

**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**

**GEORGE A M SANDILANDS of  
Messrs Beveridge Herd and  
Sandilands, WS, Solicitors, 1 East  
Fergus Place, Kirkcaldy**

1. A Complaint dated 23 August 2011 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that George A M Sandilands of Messrs Beveridge Herd and Sandilands, WS, Solicitors, 1 East Fergus Place, Kirkcaldy (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 19 October 2011 and notice thereof was duly served on the Respondent.
4. The hearing took place on 19 October 2011. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The

Respondent was present and represented by Graeme Clarkson, Solicitor, Kirkcaldy.

5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint under deletion of the averments in paragraphs 5.1 to 5.7.
6. The Tribunal found the following facts established

6.1 The Respondent was born on 29 August 1949. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 2 October 1975. From 4 June 1976 he has been a Partner in the firm of Beveridge Herd and Sandilands, WS, 1 East Fergus Place, Kirkcaldy.

#### Estate of the late Mrs A

6.2 Mrs A died in or about March 2004. On 29 March 2004 Messrs Beveridge Herd and Sandilands, WS were instructed in the administration of her Estate. Responsibility for the administration was that of the Respondent.

6.3 In February 2008 Mr B made a complaint to the Complainers in respect of delay in winding up the Estate. A complaint was intimated to Beveridge Herd and Sandilands on 20 February 2008 but, following an assurance from the firm that matters would be expedited, the complaint was withdrawn in April 2008.

6.4 Following a failure by the firm to progress the Executry, Mr B and other family members, at the end of August 2008, requested that the complaint be re-opened. The Complainers wrote to the Respondent on 3 September 2008 advising that the complaint had been re-opened.

- 6.5 The Complainers thereafter processed the complaint, instructed a Reporter, obtained a Report and placed the matter before a Client Relations Committee.
- 6.6 On 24 February 2009 Client Relations Committed C considered the complaint in respect of the provision of an inadequate professional service. They considered three issues:-
1. Failure/delay in winding up the Estate of the late Mrs A.
  2. The Solicitors failed/delayed in communicating with the Complainers, and in particular failed/delayed in responding to emails, letters and phone calls made from 2005 onwards.
  3. The Solicitors assured the Complainers in their letter dated 2 February 2007 that they would keep the Complainers updated on a fortnightly basis, but failed to do so.

The Committee upheld the complaint that there had been inadequate professional service in respect of each of the three issues.

They further determined that in terms of the Solicitors (Scotland) Act 1980 Section 42A, the fees and VAT to which Messrs Beveridge Herd and Sandilands were entitled were nil to the date of the Committee Decision, 24 February 2009, that the Solicitors waive wholly the right to recover fees and VAT in respect of the period to 24 February 2009 and that they pay the Estate of the late Mrs A compensation of £1,200.

On 13 March 2009 the Complainers sent the Respondent the Committee Schedule.

6.7 On 28 May 2010 the Complainers received from the Scottish Legal Complaints Commission a complaint made by Mr C in respect of a continuing failure to progress the Executry and to keep the beneficiaries informed as to progress.

6.8 In particular, Mr C spoke to the Respondent on 16 April 2009 and was advised that the Executry would be completed in eight weeks. In the continuing absence of any contact from the Respondent, Mr C phoned the Respondent's partner, Mr Clark, who advised that he and his colleague, Mr Jack, would do their best to have the Executry completed by the end of the year and would keep the beneficiaries informed.

Following a continued lack of any contact from the Respondent, Mr C phoned Mr Clark on 17 December 2009 and was advised that when the Respondent had returned from holiday in early October he had recovered the file and would deal with it. On 21 January 2010 Mr C phoned the Respondent who said he hoped to have the Executry concluded in eight weeks.

With no further contact from the Respondent, Mr C lodged a complaint with the Scottish Legal Complaints Commission (SLCC) dated 18 May 2010.

The SLCC referred the matter to the Complainers.

6.9 On 6 July 2010 the Complainers wrote to the Respondent with a copy of the SLCC Complaint Form and requesting a response. There was no response.

- 6.10 On 20 September 2010 the Complainers wrote to the Respondent and the two other Partners in the firm enclosing correspondence in respect of a complaint by Mr C and advising that they would formally intimate a complaint.
- 6.11 On 4 October 2010 the Complainers wrote to the Respondent intimating two issues of alleged professional misconduct and two issues of alleged inadequate professional service. The Respondent replied in a letter of 25 October 2010 accepting the two issues of inadequate professional service but disputing the issue of professional misconduct.
- 6.12 The Complainers instructed a Reporter who provided a Report dated 8 December 2010. The Complainers wrote to the Respondent on 11 January 2011 enclosing a copy of the Report. They advised that both the professional misconduct and inadequate professional service issues would come before a Client Relations Committee on 15 February 2011.
- 6.13 The complaint was considered by Client Relations Committee C on 15 February 2011. The Committee referred the professional misconduct issues to the Professional Conduct Committee.

In respect of the two inadequate professional services issues, the Committee upheld the complaint that there had been an inadequate professional service and in terms of the Solicitors (Scotland) Act 1980 Section 42, determined that the firm's fees should be reduced to nil, effective from 24 February 2009, that the firm should refund or waive the right to charge the Estate of the late Mrs A any fees previously paid in connection with work undertaken from 24 February 2009 and that the firm should pay compensation of £3,000 to the Estate of the late Mrs A.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his unconscionable delay in the winding up of the Estate of the late Mrs A.
  
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 October 2011. The Tribunal having considered the Complaint dated 23 August 2011 at the instance of the Council of the Law Society of Scotland against George A M Sandilands of Messrs Beveridge Herd and Sandilands, WS, Solicitors, 1 East Fergus Place, Kirkcaldy; Find the Respondent guilty of Professional Misconduct in respect of his unconscionable delay in the completion of an executry; Censure the Respondent; Fine the Respondent in the sum of £1000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying 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)**

**Alistair 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**

A Joint Minute was lodged in which the facts and averments in the Complaint under deletion of the averments contained in the paragraph 5.1 to 5.7 were admitted. No evidence was led. Mr Clarkson lodged a written submission on behalf of Mr Sandilands.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid advised that a Joint Minute had been lodged admitting everything in the Complaint up to and including paragraph 4. He advised that the Joint Minute deleted paragraphs 5.1 to 5.7 regarding an outstanding Inadequate Professional Service award as this had been implemented as far as possible at this stage.

Mr Reid advised that the circumstances surrounding this matter were as set out in paragraph 2 of the Complaint. He referred the Tribunal to the background of this matter as contained in paragraph 2.1 to 2.5. He advised that the Respondent's firm was instructed on 29 March 2004 to administer an executry. A Complaint was made regarding the delay which led to the Client Relations Committee meeting in 2009 making a finding of Inadequate Professional Service. Mr Reid stated that unfortunately the estate was still not sorted out following that finding and as stated in paragraph 2.6, the Complainers received a further complaint from the Scottish Legal Complaints Commission on 28 May 2010 regarding continued delay.

Mr Reid stated that the Complaint narrated that the clients had made a number of contacts regarding the delay both with the firm and the Respondent, but unfortunately the estate was still not concluded and this led to these proceedings before the Tribunal.

Mr Reid advised that the executry has now been completed by another firm and that it took from 2004 until 2011 before the estate was finally settled. Mr Reid submitted that there was no obvious reason why the executry should have taken this particular length of time to complete. Mr Reid submitted that the Respondent failed to make proper progress with the executry.



## **SUBMISSIONS FOR THE RESPONDENT**

Mr Clarkson stated that the Respondent accepts that the circumstances of the delay as narrated in the Complaint properly reflect professional misconduct and he pleads guilty to that. The Respondent is 62 years of age and has been qualified as a solicitor for 36 years. He has not been before the Scottish Solicitors' Discipline Tribunal before.

Mr Clarkson stated that the delay complained of relates to one estate. He advised that the work has now been completed by another firm of solicitors and referred the Tribunal to the letter dated 30 August 2011 which confirms that from James Thomson & Son Solicitors. This was attached to the written submission.

Mr Clarkson advised that the compensation awards made by the Law Society's Client Relations Committee totalling £4,200 have been paid by the Respondent.

Mr Clarkson further advised that the Respondent is a senior partner of Beveridge Herd & Sandilands, a long established firm in Kirkcaldy and Glenrothes. He is an able and experienced practitioner who is well respected by colleagues and Sheriffs in the area. The Respondent has two partners in the firm who are both in their early sixties. There are no qualified assistants within the firm and it is difficult to find qualified assistants in the area.

Mr Clarkson advised that since he qualified the Respondent's main areas of practice have been family law, children's hearings, Court Reports and Adoption Reports. In addition, he has been a Safeguarder since 1986. When his senior partner retired in 2000 he adjusted the firm's work load and took on some executries. There was a further adjustment in 2009 due to one partner leaving the firm suddenly due to ill-health. As an established firm the work load increased substantially with an uncomfortable mix of court work and executries which was difficult to handle.

Mr Clarkson advised that health issues have caused worry for the Respondent. He had an operation in 2004. The Respondent was the senior partner of a provincial firm

coping with the reduction in fee income due to the recent economic climate and this had given rise to additional pressures on a monthly basis regarding the overdraft and covering outgoings. The Respondent did not seek advice from his doctor on what might be depression but he considers that it might well be part of the problem in operating a small firm as he did not have time to acknowledge that he might be ill and outside help is expensive and adds to the pressure. The Respondent now accepts that his health was an underlying issue at one stage.

Mr Clarkson advised that the Respondent accepts that he did not address the client's complaint when he should have and accepts that there were many opportunities to do that, especially given the Law Society's involvement. Misguidedly he felt an obligation as the Executor to carry on. He accepts now looking back that he should have referred the case to another firm of solicitors much earlier. The estate was quite involved and of some value; it totalled approximately £425,000 and there were inheritance tax issues. In addition to cash in the bank there were more than 20 different forms of investments, mainly shareholdings. Mr Clarkson advised that most of the executory administration was completed in a reasonable time and interim payments to the beneficiaries totalling £350,000 or thereby were paid out in 2006 – 2007, that is to say before a complaint was first made. Looking at it now it would seem that the issues that needed to be sorted out when the complaint was made were the calculation of income tax due by the estate and the disposal of the investments. In the scheme of the executory as a whole that was a fairly small part but an essential part to reach closure. Mr Clarkson submitted that it is probably not unfair to say that this paints a picture of the Respondent being at a low ebb and leaving this issue which he perceived as being difficult or problematic to the side in order to deal with something which he found more straightforward. Mr Clarkson advised that there were no fees raised by the firm regarding the estate and that his own estimate was that this was work which was worth between £8,000 and £10,000 to the firm.

Mr Clarkson advised that the Respondent and his colleagues are taking active steps at present to sell their practice and building with a view to retiring from law within the next 18 months.

In conclusion, Mr Clarkson submitted that there was no dishonesty or wickedness involved in this matter and the Respondent has already borne the cost of the compensation awards personally and accepts that an award of expenses and an order for publicity are inevitable.

In answer to a question from the Tribunal, Mr Clarkson indicated that he thought that the executry should have taken around three years to complete. Mr Clarkson advised that during this period there were no other partners in the firm available to undertake this executry following the changes in the firm. Mr Clarkson advised that this is the only file where a complaint was made.

## **DECISION**

The Tribunal noted that there had been a delay of seven years in finalising the executry. The Tribunal also noted that there was no obvious reason why this executry took that particular length of time particularly as the Respondent's attention had been drawn to the delay in 2008 when the first complaint was made to the Law Society. The Tribunal considered the test in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal considered that given the lengthy delay in a relatively straightforward executry the Respondent's actions would be regarded by competent and reputable solicitors as a serious and reprehensible departure from the standards expected from those within the profession. Having considered all the circumstances, the Tribunal concluded that the Respondent's unconscionable delay in the completion of this executry constituted professional misconduct.

In considering sanction, the Tribunal took into account that this matter involved a failure in relation to one single executry, but noted that there had been persistent delay subsisting for a considerable period of time despite the matter having been drawn to the Respondent's attention by his professional body. However, the Tribunal had regard to the Respondent's lengthy experience as a solicitor and his previously unblemished record. The Tribunal took into account that the matter was now satisfactorily completed, the Respondent had cooperated with the Complainers, had not charged a fee for the work which was completed and had personally paid the

compensation awards. The Tribunal also noted that the Respondent had appeared before the Tribunal and had shown insight into his failure. The Tribunal considered that the Respondent's failure was towards the lower end of the scale of professional misconduct and that the appropriate sanction was a Censure and a Fine of £1000. The Tribunal ordered that the Respondent be liable for the expenses of the Tribunal and of the Law Society in respect of this Complaint and made the usual Order with regard to publicity.

**Chairman**