

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**ANNE FRANCES WILSON,
Solicitor, Messrs McLeish
Carswell, Solicitors, 29 Saint
Vincent Place, Glasgow**

1. A Complaint dated 12th September 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Anne Frances Wilson, Solicitor, Messrs. McLeish Carswell, Solicitors, 29 Saint Vincent Place, 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 19th December 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 19th December 2007. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The

Respondent was present and represented by Bill Macreath, Solicitor, Glasgow.

5. Mr Lynch advised that he was making a motion to amend the Complaint to delete Articles 5.2 and 6.1(b). In addition, he moved to amend the second date contained in Article 6.1(a) from August 2006 to August 2005. The Tribunal allowed the amendments. Mr Macreath advised that the Respondent wished to plead guilty to professional misconduct in terms of the Complaint as amended.
6. In consequence of this plea no evidence was led and the Tribunal found the following facts established.
 - 6.1 The Respondent was born on 19th May 1948. She was admitted as a Solicitor on 25 November and enrolled on 8th December both months of 1976. She is a partner in the firm of McLeish Carswell, Solicitors, 29 Saint Vincent Place, Glasgow.
 - 6.2 The complaint relates to the winding up of the estate of the late Mrs R (“the deceased”) who died on 13th August 1950.
 - 6.3 The Complainers received a letter from a Mrs B on 10th November 1992 referring to earlier similar correspondence and asking for assistance with a view to having Messrs McLeish Thomson finalise the administration of the executry. Mrs B was the deceased’s daughter and executrix. She stated that her last contact from Messrs McLeish Thomson was a letter dated 1st March 1988 when they confirmed that the only outstanding issue to be dealt with related to a feuduty. The Complainers then entered into correspondence with Mr Herd, the partner then responsible. On 19th January 1993, Messrs McLeish Thomson advised the Complainers that the only outstanding matter related to a small feuduty payable from a tenement property, which they had tried, without success, to persuade the

owners of the tenement to redeem. On 9th September 1993, Mr Herd again wrote to the Complainers confirming that this was still the position. As the *cumulo* feuduty was apportioned among the individual proprietors, it did not fall to be redeemed by statute. Mr Herd did not think that the amount which would be received for the feuduty would justify advertising it for sale. The advertising costs would exceed its value. Although they had considered asking a family member if they wished to take it over, as all the family lived in Australia or New Zealand, the firm did not consider this to be realistic. In November 1994, the Complainers took advice from Professor Rennie who advised that the only way to complete the executry would be to persuade one of the beneficiaries to take on the feuduty as part of their share. This information was passed to Messrs McLeish Carswell on 14th November 1994. On 19th April 1995, Mrs B's daughter, Mrs C, advised the Complainers that she had taken over the handling of the estate on behalf of her mother. She advised that her mother was 88 years old and it was feared she might die before the executry was finalised. In May 1995, the Complainers obtained further advice from Professor Rennie who observed that the problem appeared to relate to a one half share in the feuduty and suggested that the solicitors try to sell it to the owner of the other half share and if this was not possible the share should simply be transferred to one of the beneficiaries. He stressed that he did not accept the fact an asset was unrealisable was a good enough reason for delaying the winding up of the estate. Again this view was passed onto the firm. In August 1995, the solicitors indicated that there had been a change in the management of the property, that the new managers appeared to be reasonably receptive to the idea of redeeming the feuduty, and that they had sent the appropriate figures and awaited a decision. On 7th December 1995, the solicitors advised that the problem was that the tenement was no longer managed by factors but by the co-proprietors and

they awaited an answer. In January 1996, the Complainers again contacted Professor Rennie for advice. He noted that the solicitors had not responded to his suggestions made in November 1994 and May 1995 and pointed out that even if the feuduty were to be redeemed, the superiority would not be extinguished and this would still require to be addressed. This advice was again passed to the solicitors. Mr Herd eventually replied in August 1996 where he took the view that relatives in Australia would not be interested in acquiring the superiority. On being urged by the Complainers to contact them to put the option to them, he did so, and in January 1997 indicated that one of the family might be interested in taking the matter over. In October 1997, Mr Herd left the firm and the Respondent took over the management of the executry.

- 6.4 On 14th January 1998, the Respondent told the Complainers that she intended to ascertain if the superiority was saleable. On 3rd April 1998, she advised that she had traced a very large box of papers and titles which she intended to examine before any potential purchaser was approached. On 24th June 1998, the Respondent advised that due to the sudden death of one of the firm's associates she had been unable to progress matters. On 7th September, she advised that there was still no progress to report. On 23rd November 1998, the Respondent advised that she was in communication with the co-proprietors of the tenement and was providing them with a redemption figure that day. On 26th January 1999, the Respondent advised that she was attempting to pursue recovery of arrears of feuduty prior to selling the superiority but was having some difficulty in doing so. Again on 14th April and 19th August 1999, she advised that she was continuing to pursue the arrears. On 19th January 2000, she advised that there was still no progress. Following a request from the Complainers for a written response updating them within 14 days of 19th July 2000, the Respondent advised

that there was a large deed box of papers and that she would have staff look through them and extricate items of importance so that she could clarify the position with a view to finalisation of the executry. She advised an account had been drafted many years ago but never finalised and that she would require to prepare accounts covering some fifty years to finalise the position. Over the next two years, the Complainers continued on a monthly basis to press the Respondent to bring matters to a conclusion. In October 2000, she advised that the accounts were at an early draft stage; in December 2000 she advised that the accounts were “almost there”; in February 2001 she advised that due to holidays and staff absences, the accounts were not complete; in March 2001 she advised that she was working towards finalisation of the accounts; in June 2001 she advised that the various elements of the accounts had been drafted but not assimilated and squared; in October 2001 she advised that the accounts would be completed within four to six weeks; in November 2001 she advised that the accounts would be squared over the following two weeks; on 30th January 2002 she advised that the accounts would be completed by the end of the following week; on 19th February 2002, she advised that the accounts were at the final typing stage; on 15th March 2002, she advised that the accounts had been typed and she was endeavouring to confirm the shares due to each beneficiary; on 24th May 2002, she advised that she was confirming the addresses of the beneficiaries; on 18th December 2002 she advised that matters were close to conclusion and that she hoped to report matters were finalised in her next letter. There then followed a period between February and August 2003 when the Respondent did not respond to a number of letters from the Complainers. In particular, the Complainers wrote to the Respondent on 25th February, 25th March, 17th April, 16th May, and 30th May, all 2003. The Respondent eventually wrote on 2nd June 2003. She apologised for the delay and stated that

she was endeavouring to confirm details of one of the beneficiaries and that accounts were completed and would be paid shortly. The Complainers wrote on 12th June and again on 2nd July and 31st July 2003 and on these last two occasions warned that they might have recourse to the procedures set forth in sections 15 and 42 of the Solicitors (Scotland) Act 1980. On 6th August 2003, the Respondent advised that prior to making a distribution of funds, she had required to trace trust papers, which had been missing for many years, which included a small holding in war stock and that the papers had now been found from which it appeared there was a surviving trustee, which should facilitate disposal of the remaining assets. She indicated that the executry could now be finalised. This did not happen. Various excuses were thereafter offered by the Respondent as to why the estate had not yet been wound up. On 31st March 2004, she advised that everything was ready and that the payments due would be sent to the beneficiaries after she returned from a week's holiday. Further letters were sent by her on 17th June, 19th August, 5th and 17th September, 27th October, 29th November, all 2004, and 17th January, 18th February and 12th May 2005. The last matter said to be outstanding at that stage was that she was awaiting a final figure for the war stock holding. On 7th September 2005, the Respondent wrote a lengthy letter to the Complainers detailing reasons why she had not been able to finalise matters none of which related to this estate specifically but rather all of which related to general and administrative matters pertaining to the operation of the Respondent's office.

7. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the Respondent guilty of professional misconduct in cumulo in respect of:

- 7.1 Her unconscionable delay and failure to complete the administration of the estate of a client between January 1998 and August 2005.
- 7.2 Her failure to respond openly and timeously to correspondence from the Complainers.

8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19th December 2007. The Tribunal having considered the Complaint dated 12th September 2007 at the instance of the Council of the Law Society of Scotland against Anne Frances Wilson, Solicitor, Messrs McLeish Carswell, Solicitors, 29 Saint Vincent Place, Glasgow; Find the Respondent guilty of Professional Misconduct in cumulo in relation to her unconscionable delay and failure to complete the administration of an estate of a client between January 1998 and August 2005 and her failure to respond openly and timeously to correspondence from the Complainers; Censure the Respondent; 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 M Cockburn
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

Chairman

NOTE

At the outset of this case, the Chairman advised that he was aware that there was correspondence before the Tribunal from his firm regarding this case. He advised that he had not seen the correspondence regarding this matter prior to receiving these papers and had no knowledge of this matter. Both parties confirmed that they took no issue with the Chairman hearing this case.

Following amendments to the Complaint, the Respondent pled guilty to professional misconduct as outlined in the amended Complaint. Accordingly there was no requirement to lead evidence.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch advised that his amendments to the Complaint removed any inference that the Respondent had any intention to mislead either her clients or the Complainers.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath stated that the Respondent's firm is a reputable business with an excellent reputation. The Respondent now has one partner and together they run a successful private client business.

Mr Macreath outlined the circumstances surrounding this matter. The Respondent's firm was dealing the winding up of an estate of a client who died 58 years ago. There was a complaint to the Law Society in the 1980's when the deceased's daughter sought the Law Society's help. The solicitor dealing with it at the time in the Respondent's firm responded to the Law Society and entered into lengthy correspondence with the Society stating that there were problems in winding up the estate because there was a small amount of feuduty over tenemental property which could not be redeemed by statute. The Law Society sought Professor Rennie's opinion on this matter and he suggested a solution. In 1997 the solicitor who had been dealing with the matter left the Respondent's firm but did not take this file with him when he

went to become a consultant with a practice in Paisley. The Respondent took responsibility for the file from 1997 onwards.

Mr Macreath advised that the Respondent got side tracked by looking at the ledgers and confused the properties involved in Mrs R's executry and that of the C Trust. She didn't read the C Trust documents as she should have and that matter was dealt with by the Law Society as inadequate professional service and she was ordered to pay the sum of £2,000 into the executry. Mr Macreath confirmed that the Respondent co-operated fully with the Law Society in relation to that matter. Mr Macreath stated that the Respondent eventually traced a large box of papers and wrote for advice to the solicitor who was previously dealing with the matter. However, in 1998 her partner died suddenly which had an enormous impact on the firm. In the summer of 2003, the firm's cashier misappropriated a large amount of firm's funds. The funds involved did not affect this case but did involve the C Trust. The Respondent spent a considerable period of time trying to rectify the situation and this led to further delay in the administration of Mrs R's estate. Mr Macreath advised that when the matter was drawn to his attention he recommended that the file be passed to another firm of solicitors in order that the matter could be resolved. He advised that Mr Kerrigan of Messrs Maxwell MacLaurin spent a great deal of time sorting out the matter. Confusion had arisen because the Respondent's cashier had made up ledger cards showing "R/C Executry" and so confused the two separate estates. Mr Macreath advised that the beneficiaries in the R Executry should have been told that they had a share in a feuduty which was worth very little and which would be written off and the matter could then have been dealt with.

Mr Macreath advised that the Respondent has been in practice for 31 years with an exemplary record. He advised that she had fully co-operated in relation to this Complaint and has apologised to her firm, her clients and to the Law Society.

The Tribunal asked why if the Respondent had co-operated with the Law Society in relation to other matters, she did not respond to the Law Society in 2005 regarding this case. Mr Macreath replied that her failure to reply was due to the cumulative stress of all of these events. He stated that at one point the Respondent did not know if she could remain in practice given the misappropriation of funds by her cashier. Mr

Macreath stated that she simply could not cope with this file during this very difficult time.

DECISION

Having regard to the terms of the Complaint and the admissions by the Respondent, the Tribunal considered that it required to make a finding of professional misconduct against the Respondent. Protracted delays in completing work for clients are unacceptable particularly where communication with the affected clients is poor. Such failings adversely affect the reputation of the profession. In addition, failure to respond to the Law Society hampers the Society in its investigation of complaints by the public. The Tribunal considered that the Respondent's failure to respond to the Society together with the extensive delay in completing the executry in this case amounted to Professional Misconduct. However, the Tribunal had every sympathy with the highly unusual circumstances in which the Respondent found herself. The Tribunal noted her lengthy previous good record and the fact that she incurred considerable expense in resolving this issue for her clients. The Tribunal also took into account the difficult professional circumstances at the time that these failures occurred. Considering all these matters, the Tribunal concluded that a Censure was the appropriate penalty. The Tribunal made the usual order with regard to publicity and expenses.

Chairman