

**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

**William Michael Lewis, Solicitor,
1 Hope Park Terrace, Edinburgh**

1. A Complaint dated 28 March 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh (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. A Complaint dated 29 March 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that, 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.

4. The Tribunal caused a copy of this second Complaint, as lodged, to be served upon the Respondent. No Answers were lodged by the Respondent.
5. In terms of its Rules the Tribunal appointed both Complaints to be heard on 14 June 2007 and notice thereof was duly served on the Respondent.
6. The Complaints called on 14 June 2007. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by Donald McLeod QC.
7. Joint Minutes were lodged admitting the facts, averments of duty and averments of professional misconduct in both Complaints.
8. In respect of these admissions no evidence was led and the Tribunal found the following facts established

8.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 7th November 1957. He was admitted as a Solicitor on 31st March 1982 and was enrolled as a solicitor on 22nd April 1982. He is at present the sole principal of the firm of Gilmore Lewis which firm has a place of business at 1 Hope Park Terrace, Edinburgh.

8.2 **The Law Society of Scotland**

By means of a Help Form dated 1st August 2005 issued by the Complainers to those members of the public who wish to invoke their aid Mrs A intimated details of her complaint against the Respondent. The Complainers subsequently identified four issues where the Respondent had, on the face of it, rendered an inadequate professional service to Mrs A in connection with work associated with the sale of heritable property which she had instructed him to carry out on her behalf. By letter dated 15th November 2005 the Complainers wrote to the Respondent

intimating the grounds of complaint and inviting his written response within 21 days from that date. He did not provide a written response. Accordingly, and by letters dated 12th December 2005, the Complainers wrote to him giving him notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 as amended (hereinafter referred to as “the Act”) seeking this response as well as an explanation for his failure to respond within 14 days from that date and also notice in terms of Section 42C of the Act calling upon him to produce to them within 21 days from that date documents pertaining to the said transaction. The Respondent did not reply to either of these letters. Accordingly, and by letter sated 4th January 2006, the Complainers wrote to him giving him notice in terms of Section 15(2)(i)(i) of the Act thereby requiring him to give them 6 weeks’ notice of his intention to make application to take out a Practising Certificate for the year commencing 1st November 2006. The Respondent did not reply to this letter either.

- 8.3 By means of a Help Form similar to that hereinbefore referred to and dated 3rd August 2005 Mr B intimated details of his complaint against the Respondent. The Complainers subsequently identified four issues where the Respondent had, on the face of it, rendered an inadequate professional service to Mr B in connection with work associated with the purchase of heritable property which he had instructed the respondent to carry out on his behalf. By letter dated 9th September 2005 the Complainers wrote to the Respondent intimating the grounds of complaint and inviting his written response within 21 days from that date. He did not provide a written response. Accordingly, and by letters dated 6th January 2006, the Complainers wrote to him giving him notice in terms of Sections 15(2)(i)(i) and 42C of the Act calling upon him to provide them with a response, an explanation for his failure to respond and also documentation pertaining to the transaction within 14 days and 21 days respectively. The Respondent did not reply to either of

these letters. Accordingly, and by letter dated 6th February 2006, the Complainers wrote to the Respondent giving him notice in terms of Section 15(2)(i)(i) of the Act in connection with his intention to make application for a Practising Certificate for the year commencing 1st November 2006. The Respondent did not reply to this letter either. In the event the Complainers went on to determine that the Respondent had provided an inadequate professional service to Mr B and he was directed to pay £200 by way of compensation to him. The Respondent did not appeal that determination. By 5th July 2006 the Respondent had not paid this compensation to Mr B and on that date the Complainers wrote to him giving him notice in terms of Section 42B of the Act thereby calling on him to provide them with confirmation of the steps he had taken to implement the said determination within 21 days from that date. The Respondent did reply to this letter.

8.4 By letter dated 7th May 2006 Mr C wrote to the Complainers seeking to invoke their aid. In this letter Mr C intimates that he wishes to make a complaint against the Respondent. He avers in his letter that the Respondent had agreed to compensate him to the extent of £3500 for losses sustained by him as a result of certain failures on the part of the Respondent to provide him with an adequate service in connection with the sale of heritable property. Mr C had instructed the Respondent to act on his behalf in this transaction. In a letter dated 14th March 2006 to the Respondent Mr C spelt out his criticisms of the service which the Respondent had provided. These included the failure of the Respondent to return to Mr C's telephone calls to him in the period from about November 2005 until the transaction settled sometime in or about the beginning of March 2006. Following receipt of this letter the Respondent met Mr C sometime in March 2006 and they then agreed this compensation. The Respondent either failed or delayed in paying this sum to Mr C and it was as a result of this that he made the said complaint. The Complainers subsequently identified seven issues

where the Respondent had, on the face of it, rendered an inadequate professional service to Mr C. By letter dated 12th July 2006 the Complainers wrote to the Respondent intimating the grounds of complaint and inviting his written response within 21 days from that date. He did not provide a written response. Accordingly, and by letters dated 7th August 2006 the Complainers wrote to him giving him notice in terms of Sections 15(2)(i)(i) and 42C of the Act calling upon him to provide a response, an explanation for his failure to respond and also documentation pertaining to the transaction within 14 days and 21 days respectively. The Respondent did not reply to either of these letters. Accordingly, and by letter dated 31 August 2006, the Complainers wrote to the Respondent giving him notice in terms of Section 15(2)(i)(i) of the Act in connection with his intention to make application for a Practising Certificate for the year commencing 1st November 2006. The Respondent did not reply to this letter either. Nor did he return about 6 telephone calls from Mr C to him from the date in March 2006 when they agreed the said compensation until the complaint was intimated to him, by the Complainers on 12 July 2006. The Respondent had failed to return in the region of between 10 and 15 telephone calls from Mr C in the period from about November 2005 until the beginning of March 2006.

8.5 The Solicitors (Scotland) (Continuing Professional Development) Regulations 1993 (hereinafter referred to as “the regulations”) provide inter alia as follows:-

1. From 1st November 2003 every solicitor shall undertake continuing professional development the nature and timing of which shall be prescribed by the Council from time to time.
2. Every solicitor shall keep a record of continuing professional development to comply with these Regulations and produce that record to the Council on demand.

3. Breach of these regulations may be treated as professional misconduct for the purposes of Part IV of the Act. (Complaints and Disciplinary Proceedings).

Reference to “the Council” in Regulation 4 of the regulations is reference to the Complainers, reference to “solicitor” in Regulations 3 and 4 thereof is reference to a solicitor holding a practising certificate and reference to “the Act” in Regulation 6 thereof is reference to the Solicitors (Scotland) Act 1980 all by virtue of the terms of Regulation 2(1) thereof. The regulations came into force on 1st November 1993. In terms of Regulation 3 of the regulations the Complainers prescribed that a solicitor be required to undertake a minimum of 20 hours of continuing professional development in each practice year of which at least 15 hours could be attributed to group study with the remainder being attributed to private study and in all cases at least 5 hours required to be attributed to the study of management related issues. From 1st November 1996 the regulations applied to every solicitor holding a practising certificate and, accordingly, from that date they applied to the Respondent.

8.6 The Respondent failed to comply with his obligation under Regulation 4 of the regulations in respect of that, for the practice years 2000/2001 and 2003/2004, he did not produce a record of his continuing professional development and related study to the Complainers. The Respondent sought and was granted an extension of time to the end of April 2005 to produce a record to the Complainers for the practice year 2003/2004.

8.7 The Complainers have a committee, known as the Competence Committee, which is dedicated to monitoring compliance with the regulations. The Complainers, through the Competence Committee, identified that the Respondent had not produced a record of his continuing professional development for these two practice years. They wrote to him in September 2001, in January,

February and September all in 2002, in September 2004 and in January, February, March and November all in 2005 reminding him of his requirement to comply with the regulations by producing the said record to them. Apart from a letter sent by him in February 2005 the Respondent failed to respond to any of this correspondence. He wrote to the Complainers on 7th March 2005 requesting the aforementioned extension of time (which in the event he did not avail himself of). On 15th November 2002, 16th August 2005 and on 6th March 2006 the Complainers wrote to the Respondent telling him that the Competence Committee viewed his failure to comply with his obligation to submit a record of his continuing professional development as being unsatisfactory conduct. Notwithstanding the terms of this last mentioned correspondence the Respondent continued to fail to communicate with the Complainers in connection with this issue of non-compliance.

9. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
 - 9.1 His failure to comply with his obligation under the regulations to produce a record of his continuing professional development to the Law Society in respect of practice years 2000/2001 and 2003/2004.
 - 9.2 His failure to reply to correspondence sent to him by the Law Society in connection with his obligation to comply with the regulations.
 - 9.3 His failure to reply to the reasonable requests of the Law Society for information in consequence of which the Law Society were seriously inconvenienced in their investigation of the complaints made to them by Mrs A, Mr B and Mr C.
 - 9.4 His failure to return a substantial number of telephone calls made to him by his client Mr C.

10. Having heard the Solicitor for the Respondent in mitigation and having noted two previous findings of professional misconduct, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14th June 2007. The Tribunal having considered the Complaints dated 28th and 29th March 2007 at the instance of the Council of the Law Society of Scotland against William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his failure to comply with his obligation in terms of the Solicitors (Scotland) (Continuing Professional Development) Regulations 1993 by failing to submit a record for the practice years 2000/2001 and 2003/2004 and his failure to reply to correspondence sent to him by the Law Society in connection with his failure to comply with his obligations in terms of the regulations, his failure to reply to the reasonable enquiries of the Law Society in respect of three clients and his failure to return a substantial number of telephone calls made to him by one client; Censure the Respondent; Fine him in the sum of £2500 to be forfeit to Her Majesty; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to and to being supervised by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Law Society of Scotland and that for an aggregate period of at least three years from 1st September 2007 and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; 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)

Alistair M Cockburn

Chairman

11. 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

Joint Minutes were lodged admitting the facts, averments of duty and averments of professional misconduct in both Complaints. It was accordingly not necessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir moved to amend the numbering on page 4 of the Complaint dated 29th March 2007. There was no objection to this and it was agreed. Mr Muir referred the Tribunal to the two previous sets of Findings against the Respondent dated 27th September 2006 and 16th November 2006. Mr Muir advised the Tribunal that the Tribunal's Interlocutor of 16th November 2006 was presently subject to an appeal to the Inner House of the Court of Session and a hearing had been arranged for 28th June 2007. Mr Muir stated that the facts spoke for themselves in the two Complaints. In connection with the Complaint dated 29th March 2007 the Respondent had failed to produce a record of his continuing professional development for the practice years 2000/2001 and 2003/2004. In connection with the Complaint dated 28th March 2007 there had been three separate failures to co-operate with the Law Society. Mr Muir referred to the psychiatric report which was before the Tribunal and advised that the Tribunal had seen this report when dealing with the previous cases.

SUBMISSIONS FOR THE RESPONDENT

Mr McLeod advised the Tribunal that the Respondent was to be abandoning his appeal to the Court of Session in respect of the Tribunal's Interlocutor of 16th November 2006. The effect of this would be that the restriction imposed by the Tribunal on 16th November 2006 would come into effect. Mr McLeod explained that he would be having discussions with the Law Society to try and reach an agreement with regard to delaying the restriction coming into force for a period to allow the Respondent to dispose of his practice. Mr McLeod explained that the Respondent was presently in negotiations with another firm whereby he would work under supervision for the three year period of the restriction. Mr McLeod referred to the

Complaint dated 28th March 2007 and submitted that it involved three clients and that letters were sent on 15th November 2005, 12th December 2005, 4th January 2006, 9th December 2005, 6th January 2006, 6th February 2006 and 5th July 2006 and also 12th July 2006, 7th August 2006 and 31st August 2006. There were also phone calls between November 2005 and July 2006. Mr McLeod submitted that some of the letters sent concerned the requirement by the Respondent to give intimation of his intention to apply for a practising certificate. In connection with the client Mr B, Mr McLeod confirmed that the compensation in respect of the inadequate professional service finding had been paid. In connection with the client Mr C, Mr McLeod indicated that a sum had been agreed and this would be paid by the Respondent. In connection with the Complaint dated 29th March 2007, Mr McLeod pointed out that the Respondent only failed to keep a record of his CPD hours but this did not mean that he had not actually undertaken his CPD. Mr McLeod submitted that the failures to respond in the Complaint of 28th March 2007 were caused by the same difficulties that the Respondent was experiencing in connection with the historic Complaints. Mr McLeod submitted that the episodes of non response could be divided into two stages being winter 2005 to spring 2006 and summer 2006. Mr McLeod took the Tribunal through the psychiatric report on the Respondent. He submitted that the Respondent was suffering from depression during the period when the matters giving rise to both the historical Complaints and the Complaints before the Tribunal today arose. Mr McLeod pointed out that the nature of the depression was that it was recurrent and he submitted that the Respondent had a relapse following the termination of his contact with the cognitive behavioural therapist. Mr McLeod pointed out to the Tribunal that depression was debilitating and that the Respondent had to cope with this and also the historic Complaints which were going through the Tribunal process at this time. [Mr McLeod explained that the Respondent was genetically predisposed to depression]. Mr McLeod advised the Tribunal that although the Respondent had been advised of his rights to raise various procedural points, the Respondent had decided that he did not wish to take advantage of any technical points before the Tribunal. Mr McLeod referred to the case of Bolton-v-The Law Society 1994 Weekly Law Reports page 512 and stated that the Tribunal required to be sure that the offender had no opportunity to repeat the offences. Mr McLeod pointed out that the Respondent had effectively been suspended as he already had a restriction on his practising certificate which would make him meticulous with regard to his future standards. Mr McLeod emphasised

that the Respondent had managed for 14 years in practice without any difficulty. He submitted that the Respondent acknowledged that he had a loss of control. Mr McLeod suggested that the restriction and fine already imposed were sufficient to address the Respondent's conduct and asked the Tribunal to consider what disposal it would have made had all the Complaints been before the Tribunal at one time. Mr McLeod submitted that the public interest was already addressed by the restriction which was in place. In connection with the staffing situation, Mr McLeod explained that it was not reasonable to expect the Respondent to take on more staff when he knew that he might have a restriction on his practising certificate. Mr McLeod asked the Tribunal to deal with the matter proportionately. In response to a question from the Tribunal, Mr McLeod stated that he was prepared to give an undertaking that the appeal in respect of the Interlocutor of the Tribunal of 16th November 2006 would be abandoned. In response to another question from the Tribunal Mr McLeod stated that there was no psychiatrists report since the report dated 24th May 2006. In response to another question, Mr McLeod stated that the Respondent anticipated that there would be staff redundancies but he would continue to work until the new entity was up and running. Mr McLeod accepted that the Respondent would have to rely on the consent of the Law Society to agree to a delay in the start date of the restriction already imposed by the Tribunal.

DECISION

The Tribunal was extremely concerned that the Respondent appeared to have done nothing with regard to taking on extra staff or taking any concrete steps to amalgamate his practice or make arrangements for the disposal of his business. The Tribunal was also very concerned that the restriction, which was imposed by the Tribunal on 16th November 2006, to run from April 2007, was still not in place and meanwhile the Respondent had continued to practice without having taken steps to address the problems by taking on extra staff as suggested by the Tribunal in its previous findings. The Tribunal does not think it appropriate for the decision of the previous Tribunal to be delayed any further given this background.

In respect of the cases before it today, the Tribunal did not consider that they were serious enough to consider a suspension or a strike off. The Tribunal noted that the public was already protected by the existing restriction of three years, imposed by the

Tribunal in November 2006. The Tribunal however considered it imperative that the Respondent work under supervision during his period of restriction and accordingly deemed it appropriate to impose an aggregate period of three years restriction on his practising certificate. The Tribunal also noted that the Respondent had a pre disposition to suffering from depression and that his depressive illness could recur. The Tribunal accordingly will require the Respondent, at the end of the three year aggregate period of restriction, to satisfy the Tribunal that his health has improved sufficiently for him to be competent to practice again as a sole practitioner. The Tribunal will expect the Respondent to produce an up to date psychiatric report showing that he has fully recovered and that he is fit to practice without supervision. The Tribunal considered that the conduct in these Complaints was further evidence of the Respondent's inability to deal with reasonable enquiries from clients and his professional body. The Tribunal was concerned that since November 2006 the Respondent had continued to practice in similar circumstances and there was no up to date information with regard to his medical condition. The Tribunal considered that a fine of £2500, in addition to the restriction, was appropriate given the further failures to respond coupled with his failure to complete a record of his CPD in two different practice years. The Tribunal made the usual order with regard to publicity and expenses.

Chairman