

**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**

**IAIN STUART CATTO, Craigisla,  
6 Park Street, Dingwall**

1. A Complaint dated 30 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, Iain Stuart Catto, Craigisla, 6 Park Street, Dingwall (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 Joint Minute was lodged in which it was admitted that the Respondent was convicted on 22 August 2006 at Edinburgh Sheriff Court, of an offence of theft of £70,000 and was then sentenced to 27 months imprisonment on 26 September 2006.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 27 November 2007 and notice thereof was duly served on the Respondent.

4. The hearing took place on 27 November 2007. The Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was not present or represented. The Respondent had advised the Tribunal that he did not intend to be present. The Tribunal therefore proceeded with the hearing in the Respondent's absence.
5. In respect that the material facts in the Complaint were admitted, no evidence was led.
6. The Tribunal found the following facts established:-
  - 6.1 The Respondent was born on 22 May 1965. He was admitted as a Solicitor on 22 January 1993. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 28 January 1993. From 15 April 1993 to 31 October 1994 he was an employee and from 1 November 1994 to 24 May 1996 became an Associate, all with Messrs Hasties, Solicitors, Edinburgh. From 27 May 1996 to 27 January 1999 he was an Associate with Messrs Henderson Boyd Jackson, WS, Solicitors, Edinburgh. From 1 February 1999 to 25 September 2001 he was an employee with Messrs McGrigor Donald, Solicitors, Edinburgh. At his own request the Respondent was removed from the Roll of Solicitors in Scotland on 1 February 2006.
  - 6.2 On or about 5 September 2006 the Law Society received intimation from the Scottish Criminal Records Office that the Respondent had been convicted on 22 August 2006 at Edinburgh Sheriff Court of an offence of theft with sentence being deferred to 26 September 2006.
  - 6.3 On 26 September 2006 the Respondent was sentenced to twenty seven months in prison in respect of the theft of £70,000 from Mr A of Property 1.

- 6.4 On 17 October 2006 the Complainers wrote to the Respondent intimating a complaint of alleged professional misconduct in respect that he had been convicted of an act involving dishonesty, thereby bringing the Profession into disrepute. A written response was requested within twenty-one days of said letter. The Respondent replied by letter dated 23 October 2006 to the effect that he did not hold himself out as practising as a Solicitor to Mr A nor had he carried out any acts as a Solicitor nor practised as a Solicitor since 25 September 2001.
- 6.5 Following further investigation by the Complainers, it was established that the Respondent had been charged with an offence of embezzlement in respect that “On between 27 December 2001 and 23 December 2004, at various locations in Edinburgh and elsewhere in Scotland, you, Iain Catto, did, while acting as Power of Attorney of Mr A of Property 1 did embezzle £100,538.40.”
- 6.6 As averred, the Respondent pled guilty to the theft of £70,000 and received a sentence of twenty seven months imprisonment. At the material times, namely between 27 December 2001 and 23 December 2004, the Respondent was enrolled as a Solicitor in the Register of Solicitors in Scotland and remained on the Roll until removed at his own request on 1 February 2006.
7. Having considered the foregoing circumstances and the submission on behalf of the Complainers, the Tribunal found that Section 53(1)(b) of the Solicitors (Scotland) Act 1980 applied to the circumstances of the said conviction and pronounced an Interlocutor in the following terms:-

Edinburgh 27 November 2007. The Tribunal having considered the Complaint dated 30 August 2007 at the instance of the Council of the Law Society of Scotland against Iain Stuart Catto, Craigsila, 6 Park Street, Dingwall regarding a conviction of the Respondent of theft in

respect of which the Respondent was, on 26 September 2006, sentenced to a term of imprisonment for a period of 27 months; 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**

8. 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 Complainers have brought this Complaint before the Tribunal in terms of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 and in accordance with the requirement of Rule 14 of the Scottish Solicitors' Discipline Tribunal Procedure Rules 2005. The Tribunal noted that the Respondent had had his name removed from the Roll of Solicitors at his own request on 1 February 2006.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid advised that he was grateful to the Respondent for entering into a Joint Minute. He stated that the terms of the Complaint were agreed subject to the following phrase, "between 23 December 2002 and 23 December 2004" being inserted after the words "theft of £70,000," in the first line of Article 3.3 of the Complaint.

In response to a question from the Tribunal regarding the Respondent's current address, Mr Reid replied that he had not seen the letter sent to the Tribunal and did not know whether the Respondent is living at that address or if it is simply a correspondence address.

The Tribunal noted that the Respondent had had his name removed from the Roll of Solicitors at his own request on 1 February 2006.

**DECISION**

Parliament clearly envisaged the Tribunal having certain powers in respect of a person who has at some time been enrolled as a solicitor but is no longer so enrolled because Section 53(3A) of the Solicitors (Scotland) Act 1980 provides for the exercise by the Tribunal of certain powers "in relation to a former solicitor, notwithstanding that his name has been struck off the roll or that he has, since the date of the misconduct, conviction or sentence referred to in subsection (1)(a) or (b) ceased to practise as a solicitor or been suspended from practice". The term "former solicitor" is not further

defined in the Act and accordingly must be given its logical meaning, namely a person who has at some time been enrolled or been deemed to have been enrolled as a solicitor in pursuance of the Act but is no longer so enrolled or so deemed. It is plain that the Respondent falls to be regarded as a former solicitor.

In respect of a former solicitor, the only powers which the Tribunal has are those conferred on it by subsection (2)(c), (d) and (e) which, read short, are power to fine, censure, or fine and censure. However the power to fine is restricted by subsection (3) which, read with subsection (1)(b), provides that the Tribunal shall not impose a fine in respect of a solicitor who has (whether before or after enrolment as a solicitor) been convicted by any court of an act involving dishonesty or has been sentenced to a term of imprisonment of not less than 2 years. It might be argued that the disapplication of the power to fine only applies where a fine is the only penalty to be imposed and that a fine could be imposed if it was coupled with a censure in terms of subsection (2)(e). This argument would be based upon the proposition that subsection (3) refers specifically to a fine under subsection (2)(c) and makes no mention of the power to fine, combined with the power to censure, under subsection (2)(e). However such an argument would constitute a strained interpretation of the statute.

Evidence was placed before the Tribunal that, the Respondent was sentenced to a period of imprisonment of 27 months. Thus subsections (1)(b) and (3) apply to the Respondent and the Tribunal is deprived of power to impose any sanction other than a censure. This accordingly was the sanction imposed by the Tribunal. In addition, the Tribunal made the usual order for publicity and expenses.

The Tribunal wishes to place on record its concerns as detailed in the case of Angela Baillie, which was decided on 26 April 2007, that due to the constraints of the statute it lacks the power to impose upon the Respondent a penalty which it would regard as appropriate in the circumstances of this case and is placed in the position of doing no more than impose an inadequate and ineffective penalty. The offence of which the Respondent was convicted was one of serious dishonesty arising out of the Respondent's breach of trust. Such offences strike at the very heart of the obligations of honesty and integrity which are incumbent upon every solicitor and when

committed by a solicitor cannot but damage the reputation of the profession in the eyes of the public.

**Chairman**