

**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

**KEVIN JOHN BOYD, Solicitor of
Messrs D Briggs & Company,
Solicitors, 50 Cassillis Road,
Maybole, Ayrshire**

1. A Complaint dated 1 March 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Kevin John Boyd, Solicitor of Messrs D Briggs & Company, Solicitors, 50 Cassillis Road, Maybole, Ayrshire (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 by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 9 June 2005 and notice thereof was duly served on the Respondent.

4. The hearing took place on 9 June 2005. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented by Mr G McKinstry, Solicitor, Ayr.
5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the Complaint were admitted. The application for an Order under Section 53C(2) was withdrawn by the Fiscal.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 29th December 1961. He was admitted as a solicitor on 3rd July 1984. He was enrolled as a solicitor in the Register of Solicitors of Scotland on 20th July 1984. Initially after his admission he was employed by Messrs John W & G Lockhart and Murray & Tait, Solicitors until on or about 30th January 1992. From on or about 30th January 1992 he was initially employed and latterly became a partner in the firm Messrs D Briggs & Company, Solicitors, 50 Cassillis Road, Maybole, Ayrshire.
 - 6.2 Mrs A
Mrs A resides at Property 1, Ayrshire. She consulted with the Respondent in regard to an executry matter. She was disappointed with the manner in which the Respondent acted in connection with those instructions. She invoked the aid of the Complainers. The Complainers obtained sufficient information from her to allow them to formulate and intimate a Complaint to the Respondent. A Complaint was intimated to the

Respondent. Eventually the Complainers made a determination that the Respondent had failed to provide an adequate professional service to his client, Mrs.A

6.3 On 5th August 2004, the Complainers determined in terms of Section 42(1) of the Solicitors (Scotland) Act 1980 to uphold the Complaint at the instance of Mrs A that an inadequate professional service had been provided to her by the Respondent. The Complainers determined in terms of Section 42A(1) that the fees to which the Respondent was entitled in the matter would be nil, (2) that the Respondent's firm should be directed to refund or waive to the extent specified any fees which it had rendered in connection with the services provided, (3) the Respondent be directed to meet the costs of another firm of solicitors in completing the conveyancing and executry work, (4) the Respondent pay to the estate the sum of £1,000 by way of compensation. The determination by the Complainers was intimated to the Respondent by letter dated 19th August 2004. Payment of the award of compensation was not forthcoming. A formal Statutory Notice in terms of Section 42B of the Solicitors (Scotland) Act 1980 was intimated to the Respondent by recorded delivery on 27th September 2004. Payment of the award of compensation has since been made.

6.4 Failure to reply to the Law Society

Mrs A was unhappy with the manner in which the Respondent dealt with her instructions. She contacted the Complainers by e-mail on 11th August 2003. The Complainers obtained sufficient information from her to formulate a Complaint. The Complaint was intimated to the Respondent on 2nd September 2003. A reply was not forthcoming. A number of reminders were intimated to the Respondent. A reply was not forthcoming. A Statutory Notice in terms of Section

42(c) of the Solicitors (Scotland) Act 1980 was intimated by recorded delivery to the Respondent. He failed to reply to the Statutory Notice. Further reminders were intimated by the Complainers to the Respondent. These reminders were again ignored by the Respondent. Despite the repeated efforts by the Complainers to obtain a response from the Respondent, he refused to comply with their requests.

7 Having heard submissions from the parties the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Complainers concerning the Complaint at the instance of Mrs A.

8 Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 9 June 2005. The Tribunal having considered the Complaint dated 1 March 2005 at the instance of the Council of the Law Society of Scotland against Kevin John Boyd, Solicitor of Messrs D Briggs & Co, Solicitors, 50 Cassillis Road, Maybole, Ayrshire; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society; Censure the Respondent and Direct in Terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of one year with effect from 1 October 2005 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 as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland; 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 will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alistair Cockburn

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

A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint. There was accordingly no evidence led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid for the Law Society confirmed that the Determination of the Law Society had now been complied with and that the Law Society were no longer insisting on their application for an Order under Section 53C of the Solicitors (Scotland) Act 1980. Mr Reid stated that the Respondent had acted for Mrs A in an executry and she had expressed dissatisfaction and complained to the Law Society. This complaint was intimated to the Respondent and then a formal statutory notice was intimated to him. He failed to respond which resulted in a delay in the Complainers being able to deal with Mrs A's complaint. Mr Reid referred the Tribunal to the previous findings against the Respondent made on 10 February 2004 in connection with analogous matters. Mr Reid pointed out that these failures to respond post-dated the Tribunal findings. The Respondent had however co-operated with regard to entering into a Joint Minute and saved time and expense.

SUBMISSIONS FOR THE RESPONDENT

Mr McKinstry stated that the Respondent had failed to obtemper the Directions of the Law Society in connection with the inadequate professional service finding and had failed to reply to the Law Society in connection with the complaint by Mrs A. The Respondent acknowledged responsibility and culpability and apologised to the Tribunal. Mr McKinstry advised that the Respondent had also apologised directly to the client. The outstanding matters had now been dealt with and the inadequate professional service Determination had been complied with. Mr McKinstry referred the Tribunal to the productions lodged which confirmed this. Mr McKinstry stated that not only had the Respondent paid compensation but he had paid interest on this and had paid the other firm's fees. Any loss had accordingly been rectified. Mr McKinstry explained that the Respondent had succumbed to the pressures of running and maintaining a business in a difficult professional environment. It was clear that

steps had to be taken in connection with his practice. Mr McKinstry referred the Tribunal to the references lodged from a wide range of leading practitioners in Ayrshire and to the references from two of his clients. Mr McKinstry emphasised that the Respondent had taken steps to minimise the risk of a repetition and had decided to dispose of his business. Mr McKinstry confirmed that from 1 October 2005 the Respondent's practice would be subsumed into another firm and that the Respondent will be working as an assistant with other solicitors and would be relieved of his management responsibilities. Mr McKinstry stated that the Respondent's practice was a distinguished and well respected firm with no financial problems. In connection with the previous findings and the Respondent's further failure to respond, Mr McKinstry stated that this was due to pressure on the Respondent and he had ignored the problem. It was confirmed that there were no further matters outstanding against the Respondent.

DECISION

The Tribunal was concerned that the Respondent had failed to respond to the Law Society despite having previous findings made against him by this Tribunal in February 2004 for analogous matters. Failure on the part of a solicitor to co-operate with the Law Society and respond to their enquiries hampers, impedes and frustrates the Law Society in the performance of their statutory duty which is prejudicial to the reputation of the legal profession. The Tribunal noted however that the failure to respond only related to one matter and one client and that the findings made by the Tribunal on the last occasion only resulted in a Censure. The Tribunal also noted that the Respondent had taken steps to sort matters out and it was clear from the references provided that he was not incompetent or dishonest. The Tribunal accordingly agreed by a majority view that a Censure and a Restriction of the Respondent's practising certificate for a period of one year commencing from the date when his practice was to be taken over would be sufficient to protect the public. Two members of the Tribunal dissented and were of the view that a Censure, a fine of £1000 and a Restriction for three years from 1 October 2005 would have been the appropriate penalty given the previous failure to respond. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman