

**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

**DONALD MACAULAY
JOHNSON, formerly of 61
Ashcroft Drive, Glasgow and now
at 9 Prince of Wales Gardens,
Glasgow**

1. A Complaint dated 22 January 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Donald Macaulay Johnson, formerly of 61 Ashcroft Drive, Glasgow and now at 9 Prince of Wales Gardens, 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 16 November 2010 and notice thereof was duly served on the Respondent.

4. The Complaint called on 16 November 2010. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was not present or represented.
5. Ms Johnston lodged a Joint Minute of Admissions which was a scanned copy of the principal signed Joint Minute which had not yet reached her. The matter was then adjourned to 20 December 2010 to enable the principal Joint Minute to be received and for Ms Johnston to consider amending the Complaint.
6. When the case called on 20 December 2010, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was not present or represented as he had difficulty getting through from Glasgow due to the weather.
7. The Chairman suggested that the Minute of Amendment be further amended and it was agreed that the matter be adjourned to a fresh procedural hearing on 15 February 2011.
8. When the case called on 15 February 2011, the Respondent was present and represented himself. The Law Society were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh.
9. Ms Johnston moved the Tribunal to allow the amended Minute of Amendment and the Respondent indicated that he had no objection to this. This was agreed. The Tribunal also allowed the Respondent to amend his Answers.
10. As the facts were not in dispute between the parties, no evidence was required.
11. The Tribunal found the following facts established

11.1 The Respondent was born on 6 June 1959. He was admitted as a Solicitor on 18 March and enrolled in the Register of Solicitors on 12 April both in the year 1983. He was a Partner in the firm of Johnson & Co., Solicitors, formerly of 29 Priesthill Avenue, Glasgow from 30 November 1988 to 31 October 1999. The firm ceased trading on 31 October 1999. He is not currently practising as a solicitor.

Ms A

11.2 In 1995 Ms A and her partner instructed the Respondent to act on their behalf in the purchase of property 1. The date of entry for the purchase was 10 April 1995. The Respondent also acted on behalf of the Bank of Scotland in connection with a mortgage over the property. He advised Ms A of the balance due for settlement, the outlays which required to be paid and his fee in a letter dated 22 March 1995. A sum of £12,496 was paid to the Respondent by Ms A and acknowledged by him in a letter dated 30 March 1995. The sums paid to the Respondent included a figure of £1,405.00 for Stamp Duty and £341.00 for Recording Dues. Ms A paid the Respondent's Fee plus Posts and Incidents and VAT separately on 1 May 1995. Although he held funds for the Stamp Duty the Respondent did not send the Disposition in favour of Ms A and her partner to be Stamped.

11.3 The Respondent submitted the Disposition in favour of Ms A and her partner Ms B together with a Standard Security in favour of the Bank of Scotland to the Keeper of the Registers of Scotland. The application was receipted by the Keeper on 15 June 1995. The Disposition had not been forwarded to the Stamp Office and was returned to the Respondent for that purpose by the Keeper. The documents were never returned to the Keeper and the application was cancelled and returned unregistered to the firm of Johnson & Co. in January 1996.

During the period between 15 June 1995 and the return of the application in January 1996 the Respondent held a credit balance of £1,746.00 on behalf of his clients for the due outlays. Between that date and October 1999 he continued to hold those funds and did not make any enquiry to establish why or if his clients' title had been recorded. Due to illness he did not renew his practising certificate in October 1999 and the Complainers intervened in terms of section 46(1) of the Solicitors (Scotland) Act 1980 in February 2000. No trace of the file relating to this transaction for these clients was found and no ledger account holding the outlays was found. The accounting records were incomplete and no list of reconciled client balances could be produced.

- 11.4 In or about January 2007 Ms A and her partner repaid their mortgage and asked the bank for their title deeds. The bank was unable to locate the deeds. Messrs McNairs, Solicitors, 662 Alexandra Place, Dennistoun, Glasgow were instructed by Ms A and established that no title to the property had ever been registered. They proceeded to rectify the situation. The title deeds could not be traced. A new Disposition was obtained and executed by the disponers on 14 May 2007. For a period of about twelve years Ms A and her partner had no registered title to their property and the Bank of Scotland were unsecured for their loan. The Respondent was not aware that the application was cancelled and returned to the firm of Johnson and Co.

THE LAW SOCIETY OF SCOTLAND

- 11.5 The Complainers first intimated the Complaint to the Respondent by letter dated 16 April 2008. The Complaint was investigated and correspondence entered into with the office of the Judicial Factor appointed after the firm had ceased to trade. A formal complaint was sent to the Respondent on 7 August

2008 with a list of issues. He was required to provide his written response, any background information he may wish and his business file relating to the matter within 21 days. He did not reply. He was written to by and formal notice under Section 42C of the Solicitors (Scotland) Act 1980 on 5 September 2008 by recorded delivery and called upon to produce all deeds, papers and documents in his possession relating to Ms A and the purchase of property 1 within 7 days. He did not do so and did not respond. On the same day a Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 was sent to him. He did not respond to that.

- 11.6 In view of the Respondent's failure to reply and send files, he was advised that this may amount to professional misconduct by failure to respond to the Society. This was intimated to him on 6 October 2008 and he was given 14 days to reply. He did not reply and has made no response to the correspondence apart from telephoning the Law Society and advising that the Law Society had intervened in February 2000 and taken all deeds, papers and documents relating to Johnson & Co.

IPS DETERMINATION

- 11.7 On 15 September 2009, the Complainers determined that the Respondent's firm had provided an inadequate professional service to the client Ms A in relation to the purchase of property 1, and that the fees, VAT and outlays to which the solicitors were entitled should be nil and directed that they repay fees of £780.00 plus VAT of £136.50 and posts and incidents of £81.60, to the client. They further directed that the solicitors refund the stamp duty of £1,405.00 and the recording dues of £341 to the Indemnity Insurers of the former firm. They further determined that the Respondent must pay £1,000.00 to the client Ms A by way of compensation.

11.8 The determination was intimated to the Respondent by letter dated 8 October 2009 with details of the right of appeal and requiring him to provide an explanation of the steps taken to implement the determination within 21 days. He did not reply. On 29 October 2009, 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 refund the fees and outlays or make payment of the compensation in terms of the determination. The Complainers sent all said letters to the Respondent's address as known to them. The letters were not refused or returned. The Respondent did not speak to the case manager, leave any messages for her, e-mail her, provide her with an e-mail address to use to correspond with him or provide an alternative residential address.

12. Having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of:

12.1 His failure between 10 April 1995 and 31 October 1999, to register the title of Ms A and her partner to property 1 whereby they were uninfert in the property until May 2007.

12.2 His failure between 10 April 1995 and 31 October 1999, to register the Standard security granted by Ms A and her partner in favour of the Bank of Scotland in respect of property 1 whereby the bank's loan was unsecured until redeemed in January 2007.

12.3 His failure between 7 August 2008 and 22 January 2009 to respond to the reasonable enquiries of the Complainers about the registration of Ms A and partner's title or to comply with Notices and send files required of him.

13. The Tribunal also found that the Respondent had failed to comply with the Determination and Direction given by the Council of the Law Society of Scotland under Section 42A within the period specified namely within 21 days of 8 October 2009 and the Tribunal resolved to make an Order in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980.

14. Having noted two previous findings by the Tribunal against the Respondent and having heard the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 February 2011. The Tribunal having considered the Complaint dated 22 January 2009 at the instance of the Council of the Law Society of Scotland against Donald Macaulay Johnson, formerly of 61 Ashcroft Drive, Glasgow and now at 9 Prince of Wales Gardens, Glasgow; Find the Respondent guilty of Professional Misconduct in cumulo in respect of his failure between 10 April 1995 and 31 October 1999 to register a Disposition whereby his clients were uninfert in the property until May 2007 and his failure between 10 April 1995 and 31 October 1999 to register a Standard Security whereby the Bank's loan was unsecured until redeemed in January 2007 and his failure between 7 August 2008 and 22 January 2009 to respond to the reasonable enquiries of the Law Society about the registration of the title and his failure to comply with Notices or send files as requested; Direct that an Order be issued under Section 53C(2) of the Solicitors (Scotland) Act 1980; Censure the Respondent; Find the Respondent liable in one half of the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying 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)

Kirsteen Keyden

Vice Chairman

15. 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

When the Complaint called for a procedural hearing on 16 November 2010, the Respondent was not present and there was no principal Joint Minute of Admissions available. The Chairman expressed concern with regard to the allegation in respect of failure to register title and queried whether a single instance of negligence could amount to professional misconduct without more. It was agreed that the matter be adjourned to clarify the position with regard to the Joint Minute of Admissions and for the Fiscal to consider amending the Complaint.

The case then called on 20 December 2010, the Respondent was unfortunately unable to attend. It was suggested that the Minute of Amendment prepared by the Fiscal be further amended to cover the Section 53C application and the Respondent's failure to respond to the Law Society.

The case then called on 15 February 2011 when the Respondent was present and indicated no objection to the revised Minute of Amendment tendered by the Fiscal. In the circumstances this was allowed by the Tribunal. The Respondent indicated that he wished to amend his answer 3.1 as he now knew that a Judicial Factor had not actually been appointed to his firm. What had happened was that the Law Society's intervention department had intervened in February 2000 and had taken all the deeds, papers and documents relating to Johnson & Co.

SUBMISSIONS FOR THE COMPLAINERS IN RESPECT OF THE FAILURE TO RECORD DEEDS

Ms Johnston stated that she had provided further information with regard to the failure to record deeds. The fact that the Respondent held money for stamp duty and recording dues and despite this did not make enquiries to establish why or if his client's title had been recorded supported the Law Society's position that this was sufficient to amount to professional misconduct.

Ms Johnston pointed out that the period was three years ten months prior to the Respondent ceasing to practise and nothing was done to ensure the deeds were

recorded. The lender was unsecured for a period of ten years and the clients were uninfert.

SUBMISSIONS FOR THE RESPONDENT IN RESPECT OF FAILURE TO RECORD DEEDS

The Respondent explained that he had two paralegals at the time but he did not have any recollection of the transaction. He thought he had been involved in the conclusion of missives. He indicated that there were balances on the client account and that he should have checked as to why the sums were there but he was not a bookkeeper and it was not brought to his attention. He also advised that the matter was not chased up by the lender.

SUBMISSIONS FOR THE COMPLAINERS IN RESPECT OF FAILURE TO RESPOND

Ms Johnston stated that the Law Society relied on Section 64 of the Solicitors (Scotland) Act 1980 and had served Notice at the last known place of business or residence of the Respondent. She confirmed that all the documents were sent recorded delivery and were not returned or refused.

SUBMISSIONS BY THE RESPONDENT IN RESPECT OF FAILURE TO RESPOND

The Respondent indicated that he did not dispute that he had failed to respond. He explained that he was at a number of different addresses over the years but did not inform the Law Society of his change of address as it was incumbent on him so to do. He however indicated that he had been in contact with the interventions department. He explained that he thought matters were finished and that accordingly there was no need for him to provide the Law Society with his up to date address. He explained that the interventions department contacted him by mobile and email but it was only this department that had these contact details.

SUBMISSIONS BY THE COMPLAINERS IN RESPECT OF THE SECTION 53C APPLICATION

Ms Johnston stated that the Determination had been made and the Respondent had not made payment. Ms Johnston indicated that she understood that the Respondent was not in a position to make payment. She explained that Ms A had had the corrective conveyancing done and this was paid for by the indemnity insurance. However as no Judicial Factor had been appointed, the compensation had not been paid by the indemnity insurance.

SUBMISSIONS BY THE RESPONDENT IN RESPECT OF THE SECTION 53C APPLICATION

The Respondent stated that his situation was unusual. He explained that he was ill and that he was one of the first people to use the interventions department. Prior to this if a firm got into financial difficulties, a Judicial Factor was usually appointed. The Respondent explained that he was no longer working in law and was presently working at a call centre. He indicated that he had no intention of going back into law.

The Respondent submitted that what happened did not amount to professional misconduct.

DECISION

The Tribunal noted that the failure to record deeds in this case only related to one transaction. The Tribunal however was concerned by the Respondent's submission that he had two paralegals working for him and that he was not sure what had happened in this case. A competent and reputable solicitor would not deal with matters in this way. Despite there being money shown on the ledger in respect of this transaction, the Respondent did not pick up the fact that the deeds had remained unrecorded for three and a half years. The Tribunal consider that this taken together with his failure to respond to letters from the Law Society is sufficient in cumulo to amount to professional misconduct. The Respondent accepted that he did not tell his professional body where he was. The Tribunal also noted that the Respondent had not

made any attempt to make payment of the Inadequate Professional Service award. The Tribunal was very concerned by the Respondent's apparent lack of interest in what was happening in this transaction. The Tribunal was satisfied on the basis of the evidence before it that the Determination and Direction of the Law Society had been made and had not been implemented or appealed. In the circumstances the Tribunal considered it appropriate to make an Order under Section 53C of the Solicitors (Scotland) Act 1980.

Ms Johnston then lodged two previous findings against the Respondent.

The Respondent addressed the Tribunal in mitigation and advised that he had been unaware of the second set of findings made against him in 2003 as he had been moving around. He explained that he had been suffering from stress reaction at the time and had had personal and business difficulties. He advised the Tribunal of his present financial situation.

In relation to expenses, Ms Johnston stated that she would ask for an award of expenses but accepted that the issue of the Minute of Amendment was not something that it would be appropriate for the Respondent to bear the cost of. The Respondent asked the Tribunal not to make an award of expenses.

PENALTY

Given that the failure to record the deeds related to only one transaction and that the Respondent's failure to respond to the Law Society was mainly as a result of his moving address on a number of occasions, the Tribunal considered that this fell at the lowest end of the scale of professional misconduct and that a Censure would be sufficient penalty. The Tribunal also took into account the fact that the Law Society had had to amend the Complaint from its original form and accordingly considered that the Respondent should only have to pay one half of the expenses of the procedure. The Tribunal made the usual order with regard to publicity.

Vice Chairman