

THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

I N T E R L O C U T O R

in Application

JAMES IAN MACALLISTER STEWART SLOAN,
62 Martin Brae, Ladywell, Livingston.

for

An Order restoring his name to the Roll of Solicitors.

Edinburgh 7th May 2003. The Tribunal, having considered the Application at the instance of James Ian MacAllister Stewart Sloan, 62 Martin Brae, Ladywell, Livingston and having heard the Applicant and his witnesses, Refuse said Application; Direct that publicity to include the name of the Applicant be given to this decision.

Vice Chairman

NOTE

This is an Application made under Section 10 of the Solicitors (Scotland) Act 1980 by James Ian MacAllister Stewart Sloan, whose name was struck off the Roll of Solicitors by Order of this Tribunal dated 2nd February 1994.

The Order striking Mr Sloan's name from the Roll was made in respect of his being found guilty of professional misconduct in respect of his misappropriation of clients funds and breach of Rule 4(3)(b) of the Solicitors (Scotland) Accounts Rules 1989 and Rules 4(1)(a), 6 and 12 of the Solicitors (Scotland) Accounts Rules 1992. Following the Finding of professional misconduct by the Tribunal Mr Sloan was prosecuted in the Criminal Courts and pled guilty and was sentenced to 200 hours Community Service.

In accordance with the provisions of Rule 28 of the Scottish Solicitors' Discipline Tribunal Procedure Rules 2002, this Application was intimated to the Council of the Law Society ("the Law Society"). A Notice of Objection was lodged. A procedural hearing in respect of various preliminary matters took place on 17th December 2002. The Tribunal issued a Decision in respect of the preliminary issues and found that the Notice of Objection lodged by the Law Society did not dispose a *prima facie* case for enquiry and accordingly the Law Society were not afforded an opportunity of being heard by the Tribunal at the substantive hearing. The Tribunal also decided that the Scottish Solicitors' Discipline Tribunal Procedure Rules 2002 did give the Applicant fair notice of the evidence he required to adduce and the Tribunal repelled the Applicant's plea under Article 6 of the European Convention on Human Rights.

At the hearing on the merits on 7th May 2003, Mr Sloan appeared and was represented by Mr Joseph d'Inverno, Solicitor, Edinburgh.

Mr d'Inverno made an opening statement to the Tribunal pointing out that the acts of dishonesty were committed over 11 years ago and there had been full restitution of the sums taken and no claim made on the Guarantee Fund. Mr d'Inverno emphasised that the Criminal Court did not consider a custodial sentence to be necessary and had instead imposed a Community Service Order. Mr d'Inverno submitted that the terms of the Solicitors (Scotland) Act 1980 would not provide a mechanism to allow Applicants to seek restoration to the Roll unless it was the will of Parliament that a removal of a solicitor from the Roll was not irreversible. The Tribunal had also made it clear in the Decision in William Wilson's Application in 1999 that the Tribunal has a discretion in these matters. The Tribunal in their preliminary Decision in this case had set out the tests that the Applicant required to meet and Mr d'Inverno submitted that he would lead evidence to show that Mr Sloan had met these tests.

Mr Sloan then addressed the Tribunal and outlined his professional history prior to appearing before the Tribunal in 1994. Mr Sloan emphasised that he had really enjoyed legal work and had been on the Council of the Law Society for 4 or 5 years being the Vice Chairman of the Judicial Procedure Committee. Mr Sloan advised the Tribunal that he adopted a bunker mentality at the time of the events of 1992 and he could not see a way out of his problems. Mr Sloan stated that he should have asked for help but he felt that he just had to keep going. He explained that he knew that he would eventually be found out. Mr Sloan said that he had been able to make good the funds with money from his wife's family. Mr Sloan explained that he

and his wife had bought a large house which had been a financial drain on their resources. Mr Sloan stated that he realised that he had done wrong and had accepted his guilt and accepted the punishment imposed by the previous Tribunal. Mr Sloan had been relieved when he was not sent to prison but given 200 hours Community Service by the Criminal Courts. He successfully completed his Community Service Order and tried to obtain jobs but found it hopeless because of his conviction. Mr Sloan explained that he undertook a course at Napier University for six months and then got a job at Sky working on the telephones. It was a weekend job and during the week he looked after his children. Mr Sloan advised the Tribunal that he was Church Elder and he had offered to step down but was asked to carry on and this had helped his state of mind. After a year with Sky he was put into the department to deal with customer relations and complaints. In 1994 Mr Sloan joined the Dramatic Society and became their secretary and started a youth group for which he obtained a lottery grant and this was still running successfully. Mr Sloan explained that he became Team Co-ordinator in Sky in charge of 12 people in 1997/1998. Mr Sloan obtained a job with GE Capital bank in 2000 working in the Collections department dealing with arrears of car finance and repossession of vehicles which involved taking payments over the telephone by credit card and receiving cheques through the post. He had recently been made redundant as the operations of GE Capital had moved to England. Mr Sloan stated that prior to this he had discussions with his line manager with regard to the possibility of an in-house legal post being created and with regard to him undertaking this job if he got his Practising Certificate back. Mr Sloan also explained that he had recently been short listed for job where he would be able to use his legal skills without having a Practising Certificate. Mr Sloan stated that he and his wife had now separated and he was in a stable relationship with a new partner.

In response to questions from the Tribunal Mr Sloan confirmed that he did not handle cash in his job at GE Capital Bank but was receiving large sums of money each day by way of debit or credit cards and in cheques. Mr Sloan also explained that he had one course of prozac treatment in 1992 which stabilised his condition and he did not need any further treatment. Mr Sloan stated that he had felt very depressed in 1992.

The Tribunal then heard evidence from Dr A, Mr Sloan's dentist and former client. Dr A stated that she was one of Mr Sloan's first clients in 1982 and found his work excellent. Mr Sloan was a member of her family and she thought he was a very upstanding member of the community. She was shocked and devastated when she heard what Mr Sloan had done but stated that she could understand how it had happened as failure was not an option in her family and Mr Sloan had had to cope with a lot of pressure. Dr A stated that she thought Mr Sloan had had more than adequate punishment and was generally remorseful. She stated that she would go back to him as a client and would trust him with her money and considered him to be an honest person who had made a mistake. Dr A stated that Mr Sloan had now moved on and wished to re-enter the legal profession and earn money so that he could pay the money back to her family to enable him to have a clean start.

In response to questions from the Tribunal Dr A stated that she did not think Mr Sloan would have done what he did if he had been thinking straight.

The Tribunal then heard evidence from Mr B a former client of Mr Sloan who stated that Mr Sloan had bought a house for him in 1985 and he found the service provided to be very efficient. Mr B stated that he then met Mr Sloan through the Operatic Society as they were both on the Committee and worked together. Mr Sloan had had the idea of the youth group and had organised this. Mr B said he would trust Mr Sloan based on what he knew of him over the last eight years despite what had happened in the past and he did not think that this would happen again. He stated that he would recommend him to other people as a solicitor.

The Tribunal then heard evidence from Mrs C who stated that Mr Sloan had provided her with an excellent legal service in the past and that she had trusted him and had confidence in him. She stated that she was astonished by what had happened but not surprised because he was overworked and not looking well at the time. She stated that he was thinking of leaving the profession and was looking for a way out. Mrs C said that what Mr Sloan did was out of character and he could have got the money from his wealthy father-in-law. Mrs C stated that she still had trust and confidence in Mr Sloan and would return to him as a client and recommend him to her friends.

The Tribunal then heard evidence from Mr D who stated that he had been a client of Mr Sloan's in the past and found him to be an excellent lawyer and also a trustworthy and nice man. Mr D stated that he did not think it was in Mr Sloan's nature to be dishonest and that he was highly strung. Mr D stated that he would return to Mr Sloan as a client and would trust him with his money. Mr D stated that he thought that dishonesty could only happen again if the circumstances repeated themselves.

The Tribunal then heard evidence from Mr E former Manager of the Royal Bank of Scotland in Bathgate. Mr E stated that when Mr Sloan set up his firm he had discussions with him with regard to this and his bank dealt with all Mr Sloan's client accounts and firm's accounts and all the dealings were completely satisfactorily. Mr E said that Mr Sloan was looked on as a very helpful and competent solicitor. Mr E said he was very surprised by what Mr Sloan did but did not think he was a dishonest person. Mr E said that he would have trust in Mr Sloan again now both as an individual and as a bank manager and that if he was still a bank manager he would refer people to him.

The Tribunal then heard evidence from Mr F who advised that he had received a very good service from Mr Sloan as a solicitor in the past and that he had trusted Mr Sloan with his affairs and his money and that Mr Sloan was a first class man. Mr F said that what Mr Sloan had done was out of character but that no one was infallible. He stated that he would go back to him as a client and recommend him to members of his family.

The Tribunal heard evidence from Mr G a Solicitor who used to work professionally with Mr Sloan. Mr G confirmed that he had no difficulties in his professional dealings with Mr Sloan in the past and had been involved with him professionally for ten years prior to his striking off. Mr G said he was shocked and saddened by what had happened and this was totally out of character for Mr Sloan. Mr G said that he would trust Mr Sloan now based on the ten years experience that he had had of him in the past and that he felt that other solicitors in West Lothian would also trust him.

In response to questions from the Tribunal Mr G said that he was not surprised that the Law Society had lodged an objection as they were probably politically duty bound on account of public perception.

The Tribunal then heard evidence from Mr H QC who stated that he had met Mr Sloan in the late 1970's when they were both practising in the Sheriff Court. He stated that Mr Sloan was helpful, reasonable, knowledgeable and responsible and was interested in and committed to his clients. Mr H stated that he had considered going into practice with Mr Sloan but went to the Bar instead. Mr Sloan instructed him once he was at the Bar and gave excellent good quality instructions. Mr H stated that he felt disbelief when he learned what Mr Sloan had done because he was the last person that he would have imagined would do this. Mr H said that he did not consider Mr Sloan to be a dishonest character and that he would trust him and have confidence in him as a professional. Mr H advised that Mr Sloan was a friend of his and a distant relative.

Affidavit evidence from Mr I a former client was lodged. Mr I found Mr Sloan's service very satisfactory, straightforward and professional. Mr I states that he would use Mr Sloan again as a solicitor and would trust him because the incident was out of character.

The Tribunal heard further evidence from Mr Sloan who explained that he wished to return to the profession because he felt he had a contribution to make and could use his knowledge and experience. Mr Sloan stated that it had been a long journey back from 1993 but that he was

confident that he had acquired new skills and he would not fall into the same trap as he had done in the past. Mr Sloan confirmed that his health had improved and he felt able to return to the profession. Mr Sloan stated that would be prepared to give an undertaking not to practice as a principal and he had no wish to return to work as a principal in private practice. Mr Sloan emphasised that he did not have any financial pressures now and had a stable home life. Mr Sloan undertook not to do anything dishonest again.

SUBMISSIONS FOR THE APPLICANT

Mr d'Inverno addressed the Tribunal on the Applicant's behalf. He pointed out that the Tribunal was exercising a judicial function rather than a disciplinary function in hearing this Application. The Tribunal had to consider each case on its merits and he asked the Tribunal to take account of the evidence given, the doctors reports and the two letters of support from solicitors. Mr d'Inverno stated that the Tribunal had to consider what the tests were and whether Mr Sloan met them. It was clear from the Tribunal decision in the Wilson case that restoration to the Roll could be considered even in a dishonesty case. Mr d'Inverno distinguished the Wilson case where the Applicant had already been restricted prior to being struck off and had served two and a half years in prison. It was a more serious dishonesty case.

Mr d'Inverno accepted that the Tribunal had made it clear in its preliminary Decision that the onus was on Mr Sloan to rebut the presumption that he was not a fit and proper person to be a solicitor. It was however possible for Mr Sloan to rebut this presumption. There had only been one objection lodged and this was by the Law Society which did not challenge any of the

facts spoken to by Mr Sloan and his witnesses as to what had happened since Mr Sloan's striking off. The Law Society's position seemed to be an absolute one that no solicitor who has been found guilty of dishonesty should be allowed back on to the Roll. This was inconsistent with the legislation.

Mr d'Inverno submitted that the evidence given in mitigation in 1994 was relevant in considering Mr Sloan's Application and asked the Tribunal to take account of Mr Sloan's illness at that time. Mr d'Inverno stated that Mr Sloan would be prepared to have his Practising Certificate restricted but there was no power in the legislation for the Tribunal to do this.

Mr d'Inverno pointed out to the Tribunal that there had been evidence led from a number of witnesses who all testified to Mr Sloan being honest, the dishonest acts being an aberration. The Tribunal had heard evidence from former clients, and also from members of the profession. Mr d'Inverno asked the Tribunal in exercising its judicial function to have an element of compassion. Mr d'Inverno suggested that if the Tribunal required any further evidence it should advise Mr Sloan rather than refuse the Application.

In response to a question from the Chairman about the importance and relevance of the comments of the Master of the Rolls, Mr d'Inverno stated that the comments made by the Master of the Rolls in England with regard to the paramount element of protecting the good name of the profession were not relevant in this case and did not form part of the law of

Scotland. He stated the situation in England with regard to exceptional circumstances was different.

DECISION

The Tribunal carefully considered all the evidence from Mr Sloan, his witnesses, the affidavit evidence, the medical reports, the letters of support from the solicitors and the note of objection from the Law Society. The Tribunal accept that Parliament has decreed that a person who has been struck of the Roll of Solicitors may apply for restoration and there is therefore the possibility, having regard to the circumstances which may have originally caused the person to be struck off and the intervening events, of such a person making a successful application for restoration to the Roll. The Tribunal have to decide whether or not the Applicant has discharged the onus on him to displace the original conclusion reached at the time of striking off that he was not a fit and proper person to be a solicitor and to show a change in character, conduct and suitability between the time when he was struck off the Roll and the time of this application. The Tribunal consider that in a case such as this, where the Applicant had been struck off for a criminal offence involving dishonesty and misappropriation of client's funds for his own personal use the onus on him to demonstrate that his restoration to the Roll would not damage the reputation of the profession as a whole is a very heavy one.

The Tribunal consider that the comments made by the Master of the Rolls in England as per the eighth edition of Cordery on Solicitors, by FT Horne at page 325, are relevant to applications such as this in Scotland.

The Applicant led the evidence of a number of witnesses who were former clients who stated that they would again be clients and would trust the Applicant. A number of these witnesses were friends of the Applicant. Evidence was led from a solicitor and Queens Counsel who stated that they would trust the Applicant professionally based on what they knew of him. The Queens Counsel was a friend of the Applicant. The Tribunal accepted the evidence of these witnesses which was based on their knowledge of the Applicant as a person.

Mr Sloan stated that he had been the Secretary of the Operatic Society but he did not handle any funds on behalf of the Society, there being a treasurer who did this. Mr Sloan also worked for GE Capital Bank but was not handling cash. The Tribunal accordingly did not consider that he had demonstrated that he had had the opportunity to be in control of funds and not abuse this. The Respondent stated that GE Capital Bank would have trusted him to become an in-house lawyer for them but no evidence was led to support this.

The Applicant stated that he wished to return to the legal profession because he enjoys legal work so much. No evidence was led that he had done any voluntary or unqualified work connected with the legal profession since he was struck off. The Tribunal consider that the Applicant has failed to discharge the great onus on him of demonstrating that there had been a change of character and that he was now fit to be trusted with clients' funds. The evidence of former clients and others demonstrated only that the trust which they had in the Applicant at the time he committed the original offences was still present – notwithstanding all that had happened

The Tribunal must consider the wider issue of perception by members of the public and the profession who do not personally know the Applicant and the circumstances of the original Finding of misconduct. The Respondent had been living beyond his means and had resorted to misappropriation of clients funds for his own personal use. The matter only came to light when it was discovered by the Law Society. The Applicant states that he is now a stronger character, is medically well and does not have the financial and home pressures that he had in the past. It is noted however that one of the reasons the Applicant wishes to return to the profession is to enable him to pay the monies back to his wife's family. The medical evidence which was before the original Tribunal was also before this Tribunal and considered by it, but this Tribunal noted the views of the original Tribunal that "Even although the Respondent (Applicant) may have been suffering from a medical condition at the time, the gravity of his actings in embezzling clients' funds should still have been apparent to him" and that "In any event however the medical problems did not disclose any element of compulsitor".

It is now nine and half years since the Applicant was struck off the Roll but the Tribunal that struck him off did not select, from the range of penalties available to it, a suspension for a period of years, but determined to impose on the Applicant the most serious penalty available to it.

One essential test to be applied by the Tribunal is that of the public interest and the paramount element of protection of the good name of the profession. It is accepted that the Applicant is now (and was at the time of the striking off) highly thought of by clients and other professionals who know him and the Tribunal has been asked to give him a second chance.

The question for the Tribunal however is not whether the Applicant has served his sentence and paid his debt to society but whether he is a suitable person to be on the Roll of Solicitors. The Applicant was convicted of a disgraceful act of dishonesty and there has been an objection to the Applicant's restoration from the Law Society who represent the legal profession. The Tribunal must consider the public perception and the importance of maintaining the reputation of the profession and the public confidence in it. In this case the Tribunal are not satisfied that there has been a change in the Applicant's character and are not persuaded that the Applicant has demonstrated that he can be trusted by the public and the profession.

There were no circumstances which would allow departure from the usual practice of giving publicity.

Vice Chairman