

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND, 26  
Drumsheugh Gardens, Edinburgh**

**against**

**NORMAN DOUGLAS PATON  
CATHCART, Solicitor, 3 Lyndock  
Place, Glasgow**

1. A Complaint dated 18<sup>th</sup> December 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Norman Douglas Paton Cathcart, Solicitor, residing at 3 Lyndock Place, 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. No answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 12<sup>th</sup> March 2008 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 12<sup>th</sup> March 2008, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself.

5. A Joint Minute was lodged admitting the averments of facts, averments of duty and averments of professional misconduct in the Complaint as amended. The Respondent put forward a preliminary motion that the Tribunal continue the matter to enable him to ensure that all the necessary Deeds were in place. Ms Motion indicated that she had no difficulty with this suggestion and the case was accordingly adjourned until 17<sup>th</sup> June 2008. It was confirmed that the parties would have no difficulty in a differently constituted Tribunal hearing the matter on 17<sup>th</sup> June 2008.
6. The Hearing took place on 17<sup>th</sup> June 2008. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. Documentation was produced to the Tribunal showing that all the Deeds were now in place.
7. The Tribunal found the following as facts established

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

- 7.2. **Lloyds TSB Scotland plc**

On 25 January 2007 (“ the Hearing”) the Scottish Solicitors Discipline Tribunal (“the Tribunal”) heard evidence and considered productions on a Complaint dated 13 October 2006 lodged with it by the Complainers (“the previous Complaint”). The Respondent was present at the Hearing and admitted the Complaint in total. By Findings and Interlocutor dated 25 January 2007 (“the Findings”), the Tribunal found the Respondent guilty of professional misconduct *inter alia* in respect of his failure to ensure that a Standard Security was registered in the Register of Charges timeously and thereafter

to take appropriate remedial steps within a reasonable time to rectify that failure to protect the lender's interest. The lender was Lloyds TSB Scotland plc ("the Bank"). As a consequence of the Findings, the Respondent was Censured, fined in the sum of £3,000 and found liable in the expenses of the Complainers and Tribunal on the usual terms.

- 7.3 On 6 March 2007 the Bank advised that the position in relation to the rectification of the delay had still not been resolved and that they had a potential problem as a result of that.
- 7.4 On 6 March 2007 the Respondent indicated that he had requested his Edinburgh agents to proceed with the Petition required to resolve matters in about mid February 2007. His Edinburgh agents were Drummond Miller, Solicitors.
- 7.5 On 7 March 2007 Drummond Miller advised that no instructions as referred to in paragraph 7.4 had been received.
- 7.6 On 7 March 2007 the Respondent confirmed that the instructions referred to in paragraph 7.4 had not been sent.
- 7.7 By letter of 8 March 2007 the Respondent wrote to Drummond Miller requesting they proceed to instruct Counsel to revise the Petition. In that letter no additional information was provided as highlighted in a previous Counsel's Note dated 24 April 2006.
- 7.8 By letter dated 9 April 2007 the Respondent was requested to confirm that the Petition had been lodged and served. No response was received.
- 7.9 By letter of 30 April 2007 the Respondent was again requested to provide an update. No response was received.

- 7.10 By letter of 11 May 2007 a further reminder was sent to the Respondent. By e-mail of 14 May the Respondent replied providing a copy letter of 10 May 2007 that he had sent to Drummond Miller. That letter made it clear that the required Petition had not yet been lodged.
- 7.11 By letter dated 25 May 2007 Drummond Miller released a copy of Counsel's Note to Complainer's agent which raised a potential conflict of interest for the Respondent.
- 7.12 By letter of 12 July 2007 Drummond Miller advised that they were no longer acting on behalf of the Respondent or the Respondent's clients.
- 7.13 By letter of 13 July 2007 the Respondent was requested to clarify the position in light of the withdrawal of Drummond Miller. No response was received.
- 7.14 By letter of 18 July 2007 the Bank advised that there had been no developments.
- 7.15 By letter of 18 July 2007 Drummond Miller advised that they were not aware of other Edinburgh agents and the reason for withdrawal of agency was the lack of progress of the Petition.
- 7.16 As a direct result of the continued failures of the Respondent the Bank instructed the Respondent to protect the Bank's position by proceeding with a fresh Standard Security. They did this by letter of 25 July 2007. By letter of 30 July 2007 the Respondent confirmed that he would proceed on the basis outlined by the Bank. The reason for this requirement was due to the fact that another floating charge in favour of the Clydesdale Bank had been registered in the interim. A

previous floating charge in favour of Nationwide Building Society had been registered prior to the bank's instruction to the Respondent.

- 7.17 By letter of 6 August 2007 the Respondent confirmed that another firm of solicitors would be acting on behalf of Company 1 while he continued to act on behalf of the Bank.
- 7.18 By letter of 14 August 2007 the Bank sent a reminder letter to the Respondent to obtain an up to date position.
- 7.19 By letter of 20 August 2007, the Respondent indicated that consent to ranking had been sought from the Clydesdale Bank's solicitors. By letter 24 August 2007 the Bank reminded the Respondent that the issue in relation to the Nationwide had not been addressed. By letter 29 August the Respondent advised that he had been unable to make contact with the solicitor acting for Company 1. By letter of 4 September the Bank sent a reminder to the Respondent to which a response of 4 September was sent by the Respondent. A follow-up fax of 10 September and 14 September 2007 was also sent by the Respondent to the Bank.
- 7.20 By letter of 17 September 2007 the Bank advised that they had put the Respondent on notice of a potential loss as a result of the delay and the alternative steps that they had been required to undertake given the delay. As a result the Respondent has notified his insurers. As at 18<sup>th</sup> December 2007 while a Standard Security has been executed it remained unregistered pending preparation and execution of a Ranking Agreement between the Bank and Clydesdale Bank, and the Bank still awaited confirmation of the registering of the Standard Security. As at 18<sup>th</sup> December 2007 the Bank had not been provided with any documentary evidence to show that the

Floating charge in favour of the Nationwide building society has been met in full.

7.21 The Standard Security was registered on 2<sup>nd</sup> June 2008.

8. Having considered the circumstances and having heard submissions from both parties, the Tribunal found the Respondent guilty of professional misconduct in respect of
- (a) his failure without reasonable excuse to ensure that remedial action in relation to registering the Standard Security in the Register of Charges as referred to in the previous Findings of the Tribunal of 25<sup>th</sup> January 2007 was taken within a reasonable time to protect the Bank's interest and
  - (b) his failure without reasonable excuse to ensure that the Standard Security instructed on 25<sup>th</sup> July 2007 was registered in the Register of Charges timeously to protect the Bank's interest.
9. Having heard the Respondent in mitigation and having noted the previous Findings against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 17<sup>th</sup> June 2008. The Tribunal having considered the Complaint dated 18<sup>th</sup> December 2007 at the instance of the Council of the Law Society of Scotland against Norman Douglas Paton Cathcart, Solicitor, residing at 3 Lyndock Place, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his failure without reasonable excuse to ensure that remedial action in relation to registering the Standard Security in the Register of Charges was taken within a reasonable time to protect the interests of Lloyds TSB Scotland plc and his failure without reasonable excuse to ensure that the Standard Security instructed on 25<sup>th</sup> July 2007 was registered in the Register of Charges timeously to protect Lloyds TSB's interests;

Censure the Respondent; Fine him in the sum of £2000 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 Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**  
**Chairman**

10. 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 Complaint first called on 12<sup>th</sup> March 2008 when a Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint as amended. A Joint Minute of Admissions was also lodged. The matter was then adjourned until 17<sup>th</sup> June 2008 because the Respondent had not been able to finally complete matters to ensure that all Deeds were in place. When the matter called on 17<sup>th</sup> June 2008 the Respondent was able to produce documentation to show that all the Deeds were now in place.

**SUBMISSIONS FOR THE COMPLAINERS**

Ms Motion referred the Tribunal to the productions and pointed out that some of the productions had been before the Tribunal when it had met on 25<sup>th</sup> January 2007. In these productions was a note from Counsel in November 2004 which flagged up the documents which were required which were similar to the documents asked for and which were still outstanding in April 2007. Ms Motion submitted that there was no explanation for the delay in producing documents that were easily obtainable. The Respondent had not dealt with matters with any urgency.

**SUBMISSIONS FOR THE RESPONDENT**

The Respondent produced a list of the communications that he had had since 25<sup>th</sup> July 2007 with the various parties involved in the transaction. The Respondent explained that there were difficulties as the Bank did not return the ranking agreement but instead issued a letter of release which went to the TSB. The Respondent took an opinion from Mitchels Robertson on whether or not the letter of release was sufficient to give the necessary ranking and was advised that it was. The Respondent explained that he had to write to the indemnity insurers and get their authority to proceed and register the Deeds. The Respondent submitted that the memorandum produced showing all the communications showed that action had been taken continuously since the last Tribunal to try and remedy the situation. The Respondent explained that unfortunately despite his best endeavours to sort the problem out, another Complaint

was still issued by the Law Society. The Respondent referred to the statement which he produced to the Tribunal Hearing on 25<sup>th</sup> January 2007. The Respondent stated that the publicity from the last Tribunal decision had caused him a great deal of concern as some people had misinterpreted the Tribunal's summary of his circumstances. The Respondent advised that he had incurred a lot of expense due to the cost of the Tribunal Hearings and the costs involved in sorting matters out.

## **DECISION**

The Tribunal noted that the Respondent had managed to resolve the situation and that the necessary Standard Security had been registered so that the Bank's interests are now protected. The Tribunal however considered that it had taken an extraordinary amount of time for this to be done and there did not appear to be anything extraordinary in the explanation provided by the Respondent for the delay. The Tribunal accept that matters were not straight forward to sort out but note that in the previous Findings the Tribunal indicated to the Respondent that it would take an extremely dim view if matters were not sorted out quickly after last Tribunal Hearing. It has taken the Respondent almost 18 months since the Tribunal issued its previous Findings, to sort matters out. The Tribunal considered that its displeasure with regard to this must be demonstrated and the Tribunal accordingly imposed another fine of £2000 in addition to a Censure. The Tribunal made the usual order with regard to publicity and expenses.

**Chairman**