

**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

**DAVID JOHN ROBERTS TOD,
Solicitor, Tod & Mitchell,
Solicitors, Terrace Buildings,
The Cross, Paisley**

1. A Complaint dated 28 January 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, David John Roberts Tod, Solicitor, Tod & Mitchell, Solicitors, Terrace Buildings, The Cross, 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 18 March 2009 and notice thereof was duly served on the Respondent.

4. When the Complaint called on 18 March 2009, the Respondent was present and represented himself. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh.
5. The Respondent indicated that he wished to plead guilty to the Complaint and advised that he would prefer to have matters disposed of at this hearing rather than having matters adjourned to obtain representation to put forward the mitigation.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 7th May 1958. He was admitted as a Solicitor on 8th January 1987 and enrolled in the Register of Solicitors in Scotland on 20th January 1987. He was a Partner in Tod & Mitchell, Solicitors, Paisley from 14th August 1989 to 31st May 2005. He became a Consultant with the said firm on 1st June 2006.

CONTINUING PROFESSIONAL DEVELOPMENT –
2005/06 and 2006/07

- 6.2 In January 2007 the Respondent was chosen at random to provide a copy of his Continuing Professional Development (CPD) record for the year 1st November 2005 to 31st October 2006. He did not do so and after further correspondence advised that due to a family bereavement he was unable to do so. On 11th October 2007 he was advised that the Practising Certificate Committee had decided to take no action but had agreed that he would be required to produce his CPD record card for the year 2006/2007.
- 6.3 On 18th December 2007 the Respondent was asked to submit his CPD record for the year 2006/07 as soon as possible. He did not do so. On 28th January 2008 he was advised that as he

had failed to do so the matter was being referred back to the Practising Certificate Committee. On 4th February 2008 the Complainers Registrar wrote to the Respondent requiring him to produce his continuing professional development card for the year 2006 to 2007 by the 29th February 2008. On 26th February the Respondent replied advising that he was unable to produce evidence of compliance.

- 6.4 The Registrar wrote again on 28th February 2008 requiring the Respondent to examine his records and provide a record of the hours completed between 1st November 2006 and 31st October 2007 by 31st March 2008. The Respondent replied on 27th March 2008 advising that he could not do so. The Respondent has failed to keep a record of the CPD undertaken by him for two consecutive years and has failed to produce details of his compliance.
7. Having heard submissions from the Complainers and the Respondent, the Tribunal found the Respondent guilty of professional misconduct in respect of :
- i his failure between 1st November 2005 and 31st October 2006 to keep a record of his compliance in undertaking the required hours of continuing professional development and his failure to produce a record of such compliance on demand
 - ii his failure between 1st November 2006 and 31 October 2007 to keep a record of his compliance in undertaking the required hours of continuing professional development and his failure to produce a record of compliance on demand
8. Having heard the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 18 March 2009. The Tribunal having considered the Complaint dated 28 January 2009 at the instance of the Council of the Law Society of Scotland against David John Roberts Tod, Solicitor, Tod & Mitchell, Solicitors, Terrace Buildings, The Cross, Paisley; Find the Respondent guilty of Professional Misconduct in respect of his failure between 1st November 2005 and 31st October 2006 and between 1st November 2006 and 31st October 2007, to keep a record of his compliance in undertaking the required hours of continuing professional development and his failure to produce a record of compliance on demand; Censure the Respondent and Fine him in the sum of £2000 to be forfeit to Her Majesty; 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 basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; 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 pled guilty to the Complaint and then made a motion that matters be adjourned to allow him representation to put forward mitigation to the Tribunal. The Respondent however then stated that he would prefer to have matters disposed of today as there was nothing really to say. The Tribunal accordingly proceeded to deal with the Complaint. As the Respondent had pled guilty to the Complaint there was no requirement for evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston advised that the Respondent had been chosen at random to produce verification that he had carried out his continuing professional development during the year 2005 / 2006. The Respondent responded to the Law Society but said that he had been unable to do so due to a family bereavement and accordingly no further action was taken against him at that time but the Law Society indicated that they would check his continuing professional development for the following year. For the year 2006 / 2007 the Respondent again did not submit a record of his continuing professional development and accordingly this resulted in a Complaint coming to the Tribunal in respect of the two years.

SUBMISSIONS FOR THE RESPONDENT

The Respondent explained that he had had a family bereavement and had not worked for 4 months of the year at that time. He indicated that he presently worked as a consultant to the firm, although he was working 5 days per week. The Respondent stated that he did carry out the continuing professional development as he attended meetings with the Legal Aid Board. He however did not take a record. In response to a question from the Tribunal, the Respondent stated that he did write to Central Law Training but they had no record of him attending any event. He confirmed that he dealt exclusively with criminal law.

DECISION

The Respondent did not provide any evidence to the Tribunal to show that he had in fact undertaken any continuing professional in 2005/2006 or 2006/2007. The Tribunal was of the view that if he had undertaken the necessary continuing professional development, there should have been available to him, some way of establishing evidence of this. Continuing professional development often has to be paid for and the Tribunal was of the view that the record provider or trainer would probably have a record of any training attendance. In any event it was clear that the Respondent had not kept a record of his continuing professional development in 2 consecutive years as he is obliged to do in terms of the Solicitors (Scotland)(Continuing Professional Development) Regulations 1993. The Tribunal took into account the fact that it might be difficult to find continuing professional development which was of particular relevance, if the Respondent only undertook criminal work. The Tribunal also took account of the fact that the Respondent had suffered from a family bereavement and had plead guilty to the Complaint. The Tribunal however was concerned that the Respondent had failed in 2 consecutive years to keep a record of his compliance with the continuing professional development requirements. It is imperative, if the public is to have confidence in the legal profession, that solicitors keep themselves up to date and are able to show that they have undertaken the required hours of continuing professional development as directed by their professional body. In the circumstances the Tribunal considered that a Censure plus a fine of £2000 was an appropriate penalty. The Tribunal made an order for publicity and expenses.

Chairman