

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

**ALEXANDER MUIR, Flat G/R, 36
Darnley Road, Glasgow**

1. A Complaint dated 23 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, Alexander Muir, Solicitor, Flat G/R, 36 Darnley 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 18th January 2006 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 18th January 2006 the Complainers were represented by their Fiscal Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. A letter was received from the Respondent indicating that he was admitting misconduct but

requesting that the case be adjourned to allow him to present medical evidence in mitigation. The Tribunal made a finding of misconduct and agreed to adjourn the matter until 30 March 2006 to allow the Respondent to present medical evidence in mitigation.

5. When the case called on 30th March 2006 the Complainers were represented by their Fiscal Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. The Fiscal lodged an email received from the Respondent the previous day which included a medical report.

6. The Tribunal found the following facts established

6.1 The Respondent was born 10th January 1960. He was admitted as a solicitor on 13th April 1983. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 5th May 1983. From 1st May 1987 until 31st July 2001 he was a Partner in the firm Moore & Partners. From 1st August 1991 until 31st January 2001 he was a Partner in the firm Alexander & Martin. From 1st February 2001 until 7th January 2003 he was a Partner in the firm Alexander & Company. From 8th January 2003 until 31st July 2003 he was a Partner in the firm and latterly became Consultant to Messrs Carr Berman & Crichton. At present the Respondent is not employed as a solicitor.

6.2 Ms A

The Respondent acted on behalf of a Ms A of Property 1 in connection with her purchase of heritable subjects, at that time known as Property 2. Thereafter provided with the postal address Property 2A. Ms A purchased the said subjects from the Company 1 at a price of SIXTY NINE THOUSAND NINE HUNDRED AND FOUR POUNDS (£69,904) STERLING. Missives in respect of the purchase were concluded on 20th June 2002. These missives provided

a proposed date of entry of 28th August 2002. To facilitate payment of the purchase price, Ms A secured borrowing facilities from the Northern Rock plc. That bank provided to the Respondent loan instructions to facilitate the setting up of a Standard Security over the heritable subjects to protect their position. The Respondent accepted these instructions and proceeded with the conveyancing. In due course he intimated to Northern Rock plc a formal Report on Title as a consequence of which the bank released to the Respondent mortgage funds to allow the purchase price to be paid and the conveyancing transaction to settle.

6.3 On 17th July 2003, in the course of a file check, the Northern Rock plc wrote to the Respondent requesting evidence from him that the Title documentation had been presented to the Land Register of Scotland for registration. Where the purchase transaction relates to a newly built property, the period of registration with the Land Register is in practice considerably longer than that which would occur if the property had already been registered. As a consequence lenders have developed a practice whereby upon the expiry of a 12 month period from the date funds are drawn down, the lender will write to the solicitor involved in the conveyance asking them for return of the Title Deeds or evidence that the Title Deeds have been presented to the Land Register for registration. At the time this request from Northern Rock plc was received by the Respondent, he was then employed by Messrs Carr Berman & Crichton in his capacity as a Consultant. He replied to Northern Rock plc on 23rd July 2003 providing them with a copy of a purported receipted Form 4. The reply of 23rd July 2003 was sent not by the Respondent but by Martin Berman of Messrs Carr, Berman and Chricton, Solicitors, Glasgow.

6.4 Ms A instructed a separate firm of solicitors to act on her behalf in connection with the sale of the subjects. Having

accepted those instructions that firm wrote to the Northern Rock plc asking that they deliver to them the title deeds to allow them to proceed with the conveyancing. The Bank replied to the solicitors that the title deeds had never been delivered to them from the solicitors who acted on behalf of Ms A in connection with the original purchase. Further enquiries by the firm now acting for Ms A revealed that the Title Deeds, including the Disposition and Standard Security in respect of Property 2A had never been presented for registration by the Respondent. By the time this was discovered the Respondent had left his then partnership and secured a partnership with an alternative firm. The firm acting on behalf of Ms A wrote to the Respondent enquiring of him as to why the deeds had not been presented for registration despite him having received payment from the said Ms A in respect of stamp duty, professional fees and registration dues. The Respondent replied indicating that stamp duty had been paid on 29th August 2002 and that the Title Deeds had thereafter been presented for registration on 24th September 2002. Further enquiry revealed that this was inaccurate. The stamp duty had not in fact been paid by the Respondent until the end of December 2004. Separately to allow the Title Deeds to be registered and to facilitate the subsequent sale of the property, Ms A required again to make payment to her now instructed solicitors, sums of money in respect of registration dues for the Disposition and Standard Security. She had already made payment of these outlays to the Respondent at the time of the original purchase. In addition she required to meet further legal fees to her now instructed firm of solicitors who required to rectify the position on her behalf.

7. Having considered all the circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of his unreasonable delay from the time that the purchase price was paid in recording or having registered a title in favour of his client and his unreasonable delay from the time when loan funds were encashed in recording or having registered a standard security in favour of Northern Rock Plc.
8. Having noted the Respondent's written mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 30th March 2006. The Tribunal having considered the Complaint dated 23rd December 2005 at the instance of the Council of the Law Society of Scotland against Alexander Muir, Solicitor, Flat G/R, 36 Darnley Road, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his unreasonable delay in registering a title in favour of his client and a standard security in favour of Northern Rock Plc; 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 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 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

The Respondent had admitted professional misconduct in his letter to the Tribunal at its meeting on 18th January 2006 and the Tribunal had previously made a finding of misconduct. The matter was adjourned to allow the Respondent to produce medical evidence in mitigation.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid, on behalf of the Law Society, indicated that the Law Society accepted the medical report as genuine. Mr Reid confirmed that the Respondent remained outwith the profession and that he understood that the Respondent did not intend to practice again as a solicitor. Mr Reid confirmed that the Law Society did not aver that the Respondent had misled his client, but he failed to record title deeds for his client which had resulted in his client having to pay recording dues twice. Mr Reid pointed out that it was 2¼ years before the matter was discovered and so far as he understood it the client had not had the monies refunded but the Law Society were still pursuing that matter.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated in his email that he had been suffering from medical problems and referred the Tribunal to the medical report produced. The Respondent also pointed out to the Tribunal that he had been a practising solicitor for 20 years and this was the first time he had appeared before the Tribunal.

DECISION

Given that there was a failure to record the disposition and standard security for a period of 2¼ years, the Tribunal did accept that this amounted to professional misconduct. It was however very much at the lower end of the scale as it only involved one client and one transaction. There was also no averment with regard to the misleading of his client. The Tribunal considered it unfortunate that the client had

had to pay another firm of solicitors and settle recording dues for a second time. This had caused unnecessary stress and inconvenience to the client and brings the profession into disrepute. The Tribunal however noted that the Respondent had been a solicitor for 20 years and this was his first time before the Tribunal. The Tribunal also took into account the terms of the medical report lodged on behalf of the Respondent. The Tribunal further took account of the fact that the Respondent had co-operated and admitted professional misconduct. In the whole circumstances the Tribunal considered that a Censure would be sufficient penalty. The Tribunal made the usual order with regard to publicity and expenses.

Chairman