

**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**

**MARIE ANGELO LAND,  
Solicitor, 29 Nicolson Street,  
Greenock**

1. A Complaint dated 25 May 2006 was lodged with the Scottish Solicitors Discipline Tribunal by the Council of Law Society of Scotland (hereinafter referred to as 'the Complainers') requesting that Marie Angelo Land, Solicitor, 29 Nicolson Street, Greenock (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 might think right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged by the Respondent.
3. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 12 October 2006 and notice thereof was duly served on the Respondent.
4. On 11 October 2006 the Respondent produced a medical certificate stating that she was unable to attend the hearing and the hearing was accordingly discharged.

5. The hearing was adjourned to 2 November 2006 and notice thereof was duly served on the Respondent.
6. When the case called on 2 November 2006 the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. The Respondent was not present or represented. A letter had been received from the Respondent that morning indicating that she did not intend to appear, the Tribunal accordingly resolved to proceed in the Respondent's absence. A Joint Minute of Admissions in connection with the documentation was lodged. The Tribunal heard evidence from four witnesses for the Complainers.
7. The Tribunal found the following facts established.
  - 7.1 The Respondent is a Solicitor enrolled in Scotland. She was born on 5th April 1958. She was admitted as a Solicitor on 13th November 1987 and enrolled in the Register of Solicitors in Scotland on 27th November 1987. She was a Partner in Messrs Lyons, Laing & Co, Solicitors then in Leitchman & Co, Solicitors, until December 1994 and from 23rd December 1994, a Partner in Marie A Land, Solicitors, currently operating from 29 Nicolson Street, Greenock
  - 7.2 Mrs A  
The client Mrs A, Property 1, submitted a Help Form to the Complainers in January 2003 in connection with the service provided to her by the Respondent. Mrs A had consulted the Respondent in December 1999 in connection with the break up of her relationship with her partner of sixteen years to whom she had four children.
  - 7.3 Mrs A thereafter in December 2002 ceased to instruct the Respondent and instructed Messrs Bradley Campbell, Solicitors, 8 Broughton Street, Greenock, in her stead. Mrs A signed a Mandate instructing the Respondent to pass all

papers, files, etc, held by her to the new firm of Solicitors on 10th December 2002. Messrs Bradley Campbell, Solicitors, sent the Mandate to the Respondent on 13th December 2002.

7.4 On 20th December 2002, the Respondent wrote to Messrs Bradley Campbell, Solicitors, enclosing correspondence from Mr B for their attention. The Respondent advised that copy papers were being prepared in relation to the exclusion order matter in which she had acted for Mrs A. These copy papers were received by Bradley Campbell, Solicitors, on the same day.

7.5 Further copy papers were then sent but there were no papers in connection with the action raised on behalf of Mrs A. Thereafter, the Respondent failed to deliver any more files to Messrs Bradley Campbell, Solicitors, in obedience to the Mandate. On 17th June 2003 more than six months after the delivery of the mandate, Messrs Bradley Campbell confirmed that no original papers or files had, at any stage, been received by them from the Respondent. The Complainers with the Respondent's permission forwarded files to them on 23<sup>rd</sup> June 2003 and were advised that Mrs A and her children had required to leave the property in about March or April 2003 and accordingly the files were no longer needed. Messrs Bradley Campbell are unaware whether there was any documentation in these files which they did not already have copies of.

7.6 Mark Stalker

Mark Stalker was employed as a senior qualified assistant by the Respondent between 21<sup>st</sup> May 2001 and about 24<sup>th</sup> April 2003. From the end of 2001, he lived nearby the Respondent's office and was permitted by the Respondent to open the office first thing in the morning and open all incoming mail unsupervised. In addition, he was allowed to issue mail on behalf of the firm without any supervision regarding the content of the mail by the Respondent.

During the period of his employment, the Respondent failed to undertake supervision of his work. There was no system in operation to establish what work he had in progress, what Court actions were being conducted by him under the auspices of the Firm, how those actions were being financed and conducted, that clients were being kept properly informed about the progress of their business, that telephone calls and mail from clients were being returned and replied to, how his work was reviewed or diaried or to monitor the standard of service he was providing to clients. The Respondent was the appropriate partner and had a duty to supervise her assistant but had established no methods or systems to do so. As a result of her failures clients were misled, inadequately represented, had Court orders pass against them about which they knew nothing, were repeatedly unable to obtain contact with Mark Stalker by telephone in spite of significant attempts and suffered inconvenience, distress and financial loss.

#### 7.7

##### Company 1

By letter dated 12<sup>th</sup> April 2003, the firm of Company 1, of Property 2, sought the assistance of the Complainers regarding the service provided to them by Mark Stalker. Company 1 were Defenders in an action raised in Greenock Sheriff Court in 2002 at the instance of Company 2. They instructed Messrs Marie A Land, Solicitors, in or about July 2002. Mark Stalker acted on their behalf and repeatedly delayed in providing copy precognitions, failed to communicate adequately with his client, failed to provide and maintain complete files and copy correspondence, advised the Court that he was withdrawing from agency due to lack of instruction without having sought instruction, then re-entered the process all without the knowledge or agreement of his clients, failed to advise of proof diets, failed to advise of a motion being granted requiring his clients to lodge a medical certificate, failed to provide copy pleadings and failed to keep his client advised of the

progress of the litigation all between the date of his instruction and April 2003.

7.8 Mr D

The Complainers received a Help Form on 12th November 2003 from the Respondent's former client, Mr D of Property 3. Mr D complained *inter alia* that he had been misled by Mark Stalker and that there had been delay in progressing a Court action on his behalf. Mr D had instructed the firm of Marie A Land, Solicitors, in respect of an action against the Daily Record in January 2001. His representation was assumed by Mark Stalker in May 2001. Counsel's Opinion was sought and a draft Writ prepared by Counsel. Mr D produced character references and documentation in support of his claim against the paper. Mark Stalker failed to take any action. He lied to Mr D on numerous occasions advising him that his action was being progressed. In fact, no action was raised and no progress made in relation to the claim for a period of 2 years.

7.9 HUNTER & ROBERTSON, SOLICITORS, PAISLEY AND MS E

By letter dated 3rd September 2002, Messrs Hunter & Robertson, Solicitors, LP 14, Paisley, complained about the conduct of Mark Stalker in a conveyancing transaction involving their client Mr F and Mark Stalker's client Ms E. He had misled the said firm about the sale of the property at Property 4. He told them he held funds to settle, had an offer of loan, had issued a Report on Title and that he was sending them a cheque all of which was untrue.

7.10 Ms E had first approached the Complainers regarding concerns about the conduct of Mark Stalker in the year 2002. He had acted on her behalf from about September 1996 initially whilst employed by Messrs Maitlands, Solicitors. He retained her file when he commenced employment with Mesdames Marie A Land, Solicitors, on 21st May 2001. The business in which he was instructed

related to her matrimonial separation. Ms E was divorced on 10th June 2002. The Extract Decree was delivered to the Respondent by the Sheriff Clerk on 26th July 2002. During the course of his employment with the Respondent and without her knowledge, he was able to continue to represent Mrs E. He did not register the file through the office registration system. When his conduct of the business for Mrs E became increasingly inadequate, he concealed the matter from the Respondent and made a conscious decision not to disclose the issues which were arising to her as his employer. He continued to act and perpetrate the deceptions on Mrs E hereinafter condoned upon under the auspices of the Respondent's Firm.

7.11 Correspondence continued with Hunter & Robertson, Solicitors, in relation to the action. In the divorce proceedings Mrs E wrote to Mark Stalker on 3rd December 2001 seeking advice on 5 points including progress with regard to her obtaining aliment or periodical allowance. He did not reply. A Proof was scheduled for February 2002. On 31st January 2001, Hunter & Robertson wrote to him with a Minute of Agreement and Joint Minute. He signed a Joint Minute agreeing *inter alia* that Mr F's crave for divorce be allowed to proceed as undefended and conceding several heads of expenses and abandoning all five of Mrs E's counterclaims including transfer of the matrimonial home, payment of capital sum of £30,000, payment of periodical allowance of £150 per month and expenses. The Joint Minute was sent by him to Hunter & Robertson on 1st February 2001 on the basis that it be held as undelivered pending Mrs E signing the Minute of Agreement the following Monday 4th February 2001. Hunter & Robertson agreed to the discharge of the Diet of Proof.

7.12 A Minute of Agreement was prepared by Messrs Hunter & Robertson, Solicitors, and signed on 4th February 2001 by Mrs E. In terms of this document, it was agreed *inter alia* that the matrimonial home be marketed and sold with Mrs E

being permitted to remain in occupation for a period of up to 4 months, that she would receive £10,000 from the proceeds of sale along with the furniture and furnishings but excluding the boat, and that each party discharged all other claims other than the expenses incurred in the divorce proceedings. This document was registered in the Books of Council and Session on 1st March 2004. The divorce was granted on 10<sup>th</sup> June 2002.

7.13 In 2002, Mrs E decided to purchase the former matrimonial home. Messrs Hunter & Robertson on 19th April 2002, submitted to Marie Land & Co a draft judicial account claiming £1,685.76 in expenses against Mrs E in respect of the divorce action. They also wrote on 24th April requiring Mrs E to vacate the house by 4th June. Mark Stalker on 22nd May 2002, submitted an offer on behalf of Mrs E to Messrs Hunter & Robertson to purchase the former matrimonial home in the sum of £52,000 with entry on 12th July 2002. The transaction proceeded. During this time, Mrs E had been led to believe by Mark Stalker that she was due to receive a settlement from her husband. He had advised her that she had a Court decree stating that she was to receive £450 per month in aliment. She believed she had agreed to a total settlement figure of £43,500 including alimentary arrears of £33,500 and £10,000 from the sale of the house. On the advice of Mark Stalker, she signed a statement to say that she would give up occupancy rights on the sale of the house and that she would receive £10,000 from the sale. Her understanding was that this document was signed on the condition that all monies with the exception of the £10,000 would be paid before the sale and the divorce would not be finalised until after that time. She believed she was to receive 3 lump sums of £3,000 over a few weeks and then £24,500 a couple of weeks later.

7.14 Mark Stalker paid her 3 sums of £3,000 out of his own funds. No such decree had been obtained and no such agreement had been entered into in respect of arrears of aliment. She found it extremely difficult to contact Mark Stalker who did not return calls placed to him at the Firm of Marie A Land & Co. She was resident in Lanzarote at that time and he advised her that she would require to fly back to sign loan papers for the house. Prior to doing so, her circumstances changed and she decided that she would live abroad. She obtained a purchaser for the former matrimonial home and notified Mark Stalker of this by leaving a message with a Secretary as he remained difficult to contact. She flew back to Scotland on 15th August 2002. She managed eventually to contact Mark Stalker who advised that her husband's Solicitors were happy that she had another buyer. At a meeting with him on 19th August 2002, he advised her that there was a problem as the missives had almost been concluded. She did not know prior to this time that any missives had been entered into. She had not instructed him to do so and was extremely upset and angry. In fact, missives had been concluded on 16th July 2002.

7.15 Ms G  
By letter dated 3rd September 2003, Messrs Cook, Stevenson & Co, Solicitors, LP 24, Greenock 3, wrote to the Complainers regarding the conduct of Mark Stalker in his representation of Ms G in a claim on behalf of her child. Ms G initially instructed the him while he was employed at Maitlands, Solicitors. An action was raised at Greenock Sheriff Court under reference A271/99. Mark Stalker advised Ms G that she had the benefit of Legal Aid and that a Certificate had been granted when it had not been. The action was progressed and Junior Counsel was instructed to represent the Pursuer on 2 occasions when the matter



proceeded to debate. She was made aware that he had moved firms to that of Marie A Land, Solicitors, although he had not advised her of this. She attended at appointments with Mark Stalker at the office of Marie A Land & Co on 6 or 7 occasions, on one of those occasions, he advised her that there had been an offer made by the Defenders to settle the case in the sum of £4,000. She did not see a letter confirming this but had no reason to believe that this was untrue. She received very little correspondence during the course of the case.

7.16 When Mark Stalker resigned from his employment with the Respondent in April 2003 Ms G was not told. She tried to contact him by telephone in about June 2003 and was advised he was no longer there. She learnt that her file had been sent to Maitlands Solicitors. She instructed Messrs Cook, Stevenson & Co, Solicitors, to act on her behalf and they sought to recover the file. They were unable to do so but checked the Court process and established that the action had been dismissed on joint motion with Ms G as the Pursuer being found liable in the expenses of the action. Ms G did not instruct Mark Stalker to enter into such an agreement. Further enquiry with the National Health Service Central Legal Office established that there had never been any offer of settlement in the sum of £4,000 or any other such sum. In addition, no Legal Aid Certificate had ever been granted in favour of Ms G covering the expenses in this action in spite of the fact that she was a single parent in receipt of Income Support and unable to fund such an action.

7.17 Mr H  
Mr H of Property 5, submitted a Help Form to the Complainers on 26th May 2003 in connection with his representation by Mark Stalker in a matter involving central

heating installation. On 9th June 2000, Mr H had instructed the firm of Marie A Land & Co, in the case. He was granted Legal Advice and Assistance. The firm then entered into correspondence regarding the claim including making application for and obtaining increased cover under Legal Advice and Assistance. An action was raised and Legal Aid applied for. The action was sisted in or about 1st August 2001. An offer of Legal Aid had been made but not accepted. The Legal Aid Board indicated that it could be resuscitated if required at that time.

7.18 After 4th September 2001, the case was taken over by Mark Stalker and the relatively high standard of representation deteriorated dramatically. Matters were not progressed. Correspondence was not filed. File notes were not filed. Mr H's attempts to ascertain what was happening did not receive a response. Entries on the file ceased at about 31st May 2002 and no work was then undertaken on behalf of Mr H for a period of almost one year.

7.19 During that time, Mr H contacted Mark Stalker on a number of occasions and also met with him in respect of the case. He was repeatedly advised him that the case was progressing when it was not. On 1st April 2003, Mr H wrote to regarding his neighbour being a witness for him. This related to a possible Court action in May 2003 and the requirement to give the witness notice. Mark Stalker had advised Mr H that the case was due to call at Greenock Sheriff Court in May 2003 which was untrue as the action remained sisted.

7.20 Miss J  
On 9th June 2003, the Complainers received a Help Form from Miss J, Property 6, seeking assistance in relation to representation she received from Mark Stalker. In mid-

1999, Miss J's partner was murdered in Greenock. In August 1999, she instructed Messrs Marie A Land & Co, Solicitors, to act on her behalf in the submission of a Criminal Injuries Compensation claim. The application was processed over a number of years but was refused in approximately June 2001 as a result of the deceased's criminal convictions and matters related to the murder. A Review of the refusal was submitted and this was refused on the 25<sup>th</sup> of July 2001. Miss J then instructed an appeal to the Criminal Injuries Compensation Appeals Panel.

7.21 Miss J met with Mark Stalker on 7th August 2001. An appeal form dated 7th August 2001 was completed and he advised by letter of 13th August 2001 that he would seek to obtain the deceased's criminal record before submitting same. A letter of the same date was submitted to the CICA indicating an intention to lodge an appeal. He wrote to the CICA on 27th August 2001 purporting to enclose an application for review. A review had already been unsuccessful. The Appeal Form from 7th August 2001 bore to be attached to the copy letter but this was never sent or received by the CICA.

7.22 Miss J met Mark Stalker on 14th September 2001 and went over a copy of the deceased's convictions which had been obtained. In that attendance he discussed the preparation of the appeal and advised her that the appeal would then be prepared and forwarded to her. No further action was taken until 14th January 2002 when he wrote to Miss J's MSP indicating that Counsel's opinion was being sought and wrote to the Lord Advocate regarding a possible appeal by those convicted in the original murder conviction. He then advised Miss J that her appeal was due to be heard on 14th February 2003 and thereafter told her that it was postponed to 28th February 2003 due to the illness of one of the panel members.

This was untrue. No appeal was ever lodged and no hearing ever fixed.

7.23

Mr K

In or about May 1994 Mr K, Property 7 had instructed Messrs Maitlands Solicitors in a Medical Negligence Claim against Argyll & Clyde Health Board. Mark Stalker assumed responsibility for the matter in about 1996 and took the file with him when he joined Marie A Land Solicitors on 21st May 2001. A court action had been raised but in July 1997 and again in 1999 legal aid was refused. Mark Stalker well knew that Mr K wished to progress his claim and was at no time prepared to abandon it.

7.24

In 1999 Mr K paid for Counsel's opinion which was obtained by Mark Stalker. Counsel called for further investigations including a Medical Report from a consultant orthopaedic surgeon and details of the standard procedures and common practices relating to surgical equipment followed by Health Boards at the material time. Mark Stalker discussed this with Mr K on 12<sup>th</sup> May 1999. He advised him that he would take advice from various Health Boards etc in that regard and get back to him. He failed to make any such enquiries. In the course of his employment with the Respondent both Mark Stalker and the Firm of Marie A Land Solicitors were found liable for expenses in the action on two occasions. Mr K was unaware of this and was not kept informed of the progress of his action. A debate was scheduled for 30<sup>th</sup> January 2003. On 29<sup>th</sup> January 2003 Mark Stalker contacted the solicitors acting for the Health Board and advised them that Mr K did not want to go ahead with the case and was happy for the action to be dismissed with expenses against him. He had not consulted with Mr K on this matter and had no instructions to

agree to the course of action proposed. On 30<sup>th</sup> January 2003 the defenders were assoilzied with expenses against Mr K.

8. Having considered the foregoing circumstances, having heard submissions from the Complainers and having noted the Respondent's Answers and letter of 31 October 2006, the Tribunal found the Respondent guilty of professional misconduct in respect of her repeated failure between 21 May 2001 and 24 April 2003 to adequately supervise her employee Mark Stalker and her failure to have in force an effective system for supervision of employees and for the protection of her clients whereby clients Company 1, Mr D, Ms E, Ms G, Mr H, Miss J and Mr K and her fellow solicitors Hunter & Robertson were misled, received inadequate professional services, had court orders passed against them and suffered distress, inconvenience and financial disadvantage.
9. The Tribunal made no finding of professional misconduct in respect of a failure to implement a mandate sent to her by Messrs Bradley Campbell, Solicitors, on behalf of client Mrs A.
10. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 2 November 2006. The Tribunal having considered the Complaint dated 25 May 2006 at the instance of the Council of the Law Society against Marie Angelo Land, Solicitor, 29 Nicolson Street, Greenock; Find the Respondent guilty of professional misconduct in respect of her failure between 21 May 2001 and 24 April 2003 to adequately supervise her employee and failure to have in place an effective system of supervision of her employees and for the protection of clients; Make no finding of professional misconduct in respect of her failure to implement a mandate; Censure the Respondent and Direct in terms of Section 53 (5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such Restriction as will prevent her while acting as a sole practitioner from employing any qualified assistant or trainee for an

aggregate period of five years and thereafter until such time as she satisfies the Council of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law Society of Scotland that she is fit to supervise a qualified assistant or trainee; 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 at 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)

**A. M. Cockburn**

**Chairman**

11. 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 case had originally been scheduled for the 12 October 2006. A soul and conscience medical certificate was received from the Respondent the day before the Tribunal hearing indicating that she was not fit to attend due to gastroenteritis. The matter was accordingly adjourned until 2 November 2006. On 2 November 2006 the Respondent was not present or represented but sent in a letter indicating that she did not intend to appear. She enclosed with this letter a Joint Minute of Admissions in connection with the documentation lodged before the Tribunal. Ms Johnston, on behalf of the Law Society, asked that the Tribunal proceed in terms of Rule 9 in the Respondent's absence. The Tribunal agreed to accept the Joint Minute of Admissions and agreed to proceed in the Respondent's absence.

**EVIDENCE FOR THE COMPLAINERS**

The Complainers led the evidence of John O'Donnell, Solicitor, a partner with Bradley Campbell & Company. Mr O'Donnell explained that he represented Ms A who had previously been represented by the Respondent. He was instructed on 10 December 2002. Mr O'Donnell explained that his client was being threatened with eviction and had four children and that matters were urgent. Mr O'Donnell indicated that Mrs A was very unhappy with the service she was receiving from the Respondent and she signed a mandate to have the paperwork transferred to him on 30 December 2002. Mr O'Donnell indicated that he received a response from the Respondent and she sent him a copy of the motion by Mr L in connection with the eviction action but Mr O'Donnell indicated that he then received a loose collection of papers from the Respondent in a brown envelope which contained the initial writ and sundry papers in connection with the action. He indicated that these papers were totally insufficient for him and they were a selected batch of papers rather than a file. He indicated that he also received Annex 2 being another collection of photocopied papers but it was not clear whether this was a complete file. He indicated that the Respondent's response was almost deliberately unhelpful and he assumed that she was preparing Legal Aid accounts and that was what the problem was with the file. Mr O'Donnell explained that he complained on behalf of Mrs A to the Law Society. He did not receive any files until June 2003 when the Law Society sent him the files but by this time he did not need them and sent them back. Mr O'Donnell stated that his representation of

Mrs A was impeded because he did not have the full file. Mr O'Donnell stated that he asked the Respondent whether he had the entire files but she did not answer this query. In response to a question from the Tribunal, Mr O'Donnell indicated that when he referred to Marie Land he was referring to the firm and the individual. He indicated that Mrs A never said that Mark Stalker was acting for her. Also in response to a question from the Tribunal, Mr O'Donnell indicated that he could not say whether or not there were more papers in the files than the copy papers that he received from the Respondent. He indicated that he could not say what was in the files sent to him by the Law Society as he did not compare these with the papers that he had been sent by the Respondent.

The Complainers then led the evidence of Mark Stalker, Solicitor. He indicated that he was presently working as a Service Manager for the Family Mediation Service. He advised the Tribunal that he had been employed with Marie Land from May 2001 until April 2003. Mark Stalker acknowledged that he had been before the Tribunal and accepted responsibility for his actions. He explained that when he started at Marie Land's he did not take any work with him but shortly thereafter his former employer decided not to continue and asked him to take some of the files. Mark Stalker stated that he did not raise this with the Respondent because he was aware there was an issue in respect of some of the files and he wanted time to sort matters out. He stated that he did not think it was necessary to tell the Respondent as he was not thinking straight at the time. He explained that he took on about 9 or 10 files. Mark Stalker stated that there were no systems of supervision in place at the Respondent's firm. He indicated however that he was 6/7 years qualified and that there was good reason for the Respondent to place trust in him. Things were fine to start with but then when the volume of business increased and he had personal problems, things began to get on top of him. Mark Stalker explained the filing system in the office and indicated that as he was first in in the morning he would usually open the mail. The Respondent would open the mail if she was in as well. Mark Stalker explained that as he lived close to the office he was often in at 8.00am where the Respondent often did not arrive until 9.20am. Mark Stalker confirmed that the Respondent was aware that he opened the mail and he would put her mail on her desk and the rest in respective filing trays. Mark Stalker indicated that he was not told what the office systems were and there was no office manual. He indicated that the



staff would often congregate in the Respondent's office for coffee and a cigarette but there were no formal meetings to discuss matters. He explained that in connection with outgoing letters, he signed his own mail and he would also sign his trainee's mail and sometimes the Respondent's trainee's mail if the Respondent was not available. Mark Stalker said that there was no formal procedure in respect of file checks. He indicated that he understood that the Respondent wished to do this but due to the volume of business it was never done. Mark Stalker accepted that occasionally he would find a file with a memo on it for example with regard to feeing it up but that this was irregular. Mark Stalker explained that there was a court diary for court dates but this was often inadequate. He also explained that there was a typing backlog. The Respondent also had a heavy caseload and did not know what was going on and everyone was left to get on with it. Mark Stalker indicated that he did not know how the Respondent was aware of what was being spent and that he would ask the cashier for a cheque but that the Respondent would sign cheques unless she was on holiday when he was authorised to sign cheques on her behalf. Mark Stalker explained that there was a pin board on which telephone messages would be affixed and these would build up. He indicated that the Respondent would have seen this as the board was in the main reception area. Mark Stalker said that the Respondent did not enquire how he was coping with the volume of work. Mark Stalker accepted that he misled a number of clients and that court orders passed against his clients and it was difficult for people to get in touch with him. He indicated that he accepted that what he did led to distress and financial loss for his clients. Mark Stalker referred to the Company 1, Mr D, Hunter & Robertson, Ms E, Ms G, Mr H, Miss J and Mr K transactions and indicated that all these facts as set out in the Complaint were correct. A lot of the files came with him from Maitlands. Mark Stalker advised that he did his own feeing in respect of Legal Aid matters but if it was a large civil Legal Aid case or a private fee the Respondent would do it. Mark Stalker stated that he did not blame the Respondent for what had happened but that the pressures on him contributed to what occurred. Mark Stalker stated that he had problems in his personal life and there were no procedures with regard to supervision. He also explained that he often had to hunt for files and that tapes would be left for days and weeks on end before they were typed and this all contributed to what had happened. Mark Stalker stated that he did not have a holiday while he was there, he was only off for a few days. Mark Stalker indicated that the Respondent was aware of the situation with his court cases and in

connection with his personal life but he did not advise her that he could not cope. He stated that the Respondent did not indicate that she was dissatisfied with his work until a few days before he resigned. Mark Stalker confirmed that in connection with Company 1, it was not an agency case. He indicated that in connection with Mr D, the Respondent gave him the file as she wished to be rid of it. He accepted that there may have been things missing from the file. He indicated that he did not have any meetings with the Respondent with regard to Mr D's case. He stated that there were only file checks done with regard to criminal files. In connection with Hunter & Robertson, he indicated that he advised the Respondent when the client wished to speak to her. He explained that the Respondent did not know about the files that he had taken from Maitland's but he did not attempt to hide it from her. In connection with Ms G, Mark Stalker stated that he would have put this in the court diary and that he thought that the Respondent had appeared in the case on one occasion. In connection with Mr H, he indicated that there may well have been correspondence missing from the file. In connection with Mr K, Mark Stalker accepted that there was no mandate from Maitlands to the Respondent but that the Respondent was generally aware that he had brought some cases and she did not make any enquiries. Mark Stalker indicated that there were no client ledgers for these files but they would not have been marked as agency cases.

The Complainers then led the evidence of Ms N, Solicitor, who indicated that she was an assistant with the Respondent when she set up her new practice in 1995 and she then became an associate and then a partner and she left on 29 December 2000. She indicated that Mark Stalker came to the firm after she had left. She advised that while she was with the Respondent's firm she regularly signed mail when she was an assistant and had to run the firm when the Respondent was not there. She advised that there was no fixed system with regard to the mail and whoever was available signed it. Ms N stated that the Respondent was often not there and lost interest in the business. She would often not show up and they did not know why. It was from 1996 when Ms O started, that matters began to slide. Ms N indicated that until then the Respondent was interested and had systems in place. Ms N stated that she raised with the Respondent that the legal staff had to do work which admin staff should have been doing. Ms N stated that she and Ms O left the firm as they knew it was a disaster waiting to happen. Ms N stated that she acted for Ms G who had previously

been represented by Mark Stalker. She borrowed the process folder and it was clear that the Respondent had appeared on one occasion in the case.

The Complainers then led the evidence of Ms M who works in the Client Relations office of the Law Society of Scotland. Ms M indicated that she was responsible for dealing with the Respondent's case and referred to production 3.1 being the schedule of the Client Relations Committee where it was determined that no action should be taken against the Respondent for her personal conduct in connection with Mr D's case.

### **SUBMISSIONS FOR THE COMPLAINERS**

Ms Johnston submitted that there were two issues for the Tribunal to consider. Firstly there was a failure to implement the mandate and secondly the failure to supervise her employee. Ms Johnston referred the Tribunal to legal authorities lodged by the Complainers. It is clear from the case of *MacColl-v-Council of the Law Society of Scotland 1987 SLT524* that ignorance of what was going on in the practice was not acceptable. Ms Johnston submitted that the Tribunal had previously taken the view that partners should supervise the opening of incoming mail and adhibit the firm's signature to outgoing mail. It was clear from the evidence of Mark Stalker that he had been opening the mail on his own and had been able to intercept mail. Ms Johnston referred the Tribunal to Jane Ryder's book on Professional Conduct for Scottish Solicitors which suggested that there should be a manual and systems in place and that it was no defence to a charge of professional misconduct that the principal was unaware of the improper actings of an employee. Ms Johnston indicated that it was clear from the evidence of Ms N that there was a lack of systems in the Respondent's firm prior to Mark Stalker working there. In the Respondent's case there were a catalogue of cases and an ongoing course of conduct by qualified staff which due to a lack of proper systems, the Respondent was not aware of. It was clear from the evidence that the build up of phone calls and mail and backlog of tapes was visible to her and there were no systems in place to check on her assistant's actings.

In respect of the mandate, it was clear from the evidence of Mr O'Donnell that he required information and that the Respondent knew that there were concerns and that

he required access to files but she failed to provide them. In response to a question from the Tribunal, Ms Johnston stated that Mr O'Donnell had indicated that there appeared only to be partial paperwork and that there were no papers in connection with the action raised on behalf of Mrs A. Ms Johnston referred the Tribunal to the letter of 20 December 2002 from Mark Stalker referring to files being forwarded on completion of the accounting process.

## **DECISION**

The Tribunal was not satisfied beyond reasonable doubt that the Respondent had failed to implement a mandate. It was clear from the evidence that the Respondent had sent two lots of copy papers to Mr O'Donnell. Mr O'Donnell was unable to say whether or not there was any further documentation in the files which were eventually sent to him by the Law Society which he had not already received copies of from the Respondent. Although the letter by Mark Stalker dated 20 December 2002 refers to files forwarded on completion of the accounting process this letter was not spoken to in evidence and it is not clear that there were any additional papers in these files that Mr O'Donnell did not already have copies of. The Tribunal accordingly could not be satisfied beyond reasonable doubt that the Respondent had failed to implement the mandate.

In connection with the failure to supervise, it was clear from the evidence of the witnesses for the Complainers that the Respondent did not have sufficient systems in place to enable her to properly supervise qualified staff. Her assistant, Mark Stalker, was able to open the mail which allowed him to intercept mail and he also signed his own mail. It was clear that the Respondent was not aware of what was going on due to insufficient systems being in place. Although the Respondent states in her Answers that she did have systems in place she has not provided any evidence of this. It is also clear from the evidence of Ms N that there were no systems in place prior to Mark Stalker starting with the Respondent's firm. The Tribunal noted that the Respondent had previously been in the profession for 19 years and not had any difficulties and was unfortunately subject to deception by her assistant. However if a solicitor decides to delegate any work there remains a duty of supervision and a solicitor must accept personal responsibility for any improper actions which result from a failure of

reasonable supervision. The Tribunal accordingly must find that the Respondent is guilty of professional misconduct. As the Respondent's fault was in her failure to adequately supervise assistants and trainees the Tribunal considered that the most appropriate way of dealing with the Respondent was to Restrict her practising certificate to prevent her from employing qualified assistants or trainees for an aggregate period of five years if acting as a sole practitioner. Working for a period of five years under this restriction will give her time to demonstrate that she can put protocols in place with regard to the supervision of staff, execution of work and general discharge by employed persons of professional duties. She will require to satisfy the Law Society that she has demonstrated her ability to do this prior to her being able to obtain a full practising certificate. The Tribunal made the usual order with regard to expenses and publicity.

**Chairman**