

**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

**IAN MACLACHLAN ALLAN,
Solicitor, Messrs Stenhouse,
Husband & Irvine, 3 East Port,
Dunfermline**

1. A Complaint dated 13 February 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Ian MacLachlan Allan, Solicitor, Messrs Stenhouse, Husband & Irvine, 3 East Port, Dunfermline (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 6 May 2009 and notice thereof was duly served on the Respondent.
4. The hearing took place on 6 May 2009. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr Macreath, Solicitor, Glasgow.

5. Mr Macreath advised the Tribunal that the Respondent had lodged his Answers prior to receiving legal advice. He sought the Tribunal's leave to withdraw the Answers. The Tribunal agreed that the Answers could be withdrawn. Mr Macreath then indicated that the Respondent wished to plead guilty to professional misconduct as averred in the Complaint. No evidence required to be led.

6. The Tribunal found the following facts established

6.1 The Respondent was born on 21 July 1952. He was admitted as a Solicitor on 1 and enrolled as such on 14, both days of September 1976. He practices as the principal of Messrs. Stenhouse, Husband & Irvine, Solicitors, 3 East Port, Dunfermline.

Mr A and Mrs B

6.2 On 18th January 2006 the Respondent submitted an offer on behalf of Mr & Mrs C to Messrs Strutt & Parker in Edinburgh offering to purchase subjects at Property 1. The purchase price was to be £800,000 and the suggested date of entry was 31 March 2006

6.3 Messrs. Strutt & Parker replied to the Respondent on 19 January 2006 with a counter proposal as a result of which an amended offer was submitted on 27 January 2006 by the Respondent in which the price was increased to £900,000 with the same date of entry

6.4 Messrs. Anderson Strathern Solicitors Edinburgh were instructed by the sellers of the subjects who were Mr A and Mrs B. They received the amended offer and a draft qualified acceptance was issued by them on behalf of Mr A & Mrs B on 2 February 2006

6.5 As defined in the qualified acceptance, the subjects comprised (1) Property 2 and Property 3 shown outlined in red on plan

one annexed to the qualified acceptance, and more particularly disposed by (1) disposition by Mr D and Ms E in favour of the sellers, recorded in the division of the General Register of Sasines for the county of Kinross on 14 November 1995, under exception of (1a) those three fields outlined in red on plan two annexed to the qualified acceptance, (2) disposition by Company 1 in favour of the sellers recorded in the said division of the General Register of Sasines on 4 November 1994, and (3) disposition by the Trustees of Company 2 in favour of the sellers to be registered in the Land Register of Scotland prior to the date of entry and shown outlined in red on plan three annexed to the qualified acceptance. The qualified acceptance further provided that, in the event that the disposition transferring title to those fields shown outlined in red on plan three had not been registered prior to the date of entry, the subjects would comprise items (1), (1a) and (2) “as previously detailed in this condition” and the definition of subjects in the qualified acceptance would be amended accordingly. The letter under cover of which Anderson Strathern submitted the qualified acceptance stated:-

“...We are currently arranging an excambion of two fields owned by a neighbouring farmer at Property 4. We hope to have this excambion settled by the date of entry but in the event we do not we shall simply sell your clients what our clients currently own and thereafter you can carry out the excambion...”

6.6 Missives were concluded on 19 April 2006 (the date on which settlement took place) as between Mr and Mrs C and Mr A and Mrs B. Separate missives were concluded in respect of the lands to be excambed. In terms of those missives the consideration passing from Mr A and Mrs B (as purchasers) to Company 2 (as sellers) included a disposition by Mr A and Mrs B in favour of Company 2 of 16.99 hectares or thereby at

Property 2. The consideration passing from Company 2 (as sellers) to Mr A and Mrs B (as purchasers) was a disposition of 23.77 hectares or thereby at Property 4, i.e. the subjects mentioned at (3) above under reference to the qualified acceptance. The missives expressly provided for the rights and liabilities of Mr A and Mrs B as purchasers to be assigned to Mr and Mrs C, but only to the extent of the lands to be excambed. Mr A and Mrs B had a continuing and non-assignable obligation to make payment of equality consideration (amounting to £14,000) to Company 2.

- 6.7 As hereinbefore condescended upon, settlement took place on 19 April 2006. The settlement did not include the lands to be excambed.
- 6.8 The excambion was then to proceed separately. Company 2 was represented by Messrs. Turcan Connell. Draft dispositions of each of the excambion subjects were sent by Anderson Strathern to the Respondent on 10 April 2006 for revisal
- 6.9 Following settlement on 19 April 2006, correspondence was sent from Anderson Strathern to the Respondent requesting return of the draft dispositions in relation to the excambion. A letter was sent by fax on 4 May 2006. The Respondent did not reply. Anderson Strathern made further communication with the Respondent by telephone on 18 May 2006 and again by fax on 30 June 2006, 12, 18, 20 & 24 July 2006. The terms of the correspondence made it plain that Mr A and Mrs B were prevented by the delay from completing their obligations under and in terms of the contract of excambion. The two draft dispositions were returned by the Respondent to Anderson Strathern on 25 July 2006. On 26 July 2006 Anderson Strathern sent a fax the Respondent requesting that he forward a copy of the disposition in favour of his clients together with a copy of the receipt for the registration of this disposition issued by Registers of Scotland (the receipted form 4) to Messrs. Turcan

Connell in order that they could revise the drafts for their clients' interest. The Respondent did nothing. Reminders were sent on 1, 17, 22 and 23 August and 18 September 2006 by letter or fax as well as by a telephone call on 11 August. None of these reminders was responded to by the Respondent.

- 6.10 The sale of Property 2 and Property 3 to Mr & Mrs C included the fields which were to be excambed and transferred to the neighbouring farmer. Consequently, titles to the land which was to be excambed, which at the material time was recorded in the Register of Sasines required to be registered in the Land Register of Scotland in the name of Mr & Mrs C upon the sale of the farm. It was necessary for Turcan Connell to know that their client was receiving a disposition from the registered proprietor of the land to be excambed. In order to demonstrate that Mr and Mrs C were registered proprietors of the land to be excambed a title number in the name of Mr and Mrs C was required. Until the Respondent could provide a title number to prove his clients' title to the land to be excambed, the excambion could not settle.
- 6.11 The Respondent wrote to Mr and Mrs C on 21 August 2006 enclosing the Stamp Duty Land Tax form (SDLT 1) and asking that this be completed with certain information, signed and returned to him. The form was returned to the Respondent and was eventually submitted by him to the Inland Revenue on 1 September 2006 over four months after the first transaction settled. The statutory requirement is for the Stamp Duty Land Tax return to be made no later than one month after the date of settlement.
- 6.12 In their letter of 18 September 2006 Anderson Strathern stated that they were instructed to report the Respondent to the Complainers in respect of the Respondent's failure or at least delay to record Mr and Mrs C's title which they said was delaying conclusion of the excambion. On 4 October 2006 the

Respondent sent a reminder to the Inland Revenue enquiring about the whereabouts of the SDLT5 Certificate. Further reminders were sent by the Respondent to the Inland Revenue on 23 and 27 October 2006 and 6 November 2006.

6.13 The Respondent wrote to Anderson Strathern on 6 November 2006. He stated that the delay was due to delay in obtaining the Land Transaction Return Certificate from HM Revenue & Customs (HMRC) who had succeeded in the functions of the Inland Revenue.

6.14 The Respondent continued to correspond with HMRC in relation to the SDLT5 Certificate. The continuing delay was in part due to HMRC failing to acknowledge having received from the Respondent a form SDLT8 which was submitted by him on 11 September 2006.

6.15 After further correspondence the SDLT Certificate was issued on 25 January 2007.

6.16 Mr and Mrs C's title was then submitted for registration. On 16 February 2007 the Respondent sent the relative receipted form 4 to Messrs. Anderson Strathern. The Complainers are not aware of the date upon which the excambion was completed, that having been effected by delivery of cross dispositions between Turcan Connell and Stenhouse Husband & Irvine.

7. Having considered the foregoing circumstances, and having heard submissions from both parties, the Tribunal found the Respondent guilty of professional misconduct singly and in cumulo in respect of:-

7.1 His failure to have a disposition in favour of his clients timeously stamped and recorded, and

7.2 His persistent failure to answer correspondence from other solicitors.

8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6 May 2009. The Tribunal having considered the Complaint dated 13 February 2009 at the instance of the Council of the Law Society of Scotland against Ian MacLachlan Allan, Solicitor, Messrs Stenhouse, Husband & Irvine, 3 East Port, Dunfermline; Find that the Respondent guilty of professional misconduct singly and in cumulo in respect of his failure to have a disposition in favour of his clients timeously stamped and recorded and his persistent failure to answer correspondence from other solicitors; Censure the Respondent; Fine him in the sum of £2000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00 and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Kirsteen Keyden

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

The Chairman advised both parties that the complainers Mr A & Mrs B are both known her, Mr A is one of her husband's partners and both Mr A and Mrs B are known to her socially. Both Mr Lynch and Mr Macreath indicated that they saw no difficulties with the Chairman dealing with this matter.

Mr Macreath was granted leave to lodge an Inventory of Productions for the Respondent which consisted of two references from respected members of the Faculty in Dunfermline.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch advised that the Complaint contained two averments of professional misconduct, one regarding a failure to have timeously stamped and recorded a disposition in favour of clients and a second relating to a persistent failure to respond to correspondence from other solicitors. Mr Lynch advised that the Respondent had submitted Answers to the Complaint which admitted all the averments of fact subject to certain explanations. He advised that the Respondent did not admit the averments of professional misconduct in his Answers.

Mr Lynch indicated that the failure to respond to correspondence set out in Article 2.8 of the Complaint has to be seen against the background of the difficulties which this delay caused to others including the Respondent's own client.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath advised the Tribunal that the Respondent had lodged his Answers prior to receiving legal advice. He sought the Tribunal's leave to withdraw these Answers. The Tribunal agreed that the Answers could be withdrawn. Mr Macreath then indicated that the Respondent wished to plead guilty to professional misconduct as averred in the Complaint. No evidence required to be led.

Mr Macreath drew the Tribunal's attention to the two letters from respected members of the Dunfermline Faculty who had provided references as to the Respondent's good character and honesty. Mr Macreath stated that the Respondent is a sole practitioner

in a family firm which has been in existence for over one hundred years. Mr Macreath advised that the firm was well established and that the Respondent followed his father into the profession and has operated on his own account since his father retired 15 years ago.

Mr Macreath advised that the Respondent's business is 50% residential conveyancing and that the rest of his business comprises agricultural and trusts and executry work. The firm has significant local client loyalty and the clients in this case, Mr and Mrs C, are long established clients of the firm.

Mr Macreath advised that the Respondent entered into missives to acquire a farm in Kinross, from Mr A & Mrs B. The date of entry was tight given the work which was required to be done. There was an agreement that an excambion of two fields had to be transacted and it was in the Respondent's clients' interests that this was done. Missives were concluded on the date of settlement and these missives were complicated.

Mr Macreath stated that the Respondent always understood that the rights and liabilities of Mr A and Mrs B regarding the area of land to be excambed needed to be transferred to his clients. Mr Macreath stated that the Respondent knew that he had a duty to record his clients' title. Mr A and Mrs B threatened to make a formal complaint regarding the delay. He stated that the Respondent accepted that the stamp duty land tax certificate should have been made available to HMRC some months before it was. Mr Macreath advised that the Respondent's clients did not lodge a complaint and that the Respondent had made an appropriate allowance in the fee which was charged to his clients.

Mr Macreath advised that at the time of the Respondent's failures his only member of staff required to have an urgent kidney transplant and was absent from work without prior notice during this period. Mr Macreath stated that the Respondent understands that this only goes some way to mitigation as he has a duty to organise his practice to ensure that work is carried out without delay.

Mr Macreath drew the Tribunal's attention to the excellent terms of the references in relation to the Respondent's character and his reputation. Mr Macreath advised that the member of staff who was ill is now back at work having been off for 8 weeks in

total and advised that she assisted in concluding this matter. Mr Macreath advised that this was not a run of the mill transaction and the revisions needed to the deed of excambion were time consuming and detailed. Mr Macreath advised that Mr A's and Mrs B's transaction has now been concluded and the excambion has been completed.

Mr Macreath asked the Tribunal to take into account the Respondent's previous good character and the fact that this was a solitary failure compounded by the unplanned absence, due to urgent medical reasons, of his only member of staff. Mr Macreath asked the Tribunal to consider in the light of this mitigation that a Censure would be the appropriate sanction in this case.

DECISION

The Tribunal took account of the Respondent's previous unblemished character in the profession. The Tribunal noted that these failures were an isolated occurrence during a period when the Respondent's only member of staff had an eight week unplanned absence from work for medical reasons. The Tribunal also noted that all matters had now been satisfactorily resolved. However, the Tribunal consider that it was the Respondent's responsibility to deal promptly with stamping the disposition and recording the disposition to protect his clients' interests and to deal openly, timeously and effectively with professional correspondence from fellow solicitors. The Tribunal consider that it is essential that solicitors can trust each other to respond promptly to enquiries from other firms in order to be able to transact their business without incurring delays which may prejudice their clients' interests. The Tribunal noted that the Respondent's failure had an effect both on Mr A & Mrs B and on his own clients and as such the Tribunal viewed the Complaint seriously. However, the Tribunal was of the view that due to the strong mitigating factors in this case the appropriate sanction was a Censure and a fine. The Tribunal Censured the Respondent and fined him £2000 and made the usual Order with regard to publicity and expenses.

Vice Chairman