

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

MANUS GERARD TOLLAND,
Solicitor, formerly of Ferguson Dewar,
Solicitors, 20 Renfield Street, Glasgow
and now at 138 Eastwoodmains Road,
Clarkston, Glasgow

1. A Complaint dated 1st July 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Manus Gerard Tolland, Solicitor, formerly of Ferguson Dewar, Solicitors, 20 Renfield Street, Glasgow and now at 138 Eastwoodmains Road, Clarkston, Glasgow (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 by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 3rd November 2005 and notice thereof was duly served on the Respondent.

4. When the Complaint called on 3rd November 2005 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. Mr Reid moved to amend the Complaint and then lodged a joint minute agreed with the Respondent admitting the facts, averments of duty and averments of professional misconduct in the amended Complaint. It was agreed that the matter be adjourned to a future date to allow the Respondent time to obtain legal representation to present mitigation on his behalf. The matter was adjourned to 14th December 2005.
5. When the Complaint called on 14th December 2005 the Complainers were represented by their fiscal, Paul Reid, Solicitor, Glasgow. Mr Reid also appeared on behalf of Mr Neilson who was now acting for the Respondent and it was agreed on joint motion to adjourn the matter to 24th January 2006 to allow the Respondent to obtain medical evidence.
6. When the Complaint called on 24th January 2006 the Complainers were represented by their fiscal Paul Reid, Solicitor, Glasgow. The Respondent was present and represented by his solicitor Mr H. Neilson, Solicitor, Glasgow. Further amendments were made to the Complaint and the joint minute was also amended. The joint minute admitted the facts, averments of duty and averments of professional misconduct in the amended Complaint. No evidence was led.
7. The Tribunal found the following facts established: -
 - 7.1 The Respondent was born 2nd September 1956. He was admitted as a Solicitor on 16th January 1981. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 3rd February 1981. He was a Partner in the firm of Robertson & Ross, Solicitors, Paisley from 1st July 1987 until 31st March 2004. Thereafter from 1st April 2004 he was employed with the firm Ferguson Dewar, Solicitors,

Glasgow. He was assumed as a Partner in that firm on 14th June 2004 until 9th May 2005. He left that firm on 9th May 2005. He is now employed as an Assistant Solicitor with PSM Law Group, Falkirk.

7.2 **Estate of the Late Miss A**

During the 1980's Miss A, prior to her death, was a client of the former firm, Firm 1. A Judicial Factor was appointed to the firm of Firm 1 on 23rd March 1989. In or about May 1989, the firm of Messrs Robertson & Ross, Solicitors, recovered the file in relation to the affairs of Miss A from the said Firm 1. At this time the Respondent was a partner in the firm of Messrs Robertson & Ross, Solicitors. The Respondent became the Solicitor responsible for dealing with the affairs of Miss A. On 24th May 1989, the Respondent wrote to the Nursing Home in which Miss A was then residing, advising them that his firm had acquired the practice of Firm 1 on 8th May 1989. The Respondent advised them that they had identified a file relating to the affairs of Miss A and that his firm would be responsible for managing her affairs.

7.3 Miss A subsequently died on 25th April 1990. Prior to her death she completed a Power of Attorney in terms of which she appointed, as her Attorney, the partner of the Respondent, Mr C. This Power of Attorney was dated 25th July 1989 and registered in the Books of Council and Session on 3rd August 1989. Following the appointment of Mr C as Attorney and the firm of Robertson & Ross, Solicitors recovering the file of papers in relation to the affairs of Miss A, the Respondent assumed the role as being the solicitor responsible for the management of her affairs.

7.4 Miss A died on 25th April 1990. She left a Will. In terms of her Will the Respondent was appointed as Executor along with the said

Mr C. Confirmation was obtained from the Sheriff of North Strathclyde at Paisley on 27th July 1990. The Estate of Miss A was not complicated. It comprised six building society accounts and the proceeds of a life assurance policy. In total the moveable Estate identified within the terms of the Confirmation presented by the Respondent to the Sheriff amounted to £92,636.71. The ingathering of the Estate should not have been difficult to a solicitor of ordinary competence. In the course of considering this complaint against the Respondent, the ledger sheet operated by the Respondent in respect of his management of the affairs and Estate of Miss A was recovered. The client ledger sheet commences with entries on 12th October 1989 and carries on after the death of Miss A. It provides evidence indicating what sums had been uplifted from the Estate and what sums were utilised to pay off debts. Of significance the entire moveable Estate of the late Miss A was ingathered by the Respondent and invested in his firm's client account in April 1991. From there, the Respondent invested the full amount in an interest bearing account with the Allied Irish Bank plc. The monies remained invested with that institution until April 1994 whereupon the Respondent transferred the monies to the Bank of Scotland, again having them invested in an interest bearing account. From that account, monthly interest was paid on the sum invested. The monies remained in this account where interest continued to accumulate until December 1998 when the total sum inclusive of interest amounted to £129,738.

- 7.5 The Will of the late Miss A was in simple terms. The entire residue of her estate was to be paid to the Arthritis & Rheumatics Council for Research, 41 Eagle Street, London (hereinafter referred to as "the charity"). On 27th January 1999 the Respondent wrote to the Secretary of the charity advising them that "There is about £100,000 – this amount is to be confirmed – going to your

organisation in terms of her Will". This letter dated 27th January 1999 was the first intimation by the Respondent to the residual beneficiary that there was a bequest to that organisation in terms of the Will of the late Miss A.

7.6 Simultaneously the Respondent passed the file of papers operated by him to an individual identified as "Mr B". The Respondent requested this individual to prepare and audit an account of the work done by Firm 1 for Miss A between March 1986 and January 1989 with a view to a claim being intimated to the Firm 1 had identified that sums of money had been stolen by that firm from the monies belonging to Miss A. On 18th September 1991 the Judicial Factor wrote to the Respondent advising that Firm 1 had stolen from Miss A's bank account sums totalling £25,470 under the pretext that these sums were required to meet professional fees incurred. The Judicial Factor had identified that the professional fees charged by Firm 1 had been grossly overcharged and that no work had been carried out by that firm to justify fee income at that level. Having identified this level of misappropriation, the Judicial Factor indicated to the Respondent that it would be necessary to have the client files audited by the Auditor of Court before a claim could be submitted to the Scottish Solicitors Guarantee Fund. On 1st November 1991 the Judicial Factor wrote to the Respondent advising that it would be necessary to have an account prepared in respect of the Executry. Simultaneously whilst requesting an account in respect of the work carried out by Firm 1, the Respondent also asked Mr B to prepare a professional account in respect of his firm's dealings on the file. Despite this letter of instruction, no professional account by the solicitors has ever been produced by Mr B. Such account was necessary to allow a claim to be intimated to the Scottish Solicitors Guarantee Fund to reimburse monies stolen from the funds of the late Miss A.

- 7.7 Having received intimation from the Respondent, on 18th October 1999, the Chief Executive and Treasurer of the charity wrote to the Respondent enquiring as to what progress had been made regarding the winding up of the Estate of Miss A and when they could expect to receive distribution. On 9th November 1999 the Respondent replied indicating that he hoped to be in a position to respond to them shortly. Nothing further was heard until 11th September 2000, when the Respondent wrote to the charity enclosing with that letter a cheque for the sum of £131,145 being the balance of the Estate. The Respondent did not provide the beneficiary with the appropriate documentation in respect of the deduction of tax. This documentation comprised a Form R185 Tax Deduction Certificate. It was of significance because the beneficiary was a Charity and would be in a position to reclaim any sums which had been deducted in respect of tax from the Inland Revenue. Nor did he provide them with a statement of account or an account charge and discharge disclosing the extent of the estate, or his financial intromissions in connection therewith.
- 7.8 The Charity had requested that the Respondent forward to them this documentation. On 20th August 2000, the Respondent replied by enclosing what he considered to be an R185 Tax Deduction Certificate. This had been incorrectly completed by the Respondent. The beneficiary was disappointed with the manner in which the Respondent had dealt with the ingathering and distribution of the Estate. They advised the Respondent that despite eight letters sent to him over a period of twelve months requesting a copy of the Estate Account, they had still to receive a copy from the Respondent. The Respondent demonstrated that he clearly lacked the appropriate level of competence to deal with a matter of this type. This was evidenced by his response on 18th

September 2001 when he provided the Charity with an Income Tax Certificate advising that no capital transfer tax was payable. This form was clearly wrong. Such was the concern on the part of the Charity with the manner in which the Respondent dealt with the administration of the Estate, they instructed their own English Solicitors to progress the matter on their behalf. The Charity were anxious to recover the necessary documentation to allow them to reclaim tax which had been deducted in relation to their bequest. The sum involved amounted to approximately £5,000.

7.9 Having obtained instructions, the English firm of Solicitors commenced correspondence with the Respondent. The Respondent ignored their letters. The English firm requested that the Respondent forward to them the form R185 properly completed with accurate information contained thereon together with a copy of the Estate Account to allow matters to be finalised. Eventually after a lengthy delay the Respondent replied to the English firm on 18th April 2002 enclosing a Form R185 together with principal Certificates of Interest. Again displaying a lack of competence, the Respondent asked the English firm to complete the Certificate for signature by the Executors. Exasperated at the further delay, the English firm would have been pleased to assist but indicated to the Respondent they could not do so unless they received a copy of the Estate Account, regarding which they reminded the Respondent they had been writing to him repeatedly over a lengthy period of time.

7.10 The manner in which the Respondent dealt with the management and distribution of the Estate of Miss A was unsatisfactory. Miss A died on 25th April 1990. Confirmation to her Estate was obtained by the Respondent on 27th July 1990. The Estate was

modest and not complicated. By April 1991 the Respondent had ingathered all sums due to the Estate. The Will of Miss A was in simple terms. The residue of her Estate was to be paid in its entirety to one beneficiary. The Respondent did not intimate to the beneficiary that they were the sole beneficiaries in the Estate of the late Miss A until 27th January 1999. At the time of this intimation the Respondent did not consider advising the beneficiary as to when Miss A had died. The delay in intimating to the beneficiary was in excess of nine years.

- 7.11 The letter advising the Charity that they were the sole beneficiary was dated 27th January 1999. Having obtained this intimation, the Charity sought to reclaim tax on the interest earned on the bequest to which they were entitled. They thereafter repeatedly wrote to the Respondent requesting information in respect of Tax Certificates and the Estate Account. The Respondent failed to reply adequately to their enquiries to such an extent that the Charity required to instruct their own Solicitors to act on their behalf. Letters from the English Solicitors to the Respondent were ignored. The English firm invoked the assistance of the Complainers. Even with the assistance of the Complainers, the Respondent did not reply to the efforts made on behalf of the Charity until 18th April 2002. On this occasion the delay was in excess of three years. There was no reason why there should be such a delay in the information being produced. The file managed by the Respondent in respect of the Estate of Miss A was recovered. It was clear from an examination of the file that the Respondent did not understand nor have the necessary competence to carry out the task at hand. The Respondent endeavoured to produce Certificates which as a result of his inexperience and incompetence were fundamentally wrong. In reply to one of the numerous enquiries made of him, the Respondent indicated he was

waiting for a supply of the appropriate forms from the Capital Taxes Office. This is a further indication of his incompetence in that the Capital Taxes Office was not responsible for the supply of the particular form required. In the circumstances the Respondent should have passed his file to a Solicitor who had the experience and competence to deal with a matter of this type. The Respondent did not have in place appropriate systems to allow him to deal with the management of the Estate expeditiously and effectively. When he endeavoured to complete the Form R185 Tax Deduction Certificate he completed it with incorrect figures using gross amounts instead of net amounts. He made enquiry as to whether capital transfer tax was due when this was inappropriate. Subsequent review of his file revealed the file to be in complete disarray with numerous items of correspondence missing and misfiled. Correspondence in relation to other Estates and other clients affairs had been inserted within the wrong file. No consideration had been given as to which file the correspondence should have been placed in. Further examination revealed the existence of certain aspects of the Estate of Miss A which had not been included within the Confirmation and which would require to be encashed including National Savings Certificates.

- 7.12 The delay by the Respondent in winding up the Estate of Miss A and subsequently distributing same was inordinate and unreasonable. Most of the work involved in winding up the Estate of Miss A had been completed within twelve months of her date of death. The Respondent failed to produce an Account of Charge and Discharge. Even when the Respondent appeared to have matters attended to in January 1999, he allowed a further inordinate delay to occur before dealing with the matter properly. The Respondent displayed a lack of experience and competence in dealing with an Estate of this type.

- 7.13 The Respondent repeatedly ignored requests for information from the English firm of Solicitors acting on behalf of the Charity. The Respondent persistently failed to provide that firm with Executry Accounts. On 11th September 2000 the Respondent wrote to the Charity sending them payment of the sum which they were due from the Estate of Miss A. This amounted to £131,145.48 which constituted the balance due. This letter was immediately acknowledged by the Secretary of the Charity whereby he asked for a copy of the Estate Account. This request was ignored by the Respondent. A reminder was written on 9th November 2000. This reminder was ignored by the Respondent. A further reminder was intimated on 20th February 2001.
- 7.14 Having been informed that the firm Firm 1 had stolen considerable sums of money from the funds of the late Miss A, the Respondent wrote to the Chief Executive of the Charity on 21st October 2002 asking that he complete an Application Form which would be submitted to the Scottish Solicitors Guarantee Fund. The Respondent did not retain a copy of the form. The form constituted an Application for a grant to be received from the Scottish Solicitors Guarantee Fund. The Application was submitted in the name of the Respondent and was in respect of a loss arising as a result of an act of dishonesty on the part of Firm 1. The form completed by the Respondent was completed incompetently. The Respondent provided the wrong information on the form. The Respondent advised he was due fees only of £1,000. The form was neither dated, nor signed, nor submitted on time. The form should have been submitted in 1992 when the Respondent had been provided with the necessary information at that stage to lodge a claim against the Scottish Solicitors Guarantee Fund. The claim form required to be submitted by the Executors

of the late Miss A and not by the beneficiary. On 2nd December 2002, the Respondent replied to the English agents appointed on behalf of the Charity advising them that the Application had been rejected as not falling within the scheme. This information was incorrect and misleading in its effect. Despite being asked for an explanation the Respondent did not reply in respect of this aspect of the complaint.

- 7.15 The manner in which the Respondent dealt with the submission of the Application to the Scottish Solicitors Guarantee Fund was typical of the manner in which the Respondent dealt with the management and distribution of the Estate of the late Miss A. The Respondent did not properly deal with the Estate nor pay the required attention to the matter at hand. The notice of loss was intimated to the Respondent on 27th January 1999 which date coincided with the date the Respondent chose to advise the Charity that they were a beneficiary in terms of the Will of the late Miss A. No explanation was advanced by the Respondent as to why he had failed to complete the form.

8. Having considered the foregoing circumstances and having heard submissions from the both parties, the Tribunal found the Respondent guilty of professional misconduct in respect of his acting contrary to Articles 5 and 7 of the Code of Conduct for Solicitors Holding Practising Certificates in Scotland issued by the Law Society in 1989 by
- 8.1 a) his lacking the necessary competence to deal with an estate,
 b) his inordinate and unreasonable delay in distributing an estate,
 c) his failure to respond to the repeated enquiries made of him by the residual beneficiary and their solicitors,
 d) his failure to properly complete and forward to the residual beneficiary the necessary documentation to allow a tax rebate to be claimed by the beneficiary,
 e) his failure to understand the scheme which would allow for a claim to be intimated to the Scottish Solicitors Guarantee Fund
- 8.2 his acting in a manner that put his personal integrity in question by intimating in a letter that an application to the Scottish Solicitors Guarantee Fund had been rejected as not falling within the scheme when in fact the form had been rejected for different reasons.
7. Having heard the solicitor for the Respondent in mitigation and having noted a previous Finding of misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms: -

Edinburgh 24th January 2006. The Tribunal having considered the Complaint dated 1st July, 2005 at the instance of the Council of the Law Society of Scotland against Manus Gerard Tolland, Solicitor, formerly of Ferguson Dewar, Solicitors, 20 Renfield Street, Glasgow and now at 138 Eastwoodmains Road, Clarkston, Glasgow; Find the Respondent guilty of professional misconduct in respect of his acting contrary to Articles 5 and 7 of the Code of

Conduct for Solicitors Holding Practising Certificates issued by the Law Society in 1989 and his acting in a manner that put his personal integrity in question; Censure the Respondent, and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of five years from 24th April 2006, any practising certificate held or issued to the Respondent shall be subject to such Restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of 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 a solicitor 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

7. 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

A joint minute was lodged admitting the averments of fact averments of duty and averments of professional misconduct in the Complaint as amended. It was accordingly unnecessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised the Tribunal that the Respondent had been dealing with an estate for a Miss A who had died in 1990. The Respondent was an executor and obtained confirmation for the estate in 1990. Funds were ingathered and invested in an interest bearing account in April 1991. The charity who were the residual beneficiary were not advised of the bequest until 27th January 1999. It was discovered that the firm that had previously acted had stolen money from Miss A. The Respondent did not send money to the charity until September 2000. Tax had been deducted from the interest received and because the residual beneficiary was a charity this tax could be claimed back but the Respondent did not give the charity the form or the information that they required in order to do so. On 20th August 2000 the Respondent sent a form but it was completed incorrectly. The charity appointed an English firm of solicitors to deal with matters. The Respondent did not reply to the charity or the English firm of solicitors. The Respondent was clearly not competent to deal with these matters. In connection with the Guarantee Fund claim the Respondent sent a form to the charity but he had completed it wrongly and it was rejected. It was also ten years after he knew that monies had been stolen. Mr Reid asked the Tribunal to find professional misconduct established. He also stated that the inaccurate information provided to the Guarantee Fund led to a question mark over the Respondent's integrity. Mr Reid referred the Tribunal to the previous Findings of professional misconduct in connection with failure to implement a mandate. He thanked the Respondent and his solicitor for their co-operation in dealing with matters.

SUBMISSIONS FOR THE RESPONDENT

Mr Neilson pointed out that although there had been a delay in the winding up of the estate there had been no deficiency in connection with the ingathering of the estate. The Respondent lacked competence in respect of handling some aspects of the executry. Mr Neilson pointed out that the Respondent was not personally responsible for all the delays during the period. Between 1992 and 1999 the files were in another office. There was also a file relating to Miss A's father's estate and the files were in a mess and there had been misfiling between files. The Respondent did not know how to properly handle the form in connection with reclaiming of tax or how to properly handle the form to go to the Guarantee Fund. The Respondent also accepted his failure to reply. Mr Neilson advised that the Respondent had been under a lot of stress and strain in early 1999 when his father was ill. He was involved in a stressful partnership situation at Robertson and Ross and he was relieved to leave there. Mr Neilson stated that the Respondent accepted that the letter written by him on 2nd December 2000 was inaccurate and led to the recipient being misled and it was accepted that this could lead to the recipient wondering about the integrity of the Respondent. Mr Neilson stated that the previous Findings were not analogous. Mr Neilson referred the Tribunal to the medical report produced and to the letter from the Respondent's current employer. It was clear that the Respondent was now working well and was happy in his current employment. Mr Neilson outlined the Respondent's financial and family circumstances to the Tribunal. He asked that as some averments had been deleted from the Complaint the award of expenses should be restricted.

DECISION

The Tribunal considered it unfortunate that the Respondent had clearly been dabbling in matters about which he did not know much. Solicitors are under a professional obligation to provide their clients with an adequate professional service. Solicitors should not accept instructions from a client unless they can adequately discharge these.

In this case the Respondent clearly lacked the necessary competence to deal with certain matters relating to the estate. It was particularly unfortunate that the Respondent's personal integrity was put in question by his manner of dealing with the application to the Guarantee Fund. The Tribunal however noted that there was no evidence of any loss occurring as a result of his actions.

The Tribunal considered that it was clear that the Respondent required to work under supervision in order to ensure public protection. The Tribunal was impressed by the fact that the Respondent was working in a satisfactory manner with his new employer. The Tribunal accordingly, in addition to a formal Censure, imposed a Restriction on the Respondent's practising certificate for a period of five years the Restriction being delayed to run from 24th April 2006 to allow the Respondent time to have the firm, for whom he was presently working, approved by the Law Society if appropriate. Taking account of the Respondent's financial situation the Tribunal did not impose any financial penalty. The Tribunal made the usual award with regard to expenses despite the fact that there had been some deletions from the Complaint. It was clear that the Law Society had been justified in taking the Complaint to the Tribunal and the Respondent had been found guilty of professional misconduct. The Tribunal also noted that a lot of the amendments to the Complaint had been made at the last minute. The Tribunal made the usual order with regard to publicity.

Chairman