

**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

**MS EILEEN DOMMER, formerly
of Mesdames Eileen Dommer &
Company, 87 Commercial Street,
Dundee and now at Balmuith Farm,
Tealing, Dundee**

1. A Complaint dated 26th May 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Ms Eileen Dommer, formerly of Mesdames Eileen Dommer & Company, 87 Commercial Street, Dundee and now at Balmuith Farm, Tealing, Dundee (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. Answers were lodged by the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 20th September 2005 and notice thereof was duly served on the Respondent.
4. At the hearing on 20th September 2005 the Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr on behalf of Paul Reid, Solicitor, Glasgow. The Respondent was not present nor represented.
5. The Tribunal considered a copy letter from Mr Macreath, Solicitor, Glasgow addressed to Mr Muir. In addition, the Tribunal considered a fax from Ms Dommer's husband, a former solicitor, enclosing a soul and conscience certificate and emails requesting an adjournment of the hearing. The motion to adjourn was opposed by the Complainers. The motion to adjourn was refused by the Tribunal. The Complainers led the evidence of one witness.
6. The Tribunal found the following facts admitted or proved
 - 6.1 The Respondent is Ms Eileen Dommer. She was born 12th September 1956. She was admitted as a solicitor on 18th July 1986. She was enrolled in the Register of Solicitors of Scotland on 8th August 1986. From 25th March 1989 to 30th March 1999 she was a partner in the firm Bruce Short & Company. Then from 2nd April 1990 to 31st December 1991 she was a partner in the firm Houston Stewart. Then she practised as a sole

practitioner from 6th January 1992 until 28th February 2005.

6.2 Mr A of Property 1

Mr A resides at Property 1. He consulted the Respondent in regard to the sale of a heritable property. He was disappointed with the manner in which the Respondent acted in connection with those instructions. He invoked the aid of the Complainers. The Complainers obtained sufficient information from him to allow them to formulate and intimate a Complaint to the Respondent. A Complaint was intimated to the Respondent.

6.3 On 3rd June 2004 the Complainers made a determination in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 to uphold the Complaint that an inadequate professional service was provided by the Respondent to Mr A. The Complainers further determined in terms of Section 42A(2)(d) of the 1980 Act that the Respondent should pay to Mr A the sum of £1,000 compensation. The determination by the Complainers was intimated to the Respondent by letter dated 21st June 2004. Payment of the award of compensation was not forthcoming. A statutory notice in terms of Section 42B of the Solicitors (Scotland) Act 1980 was intimated to the Respondent by recorded delivery on 24th March 2005. Despite intimation of the award, payment of compensation has not been made by the Respondent. An Appeal has not been marked by the Respondent against the determination. The determination remains outstanding.

7. Having considered the foregoing circumstances, the Tribunal find that the Respondent has failed to comply with the Determination and

Direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified, namely within 21 days of 24th March 2005: The Tribunal resolved to make an Order in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980 and issued an Interlocutor in the following terms:

Edinburgh 20th September 2005. The Tribunal having considered the Complaint dated 26th May 2005 at the instance of the Council of the Law Society of Scotland against Ms Eileen Dommer, formerly of Mesdames Eileen Dommer & Company, 87 Commercial Street, Dundee and now at Balmuith Farm, Tealing, Dundee; Find that the Respondent failed to comply with the Determination and Direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified: Direct that an Order be issued under Section 53C(2) of the said Act; 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 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)

Kenneth R Robb

Vice Chairman

8. 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

Vice Chairman

NOTE

The Council of the Law Society of Scotland had made a Determination under Section 42A of the Solicitors (Scotland) Act 1980 which was not appealed by the Respondent. A Complaint was then made under the provisions of Section 53C of the said Act which states that

- (1) Where a solicitor fails to comply with a direction given by the Council under Section 42A (including, as the case may be, such a direction as confirmed or varied on appeal by the Tribunal or the Court) within the period specified in the notice relating to that direction given to the solicitor under Section 42B(1) or such longer period as the Council may allow, the Council shall make a Complaint to the Tribunal and may appoint a solicitor to represent them in connection with the complaint.
- (2) If after inquiry into a complaint made under subsection (1) the Tribunal is satisfied that the solicitor has failed to comply with the direction the Tribunal may order that the direction, or such part of it as the Tribunal thinks fit, shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

The day before the Tribunal the Respondent's husband, a former solicitor sent a fax to the Tribunal's offices enclosing a soul and conscience certificate and requesting an adjournment of the hearing. The evening before the Tribunal an email was sent by the Respondent's husband. The motion to adjourn was opposed by the Complainers. Mr Muir also submitted to the Tribunal a copy of a letter dated 16th September 2005 and sent to him by Mr Macreath of Messrs Levy and McRae, Solicitors who had formerly acted for the Respondent. Mr Muir submitted that his instructions were to oppose the motion to adjourn on behalf of the Complainers. Mr Muir advised the Tribunal that the Complainers were seeking an Order under Section 53C of the Solicitors (Scotland) Act 1980 by reason of the Respondent's failure to pay compensation of £1,000 awarded to Mr A. He confirmed that the Respondent has now paid the compensation

due to the other client referred to in the Complaint. Mr Muir advised that he proposed to lead evidence from the Law Society that the compensation has not been paid. Mr Muir stated that despite what was said in the Respondent's answers no appeal against the finding of Inadequate Professional Service was made. Mr Muir stated that the confusion regarding an Appeal seemed to be between the Respondent and her former solicitors as referred to in Mr Macreath's letter and he could see no good reason why the hearing should be adjourned.

The Tribunal noted that no one had appeared on behalf of the Respondent to make representations in relation to the request for an adjournment. The Tribunal were of the view that it would have been possible for the Respondent to have instructed either Mr Macreath or another solicitor to represent her at the hearing. In the circumstances, the Tribunal refused the motion to adjourn as the soul and conscience certificate indicated that the Respondent would be unfit to attend for at least the next year and the Tribunal considered that it was in the public interest that this matter be disposed of timeously. The Tribunal considered that the matter should be dealt with now due to the fact that the Law Society had determined in June 2004 that compensation in the sum of £1,000 was due to a member of the public and this had still not been paid.

The Tribunal was satisfied that the Notice of Hearing had been properly served in terms of the Tribunal Rules and the Respondent was clearly aware of the hearing date. The Tribunal determined to proceed in the absence of the Respondent.

The Tribunal heard evidence from Ian David Ritchie, Case Manager with the Law Society. Mr Ritchie stated that he was not the Case Manager handling the compensation and that it was his colleague, Fiona Robb who had dealt with the file. Mr Ritchie referred to the productions lodged in connection with the case and confirmed that the letter dated 21st June 2004 was sent to Ms Dommer intimating the Law Society's Determination in relation to the sum of £1,000 compensation in favour of Mr A. Mr Ritchie confirmed that Ms Dommer admitted in her Answers that that Determination was made. Mr Ritchie confirmed that to the best of his knowledge that compensation has not been paid.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir requested the Tribunal to make the necessary Order under Section 53C(2) in respect of Mr A and moved for the expenses to be awarded against the Respondent on the usual basis. He asked that publicity be given to the Decision.

DECISION

The Tribunal found that the Respondent failed to comply with the Determination and Direction of the Law Society in connection with Mr A and the Tribunal made an Order under Section 53C(2) of the Solicitors (Scotland) Act 1980. As the disposal of this Complaint constitutes a decision for the purposes of the Fourth Schedule to the Solicitors (Scotland) Act 1980 the Tribunal is required in terms of paragraph 14 of the Schedule to give publicity to this decision. The Tribunal made the usual order with regard to expenses.

Vice Chairman