

**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

**MARK JOHN STALKER,
Solicitor, Flat 1C Nicolson Court,
36 Nicolson Street, Greenock.**

1. A Complaint dated 6 April 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Mark John Stalker, Solicitor, Flat 1C Nicolson Court, 36 Nicolson Street, Greenock (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 14 June 2006 and notice thereof was duly served on the Respondent.

4. The hearing took place on 14 June 2006. The Complainers were represented by their Fiscal Valerie Johnston, Solicitor, Dunfermline. The Respondent was present and represented by Iain Ferguson, Solicitor, Glasgow.

5. A Joint Minute was lodged admitting the facts and averments of duty and averments of professional misconduct in the Complaint. No evidence was led.

6. The Tribunal found the following facts established
 1. The Respondent is a Solicitor enrolled in Scotland. He was born on 25th May 1969. He was admitted as a Solicitor on 10th September 1993 and enrolled in the Roll of Solicitors for Scotland on 13th September 1993. He is not currently employed as a Solicitor. He was formerly an Assistant in the firm of Lyons, Laing & Co, Moore & Partners, Maitlands and Marie A Land & Co. He was employed in the latter firm between 21st May 2001 and 24th April 2003. Thereafter he was employed by Boyd Crate Anderson Solicitors from August 2003 to July 2004 when the firm closed.

 2. Mr A
In or about May 1994 Mr A, of Property 1 instructed Messrs Maitlands Solicitors in a Medical Negligence Claim against Argyll & Clyde Health Board. The Respondent assumed responsibility for the matter in about 1996 and took the file with him when he joined Marie A Land Solicitors on 21st May 2001. A court action had been raised but in July 1997 and again in

1999 legal aid was refused. The Respondent well knew that Mr A wished to progress his claim and was at no time prepared to abandon it.

3. In 1999 Mr A paid for Counsel's opinion which was obtained by the Respondent. Counsel called for further investigations including a Medical Report from a consultant orthopaedic surgeon and details of the standard procedures and common practices relating to surgical equipment followed by Health Boards at the material time. The Respondent discussed this with Mr A on 12th May 1999. He advised him that he would take advice from various Health Boards etc in that regard and get back to him. He failed to make any such enquiries. The Respondent himself and the firm of Marie A Land Solicitors were found liable for expenses in the action on two occasions. Mr A was unaware of this and was not kept informed of the progress of his action. A debate was scheduled for 30th January 2003. On 29th January 2003 the Respondent contacted the solicitors acting for the Health Board and advised them that Mr A did not want to go ahead with the case and was happy for the action to be dismissed with expenses against him. He had not consulted with Mr A on this matter and had no instructions to agree to the course of action proposed. On 30th January 2003 the defenders were assoilzied with expenses against Mr A.

4. THE LAW SOCIETY OF SCOTLAND – MR A
By letter 9th January 2005 Mr A invoked the aid of the Complainers in connection with his representation by the Respondent while at the firm of Marie A Land & Co, Solicitors. By 21st February 2005 it was established that the matter had to proceed as a complaint. The

Complainers wrote to the Respondent on 4th March 2005 intimating the nature of the complaint, requiring his written response, any background information and his business file within 21 days. He did not reply.

5. On 7th April 2005, Notice were served upon him under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 by recorded delivery. The recorded delivery letter was returned not called for and re-issued by ordinary post on 18th May. He did not respond. The second part of the Section 15(2) Notice was served on him both by recorded delivery and ordinary post on 13th June 2005. In spite of those Notices, no response was received from him and by letter dated 23rd June 2005, he was advised that the matter would now proceed with an additional issue regarding his failure to reply. He did not reply and was advised that the matter would proceed to a report and on 20th July that the report had been allocated to a Reporter. On 22nd September 2005, he was sent a copy of the Report and invited to make any representations by 7th October 2005. He made no representations.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- (a) His misleading his client Mr A by telling him on 12th May 1999 that he was seeking information regarding surgical procedures for exploratory operations from other hospitals when he was in fact making no such enquiries and his continuing to make no such enquiries up to the date of conclusion of the proceedings on 30th January 2003.

- (b) His failure between 12th May 1999 and 30th January 2003 in his representation of his client Mr A by his failure to keep Mr A adequately informed about the progress of his action and his agreeing on 29th January 2003 to the Court action against Argyll & Clyde Health Board being dismissed and the defenders assoilized with expenses against Mr A without Mr A's knowledge and without his instructions.
- (c) His failure between 4th March 2005 and 7th October 2005, to respond to the reasonable enquiries of the Complainers regarding the complaint of Mr A or to comply with Notices served upon him.

8. Having heard the Solicitor for the Respondent in mitigation and having noted a previous Finding of professional misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14 June 2006. The Tribunal having considered the Complaint dated 6 April 2006 at the instance of the Council of the Law Society of Scotland against Mark John Stalker, Solicitor, Flat 1C Nicolson Court, 36 Nicolson Street, Greenock; Find the Respondent guilty of Professional Misconduct in respect of his misleading his client by advising him that he was seeking information from other hospitals when he was in fact making no such enquiries and his continuing to make no such enquiries up to the conclusion of the proceedings on 30 January 2003; his failure between 12 May 1999 and 30 January 2003 in his representation of his client by his failure to keep his client adequately informed of the progress of his court action and his agreeing to the court action against Argyle & Clyde Health Board being dismissed and the defenders assoilized with expenses against his client without his client's knowledge or instructions and his failure between 4 March 2005 and 7 October 2005 to respond to the reasonable enquiries of the Law Society or comply with the notices

served upon him; 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 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)

Kenneth R 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 Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

A Joint Minute was lodged in which the facts and averments of duty and averments of professional misconduct in the Complaint were admitted. There was accordingly no requirement for the leading of evidence.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston stated that the Respondent had co-operated and entered into a Joint Minute. She lodged previous Findings of professional misconduct with the Tribunal and explained that it had not been possible to have all the matters dealt with at the same time as the procedures in connection with these matters had not been finalised when the other matters were dealt with by the Tribunal in November 2005. Ms Johnston however confirmed that the matters in this Complaint related to the same time period. In connection with Mr A, the Respondent had been dealing with this matter when he was at Maitlands and the case went with him when he moved to Marie Land, Solicitors. He was having personal and professional difficulties at this time but he allowed the action against his client to be dismissed and the defenders were assoilzied with expenses against Mr A. The Respondent also failed to respond to eight letters including notices sent by the Law Society over a period of seven months.

SUBMISSIONS FOR THE RESPONDENT

Mr Ferguson emphasised that the Respondent had co-operated with the Law Society and not wasted any time. In November 2005 the Complaint by Mr A was known about but matters were not advanced enough to be able to be included with the other matters dealt with on 23 November 2005. Mr Ferguson submitted that if this matter had been before the Tribunal at that time it would not have resulted in any increase in the penalty. Mr Ferguson referred the Tribunal to production 1, being his client's statement and submitted that his client had been honest and open with regard to what had happened. Mr Ferguson explained that the Respondent was inexperienced and when he worked with Maitlands, he was expected to take on responsibility for all the court work. The working conditions were disorganised and when the Respondent moved to Marie Land he had no typing support. He was also undergoing family

problems at the time and he was not coping with his work pressures. Mr Ferguson also referred the Tribunal to production 2, being a psychiatrist's report stating that the Respondent had been suffering from anxiety and depression but had no insight into this at the time. Mr Ferguson also referred the Tribunal to numerous references lodged on behalf of the Respondent indicating that he was conscientious, loyal, honest, competent, reliable and hard working. Mr Ferguson stated that the matters which arose at the time were due to an unfortunate combination of circumstances. The Respondent had now sorted his life out. He had worked at Boyd Napier for a year after his time at Marie Land Solicitors and there had been no problems. This showed that he was now capable of being trusted.

DECISION

The Tribunal noted that the matters in this Complaint arose during the same timescale as those which had already been dealt with by the Tribunal in November 2005. The Tribunal were concerned that the Respondent had not kept his client informed and not dealt properly with the court action on behalf of his client. He had also failed to respond to the Law Society, which brings the profession into disrepute. The Tribunal however noted that the public was already protected by the 5 year aggregate restriction imposed by the Tribunal in November 2005 and the Tribunal saw no purpose in extending this Restriction or imposing any penalty other than a Censure. The Respondent will also have to pay the expenses of these proceedings. The Tribunal made the usual order with regard to publicity.

Vice Chairman