

**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**

**DAVID RICHARD BLAIR  
LYONS, Solicitor, Messrs. Lyons  
Laing & Co., Solicitors, 5 George  
Square, Greenock**

1. A Complaint dated 28<sup>th</sup> 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 David Richard Blair Lyons, Solicitor, Messrs. Lyons Laing & Co., 5 George Square, 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 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 a Procedural Hearing to be heard on 26<sup>th</sup> August 2008 and notice thereof was duly served on the Respondent.

4. When the Complaint called on 26<sup>th</sup> August 2006 the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Miss McCracken, Solicitor, Glasgow.
5. The matter was adjourned to a further Procedural Hearing on 15<sup>th</sup> October 2008.
6. A Complaint dated 22<sup>nd</sup> September 2008 was lodged with the Scottish Solicitor's Discipline Tribunal by the Complainers requesting that 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.
7. The Tribunal caused a copy of this Complaint to be served upon the Respondent. No answers were lodged for the Respondent.
8. This Complaint called for a Preliminary Hearing on 15<sup>th</sup> October 2008. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr McCreath, Solicitor, Glasgow. Both matters were continued to a Substantive Hearing on 19<sup>th</sup> November 2008.
9. When the case called for hearing on 19<sup>th</sup> November 2008, the Complainers were represented by their Fiscal, Sean Lynch. The Respondent was present and represented by Mr McCreath, Solicitor, Glasgow. Joint minutes were lodged admitting the averments of fact, averments of duty and averments of professional misconduct in both Complaints. No evidence was led.
10. The Tribunal found the following facts admitted or proved.
  - 10.1 The Respondent was born on 6<sup>th</sup> April 1951. He was admitted as a solicitor on 18<sup>th</sup> and enrolled on 28<sup>th</sup> both days of

November 1975. He is a partner in the firm of Messrs. Lyons Laing & Co., Solicitors, 5 George Square, Greenock.

**COMPLAINT BY THE LAW SOCIETY OF  
SCOTLAND ex proprio motu.**

- 10.2 On 20<sup>th</sup> September 2005 Ms. A contracted the Complainers alleging that the Respondent's firm had missold her an endowment policy in 1990. The Complainers provided a final response to that matter on 31<sup>st</sup> March 2006. They indicated that no action was to be taken.
- 10.3 On 22<sup>nd</sup> November 2006 the Scottish Legal Services Ombudsman recommended that the matter be reinvestigated by the Complainers. The recommendation was not binding on the Complainers. The Complainers decided to accept the Ombudsman's recommendation. The Complainers wrote to the Respondent on 7<sup>th</sup> December 2006 to make him aware of that.
- 10.4 On 15<sup>th</sup> December 2006 the Complainers wrote again to the Respondent. The letter advises that the case was to be allocated to a Reporter. It also requested that the Respondent return his file to the Complainers within seven days do the date of the letter.
- 10.5 The Respondent did not reply.
- 10.6 On 12<sup>th</sup> January 2007 the Complainers served upon the respondent a notice under Section 42C of the Solicitors (Scotland) Act 1980. The notice required the Respondent to produce to the Complainers within twenty one days of 21<sup>st</sup> January 2007, all books, accounts, deeds, securities, papers and other documents in his possession or control relating to

the complaint previously made directly to his firm by Ms A in connection with the alleged misselling of an endowment policy.

10.7 The Respondent did not reply. Nor did he obtemper the notice.

10.8 On 6<sup>th</sup> February 2007 the Complainers wrote again to the Respondent. They thereby intimated a complaint by them *ex proprio motu* in respect of the Respondent's failure to deliver the file, as required by the notice condescended upon. They required the Respondent to (a) provide a response to the complaint and (b) deliver the file within a period of seven days from that date.

10.9 The Respondent did not reply.

10.10 The Complainers were thus put in the position of having to reinvestigate the misselling complaint and to reinvestigate the new complaint without any input or assistance from the Respondent, or a file.

**COMPLAINT BY THE LAW SOCIETY OF SCOTLAND ex proprio motu.**

10.11 Mr B made a service complaint against the Respondent. The complaint was intimated to the Respondent by letter from the Complainers dated 25<sup>th</sup> September 2007. The Respondent acknowledged that letter on 16<sup>th</sup> October 2007, and stated that he had been unable to speak to the solicitor who had dealt with the matter and that he had arranged to do so on 2<sup>nd</sup> November 2007. No further communication was received from the Respondent.

- 10.12 On 15<sup>th</sup> November 2007, the Complainers wrote to the Respondent requiring a response. The Respondent did not reply.
- 10.13 On 29<sup>th</sup> November 2007 the Complainers wrote to the Respondent again. On that date they served on him notices under Section 15(2)(i) and 42C of the Solicitors (Scotland) Act 1980 which *inter alia* required the Respondent to produce his firm's file. The Respondent did not reply. Neither did he forward the file.
- 10.14 On 8<sup>th</sup> January 2008 the Complainers served a further formal notice on the Respondent intimating a new complaint of alleged professional misconduct in respect of the foregoing failure. The Respondent did not reply. A further reminder was sent to him on 2<sup>nd</sup> February 2008. The Respondent did eventually reply on 14<sup>th</sup> February 2008 but stated that he was about to go on holiday. On 29<sup>th</sup> February 2008 the Respondent wrote to the Complainers with a response for the first time in relation to the complaint by Mr. B.
11. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
- (a) his persistent failure between December 2006 and February 2007 to deal with correspondence from the Complainers in respect of Ms A
  - (b) his failure between 2<sup>nd</sup> November 2007 and 29<sup>th</sup> February 2008 to deal with correspondence from the Complainers in respect of Mr B and
  - (c) his failure to obtain obtemper statutory notices issued by the Law Society.

12. Having heard the Respondents' Solicitor in mitigation and having noted a previous finding of misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19<sup>th</sup> November 2008. The Tribunal having considered the Complaints dated 28<sup>th</sup> April and 22<sup>nd</sup> September 2008 at the instance of the Council of the Law Society of Scotland against David Richard Blair Lyons, Solicitor, Messrs. Lyons Laing & Co., Solicitors, 5 George Square, Greenock; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond to correspondence from the Law Society, and his failure to obtemper statutory notices issued by the Law Society; Censure the Respondent; 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)**

**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**

A Joint Minute was lodged admitting the averments of facts, averments of duty and averments of professional misconduct in both Complaints. No evidence was accordingly led.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch referred to the Complaint of 28<sup>th</sup> April 2008 and indicated that the Respondent had failed to respond to correspondence from the Law Society and also had failed to obtemper a statutory notice. The Complaint dated 22<sup>nd</sup> September 2008 also involved a failure to respond to correspondence from the Law Society and failure to obtemper a statutory notice. Mr Lynch lodged previous Findings against the Respondent with the Tribunal. He expressed his gratitude to the Respondent and his agent for their cooperation in dealing with the matter by way of a Joint Minute.

**SUBMISSIONS FOR THE RESPONDENT**

Mr McCreath advised the Tribunal that the Respondent had been in practice for 33 years and had established a successful practice in Greenock. He explained the history with regard to the difficulties the Respondent had had with his firm, particularly the difficulties he had had with the previous partners of the firm. Mr McCreath explained that the Respondent had also had health difficulties during the relevant period. In connection with the Complaint concerning Ms A, Mr MacCreath explained that the Respondent had sent his file to the Law Society who had decided not to take any action. The Lay Complainer had however taken the matter to the ombudsman and the Law Society had then reinvestigated the matter. A letter was sent requesting the file and the office manageress phoned the Law Society to advise that the Respondent was off sick. Mr McCreath indicated that the Respondent had attempted to appeal the finding of inadequate professional service but had not gone about it in the right way. Mr McCreath stated that the file was eventually submitted to the Law Society but it was accepted that the matter was not dealt with speedily. Mr Lynch explained that the Law Society required the file because they had to reopen the investigation and start



again. Mr McCreath said that in connection with the Complaint of 22<sup>nd</sup> September it was accepted that the Respondent had failed to respond. It was confirmed that the inadequate professional service award had been paid. Mr McCreath asked the Tribunal to deal with the matter as leniently as possible.

## **DECISION**

The Tribunal has made it clear on numerous occasions that failure to respond to the Law Society, hampers the Law Society in performing their statutory duty and can bring their profession into disrepute. The Tribunal however noted the unusual circumstances in connection with the failure to respond in respect of Ms A and also noted that the failure to respond in respect of Mr B was only between November 2007 and February 2008. The Tribunal noted that the Respondent had a previous finding for inter alia failure to respond to the Law Society. The Tribunal however also took into account the fact that the Respondent was being dealt with by the Tribunal in respect of two other Complaints where he appeared with another Respondent on the same date where he had been fined £10,000. The Tribunal accordingly did not consider it appropriate to impose an additional fine in respect of these matters. The Tribunal imposed a Censure.

**Chairman**