

**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**

**JOHN KNOX AITKEN, Solicitor  
of Thomas & Caplan Solicitors,  
365 Victoria Road, Glasgow**

1. A Complaint dated 9<sup>th</sup> December 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, John Knox Aitken, Solicitor, Thomas & Caplan, Solicitors, 365 Victoria Road, 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 by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 30<sup>th</sup> March 2006 and notice thereof was duly served on the Respondent.
4. The hearing took place on 30<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, David Clapham, Glasgow.

5. The Fiscal moved to amend the Complaint, this was agreed and the Respondent pled guilty to the amended Complaint. No evidence was led.

6. The Tribunal found the following facts established

6.1 The Respondent was born 28<sup>th</sup> July 1963. He was admitted as a solicitor on 19<sup>th</sup> September 1986. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 13<sup>th</sup> October 1986. Following his admission as a solicitor he was employed with the firm Harper Thomson & Lewis until 13<sup>th</sup> October 1989. From 16<sup>th</sup> October 1989, initially as an employee and latterly as a Partner, the Respondent has been employed with the firm Thomas & Caplan of 365 Victoria Road, Glasgow. The Respondent remains a Partner in that firm to date.

6.2 Mr A of Property 1

Mr A resides at Property 1. He entered into partnership with a Mr B, which partnership traded as the firm name Company 1. The Respondent initially acted on behalf of Mr B and thereafter assumed agency for the partnership. A partnership agreement was prepared by the Respondent. Mr B arranged for his daughters to act as his nominees in the partnership. Capital was introduced to the partnership by Mr A paying the sum of £141,000. Mr B contributed the sum of £141,000. Said sum was paid in his daughters names equally Ms C and Ms D both contributing the sum of £70,500. The intention of the partnership was to invest in commercial property in or around the Glasgow area.

6.3 Mr B purchased the commercial premises at Property 2 in 1997. It was agreed that he would transfer his interest in these commercial premises to Mr A, Ms D and Ms C, being the partners of the partnership, Company 1. To facilitate the purchase, the partners had secured finance through the Bank

of Scotland. On 29<sup>th</sup> May 1998, the solicitors acting for the Bank of Scotland wrote to the Respondent asking for the Title Deeds to be delivered in order that they could prepare a Standard Security to be signed by Mr A, Ms D and Ms C. The Respondent eventually on 10<sup>th</sup> September 1998 delivered the Land Certificate to the Bank's solicitors together with a copy of a Disposition by Mr B in favour of Mr A, Ms D and Ms C (hereinafter referred to as "the partners") and he wrote explaining that the title to the subjects had been taken in the name of Mr B in error. The Respondent's firm enclosed a copy of a Disposition by Mr B in favour of Ms D and Ms C and Mr A which they suggested would rectify the error. The Respondent proposed to the Bank's solicitors that this Disposition should be sent for registration along with the Standard Security to be granted by the partners. The partners executed the security documentation which was delivered to the Bank's solicitors on 18<sup>th</sup> September 1998.

6.4 In or about May 2000 Mr A learned from enquiry made by him of the Land Register that the title deed relating to the commercial premises at Property 2 did not properly reflect the agreement reached between the partners. The Title Deed was registered in the names of Mr A, Ms D and Ms C "equally among them and to the survivors and survivor of them". This was not what was agreed between the partners. What was agreed between the partners was for the title to be disposed to the partners on a "pro indiviso" basis. Namely the title was to be taken one half in the name of Mr A and one quarter in the name of Ms D and Ms C respectively. This was of importance insofar as what would happen to the property in the event of the demise of either of the partners. Mr A wished that his share in the property should pass and be distributed according to his estate and not be transferred immediately upon his demise to the surviving partners. It was necessary therefore for a corrective Disposition to be

executed by the partners in terms of which the Title Deed would be amended to reflect the true agreement. On 18<sup>th</sup> May 2000 the partners attended at the address of the Respondent and proceeded to execute a corrective Disposition which granted title to the partners on a pro indiviso basis. The Respondent undertook to present this corrective Disposition to the Land Register for registration without delay. At this time there were discussions between Mr A and Mr B in connection with a proposal by Mr A that he purchase Mr B's interest in the business. Messrs Sinclair McCormick Guisti Martin, Solicitors, 3 Annfield Place, Duke Street, Glasgow, as agents for Mr A, submitted an offer on 23<sup>rd</sup> May 2002 to the Respondent's firm for the purchase from Ms C and Ms D of their one-half pro indiviso share of the business and the subjects at Property 2. The Respondent was led to believe by Mr B that matters would be completed between Mr A and himself and because of the ongoing discussions, the Respondent did not present the necessary corrective Disposition to the Land Register for registration.

6.5 In or about February 2004, Mr A made enquiry of the Land Register to ascertain the true extent of his title. His enquiries revealed that despite having signed a corrective Disposition before the Respondent on 18<sup>th</sup> May 2000, that corrective Disposition had not been presented to the Land Register for registration despite the assurance offered by the Respondent. Mr A wrote to the Respondent requesting an explanation by letter dated 20<sup>th</sup> February 2004. That was ignored. He wrote reminders. Subsequent examination of the file operated by the Respondent revealed that the corrective Disposition had been presented to the Land Register for registration. Having received that Disposition, the Land Register had written to the Respondent requesting certain information. The Respondent had failed to reply to this request as a consequence of which the application had been cancelled. The fact that the Land

Register was not prepared to accept the application with the corrective Disposition was not conveyed by the Respondent to Mr A or the other partners. When Mr A complained to the Respondent he provided him with a copy of the receipted Form 4 dated 22<sup>nd</sup> June 2000. Examination of the file of the Respondent revealed a letter from the Land Register dated 14<sup>th</sup> February 2001 which stated that given more than 60 days had passed since the issue of an earlier requisition dated 15<sup>th</sup> November 2000, the letter indicated that if the requisition was not answered then the application would be cancelled. The Respondent failed to reply to the enquiry made of him of the Land Register as a result of which the corrective Disposition despite having been dated 18<sup>th</sup> May 2000 had not been presented by the Respondent for registration to as at 9<sup>th</sup> December 2005.

6.6 In addition the partnership purchased heritable subjects situated at Property 3. These subjects comprised two commercial shop units. The partnership paid in total for the two units the sum of £30,000 with £15,000 being apportioned to each shop. Title to the commercial premises was to be taken in the name of the partners. The Respondent on 30<sup>th</sup> January 1998 submitted an Offer to purchase both shops at a cumulo price of £30,000. The commercial unit at Property 3 was at that time owned by a Ms E. The purchase of Property 3 settled on 13<sup>th</sup> March 1998 when a Disposition by Ms E in favour of the partners equally to the survivor thereof was delivered to the Respondent. On 20<sup>th</sup> April 1998 the Respondent wrote to the solicitors acting on behalf of the Bank of Scotland, from whom the partnership had borrowed money, that the Disposition in respect of Property 3 had been presented to the Land Register for registration. On 27<sup>th</sup> October 1998 the Respondent sent to the Bank's solicitors a copy of a receipted Form 4 in respect of Property 3. On 15<sup>th</sup> March 2001 the Land Register wrote to the Respondent

concerning the title for Property 3. They advised the Respondent that the Title Number quoted on the Disposition had not been completed. The Disposition required to be amended and returned. The Respondent was allowed 60 days to deal with this enquiry.

6.7 In or about May 2000 Mr A learned that the title to Property 3 had been taken in the name of the partners “equally among them and to the survivors and survivor of them”. This was not what was agreed between the partners. The partners approached the Respondent who prepared a corrective Disposition relating to all commercial property owned by the partners. These Dispositions confirmed title was granted in favour of the partners on a pro indiviso basis namely that title was to be taken one half in favour of Mr A and one quarter in favour of Ms D and Ms C respectively. This was of importance insofar as what would happen to the property in the event of the demise of either of the partners. Mr A wished that his share in the property should pass and be distributed according to his estate and not be transferred immediately upon his demise to the surviving partners. The corrective Disposition was signed by the partners on 18<sup>th</sup> May 2000. The Respondent undertook to present the Disposition to the Land Register on that date for registration.

6.8 The Respondent failed to present that Disposition to the Land Register for registration. On 9<sup>th</sup> July 2001 the Land Register wrote again to the Respondent asking for a response to the original requisition. They wrote again by way of warning on 4<sup>th</sup> December 2001 requesting an answer to their enquiries. No response was received by the Respondent as a consequence of which on 24<sup>th</sup> May 2002 they wrote to the Respondent advising that the application was cancelled and charging a cancellation fee of £88. The Respondent had at different stages delegated the matter of the Property 3 transactions to different assistants. Two now former

assistants informed the Respondent that the requisitions had been dealt with. The Respondent should have checked personally that these matters were dealt with.

6.9 Having concerns about the manner in which the Respondent dealt with the conveyancing transactions, Mr A made enquiry of the Land Register to ascertain the nature and extent of his title. This enquiry revealed that the Respondent failed to forward to the Land Register the corrective Disposition. Eventually with these matters having been brought to the attention of the Respondent, he rectified matters only on 7<sup>th</sup> January 2005 when the corrective Disposition was presented by him for registration.

7. Having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His unreasonable delay from the time the corrective Dispositions were executed in respect of two commercial properties to have these Dispositions registered in the Land Register.

7.2 His failure to reply timeously, openly and accurately to the enquiries made of him by the Land Register of Scotland in breach of Article 5(e) of the Code of Conduct of Solicitors Holding Practising Certificates issued by the Law Society of Scotland in 1992.

8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 30<sup>th</sup> March 2006. The Tribunal having considered the Complaint dated 9<sup>th</sup> December 2005 at the instance of the Council of the Law Society of Scotland against John Knox Aitken, Solicitor of Thomas & Caplan Solicitors, 365 Victoria Road, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his

unreasonable delay in having corrective Dispositions to two commercial properties registered in the Land Register and his failure to respond timeously, openly and accurately to the enquiries made of him by the Land Register of Scotland; Censure the Respondent and Fine the Respondent in the sum of £2,500 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 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

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 Tribunal the Fiscal moved to make various amendments to the Complaint. This was agreed and the Respondent pled guilty to the amended Complaint. It was accordingly not necessary for any evidence to be led.

## **SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid explained that the Respondent already acted for Mr B and he did a partnership agreement with Mr B's two daughters as nominees and a Mr A in connection with the Property 2 transaction. The Respondent carried out the conveyancing. Relations between the partners became strained and Mr A made enquiries and found out that the title had not been taken as had been agreed. It had been framed with a contractual destination to the partners and survivors which meant that if one of the partners died the share would go to the other partners rather than that partner's estate which was not what was intended. There accordingly required to be a corrective Disposition prepared. It was assumed that this had been done by the Respondent and sent to the Land Register. The Respondent at no time explained to Mr A why this had not been done. Mr A enquired in February 2004 and identified that no corrective Disposition had been lodged with the Land Register. Mr A wrote to the Respondent who ignored his correspondence. In connection with the Property 3, Mr A again made enquiries and this revealed that a corrective Disposition was required. This was signed in May 2000 but the Respondent failed to reply to the queries from the Land Register and accordingly the registration failed. The corrective Disposition was not sent to the Land Register until January 2005. Mr Reid expressed his appreciation for the co-operation received from the Respondent and his agent in dealing with the Complaint.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Clapham referred the Tribunal to the Answers lodged by the Respondent. It was accepted that the Land Register's requirements were received by the Respondent and not dealt with. The Answers explained that the problem was caused by the

Respondent's staff but the Respondent accepted that he had a responsibility of supervision. Mr Clapham indicated that the reason this had happened was due to pressure of work. Mr Clapham also explained that there were other matters ongoing which may have superseded the need for the corrective Dispositions. Mr Clapham emphasised to the Tribunal that the Respondent had been in practice for 20 years and had never had any previous problems. No fees had been charged in respect of the transactions and the corrective Dispositions had been done by the Respondent at the firm's expense. The Respondent had also met the recording dues. Mr Clapham explained that there had been an award of £1000 compensation against the firm in respect of a finding of inadequate professional service and this had been paid. Mr Clapham stated that there would be the inevitable consequences for the Respondent of expenses and publicity in connection with the Tribunal proceedings. Mr Clapham referred the Tribunal to the productions which showed that the properties now had receipted Form 4's from the Land Register. Mr Clapham also pointed out that the Respondent at all times had had professional indemnity insurance in place. It was accepted that what had happened had caused stress and concern to the client. Mr Clapham advised the Tribunal that the Respondent had also been under a great deal of stress and concern with regard to his appearance at the Tribunal. Mr Clapham apologised on behalf of his client and asked the Tribunal to consider a Censure. In response to a question from the Tribunal, Mr Clapham stated that the Respondent's firm now had an extra member of staff and no longer carried out court work. Mr Clapham stated that the Respondent had learnt his lesson. In response to another question from the Tribunal in connection with why nothing had been done by the Respondent personally when there had been so many letters from his client complaining, the Respondent indicated that his staff had assured him that matters had been attended to and that he himself personally dealt with the transaction during the last two to three years. The Respondent stated that the difficulty was due to the background circumstances and the possible dissolution of the partnership which was on going.

## **DECISION**

The Tribunal had grave concerns with regard to the Respondent's actions in this matter. The Respondent was the partner involved and had to take responsibility for

what had happened. In this case the first Dispositions were defective and did not reflect the instructions of the clients. The Respondent, in failing to ensure that the corrective Dispositions were recorded as soon as possible, exposed his clients to an unacceptable risk. If one of the partners had died in the intervening period considerable expenditure would have been required to rectify the situation. The Respondent allowed a perilous state of affairs to continue for an unacceptable length of time. The Tribunal did not consider the fact that there were discussions going on in the background with regard to the dissolution of the partnership to in any way lessen the seriousness of the situation. It appeared to the Tribunal that the Respondent was indifferent to the problem and the severe risk to the interests of his clients. The Tribunal were not impressed by the steps taken by the Respondent or his apparent cavalier attitude to the problem as was evidenced by the delay between Mr A complaining and the actual date when the corrective Dispositions were registered.

The Tribunal however took account of the fact that the Respondent had had no previous problems and that he had co-operated with the Fiscal in connection with the Complaint. The Tribunal also noted that no fees or registration dues had been charged and that compensation in respect of the inadequate professional service determination had been paid. In the whole circumstances the Tribunal considered that a Censure together with a fine of £2500 was an appropriate penalty. The Tribunal made the usual order with regard to publicity and expenses.

**Chairman**