

**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**

against

**WILLIAM DUNCAN
COPELAND, Copeland & Co,
Solicitors, 43 Quarry Street,
Hamilton**

1. A Complaint dated 7th March 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Duncan Copeland, Copeland & Co, Solicitors, 43 Quarry Street, Hamilton (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 10th May 2005 and notice thereof was duly served on the Respondent.

4. The hearing took place on 10th May 2005. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented himself.

5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct were admitted. No evidence was led.

6. The Tribunal found the following facts established

6.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born 22nd December 1948. He was admitted as a solicitor on 3rd August 1976. He was enrolled in the Register of Solicitors in Scotland on 18th August 1976. Initially he was employed by the firm Lockharts Solicitors until 10th November 1989. Thereafter between 13th November 1989 and 31st October 1999 he was employed initially as an Assistant and latterly as an Associate with the firm Scullion & Company, Solicitors, Hamilton. From 1st November 1999 to date he has been a Partner in the firm Copeland & Company, Solicitors, 43 Quarry Street, Hamilton.

6.2 Messrs A, Solicitors, Glasgow

Messrs A, Solicitors have a place of business at Property 1, Glasgow. They acted on behalf of a company known as Company A. On their behalf they purchased a heritable property from clients of the Respondent in or about early 2003. The

conveyancing transaction settled on 20th May 2003. At settlement the Respondent issued a letter of obligation which was in the standard form. It included an additional obligation on the part of the Respondent to deliver to Messrs A, Solicitors, a Minute of Waiver by South Lanarkshire Council within 28 days of the date of the Letter of Obligation. A Minute of Waiver is a conveyancing deed which was required by Messrs A, Solicitors, to complete the title on behalf of their client. Despite issuing this formal undertaking the Respondent failed to deliver to Messrs A, Solicitors, the Minute of Waiver. Messrs A, Solicitors were anxious to obtain the Minute of Waiver to complete the transaction. On a number of occasions they wrote to the Respondent requesting that he implement the undertaking provided by him in terms of his Letter of Obligation. He failed to do so. As a result of his failure to do so, the conveyancing formalities required to complete the title on behalf of the clients of Messrs A, 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 the said firm, Messrs A, Solicitors, the said firm were left with no option other than to invoke the assistance of the Complainers.

6.3 By letter dated 5th November 2003, Messrs A, Solicitors invoked the aid of the Complainers regarding the manner in which the Respondent repeatedly failed to reply to correspondence requesting that he implement the formal undertaking he issued in terms of his Letter of Obligation. The Complainers obtained sufficient information and thereafter intimated a Complaint to the Respondent. The initial letter intimating the complaint was ignored

by the Respondent. A reminder was sent. This was ignored. Thereafter on numerous occasions the Complainers wrote to the Respondent asking that he forward to them a response to the matters raised. In addition formal statutory notices in terms of the Solicitors (Scotland) Act 1980 were intimated to the Respondent by recorded delivery. On each occasion the Respondent ignored these notices. As a result of the Respondent ignoring the repeated requests made of him by the Complainers, the Complainers ability to investigate the complaint intimated were frustrated, hampered and impeded.

7. Having considered the submissions made by both parties the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His failure to implement the formal undertaking issued by him in terms of his Letter of Obligation dated 20th May 2003 in terms of which he undertook to deliver to the purchasers' solicitor a formal conveyancing deed.

7.2 His failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the firm, Messrs A, Solicitors, Glasgow.

7.3 His failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society then acting in terms of their statutory duty, concerning the complaint at the instance of the firm, Messrs A, Solicitors, Glasgow.

8. Having heard the Respondent in mitigation and having noted a previous finding of misconduct against the Respondent in 1986 the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 10th May 2005. The Tribunal having considered the Complaint dated 7th March 2005 at the instance of the Council of the Law Society of Scotland against William Duncan Copeland, Copeland & Co, Solicitors, 43 Quarry Street, Hamilton; Find the Respondent guilty of Professional Misconduct in respect of his failure to implement a formal undertaking issued by him in terms of a letter of obligation and his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by fellow solicitors and by the Law Society; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of five years from 15th August 2005 any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland; 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 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 will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Chairman

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

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

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid explained that the firm of Messrs A had been purchasing from clients of the Respondent and the land was burdened with a condition that it had to be built on within two years. This condition had not been complied with. Messrs A accordingly sought a minute of waiver with regard to this and South Lanarkshire Council stated that they would provide it. Messrs A accepted the Respondent's letter of obligation that he would produce this within 28 days of settlement and this was not done by the Respondent. The Respondent then failed to reply to letters of concern sent by Messrs A. The Law Society became involved and the Respondent failed to respond to correspondence from the Law Society. The minute of waiver was never delivered but Messrs A went to South Lanarkshire Council who agreed with them an amendment of the title condition and it was accordingly unlikely that there would be a future problem. Mr Reid referred the Tribunal to Case 707/87 in Smith & Barton Procedures and Decisions of the Scottish Solicitors Discipline Tribunal where the Tribunal had previously held that a serious view would be taken of the failure of any practitioner to co-operate with his fellow solicitors in relation to a conveyancing transaction.

Mr Reid however stated that the Respondent had saved time, expense and inconvenience by co-operating and entering into a Joint Minute. The Respondent was also making efforts to dispose of his practice. Mr Reid referred the Tribunal to a previous finding against the Respondent.

SUBMISSIONS FOR THE RESPONDENT

The Respondent thanked Mr Reid for giving him the impetus to deal with matters. The Respondent explained that he had been actively involved in winding down his

business for the past six months and had very few live files. He had an agreement with the firm of Messrs B that they would take over his files on a file by file basis. The Respondent explained that he had a year off after the last Tribunal finding and then went back to do court work but was made redundant in 1989 due to a decline in legal aid business. The Respondent stated that he intended to give an undertaking to the Law Society not to take on any new business and that he did not intend to hold a practising certificate. The Respondent said that his financial position was secure and he had no particular health difficulties. He indicated that he felt that he would be able to wind up the business within a period of three months which was the period that had been suggested by the Law Society at a recent inspection. The Respondent stated that there were no difficulties with his accounts as had been confirmed by the Law Society's recent inspection. The Respondent stated that he had no reasonable explanation for his failure to deal with matters and that he had buried his head in the sand. He indicated that he had a difficulty confronting things when they went wrong. It was very stressful being a sole practitioner and he had no intention of continuing as such. He did not intend to become an employee of the firm of Messrs B. The Respondent stated that he undertook to the Tribunal that he would not take on any new business. Mr Reid confirmed he had been told of no adverse comment following a recent inspection.

DECISION

The Tribunal was concerned by the Respondent's failure to implement the letter of obligation. Settlements of all conveyancing transactions are dependent on such obligations. As has been previously stated by the Tribunal, it is essential for the smooth working of the conveyancing system that solicitors co-operate fully. The Respondent had failed to implement the letter of obligation and then had failed to respond to correspondence from fellow solicitors and the Law Society. The Tribunal noted that the previous findings against the Respondent were of a similar nature but also noted that this was almost 20 years ago. The Tribunal took account of the fact that the Respondent had taken steps to wind down his business and had co-operated in these proceedings and entered into a Joint Minute. The Tribunal also noted that the Respondent had given an undertaking to the Tribunal not to take on any new business. In the circumstances, given this undertaking, the Tribunal was satisfied that a

restriction on his practising certificate commencing 15th August 2005 for a period of five years would be sufficient to ensure protection of the public and would allow the Respondent time to conclude the winding up of his business. The Tribunal made the usual order with regard to publicity and expenses.