

**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**

against

**IAN MACLACHLAN ALLAN,
Solicitor, 3 East Port, Dunfermline**

1. A Complaint dated 23 March 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Ian Maclachlan Allan, Solicitor, 3 East Port, Dunfermline (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 by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 9 June 2005 and notice thereof was duly served on the Respondent.

4. The hearing took place on 9 June 2005. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by his solicitor, Mrs Bennie, Solicitor, Glasgow.

5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the Complaint were admitted. No evidence was led.

6. The Tribunal found the following facts established;
 - 6.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 21 July 1952. He was admitted as a solicitor on 1 September 1976 and enrolled on 14th September 1976. He became a partner of the firm of Stenhouse, Husband & Reid, Solicitors, Dunfermline on 16 December 1977. The firm of Stenhouse, Husband & Irvine was formed on 16 December 1982 as a result of the amalgamation of the firm of Stenhouse, Husband & Reid and Simpson & Irvine. He is at present and has been since 30 December 1994, the sole principal of that firm.

 - 6.2 **Mrs A Deceased**

Mrs A resided sometime at Property 1. She died on 6 December 1998. At the date of her death she resided at Property 2. Her daughters, Mrs B and Mrs C are the executors. The late Mrs A was the daughter of Mr D, one of the founders of Stenhouse, Husband & Reid. The late Mrs A had granted a Power of Attorney in favour of the late Mr E in February 1973 and left him to deal with her business affairs both before and after going to Australia. By letter dated 28 September 2000, Shepherd & Wedderburn, WS, acting on

behalf of Mrs A's executors, intimated a Complaint against the Respondent to the Complainers. In this letter, Shepherd & Wedderburn raise three principal issues of Complaint. Firstly, Mrs A's title to the property known as Property 3 had not been completed prior to her death. Secondly, and despite repeated reminders, Shepherd & Wedderburn had not received an accounting from the Respondent in respect of the said firm's intromissions with Property 3. Thirdly, Shepherd & Wedderburn indicated in this letter that the Respondent had failed to take instructions from the Executors in relation to the sale of certain areas of ground which comprised part of Mrs A's one-half share in Property 3. Shepherd & Wedderburn make it clear in this letter that the executors were no further forward in disposing of Mrs A's interest in Property 3 in September 2000 and that the Respondent was effectively procrastinating in having title completed.

- 6.3 Mrs A succeeded to a one-half share in Property 3 sometime in 1976 in part satisfaction of her one quarter share of the residue of the estate of the late Miss F who died on 28 December 1976. Specifically her interest in the Estate, which is located in the neighbourhood of Cowdenbeath, comprised a one-half share in a Superiority together with some parcels of ground at Cowdenbeath. The firm of Stenhouse, Husband & Irvine had had a long standing connection with the Estate. The other half of the Property 3 belonged at one time to the late Mr G, one of the founders of the original firm of Stenhouse & Husband, who died in 1898 and that half is still owned by his descendants. After succeeding to her one-half share in the Estate in 1976, Mrs A never received from the firm of Stenhouse, Husband & Irvine an accounting for the income and expenditure of the estate. No such accounting appears to have been requested during the lifetime of the late Mrs A. On 23 November 1987, the late Mr E wrote to Mrs C, the daughter of the late Mrs A in Australia, sending a Bank

draft which included income from Property 3 amounting to £205.43. From 1976 onwards the firm was administering the Estate on Mrs A's behalf. Shepherd & Wedderburn had been instructed by Mrs B to look into the matter of payments due to her mother from the Estate prior to her death and when she was residing in Australia. After she died the Respondent did not provide such accounting to her executors for the whole period of the firm's administration of the Estate. In a letter dated 30 April 2004 the Respondent advised the Complainers that he had little to do with Property 3 until his father, Mr E who was senior partner of the firm, suffered a stroke sometime in June 1992. Mr E did not thereafter return to work for the firm and died on 30 December 1994. Following his death, the Respondent contacted Mrs B, the daughter of the late Mrs A in Edinburgh. As a result of discussions with her, a Bank draft was sent to the late Mrs A's Bank in Australia on 15 February 1996 for credit of her account. The Bank draft included the sum of £5548.92 in respect of income from Property 3 and interest thereon. When Mrs A died in 1998 the firm held cash in the region of £4700 for the Property 3 and, after deduction of certain fees taken by the firm, the Respondent paid over the sum of £2322.91 to Shepherd & Wedderburn on 6 April 2000. Shepherd & Wedderburn had demanded a full cash statement from the Respondent in December 1999. In the event a cash account was sent by the Respondent to Shepherd & Wedderburn sometime in January 2001. This cash account details the firm's intromissions with the Estate from 1995 until April 2000. The Respondent has not provided Shepherd & Wedderburn with an accounting for the firm's intromissions for the full period from 1976 until 1995. In all probability it was during this particular period that the majority of the funds of the Estate would have been received.

6.4 The Law Society of Scotland

Following intimation of the said Complaint, the Complainers wrote to the Respondent on 26 October, 16 November, 29 November and 20 December all 2000 with the specific aim of encouraging the Respondent to contact Shepherd & Wedderburn with a view to resolving the issues that were then concerning them. It was not until 8 January 2001 that the Respondent wrote to the Complainers acknowledging their letter of 20 December 2000. By letters dated 25 May, 19 June, 2 and 27 July all in 2001 the Complainers wrote to the Respondent requesting information on how matters were progressing in relation to the winding up of Mrs A's executry. It was not until 7 August 2001 that the Respondent wrote to the Complainers responding to these letters. In January 2002 a meeting took place at the Complainers' offices where the Respondent and a representative of Shepherd & Wedderburn agreed a programme for action which the Complainers undertook to monitor. The programme involved the completion of Title and obtaining valuations of the parcels of ground belonging to Property 3. By this time the Complainers had not formally intimated a Complaint to the Respondent. They had been seeking to promote a resolution of Shepherd & Wedderburn's concern about the long standing failure by the Respondent and his firm to complete title to Mrs A's interest in both the Superiority and the three parcels of ground. The Complainers continued with this approach until 8 May and 30 May 2002 when they formally intimated the Complaint to the Respondent. The Respondent wrote on 29 May 2002. In the event and following the issue by the Complainers to the Respondent of a Notice in terms of Section 15(2)(i)(ii) of the Solicitors (Scotland) Act 1980 on 18 June 2002 requiring the Respondent to complete title within a period of three years from that date. Title was completed and Dispositions were sent to the Registers on 13 September 2002. Thereafter and by letters dated 9 and 17

October, 27 November and 17 December 2002 and 28 January and 28 February 2003 the Complainers wrote to the Respondent asking him to provide them with a report in relation to the winding up and, in particular, the work that required to be done and a timescale for completion of the winding up. The Respondent did not reply to any of these letters. On 17 March 2003 the Complainers wrote to the Respondent indicating that there was a possibility of a misconduct Complaint by reason of his failure, as alleged by Shepherd & Wedderburn, to obtain a valuation of one of the parcels of ground which he had undertaken to do at the meeting on 14 January 2002. The Respondent replied to that letter on 18 March 2003. By letter dated 20 May 2003 the Complainers wrote to the Respondent asking him to address an issue raised by Shepherd & Wedderburn in relation to the marketing of one of these parcels of ground and to confirm that he had done so. The Respondent failed to reply to this letter. During this time the Respondent had been in correspondence with Messrs Shepherd & Wedderburn.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His failure to provide his client Mrs A, and her executors with an accounting for his intromissions with her one-half share of Property 3 for the entire period from the time Mrs A succeeded to same in 1976 until 1995.

7.2 His failure to respond to the reasonable requests of the Complainers for information in consequence of which the Complainers were unable to respond in any meaningful way to Shepherd & Wedderburn who had invoked their aid.

8. Having noted two previous findings of misconduct against the Respondent and having heard the Respondent's solicitor in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 9 June 2005. The Tribunal having considered the Complaint dated 23 March 2005 at the instance of the Council of the Law Society of Scotland against Ian Maclachlan Allan, Solicitor, 3 East Port, Dunfermline; Find the Respondent guilty of Professional Misconduct in respect of his failure to provide his client and her executors with an accounting for his intromissions with her one-half share of an estate for the period from 1976 until 1995 and his failure to respond to the reasonable requests of the Law Society for information; 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 a solicitor and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alistair Cockburn

Vice 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

Vice Chairman

NOTE

A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the Complaint were admitted. There was accordingly no evidence led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir pointed out that there had been intermittent failures by the Respondent during the Law Society investigative process rather than there just being one failure to reply. Mr Muir referred the Tribunal to the two previous findings against the Respondent in 1985 and 1986. Mr Muir suggested that this course of conduct showed that the Respondent had an inability to cope.

SUBMISSIONS FOR THE RESPONDENT

Mrs Bennie stated that the Respondent had been a sole practitioner since 1994 when his father died. The Respondent had accepted his failures and delays as early as October 2004. He had accordingly co-operated with the Law Society from an early stage. Mrs Bennie stated that the Respondent was remorseful and regretted having to appear before the Tribunal. She indicated that it would be helpful to set out the background in connection with his failure to provide an accounting and failure to respond. Mrs Bennie explained that the estate was complicated and at the time of the Respondent's father's death his father held half the title as trustee for Mr G and half the title as the executor of Miss F. Mr G was survived by two daughters and when the Respondent's father died the title was still vested in his father. The two daughters were in Canada. When Miss F died in December 1976 Mrs A inherited a quarter of the residue of Miss F's estate and took the interest in half of the Property 3 in settlement of her quarter share. In 1984 the Respondent's father was administering the estate for the two daughters who were in Canada and for Mrs A who was in Australia and the title was still in the name of the Respondent's father. The Respondent had had no dealings with the estate prior to the death of his father and by the time he took over the executry had been on-going for 16 years. The Reporter had accepted that it was a very complex executry. The dispositions were by way of

exception and it was difficult to know exactly what part of the estate remained and where the boundaries were. The Respondent's father had not kept accounting records of the intromissions with the estate. After the Respondent's father's death the Respondent remitted to Mrs A the monies held on her behalf. In 1998 Shepperd & Wedderburn were instructed by Mrs A's daughter who was living in Scotland. It was agreed that Mrs A's title be completed and recorded but this had not been done by the time she died in 1998. Mrs Bennie confirmed that there were 44 exceptions to the title, 13 of which had been done after the death of Miss F and the Respondent's father was the sole executor of Miss F's estate. The Respondent accordingly found himself with a difficult situation to deal with of which he had no prior knowledge. Mrs Bennie stated that the Respondent recognised the need to give a full accounting but it was difficult as there were no proper accounts done when his father was dealing with the estate. The Respondent had been working through ledgers trying to provide a full accounting. Mrs Bennie referred the Tribunal to the productions lodged which showed that an accounting had now been provided for the period from 1995 to 2000 and from 1982 to 1995. The Respondent was presently working on the period from 1976 to 1982. Mrs Bennie explained that the cashier that had been working there when the Respondent's father was dealing with the executry had been absent from work which did not help the Respondent in dealing with the accounting. Mrs Bennie stated that the Respondent accepted his delay in replying to the Law Society but pointed out that the various dates on which he failed to reply were not isolated as there was a course of correspondence going on. The Respondent did write some letters of reply during the period. The reason the Respondent did not reply was because he was progressing matters with Shepperd and Wedderburn. By September 2002 the title was complete. If the Respondent had copied his correspondence with Shepperd and Wedderburn to the Law Society there would not have been a problem. During this period the Respondent was also caring for his mother who died in May 2003. There was no wilful intent not to respond to the Law Society. Mrs Bennie referred the Tribunal to the references lodged which indicated that the Respondent was honest and had the interests of his client at heart. His failure was in failing to recognise when he needed assistance. He had now sought an opinion in connection with the executry. Progress had been made and Shepperd and Wedderburn had indicated that matters were progressing well. Mrs Bennie pointed out that there had already been a finding of inadequate professional service made by the Law Society. The previous findings made by the Tribunal were 19 and 20 years ago.

In response to a question from the Tribunal Mr Muir confirmed that the firm had a responsibility to provide an accounting in connection with the estate. The Respondent was now the sole practitioner.

DECISION

The Tribunal had some sympathy for the Respondent's position in that he was dealing with a complex executry where accounting records had not been kept for the period prior to him becoming involved. The Respondent however was the sole practitioner in the firm and has shown by providing an accounting for the periods between 1995 and 2000 and 1986 and 1995 that he is able to produce an accounting from the records available. The Respondent undertook to the Tribunal to complete the accounting covering the period from 1976 to 1982 by the end of September 2005. Given these circumstances the Tribunal considered that this matter fell at the lower end of the scale of professional misconduct. In connection with the failure to respond the Tribunal took account of the fact that the Respondent had been corresponding with Shepperd and Wedderburn during the period in question. The Tribunal noted the previous findings but felt that these were too old to be of much relevance. In the whole circumstances the Tribunal considered that a Censure would be sufficient penalty.

Vice Chairman