

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

ABBREVIATED
FINDINGS

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY
OF SCOTLAND

against

DAVID ALEXANDER SYMINGTON, Solicitor,
19 Haddington Place, Edinburgh.

1. A Complaint dated 21st May 2002 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") requesting that David Alexander Symington, Solicitor, 19 Haddington Place, Edinburgh (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 they might think right.

2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged by the Respondent.

3. In terms of their Rules the Tribunal appointed the Complaint to be heard on 3rd September 2002 and Notice thereof was duly served upon the Respondent.
4. The hearing took place on 3rd September 2002. The Complainers were represented by Walter Muir, Solicitor, Ayr as Fiscal and the Respondent was present and represented by Mr Gibb, Solicitor. A Joint Minute was lodged wherein the facts, the averments of professional misconduct and the averments of inadequate professional service were admitted. No evidence was led.
5. The Tribunal found the following facts established:-
 - (1) The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born 6th September 1951. He was admitted as a solicitor on 29th September 1982 and enrolled on 18th October 1982. He is at present a sole principal of and trades under the name Symington & Co at 19 Haddington Place, Edinburgh.
 - Bank of Scotland – Oliver Crescent, Hawick**
 - (2) Sometime in or about the early part of 2000 the Respondent accepted instructions on behalf of A & B Limited to act in the purchase of Oliver Crescent, Hawick. This transaction constituted the first registration of the title in the land Register. The Respondent submitted papers to the Keeper in connection with this application for registration. Sometime in or about May 2000 the Bank of Scotland instructed agents to constitute a Standard Security in favour of the bank over the said subjects. In due course A & B Limited granted a Standard Security in favour of the bank. Said Standard Security was submitted for registration to the Land Register as a dealing on

10th July 2000. Sometime on or about 9th April 2001 the agents acting for the bank received a fax from the Keeper indicating that the application upon which the registration of said Standard Security was dependent was at risk of being cancelled due to the Respondent's failure to deal with a requisition made by the Keeper, which requisition was first made sometime in or about August 2000. The agents on behalf of the bank wrote to the Respondent asking him to deal with this requisition. The Respondent failed to do so. As a result of this both the bank's application and the application made on behalf of A & B Limited were cancelled by the Keeper on 9th September 2001. A & B Limited are not infest in the property and the bank do not hold a registered Standard Security over the property.

The agents acting on behalf of the bank wrote to the Respondent on four occasions in connection with matters arising from cancellation of these applications. The Respondent has failed to respond to any of these letters.

By letter dated 11th October 2001 the bank wrote to the Complainers invoking their aid. By letters dated 26th October, 14th November and 26th November all in 2001 the Complainers wrote to the Respondent requesting that he contact the Complainers to discuss matters arising from cancellation of these applications and also his response to the complaint that the agents for the bank had made to the Complainers. The Respondent failed to reply to any of these letters. By letters dated 20th December 2001 and 21st January 2002 the Complainers gave notice to the Respondent in terms of Section 15(2)(i)(i) of the Solicitors Act 1980. The Respondent failed to reply to this notice.

Bank of Scotland – Stenhouse Gardens, Edinburgh

- (3) Sometime in or about the early part of 2001 the Respondent acted for X Limited in the purchase of Stenhouse Gardens, Edinburgh. The Bank of Scotland instructed agents to constitute a Standard Security over the said

subjects. Applications for registration of the bank's Standard Security and the title in favour of X Limited were submitted to the Land Register on 20th April 2001. On 23rd July the agents acting on behalf of the bank received a fax from the Keeper indicating that the application for registration of the interest of X Limited upon which the application for registration of the said Standard Security was dependent, was at risk of being cancelled due to the Respondent's failure to deal with a requisition made by the Keeper. The agents immediately wrote to the Respondent asking him to deal with this requisition. He failed to do so. As a result both applications were cancelled by the Keeper on 14th August 2001. X are not infest in the property and the bank do not hold a registered security over the property.

The agents acting on behalf of the bank wrote to the Respondent on four occasions in connection with matters arising from cancellation of these applications. The Respondent failed to respond to any of these letters.

By letter dated 11th October 2001 the agents acting on behalf of the Bank wrote to the Complainers invoking their aid. By letters dated 26th October, 14th November and 26th November all in 2001 the Complainers wrote to the Respondent requesting that he contact the Complainers to discuss matters arising from cancellation of these applications and also his response to the complaint that the agents for the bank had made to the Complainers. The Respondent failed to reply to any of these letters. By letters dated 20th December 2001 and 21st January 2002 the Complainers gave notice to the Respondent in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980. The Respondent failed to reply to this notice.

D

- (4) Sometime in or about the early part of 1997 the Respondent accepted instructions from Mrs D in relation to the adjustment of terms of a Minute of Agreement following separation from her husband which separation took

place sometime on or about 31st December 1996. The Minute of Agreement entered into between Mr and Mrs D and dated 20th October and 11th December 1997 provided, *inter alia*, that Mr D would assign to Mrs D his interest in certain endowment policies in the joint names of Mr and Mrs D with Scottish Widows and Friends Provident. Mrs D advised the Respondent that there were two Scottish Widows endowment policies which had been effected in connection with the mortgage over the matrimonial home. The Respondent prepared a Deed of Assignment which Mr D signed on 11th December 1997 and Mrs D signed on 10th January 1998. This deed erroneously referred to only one of these two Scottish Widows policies. Mrs D was unaware of this until she was subsequently advised by Scottish Widows that one of the policies remained in the joint names of Mr and Mrs D. On 12th May 1998 Mr D signed a Trust Deed for behoof of his creditors. Agents acting on behalf of Mrs D have requested Mr D's Trustee to transfer the Scottish Widows policy still in their joint names into Mrs D's sole name. The Trustee refuses to do so. Sometime on or about 4th December 2001 Scottish Widows advised Mrs D's agents that they did not receive intimation of the executed Assignment. Scottish Widows has de-mutualised and has made substantial bonus payments to policy holders who were "qualifying members" as at 22nd June 1999. Scottish Widows did not consider Mrs D to be a qualifying member by reason of the fact that the Assignment had not been intimated to them until after 22nd June 1999. Their usual practice is to pay the bonus to the first named person on the policy. In this case Mr D was the first person named and accordingly the bonus has been paid to his Trustee. Had the assignment been timeously intimated to Scottish Widows by the Respondent Scottish Widows would have paid the bonus to Mrs D. The bonus payments in respect of both Scottish Widows policies amount in total to £3,357.50. Mr D's Trustee refuses to release this sum to Mrs D.

By letters dated 15th March, 23rd March, 2nd May and 14th May all in 2001 Mrs D's agents wrote to the Respondent requesting information from him.

By letter dated 10th August 2001 Mrs D's agents wrote to the Respondent intimating a claim for professional negligence in respect of the Respondent's failure to ensure that the two Scottish Widows policies were included in the Deed of Assignment. They asked the Respondent to confirm to them that this letter of intimation had been forwarded to his insurers. The Respondent has failed to reply to this letter and to the other aforementioned letters.

By letter dated 26th October 2002 the agents acting for Mrs D wrote to the Complainers invoking their aid. By letters dated 3rd December and 20th December both in 2001 the Complainers wrote to the Respondent requesting his comments on the complaints which Mrs D's agents had intimated to the Complainers. The Respondent failed to reply to either of these letters. On 21st January 2002 the Complainers gave notice to the Respondent in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 requesting an explanation for delay in responding to these letters. The Respondent failed to reply to this notice.

Stirling Eunson & Ferguson, Solicitors, Dunfermline on behalf of G and T

- (5) Messrs Stirling Eunson & Ferguson acted for Mr G and Mrs T in the purchase of property known as Cottage, Chance Inn, Cupar. The Respondent acted for the sellers, Mrs and Mrs Y, in this transaction. This was the first registration of the title of the said subjects in the Land Register. When Stirling Eunson & Ferguson received the Land Certificate they noted that the Keeper excluded indemnity in relation to a small area of ground. Stirling Eunson & Ferguson wrote to the Respondent in relation to this matter. The Respondent's firm had granted and had delivered up a Letter of Obligation at settlement of the transaction whereby his firm undertook to deliver a Land Certificate without exclusion of indemnity. They wrote to the Respondent's firm on six occasions in connection with this matter. Furthermore they forwarded the principal copy of the Land Certificate for

perusal by the Respondent. None of these letters were answered by the Respondent and the Land Certificate has not been returned to Stirling Eunson & Ferguson.

By letter dated 29th February 2000 Stirling Eunson & Ferguson wrote to the Complainers invoking their aid in respect of the Respondent's failure to respond to correspondence. By letter dated 22nd June 2000 the Complainers wrote to the Respondent requesting his comments on the complaint within fourteen days. The Respondent failed to respond to this letter. On 21st January 2002 the Complainers wrote to the Respondent giving him notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 and requesting him to provide an explanation for the delay in replying within fourteen days. The Respondent failed to respond to this notice.

6. Having considered the foregoing circumstances and the submissions by parties the Tribunal find the Respondent guilty of professional misconduct in that he
 - (a) Failed to deal with requisitions made by the Keeper in connection with applications made by him on behalf of his clients A & B Limited and X Limited for registration of title to properties at Oliver Crescent, Hawick and Stenhouse Gardens, Edinburgh respectively. This resulted in the cancellation of both applications with the consequence that his clients are not infert in these properties and the lenders to these clients are unsecured for the loans advanced by them.
 - (b) He failed to reply timeously to correspondence sent to him by fellow agents.
 - (c) He failed to respond at all to the reasonable requests from the Complainers for information in consequence of which the Complainers were unable to respond in any meaningful way to those who invoked their aid.

The Tribunal also find that

- (i) The Respondent provided an inadequate professional service to his client Mrs D in respect of his failure to prepare a Deed of Assignment in respect of two Scottish Widows Endowment policies on behalf of Mrs D in implement of the terms of the Minute of Agreement which she had entered into with her husband in circumstances where he knew that these two policies were to be assigned to Mrs D.
- (ii) He provided an inadequate professional service to his client Mrs D in respect of his failure to timeously intimate to Scottish Widows the assignment of one Scottish Widows Endowment policy which had been assigned to his client Mrs D in consequence of which Mrs D did not have a perfect title to that policy at the material time.
- (iii) He provided an inadequate professional service to his clients A & B Limited and X Limited in respect of his failure to deal with all the requisitions made of him by the keeper in connection with the applications for registration of title of properties at Oliver Crescent, Hawick and Stenhouse Gardens, Edinburgh, resulting in cancellation of both applications and of the Standard Securities which have been constituted over these properties.

7. Having heard the solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 3rd September 2002. The Tribunal having considered the Complaint dated 21st May 2002 at the instance of the Council of the Law Society of Scotland against David Alexander Symington, Solicitor, 19 Haddington Place, Edinburgh, Find the Respondent guilty of professional misconduct in respect of his failure to deal with requisitions made by the Keeper, failure to reply timeously to correspondence sent to him by fellow agents and failure to respond to the reasonable requests of the

Complainers for information and Find that the Respondent provided an inadequate professional service in respect of his failure to prepare a Deed of Assignment in respect of two endowment policies, his failure to timeously intimate the assignment of an Endowment policy and his failure to deal with requisitions made of him by the Keeper; Censure the Respondent, Fine him in the sum of £2,000 to be forfeit to Her Majesty and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of five years with effect from 1st December 2002 any Practising Certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such solicitor, firm or other employer as may be approved by the Council of the Law Society of Scotland, and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full Practising Certificate; Find the Respondent liable in the expenses of the Complainers and 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 Six of the Law Society's Table of Fees for general business and Direct that publicity be given to this decision and that the publicity shall include the name of the Respondent.

(Signed) PETER W ROCKWELL

Vice Chairman

8. 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

The Respondent admitted the facts and the averments of both professional misconduct and inadequate professional service. The Fiscal for the Complainers acknowledged that the Respondent had fully co-operated in adjusting a Joint Minute at the earliest opportunity. The Fiscal reported that the averment relating to the property at Cottage, Chance Inn in Cupar had been resolved by Dunfermline agents who had sent the Respondent their bill for this. The Fiscal pointed out to the Tribunal that all the matters in the Complaint would have been avoidable if the solicitor was coping, but the Respondent was failing to cope and this was worrying and potentially damaging to the profession at large.

The solicitor for the Respondent addressed the Tribunal outlining the Respondent's history and personal circumstances. Mr Gibb explained that A & B Limited and X Limited were associated companies and that the Respondent was continuing to do work for them in connection with other matters. Mr Gibb explained that there were difficulties in respect of the property at Oliver Crescent, Hawick in that the ordnance survey map did not disclose any numbers for properties in the middle of the street, the property was a repossession and accordingly the creditors could not docket the plan and the purchaser had no knowledge of the property. This matter was still not resolved and Mr Gibb undertook to assist the Respondent in getting the security in place. With regard to the property at Stenhouse Gardens, Edinburgh, Mr Gibb explained that the Respondent only had a copy of the plan which was shaded heavy black which made it difficult to identify the property. It has since transpired that the Council had a duplicate copy of the plan which might resolve matters. With regard to the assignment of the policy Mr Gibb stated that one of the assignments had been overlooked and that the assignment had been intimated but not acknowledged as it had not been received. Mr Gibb stressed that this was a rather unfortunate situation and the Respondent was unlucky in what had happened. Mr Gibb explained that there may be a claim against the Master Policy in respect of this matter and the Respondent would be liable for the £2000 excess. Mr Gibb confirmed that the difficulties with the property at Cottage, Chance Inn in Cupar had been sorted out by Stirling Eunson & Ferguson who had sent the Respondent a bill which he would have to pay. Mr Gibb stated that the Respondent accepted that he could not continue to trade on his own and he had

been trying to find a firm to join. Mr Gibb suggested that the Tribunal consider deferring for three months to allow the Respondent to make arrangements to join another firm and to satisfactorily conclude all the outstanding matters.

The Respondent accepted that his actions amounted to professional misconduct and that he provided an inadequate professional service. It was clear to the Tribunal that the Respondent was not in control and not coping with the running of his sole practice. The Tribunal were accordingly of the view that, to ensure protection of the public, the Respondent's Practising Certificate should be restricted. Given that the Respondent had asked to be given time to allow him to conclude the outstanding matters to his client's satisfaction, the Tribunal ordered the restriction to run from 1st December 2002. The Tribunal also considered that a fine would be appropriate. As regards the findings relating to an inadequate professional service there was no information laid before the Tribunal with regard to any fees paid by any of the clients and there was no request for compensation. The Tribunal also noted that the Respondent was to sort matters out with the help of Mr Gibb and that a claim was to be made in respect of loss sustained by Mrs D with the Respondent paying the £2000 excess. Accordingly the Tribunal made no order for compensation.

The Tribunal made the usual order with regard to publicity and expenses.