

**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

**PETER FITZPATRICK, of 14
Peveril Avenue, Burnside, Glasgow**

1. A Complaint dated 19 May 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Peter Fitzpatrick, of 14 Peveril Avenue, Burnside, Glasgow (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 for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 21 July 2009 and notice thereof was duly served on the Respondent.

4. The hearing took place on 21 July 2009. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was not present or represented.
5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint. After hearing evidence from the Depute Clerk with regard to service of the Complaint and noting that the Joint Minute made reference to the date of the hearing, the Tribunal was satisfied that the Respondent had received notice of the Complaint and the Notice of Hearing and resolved to proceed in the Respondent's absence. In view of the terms of the Joint Minute no evidence required to be led
6. The Tribunal found the following facts established:

6.1 The Respondent is a solicitor enrolled in Scotland. He was born on 23 August 1958. He was admitted as a solicitor on 8 September 1981. He was enrolled in the Register of Solicitors in Scotland on 30 September 1981. The Respondent was employed initially as an employee and thereafter as an associate with the firm Sellar & Christie from 23 March 1989 until 25 November 1990. Thereafter he was employed as an employee with the firm Moore & Partners from 26 November 1990 until 23 August 1991. From 26 August 1991 until 17 April 2007, he was associated with the firm Muirhead Buchanan, Stirling, initially as an employee and latterly as a partner. At present, the Complainers have no record of the Respondent being employed by a firm. The name of the Respondent remains on the Roll of Solicitors.

Conviction of 9 June 2008

6.2 On 9 June 2008 the Respondent appeared at Stirling Sheriff Court and in advance of trial pled guilty to a charge in the following terms:-

“Between 7th March 2007 and 14th March 2007, both dates inclusive, at the premises occupied by Muirhead Buchanan at 8 Allan Park, Stirling, you Peter Fitzpatrick did conduct yourself in a disorderly manner, conceal a video camera within a toilet used by female members of staff there, record female members of staff using the toilet facilities there without their knowledge or consent and commit a breach of the peace”.

A plea of not guilty in respect of a second charge on the complaint alleging an attempt to pervert the course of justice was accepted by the Procurator Fiscal.

- 6.3 As a consequence of the plea of guilty, sentence was deferred for the production of Social Enquiry Reports, a Community Service Assessment and a Risk Assessment. The matter called for sentence on 9 September 2008. Having heard submissions advanced on behalf of the Respondent by his agent in mitigation, the sentence imposed was that the Respondent be placed on probation for a period of three years with the additional condition that he attends counselling at the South Lanarkshire Sex Offenders Group Work Programme. Further his name was registered on the Sex Offenders Register for a period of three years.
- 6.4 The background to the offence is that Muirhead Buchanan is a firm of solicitors and estate agents who practice in Stirling. At the time of the offence the Respondent was a partner of that firm. The Respondent occupied an office on the third floor of the premises which was situated next door to a female toilet. The matter came to light as a result of the discovery by a Miss A who was employed as a secretary within the firm. She is 24 years of age. She was making use of the toilet facilities when she noticed empty cardboard boxes situated on the floor. She

noticed that one box had a hole in the end which appeared to have been enlarged. She examined the box and noticed a piece of polystyrene had been used to prop the box up and that the hole which had been enlarged faced the toilet seat. The box itself had been sealed with the use of sellotape. She lifted the box and identified that it was heavy. She opened the box and discovered a video cassette recorder with a tape inside. She left the recorder within the box and left the toilet. As she left, she met the Respondent and advised him as to what she had found. He indicated that he would look into the matter. The Respondent did nothing. Some days later at the instigation of her boyfriend, Miss A again spoke with the Respondent. She advised the Respondent it was the intention of her boyfriend to attend at the office to discuss matter with the other partners. At this point the accused invited Miss A into her office and advised her that it was he who was responsible for the recording equipment. Miss A became distressed. They both left the room and went to the room of another partner where the Respondent confessed that he had behaved inappropriately. He was asked to leave the premises with immediate effect, which he did. The matter was reported to the police by the firm.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of professional misconduct in respect of:-

- 7.1 His conviction for a breach of the peace with a considerable sexual background which involved behaviour which fell short of the common law principle of honesty, truthfulness and integrity expected of members of the solicitors' profession and which was a breach of Article 7 of the Code of Conduct for Scottish Solicitors 2002.

8. The Tribunal issued an Interlocutor in the following terms:-

Edinburgh 21 July 2009. The Tribunal having considered the Complaint dated 19 May 2009 at the instance of the Council of the Law Society of Scotland against Peter Fitzpatrick, of 14 Peveril Avenue, Burnside, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his conviction for a breach of the peace with a considerable sexual background which involved behaviour which fell short of the standards of honesty, truthfulness and integrity expected from members of the Solicitors' profession and which was a breach of Article 7 of the Code of Conduct for Scottish Solicitors 2002; Suspend the Respondent from practice for a period of five years and Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this Order shall take effect on the date on which the written Findings are intimated to the Respondent; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal including the expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter 3 of the last published Law Society's Table of Fees for General Business with a unit rate of £14.00; Direct that publicity be given to this decision and that this publicity include the name of the Respondent.

(signed)

Alistair M Cockburn
Chairman

9. 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 Respondent was not present or represented at the hearing. The Respondent did not lodge Answers to the Complaint. The Tribunal heard evidence from the Depute Clerk that the Complaint was sent to the Respondent by recorded delivery mail on 10 June 2009. The Depute Clerk confirmed that the Royal Mail's track and trace system indicated that the Complaint had been delivered from the Cambuslang delivery office on 12 June 2009. The Tribunal noted that the Joint Minute which had been lodged by Mr Reid and signed by the Respondent made reference to the date of the hearing and therefore the Tribunal was satisfied that the Respondent had received notice of the Complaint and of the date of the hearing. The Tribunal therefore agreed to proceed in the Respondent's absence.

In view of the contents of the Joint Minute which admitted the facts, averments of duty and averments of professional misconduct, no other evidence required to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that the background to this matter was as set out in Article 2 of the Complaint. During the period referred to in the criminal complaint against the Respondent he was a partner in the firm of Muirhead Buchanan, a well established firm in Stirling. The Respondent immediately resigned from that position when the offence came to light.

Mr Reid advised that the Respondent previously occupied an office on the third floor of Muirhead Buchanan's offices, adjacent to the female toilets. The matter came to light as a result of discovery by a Miss A, a 24 year old secretary with the firm. She was making use of the toilet facilities on 7 March 2007 when she noticed empty cardboard boxes situated on the floor of the toilet. She noticed that one box had a hole in the end which appeared to have been enlarged. She examined the box and noticed a piece of polystyrene had been used to prop the box up and that the hole which had been enlarged faced the toilet seat. She lifted the box and identified that it was heavy. She opened the box and discovered a video cassette recorder with a tape inside. She immediately reported this matter to the Respondent who said that he

would make enquiries. Mr Reid advised that when this matter was reported to the Respondent he did nothing. Mr Reid advised that some days later at the instigation of her boyfriend, Miss A again spoke with the Respondent and advised him that it was her boyfriend's intention to attend at the office to discuss this matter with the other partners. At this stage the Respondent confessed to Miss A that it was he who was responsible for the recording equipment.

Mr Reid advised that the firm dealt with the matter appropriately and it was reported to the police. The Respondent resigned from the firm that day and was subsequently prosecuted.

Mr Reid referred the Tribunal to Production 1 of the Inventory of Productions for the Complainers being a letter from the Crown Office dated 1 October 2008 to the Law Society intimating the Respondent's conviction. Mr Reid referred the Tribunal to Production 2 of the said Inventory, a copy of the amended criminal complaint. Mr Reid advised that the Respondent originally pled not guilty to both charges, but then pled guilty to an amended charge and his plea of not guilty to charge 2 was accepted. Mr Reid advised that the matter was deferred for a social enquiry report.

Mr Reid then referred the Tribunal to Production 4 of the said Inventory, a transcript of the proceedings involving the Respondent. Mr Reid indicated that there was an error in the transcript as it made reference to Her Majesty's Advocate-v-The Respondent when in fact the matter was dealt with under summary procedure. However, Mr Reid advised that it was necessary for the court to record the proceedings in view of the fact that this was a sexual offence. Mr Reid referred the Tribunal to page 6 of the said Inventory, where the transcript showed that it was conceded by the solicitor representing the Respondent that the offence had a significant sexual element.

Mr Reid then referred the Tribunal to the Procurator Fiscal's narration of the offence at page 7 of the said Inventory and to then to pages 15 - 21 which are a transcript of the adjourned diet when the Respondent was sentenced. Mr Reid advised that the Respondent was placed on probation for a period of 3 years with an additional condition that he attend counselling at the South Lanarkshire Sex Offender's Group

work programme and his name was placed on the Sex Offender's Register for a period of 3 years.

Mr Reid then referred the Tribunal to Production 6 of the said Inventory at pages 23 - 28 which were extracts of media reporting of the case which illustrate that the Respondent's conduct has adversely affected the reputation of the profession.

Mr Reid invited the Tribunal to find that professional misconduct was established and that the conduct of the Respondent was disgraceful and dishonourable, involved a considerable sexual element and left female members of staff extremely upset. Mr Reid asked the Tribunal to award expenses in favour of the Law Society.

Mr Reid advised that the Respondent deserves credit for entering into the Joint Minute. He advised that in the course of correspondence with the Respondent he had offered to advance mitigatory information on his behalf. Mr Reid advised that the Respondent had advised him that he was currently on incapacity benefit but did not provide him with any mitigation.

The Chairman asked Mr Reid about the contents of the Social Enquiry Report and Mr Reid assisted the Tribunal by producing copies of these reports.

DECISION

The Tribunal noted that the Respondent's conduct was a single isolated offence not directly pertaining to his work as a solicitor. The Tribunal had regard to the medical reports and noted that the offence was committed during a period when the Respondent was being treated for a depressive illness. However, the Tribunal consider that the essential qualities of a solicitor are honesty, truthfulness and integrity. The public is entitled to expect a solicitor to be a person of integrity. A solicitor who falls short of the qualities of honesty, truthfulness and integrity to an extent that others regard his conduct as disgraceful or dishonourable in relation to the accepted ethical standards of the legal profession brings the profession as a whole into disrepute. The Tribunal consider that the Respondent's conviction demonstrates that

the Respondent's conduct, albeit on one occasion, was not in accordance with the said standards.

The Tribunal noted that the conviction was widely reported in the media and that the profession as a whole was brought into serious disrepute. The Tribunal consider that the Respondent's conduct was disgraceful, dishonourable and wholly unbecoming of a solicitor. The Tribunal consider that the Respondent has failed to maintain a standard of conduct and propriety expected of a member of an honourable profession and accordingly the Tribunal orders the Respondent to be suspended from practising for a period of five years. In addition, in order to protect the public the Tribunal Directs in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this Order shall take effect on the date on which the written Findings are intimated to the Respondent. The Tribunal made the usual Order with regard to publicity and expenses.

Chairman