

**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

**PAUL ROBERT ANDERSON,
Solicitor, Braeside Farmhouse,
Collessie, Cupar, Fife**

1. A Complaint dated 9 March 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Paul Robert Anderson, Solicitor, Braeside Farmhouse, Collessie, Cupar (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 15 May 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 15 May 2007. The Complainers were represented by their Fiscal Valerie Johnston, Solicitor, Dunfermline. The Respondent was not present or represented.

5. A Joint Minute was lodged admitting the facts and averments of duty in the Complaint.
6. The fiscal for the Law Society did not lead any evidence.
7. The Tribunal found the following facts established

7.1 The Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 7th May 1962. He was admitted as a Solicitor on 4th December 1985 and enrolled on 17th January 1986.

7.2 The Respondent was a Partner in the firm of Fergusson, Robertson & Company between 1st November 1988 and 31st May 1990, thereafter a Partner in the firm of Thorntons between 1st June 1990 and 31st March 1993 and a Partner in the firm of Anderson, Solicitors, between 12th April 1993 and 27th April 2001. He was sequestrated and thereafter suspended from practice on 29th October 2001. He is not currently working as a Solicitor.

MS A

7.3 By letter and Helpform dated 9th May 2005 Ms A invoked the aid of the Complainers in relation to concerns about the service provided to her by the Respondent in relation to the selling of an endowment policy. The Complainers copied to this Respondent on 12th May 2005 for his information only. Further enquiries were made and the Respondent was provided with copies of the paperwork from Prudential on 8th June 2005. On 21st June 2005, a formal letter was sent to him requiring him to provide his written response, any background information he may wish, his business file and files relating to the matter should he hold them and details of any fees charged or to be

charged plus an indication of whether they had or had not been paid within 21 days.

7.4 The Respondent returned the letter of 8th June 2005 endorsing it with the words "The clients will have been fully advised of risk". He sent back the letter of 21st June 2005 endorsed with the words "You have not enclosed the file as you stated, please send as soon as possible". The Complainers retrieved the Client's file from their Interventions Department, copied this and sent it to him for his response within 21 days on 20th July 2005. He returned that letter endorsed with the words "Please remind me what this complaint is". He was sent a copy of the issues on 11th August 2005. On 15th September 2005, he was served with a formal Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980. He returned this endorsed with the words "Copy me any correspondence in this again please". The second part of the Section 15(2) Notice was sent to him on 10th October 2005. A further letter was sent to him advising him that he had had all the correspondence and copy documentation and that the matter was now proceeding to a Report as he had not responded to the issues raised. He returned the letter of 10th October 2005 for the attention of the President of the Law Society complaining about the staff. He was advised by letter of 24th October 2005 that the scrawled notes which he had written on the correspondence did not constitute a reply. He has not made a formal response.

7.5 **MR AND MRS B**

In August 2005, Mr and Mrs B of Dundee invoked the aid of the Complainers in relation to concerns about the service provided to them by the Respondent in the sale of an endowment policy. The Respondent was sent a copy of the letter on 9th August 2005. Further enquiry was then made. By

formal letter dated 27th October 2005, the complaint was intimated to the Respondent with a list of the issues. He was required to provide his written response, any background information he may wish, his business file and files relating to the matter should he hold them and details of any fees charged or to be charged plus an indication if they had or had not been paid within 21 days.

7.6 The Respondent did not reply. He was served with Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 on 22nd November 2005. The Notice was returned by the Post Office marked "not called for". He was issued with the follow up Notice under Section 15(2) of the said Act on 4th January 2006. He did not respond. The Complainers then commissioned a Report and submitted that to him by letter date. He was asked to make any comment by 21st February 2006. He did not reply to any correspondence.

7.7 **MR C**

By Helpform dated 26th September 2005, Mr C invoked the aid of the Complainers in relation to concerns about the service provided to him by the Respondent in the sale of an endowment. The Respondent was advised of the Complaint and provided with a copy of the Help form by letter dated 11th October 2005 for his information. Further correspondence regarding the issues was sent to him on 24th October and 8th November with a copy of the Prudential documentation obtained and sent to him on 22nd November 2005. By formal letter dated 25th November 2005, the complaint was intimated with a list of the issues. The Respondent was required to provide his written response, any background information he may wish, his business file and files relating to the matter should he hold them and details of any fees charged or to be

charged plus an indication if they had or had not been paid within 21 days.

7.8 The Respondent did not reply. On 30th November 2005, the Complainers recovered the files from their Interventions Department and sent copies to the Respondent. He was served a Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 on 5th January 2006. The second part of the Section 15(2) Notice was served on him on 7th February 2006. He did not respond. The Complainers then commissioned a report and submitted that to him by letter dated 31st March 2006. He was asked to make any comment by 20th April 2006. He did not respond. By letter dated 18th May 2006, he was advised that consideration was given to his conduct which may amount to professional misconduct in view of his failure to reply and he was asked to make any comment on this by 5th June 2006. He did not respond.

7.9 **MR D**

On 24th October 2005, the Endowment Compensation Service on behalf of Mr D invoked the aid of the Complainers in relation to concerns about the service provided to him by the Respondent in the sale of an endowment policy. The Respondent was advised of the complaint and provided with a copy of the letter on 4th November 2005. Further enquiries were made then by formal letter dated 13th December 2005, the complaint was intimated with a list of the issues. The Respondent was required to provide his written response, any background information he may wish, his business file and files relating to the matter should he hold them and details of any fees charged or to be charged plus an indication of they had or had not been paid within 21 days.

7.10 The Respondent did not reply. He was served with Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 on 5th January 2006. He was issued with a further Notice under Section 15(2) on 8th February 2006. There was no response from him. The Complainers then commissioned a Report and submitted that to him by letter dated 7th March 2006. He was given the opportunity to comment on the terms of this and the question of his failure to reply by 20th March 2006. He did not reply. On 17th May 2006, he was written to regarding the conduct issue of his failure to reply and advised to make any representations by 5th June 2006. He did not reply.

7.11 **MS E**

By letter dated 5th April 2006 Ms E invoked the aid of the Complainers in relation to concerns about the service provided to her by the Respondent in the sale of an endowment. The Respondent was advised of the complaint on 21st April 2006. Further enquiries were then made and by formal letter dated 3rd July 2006, the complaint was intimated to the Respondent with a list of the issues. He was required to provide his written response, any background information he may wish, his business file and files relating to the matter should he hold them and details of any fees charged or to be charged plus an indication of they had or had not been paid within 21 days.

7.12 The Respondent did not reply. He was served with Notices under Section 15(2)(i)(i) and Section 42C of the Solicitors (Scotland) Act 1980 on 26th July 2006. He was issued with a further Notice under Section 15(2) on 17th August 2006. There was no response from him. The Complainers then commissioned a Report and submitted that to him by letter dated 2nd October 2006. He was given the opportunity to comment on the terms of this by 16th October 2006. He did not

reply. On 16th November 2006, he was written to regarding the conduct issue of his failure to reply and advised to make any representations by 27th November 2006. He did not reply.

7.13 MR & MRS F

By letter dated 7th June 2006 Mr & Mrs F invoked the aid of the Complainers in relation to concerns about the service provided to them by the Respondent in the sale of an endowment policy. The Respondent was advised of the complaint on 20th June 2006 and sent a copy of the letter. Further enquiry was made and by formal letter dated 4th July 2006, the complaint was intimated with a list of the issues. The Respondent was required to provide his written response, any background information he may wish, his business file and files relating to the matter should he hold them and details of any fees charged or to be charged plus an indication of they had or had not been paid within 21 days.

7.14 The Respondent did not reply. He was provided with additional copy paperwork on 17th July 2006. He was served with Notices under Section 15(2)(i)(i) and Section 42C of the Solicitors (Scotland) Act 1980 on 27th July 2006. He was issued with a further Notice under Section 15(2) on 17th August 2006. There was no response from him. The Complainers then commissioned a Report and submitted that to him by letter dated 29th August 2006. He was given the opportunity to comment on the terms of this by 12th September 2006. He did not reply. On 18th October 2006, he was written to regarding the conduct issue of his failure to reply and advised to make any representations by 7th November 2006. He did not reply.

7.15 On 5th October 2006, the Complainers determined that the Respondent's Firm had provided an inadequate professional

service to his clients. They further determined that in terms of Section 42A(2)(d), Paul Anderson & Co, Solicitors, should pay £800 by way of compensation to the clients.

7.16 The determination was intimated to the Respondent by letter dated 18th October 2006 with details of his right of appeal and requesting that he provide an explanation of the steps taken to implement the determination within 21 days. He did not reply. On 9th November 2006, a formal letter was issued to him by the Complainers calling upon him to confirm the steps taken to implement the determination within 21 days. The Respondent failed to reply and has failed to make payment of the compensation in terms of the determination.

7.17 MS G

By Help Form dated 4th May 2005, Ms G invoked the aid of the Complainers in relation to concerns about a service provided to her by the Respondent in the sale of an endowment policy. The Complainers wrote to the Respondent on 11th May 2005 regarding the matter. On 2nd December 2005, the Complainers determined that the Respondent's Firm had provided an inadequate professional service to his client. They further determined that in terms of Section 42A(2)(d), Paul Anderson & Co, Solicitors, as constituted in May 1996 should pay £250 by way of compensation to the client.

7.18 The determination was intimated to the Respondent by letter dated 14th December 2005 with details of his right of appeal and requesting that he provide an explanation of the steps taken to implement the determination within 21 days. He did not reply. On 22nd March 2006, a formal letter was issued to him by the Complainers calling upon him to confirm the steps taken to implement the determination within 21 days. The

Respondent failed to reply and has failed to make payment of the compensation in terms of the determination.

8. Having considered the foregoing circumstances and the submissions from the Complainers and having noted the terms of the letter from the Respondent dated 13 May 2007, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 His failure between 21st June 2005 and 24th October 2005, to reply to the reasonable enquiries of the Complainers into the complaint of Ms A or to comply with Notices served upon him.

8.2 His failure between 27th October 2005 and 21st February 2006, to reply to the reasonable enquiries of the Complainers into the complaint of Mr and Mrs B or to comply with Notices served upon him.

8.3 His failure between 25th November 2005 and 5th June 2006, to reply to the reasonable enquiries of the Complainers into the complaint of Mr C or to comply with Notices served upon him.

8.4 His failure between 13th December 2005 and 5th June 2006, to reply to the reasonable enquiries of the Complainers into the complaint of Mr D or to comply with Notices served upon him.

8.5 His failure between 3rd July 2006 and 27th November 2006, to reply to the reasonable enquiries of the Complainers into the complaint of Ms E or to comply with Notices served upon him.

8.6 His failure between 4th July 2006 and 7th November 2006, to reply to the reasonable enquiries of the Complainers into the complaint of Mr & Mrs F or to comply with Notices served upon him.

9. The Tribunal also find that the Respondent has failed to comply with the determinations and directions of the Council of the Law Society within the periods specified in relation to Ms G and Mr & Mrs F and resolved to make Orders under Section 53C (2) of the Solicitors (Scotland) Act 1980.

10. Having further considered the terms of the Respondent's letter of 13 May 2007, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 May 2007. The Tribunal having considered the Complaint dated 9 March 2007 at the instance of the Council of the Law Society of Scotland against Paul Robert Anderson, Solicitor, Braeside Farmhouse, Collessie, Cupar, Fife; Find the Respondent guilty of Professional Misconduct in respect of his failure to reply to the reasonable enquiries of the Law Society in respect of complaints by a number of clients; Censure the Respondent; and Direct that Orders be issued under Section 53C(2) of the Solicitors (Scotland) Act 1980 in respect of the Respondent's failure to comply with the determinations and directions made by the Law Society of Scotland in respect of Ms G and Mr & Mrs F; Find the Respondent liable in the expenses of the Complainers and the Tribunal as the same may be taxed by the auditor of the Court of Session on an a solicitor 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

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

The Respondent did not appear and was not represented at the Tribunal. He had however signed a Joint Minute admitting the facts and averments of duty but not the averments of professional misconduct

SUBMISSIONS FOR THE COMPLAINERS

Miss Johnston told the Tribunal that she had had discussions with the Respondent last week and he had indicated that it was a matter for the Tribunal to decide whether or not his conduct amounted to professional misconduct. Miss Johnston explained that the failures to respond in the Complaint related to complaints about endowment mis-selling. Clients of the Respondent had raised these matters with the Law Society. The Respondent had on occasion returned the Law Society's letters with notes on them but did not provide the Law Society with any full or clear response. In respect of two of the matters inadequate professional service determinations had been made by the Law Society and both these had been intimated to the Respondent who had not implemented the determinations and had not appealed them. Miss Johnston asked that the Tribunal make a finding of professional misconduct and issue two Orders under Section 53C(2). In response to a question from the Tribunal, Miss Johnston stated that as the determinations had been made after the Respondent's discharge from sequestration the insurers would not pay the compensation due. In response to a further question from the Tribunal, Miss Johnston clarified that the Respondent's name was presently on the Roll of Solicitors and that she was not aware of the circumstances surrounding his request to have his name administratively removed from the Roll.

SUBMISSIONS FOR THE RESPONDENT

In his letter the Respondent explained that he had ceased practising a number of years ago and he had closed his businesses. The Respondent also stated that he had been sequestrated and had no assets. The Respondent further explained in his letter that for a period of time, despite having no typing or filing facilities, he did respond to every letter. He however felt that the Law Society were not doing anything to assist him

and he then asked to have his name removed administratively from the Roll of Solicitors. The Respondent indicates in his letter that he was advised that this was not possible while there were various endowment matters outstanding. He at this stage stopped responding to correspondence. The Respondent indicated in his letter that his wish was to have his name removed administratively from the Roll and he had no intention of practising again as a solicitor.

DECISION

The Respondent had failed to reply to correspondence from the Law Society in respect of various complaints by clients. His conduct clearly amounts to professional misconduct. The Tribunal has made it abundantly clear that failure to respond to the Law Society hampers the Law Society in the performance of their statutory duty and brings the profession into disrepute. In this case there were numerous letters sent to the Respondent over a period of time to which he failed to reply.

PENALTY

The Tribunal noted that the Respondent had been out of the profession for four and a half years. The Respondent was clearly in a difficult situation. He was no longer practising when these Complaints came in and had no access to secretarial facilities or filing. These endowment complaints were made some four years after the Respondent had been sequestered. The Respondent had asked to have his name administratively removed from the Roll and it is unclear to the Tribunal why the Law Society were not prepared to do this. In terms of Section 9 of the Solicitors (Scotland) Act 1980 the Law Society shall on the solicitor satisfying the Council that he has made adequate arrangements with respect to the business he has then in hand remove the solicitor's name from the Roll. In this case as the Respondent had stopped operating some four and a half years ago it is not clear to the Tribunal what business affairs of the Respondent were not in order. This however is a matter for the Law Society. In the whole circumstances in this case, the Tribunal considered that a Censure would be a sufficient penalty.

It is clear that in two cases inadequate professional service determination had been made and compensation had been ordered. The Respondent accepts that he has failed to comply with the determinations and directions and the compensation remains outstanding. The Tribunal accordingly considered it appropriate to make two orders under Section 53C(2) of the Solicitors (Scotland) Act 1980 in respect of the outstanding compensation. The Tribunal made the usual order with regard to publicity and expenses.