

**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**

**WILLIAM JAMES MACKAY,  
Solicitor, care of The Procurator  
Fiscal Service, 10 Ballater Street,  
Glasgow**

1. A Complaint dated 1<sup>st</sup> November 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William James Mackay, Solicitor, care of The Procurator Fiscal Service, 10 Ballater Street, 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. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 11<sup>th</sup> January 2006 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 11<sup>th</sup> January 2006 the Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was not present or represented. The Fiscal indicated that the Respondent accepted the facts and averments in the Complaint as was clear from his Answers. The Respondent hoped to be in funds to pay the

compensation by March 2006. It was accordingly agreed that the matter be adjourned to 14<sup>th</sup> March 2006 at 10.00am

5. When the Complaint called on 14<sup>th</sup> March 2006 the Complainers were represented by Paul Reid, Solicitor, Glasgow on behalf of Walter Muir, Solicitor, Ayr. The Respondent was not present or represented. The Fiscal advised the Tribunal that the compensation had still not been paid.

6. The Tribunal found the following facts established

6.1 The Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born on 30<sup>th</sup> January 1959. He was admitted as a Solicitor on 26<sup>th</sup> September 1984 and enrolled as a solicitor on 12<sup>th</sup> October 1984. From 17<sup>th</sup> June 1996 until 31<sup>st</sup> October 2004 he was a partner and latterly the sole principal of the firm of Watson & Mackay, Solicitors, 37 Hairst Street, Renfrew. He is at present employed by The Procurator Fiscal Service.

6.2 **Mr A**  
On 19<sup>th</sup> April 2005 the Complainers made a determination under Section 42A (1) of the Solicitors (Scotland) Act 1980 that the firm of Watson & Mackay had provided an inadequate professional service to Mr A. The Complainers then further determined in terms of Section 42A(2)(d) of the said Act that the said firm pay to Mr A the sum of £500 by way of compensation. The Respondent was the sole principal of the said firm when this inadequate professional service was provided to Mr A and thereafter. By letter dated 29<sup>th</sup> April 2005 the Complainers intimated these determinations to the Respondent. He did not appeal them. By 7<sup>th</sup> September 2005 he had not paid Mr A the sum of £500 and on that date the Complainers gave notice to him in terms of Section 42B of the said Act calling upon him to provide confirmation to them of the steps he had taken to

implement the determination in relation to compensation within a period of 21 days from that date. The Respondent failed to provide this confirmation and has still not implemented the said determination in relation to the payment of £500.

7. Having considered the foregoing circumstances and having noted the terms of the Respondent's Answers the Tribunal find that the Respondent has failed to comply with the Determination and Direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Mr A within the period specified. The Tribunal resolved to make an Order in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980 and issued an Interlocutor in the following terms.

Edinburgh 14<sup>th</sup> March 2006. The Tribunal having considered the Complaint dated 1<sup>st</sup> November 2005 at the instance of the Council of the Law Society of Scotland against William James Mackay, Solicitor, care of The Procurator Fiscal Service, 10 Ballater Street, Glasgow; Find that the Respondent has failed to comply with the Determination and Direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified; Direct that an Order be issued under Section 53C of the said Act; 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)**

**Alistair Cockburn**  
**Chairman**

8. 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 Council of the Law Society of Scotland had made a determination under Section 42A of the Solicitors (Scotland) Act 1980 which was not appealed by the Respondent. A Complaint was then made under the provisions of Section 53C of the said Act which states that

- (1) Where a solicitor fails to comply with a direction given by the Council under Section 42A (including, as the case may be, such direction as confirmed or varied on appeal by the Tribunal or the Court) within the period specified in the notice relating to that direction given to the solicitor under Section 42B(1) or such longer period as the Council may allow, the Council shall make a Complaint to the Tribunal and may appoint a solicitor to represent them in connection with the Complaint.
- (2) If after inquiry into a Complaint made under subsection (1) the Tribunal is satisfied that the solicitor has failed to comply with the direction the Tribunal may order that the direction, such or part of it as the Tribunal thinks fit, shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the Sheriff Count of any Sheriffdom in Scotland.

The Respondent accepted in his Answers that the Determination had been made by the Council of the Law Society. The matter was continued from a previous Tribunal hearing to allow the Respondent to make payment of the compensation. The Fiscal advised that the compensation had still not been paid. The Tribunal was accordingly satisfied that the Respondent had failed to comply with the Determination and Direction of the Law Society and was of the opinion that an Order should be made. The Tribunal found the Respondent liable in the expenses of the proceedings. As the disposal of this Complaint constitutes a decision for the purposes of the fourth schedule to the Solicitors (Scotland) Act 1980, the Tribunal is required in terms of paragraph 14 of the schedule to give publicity to this decision.

**Chairman**