

**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

**ALISTAIR IAIN MACDONALD,
Solicitor, 16 Cameron March,
Edinburgh**

1. A Complaint dated 15 February 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alistair Iain MacDonald, Solicitor, 16 Cameron March, 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 1 June 2006 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 1 June 2006 the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. The Respondent was present and represented by Mr Thorley, Solicitor, Edinburgh.

5. A Joint Minute was lodged deleting some of the averments in the Complaint. The Respondent then pled guilty to the Complaint as amended.

6. In respect of these admissions no evidence was led and the Tribunal found the following facts established

6.1 The Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 6th July 1958. He was admitted as a Solicitor on 29th September 1982 and enrolled on 18th October 1982. On or about 1st September 1996, he became a Partner in the firm of Hasties SSC, Solicitors, 51 South Bridge, Edinburgh. He ceased to be a Partner in March 2003. He is not the holder of a practising certificate.

6.2 MR & MRS A

In the Spring of 2000, Mr and Mrs A instructed the Respondent to act as law agent for their purchase of a flat at Property 1. The purchase related to the south facing flat owned by Mr B. The purchase was effected with the assistance of a loan of £77,600 from Halifax plc who instructed the Respondent to represent their interests. Loan funds were received on 2nd May 2000 and settlement took place on 17th May when the price was transferred to Mr B for whom the Firm also acted. Mr B had previously owned the north facing flat as well which he had sold in August 1998. The Solicitors who acted in that transaction on behalf of Mr B and the solicitors acting on behalf of the purchasers of the north facing flat transferred title to the wrong property in that they transferred title to the south facing flat.

6.3 Soon after they took occupation Mr & Mrs A were contacted on a number of occasions by Halifax Plc who asked for the Title Deeds of the property which was being used as security

for their mortgage. The Respondent had not recorded title to the property in favour of Mr & Mrs A nor had he registered the security on behalf of Halifax plc. The clients referred this query and similar questions regarding re-financing of their borrowings to the Respondent over a number of months. They re-mortgaged in July 2001 with the Royal Bank of Scotland. An offer of loan was received from The Royal Bank of Scotland in about July 2001 and instructions sent to the Respondent. He acknowledged receipt of the instructions and notified his clients by letter dated 16th July 2001. Loan funds of £82,000 were received by him on 9th August 2001 and used to redeem the Halifax loan on 24th August.

6.4 By September 2001, the Respondent had recognised that there was a problem with the title. On 4th September, he wrote to his clients advising “your new security has been sent off for recording and the matter of the title mistake is being rectified. We will keep you advised in this respect.” The Respondent had taken and continued to take no action in relation to rectifying the error in title. The Respondent intromitted with the loan funds from The Royal Bank of Scotland in a situation where he could not effectively record a Standard Security over the property specified in the loan instructions. One year later, the matter had not been resolved by the Respondent and Mr and Mrs A transferred their legal affairs to Messrs A & W M Urquhart, Solicitors. That firm wrote to the Respondent on 29th October 2002 and 11th November 2002 raising a number of issues including that of the title deeds. The Respondent failed to reply.

6.5 MRC

Mr C, formerly of Property 2, was a client of the Respondent. Mr C was the sole director and shareholder of Company 1, and the owner of Property 2. The Respondent acted for Mr C, his family and his company for many years. During the early

part of 2002, Mr C instructed the Respondent to act in matters concerning the re-financing and security transactions for Property 2. It was intended to refurbish and extend the hotel with re-financing through AIB Bank. The Bank was represented by Messrs Anderson Strathern, Solicitors.

6.6 In August 2002, Messrs Anderson Strathern requested a list of requisitions from the Respondent to progress the refinancing. There was no response. Mr C sought to confirm that matters were progressing and received verbal assurances from the Respondent that the legal formalities were being attended to. By October 2002, the Business Banking Manager at AIB had advised Mr C that matters were not being processed and that the Respondent had done nothing to achieve that. Mr C wished to progress the refurbishment quickly to benefit from the Christmas trading period. He attempted to contact the Respondent by phone and fax on many occasions but did not obtain any response.

6.7 As the Respondent had done nothing to progress his business, Mr C instructed Messrs Baird & Company of Glenrothes to act on his behalf and signed a Mandate in their favour. Baird & Company wrote to the Respondent on 21st October 2002. They wrote again on 25th October 2002 enclosing the Mandate and sent this letter both by fax and post. They wrote again on 1st November and wrote sent a fax to him on 6th November 2002. They received no response to any of this correspondence. They did not receive the files from the Respondent. His then partner retrieved some files which he sent to them in February 2003 but none of these related to the refinancing transaction.

6.8 THE LAW SOCIETY OF SCOTLAND – MR C
By letter dated 16th November 2002, Mr C invoked the aid of the Complainers in relation to the service provided to him by

the Respondent and his conduct. Heads of Complaint were adjusted and by letter dated 20th December 2002 intimated to the Respondent requiring his written response, any background information and his business file within 14 days of the letter. By letter dated 10th January 2003, he was given a further 14 days to respond. He failed to do so. On 20th February 2003, a further copy of the list of complaints was intimated to him with an additional matter and he was required to respond within 14 days. On the same date, a Notice under Section 15(2)(ii) of the 1980 Act was issued to him. A follow up letter was sent on 26th March 2003. He did not reply to any correspondence. On 28th May 2003, he was advised that a Report was being commissioned. The Report was sent to him on 12th January 2004 and he was invited to submit his comments and representations by 22nd January 2004. He did not reply and on 26th February 2004, he was advised that the matter would go to the Professional Conduct Committee and if he wished to make representations, they were required by 11th March 2004. He did not reply.

6.9 MR D

Messrs Wilson, Terris & Co, Solicitors, Edinburgh acted on behalf of Mr D in February 2002 in obtaining the lease of premises at Property 3 from Company 2. The offer was submitted on 11th February and dealt with by Chris Sayer, Solicitors, with missives being concluded on 17th July 2002. The intended date of entry of 1st August 2002 was not met for various reasons. On 29th October 2002, the Respondent wrote to Messrs Wilson, Terris & Co advising that he was now instructed to act on behalf of the landlords and seeking clarification of the position.

6.10 On 4th November 2002, Messrs Wilson Terris replied enclosing copies of the concluded missives and giving details of the outstanding points. Correspondence was exchanged on

8th, 13th and 26th November. Thereafter, the Respondent failed to return telephone calls from Messrs Wilson Terris who wrote on 18th December indicating that they required an immediate response. The Respondent replied on 19th December advising that another interested party had contacted the landlord and that he had on the client's instructions concluded missives with that other party. On 20th December 2002, Messrs Wilson Terris faxed a response asking on what basis Company 2 was entitled to end negotiations given that missives had been concluded. The letter was extensive and outlined full circumstances and the expenses incurred. Reminders were sent to the Respondent on 7th and 14th January 2003. He did not reply to any of them.

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

7.1 His failure between 17th May 2000 and 29th October 2002 to obtain and record or register a valid title on behalf of his clients Mr and Mrs A in respect of the property purchased by them at Property 1.

7.2 His failure between 2nd May 2000 and 9th August 2001 to look after the interests of his clients The Halifax Plc in that after he banked the loan funds on 2nd May he failed to record or register a valid Standard Security over the subjects of loan at Property 1.

7.3 His failure between 9th August 2001 and 29th October 2002 to look after the interests of his clients The Royal Bank of Scotland Ltd in that after he cashed their loan cheque on 9th August 2001, he failed to record or register a valid Standard Security over the subjects of loan at Property 1.

- 7.4 His repeated failure between 21st October 2002 and the middle of November 2002 to reply to correspondence from his fellow Solicitors Messrs Baird & Company who had assumed agency for the client Mr C or to implement a Mandate sent to him by them on behalf of the client.
- 7.5 His repeated failure between 20th December 2002 and 11th March 2004 to respond to the reasonable requests of the Complainers for information about the complaint of Mr C or to comply with Statutory Notices served upon him.
- 7.6 His repeated failure between 20th December 2002 and the middle of January 2003 to reply to correspondence from his fellow Solicitors, Messrs Wilson Terris & Co in respect of their client Mr D.

8. Having noted two previous findings of professional misconduct against the Respondent and having heard mitigation on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 1 June 2006. The Tribunal having considered the Complaint dated 15 February 2006 at the instance of the Council of the Law Society of Scotland against Alistair Iain MacDonald, Solicitor, 16 Cameron March, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his failure between May 2000 and October 2002 to obtain and record or register a valid title on behalf of his clients in respect of a property purchased by them, his failure between May 2000 and August 2001 to look after the interests of the Halifax PLC by banking loan funds without having recorded or registered a valid standard security in their favour and his failure between August 2001 and October 2002 to look after the interests of The Royal Bank of Scotland Limited by cashing their loan cheque

without having recorded or registered a valid standard security in their favour, his repeated failure to reply to correspondence from fellow solicitors or to implement a mandate sent to him by them, his repeated failure to respond to the reasonable requests of the Law Society for information and his repeated failure to respond to correspondence from another firm of solicitors; Censure the Respondent and Fine him in the sum of £2500 to be forfeit to Her Majesty; 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)

Alistair M Cockburn

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

On the morning of the hearing a Joint Minute was lodged deleting various aspects of the Complaint. The Answers previously lodged by the Respondent were withdrawn and the Respondent pled guilty to the Complaint as amended. The Respondent confirmed that he was accepting the facts, averments of duty and averments of professional misconduct in the amended Complaint. The Fiscal lodged two previous findings of professional misconduct with the Tribunal.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston confirmed that the Respondent had not practised as a solicitor since March 2003. He had previously been restricted by the Tribunal and the former firm of Hasties had been wound up. Ms Johnston stated that there were three main issues before the Tribunal. In connection with Mr & Mrs A, Ms Johnston stated that the Respondent received the disposition but he could not record it as another couple had title to the property because of difficulties caused in a previous transaction which had nothing to do with the Respondent. The Respondent however intromitted with funds from the lender without being able to record a security over the property both in connection with the first lender and the lender on the re-mortgage. In connection with Mr C, Mr C had trouble getting hold of the Respondent which caused him inconvenience and distress. The Respondent did not reply to Baird & Company and did not reply to the mandate sent. The files were eventually sent in February 2003. The Law Society wrote to him about this and he did not respond. In connection with Mr D, the Respondent did not respond to phone calls or letters from the new solicitors.

SUBMISSIONS FOR THE RESPONDENT

Mr Thorley pointed out that the Respondent's firm of Hasties paid for all the corrective conveyancing in connection with Mr & Mrs A's transactions. Mr Thorley advised that the Respondent was currently working as McDonald Licensing Limited as a non-solicitor. He had no intention of resuming practice as a principal. Mr

Thorley indicated that the Respondent had learned his lesson. Mr Thorley explained that the Respondent's problems had started in 1996 when the number of partners in the firm of Hasties decreased. By 1998 there were only two partners and the Respondent was the sole partner in Edinburgh. He had a very large workload and this affected his health. He had major problems between 2000 and 2003 which was the time period when the incidents in both the previous findings and in this Complaint occurred. The Respondent was not coping and was working 70-80 hours per week which was affecting his family life and his health. Mr Thorley stated that the Respondent acknowledged his failings in private practice and did not wish to be a principal. Mr Thorley explained that Mr & Mrs A's case was very complicated and the north and south flats had been mixed up. The Respondent discovered the mistake when purchasing on behalf of his clients. The Respondent did the conveyancing which went ahead on the basis that the title would be corrected but the title was not recorded due to difficulties with obtaining a discharge in respect of an outstanding security. The Respondent accepted that he should have ensured that the discharge was available before he cashed the building society cheque but Mr Thorley stated that the Respondent thought that everything was in order. Mr Thorley pointed out that ultimately no loss was sustained by anyone. Mr Thorley also explained that by the time the Respondent had been at the Tribunal in November 2002 and had his practising certificate restricted he had lessening motivation and because his staff knew what was happening they started leaving which made things even more difficult.

DECISION

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 within a reasonable time after cashing the loan cheque. In this case the Respondent was unable to do this and the lender remained unprotected. Even when the Respondent's clients re-mortgaged and the Respondent cashed the second loan cheque he was still unable to record the lenders security. The Respondent did not make any attempt to explain the situation to the lenders and the Tribunal was concerned with regard to his cavalier attitude to this. The Respondent also failed to respond to fellow solicitors and the Law Society and failed to implement a mandate.

These matters were analogous to the issues in the previous cases dealt with by the Tribunal. The Tribunal however noted that these matters all arose from the same time period. The Tribunal noted that the Respondent already had a Restriction on his practising certificate and did not consider it necessary to extend the period of this Restriction. However taking into account all the matters in the Complaint and the previous findings of misconduct the Tribunal considered that a Censure alone would not be sufficient penalty and accordingly imposed a Censure plus a fine of £2500. The Tribunal made the usual order with regard to expenses and publicity.

Chairman