

**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

**MARGARET McAFEE, Solicitor,
formerly of Margaret Gray &
Company, 297 East Muirhall
Street, Coatbridge, now at Flat 1
Fountain Court, 72 Deedes Street,
Airdrie**

1. A Complaint dated January 2007 was made by the Council of the Law Society, 26 Drumsheugh Gardens, Edinburgh (hereinafter referred to as “the Complainers”) against Margaret McAfee, Solicitor formerly of Margaret Gray & Company, 297 East Muirhall Street, Coatbridge and now at Flat 1 Fountain Court, 72 Deedes Street, Airdrie (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 30th May 2007 and notice thereof was duly served on the Respondent. The Respondent’s sister left a message advising the Tribunal that the Respondent was ill and accordingly a fresh date for hearing was fixed.

4. The Tribunal appointed the Complaint to be heard on 12th September 2007 and notice thereof was duly served on the Respondent.
5. When the Complaint called on 12th September 2007, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was not present or represented.
6. After hearing evidence from the Clerk to the Tribunal with regard to intimation of the Complaint and the notice of hearing, the Tribunal resolved to proceed in the Respondent's absence.
7. The Tribunal heard the evidence of one witness and found the following facts established
 - 7.1 The Respondent was a Partner with Mgt. Gray & Company, Solicitors, 297 East Muirhall Street, Coatbridge.
 - 7.2 Mrs A resides at Property 1. She instructed the Respondent in respect of matrimonial matters, including divorce. She was disappointed with the manner in which the Respondent acted in connection with the instructions given. On or about 30 November 2005 she sent an e-mail requesting the aid of the Complainers.
 - 7.3 The Complainers wrote to the Respondent on 5 December 2005 providing details of the concerns expressed by Mrs A and requesting the Respondent's comments within fourteen days. On 5 January 2006 the Complainers wrote to the Respondent enclosing a copy of a further e-mail received from Mrs A.
 - 7.4 On 6 January 2006 the Complainers wrote to the Respondent intimating a complaint and inter alia requesting the Respondent's business file or files relating to the matter, to be

provided within twenty-one days of the date of the letter. The Respondent wrote to the Complainers on 27 January 2006, the file was not enclosed. The Complainers wrote to the Respondent on 7 February 2006 acknowledging the letter of 27 January 2006 inter alia noting that the file had not been enclosed, requesting it by return and advising that if it was not received, a Notice would require to be served in terms of the Solicitors (Scotland) Act 1980, Section 42C.

7.5 The Complainers did not receive the Respondent's business file and on 20 February 2006 a Statutory Notice in terms of the Solicitors (Scotland) Act 1980 Section 42C was intimated by Recorded Delivery to the Respondent. She failed to reply to the Statutory Notice. A subsequent telephone call by the Complainers to the Respondent's office seeking the file did not produce a response.

7.6 The Respondent's file not having been received, the Complainers wrote to the Respondent on 17 March 2006 intimating a complaint that the Respondent's conduct might amount to professional misconduct in respect of her failure to provide the file. On 6 April 2006 a Reporter was instructed and the Complainers wrote to the Respondent advising that a Reporter had been instructed. On 24 April 2006 the Complainers wrote to the Respondent enclosing the Report and Opinion. The Complainers advised that the professional misconduct issue would be considered by a Client Relations Committee on 23 May 2006.

7.7 The Respondent, with a letter dated 22 May, and received by the Complainers on 24 May 2006, sent the file to the Complainers. Following receipt of the file, the Reporter was instructed by the Complainers to provide a new Report and the Respondent was advised of this in a letter dated 2 June 2006.

8. Having heard submissions from the fiscal, the Tribunal found the Respondent guilty of Professional Misconduct in respect of her failure to timeously provide her business file to the Law Society and failure to provide any explanation as to why the file had not been produced timeously.

9. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 12th September 2007. The Tribunal having considered the Complaint dated January 2007 by the Council of the Law Society of Scotland against Margaret McAfee, Solicitor formerly of Margaret Gray & Company, 297 East Muirhall Street, Coatbridge and now at Flat 1 Fountain Court, 72 Deedes Street, Airdrie; Find the Respondent guilty of Professional Misconduct in respect of her failure without explanation to timeously provide her business file to the Law Society; 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 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)

David Coull
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

David Coull
Chairman

NOTE

The case was originally set down for hearing on 30th May 2007. A message was however received at the Clerk to the Tribunal's office the day before the Tribunal indicating that the Respondent was ill and had been in hospital and would not be able to attend the hearing. No contact number was left and it was not possible to contact the Respondent. In the circumstances, the hearing on 30th May 2007 was adjourned to a procedural hearing on 26th July 2007 with the fiscal to make enquiries. At the procedural hearing on 26th July 2007, no further information was available and accordingly another hearing date of 12th September 2007 was fixed.

The Tribunal heard evidence from the Clerk to the Tribunal to the effect that the notice of Complaint had been served on the Respondent by recorded delivery on 19th January 2007 and had not been returned. The notice of hearing for 12th September 2007 was served on the Respondent by Sheriff Officers on 8th August 2007. In the circumstances, the Tribunal resolved to proceed in the Respondent's absence.

EVIDENCE FOR THE COMPLAINERS

The Complainers led the evidence of Lorna Johnston, Case Manager with the Law Society. Ms Johnston referred to the List of Productions lodged by the Complainers and confirmed that these Productions comprised the principal file in relation to the case. Ms Johnston referred to Production 183 being an email from a Mrs McDonald raising certain issues and making a Complaint about the Respondent. Production 182 was a letter from Lorna Johnston to the Respondent enclosing a copy of the email and outlining the client's concerns. Production 180 was an email received from Mrs A dated 29th December 2005 and Ms Johnston referred the Tribunal to Production 176 being her letter to the Respondent enclosing this further email. Production 166 is a letter dated 6th January 2006 to the Respondent from Lorna Johnston intimating the Complaint and asking for the Respondent's business file within 21 days. Ms Johnston referred the Tribunal to Production 161 being a letter of 27th January 2006 from the Respondent's office outlining the history of the case. This letter stated that the file had not been lost. Production 156 was a letter from Ms Johnston dated 7th February 2006

acknowledging the Respondent's letter and asking for the business file by return. Production 147 was a Section 42C Notice which was sent by recorded delivery to the Respondent on 20th February 2006 because the file had not been received. Production 146 referred to a phone call made by Ms Johnston to the Respondent's office asking for her to return the call but no return call was received. Ms Johnston referred to Production 143 being a letter dated 17th March 2006 to the Respondent enclosing a list of conduct issues in connection with the failure to produce the file. Production 124 was a report from the Reporter dated 10th April 2006 indicating that the inadequate professional service issues could not be upheld because there was no evidence as the file had not been produced. Ms Johnston referred to Production 115 being a letter dated 24th April 2006 to the Respondent advising that the matter was being referred to the Client Relations Committee. Production 82 was a letter from the Respondent dated 22nd May 2006 indicating that the firm was leaving the premises on 10th June 2006 and that the file had been packed away but was now enclosed with the letter. Ms Johnston stated that this was the first time that any suggestion had been made that the file was unavailable. The matter was then referred back to the Reporter with the file. Production 61 is a letter dated 13th June 2006 to the Respondent enclosing the Reporter's report. Production 28 was a Schedule of the Client Relations Committee and Production 24 was a letter dated 7th August 2006 to the Respondent enclosing a copy of the Schedule. Production 2 is a letter to the Respondent dated 5th September 2006 enclosing a copy of the Report to the Professional Conduct Committee. Ms Johnston confirmed that the Respondent was the sole practitioner of Margaret Gray and Company and that Margaret Gray and Margaret McAfee were one and the same person.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid submitted that on the basis of the evidence the Respondent's actings were sufficient to amount to Professional Misconduct. He submitted that this was a situation where the file was required as a result of a complaint by a client and it was not produced. Despite the Section 42C Notice being sent and a phone call being made, the file was not produced and consideration of the complaint by Mrs McDonald was delayed and impeded and the Reporter was unable to properly consider the inadequate professional service issue. No proper reason was given for not producing the file. Mr

Reid pointed out that the Respondent had indicated in correspondence that the file had not been lost and had not suggested at any time up until May 2006 that there was any difficulty in locating the file. Mr Reid submitted that this had resulted in an unacceptable delay which was prejudicial to the reputation of the profession.

DECISION

The Tribunal found the witness for the Complainers credible and reliable and accepted her evidence. The Tribunal considered that the Respondent's delay of approximately four and a half months in producing the file which resulted in the Law Society being delayed and impeded in investigating a complaint by a client did amount to Professional Misconduct.

The Tribunal noted that the Respondent had indicated in her letter dated 27th January 2006 that the file was not lost and yet it was not until the 22nd May 2006 that she produced the file. This letter contained the first suggestion that the file had been unavailable due to being packed away because of the move of office premises. The Tribunal considered it unfortunate that the Respondent had not lodged answers or seen fit to attend the Tribunal. The Tribunal, however, was aware that the Respondent was no longer practising, and took account of the fact that the Respondent did eventually produce the file and did send some responses to the Law Society. In the circumstances, the Tribunal considered that a Censure alone would be sufficient penalty. The Tribunal made the usual order with regard to publicity and expenses.

David Coull
Chairman