

**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**

against

**ANGELA MARGARET BAILLIE, 8
Birnam Place, Glasgow**

1. A Complaint dated 21 December 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Angela Margaret Baillie, 8 Birnam Place, 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 might think right.
2. The Tribunal caused a copy of the copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent in which it was admitted that she had been convicted of two offences under the Misuse of Drugs Act 1971 and that the Complaint was properly and relevantly submitted to the Tribunal in terms of Section 53(1) (b) of the Solicitors (Scotland) Act 1980.
3. In terms of their Rules the Tribunal appointed the Complaint to be heard on 13 March 2007 and notice thereof was duly served upon the Respondent. On that date the Complaint called for hearing. A question arose as to the extent

of the Tribunal's powers in dealing with the Complaint under Section 53 of the Solicitors (Scotland) Act 1980 and the Tribunal continued the case until 26 April 2007 to for a debate on that issue.

4. The Hearing took place on 26 April 2007. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was not present or represented.
5. In respect that the material facts in the Complaint were admitted, no evidence was led and the Tribunal found the following facts established:-
 - 5.1 The Respondent was, until 8 February 2006, a Solicitor enrolled in the Register of Solicitors for Scotland. She was born on 31 May 1973. She was admitted as a Solicitor on 9 September 1997 and enrolled on the Register of Solicitors in Scotland on 11 September 1997.
 - 5.2 The Respondent was a solicitor enrolled in the Registers of Solicitors for Scotland until 8 February 2006. She practised as an Assistant Solicitor at Boyle & Co., Glasgow between 13 October 1997 and 11 August 1998; then as an employee at Carroll & Co., Glasgow from 12 August 1998 until 30^h May 2000; thereafter as an employee at Friel & Co., Glasgow from 8 June 2000 until 12 April 2001 and latterly as an employee with Lobjoie & Co., 93 Hope Street, Glasgow from 1 June 2001 until 31 October 2005. She has recently been released on licence from Her Majesty's Prison, Corntonvale, Stirling
 - 5.3 On 6 February 2006 the Respondent pled guilty to the following indictment at the High Court in Paisley that on:-

1. 23 October 2006 at Her Majesty's Prison, Barlinnie, 81 Lee Avenue, Glasgow and elsewhere in Glasgow, you were concerned in the supplying of a controlled drug, namely Diamorphine, a Class A drug, specified in Part I of Schedule 2 to the aftermentioned Act, to another or others, and in particular to Mr A, a prisoner in the Prison of Barlinnie, Glasgow, in contravention of Section 4 (1) of said Act: contrary to the Misuse of Drugs Act 1971, Section 4 (3) (b); and

2. On 23 October 2005 at Her Majesty's Prison, Barlinnie, 18 Lee Avenue, Glasgow, and elsewhere in Glasgow, you were concerned in the supplying of a controlled drug, namely Diazepam, a Class C drug specified in Part III of Schedule 2 to the aftermentioned Act, to another or others, and in particular to Mr A, already a prisoner in the Prison of Barlinnie. Glasgow, in Contravention of Section 4 (1) of said Act: Contrary to the Misuse of Drugs Act 1971, Section 4 (3) (b)

5.4 Sentence was deferred until 20 April 2006 and on that date the Respondent was sentenced to a period of 32 months imprisonment in relation to Charge (1) and 8 months imprisonment in relation to Charge (2) to run concurrently.

5.5 On 6 February 2006 the Respondent applied to the Complainers for the removal of her name from the roll of solicitors in terms of Section 9 of the 1980 Act. At that stage the Law Society had not been formally notified that she had been convicted of the above charges and therefore the Society had to consider her application on that basis. That application was granted by the Law Society and her name was removed from the roll on 8 February 2006.

- 5.6 No appeal was marked against conviction or sentence and the time for any appeal has now elapsed.
- 5.7 The Respondent has recently been released early on licence from her sentence at HM Prison, Corntonvale.
6. Having considered the foregoing circumstances and the submissions 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 26 April 2007. The Tribunal having considered a Complaint dated 21 December 2006 at the instance of the Council of the Law Society of Scotland against Angela Margaret Baillie, 8 Birnam Place, Glasgow regarding a conviction of the Respondent on two charges of contraventions of Section 4 (3) (b) of the Misuse of Drugs Act 1971 in respect of which the Respondent was, on 20 April 2006 sentenced to terms of imprisonment for periods of 32 months and 8 months respectively, to run concurrently; the Respondent having voluntarily had her name removed from the Roll, Censure the Respondent, Find the Respondent liable in 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 agent and client indemnity basis in terms of Chapter 3 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.

Chairman

7. A copy of the foregoing Interlocutor together with a copy of the Findings certified by the Clerk to the Tribunal as correct was 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 requirements of Rule 14 of the Scottish Solicitors' Discipline Tribunal Procedure Rules 2005.

SUBMISSIONS FOR THE COMPLAINERS

Mrs Motion advised the Tribunal that on 6 February 2006 (the day upon which she first appeared before the High Court) the Respondent applied to the Complainers for the removal of her name from the roll of solicitors in terms of Section 9 of the 1980 Act. At that stage the Law Society had not been formally notified that she had been convicted of these charges and therefore the Society had to consider her application on that basis. That application was granted by the Law Society and her name was removed from the roll on 8 February 2006.

In response to a question from the Tribunal Mrs Motion stated that the Law Society did not have a discretion to refuse the application. Mrs Motion advised that in Danskin-v-Council of the Law Society of Scotland 2002 SLT 900 Lady Cosgrove had held that the Society could not refuse a solicitor's application if the criteria in section 9 of the 1980 Act are met.

Mrs Motion advised that the procedures of other regulatory bodies differed in this regard and that some regulators could prevent registrants from resigning whilst there were proceedings against them pending. She stated that a change in primary legislation may require to be made in order that the Complainers should not find themselves in this position again in dealing with such a serious matter.

Mrs Motion stated that the powers which the Tribunal may exercise in this case are specified in Section 53 of the 1980 Act. Subsection (1) specifies the conditions under which those powers may be exercised and the remaining subsections specify the powers themselves. She stated that as the legislation provides a method of reporting this matter to the Tribunal, in her view it is not open to her to bring a complaint alleging professional misconduct arising out of the circumstances which gave rise to the Respondent's conviction and subsequent prison sentence.

Mrs Motion stated that subsections (1) and (2) of Section 53 refer to the powers of the Tribunal in respect of a "solicitor". "Solicitor" is defined in section 65 of the Act as meaning "any person enrolled or deemed to have been enrolled as a solicitor in pursuance of the Act". As the Respondent ceased to be enrolled on 8 February 2006, those powers of the Tribunal which can only be exercised in respect of a solicitor cannot be exercised in respect of the Respondent.

Mrs Motion advised that she now accepted that in this case the only sanction available to the Tribunal was the power to censure. However, she submitted that it was open to the Tribunal to comment within its Findings what sanction the Tribunal would have applied had it not been constrained by the terms of Section 53 and the full range of sanctions had been open to it. Mrs Motion submitted that it was important for the Tribunal to consider and comment on this issue as guidance from the Tribunal would assist the Law Society were it to receive an application from the Respondent at some future date for restoration to the roll of solicitors.

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) 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 and it was conceded by the Fiscal for the Complainers that it could not reasonably be maintained.

Evidence was placed before the Tribunal that, when the Respondent appeared for sentence before the High Court on 20 April 2006, she was sentenced to a period of imprisonment of 32 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 was conceded by the Fiscal for the Complainers and was, accordingly, the sanction imposed by the Tribunal.

The Tribunal wishes to place on record its concern that it lacks the power to impose upon the Respondent a penalty which it would regard as appropriate in the circumstances of

this case but is placed in the position of doing no more than impose an inadequate and ineffective penalty. The offences to which the Respondent pled guilty before the High Court strike at the very heart of the obligations of honesty and integrity which are incumbent upon every solicitor. Not only did she breach the privileges accorded to a solicitor entering a prison to interview a client, but she committed a serious criminal offence. It is difficult to imagine conduct more calculated to damage the reputation of the profession in the eyes of the public. That in such circumstances the Tribunal is, for all practical purposes, powerless to impose a meaningful sanction, and in particular is powerless to demonstrate to the public and the profession the odium which such conduct engenders, is wholly unsatisfactory. That the Respondent may have no intention of returning to legal practice and could be prevented, by other means, by the Law Society from so doing is of no consolation.

The position in which the Tribunal finds itself results from the defective wording of Section 53. The Tribunal regards it as essential that the Law Society take urgent steps to secure alterations to Section 53 which will prevent a recurrence of the situation which has arisen in this case. Until such alterations are made, a loophole will exist in the power of the Tribunal to take effective action in regard to a solicitor (or a former solicitor) who has committed a serious criminal offence. During the course of its detailed examination of Section 53, the Tribunal noted a number of other drafting errors which, if exploited, could have adverse consequences. The Tribunal is therefore of the opinion that Section 53 should not merely be amended in piecemeal fashion to prevent the recurrence of the situation which has been highlighted by this case, but should be completely redrafted so as to constitute an unambiguous statement of the powers conferred upon the Tribunal. At the same time, Sections 9, 10, 15 and 16 of the Act should be critically examined and, if necessary, redrafted to ensure that, in appropriate circumstances, the Law Society can refuse to permit the name of a solicitor to be removed from the roll when disciplinary action is possible against that solicitor and also to impose more stringent conditions upon which the name of a solicitor may be restored to the roll.

Chairman