

**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

**RICHARD ALLAN SANDEMAN,
Solicitor, of Messrs Sandemans
Solicitors, 256 Main Street,
Camelon, Falkirk**

1. A Complaint lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Richard Allan Sandeman, Solicitor, of Messrs Sandemans Solicitors, 256 Main Street, Camelon, Falkirk (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 23 August 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 23 August 2007. The Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The

Respondent was present and represented by James McCann, Solicitor, Clydebank.

5. A Joint Minute was lodged; the Respondent admitted the averments of duty and of professional misconduct. The Respondent's answers admitted the averments of facts subject to some amendments. The amendments to the facts were accepted as accurate by the fiscal. No evidence was led.

6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 11 July 1953. He was admitted as a Solicitor on 10 December 1976. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 6 January 1977.
 - 6.2 He was a partner with Messrs Milligan, Telford & Morrow from 1 March 1987 to 3 December 1993. From 13 December 1993 he has been a partner with Messrs Sandemans, Solicitors, 256 Main Street, Camelon, Falkirk. From 1 June 1994 to 31 December 1995 he was a partner with Young & Co.
 - 6.3 In or about January 2004 Mr A, instructed the Respondent in respect of a constructive dismissal employment claim against his former employers. An application was made to an Employment Tribunal and the case proceeded to a hearing of the evidence.
 - 6.4 The Employment Tribunal issued its final decision on 15 October 2004. Mr A was unsuccessful. The Tribunal found that he had not been constructively dismissed.
 - 6.5 The time period for any appeal against the Employment Tribunal decision was forty-two days, running from 15 October 2004. A Notice of Appeal was lodged with the form being dated 10 November 2004 and a date receipt from the Employment Tribunal offices, being 22 November 2004. The Respondent had not advised the client Mr A to take an appeal

to the Employment Appeal Tribunal after the rejection of his original case by the Employment Tribunal. The Respondent had formed a very clear view, and communicated that view to Mr A, that such an appeal could not succeed. The Respondent had been friendly with MrA and because the Respondent was going on holiday in November 2004 he allowed Mr A the facility of contacting the Respondent's staff and using, to some extent, the typing and other facilities within the Respondents office to frame and lodge his own appeal. Accordingly the appeal was drafted and signed and lodged on 10th November 2004 by Mr A himself.

- 6.6 By letter dated 24 November 2004 the Tribunal advised the Respondent that the Appeal had not been properly constituted, that a copy of the Tribunal decision or order was required and that the Appeal period was forty-two days from the date when extended written reasons had been issued. The Respondent replied by letter dated 6 December 2004 enclosing a copy of the extended reasons.
- 6.7 By letter dated 10 January 2005 the Tribunal office advised the Respondent that the Appeal was instituted on 8 December 2004 and was therefore thirteen days out of time. The said letter advised that if the Appeal was to be pursued further, an application to extend the time required to be lodged along with reasons for the lateness. Such an application should be lodged within fourteen days.
- 6.8 The Respondent replied by letter dated 21 January 2005 that because the Tribunal office had failed to advise them immediately of the apparent difficulty, the application could not have been presented on time. The Respondent did not accept that the application was late and asked the Tribunal office to proceed with the application.
- 6.9 The Tribunal office wrote further to the Respondent on 4 March and 30 March 2005 to the effect that they had had no response to their letter of 10 January. The latter letter asked for

any application for an extension of the time limit to be lodged by 6 April 2005. In the absence of any response from the Respondent, the Tribunal office, in a letter dated 25 April 2005, sent a sealed copy of an order in respect of the failure to lodge the application for an extension of time, stating that unless said extension was lodged with the Tribunal office within ten days of 25 April 2005, the Appeal would be struck out.

6.10 By letter dated 27 April 2005 the Respondent advised Mr A that his application (ie, his Appeal) had not been able to get through the sift of the applications and that concluded matters.

6.11 By letter dated 16 May 2005 the Tribunal office wrote to the Respondent enclosing a copy of the sealed order, striking out the Notice of Appeal as no application of extension had been lodged despite the Tribunal office letters of 10 January, 4 March and 30 March 2005 and the order of 25 April 2005.

7. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his writing to his client on 27th April 2005 advising that his Appeal had not been able to get through the sift, when the Respondent knew that the Tribunal Office had taken the position that the Appeal was out of the time and an application for an extension of time was required and the Respondent knew that no sift had taken place.

8. Having heard the Solicitor for the Respondent in mitigation and having noted a previous Finding of misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23 August 2007. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Richard Allan Sandeman, Solicitor of Messrs Sandemans Solicitors, 256 Main Street, Camelon, Falkirk; Find the Respondent guilty of Professional Misconduct in respect of his

misleading his client by advising his client by letter that his Appeal had not been able to get through the sift when the true position was that the Appeal was out of time and the Respondent knew that no sift had taken place; Censure the Respondent and Fine him the sum of £1,500 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 £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Gordon Cunningham

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

Chairman

NOTE

The Respondent's answers admitted the averments of fact in the Complaint subject to the addition of certain facts. It was clarified with the fiscal that the fiscal accepted as correct the facts set out in 2.0 to 2.9 of the Respondent's answers. A Joint Minute was lodged in which the Respondent accepted the terms of the productions, the averments of duty and averments of professional misconduct. It was accordingly not necessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid referred the Tribunal to the Inventory of Productions for the Complainers and expressed his appreciation that the Respondent had agreed the terms of the Productions in terms of the Joint Minute. Mr Reid lodged a previous finding of professional misconduct with the Tribunal. Mr McCann confirmed that this was admitted. Mr Reid explained that the Respondent had acted for Mr A in an Employment Tribunal and lost the case. The Notice of Appeal lodged was completed by the client. Mr Reid referred the Tribunal to Production 1 being the faxed copy of the Appeal which was date stamped 22nd November 2004 by the Employment Appeal Tribunal. The Employment Appeal Tribunal wrote back on 24th November to say that the Appeal was not properly constituted and they required a copy of the extended reasons. These were sent to the Employment Appeal Tribunal by the Respondent on 6th December. The Employment Appeal Tribunal advised the Respondent that the Appeal had not been lodged properly constituted within the time limit and was accordingly out of time and that the Respondent required to apply for an extension of time. The Respondent replied disputing this. The Employment Appeal Tribunal wrote on 4th March 2005 setting out a history and explaining why the Appeal was out of time and asked for an application for an extension by the 18th March. A reminder was sent setting another deadline of 6th April 2005. The Employment Appeal Tribunal then sent an Order stating that unless the application was received within 10 days the Appeal would be struck out. The Respondent then wrote to his client and stated that the application had not got through the sift. The Employment Appeal Tribunal then sent an Order striking out the Appeal. Mr Reid stated that the Respondent could have

been in no doubt what the Employment Appeal Tribunal's position was and yet he wrote to his client stating that the Appeal had not got through the sift when he knew that no sift had taken place. Mr Reid stated that it seemed odd that the Respondent did this prior to the final deadline expiring. Mr Reid confirmed that Mr A was not a solicitor.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann stated that this was not a case of a solicitor deliberately covering up a time bar situation because when the Respondent sent the letter he could still have got out of the time bar situation. Mr McCann said that although Mr A was not a solicitor, he was an experienced paralegal in a legal office and was articulate and intelligent. Mr McCann explained that Mr A and the Respondent were close friends and that the Respondent was not experienced in dealing with Employment Appeal Tribunal work. Mr A was strong minded and persuaded the Respondent to take on the case. Mr McCann explained that the Respondent did this all properly, he opened up a file, sent out a letter of engagement etc, but it was not the Respondent that was running the case. Mr A did his own draft of submissions and in these submissions it was stated that the Respondent did not know what he was doing at the first hearing (the Employment Tribunal case). Mr McCann submitted that this case highlighted the problem of solicitors acting for friends and family. Mr McCann stated that Mr A drafted his case and made observations with regard to the Chairman of the Tribunal in the first hearing and the Respondent was not happy with regard to this. There had been clashes between the Respondent and Mr A with regard to the lines of evidence etc at the first hearing. Mr McCann explained that the Respondent had the time limit for Appeal marked in his diary and that when the Appeal was first sent in, it was received within time but it was not properly constituted as the reasons were not attached. The Respondent was on holiday until 5th December but sent the written reasons the day he got back to the office. However, the Employment Appeal Tribunal stated that the Appeal had not been lodged timeously. The Respondent tried to persuade them that it had been but he failed to get matters sorted out and then wrongly told his client that the case had not got through the sift. Mr McCann submitted that the Respondent had been unthinking rather than self serving. Mr McCann said that Mr A

was not misled by the Respondent's letter as he knew the procedures and knew that the Clerk of the Employment Appeal Tribunal would indicate to an Appellant that there was no error of law but that the Appellant could apply for a hearing in connection with this. Mr A contacted the Employment Appeal Tribunal and then reported the matter to the Law Society. Mr McCann stated that the relationship between the Respondent and Mr A was dysfunctional and the Respondent should have taken some advice. Mr McCann submitted that Mr A's case was doomed as there was no point of law which could have been taken but it was accepted that Mr A had lost his right to win or lose his case. Mr McCann stated that Mr A had a negligence claim against the Respondent and also advised the Tribunal that the Respondent had had a finding of inadequate professional service made against him and had had to pay £1,500. Mr McCann also advised the Tribunal that the Respondent would have a double deductible excess on his insurance policy and would accordingly have to pay the first £6,000 of any claim. Mr McCann pointed out that the Respondent would also have the cost of funding his own defence and the Tribunal and Law Society costs in connection with these proceedings. Mr McCann asked the Tribunal to accept that there was no cynical manoeuvring by the Respondent in this case. Mr McCann referred the Tribunal to the references lodged and explained that the Respondent had been a solicitor for 31 years and ran a busy office and was well thought of. Mr McCann asked the Tribunal to consider imposing a fine and a Censure.

DECISION

The Tribunal noted the previous Findings against the Respondent but as these were 10 years ago and were not analogous, the Tribunal did not attach much weight to them. The Tribunal were, however, very concerned by the Respondent's conduct. If solicitors mislead clients the public cannot have confidence in the legal profession. The Tribunal was puzzled by why the Respondent wrote a letter at this stage because he still had time to sort matters out. The Tribunal considered that the Respondent had made an inexplicable error of judgement and allowed himself to be manipulated. There was a complication in this case caused by the lack of a clear cut separation between whether the Respondent was undertaking the work or whether the client was doing it on his own. Solicitors however have to understand that if work is being done through their firm they have the professional responsibility to ensure the work is done

properly and they cannot only be half acting. Difficulties were caused in this case because of the blurring of the edges between the solicitor and the client and is important that solicitors avoid any such situation arising. The Tribunal did, however, take account of the dysfunctional relationship between the Respondent and his client in this particular case and also took account of the fact that the Respondent had cooperated with the fiscal and the Tribunal noted the references lodged. The Tribunal also noted that the Respondent had had a finding of inadequate professional service made against him and had made a payment of £1,500. The Respondent is also likely to suffer further financial loss as a result of the negligence claim. In the whole circumstances the Tribunal considered that a Censure plus a fine of £1,500 would be sufficient penalty. The Tribunal made the usual Order with regard to publicity and expenses.

Chairman