

**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**

**WILLIAM MICHAEL LEWIS,  
Solicitor, 1 Hope Park Terrace,  
Edinburgh**

1. A Complaint dated 31<sup>st</sup> March 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh (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 29<sup>th</sup> June 2006 and notice thereof was duly served on the Respondent.
4. The hearing took place on 29<sup>th</sup> June 2006. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by his solicitor, David Clapham, Glasgow .

5. A Joint Minute was lodged admitting certain facts and averments of duty and averments of professional misconduct in the Complaint and the remainder of the averments were deleted. It became apparent during the hearing on 29<sup>th</sup> June 2006 that there was still a dispute between the parties with regard to exactly which facts were agreed. The case was accordingly adjourned until 27<sup>th</sup> September 2006 for matters to be clarified.
6. The Complaint called again on 27<sup>th</sup> September 2006. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by his solicitor, David Clapham, Glasgow. The parties confirmed that they had agreed facts and provided the Tribunal with the necessary additional information.
7. On this basis the Tribunal found the following facts established

7.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 7<sup>th</sup> November 1957. He was admitted as a solicitor on 31<sup>st</sup> March 1982 and was enrolled as a solicitor on 22<sup>nd</sup> April 1982. He is at present the sole principal of Gilmore Lewis which has a place of business at 1 Hope Park Terrace, Edinburgh.

7.2 **Inspection by the Complainers of the firm of Gilmore Lewis on 19<sup>th</sup> July 2004**

On 19<sup>th</sup> July 2004 the Complainers carried out an inspection of the firm of Gilmore Lewis. This was a re-inspection at the Respondent's expense due to his failure to respond to the Complainers to matters of concern to them which had been identified at an inspection sometime in August 2003. At this inspection on 19<sup>th</sup> July 2004 the Inspector noted 12 transactions where the Respondent had acted for the purchaser or purchasers of heritable properties and where on the face of it he had failed to timeously record the Disposition and relative Standard Security in them all. By

way of example, the Respondent acted for Mr. and Mrs. A in the purchase of subjects known as A1. The transaction settled on 3<sup>rd</sup> December 2003. By way of further example, the Respondent acted for B in the purchase of subjects known as B1. This transaction settled some time in May 2003. In both of these transactions the Dispositions and relative Standard Securities had not been recorded at the date of this inspection. In these 12 transactions the delay in the recording of deeds ranged on the face of it from between 2 and 17 months from the date of settlement.

7.3 **Respondent's interview with Panel of Complainers' Guarantee Fund Committee on 23<sup>rd</sup> September 2004**

The Respondent attended at an interview with a Panel of the Guarantee Fund Committee on 23<sup>rd</sup> September 2004. The Respondent then advised the Panel that he was very busy and that, in his view, the standard of record keeping was good. He did, however, accept, as he had to do, that he had a problem with the recording of deeds on time. He then advised the Panel that he had addressed this problem and he provided reassurance to the Panel that he intended ensuring that there would be no further recurrence in respect of the late recording of deeds.

7.4 **Inspection by the Complainers of the firm of Gilmore Lewis on 20<sup>th</sup> and 21<sup>st</sup> April 2005**

On 20<sup>th</sup> and 21<sup>st</sup> April 2005 the Complainers carried out an inspection of the firm of Gilmore Lewis. This was a re-inspection which had been arranged following the failure of the Respondent to respond adequately to correspondence from the Complainers arising from the inspection which had taken place on 19<sup>th</sup> July 2004. At this latest inspection the Inspector identified 16 transactions where on the face of it the Respondent had failed to submit deeds for recording within a reasonable time. By way of example, the Inspector

noted that the Disposition and Standard Security for Mr. and Mrs. A had still not been recorded. By way of further example, the Inspector noted that the Respondent had acted for Mr. and Mrs. I in the purchase of I1. This transaction settled on 22<sup>nd</sup> October 2004 and the Inspector noted that the Disposition and Standard Security had not been recorded. The Inspector noted that in these 16 transactions the delay in recording deeds ranged on the face of it from two months to approximately three years.

7.5 **Inspection by the Complainers of the firm of Gilmore Lewis on 16<sup>th</sup> and 17<sup>th</sup> January 2006**

On 16<sup>th</sup> and 17<sup>th</sup> January 2006, the Complainers carried out a further inspection of the firm of Gilmore Lewis. This was again a re-inspection of the firm at the Respondent's expense and it had been arranged as a result of the Complainers' concern about the Respondent's failure to timeously record deeds which had been identified at the inspection on 20<sup>th</sup> and 21<sup>st</sup> April 2005. At this latest inspection, the Inspector noted a large number of transactions where on the face of it there was clear evidence of late recording of Dispositions, Standard Securities and Discharges. The Respondent advised the Inspector that he had employed someone in September 2005 whose duties were exclusively devoted to ensuring that deeds were timeously recorded. The Inspector advised him that it was perfectly clear to her that, despite employing someone for this purpose, the Respondent had still not introduced any effective system to ensure the timeous recording of deeds. The Respondent acknowledged to the Inspector that he was having difficulty in addressing this issue. At this latest inspection, the Inspector identified 42 transactions where on the face of it the delay in recording deeds ranged from two months (in five cases only) to six years from the date of settlement of the transaction in question.

7.6

**Mr.B**

Mr. B, who resides at Property 2, was the sole beneficiary in the estate of his mother, the late Mrs. C who died on 2<sup>nd</sup> October 2003 and his late step-father, Mr. D who died on 2<sup>nd</sup> November 2003. Mr. D and Mrs. C both died testate and, in their Wills, they appointed the Respondent executor thereunder. Mr. B met the Respondent sometime in November 2003 and at that meeting the Respondent advised Mr. B that he would proceed with the winding up of both estates. The estate of Mr. D included subjects known as Property 2. The Respondent recommended to Mr. B that these subjects be marketed by a particular estate agent with whom he had a family connection and Mr. B went along with this recommendation. Sometime in January 2004, the Respondent advised Mr. B that these subjects had been sold at a price of £59,000. Mr. B thereafter sought information from the Respondent about this sale and the winding up of the estates generally. Thereafter Mr. B repeatedly sought information about progress with the winding up of the estates. The Respondent did not reply to any of the communications from Mr. B in this respect. On 21<sup>st</sup> April 2004, the Respondent emailed Mr. B apologising for his failure to reply. On 23<sup>rd</sup> April 2004 he sent a draft Inventory of both estates to Mr. B. On 3<sup>rd</sup> May 2004 Mr. B advised the Respondent that a Mr. E had expressed an interest in the said subjects which, by that time, had been purchased under missives. In this letter, Mr. B requested the Respondent to put pressure on the purchaser to make progress towards completion of the transaction within a week failing which Mr. E should be allowed to go ahead and purchase. The Respondent replied to Mr. B to the effect that he would update him on the position regarding the property. In the event, and in the absence of a reply from the Respondent, Mr. B emailed him on 20<sup>th</sup> May 2004

requesting an update on the sale of the property. The Respondent did not reply to that letter. On 3<sup>rd</sup> June 2004, Mr. B and his wife attended at the Respondent's office to establish the position of the transaction. It was then that the Respondent advised them that the purchaser had disappeared. On 7<sup>th</sup> June 2004, Mr. B wrote to the Respondent expressing his concern that he had not been advised of the purchaser's disappearance and complaining about the Respondent's failure to reply to communications.

7.7

### **The Law Society of Scotland**

Arising from said inspection on 20<sup>th</sup> and 21<sup>st</sup> April 2005, Mrs. Morag Newton, the Director of the Complainers' Guarantee Fund Department, wrote to the Respondent on 26<sup>th</sup> May 2005 pointing out, *inter alia*, these failures to record deeds and these breaches of the 2001 Rules. In this letter she requested the Respondent to provide her with information to reassure her that he was addressing same so as to prevent a further recurrence and that within a period of 14 days. The Respondent did not respond to this letter nor did he respond to letters dated 15<sup>th</sup> June and 21<sup>st</sup> July, 2005 from Mrs. Newton in which she reminded him that she wanted his response. By letter dated 29<sup>th</sup> August 2005, Mrs. Newton again wrote to the Respondent saying that if a response was not received within a period of seven days from then she would report the position to the Complainers' Guarantee Fund Committee. In this letter she made it clear to the Respondent that failure to respond to correspondence from the Complainers is viewed seriously by them and that the Committee would take into account a failure to respond to correspondence in its consideration of his position. Arising from the said inspection on 16<sup>th</sup> and 17<sup>th</sup> January 2006 Mrs. Newton wrote to the Respondent on 1<sup>st</sup> February 2006 pointing out to him the transactions where delays in the recording of deeds had been identified and also the

breaches of both the 2001 Rules and the 2005 Rules. In this letter she asked the Respondent to reply to her within 14 days from that date providing certain information and documentation together with an indication of the steps taken by him to avoid recurrence of the failures identified at this inspection. The Respondent failed to respond to all of this correspondence.

On 12<sup>th</sup> June 2004, Mr.B invoked the aid of the Complainers in relation to the failure of the Respondent to communicate with him. On 23<sup>rd</sup> June 2004, the Complainers wrote to the Respondent enclosing a copy of Mr. B's letter to them dated 12<sup>th</sup> June 2004 and requiring of the Respondent his written response together with any background information, his business file and details of fees within a period of 21 days. On 14<sup>th</sup> July 2004, the Respondent wrote to the Complainers requesting that the Complaint be placed on hold until he had concluded the winding up of both executries and advising that he did not intend charging any fees in relation to either estate. Mr. B agreed to this on the understanding that he received full details of the status of each executry, a proposed completion date for each of them and information on any potentially problematic issues arising therefrom. On 4<sup>th</sup> August 2004 the Respondent wrote to the Complainers and advised them about the state of progress in relation to each executry. He did not, however, address the issues of complaint. Sometime in November 2004, Mr. B established that the mortgage over the property had not been paid for some 14 months and that the lender was threatening court proceedings. He decided to retain the property and he instructed the Respondent to arrange for the title thereof to be transferred into his name. Sometime in January 2005, Mr. B decided that he wished the Complainers to pursue the matters that he had raised in his letter of complaint. On 17<sup>th</sup>

February 2005, the Complainers wrote to the Respondent providing him with a revised list of issues that they required him to respond to within a period of 21 days. The Respondent replied to this letter by seeking further specification from the Complainers. By letter dated 11<sup>th</sup> March 2005, the Complainers wrote to the Respondent advising him that he had full details of the complaint and that he was required to provide a response. By letters dated 1<sup>st</sup> April 2005, the Complainers wrote to the Respondent giving him notice under Sections 15(2)(i)(i) and 42C of the Solicitors (Scotland) Act 1980. The Respondent subsequently requested the Complainers to allow him an extension of time within which to respond. The Complainers refused this request. The Respondent has not provided the Complainers with a substantive response in relation to the Complaint nor did he provide them with his business file.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 8.1 His persistent failure to timeously record dispositions
- 8.2 His persistent failure to timeously record standard securities relative to said dispositions
- 8.3 His persistent failure to timeously record discharges of standard securities
- 8.4 His failure to respond to the reasonable requests of the Law Society for information
- 8.5 His failure to keep his client fully informed with regard to the sale of heritable property or to respond to the reasonable enquiries of his client in relation to the matter.

9. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-



Edinburgh 27<sup>th</sup> September 2006. The Tribunal having considered the Complaint dated 31<sup>st</sup> March 2006 at the instance of the Council of the Law Society of Scotland against William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his persistent failure to timeously record dispositions, standard securities and discharges of standard securities, his failure to respond to the reasonable requests of the Law Society for information and his failure to keep his client fully informed in connection with a transaction and failure to respond to the reasonable enquiries of his client for information in connection with the matter; Censure the Respondent and Fine him in the sum of £7,500 to be forfeit to Her Majesty; 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 a solicitor 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**

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**

Mr Muir, the fiscal, confirmed that the Law Society were withdrawing the averments in Articles 9.2, 9.3e and 9.3f of the Complaint and the Joint Minute accepted what remained in the Complaint. Mr Clapham stated that the Respondent accepted the facts in Articles 2.1, 4.1 and 5.1 in connection with the non-recording of deeds on the basis that this was what the inspectors reasonably believed to be the case. Mr Clapham referred to a table lodged which he indicated reflected the true position. In the course of submissions for the Respondent it became clear that there was a dispute between the parties with regard to exactly how many of the delays in recording deeds were due to fault on the part of the Respondent. As the Tribunal required clarification with regard to exactly what facts were agreed the matter was adjourned from the 29<sup>th</sup> June 2006 to 27<sup>th</sup> September 2006 to allow the parties to agree on the exact number of cases where the Respondent was responsible for late recording of deeds. When the Tribunal reconvened on 27<sup>th</sup> September, Mr Clapham and Mr Muir advised the Tribunal that they were agreed that there were 44 transactions where the delay in recording deeds was due to the Respondent's culpability. These involved 34 dispositions, 34 standard securities and 7 discharges. There were 10 cases where the delay was under six months, 8 cases where the delay was between 6 and 12 months and 26 cases where the delay was in excess of 12 months.

Mr Muir advised the Tribunal that there had been another inspection of the Respondent's books 14 days ago. Mr Clapham objected to any evidence with regard to this as it was not relevant to the proceedings before the Tribunal. The Tribunal decided that it would not be appropriate to allow evidence with regard to the most recent inspection. The Tribunal was only considering the matters in the Complaint before it.

## **SUBMISSIONS FOR THE COMPLAINERS**

Mr Muir indicated that there were three inspections of the Respondent's practice. The Respondent also attended a Guarantee Fund interview on 23 September 2004 and Mr Muir referred the Tribunal to production 3 being the note of the interview. At this interview the Respondent indicated that he had addressed the problem and would ensure that it did not happen again and it was suggested to him that he obtain help.

Mr Muir submitted that it was clear that the assurance given by the Respondent was worthless as there continued to be difficulties with late recording of deeds after this. It was clear that the Respondent had not addressed the problem. The Respondent not only failed to record deeds but also failed to respond to eight letters sent to him by the Law Society. Mr Muir referred the Tribunal to the letter in July 2004 which referred to 12 instances of non-recording of deeds and asked the Respondent for the forms 4 and asked him to explain. The Respondent ignored all the letters. Mr Muir stated that there had been no attempt by the Respondent until very recently to put the record straight with regard to his recording of the deeds. The Respondent also failed to respond to the reasonable enquiries made of him by his client, Mr B. Mr Muir referred the Tribunal to the table lodged by the Respondent indicating that this showed the number of transactions and when they settled and when deeds were recorded but it was not clear to him what the notes attached to the table meant. Mr Muir submitted that for two years the Respondent failed to address the problems despite giving an assurance to the Law Society that he would. Mr Muir asked the Tribunal to approach the disposal on the basis of the position in January 2006. Mr Muir referred to the medical reports lodged on behalf of the Respondent which indicated that he suffered from depression but pointed out that these reports did not say that the Respondent could not function properly and the Respondent still appeared to be running a successful practice. Mr Muir asked the Tribunal to question whether the Respondent was fit to hold a full practising certificate.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Clapham pointed out that the Complaint as originally lodged was much more extensive than what the Respondent had to answer now. In connection with Mr B it was accepted that the Respondent did not keep his client up to date but there was no misleading of Mr B. Mr Clapham suggested that although there were three separate charges with regard to failure to record dispositions, standard securities and discharges these really should be taken together as one charge. Mr Clapham stated that the table prepared by the Respondent showed that things were not as bad as set out in the Complaint but it was accepted that this still amounted to professional misconduct. The averments of fact in the Complaint were what was believed to be the position by the inspectors at the time. Mr Clapham advised the Tribunal that there were only three cases out of the 44 where matters were still ongoing and deeds had

still not been recorded. He assured the Tribunal that the Respondent was attending to these matters. Mr Clapham stated that the Respondent's problems were made worse because as he had delayed to record dispositions and in the intervening period Feudal Tenure had been abolished resulting in him having to carry out corrective conveyancing. Mr Clapham accepted that the Respondent was clearly aware of the problems which had been highlighted at the interview with the Law Society. He arranged for his secretary to undertake overtime at weekends to see to the recording of the deeds. Mr Clapham however advised the Tribunal that the Respondent's secretary's mother was ill and she was not always able to do the overtime. Mr Clapham stated that the Respondent should have shown the Law Society Inspectors the deeds which had been recorded. He was however a victim of his own success and was overworked. Mr Clapham also pointed out to the Tribunal that the Respondent was not functioning at his best at that time and referred the Tribunal to the psychiatric report lodged. Mr Clapham explained that the Respondent had a very busy practice and was feeling below par and when he was confronted by the Law Society correspondence he did not deal with it as he should have. In connection with Mr B the Respondent accepted that he had provided an inadequate professional service and Mr Clapham confirmed that the Respondent had paid Mr B £1,000 compensation. Mr Clapham advised the Tribunal that the Respondent currently employed seven staff, one was a qualified assistant doing court work and one was a part-time qualified assistant who was dealing with the issue of recording of deeds. Mr Clapham emphasised that the Respondent had been a principal in his own firm for 14 years and had built up a successful business. He had never previously been found guilty of professional misconduct. Mr Clapham also pointed out to the Tribunal that a number of aspects in the Complaint had been deleted and the Respondent had fully co-operated with the fiscal in dealing with the Complaint. Mr Clapham asked the Tribunal to deal with the matter in such a way as would allow the Respondent to continue to operate his firm.

## **DECISION**

The Tribunal was extremely concerned by the number of instances of late recording of deeds, particularly the 26 cases which had been outstanding for more than one year. The Respondent had continued to fail to record deeds timeously despite matters having been brought to his attention by the Law Society. A solicitor acting for a

purchaser in a conveyancing transaction has a duty to record or register within a reasonable time after payment of the purchase price, a valid disposition in favour of his client and has a duty to the lender to record a standard security within a reasonable time of him cashing the loan cheque. Failure to do so leaves the purchaser uninfected and the lender unsecured and open to risk. The whole purpose of solicitors being involved in conveyancing transactions is to ensure that the interests of their clients are protected. The Respondent failed in his duty to do this. The Tribunal was also concerned with regard to the Respondent's failure to reply to the Law Society and failure to keep his client, Mr B, informed in connection with a transaction. His failure to respond to the Law Society only made matters worse. In connection with Mr B, the Tribunal noted that an inadequate professional service finding had been made and that the Respondent had paid Mr B £1,000 in compensation. The Tribunal considered that a lot of the Respondent's difficulties were due to the fact that he was seriously understaffed. The Tribunal was concerned to note that even with a volume of business of 40 settlements a month, the Respondent was currently operating with only one part-time assistant helping him with the conveyancing. The Tribunal advised the Respondent that this was unsatisfactory and suggested that he engage extra staff to cope with the business. The Tribunal was concerned with regard to both the reputation of the profession and protection of the public and seriously considered restricting the Respondent's practising certificate. The Tribunal however took into account the fact that the Respondent was a sole practitioner and that to restrict his practising certificate would put him out of business. The Tribunal also took account of the psychiatric report and the fact that the Respondent had co-operated with the fiscal in dealing with the Complaint. The Tribunal accordingly imposed a Censure plus a fine of £7,500. The Tribunal warned the Respondent that if he came back before the Tribunal in connection with similar matters there may be no alternative but to put a restriction on his practising certificate in order to protect the public.

**Chairman**