

**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

**DERYCK DE MAINE
BEAUMONT, Solicitor Balnagard,
Pitlochry**

1. A Complaint dated 25th April 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Deryck De Maine Beaumont, Solicitor, Balnagard, Pitlochry (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. A Complaint dated 8th June 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that 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.

4. The Tribunal caused a copy of this Complaint dated 8th June 2005 as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
5. In terms of its Rules the Tribunal appointed a preliminary hearing for 17th August 2005 and substantive hearing for 28th September 2005 in respect of both Complaints and notice thereof was duly served on the Respondent.
6. When the Complaints called for a preliminary hearing on 17th August 2005, the Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented himself. It was noted that the Respondent had lodged his answers late but these were nevertheless allowed by the Tribunal. The Respondent confirmed that he admitted all the facts in both Complaints
7. When the Complaints called for a substantive hearing on 28th September 2005 the Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented himself. It was noted that various productions had been lodged and amended answers in respect of the Complaint dated 25th April 2005 had also been lodged. Joint Minutes were lodged in respect of both Complaints admitting the majority of the facts in the Complaints. It however became apparent that evidence with regard to certain matters would be required from witnesses.

8. The Complainers led the evidence of two witnesses and the Respondent led evidence on his own behalf. The Tribunal found the following facts established

8.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 23rd February 1947. He was admitted as a solicitor on 11th August 1988 and enrolled on 22nd August 1988. He is at present the sole principal of and trades under the name of Beaumont & Co. at Balnagard, Pitlochry.

8.2 **Mrs A, Solicitor, Lochgilphead**

Sometime in or about September 2001 the Respondent acted for Mr B who was then the pursuer in an action against Ms C in Dunoon Sheriff Court. By Interlocutor dated 7th September 2001 the sheriff appointed Mrs A to investigate and to report to the court *quam primum* on all of the circumstances of the two children of the parties to the action and on the proposed arrangements for their care and upbringing. Said Interlocutor also provided that the Pursuer was to pay the fees and expenses of Mrs A associated with the preparation of her report. By letter dated 11th September 2001 the Respondent wrote instructing Mrs A to prepare the report. He did not at any time expressly disclaim responsibility for payment of Mrs A's charges. Mrs A accepted this instruction. She duly prepared the report and lodged it at Dunoon Sheriff Court on 9th October 2001. Thereafter she rendered her business account to the Respondent on 29th October 2001. Her fee, expenses and VAT totalled £939.20. The Respondent did not acknowledge receipt of the business account to Mrs A. By letters dated 17th October 2002, 13th January, 11th March, 8th July, 13th August and 10th November all in 2003, Mrs A wrote to the Respondent reminding him that her account remained unpaid. The Respondent did not reply to any of these letters. Mrs A was aware that the Respondent's client was in receipt of legal aid in connection with the Sheriff Court proceedings. By letter dated 7th January, 2004 she wrote to the Scottish Legal Aid Board (SLAB) enquiring whether they had

remitted funds to the Respondent to settle her account. SLAB replied to this enquiry by asking for a legal aid reference number for the Respondent's client. On 19th January 2004 Mrs A faxed the Respondent and asked him to supply her with his client's legal aid reference number. The Respondent did not reply to this enquiry. On 17th February 2004 Mrs A wrote to the Complainers seeking to invoke their aid and requesting that, in view of the Respondent's failure to reply to her correspondence, they treat her letter as a complaint. On 13th April 2004 the complainers intimated a complaint of alleged professional misconduct to the Respondent. By letter dated 9th April 2004 the Respondent wrote to Mrs A for the first time since 11th September 2001 enclosing a cheque for £500 to account of the sum due to her. The balance of £439.20 was paid by the Respondent to Mrs A on 29th June 2005.

8.3 **Faculty Services Limited**

By letters dated 5th and 10th December 2003 Faculty Services Limited (FSL) wrote to the Complainers invoking their aid. Specifically FSL asked the Complainers in these letters to assist them in seeking answers from the Respondent to correspondence that they had sent to him sometime in or about June 2002 in relation to settlement of fees due by him to them and also settlement of these fees. The Respondent had instructed Counsel to carry out work on behalf of his clients, F, G and H who were involved in criminal proceedings. The Respondent had also instructed Counsel to act for his client, Mrs D in connection with civil court proceedings in 2000. FSL rendered fee notes to the Respondent in respect of all of the aforementioned work carried out by Counsel on the instructions of the Respondent on 15th March 2000 (in respect of Mrs D) and on 14th June 2002 (in respect of F, G and H). The total sum due by the Respondent to FSL is £616.88. In their letters to the Complainers, FSL advised that they pursued the Respondent for the fees due to them at the point where sanctions should be placed on his firm but that this was recorded in their records as being legally aided and it would not appear appropriate to place

sanctions for fees that should be readily recovered from the Scottish Legal Aid Board (SLAB). FSL were aware that the Respondent had obtained legal aid for his clients and, in the view of FSL, the fees due to them should have been readily recoverable from SLAB by the Respondent. By letter dated 26th February 2004 the Complainers wrote to the Respondent intimating a complaint of alleged professional misconduct in relation to him instructing Counsel and failing to make payment to FSL of the sums due to Counsel. The Complainers did not receive a substantive response from the Respondent to this letter and accordingly by letter dated 18th May 2004 they wrote to him giving notice under Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 in respect of his failure to provide this substantive response. By letter dated 1st July 2004 the Respondent wrote to the Complainers saying that he saw no reason why SLAB should not be paying these fees. The fees in respect of F, G and H were paid by SLAB to FSL on 13th September 2005. The fees in respect of Mrs D remain outstanding.

9. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of professional misconduct in respect of:
 - 9.1 His failure to timeously settle the business account of Mrs A whom he had instructed to carry out work on behalf of his client.
 - 9.2 His failure to reply to correspondence addressed to him from Mrs A on various occasions between 29th October 2001 and 8th April 2004 in which she was making reasonable enquiries concerning payment of her business account.
10. The Tribunal found the Respondent not guilty of professional misconduct in respect of his failure to settle the sum of £616.88 due by him to FSL.
11. Having heard the Respondent in mitigation and having noted three previous findings of professional misconduct against the Respondent, the Tribunal pronounced an interlocutor in the following terms:

Edinburgh 28th September 2005. The Tribunal having considered the Complaints dated 25th April 2005 and 8th June 2005 at the instance of the Council of the Law Society of Scotland against Deryck De Maine Beaumont, Solicitor, Balnagard, Pitlochry; Find the Respondent guilty of Professional Misconduct in respect of his failure to timeously settle the business account of a Reporter whom he had instructed to carry out work on behalf of his client and his failure to reply to correspondence from the Reporter concerning the payment of her business account; Find the Respondent not guilty of professional misconduct in respect of his failure to settle the sum of £616.88 due by him to FSL; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of three years with effect from 31st March 2006, 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 50% of the expenses of the Complainers and 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 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)

Malcolm McPherson
Chairman

12. 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

It was agreed that the two Complaints be conjoined and dealt with together. Joint Minutes were lodged in respect of each Complaint admitting the majority of the facts in the Complaints. Mr Muir explained to the Tribunal that there were certain issues that required evidence from witnesses notwithstanding the terms of the Joint Minutes.

EVIDENCE FOR THE COMPLAINERS

The Tribunal heard evidence from Mrs A a sole practitioner from Lochgilhead. Mrs A explained that she had a lot of experience in matrimonial cases and had been a Reporter, in cases involving children, for some time and carried out about 12 reports a year. Mrs A referred to the Respondent's production 1 being the Interlocutor appointing her to do a report on the circumstances of the children in a case where the Respondent acted for the pursuer. Mrs A stated that as far as she was aware the wording of the Interlocutor was standard. She confirmed that she received a letter from the Respondent dated 11th September 2001 which stated that he was instructed to instruct her to prepare a report. On the second page of the letter the Respondent stated that it was his normal practise when instructing a report to copy the letter to the other side. He also stated in his letter that both parties were utilising Regulation 18 and she understood this to mean that emergency legal aid was in place which would cover the expenses of her report. Mrs A confirmed that she was under the impression that the Respondent was instructing her to prepare the report. She did the report and rendered her account to the Respondent on 29th October 2001. Mrs A stated that the Respondent had at no time disclaimed liability in connection with payment for the report. She confirmed that she had never come across a situation such as this before where the solicitor who was acting for the party who was ordered to pay her costs denied responsibility for her account. She confirmed that there was a delay of 3 years and 8 months in the settlement of her account.

In cross-examination Mrs A stated that she was unable to comment with regard to Interlocutors from other court areas of Scotland. She confirmed that the pursuer had to act on the Interlocutor from the Sheriff. She stated that she was never told by the Respondent that the Scottish Legal Aid Board would not cover payment for the report.

The Complainers then led evidence from Ms E who confirmed that she had been employed by FSL as a credit controller for 15 years. She confirmed that she was aware of the 2002 scheme for accounting for and recovery of Counsel's fees. She stated that the responsibility for payment of Counsel fees rested with the instructing solicitor, except where legal aid cover was in force when the Legal Aid Board paid Counsel's fees directly. Ms E stated that in connection with the two fee notes for Mrs D and the fee note for F, G and H, her information was that the Respondent had not done what was required for the Scottish Legal Aid Board. She understood that the Scottish Legal Aid Board were awaiting information from the Respondent. In connection with the F, G and H fee note she confirmed that FSL received a cheque from the Legal Aid Board in settlement of the fee on 13th September 2005 but the two fee notes for Mrs D, were still outstanding and had been for five years. She explained that FSL were in the middle between the Respondent and the Scottish Legal Aid Board. Ms E stated that the instructing solicitor had to be responsible for the fees unless they could prove that they had sanction from the Scottish Legal Aid Board. In cross-examination she confirmed that if legal aid cover was in place the correspondence would be directly between Counsel and the Scottish Legal Aid Board, although the solicitor may be asked for comments with regard to the level of fees. She accepted that various letters had been sent by the Respondent to the Scottish Legal Aid Board in connection with the F, G and H and Mrs D fee notes. She however indicated that she had been unaware of this correspondence until recently. She confirmed that if legal aid cover was in place there was no personal responsibility on the solicitor to pay Counsel's fees. She confirmed that in the F, G and H case she accepted that there was legal aid cover in place and that the Respondent accordingly had no personal responsibility for these Counsel fees. In connection with the Mrs D fee notes she indicated that she was not satisfied that cover was in place because there was no evidence from the Scottish Legal Aid Board that it was but she also confirmed that she had not been told by the Legal Aid Board that no cover was in place in respect of the Mrs D fee notes. She confirmed that the usual practise would be to ask for an interim payment after 2 years and then ask what was going on and if matters were not ongoing then a full payment would be requested and then various reminders would be sent at two-monthly intervals.

EVIDENCE FOR THE RESPONDENT

The Respondent gave evidence on his own behalf. He indicated that he admitted that he had written the letter dated 11th September 2001 to Mrs A. He stated that it was unusual in his experience to see an Interlocutor which was peremptory in nature. The Respondent stated that he had no alternative but to follow the Interlocutor of the court. He indicated that he thought the pursuer or the Scottish Legal Aid Board would pay for the report. In connection with the F, G and H fee note he confirmed that all the letters in the productions were letters received and sent by him. He indicated that his understanding was that legal aid cover was in place and the matter was between the Scottish Legal Aid Board and FSL and did not involve the instructing solicitor. He stated that he would usually just assume that FSL had been paid direct by the Scottish Legal Aid Board after he had submitted his fee to the Scottish Legal Aid Board. In cross-examination he stated that as far as he was aware there was no difference between a specialist's report and a Reporter's report, so far as the Legal Aid Board was concerned. He confirmed that he could not imagine the court being responsible for the Reporter's fee. He accepted in cross-examination that he did not expressly state that he was not going to pay for Mrs A's report. He indicated that he made payment to Mrs A due to his embarrassment but he did not accept liability. He was unable to explain why he did not reply over such a long period to Mrs A's letters. Mr Beaumont explained that if instruction included an obligation to pay a fee, he did not accept that he instructed Mrs A. He stated that he could understand why Mrs A would think that he would pay her bill.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir confirmed that in connection with the Complaint dated 25th April 2005 all the averments of facts were admitted with the exception of whether or not the Respondent instructed Mrs A. Mr Muir submitted that it was clear from the court Interlocutor and from the evidence from Mrs A that the liability for payment of the fee for the report rested on the pursuer's solicitor, being the Respondent. In the Respondent's letter dated 11th September 2001 the Respondent stated that he acted for the pursuer and was instructed to instruct the report. He does not say who had instructed him. Mr Muir pointed out that the Respondent stated, on page 2 of the

letter, that as was his standard practise in instructing reports he was sending a copy of the letter to the other side. The reference to utilising Regulation 18 was interpreted as meaning that cover was in place to pay for the preparation of the report. The Respondent had never made any disclaimer, express or otherwise in connection with the payment for the report. The two letters sent by the Respondent with the two payments to Mrs A did not deny responsibility and included an apology. Mr Muir referred to Section 30 of the Solicitors (Scotland) Act 1980 which states that where a solicitor, authorised or acting for a client employs another solicitor, he should be liable to the other solicitor for that solicitor's fees and outlays, unless at the time of such employment he expressly disclaims any such liability. Mr Muir stated that in this case there was no special arrangement and the Respondent was clearly responsible for Mrs A's fee. The Respondent's failure to respond to 7 letters between October 2001 and April 2004 from Mrs A, clearly also amounted to professional misconduct.

In connection with the FSL Complaint dated 8th June 2005, Mr Muir stated that it was not clear what had happened but the two Mrs D fee notes had been outstanding for 5 years and the F, G and H fee note had been outstanding for 3 years. Paragraph 1(4) of the scheme between FSL and the Law Society stated that while responsibility for meeting Counsel's fees in a legal aided case is assumed by the Scottish Legal Aid Board, it remained incumbent upon the instructing solicitor to take reasonable care to comply with his obligations under the legal aid legislation. Mr Muir submitted that the responsibility for payment of the Counsel's fees ultimately lay with the Respondent. In a case of such an unconscionable delay it did not matter whether the case was legal aided. The Respondent had not been able to satisfy the Scottish Legal Aid Board that they should make payment to FSL. Mr Muir submitted that there must come a point where the ultimate responsibility kicks in and the Respondent becomes liable.

Mr Muir asserted that as the Legal Aid Board had not made payment in connection with the Mrs D fee notes it was clear that there was still no cover in place.

SUBMISSIONS FOR THE RESPONDENT

The Respondent emphasised that the Tribunal must be satisfied beyond reasonable doubt that his conduct amounted to professional misconduct and that his culpability was such as to amount to professional misconduct in this particular case and in these particular circumstances. The Respondent stated that employment was different from instruction as it suggested an element of choice and in this case the terms of the court Interlocutor did not allow any choice. The Respondent indicated that it was accepted by the Complainers' witness, Ms E that if a legal aid certificate was in force there was no obligation of the instructing solicitor to pay for Counsel's fees. The Respondent stated that it was clear that he was instructed by his client who was instructed by the court. The reference to Regulation 18 in his letter was just describing the situation. The Respondent submitted that this was not a Section 30 situation and could not in all the circumstances amount to professional misconduct. In connection to the failure to respond, he indicated that it would be for the Tribunal to decide whether this was gross enough to amount to professional misconduct.

In connection with the FSL Complaint the Respondent emphasised that the Complainers' witness, Ms E, accepted that once there was legal aid cover the solicitor was not responsible. The Respondent indicated that there was no evidence that he had not obtempered his duty to take reasonable care in connection with his legal aid duties. He stated that there was no evidence that after a period of time a solicitor's obligation kicked in. There were no allegations in the Complaint with regard to his delay. The Respondent emphasised that there was no evidence that he was professionally responsible for Counsel's fees just due to the passage of time. The Respondent stated that it was clear from the correspondence that there was cover in place in connection with all three fee notes. He indicated that it had not been averred that there was no cover and if it had been he could have produced evidence to show that cover was in place.

DECISION

The Tribunal found the witnesses for the Complainers to be credible and reliable and accepted their evidence. Mrs A was clearly of the opinion that the Respondent had

instructed her to carry out the report. The reference to Regulation 18 in the Respondent's letter understandably led Mrs A to believe that legal aid cover was in place. It was also clear from the evidence that the Respondent did not expressly exclude his liability, to pay. The Tribunal found that Mrs A had every right to assume from the correspondence received from the Respondent and from her knowledge of general practice that the Respondent would meet her costs. The Respondent made no attempt to dissuade her from this view. The Respondent also sent cheques in settlement of her account without making any disclaimer. In professional circles there is very little difference between instruct and employ and when a solicitor instructs a report it is usually assumed that he will pay for it unless he states otherwise. The Tribunal was accordingly satisfied beyond reasonable doubt that the Respondent had instructed Mrs A in the preparation of the report and was liable for her fee. He failed to make payment of this fee for a period of 3 years 8 months and this clearly amounts to professional misconduct. The Respondent also failed to reply to her correspondence between 2001 and 2004 which is clearly an unwarranted failure and a professional discourtesy and amounts to professional misconduct.

In connection with the FSL fee notes, the Tribunal could not be satisfied from the evidence whether or not legal aid cover was in place in connection with the two Mrs D fee notes. In connection with the F, G and H fee note, as this has now been paid by the Scottish Legal Aid Board, cover clearly was in place. The Tribunal did not find the evidence in respect of this matter to be sufficient. The Complainer's witness indicated that if legal aid cover was in place there was no obligation on the instructing solicitor to pay Counsel's fees. The Complainers did not lead any evidence to suggest that the statutory position was any different from this. The Complainers did also not lead any evidence to show that after a period of time, if the fee was not paid, the responsibility became the instructing solicitors. There were no averments in the Complaint with regard to unacceptable delay on the part of the Respondent in sorting matters out. The Tribunal accordingly could not make a finding in connection with this. Accordingly, in this particular case, the Tribunal was not satisfied beyond reasonable doubt, on the basis of the evidence that the Respondent's conduct amounted to professional misconduct. That is not to say however that there is no liability on an instructing solicitor to pay Counsel's fees where legal aid cover is in place.

PENALTY

Mr Muir referred the Tribunal to three previous Findings of professional misconduct against the Respondent which were admitted by the Respondent. The Tribunal noted that some of these were for analogous matters. The Tribunal further noted that in the most recent Findings against the Respondent, the Respondent was warned that if he appeared again before the Tribunal on similar matters he would be likely to have his practising certificate restricted. The Tribunal also noted that the previous Tribunal had only narrowly stopped short of restricting the Respondent's practising certificate due to the fact that he was a sole practitioner in a rural area. The Tribunal noted that, despite the Findings of the Tribunal in September 2004, the Respondent still delayed until June 2005 in settling the final instalment due to Mrs A. The Tribunal heard mitigation from the Respondent who indicated that he was now better at responding to matters and was more proactive. He stated that he was a sole practitioner with a trainee and a limited profit. The Tribunal was of the view that the number of recent Findings of professional misconduct against the Respondent clearly showed that he had an unsound business practice and in order to protect the public the Tribunal considered that the only option was to restrict the Respondent's practising certificate for a period of three years. The Tribunal saw no merit in imposing another fine. The Tribunal ordered the restriction to run from 31st March 2006 to enable the Respondent time to dispose of his practice.

Mr Muir asked for the expenses of the proceedings, as the Respondent had been found guilty on two counts. The Respondent asked that he only be liable in 50% of the expenses because the issues which were contested had resulted in a 50% success rate for him. In the whole circumstances, given that there were two Complaints before the Tribunal and the Respondent had only been found guilty in respect of one of the Complaints, and also given that the Respondent had not contested the failure to respond to Mrs A, the Tribunal found it appropriate to award 50% of the expenses against the Respondent. The Tribunal ordered expenses on the last published Law Society's Table of Fees with a unit rate of £11.85. The Tribunal made the usual order with regard to publicity.

Chairman