

**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 BUCHANAN YOUNG,  
Solicitor, 23 Academy Street,  
Inverness**

1. A Complaint dated 29 April 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Buchanan Young, Solicitor, 23 Academy Street, Inverness (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 14 August 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 14 August 2008. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was not present or represented.

5. After hearing evidence from the Depute Clerk with regard to service of the Complaint and Notice of Hearing, the Tribunal resolved to proceed in the Respondent's absence. The Tribunal noted that no Answers had been lodged by the Respondent. The Tribunal allowed the Fiscal's motion to lead evidence by way of Affidavit in terms of Rule 9 of the Tribunal's Rules. Affidavit evidence from Caroline Robertson, the Law Society's Case Manager was lodged.
  
6. The Tribunal found the following facts established
  - 6.1 The Respondent was born on 11 July 1966. He was admitted as a Solicitor on and enrolled in the Register of Solicitors in Scotland on 3<sup>rd</sup> and 17<sup>th</sup> July 1991 respectively. He was employed in the Procurator Fiscal Service from 1 November 1991 until 20 May 1994 and has been a Partner in Alex Brown & Co, Solicitors, 23 Academy Street, Inverness from 6 June 1994 to date.
  
  - 6.2 MR A  
By letter dated 30 March 2007 Mr A complained about the service provided to him by the Respondent in respect of an appeal against conviction and sentence and a failure to implement a mandate. Details were sent to the Respondent on 2 May 2007 and a copy Helpform with correspondence sent to him for comment within 14 days on the 14 of May. A formal letter intimating the complaint was sent to him on 25 June 2007 requiring him to provide his written response, any background information he may wish and the business file or files relating to the matter within 21 days. He did not reply.
  
  - 6.3 On 20 July 2007, formal Notices were served on the Respondent in terms of Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 and Section 42C requiring the production within 21 days of all relative books, accounts, deeds, securities,

papers and other documents in his possession or control. A telephone call to his office established that he was on holiday. The time limit was extended to 20 August 2007. He did not reply or address the complaint.

6.4 On 20 August 2007 the second part of the Section 15(2) Notice was served and he was written to and advised that in view of the fact that he had failed to respond to the merits of the complaint by Mr A, the Society would consider whether that failure in itself may amount to professional misconduct. He was invited to provide his written response, any background information that he wished to provide and the business file or files relating to the matter within 21 days. He did not respond. A follow up letter was sent on 3 September advising that the matter would be sent to a Reporter.

6.5 A Reporter was appointed and a Report was sent to the Respondent on 2 October 2007. He was asked to provide any comments by 17 October 2007. On 1 November 2007 the Complainer's Committee continued consideration for information about any fees charged. The Respondent was written to on 26 November 2007 and asked to provide details of any fees submitted to the Legal Aid Board within 14 days. He did not reply.

6.6 MR A IPS DETERMINATION

On 10 January 2008, the Complainers determined that the Respondents' firm had provided an inadequate professional service in relation to the client Mr A, and directed that he pay £950 by way of compensation to the client and that any fees or outlays charged in relation to post sentencing work be reduced to nil and refunded.

6.7 The Determination was intimated to the Respondent by letter

dated 18 January 2008 with details of the 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 17 March 2008, 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 comply with the determination.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of his failure to respond to reasonable enquiries made of him by the Law Society and to statutory notices served on him by the Law Society and to send files required by the Law Society in relation to a Complaint made against him. In addition, the Tribunal found that the Respondent had failed to comply with the Determination and Direction given by the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Mr A within the period specified; the Tribunal resolved to make an Order in terms of Section 53C (2) of the Solicitors (Scotland) Act 1980.

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

Edinburgh 14 August 2008. The Tribunal having considered the Complaint dated 29 April 2008 at the instance of the Council of the Law Society of Scotland against William Buchanan Young, Solicitor, 23 Academy Street, Inverness; Find the Respondent guilty of Professional Misconduct in cumulo in respect of his failure to respond to reasonable enquiries made of him by the Law Society and to statutory notices served on him by the Law Society and to send files required by the Law Society in relation to a Complaint made against him; Find that the Respondent failed to comply with the Determination and Direction given by the Law Society of Scotland on 10 January 2008 under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified; Direct that an Order be issued under Section 53C

of the said Act; Censure the Respondent; Fine the Respondent £2,500 to be forfeit to Her Majesty; 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 £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**David Coull**

**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 was not present or represented at the hearing. He did not lodge Answers to the Complaint. The Tribunal heard evidence from the Depute Clerk that the Complaint was sent to the Respondent by recorded delivery mail on 16 May 2008. The Depute Clerk confirmed that a printout had been obtained from the Royal Mail's track and trace system which indicated that the Complaint had been delivered and signed for by Mr B on 19 May 2008. The Tribunal heard evidence from the Depute Clerk that Notice of Hearing was sent to the Respondent by recorded delivery mail on 11 June 2008. The Depute Clerk confirmed that a printout had been obtained from the Royal Mail's track and trace system which indicated that the Notice had been signed for on 12 July 2008 by Mr C. In the circumstances, Mrs Johnston made a motion to allow her to lead evidence by way of Affidavit and the Tribunal agreed to grant her motion.

**EVIDENCE FOR THE COMPLAINERS**

Mrs Johnston referred the Tribunal to the Affidavit evidence of Caroline Robertson, Case Manager with the Law Society's Client Relations Department. Ms Robertson's Affidavit advised that in her capacity as Case Manager she received a Complaint from a former client of the Respondent. Mr A instructed the Respondent in connection with an appeal against conviction and sentence. He was disappointed with the manner in which the Respondent dealt with his instructions. Details of Mr A's Complaint were sent to the Respondent on 2 May 2007 and, on 14 May 2007 a copy of the helpform together with the correspondence referred to therein was sent to the Respondent for comment within fourteen days. A formal letter intimating the Complaint was sent to the Respondent on 25 June 2007 requiring the Respondent to provide his written response, any background information he wished and the business files relating to the matter within twenty one days. There was no reply to that formal letter.

On 20 July 2007, formal notices were served on the Respondent in terms of Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 and Section 42C requiring the Production within twenty one days of all relative books, accounts, deeds, securities, papers and other documents in the Respondent's possession or control. A telephone

call to the Respondent's office established that he was on holiday over the time limit for his reply and that time limit was extended to 20 August 2007. There was no reply to these notices and the Complaint was not addressed by the Respondent.

On 20 August 2007 the second part of the Section 15(2) notice was served and the Respondent was written to and advised that in view of the fact that he had failed to respond to the merits of the Complaint by Mr A, the Law Society was considering whether that failure may in itself amount to professional misconduct. The Respondent was invited to provide his written response, any background information that he wished to provide and the business files relating to the matter within twenty one days. There was no response to that notice. A follow up letter was sent on 3 September 2007 advising that the matter would be sent to a Reporter.

A Reporter was appointed and a Report was sent to the Respondent on 2 October 2007. He was asked to provide any comments by 17 October 2007. On 1 November 2007 the Complaints Committee continued the matter for consideration for information about any fees charged. The Respondent was written to on 26 November 2007 and asked to provide details of any fees that he had submitted to the Legal Aid Board within fourteen days. There was no reply to that letter.

On 10 January 2008, the Complainers determined that the Respondent's firm had provided an inadequate professional service in relation to their client Mr A, and directed that the Respondent pay £950 by way of compensation to his client and that any fees or outlays charged in relation to post sentencing work be reduced to nil and refunded.

The Determination was intimated to the Respondent by letter 18 January 2008 with details of the right of appeal and requesting that the Respondent provide an explanation of the steps taken to implement the Determination within twenty one days. There was no reply to that letter. On 17 March 2008, a formal letter was issued to the Respondent by the Law Society calling upon the Respondent to confirm the steps taken to implement the Determination within twenty one days. There was no response to that letter and the Respondent has failed to comply with the Determination. A copy of the Determination and the letters referred to in Ms



Robertson's Affidavit were annexed to the Affidavit and a docquet was signed by Ms Robertson on each of the Productions confirming that they related to the Affidavit. Mrs Johnston stated that it was clear from the Affidavit evidence and the Productions lodged that the Determination and Direction had been made and that the Respondent had failed to comply with it and she asked the Tribunal to make an order under Section 53C.

## **DECISION**

The Tribunal was satisfied that the Respondent was aware of the Complaint and the Hearing. The Tribunal noted that the Respondent had not seen fit to lodge Answers or attend the Tribunal hearing. The Tribunal was satisfied beyond reasonable doubt on the basis of Productions and the Affidavit evidence lodged that the Respondent had failed to comply with the Determination and Direction of the Law Society. The Tribunal accordingly proceeded to make an Order under Section 53C of the Solicitors (Scotland) Act 1980. The Tribunal was also satisfied beyond reasonable doubt on the basis of the Productions and Affidavit evidence that the Respondent had failed to reply to the reasonable enquires of the Complainers, failed to comply with statutory notices served on him by the Complainers and failed to send files to the Complainers as required of him.

The Tribunal considered that the Respondent was well aware that the Law Society has a duty to investigate any Complaint regarding the conduct of a solicitor and that solicitors have a duty to respond to enquiries made by the Law Society in this regard. Failure to respond to the Law Society prevents the Society from properly investigating complaints and can bring the whole profession into disrepute. For these reasons the Tribunal views the Respondent's failures to respond to the Law Society in these circumstances as serious and reprehensible and considers that his failures amount to professional misconduct in cumulo. Given that the Respondent has failed to respond either to the Law Society or to correspondence from the Tribunal, the

Tribunal consider that it is appropriate to fine the Respondent £2,500. The Tribunal made the usual order with regard to expenses and publicity.

**Vice Chairman**