

**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**

**TOM HAY, Solicitor, 7 Tarmangie  
Drive, Dollar**

1. A Complaint dated 3 February 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Tom Hay, Solicitor, 7 Tarmangie Drive, Dollar (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 21 April 2009 and notice thereof was duly served on the Respondent.
4. The hearing took place on 21 April 2009. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented himself.
5. The Respondent confirmed that he was pleading guilty to the Complaint and accepted the averments of fact, averments of duty and averments of

professional misconduct. There was accordingly no need for any evidence to be led.

6. The Tribunal found the following facts established

6.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 26<sup>th</sup> February 1969. He was admitted as a solicitor on 25<sup>th</sup> April 1995 and enrolled on the 27<sup>th</sup> of the same month. He was employed by a number of Firms and latterly by Kerr & Co, Solicitors based in Stirling from 1<sup>st</sup> March 2005. The Firm demerged in 2005 with the Stirling branch becoming Kerr Stirling LLP, 10 Albert Place, Stirling and his employment continued in the newly constituted firm until the end of April 2006. He is not currently employed as a solicitor.

KERR STIRLING LLP

6.2 By letter dated 10<sup>th</sup> April 2008 Kerr Stirling LLP, 10 Albert Place, Stirling intimated a complaint against the Respondent a former employee. His employment had ended at the end of April 2006. On 30<sup>TH</sup> April 2006 the Respondent had been within the Firm's offices to complete some work and to remove his personal possessions. While there he accessed two files. In the file of Client A an agreement had been reached with the Scottish Health Services Legal Office (CLO) to extend the triennium on a personal injury claim to 1<sup>st</sup> October 2005. In the file of client B the medical negligence claim had become time barred on 1<sup>st</sup> September 2005. The Respondent had not raised an action or obtained any further agreement to extend the time bar in either case.

6.3 He created a letter on the file of Client A addressed to the CLO dated 13<sup>th</sup> September 2005 requesting an extension of the

triennium to 30<sup>th</sup> June 2006. He placed the false copy letter in the file of Client A. No such letter had been sent to the CLO. He created two letters on the file of Client B addressed to the CLO, purportedly faxed to them, dated 22<sup>nd</sup> August and 16<sup>th</sup> November 2005. The former sought extension of the triennium to 1<sup>st</sup> December 2005 and the second a further extension to 30<sup>th</sup> June 2006. He placed these false copy letters in the file of client B. No such letters had been sent or faxed to the CLO.

6.4 The Complainers intimated the letter of 10<sup>th</sup> April 2008 to the Respondent who replied by e-mail on 10<sup>th</sup> June 2008 admitting that he did create the copy correspondence in the complaint and that he was deeply ashamed by his conduct.

7. Having heard submissions from the Complainers and the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 his fabrication on 30<sup>th</sup> April 2006 of letters dated 13<sup>th</sup> September, 22<sup>nd</sup> August and 16<sup>th</sup> November all 2005 which he addressed to the Scottish Health Services Central Legal Office, his placing them within two files in the offices of Kerr Stirling LLP and by doing so implying that they were genuine and that the principals had been transmitted to the addressee which was untrue.

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

Edinburgh 21 April 2009. The Tribunal having considered the Complaint dated 3 February 2009 at the instance of the Council of the Law Society of Scotland against Tom Hay, Solicitor, 7 Tarmangie Drive, Dollar; Find the Respondent guilty of Professional Misconduct in respect of his fabrication of three letters which he addressed to the

Scottish Health Services Central Legal Office and his placing them within two files in the offices of Kerr Stirling LLP and by doing so implying that they were genuine and that the principals had been transmitted to the addressee which was untrue; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to (and to being supervised by) such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the practising certificate committee of the Council of the Law Society of Scotland and that for an aggregate period of at least three years and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; 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**

The Respondent had lodged Answers admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. The Respondent confirmed orally to the Tribunal that he was pleading guilty to the Complaint.

**SUBMISSIONS FOR THE COMPLAINERS**

Ms Johnson advised the Tribunal that all the facts were accepted by the Respondent.

**SUBMISSIONS FOR THE RESPONDENT**

The Respondent explained that he had previously been a family law solicitor and had considered himself an expert in this particular area of law. When he moved to Kerr & Co solicitors he became involved in commercial litigation. The Respondent advised that the job was highly pressured and he explained that his wife was very ill at the time. The Respondent further explained that although he had little experience of commercial litigation he received very little support from his firm and although he did try to speak to them about this, he did not get anywhere. He explained that on his last day at work he was sent to Stonehaven to deal with a court case all day and he accordingly had to go into the office on the following Sunday. The Respondent stated that he could not explain why he did what he did but one of the partners was in the office at the time and he did not want to face more shouting and abuse. He however indicated that he could not explain the logic behind doing this. He assured the Tribunal that he deeply regretted having done it and was ashamed. The Respondent said that he had no aspirations to return the profession.

The Respondent explained that after he had left Kerr Stirling LLP he obtained employment as a proof-reader but when the letters were discovered he had meetings with his former firm. He was under financial pressure and was offered a job doing legal work but not commercial litigation with another firm. He explained that it was nearly two years later before Kerr Stirling LLP reported him to the Law Society. They had advised him that they would not do this provided he was not undertaking commercial litigation. The Respondent explained that it became clear to him at this

time that he could not continue working as a solicitor. He advised that he was presently re-training and hoped to become a teacher. The Respondent outlined his financial and personal situation and asked the Tribunal to take account of his conduct before the events and his co-operation since taken together with the difficulties caused by his wife's ill-health. He explained that he unfortunately had little money to pay a fine or expenses. The Respondent stated that he would resist an award of expenses because he had confirmed to the Law Society that he would give an undertaking that he would leave the profession and never return to it. This however did not appear to have been mentioned.

In a response to a question from the Tribunal, Ms Johnston confirmed that the Law Society accepted that no member of the public had been affected by the letters.

## **DECISION**

The Tribunal considered that the Respondent's conduct clearly amounted to professional misconduct as he had falsified the file which was dishonest and totally contrary to the standards expected of a solicitor. It is imperative if the public are to have confidence in the profession that solicitors must act honestly at all times. The Tribunal however took into account the fact that the Respondent had fully cooperated with the Law Society and had had the courage to attend and address the Tribunal and was clearly remorseful about what he had done. The Tribunal further took into account the fact that no member of the public was affected by what he had done. The Tribunal also took into account the fact that the Respondent had various pressures at the time of the conduct complained of but do not consider this to be an excuse. The Tribunal noted that the Respondent did not intend to work as a solicitor again but considered that in order to ensure public protection, it was necessary to impose a restriction on the Respondent's practising certificate in addition to a Censure. The Tribunal imposed an aggregate restriction of three years as it is considered important that the Respondent works under supervision for a period. The Tribunal would expect the Respondent to be able to show that it was safe for him to be allowed to practice on his own prior to requesting a full practising certificate. The Tribunal considered the Respondent's financial position in respect of an award of expenses and also noted that the Respondent had given an undertaking to the Law Society. The Tribunal however

was of the view that the Law Society had no option but to take the matter to the Tribunal given the dishonesty involved and accordingly saw no reason to depart from the usual finding in respect of expenses. The Tribunal made the usual order with regard to publicity.

**Chairman**