

**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**

**Lindsey M Fettes, Solicitor, of  
Wilson and Duffus, PO Box 81, 7  
Golden Square, Aberdeen**

1. A Complaint dated 30 August 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Lindsey M Fettes, Solicitor, of Wilson and Duffus, PO Box 81, 7 Golden Square, Aberdeen (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. In terms of its Rules the Tribunal appointed the Complaint to be heard on 27 November 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 27 November 2007. The Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The

Respondent was present and represented by Mr Burnside, Solicitor, Aberdeen.

5. In respect that the material facts in the Complaint were admitted, no evidence was led.
6. The Tribunal found the following facts established:-
  - 6.1 The Respondent was born on 30 July 1959. She was admitted as a Solicitor on 15 April 1982. She was enrolled as a Solicitor in the Register of Solicitors in Scotland on 4 May 1982. From 1 January 1986 she has been a Partner with Wilsone and Duffus, Solicitors, PO Box 81, 7 Golden Square, Aberdeen.
  - 6.2 By letter dated 11 January 2005, Messrs Antons, Solicitors, 14 East Church Street, Buckie wrote to the Complainers advising that on behalf of a client, they had been writing to the Respondent from April 2004 attempting, without success, to obtain Title Deeds from the Respondent in respect of an ongoing transaction. The Complainers wrote to the Respondent by letters dated 18 January 2005, 2 and 4 March 2005, 18 March 2005 and on 14 April 2005. On the latter date, 14 April 2005, they served a Notice under the Solicitors (Scotland) Act 1980, Section 15(2)(i)(i).
  - 6.3 The Complainers received a letter from the Respondent dated 27 April 2005 advising inter alia that “we are looking into the matter as one of some urgency with a view to progressing matters to the satisfaction of all concerned.” By letter dated 13 May 2005 the Complainers provided a copy of the Respondent’s letter to Messrs Antons.

- 6.4 By letter dated 25 October 2006 Messrs Antons, Solicitors wrote to the Complainers advising that in respect of the same transaction, they had written to the Respondent on 10 March, 30 March, 17 May, 27 June, 6 August and 9 October, all 2006 without any response.
- 6.5 The Complainers wrote to the Respondent on 26 October 2006 advising that in terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 Section 33, they had a duty to investigate the complaint. They enclosed a list of issues and requested a response from the Respondent within twenty-one days.
- 6.6 The Complainers did not receive any response. On 22 November 2006 they wrote to the Respondent intimating by recorded delivery a Statutory Notice in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) and on the same date intimated by recorded delivery a Statutory Notice in terms of the Solicitors (Scotland) Act 1980 Section 42C. The Respondent failed to reply and on 18 December 2006 the Complainers wrote to the Respondent by recorded delivery intimating an additional complaint in respect of her failure to respond to the Law Society and intimating a Notice under the Solicitors (Scotland) Act 1980 Section 15(2)(i)(ii).
- 6.7 In the continuing absence of any response from the Respondent the Complainers instructed a Reporter on 5 January 2007 and wrote to the Respondent on 10 January 2007 advising that a Reporter had been instructed. On 16 February 2007 the Complainers wrote to the Respondent advising that they had had a request from the Reporter for copies of the letters of 10 March, 30 March, 17 May, 27 June, 6 August and 9 October 2006, that Messrs Antons had been asked for copies of these

letters and that when received, these would be sent to the Reporter for further consideration.

- 6.8 On 21 March 2007 the Complainers wrote to the Respondent enclosing the Report and advising that the complaint was scheduled to come before a Client Relations Committee on 17 April 2007. The Respondent was advised that written comments should be received by the Complainers by 4 April 2007.
- 6.9 The Client Relations Committee met on 17 April 2007 and decided to refer the matter to the Professional Conduct Committee with a recommendation for prosecution. On 18 April 2007 the Respondent sent a fax to the Complainers referring to her lack of response and stating *inter alia* “the absence in my doing so previously is inexcusable and I accept complete responsibility for the lack of action.”
- 6.10 On 1 May 2007 the Complainers wrote to the Respondent enclosing a schedule setting out the Client Relations Committee considerations and recommendations. The Respondent was advised that the Professional Conduct Committee would meet on 24 May 2007 and that any additional written representations for consideration by that Committee should be with the Complainers no later than 15 May 2007. On 14 May 2007 the Respondent faxed the Complainers with various representations.
- 6.11 On 24 May 2007 the Professional Conduct Committee decided that the Respondent’s conduct could amount to professional misconduct and determined to appoint a Fiscal in terms of the Solicitors (Scotland) Act 1980 Section 51. The Complainers wrote to the Respondent on 12 June 2007 advising her of the

Committee's decision and enclosing a copy of the Committee Schedule.

7. Having considered the foregoing circumstances and having heard submissions by both parties, the Tribunal found the Respondent guilty of Professional Misconduct singularly and in cumulo in respect of:-

7.1 Her failure to respond to enquiries made of her by the Complainers and to statutory notices served by them.

7.2 Her failure to reply timeously or at all to correspondence received from another firm of solicitors, all to the prejudice of the completion of the transaction and to the prejudice of the parties involved in the transaction.

8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27 November 2007. The Tribunal having considered the Complaint dated 30 August 2007 at the instance of the Council of the Law Society of Scotland against Lindsey M Fettes, Solicitor, of Wilsone and Duffus, PO Box 81, 7 Golden Square, Aberdeen; Find the Respondent guilty of Professional Misconduct singularly and in cumulo in respect that: a) she failed to respond to enquiries made of her by the Complainers and to statutory notices served by them and b) she failed to reply timeously or at all to correspondence received from another firm of solicitors, all to the prejudice to the completion of the transaction and to the prejudice of the parties involved in the transaction; Censure the Respondent; 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 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) 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**

Answers were lodged by the Respondent which admitted the averments of fact, averments of duty and averments of professional misconduct in the Complaint.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid stated that he did not wish to add a great deal to the terms of the Complaint and Answers before the Tribunal. He referred the Tribunal to Article 2.3 of the Complaint which outlines the letters written by Messrs Antons, Solicitors, to the Respondent, none of which had been responded to. Mr Reid stated that despite these letters and the serving of two statutory notices by the Complainers, the Respondent did not respond until she sent a fax dated 18 April 2007, which was after the Client Relations Committee meeting.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Burnside stated that although the Complaint, Answers and Productions before the Tribunal give an indication of the failure by his client, he wished to address the Tribunal on some of the background of the case and the problems being experienced by his client at the time, in order to put her failures in context. He stated that the matter concerned a deed of servitude in relation to access rights and Mr Burnside stated that since the Complaint has been lodged the Respondent has set aside a considerable number of hours to check the complicated title deeds of the farm. She ordered a search at her firm's expense and sent this to Antons and ultimately came to the view that her clients did not have title to the access road.

The background is that the Respondent was approached in early 2004 by Messrs Stuart and Watson, a local firm who were selling a property adjacent to a farm and were seeking a deed of servitude. The Respondent was the farmers' solicitor. They own a large amount of farmland and they had no objection to the use of the access road. Messrs Stuart and Watson had approached the Respondent's clients direct and had been told that the Respondent's clients were prepared to grant the deed if their



expenses were met. Mr Burnside stated that at this stage the Respondent was not sure if a new servitude was required or if one had been created by usage. Stuart & Watson wrote a reminder to the Respondent in 24 March 2004. On 20 April 2004 the Respondent wrote to her clients and she then advised Stuart & Watson that she would require to check the titles. In July 2004 Messrs Antons, which was the firm of solicitors acting on behalf of the purchaser, wrote to the Respondent in an aggressive tone, stating that she had been ignoring the correspondence from Stuart & Watson, which was not true. The Respondent advised Antons that she was not delaying, but that there was a problem in locating the file and the title deeds in her office. The person who had previously dealt with the file had gone on maternity leave and then left the firm. The file was found and some documentation was sent to Antons on 8 October 2004. Antons then requested further deeds to complete their examination of title. Stuart & Watson wrote to the Respondent on 20 October 2004 and asked her to correspond directly with them and not with Antons. The Respondent agreed to do that. Antons then wrote to the Respondent on 8 November 2004, threatening to report her to the Law Society in relation to lack of action. The Respondent accepts that she should not have let that letter influence her attitude to this matter. A complaint was made to the Law Society in 2005 which was eventually not insisted upon.

Mr Burnside advised that the Respondent then embarked on a process of trying to deal with the matter, which was very complicated because the farm title was made up of a number of smaller parcels of land and some deeds did not have plans. The Respondent was trying to help another agent and accepts that she had agreed to do so. The sale of the land to the clients of Messrs Antons was completed and it was not a condition of the sale that a deed of servitude was produced so Messrs Stuart & Watson were no longer involved in the matter.

After settlement Antons then wrote to the Respondent asking for some documentation which they could have got from the Registers. The Respondent did order this documentation and sent it to Antons. Antons then sought a plan which was referred to in one of the deeds which the Respondent had sent to them. However, it was established that a copy of the plan was not held at the Register of Sasines.

Mr Burnside stated that the Respondent accepts that she should have advised Antons of her difficulties with the titles but she did not do so. Mr Burnside advised that the Respondent regrets that.

Mr Burnside advised that Antons complained again to the Law Society. The Respondent meant to find time to complete the searches but was pulled in a number of directions with partnership issues and could not find time to do this complicated work. Mr Burnside stressed that this was not a complaint by a client but a complaint by another firm who have been inconvenienced. However, he made the point that Antons have not asked for any recompense. Mr Burnside stated that no one was billed for the Respondent's time and that there was no material damage done to anyone by her failure to progress the transaction which she was undertaking as a favour to her client. Mr Burnside advised that the Respondent is the managing partner of Messrs Wilson and Duffus, an old established firm, well respected in Aberdeen. However, in the last 10 years the firm has experienced serious difficulties which has led to a large administrative burden and a great amount of stress falling on the Respondent as managing partner. There were problems in relation to staffing at the firm when a large number of partners retired in a short period of time. This was coupled with problems in retaining key staff generally. Mr Burnside also referred to the financial difficulties faced by the Respondent.

Around that time her son was involved in a near fatal road accident and she required to take a leave of absence from work for a considerable time to look after him. Not long after this her relationship with her long term partner was affected by the stress and ended. She was under a great deal of pressure but did not seek medical attention, although she now realises that she would most probably have been signed off work with stress or treated for depression. She was unable to take holidays and was working six days a week, eleven to twelve hours per day.

In August 2002, she was involved in a cycling accident which led to her being off work for a short time, which led to another partner leaving the business. She received no support from the other partners and was managing partner, client relations partner and complaints partner. There were more staffing difficulties and she was involved in

a great deal of work in dealing with complaints from clients in relation to former partners and former assistants.

When the Law Society's letters were sent towards the end of 2006 she was suffering from another period of extreme stress due to yet more staffing shortages and recruitment problems. This stress was compounded by the upgrading of the business computer system which project was, with hindsight, organised at a particularly bad time.

Mr Burnside stated that at this time the pressure on the Respondent was immense and it was against this background that the Law Society correspondence was not dealt with. He stated that the Respondent could give no single reason why she did not deal with the correspondence, it was an accumulation of circumstances. The Respondent's view is that if she had not tackled the complaints, the staffing issues and the training of new staff, the consequences for her and her partners and employees could have been catastrophic. The Respondent knew that the underlying issue regarding Antons query would take some considerable time to sort out and she simply did not have that time. The Respondent was busy dealing with complaints and simply did not devote time to the complaint against her. She had a mental block regarding this file although she knew she had to deal with it.

Mr Burnside advised that the position now is much better, the Respondent is still working six days per week with eleven hour days but the firm is stable both in financial and staffing terms. Mr Burnside stated that the Respondent appreciates that she should have got medical help. The Respondent apologises for her failings and wishes to state that she does not regard the Law Society with contempt. Mr Burnside also referred to the last two letters, numbers 12 and 13 in the Respondent's Inventory of Productions, which were two testimonial letters.

Mr Burnside asked the Tribunal to accept that the first element of the Complaint regarding the failure to respond to correspondence from Messrs Antons, falls at the bottom end of the scale of professional misconduct and does not appear to have impeded anything. He stated that the failure to respond to the Law Society is more serious and the Respondent accepts that. He asked the Tribunal to find that she was

under more pressure than her partners should have allowed her to have been but to recognise that things are better now. Mr Burnside stated that he did not think that the Respondent was likely to appear before the Tribunal again.

## **DECISION**

The Tribunal has made it clear on a number of occasions that it takes a serious view of failure to respond to the Law Society. Failure to respond hampers the Complainers in the performance of their statutory duty and is likely to bring the profession into disrepute. In this case a significant number of letters and two statutory notices were sent to the Respondent and no replies were received. The Tribunal also considered it a serious matter to fail to respond timeously to correspondence received from other firms of solicitors. In this case, whilst there was delay to the completion of the transaction, the Tribunal noted that there was no significant prejudice to either Messrs Antons or their clients. However, the Tribunal considered that the Respondent, as an experienced solicitor, should have known how important it was to comply with her professional obligations and to respond to enquiries from her professional body. The Tribunal took into account the fact that the Respondent admitted her failures in her Answers and thus prevented the need for evidence to be led. The Tribunal also took into account the Respondent's previous unblemished record and noted the difficult professional and personal circumstances at the time that these failures occurred. Considering all these matters the Tribunal concluded that a Censure was the appropriate penalty. The Tribunal made the usual order with regard to publicity and expenses.

**Chairman**