

**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

**SHAHID SATTAR PERVEZ, of
the former firm of Belton Pervez,
430 Victoria Road, Glasgow, now
residing at 8 Langhaul Place,
Crookston, Glasgow**

1. A Complaint dated 30 June 2008 (reference DC/08/50) was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Shahid Sattar Pervez, of the former firm of Belton Pervez, 430 Victoria Road, Glasgow, then of HM Prison Castle Huntly Open Estate, Longforgan, Dundee and now in terms of a home release curfew residing at 8 Langhaul Place, Crookston, 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 15 October 2008 and notice thereof was duly served on the Respondent.

4. The hearing took place on 15 October 2008. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. 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. In addition, a Joint Minute of Admissions was lodged agreeing the evidence. No additional evidence was led.
6. The Tribunal found the following facts established

6.1 The Respondent was born on 3 June 1968. He was admitted as a solicitor on 12 December 1997. He was enrolled as a solicitor in the Register of Solicitors of Scotland on 15 December 1997. After his admission he was employed by Thomas Caplan solicitors, Glasgow until 16 March 2001 and on 9 April 2001 became a partner in the firm of Belton Pervez, 430 Victoria Road, Glasgow. He ceased to be a partner in Belton Pervez on 31 October 2005. He was residing care of HM Prison Castle Huntly Open Estate, Longforgan, Dundee and now in terms of a home release curfew is residing at 8 Langhaul Place, Crookston, Glasgow. On 2 September 2006 the Respondent's name was removed from the Roll due to non payment of his practising certificate fees.

6.2 In all the transactions set out below the Respondent was instructed and acted on behalf of the Royal Bank of Scotland plc (hereinafter referred to as "the Bank").

Property 1 – Mr A

6.3 On 23 December 2003 the Bank issued loan instructions to the Respondent and his firm in respect of Business B to be secured by a second Security over Property 1 and by

Guarantee for £10,000 by Mr A. Said instructions stated *“Please provide us with a fully effective Security as soon as possible...We should point out, however, that the facilities will not be made available by the Bank until you confirm to this department that the Security documentation in favour of the Bank has been validly executed and that you are attending to the recording/registration formalities”*.

- 6.4 On 23 January 2004 the Respondent and/or his firm sent a fax to the Bank confirming that they held a duly executed Standard Security and the loan funds were released on said date.
- 6.5 On 16 July 2004 the Bank wrote to the Respondent and his firm asking for their Schedule of Particulars Form (which gave details of the dates of execution and registration of the Standard Security) and for any writs that were available.
- 6.6 On 6 September 2005 the Respondent and his firm sent the Schedule of Particulars Form and Charge Certificate to the Bank. Said Schedule of Particulars Form indicated that the Standard Security had not been registered until 9 August 2005.

Property 2 – Mr C

- 6.7 On 23 September 2003 the Bank issued loan instructions to the Respondent and his firm in respect of borrowing by Mr C to be secured by a First Security over two shop units at Property 2.
- 6.8 As the two shop units were being purchased separately from different sellers it was agreed between the

Respondent and the Bank that two separate Standard Securities would be granted.

- 6.9 On 7 October 2003 the Respondent and his firm sent a fax to the Bank confirming that they held one executed Standard Security. Accordingly part of the loan funds were then released.
- 6.10 On 1 December 2003 the Respondent and his firm advised that Bank that they held the second executed Standard Security and accordingly the balance of the funds were then released.
- 6.11 On 8 December 2003 the Respondent and his firm sent the Bank the Land and Charge Certificates and a Schedule of Particulars for one of the properties and on 10 December 2003 the Bank acknowledged receipt of same.
- 6.12 On 11 June 2004 the Bank wrote to the Respondent and his firm requesting the Titles and the Schedule of Particulars for the outstanding property. No response was received.
- 6.13 The Bank sent reminders to the Respondent and his firm on 11 January, 11 February, 11 May and 13 June all 2005.
- 6.14 On 27 July 2005 the Respondent and his firm wrote to the Bank advising that the Titles were still with the Land Register and provided a copy of a receipted Form 4 dated 4 February 2004.
- 6.15 On 9 August 2005 the Respondent and his firm wrote again to the Bank enclosing a letter from the Keeper of the Registers of Scotland confirming that the application has been dealt with but that they could not forecast when the Land Certificate would be issued.

Properties 3 to 6 – Mr and Mrs D and Business E

- 6.16 On 10 February 2005 the Bank issued four separate sets of loan instructions to the Respondent and his firm in respect of borrowing by Mr and Mrs D as partners in the Business E to be secured by a First Security over commercial properties 3 to 6.
- 6.17 On 18 February 2005 the Respondent and his firm confirmed that they held the Standard Securities for each of the properties narrated in the preceding paragraph and accordingly the Bank released said loan funds.
- 6.18 On 23 June 2005 the Bank wrote to the Respondent and his firm requesting the return of the Schedule of Particulars.
- 6.19 On 1 July 2005 the Respondent and his firm replied to the Bank indicating that they would let the Bank have this as soon as they had confirmation of the date of registration.
- 6.20 On 16 February 2006 the Respondent advised the Bank that he had experienced problems with the completion of the Stamp Duty Land Tax with reference to these properties and that the Respondent had passed the file to another firm of solicitors to finalise matters.

Property 7 – Mr F

- 6.21 On 6 February 2004 the Bank issued loan instructions to the Respondent and his firm in respect of borrowings by Mr F to be secured by First Security over his Leasehold interest in the commercial premises at Property 7.

- 6.22 On 8 June 2004 the Bank released the loan funds to the Respondent and his firm.
- 6.23 On 8 June 2005 the Bank wrote to the Respondent and his firm requesting return of the Schedule of Particulars.
- 6.24 On 27 July 2005 the Respondent and his firm sent the Schedule of Particulars to the Bank. Said form indicated that the Standard Security had been dated 19 May 2004 but was not registered until 24 June 2005.

Property 8 – Mr G

- 6.25 On 26 July 2004 the Bank issued loan instructions to the Respondent and his firm in respect of a borrowing by Mr G to be secured by First Security over Property 8.
- 6.26 On 6 August 2004 the Respondent and his firm confirmed to the Bank that they held an executed Standard Security and accordingly the Bank released the loan funds.
- 6.27 By letters dated 26 May and 17 August 2005 the Bank wrote to the firm requesting the return of the Schedule of Particulars.
- 6.28 By letter of 23 September 2005 the Respondent and his firm advised the Bank that there had been a delay in registration as the purchaser had not paid the Stamp Duty Land Tax which the Respondent and his firm had ultimately paid themselves. No indication was given in said letter as to when this occurred.
- 6.29 On 1 February 2006 the Respondent advised the present Complainers that his file had been sent to another firm of solicitors on the understanding that a remortgage would be carried out which would discharge the Bank's Standard

Security. The Bank, as at 15 October 2008 has received no notification that this is the case.

Property 9 to Property 10 – Mr H

- 6.30 On 19 June 2001 the Bank issued loan instructions to the Respondent and his firm in respect of a borrowing by Mr H to be secured by a First Security over his Leasehold interest in commercial properties 9 to 10.
- 6.31 On 10 July 2001 the Respondent's firm confirmed to the Bank that they held an executed Standard Security and the loan funds were accordingly released by the Bank to the Respondent and his firm.
- 6.32 By letters of 16 July and 29 December both 2004, 6 April and 10 September both 2005 the Bank wrote to the Respondent and his firm to request the return of the Schedule of Particulars, Title Deeds and relative security.
- 6.33 On 15 September 2005 the Respondent and his firm returned the Schedule of Particulars to the Bank together with a copy of the receipted Form 4 indicating that the relevant Standard Security was received by the Keeper of the Registers of Scotland on 17 October 2002.

Property 11 - 12 – Business I

- 6.34 On 2 November 2001 the Bank issued loan instructions to the Respondent and his firm in respect of borrowings by Business I to be secured by a First Security over Property 11 - 12.

- 6.35 On 27 November 2001 by fax the Respondent and his firm confirmed that they held an executed Standard Security and accordingly the loan funds were released on 28 November 2001.
- 6.36 On 26 November 2002 the Respondent and his firm sent the Land and Charge Certificates and Schedule of Particulars to the Bank.
- 6.37 On 5 July 2002 the Respondent and his firm wrote to the Bank advising that Business I was to lease out the property for a period of 21 years and that they were enclosing a copy of a draft of a proposed Lease and sought the Bank's consent.
- 6.38 By letter of 8 July 2002 the Bank indicated that a copy of the Lease was not enclosed and asked for a copy of same as soon as possible.
- 6.39 On 29 July 2004 the Bank sent a letter to the Respondent marked "Third Request". Said letter asked for an excerpt of the Minute of Meeting regarding the granting of an execution of their Charge and also asking for confirmation as to whether the proposed Lease had proceeded as they had not received a copy of the draft Lease.
- 6.40 By letters of 29 October 2004, 21 January, 21 May, 25 August and 28 August all 2005, the Bank sent further reminders. No response was received.
- 6.41 On 16 February 2006 the Respondent advised the Complainers that he was arranging to meet the Director of Business I to uplift the necessary Company Resolution. Neither the Bank nor the Complainers have received said Company Resolution.

Law Society of Scotland re Royal Bank of Scotland

6.42 The Complainers wrote to the Respondent's firm on 12 August 2005 in relation to the issues set out in Sections 6.3 to 6.41 above. A further letter of 16 September 2005 was sent to the Respondent's firm, to his then partner Mr Belton. By letter of 23 September 2005 the Respondent replied to the letter of 16 September 2005.

6.43 Further letters were sent by the Complainers to the Respondent or his firm on 31 October 2005; 1 December 2005; 23 January 2006; 15 February 2006 including notices under Section 15(2) and Section 42C of the Solicitors (Scotland) Act 1980. By letter of 22 February 2006 the Respondent's partner indicated that the relevant files were in storage and the Respondent would be forwarding copies in early course. Accordingly by letters of 5 and 13 April 2006 the Complainers again wrote to the Respondent seeking the files. By letter of 15 April 2006 the Respondent advised that the files as requested were being dispatched by Legal Post on 18 April 2006. No such files were received. Further letters of 8 and 22 May, 23 June, 31 July, 23 August all 2006 were sent by the Complainers to the Respondent without response. On 4 October 2006 a voicemail message was left by the Complainers for the Respondent in relation to delivery of files. A further letter of 6 October 2006 was sent to the Respondent by the Complainers. As at 30 June 2008 the Respondent had not complied with the Complainers' requests for delivery of the relevant files.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of the Respondent and his firm unreasonably delaying or failing to :

- 7.1 record Standard Securities in favour of their client, the Bank, the lender;
 - 7.2 provide their client, the Bank, the lender with any or all of the relevant Schedule of Particulars and;
 - 7.3 advise their client, the Bank, the lender, that Standard Securities had been registered;
 - 7.4 deliver relevant Standard Securities and/or Title Deeds to their client, the Bank, the lender;
 - 7.5 provide the relevant company documentation in particular Minutes or Resolutions to protect their client's interest and;
 - 7.6 advise their client, the Bank, the lender whether a proposed lease was to proceed or not;
 - 7.7 communicate effectively with their client, the Bank, the lender to update them on developments and to protect their interests;
- and, in addition the Tribunal found the Respondent guilty of Professional, Misconduct in relation to his unreasonable delay in responding to the reasonable enquiries of the Complainers..

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

Edinburgh 15 October 2008. The Tribunal having considered the Complaint dated 30 June 2008 (Reference DC/08/50) at the instance of the Council of the Law Society of Scotland against Shahid Sattar Pervez, of the former firm of Belton Pervez, 430 Victoria Road, Glasgow, then of HM Prison Castle Huntly Open Estate, Longforgan, Dundee and now in terms of a home release curfew residing at 8 Langhauil Place, Crookston, Glasgow; Find the Respondent guilty of Professional Misconduct singly and in cumulo in respect of the

Respondent and his firm unreasonably delaying or failing to record Standard Securities in favour of their client, a lender; to provide that client with any or all of the relevant Schedule of Particulars; to advise the said client that Standard Securities had been registered; to deliver relevant Standard Securities and/or title deeds to the said client; to provide the relevant company documentation in particular Minutes or Resolutions to protect their client's interest; to advise the said client whether a proposed lease was to proceed or not; to communicate effectively with the said client; to update the said client on developments and to protect their interests and in relation to the Respondent's unreasonable delay to respond to the reasonable enquiries of the Law Society; Censure the Respondent; 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 an agent 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 £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

David Coull
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

The Respondent was not present or represented at the hearing. He did not lodge Answers to the Complaint. A Joint Minute of Admissions agreeing the Complainer's Productions was lodged together with a Joint Minute agreeing the facts, averments of duty and the averments of professional misconduct contained in the Complaint. The Tribunal was satisfied from the terms of the Joint Minute that the Respondent was aware of the date of the hearing.

SUBMISSIONS FOR THE COMPLAINERS

Mrs Motion referred the Tribunal to the Affidavit from Mr Cauldwell which states that the Bank remains concerned about the delays in recording deeds in this case. That Affidavit confirms that as far as the complaint in relation to Property 8 is concerned the mortgage in relation to this property was repaid in March 2006. Mrs Motion advised that she only became aware of that information the day before the hearing.

Mrs Motion stated that this Complaint highlighted a pattern of failing to record deeds and communicate effectively with the firm's client, the Royal Bank of Scotland. Mrs Motion advised that the final part of the Complaint deals with a failure to respond to the Law Society correspondence and advised that Mr Mason's Affidavit sets out details of a complete failure to respond to correspondence from the Law Society regarding these complaints.

Mrs Motion advised the Tribunal that the Respondent had recently been found guilty of professional misconduct for similar failures.

DECISION

The Tribunal considered that it was clear that the Respondent's conduct amounted to professional misconduct. A solicitor acting for a lender has a duty to record or register a Standard Security in favour of the lender as soon as reasonably possible. In this case the Respondent did not do this and the lender remained unprotected. The Respondent did not make any attempt to explain the situation to the lenders and ignored their correspondence. In addition, the Respondent failed to communicate effectively with

the Bank to update them on developments and to protect their interests. The Tribunal was concerned about this lengthy and repeated sequence of failures. In addition, the Respondent failed to respond to the Law Society when it attempted to investigate these matters on behalf of the Bank. The Respondent was well aware that the Law Society has a duty to investigate any complaint regarding the conduct of a solicitor and that solicitors have a duty to respond to enquiries made by the Law Society in this regard. Failure to respond to the Law Society prevents the Society from properly investigating complaints and can bring the whole profession into disrepute. For these reasons, the Tribunal views the Respondent's failures as serious and reprehensible and considers that his failures amount to professional misconduct.

The Tribunal took into account that the Respondent has recently been found guilty of professional misconduct for similar failures. The Tribunal was advised that the Respondent had previously been sentenced to a period of imprisonment in excess of two years. The Tribunal also noted that the Respondent is no longer on the Roll of Solicitors, his name having been removed from the Roll due to non-payment of his practising certificate fees in September 2006. The Tribunal was deeply concerned that the wording of Section 53 of the said Act does not give the Tribunal sufficient powers to deal appropriately with cases such as this to allow the interests of the public to be adequately protected. The Tribunal was of the view that the Scottish Government should take urgent steps to give the Tribunal additional powers. The Tribunal was of the opinion that had the Respondent not had his name removed from the Roll of Solicitors administratively, it would have ordered that his name be removed from the Roll of Solicitors permanently. The Tribunal came to this conclusion after considering the Respondent's pattern of very serious failures which demonstrated a course of conduct over a considerable period which placed lenders and the Guarantee Fund at significant risk.

However, in view of the fact that the Respondent is no longer on the roll of solicitors, the Tribunal's powers in this case are restricted. The Tribunal imposed a Censure. The Tribunal made the usual order with regard to expenses and publicity.

Vice Chairman