

**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**

**JAMES McRAE, Solicitor,  
formerly at 35 Hawkcraig Road,  
Aberdour, Burntisland, Fife now at  
PO Box 14333 Burntisland, Fife,  
KY3 0WT**

1. A Complaint dated 19 December 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, James McRae, Solicitor, formerly at 35 Hawkcraig Road, Aberdour, Burntisland Fife, now at PO Box 14333 Burntisland, Fife, KY3 0WT (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 24 April 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 24 April 2008. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The

Respondent was present and represented by his solicitor, David Clapham, Glasgow.

5. The Respondent pled guilty to the Complaint as amended. It was accordingly not necessary for any evidence to be led.
6. The Tribunal found the following facts established

7.1 The Respondent was born on 22 May 1942. He was admitted as a Solicitor in Scotland on 5th and enrolled on 8<sup>th</sup> both of February 1993. He formerly carried on business as McRae WS Legal Services at 183 High Street, Burntisland, Fife. He was thereafter employed by Messrs Thorntons, WS, Dundee. He resides at 35 Hawkcraig Road, Aberdour, Burntisland, Fife. The Respondent practices from PO Box 14333 Burntisland, Fife, KY3 0WT dealing with court martial cases and related work.

7.2 **Mr A**

Mr. A instructed the Respondent to deal with a medical negligence claim on his behalf. Having become dissatisfied, he invoked the assistance of the complainers. The complainers adjusted a list of issues with Mr. A. On 16 June 2006 the complainers wrote to the Respondent intimating the complaint of Mr. A along with a copy of the list of issues. The letter intimating the complaint required that the Respondent provide a response to the complaint, the file maintained by him in respect of the subject matter, and information about fees and outlays charged to Mr. A, all within twenty one days of 16 June 2006. The Respondent did not reply.

7.3 On 13 July 2006 the complainers served upon the Respondent notices in terms of sections 15 and 42C of The Solicitors (Scotland) Act 1980. The notices required the Respondent to provide the response previously requested, together with an

explanation for the delay, within fourteen days of 13 July 2006, together with production within twenty one days of that date of all papers relating to Mr. A's medical negligence claim so far as in the possession or control of the Respondent. The Respondent did not reply.

- 7.4 On 9 August 2006 the complainers served upon the Respondent the second part of a notice under section 15 of the 1980 Act. The Respondent did not reply.
- 7.5 On 28 October 2006 the Respondent wrote to the complainers a letter in which he stated "...I...am sorry that this matter has become so difficult...you are aware of my present circumstances and I have no doubt that the difficulties have occurred due to my having overlooked to send the appropriate file which I have now retrieved and enclose herewith with my apologies."
- 7.6 On or shortly after 6 September 2006 Messrs. Brodies WS who were then instructed by Mr. A wrote to the Respondent with a mandate signed by Mr. A requesting that the Respondent forward Mr. A's file to them. The Respondent did not reply. He did not implement the mandate. Messrs. Brodies WS accordingly invoked the assistance of the complainers.
- 7.7 On 15 January 2007 the complainers intimated fresh complaints to the Respondent in respect of failure to implement the mandate condescended upon and the failure to obtemper the statutory notices condescended upon. The Respondent was required to provide a response to the complaints within fourteen days of 15 January.
- 7.8 On 27 January 2007 the Respondent acknowledged the new complaints and stated that he was surprised and alarmed. He

pointed out that he had forwarded the client's files in October 2006. He did not address the heads of complaint.

7.9 On 12 February 2007 the complainers wrote to the Respondent and reminded him that a response was required to the new matters, particularly the failure to implement the mandate. A response was requested within fourteen days. The Respondent did not reply.

7.10 The Respondent wrote to the complainers on 10 March 2007 saying that he did not know what further response he could make.

7.11 **Mr B**

Mr. B invoked the assistance of the complainers in relation to a reparation action in which he had instructed the respondent which the respondent had allowed to become time barred. The complaint was intimated to the respondent by the complainers' letter of 16 August 2006. The letter required the respondent to furnish to the complainers with a written response to the complaint, the file relating to the case, and details of fees and outlays charged, all within twenty one days of 16 August 2006. The respondent did not reply.

7.12 On 21 September 2006 the complainers served upon the Respondent a notice in terms of section 15 of the Solicitors (Scotland) Act 1980. The notice required a response as previously requested, together with an explanation for the delay, within fourteen days of that date. On the same date the complainers served upon the Respondent a notice in terms of section 42C of the 1980 Act requiring production to them of all documents relating to Mr. B in the possession or control of the Respondent within twenty one days of that date.

- 7.13 On 6 October 2006 the Respondent wrote to the complainers advising that he had received a mandate from other solicitors in respect of Mr. B's file. He asked for advice as to what he should do. He did not provide a response to the complaint.
- 7.14 On 13 October 2006 the complainers wrote to the Respondent advising that he should implement the mandate on the basis that the new solicitors could pass the file to the complainers in due course.
- 7.15 On 23 October 2006 the complainers wrote to the Respondent pointing out that they still did not have his response to the complaint and requesting that this now be forwarded within fourteen days. The Respondent did not reply.
- 7.16 In the absence of a reply to their letter of 23 October 2006 the complainers again wrote to the Respondent on 17 November 2006. On this occasion they required a response within seven days. None was received.
- 7.17 On 30 November 2006 the complainers served the second part of a notice under section 15 of the 1980 Act upon the Respondent.
- 7.18 On 4 December 2006 the Respondent wrote to the complainers. He stated that Mr. B's files had been misplaced but that they had now been located and passed to Mr. B's new agents. He did not respond to the complaint.
- 7.19 By letter dated 20 December 2006 the complainers again requested a response to the complaint. None was forthcoming.
- 7.20 On 24 January 2007 the complainers intimated to the Respondent a complaint *ex proprio motu* in respect of the

failure to respond to correspondence relating to Mr. B's complaint.

- 7.21 Copies of the file held by the Respondent in connection with Mr. B's case were made available to the complainers by Mr. B's new agents.
- 7.22 On 4 August 2006 those agents, Messrs. A W & M Urquhart, forwarded a mandate to the Respondent requesting delivery of the file relating to Mr. B. The Respondent did not acknowledge the mandate nor did he implement it.
- 7.23 On five subsequent occasions (28 August, 12 and 20 September, 24 October and 24 November, all 2006) the new agents sent reminders to the Respondent in relation to the mandate. The Respondent did not reply to these. The agents accordingly invoked the assistance of the complainers.
- 7.24 A complaint concerning the failure to implement the mandate was intimated to the Respondent on 22 January 2007. The letter intimating the complaint required the Respondent to provide a response to the complaint and produce his file within twenty one days of that date. The Respondent did not reply. (In the meantime by letter dated 7 December 2006 the new agents had advised the complainers that the file had been forwarded to them.)
- 7.25 On 22 February 2007 the complainers served upon the Respondent a notice under section 42C of the 1980 Act requiring production of all papers and other documents within the possession or control of the Respondent relating to correspondence with A & W M Urquhart concerning Mr. B within fourteen days of that date. The Respondent did not reply.

7.26 On 12 March 2007 the complainers served a notice under section 15 of the 1980 Act on the Respondent in respect of his failure to comply with the notice of 22 February 2007. On 15 March 2007 the Respondent wrote to the complainers. The terms of the letter are more fully set out at para. 7.35 below. In relation to Mr. B the Respondent stated that he had passed his papers to the new agents.

7.27 **Mr C**

On 27 July 2006 Mr C invoked the assistance of the complainers in connection with a reparation action in which he had instructed the Respondent which the Respondent had allowed to become time barred. The complainers adjusted a list of issues which was agreed with Mr. C. On 11 October 2006 the complainers wrote to the Respondent. They enclosed a copy of the list of issues. They required the Respondent to furnish to them a written response to the complaint as set forth in the list of issues, the file relating to the case, and details of fees and outlays charged, all within twenty one days of 11 October 2007. Since the complainers were aware that the Respondent's firm had ceased to exist, they also advised that Mr. C had asked for clarification of whether the Respondent was still acting for him. On 29 October 2006 the Respondent replied to the letter saying that he was surprised by Mr. C's enquiry as to whether he would still act. He said that he would contact Mr. C prior to making any comment on the points which had been raised by him. He did not provide the file or a response to the complaint nor did he provide the other information requested by the complainers.

7.28 On 14 November 2006 the complainers sent a reminder to the Respondent. They indicated that a response was required within fourteen days of that date. The Respondent did not reply.

- 7.29 On 4 December 2006 the complainers sent a further reminder to the Respondent. They warned that failure to reply might lead to the service of a notice under section 15 of the Solicitors (Scotland) Act 1980 on the Respondent. The Respondent did not reply.
- 7.30 On 5 December 2006 Mr. C advised the complainers that he had spoken to the Respondent who had told him that he was passing the matter to a solicitor in Thorntons to deal with it.
- 7.31 On 21 December 2006 the complainers served upon the Respondent a notice in terms of section 15 of the 1980 Act. The notice required that the Respondent provide within fourteen days of 21 December 2006 a response as requested previously together with an explanation of the failure to reply up to this point. Also on 21 December 2006 the complainers wrote to Messrs. Thorntons requesting their assistance in recovering Mr. C's file. Messrs. Thorntons acknowledged the letter to them on 22 December 2006. On 27 December 2006 the Respondent wrote to the complainers. He apologised for not writing sooner and stated that he had spent most of December in England doing court martial work. He stated that he was in touch with Mr. C, that he had informed Mr. C that he had lost the opportunity to raise proceedings because of the passage of time and that he was willing to pass the file to whichever firm Mr. C now decided to instruct. He did not provide the file or a response to the complaint.
- 7.32 On 23 January 2007 the complainers wrote to the Respondent again requesting a response to the complaint, and the file. The Respondent did not reply.
- 7.33 On 8 February 2007 the complainers served upon the Respondent a notice in terms of the Solicitors (Scotland) Act 1980 section 42C. The notice required production to the



complainers by the Respondent, within twenty one days of 8 February 2007, of all documents in the possession or control of the Respondent relating to Mr. C. The Respondent did not reply.

7.34 On 7 March 2007 the complainers intimated to the Respondent a complaint *ex proprio motu* of professional misconduct in respect of his failure to respond to letters and statutory notices in respect of Mr. C's complaint.

7.35 On 15 March 2007 the Respondent wrote to the complainers. He stated that he was enclosing Mr. C's papers but in a manuscript note at the end stated that "upon advice" he had sent these to Mr. C's new agents. He acknowledged that the claim was time barred, that insurers had been advised, and that he felt he could say no more. He apologized for the delay in dealing with matters, for which he said that there were a number of reasons but these were not specified. In a further letter dated 28 March 2007 the Respondent mentioned the strain of closing his office and moving the caseload to another firm some fifty miles away.

8. Having considered the foregoing circumstances and having heard the submissions for the Complainers and for the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 8.1 His failure to respond to correspondence from other solicitors.
- 8.2 His repeated failure to respond to correspondence from the Law Society.
- 8.3 His failure to obtemper statutory notices served by the Law Society.

9. Having heard the solicitor for the Respondent in mitigation and having noted the testimonial lodged, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 24 April 2008. The Tribunal having considered the Complaint dated 19 December 2007 at the instance of the Council of the Law Society of Scotland against James McRae, Solicitor, formerly at 35 Hawkcraig Road, Aberdour, Burntisland Fife, now at PO Box 14333 Burntisland, Fife, KY3 0WT; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond to correspondence from other solicitors, his repeated failure to respond to correspondence from the Law Society, and his failure to obtemper statutory notices; Censure the Respondent; Fine the Respondent the sum of £1,000 to be forfeit to Her Majesty; and Direct in terms of Section 53 (5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to providing legal services to members of the armed forces within the system of military discipline and Courts Martial and that for a period of 10 years; 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 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**

10. 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**

Mr Lynch moved the Tribunal to amend the Complaint by deleting one of the averments of professional misconduct and amending one of the other averments. Mr Clapham then confirmed that the Respondent pled guilty to the Complaint as amended.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch stated that he had nothing to add to the terms of the Complaint and thanked the Respondent for his co-operation in dealing with the Complaint.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Clapham explained the Respondent's previous career history and advised that the Respondent had a special interest in doing Courts Martial work. The Respondent's military law practice was expanding so he commenced practice on his own account. He was a consultant with Thorntons for 9 months but this did not last due to the location of the office and for other reasons. When the Respondent joined Thorntons in May 2006 he retained some files because of his close relationship with the clients concerned and the three clients which were the subject of this Complaint fell into that category. Mr Clapham stated that the Respondent's professional indemnity insurance covered the issues. They arose because he was too busy due to the amount of travelling and the work that he was doing. Mr Clapham explained that the Respondent was now dealing with custody hearings for the services and in fact did most of them in Scotland. He also provided legal representation for servicemen and dealt with Courts Martial work. Mr Clapham stated that the Respondent had a full diary of these type of commitments and had no wish to retire at present. Mr Clapham pointed out that the Respondent was undertaking a very specialised area of work and was anxious to continue to be able to hold a full practising certificate. Mr Clapham stated that the Respondent had been overworked and apologised unreservedly for what had happened. Mr Clapham stated that the Respondent was happy to restrict himself to doing Courts Martial and services work. Mr Clapham submitted that there was a public need for the Respondent's services. Mr Clapham also referred the Tribunal to the testimonial lodged. Mr Clapham pointed out that this was the

Respondent's first appearance before the Tribunal and that the matters had not arisen from the type of work which the Respondent was doing now and intended to do in the future. There was little risk of the Respondent appearing before the Tribunal again. Mr Clapham outlined the Respondent's personal and financial circumstances. He pointed out that the Respondent would have the inadequate professional service awards still to pay and the expenses of the proceedings.

## **DECISION**

All solicitors have a duty to respond timeously, openly and accurately to correspondence from the Law Society and correspondence from fellow agents. The Tribunal was concerned that in this case the Respondent had failed to reply to a number of different agents and to the Law Society in respect of three different cases over periods ranging from 7 – 10 months. The Tribunal also noted that the Respondent was happy to restrict himself to Courts Martial and services work and obtained more details from the Respondent with regard to exactly what this would entail. The Tribunal noted that the errors made by the Respondent happened when he entered into areas of work which were not familiar to him. The Tribunal noted that the Respondent had a specialisation in the military discipline and considered that it would be appropriate to restrict his practising certificate to these particular areas of work. The Tribunal accordingly restricted his practising certificate so that he can only provide legal services to members of the armed forces within the system of military discipline and Courts Martial. This will mean that the Respondent is no longer able to undertake his Sheriff and District Court work but he can undertake most of the work that he is presently doing and that he intends to do in the future. The Tribunal considered that a period of 10 years restriction would be appropriate. This period would, in the public interest, emphasise the importance of him not being tempted to practise in the areas where his abilities and experience fell short of the standards expected of solicitors in practice. Given the number of failures to respond, the Tribunal considered that it was appropriate also to impose a fine of £1000.

The Tribunal made the usual Order for publicity and expenses.

**Vice Chairman**