

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, 26
Drumsheugh Gardens, Edinburgh**

against

**TACO FRANK NOLF, Solicitor, 34c
Marischal Street, Aberdeen**

1. A Complaint dated 22 July 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Taco Frank Nolf, Solicitor, 34c Marischal Street, Aberdeen (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 18 September 2008 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 18 September 2008, the Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was not present or represented.

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

6. The Tribunal found the following facts established: -
 - 6.1 The Respondent was born on 14 July 1948. He was admitted as a Solicitor on 19 September 1996 and was enrolled as a solicitor on 20 September 1996. He is at present the sole principal of the firm of Nolf & Co which has a place of business at 34c Marischal Street, Aberdeen.

The Law Society of Scotland

- 6.2 By letter dated 12 December 2007 Faculty Services Limited wrote to the Complainers. In this letter they intimated concerns about the Respondent's failure to answer correspondence in relation to the late settlement of fees due to Counsel. The Complainers thereupon embarked upon their usual process of communication by writing to the Respondent in connection with the issues which had given rise to the Complaint. By letter dated 18 December 2007 they wrote to him requesting his comments anent these concerns. He did not respond to this letter and, accordingly, they wrote to him on 8 January 2008 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 1 February 2008, the Complainers wrote to him giving him, firstly, notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 as amended (hereinafter referred to as "the Act") seeking his response as well as an explanation for his failure to respond within 14 days

from that date and, secondly, 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 dated 18 February 2008, 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 six weeks notice of his intention to make application to take out a Practising Certificate for the year 1 November 2008. The Respondent did not respond to this letter either.

7. Having considered the foregoing circumstances and having heard submissions on behalf of the Complainers and the Respondent, the Tribunal found the Respondent guilty of professional misconduct *in cumulo* in respect of his failure to respond to the reasonable enquiries made of him by the Law Society and to statutory notices served on him by the Law Society.
8. Having heard a statement in mitigation on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms: -

Edinburgh 18 September 2008. The Tribunal having considered the Complaint dated 22 July 2008 at the instance of the Council of the Law Society of Scotland against Taco Frank Nolf, Solicitor, 34c Marischal Street, Aberdeen, Find the Respondent guilty of professional misconduct *in cumulo* in respect of his failure to respond to reasonable enquiries made of him by the Law Society and to statutory notices served on him by 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 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 £14.00; and

Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

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

Chairman

NOTE

The Respondent was not present or represented at the hearing. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. Accordingly there was no need for evidence to be led.

The Tribunal noted that the Tribunal's Clerk had received a letter from the Respondent advising that he was not able to attend the Tribunal due to court commitments.

Mr Muir indicated that Mr Nolf had asked him to make a statement in mitigation on his behalf.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir acknowledged Mr Nolf's co-operation in this matter by entering into a Joint Minute which has meant that no evidence required to be led. Mr Muir stated that this was a very straightforward case and that he had no comments to make on the facts of the matter. Mr Muir moved for expenses on the usual basis.

SUBMISSIONS FOR THE RESPONDENT

Mr Muir made the following statement on behalf of the Respondent. Mr Muir indicated that the Respondent had advised him that the background to the Complaint involved the Respondent reluctantly taking over agency for another solicitor in a criminal case involving the defence to a deportation order which was heard before the Criminal Appeal Court. At the end of the proceedings the Respondent required to draft a detailed fee note in relation to the extensive file relating to that case. The Respondent advised Mr Muir that he had been suffering from various health difficulties which affected his energy levels for the last 5-10 years. The Respondent had advised Mr Muir that he was simply too ill to fee the file up and as a consequence he lost a considerable sum of money. The Respondent had advised that Faculty Services were pressurising him to prepare the fee

note and he was not in a position to do that. The Respondent owed a substantial amount of council tax and an arrestment was executed in the hands of the Scottish Legal Aid Board. As a result the Respondent suggested to Faculty Services that they should bill the Scottish Legal Aid Board direct. They refused to do that and made a Complaint to the Law Society. The Respondent advised Mr Muir that the Complaint to the Law Society was ultimately rejected by the Reporter. However, the Respondent accepts that he should have responded to the Law Society.

In response to a question from the Tribunal Mr Muir advised that he had not seen any medical evidence in this case and had only obtained details of the plea in mitigation by telephone.

In response to a question by the Tribunal as to how much money was involved, Mr Muir indicated that this information was not known to him. However, he commented that the Respondent advised him that his earnings from his practice are extremely limited as he doesn't have the energy to run his business in the most effective manner.

Mr Muir advised that the Respondent has no previous experience of the Tribunal and that he had explained to him that the likely outcome was a Censure and a fine or a Censure and, if the Tribunal was considering a different sanction, that Mr Muir would request that the matter be continued.

Mr Muir advised that the Respondent asked him to make a motion that there should be no order for publicity made in this case as the public interest was not affected by his failures.

DECISION

The Tribunal had regard to the submissions made and took into account that the Respondent had acknowledged that his failures amounted to professional misconduct and had entered into a Joint Minute which meant that no evidence required to be led. The Tribunal considers that the Respondent was well aware that the Law Society has a duty to

investigate any Complaint, from any source, regarding the conduct of a solicitor and that solicitors have a duty to respond to enquiries made by the Law Society in this regard. Failure to respond to the Law Society prevents them from properly investigating Complaints and can bring the whole profession into disrepute. Accordingly, the Tribunal does not accept that the public interest was not affected by the Respondent's failures. For these reasons the Tribunal views the Respondent's failures to respond to the Law Society, in these circumstances, as serious and reprehensible and considers that his failures amount to professional misconduct in cumulo.

However, the Tribunal took into account the Respondent's previously unblemished record and the fact that these failures, over a relatively short period of time, were at the lower end of the scale of professional misconduct. Accordingly, the Tribunal consider that the appropriate sanction is that of a Censure. In imposing this sanction the Tribunal caution the Respondent that regardless of his illness, the next time he is in receipt of correspondence from his professional body he should deal with it timeously or the consequences will be more severe. In relation to the motion regarding publicity, the Tribunal considers that no grounds have been made out in terms of paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 which would allow the Tribunal to consider refraining from making the usual order for publicity. Accordingly the Tribunal made the usual order with regard to expenses and publicity.

Chairman