was not sent to the Law Society. Mrs Motion referred to Production 43 where the Respondent asked the Law Society if they held an abbreviated file. The Law Society had already indicated that they did not have the sale file. Production 46 is a letter from the Respondent saying that he had already sent the necessary parts of the file. The Law Society had to determine the inadequate professional service matter without the sale file.

In connection with the Complaint dated 29 August. Digby Brown sent a mandate on 25 June 2007 but there was no response despite reminders. Digby Brown then complained to the Law Society. On 17 September the Law Society wrote to the Respondent requesting an explanation. There was no response. On 17 October 2007 the Respondent sent a letter saying he had sent the file to Digby Brown but the file was not received by Digby Brown. Then by letter dated 25 March 2008 the Respondent advised the Law Society that he had now recovered the file and was to deliver it to Digby Brown. This was an inconsistent version of events. Mrs Motion confirmed that the file had still not been delivered to Digby Brown and the mandate remained outstanding. Mrs Motion submitted that the letter sent on 17 October 2007, by the Respondent, indicating that he had sent the file to Digby Brown when he had not, meant that he must have known the he was likely to mislead the Law Society. The Law Society wrote to the Respondent in connection with his failure to respond to the mandate and the Respondent failed to reply to the Law Society letters and notices. By a letter dated 17 January 2008, the Respondent acknowledged receipt of the letters and said that he had not responded due to the outstanding Tribunal proceedings. On

23 January 2008 the Respondent indicated that he would deliver the correspondence by the following week but this had not been done and there had still been no response.

Mrs Motion produced a copy of previous findings made by the Tribunal against the Respondent on 16 January 2008. These were admitted by the Respondent.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Anderson emphasised to the Tribunal that the Respondent appeared before the Tribunal with deep sadness and regret. Mr Anderson stated that it had been difficult for the Respondent to accept the inevitable but that he had now done so. The Respondent apologised to those who had been inconvenienced and to the profession and the Law Society.

In connection with Mr A's case, Mr Anderson submitted that as Mr A was not a client, the letter of 18 April 2006 was not an undertaking in the usual sense. Mr Anderson explained that there was an informal client arrangement and the landlord did not instruct his own solicitor. Mr Anderson stated that there was no urgency in producing the lease. It was however accepted that after 18 April 2006 the Respondent accepted a measure of formality. The lease was sent to the client to sign on 24 April 2006 and a reminder was also sent on 1 June 2006. The Respondent and his client knew each other well and the Respondent was aware that the rent continued to be paid. The Respondent had tried to protect his client from pressure from Mr A. Mr Anderson stated that it was accepted that the Respondent's responses were careless and thoughtless and reflected things he intended to do rather than what he had actually done. Mr Anderson pointed out that nothing was done to benefit the Respondent and that the Respondent was trying to protect his client. What he should have done was told Mr A he could not get the lease from his client and suggest that Mr A consult his own solicitor. Mr Anderson stated that the Respondent did not know that there was any transaction pending in connection with the lease or that there was anything that might have been affected by the absence of a signed lease.

In connection with the failure to respond to the Law Society, there was a recurring theme. The Respondent sent replies which were expressions of his wish. This came

from a complex emotional and mental reaction between 2006 and 2008. Mr Anderson submitted that many solicitors dealt with letters from the Law Society by putting them to the bottom of the pile. In the Respondent's case the letters from the Law Society brought down the shutters on his mind which led to an inability on his part to respond.

In connection with the Mr B case, on 3 December 2007 the matter was dealt with by the Law Society and after that date the delivery of the file became of no significance. The Respondent did reply to the Law Society's questions about what had happened in the Mr B transaction. In connection with the mandate from Digby Brown, the Respondent apologised for not dealing with it in an accurate and prompt way. The file was scanty and the Respondent could not locate it. Mr Anderson suggested that the lack of the file was probably not a problem for a firm as experienced as Digby Brown. Mr Anderson explained that the Respondent had stresses and pressures in his life at that time and referred the Tribunal to the medical reports lodged. Mr Anderson explained that the complaints from the Law Society led to a worsening of the Respondent's condition. Although his condition was now under control, there was no guaranteed cure, but there would be periods when he would be able to do a good job. The Respondent was receiving treatment and had significantly improved but matters were not resolved. The Respondent was at his worst in May 2006, June 2007 and July 2008. The press coverage in respect of the previous findings caused him a great deal of distress. Mr Anderson submitted that the Respondent was suffering from a recognised and established medical condition which was likely to compromise his functioning. He had responded well to treatment but the prognosis was guarded. The Respondent had found the proceedings before the Tribunal extremely stressful and this has affected his condition. Mr Anderson asked the Tribunal to look at these matters as isolated events in the context of a busy lawyer with a lot of contented clients, who had practised without incident for a period of 32 years. Mr Anderson submitted that the Respondent had allowed a successful business to get on top of him.

The Respondent had found it extraordinarily difficult to face the fact that his business must come to an end. He had been counselled by another experienced solicitor and had decided to give up his business, which was a very difficult thing for him to do given that it was the only thing that he knew and was his way of supporting his family. The Respondent had recognised that he could not continue in practice as this

was too stressful and would have an adverse affect on his health. The Respondent had made arrangements to deal with the expenses from the previous Tribunal proceedings and was putting in place procedures to dispose of his business. Mr Anderson referred the Tribunal to the various references lodged from highly experienced solicitors. Mr Anderson suggested that the Tribunal might wish to continue the case to enable the Respondent to put all the arrangements in place to protect his clients and dispose of his business. This would allow the Respondent to maintain his dignity and minimise continuing harm to him. In response to a question from the Chairman, Mr Anderson confirmed that the Respondent was willing to give an undertaking to the Tribunal that he would give up his practice within 3 months. It was confirmed that there was no objection to the Complaints being conjoined. Mrs Motion stated that the Law Society would be willing to accept the undertaking, on the condition that all matters be addressed to the satisfaction of the Law Society and that all current or future complaints would also be dealt with to the Law Society's satisfaction.

## **DECISION**

The Tribunal was concerned that as well as delaying in dealing with matters the Respondent had also misled the Law Society and an individual and another firm of solicitors with regard to what he had or had not done. The Tribunal felt that the Respondent had shown contempt for the Law Society and others by his failure to be candid and failure to reply and failure to deal with matters. The Tribunal was not convinced by the explanation that this was wishful thinking on the part of the Respondent. It is imperative that solicitors are honest at all times for the public to have confidence in the profession. The Tribunal also noted that at the previous Tribunal hearing on 16 January 2008, the Respondent advised the Tribunal that he had a clean bill of health and that all matters had been dealt with. From the evidence available to the Tribunal today, it is clear that the Respondent's health difficulties are ongoing and that he still failed to produce the mandate to Digby Brown or respond satisfactorily to the Law Society with regard to this matter after January 2008. The Tribunal considered deferring the matter to give the Respondent a chance to wind up his practice. The Tribunal however felt that it would be better for the Respondent's health to have the matter finally disposed of. The Tribunal noted the undertaking

given on behalf of the Respondent to wind up his practice within a period of 3 months. The Tribunal however considered that given the Respondent's health problems, there was a risk to the public to allow him to continue to operate as a principal in private practice. The Tribunal has a duty to ensure the protection of the public and accordingly considered it appropriate to impose a restriction on the Respondent's practising certificate for a period of 5 years. This however will not take effect until 1 June 2009, by which time the Respondent should have made arrangements to wind up his practice as per the undertaking given to the Tribunal. In all the circumstances of this case the Tribunal did not consider that there was any point in imposing a fine. The Tribunal made the usual finding with regard to publicity and expenses.

**Vice Chairman**