

**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**

**FIONA MARY MACLEOD of  
Shell UK Limited, 1 Altens Farm  
Road, Nigg, Aberdeen**

1. A Complaint dated 21 December 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Fiona Mary Macleod of Shell UK Limited, 1 Altens Farm Road, Nigg, Aberdeen (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 4 May 2006 and notice thereof was duly served on the Respondent.
4. The hearing took place on 4 May 2006. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented by her solicitor Alexander Green, Aberdeen. The Fiscal moved to amend the Complaint to delete

the averment of professional misconduct contained in Article 5.1 (a). The Respondent pled guilty to the amended Complaint. No evidence was led.

5. The Tribunal found the following facts established

5.1 The Respondent was born 17<sup>th</sup> February 1959. She was admitted as a solicitor on 29<sup>th</sup> November 1983. She was enrolled as a solicitor in the Register of Solicitors in Scotland on 21<sup>st</sup> December 1983. Having been admitted as a solicitor she obtained employment with the firm McClure Naismith Anderson & Gardiner, Solicitors, Glasgow. She thereafter has been employed with Shell UK Limited.

5.2 Solicitors (Scotland) (Continuing Professional Development) Regulations 1993

The Solicitors (Scotland)(Continuing Professional Development) Regulations 1993 provide *inter alia* as follows:-

3. From 1<sup>st</sup> November 1993 every solicitor shall undertake continuing professional development, the nature and timing of which shall be prescribed by the Council from time to time.

4. Every solicitor shall keep a record of continuing professional development undertaken to comply with these regulations and produce that record to the Council on demand.

6. Breach of any of these regulations may be treated as professional misconduct for the purposes of

Part IV of the Act (Complaints and Disciplinary Proceedings).

The regulations were made on 29<sup>th</sup> July 1993 by the Council of the Law Society of Scotland with the concurrence of the Lord President of the Court of Session in terms of Section 5 of the Solicitors (Scotland) Act 1980. The Complainers resolved pursuant to regulation 3, that the requirement in terms of that regulation would be a minimum of 20 hours of continuing professional development in each practice year of which at least 15 hours required to be made up of group study with the possibility of the remainder being satisfied by private study, and in all cases at least five hours should be devoted to the study of management related subjects. On 1<sup>st</sup> November 2002 the regulations came into force in respect of solicitors holding a practising certificate who had been admitted on or after 1<sup>st</sup> November 1983. From 1<sup>st</sup> November 1996, the regulations were applied to all solicitors holding a practising certificate. From and after that date the regulations applied to the Respondent.

5.3 The Respondent was obliged to comply with these regulations and to carry out the necessary study and to produce to the Complainers a record that she had indeed carried out the necessary study. The Respondent failed to comply with her obligation to submit her record card to the Complainers for their examination confirming the extent of her study for the practice year 2000/2001, 2001/2002, 2002/2003 and 2003/2004.

5.4 Failure to respond to the Law Society

The Complainers have set up a specific committee which deals with a solicitors requirement to comply with the

1993 Regulations. This Committee is termed the Competence Committee. Part of its duty is to manage and observe compliance with the regulations by solicitors. In the course of reviewing its records, the Complainers through this Committee identified that the Respondent had failed to intimate to them that she had complied with the regulations or that she had returned to the Complainers the record of her compliance. This was identified firstly by the Complainers in the year 2000/2001. In that year the Complainers wrote repeatedly to the Respondent asking that she return to them the record card or an explanation for her failure to do so. The Respondent failed to reply to these enquiries. In the years 2001/2002, 2002/2003 and 2003/2004, the Complainers again wrote repeatedly to the Respondent, as and when the time arrived for her to present her record card in respect of her compliance with these regulations, requesting that she deliver the record card to them for their scrutiny. The Respondent failed to reply to these letters.

6. Having considered submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
  - 6.1 Her failure to comply with her obligation in terms of the Solicitors (Scotland) (Continuing Professional Development) Regulations 1993 by failing to submit a record pursuant to Regulation 4 thereof in relation to the practice years 2000/2001, 2001/2002, 2002/2003 and 2003/2004.
  - 6.2 Her failure to reply timeously, openly and accurately over a number of years to the enquiries made of her by the Law

Society in connection with her compliance with the 1993 Regulations.

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

Edinburgh 4 May 2006. The Tribunal having considered the Complaint dated 21 December 2005 at the instance of the Council of the Law Society of Scotland against Fiona Mary Macleod of Shell UK Limited, 1 Altens Farm Road, Nigg, Aberdeen; Find the Respondent guilty of Professional Misconduct in respect of her failure to comply with her obligation in terms of the Solicitors (Scotland) (Continuing Professional Development) Regulations 1993 by failing to submit a record for the practice years 2000/2001, 2001/2002, 2002/2003 and 2003/2004 and her failure to reply timeously, openly and accurately to the reasonable enquiries made of her by the Law Society; Censure the Respondent and Fine her in the sum of £500 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 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)

Malcolm McPherson

Vice Chairman

8. 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**

At the start of the hearing the Fiscal made certain deletions from the Complaint and the Respondent pled guilty to what remained in the Complaint.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid stated that the Law Society recognised the importance of lifelong learning which was crucial to the profession becoming more competent and efficient. Mr Reid stated that this requirement applied to all solicitors and the Respondent had failed to produce a record of her compliance for four consecutive years. It was only once the Complaint had been raised against her that evidence was produced of her compliance. Mr Reid indicated that it was accepted that the Respondent had undertaken the necessary continuing professional development during the years in question but had failed to provide evidence of this until served with the Complaint. The Law Society had written five letters and made two phone calls each year, all of which were ignored by the Respondent. Mr Reid expressed his appreciation for the Respondent's co-operation in entering into an early plea.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Green emphasised that the Law Society now accepted that the Respondent had undertaken the necessary Continuing Professional Development hours in each of the years concerned. The Respondent accepted however that she did not comply with her obligation to submit a record and did not reply to the Law Society over a number of years. Mr Green indicated that the Respondent was very sorry with regard to this and took the matter seriously. She had co-operated fully with the Fiscal and had attended the Tribunal in person. Mr Green explained that during the time that the Respondent had been working for Shell she had only briefly been in the legal department between 1988 and 1990 and apart from this she had not held herself out as a solicitor or given legal advice. She had no intention of working for Shell as a solicitor. Mr Green referred the Tribunal to the Respondent's employment history and the letter from the

head of the legal department at Shell UK which showed that the Respondent had not worked in a legal advisory capacity with Shell UK since May 1990. Mr Green also pointed out that the Respondent had exceeded to a significant extent the Continuing Professional Development hours set by the Law Society but had not sent in a record of these hours. Mr Green explained that during the period in question the Respondent had difficulties in her personal life and was also undertaking a very demanding job. The Respondent regretted her failure to respond and accepted that she had not given the matter the attention it deserved. The Respondent did not require to have a practising certificate to undertake the work she was doing and she should just have left her name on the Roll rather than continuing to hold a practising certificate. Mr Green stated that the Respondent accepted that as she had a practising certificate she was under an obligation to comply with the regulations. Mr Green pointed out that so far as he understood it the Law Society no longer required solicitors to submit a record card, only to indicate on their application for a practising certificate that they had undertaken the necessary hours. Mr Green submitted that it was reasonable to infer from this that the submission of the record card was not now considered of particular importance. Mr Green invited the Tribunal to consider a Censure in all the circumstances. In response to a question from the Tribunal Mr Green, on behalf of the Respondent, accepted that she had ignored 20 letters and 8 phone calls over a period of four years from the Law Society.

## **DECISION**

The Tribunal considered this to be an unfortunate case. For the reputation of the profession to be upheld it is imperative that solicitors complete the necessary Continuing Professional Development hours each year. In this case although the Respondent had completed the hours she failed to provide evidence of her compliance to the Law Society over a period of four consecutive years. As a consequence of this the Law Society's ability to regulate compliance with the Continuing Professional Development Regulations was hampered and impeded. Furthermore the Respondent then failed to reply to 20 letters and 8 phone calls from the Law Society over a period of four years when they attempted to make enquiry of her with regard to why she had not made her record card available. The Tribunal noted that the Respondent was not giving legal advice during the relevant period but as she had a practising certificate it



was her responsibility to ensure that the conditions of the certificate were complied with and it was clear that this was recognised by the Respondent. The Tribunal was concerned by the length of time that the Respondent ignored correspondence from the Law Society but also took account of the fact that her failure to reply did not have any knock on effect on any member of the public. The Tribunal also took account of the fact that the Respondent had co-operated with the Law Society since the Complaint was raised. In the circumstances the Tribunal considered that a Censure plus a Fine of £500 would be an appropriate penalty. The Tribunal made the usual order with regard to publicity and expenses.

**Vice Chairman**