

**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

**HAMISH LOUDON MELROSE of
Melrose, Queen Anne House, 111
High Street, Fort William**

1. A Complaint dated 15 March 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Hamish Loudon Melrose of Melrose, Queen Anne House, 111 High Street, Fort William (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 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 30 May, 2007 and a notice thereof was duly served on the Respondent.
4. The hearing took place on 30 May, 2007. The Complainers were represented by their Fiscal, Andrew Lothian, Solicitor, Edinburgh. The Respondent was present and represented by James McCann, Solicitor, Glasgow.

5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint subject to slight amendment. No evidence was led.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 16 July, 1958. He was admitted as a solicitor on 11 September, 1980. He was enrolled as a solicitor in the Registers of Scotland on 2 October, 1980. The Respondent was a partner in the firm of MacArthur Stewart, Solicitors, between 1 February, 1985 and 6 September, 1996. On 9 September 1996 the Respondent was assumed as a partner in the firm of MacPhee & Partners, Solicitors, latterly of Airds House, An Aird. The Respondent was a partner in the firm of MacPhee & Partners until 31 December, 2006. On 19 September 2005 the Respondent was assumed as a partner in the firm of Hosack & Sutherland, Solicitors, latterly of Queen's Buildings, George Street, Oban. The Respondent was a partner in the firm of MacPhee & Partners incorporating Hosack & Sutherland until 31 December, 2006. On 3 January, 2007 the Respondent commenced practice on his own account as a sole practitioner, trading as Melrose, Queen Anne House, 111 High Street, Fort William.
 - 6.2 The Respondent practises as a criminal agent.
 - 6.3 On 3 November, 2005, the Respondent interviewed a client within a detention room at the Police Station, Fort William. The Respondent's client was at that time held in police custody. The Respondent's client was accused of criminal charges.
 - 6.4 During the course of the interview, the Respondent passed a mobile telephone to his client.
 - 6.5 The original incident was seen by a Reliance civilian operative.

- 6.6 The Respondent was questioned by police officers. Initially, he denied having passed a mobile telephone to the prisoner, but when interviewed by police, gave a full and truthful admission.
- 6.7 The Procurator Fiscal elected not to prosecute under any of the relevant statutory provisions and in particular the Prisons and Young Offenders Institutions (Scotland) Rules 1994.
- 6.8 The Respondent had been given the mobile phone by the brother of the prisoner a few minutes previously, with the request that it be passed on for the purposes of communication with the prisoner's family, who had been waiting around the court for approximately three hours due to the Sheriff having been delayed by a road traffic accident. The Respondent, who had been under pressure to speak to numerous persons waiting around the precincts of the court due to having a large number of cases delayed, complied with the request only for humanitarian reasons, without any sinister intent, and without thinking of the consequences that he might be breaking any rule. There had been considerable flexibility at the local court in such matters, with no formal Notices posted up or published until after this event. A local Faculty meeting was held to deal with a number of instances of items being passed by solicitors to prisoners, leading to Notices and to stricter practices being imposed upon and accepted by solicitors, but that was all after the event.
7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect of his passing a mobile telephone to a prisoner in custody contrary to Article 6 of the 2001 Code of Conduct for Criminal Work.
8. Having heard mitigation from the Respondent's agent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 30 May, 2007. The Tribunal having considered the Complaint dated 15 March, 2007 at the instance of the Council of the Law Society of

Scotland against Hamish Loudon Melrose of Melrose, Queen Anne House, 111 High Street, Fort William; Find the Respondent guilty of professional misconduct in respect of his passing a mobile telephone to a prisoner in custody contrary to Article 6 of the 2001 Code of Conduct for Criminal Work; 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 a solicitor and client indemnity basis in terms of Chapter 3 of the last published Law Society 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

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

A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint. There was a slight alteration to the Complaint to reflect the Respondent's past business career and a change to the wording of Articles 2.3 and 2.4. The Joint Minute also accepted as factually correct the Respondent's answers to averments of fact 2.1 to 2.4.

SUBMISSIONS FOR THE COMPLAINERS

The fiscal stated that on the day in question, the Respondent had been instructed by his client at the Court but due to the lack of availability of cells at the Court his client was in a police cell. The Respondent was given the mobile phone by a family member and asked to pass it on to the prisoner. The Respondent did this and this was observed by a Reliance civilian operative. The Respondent originally denied that it had happened but on the same day accepted culpability and wrote a letter to the Chief Inspector apologising. The Fiscal referred to Article 6 of the 2001 Code of Conduct for Criminal Work which states that only business cards and legal documentation should be passed by a solicitor to a person in custody. Mr. Lothian pointed out that the Respondent's conduct was also in breach of the Prisons and Young Offenders Institutions (Scotland) Rules 1994. Mr. Lothian stated that the consequences of the Respondent's actions could have been significant. Mr. Lothian referred the Tribunal to the letter from the National Operations Co-ordinator of the Prisons Directorate which indicated that mobile phones were a problem as calls within prisons were monitored. This could not be done if a prisoner was using a mobile phone. Mr. Lothian asked the Tribunal to find that the Respondent's conduct amounted to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr. McCann stated that it was for the Tribunal to decide whether or not the Respondent's conduct was sufficiently reprehensible to amount to professional misconduct. Mr. McCann stated that his view was that in the current climate the Respondent's conduct did amount to professional misconduct.

DECISION

The Tribunal considered that the Respondent's actions of passing a phone to a prisoner in breach of prison security rules and in breach of the Code of Conduct for Criminal Work was serious and reprehensible to the point of amounting to professional misconduct.

MITIGATION

Mr. McCann pointed out that the Respondent was a very experienced and well regarded practitioner. Mr. McCann referred the Tribunal to the references lodged on his behalf. Mr. McCann explained that at the time the Respondent was suffering from ill health and things were unusually disordered at the Court on the morning in question. Mr. McCann explained that the father and brother of the Respondent's client asked him to pass the telephone on to his client who was only 18 as they were concerned about his welfare. The Respondent only had the telephone for two to three minutes and after he gave it to his client he was asked about it by the Police when he left the room. He originally stated that he had not handed anything over and thereafter admitted it. Mr. McCann explained that at this particular Court there was flexibility with regard to such matters and no formal notices had been posted. There now were notices up. Mr. McCann asked the Tribunal to accept that this matter was a one-off incident and was merely a stupid mistake on a bad day which was instantly regretted and would not happen again. Mr. McCann advised the Tribunal that the Respondent was presently practicing on his own, carrying out criminal duties in the Highland and Islands which was an area where there was a lack of solicitors to provide cover for Legal Aid work. The Respondent was accordingly providing a necessary service. Mr. McCann advised the Tribunal of the Respondent's financial and personal circumstances.

PENALTY

The Tribunal considered that the Respondent ought to have known that by passing a mobile telephone to a prisoner he was breaching the 2001 Code of Conduct for Criminal Work. The client was in custody and the Respondent had a duty to observe the statutory provisions governing persons in custody and the Code of Conduct. It is important that police and custodial authorities can have trust and confidence in

solicitors while they attend prisoners in custody. It is unfortunate that there appeared to be a laissez-faire attitude going on at this particular Court at this time. The Tribunal accept that this was a one-off stupid mistake made by the Respondent on a busy day. The Tribunal also noted that the Respondent has shown remorse for this from the outset. The Respondent has also fully co-operated with the Fiscal and entered into a Joint Minute. The Tribunal noted the references lodged and considers it extremely unlikely that anything similar will occur in future. The Tribunal accordingly considered that a Censure would be sufficient penalty given that the Respondent will also have to pay the expenses of the proceedings and will suffer the injury to his reputation which will inevitably follow from the publication of these findings. The Tribunal made the usual order with regard to publicity and expenses.

Chairman