

PLEASE NOTE

**The present firm of Alexander George & Co has no connection with the
Respondent**

**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

**EDWARD LINDSAY ACTON,
Solicitor, 24 Shore, Street,
MacDuff**

1. A Complaint dated 14th February 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Edward Lindsay Acton, Solicitor, 24 Shore Street, MacDuff (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. A letter was lodged by the Respondent in answer to the Complaint.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 18th April 2007 and notice thereof was duly served on the Respondent.
4. The Complaint called on 18th April 2007. The Complainers were represented by their Fiscal Valerie Johnston, Solicitor, Dunfermline. The Respondent was not present or represented .
5. On the motion of the Fiscal the Hearing was adjourned until 15th May 2007 to allow the Fiscal to present further evidence.
6. Notice of the fresh Hearing of 15th May 2007 was served on the Respondent.
7. When the Complaint called on 15th May 2007, the Complainers were represented by their Fiscal Valerie Johnston, Solicitor, Dunfermline. The Respondent was not present or represented.
8. The Tribunal heard evidence from one witness and the Fiscal lodged Affidavit evidence from a further witness. Various Productions were also lodged with the Tribunal.
9. The Tribunal found the following facts established
 - 9.1 The Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born on 30th October 1947. He was admitted as a Solicitor on 7th December 1971 and enrolled on 23rd December in the same year. He became a Partner in the firm of Alexander George & Company on 1st December 1975. The Respondent does not currently have a practising certificate.
 - 9.2 A C MORRISON & RICHARDS, SOLICITORS
By letter dated 19th May 2006, Messrs A C Morrison &

Richards, Solicitors, invoked the aid of the Complainers in respect of the Respondent's failure to reply to their correspondence. Messrs A C Morrison & Richards, Solicitors, represent Professor and Mrs A. The Respondent acted on behalf of their neighbours Mr and Mrs B. Messrs A C Morrison & Richards had received instructions on behalf of their clients to rectify a title defect involving 2 properties.

9.3 By letter dated 28th February 2005, Messrs A C Morrison & Richards wrote to the Respondent. They did not receive a reply and wrote a follow up letter on 26th May 2005. The Respondent replied on 3rd June 2005 requesting a coloured copy of the plan relating to the title defect. Messrs A C Morrison & Richards, Solicitors, provided this with their letter of 8th June 2005. They wrote follow up letters on 12th October 2005, 2nd December 2005, 24th January 2006 and 20th February 2006. The Respondent did not acknowledge the letters nor did he reply.

9.4 THE LAW SOCIETY OF SCOTLAND

On receipt of the complaint by Messrs A C Morrison & Richards, the Complainers advised the Respondent of the complaint by letter dated 29th May 2006. Further enquiries were made and by formal letter dated 13th June 2006, the complaint was intimated to the Respondent with a list of the issues. He was required to provide his written response, any background information he may wish, his business file and files relating to the matter should he hold them within 21 days of the date of the letter.

9.5 The Respondent did not reply. He was served with Notices under Section 15(2)(ii) and Section 42C of the Solicitors (Scotland) Act 1980 on 4th July 2006. He did not respond. He was served with the second part of the Section 15 Notice on

2nd August 2006. He did not reply. He was advised that the matter was proceeding to a report on 21st August 2006 and that it had been allocated to a Reporter on 24th August 2006. On 3rd October 2006, he was sent a copy of the Report and asked to make any comments by 18th October 2006. He did not reply. The Client Relations Committee considered the matter on 2nd November 2006. He was sent a copy of the Schedule on 16th November 2006 and invited to make any representations by 27th November 2006. He wrote on 24th November 2006 advising that Morrison & Richards were not his clients so it was not appropriate for him to comment

10. Having considered the foregoing circumstances and having noted the terms of the letter from the Respondent dated 21st February 2007, the Tribunal found the Respondent guilty of Professional Misconduct in respect of

10.1 His repeated failure between 28th February 2005 and 19th May 2006, to respond to the correspondence of a fellow Solicitor and

10.2 his failure between 13th June 2006 and 24th November 2006 to reply to the reasonable enquiries of the Complainers into the complaint of Messrs A C Morrison & Richards, Solicitors, and failure to comply with Notices served upon him.

11 The Tribunal pronounced and Interlocutor in the following terms:-

Edinburgh 15th May 2007. The Tribunal having considered the Complaint dated 14th February 2007 at the instance of the Council of the Law Society of Scotland against Edward Lindsay Acton, Solicitor, 24 Shore Street, MacDuff; Find the Respondent guilty of Professional Misconduct in respect of his failure to reply to correspondence from a fellow Solicitor and

failure to reply to the reasonable enquiries of the Law Society and failure to comply with Notices served upon him by the Law Society; Censure the Respondent and Fine him in the sum of Two Thousand Pounds to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and the Tribunal as the same may be taxed by the auditor of the Court of Session on a solicitor and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85 with the exception of the expenses of preparation for and attendance at the Hearing on 18th April 2007; and Direct that publicity will be given to this Decision and that this publicity should include the name of the Respondent.

(signed)

Alistair M Cockburn
Chairman

- 12 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 nor represented at the Tribunal. His letter dated 21st February 2007 indicated that he did not intend to actively participate in the proceedings. After hearing evidence from the Tribunal Clerk with regard to service of the Notice of Hearing the Tribunal resolved to proceed in the Respondent's absence.

EVIDENCE FOR THE COMPLAINERS

The Complainers led the evidence of Ian Ritchie, Case Manager with the Law Society. Mr Ritchie indicated that he was responsible for dealing with the investigation into the matter. Mr Ritchie confirmed that the Respondent was a solicitor enrolled in the Register of Solicitors in Scotland but that the Respondent did not presently hold a Practising Certificate. Mr Ritchie referred to the letter from Morrison & Richards dated 19th June 2006 which set out the problems which they had had with the Respondent. Mr Ritchie confirmed that the letters attached to the letter of 19th May came with it. Mr Ritchie explained that the Respondent represented neighbours of Messrs Morrison & Richard's client. Mr Ritchie stated that he sent a letter to the Respondent on 13th June with a schedule attached highlighting what was under investigation and asking for a reply within 21 days. This letter also asked for the Respondent's business file. The Respondent did not reply. Mr Ritchie explained that he wrote again on 4th July 2006 by recorded delivery asking for a response within 14 days. He also sent a Notice under Section 42C on the 4th July as he had not received the files. Mr Ritchie stated that the files might have given an explanation as to why the Respondent had not responded to Morrison & Richards. Mr Ritchie explained that another Notice was sent on 2nd August advising him that if he did not respond there would be an investigation. The Respondent did not reply. On 24th August the Respondent was written to and told that a Reporter had been appointed. The Report was sent to the Respondent on 3rd October asking for his comments and there was no response from him. On 16th November Mr Ritchie stated that the Respondent was sent a letter from giving him formal Notice of the outcome of the Client Relations Committee. Mr Ritchie said that the Respondent sent a letter on 26th November and this was the only response from him and it did not give any explanation of his failure to respond. Mr Ritchie referred the Tribunal to the letter of

3rd June 2005 from the Respondent to Messrs Morrison & Richards which showed that the Respondent was acting for Mr & Mrs B.

Miss Johnston then referred the Tribunal to 2 Affidavits from Alan Alexander Slessor Wilson a partner in A C Morrison & Richards. The Affidavits confirm that various letters were written to the Respondent from Morrison & Richards in connection with defective conveyancing which was required by Morrison & Richards clients but the Respondent did not reply and the matter accordingly had to be reported to the Law Society. Mr Wilson confirms in his Affidavits that he wrote to the Law Society on 19th May enclosing copy correspondence, Mr Wilson also confirms in his Affidavit that the Respondent's failure to respond to his numerous letters caused both him and his client considerable inconvenience. Mr Wilson also refers to a letter from the Respondent's clients instructing him to co-operate with any corrective conveyancing formality. Mr Wilson further indicates in his Affidavit that it was only in Spring of 2007 that matters were resolved.

SUBMISSIONS FOR THE COMPLAINERS

Miss Johnston asked that Tribunal to find that the Respondent was duty bound to reply to the letters from Messrs Morrison & Richards. Miss Johnston indicated that the Respondent had declined to comment and had made a suggestion that he could not comment due to client confidentiality. Miss Johnston submitted that the Respondent's failure to respond was wilful. Miss Johnston emphasised the importance of a solicitor's duty to their professional colleagues. Solicitors have a duty to reply to all correspondence from their professional colleagues and if they cannot for any reason this needs to be conveyed to the other side in writing. Miss Johnston referred the Tribunal to previous cases involving a Mr McDonald and a Mr Lewis. She submitted that each case had to be decided on its own facts. In this case Mr Wilson was aware that the Respondent was the agent for Mr & Mrs B and he needed to know whether the Respondent's client would do corrective conveyancing. The Respondent had replied to confirm that Mr & Mrs B were his clients but had then ignored all further correspondence and had not advised Mr Wilson that he had any instructions to terminate correspondence. Miss Johnston pointed out that there was a letter from the Respondent's client instructing to him to co-operate and deal with matters. The Respondent had not explained why he had not responded. Miss Johnston pointed out

that the Respondent had not said that he could not produce the file because it was subject to legal privilege. Miss Johnston confirmed that after the complaint had been received against the Respondent a new firm had taken over and completed the remedial conveyancing. In response to a question from the Chairman, Miss Johnston accepted that it might amount to Professional Misconduct if a solicitor produced files without his client's consent. Miss Johnston however stated that the Law Society has the power to obtain the files but the solicitor has an option at that stage to say that he cannot produce the files due to legal privilege. What the solicitor cannot do is just ignore correspondence and fail to produce the files.

DECISION

The Tribunal had concerns with regard to the Notice sent by the Law Society requiring the Respondent to deliver the file to the Law Society when he did not have the consent of his client to do. The Tribunal considered that by issuing this Notice the Law Society were inviting the Respondent to do something that could amount to Professional Misconduct and they were doing this under threat of a Legal Notice. The Tribunal considered that this was unfortunate. The Respondent should not however have ignored the Law Society's request for the file. He should have explained his difficulty.

The Tribunal was satisfied on the basis of the evidence led that the Respondent had failed to respond to correspondence from Messrs Morrison & Richards over a period of time. The Respondent had not explained his failure to respond and the Tribunal considered that he was under a duty to respond to his fellow solicitor. The Respondent had then failed to respond to the reasonable enquiries of the Law Society and failed to respond to the Notice from them asking for a response. In the circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of his failure to respond to a fellow solicitor and also failure to respond to reasonable enquiries and Statutory Notices of the Law Society with the exception of the Statutory Notice requiring the delivery of the file.

PENALTY

It is imperative that there is underlying trust between solicitors and if solicitors fail to respond to fellow solicitors this trust is undermined. The Tribunal has also made it clear on numerous occasions that failure to respond to the Law Society hampers the Law Society in the performance of their statutory duty and brings the Profession into disrepute. The Tribunal noted the previous Findings against the Respondent and his partner issued by the Tribunal in July 2006. Some of the matters in these Findings were analogous and the Respondent had been fined £850. The Tribunal noted that in July 2006 the agent on behalf of the Respondent gave an assurance to the Tribunal that nothing like this would happen again but despite this the Respondent had failed to reply to the Law Society on 4th July and in October 2006 did not provide any comments after being sent a copy of the Reporter's report. The Tribunal also noted that the Respondent had not attempted to explain why he had failed to respond apart from indicating that he did not wish to actively participate in a process that would inevitably mean giving information which would be confidential to the client. Whilst the Tribunal has accepted that there could be problems with the Respondent producing the file due to client confidentiality, the Tribunal did not see why the Respondent could not explain his failure to reply. The Tribunal was not aware of the Respondent's income as he had failed to provide the Tribunal with any information of his present circumstances. Taking into account of the previous Findings, the Tribunal felt that a Censure plus a fine of £2,000 would be an appropriate penalty. The Tribunal made the usual Order with regard to publicity and found the Respondent liable in expenses but excluded the expenses of preparation and appearance at the hearing on 18th April as this hearing had been adjourned on the motion of the Fiscal who was not adequately prepared.

Chairman