

**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

**EDWARD LINDSAY ACTON,
Solicitor, 24 Shore Street, MacDuff
(First Respondent)**

and

**GEORGE ALEXANDER
WILSON, Solicitor, 16 East
Church Street, Buckie (Second
Respondent)**

1. A Complaint dated 9 May 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Edward Lindsay Acton, Solicitor, 24 Shore Street, MacDuff (hereinafter referred to as "the First Respondent") and George Alexander Wilson, Solicitor, 16 East Church Street, Buckie (hereinafter referred to as "the Second 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 Respondents. Answers were lodged by both Respondents.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 18 July 2006 and notice thereof was duly served on both Respondents.

4. The hearing took place on 18 July 2006. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. Both Respondents were present and represented by James McCann, Solicitor, Clydebank.
5. Both Respondents pled guilty to the facts, averments of duty and averments of professional misconduct in the Complaint so far as relating to them.
6. The Tribunal found the following facts established
 - 6.1 The First Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born on 30th October 1947. He was admitted as a Solicitor on 7th December 1971 and enrolled on 23rd December in the same year. He became a Partner in the firm of Alexander George & Company on 1st December 1975 and works from their office at 24 Shore Street, MacDuff.
 - 6.2 The Second Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born on 2nd November 1954. He was admitted as a Solicitor on 7th September 1979 and enrolled on 25th September in the same year. He became a Partner in the firm of Alexander George & Company on 1st December 1983 and works from their office at 16 East Church Street, Buckie.
 - 6.3 MR & MRS A – MRS B
By letter dated 3rd August 2004 Mr B submitted a Help Form to the Complainers on behalf of his wife Mrs B in respect of the actions of the Respondents in conducting business on behalf of Mr & Mrs A and thereafter herself. Mrs B was the daughter and Executrix of the late Mr A (born 28.4.16 – died

10.12.02) and was the step-daughter, Executrix and residuary beneficiary of the late Mrs A (born 17.8.21 – died 17.11.02).

- 6.4 In March 2002, Property 1 was owned by Mr and Mrs A jointly. Mr A lived at a separate address and Mrs A was resident in a Nursing Home. The Nursing Home was operated by Mr and Mrs C. On 4th March 2002, the late Mr A instructed the Second Respondent to act in the sale of Property 1 to Mr C. On 7th March 2002, Mr C instructed the First Respondent to act on his behalf in connection with the purchase. The First Respondent accepted those instructions and on 11th March 2002, submitted an offer from Mr C through the firm of Alexander George & Company and signed by Mr C on his own behalf.
- 6.5 The Second Respondent then wrote to the late Mr A with a copy of the offer seeking instructions. A letter was issued to the late Mr A explaining that Alexander George & Company acted for Mr C and that if he wished to Mr A could take independent legal advice. The Second Respondent met with his client who gave instruction on his own behalf and as Attorney for his wife to accept the offer. On 28th March 2002, a qualified acceptance was prepared in the names of Mr and Mrs A and issued to the First Respondent. Conditions 1 and 31 which formed part of the bargain were unusual.
- 6.6 By 1st April 2002 the First Respondent was aware of a possible title problem in relation to the property and advised his client of that. At some time that month, Mr C took entry to the property and the first instalment of the sale price in the sum of £17,500 was paid to Alexander George & Company on 10th April 2002. No correspondence was entered into advising Mr A of difficulties with the title. The payment of the first instalment was held on a designated account by the

Firm from 11th April 2002 to 6th December 2002. During that time the Second Respondent continued to act for Mr & Mrs A in the full knowledge of the relationship between sellers and purchaser and the potential conflict of interest. He made no progress in resolving the title problem to enable the transaction to conclude, he made no provision in the contract for payment of interest on the deferred purchase price, he gave no consideration to the potential pitfalls should there be a death or bankruptcy in respect of the various parties. Mrs A died on 17th November 2002 after which the sum of £27,423.39 was transferred to Mr A's ledger card. Mr A died on 10th December 2002.

6.7 On 16th December 2002, Mrs B's husband met with Mrs Leslie of Alexander George & Company and instructed her in connection with the estate of the late Mr & Mrs A. By 10th February 2003, Mrs Leslie had become aware of the inclusion of Property 1 and that the First Respondent acted for the purchaser. No formal letter was issued to Mrs B as Executrix explaining that Alexander George & Company acted for the purchasers. Mr and Mrs B were aware by that time that they did. By May 2003, Mr and Mrs B were concerned about the lack of progress and by 3rd June, Mr B had confirmed to Mrs Leslie that he was not happy with the delay in relation to the sale of Property 1. Confirmation to the estate of Mr A was granted on 26th June 2003 and to that of Mrs A on 22nd August 2003. Mrs Leslie advised that she would complete the conveyancing for Property 1. On 27th August 2003, she wrote to the First Respondent supplying him with the necessary documents of confirmation to enable him to progress the conveyancing.

6.8 Throughout September and October 2003, Mr B repeatedly complained about the delay and Mrs Leslie contacted the

First Respondent on a number of occasions in an attempt to conclude the sale. He failed to respond. On 10th November 2003 Mr B contacted the First Respondent direct and requested urgent action due to the delays. The First Respondent refused and advised that there was a conveyancing problem. Attempts were made to rectify the title problem. This had not been resolved by July 2004. Mr B again contacted the First Respondent direct and was advised by him that the purchasers, Mr and Mrs C, intended to transfer their interest in the property to their son and that it would make sense to delay completion of the sale of the As' interest in the property until Mr and Mrs C had clarified their instructions so that both transactions could be completed simultaneously. Mrs Leslie expressed anger at the suggestion and proposed to contact the Law Society. The First Respondent continued to delay completion of the sale. On 31st August 2004 he confirmed to Mrs Leslie that title to the property was to be drawn in the name of Mr and Mrs C's son. This was not reported to Mr and Mrs B nor were their instructions sought. The Disposition was signed and returned to Alexander George & Company by 28th October 2004.

6.9

MR D

By Help Form dated 14th September 2004, Mr D of Property 2, sought the aid of the Respondents in connection with his instruction of the First Respondent. Mr D had been dissatisfied with the progress of his legal work and instructed a new Solicitor, Mr Torrance of Iain Smith & Company, Solicitors, Aberdeen at the end of 2003. On 19th February 2004 Messrs Iain Smith & Co wrote to the First Respondent with a Mandate and seeking delivery of their client's file. He did not reply. They wrote again on 29th March 2004. By letter dated 2nd April the First Respondent sent copies of

outgoing letters and advised that he was unable to trace the file but would forward it when it was located.

6.10 On 30th April 2004, Messrs Iain Smith & Co, Solicitors, wrote to the First Respondent again advising that those copy letters did not provide the full picture. They referred to copies of the Court proceedings and the statement of claim or counterclaim. They advised that at least they required copies of pleadings to be able to protect their client's position.

6.11 The First Respondent did not reply to that letter nor to follow up letters dated 20th May, 15th June, 14th July or 10th August all 2004. The Complainers wrote to the First Respondent about the matter on 24th September 2004. He responded with letters dated 28th September 2004 and 20th January 2005 stating that the file had been lost and as a result, irrespective of what letters, telephone calls, etc, were made, it was not possible to send it and therefore the situation could not be changed.

7. Having considered the foregoing circumstances and the submissions from both parties, the Tribunal found the First Respondent guilty of Professional Misconduct in cumulo in respect of:

7.1 his acting between 11th March 2002 and 28th October 2004 on behalf of his client Mr C in the purchase of a property from Mr & Mrs A in the knowledge that the Second Respondent a partner in the same Firm acted on behalf of the sellers and where a dispute might reasonably be expected to arise between the parties in that his colleague's clients were elderly, one was resident in a Nursing Home operated by the purchaser and where the terms of the agreement reached regarding payment of the purchase price were unusual.

- 7.2 his failure to progress the purchase and his continuing to act when a conflict of interest arose in relation to a title defect and, after it was evident that the sellers had both died and another solicitor in his Firm was instructed by the Executor
- 7.3 his placing the interests of his client first and deliberately delayed settlement of the sale to suit his own client's convenience while being well aware that this was contrary to the wishes and interests of the Executor and in circumstances where there was a clear conflict of interest between the Firm's respective clients.

All in breach of Rules 3 and 5 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct for Scottish Solicitors 2002.

- 7.4 his failure between 19th February and 7th September 2004 to respond to a mandate sent to him in relation to the client Mr D and failure to deliver copies of pleadings to Messrs Iain Smith & Company when asked to and thereafter his failure to reply to the correspondence of a fellow Solicitor from that firm sent to him on 30th April, 20th May, 15th June, 14th July and 10th August all 2004.

and Find the Second Respondent guilty of professional misconduct in cumulo in respect of:

- 7.5 his acting between 28th March 2002 and 10th February 2003, acted on behalf of his clients Mr and Mrs A in the sale of a property owned by them to Mr C in the knowledge that the First Respondent a partner in the same Firm acted on behalf of the purchaser and where a dispute might reasonably be expected to arise between the parties in that his clients were elderly, one was resident in a Nursing Home operated by the

purchaser and where the terms of the agreement reached regarding payment of the purchase price were unusual.

- 7.6 his failure to progress the sale and his continuing to act when a conflict of interest arose in relation to a title defect in circumstances where there was a clear conflict of interest between the respective clients.

All in breach of Rules 3 and 5 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct for Scottish Solicitors 2002.

- 7.7 his failure on 11th March 2002 to properly advise his clients Mr and Mrs A that the firm was acting on behalf of both parties and that if a dispute arose, they would require to consult an independent Solicitor or Solicitors, all in breach of Rule 5(2) of the Solicitors (Scotland) Practice Rules 1986.

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

Edinburgh 18 July 2006. The Tribunal having considered the Complaint dated 9 May 2006 at the instance of the Council of the Law Society of Scotland against Edward Lindsay Acton, Solicitor, 24 Shore Street, MacDuff (“the First Respondent”) and George Alexander Wilson, Solicitor, 16 East Church Street, Buckie (“the Second Respondent”); Find the First Respondent guilty of Professional Misconduct in cumulo in respect of his acting in a conflict of interest situation in respect of the purchase of a property; his failure to progress the sale and his continuing to act when a conflict of interest arose in relation to a title defect; his placing the interests of his client first and deliberately delaying settlement of the sale to suit his own client’s convenience, all in breach of Rules 3 and 5 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct for Scottish Solicitors 2002 and his failure to respond to a mandate, failure to deliver copies of pleadings and failure to respond to correspondence from a fellow solicitor; Find the Second Respondent guilty of professional misconduct in cumulo in respect of his acting in a conflict of interest situation in the sale of a property; his failure to progress the sale and his continuing to act when a conflict of interest situation arose, all in breach of Rules 3 and 5 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct for Scottish Solicitors 2002 and his failure to properly advise his clients that the firm was acting on behalf of both parties and that if a dispute arose they would require to consult an independent solicitor or solicitors, all in breach of Rule 5(2) of the Solicitors (Scotland) Practice Rules 1986; Censure the First Respondent and Fine him in the sum of £850 to be forfeit to Her Majesty; Censure the Second Respondent and Fine him in the sum of £500 to be forfeit to Her Majesty; Find the Respondents jointly and severally 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 Respondents.

(signed)

Kenneth Robb

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 Respondents by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

Mr McCann advised the Tribunal that he had been recently instructed by the Respondents but having discussed matters with them that morning he was satisfied that it would be possible for him to represent both of them. Mr McCann advised that neither of them had taken advice and they were struggling to represent themselves. He indicated that it was clear to him that there was no distinction between the two partners and he had clear instructions from them to represent both and to plead guilty in cumulo on their behalf in respect of the facts, averments of duty and averments of professional misconduct. They had already done this themselves in their Answers.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston explained that Mrs B was the executrix in the estates of Mr & Mrs A, the clients initially affected by these matters and her husband submitted a Help Form on her behalf with regard to the delay in the progress of their executries. Mr C was also a client of the Respondents' firm and in July 2002 the late Mr A approached the firm in connection with Property 1 which he wished to use to finance the cost of Mrs A's nursing home. Mr A instructed the Second Respondent in connection with the sale and Mr C instructed the First Respondent in connection with the purchase. The Second Respondent wrote to Mr A with a copy of the missives and a letter in connection with regard to a potential conflict of interest situation. The missives were unusual. Ms Johnston confirmed that taking into account that both clients were existing clients of the firm and given the geographical location it was reasonable for the First and Second Respondents to have represented both clients but by the 1 April 2002 it was evident there was going to be a possible title problem which could lead to a conflict of interest situation and yet the firm continued to act for both clients. A first instalment of the sale price was paid on 10 April 2002 but Mr A was not advised of the title problems. The problem was not resolved. Mrs A died on 17 November 2002 and Mr A died one month later. Mr & Mrs B became worried with regard to the lack of progress and the delay in dealing with the property. Things were not resolved by July 2004. The First Respondent indicated that Mr & Mrs C wanted title in their son's

name which caused a further delay and resulted in the Bs referring the matter to the Law Society. The Disposition was finally signed on 28 October 2004.

In connection with Mr D, the client was dissatisfied and instructed Iain Smith & Co. This firm wrote to the First Respondent on 19 February 2004 with a mandate but there was no reply. They wrote again on 29 March and the First Respondent replied sending copy letters but saying he could not trace the file. By 30 April 2004 Iain Smith & Co said that they needed at least copies of the pleadings and chased up the First Respondent in May, June, July and August but there was no response until 29 September when the First Respondent said he could not send the file as it had been lost.

SUBMISSIONS FOR THE RESPONDENTS

Mr McCann explained that both parties to the property transaction were existing clients and appropriate letters were sent saying that the clients had the right to go elsewhere. There were geographical problems and accordingly there was no difficulty with them acting for both parties at the start but where a problem arose they should not have continued to act. Mr McCann however explained that both parties wanted the First and Second Respondent to sort out the problems with the property. The First and Second Respondents' problem was that they did not insist that the clients went elsewhere. They did not want to cause their clients the worry of having to go elsewhere. Mr McCann explained that the Respondents' practice was in an area where there was a chronic problem in getting staff. The Respondents' practice was a good practice with a healthy turnover but there were huge overheads and the Respondents had to work long hours and did not have time to do some of the jobs which they should have been doing. Mr McCann emphasised that the Respondents were well intentioned and helpful but their actions were ill judged. The clients did not complain with regard to conflict yet the Law Society took this matter up themselves. Mr McCann advised that there was an IPS Determination which ordered that no fees should be charged in connection with the transaction.

In connection with the mandate, Mr McCann explained that files had been archived and this file had gone missing. It was accepted that the First Respondent should have

told the other firm of solicitors that the file was lost but he thought that he would find time to locate it. In this matter an IPS award of £600 compensation had been made.

Mr McCann emphasised that the First and Second Respondents had no previous disciplinary problems and had been in the profession for a long time. They had found this matter very distressing and had wished it dealt with today rather than prolonging matters. Mr McCann stated that the title problem had been resolved and there had been no loss to the client. Mr McCann stated that the Respondents' firm was in negotiations with regard to improving the performance of the firm. As they could not get the staff they had to reduce the amount of work they took on. Mr McCann asked that the Tribunal not restrict their practising certificates. He gave an assurance on their behalf that steps would be taken to ensure that nothing like this happened again. Mr McCann advised the Tribunal of the Respondents' income and asked that the matter be dealt with by way of a Censure and a Fine. Mr McCann also referred the Tribunal to the reference from a Member of Parliament.

DECISION

The Tribunal was of the view that the Respondents' conduct clearly amounted in cumulo to professional misconduct. The rules of conduct are there to protect solicitors from themselves and to protect clients. The Respondents were experienced solicitors and should have known better. It was an unusual transaction but it was clear that the Law Society understood why they had acted in a potential conflict of interest situation to start with. The Tribunal was concerned that even after the problem arose the transaction was delayed to have the title taken in the name of the son of one of the clients which delayed matters to the detriment of the other client. The Tribunal did not consider that this was just a technical conflict of interest situation. The Tribunal however took account of the fact that the Respondents had been in practice for a long period of time and had been well intentioned. The Tribunal also noted the reference lodged and took account of the Respondents' early plea.

In connection with the First Respondent's failure to reply to correspondence and the mandate from another firm of solicitors, the Tribunal considered that a solicitor has a professional obligation to address issues and respond to correspondence. The First

Respondent had a professional responsibility not to take on more work than he could cope with. The Tribunal accordingly Censured the First Respondent and Fined him £850 and Censured the Second Respondent and Fined him £500. The Tribunal found the Respondents jointly and severally liable in the expenses and made the usual order with regard to publicity.

Vice Chairman