

**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**

**against**

**WILLIAM MICHAEL LEWIS,  
Solicitor, 1 Hope Park Terrace,  
Edinburgh**

1. A Complaint dated 5 November 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Michael Lewis, Solicitor, 1 Hope Park Terrace, 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. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 18 January 2005 and notice thereof was duly served on the Respondent.

4. At the hearing on 18 January 2005, the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow on behalf of Valerie Johnston, Solicitor Dunfermline. The Respondent was present and represented by Mr D Clapham, Solicitor, Glasgow .
5. The Respondent moved for an adjournment of the case as he was not ready to proceed. This was agreed and the hearing was adjourned to 1<sup>st</sup> March 2005.
6. The hearing took place on 1 March 2005. The Complainers were represented by their Fiscal Valerie Johnston, Solicitor Dunfermline. The Respondent was present and represented by Mr D Clapham, Solicitor, Glasgow.
7. The Answers admitted most of the facts averred in the Complaint and accordingly no evidence was led.
8. After hearing submissions the Tribunal found the following facts established

8.1 The Respondent is a Solicitor enrolled in Register of Solicitors in Scotland. He was born on 7th November 1957. He was admitted as a Solicitor on 31st March 1982 and enrolled on 22nd April 1982. He was employed by Messrs Warner Solicitors, becoming a Partner on 1st September 1985 and remaining there until 30th June 1992. He then became a Partner in the firm of Gilmore Lewis, Solicitors, on 1st July 1992 and thereafter also in the firm of MacIntyre Lewis on 1st January 1999.

8.2 COMPLAINT BY MESSRS BELL & SCOTT, SOLICITORS FOR MS A

Ms A purchased Property 1 on 31st October 2002. The Respondent acted for the seller of the property. Messrs Bell & Scott, Solicitors, acted for Ms A. At settlement, the Respondent delivered a Deed of Servitude to Messrs Bell & Scott which was provided for in the concluded missives. This was presented to The Keeper with the application for first registration in the Land Register in November 2002. The Deed of Servitude had been prepared by Messrs Wright & Co., who were the previous agents of the seller. The conveyancing transaction was one which was going to trigger first registration for the purposes of the Land Registration (Scotland) Act, 1979. On 8<sup>th</sup> October 2002 Messrs Bell and Scott, for the purchaser, and the Respondent as agent for the seller were still in the process of concluding missives and correspondence was ongoing about the extent of the property to be conveyed. On the said date, 8<sup>th</sup> October 2002, the Deed of Servitude (which had been prepared by Wright & Co) was sent by Messrs Gilmore Lewis to Messrs Bell & Scott. This was not a draft. This was an executed Deed and it was sent to Messrs Bell & Scott in order that they, as agents for the purchaser, might have an opportunity to examine it. On 18<sup>th</sup> October 2002, Messrs Bell & Scott sent a formal letter Messrs Gilmore Lewis which had the effect of including in the missives a formal condition that the Deed of Servitude was to be recorded and delivered to them. On 18<sup>th</sup> October 2002, Messrs Gilmore Lewis accepted the qualifications set out in the formal letter from Messrs Bell & Scott and the bargain was thus concluded. Also on 18<sup>th</sup> October 2002 Messrs Bell & Scott observed that the Deed of Servitude, which had been prepared by Messrs Wright & Co., was in favour of Mr & Mrs B. The title of the property which Ms A was buying was in sole name of Mr B. Consequently, Messrs Bell & Scott requested of Messrs Gilmore Lewis that there be a fresh Deed of Servitude, i.e. that there be a

Deed of Servitude in the name of Mr B only so that the position regarding the Deed of Servitude would be consistent with the position regarding the title. Messrs Gilmore Lewis obtained an amended Deed of Servitude from Messrs Wright & Co. Apart from the fresh Deed of Servitude being in favour of Mr B alone, instead of in favour of Mr & Mrs B, the terms of the Deed of Servitude were identical. Messrs Bell & Scott did not request any other alteration or amendment in respect of the Deed of Servitude. At settlement of the conveyancing transaction Messrs Gilmore Lewis delivered the usual settlement items to Messrs Bell & Scott and also delivered the fresh executed Deed of Servitude. Messrs Gilmore Lewis had prepared the necessary covering forms to enable the Deed of Servitude to be recorded but the Keeper advised that recording was not appropriate and that the Deed should be registered and the necessary Land Registration forms were then sent by Gilmore Lewis to the Keeper. On 28th February 2003, The Keeper returned the Servitude to Messrs Bell & Scott requiring amendments to be made and seeking production of Land Certificate MID13293. The Keeper wanted there to be reference in the body of the Deed of Servitude to certain title numbers and the Keeper indicated that the plan which was annexed to the Deed of Servitude differed slightly from the title plan in the Land Certificate for the subjects over which the servitude was being granted. A deadline of 60 days was given by The Keeper for production of the documents required. In his letter, he indicated that if they were not produced, he would either cancel the application for registration or register with indemnity excluded. The requisition made by the Keeper was a requisition made of Bell & Scott. It was not a requisition made of the Respondent. It was not the Respondent's responsibility.

- 8.3 A copy of this letter of 28th February 2003 and the Deed of Servitude were forwarded to the Respondent on 6th March with

a request that he obtain an amended Deed of Servitude and plan. He did not respond. The Keeper wrote on 29th April reiterating his position on registration. An urgent fax was sent to him on 7<sup>th</sup> May confirming that The Keeper's deadline would expire on 14<sup>th</sup> May and confirming the urgency of the situation. An urgent fax was sent to the Respondent on 9th May 2003 requiring a response. He replied by fax indicating that he was dealing with the issue with the agents who prepared the Deed of Servitude.

8.4 Nothing further was heard and on 13th June 2003, he was written to and also contacted by phone. He indicated that he would call the other solicitors involved and then get back in touch with Messrs Bell & Scott. He did not do so. In view of his failure to reply, a further fax was sent to him by Bell & Scott on 25th June regarding his failure to reply to them and advising that The Keeper's deadline which had been extended would expire in 2 weeks time. He replied on 27th June explaining that Messrs Gilmore Lewis had not acted for Mr & Mrs B in the preparation of the Deed of Servitude and that they did not act for the granter of the Deed of Servitude. He explained that a new deed had been prepared and was with the granters' agents for signature. Messrs Gilmore Lewis said they expected to have the replacement shortly and would come back to Messrs Bell & Scott when there was anything new to report.

8.5 Nothing further was heard and the Respondent was contacted by phone on 10th July. He did not reply to the telephone call and an urgent fax was sent to him on the same day asking that he get in touch immediately. He did not. On 15th July, he sent an amended Deed of Servitude and plan having received these on 14<sup>th</sup> July 2003. Further problems were outlined in relation to the plan by The Keeper and it was returned to the Respondent who stated that he would amend it and send it back by return. It was sent to him on 18th July 2003. He did not reply. A follow up

letter was sent on 18th August 2003. On 29th August 2003, he was sent a fax advising that a complaint would be lodged with The Law Society if he did not reply to Messrs Bell & Scott that day. He was also advised that the amended plan was required by 5th September. On 5th September, a fax was sent to him advising that the matter was being referred to The Law Society for assistance. By 10th December 2003 no further word had been heard from him and no fresh plan received. A land certificate was eventually issued in favour of Bell & Scott.

#### 8.6 THE LAW SOCIETY OF SCOTLAND

By letter dated 19th December 2003, Messrs Bell & Scott, Solicitors invoked the aid of the Complainers in relation to the Respondent's failure to communicate with them. The Complainers copied this letter to the Respondent on 29th December 2003 and advised that he had 21 days to resolve the issue and to advise what he had done to do so. He did not reply. The Respondent's office was closed for Christmas and New Year at this time and the Respondent has been unable to locate this letter, which was sent by ordinary post and not sent by recorded delivery. A follow up letter was sent on 29th January 2004 advising that as he had not replied, an investigation would now be undertaken. This letter stated that there was no need to reply.

8.7 On 18th February 2004, a formal letter providing him with details of the complaint was issued to the Respondent requiring his written response within 21 days. He did not reply. On 12th March 2004, he was advised that as he had not replied, the Complainers were now proceeding to obtain a report. He was also issued with a formal letter under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980. No response was received from

him in relation to this correspondence. He wrote on 26th March 2004 explaining his position and regretting his delay in dealing with the matter and in replying to correspondence.

9. Having considered the foregoing circumstances the Tribunal made no finding of professional misconduct.
10. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 1<sup>st</sup> March 2005. The Tribunal having considered the Complaint dated 5<sup>th</sup> November 2004 at the instance of the Council of the Law Society of Scotland against William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh; Make no finding of professional misconduct against the Respondent; make no finding of expenses due to or by either party; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed) Malcolm McPherson**  
**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**

Valerie Johnston, Fiscal, advised that no evidence was to be led and matters would proceed on the basis of the facts as admitted in the Answers. Miss Johnston did not dispute the facts as set out in the Answers.

**SUBMISSIONS FOR THE COMPLAINERS**

Miss Johnston referred the Tribunal to a previous Tribunal case (707/87) where the Tribunal had taken a serious view of failure to co-operate in relation to a conveyancing transaction and failure to implement a letter of obligation. Miss Johnston stated that the Respondent in this case had undertaken to co-operate in connection with a Deed of Servitude but had then not replied timeously to letters and faxes. Miss Johnston referred the Tribunal to another previous case (660/86) and stated that a serious aspect of this past case was failure to communicate with a firm of solicitors and the Law Society. Miss Johnston stated that it was essential that solicitors responded promptly and fully to fellow solicitors and the Law Society. Miss Johnston submitted that here the Respondent had neglected to deal with matters and if he had not been going to be able to deal with matters he should have indicated this to Bell & Scott in writing. Miss Johnston emphasised that there was no complaint with regard to the actual conveyancing issue but stated that the extent of the neglect by the Respondent amounted to professional misconduct. She pointed out that 16 letters and faxes were sent over a period of 10 months and the Respondent only responded on 4 occasions. The Respondent had undertaken to take action to assist to resolve the matter but had delayed in doing so.

The Law Society then wrote to him on 29<sup>th</sup> December and even if he did not receive this letter, the letter on 29<sup>th</sup> January referred to the previous letter. Miss Johnston accepted that the letter dated 29<sup>th</sup> January stated that there was no need to respond but she submitted that if the Respondent had not received the previous letter of 29<sup>th</sup> December he should then have asked about it at this stage. The Respondent did not reply until 26<sup>th</sup> March. During this period the Law Society were unable to help as there had been no response from the Respondent. Miss Johnston said that eventually Bell & Scott had managed to resolve the problem themselves. Miss Johnston's

position was that it was inexcusable to fail to respond over a period of one year to both another firm of solicitors and to the Law Society and this amounted to professional misconduct. In response to a question Miss Johnston confirmed that the letter dated 29 December had been sent by ordinary post and not recorded delivery.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Clapham reminded the Tribunal of the standard of proof being beyond reasonable doubt and that for professional misconduct the conduct had to be considered serious and reprehensible. Mr Clapham stated that it may be that the Tribunal think that the Respondent could have dealt with matters better but they could not be satisfied beyond reasonable doubt that his actions amounted to professional misconduct. Mr Clapham stated that the fiscal had referred to both agents having a duty to co-operate in connection with a conveyancing transaction but Mr Clapham pointed out that in this case there was no ongoing transaction because the transaction had settled. Following settlement, Bell & Scott's clients' position was exposed. The Respondent had complied with his obligations by delivering the Deed of Servitude at settlement and any problem with the Deed of Servitude should have been addressed by Bell & Scott prior to settlement. The onus was not on the Respondent to sort matters out after settlement. In response to a question Mr Clapham stated that the Respondent had been trying to be helpful and that there had been no obligation on him to sort matters out. The reasons for the Respondent's delay in dealing with matters was pressure of work and the fact that he gave priority to ongoing conveyancing transactions.

In connection with the failure to reply to the Law Society, Mr Clapham stated that the Respondent could not definitely say he had not received the letter of 29<sup>th</sup> December but he could not recollect it. His office had been closed for Christmas and New Year and he could not recall the letter being delivered when he reopened in January. Mr Clapham accepted that when the Respondent received the letter of 29<sup>th</sup> January it would have been prudent for him to phone and find out about the previous letter but failure to do this could not be considered to be serious and reprehensible. The letter of 29<sup>th</sup> January stated that there was no need to take any action and the Respondent did in fact reply by 26<sup>th</sup> March, which was not long after 29<sup>th</sup> January.

## **DECISION**

The Tribunal accepted the Respondent's position that he had delivered all that was required of him at settlement and Bell & Scott had already seen and approved the Deed of Servitude and accordingly there was no obligation on the Respondent after settlement to sort matters out. The Respondent however did say that he would get matters sorted out and the Tribunal had to consider whether or not his delays and failures to reply to Bell & Scott with regard to the Deed of Servitude were so serious and reprehensible as to amount to professional misconduct. It is understandable that the Respondent gave priority to matters where he was under an obligation to his clients to deal with matters expeditiously. In this case the Respondent had not failed to perform an obligation but had failed to help when he said that he would. The Respondent had also eventually obtained an amended deed which then required a further amendment. With regard to the failure to reply to the Law Society the Tribunal could not be satisfied, beyond reasonable doubt, that the letter dated 29<sup>th</sup> December had been received by the Respondent, especially as it had not been sent recorded delivery, which seems somewhat surprising, given the importance of the letter. The letter of 29<sup>th</sup> January 2004 stated that there was no need to reply. The Respondent then did reply on 26<sup>th</sup> March, which was not a long time thereafter.

The Tribunal has held on numerous occasions that failure to respond to the Law Society and fellow solicitors brings the profession into disrepute and amounts to professional misconduct. However in this particular case the Respondent's failure and delay in replying to the firm of solicitors related to a matter where he was helping out rather than performing an obligation and the delay in his responding to the Law Society was only for a short period and on 26<sup>th</sup> March he did reply giving an explanation. In the whole circumstances the Tribunal did not find that his conduct was so serious and reprehensible enough as to amount to professional misconduct. The Tribunal would however not wish to associate itself with this type of conduct and consider that the Respondent's failures to respond were unprofessional. The Tribunal further consider that the Respondent had no one to blame but himself for having been

charged with professional misconduct. The Tribunal accordingly did not award expenses against the Law Society but made an order that no expenses be due to or by either party. The Tribunal made the usual order with regard to publicity.

**Vice Chairman**