

**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

**PAUL SAUNDERS JARDINE,
Solicitor, Jardine Phillips LLP, 205
Morningside Road, Edinburgh**

1. A Complaint dated 16 December 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Paul Saunders Jardine, Solicitor, Jardine Phillips LLP, 205 Morningside Road, 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 it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 16 March 2010 and notice thereof was duly served on the Respondent.
4. The hearing took place on 16 March 2010. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented himself.

5. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint as amended. No evidence was led.
6. The Tribunal found the following facts established:
 - 6.1 The Respondent was born on 5 March 1970. He was admitted as a Solicitor on 7 May 1997. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 9 May 1997.

From 28 May 1997 to 31 August 2001 he was employed by Guild & Guild, WS, Solicitors. From 1 September 2001 he was a Partner in the firm of Guild & Guild, WS and ceased to be a Partner on 31 July 2006. From 31 July 2006 he became a partner in the firm now called Jardine Phillips, LLP.
 - 6.2 The Complainers received a letter from Mrs A, of Property 1 dated 23 April 2008 requesting the re-opening of a complaint.
 - 6.3 Separately, in the said letter, Mrs A complained that the Respondent had failed to record two Dispositions transferring shares in the ownership of a cottage from Mrs A herself to her daughter, Ms B.
 - 6.4 The Complainers carried out the necessary investigations into the complaint. Following said investigations a Reporter was instructed and a Report was produced dated 11 February 2009. On 3 March 2009 the Complainers wrote to the Respondent enclosing a copy of the Report. The Complainers advised that the professional misconduct issues would be considered by a Client Relations Committee.
 - 6.5 The issues were considered by a Client Relations Committee on 14 April 2009 and the Complainers wrote to the Respondent

on 13 April 2009 enclosing a copy of the Client Relations Committee Schedule and advising that the professional conduct issues would be considered by the Professional Conduct Committee.

- 6.6 The professional misconduct issues were considered by the Professional Conduct Committee on 28 May 2009 and 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. The Committee determined that a Fiscal should be appointed.

The Complainers wrote to the Respondent on 10 June 2009 enclosing a copy of the Professional Conduct Committee Schedule.

- 6.7 Prior to the dissolution of the firm of Guild & Guild, WS, the Respondent acted for Mrs A. He thereafter continued to act for Mrs A while a partner in the firm of Jardine Phillips, LLP. He continued to act until in or about July 2007 when he received a Mandate signed by Mrs A instructing that all her papers be transferred to Messrs Raeburn Christie, Solicitors, Banchory.

- 6.8 In 2005 the Respondent was advised by Mrs A that she wished to transfer a one fifth share in a property known as Property 2 to her daughter, Ms B.

The Respondent prepared the appropriate Disposition in respect of the transfer of a one fifth pro indiviso share of Property 2 to Ms B. Mrs A executed the Disposition on 30 December 2005 and returned it to the Respondent.

- 6.9 Mrs A wished to transfer a further one fifth share in the said property to her daughter, Ms B. The Respondent prepared a

Disposition in respect of the transfer of a one fifth pro indiviso share of the property 2 to Ms B. Mrs A executed the Disposition on 29 June 2006 and returned it to the Respondent.

The Respondent failed to register either of the Dispositions. The Pursuer's papers were eventually transferred under Mandate to Messrs Raeburn Christie, Solicitors with an undated letter from the Respondent received by Raeburn Christie at some point between 19 July 2007 and 6 August 2007. In this letter the Respondent pointed out that the two Dispositions required to be registered in the Sasine Register. The Dispositions were ultimately recorded GRS (Banff) on 7 November 2008.

7. Having heard submissions from both parties, and having noted the terms of an undated letter from the Respondent received by Raeburn Christie in July/August 2007, the Tribunal was not satisfied that the Respondent's conduct was sufficiently serious and reprehensible to amount to professional misconduct.
8. The Tribunal accordingly made no finding of professional misconduct and pronounced an Interlocutor in the following terms:-

Edinburgh 16 March 2010. The Tribunal having considered the Complaint dated 16 December 2009 at the instance of the Council of the Law Society of Scotland against Paul Saunders Jardine, Solicitor, Jardine Phillips LLP, 205 Morningside Road, Edinburgh; Make no Finding of Professional Misconduct; Find no expenses due to or by either party and Direct that publicity will be given to this Decision and this publicity will 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

A Joint Minute was lodged admitting the averments of facts, averments of duty and averments of professional misconduct in the Complaint.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid referred the Tribunal to paragraphs 2.6 and 2.8 of the Complaint. He explained that Mrs A had transferred two one fifth shares in her property to her daughter. The first transfer was on 1 December 2005 and the second was in June 2006. The Dispositions were not recorded by the Respondent and this had an effect on what Mrs A was trying to do. In July 2007, Mrs A instructed other solicitors and the Respondent sent an undated letter in which he outlined the situation very helpfully but at this time the deeds had not been recorded. The fact that the deeds had not been recorded only came to light when Mrs A transferred a third one fifth share in the property to her daughter. Mr Reid stated that Mrs A had complained to the Law Society. Mr Reid lodged previous findings against the Respondent with the Tribunal. These were admitted by the Respondent.

SUBMISSIONS FOR THE RESPONDENT

The Respondent explained that Mrs A had a house up north which she did not use and he thought it was a good idea for her to give shares in this to her daughter. After the first transaction in December 2005, the Respondent sent a Stamp Duty form to Mrs A's daughter but this was not signed and returned. The Respondent accordingly sent two Stamp Duty forms after the second transaction in June 2006 and both were sent back. The Respondent stated that at this stage he could have recorded both Dispositions but he had just moved offices and it was overlooked. The Respondent confirmed that this had no impact on Mrs A's tax situation as the conclusion of missives was the contract and she was able to use her allowances for both tax years. The Respondent stated that when the papers were sent to the new solicitors he pointed out that the Dispositions had not been recorded. He explained that because of the Mandate he did not feel that he could record them at that stage but he did point it out to the new solicitors. Mr Reid stated that although the undated letter from the

Respondent was helpful, he was not aware of it pointing out that the deeds had not been recorded.

In response to a question from a Tribunal member with regard to whether or not the Respondent's conduct met the Sharp Test, Mr Reid stated that one deed was prepared in December 2005 and another in June 2006 and by the time of the Mandate in June 2007, one and a half years had already passed. The failure to record did not come to light until 2008 when the third transaction was being undertaken and this was a long time period. The Respondent stated that he was sure he had highlighted in his letter the need to record the deeds as the deeds were not stamped. He also made a suggestion about the third transaction being undertaken. At this stage, the case was adjourned as the Tribunal requested sight of the letter in question.

The letter was produced and Mr Reid stated that he was obviously wrong with regard to whether or not the Respondent had pointed out that the Dispositions required to be registered and he accepted that this was stated in the letter. He accepted that this meant that Raeburn Christie should have been alerted to the need to record the deeds in July 2007. Mr Reid clarified that he still submitted that the Respondent's conduct amounted to professional misconduct.

The Respondent stated that he agreed that he should have registered the Dispositions either while at his old firm or at the new firm and that they were sitting in the file but the reason for this was that he was setting up the new firm and things were difficult. It was only when the Mandate came in that he realised that these deeds had not been recorded. He stated that he did not know whether his failure was sufficient to amount to professional misconduct and that he would let the Tribunal decide.

DECISION

Notwithstanding the terms of the Joint Minute, the Tribunal must be satisfied that the Respondent's conduct is sufficient to amount to professional misconduct in terms of the Sharp Test, Sharp-v-Council of the Law Society of Scotland 1984 SC 129. In the present case the Respondent has explained that in respect of the transaction in December 2005 the Stamp Duty form was not returned by Mrs A's daughter. He

accordingly then sent two forms after the second transaction in June 2006. It was unfortunate that the Respondent then overlooked the recording of the deeds until the Mandate came in in June 2007. It is however clear from the undated letter sent by the Respondent, which was received by Raeburn Christie between 19 July 2007 and 6 August 2007, that in response to the Mandate the Respondent sent the Dispositions and the SDLT 60 Forms and pointed out that the two Dispositions required to be registered in the Sasines Register. The Respondent accordingly can only be held responsible for the delay between December 2005 and July 2007. The Tribunal consider that there was a failure by the Respondent in respect of his oversight in failing to record the deeds. The failure from December 2005 however is partly explained by Mrs A's daughter's failure to return the Stamp Duty form. The Respondent has also explained that the oversight in recording the deeds after June 2006 was due to him moving firms. This is not an excuse and the Respondent's conduct is regrettable but the Tribunal has to consider whether it is sufficiently serious and reprehensible so as to amount to professional misconduct. It would appear that the Respondent's conduct did not have any impact on the inheritance tax situation and accordingly his client was not disadvantaged by what had happened. The Respondent's undated letter was extremely helpful and pointed out to Raeburn Christie that the deeds had to be registered. It would appear that the deeds were not actually registered, despite the terms of this letter, until November 2008, almost another year and a half later. The latter delay however cannot be attributed to the Respondent. In the whole circumstances the Tribunal could not be satisfied beyond reasonable doubt that the Sharp Test was met by this one oversight by the Respondent.

Mr Reid asked that there be finding of no expenses due to or by either party and the Respondent concurred in this motion. The Tribunal accordingly awarded no expenses due to or by either party. As this is a Decision of the Tribunal it requires to be given publicity in the normal way.

Vice Chairman