

**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

**NORMAN DOUGLAS PATON
CATHCART, "Orotava",
Knockbuckle Road, Kilmacolm,
Inverclyde.**

1. A Complaint dated 13 October 2006 was lodged with the Scottish Solicitors Discipline Tribunal by the Council of Law Society of Scotland (hereinafter referred to as 'the Complainers') requesting that Norman Douglas Paton Cathcart, "Orotava", Knockbuckle Road, Kilmacolm, Inverclyde (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 might think right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged by the Respondent.
3. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 25 January 2007 and notice thereof was duly served on the Respondent.

4. The Complaint was heard on 25 January 2007. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented himself.
5. Two Joint Minutes were lodged, one of which admitted the facts, averments of duty and the averments of professional misconduct in the Complaint.
6. In respect of these admissions no evidence was led and the Tribunal found the following facts established.

6.1 The Respondent was admitted as a Solicitor on 5 January 1976 and as a Notary Public on 14 September 1977. On qualifying he worked for various firms taking up partnership at Campbell Cathcart, 3 Lynedoch Place, Glasgow, on 6 April 1994.

6.2 TSB SCOTLAND plc

By letter dated 28 May 2002 Lloyds TSB Scotland plc (“the Bank”) requested the firm of Messrs Campbell Cathcart to act in their interest as lenders to Company 1, a client of Messrs Campbell Cathcart (“the Firm”) for an amount of £234,000 to facilitate Company 1’s purchase of Property 1. The letter expressly stated that the Bank’s Security was to rank entirely prior to any other fixed or floating Charge over the property. The letter further stipulated that the Bank’s Security was also to be registered in the Register of Charges “the Charge” and that a photocopy of the Standard Security should be sent to the Bank before the original was sent for recording. The instruction was subject to there being no conflict of interest or breach of Rule 10 of the Solicitors Accounts Rules by the Firm. The Firm replied under the Respondent’s reference on 30 May 2002, confirming that they did not foresee any such difficulties in relation to the conditions and accepted the instructions. By letter dated 30

May 2002 the Respondent accepted these instructions and the conditions contained therein.

- 6.3 The date of settlement of the transaction was 5 June 2002.
- 6.4 By letters of 15 July, 24 September and 18 November all 2002, the Bank requested sight of the Certificate of Registration of Charge. No response as received to the first two letters and the Bank received a holding response, from the Respondent dated 20 November 2002 to their letter of 18 November 2002 indicating that the Respondent was tracing the position regarding the Certificate of Registration of Charge.
- 6.5 The Bank made subsequent enquiries of the Respondent as to the whereabouts of the Land Certificate, Charge Certificate and Certificate of Registration of Charge, by letters dated 3 February, 24 March, 6 May, 24 June all 2003. No response was received to any of these letters. On 9 September 2003, a representative of the Bank spoke with the Respondent at which time the Respondent indicated he would revert once he had the file and hopefully that would be later that week. No response was received. By letters from the Bank dated 2 October, 31 October and 10 November all 2003, the Bank again sought an update. By letter of 12 November 2003, the Respondent indicated that a full response would be provided by 13 November 2003. No response was received.
- 6.6 By letter dated 21 November 2003, the Bank again wrote to the Respondent again asking for an update having received no explanation from the Respondent.
- 6.7 On 23 December 2003, the Bank received a substantive response when the Firm admitted, on the Respondent's

reference, that the Bank's Standard Security had not been duly registered as a Charge in the Register of Charges. The Respondent advised that there had been an omission to retain a photocopy when the deeds were forwarded to the Keeper of the Land Register. The Application for Registration was acknowledged on 18 June 2002 when the oversight was noted. The Respondent then wrote to the Keeper of the Registers on 25 June 2002 requesting a copy of the Standard Security to enable registration of the Charge. The Respondent did not receive a copy of the Standard Security until outwith the 21 day period for registration. The Respondent claimed that Edinburgh agents had been instructed by them to present a Petition to allow the late registration and expressed their intention to provide an updated Report to the Bank as soon as possible and probably in the week commencing 5 January 2004. No such Report was provided by the Respondent.

- 6.8 By letter dated 19 January 2004 the Bank again requested an update. The Respondent issued a holding response by letter dated 23 January 2004 indicating he had instructed Edinburgh Agents but had not received a report.
- 6.9 Further requests were made by the Bank dated 25 February and 7 April 2004. No response was received.
- 6.10 By letter dated 15 June 2004 the Respondent admitted to the Bank that the Petition had yet to be lodged in Court and undertook to keep the Bank informed as to the likely timescale. The Respondent advised that Counsel would be completing the Petition for lodging shortly in court.
- 6.11 By letters dated 29 July and 23 September 2004, the Bank again sought an update. No response was received. The

Bank telephoned the Respondent on 3 December 2004 and was advised by the Respondent that the completed Petition to be lodged in the Court of Session had just been received by him. The Respondent indicated that he would send on the Land and Charge Certificates to the Bank. No such documents were received by the Bank at that time. By letters dated 29 December 2004 and 11 February 2005, the Bank sought a further update. No response was received to these letters.

- 6.12 In March 2005, the Bank lodged a formal complaint with the Complainer in light of no substantive response from the Respondent.
- 6.13 As at June 2006, the Bank were advised that the Petition referred to above had not been lodged.
- 6.14 As at the date of this Complaint, the Respondent has not registered the Standard Security on the Register of the Charges.
- 6.15 In response to the Complaint intimated by the Bank, the Respondent initially wrote to the Society on 22 June 2005 indicating that Edinburgh agents had been instructed in December 2003 to prepare a Petition to the Court of Session to allow the late registration of the Charge but a subsequent flooding in the Respondent's office had contributed significant delay with the result the Petition had still not been presented. It was claimed that the Respondent held the Register of Land and Charge Certificates which would be forwarded to the Bank. They requested that he retain the file meantime to expedite the presentation of the Petition.

6.16 Subsequent to that letter of 22 June 2005, the Complainers requested sight of the Solicitors' files on 9 August 2005, 22 August 2005, 5 September 2005 (Notice under Section 42C of the Solicitors (Scotland) Act 1980), 11 October 2005, 2 November 2005 and 17 November 2005. The only contact during this period was a voicemail message left on 13 September 2005 indicating that the Respondent was going on holiday and would make contact with the Complainers whilst he was away. No contact was received. As at the date of this Complaint, the client file has not been produced by the Respondent

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his failure to register a Standard Security timeously in the Register of Charges and thereafter to take appropriate remedial steps within a reasonable time to rectify that failure so as to protect the Bank's interest and his failure to respond to correspondence from clients and his failure to respond to correspondence and statutory notices from the Law Society.
8. Having heard the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 25 January 2007. The Tribunal having considered the Complaint dated 13 October 2006 at the instance of the Council of the Law Society against Norman Douglas Paton Cathcart, Solicitor residing at "Orotava", Knockbuckle Road, Kilmacollm, Inverclyde; Find the Respondent guilty of Professional Misconduct in respect of his failure to ensure that a Standard Security was registered in Register of Charges timeously and thereafter to take appropriate remedial steps within a reasonable time to rectify that failure so as to protect the lender's interest, his failure to respond to correspondence from clients and his failure to respond to correspondence and statutory notices from the Law Society; Censure the Respondent and Fine him in the sum of £3,000 to

be forfeit to Her Majesty; and Find him 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 at 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)

K 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

The Fiscal lodged two Joint Minutes, one of which admitted the facts, averments of duty and the averment of professional misconduct as detailed in the Complaint. Mrs Motion moved to lodge additional documentation; this was not objected to by the Respondent. The Tribunal accordingly agreed that the additional documentation could be lodged. The other Joint Minute agreed that the Complainer's Productions numbered 1 to 43 comprise a complete set of the correspondence in relation to this matter. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

Mrs Motion stated that this case involved a straightforward factual scenario. The Respondent accepted instructions to draft a security and register it within the statutory timescales for registration of charges. She stated that the documentation lodged on behalf of the Complainers shows the efforts made by the Bank to get the Respondent to progress this matter. Mrs Motion referred to the documents which have been lodged and stated that she wished to draw the Tribunal's attention to three points. Firstly at paragraph 2.6 of the Complaint the Respondent wrote to the Bank and said that he had instructed Edinburgh agents to effect late registration of the charge. Mrs Motion referred to document 37 of the Complainer's Inventory of Productions which is the letter of instructions to Drummond Miller dated 23 December 2003. She pointed out that this letter was dated the same day as the letter to the Bank although the Respondent gave the Bank the impression that this work had already been instructed. Mrs Motion pointed out that although the Respondent had advised the Bank that the matter was in hand he had in fact not sent papers to Drummond Miller to enable them to progress the Petition to the Court of Session.

Secondly, Mrs Motion referred to paragraph 2.9 of the Complaint which referred to the letter of 15 June 2004 which is document 39 of the said Inventory. Mrs Motion advised that this letter should be cross referenced with the correspondence referred to in documents 22 and 23. She advised that the rectification of title was not progressed.

Thirdly, Mrs Motion referred to paragraph 2.10 of the Complaint and referred to the additional documents she had lodged numbered 40 to 43 in the said Inventory. She advised that at the time of writing to the Bank the Respondent indicated that a completed Petition would be lodged as soon as it was received. However, document 43 contained a note from Counsel advising that additional information was required.

Mrs Motion advised that the current situation is that the charge remains unregistered. The Petition still has not been lodged and the Respondent has advised only that it has still not happened. A floating charge has been registered by the Clydesdale Bank in relation to other properties owned by Company 1, not the same properties as involved in this case. It is not known whether the Clydesdale Bank will consent or oppose any Petition. The floating charge was registered on 15 July 2005.

SUBMISSIONS FOR THE RESPONDENT

The Respondent stated that he very much regretted his failings which had rendered these proceedings necessary. He confirmed that he did admit the facts. He asked the Tribunal to have regard to the statement which he had been lodged as a production. He advised that he had passed a copy of the statement to Mrs Motion last week at a meeting.

The Respondent stated that the Complaint is in relation to his delay in failing to deal with correspondence received. He advised that the Petition requires further information before being lodged and his difficulty is that the information relevant is contained in the information passed to the Tribunal. The Respondent stated that he had real difficulty in putting these facts into court documents. He advised that it should have happened but didn't and he apologised for that fact to the Bank.

The Respondent advised that the supplementary matter in the Complaint was the failure to respond to Law Society correspondence. He advised that there was a separate complaint made to the Law Society against him in relation to Company 1. That second matter took a considerable amount of time and correspondence to resolve. He stated that the correspondence in relation to both matters became

confused in his mind. He advised that he was completely exonerated on the second complaint.

He stated that it was also relevant that the Fiscal had mentioned the floating charge in favour of the Clydesdale Bank. He advised that as far as he is aware there has been no financial loss to date by the TSB. He advised that Company 1 is a private limited company and that all securities have been registered as required in other transactions where he has acted for them. He advised that the company buy properties and lease them and that they don't trade. He stressed that there was no loss to the Bank but conceded that that didn't excuse his failures to register the charge.

The Respondent stated that he understood that he was likely to be called upon to give an undertaking regarding the Petition and advised that he would lodge it immediately.

The Respondent stated that he received an email yesterday that one of two directors of Company 1 was unwell. The email stated that the director and his wife wanted to meet with the Respondent to discuss inheritance tax issues which would involve the sale of assets. The Respondent explained that he would like to establish quickly if the property concerned in this Complaint is to be sold and the bank security is to be repaid.

The Respondent advised that he wished to address the Tribunal in relation to another factor. He stated that he was aware at the time that Company 1 transferred properties to a separate company called Company 2. He advised that this particular property was not transferred and had remained in the name of Company 1 probably because of this Complaint.

The Respondent advised that he had previously been involved in a practice in Glasgow which had six partners when he joined them and which then increased to 17 partners and six branch offices. The Respondent stated that he didn't agree with this expansion and that the firm then downsized and sold off some offices. The Respondent explained that he then left the practice and went into partnership with a former colleague of the firm. He advised that he has been in practice with that

colleague for 14 years and that he deals with all the cashroom procedures giving him a very heavy workload.

He advised that he has no other income and his only significant asset is his house. He advised that his wife has not worked for five years due to a medical condition and the fact that she has been caring for her elderly parents. He emphasised that this was the first time that he had come to the attention of the Tribunal.

In response to a question from the Tribunal the Respondent advised that he had never considered that the original security could have been discharged and a fresh one granted. He stated that this was never suggested to him by Drummond Miller. He advised that he was instructed to do the Petition.

DECISION

The Tribunal was of the view that the Respondent had demonstrated a disregard for the welfare of his clients and their lender by his failure to record the Standard Security timeously in the Register of Charges. His continued failure to do so has resulted in the lender's interests not being sufficiently protected. The Tribunal noted that even when pressure was brought to bear by his clients he ignored that correspondence and failed to resolve the problem. The Tribunal also noted that this position continued even when the matter was reported to the Law Society and that the Respondent repeatedly ignored the Law Society's correspondence. The Tribunal have grave concerns that the matter remains unresolved. The Tribunal consider that the Respondent should immediately investigate possible ways of resolving this matter including passing the file onto other agents. The Tribunal would take an extremely dim view if any further complaint came before it in relation to the Respondent's continued failure to remedy the conveyancing issue. In relation to the failure to respond to the Law Society the Tribunal consider that such failures prevent the Society from properly investigating complaints and responding to the complainers. This puts the Law Society in an impossible situation and can bring the whole profession into disrepute. For these reasons the Tribunal views the Respondent's failures to respond as serious and reprehensible matters.

The Tribunal took into account that the Respondent had a previously unblemished record and had admitted professional misconduct. The Tribunal also had regard to the fact that these failures had begun at a time when the Respondent was suffering health, domestic and business difficulties. In view of this the Tribunal consider that a monetary penalty is appropriate in all the circumstances. The Tribunal fined the Respondent the sum of £3,000 and made the usual order for publicity and expenses.

Vice Chairman