

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2005)**

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**ALISON BAXTER, Solicitor,
formerly of Baxter & Company, 18
Victoria Street, Aberdeen and now
care of Burness, Paull &
Williamsons, Union Plaza, 1 Union
Wynd, Aberdeen**

1. A Complaint dated 21 December 2012 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alison Baxter, Solicitor, formerly of Baxter & Company, 18 Victoria Street, Aberdeen and now care of Burness, Paull & Williamsons, Union Plaza, 1 Union Wynd, Aberdeen (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 8 March 2013 and notice thereof was duly served on the Respondent.

4. The hearing took place on 8 March 2013. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented David Burnside, Solicitor, Aberdeen.
5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint as slightly amended.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 22 January 1970. She was enrolled as a Solicitor in the Register of Solicitors in Scotland on 8 October 1991. From 12 February 1996 to 7 June 2005 she was a partner in the firm of Baxter & Co. From 8 June 2005 to 10 April 2006 she was employed as an Associate by Stronachs, Solicitors. From 11 April 2006 to 07 January 2011, she was a Consultant with Solicitors Direct. From 22 December 2010 until June 2012 she was an employee with KWAD, Solicitors. She is not currently working as a solicitor.
 - 6.2 In or about October 2000, the Respondent was instructed by Mr A and Ms B in relation to the proposed purchase by Mr A and Ms B of Property 1.
 - 6.3 Missives were concluded in respect of the purchase of Property 1, with a date of entry of 19 January 2001. The transaction settled on that date. Mr A and Ms B had obtained a loan from Lloyds TSB in relation to the purchase and had executed a Standard Security in favour of Lloyds TSB.
 - 6.4 On 10 May 2001 the Registers of Scotland wrote to the Respondent advising that an Application for Registration of the

Deeds could not proceed until a dispute between Property 1 and Property 2 had been resolved in relation to common paths.

Thereafter, correspondence ensued between the Respondent, Ledingham Chalmers, Solicitors (for the sellers), Aberdeen City Council (who had in turn sold the property to the sellers) and the Registers of Scotland.

6.5 The Titles for numbers Property 1 and Property 2 had been granted by Aberdeen City Council. The Title Deed plans for the properties contained discrepancies.

6.6 An Extract from the Ordnance Survey plan produced by the Registers of Scotland showed:-

- a) The Title to Property 1 provided that Property 1 (purchased by the Respondent's clients) had a right in common to paths shown tinted yellow, green, blue, brown and pink on the Extract.
- b) The plan attached to the Deed granted by Aberdeen City Council to Property 2, which became the Title Plan for Property 2, showed the area tinted green as an exclusive coal bunker for Property 2, on which basis the area tinted green should not have been included in the Title for Property 1.
- c) The area tinted pink was not included within the common path. Accordingly, the said pink area should have been exclusively conveyed to Property 1. Instead, it had been included as a common path area in the Title to Property 1 and not included at all in the Title to Property 2.

- d) The Title plan for Property 2 did not show the position of an additional section of common path, shown as tinted blue on the Title to Property 1, but instead showed a section of common path coloured mauve and brown.
- e) The areas coloured mauve and brown were in fact areas of ground forming part of a larger area of garden ground exclusive to Property 1.
- f) The width of the section of common path tinted blue in the Title for Property 1 was narrower than the matching section of common path in the Title for Property 2.
- g) The Respondent sent a copy of the Registers of Scotland letter and enclosures on 24 May 2001 to Ledingham Chalmers, the Solicitors who had acted for the sellers of the property. Ledingham Chalmers responded by letter dated 16 July 2001.

6.7 The Respondent was ill over the summer of 2001.

6.8 On 21 September 2001 the Respondent reported the difficulties to her clients along with a copy of a letter from Aberdeen City Council suggesting two options to resolve the difficulties. These difficulties were not reported to Lloyds TSB at that time. The clients did not respond and reminders were sent to them. The Registers of Scotland granted various extensions. In or about March 2002 the Respondent met with her clients and thereafter had a further meeting with them.

The Land Register wrote to the Respondent on 8 April 2002 advising that the application had been cancelled due to lack of response.

- 6.9 From 7 May 2002, further correspondence ensued between the Respondent, Ledingham Chalmers and the Registers of Scotland. On 17 May 2002 the Registers advised that, having cancelled an application, it could not be reopened. On 25 June 2002 the Respondent presented a further application to the Registers of Scotland.
- 6.10 Lloyds TSB, the lenders in respect of Property 1, wrote to the Respondent on 19 August 2002 in relation to non-delivery of the Title Deeds. The Respondent replied on 2 September 2002 advising inter alia that, “There is a query that has only now been raised regarding a neighbour’s property and how it effects this property. The solicitors that we purchased from are having to try and sort this matter in terms of our clients contract with them and they are therefore having to enter into correspondence with Aberdeen City Council as this is an ex Council property. We are chasing on an ongoing basis and when these matters are eventually resolved and the title deeds have gone through their registration process we shall provide them to you.”
- 6.11 The Respondent wrote to Ledingham Chalmers on 14 November 2002 reminding them that a proper response was awaited to the Respondent’s letter of 7 May 2002 and a reminder of 2 September 2002, and on 20 November 2002 Ledingham Chalmers wrote to the Respondent enclosing the Council’s comments and proposals to resolve the problem.

Based on the comments, the Council proposed that the Registers proceed to register the Title for Property 1 with an exclusion of indemnity. The purchasers [the Respondent’s clients] would then dispoise Property 1 ad rem to the Council and the Council would grant a fresh title including a new plan [which they had provided with their comments and proposals].

- 6.12 On 24 February 2003 the Respondent wrote to Ledingham Chalmers advising that her clients didn't agree with the path widths and neither option was appropriate as the security of her clients' lenders could be prejudiced.
- 6.13 Ledingham Chalmers passed the letter of 24 February 2003 to Aberdeen City Council who wrote to the Respondent on 19 March 2003 suggesting how to proceed. The Respondent wrote to her clients on 22 April 2003 with a copy of the Council's letter.

On 21 August 2003 the Respondent had a telephone conversation with Mr A, one of her clients. On 16 September 2003 the Respondent wrote to the Land Register in respect of the then current application asking for an extension. On the same date she wrote to her clients with a draft of a letter to be sent to Aberdeen City Council and seeking the client's approval on the terms of the draft.

- 6.14 On 5 November 2003 Lloyds TSB wrote to the Respondent seeking the Deeds or an update. The Respondent replied on 17 December 2003 with a general explanation of the problem and an explanation that she had been ill and absent from the office.
- 6.15 At the end of January 2004 the Respondent's clients confirmed their agreement with the terms of the draft letter to Aberdeen City Council and on 30 January 2004 the Respondent wrote to the Council setting out her clients' position and seeking compensation.

There was then subsequent correspondence with the Council and the Land Register and on 25 May 2004 the Council wrote advising the amount of the compensation. On 15 June 2004 the Respondent copied the Council letter to her clients. The

Respondent met her clients on 1 September 2004. The Council wrote to the Respondent on 9 September, 6 October and 15 November 2004 without response.

The Respondent wrote to her clients on 10 November 2004 asking for final instructions and pointing out she might require to advise the lender “that you are not allowing matters to settle”.

6.16 On 8 February 2005 the Respondent wrote to Aberdeen City Council and the Registers of Scotland advising that there had been no contact with the clients and advising that if she did not hear from the clients within seven days, she would have no option but to resign from acting on their behalf. On 17 February 2005 the Respondent wrote to her clients with an explanation and a final opportunity to contact the firm, failing which they would withdraw and report matters to the lenders.

6.17 Aberdeen City Council wrote reminders to the Respondent on 4 and 23 March 2005 but there was no response. The Council wrote again on 11 April 2005 advising that, in the absence of any response, they assumed the Respondent was no longer acting and had therefore closed their file.

The Respondent and/or members of staff had attempted to contact her clients on various telephone numbers and left messages. The clients did not respond until May when they agreed to accept the Council offer.

6.18 On 1 July 2005 the Respondent, who had moved to Stronachs, Solicitors, Aberdeen, wrote to Aberdeen City Council advising that all mail should be addressed to her at Stronachs and that she had instructions from her clients to accept a settlement

proposal from the Council. The Respondent asked the Council to prepare the necessary Deeds.

On the same date the Respondent wrote to her clients advising that she had written to the Council.

The Respondent, who had commenced that employment on 8 June 2005, required to continue to deal with matters relating to her former firm outwith office hours.

- 6.19 On 4 July 2005 the Respondent wrote to the Registers of Scotland advising that she had instructions and had agreed settlement with the Council. She requested a further time extension. The Registers of Scotland replied on 13 July 2005 advising that, if the matter was not resolved within sixty days, they would have no option but to cancel the application.
- 6.20 Aberdeen City Council sent drafts and a new plan to the Respondent on 10 August 2005. In the absence of any response, they sent a reminder on 12 September 2005.
- 6.21 On 3 October 2005 the Registers of Scotland wrote to the Respondent as Baxter & Co with a copy to Stronachs advising that as there had been no further communication the application had been cancelled.
- 6.22 On 3 November 2005 Lloyds TSB wrote to Stronachs in relation to the failure by the Respondent as Baxter & Co to deliver the Deeds for Property 1. They also pointed out that the charge in their favour had not been registered and asked for a response within seven days. There was no response.
- 6.23 The Respondent began employment as a Consultant at Solicitors Direct on 11 April 2006. On 12 June 2006 Aberdeen

City Council wrote to Stronachs requesting return of the drafts. Stronachs passed said letter to Solicitors Direct in Aberdeen as the Respondent was now employed by them. The Council received no reply.

6.24 On 13 March 2007 Lloyds TSB wrote to Stronachs who responded to the effect that the Respondent was no longer employed by them and referred Lloyds TSB to Solicitors Direct. Lloyds TSB wrote to Solicitors Direct on 20 April 2007 but received no response.

6.25 In August 2007 Lloyds TSB contacted Stronachs who repeated that the Respondent was with Solicitors Direct. Stronachs' response was copied by Lloyds TSB to Solicitors Direct on 29 August 2007. Lloyds TSB again referred to the charge not being registered and asked for a response within seven days. There was no response.

Aberdeen City Council wrote to Solicitors Direct on 29 November 2007 advising that if they did not hear within fourteen days they would close their file.

6.26 On 2 January 2008 Lloyds TSB wrote to Solicitors Direct referring to their earlier letters and seeking a reply within seven days. There was no response. The Respondent was still with Solicitors Direct.

6.27 Given the lack of response, Lloyds TSB instructed their Solicitors, Turner Macfarlane Green, who, on 16 June 2008, wrote to Solicitors Direct referring to the loan advanced on 18 January 2001 and advising that the Deeds had not been delivered and there had been no explanation given.

The Respondent had written to Lloyds TSB on 2 September 2002 and 17 December 2003 (as previously narrated) but not since that latter date.

- 6.28 From on or about 17 June 2008 to 19 March 2009 there was correspondence between Turner Macfarlane Green and Solicitors Direct. On 19 March 2009 Solicitors Direct wrote to Turner Macfarlane Green (now Optima Legal) advising that they had received a reply from Aberdeen City Council but that the Respondent had been ill. It was hoped that she would consider the letter and reply the following week.
- 6.29 The Respondent passed the file to her colleague, Ms C, in or about March 2009.

Optima Legal wrote to Solicitors Direct on 8 April, 21 May, 10 June and 17 July 2009 without response. On 13 September 2009 Solicitors Direct wrote to Optima Legal advising that the Respondent was on maternity leave. They would revert to Optima Legal as soon as possible. Optima Legal sent reminders on 19 October and 4 November 2009.

The Respondent was very ill during her pregnancy. Her baby was born on 22 June 2009 and she did not return to Solicitors Direct until February 2010. The letter of 13 September 2009 was sent by Ms C.

When the Respondent returned to work, the file was retained by Ms C. It was returned to the Respondent for a period of approximately one month at the end of May 2010 but the Respondent was instructed she was not allowed to deal with the file. Ms C required the Respondent to return the file to her on 7 July 2010.

6.30 On 20 November 2009 Solicitors Direct wrote to Optima Legal advising that the file had been examined by a Mr D and that Solicitors Direct had not acted at any time for the purchasers or been instructed by Lloyds TSB and therefore had no duty to the lender or instructions from the purchasers. The letter advised that as a gesture of goodwill to Lloyds TSB, Solicitors Direct would look further at the matter to try and resolve the problem, but asked them to confirm that they wished them to proceed on that basis.

On 8 December 2009 Optima Legal wrote a reminder to Solicitors Direct who replied on 27 January 2010 advising they were still reviewing the file, and asked “in the meantime can you please reply to our letter dated 20 November 2009 and confirm in writing that you are in agreement with the terms of our letter?”. Optima never responded to these questions posed in each letter. Optima Legal wrote further on 14 May 2010. There was no response.

6.31 On 30 June 2010 Optima Legal wrote direct to the Respondent at Solicitors Direct advising that the Land Register did not show that an Application for Registration in respect of Property 1 had been re-presented. Optima Legal asked for confirmation of the current position and confirmation that the matter had been referred to the indemnity insurers.

Although Optima Legal wrote to the Respondent at Solicitors Direct, all letters relating to the matter at this point in time were being dealt with by Ms C.

6.32 In the absence of any response, Optima Legal wrote to Solicitors Direct on 19 July 2010 advising that if there was no response, they would have no option other than to lodge a formal complaint.

The Respondent, through Solicitors Direct, replied on 27 July 2010 referring to other persons within Solicitors Direct having had the file and not being able to discover the current position.

The Respondent was in the office on 27 July, saw the letter and responded although the matter was being dealt with by Ms C.

6.33 By letter dated 1 September 2010 Optima Legal, acting for Lloyds TSB, intimated a complaint to the Scottish Legal Complaints Commission. The SLCC referred the matter to the Complainers to investigate. Lloyds TSB complained that the Respondent had been instructed by Mr A and Ms B in the purchase of Property 1 in 2000, that loan funds had been provided by Lloyds TSB in January 2001 for the purchase, that the Standard Security in favour of Lloyds TSB had still not been registered.

6.34 On 18 November 2010 the Complainers wrote to the Respondent intimating a complaint, as per an attached List of Issues. The List included two Issues in that there was:-

(1) Delay or failure to record either the complainers' Standard Security or the Disposition in favour of the Borrowers.

(2) Failure to respond to correspondence from the complainers or their Agents.

6.35 The Complainers thereafter investigated the Issues and the complaint was considered by a Professional Conduct Sub Committee on 3 November 2011. The Committee Considered that the Issues appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that they

appeared capable of being proved beyond reasonable doubt and could amount to professional misconduct. The Committee decided that a Fiscal should be appointed.

The Complainers wrote to the Respondent on 22 November 2011 enclosing a copy of the Professional Conduct Sub Committee Schedule.

7. Having heard submissions from the Complainers and on behalf of the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 her failure and delay over a period of eight and a half years in recording the standard security in favour of Lloyds TSB and the disposition in favour of Mr A and Ms B; and

7.2 her failure to respond to communications from Lloyds TSB or their agents.

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

Edinburgh 8 March 2013. The Tribunal having considered the Complaint dated 21 December 2012 at the instance of the Council of the Law Society of Scotland against Alison Baxter, Solicitor, formerly of Baxter & Company, 18 Victoria Street, Aberdeen and now care of Burness, Paull & Williamsons, Union Plaza, 1 Union Wynd, Aberdeen; Find the Respondent guilty of Professional Misconduct in respect of her failure and delay over a period of eight and a half years to record a standard security in favour of a lender and disposition in favour of her client and failure to respond to communications from the lender or their agents; Censure the Respondent; 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)

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

The Respondent admitted professional misconduct in the Answers lodged. On the morning of the Tribunal, parties lodged a Joint Minute with the Tribunal setting out agreed facts. These facts were slightly different from the facts as set out in the Complaint and parties confirmed that these facts were agreed between them. It was accordingly not necessary for evidence with regard to the facts to be led before the Tribunal. Mr Burnside also confirmed on behalf of his client that she accepted that her conduct amounted to professional misconduct.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that the Respondent's conduct fell in to two sections. The failure between the date of entry in July 2001 up until July 2005 was the first section. She wrote to her clients in September 2001 setting out what the problems were. In August 2002 the lenders enquired what was going on and she advised them of the problem. In November 2003 the lenders asked for an update which she gave in December 2003. There were problems at the time in obtaining instructions from her clients. However there was a second section of failure to respond between July 2005 and 2009 where there was a substantial delay and the deeds were still not recorded. The lenders wrote in November 2005 and the Respondent did not reply. In April 2006 she went to Solicitors Direct. The lenders wrote there in April 2007 and there was no reply. They also wrote in January 2008 and June 2008 with no reply. There was then correspondence with regard to a plan and then she was off ill. Mr Reid stated that the Law Society accepted that Ms C had control of the file after 2009 and that the Respondent's responsibility for this file ceased at this time. Mr Reid however pointed out that the deeds remained unrecorded for a period of eight and a half years and that the cumulative series of delays was unacceptable and amounted to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Burnside stated that it was accepted that the failure to record deeds led to problems for the lender and the client. He however pointed out that this was a one-off

situation. There were initial problems getting instructions from the client and dealing with Aberdeen City Council. The Respondent tried to remedy the situation. It was not a case of her not “being bothered”. Mr Burnside explained that the Respondent’s clients saw a possible opportunity to make some money out of what had happened. There was 15 months delay due to the clients. Unless the clients agreed to the remedial conveyancing it could not take place. Mr Burnside stated that this was not a solicitor who just allowed things to pile up on her desk. He emphasised that the Respondent knew that it was not acceptable for the delay to go on so long. Mr Burnside pointed out the difficulty caused by the clients’ lack of cooperation and the delays in dealing with Aberdeen City Council. The Respondent also had a number of personal problems and health problems. She became pregnant and was a single parent. She had her own small practice that was not viable and had to wind it down while working at Stronachs who were not interested in this particular file. Mr Burnside referred to Solicitors Direct’s chequered history and advised that the Respondent had no support from them.

Mr Burnside submitted that we all have horror files and that the buddy system would have helped but the Respondent was on her own and had no one to ask for help. Mr Burnside stated that the length of delay in this case was appalling but was down to the delays on the part of others and the Respondent’s personal problems. He pointed out that the matter had been hanging over the Respondent for some time and was causing additional stress for her in addition to her being a single parent and having ill-health. Mr Burnside advised that since Mr E’s (of KWAD) practising certificate had been restricted, the Respondent had ceased to be employed since June 2012.

Mr Burnside stated that it was accepted that the Respondent’s delays were unconscionable, but it was not just a case of “a head in the sand”. It was a complicated issue and the Respondent was off work for long periods of time.

Mr Burnside submitted that this was the only file that had gone wrong in the Respondent’s long conveyancing career. Her attitude was not cavalier. It was a single transaction and there had already been a significant effect on her. She had paid £1000 for the remedial conveyancing and would have to pay the costs of the Tribunal.

Mr Burnside then asked the Respondent some questions about her health difficulties over the years. The Respondent stated that two years of the delay was caused by the clients' delay in instructions and delays by Aberdeen City Council. She explained that she had a lot of live conveyancing transactions and court cases going on at this time and that each time correspondence came in in connection with this dreaded file she had to remind herself of the position. She was suffering from asthma at this time and would be off for a couple of weeks at a time and then would have a backlog to catch up on. After 2005, which was the second section of the delays, she had been a sole practitioner for 10 years but had to start working at Stronachs quickly and had to run down her firm at the same time. It did not work out at Stronachs due to personalities. The stress the Respondent was going through at this time meant that the file took a backseat. The Respondent explained that she was working self-employed under Solicitors Direct but that her mum then had a stroke and had to move in with her. She had to look after her mum who had health problems and she got very depressed as it was all too much. She was then off ill between September and December 2006. In October 2008 she had breathing problems and found out that she was pregnant. She had a very bad pregnancy with numerous health problems causing her to use crutches and wear hand splints. The Respondent explained that nobody would take the file but then finally in March 2009 Ms C took it over. The Respondent confirmed that she managed to progress her other work with no difficulty but could not deal with this particular file. The Respondent explained that she has not been working since the end of May 2012 and has been unable to obtain another job with this matter hanging over her.

DECISION

The Tribunal had a discussion about whether or not the Respondent's conduct was sufficiently serious and reprehensible to meet the Sharp Test. The incident related to one client and one file. To start with the Respondent had difficulties getting instructions from her clients and there were also delays caused by Aberdeen City Council. On balance however the Tribunal considered that the Respondent's conduct did meet the test of professional misconduct given that the delay continued for a totally unacceptable period of eight and a half years during which time the client remained un-infeft and the lender remained unsecured. Extensive delays in recording

deeds and failure to respond to lenders in respect of enquiries about these delays is prejudicial to the profession and is likely to bring the profession into disrepute. The Respondent did not provide a satisfactory explanation or much detail about why she failed to respond to the lender between 2005 and 2009. It was stated that it was due to health problems but despite this she managed to continue with her other work. The Tribunal accordingly made a finding of professional misconduct but considered the Respondent's conduct to be very much at the lower end of the scale.

The Tribunal noted the Respondent's health problems and considered that a Censure would be a sufficient penalty in this case. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman