

**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**

against

**JAMES JOSEPH MCGINLEY,
Solicitor, Reilly McGinley, 57
Ruthven Lane, Glasgow**

1. A Complaint dated 20 September 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, James Joseph McGinley, Solicitor, Reilly McGinley, 57 Ruthven Lane, 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 for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 6 January 2005 and notice thereof was duly served on the Respondent.

4. The hearing took place on 6 January 2005. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. The Respondent was present and represented by William Macreath, Solicitor, Glasgow .

5. An amended Complaint was lodged together with a Joint Minute admitting the facts, averments of duty and averments of professional misconduct in the amended Complaint. No evidence was led.

6. After hearing submissions the Tribunal found the following facts established
 - 6.1 The Respondent is a Solicitor enrolled in Scotland. He was born on 3rd November 1961. He was admitted as a Solicitor on 21st November 1984 and enrolled in the Register of Solicitors on 7th December 1984. He was Partner in the Firm of McManus, Reilly, Campbell & Company from 1st November 1987 to 24th February 1995 and thereafter, in the firm of Reilly McGinley from 1st March 1995 to date.
 - 6.2 HEWATS, SOLICITORS
Messrs Hewats, Solicitors, 40 St Mary Street, Kirkcubright acted on behalf of the Accountant in Bankruptcy in the sale of one half share of Property 1 to Mrs A the co-proprietor. The Respondent's Firm acted for Mrs A. Settlement was delayed as the full purchase price could not be paid and it was agreed in correspondence that the balance would be paid within ten weeks. The Accountant in Bankruptcy wished to take a postponed security and Messrs Hewats sought the Title deeds from the Respondent's Firm by letter dated 19th December 2001. They received no reply and wrote again on 8th, 21st and

28th January 2002. The Respondent phoned on 1st February stating that he had not seen the letters and that he would investigate and reply immediately. He did not reply to the letter of 4th February and on 8th February 2002 was advised that a report would be made to the Law Society if he did not reply by noon. He faxed indicating that the Titles and draft Standard Security would be forwarded in early course. They were not, nor did he reply to letters of 11th February or 4th March and 7th March nor a call on 6th March and the matter was referred to the Complainers by Messrs Hewats on 2nd April 2002. The Complainers raised the issue with the Respondent who indicated he had not seen the letters and would draft a response in early course.

6.3 The Complainers sent a formal letter to him for his comments on 10th April 2002. A follow up letter was sent on 24th April 2002 and provoked a response that the Respondent was in London and would be back on 1st May when it would be brought to his immediate attention. A follow up letter was sent to him on 6th May 2002 and his office contacted by telephone on 8th May, at which time, the Complainers were advised that he was not in until the afternoon. A message was left for him to call back but he did not do so. His secretary then called indicating that he was in hospital for a period of 2 days. The Complainers called again on two occasions on 10th May and on both occasions were advised that he was not in. By this time Mrs A had instructed a transfer of agency in the matter to Messrs Low Beaton Richmond Solicitors and that Firm issued a Mandate for the papers to the Respondent on 1st May 2002.

6.4 On 13th May, the Respondent advised that he had spoken to Messrs Hewats, Solicitors and would write to them that night. By 12th June 2002, Messrs Hewats advised that they still had nothing from him and follow up letters were sent to him by the Complainers on 27th June, 16th July, 7th August and 28th August all 2002. On 10th September 2002, a formal letter

regarding his possible misconduct was issued to him, giving him 14 days to reply. He phoned the Complainers on 18th September indicated that he had not located files and asked for a copy of the original letter from Hewats. On 26th September, he responded, indicating that he had found four files and seeking to explain his previous failures.

6.5 LOW BEATON RICHMOND

Mrs A was dissatisfied with the service provided by the Respondent and his Firm and instructed the Firm of Low Beaton and Richmond 4A Frazer Street, Largs to conclude her purchase of Property 1. A formal mandate was sent to the Respondent's Firm on 1st May 2002. No reply was received nor to a letter of 10th May and on 20th May the matter was referred to the Complainers. The letter was copied to the Respondent for noting on 27th May and thereafter, a formal complaint letter sent to him on 27th June 2002 seeking his response within 14 days. He did not reply. A follow up letter was sent on 16th July 2002 followed by Recorded Delivery notices under Section 15(2)(i)(i) and 42C on 6th August 2002. A further follow up letter was sent on 26th August 2002. The Respondent contacted the Complainers by telephone but could not be contacted in response. He phoned on 2nd September advising that he was confused about the whereabouts of the files and would write immediately.

6.6 On 11th September, the Respondent advised that he thought he had sent papers to Messrs Low Beaton Richmond already but would try and find them. He had moved office. This was copied to Messrs Low Beaton Richmond by the Complainers. On 26th September 2002, the Respondent advised that an extensive search had been carried out over a period of 7 days and four files were traced which he would photocopy to enable him to implement the mandate. He was thereafter advised to forward the files to Messrs Low Beaton Richmond urgently on

9th October 2002. They did not receive the files and a further letter was sent to the Respondent on 31st October 2002 asking him to confirm that he had now sent them. He did not reply. A follow up letter was sent by Recorded Delivery on 20th November 2002 giving him 14 days to respond. A formal Section 15(2)(i) Notice was then sent again on 12th December 2002 and a follow up letter sent on 7th January 2003.

6.7 On 22nd January 2003, the Respondent wrote to the Complainers indicating that the files had been lost again but that he had now copied them and sent them on. He apologised. By 6th February 2003, Messrs Low Beaton Richmond still did not have the files and a further follow up letter was sent to the Respondent on 19th February 2003. On 20th February, the second part of the Section 15 Notice was sent to him. By 24th February 2003, the files still had not been delivered. Follow up letters were sent on 4th and 27th March querying why he had not now implemented the mandate. He responded on 28th March indicating that he was horrified that it had not been done and that he had sent the files by Courier. On 31st March 2003, Messrs Low Beaton Richmond confirmed that they had received three files by Courier. By letter of 19th May 2003 the Respondent apologized for his failure to reply to correspondence which was due to difficulties suffered at the time.

6.8 In September 2001 there was water ingress into the Respondent's offices causing substantial damage and collapse of ceilings. The Respondent acquired alternative offices but entry was delayed and he could not gain entry to his new offices until 25 June 2002.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of professional misconduct in respect of:

- (1) His unconscionable delay and at times failure between 10th April 2002 and 11th September 2002 to respond to the reasonable enquiries of the Complainers about his failure to reply to the correspondence in connection with the complaint of Hewats, Solicitors.
- (2) His unconscionable delay between 1st May 2002 and 28th March 2003 to implement a mandate issued to him by Messrs Low Beaton Richmond, Solicitors in relation to the client, Mrs A.
- (3) His failure between 1st May 2002 and 28th March 2003 to respond to letters from his fellow Solicitors Messrs Low Beaton and Richmond in connection with the implementation of a mandate signed by the client, Mrs A.
- (4) His unconscionable delay and at times failure between 27th June 2002 and 28th March 2003 to respond to the reasonable enquiries of the Complainers about his failure to implement the mandate of Mrs A or to reply to their correspondence in connection with the matter and comply with notices.

8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6 January 2005. The Tribunal having considered the amended Complaint dated 5 January 2005 at the instance of the Council of the Law Society of Scotland against James Joseph McGinley, Solicitor, Reilly McGinley, 57 Ruthven Lane, Glasgow; Find the Respondent guilty of professional misconduct in respect of his unconscionable delay and at times failure to reply to letters from another firm of solicitors and correspondence from the Law Society and his unconscionable delay in implementing a mandate; Censure the Respondent and Fine him in the sum of £1000 to be forfeit to Her Majesty; 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 will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

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

An amended Complaint was lodged with the Tribunal on the day of the hearing together with a Joint Minute admitting the facts, averments of duty and averments of professional misconduct in the amended Complaint. Accordingly no evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

Miss Johnston explained that a number of letters had been written by Hewats Solicitors in connection with a matter where the Respondent acted for Mrs A. The Respondent had promised action but nothing had happened and the matter had been referred to the Complainers who wrote a number of letters over a period of months but the Respondent did not reply. Eventually on 11 September 2002 the Respondent wrote explaining his difficulties and on 26 September 2002 wrote saying he had found four files. In connection with the mandate the Respondent did not reply to the mandate sent by Low Beaton Richmond and the matter was referred to the Complainers. The Complainers wrote various letters and sent notices all of which were unanswered until the Respondent wrote on the 11 and 26 September 2002. The files however were still not sent and four more letters were sent to the Respondent by the Complainers. The files were not sent until the 28 March 2003, seven months after the mandate had been sent to the Respondent.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath referred the Tribunal to a doctor's report lodged with the Tribunal. Mr Macreath explained that the Respondent had been in partnership with his sister and the business had grown enabling them to move to larger premises on four floors. On 3 September 2001 there was a water ingress problem causing substantial damage and the collapse of a ceiling, IT equipment was damaged and then another pipe burst and the whole ceiling came down on the first floor and water went through the ceiling into the ground floor offices. This meant that the building was out of commission for three weeks and there was no access to files. The insurance claim with regard to the

damage was not settled until a year later. The Respondent's office was out of use until December 2001 which caused cashflow problems. By December 2001 the building could not be guaranteed safe and so the Respondent decided to downsize. He obtained other property but there were delays with regard to entry and he did not gain entry until 25 June 2002. During that period there were files being stored at Pickfords. With all this going on the Respondent was suffering from a mental paralysis. He was also involved in a major transaction which took him to London a lot of the time and he was accordingly not at the office. He had health problems which took him to hospital for two days when he came back from London. Mr Macreath emphasised that the Respondent wished to apologise for what had happened and had apologised both to Hewats and to Low Beaton Richmond both of which firms he had had a good relationship with. Mr Macreath also explained that the transaction involved had complications. The Respondent became involved to try and sort matters out. There had been no financial prejudice to Mrs A and an inadequate professional service decision had been made and fees had been abated. Mr Macreath said it did not make sense that the Respondent did not send the files as he had them and wrote a long letter explaining his problems when he should just have sent the files in. It showed that the Respondent was at the time suffering from a mental paralysis. Mr Macreath stated that the Respondent's health had now improved, he had fewer clients and had his workload under control with no branch offices. The Respondent had co-operated with the Law Society and entered into a Joint Minute. Mr Macreath suggested that there was no likelihood that this would occur again.

DECISION

The Tribunal has made it clear on numerous occasions that solicitors have a duty to co-operate with the Law Society and to provide, as soon as practicable, a full and accurate explanation in respect of any matter which is the subject of a complaint. Failure on the part of the solicitor to do this hampers the Law Society in the performance of their statutory duty and brings the profession into disrepute. In this case the Respondent had also failed to respond to fellow solicitors, and failed to respond promptly to a mandate. It is imperative for solicitors to act with fellow solicitors in a manner consistent to persons having mutual trust and confidence in

each other as set out in Article 9 of the Code of Conduct for Solicitors holding practising certificates issued by the Law Society 1989-2002.

The Tribunal however took account of the difficulties experienced by the Respondent in connection with water damage to his offices and also noted that the Respondent had co-operated with the Law Society and entered into a Joint Minute in respect of this complaint. The Tribunal also took account of the fact that the Respondent had taken steps to improve the situation by reducing his workload and closing branch offices. The Respondent also seemed to be genuinely contrite with regard to his failures. The Tribunal was accordingly satisfied that it was not likely that the Respondent's actions would be a continuing course of conduct and the Tribunal considered that a Censure and a Fine of £1000 would be sufficient penalty. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman