

**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

**JAMES MORRISON, Solicitor,
156 Station Road, Shotts**

1. A Complaint dated 13th January 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, James Morrison, Solicitor, 156 Station Road, Shotts (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 4 May 2006 and notice thereof was duly served on the Respondent.
4. The hearing took place on 4 May 2006. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by David Clapham, Solicitor, Glasgow.

5. The Fiscal for the Law Society indicated that the averments of professional misconduct contained in Articles 4.2 and 4.4 were to be withdrawn by the Law Society. Thereafter a Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct which remained in the Complaint. No evidence was led.

6. The Tribunal found the following facts established

6.1 The Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born on 18th June 1955. He was admitted as a solicitor on 6th October 1978 and enrolled on 26th October 1978. From 10th May 1993 until 31st July 2000 he was the sole principal of James Morrison & Co and he then practised at 156 Station Road, Shotts. On 1st August 2000 he became a partner in the firm of Sneddon Morrison and he is at present a partner in the firm of Aitkens.

6.2 Caesar and Howie, Solicitors, Bathgate

Sometime in or about July 1998 the Respondent was instructed by his client, Company 1 (hereinafter referred to as "the Company"), to act in connection with the purchase of garage premises at Property 1. Caesar and Howie were instructed to act on behalf of their client, Mr A, who was the seller in this transaction. Missives were concluded for the purchase of these garage premises and the purchase price was agreed in the sum of £70,000.00. A payment of £1,500.00 to account of the purchase price was paid by the Company to Mr A prior to the date of entry. A further payment of £8,500.00 was paid by the Company to Mr A on the date of entry. The Company and Mr A agreed that the balance of the purchase price (£60,000.00) would be paid by instalments of £1,000.00 per month commencing the first instalment on 3rd September 1998. In security of its obligation to pay these instalments, the Company agreed to grant a Standard Security in favour of

Mr A over these garage premises. Contrary to normal practice, the Respondent, as agent for the Company, prepared the Standard Security which was executed on behalf of the Company on 4th August 1998. The date of entry in terms of the missives was 3rd August 1998 but, in the event, the transaction settled on 5th August 1998. On that date the Respondent wrote to Caesar and Howie enclosing a cheque in payment of the amount then due (£8,500.00) and their legal expenses which the Company had agreed to pay. In this letter the Respondent requested Caesar and Howie to send to him the executed Disposition in favour of the Company and he advised Caesar and Howie that, upon receipt thereof, he would have the Disposition stamped and thereafter registered along with the executed Standard Security which he then had in hand. In due course, Caesar and Howie sent the executed Disposition by Mr A in favour of the Company to the Respondent and sometime on or about 19th August 1998 the Respondent sent the Disposition to the Stamp Office for stamping. The Complainers are unaware of the precise date that the Disposition was returned to the Respondent after stamping. A Provisional Liquidator was appointed to the Company on 5th October 1998. By that date the said Disposition and the said Standard Security had not been sent by the Respondent to the Keeper for registration. Following this appointment the Respondent met Mr B sometime on or about 26th October 1998. The Complainers believe that Mr B was then neither a Director nor an Officer of the Company. Notwithstanding that, however, the Respondent regarded Mr B's interest in the Company as being sufficient for him to accept instructions from him on its behalf. In furtherance of the discussion at this meeting, the Respondent wrote to Mr and Mrs B on 3rd November 1998. In this letter, the Respondent confirmed to them that, in relation to these garage premises, he would not record the deeds until he heard

from them and until the action involving the liquidation of the Company had been disposed of. The Respondent had by 3rd November 1998 accepted instructions from Mr B to withhold making application for registration of the said Disposition and the said Standard Security until such time as he was instructed by Mr B to do so. The Respondent did not advise Caesar and Howie that he had accepted this instruction. It was not until January 2002 that Caesar and Howie became aware for the first time that they had not received the registered Standard Security from the Respondent. Their client, Mr A, had not received any instalment payments from the Company since October 2000. By letter dated 31st January 2002, Caesar and Howie wrote to the Respondent requesting the registered Standard Security. By this time it had not been registered. The Respondent had attempted to have it registered sometime in March 2001. The application for registration was cancelled by Sneddon Morrison sometime in May 2001. Albeit that Caesar and Howie did not enquire of the Respondent from August 1998 until January 2002 about the position with regard to registration of the Standard Security in favour of their client, they were entitled to rely upon the Respondent's undertaking to have it recorded within a reasonable time from the date of settlement of the transaction.

7. Having considered submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his failure to honour an undertaking given by him to a fellow solicitor to register a Standard Security within a reasonable time after settlement of a conveyancing transaction.

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

Edinburgh 4th May 2006. The Tribunal having considered the Complaint dated 13th January 2006 at the instance of the Council of the Law Society of Scotland against James Morrison, Solicitor, 156 Station Road, Shotts; Find the Respondent guilty of Professional Misconduct in respect of his failure to honour an undertaking given by him to a fellow solicitor to register a Standard Security; Censure the Respondent; 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)

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

On the morning of the Tribunal the Fiscal moved to amend the Complaint by deleting two of the averments of professional misconduct. This was agreed and a Joint Minute was then lodged admitting the facts, averments of duty and the remaining averment of professional misconduct.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir explained to the Tribunal that this case involved a curious transaction where the Respondent acted for the purchaser but also drew up the security documentation. The Standard Security was executed and the Respondent undertook that he would register the Standard Security. Mr Muir indicated that quite legitimately thereafter the Respondent's client instructed him not to register the Disposition which meant he could not register the Standard Security. The Respondent forgot to tell Caesar and Howie that he could not register the Security. In March 2001 he attempted to register the Security. Mr Muir indicated that the Law Society was unable to say whether or not he had forgotten but he certainly knew of the undertaking that he had given to Caesar and Howie and he should have told Caesar and Howie that he could not register the Disposition. His failure to register the Disposition and the Standard Security led to unfortunate consequences for Caesar and Howie. Mr Muir clarified that there was no allegation of dishonesty but he asked the Tribunal to find the Respondent guilty of professional misconduct in respect of his failure to honour an undertaking and his failure to let Caesar and Howie know that he could not do so. In response to a question from the Tribunal it was clarified that a £10,000 deposit was paid and then about 15 monthly payments of £1,000 were made.

SUBMISSIONS FOR THE RESPONDENT

Mr Clapham advised the Tribunal that the Respondent had been in the profession for 28 years and this was his first appearance before the Tribunal. He had had no other difficulties either before or since this incident. Mr Clapham stated that there was no pattern of conduct, it was just an isolated matter. Mr Clapham explained that the

Respondent undertook to draft the Standard Security in order to be helpful. The letter that he issued was one of a large number of letters issued in the course of normal business and was not a formal letter of obligation. The Respondent said that he would record the Standard Security with the Disposition. As the Disposition was not registered the lender, who was the seller, remained the registered proprietor and so the lenders position was protected. The reason that the Respondent did not record the Disposition was that his client told him that the company in whose name the Disposition was to be recorded was in difficulty and his client accordingly told him to hold off registering the deeds. The Respondent accepted that he should have told Caesar and Howie about this. Mr Clapham stated that the Respondent accepted that in 1998 he must have been aware that he had given the undertaking to Caesar and Howie. He however later overlooked the letter and had forgotten about the undertaking by March 2001. In 2002 the lender pointed out that the deeds had still not been recorded and the lender was accordingly still infest in the property. Mr Clapham pointed out that Caesar and Howie did not enquire for 3-3½ years as to what was happening. Mr Clapham invited the Tribunal to consider that the matter was at the very lower end of the scale of professional misconduct and suggested that it be dealt with by way of a Censure.

DECISION

Although the Respondent had pled guilty to professional misconduct, the Tribunal had to consider whether or not the Respondent's conduct was sufficiently serious and reprehensible so as to amount to professional misconduct. Given that the Respondent accepted that at the time he did know of the undertaking he gave to Caesar and Howie and given that he did not tell them that he could not record the Standard Security, the Tribunal found that the Respondent's conduct did amount to professional misconduct. The Tribunal however recognised that the Respondent was put in a difficult position due to the instructions he received from his client. The Respondent's view appeared to have been that as the title was still in the seller's name and the seller was the lender there was no prejudice to the lender. However the seller may not have wanted to remain infest and there could have been implications if the Security had been called up. The Tribunal however considered that this matter fell at the lower end of the scale of professional misconduct and that a Censure was sufficient penalty.

The Fiscal moved for an award of expenses and asked the Tribunal not to limit the expenses as this was not a case where the Law Society had argued three heads of complaint and lost two, in this case only one matter had gone forward and the Law Society had been successful.

Mr Clapham asked the Tribunal to modify the award of expenses in respect of the Complainers expenses because when the Complaint was initiated there were three charges to answer but the Complainers had abandoned two of them.

The Tribunal did not consider it appropriate to mitigate the expenses in a case such as this where the Law Society had, after investigation and taking account of the answers, decided not to proceed with two of the heads of complaint. It would have been different if these had been proceeded with and lost by the Law Society. The Tribunal noted that there had been no delays caused by the Law Society and did not consider it appropriate to modify the expenses. The Tribunal made the usual order with regard to publicity.

Vice Chairman