

**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

**STUART FRASER WILSON,
Solicitor of S.F. Wilson & Co, 28
Moss Street, Paisley**

1. A Complaint dated 29th August 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Stuart Fraser Wilson, Solicitor, of S.F. Wilson & Co., 28 Moss Street, Paisley (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 27th November 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 27th November 2007. The Complainers were represented by their Fiscal Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented.

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 was born 29th April 1966. He was admitted as a solicitor on 1st November 1989. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 20th November 1989. Between 20th November 1989 and 30th November 1992, he was employed with the firm Beattie & Company, Solicitors. From 1st December 1992 to date he has practised as a sole practitioner trading as S.F. Wilson & Co, Solicitors, of 28 Moss Street, Paisley, PA1 1BA.

 - 6.2 McClure Naismith, Solicitors formerly acted as Edinburgh Agents on behalf of the Respondent. In this capacity they received instructions from the Respondent to act as Edinburgh Agents in an action raised on behalf of a client of the Respondent, Mr A. Mr A was Pursuer in a claim for reparation against Property 1. Mr A enjoyed the benefit of a Legal Aid Certificate. He pursued an action for damages in respect of personal injury occasioned to him following a road traffic accident. In or about 24th April 2001 the action settled. Mr A received a settlement payment together with payment of judicial expenses. In accordance with the settlement terms, McClure Naismith, Solicitors, proceeded to prepare a judicial account of expenses which was intimated to the Defenders. In April 2002, judicial expenses were finally agreed and in accordance with the appropriate practice, the cheque received in respect of these judicial expenses was forwarded to the Scottish Legal Aid Board for disbursement. At a later date it emerged that an invoice in respect of a disability and employment consultant, who had been instructed on behalf of

Mr A remained outstanding and had not been included in the judicial expenses which were agreed. This invoice amounted to the sum of £2,279.50. Given their professional responsibilities to witnesses, Messrs McClure Naismith, Solicitors, paid this outstanding account. They wrote to the Respondent on 2nd June 2003 suggesting that given the outlay had been overlooked by both McClure Naismith and the Respondent, the most appropriate and fair manner to deal with the liability was for both firms to contribute one-half towards the outstanding sum. This meant that the Respondent was due to pay the sum of £1,139.50. On 15th July 2003, the Respondent wrote back to McClure Naismith advising that he agreed with their proposal and would revert to them with payment in due course. In addition on 30th September 2004, the Respondent wrote to McClure Naismith advising that as a matter of courtesy he was prepared to meet the outstanding account but that would not be paid immediately. His expectation was for payment within the next two month period. Despite this assurance the Respondent failed to make the payment as agreed. Messrs McClure Naismith required to correspond and communicate with the Respondent at considerable length reminding him as to the agreement and seeking payment. These efforts were ignored by the Respondent. In particular reminders were sent to the Respondent requesting payment on 14th August 2003, 4th September 2003, 19th September 2003, 1st October 2003, 15th October 2003, 24th October 2003, 11th November 2003, 25th November 2003, 5th December 2003, 12th December 2003, 7th January 2004, 26th January 2004, 16th February 2004, 12th March 2004, 8th April 2004, 26th April 2004, 4th May 2004, 11th May 2004, 16th December 2004, 27th October 2005, 4th November 2005 and 28th March 2006. Only after the Complaint had been instigated by the Complainers regarding the conduct of the Respondent did he make payment of the sum due in or about July 2007.

6.3 As a consequence of the failure on the part of the Respondent to reply to the repeated correspondence by McClure Naismith requesting payment of the outlay, McClure Naismith invoked the aid of the Complainers regarding the manner in which the Respondent had failed to reply to their correspondence. The Complainers obtained sufficient information from McClure Naismith regarding the matter and thereafter intimated a Complaint to the Respondent on 28th July 2006. Thereafter a number of letters were sent to the Respondent encouraging him to resolve matters independently of the Complaints process. The Respondent ignored these overtures and as a consequence on 16th October 2006, a formal letter was sent to the Respondent identifying heads of complaint. This was ignored by the Respondent. As a result a formal Statutory Notice in terms of the Solicitors (Scotland) Act 1980 was intimated to the Respondent by recorded delivery on 15th November 2006. This again was ignored by the Respondent. A subsequent Statutory Notice was intimated by recorded delivery on 7th December 2006. This also was ignored by the Respondent. As a result of the Respondent failing to reply to the enquiries made of him by the Complainers, a separate Formal Letter identifying this failure to respond as an additional head of complaint was intimated to the Respondent by recorded delivery on 8th December 2006. This also was ignored by the Respondent. As a result of the Respondent ignoring the repeated requests made of him by the Complainers, the Complainers' ability to investigate and process the complaint was frustrated, hampered and impeded.

7. Having considered the foregoing circumstances and having heard a submission from the Fiscal, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect of his failure to reply timeously, openly and accurately to enquiries made of him by the Complainers and to Statutory Notices served by them and in respect of his failure to implement an agreement reached with a firm of solicitors and his failure to reply to repeated requests to implement that agreement.
8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27 November 2007. The Tribunal having considered the Complaint dated 29th August 2007 at the instance of the Council of the Law Society of Scotland against Stuart Fraser Wilson, Solicitor, of S.F Wilson & Co., 28 Moss Street, Paisley; Find the Respondent guilty of Professional Misconduct *in cumulo* in respect of his failure to reply timeously, openly and accurately to enquiries made of him by the Complainers and to Statutory Notices served by them and in respect of his failure to implement an agreement reached with a firm of solicitors and his failure to reply to repeated requests to implement that agreement; Censure the Respondent; Fine the Respondent £2,500 to be forfeit to Her Majesty and Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alistair Cockburn
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. The Tribunal heard evidence from the Depute Clerk that the Notice of Hearing had been served on the Respondent by recorded delivery. The Depute Clerk advised that the Royal Mail's track and trace system indicated that the recorded delivery letter had been signed for. The Tribunal was satisfied that the Respondent had received service of the Notice of Hearing at his business address and accordingly the Tribunal agreed to proceed in the absence of the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised that a Joint Minute had been entered into by the Respondent which meant that evidence would not be required in this case. Mr Reid advised that the Respondent is aged 41 years and was admitted in 1989 and therefore had around 18 years experience. He advised that the Respondent is presently a sole practitioner. Mr Reid stated that McClure Naismith acted as Edinburgh agents for Respondent in a reparation case following a road traffic accident. The Respondent's client received damages and was awarded judicial expenses. The expenses were agreed in April 2002. Later an expert witness sent an account which had not been paid. McClure Naismith took the view that the expenses should be shared and paid the expert witness. McClure Naismith wrote twice to the Respondent and then the Respondent agreed to their proposal. Regrettably, the payment was not forthcoming. Mr Reid referred the Tribunal to the Second Inventory of Productions for the Complainers which contained details of a number of letters, faxes and phone calls seeking payment. Mr Reid referred the Tribunal to Production number 50, a letter from the Respondent dated 30th November 2004 confirming that he would pay. Mr Reid stated that finally in April 2007, after 23 communications and after the complaint had been intimated to the Law Society, the payment was finally received. Mr Reid stated that McClure Naismith were exasperated and had to enlist in the help of the Law Society.

Mr Reid stated that he recognised that the Respondent had co operated and saved time by entering into a Joint Minute. Mr Reid stated that when he spoke to the Respondent recently the Respondent had indicated that he would not attend the hearing and that

the matter was of some embarrassment to him. Mr Reid stated that the Respondent wished the Tribunal to take into account that no one was left out of pocket and that he offered his sincere apologies for his conduct.

Mr Reid advised that the Respondent had previously appeared twice before the Tribunal. The more recent Complaint was dated 27th February 2007 and was a Section 53C Complaint regarding a failure to pay compensation. Mr Reid indicated that in that case the compensation was subsequently paid. Mr Reid advised that the earlier Complaint was dated 25th April 2005 when the Respondent was found guilty of professional misconduct in relation to delay in settling an account to Faculty Services and failing to respond to the Law Society. Mr Reid lodged copies of both Findings.

DECISION

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 any enquiries that are made by the Law Society. In this case, not only did the Respondent fail to respond to the Law Society but he also failed to respond to two Statutory Notices issued to him.

In addition, the Tribunal noted that the Respondent had breached the terms of Article 9 of the Code of Conduct for Solicitors holding practising certificates issued by the Law Society. Article 9 states that “a solicitor shall not knowingly mislead colleagues or where they have given their word go back on it”. The Tribunal considered that a solicitor must act with other solicitors in a manner consistent with persons having mutual trust and confidence in each other. The Tribunal considered that the conduct of the Respondent in this case was not in accordance with this Code. Not only did the Respondent fail to implement the agreement but he also failed to reply to numerous and repeated correspondence over a three year period requesting implementation of the agreement.

Failure to respond to the Law Society prevents the Society from properly investigating Complaints and can bring the whole profession into disrepute. For these

reasons, the Tribunal views the Respondent's failures as serious and reprehensible matters.

The Tribunal noted that the Respondent had two previous recent findings. One of these matters was directly analogous and involved a finding of professional misconduct in relation to failure to respond to the Law Society and unacceptable delay in settling an account from Faculty Services Limited. The other matter was a failure to pay compensation as a result of a finding of Inadequate Professional Service. As these failures occurred relatively recently the Tribunal considered that this was a continuing course of conduct and therefore regarded the present case as more serious in light of these previous Findings. The Tribunal considered that the appropriate sanction was Censure and a fine of £2,500. The Tribunal made the usual Order for publicity and found the Respondent liable for the expenses of the proceedings on the usual basis.

Chairman