

**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

**JOHN TAYLOR, Solicitor, 15a
Moray Place, Edinburgh**

1. A Complaint dated 13th July 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, John Taylor, Solicitor, 15a Moray Place, 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. No answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 23rd November 2005 and notice thereof was duly served on the Respondent.

4. The hearing took place on 23rd November 2005. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. The Respondent was present and represented himself.

5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint as amended. No evidence was led.

6. The Tribunal found the following facts established
 - 6.1 The Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born on 26th July 1953. He was admitted as a Solicitor on 19th October 1978 and enrolled on 6th November 1978.

 - 6.2 He was a Partner in Taylor, Bruce & Company from 1st August 1983 to 31st October 1989, he became an employee of Beaumont & Company on 1st November 1989 until 13th July 1990 then an employee of Cochran Sayers & Cook from 16th July 1990 to 30th October 1992, he became an associate with Shield & Kyd, Solicitors on 2nd November 1992 and ceased to be an associate on 19th August 1994, he became an associate in Johnston & Co on 22nd August 1994 and ceased to be an associate on 18th December 1994 becoming a Partner the following day and remaining so until 1st May 1995. After that, he became a Principal in the firm of Taylors at 15a Moray Place, Edinburgh.

6.3 Law Society of Scotland – Ms A

The client Ms A, Property 1, submitted a Help Form to the Complainers on 20th October 2003 in connection with the service and conduct of the Respondent who acted as her Solicitor. The Complainers wrote to the Respondent on 27th October 2003 with a view to arranging conciliation providing him with a copy of the Help Form. The Respondent contacted the client direct. She advised the Complainers that she had not received the full details she requested from him and he was written to again by the Complainers on 21st November 2003 extending the period for conciliation and asking him to further contact his client.

6.4 The Respondent advised by letter dated 3rd December that an appointment had been arranged for Ms A. This took place and Ms A then advised that she still required a further accounting from the Respondent. The Complainers wrote on 16th December asking the Respondent to advise what the current position was and again on 8th January 2004, in view of the lack of response, requiring a reply within 14 days confirming what steps had been taken to answer the client's specific concerns. No reply was received. He was written to again on 30th January and given a further 7 days to respond, failing which, he was advised that there would be no alternative but to issue notices in terms of the 1980 Act.

6.5 The Respondent did not reply and a formal notice in terms of Section 15(2)(ii) of the 1980 Act was issued to him on 12th February 2004. He did not reply and a

further notice in terms of said Section was issued to him on 4th March 2004. In view of his lack of response, he was advised on 12th March that the matter was now proceeding to a written investigation.

6.6 The Complainers wrote to the Respondent on 23rd March 2004 in formal terms requiring his written response to the identified issues, any background information, his business file and details of the fees charged or to be charged and whether or not they had been paid within 21 days of 23rd March 2004. The Respondent then arranged a meeting with the Case Manager which took place on 31st March 2004. He undertook to reply to the 4 Heads of Complaint within the next 14 days. He did not do so. A follow up letter was sent to him on 28th April 2004 seeking his responses within 7 days. He did not reply and a report was then commissioned on 11th May 2004.

6.7 The report and opinion was submitted to him for comment on 21st June 2004. He did not respond. He was written to on 13th July 2004 and invited to confirm within 7 days if he was willing to accept the recommendation. He did not reply. He was written to again on 27th August 2004 and advised that the Complaint would be considered by the Client Relations Committee on 7th October 2004 and he was asked to provide information regarding a discrepancy in the figures produced to the client within 7 days. Thereafter, he sought an extension of time by E-Mail dated 3rd September 2004 and responded on 4th October 2004.

6.8 Inspection – 2003

The Complainers conducted a routine inspection of the Respondent's firm on 14th, 15th, 28th and 29th May 2003. At that time, it was noted that there were many problems with non-recording of deeds and poor record keeping. Inspectors noted a breach of Rule 4 in respect of a deficit on the client account, breaches of Rules 8, 9 and 11 and also instances where the source of funds received from clients had not been verified or there was no identification in compliance with the Money Laundering Regulations. No averments of professional misconduct were made in respect of this inspection which was raised as background information. After this Inspection and each of those hereinafter condescended upon he was advised of the findings in person and in writing.

6.9 On 17th and 18th November 2003, the Complainers returned for a re-inspection of the practice. There were many instances where conveyancing transactions had settled but deeds had not been recorded with no recording dues paid and on occasions no Stamp Duty paid when due. In particular, they noted that for the clients, Mr & Mrs B, who purchased Property 2 on 1st October 2003 with an Alliance & Leicester loan of £101,970, the Disposition and Standard Security had not been recorded; for the clients C & D who purchased Property 3 on 27th October 2003 with a Birmingham Midshires loan, no Stamp Duty had been paid and the Disposition and Standard Security had not been recorded; for the client Ms E who purchased Property 4 on 18th August 2003 with a Halifax loan of £178,655, Stamp Duty had not been paid and the Disposition and Standard Security had not been

recorded; for the client Mr F who sold Property 5 on 25th July 2003, the Discharge of the Northern Rock loan had not been recorded; for the clients Mr and Mrs G who sold Property 6 on 11th August 2003, the Discharge of the Halifax loan had not been recorded; for the clients Mr and Mrs H who obtained a re-mortgage over their property at Property 7 on 15th August 2003, the original loan from the Alliance & Leicester had not had the Discharge recorded.

6.10 It was further noted that all sale ledgers had been debited with various charges which were not included in fees. For example, £100 was taken to Taylors, Solicitors, re pre-sale visit and preparation of sales particulars as at 31st October 2003 for the client Miss I. Entries of this nature appeared to show outlays charged to the client whereas in fact, they represented fees due to be charged by the firm where no invoices had been raised.

6.11 Several examples of late postings were noted such as in the executry of Mrs J where a BACS receipt on 29th September 2003 was not posted to the records until 30th October 2003. In addition, a transfer from the client bank account to the firm bank account on 20th October 2003 was not posted for 2 days. The client bank reconciliation included adjustments for cheques written but not posted. Several client balances over £500 were held as uninvested. Eight cases in particular were noted.

In relation to Gray Solicitors, a client ledger had been opened in the name of that Firm and separate matters

used for the transactions of 2 clients. In relation to Mr K, the firm acted for Mr and Mrs L, his parents, as lenders to their son but there was no separate ledger for Mr and Mrs L. The outstanding balance of bridging loans obtained in the firm's name of clients were not being recorded in the records of the firm. Eight cases in particular were noted.

6.12 Inspection – March 2004

In view of their ongoing concerns regarding the firm, the Complainers returned for a re-inspection on 29th and 30th March 2004. They again noted that there were serious problems in relation to delay and failure to record deeds. In particular deeds had not been recorded for Mrs M who purchased Property 8 on 29th January 2003 with a £98,500 loan from the Northern Rock; for Mr N in his re-mortgage of Property 9 on 10th October 2002 with a loan of £105,975 from Birmingham Midshire replacing a loan of £78,927.05 from Alliance & Leicester which was redeemed on 11th October 2002; for Mr O, in the purchase of Property 10 on 26th February 2004 for £159,600 with a £159,600 loan from the Halifax; for Mr and Mrs P in the purchase of Property 11 on 20th February 2004 with a £93,000 from Northern Rock; and, for the client Ms E in the purchase of Property 4 on 18th August 2003 with a £178,655 from the Halifax.

6.13 In respect of the sale of Property 12 on 12th September 2003 for Mr Q the Cheltenham & Gloucester loan had been redeemed on 25th September 2003 but the Discharge not recorded until 18th March 2004. Further delays were found in

relation to Mr and Mrs R who remortgaged Property 13 on 8th January 2004 and the original Discharge was not recorded until 26th March 2004; Mr and Mrs S in the purchase of Property 14 on 5th December 2003 with a £87,982 loan from the Bank of Scotland where the Disposition and Standard Security were only recorded on 3rd March 2004; Mrs T in the purchase of Property 15 on 14th January 2004; Mr and Mrs U in the purchase of Property 16 on 19th December 2003 with a loan from the Halifax where the Disposition and Standard Security appeared not to have been recorded; for Mrs V in the sale of Property 17 on 30th January 2004 where the Bank of Scotland loan was redeemed on 2nd February 2004 but no Discharge recorded; and, for Mr W on 30th January 2004 in the sale of Property 18 where the loan from the Skipton Building Society was redeemed on 2nd February 2004 and no Discharge recorded.

6.14 Several breaches were seen in relation to the combining of client transactions under one ledger. For example in Mr X's executry the original transaction related to a transfer of title to Mrs Y. A subsequent transaction involved a Ms Z obtaining a £28,000 mortgage from the Halifax Building Society on 27th February 2004. No separate ledgers were opened for these new transactions. There were several instances where the client ledger heading did not show the correct name of the clients, the ledger which appeared to relate to Miss AA was in fact a joint transaction in the name of Miss AA and Mr BB. The ledger for Mr CC was in fact a joint matter for Mr & Mrs DD.

6.15 Issues regarding delay in recording deeds from the previous inspection had still not been addressed for the clients Mr & Mrs B, C & D, Mr F, Mr and Mrs G and Mr and Mrs H.

6.16 Inspection – December 2004

Due to increasing concerns regarding the long delays in the recording of deeds and other breaches of the Accounts Rules, the Complainers returned for a re-inspection on 21st and 22nd December 2004. At that time, it was noted that there were 26 instances where transactions had settled but the deeds had not been recorded. In addition, there were 7 instances where there had been long delays in the recording of the deeds. These failures and delays mainly dated back to 2003 and 2004 but two were from 2001 and one from 1999.

6.17 There were ledger balances in excess of £500 which had not been invested. Four cases in particular were noted.

Ledger narratives in client accounts were also found to be insufficient to explain the transaction. In the cases of Ms EE and Mr and Mrs FF, transactions where bridging funds were received, the ledgers did not clearly state that the funds were bridging funds. Several out of date cheques from the client banks of more than 6 months age were noted in the reconciliation but had not been cancelled and investigated. In the case of Ms A, a sum of £5,194.45 had been outstanding on the client bank reconciliation since 30th June 2004. The cheque had originally been issued on 14th March 2004 but later cancelled and re-

issued. In the case of Mr GG, a cheque in the sum of £6,288.70 was issued on 10th August 2004 but remained uncashed. In the Mr HH executry, the estate had been ingathered but no payments made to the beneficiaries. For Mr II, a refund of £77 was received from the Registers of Scotland on 11th September 2003 and remained held on the account.

6.18 Inspection – 10th and 11th May 2005

After the inspection, the Respondent was written to on 5th January 2005, a reminder sent on 4th and 18th February 2005 with details of the findings and matters to be attended to. He wrote on 2nd March 2005. Outstanding matters remained and reminders were sent to him on 12th and 28th April eliciting no further response. A special inspection was then approved for May 2005. When the inspector arrived the Respondent advised he had not received the Notice and the books were with his cashier and not available in the office. The inspector arranged to return the next day. Due to the time constraints, a full inspection was not undertaken. Breaches continued to be noted as hereinafter condescended upon but it was seen that there had been a significant improvement in the recording of deeds.

6.19 On 15th April 2005, funds had been transferred from the ledger for Ms JJ to the ledger of Ms KK amounting to £119,999. Funds to cover that were not posted to the credit of Ms JJ until 25th April 2005. The balance was paid out on the KK ledger on 15th April 2005 and this appeared to create a substantial shortage on the client bank account from 15th to 25th April 2005.

6.20 Three cases of delay in recording deeds were noted. For the client Ms LL, there was a security discharged by the Northern Rock Building Society and received by the Respondent on 3rd February 2005 however the discharge was only sent to the Keeper on 10th May 2005; for the client Ms MM who sold Property 19 on 20th January 2005, the Deeds were not sent to be recorded until 10th May 2005; and for Dr and Mrs NN who sold Property 20 on 1st March 2005, the Halifax discharge had not been sent to be recorded.

6.21 The accounting records of the practice were only written up to 30th April 2005 and there was no client account reconciliation or firm account reconciliation available for the month end of April. Balances noted on current accounts at the last 2 inspections were still shown on the firm's trial balance, thereby obscuring the true financial position of the firm. Invested funds were not being reconciled on a quarterly basis and some statements were received only 6 monthly. Client balances amounting to more than £500 were uninvested. Nine cases in particular were noted

6.22 In the Ms OO Executry a fee of £500 plus VAT was recovered by the firm on 10th August 2004 without rendering the fee note to the client.

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

7.1 His unreasonable delay between 16th December 2003 and 4th October 2004 in responding to the reasonable enquiries of the Complainers about the complaint of

Ms A and in complying with formal notices served upon him.

7.2 His failure to record timeously Dispositions, Standard Securities and Discharges in respect of numerous transactions.

7.3 His failure to comply with the Solicitors (Scotland) Accounts Etc Fund Rules 2001 in respect that:-

(a) he debited clients for fees without rendering fee notes

(b) he repeatedly failed to invest client funds in excess of £500 held for periods of up to 2 years in interest bearing accounts

(c) he failed to keep properly written up books and accounts to show all his dealings with client monies and to reconcile bank and investment accounts

(d) He failed to keep properly written up books and accounts to show the true financial position of his firm

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

Edinburgh 23rd November 2005. The Tribunal having considered the Complaint dated 13th July 2005 at the instance of the Council of the Law Society of Scotland against John Taylor, Solicitor, 15a Moray Place, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his unreasonable delay in responding to the reasonable enquiries of the Law Society for information, his failure to record timeously dispositions, standard securities and discharges and his breach of Rules 6, 8, 9, 10, and 11 of the Solicitors (Scotland) Accounts etc Fund Rules 2001; Censure the Respondent; Fine him in the sum of £5,000 to be forfeit to Her Majesty and Direct in terms of

Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of five years from 1st March 2006 any practising certificate held or issued to the Respondent shall be subject to such Restriction as will limit him to acting as a qualified assistant to and being supervised by such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland, and thereafter until such time as satisfies the Tribunal that he is fit to hold a full practising certificate; 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)

Kenneth R Robb

Vice 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

Vice Chairman

NOTE

Various amendments were made to the Complaint and a Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the amended Complaint. It was accordingly not necessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston stated that in connection with the Complaint by Ms A the Respondent had failed to answer the query for a period of one year which had hampered the Law Society in undertaking its statutory duty. Ms Johnston stated that most of the Complaint related to the Accounts Rules, and failure to record deeds, which were discovered at various inspections. Ms Johnston said that the Respondent's record keeping was of concern in 2003 and when the Law Society returned for a further inspection things had deteriorated. The Respondent had not kept proper records and it was difficult to ascertain the true financial position of his firm. By March 2004 the delays in recording of deeds had got a lot worse. This had been discussed with the Respondent who had acknowledged that he had problems. It was accepted that the problems with the recording of deeds had improved by the final inspection as had his record keeping but the client balances and books were still not up to date.

SUBMISSIONS FOR THE RESPONDENT

The Respondent conceded that his actions amounted to professional misconduct. He outlined the history of his career and stated that he had set up on his own in the early 80's prior to joining Beaumont & Co, and at that time had had no difficulties with any inspections. It was three years after he set up on his own again in 1995 that he started to have difficulties. He moved from a smaller office to Moray Place and was approached by other solicitors who then joined the firm for 12 months. This resulted in the firm having extra offices and things did not work out and the Respondent was left with two cars and borrowing to pay off. There was also a delay in producing cessation accounts which resulted in the finances becoming tight. The Respondent

indicated he was having to work extremely long hours. He explained that he employed a senior associate who did executry and conveyancing work while he did the court work. Things were fine until the 12 months before she went off on maternity leave when she stopped dealing properly with post-settlement issues. She did not return after her maternity leave. The Respondent indicated that at this time he also had problems with cashiers. In December 2002 the Respondent advised that he was approached by another solicitor to see if he would take over his business and employ him as a solicitor. This solicitor had been in difficulty with the Law Society but the Respondent indicated that the Law Society had assured him that the solicitor's difficulties were only caused by overwork. The solicitor was unfortunately unreliable and did not attend to conveyancing formalities properly. The Respondent started receiving a lot of complaints in connection with files that he knew nothing about. He tried to get a good cashier and was willing to pay them well but they still let him down. In 2004 he took on a conveyancing paralegal to deal with the outstanding conveyancing issues and this worked well. She however had to go to the Haddington office to wind up the office which meant leaving the conveyancing. She then left. The Respondent stated that the problems were with files that were dealt with by others rather than himself. The Respondent explained that he obtained finance from his mother to enable him to make a fresh start. He stated that he had looked at selling his business and getting a job doing court work. He had reached an agreement with McGloughlin & McKenzie Solicitors that he would be employed by them as a solicitor and they would take over his business. The Respondent explained that he was a good solicitor but not a good manager. He assured the Tribunal that he would not seek to be a partner or a sole practitioner in the future. The Respondent confirmed that McGloughlin & McKenzie were aware of his difficulties.

DECISION

The Tribunal was extremely concerned about the number of instances of late recording of deeds. A solicitor acting for a purchaser in a conveyancing transaction has a duty to prepare and record or register within a reasonable time after payment of the price a valid disposition in favour of the client. Until that is done the client is not infert in the property. Further a solicitor has a duty when acting for the lender over heritable property to record or register a standard security in favour of the lender

within a reasonable time after cashing loan cheques. Failure to do so results in the lender remaining unsecured. The Respondent's failure on numerous occasions to record deeds within a reasonable time exposed both his clients and the lenders to substantial risk. In addition to this the Respondent breached a number of the Accounts Rules and failed to reply to the reasonable enquiries made of him by the Law Society. The Respondent's history as narrated by him reflects repeated bad management and judgement. The Tribunal was of the view that in order to protect the public it was essential that the Respondent work under supervision. The Tribunal accordingly Ordered a Restriction on the Respondent's practising certificate for a period of five years and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate. At the end of the period of Restriction it will be for the Respondent to satisfy the Tribunal that he has gained the necessary experience and he will require to demonstrate good management and judgement to convince the Tribunal that he is fit to hold a full practising certificate. The Tribunal Ordered the Restriction to run from 1st March 2006 to allow the Respondent time to endeavour to have his prospective employer approved by the Law Society. In order to reflect the serious view that the Tribunal takes of the numerous non-recording of deeds the Tribunal also imposed a fine of £5,000. The Tribunal made the usual order with regard to expenses and publicity.

Vice Chairman