

**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

**STUART FRASER WILSON,
Solicitor, 28 Moss Street, Paisley**

1. A Complaint dated 25th April 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Stuart Fraser Wilson, Solicitor, 28 Moss Street, Paisley (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 23rd June 2005 and notice thereof was duly served on the Respondent.

4. The hearing took place on 23rd June 2005. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by Mr Coffield, Solicitor, Paisley.

5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct 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 29th April 1966. He was admitted as a solicitor on 1st November 1989 and enrolled on 20th November 1989. Since 1st December 1992 he has practised as the sole principal of and traded under the name S.F. Wilson & Co. at 28 Moss Street, Paisley.

 - 6.2 **Faculty Services Limited**

By letter dated 13th August 2003 Faculty Services Limited (FSL) wrote to the Complainers invoking their aid. Specifically FSL asked the Complainers in this letter to assist them in seeking answers from the Respondent to correspondence that they had sent to him in relation to settlement of fees due by him to them and also settlement of these fees. The Respondent had instructed Counsel to act for his client, Ms A in connection with civil court proceedings arising from a road traffic accident on 13th March 1995. FSL rendered fee notes to the Respondent on 19th May 1998, 21st August 1998 and 13th May 1999 all in connection with work carried out by Counsel on the instructions of the Respondent

in connection with these proceedings. The total sum due by the Respondent to FSL is £998.75. In their letter to the Complainers, FSL advised that they had pursued the Respondent for this sum through correspondence to the point where sanctions would be placed on the Respondent. FSL were aware that the Respondent's client had obtained legal aid in connection with these proceedings and they were advised by The Scottish Legal Aid Board that the Respondent had obtained payment of his fees from them sometime in 2000. By letter dated 15th September 2003 the Respondent wrote to the Complainers and advised them that he would settle the sum due to FSL within 28 days. That did not happen. On 23rd June 2004 the Respondent wrote to the Complainers enclosing a cheque for £998.75 payable to them. On 1st July 2004 the Complainers wrote to the Respondent returning the cheque and advising him that he should make it payable to FSL. By letter dated 11th August 2004 FSL wrote to the Complainers advising them that the Respondent had still not settled the sum due to them. The Respondent made payment by cheque on 22nd June 2005, the day before the Tribunal hearing.

6.3 **The Law Society of Scotland**

Following receipt of the aforementioned letter dated 13th August 2003 from FSL the Complainers wrote to the Respondent on 22nd August 2003 asking him to confirm that he was prepared to conciliate with FSL and how he intended approaching their concerns. The Respondent did not reply to this letter. By letter dated 9th September 2003 the Complainers wrote to the Respondent saying that unless he confirmed within 14 days that he had been in touch with FSL they would have to treat the matter as a formal complaint. Following receipt of the Respondent's letter dated 15th September 2003 the Complainers wrote to FSL on 19th

September 2003 enclosing a copy of the Respondent's letter and asking them to confirm settlement after the expiry of the 28 day period. By letter of even date the Complainers also wrote to the Respondent asking him to confirm payment to FSL. By letter dated 6th November 2003 FSL wrote to the Complainers advising that they had still not received settlement from the Respondent. By letter dated 21st November 2003 the Complainers wrote to the Respondent requesting him to contact FSL within 14 days in order to resolve the matter. At the request of FSL the Complainers wrote to the Respondent on 23rd January 2004 advising him that unless the sum due to FSL was settled within 14 days then they may require to treat the matter as a formal complaint. By letter dated 17th March 2004 FSL wrote to the Complainers saying that they wanted them to proceed with a formal complaint against the Respondent. By letter dated 6th May 2004 the Complainers wrote to the Respondent intimating a claim of alleged professional misconduct and, in terms of Section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 they asked the Respondent, *inter alia*, for his written response to the issue of complaint identified on a list attached to this letter within 21 days from the date thereof. The Respondent failed to reply to this letter. By letter dated 11th June 2004 the Complainers wrote to the Respondent giving him notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 requiring him to provide a response together with an explanation for the delay in replying to their letter of 6th May 2004 within a period of 14 days from the date of the notice. The Respondent wrote to the Complainers on 23rd June 2004 enclosing a cheque for £998.75 made payable to them. Consequent upon writing to the Respondent on 1st July 2004 returning his cheque the Complainers wrote to him on 5th August 2004 enquiring if he had settled with FSL. By letter dated 11th August 2004 FSL

wrote to the Complainers advising that they had not received payment from the Respondent. By letter dated 2nd September 2004 the Complainers wrote to the Respondent giving him notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 on the basis that they considered that he had failed to reply in such a way that would enable them to complete their investigation of the matter and requiring him to send a response within a period of 14 days. By letter of even date the Complainers wrote to the Respondent giving him notice in terms of Section 42C of the Solicitors (Scotland) Act 1980 requiring him to produce certain documents to them within a period of 21 days. The Respondent failed to reply to either of these last mentioned notices. By letter dated 26th October 2004 the Complainers again wrote to the Respondent in terms of Section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and requested him to provide *inter alia*, his written response to the issues of alleged professional misconduct identified on a list attached to this letter within a period of 21 days. The Respondent failed to reply to this letter.

7. Having heard submissions from the Complainers and on behalf of the Respondent the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
 - 7.1 His unacceptable delay in settling the sum of £998.75 due by him to Faculty Services Limited.
 - 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 Faculty Services Limited who had invoked their aid.

8. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23rd June 2005. The Tribunal having considered the Complaint dated 25th April 2005 at the instance of the Council of the Law Society of Scotland against Stuart Fraser Wilson, Solicitor, 28 Moss Street, Paisley; Find the Respondent guilty of Professional Misconduct in respect of his unacceptable delay in settling the sum due by him to Faculty Services Limited 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

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 admitting the facts, averments of duty and averments of professional misconduct in the Complaint. No evidence was accordingly led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir expressed his appreciation for the co-operation of the Respondent in entering into a Joint Minute which had foreshortened proceedings. Mr Muir also confirmed that a letter had been received by the Law Society on 22nd June 2005 from the Respondent enclosing a cheque drawn on the client account made payable to Faculty Services Limited for £990.00 which Faculty Services Limited were prepared to accept in full settlement of the account due. In connection with the failure to respond Mr Muir stated that this was not a continuing failure but was a sporadic failure. What was strange was that the Respondent had sent a cheque to the Law Society on 23rd June 2004 which had been returned to him as it was made payable to the Law Society and for some reason the Respondent failed to issue a fresh cheque. The Respondent also disregarded the statutory notices sent to him by the Law Society. Mr Muir moved for the expenses of the Complaint.

SUBMISSIONS FOR THE RESPONDENT

Mr Coffield explained that the Respondent had been in practice for some time and required help in coping with the amount of civil court work with which he dealt. The Respondent had had difficulties in getting an assistant and had had to carry on with a heavy caseload. Matters were made more difficult by the fact that the Respondent moved office in 2000 and this particular file was lost and never found. Mr Coffield explained that the fee for Faculty Services Limited should have been recovered from the insurance company but the bill for the £1000 came in after matters had been settled with the insurance company. At first the Respondent thought that it had already been paid but when he found that this was not so he did not attend to matters. Mr Coffield pointed out that the Respondent had had to pay the sum out of his own pocket and if the bill had come in on time it should have been covered by the payment

from the insurance company. Mr Coffield explained that the Respondent was working excessive hours and was now actively trying to get an assistant. Mr Coffield stated that the Respondent was a sole practitioner in Paisley with a good reputation.

DECISION

The Tribunal has made it clear on numerous occasions that failure to respond to the Law Society amounts to professional misconduct. There were unfortunate circumstances in this case but the Respondent should have been aware that there was another bill to come from Faculty Services. The Tribunal found it particularly unfortunate that the Respondent had allowed matters to come to the Tribunal by his delay in settling the bill and his failure to respond to correspondence from the Law Society. The Tribunal considered that the Respondent's conduct fell at the very bottom end of the scale of professional misconduct and that a Censure would be sufficient penalty. The Tribunal made the usual order with regard to publicity and expenses.

Chairman