

**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**

**STEVEN BROWN, Independent  
Qualified Conveyancer and  
Independent Executry  
Practitioner, Scottish  
Conveyancing Services, 297 Main  
Street, Wishaw, Larnarkshire**

1. A Complaint dated 29 January 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Steven Brown, Independent Qualified Conveyancer and Independent Executry Practitioner, Scottish Conveyancing Services, 297 Main Street, Wishaw, Lanarkshire (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 by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 3 June 2008 and notice thereof was duly served on the Respondent.

4. The hearing took place on 3 June 2008. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.
5. The Complaint was amended by the Fiscal and the Respondent then pled guilty to the Complaint as amended.
6. The Tribunal found the following facts established
  - 6.1 The Respondent was born on 23<sup>rd</sup> February 1963. The Respondent was formerly a solicitor and was on the roll between 28<sup>th</sup> April 1987 and 31<sup>st</sup> December 2002 when his name was removed from the Roll of Solicitors of his own request. He had no disciplinary record as a solicitor. The Respondent is an independent qualified conveyancer and independent executry practitioner and qualified as such on 1<sup>st</sup> January 2003. He carries on business as the Scottish Conveyancing Services, 297 Main Street, Wishaw, Lanarkshire. He is subject to the jurisdiction of the Scottish Solicitors Discipline Tribunal by virtue of the Solicitors (Scotland) Act 1980 Section 51(1A).

**Mr A and Miss B**

- 6.2 Mr A and Miss B instructed the Respondent to act in the purchase of Property 1. The purchase was of a new property and the offer was made on 10<sup>th</sup> September 2004. A bargain was concluded on 28<sup>th</sup> September 2004. The date of entry was dependent on NHBC certification. Loan funds were advanced by Northern Rock. Loan funds were drawn down on 29<sup>th</sup> March 2005. The transaction settled on or about 30<sup>th</sup> March 2005. The consideration paid was £124,555.00. Following upon settlement the Respondents submitted a cash statement

to the complainers indicating a balance due by them. A Stamp Duty Land Tax form was not submitted to Mr A and Miss B until 4<sup>th</sup> May 2005, more than a month after settlement. On 28<sup>th</sup> June 2005 a completion certificate was received by the Respondent from the sellers' agents; he acknowledged this on 31<sup>st</sup> July 2005.

- 6.3 Nothing thereafter happened until 16<sup>th</sup> February 2006 when the Stamp Duty Land Tax certificate was submitted. Thereafter on 7<sup>th</sup> March 2006 the Respondent wrote to the clients asking that a fresh standard security be signed as a discrepancy had been noticed in the original document which required to be corrected. On 15<sup>th</sup> March 2006 Northern Rock PLC wrote to the Respondent to advise that the titles had been requested by another firm of solicitors, and asking that they be forwarded to the new agents. The Respondent did not give any indication to Northern Rock PLC that there had been any difficulty or delay in the registration of title. The Respondent did at that stage write to the new solicitors, forwarding form Stamp Duty Land Tax 5 and indicating that the Northern Rock PLC standard security had not been registered. He enclosed the titles. The new agents returned the deeds and documents to the Respondent with a request that registration should be completed and requesting a receipted Form 4 in due course. On 30<sup>th</sup> March 2006 the Respondent received a letter from Registers of Scotland requesting payment of the correct fee and a new ID number. The documents were returned by the Respondent on 7<sup>th</sup> April 2006. The file contains a letter dated 21<sup>st</sup> January 2005 (which date is presumed to be incorrect) forwarding the receipted Form 4 to the new agents. The Form 4 was dated 7<sup>th</sup> April 2006. A further letter dated 18<sup>th</sup> April 2006 also purported to send the Form 4. On 28<sup>th</sup> September 2006 the Respondent forwarded the land certificate to the new agents. Throughout the period from 30<sup>th</sup>

March 2005 to 7<sup>th</sup> April 2006, the title in favour of the Mr A & Miss B was unrecorded and Northern Rock PLC had no valid security.

### Miss C

- 6.4 Miss C instructed the Respondent in connection with the purchase of Property 2. The purchase price was £120,000. Settlement took place either on 29<sup>th</sup> April 2005 which was the contractual date of entry, or on 3<sup>rd</sup> May 2005 which was the next business day after 29<sup>th</sup> April 2005. The purchase was financed with the assistance of loan funds from the Chelsea Building Society.
- 6.5 In March 2006 Miss C arranged for the property to be remortgaged. The new lenders were Abbey National who instructed PSM Solicitors. At that time the Respondent received a request from Chelsea Building society for the titles, these having been requested by PSM Solicitors. Having received a further two reminders from PSM Solicitors the Respondent told them in a letter that the titles had not been received from the selling agents when the transaction had settled.
- 6.6 On 6<sup>th</sup> April 2006 the Respondent wrote to the Solicitor s who had acted on behalf of the sellers to Miss C advising them that he did not ever appear to have received the settlement documents from them and asking for them by return. Within forty eight hours the sellers solicitors responded pointing out that the Respondent had acknowledged receipt of the settlement documents by letter dated 22<sup>nd</sup> May 2005. On 23<sup>rd</sup> March 2006 PSM Solicitors wrote to the Respondent advising that they had instructed a search against the property which disclosed that the disposition in favor of Miss C had never

been sent for registration. On 18<sup>th</sup> May 2006 the Respondent sent a fresh disposition in favour of Miss C to the sellers' solicitors requesting that they arrange for the execution and return of same. A fresh signed disposition was sent to the Respondent on 30<sup>th</sup> June and subsequently sent for registration. The keeper issued a Form 4 on 17<sup>th</sup> July 2006. A penalty notice was issued by the Inland Revenue dated 19<sup>th</sup> April 2006 in respect of the late submission of a Stamp Duty Land Tax return. The penalty imposed was £200, meaning that the return was submitted more than six months after the settlement of the transaction.

6.7 Between 3<sup>rd</sup> May 2005 and 17<sup>th</sup> July 2006 the title in favour of Miss C remained unrecorded. At no time did Chelsea Building Society have a valid security over the property.

6.8 In response to a request for information from the complainers, the Respondent wrote to them on 18<sup>th</sup> May 2006 and stated that the disposition in favour of Miss C had not been received by the keeper, the implication being that it had been forwarded by the Respondent to the keeper for registration.

7. Having considered the foregoing circumstances and having considered submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 his failure to timeously record deeds

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

Edinburgh 3 June 2008. The Tribunal having considered the Complaint dated 29 January 2008 at the instance of the Council of the Law Society of Scotland against Steven Brown, Independent Qualified

Conveyancer and Independent Executry Practitioner, Scottish Conveyancing Services, 297 Main Street, Wishaw, Lanarkshire; Find the Respondent guilty of Professional Misconduct in respect of his failure to timeously record deeds; 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 £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**

The Fiscal moved to amend the Complaint including the deletion of one of the averments of professional misconduct. The Respondent then pled guilty to the averments of fact, averments of duty and remaining averment of professional misconduct.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch advised the Tribunal that it was now dealing with two incidences of failure to record deeds timeously. In connection with the transaction involving Mr A and Miss B, the transaction settled on 30 March 2005. A stamp duty land tax form was not submitted to Mr A and Ms B until 4 May 2005 more than a month after settlement. Thereafter nothing happened until 16 February 2006 when the stamp duty land tax certificate was submitted. It was not until 7 April 2006 that the title was recorded. Throughout the period from 30 March 2005 to 7 April 2006, the title in favour of Mr A and Ms B was unrecorded and Northern Rock Plc had no valid security. In connection with Miss C, this transaction settled on 1 May 2005. In March 2006 the client wished to remortgage and there was a request for the title deeds. Two reminders were sent and then the Respondent wrote a letter on 6 April 2006 to the Sellers saying he had not received the title deeds. He had however acknowledged these title deeds in May 2005. The disposition was not sent for registration until the 17 July 2006 and accordingly between 1 May 2005 and 17 July 2006 the client's title was not recorded and there was no valid security. Mr Lynch submitted that there were a number of opportunities during the time period for the position to be rectified and the fact that it was not indicated a systematic failure. The Respondent did not have proper systems in place. Mr Lynch acknowledged that the Respondent had fully cooperated with him in dealing with the Complaint.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath pointed out that there were only two independent qualified conveyancing firms in Scotland and they were now subject to the inspection regime of the Law Society. They dealt with matters in the same way as solicitors and Building



Societies and other institutions insisted on the same certificates of title on the same terms from conveyancing and executry practitioners as from solicitors. Mr Macreath explained that in both cases complaints were lodged by the clients with the Law Society. There were service issues in both cases and compensation and abatement of fees had been awarded in respect of both matters. Mr Macreath explained that the Respondent had been in private practice as a solicitor but had resigned and set up as an independent qualified conveyancer. At the time of the transactions business had increased and the firm was settling ninety cases a month. Although the volume had increased, the Respondent's firm had not got systems in place to deal with this. The case management system did not have an adequate diary arrangement to deal with the introduction of stamp duty land tax. Mr Macreath explained that the Respondent now had a paralegal that dealt with stamp duty land tax online and there were necessary checks in place. In connection with the Miss C transaction, the title deeds went missing and there had been no tracking system. Mr Macreath stated that it was accepted that the failure to record the deeds timeously placed the clients at risk and resulted in the lenders being unsecured. It was accordingly accepted that the Respondent's conduct amounted to professional misconduct. Mr Macreath pointed out that the Respondent's firm was being inspected by the Law Society who had found that the necessary systems were now in place.

In response to questions from the Tribunal, Mr Macreath explained that in respect of the Mr A and Miss B transaction the file was blank between the completion certificate being received in June 2005 and the stamp duty land tax certificate being submitted in February 2006. It was when Golds solicitors were instructed to deal with the remortgage for the clients that it was discovered that there was no registered title and this triggered the stamp duty land tax certificate being submitted in February 2006. Mr Macreath explained that he was of the view that the Respondent's conduct amounted to professional misconduct because the trigger in both cases leading to matters being sorted out came from the clients themselves. There were no systems in place to protect the public. Mr Macreath confirmed that in connection with the Miss C transaction, there was a failure to analyse the cash balances and accordingly no system was in place to show whether or not the deeds had been sent to the keeper.

**DECISION**

The Tribunal had a discussion with regard to whether or not the Respondent's conduct was serious and reprehensible enough to amount to professional misconduct. It involved two delays in recording deeds. It was conceded before the Tribunal that the standards applying to independent qualified conveyancers were the same as the standards expected of lawyers in respect of the duty to timeously record deeds. The Tribunal noted that the Respondent was dealing with a large volume of conveyancing cases each year and there were only two incidences of failure to record deeds. It was however clear from the submissions made by the Respondent's representative that the Respondent did not have systems in place in order to protect the public interest. It appeared that the Respondent had no systems in place to analyse cash balances or to check that deeds had been recorded. Both these cases occurred during the same time period and the Tribunal considered it significant that in respect of both matters the failure only came to light due to complaints from the clients. The consequences of the Respondent's actions caused extreme inconvenience to the clients and resulted in the Respondent's clients and the lenders being put at risk. In the circumstances the Tribunal considered that the Respondent's conduct did amount to professional misconduct.

The Tribunal noted that the Respondent had already paid compensation and had his fees abated in respect of inadequate professional service findings relating to the failures. The Tribunal also noted that the Respondent had now put systems in place to ensure that this did not happen again. The Tribunal further took account of the fact that the Respondent had cooperated with the Fiscal in dealing with the Complaint. The Tribunal accordingly considered that a Censure would be sufficient penalty. The Tribunal noted that some parts of the Complaint had been deleted but considered that as the Respondent had been found guilty of professional misconduct he should be found liable in the expenses of the Law Society and the Complainers. The Tribunal made the usual order with regard to publicity.

**Chairman**