

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

**F I N D I N G S**

**in Complaint**

**by**

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

**against**

**MARK JOHN STALKER,  
Solicitor, Flat 1c Nicolson Court,  
36 Nicolson Street, Greenock**

1. A Complaint dated 1<sup>st</sup> November 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Mark John Stalker, Solicitor, Flat 1c Nicolson Court, 36 Nicolson Street, Greenock (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 this Complaint as lodged to be served upon the Respondent. No answers were lodged for the Respondent.
3. A Complaint dated 13<sup>th</sup> July 2005 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. The Tribunal caused a copy of this Complaint dated 13<sup>th</sup> July 2005 to be served upon the Respondent. No answers were lodged for the Respondent.
5. A Complaint dated 22<sup>nd</sup> November 2005 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. This Complaint dated 22 November 2005 was given to the Respondent who dispensed with the usual requirements of service and notice.
6. In terms of its Rules the Tribunal appointed the Complaints to be heard on 23<sup>rd</sup> November 2005 and notice thereof was duly served on the Respondent in respect of the Complaints dated 1<sup>st</sup> November 2004 and 13<sup>th</sup> July 2005.
7. The hearing took place on 23<sup>rd</sup> November 2005. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. The Respondent was present and represented by Ian Ferguson, Solicitor, Glasgow. Three Joint Minutes were lodged admitting the facts,

averments of duty and averments of professional misconduct in the three Complaints. No evidence was led.

8. The Tribunal found the following facts established

8.1 The Respondent is a Solicitor enrolled in Scotland. He was born on 25th May 1969. He was admitted as a Solicitor on 10th September 1993 and enrolled in the Roll of Solicitors for Scotland on 13th September 1993. He was formerly an Assistant in the firm of Lyons, Laing & Co, Moore & Partners, Maitlands and Marie A Land & Co. He was employed in the latter firm between 21st May 2001 and 24th April 2003. He then worked at Boyd Napier LLP for almost a year. Thereafter he was unemployed for a period and is now working as a service manager with the family mediation service.

8.2 Mr A  
The Complainers received a Help Form on 12th November 2003 from the Respondent's former client, Mr A of Property 1. Mr A complained *inter alia* that he had been misled by the Respondent and that there had been delay in progressing a Court action on his behalf. Mr A had instructed the firm of Marie A Land, Solicitors, in respect of an action against the Daily Record in January 2001. His representation was assumed by the Respondent in May 2001. Counsel's Opinion was sought and a draft Writ prepared by Counsel. Mr A produced character references and documentation in support of his claim against the paper. The Respondent failed to take any action. The Respondent on numerous occasions, lied to Mr A advising him that his action was being progressed. In fact, no action was raised and no progress made in relation to the claim by the Respondent for a period of 2 years.

8.3 Hunter & Robertson, Solicitors, Paisley

By letter dated 3rd September 2002, Messrs Hunter & Robertson, Solicitors, LP 14, Paisley, complained about the conduct of the Respondent in a conveyancing transaction involving their client Mr B and the Respondent's client Ms C. The Respondent misled the said firm about the sale of the property at Property 2. He told them he held funds to settle, had an offer of loan, had issued a Report on Title and that he was sending them a cheque all of which was untrue.

8.4 The Law Society of Scotland – Hunter & Robertson, Solicitors

The Complainers intimated the complaint by Messrs Hunter & Robertson, Solicitors, to the Respondent on 2nd October 2002. They required his written response, any background information he may wish to provide and his business file within 14 days. He did not reply. A follow up letter was sent on 24th October 2002. He did not reply. Notices under Sections 15(2)(i)(i) and 42C of the Solicitors (Scotland) Act 1980 were served on the Respondent by Recorded Delivery on 15th November 2002. He did not reply. A further follow up letter was sent to him on 8th January 2003. The second part of the Section 15 Notice was served on him by Recorded Delivery on 19th February 2003. A follow up letter was sent on 14th March 2003. As no response was received from him, he was advised by letter dated 11th April 2003 that the question of his failure to respond to The Law Society had been considered by the Council of The Law Society who had determined to appoint a Fiscal with a view to his prosecution.

8.5 On 15th April 2003, his employer, Miss Marie Land, Solicitor, advised that she had not been aware of any correspondence, was shocked to find out what the situation was and that the Respondent was tendering his resignation that day. Thereafter, the Respondent consulted Agents and accepted his failures to reply to The Law Society.

8.6 Ms C  
Ms C first approached the Complainers regarding concerns about the conduct of the Respondent in the year 2002. The Respondent acted on her behalf from about September 1996 initially whilst employed by Messrs Maitlands, Solicitors. He retained her file when he commenced employment with Mesdames Marie A Land, Solicitors, on 21st May 2001. The business in which he was instructed related to her matrimonial separation. Ms C was divorced on 10th June 2002. The Extract Decree was delivered to the Respondent by the Sheriff Clerk on 26th July 2002.

8.7 Ms C was granted legal advice and assistance by the Respondent on 24th June 1997. On 1<sup>st</sup> July 1997 he attempted to raise an action on her behalf but the papers and cheque were returned by the Court without a Warrant. The action was never raised. On 28th January 2000 at a meeting with the Respondent, Ms C instructed commencement of divorce proceedings but reserved her position on the pursuit of back aliment which he told her stood at £9,000. The Respondent began preparation of a Legal Aid application on her behalf. Forms were completed by her and returned to him. He acknowledged receipt on 17th April 2000 advising that the firm could proceed to deal with the application. He

did not submit the Legal Aid application on behalf of Ms C at any time. Her husband applied for a simplified divorce in January 2001 which was opposed by the Respondent on her behalf. Her husband raised a divorce action in February 2001 and the Respondent signed and returned the Notice of Intention to Defend on behalf of Ms C.

8.8 Correspondence continued with Hunter & Robertson, Solicitors, in relation to the action. In the divorce proceedings Ms C wrote to the Respondent on 3rd December 2001 seeking advice on 5 points including progress with regard to her obtaining aliment or periodical allowance. He did not reply. A Proof was scheduled for February 2002. On 31st January 2001, Hunter & Robertson wrote to the Respondent with a Minute of Agreement and Joint Minute. The Respondent signed a Joint Minute agreeing *inter alia* that Mr B's crave for divorce be allowed to proceed as undefended and conceding several heads of expenses and abandoning all five of Ms C's counterclaims including transfer of the matrimonial home, payment of capital sum of £30,000, payment of periodical allowance of £150 per month and expenses. The Joint Minute was sent by him to Hunter & Robertson on 1st February 2001 on the basis that it be held as undelivered pending Ms C signing the Minute of Agreement the following Monday 4th February 2001. Hunter & Robertson agreed to the discharge of the Diet of Proof.

8.9 A Minute of Agreement was prepared by Messrs Hunter & Robertson, Solicitors, and signed on 4th February 2001 by Ms C. In terms of this document, it was agreed *inter alia* that the matrimonial home be marketed and

sold with Ms C being permitted to remain in occupation for a period of up to 4 months, that she would receive £10,000 from the proceeds of sale along with the furniture and plenishings but excluding the boat, and that each party discharged all other claims other than the expenses incurred in the divorce proceedings. This document was registered in the Books of Council and Session on 1st March 2004. The divorce was granted on 10<sup>th</sup> June 2002.

8.10 In 2002, Ms C decided to purchase the former matrimonial home. Messrs Hunter & Robertson on 19th April 2002, submitted to the Respondent a draft judicial account claiming £1,685.76 in expenses against Ms C in respect of the divorce action. They also wrote on 24th April requiring her to vacate the house by 4th June. The Respondent advised them that she proposed to purchase the house. The Respondent on 22nd May 2002, submitted an offer on behalf of Ms C to Messrs Hunter & Robertson to purchase the former matrimonial home in the sum of £52,000 with entry on 12th July 2002. The transaction proceeded, in terms of the said letter of complaint from Messrs Hunter & Robertson, as hereinbefore condescended upon. During this time, Ms C had been led to believe by the Respondent that she was due to receive a settlement from her husband. He had advised her that she had a Court decree stating that she was to receive £450 per month in aliment. She believed she had agreed to a total settlement figure of £43,500 including alimentary arrears of £33,500 and £10,000 from the sale of the house. On the advice of the Respondent, she signed a statement to say that she would give up occupancy rights on the sale of the house and that she would receive £10,000 from the sale. Her

understanding was that this document was signed on the condition that all monies with the exception of the £10,000 would be paid before the sale and the divorce would not be finalised until after that time. She believed she was to receive 3 lump sums of £3,000 over a few weeks and then £24,500 a couple of weeks later.

8.11 The Respondent paid her 3 sums of £3,000 out of his own funds. No such decree had been obtained and no such agreement had been entered into in respect of arrears of aliment. When she decided to purchase the house, the Respondent had advised her that there was a delay due to her husband's credit problem in the United States. She found it extremely difficult to obtain contact with the Respondent, who did not return calls. She was resident in Lanzarote at that time and he advised her that she would require to fly back to sign loan papers for the house. Prior to doing so, her circumstances changed and she decided that she would live abroad. She obtained a purchaser for the former matrimonial home and notified the Respondent of this by leaving a message with a Secretary as he remained difficult to contact. She flew back to Scotland on 15th August 2002. She managed eventually to contact the Respondent, who advised that her husband's Solicitors were happy that she had another buyer. At a meeting with him on 19th August 2002, he advised her that there was a problem as the missives had almost been concluded. She did not know prior to this time that any missives had been entered into. She had not instructed him to do so and was extremely upset and angry. In fact, missives had been concluded on 16th July 2002 which was well known to the Respondent.



8.12

Marie A Land

Miss Land employed the Respondent on 18th May 2001 as a Legal Assistant. During the course of his employment and without her knowledge, he represented Mrs C as hereinbefore condescended upon. He did not register the file through the office registration system. He did not advise her of his representation of Ms C. When his conduct of the business for Ms C became increasingly inadequate, he concealed the matter from Miss Land. He made a conscious decision not to disclose the issues which were arising to her as his employer. He continued to act and perpetrate the deceptions on Ms C hereinbefore condescended upon under the auspices of the firm of his employer.

8.13

Cook, Stevenson & Co, Solicitors on behalf of Ms D

By letter dated 3rd September 2003, Messrs Cook, Stevenson & Co, Solicitors, LP 24, Greenock 3, wrote to the Complainers regarding the conduct of the Respondent in his representation of Ms D in a claim on behalf of her child. An action was raised at Greenock Sheriff Court. The Respondent advised Ms D that she had the benefit of Legal Aid and that a Certificate had been granted when it had not been. The action was progressed and Junior Counsel was instructed to represent the Pursuer on 2 occasions when the matter proceeded to debate. Ms D initially instructed the Respondent while he was employed at Maitlands, Solicitors. She was then advised that he had moved firms to that of Marie A Land, Solicitors, although he had not advised her of this. She attended at appointments with the Respondent on 6 or 7 occasions, on one of those occasions, he advised her that there had been an offer made by the Defenders to settle the case

in the sum of £4,000. She did not see a letter confirming this but had no reason to believe that this was untrue. She received very little correspondence from the Respondent during the course of the transaction.

8.14 When the Respondent resigned from his employment with Marie Land in April 2003 Ms D was not told. She tried to contact him by telephone in about June 2003 and was advised he was no longer there. She learnt that her file had been sent to Maitlands. She then instructed Messrs Cook, Stevenson & Co, Solicitors, to act on her behalf and they sought to recover the file. They were unable to do so but checked the Court process and established that the action had been dismissed on joint motion with Ms D as the Pursuer being found liable in the expenses of the action. Ms D did not instruct the Respondent to enter into such an agreement. Further enquiry with the National Health Service Central Legal Office established that there had never been any offer of settlement in the sum of £4,000 or any other such sum. In addition, no Legal Aid Certificate had ever been granted in favour of Ms D covering the expenses in this action in spite of the fact that she was a single parent in receipt of Income Support and unable to fund such an action.

8.15 Mr E  
The client Mr E of Property 3, submitted a Help Form to the Complainers on 26th May 2003 in connection with his representation by the Respondent in a matter involving central heating installation. On 9th June 2000, Mr E had instructed the firm of Marie A Land & Co, in the case. He was granted Legal Advice and

Assistance. The firm then entered into correspondence regarding the claim including making application for and obtaining increased cover under Legal Advice and Assistance. An action was raised and Legal Aid applied for. The action was sisted in or about 1st August 2001. An offer of Legal Aid had been made but not accepted. The Legal Aid Board indicated that it could be resuscitated if required at that time.

8.16 After 4th September 2001, the case was taken over by the Respondent and the relatively high standard of representation deteriorated dramatically. Matters were not progressed. Correspondence was not filed. File notes were not filed. Mr E's attempts to ascertain what was happening did not receive a response from the Respondent. Entries on the file ceased at about 31st May 2002 and no work was then undertaken on behalf of Mr E by the Respondent for a period of almost one year.

8.17 During that time, Mr E contacted the Respondent on a number of occasions and also met with him in respect of the case. The Respondent repeatedly advised him that the case was progressing when it was not. On 1st April 2003, Mr E wrote to the Respondent regarding his neighbour being a witness for him. This related to a possible Court action in May 2003 and the requirement to give the witness notice. The Respondent had advised Mr E that the case was due to call at Greenock Sheriff Court in May 2003 which was untrue as the action remained sisted.

- 8.18 Ms F  
On 9th June 2003, the Complainers received a Help Form from Ms F, Property 4, seeking assistance in relation to representation she received from the Respondent. In mid-1999, Ms F's partner was murdered in Greenock. In August 1999, she instructed Messrs Marie A Land & Co, Solicitors, to act on her behalf in the submission of a Criminal Injuries Compensation claim. The application was processed over a number of years but was refused in approximately June 2001 as a result of the deceased's criminal convictions and matters related to the murder. A Review of the refusal was submitted and this was refused on the 25<sup>th</sup> of July 2001. Ms F then instructed the Respondent to mark an appeal to the Criminal Injuries Compensation Appeals Panel.
- 8.19 Ms F met with the Respondent on 7th August 2001. An appeal form dated 7th August 2001 was completed and the Respondent advised by letter of 13th August 2001 that he would seek to obtain the deceased's criminal record before submitting same. A letter of the same date was submitted to the CICA indicating an intention to lodge an appeal. The Respondent thereafter wrote to the CICA on 27th August 2001 purporting to enclose an application for review. A review had already been unsuccessful. The Appeal Form from 7th August 2001 bore to be attached to the copy letter but this was never sent or received by the CICA.
- 8.20 Ms F met the Respondent on 14th September 2001 and went over a copy of the deceased's convictions which had been obtained. In that attendance, the Respondent discussed the preparation of the appeal and advised her that the appeal would then be prepared and forwarded to

her. No further action was taken by the Respondent until 14th January 2002 when he wrote to Ms F's MSP indicating that Counsel's opinion was being sought and wrote to the Lord Advocate regarding a possible appeal by those convicted in the original murder conviction.

8.21 The Respondent then advised Ms F that her appeal was due to be heard on 14th February 2003 and thereafter told her that it was postponed to 28th February 2003 due to the illness of one of the panel members. This was untrue. No appeal was ever lodged and no hearing ever fixed.

8.22 The Law Society of Scotland – Mr G  
By letter dated 27<sup>th</sup> April 2004, Mr G of Property 5 invoked the aid of the Complainers in connection with his representation by the Respondent while at the firm of Marie A Land & Co, Solicitors. Efforts were made to resolve the difficulties but by March 2005, it was established that the matter had to proceed as a complaint. The Complainers wrote to the Respondent on 10<sup>th</sup> March 2005 intimating the nature of the complaint, requiring his written response, any background information and his business file within 21 days. He did not reply.

8.23 On 4<sup>th</sup> April 2005, Notices were served upon him under Section 15(2)(i)(i) and Section 42C of the 1980 Act by Recorded Delivery. He did not respond. The second part of the Section 15(2) Notice was served on him by Recorded Delivery on 25<sup>th</sup> May 2005. In spite of those Notices, no response was received from him and by letter dated 10<sup>th</sup> June 2005, he was advised that the matter would now proceed to a Report. On 22<sup>nd</sup> August

2005, he was sent a copy of the Report and invited to make any representations by 5<sup>th</sup> September 2005. He made no representations.

9. Having considered the foregoing circumstances and having heard submissions from the parties the Tribunal found the Respondent guilty of professional misconduct in respect of :

9.1 His repeatedly misleading his client Mr A between 18th May 2001 and 15th April 2003 about the progress of his claim against the Daily Record.

9.2 His failure to progress a claim for damages in respect of defamation of character on behalf of the client Mr A between 18<sup>th</sup> May 2001 and 15<sup>th</sup> April 2003.

9.3 Between 22nd May 2002 and 16th August 2002, his repeatedly misleading his fellow solicitors at Messrs Hunter & Robertson, Solicitors on the position of his client Ms C in connection with the settlement of the sale of the property 2.

9.4 Between 2nd October 2002 and 11th April 2003, his failure to reply to the reasonable enquiries of the Complainers regarding the complaint of Messrs Hunter & Robertson, Solicitors, or to comply with Notices served upon him.

9.5 Between September 1996 and the 15<sup>th</sup> of April 2003 his failure in his representation of his client Ms C in that:

a) he entered into a Joint Minute on her behalf disposing of a divorce action at the instance of her

husband on terms different to those discussed with her and without her instructions.

- b) he misled her by advising her that she was to receive a financial settlement from her husband which would include arrears of aliment amounting to £33,500.
- c) he misled her by advising her that he had raised an action for aliment on her behalf and that he had obtained decree in her favour at £450 per month aliment in 1998 when no such action had been raised.
- d) he misled her by advising her that an application had been made on her behalf for Legal Aid and had been granted which was untrue.
- e) he failed to properly advise her in respect of an application for Legal Aid or to submit same on her behalf to enable her to have cover for the defence of the divorce against her by her husband.
- f) he misled her by advising her that she would not have to pay any Court expenses in the divorce action against her by her husband, when in fact as he well knew an order for expenses against her was incorporated in the Minute disposing of the action.
- g) he misled her by advising her that she would not be divorced until financial matters relating to the dissolution of her marriage were resolved when in

fact as he well knew decree of divorce had been granted on 10<sup>th</sup> June 2002.

- h) he acted on her behalf in concluding missives for the purchase of the former matrimonial home at Property 2 without her instructions and without discussing the terms thereof with her.
- i) he misled her by advising her that missives had not been concluded for the sale of the former matrimonial home at Property 2 when as he well knew missives had been concluded on 16th July 2002.

9.6 Between 18th May 2001 and 15th April 2003, his deceiving his employer, Miss Marie Land Solicitor by representing Mrs C through the agency of the firm and hiding that representation and the difficulties arising from her case.

9.7 Between 1999 and 15<sup>th</sup> April 2003 his failure in his representation of his client Ms D in that:

- a) he misled her by advising her that she had been granted Legal Aid when she had not.
- b) he misled her by advising her that an offer of settlement had been made in her action when it had not.
- c) he acted without her instructions and agreed to dismissal of her Court action with an Order for expenses against her.



- 9.8 Between 4th September 2001 and 15th April 2003, his failure in his representation of his client Mr E in that:
- a) he repeatedly failed to progress his claim.
- 9.9 His misleading his client Ms F by telling her that her appeal for Criminal Injuries Compensation was ongoing and his lying to her about there being a hearing on 14th February 2003. His lying to her again telling her that the Hearing was postponed to 28th February 2003 because one of the panel members was sick.
- 9.10 Between 10<sup>th</sup> March 2005 and 20<sup>th</sup> September 2005, his failure to respond to the reasonable enquiries of the Complainers regarding the complaint of Mr G or to comply with Notices served upon him.
10. Having heard the solicitor in mitigation the Tribunal pronounced an Interlocutor in the following terms:
- Edinburgh 23<sup>rd</sup> November 2005. The Tribunal having considered the Complaints dated 1<sup>st</sup> November 2004, 13<sup>th</sup> July 2005 and 22<sup>nd</sup> November 2005 at the instance of the Council of the Law Society of Scotland against Mark John Stalker, Solicitor, Flat 1c Nicolson Court, 36 Nicolson Street, Greenock; Find the Respondent guilty of professional misconduct in respect of his repeatedly misleading clients, his failure to progress business on behalf of clients, his failure in his representation of clients, his acting without clients' instructions, his deceiving his employer, his misleading a fellow solicitor and his failure to reply to the reasonable enquiries made of him by the Law Society; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that 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 and 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 five years and thereafter until such time 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 in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a solicitor 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 £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**

11. 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 were three Complaints before the Tribunal, the latest of which was lodged with the Tribunal on the date of the hearing. The Respondent agreed to dispense with the usual requirements re service and notice. Joint Minutes were lodged admitting the facts, averments of duty and averments of professional misconduct in all three Complaints. There was accordingly no need for the leading of evidence. The Tribunal agreed to conjoin the three Complaints.

**SUBMISSIONS FOR THE COMPLAINERS**

Miss Johnston said that the problems had arisen during the period between May 2001 and April 2003 when the Respondent had been employed by Marie Land Solicitors. Some of the work which had caused difficulties had come from the time when he was working at Maitlands. Miss Johnston stated that the Complaint dated 13<sup>th</sup> July 2005 contained the most serious conduct. The Respondent had failed to progress work, misled clients and agents and carried out work without clients' instructions. She invited the Tribunal to make a finding of professional misconduct in respect of all three Complaints. Miss Johnston stated that the Respondent had co-operated throughout the prosecution and entered into a Joint Minute.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Ferguson emphasised that the Respondent had fully co-operated and entered into a Joint Minute. Mr Ferguson indicated that the Respondent was ashamed of his conduct and regrets the effects of his conduct on his clients. Mr Ferguson referred to production number 1 being a statement by his client explaining exactly what had happened. Mr Ferguson said that his client had been completely honest in the statement which gave the Tribunal an insight into what was going on in the Respondent's mind at the time. Mr Ferguson also explained that after leaving Marie Land Solicitors the Respondent had managed to gain employment with Boyd Napier LLP for almost a year. His employers there had been aware of his past conduct but he managed to work at Boyd Napier without any difficulties and undertook his work well. Mr Ferguson explained that when the Respondent had been working at

Maitlands and while he was at Marie Land Solicitors he was thrown in at the deep end and left to get on with all the court work without any supervision from partners in the firms. The Respondent was also overwhelmed by the workload. He found himself telling clients that things had been done when they had not. Mr Ferguson emphasised that when the Respondent told his clients these things he honestly believed that he would manage to carry out the work but things got worse and he withdrew into himself. The longer matters went on the worse he felt and he could not bring himself to tell the partners. When he moved from Maitlands to Marie Land Solicitors some of the problem files went with him. The Respondent was very afraid of his actions being discovered. The Respondent had been left to sink or swim in the firms in which he had worked and had had to work under chaotic working conditions. He would spend a long day in court and then come back to numerous calls to return, people waiting to see him and a lot of desk work to deal with. The Respondent was overwhelmed and was having to work extremely long hours. There was also very little support and a typing backlog. The Respondent also had to support his mother who had been having difficulties since his father's death. The Respondent did not realise but at this time he was suffering from anxiety and depression. He went to see his doctor the day after he left Marie Land Solicitors and was prescribed anti-depressant medication. Mr Ferguson referred the Tribunal to the report from the Respondent's consultant psychiatrist. Mr Ferguson emphasised that the Respondent had made a good recovery and had sorted himself out. Mr Ferguson referred the Tribunal to the numerous references lodged on behalf of the Respondent indicating that he was conscientious, honest, loyal, competent, reliable and hard working. Two of the referees had attended the Tribunal to show their support. Mr Ferguson asked the Tribunal to take into account the combination of circumstances which led the Respondent to act as he did which was totally out of character. In response to a question from the Tribunal Mr Ferguson confirmed that the Respondent presently did not have a practising certificate and had no wish to re-enter the profession but did not want the door to be completely shut on this for the future.

## **DECISION**

The Tribunal considered that the Respondent's conduct clearly amounted to professional misconduct. There is a duty upon solicitors to take reasonable steps to

undertake the business of their clients. The essential and absolute qualities of a solicitor are honesty, truthfulness and integrity. The Respondent fell short of this by misleading his clients which brings the legal profession into disrepute. The Respondent let his clients down badly in a number of different cases and his catalogue of misleading and acting without instructions is totally unacceptable. The Respondent clearly caused his clients considerable distress but did seem genuinely contrite. It is also important that solicitors act with fellow solicitors in a manner consistent with persons having mutual trust and confidence in each other. The Respondent breached this mutual trust by misleading a fellow solicitor. The Tribunal has also made it clear on a number of occasions that failure to respond to the reasonable enquiries of the Law Society seriously hampers the Law Society in its performance of its statutory duty and brings the profession into disrepute. The Tribunal considered it unfortunate that the Respondent had worked in a number of firms where there had been a lack of supervision. The Tribunal took account of the numerous references lodged on the Respondent's behalf and was also impressed by the fact that the Respondent had worked for a year at Boyd Napier with no apparent problems. The Tribunal accordingly stopped short of striking the Respondent's name from the Roll or suspending him from practice and considered that a Restriction on his practising certificate for an aggregate period of five years would be sufficient to protect the public. The Tribunal consider that it is imperative that the Respondent works under proper supervision for a period of five years and at the end of the five year period it will be for the Respondent to show the Tribunal that he has gained the necessary experience and that he is able to deal with work diligently and manage his workload before he can be allowed to hold a full practising certificate. The Tribunal made the usual order with regard to publicity and expenses.

**Vice Chairman**