

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

F I N D I N G S

in Complaint

by

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

against

**NORMAN JAMES COWIE,
Solicitor, formerly of Cowie & Co.,
198 High Street, Cowdenbeath,
Fife and now of 36 Crawford
Gardens, St. Andrews, Fife**

1. A Complaint dated 14 July 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Norman James Cowie, Solicitor, formerly of Cowie & Co., 198 High Street, Cowdenbeath, Fife and now of 36 Crawford Gardens, St. Andrews, Fife (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 the Complaint to be heard on 26 February 2009 and notice thereof was duly served on the Respondent.

4. The hearing took place on 26 February 2009. The Complainers were represented by their Fiscal, Paul Reid, Solicitor-Advocate, Glasgow. The Respondent was not present or represented.

5. After hearing evidence with regard to service of the Complaint and Notice of Hearing, the Tribunal resolved to proceed in the Respondent's absence. The Tribunal heard evidence from Faye Shortt, the Quality Assurance Manager of the Complaints Investigation Team at the Law Society of Scotland.

6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 7 March 1957. He was admitted as a solicitor on 30 September 1981. He was enrolled as a solicitor in the Register of Solicitors for Scotland on 20 October 1981. He was employed with the firm Pagan Osborne Grace and Calders, Solicitors of 5 Falkland Place, Glenrothes from 1 November 1984 until 31 October 1989. He was then employed with Messrs Dundas & Wilson, Solicitors, Saltire Court, Edinburgh from 1 November 1989 to 30 September 1994. Thereafter he was employed with Pirie & Cowie, Solicitors of 208 High Street, Cowdenbeath from 1 October 1994 to 15 November 1996. Thereafter he was employed with the firm Baird & Company of 208 High Street, Cowdenbeath from 18 November 1996 to 13 February 2003. From 14 February 2003 he has practised on his own account trading as Cowie & Company, 198 High Street, Cowdenbeath Fife. The Complainers believe the Respondent is not presently practising as a solicitor.

Mrs A

- 6.2 The Respondent was formerly instructed by the client, Mrs A. She consulted the Respondent in connection with the transfer of a heritable property into her name alone. She was unhappy with

the level of service provided by the Respondent and in particular his repeated ignorance of her requests for the title deeds to be delivered to her. By e-mail dated 17 January 2006 she invoked the aid of the Complainers regarding a failure on the part of the Respondent to reply to her enquiries. The Complainers obtained from her sufficient information to allow them to formulate the extent of the Complaint. By letter dated 20 January 2006 they intimated the Complaint to the Respondent and encouraged him to conciliate and resolve matters without further procedure. These efforts were ignored by the Respondent. A formal Complaint identifying heads of Complaint was formulated and intimated to the Respondent by letter dated 13 February 2006. No response or answer was received from the Respondent. As a consequence by recorded delivery letter dated 14 March 2006, Statutory Notices in terms of Section 15(2) and 42C of the Solicitors (Scotland) Act 1980 were intimated to the Respondent. The terms of these Statutory Notices were ignored by the Respondent. As a consequence a further Statutory Notice was intimated by recorded delivery to the Respondent on 11 April 2006. Once again this Statutory Notice was ignored. As a result of the failure on the part of the Respondent to reply to the enquiries made of him by the Complainers, a separate letter of complaint was intimated to the Respondent on 11 April 2006. This also was ignored by the Respondent.

6.3 On 20 June 2006 the Complainers acting through a Client Relations Committee determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client. In particular they determined the following:-

(a) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to his client the sum of £500 by way

of compensation and to deliver the title deeds to the subjects or to provide copies at his own expense.

The determination was intimated to the Respondent by letter dated 29 June 2006. No payment of compensation was made. Thereafter by recorded delivery a Formal Notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent on 27 July 2006. Despite intimation of this Formal Statutory Notice, the Respondent has failed to implement the determination and the award of compensation remains outstanding. An Appeal has not been marked by the Respondent against the determination.

Mr B

- 6.4 The Respondent was formerly instructed by the client, Mr B formerly of Property 1 and now at Property 2. He consulted the Respondent in connection with a conveyancing matter relating to heritable subjects situated at Property 2. He was unhappy with the level of service provided by the Respondent and in particular his repeated failure to attend to matters on his behalf or to reply to his enquiries regarding progress of the matter in which he was instructed. By e-mail dated 17 January 2006, Mr B invoked the aid of the Complainers regarding the failure on the part of the Respondent to respond to his enquiries or to progress matters on his behalf. The Complainers obtained sufficient information from Mr B to allow them to formulate the extent of the complaint. By letter dated 25 January 2006 the Complainers intimated the complaint to the Respondent and encouraged him to conciliate and to resolve matters with his client without further procedure being incurred. Their efforts in this respect were ignored by the Respondent. A formal complaint identifying the heads of complaint was formulated and intimated to the Respondent by letter dated 10 February 2006. No response was

received from the Respondent. As a consequence Statutory Notices in terms of Section 15(2) and 42C of the Solicitors (Scotland) Act 1980 were intimated to the Respondent. The terms of these Statutory Notices were ignored by the Respondent. As a result of this failure to reply, a further Statutory Notice was intimated by recorded delivery to the Respondent on 5 April 2006. Once again this Statutory Notice was ignored. As a result of the failure on the part of the Respondent to reply to the enquiries made of him by the Complainers, a separate letter of complaint was intimated to the Respondent on 5 April 2006. This letter of complaint was also ignored by the Respondent.

6.5 On 6 July 2006 the Complainers acting through the Client Relations Committee made a determination in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client, Mr B. The Complainers determined:-

(a) In terms of Section 42A(2)(a)(i) of the said 1980 Act that any fee of the Respondent should be abated to nil;

(b) In terms of Section 42A(3) of the said 1980 Act, that the Respondent shall waive his fees to the extent as was necessary;

(c) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to his client compensation of £1,000.

This determination was intimated to the Respondent by letter dated 21 July 2006. No payment of compensation was made. By recorded delivery a formal Statutory Notice in terms of Section 42B of the Solicitors (Scotland) Act 1980 was intimated to the Respondent on 5 September 2006. No response was made by the Respondent. Neither the award of compensation nor the abatement of fees has been made by the Respondent. The

determination made by the Complainers remains outstanding. No appeal has been marked by the Respondent in respect of these determinations.

Mr C

- 6.6 The Respondent was formerly instructed by the client, Mr C of Property 3, USA. In February 2005, the son of said Mr C, a Mr Mr D, instructed the Respondent to act on his behalf in connection with the purchase of a heritable property situated at Property 4. Said heritable property belonged to Mr C. Given that Mr C resided furth of the jurisdiction of Scotland, the Respondent agreed to act for him in addition to his son in the transaction. Following this instruction the Respondent by e-mail transmission communicated to Mr C the following information “we are acting for you in connection with a transaction and also for Mr D and Ms E. I am able to do so in terms of Law Society Rules but I require to give you formal written notice that should any dispute arise in connection with the transaction I will have to ask either one or both parties to seek separate legal advice.”
- 6.7 The Respondent received instructions in connection with the conveyance in February 2005. Following a complaint at the instance of Mr C the conveyancing file was recovered and subsequently examined. This examination revealed that the Respondent wrote to the heritable security holder over the property seeking the title deeds on 24 February 2005. The e-mail transmission to Mr C was intimated to him some six weeks later. Said intimation was not at the earliest practicable opportunity as envisaged by the appropriate practice rules, in particular was not at the time the Respondent was instructed.
- 6.8 Mr C was dissatisfied with the manner in which the Respondent dealt with the transaction. By letter of complaint dated 2 August

2005 he invoked the aid of the Complainers regarding a failure on the part of the Respondent to reply to his enquiries. The Complainers obtained from Mr C further information regarding the extent of his complaint. Formal intimation of the complaint was made to the Respondent by letter dated 25 October 2005. He was invited to provide a response to assist in the investigation process. He did not do so. As a result of his failure to reply, the Complainers intimated a Statutory Notice in terms of Section 42C of the Solicitors (Scotland) Act 1980 by recorded delivery to the Respondent on 22 November 2005. The Respondent failed to reply to this Notice. As a consequence on 15 December 2005, a further Statutory Notice in terms of Section 15 of the Solicitors (Scotland) Act 1980 was intimated to the Respondent by recorded delivery. Again no reply was received. In an effort to extract a response a reminder was intimated to the Respondent on 17 January 2006. No reply was forthcoming.

6.9 On 8 August 2006, the Complainers acting through a Client Relations Committee made a determination in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client, Mr C. The Complainers further determined:-

(a) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to his client compensation of the sum of £650.

The determination was intimated to the Respondent by letter dated 17 August 2006. Payment of the award of compensation was not made. A Formal Notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent by recorded delivery on 13 September 2006. No response was made by the Respondent. The award of compensation has not been paid. No Appeal has been marked by the Respondent in respect of this

determination. The determination made by the Complainers remains outstanding.

Ms F

- 6.10 The Respondent was formerly instructed by the client, Ms F of Property 5. She instructed the Respondent in connection with the purchase of a heritable property situated at Property 5. She met with the Respondent on 17 September 2004 and instructed him to act for her in relation to the purchase of these heritable subjects. The heritable property was formerly owned by the Local Authority. This transaction is what is known as a council house purchase. In terms of the missives a date of entry was fixed for 10 January 2005. To facilitate the purchase Ms F had secured lending finance through the Co-operative Bank plc. That bank was unhappy at instructing a sole practitioner such as the Respondent to act on their behalf. To facilitate obtaining the security, the Respondent agreed with another firm of greater size that they would act on behalf of the lenders. The conveyancing transaction proceeded. Following the complaint the file of the Respondent was recovered and examined. This revealed that on 12 January 2005 the firm instructed by the lenders wrote to the Respondent asking for an urgent update from him as to when the matter may be in a position to settle. Subsequently a cheque in respect of the purchase price was sent to the Local Authority in settlement of the transaction on 16 February 2005. Following settlement, the Local Authority issued a letter dated 17 February 2005 to the Respondent undertaking to deliver to him the executed Feu Disposition in favour of his client, Ms F, as soon as they had received from him the executed discount Standard Security in favour of the Local Authority. Nothing was delivered by the Respondent in response to that letter. The Local Authority were concerned and issued reminders to the Respondent on 3 March, 31 March and 26 April, all 2005.

These reminders were ignored. In or about July 2005 Ms F decided to effect a re-mortgage with a separate lender. She contacted the Respondent and asked that he provide information regarding the conveyance to a separate firm of solicitors instructed on behalf of this mortgage lender. That firm required from the Respondent information concerning the title to the subjects to allow them to complete the re-mortgage. On 12 August 2005, the Respondent telephoned Ms F requesting that she attend his office to execute a document. He did not expand upon what document this was. She attended immediately. At the meeting he did not explain to her what the document was but confirmed to her that if this was signed then that would enable him to provide necessary information to the solicitors acting on behalf of the proposed new lender. Ms F was concerned as a result of the reluctance on the part of the Respondent to provide her with information. She contacted the firm of solicitors direct. They advised her that they could not proceed with the re-mortgage as title to the property had not yet been registered in her name. Having learned this information she thereafter telephoned the Respondent to complain. On 12 August 2005 the Respondent finally sent the Discount Standard Security to the Local Authority and asked that in response he be provided with the appropriate documentation to allow the registration process to complete. On 25 August 2005 the Respondent completed the transaction and presented the title deeds to the Land Register for registration.

- 6.11 Ms F was dissatisfied with the manner in which the Respondent dealt with her affairs. She invoked the aid of the Complainers by letter dated 18 August 2005 explaining to them the difficulties which had arisen. Having received this letter of complaint, the Complainers intimated it to the Respondent informally on 26 August 2005. Further detail was obtained from Ms F and a formal Complaint was intimated to the Respondent on 3 October

2005 with a request that he provide a response. No response was forthcoming. As a consequence on 9 November 2005, two Statutory Notices in terms of Sections 15(2) and 42C of the Solicitors (Scotland) Act 1980 were intimated by recorded delivered to the Respondent. He failed to reply. As a consequence of his failure to reply, a separate letter intimating a new ground of complaint alleging a failure on the part of the Respondent to reply to the enquiries made of him by the Complainers was intimated to the Respondent on 12 December 2005 with a request that he provide a response. No response was forthcoming. A further Statutory Notice in respect of this additional Complaint was intimated in terms of Section 15(2) of the Solicitors (Scotland) Act 1980 by recorded delivered to the Respondent on 12 December 2005. The Respondent failed to reply to this Statutory Notice.

6.12 On 25 July 2006 the Complainers acting through a Client Relations Committee made a determination in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client, Ms F. Thereafter the Complainers determined:

(a) In terms of Section 42A(2)(a)(i) of the said 1980 Act that any fee charged by the Respondent for the conveyancing should be reduced by one-half and that the Respondent should refund to his client one-half of the fee charged.

(b) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to his client compensation of £750.

The determination was intimated to the Respondent by recorded delivery letter on 7 August 2006. The Respondent failed to comply with the determination. Accordingly a Formal Notice in terms of Section 42B of the said 1980 Act was intimated to the

Respondent on 30 August 2006. The Respondent failed to comply with the determination. The award of compensation and refund of fee remains outstanding. The determination remains outstanding. No Appeal has been marked by the Respondent in respect of this determination.

Miss G

- 6.13 Miss G resides at Property 6. She was formerly a client of the Respondent. She consulted the Respondent in connection with a conveyancing transaction. She was disappointed with the manner in which the Respondent dealt with her instructions. As a consequence she invoked the aid of the Complainers. The Complainers obtained from her sufficient information to allow them to identify the true extent of her complaint. Having obtained this information, the Complainers intimated a formal letter articulating the grounds of the complaint to the Respondent on 10 December 2004. The Respondent failed to provide a reply. As a consequence a Statutory Notice in terms of Section 15(2) of the Solicitors (Scotland) Act 1980 was intimated to the Respondent by recorded delivery on 10 January 2005. Despite intimation of the Statutory Notice, a full and detailed response addressing the grounds of complaint was not received by the Respondent. As a consequence, on 10 February 2005, a further Statutory Notice in terms of Section 15(2) of the said 1980 Act was intimated to the Respondent by recorded delivery. Again no reply was received from the Respondent. During the course of this correspondence, the Complainers kept Miss G up to date. Matters developed in relation to the affairs of Miss G as a consequence of which further grounds of complaint arose. On 19 May 2005 the Complainers intimated further grounds of complaint to the Respondent which were in addition to the grounds of complaint previously intimated. No reply was received by the Respondent. As a result a reminder was

intimated to the Respondent asking for a reply on 27 June 2005. Regrettably the Respondent did not reply. Without any contribution from the Respondent, the Complainers proceeded with the investigation of the complaint as best they could.

- 6.14 As a consequence of the failure on the part of the Respondent to provide a reply or to contribute to the investigative process concerning the grounds of complaint in relation to Miss G, it was decided that a further Complaint concerning a failure to reply on the part of the Respondent should be instigated. A formal letter articulating this ground of complaint was intimated to the Respondent on 29 March 2006. No reply was received. A reminder was intimated to the Respondent on 11 May 2006. Again, no reply was received. As a consequence the Complainers intimated a Formal Notice in terms of Section 15(2) of the said 1980 Act by recorded delivery to the Respondent on 9 June 2006. The Respondent did not reply to this Notice. At this stage in the process, the Respondent moved address without advising the Complainers as to his whereabouts. Enquiries were instigated and his correct address was identified. In order to ensure the process was fair, a further letter of complaint was intimated to the Respondent at the new address on 11 August 2006. A reply was not received. A reminder was intimated to the Respondent on 18 August 2006, again no reply was received. The Complainers proceeded with the investigation process as best they could without contribution from the Respondent. During the process of the investigation at every appropriate stage, correspondence was intimated to the Respondent advising him as to what occurred. No reply or contribution to the process was received by the Respondent.

Company 1

6.15 Company 1 acted on behalf of a client, Mrs H. They obtained instructions from their client to act on her behalf in connection with the purchase of heritable subjects situated at Property 7. The Respondent at this time was instructed on behalf of the seller of the said subjects. The conveyancing proceeded and on 22 August 2003 the transaction settled when the purchase price was paid. In accordance with established conveyancing practice, on the date of settlement, the Respondent issued a Letter of Obligation which was in a standard form. In terms of the Letter of Obligation, there was an additional obligation on the part of the Respondent to deliver to Company 1, Solicitors, a Discharge of a Standard Security by the client of the Respondent in favour of the Clydesdale Bank plc which had been recorded against the title on 22 April 1992. Having obtained the title documentation, the firm Company 1 presented same to the Land Register on behalf of their client. In due course a Land Certificate was issued. Examination of the Land Certificate disclosed the existence of the Standard Security in favour of the Clydesdale Bank plc which still appeared in the Charges Section of the Land Certificate. This was of concern to the firm Company 1. They wrote to the Respondent on 26 August, 9 October and 14 November, all 2003, reminding the Respondent that the Discharge had still not been received and asking that it be delivered in accordance with the terms of the Letter of Obligation. In addition to these written communications there were a number of telephone calls made by the firm to the Respondent encouraging him to deliver the Discharge. Regrettably the Respondent failed to respond to these promptings. As a result Company 1 had no alternative other than to register a formal complaint against the Respondent to the Complainers. In the course of investigating the Complaint, the conveyancing file operated by the Respondent was recovered. In the course of reviewing the file, it was revealed that in April 2004, the Respondent wrote to the Clydesdale Bank plc at their

Kirkcaldy Branch advising them that his clients had informed him that they no longer had an account with the Bank and asking that they let him have a Standard Security in order that a Discharge could be prepared. This was the only letter written by the Respondent. No reply was received from the Bank. As a result of their exasperation at the failure on the part of the Respondent to deliver the Discharge as provided for in terms of the Letter of Obligation, on 7 November 2005 the firm Company 1 invoked the aid of the Complainers. A Case Manager in the employ of the Complainers, telephoned the Respondent on 29 November 2005 in connection with the complaint. This Case Manager was provided with an assurance by the Respondent that he would deal with the matter of the Discharge within seven days of that telephone call. This information was conveyed to the firm Company 1, Solicitors. Despite this assurance, the Respondent failed to attend to the production of the Discharge. As a result of his failure to do so, the conveyancing formalities required to complete the title on behalf of the clients of Company 1, Solicitors, remain outstanding. As a result of the failure on the part of the Respondent to reply to the numerous letters intimated to him by Company 1, Solicitors, that firm were left with no option other than to invoke the assistance of the Complainers.

- 6.16 A formal letter of complaint setting forth detailed grounds of complaint was intimated to the Respondent by the Complainers on 3 March 2006. No reply was received. As a consequence, by recorded delivery dated 10 April 2006, the Complainers intimated a Statutory Notice in terms of Section 15(2) of the Solicitors (Scotland) Act 1980. Despite this intimation, no reply was received by the Respondent. As a consequence a further Statutory Notice in terms of Section 42(C) of the said 1980 Act was intimated to the Respondent by recorded delivery on 1 May 2006. Despite intimation of this Statutory Notice, a reply was not received from the Respondent. As a result of the Respondent

ignoring the repeated requests made of him by the Complainers, the ability of the Complainers to investigate the Complaint intimated, was frustrated, hampered and impeded.

Mr & Mrs I.

- 6.17 Mr and Mrs I were formerly clients of the Respondent. They consulted with the Respondent in connection with their purchase of subjects at Property 8. When they came to sell the said subjects they realised that the Respondent had failed to register a title in their favour with the Land Register. They were disappointed with the manner in which the Respondent dealt with their affairs. By letter of complaint, dated 26 January 2006, they invoked the aid of the Complainers. The Complainers obtained from them sufficient information to allow them to identify the true extent of their complaint. A formal letter of complaint was intimated to the Respondent. A partial response was received. The complaint process was instigated and proceeded with.
- 6.18 On 12 September 2006 the Complainers, acting through a Client Relations Committee, determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his clients. In particular they determined the following:-
- (a) In terms of Section 42A(2)(a)(ii) of the said 1980 Act that the fees relating to the purchase of the property incurred by the clients to the Respondent should be abated by 50% including VAT. In terms of 42A (3) of the said 1980 Act, the Complainers directed that the Respondent make payment to the clients of the sum of £210.03 in order to comply with this determination.
- (b) In terms of Section 42A(2)(c) of the said 1980 Act the Respondent should meet the costs incurred by the clients in

respect of the additional legal work required to rectify the mistakes of the Respondent amounting to £1,007.17.

(c) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to Mr and Mrs I the sum of £1,000 compensation.

6.19 The determination was intimated to the Respondent by formal letter dated 25 September 2006. Despite this intimation, payment of neither compensation nor compliance with the order has been achieved. By Recorded Delivery, a Formal Notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent on 27 November 2006. No response or reply was received from the Respondent. Reimbursement of fees or compensation has not been paid by the Respondent. The determination made by the Complainers remains outstanding. No appeal has been marked by the Respondent in respect of the determination.

Ms J

6.20 Ms J resides at Property 10. She consulted the Respondent in connection with the sale of heritable subjects at Property 11 in or about March 2005. She was disappointed with the manner in which the Respondent dealt with her affairs. She invoked the aid of the Complainers. The Complainers obtained from her sufficient information to allow them to identify the true extent of her complaint. A formal letter of complaint was intimated to the Respondent. The complaint process was instigated and proceeded with. Having invoked the assistance of the Complainers, a formal letter of complaint on behalf of the client was intimated to the Respondent on 15 September 2005. No reply was received from the Respondent. As a consequence, reminders were intimated to the Respondent on 31 October 2005

and 6 December 2005. Despite these reminders, no reply was received from the Respondent. As a consequence, by recorded delivery dated 6 December 2005 a formal notice in terms of Section 15(2) of the Solicitors (Scotland) Act 1980 was intimated to the Respondent. Despite this intimation, no reply was received by the Respondent. As a result of the Respondent ignoring the repeated requests made of him by the Complainers, the ability of the Complainers to investigate fully the complaint intimated was frustrated, hampered and impeded.

6.21 On 16 May 2006 the Complainers acting through a Client Relations Committee determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client. In particular they determined the following:-

(a) In terms of Section 42A(2)(a)(i) of the said 1980 Act that the fees and outlays to which the Respondent was entitled in connection with the sale of Property 11 should be nil. They further directed that the Respondent in terms of Section 42A(3) of the said 1980 Act, repay to his client the sum required in order to comply with this determination.

(b) In terms of Section 42A(2)(c) of the said 1980 Act that the Respondent should pay 50% of the professional fee incurred by an alternative firm of solicitors engaged by the client to remedy matters arising in relation to the sale of Property 11.

(c) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to his client the sum of £500 compensation.

6.22 The determination was intimated to the Respondent by formal letter dated 24 May 2006. Despite this intimation, payment of

compensation nor compliance with the determination was implemented. By recorded delivery, a Formal Notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent on 6 October 2006. No response or reply was received from the Respondent. Reimbursement of fees, compensation and payment of the solicitor's account has not been implemented. The determination made by the Complainers remains outstanding. No appeal has been marked by the Respondent in respect of the determination.

Mr & Mrs K

- 6.23 The Respondent was formerly instructed by the clients, Mr and Mrs K of Property 12 in connection with a conveyancing matter relating to the purchase and sale of two heritable properties. The clients were unhappy with the level of service provided by the Respondent and in particular his failure to finalise both transactions. As a consequence in or about June 2006, they invoked the aid of the Complainers regarding the Respondent's failure to deal with their affairs properly. The Complainers obtained information from the clients to formulate the extent of the complaint. A formal complaint, identifying the heads of complaint, was intimated to the Respondent by letter dated 12 July 2006. No reply was received from the Respondent. The complaint process proceeded. During the currency of the complaint process the Respondent did not reply to any of the correspondence intimated to him by the Complainers.
- 6.24 On 11 January 2007, the Complainers acting through a Client Relations Committee determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his clients. In particular they determined the following:-

(a) In terms of Section 42A(2)(a)(i) of the said 1980 Act that the amount of fees charged by the Respondent should be restricted to nil and further in terms of Section 42A(3) of the said 1980 Act that any such professional fees previously paid in connection with the services provided by the Respondent to his clients should be refunded to the clients.

(b) In terms of Section 42A(2)(c) of the said 1980 Act that the Respondent be directed to refund to his clients the sum of £2,049.57, being funds paid by his clients in respect of a Halifax Loan Repayment of £175.57, stamp duty of £1,500 and recording dues of £374.00, outlays in respect of which the Respondent had failed to discharge when completing the conveyancing transaction during the currency of his instruction. In this respect the Complainers further determined that the Respondent should be liable for any penalty charge libelled against his clients in respect of the late payment of stamp duty.

(c) In terms of Section 42A(2)(d) of the said 1980 Act, that compensation of £1,500 should be paid by the Respondent to his clients.

6.25 The determination was intimated to the Respondent by formal letter dated 11 January 2007. The Respondent failed in any way to comply with the terms of the determination. As a consequence a Statutory Notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent on 2 April 2007. This notice was returned by the Post Office. As a consequence a further notice was intimated by first class post on the 29 May 2007. No reply was made by the Respondent to the formal notice. The determination remains outstanding in its entirety. Compensation has not been paid. No appeal has been marked by the Respondent in respect of the determination.

Mr L

- 6.26 The Respondent was formerly instructed by the client, Mr L of Property 13. He consulted with the Respondent in regard to a conveyancing transaction. He was disappointed with the level of service provided by the Respondent. In or about July 2006, he invoked the aid of the Complainers regarding a failure on the part of the Respondent to attend to his affairs. The Complainers obtained information from the client to formulate the extent of the complaint. A formal complaint identifying heads of complaint was intimated to the Respondent. The complaint process was instigated. During the course of this process, the Respondent failed to reply or in any way assist with the process.
- 6.27 On 13 March 2007, the Complainers acting through a Client Relations Committee, determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client. In particular they determined the following:-
- (a) In terms of Section 42A(2)(a)(i) of the said 1980 Act, the fees to which the Respondent was entitled in relation to the conveyancing transaction should be abated in their entirety. The Complainers further directed that the Respondent should refund any fees previously paid in connection with the service rendered.
- (b) In terms of Section 42A(2)(c) of the said 1980 Act, that the Respondent should reimburse to his client the fees and outlays incurred by Company 2 totalling £352.50. This firm of solicitors were employed by the client to rectify the difficulties caused by the Respondent.

(c) In terms of Section 42A(2)(d) of the said 1980 Act, the Respondent should pay to his client, Mr L, the sum of £1,350 by way of compensation.

6.28 The determination was intimated to the Respondent by formal letter dated 22 March 2007. No response or compliance with the determination was received from the Respondent. As a consequence a formal notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent on 18 April 2007. Despite this formal notice, no response or compliance with the determination was made by the Respondent. The award of compensation and reimbursement of fees remains outstanding. The determination remains outstanding. No Appeal has been marked by the Respondent in respect of the determination.

Mrs M and Mr N

6.29 Mrs M and Mr N reside at Property 14. They consulted the Respondent in connection with their purchase of Property 14. They were disappointed with the manner in which the Respondent acted in connection with their instructions. As a consequence, they invoked the aid of the Complainers. The Complainers obtained sufficient information to allow them to formulate and intimate a complaint to the Respondent. Thereafter, the process of investigating the complaint proceeded. Having obtained instructions from the clients regarding the extent of their complaint, the Complainers intimated the complaint to the Respondent on 15 August 2007. The Respondent failed to reply. A notice in terms of Section 15 of the Solicitors (Scotland) Act 1980 was intimated by recorded delivery on 5 September 2007. This was ignored by the Respondent. There was a failure on the part of the Respondent to reply which hampered and frustrated the investigation of the complaint.

6.30 On 22 January 2008, the Complainers, acting through a Client Relations Committee, determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client. Thereafter, they made the following directions:-

(a) In terms of Section 42(A)(2)(a)(ii) of the said 1980 Act that the fees to which the Respondent was entitled should be reduced by 30% plus VAT:

(b) In terms of Section 42(A)(3) of the said 1980 Act, the Respondent should waive or refund the fee to the extent specified.

(c) In terms of Section 42(A)(2)(d) of the said 1980 Act, that the Respondent should pay to his clients compensation of £955.

6.31 The determination was intimated to the Respondent by letter dated 1 February 2008. The Respondent failed to comply with the determination in any respect. As a consequence, a formal Statutory Notice in terms of Section 42(B) of the said 1980 Act was intimated to the Respondent by recorded delivery on 29 February 2008. Despite intimation of this formal Statutory Notice, the Respondent has failed to implement the determination in any respect. An appeal has not been marked by the Respondent against the determination. The determination, therefore, remains outstanding.

Mr and Mrs O

6.32 Mr and Mrs O reside at Property 15. They consulted the Respondent in connection with the purchase of heritable subjects

at Property 16. They were disappointed with the manner in which the Respondent acted in connection with their instructions. As a consequence, they invoked the aid of the Complainers. The Complainers obtained sufficient information from them to allow them to formulate and intimate a complaint to the Respondent. Thereafter, the process of investigating the complaint proceeded.

6.33 On 12 June 2007, the Complainers, acting through a Client Relations Committee, determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 to uphold the complaint that an inadequate professional service had been provided by the Respondent to his clients. Thereafter, they made the following directions:-

(a) In terms of Section 42(A)(2)(a)(i) of the said 1980 Act that the professional fee to which the Respondent would have been entitled in relation to the purchase of the heritable subjects should be abated in full. The Committee further directed that the Respondent should refund any fees previously paid in connection with the service in order to meet this restriction.

(b) In terms of Section 42(A)(2)(c) of the said 1980 Act that the Respondent should reimburse the professional fees incurred by Thomas Blair & Son for the sum of £447.50 and also the professional fees incurred by Caesar & Howie totaling £135.13 and directed that the Respondent should reimburse the fees incurred by Company 2 in respect of the rectification of the title.

(c) In terms of Section 42(A)(2)(d) of the said 1980 Act that the Respondent should pay to Mr and Mrs O the total sum of £1,750 by way of compensation.

6.34 The determination was intimated to the Respondent by letter dated 22 June 2007. The Respondent failed to comply with the determination in any respect. As a consequence, a formal Statutory Notice in terms of Section 42(B) of the Solicitors (Scotland) Act 1980 was intimated to the Respondent on 16 April 2008. Despite intimation of this formal Statutory Notice, the Respondent has failed to implement the determination in any respect. An appeal has not been marked by the Respondent against the determination. The determination, therefore, remains outstanding.

Mr & Mrs I

6.35 Mr and Mrs I reside at Property 9. They consulted the Respondent in connection with their purchase of heritable property 9. They were disappointed with the manner in which the Respondent acted in connection with their instructions. As a consequence, they invoked the aid of the Complainers. The Complainers obtained sufficient information from them to allow them to formulate and intimate a complaint to the Respondent. Thereafter, the process of investigating the complaint proceeded.

6.36 On 6 September 2007, the Complainers, acting through a Client Relations Committee, determined in terms of Section 42(A)(1) of the Solicitors (Scotland) Act 1980 to uphold the complaint that an inadequate professional service had been provided by the Respondent to his client. Thereafter, they made the following directions:-

(a) In terms of Section 42(A)(2)(a)(i) of the said 1980 Act, that the Respondent's entitlement to fees in respect of the services provided be restricted to nil. They further directed that any fees previously paid to the Respondent should be refunded to the Lay Complainers in order to comply with this restriction.

(b) In terms of Section 42(A)(2)(c) of the said 1980 Act, that the Respondent refund to the Lay Complainers the sum of £655 which had been provided by them in respect of Stamp Duty liability and the sum of £293.75 in respect of the professional charges incurred by the Lay Complainers in securing the remedial conveyancing. The sum of £655.00 has been paid by the Interventions Department of the Complainers.

(c) In terms of Section 42(A)(2)(d) of the said 1980 Act, that compensation of £3,272.40 be paid by the Respondent to the Lay Complainers, which sum included the sum of £1,522.40 in respect of the vouched losses produced by the Lay Complainers.

6.37 The determination was intimated to the Respondent by letter dated 25 September 2007. The Respondent failed to comply with the determination in any respect. As a consequence, a formal Statutory Notice in terms of Section 42(B) of the said 1980 Act was intimated to the Respondent by recorded delivery on 16 April 2008. Despite intimation of this formal Statutory Notice, the Respondent has failed to implement the determination in any respect. An appeal has not been marked by the Respondent against the determination. The determination, therefore, remains outstanding.

Mr P and Mr Q

6.38 Mr P resides at Property 24 and Mr Q resides at Property 19. They consulted the Respondent in connection with the administration of the estate of the late Mr R. They were disappointed with the manner in which the Respondent acted in connection with their instructions. As a consequence, they invoked the aid of the Complainers. The Complainers obtained sufficient information from them both to allow them to formulate

and intimate a complaint to the Respondent. Thereafter, the process of investigating the complaint proceeded.

6.39 On 24 October 2006, the Complainers, acting through a Client Relations Committee, determined in terms of Section 42(A)(1) of the Solicitors (Scotland) Act 1980 to uphold the complaint that an inadequate professional service had been provided by the Respondent to his clients. Thereafter, they made the following directions:-

(a) In terms of Section 42(A)(2)(a)(ii) of the said 1980 Act any fee to which the Respondent was entitled should be abated by 25%. They directed that the Respondent should refund 25% of the total fee already paid, or yet to be paid.

(b) In terms of Section 42(A)(2)(d) of the said 1980 Act, that the Respondent should pay the sum of £500 by way of compensation to the estate of the late Mr R.

6.40 The determination was intimated to the Respondent by letter dated 9 November 2006. The Respondent failed to comply with the determination in any respect. As a consequence, a formal Statutory Notice in terms of Section 42(B) of the said 1980 Act was intimated to the Respondent by recorded delivery on 16 April 2008. Despite intimation of this formal Statutory Notice, the Respondent failed to implement the determination in any respect. An appeal has not been marked by the Respondent against the determination. The determination, therefore, remains outstanding.

Mr S

6.41 Mr S resides at Property 17. He consulted the Respondent in connection with his purchase of the subjects at Property 17. He

was disappointed with the manner in which the Respondent acted in connection with his instructions. As a consequence, he invoked the aid of the Complainers. The Complainers obtained sufficient information from him to allow them to formulate and intimate a complaint to the Respondent. Thereafter, the process of investigating the complaint proceeded.

6.42 On 2 August 2007 the Complainers, acting through a Client Relations Committee, determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client. Thereafter, they made the following directions:-:

(a) In terms of Section 42A(2)(a)(ii) of the said 1980 Act that the fees and VAT charged by the Respondent totalling the sum of £352.50 should be restricted by 75% to an amount of £88.12. The Complainers further directed in terms of Section 42A(3) of the said 1980 Act that the Respondent should repay to Mr S the sum of £264.38 in order to comply with this determination.

(b) In terms of Section 42A(2)(c) of the said 1980 Act that the Respondent should refund to Mr S one half of the registration dues of £66.00 and the fee paid by Mr S to Company 2 of £60.00 making a total of £126.00. The Committee further determined that the Complainers as holders of funds from the client account of the former firm of the Respondent should pay to Mr S the sum of £66.00 being the amount held by them on behalf of the Respondent and representing 50% of the registration dues received by the solicitors by way of refund from the Registers of Scotland.

(c) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to Mr S the sum of £500 in compensation.

6.43 The determination was intimated to the Respondent in a letter dated 22 August 2007. The Respondent failed to comply with the determination in any respect. As a consequence, a form of Statutory Notice in terms of Section 42(B) of the said 1980 Act was intimated to the Respondent by Recorded Delivery on 26 October 2007. Despite intimation of this formal Statutory Notice the Respondent has failed to implement the determination in any respect. An appeal has not been marked by the Respondent against the determination. The determination therefore remains outstanding.

6.44 The Respondent had been instructed by the said Mr S in connection with the purchase of the heritable property 17. Mr S was obtaining mortgage finance from the Royal Bank of Scotland plc. The Respondent was instructed to act on behalf of the bank. Completion of the transaction took place on 31 October 2003. The Respondent sent the Disposition in favour of Mr S and the Standard Security in favour of the bank to the Land Register for registration shortly after completion. An acknowledgement from the Land Register had been received on 7 November 2003. Although the deeds had been presented for registration, the Respondent had failed to advise the Keeper that the original Land and Charge Certificates which had not accompanied the application for registration were already held by the Land Register in connection with another application. As a consequence, it was not possible for the Keeper to complete registration. Instead, they wrote to the Respondent requesting that he deliver the Land and Charge Certificates. The Respondent failed to reply to the initial request. A reminder was intimated from the Land Register on 15 January 2004 in terms of

which they advised the Respondent that he would have 15 days in which to produce the Land and Charge Certificates, failing which the application would be cancelled. The Respondent failed to reply or in any way attend to the issue raised in this reminder. As a result the Keeper cancelled the application for registration of title and partially refunded the registration dues paid by the Respondent retaining one half of the registration dues as a cancellation fee. Following this, the Respondent ceased to trade. The Complainers became involved. The files of the Respondent were passed to another firm of solicitors who completed the registration of title in favour of Mr S. The Respondent failed to complete the registration of the title in favour of Mr S. The Respondent was directly responsible for this failure by ignoring and failing to respond to letters from the Keeper requisitioning documentation required to complete the registration process. This failure to complete registration could have had potentially seriously adverse consequences for the parties involved, namely the client and the bank. As a consequence of the Standard Security not being registered, the lender was effectively unsecured in respect of a loan for a period of at least 8 months.

- 6.45 The said Mr S was disappointed with the manner in which the Respondent dealt with his affairs. He intimated a complaint to the Complainers. They obtained sufficient information from him and intimated a formal complaint to the Respondent on 19 February 2007. Unfortunately, no reply was received from the Respondent. Thereafter, two formal notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and in respect of the failure to respond by the Respondent had been sent by Recorded Delivery. These were returned by the post office marked “not called for”. The Complainers had no reason to believe the Respondent was not residing at the address to which the letter and notice had been sent. The initial letter sent by ordinary post had not been returned by the post office. The failure on the part

of the Respondent to reply to the enquiries made of him by the Complainers, frustrated, hampered and impeded their ability to deal with this complaint.

Ms T

- 6.46 Ms T resides at Property 20. She consulted the Respondent in connection with her purchase of heritable subjects at Property 20. She was disappointed with the manner in which the Respondent acted in connection with her instructions. As a consequence she invoked the aid of the Complainers. The Complainers obtained sufficient information from her to allow them to formulate and intimate a complaint to the Respondent. Thereafter the process of investigating the complaint proceeded.
- 6.47 On 24 April 2007 the Complainers acting through a Client Relations Committee determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to this client. This decision of the Committee had already been considered earlier at a meeting on 27th February 2007. The matter had been referred back to the Committee following observations from the Reporter. It considered these observations and the Committee made the following directions:-
- a) In terms of Section 42A(2)(a)(ii) of the said 1980 Act that the fees to which the Respondent was entitled should be reduced by 50%. They further directed that the Respondent in terms of Section 42A(3) of the said 1980 Act should repay to Ms T the sum of 50% of the fees already paid by her to the solicitor in respect of the services complained of.

- b) In terms of Section 42A(2)(c) of the said 1980 Act that the Respondent should make payment of the vouched expenses including fees and outlays and VAT incurred by Ms T to Company 3, solicitors in relation to the registration by them of the titles to the property 20.
- c) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay compensation to Mrs T in the sum of £1,000.

6.48 The determination was intimated to the Respondent by a letter dated 15 May 2007. The Respondent failed to comply with the determination in any respect. As a consequence a Formal Notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent by recorded delivery on 16 April 2008. Despite intimation of this formal Statutory Notice the Respondent has failed to implement the determination in any respect. An appeal has not been marked by the Respondent against the determination. The determination remains outstanding.

Mrs U

- 6.49 Mrs U resides at Property 21. She consulted with the Respondent in connection with her purchase of heritable subjects at Property 21. She was disappointed with the manner in which the Respondent acted in connection with her instruction. As a consequence she invoked the aid of the Complainers. The Complainers obtained sufficient information from her to allow them to formulate and intimate a complaint to the Respondent. Thereafter the process of investigating the complaint proceeded.
- 6.50 On 11 January 2007 the Complainers acting through a Client Relations Committee determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 that an inadequate professional

service had been provided by the Respondent to his client. Thereafter they made the following directions.

a) In terms of Section 42A(2)(c) of the said 1980 Act that the Respondent should repay to Mrs U the fees, outlays and VAT paid by her to her new solicitors in completing the registration of title to the heritable subjects at Property 21 as properly vouched.

b) In terms of Section 42A(2)(d) of the said 1980 Act that compensation of £500 be paid by the Respondent to Ms U.

6.51 The determination was intimated to the Respondent by letter dated 26 January 2007. This was sent to an incorrect address. On 10th May 2007 the determination was sent to the correct address. The Respondent failed to comply with the determination in any respect. As a consequence a formal Statutory Notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent by recorded delivery on 31 May 2007. Despite intimation of this formal Statutory Notice the Respondent has failed to implement the determination in any respect. An appeal has not been marked by the Respondent against the determination. The determination therefore remains outstanding.

Ms V

6.52 Ms V resides at Property 22. She consulted with the Respondent in connection with the purchase of heritable property at Property 23. She was disappointed with the manner in which the Respondent acted after the intimation of her instructions. As a consequence she invoked the aid of the Complainers. The Complainers obtained sufficient information from her to allow them to formulate and intimate a complaint to the Respondent. Thereafter the process of investigating the complaint proceeded.

6.53 On 22 May 2007 the Complainers acting through a Client Relations Committee determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 to uphold the complaint that an inadequate professional service had been provided by the Respondent to his client. Thereafter they had made the following directions:-

a) In terms of Section 42A(2)(a)(ii) of the said 1980 Act that the fees of the Respondent should be reduced by £369.78 plus £64.72 being VAT thereon totalling £434.50.

b) In terms of Section 42A(2)(c) of the said 1980 Act that Company 3's fees of £200 plus VAT should be paid by the Respondent to the Complainer or if not already paid by the Complainer, directly to the firm involved.

c) In terms of Section 42A(2)(c) of the said 1980 Act that the penalty for the late submission of the SDLT form and the sum of £200 should be paid by the Respondent to the Complainer together with the sum of £60 in relation to serving copies of building warrant and completion certificates which were obtained from the local authority.

d) In terms of Section 42A(3) of the said 1980 Act to repay to the Complainer the said abated fees and VAT thereon and the fees relating to charges raised by Company 3 and the sums paid to the Inland Revenue and Fife Council in respect of the additional outlays incurred.

e) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to the Complainer the sum of £750 by way of compensation.

6.54 The determination was intimated to the Respondent by letter dated 6 June 2007. The Respondent failed to comply with the determination in any respect. As a consequence a formal Statutory Notice in terms of Section 42B of the said 1980 Act was intimated to the Respondent by recorded delivery on 16 April 2008. Despite intimation of this formal Statutory Notice the Respondent has failed to implement the determination in any respect. An appeal has not been marked by the Respondent against the determination. The determination therefore remains outstanding.

7. Having heard a submission on behalf of the Complainers the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of:

- 7.1 his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society;
- 7.2 his failure to respond to statutory notices served upon him by the Law Society;
- 7.3 his failure and reasonable delay to register or record title deeds;
- 7.4 his breach of Article 9 of the Code of Conduct for Scottish Solicitors 2002 by his failure to deliver conveyancing deeds in terms of a formal undertaking issued by him despite receiving repeated requests for him to implement that undertaking;
- 7.5 his breach of Rule 5 of the Solicitors (Scotland) Practice Rules 1986 in relation to acting for both parties in a sale and purchase of a heritable property in that he did not write to the parties explaining the position to him as quickly as he ought;

7.6 In addition, the Tribunal found that the Respondent had failed to comply with the Determinations and Directions given by the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Mrs A, Mr B, Mr C, Ms F, Mr and Mrs I, Ms J, Mr and Mrs K, Mr L, Mrs M and Mr N, Mr and Mrs O, Mr and Mrs I, Mr P and Mr Q, Mr S, Ms T, Mrs U and Ms V within the periods specified, the Tribunal resolved to make sixteen Orders in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980.

8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 26 February 2009. The Tribunal having considered the Complaint dated 14 July 2008 at the instance of the Council of the Law Society of Scotland against Norman James Cowie, Solicitor, formerly of Cowie & Co., 198 High Street, Cowdenbeath, Fife and now of 36 Crawford Gardens, St. Andrews, Fife; Find the Respondent guilty of professional misconduct in cumulo in respect of his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society; his failure to respond to statutory notices served upon him by the Law Society; his failure and unreasonable delay in recording or registering title deeds; his breach of Article 9 of the Code of Conduct for Scottish Solicitors 2002 by failing to deliver conveyancing deeds in terms of a formal undertaking issued by him despite receiving repeated requests for him to implement his undertaking and his breach of Rule 5 of the Solicitors (Scotland) Practice Rules 1986 in relation to acting for both parties in a sale and purchase of a heritable property in that he did not write to the parties explaining the position to him as quickly as he ought; Order that the name of the Respondent be struck off the Roll of Solicitors in Scotland; Find that the Respondent failed to comply with sixteen Determinations and Directions given by the Law Society of Scotland on 20 June 2006, 6 July 2006, 8 August 2006, 26 July 2006, 12 September 2006, 24 May 2006, 11 January 2007, 13

January 2007, 22 January 2008, 12 June 2007, 6 September 2007, 24 October 2006, 2 August 2007, 24 April 2007, 11 January 2007 and 22 May 2007 under Section 42A of the Solicitors (Scotland) Act 1980 within the periods specified; Direct that sixteen Orders be issued under Section 53C of the said Act; 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 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

The Respondent was not present or represented at the hearing. He did not lodge Answers to the Complaint or any other documentation. The Respondent did not make contact with the Tribunal's Clerk regarding this Complaint.

The Tribunal heard evidence from the Depute Clerk that the Complaint was served on the Respondent by Sheriff Officers on 21 January 2009 by leaving it at his address. The Tribunal heard evidence from the Depute Clerk that the Notice of Hearing was served personally on the Respondent by Sheriff Officers on 5 February 2009. In the circumstances the Tribunal agreed to proceed in the Respondent's absence.

Two Inventories of Productions were lodged for the Complainers.

Mr Reid indicated that he wished to lead evidence from one witness, Mrs Faye Shortt, the Quality Assurance Manager of the Complaints Investigation Team at the Law Society.

EVIDENCE FOR THE COMPLAINERS

Mrs Shortt gave evidence that she has been employed by the Law Society for seven and a half years. She currently holds the post of Quality Assurance Manager of the Complaints Investigation Team having previously been a Complaints Investigator. She advised that she is responsible for overseeing a number of files regarding the Respondent and confirmed that she was familiar with the complaints regarding the Respondent. She advised that the complaints were dealt with by a number of different case managers, some who are no longer employed by the Complainers. Mrs Shortt advised that she could give evidence about these complaints as she had involvement with them in a supervisory capacity.

Mrs Shortt advised that when a solicitor fails to respond to correspondence from the Complainers a number of statutory notices are sent to him. Mrs Shortt was referred to the two Inventories of Productions lodged for the Complainers. She advised that she had read each and every page of both Inventories. She confirmed that she was

satisfied that all the communications specified in the indexes to the Inventories as having been sent to the Respondent had been sent to the Respondent.

In so far as the productions contain documentation sent by the Complainers to the Respondent requiring the Respondent to do something in terms of Section 42A(1) of the above Act Mrs Shortt stated that she was satisfied that all of the requirements remain outstanding. She confirmed that the following letters and statutory notices were sent to the Respondent by the Complainers between 10 December 2004 and 16 April 2008 and advised that he did not respond to any of the correspondence -

1. Letter to Respondent dated 14 March 2006.
2. Formal Notice to Respondent dated 14 March 2006.
3. Recorded Delivery Notice to the Respondent dated 11 April 2006.
4. Letter to Respondent dated 11 April 2006.
5. Letter to Respondent dated 29 June 2006.
6. Section 42A Notice dated 29 June 2006.
7. Section 42B Notice dated 27 July 2006.
8. Letter to Respondent dated 27 July 2006.
9. Letter to Respondent dated 25 January 2006.
10. Formal Notice to Respondent dated 13 March 2006.
11. Notice to Respondent dated 13 March 2006.
12. Recorded Delivery letter to Respondent dated 5 April 2006.
13. Letter to Respondent dated 5 April 2006.
14. Section 42A Notice dated 21 July 2006.
15. Letter to Respondent dated 21 July 2006.
16. Section 42B Notice to Respondent dated 5 September 2006.
17. Letter to Respondent dated 5 September 2006.
18. Letter to Respondent dated 25 October 2005.
19. Recorded Delivery letter to Respondent dated 22 November 2005.
20. Formal Notice to Respondent dated 22 November 2005.
21. Recorded Delivery Notice to Respondent dated 15 December 2005.
22. Letter to Respondent dated 15 December 2005.
23. Letter to Respondent dated 17 January 2006.
24. Section 42A Notice dated 17 August 2006.

25. Section 42B Notice dated 13 September 2006.
26. Letter to Respondent dated 3 October 2005.
27. Recorded Delivery Notice to Respondent dated 9 November 2005.
28. Recorded Delivery Letter to Respondent dated 9 November 2005.
29. Letter to Respondent dated 12 December 2005.
30. Recorded Delivery Notice to Respondent dated 12 December 2005.
31. Letter to Respondent dated 20 December 2005.
32. Letter to Respondent dated 24 February 2006.
33. Section 42A Notice dated 7 August 2006.
34. Section 42B Notice dated 30 August 2006.
35. Letter to Respondent dated 10 December 2004.
36. Recorded Delivery Notice to Respondent dated 10 January 2005.
37. Recorded Delivery Notice to Respondent dated 10 February 2005.
38. Letter to Respondent dated 10 February 2005.
39. Letter to Respondent dated 15 March 2005.
40. Letter to Respondent dated 19 May 2005.
41. Recorded Delivery Notice to Respondent dated 9 June 2006.
42. Letter to Respondent dated 29 June 2006.
43. Letter to Respondent dated 11 August 2006.
44. Letter to Respondent dated 3 March 2006.
45. Letter to Respondent dated 10 April 2006.
46. Letter to Respondent dated 1 May 2006.
47. Recorded Delivery Notice to Respondent dated 4 May 2006.
48. Section 42A Notice dated 25 September 2006.
49. Section 42B Notice dated 27 November 2006.
50. Letter to Respondent dated 15 September 2005.
51. Letter to Respondent dated 31 October 2005.
52. Letter to Respondent dated 31 October 2005.
53. Letter to Respondent dated 6 December 2005.
54. Formal Notice dated 12 January 2006.
55. Recorded Delivery Letter to Respondent dated 12 January 2006.
56. Recorded Delivery Letter to Respondent dated 6 October 2006.
57. Recorded Delivery Letter to Respondent dated 6 October 2006.
58. Letter to Respondent dated 28 September 2007.

59. Section 42A Notice dated 24 January 2008.
60. Section 42B Notice dated 20 June 2008.
61. Section 42A Notice dated 1 February 2007.
62. Section 42B Notice dated 2 April 2007.
63. Section 42A Notice dated 22 March 2007.
64. Section 42B Notice dated 18 April 2007.
65. Letter to Respondent dated 31 July 2007.
66. Letter to Respondent dated 15 August 2007.
67. Letter to Respondent dated 5 September 2007.
68. Recorded Delivery Letter to Respondent dated 5 September 2007.
69. Formal Notice to Respondent dated 5 September 2007.
70. Recorded Delivery Letter to Respondent dated 19 September 2007.
71. Section 42A Notice dated 1 February 2008.
72. Section 42B Notice dated 29 February 2008.
73. Section 42A Notice dated 22 June 2007.
74. Section 42B Notice dated 16 April 2008.
75. Section 42A Notice dated 25 September 2007.
76. Section 42B Notice dated 16 April 2008.
77. Section 42A Notice dated 9 November 2006.
78. Section 42B Notice dated 16 April 2008.
79. Letter to Respondent dated 19 February 2007.
80. Recorded Delivery Letter to Respondent dated 9 March 2007.
81. Formal Notice to Respondent dated 2 April 2007.
82. Recorded Delivery Letter to Respondent dated 2 April 2007.
83. Letter to Respondent dated 2 April 2007.
84. Section 42A Notice dated 22 August 2007.
85. Section 42B Notice dated 26 October 2007.
86. Section 42A Notice dated 15 May 2007.
87. Section 42B Notice dated 16 April 2008.
88. Section 42A Notice dated 26 January 2007.
89. Letter to Respondent dated 10 May 2007.
90. Section 42B Notice dated 31 May 2007.
91. Section 42A Notice dated 6 June 2007.
92. Section 42B Notice dated 16 April 2008.

Mr Reid referred the witness to page 43 of the First Inventory of Productions for the Complainers which related to correspondence regarding a complaint by Mr C. In relation to Production 25 on page 57 the witness advised that this was a report by a Solicitor Reporter in connection with the complaint. The witness explained that after a complaint is investigated the file is referred to a Reporter for a report to be prepared. In this case it was a solicitor who was acting as the Reporter. The witness explained that the report is the key piece of documentation when the case is considered by a Committee and is sent to both parties before it goes to Committee. In the case of the complaint by Mr C one of the heads of complaint involved conflict of interest.

Mrs Shortt advised that the Reporter had access to the Respondent's file prior to preparing the report and that the report accurately reflected what was in the Respondent's file. The witness advised that the Reporter's conclusion was based on an examination of the file. Mrs Shortt agreed that the report states –

“In all the circumstances, I do not think that, on the balance of probabilities, it can be established that Cowie & Co did not advise Mr C, prior to doing any substantive work, that they were acting for both sides. Accordingly this Issue should not be upheld.”

Mrs Shortt advised that the Committee disagreed with this conclusion.

The witness was then referred to pages 76 to 118 of the said Inventory, correspondence regarding Ms F's complaint. She confirmed that production 41 was a report by a Solicitor Reporter regarding that complaint. Mrs Shortt confirmed that at page 105 of the said Inventory the following conclusion was stated by the Reporter -

“The facts are clear in this matter, the purchase price for Property 5 was paid to Fife Council on 16 February 2005, when the executed Disposition in favour of Ms F should have been obtained in exchange and sent as reasonably as practicable for registration. The Disposition would not be delivered until the council had received from Cowie & Co the signed Discount Standard Security. This was returned to Fife Council on 12 August and the Disposition was received by Cowie & Co on 16

August. It is not known exactly when the Disposition and title package was sent to the Land Register but their date of receipt was 25 August so I conclude that it was sent on 24 August. I consider that this delay amounts to an inadequate professional service.”

The witness was referred to page 80 of the said Inventory a letter from Ms F to the Complainers dated 5 September 2005. The witness advised that the letter refers to a number of occasions in July and August 2005 when Ms F contacted the Respondent to chase up the registration of her deeds after finding out that they had not been registered when the transaction had settled six months previously. The witness advised that the letter referred to a number of calls made during a three week period in July 2005 which were never returned despite messages being left with the Respondent’s secretary. Mrs Shortt advised that the letter states that the deeds were only registered the day after Ms F threatened to report the Respondent to the Complainers. The witness confirmed that Ms F had pestered the Respondent to make progress with the registration.

The witness was referred to page 150 of the said Inventory a letter to the Complainers dated 4 November 2005 from Company 1, Solicitors. The witness confirmed that the letter showed that the transaction settled on 22 August 2003 but that despite contacting the Respondent on numerous occasions the letter of obligation remained unimplemented and the firm were seeking the assistance of the Complainers to order to progress matters.

The witness was then referred to page 151 of the said Inventory a letter dated 12 January 2006 from the same firm to the Complainers. The witness confirmed that the letter showed that despite the fact that the Complainers had contacted the Respondent on 29 November 2005 and received an assurance that the matter would be dealt with within 14 days, that the letter of obligation remained unimplemented and the firm of Company 1 had still not received the executed discharge in favour of their client. This amounted to a delay of two and a half years.

The witness was then referred to pages 160 to 164 of the said Inventory, a report prepared by a Reporter for a committee of the Complainers which indicated that the delays in that transaction were noted by the Reporter in the course of examination of

the Respondent's file. The witness advised that the Complainers never received a response from the Respondent regarding this complaint despite a number of reminders and telephone calls.

The witness was then referred to pages 100 to 101 of the Second Inventory of Productions for the Complainers, a Help Form received by the Complainers from Stewart Reid in relation to a complaint against the Respondent. The witness advised that the form indicated that Mr Reid had to pay twice for his deeds to be registered as the deeds were not registered by the Respondent. This was confirmed in Production 105 of the said Inventory, a letter dated 5 February 2007 from Company 4, Solicitors, and also by the report of the Solicitor Reporter who had had access to the Respondent's file. The witness advised that the report was found at pages 115 to 121 of the said Inventory. She advised that the transaction settled on 31 October 2003. The Respondent had sent the deeds for registration but they were returned to him by the Keeper. The deeds were not returned to the Keeper by the Respondent. The Keeper sent reminders to the Respondent and that correspondence was not responded to. A cancellation letter was sent by the Keeper on 25 March 2004 to the Respondent advising that Mr Reid's application to have his deeds registered was cancelled. On 2 June 2006 Mr Reid was advised by another firm of solicitors that the Respondent had ceased trading and that the Complainers had passed them the file relating to his house purchase. These solicitors advised Mr Reid that his deeds had not been registered; this was nearly three years after the transaction settled.

SUBMISSIONS ON BEHALF OF THE COMPLAINERS

Mr Reid asked the Tribunal to grant the sixteen Orders requested in the Complaint as a result of the Respondent's failure to comply with the numerous Determinations and Directions detailed in the Complaint.

Mr Reid asked the Tribunal to find the Respondent guilty of Professional Misconduct in relation to his failure or unreasonable delay to register title deeds, his failure to respond to correspondence and Statutory Notices from the Complainers, his failure to implement a formal undertaking given by him in a letter of obligation whereby he undertook to deliver a deed to another solicitor and his breach of Rule 5 of the

Solicitors (Scotland) Practice Rules 1986 in relation to acting for both parties in a sale and purchase of a heritable property in that he did not write to the parties explaining the position to him as quickly as he ought.

In response to a question from the Tribunal Mr Reid advised that the Respondent was still on the Roll of Solicitors.

In response to a question from the Tribunal as to whether he was in a position to put forward any mitigation on the Respondent's behalf Mr Reid advised that he had not had any contact with the Respondent regarding these proceedings. Mr Reid advised that he believed that the Respondent is not in the best of health and was sequestered in April 2007.

DECISION

The Tribunal was satisfied from the evidence of the Depute Clerk that the Respondent was aware of the Complaint and of the hearing. The Tribunal noted that the Respondent had not seen fit to lodge Answers or attend the Tribunal hearing. The Tribunal considered that in the public interest it should proceed with the hearing in the Respondent's absence. The Tribunal was satisfied beyond reasonable doubt on the basis of the evidence and the productions lodged that the Respondent had failed to comply with the sixteen Determinations and Directions of the Law Society. The Tribunal accordingly proceeded to make sixteen Orders under Section 53C of the Solicitors (Scotland) Act 1980.

The Tribunal was also satisfied beyond reasonable doubt on the basis of the evidence and the productions lodged that the Respondent had failed to respond to the reasonable enquiries of the Complainers; failed to comply with statutory notices served upon him by the Complainers; failed and unreasonably delayed from the time that a purchase price was paid to record or have registered a title in favour of his client and had unreasonably delayed from the time when loan funds were encashed by him to record or have registered a standard security in favour of a lender; failed to implement a formal undertaking issue by him in terms of a letter of obligation wherein he undertook to deliver to the solicitor for the purchaser a formal

conveyancing deed having received repeated requests for him to implement his undertaking and that he breached Rule 5 of the Solicitors (Scotland) Practice Rules 1986 in that when acting for both parties in a sale and purchase of heritable property that he did not write to the parties explaining the position to them as quickly as he ought.

The Tribunal considered that the Respondent was well aware that the Law Society has a duty to investigate any complaint regarding the conduct of a solicitor and that solicitors have a duty to respond to the enquiries made by the Law Society in this regard. Failure to respond to the Law Society prevents the Law Society from properly investigating complaints and can bring the whole profession into disrepute. The Tribunal also considered that a solicitor acting on behalf of a client in connection with a conveyancing transaction has a duty to prepare deeds to record or have these registered within a reasonable time. The Tribunal is aware that until a deed is recorded or registered the client is not infest in the property and their title is placed at risk and that similarly any security in favour of a lender is also at risk until the deeds are recorded. The Tribunal noted that the Respondent also failed in his duty to comply with the formal undertaking which he gave to a fellow solicitor. The Tribunal considers that a solicitor must be able to trust a formal undertaking given by another solicitor as the Scottish system of conveyancing relies to a great extent upon the issuing of formal letters of obligation. Such undertakings should not be granted lightly or ignored. The Tribunal considers that by failing to comply with this undertaking and by ignoring repeated reminders from both the solicitors involved and from the Law Society that the Respondent acted in a manner which has adversely affected the reputation of the profession.

The Tribunal is greatly concerned that the Respondent has failed to respond in any way to a large volume of correspondence sent by the Law Society in relation to a large number of separate complaints over a period of four years and that the Respondent has also ignored all correspondence sent by the Clerk to the Tribunal and has not attended this hearing or put forward any explanation for his failures. The Tribunal noted that in relation to the failures to register deeds and to implement the letter of obligation the Respondent had been given numerous opportunities to rectify matters but had continued to ignore all reminders and enquires from his fellow

solicitors and from the Complainers. For these reasons the Tribunal was of the view that the appropriate sanction was to Order that the name of the Respondent be struck off the Roll of Solicitors in Scotland. The Tribunal made the usual Order with regard to expenses and publicity.

Chairman