

**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**

**DERYCK DE MAINE  
BEAUMONT, Solicitor,  
Balnaguard, Pitlochry**

1. A Complaint dated 28 November 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Deryck De Maine Beaumont, Solicitor, Balnaguard, Pitlochry (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 for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 20 March 2008 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 20 March 2008. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented himself.

5. On Joint Motion the matter was adjourned to 16 April 2008 at 10:30am as the Respondent had only recently lodged Answers and there were matters that required to be investigated.
6. When the case called on 16 April 2008, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented himself.
7. A Joint Minute of admissions was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint as amended. It was accordingly not necessary for any evidence to be led.
8. The Tribunal found the following facts established

8.1 The Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 23rd February 1947. He was admitted as a Solicitor on 11th August 1988 and enrolled on 22nd August 1988. He ceased to practise in November 2006.

8.2 He was engaged as self-employed by Messrs Watt & Company, Solicitors, until 30th November 1989 after which he became a Partner in his own firm of Beaumont & Company at Balnaguard, Pitlochry.

#### FACULTY SERVICES

8.3 By letter dated 13th April 2006, the Dean of the Faculty of Advocates invoked the aid of the Complainers in relation to a continuing failure of the Respondent to meet Counsel's fees in terms of the scheme for accounting for and recovery of Counsel's fees. The Respondent's firm had been sanctioned in

terms of the scheme in March 2004 but there was an ongoing failure and substantial sums were due to Counsel. The Complainers wrote to the Respondent on 2nd May 2006 with a view to having him resolve the matter direct with Faculty Services. He replied on 10th May 2006 indicating that he had written to the Chairman of Faculty for details of the client or clients in respect of whom fees were outstanding. The Respondent also wrote to the Complainers on 1 June 2006.

8.4 On 2nd June 2006, the Faculty submitted to the Complainers details of 8 cases in which fees had been incurred but not settled by the Respondent. In relation to the cases complained of commencing on the dates referred to in column one of the amended schedule attached to the Complaint, fees were rendered to him for the work done and he persistently failed to pay the sums claimed. Faculty Services Limited wrote to him, phoned him and e-mailed him over the years to arrange payment. The sums claimed outstanding as at 4<sup>th</sup> April 2007 amounted to a total of £8,823.76. From 8 October 2002 to 3 April 2007 the Respondent failed to respond adequately or timeously to Faculty Services in connection with said fees.

8.5 A formal letter was sent to the Respondent on 24th August 2006 with details of the complaint and requiring his written response with any background information and his business file within 21 days. He failed to reply. On 21st September 2006, he was written to again and sent Notices under Section 15(2)(i)(i) and Section 42C of the Solicitors (Scotland) Act 1980. He did not reply. He did not produce any files. On 13th October 2006, he was written to again and advised that his failure to reply to the Complainers was now being considered as a fresh complaint. He was served with the second Section 15(2)(ii) and he was given 7 days to reply on both issues. He failed to reply. On 24th October 2006, the Complainers

appointed a Reporter. The Report was submitted to the Respondent on 7th November 2006 and he was advised that 21st November 2006 was the deadline for comments. He replied by letter dated 24th November 2006 acknowledging that he was conscious that he should have got back to the Complainers by now. He maintained that he had been communicating with Ms A at Faculty Services and was closing his business. He did not reply on the substantive matter or give any explanation as to why he had not responded to the Complainers' correspondence. The Respondent did however write to the Complainers on 9 January 2007 and 16 January 2007.

FACULTY SERVICES – MR B -v- COMMISSIONERS OF  
CUSTOMS & EXCISE

- 8.6 By letter dated 9th June 2006, the Credit Controller of Faculty Services Ltd invoked the aid of the Complainers in relation to an outstanding fee in the case of Mr B -v- Commissioners of Customs & Excise. The Respondent had instructed Counsel in the case on behalf of his client Mr B in about January 2003. Urgent work was undertaken by Counsel on the basis that SU4 cover had been granted for the work done by the Scottish Legal Aid Board. Faculty Services wrote to the Respondent's firm for an update on 15th February 2005 and were advised by letter dated 24th March 2005 that the account had been sent to the Legal Aid Board. The Legal Aid reference number was provided at that time. On 15th April 2005, the Board wrote to Faculty Services Ltd with an offer of settlement which saw the entire fee abated with a value given as nil. No payment was subsequently received and Faculty Services Ltd wrote to the Respondent again on 25th October 2005, 29th December 2005, 27th April 2006 seeking further information regarding payment. In the last letter, they advised that they would report

the matter to the Law Society if they did not hear from the Respondent within 14 days, no reply having been received to any correspondence since March 2006.

8.7 On receipt of the Faculty Services Ltd letter dated 9th June 2006, the Complainers wrote to the Respondent on 16th June 2006 enclosing a copy of a letter and asking him to contact Faculty Services Ltd with a view to resolving matters. He was advised on 13th July 2006 that as conciliation did not appear to have been successful, a written investigation would proceed. A formal letter was written to him on 24th July 2006 with details of the Complaint and requiring his written response with any background information and his business file within 21 days. He failed to reply. On 14th August 2006, he was written to again and sent Notices under Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 and Section 42C of the said Act. He did not reply. He did not produce any files. On 7th September 2006, the second part of the Notice under Section 15(2)(ii) of the 1980 Act was served upon him. As he did not respond to any letters or Notices, he was advised on 10th October 2006 that the case was being referred on to a Reporter. On 24th October 2006, he was advised that a Reporter had been appointed to consider the papers. The Report and opinion were submitted to him on 31st October 2006 and he was advised that 14th November 2006 was the deadline for comments. He did not submit comments. In addition the Respondent was paid by SLAB for his work in Campbell and Faculty Services was paid for work instructed by the Respondent but SLAB refused to pay the fee note in the name of Anderson Strathern for £411.25 as shown in the amended schedule attached to the Complaint.

9. Having heard submissions from the Complainers and the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct singly and in cumulo in respect of:
- 9.1 his repeated failure between 15 February 2005 and 4 April 2007 to reply to Faculty Services correspondence about Counsel's fees in the case of Mr B or to provide an explanation for the non-payment of fees;
  - 9.2 his repeated failure between 16 June 2006 and 12 December 2006 to respond to the reasonable enquiries of the Complainers about the fees due to Faculty Services in relation to the case of Mr B or to comply with Notices served upon him;
  - 9.3 between 8 October 2002 and 4 April 2007, his repeated delay to reply to Faculty Services and his failure to settle Counsel's fees for instruction in respect of the case of Company 1 -v- Mr C, the case of Mr D, the case of Ms E -v- Company 2 and the case of Mr D and another -v- Mr F;
  - 9.4 between 24 August 2006 and 18 January 2007, his unreasonable delay in responding the reasonable enquiries of the Complainers about the fees due to Faculty Services in respect of the cases involving Ms G and D De Maine Beaumont -v- I & M and Mr H, Company 1 -v- Mr C, Mr D, Ms J, Ms E -v- Company 2, Ms K -v- Mr and Mrs L, Company 3 -v- Ms J, Mr D and Another -v- Mr F and his failure to comply with the Statutory Notices served upon him.
10. Having heard the Respondent in mitigation and having noted four previous findings of professional misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 April 2008. The Tribunal having considered the Complaint dated 28 November 2007 at the instance of the Council of the Law Society of Scotland against Deryck De Maine Beaumont, Solicitor, Balnaguard, Pitlochry; Find the Respondent guilty of professional misconduct singly and in cumulo in respect of his repeated failure between 15 February 2005 and 4 April 2007 to reply to Faculty Services correspondence about Counsel's fees in respect of a client or to provide an explanation for the non-payment of said fees; his repeated failure between 16 June 2006 and 12 December 2006 to respond to the reasonable enquiries of the Law Society about fees due to Faculty Services in respect of the said client and failure to comply with Notices served upon him; his repeated delay between 8 October 2002 and 4 April 2007 to reply to Faculty Services and failure to settle Counsel's fees for instruction in respect of cases concerning four clients and his unreasonable delay between 24 August 2006 and 18 January 2007 in responding to the reasonable enquiries of the Law Society about the fees due to Faculty Services in respect of cases involving eight clients and his failure to comply with Statutory Notices served upon him; Censure the Respondent; Fine him in the sum of £2,500 to be forfeit to Her Majesty 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 ten 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 publicity

will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**  
**Chairman**



11. 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 Complainers and the Respondent adjusted a Joint Minute of admissions on the day of the Tribunal. The Respondent admitted the averments of fact, averments of duty and the averments of professional misconduct in the Complaint as amended. The Tribunal took the Respondent through the facts in the Complaint and clarified exactly what was admitted and what required to be amended in the Complaint. Certain additions were made to the Complaint which were agreed by the Fiscal.

**SUBMISSIONS FOR THE COMPLAINERS**

Ms Johnston stated that the problem had arisen because the Respondent had not addressed the issues at the time that they were raised. Faculty Services had been chasing up fees due but there were gaps in the Respondent's replies. Matters were not resolved and the Dean of the Faculty accordingly reported the Respondent to the Law Society. The Law Society had difficulties in getting the Respondent to sort matters out. A formal letter was sent to him on 24 July 2006 and there was no reply. The Respondent did send a letter on 24 November 2006 but this did not deal with all the substantive matters. Ms Johnston explained that there are number of issues which she had not been able to resolve and she had made various amendments to the Complaint in light of this. She clarified that in connection with Mr D, £621.25 being the abated fee had been paid by the Respondent on 8 November 2006. She also stated that the matter involving Ms E had also been resolved and the fees had been paid by the Respondent on 8 November 2006. In respect of these matters she clarified to the Tribunal that it was only dealing with the Respondent's failure to respond to correspondence from the Faculty and the Law Society in connection with the fees.

**SUBMISSIONS FOR THE RESPONDENT**

The Respondent referred the Tribunal to a number of letters written by him to Faculty Services Limited. The Respondent explained that he did make some responses but he did not deny that he delayed in replying. The Chairman of the Tribunal clarified that the Tribunal would require to know the extent of the delay in replying. The Respondent referred to the case involving the Company 1 –v- Mr C. He explained that

some of the work was ten years ago and this was a legal aid case. The Legal Aid Board had said that they would not pay Counsel's fees because the Respondent had been found personally liable in expenses but this should not have prevented his own Counsel being paid. The Respondent indicated that he had not been aware of this at the time although Faculty Services had written to him. Ms Johnston explained that Faculty Services had wanted to confirm the position so that they could go back to the Legal Aid Board if appropriate. The Respondent advised that he wrote to the Faculty Services on 28 May 2002. In connection with Mr D, the Respondent explained that his client was not happy with the level of the Counsel's fees and he had correspondence with the Clerk to the Faculty with regard to this. Eventually the fees were abated and paid by him in November 2006. The fees relating to the other Mr D case had not been paid as he did not realise that there was a separate case. The Respondent accepted that he should have been more proactive in chasing matters up. In connection with the case for Ms E, the Respondent clarified that this was a private client and that the fees were paid by him in November 2006. He did not have an explanation as to why they were not paid until then but indicated that it may have been because he was acting for other agents or may not have been in funds.

In connection with Mr B, the Respondent explained that he was approached the week before the case was due to be heard and he contacted Anderson Strathern. There was a dispute with the Legal Aid Board with regard to what was covered by the SU4 and Counsel opinion was instructed by Anderson Strathern but the Legal Aid Board stated that this was not covered. Ms Johnston explained that Faculty Services had asked the Respondent to assist in getting matters sorted out.

The Respondent explained that he did write a number of letters to the Law Society. Given that there were eight cases and because of the age of them it took some time to work out exactly what was happening and what all the issues were. The Respondent accepted that he should have responded to Faculty Services and the Law Society. The Respondent outlined his present financial circumstances.

## **DECISION**

Given the terms of the amended Complaint and the submissions made by the Complainers and the Respondent, it was clear that the Respondent had failed to reply to Faculty Services and the Law Society in connection with the certain fees notes and also had failed to settle Counsel's fees for instruction in respect of at least two cases. There is a long established practice that a solicitor has a professional responsibility with regard to settlement of Counsel's fees for work which he has instructed. A solicitor has a duty to comply with the Scheme for Accounting for and Recovery of Counsel's fees of 1987 and 2002 between the Faculty of Advocates and the Law Society of Scotland. In this case the Respondent failed to provide a satisfactory explanation with regard to non-payment of Counsel's fees and failed to reply to letters and Notices from the Law Society in connection with this matter. The Tribunal accordingly found that the Respondent's conduct did amount to professional misconduct singly and in cumulo.

The Fiscal lodged four previous findings of professional misconduct against the Respondent. These were admitted by the Respondent.

## **MITIGATION**

The Respondent stated that he had no intention of practising on his own again. He pointed out that the Complaints had not been to do with his work but more to do with his running of the firm.

## **PENALTY**

The Tribunal were very concerned to note the ongoing course of conduct by the Respondent over a number of years in respect of failure to the respond to the Law Society. He has also previously failed to respond to fellow solicitors and in this case, he failed to respond to Faculty Services Limited. The Tribunal noted that the Respondent advised a previous Tribunal in September 2005 that he was now better at responding to matters and was more proactive. This is clearly not the case as the Respondent was still failing to respond to the Law Society in August 2006. The

Tribunal noted that the Tribunal on the last occasion had restricted the Respondent's practising certificate for a period of three years. The Tribunal also noted that the Complaints against the Respondent did not relate so much to the work carried out by him but more to his ability to properly run his practise and respond to queries raised. The Tribunal considered that the Respondent would benefit from working under supervision for an extended period. Given the number of previous findings against the Respondent, the Tribunal considered that in addition to a restriction for ten years, a fine of £2,500 should also be imposed. The Tribunal imposed an aggregate restriction to ensure that the Respondent works under supervision for a period of ten years before being able to apply for a full practising certificate.

In connection with expenses, the Tribunal ordered the Respondent to pay the full expenses of the proceedings. The reason that the Tribunal did not proceed at the first hearing was mainly due to the fact that the Respondent did not lodge Answers to the Complaint until two or three weeks prior to the hearing fixed for 20 March 2008. In terms of the Tribunal's Rules, the Respondent's Answers should have been lodged within fourteen days of the date on which the Complaint was served on him which was the 11 December 2007. The Tribunal made the usual order with regard to publicity.

**Chairman**