

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

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND**

**against**

**MICHAEL GORDON ROBSON,  
Solicitor, The Old School House, 2  
Baird Road, Ratho**

1. A Complaint dated 20<sup>th</sup> February 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Michael Gordon Robson, Solicitor, The Old School House, 2 Baird Road, Ratho (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.
3. The Complaint was sisted on Joint Motion until after the outcome of an appeal in connection with previous Tribunal Findings which were ongoing at the Court of Session.

4. On 16<sup>th</sup> December 2004 the sist was recalled and a further 8 weeks was allowed for the lodging of Answers. No Answers were lodged.
5. In terms of its Rules the Tribunal appointed the Complaint to be heard on 23<sup>rd</sup> March 2005 and notice thereof was duly served on the Respondent.
6. When the case called on 23<sup>rd</sup> March 2005, the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. On the morning of the Tribunal a written motion for an adjournment was received from the Respondent. This motion was refused and the case proceeded.
7. The Complainers led the affidavit evidence of one witness and the Tribunal found the following facts established

7.1 The Respondent was enrolled as a solicitor on 8<sup>th</sup> December 1975. His date of birth is 8<sup>th</sup> October 1952. Having graduated he was employed by a number of different firms until on or about 3<sup>rd</sup> August 1998. Since that date he had practised as a sole practitioner in the firm Robson, WS, SSC, Solicitors of The Old School House, 2 Baird Road, Ratho, Edinburgh. Since 7<sup>th</sup> November 2001 he has remained outwith the profession.

7.2 Mr A

The Respondent was instructed by a client, Mr A who resides at Property 1. He was consulted in connection

with a court action to be raised against the firm of solicitors, Messrs Duncan & Wallace. The Respondent accepted these instructions. On or about 14<sup>th</sup> April 2000 the Respondent wrote to Mr A enclosing two separation Advice and Assistance Forms provided by the Scottish Legal Aid Board for the completion by Mr A and return to the Respondent. One form related to the proposed action against the firm of Duncan & Wallace and the other in relation to a potential court action against Tweeddale District Council. Mr A completed these forms and returned them to the Respondent by letter dated 18<sup>th</sup> April 2000.

7.3 In June 2000 the Respondent communicated with Mr A advising him that he would obtain an increase in authorised expenditure from the Scottish Legal Aid Board to meet the costs of an Opinion to be obtained from a conveyancing expert. The Respondent maintained to Mr A that his application for Legal Aid had been successful. The Respondent advised Mr A that he had contacted the Legal Aid Board to obtain an increase in authorised expenditure to obtain an Opinion from a conveyancing expert in respect of the negligence claim against the previous solicitors. The said Mr A repeatedly made efforts to contact the Respondent to ascertain what progress was being made in relation to the instructions given to him. The Respondent had failed to respond to the repeated requests made of him by Mr A for a report as to progress in relation to his affairs. The Respondent had failed to communicate or keep Mr A up to date with progress in relation to his affairs.

7.4 Following the inability of the Respondent to properly keep Mr A informed as to what progress was being made in relation to his affairs, Mr A then consulted the

firm of Sneddon Morrison, Solicitors. On his behalf they intimated to the Respondent a Mandate signed by Mr A by letter dated 14<sup>th</sup> February 2001. On 26<sup>th</sup> March 2001 the now instructed firm of Sneddon Morrison, Solicitors, wrote to Mr A to advise that they had received various files.

8. Having considered the foregoing circumstances and the submissions on behalf of the Complainers the Tribunal made no finding of professional misconduct against the Respondent. The Tribunal however considered that the Respondent's conduct in failing to communicate properly and effectively with his client, Mr A, was unprofessional conduct.
9. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23<sup>rd</sup> March 2005. The Tribunal having considered the Complaint dated 20<sup>th</sup> February 2004 at the instance of the Council of the Law Society of Scotland against Michael Gordon Robson, Solicitor, The Old School House, 2 Baird Road, Ratho; Make no finding of professional misconduct against the Respondent; Find the Complainers liable in the expenses of the Respondent and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a solicitor and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business and Direct that publicity, to include the name of the Respondent, will be given to this decision.

**(signed) Alistair Cockburn**  
**Vice 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**

**Vice Chairman**

**NOTE**

The Complaint had been sisted on Joint Motion until the outcome of an appeal to the Court of Session in respect of a previous finding of the Tribunal against the Respondent. The Court of Session decision was issued in November 2004 and this Complaint called before the Tribunal on 16<sup>th</sup> December 2004 when the Complainers moved that the sist be recalled. The Respondent asked that the sist remain in place because he was to be appealing the Court of Session decision in the previous case to the European Court of Human Rights and he was not in good health. The Tribunal however agreed that the sist be recalled but allowed the Respondent eight weeks for the lodging of Answers. No Answers were lodged and the Tribunal appointed the Complaint to be set down for hearing on 23<sup>rd</sup> March 2005. When the case called on 23<sup>rd</sup> March 2005 the Respondent had still not lodged Answers and on the morning of the Tribunal sent in a written motion for an adjournment based on his health difficulties. The motion for an adjournment was accompanied by a soul and conscience certificate from his doctor stating that he was suffering from an avoidance strategy caused by his depression. There was however no suggestion in the doctor's letter that the Respondent was not physically able to attend the Tribunal hearing. The Fiscal for the Complainers moved that the Tribunal proceed to deal with the case and advised the Tribunal that he had spoken to the Respondent that morning and the Respondent had indicated that he had no intention of attending the Tribunal hearing.

The Tribunal took account of the fact that the allegations against the Respondent could affect his right to be a solicitor, but the Tribunal had to weigh the interests of the Respondent against the public interest in having matters dealt with. The matters had been outstanding for some time and the Respondent had been given an unusually long period of eight weeks for lodging Answers which he had failed to comply with. The Respondent had left it until the day of the hearing to move for an adjournment and the Tribunal considered that he had been given enough latitude and that the matter should proceed. The Tribunal took account of the doctor's letter produced by the Respondent but this letter did not say that the Respondent was unfit to attend the Tribunal. The Tribunal was of the view that even if the case was adjourned it was unlikely that the Respondent would co-operate with the process. Although the Respondent had an avoidance strategy difficulty he was still clearly able to write

letters and articulate a view and appeared to be able to work as a tennis coach. The Notice of Hearing sent to the Respondent warned him that if he did not attend matters could proceed in his absence. The Tribunal accordingly refused the Respondent's motion to adjourn.

The Fiscal then asked the Tribunal to delete Articles 2.1 to 2.4 in the Complaint relating to Mr B. Mr Reid explained that Mr B was abroad for six months due to ill health and it was not known when he would return and accordingly Mr Reid had been unable to obtain an affidavit from him. Mr Reid stated that the Law Society wished to preserve their position so that they could re-raise the matter in connection with Mr B's complaint in the future.

The Tribunal did not agree to this as it had already been decided that it was in the public interest that matters be brought to a conclusion. It would not be fair to the Respondent to keep these particular matters hanging over him for an indefinite period. The Tribunal felt it important to make a decision in respect of the whole Complaint and the motion to delete was refused.

## **EVIDENCE FOR THE COMPLAINERS**

Mr Reid referred the Tribunal to the affidavit from Mr A and stated that the allegations contained in the Complaint amounted to professional misconduct. Mr A stated in his affidavit that he consulted the Respondent in connection with raising an action for damages against the former firm of solicitors who had acted for him. The Respondent requested that Mr A complete legal aid forms and return them to him which Mr A did on the 18 April 2000. Mr A then states in his affidavit that he subsequently learned that the Respondent submitted the forms to the Scottish Legal Aid Board for registration but the forms were not registered as they had not been properly completed and were returned to the Respondent. Mr A stated that he understood that the forms were returned to the Respondent by the Legal Aid Board on 15<sup>th</sup> May 2000 but that Mr Robson did nothing with them. He allowed the forms to lie on the file unattended. Mr A stated that this resulted in him not obtaining advice and assistance from the Legal Aid Board. Mr A states in his affidavit that the

Respondent telephoned him to advise that he would obtain an increase in authorized expenditure from the Legal Aid Board to meet the cost of securing an opinion from a recognized conveyancing expert and that the phone call took place in June 2000. The Respondent told Mr A that the increase in authorized expenditure had been successful. Mr A states in his affidavit that he subsequently discovered that the Respondent had lied to him as no application had been completed. Mr A stated that he then repeatedly made contact with the Respondent to try to ascertain what was happening but the Respondent gave him excuse after excuse in connection with the delay. Mr A stated that he believed that the Respondent was giving him the run around and he telephoned Professor Rennie who was providing the expert opinion. The secretaries for Professor Rennie advised Mr A that they had had no correspondence from the Respondent. Mr A states that he then decided to dispense with the Respondent's legal services and he instructed Sneddon Morrison Solicitors who wrote to the Respondent with a mandate on 14 February 2001 requesting that he forward them the file of papers. Mr A states that he, at the same time complained to the Law Society with regard to the Respondent. It was not until 26 March 2001 that Mr A received a letter from Sneddon Morrison advising that they had received the files from the Respondent. Mr Reid accepted that the delay in implementing the mandate was not particularly serious as it only amounted to five to six weeks.

## **DECISION**

It was clear from the affidavit evidence of Mr A that the Respondent had applied for legal aid on behalf of his client, Mr A, and had advised Mr A that he had contacted the Legal Aid Board to obtain an increase in authorised expenditure to obtain an opinion from a conveyancing expert in respect of a negligence claim. The Tribunal were however not satisfied beyond reasonable doubt on the basis of the affidavit evidence from Mr A, that the forms were not registered by the Legal Aid Board because they had not been properly completed by the Respondent, or that the forms were returned by the Legal Aid Board to the Respondent, or that the forms had then been left to lie on the file unattended or that no application for an increase in advice and assistance had been successfully completed on Mr A's behalf. The affidavit from Mr A in respect of these issues merely states that Mr A subsequently learned or



understood that. There is no evidence as to how he learned this or how he understood this to be the case. The Tribunal could accordingly not accept this as reliable evidence. There is also evidence in the affidavit from Mr A in connection with contact with Professor Rennie which is not included in the Complaint. The Respondent has not seen the affidavit evidence and would not have had fair notice of what was in the affidavit and accordingly the Tribunal could not allow this evidence. The Tribunal was satisfied beyond reasonable doubt on the evidence of the affidavit from Mr A that the Respondent failed to communicate effectively with Mr A despite repeated enquiries by Mr A. The Tribunal were however not satisfied that this failure to respond to his client was serious and reprehensible enough so as to amount to professional misconduct. The Tribunal however would not wish to associate itself with such conduct and finds that the Respondent's conduct in this matter was unprofessional. The Tribunal were also satisfied beyond reasonable doubt that the Respondent delayed in responding to the mandate received from Sneddon Morrison Solicitors. The Tribunal however do not find that the delay from 14<sup>th</sup> February 2001 to 26<sup>th</sup> March 2001 is serious enough to amount to professional misconduct. The Tribunal made no finding of professional misconduct in respect of the Complaint and in the circumstances awarded expenses against the Complainers. The usual order was made with regard to publicity.