

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

FINDINGS

in Complaint

by

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

against

**MICHAEL GERALD ROURKE
of Messrs Robert Thomas &
Caplan, Solicitors, 365 Victoria
Road, Glasgow**

1. A Complaint dated 16 March 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Michael Gerald Rourke of Messrs Robert Thomas & Caplan, Solicitors, 365 Victoria Road, Glasgow (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. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 1 June 2006 and notice thereof was duly served on the Respondent.
4. The Complaint called on 1 June 2006. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented himself.

5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint.

6. In respect of these admissions no evidence was led and the Tribunal found the following facts established.

6.1 The Respondent was born on 12th November 1956. He was admitted as a solicitor on 12th November 1980. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 11th December 1980. On 27th May 1987 the Respondent became an employee with the firm Robert Thomas & Caplan, Solicitors, 365 Victoria Road, Glasgow. On 1st June 1992 he was assumed as a Partner in that firm. The Respondent continues in the role of Partner with Messrs Robert Thomas & Caplan, Solicitors.

6.2 Mr & Mrs A

The firm, Messrs Robert Thomas & Caplan were instructed by a Mr and Mrs A of Property 1. The clients were unhappy about how the said firm dealt with their affairs, in particular in relation to the alleged mis-selling of an endowment life assurance policy. The clients invoked the aid of the Complainers alleging that the said firm had failed to provide them with appropriate advice in connection with endowment policies. The Complainers sought and obtained from the clients sufficient information to allow them to intimate a Complaint. A Complaint was intimated to the said firm by letter dated 17th May 2005. In response, a Partner of the Respondent, wrote to the Complainers advising that the Respondent was the designated Client Relations Partner and had assumed responsibility for dealing with this particular Complaint. A letter confirming this understanding was sent by the Complainers to the Respondent dated 23rd June 2005. No reply was received from the Respondent in respect of the

original letter of complaint. A Formal Notice in terms of Section 15(2) of the Solicitors (Scotland) Act 1980 was intimated to the Respondent by recorded delivery on 13th July 2005. No reply was received to this Formal Notice. As a consequence a further Formal Statutory Notice was served by recorded delivery on the Respondent on 4th August 2005. Again, no reply was received to this Notice from the Respondent. As a consequence of the failure on the part of the Respondent to reply to the enquiries made of him by the Complainers, a separate Complaint was instigated by them against the Respondent which was intimated to the Respondent by letter dated 19th August 2005. This letter was again ignored by the Respondent. Eventually a reply was received from the Respondent dated 28th October 2005.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society in respect of the complaint by his client despite repeated reminders intimated to him.

8. Having heard the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 1 June 2006. The Tribunal having considered the Complaint dated 16th March 2006 at the instance of the Council of the Law Society of Scotland against Michael Gerald Rourke of Messrs Robert Thomas & Caplan, Solicitors, 365 Victoria Road, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society; Censure the Respondent; 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

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

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised the Tribunal that Mr & Mrs A had complained because they were unhappy with regard to how the Respondent's firm dealt with their affairs in particular in relation to the alleged mis-selling of an endowment life assurance policy. Mr Reid referred the Tribunal to production 1 being the letter from the Law Society addressed to the Respondent's partner, Mr Aitken, which was dated 17 May 2005 and intimated the Complaint. The Law Society then wrote to the Respondent on 23 June indicating that they now understood that he was dealing with the matter. The Law Society wrote again recorded delivery on 13 July 2005 by way of a statutory notice and sent the second part of the statutory notice on 4 August 2005. The Law Society then wrote to the Respondent on 19 August intimating the Complaint of failure to respond to the Law Society and sent a reminder on 16 September 2005. All these letters were ignored. Mr Reid then referred the Tribunal to production 8 being the Respondent's reply dated 28 October. Mr Reid indicated that it was unfortunate that the Respondent had not highlighted the matters outlined in his letter of 28 October to the Law Society in the four months prior to this. In response to a question from the Tribunal, Mr Reid indicated that he did not think that there had been any finding of inadequate professional service made against the Respondent's firm.

SUBMISSIONS FOR THE RESPONDENT

The Respondent stated that he had no doubt that he was foolhardy not to respond to the Law Society and he apologised to the Tribunal and the Law Society. The Respondent referred to his letter of 28 October in which he had already apologised to the Law Society and which set out the circumstances surrounding the matter. The Respondent also referred the Tribunal to production 10 which set out the background

circumstances. The Respondent explained that his firm was dealing with numerous claims in connection with mis-selling of endowment policies and that these had been dealt with on an ad-hoc basis which led to a difficulty with papers. The Respondent stated that he misdirected himself with regard to the nature of the complaints and did not give them the attention they deserved. He however explained that he reviewed all the claims from September onwards. The Respondent also explained that his partner was on holiday in July and he himself was then on holiday during the period when some of the letters from the Law Society had come in. The Respondent also explained that there were only three partners in the firm when Mr Caplan retired in 1993 and then in March 2003 one of the other partners retired from the partnership and started working part-time which had resulted in the Respondent inheriting a lot of his conveyancing transactions. In response to questions from the Tribunal the Respondent confirmed that he accepted that there was an obligation on him as a solicitor to look into the endowment complaint. He stated that the Law Society did an investigation into this matter and determined that there had not been an inadequate professional service. The Respondent advised the Tribunal of his current personal circumstances.

DECISION

The Tribunal considered that this was a very unfortunate case and wondered if it was really necessary for the matter to have been brought to the Tribunal. The Tribunal however has stated on numerous occasions that failure to respond to the Law Society hampers them in the performance of their statutory duty and amounts to professional misconduct. In this case the Respondent accepted that his failure to respond was not inadvertent and there were a number of letters which he ignored. The pressures of business which the Respondent was subject to resulted in him avoiding responding. The Complaint as originally made had not resulted in any finding of inadequate professional service and it was perhaps unfortunate that there was no evidence of any chase up phone calls having been made by the Law Society to the Respondent in this case. The Tribunal was saddened that it was forced to tarnish the professional reputation of the Respondent but given the number of letters written by the Law Society over a period of four months there was no alternative but to find the Respondent guilty of professional misconduct. The Tribunal consider that this very

much fell at the lower end of the scale of professional misconduct and that a Censure was more than sufficient penalty. If something less had been available to the Tribunal it might well have been utilised. The Tribunal made the usual order with regard to publicity and expenses.

Chairman