

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

LOUISE MARIE HAY,
Solicitor, Upper Vicarsford, 37 Albany
Road, Broughty Ferry, Dundee

1. A Complaint dated 31 August 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Louise Marie Hay, Solicitor, Upper Vicarsford, 37 Albany Terrace, Broughty Ferry, Dundee (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 6 December 2005 and notice thereof was duly served on the Respondent.

4. The Complaint was heard on 6 December 2005. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented herself.

5. In respect that the material facts in the Complaint were admitted, no evidence was led and the Tribunal found the following facts established: -

5.1 The Respondent was born on 15^h March 1968. She was admitted as a Solicitor on 1st and enrolled on 3rd both days of December 1999. Her name was removed from the roll of solicitors in Scotland, following upon a statutory notice relating to failure to pay fees, in or about September 2004. She resides at Upper Vicarsford, 37 Albany Road, Broughty Ferry, Dundee. She is not currently engaged in legal practice in Scotland.

5.2 **Complaint *ex proprio motu* by the Council of the Law Society of Scotland.**

On 6 October 2004 the Respondent appeared in the Sheriff Court at Dundee and pled guilty to a charge in the following terms: -

“Between 28th January 2000 and 16th January 2001, both dates inclusive at 1 Carnbane Drive, Dundee, 37 Albany Road, Dundee or elsewhere to the complainer unknown she did complete and thereafter submit to the Inland Revenue claims for Working Families Tax Credit and did pretend that she incurred Child Care expenses at the Area 1 Out of School Care Club; and in support thereof she produced to said Inland Revenue forms bearing to be signed by the Child Care Provider, the truth being, as she well knew, that she had not incurred Child Care expenses at the Area 1 Out of School Care Club, and that the forms bearing to be signed by the child care provider were signed by her, and she did this to obtain Working Families Tax Credit to which she was not entitled, and she did thus obtain tax credits in the sum of £5187.78 by fraud.”

Sentence was deferred until 3 November 2000 when the Respondent was fined in the sum of £750.00.

5.3 No appeal was marked against conviction or sentence and the time for any appeal has now elapsed.

6. Having considered the foregoing circumstances and the submissions by the Respondent, the Tribunal found that Section 53(1)(b) of the Solicitors (Scotland) Act 1980 applied to the circumstances of this case and pronounced an Interlocutor in the following terms: -

Edinburgh 6 December 2005. The Tribunal having considered the Complaint dated 14 June 2005 at the instance of the Law Society of Scotland against Louise Marie Hay, Upper Vicarsford, 37 Albany Road, Broughty Ferry, Dundee, in respect of the conviction of the Respondent of an act involving dishonesty; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit her to acting as a qualified assistant to and being supervised by such employer or successive employers as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland for a period of five years; 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 agent 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 the Order for payment of the expenses shall be suspended for a period of two years from the date of taxation of such expenses: and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

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signed

Alistair M Cockburn
Chairman

7. 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

This Complaint was made to the Scottish Solicitors Discipline Tribunal under the provisions of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 which provides for the Tribunal exercising certain statutory powers where a solicitor has been convicted of an act involving dishonesty.

It was not disputed that the Respondent had pled guilty at Dundee Sheriff Court on 6th October 2004 and had been convicted of obtaining the sum of £5187.78 of tax credits by way of fraud; and that this conviction was an act involving dishonesty within the meaning of the said Section 53(1)(b).

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch advised the Tribunal that the Law Society had brought the matter before the Tribunal in terms of Rule 14 of the Tribunal Rules which state that the Law Society shall submit information to the Tribunal in such cases. The Law Society accordingly did not have discretion as to whether or not to bring the matter before the Tribunal.

SUBMISSIONS FOR THE RESPONDENT

Mrs Hay advised that given that she had no reason to discuss the terms of the charge she would concentrate solely on the background and the circumstances of the offence. She referred to her first Inventory of Productions and item 1 in that inventory, the Social Enquiry Report dated October 2004. This report confirmed that the offence was committed when she was a single parent with two children and claiming for Working Families Tax Credits from 1995 when her children were attending an after school club. She confirmed that the children attended the after school club from 1995 – 1999. She advised that as confirmed by the report she was not receiving any financial support from her former husband and things were extremely difficult at that time. She took up a traineeship in Perth in 1999 and was forced to find alternative childcare arrangements.

The children were then looked after by an unregistered childminder, her former mother-in-law, to whom she was paying money weekly. At the point the offence was committed she signed a document for renewal of tax credits purporting that the children continued to attend the after school club. Mrs Hay advised that the Inland Revenue's decision to investigate was prompted by her own disclosure of a change in her circumstances and that the proceedings took several years to conclude.

Mrs Hay then referred the Tribunal to the two medical reports contained in her first Inventory of Productions. Firstly the medical report by her consultant obstetrician, Mr A and secondly an up-to-date report from her General Practitioner, Dr B dated August 2005.

Mrs Hay advised that full repayment of the sum involved had been made to the Inland Revenue as confirmed by the third item in her first Inventory of Productions, a letter to the Inland Revenue by Mr Brown.

Mrs Hay emphasised that the offence was not committed in the course of her employment and that it was an isolated incident. However, in response to a question from the Chairman Mrs Hay did concede that she had completed two inaccurate claim forms six months apart.

Mrs Hay confirmed that as a result of the pending prosecution her employment was terminated in May 2004. She advised that she is completely reliant on her husband for income and that her husband's employment is not secure at present as there have been a number of redundancies in his company in the course of the last year. Mrs Hay advised that her husband has had to service the debts which she incurred whilst she was in employment.

Mrs Hay then went on to make legal submissions. Mrs Hay advised that she accepted that the Tribunal was precluded from looking behind the conviction, however she referred to the opinion of Lord McCluskey in the Petition by the Council of the Law Society –v-

James Johnston McIntyre dated 7th May 1999 when he stated that it is accepted that it was appropriate that the Tribunal look at the full circumstances surrounding the conviction. Mrs Hay referred to the case of The Council of the Law Society of Scotland -v- Leonard James Burkinshaw (Decision of the Tribunal on 22nd April 2004) where Lord McCluskey's comments were followed and further evidence - the Sheriff's notes, were allowed to be lodged. Mrs Hay stated that although this present case and the Burkinshaw case both involved dishonesty, Mr Burkinshaw was convicted of embezzlement from his employers and was given a community service order which is a direct alternative to custody. Mrs Hay stated that the Sheriff in her case had not considered that her offence was serious enough to consider a custodial sentence or a Community Service Order but stated that it was conduct unbecoming of a solicitor and imposed a £750 fine.

Mrs Hay then referred to the decision of The Council of the Law Society against Laurence McGeady (Decision of the Tribunal on 19th March 1997). Mrs Hay stated that this was a similar case to the Burkinshaw case and involved embezzlement and in that case the Tribunal had regard to Sir Thomas Bingham's comments in the English case of Bolton-v-Law Society [1994] 1 W.L.R.512. In the McGeady case the Tribunal stopped short of striking off and suspended for three years. Mrs Hay stated that she accepted that a fraud conviction was a departure from the standards expected of a solicitor. She advised that this conviction had been a life changing event for her and her family and that she would have to learn to live with it. She stated that she felt that she has been punished and has suffered as a result of her actions. She referred to the terms of the Social Enquiry Report which stated that it was unlikely that she would re-offend and emphasised that the offence was committed 5 to 6 years ago. Mrs Hay also stressed that the offence was not premeditated. Mrs Hay asked the Tribunal to consider the above mitigation and to deal with her as leniently as possible by way of restricting her practising certificate.

Mrs Hay submitted that expenses should not be awarded against her, as she has no independent income at present. Alternatively she requested that the expenses be able to be repaid by her once she is in paid employment.

In response to the question of expenses Mr Lynch stated that it was inequitable that the profession should bear the expenses of this prosecution. Whilst acknowledging the co-operation of the Mrs Hay in the disposal of this Complaint he asked that the Tribunal make the usual order for expenses.

DECISION

In view of Lord McCluskey's comments in the McIntyre case, the Tribunal did look at the full circumstances surrounding the conviction. In cases where Section 53(1)(b) of the Solicitors (Scotland) Act 1980 apply the penalties open to the Tribunal are limited to Censuring the solicitor with or without an accompanying Restriction on his practising certificate, Suspending him or striking him from the Roll. The Tribunal was of the view that a conviction of fraud represents a serious departure from the high standards expected of a solicitor. The Tribunal however took account of the Respondent's personal circumstances in that she was, at that time, subject to the pressures of being a single parent. The Tribunal considered that there was no possibility of the same circumstances recurring. In addition, the Tribunal perceived the offence as being a technical one in that her right to payment of child tax credit required her to comply with the precise terms of the legislation. In questioning the Respondent the Tribunal was satisfied that the children were receiving childcare but not from an approved supplier. The Tribunal took account of the fact that the offence was not committed in the course of her employment, that it occurred some time ago and that she did not seek to excuse her conduct in any way. In view of these circumstances, the Tribunal stopped short of striking the Respondent's name from the Roll or imposing a period of suspension which would normally be appropriate for offences involving dishonesty. The Tribunal was satisfied that the public would be adequately protected by a Restriction on the Respondent's practising certificate to prevent her acting as a principal solicitor for the next five years.

In relation to expenses, the Tribunal ordered that the Respondent be liable for expenses but that payment of the expenses be suspended for a period of two years from the date of taxation of the expenses having regard to the Respondent's personal circumstances and the problems which she may face in obtaining a practising certificate in terms of the

provisions of Section 15(2)(e) of the Solicitors (Scotland) Act 1980. The usual order was made with regard to publicity.

Chairman