

**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

**THOMAS HUGH MURRAY,
Solicitor, 100 Pendeen Road,
Glasgow**

1. A Complaint dated 14 December 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Thomas Hugh Murray, Solicitor, 100 Pendeen Road, 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 18 January 2005 and notice thereof was duly served on the Respondent.

4. On 18 January 2005 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented and had sent in a written request that the case be adjourned. He was not ready to proceed due to lack of access to relevant information. The Tribunal agreed that the matter be adjourned until 1 March 2005.
5. The Hearing took place on 1 March 2005. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented himself.
6. The Respondent made a preliminary plea requesting that the Complaint be dismissed without proceeding to the hearing of evidence. This plea was repelled by the Tribunal.
7. The Tribunal heard the evidence of one witness for the Complainers and evidence from the Respondent.
8. The Tribunal found the following facts established
 - 8.1 The Respondent was born 13th December 1962. He was admitted as a solicitor on 29th July 1992. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 12th August 1992. He was employed with Messrs Digby Brown & Company, Solicitors, Royal Exchange, Dundee from 14th September 1992 to 4th February 1994. Thereafter he was employed with the

firm Lawrence, Trinity Chambers, Glasgow from 7th February 1994 to 3rd October 1994. Thereafter he was employed with the firm Park, Suite 503/6, Baltic Chambers, Glasgow from 1st November 1994 to 3rd June 1995. From 17th July 1995 until 18th May 2001 he practised on his own as the firm T H Murray, 13 Upper Craigs, Stirling. The Respondent is not currently employed by a firm of solicitors.

8.2

Mr A

Mr A of Property 1 met with the Respondent on 28th January 1999. At that meeting Mr A gave to the Respondent a substantial quantity of documentation relating to what Mr A considered was a professional negligence claim against an Edinburgh firm of solicitors. In simple terms Mr A alleged that certain partners of the said Edinburgh firm had over a number of years mismanaged funds belonging to a Trust Fund of which Mr A would have eventually become beneficiary. At that meeting the Respondent agreed to peruse the documentation and then write to Mr A with his views on how best to proceed. Following that meeting on 2nd February 1999 the Respondent wrote to Mr A advising that he was prepared to act on his behalf and requested from him a payment to account of fees amounting to £3,500. Mr A in response to the letter telephoned the Respondent to enquire as to what the payment to account would cover. The Respondent advised Mr A the payment to account would enable him to consider all of the papers which Mr A held in relation to the matter, to obtain an opinion from Counsel as to the validity of the claims and the issue of time bar and would be sufficient to cover any Specification to be drawn up and lodged at the Court of Session with a view to recovering those documents which were not

already in Mr A's possession. This advice was confirmed by the Respondent in writing by letter dated 11th February 1999. Mr A sent the Respondent a cheque for the sum of £3,500 which was acknowledged by the Respondent by letter to Mr A dated 23rd February 1999. By this time the Respondent had carried out some work for Mr A.

8.3 For a number of different reasons Mr A was unhappy with the manner in which the Respondent dealt with his instructions. As a consequence Mr A invoked the aid of the Complainers by way of a Complaint regarding the manner in which the Respondent had dealt with his affairs. In the course of enquiring into the nature of the complaint, part of the Respondent's business file was recovered by the Complainers. Prior to this other parts of the file had been removed by Mr A. An examination of the file revealed a client ledger which indicated the payment to account amounting to £3,500 was credited to the ledger by an entry dated 19th February 1999. Immediately on that date, the Respondent transferred that sum to his firm account in respect of fees. In doing so the Respondent deceived his client. The money was transferred by the Respondent to his firm account in respect of fees prior to him carrying out work on behalf of Mr A to the full value of £3,500 and contrary to the basis on which he persuaded the client to give him the money as specified in his letter of 11th February 1999. The Respondent transferred the sum of money to his firm account without issuing to Mr A a fee note. The Respondent transferred the sum of money to his firm account without him, at that time, accounting to H.M. Customs & Excise in respect of the VAT element due.

9. Having considered the foregoing circumstances and after hearing submissions, the Tribunal found the Respondent guilty of professional misconduct in respect of:

- (1) His deliberately misleading his client by misrepresenting the basis on which he was to use the money received from him and his deceiving his client by transferring the sum of money received immediately to the firm account without carrying out the work as specified in his letter of 11th February 1999.
- (2) His transferring the funds received to his firm account without the issuing of a fee note
- (3) His acting dishonestly by transferring the funds to his firm account without, at that time, making payment of, or making any provision for monies due in respect of the VAT element on the purported fee

All contrary to Article 7 of the Code of Conduct for Solicitors holding Practising Certificates issued by the Law Society of Scotland in 1989 and contrary to Rule 6 of the Solicitors (Scotland) Accounts Rules 1997.

10. Having heard the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 1 March 2005. The Tribunal having considered the Complaint dated 14 December 2004 at the instance of the Council of the Law Society of Scotland against Thomas Hugh Murray, Solicitor, 100 Pendeen Road, Glasgow; Find the Respondent guilty of professional misconduct in respect of his deceiving his client by transferring a sum of money received from his client immediately to the firm account without having carried out the work as agreed between him and his client and without issuing his client with a fee note and without, at that time, making payment of, or making any provision for monies due in respect of the VAT element on the purported fee, all contrary to Article 7 of the Code of Conduct for Solicitors holding Practising Certificates issued by the Law Society in

1989 and contrary to Rule 6 of the Solicitor (Scotland) Accounts Rules 1997; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any Practising Certificate held or to be 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 of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law Society of Scotland and that for an aggregate period of three 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 a solicitor and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business; and Direct that publicity shall be given to this decision and that this publicity shall include the name of the Respondent.

(signed) Kenneth Robb
Vice Chairman

11. 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 Respondent made a preliminary plea asking that the Complaint be dismissed on the grounds that the Complaint had proceeded on incomplete information and the Respondent had not had access to the full papers which had been in his file and which had been removed by the witness Mr A. The Respondent stated that it would be unsafe to proceed without all the relevant information and asked the Tribunal to dismiss the Complaint without hearing evidence. Mr Reid, the fiscal, responded on behalf of the Law Society and stated that the file of papers which had been recovered by the Law Society had now been lodged as Production 4. Mr Reid pointed out that the Respondent had had the opportunity to take action to obtain any missing papers when the case had been adjourned on the last occasion but he had done nothing about this. The fiscal asked that the case proceed.

The Tribunal noted that despite being granted an adjournment on the last occasion the Respondent had done nothing to recover any papers which he alleged were missing from the file. The Respondent had not pointed to any specific items which were missing which would cause him any prejudice. The Tribunal was accordingly not persuaded that the Complaint should be dismissed. The Respondent did not request an adjournment and the Tribunal proceeded to hear evidence.

EVIDENCE FOR THE COMPLAINERS

The Complainers led the evidence of their witness Mr A who explained that the Respondent had been recommended to him and he had his first meeting with the Respondent on 28th January 1999 at Mr A's house when they discussed his case against an Edinburgh firm of Solicitors. The Respondent took some of the papers with him and said that he would study them and let Mr A know what the likely costs of proceeding with an action would be. Mr A stated that he made it clear to the Respondent that he wished to proceed on a no win no fee basis. Mr A stated that the next contact with the Respondent was the letter from the Respondent dated 2nd February 1999. Mr A stated that he wrote a letter to the Respondent on 8th February 1999 and he had a copy of this letter although there was no copy in the file. Mr A stated that the Respondent asked him for £3,500 to cover the consideration of all the

papers which Mr A held in relation to the matter, an opinion to be obtained from Counsel with regard to the validity of the claims and the issue of time bar and a specification of documents to be drawn up and lodged with the Court of Session. Mr A stated that the Respondent wished to see all the papers which he had and he was concerned about this. Mr A indicated that on the 19th February he sent a cheque for £3,500 being a payment to account to cover all the things set out in the Respondent's letter of 11th February 1999. Mr A stated that he had not received a demand or a fee note in connection with work which the Respondent had done. Mr A was adamant that by 19th February 1999 he had only had one meeting with the Respondent and a couple of phone calls. Mr A stated that he did receive a fee note for £400 but he had lost it. He indicated that he felt deceived by the Respondent.

In cross examination Mr A denied that he had attended at the Respondent's office prior to the meeting at Mr A's home. Mr A accepted that he went to the Respondent's offices to reclaim his papers and took out 34 of his letters to the Respondent from the file. He stated that they were his papers and that he had in total sent the Respondent 72 letters but the others were not in the file so he could not remove them. Mr A confirmed that there were about 4,000 pages of papers in connection with his case against an Edinburgh firm of Solicitors. Mr A said that there was no meeting at a hotel with the Respondent on 22nd February 1999. Mr A stated that the Respondent had done no work by February 1999 except to read the papers. Mr A accepted that it had never been clarified whether the Respondent was willing to take his case on a no win no fee basis but he thought that this would become more clear after the work as set out in the Respondent's letter of 11th February 1999 had been done. Mr A stated that he was not sure whether he had passed over some 1,000 pages of documentation to the Respondent by 23rd February 1999. Mr A stated that the 4th Inventory of Productions was the file which he got from the Law Society.

EVIDENCE FOR THE RESPONDENT

The Respondent indicated that he did not wish to lead evidence but was happy to answer any questions from the Law Society's fiscal or the Tribunal. The Respondent confirmed that he had been a sole practitioner for 5-6 years and was familiar with the Accounts Rules. In connection with Production 1 being the ledger card the

Respondent stated that he did not think that the dates were 19th February but thought that the first date was 1st February which was when a fee note was issued and the second date was 29th February which was when the fees were received. The Respondent stated that although it was his handwriting he was not sure exactly what was written. The Respondent said that he was quite anxious with regard to having Mr A as a client and took particular care with what he did. He stated that he had issued a fee note on 1st February and this would have included an element for VAT. He indicated that he did not know where the fee note was because all the records had been removed from his office by his trustees when he was sequestered but his trustees stated that they had no records. The Respondent stated that he would have sent the fee note out with the letter of 2nd February 1999 although he accepted that there was no reference in this letter to the enclosure of a fee note. The Respondent stated that his first meeting with Mr A had been at his office where they had had a brief meeting for about an hour and discussed the case and then made arrangements to meet at Mr A's house on 28th January. The Respondent stated that he had had to consider a large number of papers that he had been given by Mr A. Mr A had given him about 1,000 pages of documents and he had spent seven hours considering these. The Respondent indicated that there were notes in the file showing the work that had been done but these must have been removed by Mr A. The Respondent indicated that by the time he took the fee of £3,500 he had done over 30 hours of work for Mr A. The Respondent indicated that his VAT payments were up to date until 2001 and referred to the letter lodged from his Accountant.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid asked the Tribunal to find the Respondent guilty of professional misconduct. He indicated that the Respondent's theory that Mr A had removed documents from the file in order to make a case against him did not stand up as the charge as contained in the Complaint had been identified by the reporter in looking at the papers in the case not by Mr A. Mr Reid stated that the Respondent had said that he had sent the fee note out with the letter of 2nd February but there was no mention in this letter of any fee note there was only a request for a payment to account. The Respondent's letter of 11th February set out particular things which were to be done for which he

required the payment to account. It was clear from the ledger that the £3,500 was taken to fees on 19th February which ties in with the Respondent's letter to Mr A of 23rd February acknowledging receipt of the money. There was no evidence that the Respondent had prepared a fee note for the sum of £3,500 or done a VAT invoice. The Respondent was guilty of deceiving his client which amounted to professional misconduct. Mr Reid submitted that even if the Respondent had done work amounting to the value of £3,500 by the time he took the £3,500 to fees it made no difference because he had indicated to his client that the £3,500 was to be for the matters as set out in the letter of 11th February and not for work already done.

SUBMISSIONS FOR THE RESPONDENT

The Respondent stated that Mr A was not deceived as he had done more than 30 hours work for Mr A by the time he took the fees. The Respondent indicated that Mr A had removed the items from the file as he had his own agenda. The Respondent said that he had only recently become aware that the reporter had not had access to the full file when he prepared his report. The Respondent stated that he had rendered a fee note for the £3,500.

DECISION

The Tribunal considered that it was quite clear from the terms of the Respondent's letter of 2nd February 1999 that the £3,500 which the Respondent requested from Mr A was for payment to account to enable him to make initial enquiries. The Tribunal did not accept the Respondent's contention that the letter of 2nd February 1999 included a fee note in respect of work already done to the value of £3,500. There is no mention in the letter of 2nd February 1999 of any fee note or of any fees to be charged in respect of work already done. It is quite clear from the Respondent's letter of 11th February 1999 that the £3,500 would be to enable the Respondent to consider all Mr A's papers, to obtain an opinion from Counsel and draw up a specification of documents. The Respondent indicated that the dates on the ledger card were 1st and 29th February 1999. The Fiscal has contended that both dates are 19th February 1999. It is not possible to be absolutely sure from the writing on the record card of the dates. However the 29th February 1999 is a date which does not exist as it was not a leap

year. The Tribunal was accordingly satisfied that the dates on the ledger were 19th February 1999 and it was clear from the ledger that the Respondent took fees to his firm account at this time. The Tribunal accept that the Respondent had done some work for Mr A by this time. The Tribunal was however satisfied beyond reasonable doubt that the Respondent deceived his client by taking fees contrary to the basis on which he persuaded the client to give him the money as set out in his letter of the 11th February 1999. The Tribunal was also satisfied beyond reasonable doubt on the basis of the letter of 2nd February 1999 and Mr A's evidence that no fee note with a VAT element was rendered to Mr A. It is clear from the ledger entry that the Respondent took the £3,500 to fees and there was no provision in respect of a VAT element on the purported fee at that time. The Tribunal however accept that the Respondent may have included the necessary allowance in his VAT returns at a later stage.

The Tribunal were concerned that there appeared to be some documents which had been produced to the reporter which were not before the Tribunal. The Tribunal were further concerned that Mr A appeared to have letters which were referred to but not produced and which might have assisted the Tribunal. The Tribunal however were of the view that the absence of these documents did not affect the outcome of the case. The Tribunal was satisfied that the Respondent's conduct amounted to professional misconduct.

MITIGATION

The Respondent indicated that he had nothing to add in mitigation but stated that he had no income at present. The Fiscal made a motion for the expenses and the Respondent indicated that he had nothing to say with regard to this.

PENALTY

The essential qualities of a solicitor are honesty, truthfulness and integrity. A solicitor who falls short of this brings the legal profession into disrepute. The Respondent had deceived his client which is serious and reprehensible. The Tribunal however noted that the Respondent's client had not been out of pocket in this case as it was clear that the Respondent had, by a later stage, done work to the value of at least £3,500. It was

also clear that the Respondent had already done some work by the time he took the money to fees in February 1999. The Tribunal is of the view that the Respondent requires supervision in order to gain the necessary guidance and experience prior to being able to work again as a sole practitioner. The Tribunal also felt that the best way of ensuring protection of the public was to impose a Restriction on the Respondent's practising certificate which will ensure that he works for three years under supervision before he can work again as a sole practitioner. The Tribunal noted the Respondent's financial position but saw no reason to depart from the usual practice of awarding expenses where a finding of professional misconduct is made. The Tribunal made the usual order with regard to publicity.

Vice Chairman