

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND**

against

**MICHAEL GORDON ROBSON,
Solicitor, The Old School House, 2
Baird Road, Ratho**

1. A Complaint dated 14th June 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Michael Gordon Robson, Solicitor, The Old School House, 2 Baird Road, Ratho (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.
3. The Complaint was sisted on Joint Motion until after the outcome of an appeal in connection with previous Tribunal Findings which were ongoing at the Court of Session.

4. On 16th December 2004 the sist was recalled and a further 8 weeks was allowed for the lodging of Answers. No Answers were lodged.
5. In terms of its Rules the Tribunal appointed the Complaint to be heard on 23rd March 2005 and notice thereof was duly served on the Respondent.
6. When the case called on 23rd March 2005, the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. On the morning of the Tribunal a written motion for an adjournment was received from the Respondent. This motion was refused and the case proceeded.
7. The Complainers led the evidence of one witness and the affidavit evidence of another witness. The Tribunal found the following facts established:

7.1 The Respondent's date of birth is 8th October 1952. He was admitted as a solicitor on 8th December 1975. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 8th December 1975. Throughout his professional career he was employed by a number of different Solicitors firms until on or about 3rd August 1998 when on that date he commenced practice as a sole practitioner trading as the firm Robsons, WS, SSC, of The Old School House, 2 Baird Road, Ratho. Since 7th November 2001 the Respondent has not practiced as a solicitor and has remained outwith the profession.

7.2 Mr A (Deceased)

Mr A was a former client of the Respondent. He died on 20th February 1999. The Respondent was appointed as responsible for the administration of his Estate. In terms of a Will left by the said Mr A, the Respondent was appointed as Executor along with Mr B of Property 1 and Ms C of Property 2. Having been appointed as Executor the Respondent proceeded to administer the Estate. In or about late July 1999 the Respondent made contact with the said Mr B to discuss with him payment of his professional charges. The Respondent advised the said Mr B that his professional practice was approaching its financial year end and for the purposes of the firm accounts it would be beneficial if the Respondent could credit his professional account with a sum to reflect the amount of work which he had carried out to date in connection with the administration of the estate. There then followed a discussion between the Respondent and the said Mr B regarding the level of professional charges of the Respondent. The Respondent indicated to Mr B that he wished to agree a fixed fee of £4,000 plus VAT to complete all work associated with the administration of the estate. At the time of this suggestion, the Respondent further indicated to Mr B that as at the date of their telephone conversation he had completed 75% of the anticipated work and he accordingly sought the consent of Mr B to credit his firm with the sum of £3,000 plus VAT in respect of professional charges from the executory account. Mr B required to discuss matters with his co-executor, his sister the said Ms C. They discussed the proposal and agreed with the suggestion of the Respondent that his fee should be fixed at a level of £4,000 plus VAT to complete the administration of the

estate. Following that discussion Mr B thereafter sent an e-mail to the Respondent on 30th July 1999 in terms of which the following was stated.

“Following our telephone conversation, I spoke to Ms C about your suggestion of a fixed fee of £4,000 plus VAT to complete all of the work associated with the execution of Mr A’s Will. We are quite happy with that figure and that you have probably completed about 75% to date. You can allocate £3,000 plus VAT to your current year’s accounts.”

7.3 Mr B repeatedly attempted to make enquiry of the Respondent concerning the winding up of the estate. The Respondent failed to communicate with Mr B. Eventually as a result of his silence the co-executors dismissed the Respondent from completing the administration of the estate and thereafter sought to appoint an alternative firm of solicitors to finalise matters. In the course of reviewing the paperwork produced by the Respondent to that alternative firm, a Statement of Account of the financial intrusions of the Respondent was obtained. In terms of the Statement of Account it revealed that on 2nd August 1999 fees for the Respondent, which were agreed, totalling £3,000 plus VAT had been deducted from the executry account. However, the Statement of Account disclosed a further entry on 4th January 2001, where further fees to the Respondent amounting to £2,820 had been deducted from the executry account without the consent of the co-executors and without the Respondent intimating a fee note. The total fees deducted from the executry account by the Respondent amounted in total

to £6,345 which level of fees were well in excess of the agreed level of £4,000.

7.4 Failure to Respond to the Law Society

By letter dated 3rd December 2002 the said Mr B of Property 1 invoked the aid of the Complainers regarding the manner in which the Respondent had dealt with the estate of the late Mr A. The complaint alleged the Respondent had failed to progress satisfactorily the administration of the estate, that the Respondent had failed to keep Mr B advised of progress in relation to the administration of the Estate and that the Respondent had taken fees to account without explanation or intimation of a fee note, which fees were well in excess of an agreed level of fee. The Complainers obtained from Mr B sufficient information to allow them to formulate the extent of a complaint. This complaint was intimated by recorded delivery and by ordinary post on the Respondent on 19th March 2003. No reply was received. A number of reminders were intimated to which there was no response by the Respondent. As a consequence Statutory Notices in terms of Section 15(2)(i)(i) and 42C of the Solicitors (Scotland) Act 1980 were intimated by recorded delivery upon the Respondent. Again, there was no reply by the Respondent. As a consequence of the Respondent's failure to reply the complaints remained outstanding.

8. Having considered the foregoing circumstances and the submissions from the Complainers, and the various letters from the Respondent, the Tribunal found the Respondent guilty of professional misconduct in respect of:

- (a) His breach of Rule 6(1)(d) of the Solicitors (Scotland) Accounts Rules 1997
- (b) His acting in a dishonest fashion in that having reached an agreement with a co-executor in relation to the level of the fee that he intended to charge regarding the administration of an estate, he ignored the agreement which was reached and chose to charge a fee which was well in excess of that which he undertook to charge, which fee he took to account from executry funds without intimating a fee note to the executors.
- (c) His failure to reply timeously, openly and accurately to the reasonable enquiries made of him by the Complainers concerning the administration of the estate.

9. Having noted previous Findings of professional misconduct for analogous matters, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23rd March 2005. The Tribunal having considered the Complaint dated 14th June 2004 at the instance of the Council of the Law Society of Scotland against Michael Gordon Robson, Solicitor, The Old School House, 2 Baird Road, Ratho; Find the Respondent guilty of professional misconduct in respect of his breach of Rule 6(1)(d) of the Solicitors (Scotland) Accounts Rules 1997, his acting dishonestly by charging a fee well in excess of that which he had agreed with the co-executor which fee he took to account from executry funds without intimating a fee note to the executors and his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society; Order that the name of the Respondent, Michael Gordon Robson be Struck Off the Roll of Solicitors in Scotland; 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 Law Society's Table

of Fees for general business; and Direct that publicity, to include the name of the Respondent, will be given to this decision.

(signed) Alistair Cockburn
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

The Complaint had been sisted on Joint Motion until the outcome of an appeal to the Court of Session in respect of a previous finding of the Tribunal against the Respondent. The Court of Session decision was issued in November 2004 and this Complaint called before the Tribunal on 16th December 2004 when the Complainers moved that the sist be recalled. The Respondent asked that the sist remain in place because he was to be appealing the Court of Session decision in the previous case to the European Court of Human Rights and he was not in good health. The Tribunal however agreed that the sist be recalled but allowed the Respondent eight weeks for the lodging of Answers. No Answers were lodged and the Tribunal appointed the Complaint to be set down for hearing on 23rd March 2005. When the case called on 23rd March 2005 the Respondent had still not lodged Answers and on the morning of the Tribunal sent in a written motion for an adjournment based on his health difficulties. The motion for an adjournment was accompanied by a soul and conscience certificate from his doctor stating that he was suffering from an avoidance strategy caused by his depression. There was however no suggestion in the doctor's letter that the Respondent was not physically able to attend the Tribunal hearing. The Fiscal for the Complainers moved that the Tribunal proceed to deal with the case and advised the Tribunal that he had spoken to the Respondent that morning and the Respondent had indicated that he had no intention of attending the Tribunal hearing.

The Tribunal took account of the fact that the allegations against the Respondent could affect his right to be a solicitor but the Tribunal had to weigh the interests of the Respondent against the public interest in having matters dealt with. The matters had been outstanding for some time and the Respondent had been given an unusually long period of eight weeks for lodging Answers which he had failed to comply with. The Respondent had left it until the day of the hearing to move for an adjournment and the Tribunal considered that he had been given enough latitude and that the matter should proceed. The Tribunal took account of the doctor's letter produced by the Respondent but this letter did not say that the Respondent was unfit to attend the Tribunal. The Tribunal was of the view that even if the case was adjourned it was unlikely that the Respondent would co-operate with the process. Although the Respondent had an avoidance strategy difficulty he was still clearly able to write letters and articulate a view and appeared to be able to work as a tennis coach. The Notice of Hearing sent

to the Respondent warned him that if he did not attend matters could proceed in his absence. The Tribunal accordingly refused the Respondent's motion to adjourn.

EVIDENCE FOR THE COMPLAINERS

The Complainers led evidence from Fiona Robb, Case Manager with the Law Society. Ms Robb stated that she had dealt with the Complaint by Mr B. Ms Robb referred to the productions being recorded delivery letters to the Respondent dated 19th March 2003 and 20th May 2003 and Statutory Notices sent on 12th June 2003 and a further letter to the Respondent on 29th January 2004. Ms Robb confirmed that the Respondent had not replied to any of these letters or notices. She indicated that this was frustrating and impeded the Law Society's ability to carry out their statutory function. Mr B was dismayed by the difficulties with the executry and the delays made this worse. Mr Reid then referred the Tribunal to the affidavit evidence from Mr B. Mr B stated in his affidavit that when his brother died a will was left appointing Mr B and his sister Ms C as Executors along with the Respondent. The Respondent attended to the legal formalities surrounding the administration of the estate. In July 1999 the Respondent telephoned Mr B to discuss payment of his professional services. Mr B states that it was agreed between the Respondent and himself that a fixed fee of £4,000 + VAT would be charged to complete all the work associated with the administration of Mr B's brother's estate. Mr B stated in his affidavit that the Respondent told him that he had completed 75% of the work and asked Mr B to agree that fees of £3,000 + VAT be taken in respect of professional charges. Mr B states that he contacted his sister, the co-executor and it was agreed and confirmed by email on 30 July 1999 that the fixed fee of £4,000 + VAT would be for all the work in connection with the executry and that £3,000 + VAT be allocated in the current year. Mr B stated that he was disappointed with the manner in which the Respondent dealt with his brother's estate and the time that it was taking to be finalized. He tried to contact the Respondent but he was unable to make any contact with him. Mr B stated that he then contacted his own solicitor who recovered the paperwork from the Respondent. Mr B stated that in the file there was a Statement of Account which showed the financial intrusions of the Respondent during the administration of the estate and revealed that on 2 August 1999 fees of £3,000 + VAT had been deducted from the executry account. Mr B then states that the Statement of Account also

disclosed a further entry on 4 January 2001 for further fees of £2,820 which had been deducted from the executry account. In total £6345 of fees had been deducted by the Respondent Mr B confirmed that he had not consented to this and had never been given a fee note in respect of these fees. Mr Reid invited the Tribunal to consider the affidavit from Mr B in its whole terms and produced the Statement of Account which he stated he wished to lodge as a production. Mr Reid asked the Tribunal to find professional misconduct established.

DECISION

The Tribunal found Ms Short to be a credible and reliable witness and she gave her evidence in a straightforward manner. It was clear that the Respondent had failed to respond to the Law Society in connection with the administration of the estate. The Tribunal allowed the amendment of the Complaint with regard to the name of the co-executor as this was not an amendment of substance and the Tribunal did not consider that it would cause any prejudice to the Respondent. It was clear from the affidavit evidence of Mr B that the Respondent had agreed a fee in respect of the executry, then gone on to charge a fee in excess of the agreed fee and had taken these fees to account without issuing a fee note to the executors. The Tribunal was satisfied beyond reasonable doubt that this was established from the affidavit evidence of Mr B and that this amounted to professional misconduct.

It is imperative if the public is to have confidence in the legal profession that solicitors act honestly at all times and in such a way as to put their personal integrity beyond question. In this case the Respondent deliberately acted in breach of an agreement with his client. His conduct is regrettably disgraceful and dishonourable and brings the profession into disrepute. The Respondent further took the fees to account without intimating a fee note to the executors in breach of Rule 6 of the Solicitors (Scotland) Accounts Rules 1997. The Tribunal has also made it clear on numerous occasions that failure to respond to the Law Society hampers the Law Society in the performance of their statutory duty and brings the profession into disrepute. The Tribunal was particularly concerned to note two previous Findings of professional misconduct against the Respondent where he had failed to respond to the Law Society. The Tribunal noted that the failures to respond to the Law Society in

this case arose in December 2002 which was after the Tribunal findings issued on 8th October 2002 when the Tribunal had taken a very serious view of the Respondent's failure to respond to the Law Society and failure to comply with previous undertakings given on his behalf to the Tribunal that he would comply in future. Even after two previous Findings against the Respondent he still failed to respond to the Law Society. This taken together with the Respondent's acting in a dishonest fashion in charging fees in excess of that agreed with his client brings the Tribunal to conclude that the Respondent is not a fit and proper person to remain on the Roll of Solicitors in Scotland. The Tribunal made the usual order with regard to expenses and publicity.

Vice Chairman