

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND**

**against**

**AJAZ MOHAMMED HUSSAIN,  
Solicitor, 12 Albany Terrace,  
Dundee**

1. A Complaint dated 11 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 Ajaz Mohammed Hussain, Solicitor, 12 Albany Terrace, Dundee (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 by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 12 March 2008 and notice thereof was duly served on the Respondent.
4. The Complaint was heard on 12 March 2008. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented.

5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint as amended.

6. In respect of these admissions no evidence was led and the Tribunal found the following facts established:-

6.1 The Respondent is a solicitor enrolled in Scotland. He was born on 2<sup>nd</sup> July 1967 . He was admitted as a solicitor on 20<sup>th</sup> March 1997 and enrolled on 25<sup>th</sup> March 1997. He formerly carried on practice on his own account as NIAS & Co at 67 West Lyon Street, Dundee until about October 2003, thereafter he was employed for a time as a qualified assistant by Messrs RSB MacDonald Solicitors, 4 Whitehall Street, Dundee. He currently resides at 12 Albany Terrace, Dundee. He is not presently in practice as a solicitor.

#### **COMPLAINT BY MR AND MRS. A**

6.2 Mrs. A was a British citizen. On 4<sup>th</sup> April 2003 she married Mr. A who was a citizen of Zimbabwe. In July 2003 Mr. & Mrs. A instructed the Respondent to make an application to the Home Office on Mr. A's behalf for indefinite leave to remain in the United Kingdom as the spouse of a British Citizen. Mr. & Mrs A paid the Respondent the sum of £300 in connection with the application. The Respondent prepared an application for onward transmission to the Immigration Authorities. Mr. & Mrs. A took the papers which had been prepared by the Respondent to the Immigration Office in Glasgow on 28<sup>th</sup> July 2003. They were advised that it was not possible for the application to be processed in Glasgow and that it would instead require to be sent to the offices of the Home Office Immigration and Nationality Directorate at Croydon. This information was conveyed by Mr. & Mrs. A to the Respondent. The Respondent indicated that he would lodge the application

with the Croydon office and in due course confirm that he had done so. On 8<sup>th</sup> March 2004, while employed as a solicitor by Messrs RHB MacDonald Solicitors, 4 Whitehall Street, Dundee, DB1 4AF, the Respondent provided Mr. A with a letter in which he stated that Mr. A's Zimbabwean passport was with the Home Office in Croydon in support of Mr. A's application for leave to remain. The truth as the Respondent well knew was that no application was lodged by him for leave to remain on Mr. A's behalf.

**COMPLAINT BY THE LAW SOCIETY OF SCOTLAND**  
**EX PROPRIO MOTU**

- 6.3 In due course Mr. & Mrs. A invoked the assistance of the Complainers. On 22<sup>nd</sup> February 2007 the Complainers wrote to the Respondent. They intimated the complaint and required him to provide them within twenty one days of that date with a written response to the complaint, his business file, details of any fees charged or to be charged whether paid or not and any further background information which the Respondent might wish to provide. On 14<sup>th</sup> March 2007 the Respondent contacted the Complainers by email requesting a continuation of two weeks until 29<sup>th</sup> March 2007 in order for him to take legal advice. This request was granted but the Respondent was reminded that if no response was received by that date, the Complainers would require to issue a notice under Section 15 of the Solicitors (Scotland) Act 1980. This communication was sent to the Respondent by email. It was acknowledged by him on 16<sup>th</sup> March 2007.
- 6.4 On 2<sup>nd</sup> April 2007 the Respondent telephoned the Complainers to enquire whether an email sent on his behalf during the previous week had been received. He was told that it had not. The Respondent said that he would resend the email. The

Complainers on that date sent an email to the Respondent in which they confirmed they had received neither a response nor the file and warned that if they were not received immediately then a notice under Section 15 of the Act would be issued. On 4<sup>th</sup> April 2007 the Respondent telephoned the Complainers and advised that he had received that email. He said that he did not know whether he would have time to re-send the email. He said he would drop off the file and a written response in person to the Complainers on Friday of that week. He was advised that the Complainers would require to issue the notice under Section 15.

6.5 On 4<sup>th</sup> April 2007 the Complainers issued notices under Sections 15 and 42(C) of the 1980 Act, requiring respectively that the Respondent provide a response to the complaint within fourteen days and that he produce the file and generally all books accounts, deeds, securities, papers and other documents in his possession or control in relation to the application to the Home Office by Mr. A, within twenty one days of that date. On 16<sup>th</sup> May 2007 the Respondent telephoned the Complainers, and apologised for not having provided the file and response to the complaint. He stated that he would do both in person on 21<sup>st</sup> May 2007. He did neither.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 his repeated failure to respond to correspondence from the Law Society;

7.2 his failure to obtemper Statutory Notices;

7.3 his misleading his client Mr A as to the status of his application.

8. Having noted the terms of an email received from the Respondent dated 11 March 2008 and having noted a previous finding of professional misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 12 March 2008. The Tribunal having considered the Complaint dated 11 December 2007 at the instance of the Council of the Law Society of Scotland against Ajaz Mohammed Hussain, Solicitor, 12 Albany Terrace, Dundee; Find the Respondent guilty of Professional Misconduct in respect of his repeated failure to respond to correspondence from the Law Society, his failure to obtemper Statutory Notices and his misleading his client as to the status of his application; Censure the Respondent 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 acting as a qualified assistant to such employer or successive employers as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least ten years and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; 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)**

**David Coull**

**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**

The matter was originally set down for a procedural hearing on 12 March 2008 due to the skeletal nature of the Respondent's Answers. Mr Lynch however gave evidence on oath to the Tribunal to the effect that he had discussions with the Respondent on the 10<sup>th</sup> March 2008 and the Respondent had indicated that he wished matters disposed of as soon as possible. Mr Lynch lodged a copy email that he sent to the Respondent on 11<sup>th</sup> March 2008 enclosing a Joint Minute and also a copy email sent to the Respondent later on the 11<sup>th</sup> March 2008 narrating a suggested amendment. The Respondent agreed to the terms of the Joint Minute and the suggested amendment to the Complaint and this Joint Minute was now lodged with the Tribunal.

Mr Lynch moved the Tribunal to allow amendment of the Complaint by adding a new sub paragraph (3) to Article 5.1 of the Complaint to add in the words "misled Mr A as to the status of his application" The fiscal also moved further technical amendments to the Complaint in connection with re-numbering of the Articles referred to in Article 5.1. These were allowed.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch referred the Tribunal to the previous findings dated 15<sup>th</sup> June 2004 where the Respondent was Censured and restricted for an aggregate period of five years. Mr Lynch explained that the Respondent was then employed by RSB McDonald Solicitors in Dundee and the writing of the letter which misled Mr A took place in the course of that employment. A month later in April 2004 his employment with them came to an end. The Respondent then worked as an unqualified legal advisor in connection with immigration matters. Mr Lynch stated that Article 3 in the Complaint related to the Respondent's failure to respond to the Law Society. Mr Lynch advised the Tribunal that the Respondent was sequestrated but he was not aware of his personal circumstances although he understood he had been supported by his family.

**DECISION**

The Tribunal considered it unfortunate that the Respondent had not attended the Tribunal to put forward any mitigation on his own behalf. The Tribunal however noted the terms of the email from the Respondent in connection with his work commitments and state of health. The Tribunal was particularly concerned with regard to the Respondent's misleading of his client. Clients are entitled to expect that solicitors be truthful and provide them with the correct information. Misleading of clients brings the profession into disrepute and undermines public confidence in the profession. The Respondent also failed to respond to enquires made by the Law Society thereby hampering the Law Society in the performance of their statutory duties. The Tribunal also noted that the Respondent had recently been before the Tribunal in respect of other matters and had been Censured and had his practising certificate restricted for an aggregate period of at least five years.

This further Complaint shows that the Respondent is definitely not fit to continue in practice as a principal. The Tribunal considered that there should be an extension of the period of restriction on the Respondent's practising certificate and accordingly imposed an aggregate restriction of at least ten years. This restriction will run concurrent with his existing restriction. If the Respondent does secure other employment within the profession, it will be for him to satisfy the Council of the Law Society or their practising certificate committee that there is adequate supervision for him within that employment. He will then require to work for a period of ten years before he can return to this Tribunal to apply for his restriction to be withdrawn. At this time the Respondent will require to show that he has developed the confidence, experience and capacity to practise as a principal. The Tribunal made the usual Order with regard to publicity and expenses.

**David Coull**  
**Vice Chairman**