

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

D E C I S I O N

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**MALCOLM CAMERON,
Solicitor, residing at 17 Larch
Road, Drumbreck, Glasgow**

1. A Complaint dated January 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Malcolm Cameron, Solicitor, of Messrs Cameron Macaulay, 80 Berkeley Street, 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 4th September 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 4th September 2007. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by Joan Cunningham.

5. An amended Record dated 28th August 2007 was lodged by Mr Reid. Preliminary pleas were lodged for the Respondent. Mrs Cunningham intimated that her first plea in law was not insisted upon at this stage.
6. Mr Reid agreed that Article 4 of the Complaint should be amended to delete the words “late August 2006” where they appear in line 6 of that Article and replace them with the words “10th March 2006”.
7. The Tribunal invited a submission from Mr Reid regarding the relevancy of the Complaint.
8. Having considered that submission the Tribunal dismissed the Complaint as irrelevant and pronounced an Interlocutor in the following terms:-

Edinburgh 4th September 2007. The Tribunal having considered the Complaint dated January 2007 at the instance of the Council of the Law Society of Scotland against Malcolm Cameron, Solicitor, residing at 17 Larch Road, Drumbreck, Glasgow; Dismiss the Complaint as amended as irrelevant and Find the Complainers liable in the expenses of the Respondent 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 Law Society’s last published 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)

Vice Chairman

9. A copy of the foregoing together with a copy of the Decision 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

Mrs Cunningham advised that her first plea in law in relation to notice of the Complaint was not insisted upon at this stage.

It was accepted by Mr Reid that events after the intimation of the Complaint in March 2006 cannot be prayed in aid to prove the charge of professional misconduct in relation to the failure to deliver title deeds by March 2006. Mr Reid agreed that Article 4.1 of the Record required to be amended to delete “late August 2006” in line 6 and insert in its place “10th March 2006”.

By means of questioning, it was established by the Tribunal that this Complaint was solely concerned with a delay of four months in delivering title deeds. It was also established that it was not disputed that the Respondent was ill during that period and had delegated the matter to an experienced paralegal.

Mr Reid was invited to address the Tribunal on the relevancy of the Complaint as amended. The Tribunal sought Mr Reid’s view on how the averments in the amended Complaint could amount to professional misconduct.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid submitted that the averments could amount to professional misconduct. He stated that firstly the Respondent advised the Complainers in November 2006 that he had reached an agreement with his clients to deliver replacement title deeds to them. Secondly, between November 2005 and 10th March 2006 when the Complaint was intimated to the Respondent, the title deeds were not delivered to the clients. Thirdly, during that period of four months nothing happened despite various letters and telephone calls. Mr Reid submitted that at its simplest, his contention was that this delay was sufficient to give rise to a charge of professional misconduct, as a client is entitled to expect his title deeds to be delivered to him. Mr Reid submitted that the decision on whether a delay of four months in these circumstances could amount to professional misconduct was one for the Tribunal to make.

In response to a question from the Tribunal, Mr Reid advised that the Law Society accepted that the Respondent's letter of 3rd November 2006 did not contain a time period when the deeds would be delivered. Mr Reid stated that irrespective of that, the Society's position is that a competent solicitor would have arranged for the delivery of the title deeds within an appropriate time period. He stated that the Law Society contends that the Respondent's delay in sending the deeds for a period of four months was inappropriate.

DECISION

The Tribunal considered the Complaint as amended, the pleadings and the other documents lodged together with the submission by Mr Reid and the undisputed evidence. The Tribunal noted that in this case the deeds in question had been properly recorded and the clients had a good title to their property at all times. There was therefore no risk to the clients and no financial consequences resulting from the Respondent's alleged delay. The Tribunal noted that all that was alleged in the Complaint as amended was that the Respondent had delayed for a period of four months in obtaining copies of the deeds and forwarding them to his clients. The Tribunal also noted that it was accepted that the Respondent was ill during that four month period and had delegated the task to an experienced paralegal.

The Tribunal considered the test of professional misconduct as laid down in the case of Sharp –v Council of the Law Society of Scotland 1984 SC 134. The Tribunal considered that in all the circumstances of this case a delay of four months in sending clients copies of their title deeds was a departure from the standards of conduct expected of a competent and reputable solicitor. However, the Tribunal was of the view that taking into account the terms of the Complaint as amended, the undisputed evidence and the particular circumstances of this case, the averments in Complaint could not at their highest amount to a serious and reprehensible breach of these standards. The Tribunal therefore decided that in all the circumstances of this case the Respondent's delay, if proved, could not amount to professional misconduct. The Tribunal therefore dismissed the Complaint as irrelevant.

On behalf of the Respondent, Mrs Cunningham indicated that she would not be charging the Respondent a fee and would only be looking to him to recover her outlays. However, she advised that the Respondent had previously received legal advice from Mr Macreath. She therefore submitted that the Tribunal should award expenses on the usual solicitor and client indemnity basis. The Tribunal ordered that the Complainers be held liable for the expenses both of the Respondent and of the Tribunal on the usual basis. The Tribunal made the usual order for publicity.

Vice Chairman