

**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**

**ALAN DESMOND BAXTER,  
Solicitor, of 10 Emsdorf Crescent,  
Lundin Links, Fife**

1. A Complaint dated 19 February 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alan Desmond Baxter, Solicitor, 10 Emsdorf Crescent, Lundin Links, Fife (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. No Answers were lodged by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 26 April 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 26 April 2007. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was represented by James McCann, Solicitor, Clydebank. The Fiscal moved to amend the Complaint to correct a typographical error. The

averments of professional misconduct were accordingly renumbered Article 5 in the Complaint. A Joint Minute admitting the averments of fact, duty and professional misconduct was lodged. No evidence was led.

5. The Tribunal found the following facts established:-

5.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 17 September 1956. He was admitted as a solicitor on 7 December 1982 and enrolled as a solicitor on 11 January 1983. He was, from 1 April 1991 until he resigned on 31 December 2006, a partner in the firm of Wilson Terris & Co SSC, Edinburgh. He is not, to the best of the Complainers' knowledge, currently practising as a solicitor.

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 2003 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).

Reference to “the Council” in Regulation 4 of the regulations is reference to the Complainers, reference to “solicitor” in Regulations 3 and 4 thereof is reference to a solicitor holding a practising certificate and reference to “the Act” in Regulation 6 thereof is reference to the Solicitors (Scotland) Act 1980 all by virtue of the terms of Regulation 2(1) thereof. The regulations came into force on 1 November 1993. In terms of Regulation 3 of the regulations the Complainers prescribed that a solicitor be required to undertake a minimum of 20 hours of continuing professional development in each practice year of which at least 15 hours could be attributed to group study with the remainder being attributed to private study and in all cases at least 5 hours required to be attributed to the study of management related issues. From 1 November 1996 the regulations applied to every solicitor holding a practising certificate and, accordingly, from that date they applied to the Respondent.

5.3 The Respondent failed to comply with his obligation under Regulation 4 of the regulations in respect that, for the practice years 2002/2003 and 2003/2004, he did not produce a record of his professional continuing development and related study to the Complainers. The Respondent was granted an extension of time to 31 October 2005 to produce a record to the Complainers for the practice year 2003/2004.

5.4 The Law Society of Scotland

The Complainers have a committee, known as the Competence Committee, which is dedicated to monitoring

compliance with the regulations. The Complainers, through the Competence Committee, identified that the Respondent had not produced a record of his continuing professional development for these two practice years. They wrote to him in September 2003, in January, February, March and September all in 2004, in January, February, March and November all in 2005 and reminded him of his requirement to comply with the regulations by producing the said record to them. The Respondent failed to respond to any of this correspondence. He failed to comply with the aforementioned extension of time. On 11 May 2004, 3 May 2005 and 6 March 2006 the Complainers wrote to the Respondent telling him that the Competence Committee viewed his failure to comply with his obligation to submit a record of his continuing professional development as being unsatisfactory conduct. Notwithstanding the terms of all of this last mentioned correspondence the Respondent continued to fail to communicate with the Complainers in connection with this issue of non-compliance.

6. Having considered submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
  - 6.1 His failure to comply with his 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 2002/2003 and 2003/2004.
  - 6.2 His failure to reply timeously, openly and accurately over a period of over two of years to the enquiries made of him by the Law Society in connection with his compliance with the said 1993 Regulations.

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

Edinburgh 26 April 2007. The Tribunal having considered the Complaint dated 19 February 2007 at the instance of the Council of the Law Society of Scotland against Alan Desmond Baxter, Solicitor, 10 Emsdorf Crescent, Lundin Links, Fife; Find the Respondent guilty of Professional Misconduct in respect of his failure to comply with his obligation in terms of the Solicitors (Scotland) (Continuing Professional Development) Regulations 1993 by failing to submit a record for the practice years 2002/2003 and 2003/2004 and his failure to reply timeously, openly and accurately to the reasonable enquiries made of him by the Law Society; Censure the Respondent and Fine him in the sum of £2,000 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 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)**

**David Coull**

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**

**Chairman**

## **NOTE**

At the start of the hearing the Fiscal made a motion to amend the Complaint to correct a typographical error in the numbering of the final article. The Respondent's solicitor did not oppose the motion. The Tribunal agreed that the final article in the Complaint should be renumbered Article 5.

## **SUBMISSIONS FOR THE COMPLAINERS**

Mr Muir stated that he had nothing to add to the terms of the Complaint. He expressed his appreciation for the co-operation of the Respondent and his Solicitor in agreeing the Joint Minute. Mr Muir moved for the expenses to be awarded against the Respondent on the usual basis.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr McCann indicated that he had no submissions to make in relation to the question of publicity and expenses.

Mr McCann made reference to the single production which he had lodged which was a letter from Mr A, a former partner of the Respondent. Mr A's letter confirms the history of how the firm arranged their Continuing Professional Development training (CPD). Mr McCann stated that essentially the Respondent did most of the CPD required of him but there was no record of this and the Respondent cannot prove that he did all of it. Mr McCann stated that the key issue was that the Respondent did not report what training he had done in the necessary form to the Law Society so that they could be satisfied that they had fulfilled their regulatory function.

Mr McCann stated that the Respondent was going through a very difficult time in his personal life which was confirmed by Mr A's letter. Mr McCann advised that he had hoped to have a medical report for the Tribunal from the Respondent's General Practitioner, however this was not available and he did not seek to adjourn the hearing to obtain such a report. Mr McCann advised that the Respondent is aged 51 and prior to his premature retiral from practice was a competent, experienced and hard working

solicitor. Mr McCann advised that the Respondent had undergone a fairly traumatic divorce which was finalised within the last year or so. Mr McCann stated that the Respondent has been greatly affected by this and also struggled with the effects of ill health and a very busy professional practice. The Respondent had felt he was not coping and retired prematurely from practice. Mr McCann stated that the Respondent is not now working and has no immediate plans to return to the legal profession. His position is uncertain at the moment and he has no clear plans for the future. At present he has no earnings. Mr McCann stated that the Law Society have the power to allow the Respondent to phase back into practice as an Assistant if he finds himself able to return to the legal profession.

Mr McCann stated that the Respondent was not complying with the CPD regulations but advised that he was not far short of the level which was required and would have been given the opportunity to rectify the position but decided instead to retire.

Mr McCann submitted that the Tribunal should consider Censuring the Respondent without the imposition of a financial penalty as the Respondent will also have to pay considerable expenses and is not covered by the Legal Defence Union. Mr McCann stated that there was no suggestion that the Respondent had done anything else wrong over a long legal career. In response to a question from the Tribunal, Mr McCann stated that his client does have a current practising certificate but does not intend to renew it.

## **DECISION**

The Tribunal was of the view that compliance with the Continuing Professional Development Regulations is essential to ensure that solicitors keep abreast of developments in the law and to maintain public confidence in the profession. The Tribunal consider that there is a cost to all solicitors in both time and financial terms in complying with the Continuing Professional Development Regulations. In this case it appeared that the Respondent had completed some of the hours but he could not provide evidence of his compliance to the Law Society over a period of two 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. The



Tribunal noted that the Respondent had failed to answer twelve letters from the Law Society regarding his training record during a period when he was in practice. These letters were ignored by the Respondent over a period of two and a half years. The Tribunal considered that the Respondent had plenty of opportunity to comply with his obligation as the Law Society had given him additional time to do so. In the circumstances the Tribunal considered that a fine should be imposed on the Respondent. The Tribunal Censured the Respondent and fined him £2000. The usual order was made for expenses and publicity.

**Chairman**