

**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**

**RICHARD JAMES BARBER  
HILL, Solicitor, Messrs Stevenson  
& Johnstone, Solicitors, Bank of  
Scotland Buildings, Langholm**

1. A Complaint dated 1<sup>st</sup> February 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Richard James Barber Hill, Solicitor, Messrs Stevenson & Johnstone, Solicitors, Bank of Scotland Buildings, Langholm (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 by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 18<sup>th</sup> April 2006 and notice thereof was duly served on the Respondent. Prior to the hearing the Fiscal lodged a Minute of Amendment of the Complaint. The Respondent was offered the opportunity of an adjournment to answer the amendments but indicated that he wished the

hearing to proceed as scheduled. The Respondent lodged Answers to the Minute of Amendment.

4. The hearing took place on 18<sup>th</sup> April 2006. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself.
5. The Complainers led the evidence of two witnesses and the Respondent gave evidence on his own behalf.
6. The Tribunal found the following facts established

6.1 The Respondent was born on 18<sup>th</sup> October 1928. He was admitted as a Solicitor on 8<sup>th</sup> and enrolled on 16<sup>th</sup> both days of October 1952. He carries on practice as a partner in the firm of Stevenson & Johnstone, Solicitors, Bank of Scotland Buildings, Langholm.

6.2 **Complaint by Mrs A**

Mr B and Mrs A, who resided together in a property which they owned at Property 1 were established clients of the Respondent. Mrs A who had been looking for alternative accommodation had become aware that Mr & Mrs C who lived at Property 2, were looking to sell their property and buy a bigger house. Mrs A and her husband did not speak. They communicated through their son. Mrs A's son and husband met Mr & Mrs C. They agreed terms for the purchase by Mr & Mrs C of Mr B & Mrs A's house at Property 1 and for the purchase by Mrs A of Mr & Mrs C's house at Property 2. This was communicated back to Mrs A by her son and as far as Mrs A knows to the Respondent by Mr B.

- 6.3 Messrs Andrew Haddon & Crowe, Solicitors, Hawick submitted an offer on behalf of Mr & Mrs C to the Respondent to purchase Property 1 from Mr B & Mrs A, subject to the sale of Property 2 proceeding. The Respondent then submitted to Messrs Andrew Haddon & Crowe an offer to buy Property 2 on behalf of Mrs A alone.
- 6.4 On a date prior to 26<sup>th</sup> May 2004 the Respondent had discussions with Mr B. Mr B made it clear to the Respondent that he would not proceed with the sale of Property 1 unless Mrs A were to agree in writing that in the event of Mr B & Mrs A separating or being divorced, Mrs A would make no claim against the pension policies which Mr B had.
- 6.5 The Respondent contacted Mrs A. He called at her house on or about 26<sup>th</sup> May 2004. He asked her whether she was willing to sign a document in these terms. He stated that if Mrs A were not prepared to sign such a document she would not be able to proceed with the purchase of Property 2. The Respondent did not suggest to Mrs A that she should obtain separate legal advice. Mrs A reluctantly agreed that she would sign a document to the foregoing effect. The Respondent then produced a letter dated 26<sup>th</sup> May 2004 which he had already prepared addressed to the Respondent's firm which was in the following terms:-

“ Dear Sirs,

I, Mrs A residing at Property 1 hereby confirm that in virtue of my husband agreeing to the sale of number Property 1 in the event of our separating or being divorced then I will make no claim against the pension policies which he has taken out with the Prudential

Assurance Company and I give my undertaking to that effect upon which he can rely,

Yours faithfully”

The Respondent then presented the letter to Mrs A. Even at this stage he did not suggest that she obtain separate legal advice. Mrs A signed the letter, and the Respondent proceeded to conclude the missives on 8<sup>th</sup> June for the sale of Property 1 and the purchase of Property 2 and in due course settled the sale, divided the free proceeds equally between the parties, and used Mrs A's share thereof to settle the purchase of Property 2. Shortly before settlement, the Respondent attended at the house at Property 1 when both Mr B and Mrs A were present. On 11<sup>th</sup> June 2004 Mr. & Mrs A signed the conveyancing documents just after the Respondent had handed over the letter signed by Mrs A to Mr B.

6.6 Mrs A raised an action of divorce against Mr B in the Sheriff Court at Jedburgh. She averred that the pension policies were matrimonial property. In response Mr B averred that Mrs A was personally barred from insisting upon her claim insofar as it related to the Prudential policies. Mr B founded upon the letter of 26<sup>th</sup> May 2004. The action is presently sisted. Both parties have instructed Counsel. The parties have agreed the mechanism of arriving at a financial settlement. The only issue outstanding between the parties is the status of the letter referred to in paragraph 6.5.

7. Having considered the evidence and the submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:-

- 7.1 His failure to advise Mrs A to seek independent advice.
- 7.2 His acting for two parties in the knowledge that their interests conflicted.
- 7.3 His preparing a document which was adverse to Mrs A's interests, his presenting it to Mrs A for her to sign and his failing to advise her to obtain independent legal advice before signing it.

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

Edinburgh 18<sup>th</sup> April 2006. The Tribunal having considered the Complaint dated 1<sup>st</sup> February 2006 and the Minute of Amendment at the instance of the Council of the Law Society of Scotland against Richard James Barber Hill, Solicitor, Messrs Stevenson & Johnstone, Solicitors, Bank of Scotland Buildings, Langholm; Find the Respondent guilty of Professional Misconduct in respect of his failure to advise his client to seek independent advice, his acting for two parties in the knowledge that their interests conflicted and his preparing a document which was adverse to his client's interests and presenting it to her for her to sign and his failing to advise her to obtain independent legal advice before signing it; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of three years 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 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 a solicitor 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)**

**K. Robb**

**Vice 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**

**Vice Chairman**

**NOTE**

The Fiscal had lodged a Minute of Amendment to the Complaint a few days before the Tribunal hearing. The Respondent had been offered an adjournment to allow him further time to consider the Minute of Amendment but the Respondent had indicated that he did not object to the Minute of Amendment and lodged Answers to it. It was confirmed on the day of the hearing that the Respondent was content for the matter to proceed rather than be adjourned. The Fiscal lodged late productions and the Respondent indicated that he had no objection to them. The Respondent lodged one production and the Fiscal did not object to this.

**EVIDENCE FOR THE COMPLAINERS**

The Complainers led the evidence of Mrs A who confirmed that the Respondent had been a solicitor for herself and her husband. Her husband worked away a lot. Mrs A advised that in March 2004 she decided to separate from her husband. Mrs A indicated that at this time she wished to find somewhere else to live. She heard that there was a house at Property 2 owned by Mr & Mrs C who were looking for a bigger house and Mr & Mrs C looked at their house at Property 1. Mrs A stated that her husband and her son went to the Mr & Mrs C and a deal was agreed with regard to the sale and purchase of the two houses. Mrs A stated that she contacted the Respondent in connection with changing her will because she wanted to safeguard her son's interest in her half of the house. She explained that at this time she was ill and stated that she told the Respondent that she and her husband were to separate. She indicated that the Respondent came to her house on three occasions. She confirmed that she gave the Respondent instructions with regard to the purchase of Property 2. She indicated that the Respondent then came to see her saying that her husband had stated that he would not sign the documents for the sale of the house unless she signed a piece of paper that the Respondent had prepared for her to sign. She read the piece of paper and told the Respondent that she thought it was blackmail. Mrs A referred to the piece of paper as being a letter in terms similar to that as set out in the Complaint. She confirmed that she did sign it. Mrs A also stated that on the day when she and her husband signed the deeds in connection with the sale of the house, just prior to the signing the Respondent took the letter out of his pocket and gave it to her husband

saying that she had signed it. Mrs A explained that she signed the letter despite not wanting to because she wanted to get away from the conditions that she was living in. She confirmed that she did not instruct the Respondent with regard to her matrimonial difficulties.

Mrs A said that she went to get legal advice with regard to her separation from a Mr D, who raised the divorce action on her behalf. She indicated that her husband was now alleging that she could not claim a share of his pension due to the fact that she had signed the letter.

In cross examination Mrs A confirmed that she needed the money from the sale of the property at Property 1 to be able to buy the property at Property 2. Mrs A was adamant in cross examination that it was before the disposition was signed that she made her new will. She stated that her address in the will was Property 2 which she thought was odd as she had not yet moved in. Mrs A confirmed in cross examination that she realised that if she had been committed to buy Property 2 and the sale of Property 1 had fallen through she would have been in a difficult situation. Mrs A confirmed that she signed the disposition in respect of the sale of the house on 11<sup>th</sup> June 2004 and moved on 12<sup>th</sup> June. Mrs A said that the Respondent told her that if she did not sign the letter the sale would not be able to go ahead.

The Complainers then led the evidence of Mr D of Andrew Haddon & Company, Solicitors. He confirmed that he was instructed by Mrs A in October 2004 when she came to see him about the dissolution of her marriage and the division of financial assets. He gave her advice about her claim and raised an action of divorce. He stated that Mrs A told him about the letter that she had signed giving up any rights to Mr B's pension policies.. Mr D confirmed that the pensions had a value of £48,000. The principal letter was with Mr B's solicitors. Everything in the divorce was agreed between Mr & Mrs A except the position with regard to the pensions. Both sides had obtained Counsel's opinion which differed and neither of them was resolute on whether or not the terms of the letter constituted an agreement. Mr D confirmed that the action was presently sisted. If it had not been for this letter the action would have been settled back in July 2005. Mr D confirmed that the protracted proceedings would involve considerable costs for Mrs A as her contribution to legal aid would be



£4,000. Mr D stated that Mrs A had told him that the Respondent had visited her and asked her to sign the letter and indicated that if she did not the sale would not be able to be completed. Mrs A told him that she had thought this was blackmail.

### **EVIDENCE FOR THE RESPONDENT**

The Respondent stated that he stood by what was in his Answers. He explained that he was concerned with the joint house transaction and that the instructions with regard to the sale and purchase of the houses came from Mrs A and not Mr B. He indicated that missives were flying backwards and forwards and there was an early completion date. He said that he could only see Mrs A on a Wednesday afternoon when he was in Newcastleton. The Respondent explained that out of the blue he had a visit from Mr B who said that he would not sign the disposition unless Mrs A gave up any rights that she might have to his pension. The Respondent indicated that this put him in a difficult position and he was not sure whether or not he should cancel the missives. He explained that he put it to Mrs A whether she wished to go ahead and if so she would have to sign the letter or whether she did not wish to do so. The Respondent was adamant that he acted in Mrs A's best interests and was not dishonest or deceitful. He received no profit for himself out of what had happened. He explained that all he was concerned about was getting the missives and sales completed. In cross examination the Respondent stated that he put Mrs A's address in the will as Property 2 as she was just about to move there. He stated that she signed it on the day he took it to her but he put a later date in the testing clause because she was in Property 2 by then. The Respondent confirmed that final missives were concluded on 8<sup>th</sup> June with entry on the 11<sup>th</sup> June. He stated that if Mrs A had not signed the letter he would have had to withdraw from both contracts. In response to a question as to why he did not advise her to go to another agent, he indicated that another agent could only have put the same situation to her and it would have delayed matters. The Respondent stated that Mrs A knew she would be entitled to some of the pension but he did not know what the pension claims were likely to be. The Respondent conceded that he was not as familiar as he should be with the 1986 Practice Rules, the Code of Conduct or the Law Society's Guidelines on acting for separate spouses.

## **SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid submitted that the only real conflict between Mrs A's evidence and the Respondent's evidence was in connection with when the Respondent became aware of the separation between Mr B & Mrs A. Mr Reid submitted that it was not necessary for the Tribunal to make specific findings in connection with the instructions for the will. By 26<sup>th</sup> May 2004, two weeks prior to settlement there were no concluded missives and the Respondent framed a document which discharged important legal rights and he did not give his client proper advice or suggest independent advice before she signed it. This document was contrary to his client's interest and led to actual and substantial prejudice to his client. Mr Reid asked the Tribunal to make a finding of professional misconduct.

## **SUBMISSIONS FOR THE RESPONDENT**

The Respondent stated that it would appear that what had happened may be professional misconduct. He explained that all he saw at the time was that he was faced with a problem that had to be resolved quickly. He submitted that another agent could not have given any different advice. Mrs A just had to decide whether to sign the letter or not. The Respondent submitted that if that amounted to professional misconduct then he had committed it.

## **DECISION**

The Tribunal considered that this was a very unfortunate case. The Respondent appeared to have had tunnel vision with regard to getting the sale and purchase transactions concluded. The Tribunal was concerned that the Respondent was not even aware of how much the pension rights were worth. He also appeared not to be fully familiar with the Law Society guidelines on acting for separated spouses or the Solicitors (Scotland) Practice Rules in connection with conflict of interest. He was acting for both Mr B & Mrs A and he pre-prepared a document that he took to Mrs A which she signed giving up rights, the extent of which he did not know. Mrs A was entitled to believe that he was acting in her best interests. The Tribunal considered

that she was not given proper advice by the Respondent and she was not able to give informed consent.

The Tribunal did not consider it necessary to make specific findings with regard to the will and when it was instructed, but was extremely concerned by the Respondent's cavalier attitude to putting a different date in a testing clause, although this did not form part of the Complaint before the Tribunal. The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct amounted to professional misconduct.

### **MITIGATION**

The Fiscal for the Law Society pointed out that the Respondent had been in the profession for 50 years and had never had any previous trouble. The Respondent indicated that he hoped to keep working until he was 80 and asked the Tribunal to deal with the matter by way of a Censure and a Fine. He indicated that he and his son were partners in the firm but his son now regarded himself as the senior partner. He advised that he was presently working long hours as there was so much to do to try and keep up to date.

### **PENALTY**

The Tribunal took account of the Respondent's long unblemished career in the profession and had sympathy for the Respondent but had to consider the importance of protection of the public. In this case the Respondent's client suffered actual and substantial prejudice. The Tribunal has to ensure that nothing like this happens again in future. The Tribunal was concerned that the Respondent was not fully aware of important Law Society guidelines and Practice Rules and considered that it was necessary to put a Restriction on his practising certificate in order to ensure that nothing similar occurred in future. The Tribunal accordingly Censured the Respondent and imposed a Restriction on his practising certificate for a period of three years. The Respondent will still be able to work as an employee or a consultant to a firm approved by the Law Society. The Tribunal made the usual order with regard to publicity and expenses.

**Vice Chairman**