

PLEASE NOTE

**The present firm of Alexander George & Co has no connection with the
Respondent**

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

FINDINGS

in Complaint

by

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

against

**EDWARD LINDSAY ACTON,
Solicitor, 24 Shore Street, MacDuff**

1. A Complaint dated 14 January 2008 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 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 16 April 2008 and notice thereof was duly served on the Respondent.

4. The hearing took place on 16 April 2008. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was not present or represented. The Fiscal lodged a letter from the Respondent in which he indicated that he did not intend to appear at the hearing.
5. The Complainers led the evidence of one witness and referred to various Productions lodged.
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 30th October 1947. He was admitted as a Solicitor on 7th December 1971 and enrolled on 23rd December in the same year. He was a Partner in the firm of Alexander George & Company from 1st December 1975 to 2007. The firm ceased to exist as at 31st October 2006.

MS A
 - 6.2 By letter dated 30th August 2006, Ms A, invoked the aid of the Complainers in respect of the Respondent's failure to reply to correspondence regarding the estate of her late mother, Mrs B.
 - 6.3 On receipt of the complaint the Complainers wrote to the Respondent on 13th September 2006 seeking to have the problem resolved by conciliation within 21 days. He replied with a copy of correspondence sent to Solicitors acting for Ms A dated 6th October 2006. Ms A replied asking why the sale of her late mother's house was not included in the Account of Charge and Discharge and raising other issues regarding the handling of the estate. The Respondent confirmed that he was no longer a solicitor or partner in the firm and that Ms A was not a client of his or the firm in a letter of 2nd November 2006.

He advised that the executors were her two brothers and that the firm of Alexander George acted in the executry.

6.4 Further enquiries were made and the Respondent was advised by letter dated 15th November 2006 that the Complainers would write to the firm and confirmed their policy was that a beneficiary had an interest to raise a service complaint. The Respondent wrote again on 17th November 2006 with a copy of a letter from the executors and advising that he did not think it ethically correct for him to comment on the complaint a point on which he suspected he and the complainers differed. By formal letter dated 10th January 2007, the complaint was intimated to the Respondent with a list of the issues. He was required to provide his written response, any background information he may wish, his business file and files relating to the matter should he hold them and details of any fees charged or to be charged within 21 days of the date of the letter. The same letter was sent to his former partner. A follow up letter was sent to him on the 21st February.

6.5 The Respondent did not reply until by letter of 21st February 2007 he advised that as Mrs A was not his client it would be inappropriate to comment. He was written to again on 20th March with an explanation as to the requirements on the Complainers to investigate such matters and he was required to respond within 14 days and to send the file. His partner then wrote saying the file would follow and the explanation would come from the Respondent. The Complainers wrote again on 19th April requiring a response and the file within 7 days. He did not reply. He was served with Notices under Section 15(2)(ii) and Section 42C of the Solicitors (Scotland) Act 1980 on 2nd May 2007. He was served with the second part of the Section 15 Notice on 17th May 2007.

6.6 He wrote on the 9th May 2007 saying that Mrs A was not the owner of the file and that he was in a catch 22 situation. From a moral point of view the file should not be sent to the Complainers. He wrote again on 25th May 2007 saying that to provide the information would be unethical and acknowledging that the matter would go to the Discipline Tribunal. On 5th June 2007 his former partner sent a reply and the file. On 3rd September 2007 he was advised that the Client Relations Committee had considered the matter and of their recommendations. He was sent a copy of the Schedule and invited to make any representations by 13th September 2007.

7. Having considered the foregoing circumstances and the undated letter from the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 his failure between 13 September 2006 and 13 September 2007 to reply to the reasonable enquiries of the Complainers in respect of the complaint of Ms A, his failure to provide any substantive explanation regarding the complaint and his failure to produce the file or to comply with Statutory Notices served upon him.

8. Having noted previous Findings of misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 April 2008. The Tribunal having considered the Complaint dated 14 January 2008 at the instance of the Council of the Law Society of Scotland against Edward Lindsay Acton, Solicitor, 24 Shore Street, MacDuff; Find the Respondent guilty of Professional Misconduct in respect of his failure between 13 September 2006 and 13 September 2007 to reply to the reasonable enquiries of the Law Society, his failure to provide any substantive explanation with regard to the complaint made about him to the Law Society and his failure to produce the file or comply with Statutory Notices served upon him;

Censure the Respondent; Fine him in the sum of £3,000 which is to be forfeit to Her Majesty; 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 an agent 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)

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

The Respondent did not lodge Answers or attend the Tribunal. The Fiscal produced a letter received from the Respondent indicating that he did not intend to attend the hearing and setting out his position. The Complainers led the evidence of one witness and referred to various Productions lodged.

EVIDENCE FOR THE COMPLAINERS

Kirsten Mavor, Case Manager with the Law Society gave evidence to the Tribunal. She confirmed she had dealt with the complaint made against the Respondent. She indicated that he did not have a practising certificate and his name had been removed from the Roll after his firm ceased trading on 31 October 2006. Ms Mavor referred to Complainers Production 1 being a letter of complaint dated 30 August 2006 in connection with the Respondent's failure to respond to requests for information. Ms Mavor explained that Ms A's solicitors had been trying to get information from the Respondent for a year. Production 2 was a letter from Ms Mavor to the Respondent dated 13 September 2006 enclosing a copy of Ms A's letter of complaint. The Respondent sent a letter dated 2 November but the Complainer was not satisfied with his response. Ms Mavor confirmed that as at 2 November 2006 the Respondent's firm had ceased trading. The Respondent indicated in his letter that he had passed the letter of complaint to the executors. Ms Mavor referred to Production number 5 being a letter of 15 November 2006 to the Respondent from her indicating that the beneficiary had the right to raise a complaint. The Respondent's response was that it was not appropriate for him to respond as the Complainer was not his client. The Respondent indicated that he had no objection to the Law Society corresponding directly with the two executors. Ms Mavor referred to the formal letter of complaint dated 6 February 2007 when she intimated the complaint to the Respondent. He was required to respond to this letter. On 21 February 2007 the Respondent indicated that he could not reply because his client's position was confidential. She explained that the Law Society sent a letter on 20 March 2007 explaining why they required the information and stating that the Law Society's policy was to investigate complaints by beneficiaries. Ms Mavor confirmed that by this time there was a new firm called Alexander George & Co. but it did not have the same partners in it as the previous

firm. Ms Mavor confirmed that a formal notice was sent to the Respondent on 2 May 2007.

In response to a question from the Chairman, Ms Mavor stated that they still wrote to the Respondent at the Alexander George address because this was the only address that they had for him at that time. Production 14 was a letter from the Respondent indicating that it was not appropriate for him to respond or produce the file due to the file not belonging to the Complainer. Ms Mavor confirmed that the letter sent to the Respondent was sent recorded delivery and was not returned. The letter of 17 May 2007 was sent intimating the conduct issues. His reply was that it was unethical for him to reply. Ms Mavor was then referred to a letter from Alexander George written by G Wilson, a former partner of the Respondent's which provided the file and indicated that the file was obtained from the Respondent who had been responsible for the executry. The letter requested that the correspondence be kept confidential and not copied to the Complainer. Ms Mavor explained that in situations such as this, the Law Society would not copy the correspondence to the Complainer if it was confidential. Ms Mavor referred to her letter of 3 September 2007 advising the Respondent of the date of the Professional Conduct Committee and asking him for any comments. No information was provided.

In response to a question from the Tribunal, Ms Mavor stated that she did not know why the Respondent had held onto the file. In response to a further question from the Tribunal, Ms Mavor stated that she did not know whether the Respondent had been instructed by his clients not to give anything to Ms A.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston stated that the Complaint was not that he failed to give information with regard to the executry but that he had failed to explain why he had not replied to the letters sent.

DECISION

The Tribunal found the witness for the Complainers to be credible and reliable and accepted her evidence. The Tribunal noted the terms of the letter received from the

Respondent and also the terms of the Respondent's letters contained in the Complainer's Productions. The Respondent's position was that as the Complainer was not his client, he could not provide the information which was confidential to his client. The Tribunal's view is that if a Respondent has a valid reason why he cannot produce the file and provide the information, he should explain this to the Law Society. If the Respondent had been told by his clients not to release the information he should have told the Law Society this. There was no explanation as to why the Respondent had held onto this particular file after he had left the firm. The Tribunal considered that the Respondent had a duty of care to the beneficiary and although the Tribunal accepted that the Respondent had a point in connection with client confidentiality, the Law Society as a professional body must be trusted to look at the file and take a view on whether or not there was confidential information in the file which should not be transmitted to the Complainer. The Tribunal was satisfied that the Respondent's failure to respond to the Law Society and failure to provide a substantive explanation amounts to professional misconduct.

PENALTY

The fiscal then referred the Tribunal to two previous findings of professional misconduct against the Respondent. The Tribunal noted that the Respondent had been before the Tribunal in May 2007 in respect of failure to respond to correspondence from a fellow solicitor and failure to respond to the Law Society. He had also previously been before the Tribunal in 2006 for some analogous matters. In 2006, the Respondent gave an undertaking to the Tribunal that this would not happen again and yet despite this, the Respondent was before the Tribunal in May 2007 and was now before the Tribunal again. In these circumstances, the Tribunal considered that a Censure plus a Fine of £3,000 was appropriate. The Tribunal made the usual order with regard to publicity and expenses.

Chairman