

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

FINDINGS

in Complaint

THE COUNCIL OF THE LAW SOCIETY
OF SCOTLAND

against

DERYCK de MAINE BEAUMONT, Solicitor,
Balnaguard, Pitlochry.

1. A Complaint dated 21st May 1998 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (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 they might think 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 within the induciae.
3. In terms of their Rules, the Tribunal appointed the Complaint to be heard on 22nd July 1998 and notice thereof was duly served upon the Respondent.
4. The Hearing took place on 22nd July 1998. The Complainers were represented by Mr D.C.W. Pyle W.S., Edinburgh as Fiscal. The Respondent appeared on his own behalf and lodged Answers. The Tribunal granted leave to the Complainers to amend the Complaint and in respect that the Complaint as amended, was admitted, no

evidence was led. The Tribunal found the following facts established:-

- (1) The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was admitted as a solicitor on 11th August 1988 and enrolled on 22nd August 1988. He practises on his own account at Balnaguard, Pitlochry.

“A”

- (2) “A” was formed for the sole purpose of the acquisition, protection and maintenance of a former railway bridge over “P.1”. The bridge was used as an access road for members of the public. The Respondent was appointed a Director and the Secretary of the Company on 23rd May 1994.
- (3) In terms of his duties as Secretary of the Company, the Respondent was responsible for filing the Annual Return which was due to be lodged no later than 23rd June 1995. The Respondent failed to lodge the Annual Return. As a consequence of the failure to lodge that Annual Return, the Registrar of Companies gave notice to the Company at the Respondent's address on 10th November 1995 in terms of Section 652 of the Companies Act 1985 that, unless cause was shown to the contrary, at the expiration of three months from that date the name of the Company would be struck off the Register and the Company would be dissolved. The Respondent failed to respond to said notice with the result that the Company was struck off the Register under Section 652(5) of said Act on 21st

February 1996 and was dissolved by notice in the “B” dated 1st March 1996. The Respondent failed to advise the other Directors of the Company of said notices, striking off and dissolution, which was discovered by those other Directors only some nine months after the dissolution. Those Directors had applied for substantial financial grants from third parties in connection with the Company's objects but were unable to proceed further with these applications.

- (4) On the instructions of the former Chairman and two of the former Directors of the Company, solicitors acting on their behalf wrote to the Respondent on 13th February 1997 instructing him to forward all papers belonging to the Company to them. He was also instructed to desist from carrying out all work relating to a proposed petition to the Court for the restoration of the Company to the Register. The Respondent refused to comply with the terms of said letter.
- (5) Those solicitors lodged a formal complaint with the Law Society who intimated it to the Respondent by letter dated 12th May 1997, in which the Law Society requested that the Respondent reply in detail to said complaint. The Respondent failed to do so. On 9th June 1997, the Law Society served on the Respondent Notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980. The Respondent failed to respond to said Notice. Accordingly on 28th July 1997, the Law Society served a further Notice in terms of said section.

“C”

- (6) In or about June 1994, “C”, a plumbing, heating and electrical contractor, of “P.2”, instructed the Respondent to pursue “D” in respect of the sum of £2,900. At the Respondent's request, Mr “C” paid him the sum of £400 by way of an advance of fees and outlays to be incurred by the Respondent on his behalf. On or about 20th June 1994, the Respondent was advised by a solicitor acting for another creditor of “D” that a petition had been lodged for the winding up of “D”, that the creditor had been paid in full thereafter and that the petition fell to be dismissed.
- (7) The Respondent failed to carry through the instructions of Mr “C” or communicate adequately with him. Mr “C” made a complaint to the Law Society. The Law Society wrote to the Respondent on 30th January 1996 giving details of Mr “C's” complaint and recommending that the dispute between them be dealt with by conciliation. The Respondent did not reply to that letter. After attempts to contact the Respondent by telephone, the Law Society wrote to him again on 20th February 1996 informing him that a formal investigation would now require to be instituted. By letter dated 22nd March 1996, the Law Society requested the Respondent to give a detailed response to Mr “C's” complaint. The Respondent failed to do so. Further reminder letters were sent on 18th April and 3rd May 1996 to which again the Respondent failed to reply. Accordingly on 14th May 1996, a Notice in terms of said Section 15(2)(i)(i) was served on the Respondent calling on him to give a response within fourteen days. That

response was not received until 10th June 1996. On 3rd July 1996, the Law Society served a further Notice on the Respondent in terms of said section.

- (8) In the response received on 10th June 1996, the Respondent offered to carry out certain steps to investigate the prospects of recovery of the alleged debt and in the meantime to repay Mr “C” the advance payment with interest from the original date of payment. A cheque payable to Mr “C” was sent to the Law Society on 31st May 1996 but the payment of interest was not made at that time. The Law Society wrote to the Respondent reminding him that the interest was still to be paid, by letters dated 3rd September, 25th September, 15th October and 31st October all 1996, but the Respondent did not reply nor pay the interest. Following a further reminder on 19th November 1996, the Respondent eventually paid the interest on 24th December 1996.
- (9) On 28th February 1997, the Law Society wrote to the Respondent requesting a report on the current position. Reminder letters were sent on 24th March and 17th April 1997. The Respondent did not reply. Accordingly on 30th April 1997 a further Notice was served on the Respondent in terms of said Section 15(2)(i)(i). Again no reply was received and accordingly on 28th July 1997, a further notice was served on the Respondent in terms of said Section. Moreover on 21st May 1997, the Law Society called upon the Respondent to produce all papers and documents in his possession relating to Mr “C's” dispute, all in terms of Section 42C of said Act. The Respondent did not reply to these communications.

“E”

- (10) In or about July 1994, “E” of “P.3” made a complaint to the Law Society about the Respondent's failure to reply to enquiries about the progress by the Respondent in dealing with a petition by Mr “E” to the Court of Session for judicial review of certain actings of “F”. After discussions with the Respondent it appeared to the Law Society that the dispute between Mr “E” and the Respondent was likely to be resolved as a result of direct communication between them.
- (11) The Law Society continued to monitor the progress being made by the Respondent in implementing Mr “E's” instructions. From time to time Mr “E” complained about further delay by the Respondent in dealing with his affairs. Frequently the Respondent failed to reply to letters from the Law Society requesting a note of progress and where a response was given it was considerably delayed.
- (12) In particular, the Law Society by letter dated 18th December 1995 made a request for a progress report to which the Respondent did not reply. Reminder letters were sent on 18th February, 1st March and 19th March, all 1996, but again he did not reply. Accordingly on 3rd May 1996 a Notice in terms of said Section 15(2)(i)(i) was served on the Respondent. No response was received until 10th June 1996. A further Notice under said Section was served on 3rd July 1996.

- (13) The Law Society continued to monitor progress. They requested a note of progress by letter dated 24th July 1996. Further reminder letters were sent on 24th September, 25th October and 19th November, all 1996 to which a reply was eventually received on 24th December 1996. A further request for a note of progress was sent by the Law Society on 8th January 1997 with reminders being sent on 24th January, 14th February and 17th March all 1997. Again the Respondent did not reply. On 9th April 1997 the Law Society served a Notice on the Respondent in terms of said Section 42C to produce all papers held by him on behalf of Mr “E”. The Respondent failed to do so.
5. Having considered the foregoing circumstances, the Tribunal found the Respondent singly and in cumulo guilty of professional misconduct in that
- (i) He delayed unconscionably to respond to the reasonable enquiries of the Law Society about the “A” despite two expired statutory notices;
 - (ii) He delayed unconscionably to respond to the reasonable enquiries of the Law Society about Mr “C” and in particular to deliver his file of papers to them despite many reminders and five expired statutory notices; and
 - (iii) He delayed unconscionably to respond to the reasonable enquiries of the Law Society about “E” and in particular to deliver his file of papers to them, despite many reminders and three expired statutory notices.

6. The Tribunal separately found that
- (i) the Respondent provided an inadequate professional service to his client, Mr “C”, in that he did not carry through the instructions of Mr “C” nor communicate adequately with him, and
 - (ii) the Respondent provided an inadequate professional service to his clients, the “A” in the unconscionable delay in and failure to lodge documents with the Registrar of Companies whereby the company was dissolved and struck off the Register of Companies.
7. Having heard the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 22nd July 1998. The Tribunal having considered the Complaint 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 in respect of his unconscionable delay in responding to enquiries of the Law Society, Censure the Respondent and Fine him in the sum of £5000 to be forfeit to Her Majesty; In respect that the professional services by the Respondent were inadequate Direct the Respondent in terms of Section 53A(2)(d) of the Solicitors (Scotland) Act 1980 to pay to “C”, “P.2”, by way of compensation the sum of £250 but make no direction in favour of the “A”; Find the Respondent liable in the expenses of the Complainers and 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 Six of the Law Society's Table of Fees for general business together with a reasonable sum for posts and incidental outlays; and direct that publicity be given to this decision and that the publicity shall include the name of the Respondent.

(Signed) J.W. LAUGHLAND

Chairman

8. A copy of the foregoing Interlocutor together with a copy of the Findings certified to the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery on 27th August 1998

IN NAME OF THE TRIBUNAL

Chairman

NOTE

The Respondent did not lodge Answers to this Complaint or otherwise communicate with the Tribunal prior to the hearing. On the morning of the hearing, the Respondent submitted Answers, but subsequently, he admitted the whole Complaint as amended.

The Respondent explained that he had previously been an Advocate and that he was principally engaged in civil court work. He referred in general terms to certain personal difficulties that he had encountered in late 1995 which has caused him to review his position. He was now limiting the scope of his practice and taking steps to bring all his work up to date.

The Respondent pointed out that he had been actively involved in the formation of “A” and had never charged any fees for his work as solicitor to the Company. When the Company had been struck off the Register, he had personally taken steps as a member of the Company and at his own expense to have the Company restored to the Register, and the Fiscal acknowledged that at that stage the other former directors had no locus to require the Respondent to deliver the papers which he held for the former Company. He resigned as secretary after the Company had been restored to the Register.

The Respondent explained that he did some work for Mr “C” but he admitted that he had failed to communicate with him. He added that initially he had not wanted to act for Mr “E” but had accepted instructions as other solicitors had declined to act. It was noted that this matter had already been the subject of a finding of inadequate professional services by the Council of the Law Society and a compensatory order had been made in favour of Mr “E”.

The charges of professional misconduct in this Complaint were confined to the Respondent's unconscionable delay in replying to repeated communications from the Law Society.

Where matters are referred to the Law Society, a solicitor has a professional duty to respond promptly to the Law Society's reasonable enquiries and the Tribunal had no hesitation in finding that the Respondent's persistent delay in each matter, separately amounted to professional misconduct.

The Tribunal has carefully considered all that was said by the Respondent in mitigation, but it remains that over a significant period particularly in 1996 and 1997, the Respondent persistently neglected to reply promptly to the Law Society and it is therefore appropriate that the Respondent should bear a substantial fine.

The Complaint also contained charges that the Respondent had provided an inadequate professional service to both "A" and Mr "C". These charges were admitted. The initial suggestion was that the Respondent's neglect in allowing the "A" to be struck off the Register had adversely affected the Company financially but this averment had been withdrawn, and as there was no other indication that the Respondent's neglect had resulted in any cost to the Company, the Tribunal resolved not to make any determination or direction under Section 53A of the Solicitors (Scotland) Act 1980. It was not claimed that the Respondent's delay in his acting for Mr "C" had necessarily caused him loss but it was apparent that the Respondent's neglect would have caused Mr "C" certain worry and distress and it is with these considerations that a direction has been made in favour of Mr "C".

No circumstances were disclosed which might have caused the Tribunal to exercise its limited discretion regarding publicity, and accordingly publicity to include the name of the Respondent, will be given to this decision.

Chairman