

**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**

**CHRISTINE MARGARET  
MURRAY, Solicitor, of Murray  
Ireland, Solicitors, PO Box 8140,  
Mauchline, Ayrshire**

1. A Complaint dated 1 April 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Christine Margaret Murray, Solicitor, of Murray Ireland, Solicitors, PO Box 8140, Mauchline, Ayrshire (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 2 July 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 2 July 2008. The Complainers were represented by their Fiscal, Andrew Lothian, Solicitor, Edinburgh. The

Respondent was present and represented by David Clapham, Solicitor, Glasgow.

5. The Tribunal allowed a number of minor amendments to the Record which had been previously been lodged. These amendments were agreed between the parties. A Joint Minute of Admissions was lodged agreeing the evidence and therefore no witnesses were required to be led by either party.

6. The Tribunal found the following facts established

6.1 The Respondent was born on 18 June 1969. She was admitted as a solicitor on 22 September 1992. She was enrolled as a solicitor in the Registers of Scotland on 2 October 1992. The Respondent was employed by the firm of Ian McCarry, Solicitors at 1980 Maryhill Road, Glasgow from 29 October 1992 to 27 August 1999. The Respondent commenced practice on her own account on 1 September 1999 as Christine Murray, Solicitors. Subsequently she acquired the practice of Ireland & Company and changed the name of her firm to Murray Ireland. That firm continues and its current address is PO Box 8140, Mauchline, Ayrshire.

Mr and Mrs A

6.2 In or about 2006, Mr and Mrs A instructed the Respondent in connection with the conveyancing of certain heritable property, including the purchase of heritage at Property 1, with a settlement date of 24 November 2006.

6.3 On completion of the transaction on 24 November 2006, Mr and Mrs A instructed the Respondent to register the disposition in their favour, in order that they would become infert. The Respondent failed to register the disposition in favour of Mr

and Mrs A. On or about 31 January 2007, Mr and Mrs A withdrew instructions from the Respondent in favour of another firm of solicitors. The solicitors then instructed for Mr and Mrs A searched the Land Register on 15 February 2007. They identified that the disposition relating to the Property 1 had not been presented for registration. On 19 February 2007 the Respondent sent the unregistered disposition to the solicitors then acting for Mr and Mrs A.

- 6.4 Mr and Mrs A had obtained a mortgage from the Royal Bank of Scotland plc in order to fund the purchase of their new house. They executed a standard security in favour of the lender. When their new solicitors searched the Land Register in February 2007, they identified that the standard security had not been presented for registration. On or about 19 February 2007 the Respondent sent the unregistered standard security to the solicitors then acting for Mr and Mrs A.

#### Failure to respond to correspondence

- 6.5 On 15 February 2007, Mr and Mrs A invoked the aid of the Complainers regarding the manner in which the Respondent had dealt with the instructions received from them. The Complainers obtained sufficient information to allow them to formulate and intimate a complaint to the Respondent.
- 6.6 The Complainers wrote to the Respondent by letter dated 23 April 2007 intimating the complaint by Mr and Mrs A in terms of an attached list of issues. In addition to having been the subject of the complaint, the Respondent was at that time the sole principal and client relations partner in the firm of Murray Ireland. The Complainers sought, within 21 days of the date of that letter: the Respondent's written response; any further background information the Respondent wished to provide; the

Respondent's business file or files relating to the matter; and details of any fees charged or to be charged. No response was received from the Respondent.

- 6.7 On 16 May 2007 the Complainers served on the Respondent a Notice in terms of section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980, requiring from the Respondent within 14 days a response as requested previously and an explanation for the delay. No response to that notice was received.
- 6.8 On 31 May 2007 the Complainers wrote to the Respondent seeking her response to the issues raised in the complaint by Mr and Mrs A, within seven days, under explanation that if she failed to respond within that time period, a further Notice in terms of Section 15(2)(i)(i) (requiring the Respondent to give the Complainers six weeks' notice of her intention to renew her practising certificate) would be served on the Respondent. No response was received. A Notice under Section 15(2)(i)(i) was served on the Respondent in these terms on 11 June 2007.
- 6.9 On 11 June 2007 the Complainers wrote to the Respondent to intimate a separate Complaint regarding her failure to respond to the Complainers' correspondence. The Complainers sought, within 21 days of the date of that letter: the Respondent's written response; any further background information the Respondent wished to provide; the Respondent's business file or files relating to the matter; and details of any fees charged or to be charged. No response was received from the Respondent.
- 6.10 On 2 August 2007 the Complainers wrote to the Respondent to inform her that a Reporter had been appointed.

#### Repeated breaches

6.11 Between April and August 2007 the Complainers required to carry out investigations into the complaint made by Mr and Mrs A. These investigations required the appointment of a Reporter. The Complainers repeatedly requested a response from the Respondent in order that they might progress investigation of the complaint. The Respondent repeatedly failed to comply with the reasonable requests made of her by the Complainers and the section 15 Notice served upon her.

7. Having considered the foregoing circumstances and having heard submissions by both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of her failure to respond timeously, openly and accurately to the reasonable enquires made of her by the Complainers and to Statutory Notices served by them.
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 2 July 2008. The Tribunal having considered the Complaint dated 1 April 2008 at the instance of the Council of the Law Society of Scotland against Christine Margaret Murray, Solicitor, of Murray Ireland Solicitors, PO Box 8140, Mauchline, Ayrshire; Find the Respondent guilty of Professional Misconduct in respect of her failure to respond timeously, openly and accurately to the reasonable enquires made of her by the Law Society and to Statutory Notices served by them; Censure the Respondent; Find no expenses due to or by either party; 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**

A Record and Inventories of Productions for the both the Complainers and the Respondent were lodged with the Tribunal.

Mr Lothian sought to make a number of minor amendments to the terms of the Record. Mr Clapham was agreeable to these amendments being made. The Tribunal agreed to amend the Record accordingly.

A Joint Minute of Admissions was lodged agreeing the evidence in this case. This meant that no witnesses required to be led on behalf of either party.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lothian referred to Article 2 of the Complaint which related to the background to a complaint by the Respondent's clients arising from a conveyancing transaction. He confirmed that as stated in the Record this article was admitted in its entirety. The circumstances of the complaint were that three months after the settlement date of their conveyancing transaction the Respondent's clients instructed new solicitors in relation to a remortgage who in the course of acting established that the Disposition and Standard Security relating to the property they had purchased had not been registered. Mr Lothian referred to the Respondent's Answer 5.1 where the Respondent's explanation for this error is set out. Mr Lothian accepted this explanation as factually accurate. The Respondent had stated that she had instructed her secretary by means of a dictation tape to obtain the Stamp Duty Land Tax Certificate (SDLT) in relation to this matter. The Respondent assumed that her instructions had been implemented. However, she found out later that the deeds had not gone to the Land Register and her secretary explained that she had had difficulty accessing the Inland Revenue website to obtain the SDLT Certificate and had meant to go back to the matter but had overlooked it.

In relation to a question from the Tribunal, Mr Lothian stated that he was not aware whether there were difficulties with the operation of the SDLT website at that time.

Mr Lothian also referred to the second matter contained in the Complaint which was set out at Article 3 of the Record. This involved a failure to respond to correspondence from the Law Society. On 15 February 2007 the same clients invoked the aid of the Complainers and a letter was sent to the Respondent as Client Relations Partner and sole principal of the firm. The Respondent admitted that letter had been received. A response was required by the Respondent but none was forthcoming.

Mr Lothian referred to Production 3 of the Complainer's Inventory of Productions, a statutory notice dated 16 May 2007 under Section 15 of the Solicitors (Scotland) Act 1980. This notice required a response. The Respondent accepted that she received the statutory notice and that she did not respond.

Mr Lothian stated that around 23 May 2007 the Law Society was given to believe that the Respondent was no longer practising at her business address so they wrote to her at her home address. A number of letters were sent to her at her home address which the Respondent has no recollection of receiving. Mr Lothian stated that the Law Society accept that the Respondent has no recollection of receiving these letters. Mr Lothian stated that the Law Society cannot say whether these letters were received. He referred to Production 5 of the said Inventory, a notice dated 11 June 2007 in relation to the Respondent's practising certificate. Another identical notice, a copy of which is found at Production 6 of the said Inventory was also sent that day. Mr Lothian stated that both notices were sent recorded delivery. One was returned marked "not called for". The other was not on the Law Society file and Mr Lothian stated that all he could say was that it the practice of the Law Society to place all returned mail in the file. Mr Lothian stated that in these cases the recorded delivery slips were not available.

Mr Lothian referred to Production 8 of the said Inventory, a letter dated 2 August 2007 advising the Respondent that a Reporter had been appointed in relation to the complaint by her clients. Mr Lothian stated that the Respondent admits that she received that letter.

Mr Lothian submitted that the Respondent is guilty of professional misconduct firstly in relation to her failure to register the Disposition and Standard Security on behalf of



her clients. Mr Lothian stated that while these deeds were unrecorded her clients were uninfert. The letter of obligation had expired so there was a period of delay of around two months when her clients' interests were not protected. Mr Lothian submitted that this was a serious and reprehensible departure from the standards expected of a competent solicitor for the following reasons. Firstly, the Tribunal in the case of Alexander Muir decided on 30 March 2006, accepted that professional misconduct could arise from a delay in recording just two deeds. Mr Lothian stated that in the Muir case the delay was that of two and a quarter years. Secondly, he submitted that the Tribunal was entitled to have regard to the whole circumstances in this case. He submitted that the failures were brought to the attention of the Respondent by the clients' new solicitors who checked the Register. He submitted that if this had not happened it was not known when this matter would have been brought to the Respondent's attention. Mr Lothian submitted that this failure should be regarded as more serious and reprehensible because there was no system for identifying that deeds had gone unregistered.

In response to a question from the Tribunal, Mr Lothian confirmed that it was not part of the case against the Respondent that she had failed to institute a safe system of recording deeds. Mr Lothian confirmed that there was nothing else in relation to averments of professional misconduct apart from the Respondent's failure to record the two deeds. He stated that the explanation that the Respondent provided was not exculpatory.

Mr Lothian then turned to the second part of the Complaint regarding the failure to respond to the Law Society. He stated that statutory notices were sent and required a response. He stated that between 23 April 2007 and 2 August 2007 the Respondent was aware that a complaint had been made by her clients and that a response was required from her. Mr Lothian stated that the Respondent was aware that over a period of three months that her failure to respond could hinder the Law Society in the execution of their statutory duty to investigate the complaint made against her. Mr Lothian submitted that this delay met the serious and reprehensible test and therefore she was guilty of professional misconduct in relation to this matter also.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Clapham referred the Tribunal to the case of Sharp-v-The Council of the Law Society of Scotland 1984 SLT 313 and stated that any failure on behalf of his client required to be a serious and reprehensible departure from the standards expected of a competent solicitor. The Chairman indicated to Mr Clapham that he need not address the Tribunal in detail in relation to this familiar case.

Mr Clapham stated that the test was not whether the Respondent was negligent. He submitted that mistakes do happen. Mr Clapham submitted that many cases involving unrecorded deeds come before the Tribunal which involve serious failures and a large number of unrecorded deeds. Mr Clapham submitted that there were two deeds in this case but they were connected and would have been registered together. He submitted that the failure would have come to light shortly as it would have been noted that there was a ledger balance in relation to the outstanding amount of stamp duty and recording dues. Mr Clapham submitted that the Tribunal is entitled to take the view that failure to record the Disposition and Standard Security may be unsatisfactory and amount to inadequate professional service but may not amount in the particular circumstances of this case to professional misconduct.

In relation to the correspondence from the Law Society, Mr Clapham submitted that the Respondent's position is clear. She admits receiving the letters of 23 April and 16 May. She has no recollection of receiving the letters dated 31 May or 11 June 2007. In relation to the letters of 11 June 2007 sent by recorded delivery post, Mr Clapham stated that one was not received and was returned to the Law Society. He invited the Tribunal to draw an inference from that fact and consider that if two recorded delivery letters were dispatched to the same person at the same time the letters would go out together and through the Royal Mail system together and that if one could not be delivered by the postman, the other would not be delivered either.

Mr Clapham stated that the other letters were sent by ordinary post. He submitted that the test in this case is proof beyond reasonable doubt. He stated that this is a situation where the Respondent accepts that she got some letters and did not reply to them and that the last letter she received did not require a response. Mr Clapham conceded that

the Respondent did not respond to the letters of 23 April and 16 May 2007. He submitted that the circumstances in this case fall short of professional misconduct although he accepted that it was not satisfactory for his client to have failed to respond to the Law Society correspondence. Mr Clapham referred the Tribunal to the Sharp test and stated that if a solicitor failed to respond to fifteen or twenty letters then that would amount to professional misconduct. However, he submitted that in the case of a single letter or in this case two letters, that this amounts to unsatisfactory professional conduct falling short of the Sharp test.

Mr Clapham stated that the statutory notice of 11 June 2007 indicated that the Respondent would need to give notice of her intention to renew her practising certificate. He referred to Production 1 of the Respondent's Inventory of Productions, a letter from the Registrar of 23 July 2007 and Production number 2, the Respondent's response to that letter dated 2 September 2007. He submitted that the Respondent did attend to correspondence from the Complainers.

Mr Clapham invited the Tribunal not to make a finding of professional misconduct for the reasons outlined above and to find that the circumstances of this case fall short of professional misconduct in terms of the Sharp test.

Mr Clapham indicated that if the Tribunal was not with him on this point, he wished to make several points in mitigation. He stated that the Respondent apologises for not responding to the two letters from the Law Society which she admits receiving. He stated that there were a number of factors which contributed to her failure. One of them was the Respondent's ill-health at the time and he referred to the medical report lodged in the said Inventory. Another factor was that she was involved in closing two of her offices as referred to in her Answers. Both offices closed around April/May 2007. Mr Clapham submitted that the Respondent's focus was on other matters at this time and that she was suffering from certain medical conditions.

## **DECISION**

The Tribunal had regard to the submissions made by both parties and to the documentation which had been lodged.

In relation to the first averment of professional misconduct regarding the Respondent's failure to register a disposition and standard security the Tribunal distinguished this case from the case of Alexander Muir which was referred to by Mr Lothian. In the Respondent's case the deeds were unregistered for a short period of three months as opposed to the lengthy delay of two and a half years in the Muir case. The Tribunal noted that this complaint involved a single failure to register two related deeds from a single conveyancing transaction. The Tribunal accepted the Respondent's explanation that she had instructed a member of staff to attend to the registration of the deeds. The Tribunal was aware that at the time of this transaction the Inland Revenue website where stamp duty was obtained online had only recently been introduced and was at times difficult to access. The Tribunal was of the view that mistakes do happen in practice and that in the absence of any aggravating factors a single mistake such as this does not amount to a serious and reprehensible departure from the standards expected of a competent solicitor and therefore does not amount to professional misconduct.

The Tribunal then considered the second averment of professional misconduct in relation to the Respondent's failure to respond to correspondence from the Law Society. The Tribunal noted that the Respondent admitted to receiving two letters from the Society, one a letter intimating that a complaint had been made and the other a statutory notice. Both letters sought the Respondent's response to the complaint to enable the Law Society to investigate the matter. The Tribunal considered that the Respondent was well aware that the Law Society has a duty to investigate any complaint regarding the conduct of a solicitor and that solicitors have a duty to respond to enquires that are made by the Law Society in this regard. Failure to respond to the Law Society prevents the Society from properly investigating complaints and can bring the whole profession into disrepute. For these reasons the Tribunal views the Respondent's failures to respond to the Law Society in these circumstances as serious and reprehensible and considers that her failures amount to professional misconduct.

**SUBMISSIONS IN MITIGATION**

Mr Clapham referred the Tribunal to the terms of the two testimonials contained in the Respondent's Inventory of Productions. He asked the Tribunal to view the Respondent's failure at the very lower end of the scale of professional misconduct and invited the Tribunal to refrain from censuring his client in view of the circumstances and the terms of the references which had been lodged.

**SUBMISSIONS RE EXPENSES**

Mr Lothian submitted that as the Respondent had been partly successful in this case that no award of expenses should be made against her.

**PENALTY**

The Tribunal considered that the Respondent's failures were at the lower end of the scale of professional misconduct and that the appropriate sanction was a Censure. No award of expenses was made. The Tribunal made the usual order with regard to publicity.

**Chairman**