

**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

**WILLIAM McCARTHY,
Solicitor, 57 Paisley Road,
Barrhead, Glasgow**

1. A Complaint dated 29th August 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William McCarthy, Solicitor, 57 Paisley Road, Barrhead, 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 18th January 2006 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 18th January 2006 the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr D Clapham, Solicitor, Glasgow.

5. The solicitor for the Respondent moved to amend the Answers so as to include an admission of professional misconduct. No evidence was led.

6. The Tribunal found the following facts established

6.1 The Respondent was born on 19th February 1943. He was admitted as a Solicitor in Scotland on 27th October and enrolled on 19th November both months of 1970. He carries on business as William McCarthy Solicitor, at 57 Paisley Road, Barrhead, Glasgow on a part-time basis.

6.2 Mr & Mrs A

In or about August 2002 Mr & Mrs A instructed the Respondent to act on their behalf in connection with their purchase from the local authority of the house occupied by them at Property 1. The purchase was to proceed with the assistance of a secured loan from Halifax plc. The Respondent was instructed to act on behalf of the lender to secure the lender's interest as heritable creditor. The conveyancing proceeded and the transaction settled on or about 2nd December 2002. The Respondent prepared an application for registration of the necessary deeds and an application for registration was submitted to Registers of Scotland and acknowledged by them on 11th December 2002.

6.3 On 4th February 2003 Registers of Scotland wrote to the Respondent returning the feu disposition granted in favour of Mr & Mrs A. They identified certain discrepancies in the feu disposition which required to be addressed to enable the process of

registration of title to proceed. The discrepancies related to the correlation of the wording of the feu disposition to the plan annexed thereto and were matters which could have been addressed with little difficulty by referring the problem back to East Renfrewshire Council who were the sellers of the property. The letter from Registers of Scotland to the Respondent dated 4th February 2003 advised the Respondent that he had sixty days in which to deal with the matters referred to in the letter failing which the application for registration of title would be cancelled. No action was taken by the Respondent following upon receipt of this letter. On 16th April 2003 Registers of Scotland wrote again to the Respondent pointing out that sixty days had elapsed since the requisition dated 4th February 2003 and stating that if the requisition was not complied with within fifteen days of 16th April 2003 the application for registration of title would be cancelled.

6.4 Despite the terms of the letter of 16th April 2003 the Respondent did nothing to deal with the requisition. On 7th May 2003 Registers of Scotland again wrote to the Respondent. Despite what they had said previously they indicated that they would allow a further fifteen days to the Respondent in which to deal with the requisition, to avoid the cancellation of the application for registration of title. On this occasion the Respondent again did nothing to comply with the requisition.

6.5 On 13th May 2003 East Renfrewshire Council wrote to the Respondent. They said that they had

been aware of the outstanding requisition from Registers of Scotland, and requested that the Respondent return the feu disposition and plan to the council to enable the council to take steps to carry out the necessary amendments to the documents. The Respondent did not reply to this letter. On 30th May 2003 Registers of Scotland wrote to the Respondent to advise him that in view of his lack of response to their letters, the application for registration of title had been cancelled. Along with that letter Registers of Scotland returned to the Respondent the other papers which they held in connection with the application for registration. On 24th June 2003 East Renfrewshire Council wrote to the Respondent indicating that from their point of view (since their standard security could not be recorded) it was imperative that the matter be dealt with.

6.6 Also in June 2003 East Renfrewshire Council contacted Mr & Mrs A to advise them that the title in their favour had not been registered. Mr & Mrs A attempted on several occasions to speak by telephone to the Respondent. Their calls were not returned. They attended in person at the house of the Respondent and left a message with his wife which was not responded to.

6.7 Mr & Mrs A contacted other solicitors namely Mr Hall, a partner in the firm of McAuley, McCarthy & Co, Solicitors, Paisley and Mr McGill, a partner in the firm of Messrs MacKinlay & Suttie, Solicitors, Barrhead Glasgow and Renfrew. Mr Hall and Mr McGill made attempts to contact the

Respondent to try to resolve the matter informally, but without success. Mr & Mrs A thereafter instructed Mr McGill formally to resolve matters. By this time, the provisions of the Abolition of Feudal Tenure etc (Scotland) Act 2000 were in force and the original feu disposition and other documents were no longer appropriate. Accordingly substantial remedial conveyancing required to be carried out by Messrs McKinlay & Suttie. This involved Mr & Mrs A in further expense. The Respondent wrote to Messrs Mackinlay & Suttie on 21st December 2004, apologised most sincerely for their having to become involved in the matter as a result of his own failure and enclosed a remittance for £400 to cover the fees and outlays that Messrs Mackinlay & Suite might have incurred to date. On or about 26th October 2004, Mr & Mrs A invoked the assistance of the Complainers.

6.8 By decision dated 19th April 2005 and communicated to the Respondent on 26th April 2005 the Complainer determined that the Respondent had provided an inadequate professional service to Mr & Mrs A, that the amount of fees and outlays to which the Respondent was entitled in respect of the transaction was nil, that the Respondent was to refund or waive to that extent the fees and outlays rendered in connection with the services provided, that the Respondent was to pay the fees and outlays of Messrs McKinlay & Suttie in relation to the remedial conveyancing and that the Respondent was to pay to Mr & Mrs A the sum of

£1000.00 by way of compensation. That determination was implemented in full by the Respondent, on or about 9th May 2005. On 9th May 2005 the Respondent wrote to Mr & Mrs A and said that the fault in the case lay exclusively with him and he said that he profoundly regretted the worry and upset that this had caused to Mr & Mrs A. The Respondent refunded to Mr & Mrs A the fee of £250 and the registration dues of £44.

7. Having considered the foregoing circumstances and after hearing submissions from the Complainers and on behalf of the Respondent, the Tribunal found the Respondent guilty of professional misconduct in respect of:

- 7.1 His persistent failure to respond to correspondence from the Keeper of The Registers of Scotland and from East Renfrewshire Council, so that
- a) an application for registration for title was cancelled, and
 - b) from about December 2002 until January 2005, the title of Mr & Mrs A was unregistered; the standard security in favour of Halifax PLC remained unregistered and Halifax PLC were thereby exposed to risk; and the standard security in respect of East Renfrewshire Council was not registered and East Renfrewshire Council was exposed to risk.

8. Having heard mitigation on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 18th January 2006. The Tribunal having considered the Complaint dated 29th August 2005 at the instance of the Council of the Law Society of Scotland against William McCarthy, Solicitor, 57 Paisley Road, Barrhead, Glasgow; Find the Respondent guilty of professional misconduct in respect of his persistent failure to respond to correspondence from the Keeper of the Registers of Scotland and from East Renfrewshire Council resulting in an application for registration of title being cancelled and a disposition and two standard securities remaining unregistered; 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 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)

Kenneth R Robb
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 Respondent had lodged answers admitting the facts and averments of duty in the Complaint. On the day of the Tribunal these answers were amended to include an admission of professional misconduct. It was accordingly not necessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch stated that on three occasions the Respondent had failed to respond to the Registers of Scotland and on two occasions had failed to respond to East Renfrewshire Council. Mr Lynch acknowledged the co-operation from the Respondent and his solicitor in dealing with matters. Mr Lynch also confirmed that the Respondent had never been before the Tribunal before and as far as he was aware there was nothing outstanding against the Respondent.

SUBMISSIONS FOR THE RESPONDENT

Mr Clapham stated that the Respondent had acknowledged from the outset that he had caused stress and inconvenience to his clients. Mr Clapham explained that the Respondent's intention was to carry on in practice part-time and do locum work and also act as a part-time Tribunal Chairman. Mr Clapham further explained that a partner in another firm in Coatbridge died suddenly and the Respondent was asked to help out. He agreed to do this, saying that he could do 3-4 days per week but this became 5½ days a week and the Respondent also had travelling time. The Respondent admits that he did not deal with correspondence from the Keeper or East Renfrewshire Council. Mr Clapham stated that everything had gone alright in the conveyancing up until this point and there was nothing particularly complex with regard to the matter. The Respondent was working long hours and was exhausted and this was why he did not deal with it. Mr Clapham referred the Tribunal to a letter from the Respondent to his client's new agents apologising and sending £400 to cover their costs. Mr Clapham also referred the Tribunal to a letter from the Respondent

apologising to his clients. Mr Clapham confirmed that the Respondent had refunded to his clients any fees and outlays paid by them and also paid them £1000 by way of compensation. Mr Clapham also pointed out that the Respondent had professional indemnity cover at all times. Mr Clapham advised the Tribunal that the Respondent had never had a claim made against him on the professional indemnity policy and was presently working three days a week as an assistant and was still working as a part-time Chairman of Tribunals. Mr Clapham pointed out that the Respondent was a solicitor of 35 years standing with a previously unblemished record and had been a former dean of the faculty in Paisley. Mr Clapham asked that in the circumstances the penalty be limited to a Censure.

In response to a question from the Tribunal the Respondent confirmed that, so far as he understood it, the registration process had now been completed by the new solicitors.

DECISION

The Tribunal considered that the circumstances of the case, given the persistent failure to respond to both the Keeper and East Renfrewshire Council, were sufficient to amount to professional misconduct. The Tribunal however considered that this was very much at the bottom end of the scale of professional misconduct and is one of the least serious cases dealt with by the Tribunal in recent times. The Tribunal was impressed by the fact that the Respondent had acknowledged his failures from the start and had apologised to his clients, the new firm of solicitors and the Law Society. The Tribunal also noted that the Respondent had reimbursed his fees, paid the new solicitors expenses and paid his clients £1000 compensation. The Respondent had also co-operated with the fiscal and the Law Society. The Tribunal accordingly imposed the lowest sanction available to it being a Censure. The Tribunal made the usual order with regard to expenses and publicity.

Vice Chairman