

**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**

**BRIAN JAMES ABBOT, 9 Dorset  
Square, Glasgow**

1. A Complaint dated 17<sup>th</sup> June 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Brian James Abbot, 9 Dorset Square, 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. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 2 December 2004 and notice thereof was duly served on the Respondent.
4. When the case called on 2 December 2004 the Complainers were represented by their fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present but was represented by Mr Robertson, Solicitor, Glasgow. On joint motion the Tribunal agreed to the matter being sisted due to the Respondent's ill health.

5. At a procedural hearing on 23 November 2005 the Complainers were represented by their fiscal Mr Paul Reid, Solicitor, Glasgow. The Respondent was not present but was represented by Mr Robertson, Solicitor, Glasgow. It was agreed that the sist be recalled and a hearing was fixed for 14 March 2006.
6. When the Complaint called on 14<sup>th</sup> March 2006 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented by his solicitor, Mr Robertson, Glasgow.
7. The Fiscal moved to make various amendments to the Complaint. There was no objection and this was agreed. The Respondent admitted the facts, averments of duty and averments of professional misconduct in the amended Complaint.
8. The Tribunal found the following facts established
  - 8.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. The Respondent was born on 14th April 1951. He was admitted as a solicitor on 28th January 1976. He was enrolled as a solicitor in the Register of Solicitors on 16th February 1976. He was appointed to the office of Notary Public on 2nd February 1979. He worked as a solicitor for Prudential and then had his own firm for a period during the 1980's. The Respondent was employed by Messrs Goodman Steiner & Company from 1st September 1988 to 31st December 1988. Then he was employed by the firm Grants from 1st January 1989 until 14th September 1990. Then he was employed by the firm Paterson Robertson & Graham from 17th September 1990 until 21st December 1990. Thereafter he was not employed by any firm until securing employment with Unwin Rasmusen from 3rd June 1998 until 30th December 1999. Since 30th December 1999 the Respondent has not been employed by a firm of solicitors.

## 8.2 Mr A

In September 1999 the Respondent was employed as an assistant with the firm Unwin Rasmusen, Solicitors of 16 Grampian Court, Beveridge Square, Livingston, West Lothian. In the course of that employment he was involved in a conveyancing transaction relating to the affairs of a client of the firm Mr A of Property 1. The firm of Unwin Rasmusen were instructed to act in connection with the transfer of ownership of a flatted property at Property 2 from Mr A to Company E, a company which has its registered office at Property 3. In the course of the conveyancing it was necessary to have Mr A execute a Disposition disposing his interest in the flat to the said company and an Affidavit in terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981. The Respondent was responsible for the preparation and execution of these Deeds. A member of the firm's administrative staff drew to the attention of the senior partner of Unwin Rasmusen that the conveyancing documentation prepared by the Respondent, being more specifically a Disposition of the aforesaid flat, and the required Affidavit in terms of the said 1981 Act had been wrongfully completed by the Respondent in that the Respondent had forged the signature of Mr A on both the Disposition and the Matrimonial Homes Affidavit. The senior partner considered the documentation and formed the view that the signature purportedly that of "Mr A" on each of the conveyancing Deeds appeared similar, if not identical, to the signature of the Respondent.

8.3 The Disposition purportedly signed by Mr A was signed in the presence of the Respondent as a witness on 27th September or 4th October 1999. The Matrimonial Homes Affidavit purportedly signed by the said Mr A was signed in the presence of the Respondent, then acting in his capacity as Notary Public, at Glasgow on 27th September or 4th October 1999. Both Deeds

were signed wrongfully by the Respondent who wrongfully wrote out the signature of Mr A on both Deeds.

9. The Tribunal heard submissions from the Complainers and submissions and mitigation on behalf of the Respondent. Mr Reid, on behalf of the Complainers, indicated that although he did not dispute the explanation given by the Respondent in mitigation, he could not agree this. It accordingly became apparent that a proof in mitigation was required. The Respondent led the evidence of two witnesses. After having heard this evidence, the Tribunal accepted the Respondent's explanation on the balance of probabilities.
10. The Tribunal found the Respondent guilty of Professional Misconduct in respect of:
  - a) his acting in a dishonest fashion by wrongfully executing formal conveyancing documentation relating to a transaction involving his client;
  - b) his wrongfully executing the signature of his client on two separate significant conveyancing deeds and thereafter allowing the deeds to be presented to the Land Register of Scotland as authentic and;
  - c) his failure in his office of notary public to ensure that the matrimonial homes Affidavit was properly signed by his client and notarised by him prior to the despatch of the deed to the Land Register of Scotland.
11. Having taken into account the Respondent's explanation in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14<sup>th</sup> March 2006. The Tribunal having considered the Complaint dated 17<sup>th</sup> June 2004 at the instance of the Council of the Law Society of Scotland against Brian James Abbot, 9 Dorset Square, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his acting in a dishonest fashion by wrongfully executing formal conveyancing documentation by wrongfully executing the

signature of his client on two separate significant conveyancing deeds and allowing the deeds to be presented to the Land Register of Scotland as authentic and his failure in his office as a notary public to ensure that the matrimonial homes Affidavit was properly signed by his client and notarised by him prior to the despatch of the deed to the Land Register of Scotland; Suspend the Respondent from practice for a period of two years; 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)**

**Alistair Cockburn**

**Chairman**

12. 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**

On the morning of the Tribunal the Complaint was amended by the Fiscal. There was no objection by the Respondent and the amendments were agreed. The Respondent admitted the facts, averments of duty and averments of professional misconduct in the amended Complaint. The mitigation provided on behalf of the Respondent included an explanation as to what had happened. The Fiscal for the Law Society was unable to accept this explanation as truthful, although not in a position to lead contradictory evidence. Given that the truthfulness or otherwise of the explanation was significant so far as any penalty was concerned, the Tribunal considered it necessary to hold a proof in mitigation. The Respondent accordingly led the evidence of two witnesses.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid advised the Tribunal that the Respondent had not been employed in the legal profession since 30<sup>th</sup> December 1999. The Respondent had done the conveyancing in respect of the transfer of title from Mr A to Company E. The signature on the Disposition and the matrimonial homes Affidavit had been examined by two handwriting experts who were of the view that the handwriting was that of the Respondent. These documents were presented for registration and had to be recalled and separate dispositions and affidavits had to be produced. Mr Reid asked the Tribunal to find professional misconduct established.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Robertson, on behalf of the Respondent, explained that in 1999 when the Respondent started working for Unwin Rasmusen he took a number of his old personal clients with him including a Mr & Mrs B and a Mrs C and her partner Mr D. These four clients set up Company E. This was a company formed to buy and rent out properties. In autumn 1999 a property at Property 2 was for sale and the company wished to buy it. The company however was still in the process of being set up and did not have the finance available and accordingly the property was bought in the name of Mrs C's son, Mr A. The intent was that once the funding for the company

was sorted out, the company would buy the flat from Mr A. The Respondent accordingly prepared a Disposition and Affidavit to be signed by Mr A and several meetings were arranged for the purpose of enabling the property to be transferred. Mr A however failed on a number of occasions to attend the meetings. On one occasion he turned up but was so drunk he had to be sent home. There was eventually another meeting held on either the 27<sup>th</sup> September or 4<sup>th</sup> October 1999 at which Mr & Mrs B, Mrs C and her partner Mr D were all present. Mr A attended the meeting but had “the shakes” having previously been on a two-day drinking binge. Mr Robertson indicated that Mr A was *compos mentis* and knew why he was there and which documents he had to sign but had a problem with regard to his shaking hands and could not exhibit his signature to the documents. Mr A’s mother, Mrs C indicated that she would sign them on his behalf but the Respondent explained that this could not be done. The Respondent was sitting next to Mr A and moved behind him and gripped his right hand which was holding the pen and helped him sign the documents. Mr Robertson said that in the circumstances the Respondent was not committing any forgery but was just over-assisting Mr A in signing the deeds. It was accepted that this went beyond what was acceptable practice. Mr Robertson indicated that the correct way of dealing with the matter would have been for the Respondent to have done a notarial execution.

Mr Robertson pointed out to the Tribunal that no-one had benefited or lost out as a result of the Respondent’s actions. The effects of the incident on the Respondent had been drastic. Once matters came to light the Respondent resigned in December 1999 and has not worked at all since then. Mr Robertson outlined the Respondent’s health problems to the Tribunal. Mr Robertson submitted that the Respondent had been a hard worker and had been working long hours which had led to his health problems. Mr Robertson indicated that due to the Respondent’s serious health problems he had no intention of practising as a lawyer in the future. Mr Robertson advised that the Respondent had no financial means other than receiving Disability Living Allowance. Mr Robertson then led the evidence of two witnesses to support his explanation in mitigation.



## **EVIDENCE FOR THE RESPONDENT**

Mr Robertson firstly led the evidence of Mrs C who indicated that she was a director and shareholder of Company E. She confirmed that the company wished to purchase the property in Property 2 in 1999 but as the company was still being set up, they had no finances ready and accordingly the property was purchased in the name of her son, Mr A. Mrs C stated that she gave her son the money to buy the property. The understanding was that the property would then be transferred to the company. The Respondent was the company Solicitor. Mrs C indicated that she had known him since the 1970's. Mrs C stated that he had been her solicitor for a long time and she was very happy with the service that he provided. She confirmed that the Respondent prepared the documents to transfer the property from her son to the company. She confirmed that there were a number of meetings organised where her son did not turn up. She referred to the meeting where her son did attend which was held in the Canteen Restaurant in Glasgow. Mrs C confirmed that the Respondent, Mr & Mrs B, herself and her son were all present and also Mr D. She stated that her son had been on a "bender" for two days and was suffering from the shakes. He had difficulty holding a pen and kept dropping it. She indicated that the Respondent came round and told her son to hold the pen and the Respondent then held her son's hand and moved it along the paper. Mrs C indicated that she had offered to sign the documents on behalf of her son but the Respondent had told her that this could not be done. Mrs C indicated that she did not know how many documents had been signed. She said that she had difficulty remembering as it was some time ago and it did not seem important at the time. In cross examination Mrs C indicated that she did not know why the Disposition had a different date on it from the Affidavit. She stated that there was only one meeting where her son attended. She also indicated in response to a question from the Chairman that she did not remember any oath being given.

The Respondent then led the evidence of Mr B who confirmed that he had also been a director of Company E and that the company was just starting out when they saw the property in Property 2 and wished to purchase it. He explained that the company had not got finances in place to buy the property and that the director's funds were all tied up and accordingly the property was bought in the name of Mrs C's son, Mr A. Mr B said that he had known the Respondent for 30 years and he had been his solicitor for a

long period and he was very happy with the service he received. Mr B confirmed that there were a number of meetings organised but Mr A did not turn up as he was totally unreliable and was more or less an alcoholic. He had turned up once before but had been so drunk he did not even know who was present. A meeting did ultimately take place in the Canteen Restaurant where Mr A turned up and although he was not drunk he was suffering from the “shakes”. Mr B stated that he gave him a drink to try and help. Mr B confirmed that Mr A was mentally competent and knew why he was there and what he had to do. Mr B confirmed that everyone was sitting around a table and the Respondent was sitting beside Mr A. Mr B described how Mr A’s hand was all over the place and although he practised writing it was like baby writing. Eventually Mr A signed the documents with the help of the Respondent who held his hand and guided his hand over the page. Mr B indicated that he recognised documents productions 1 and 2 being the Disposition and Affidavit. He confirmed that both these documents were signed at the meeting. Mr B also confirmed that Mr A’s mother offered to sign the documents on his behalf but the Respondent said that this was not possible. Mr B confirmed that later when the property was sold, Mr A received some money for having helped out with the transaction. In cross examination Mr B stated that he thought the property was bought by Mr A using a mortgage. Mr B indicated that he was not sure who owned the flat now as he and his wife had resigned from the company five years ago.

## **DECISION**

Given the evidence of the two witnesses on behalf of the Respondent, the Tribunal was satisfied on the balance of probabilities that Mr A had intended to sign the documents and the Respondent had merely assisted with the signature. Although there were some inconsistencies in the witnesses’ evidence, the Tribunal noted that Mr B had not been connected with the company for the last five years and considered that there was no reason why he would not be telling the truth. The Tribunal accordingly accepted the Respondent’s explanation as put forward in mitigation.

Even accepting the explanation, it was clear that the Respondent had wrongfully executed the signature of his client on two separate significant conveyancing deeds and thereafter allowed the deeds to be presented to the Land Register of Scotland as

authentic. This is contrary to the principles of honesty, truthfulness and integrity expected of members of the solicitors' profession. For the public to have confidence in the profession it is essential that solicitors do not act in this manner. It is also crucial to the administration of justice that the public should have faith in deeds authenticated by a notary public. The Respondent wrongfully wrote the signature of Mr A on a formal affidavit, purporting that it was sworn on oath before him as a notary public. When a solicitor acts as a notary he has a duty to ensure that his conduct is beyond reproach. The Respondent's conduct fell far short of this in this case. The duty of a solicitor is to uphold the highest standards of the profession. The Respondent's conduct in wrongfully executing conveyancing deeds is prejudicial to the reputation of the profession and undermines the solicitors' role in safeguarding clients' interests in conveyancing transactions. The Respondent assisted Mr A with his signature and he should have known that he was acting inappropriately. The Tribunal however took into account the fact that there was no fraud involved and that nobody lost or gained by the Respondent's conduct. The Tribunal also took into account that the difficulties could have been circumvented by the Respondent complying with the technicalities of notarial execution. The Tribunal also took into account the Respondent's health difficulties. In the whole circumstances the Tribunal considered that a two year period of suspension would be sufficient penalty. The Tribunal noted that the Respondent may have difficulty paying the expenses but saw no reason to depart from the usual practice of awarding expenses where a finding of professional misconduct is made. The Tribunal also noted that publicity may cause the Respondent further stress but in terms of Schedule 4 to the Solicitors (Scotland) Act 1980 this is not something the Tribunal can take into account in considering whether or not to give publicity. The Tribunal accordingly made an order for publicity.

Chairman