THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, Atria One, 144 Morrison Street, Edinburgh

Complainers

against

JOHN CHARLES NASON CRAXTON, residing at 2A Ashton View, Dumbarton

Respondent

1. A Complaint dated 29 July 2020 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that John Charles Nason Craxton, residing at 2A Ashton View, Dumbarton (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was no Secondary Complainer.

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

4. In terms of its Rules, the Tribunal fixed a procedural hearing for 24 September 2020, to be held on the virtual platform Zoom, and notice thereof was duly served on the Respondent. The Tribunal Office received two emails from the Respondent indicating that he did not intend to lodge Answers and that he did not wish to attend any hearings.

5. At the virtual procedural hearing on 24 September 2020, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was absent. On the Fiscal's motion, the Tribunal continued the Complaint to

a further procedural hearing on 9 November 2020 to allow the Fiscal to make contact with the Respondent with regard to the possibility of him agreeing the evidence in the case. It was confirmed that this procedural hearing again take place on the virtual platform Zoom.

6. Notice of the virtual procedural hearing set down for 9 November 2020 was served on the Respondent.

7. At the virtual procedural hearing on 9 November 2020, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was absent. The Fiscal invited the Tribunal to receive an amended Complaint dated 6 October 2020. He confirmed that this Complaint had been intimated to the Respondent and the principal amended Complaint included a handwritten docquet by the Respondent dated 21 October 2020. The Fiscal invited the Tribunal to deal with the hearing in the absence of the Respondent in terms of Rule 14 of the 2008 Tribunal Rules. He, thereafter, invited the Tribunal to convert the procedural hearing into a full hearing, treat the docquet by the Respondent as an admission of the facts and proceed on the basis of submissions only. Having given careful consideration to the Fiscal's submissions and email correspondence with the Respondent, the Tribunal granted all motions. The procedural hearing having been converted to a full hearing, the Tribunal proceeded to hear submissions from the Fiscal in relation to the matters raised within the Complaint.

8. Having given careful consideration to the terms of the amended Complaint including the Respondent's docquet and the submissions of the Fiscal, the Tribunal found the following facts established:-

8.1 The Respondent is John Charles Nason Craxton, who resides at 2A Ashton View, Dumbarton. He was enrolled as a solicitor on 18 November 1983. He was employed by Anderson Fyfe until May 1990 when he became a partner of that firm. He left Anderson Fyfe and established Craxton & Mercer in November 1994, where he remained until October 1998. In November 1998 he established Craxton & Grant SSC where he practised until 24 November 2011 (apart from a short period in 2003 when he was an employee of Burnett WS) until he was sequestrated and suspended on 24 November 2011. The Respondent requested his name be removed from the Roll of Solicitors. The

Practising Certificate Sub Committee met on 6 March 2014 and agreed to remove Mr Craxton's name from the Roll of Solicitors in Scotland. He is no longer on the Roll of Solicitors.

8.2 On 13 June 2017 Edwin McLaren and Lorraine McLaren were sentenced to periods of imprisonment of 11 years and 2 ½ years respectively in respect of an indictment containing 25 charges of common law fraud and money laundering. Generally, Edwin McLaren was the controlling mind in a scheme where home owners were induced to sell to Mr McLaren, or his nominee, their property at a reduced price on the promise that they could remain in the property indefinitely, without making any rent-like payment and they would receive a one-off lump sum payment on the conclusion of the transaction. The sellers were induced to relinquish their real right to their property for a small proportion of its value. The trial was Scotland's longest running fraud trial.

8.3 Edwin McLaren was convicted of property fraud involving the properties narrated in appendices 1,4,5,7 & 8 (and 20 others).

8.4 In the period of 2009 through to 2013 the Respondent facilitated Edwin McLaren's fraud. He received instructions from Mr McLaren or an employee of McLaren/a company controlled by him to make an enquiry with Registers of Scotland to ascertain the ownership of a property and the outstanding heritable security holders. Thereafter he acted in the conveyancing transaction either for (i) both seller and purchaser (appendices 1 & 2) or (ii) just the seller (appendices 3-8). In each case the purchaser was a nominee of McLaren. The Respondent generally delegated all conveyancing tasks instructed by Mr McLaren (or his employees) to a paralegal employed by the Respondent. The Respondent retained full responsibility for all actions of the paralegal and was responsible at all times for her supervision.

8.5 The Respondent gave evidence in Mr McLaren's trial. During that evidence he accepted he understood that Mr McLaren was the driving and controlling force of all instructions he received, that Mr McLaren was creating a "property portfolio" for his benefit and for the benefit of his family despite the properties being held in various nominees' names. The Respondent accepted that when

the transactions led to property being purchased by AH, JH or MH, he understood the property was in effect being purchased for the benefit of Mr McLaren or his family.

8.6 Generally in cases where the Respondent acted for both the purchaser and seller (see appendices 1 & 2) he remitted part of the purchase price, due to the sellers, to Company A. Company A was a company of which AH was the sole shareholder and Director, but in reality the company was under the control of Mr McLaren. The Respondent knew that this was the case. The purchase price was received from AH, or his lender, these funds were used to repay the seller's outstanding heritable loans, pay the Respondent's professional fee, a lump sum was paid to Company A (it was not explained why this was paid but on occasion it was referred to as a lump sum rent payment), and a balance paid to the seller. Therefore, part of the purchase price would be repaid to the company in which the purchaser (AH, or where the purchase was JH, his father) was the sole shareholder and director. Accordingly, the purchaser (or his father) would be repaid, or at least have *prima facie* control of part of the purchase price he had paid.

8.7 In other cases (see appendices 3 – 8) where the Respondent acted for the one of the three sellers, he would advise Mr McLaren when funds had been transferred to the seller's bank. On occasion Mr McLaren or a person under his direction would be with the seller in the bank awaiting payment of the free proceeds. The Respondent would release the confidential information that the seller had received free proceeds of sale to Mr McLaren. The Respondent understood that the seller would be making a payment either to Mr McLaren or Company A.

8.8 The Respondent acted in the conveyancing of seven properties (five of which form part of this complaint) which resulted in a conviction for fraud of Edwin McLaren. The Respondent had been receiving referrals from Mr McLaren's estate agency, One Move, for two or three years prior to the financial crash in 2008. The Respondent relied upon these referrals for approximately 80% of his business. The Respondent had discussed with Mr McLaren the scheme of buying distressed sellers' properties in early 2008. He was aware of Mr

McLaren's proposed plan and accepted instructions from him in that knowledge. The Respondent facilitated McLaren's fraud.

The Respondent's actings

8.9 The complaint has eight appendices attached. Appendices 1 and 2, and Appendices 3-8 form two distinct categories of transactions the Respondent carried out on behalf of Mr McLaren. The details of the transactions are continued in the appendices.

TRANSACTIONS IN APPENDICES 1 & 2

8.10 In respect of the transactions at Appendices 1 and 2, the Respondent was responsible for the supervision of his paralegal, who carried out the conveyancing transactions. In these two transactions the Respondent acted for the buyer and seller. The files commenced with a request from Edwin McLaren or his employee at One Move to obtain a Form 12 Report upon two properties. The Form 12s were obtained and thereafter the Respondent received instructions to proceed with the transaction. A letter of offer of loan was received by Craxton & Grant in favour of either AH or JH. On receipt of the loan papers the paralegal downloaded the title information from Registers of Scotland and drafted a Disposition. The Disposition would be from the owners of the property in favour of the name of the person on the loan offer. Neither the Respondent nor the paralegal met AH or JH. He did not receive instructions from them. The Respondent gave evidence in the High Court that he at no time met either of AH or JH. Neither the Respondent nor the paralegal met the sellers. He did not receive instructions from the sellers. The paralegal drafted a letter noting that the sellers did not wish to be represented by their own solicitor, along with a letter indicating that the signing of the Disposition had certain legal consequences and that Craxton & Grant were not acting for the seller.

8.11 In both cases the letters and Dispositions mentioned above were delivered to the sellers by an employee of Onemove at the direction of McLaren. The sellers signed the dispositions without receiving legal advice, in the presence of the employee of Onemove, who witnessed the signatures on the dispositions at sellers' addresses.

8.12 The Respondent signed and submitted a Certificate of Title allowing the mortgage funds to be drawn down. The Certificate of Title would have either said that there was a Short Assured Tenancy in place or the purchaser was receiving vacant possession. In reality, the Respondent knew that the sellers were going to remain in the house. In transactions in appendices 1 & 2, a lump sum was transferred to Company A. The Respondent described this payment in the High Court evidence as either "advanced rent" or "cashback". The Respondent remitted the payments from his Client Account to Company A.

8.13 In transactions narrated in Appendices 1 & 2, despite indicating to the sellers, he was not acting for them, the Respondent wrote to their heritable creditors and obtained redemption figures and property titles. He purported to act for the sellers. He did not enter into any missives in respect of the transactions on behalf of either the sellers or the purchaser. He offered neither the sellers nor the purchaser advice in respect of their rights and obligations of the sale of heritable property, nor any advice to the purchaser in respect of his obligations under the loan agreement. The solicitor repaid the outstanding mortgage on behalf of the sellers. In the transactions the sellers did not obtain a real or personal right to remain in their property.

8.14 Subsequently, following a Law Society investigation the Respondent instructed his paralegal to obtain correspondence from Company A to "justify" the lump sum payments made to them from the purchase price in all transactions – Appendices 1-8. In evidence before the High Court the Respondent accepted that the Director of Company A was AH (the purchaser in Appendix 1) and the company had a separate legal identity, that the sale price was returned to a company in full control of the purchaser, he further accepted the funds would have been available to AH to do as he wished.

8.15 In the transactions in Appendices 1 & 2 the Respondent also acted for the lender to the purchaser. In the first the Respondent accepted instruction in terms of the CML Handbook. In the second he was provided specific instructions. The instructions relied upon are narrated in the appendices.

8.16 In the transactions in Appendices 1 & 2 the seller and purchaser were not related to each other nor were the sellers existing clients of the Respondent.

TRANSACTIONS IN APPENDICES 3-8

8.17 The transactions narrated in Appendices 3-8 operated in a different manner. The Respondent only acted for the sellers. The Respondent received an offer to purchase the detailed property from Firm B. The purchaser was one of the aforementioned nominees of Edwin McLaren. The Respondent delegated the work to his paralegal.

8.18 It would have been obvious to the Respondent when delegating the task that these transactions were part of Edwin McLaren's scheme. The process thereafter was similar to that in Appendices 1 and 2 in that the paralegal would download the title deeds from the Registers of Scotland, write to their heritable security holders and request a redemption figure and title deeds, and thereafter enter in to missives for the sale of the property. Neither the Respondent nor the paralegal met with the seller nor did they require the sellers to attend at his office to provide client identification.

8.19 The Respondent did not obtain instructions directly from the sellers. The Respondent did not advise the sellers on the reasonableness of the purchase price nor on their obligations in terms of the missives. He did not enquire why the sellers were entering into the sale agreement. He did not offer the sellers advice on their right to continue living in their homes with or without a tenancy agreement. The Dispositions and correspondence were passed to either Mr McLaren or one of his employees to deliver and obtain the signed Dispositions from the sellers. The Respondent ensured the heritable creditors were paid and discharges obtained.

8.20 The Respondent gave evidence in the High Court that he advised Mr McLaren when payment was being made to the sellers. The Respondent was aware the sellers were going to make a payment to Mr McLaren in terms of the scheme previously discussed between the Respondent and McLaren. The Respondent

would retain his fee from the purchase price. The Respondent retained the cost of the Form 12 enquiry and copy deeds from the purchase price.

8.21 In all the transactions (appendices 1-8) the Respondent failed to obtain client identification, he did not carry out customer due diligence on instruction nor at any other appropriate time.

APPENDICES

APPENDIX 1 – Property 1

The Respondent's file is opened under the name of AH.

The file holds a Form 12 enquiry for the property dated 18 February 2009. A second Form 12 enquiry is dated 20 February 2009 The Respondent received a letter dated 19 February 2009 from Birmingham Midshires addressed to Craxton & Grant narrating AH as the customer, Property 1 as the property and indicating there was a mortgage offer in sum of £73,000.31 against a purchase price of £95,000. Craxton & Grant were instructed in terms of the Second Edition of CML Lender's Handbook. The Respondent therefore accepted instructions to act for both AH and Birmingham Midshires. It was for a Buy to Let mortgage offer. It required a short assured tenancy to be in place before funds were drawn down.

The CML handbook required the Respondent to inter alia:

3.1 - ...follow the current Solicitors (Scotland) Accounts Rules – including biding by the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002.

5.1.2 If any matter comes to the attention of the fee earner dealing with the transaction which you should reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as whether the borrower has given misleading information to us or the information which you might reasonably expect to have been given to us is no longer true) and you are unable to disclose that information to us because of a conflict of interest, you must cease to act for us and return our instructions stating that you consider a conflict of interest has arisen.

6.3.1 The purchase price for the property must be the same as set out in our instructions. If it is not, you must tell us (unless we say differently in part 2). You must tell us (unless we say differently in part 2) if the missives provide for:
6.3.1.1 a cashback to the buyer; or
6.3.1.2 part of the price is being satisfied by a non-cash incentive to the buyer.
This may lead to the mortgage offer being withdrawn or amended.
6.3.2 You must report to us (see part 2) if you will not have control over the payment of all of the purchase money (for example, if it is proposed that the borrower pays money to the seller direct) other than a deposit held by an estate

agent or a reservation fee of not more than £1000 paid to a builder or developer.

6.5.3.1 the letting must be a Short Assured Tenancy and the borrower must serve notice on the prospective tenants before the tenancy commences of Ground 2 of Schedule 5 of the Housing (Scotland) Act 1988 that the property is subject to a heritable security and that we may seek to recover possession of the property in the event that the borrower fails to keep to the conditions of the loan. If the property is already let, and the existing letting does not comply with these requirements, you must report the position to us (see part 2); and
6.5.3.2 you must confirm with the borrower that he is registered as a landlord on the register of landlords with the local authority where the property is situated in terms of the Antisocial Behaviour (Scotland) Act 2004 and that any letting agent employed by the borrower in respect of the property is also

16.4.2 If the application for our consent (to let the property) is approved and we instruct you to act for us, you must approve the form of tenancy agreement on our behalf. Subject to any conditions that apply to the letting in part 2 or any consent to let we issue, then you should advise the borrower of the requirements that:

16.4.2.1 he must register as a landlord on the register of landlords with the local authority where the property is situated in terms of the Antisocial Behaviour (Scotland) Act 2004 and that any letting agent employed by the

The Respondent did not meet any of these contractual instructions.

It is noted that the offer came through 1move Financial Services Limited.

A letter of engagement was sent to AH narrating a fee and outlays of £1952.80. Next on the file is a letter signed by the sellers with the date of 19 February 2009 enclosing a Disposition. The letter also contains a warning that the Deed will have legal consequences. On the same date the file holds a letter to the sellers indicating the firm's understanding was that they did not wish services of the solicitor in connection with the sale of the property at the price of £95,000. This letter is signed by the sellers in acknowledgement. The file also contains letters signed by the sellers to their two outstanding mortgage holders requesting redemption figures and the Title Deeds. The Respondent sought the sellers' titles, in correspondence the solicitor indicated he was acting for the sellers.

The signing schedule for the disposition notes it was signed by the sellers in the presence of the employee of OneMove.

Notification of Payment of £23,7085 received into the firm's bank account from AH c/o of 1move. A letter dated 20 February 2009 addressed to Craxton & Grant and signed by the sellers (it is clear the letter was typed by Craxton & Grant) instructed the solicitor to transfer £30,000 of the purchase price to the sellers, pay off their outstanding mortgages and pay the balance to Company A.

There is a notification from Clydesdale Bank (the Respondent's bank account) that the sum of £55,686.86 was paid to Company A on 23 February 2009. AH was the sole director of Company A. The file shows that the solicitors acted in the completion of the Standard Security in favour of Birmingham Midshires and

the Disposition was signed at Hamilton in the presence of the employee of OneMove. Craxton & Grant completed the Discharges of the sellers' outstanding standard securities and registered them.

The Respondent charged & took a fee of £1633 inclusive of VAT but excluding outlays dated 13 February 2009.

The Respondent personally approved all the payment made on this file.

There is no Terms of Business Letter addressed to the sellers.

There was no Missives entered in to between AH and the sellers. There was no inquiry with the sellers as to what they would do once the sale of the property was complete. The Respondent did not discuss with the sellers the lack of real right to remain in the property once the Disposition was registered. The Respondent did not discuss with the sellers what steps should be taken to protect their right to remain in the property.

There was no discussion about the handover of the keys with his client AH. There was no discussion about any length of rent. The Respondent did not inform the purchaser's lender that the sellers would remain in occupation of the property.

The Respondent was required, following a Law Society inspection to report the transaction to Birmingham Midshires. He wrote on the 14th July 2009 -

"Following an inspection by our regulatory body the following matters it has been recommended that we make you aware of the following:-

1. The sellers of the property subsequently leased the property back from the purchaser and our regulatory body consider that this constitutes a "distressed sale". We have no evidence that this is the case.

2. An advance payment of rent for a period of 8 years was made to the property managers, Company A at the date of entry."

There is a letter dated 10 July 2009 from Company A noting that the company received £56,000 "which covers the rent on the above property for the full term of the lease which is 8 years."

APPENDIX 2 – Property 2

The Respondent acted for both the sellers and purchaser in the transaction.

The file begins with an e-mail dated 24 April 2009 from 1move Financial Services indicating that JH would be purchasing the property.

In a letter dated 27 April 2009 addressed to Lloyds TSB, the sellers' mortgage provider, the Respondent advised he was instructed by the sellers in the redemption of their mortgage and asked for a redemption figure.

The Respondent received an offer of mortgage addressed to JH from the Cheltenham and Gloucester part of the Lloyds TSB Bank plc. The offer was subject to the General Loan conditions 2007 which adopted the CML Lenders Handbook for Scotland. It was a buy to let offer. The Respondent sent a Certificate of Title dated 7 May 2009.

The CML Handbook required the Respondent to

3.1 - …follow the current Solicitors (Scotland) Accounts Rules – including biding by the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002.

5.1.2 If any matter comes to the attention of the fee earner dealing with the transaction which you should reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as whether the borrower has given misleading information to us or the information which you might reasonably expect to have been given to us is no longer true) and you are unable to disclose that information to us because of a conflict of interest, you must cease to act for us and return our instructions stating that you consider a conflict of interest has arisen.

6.3.1 The purchase price for the property must be the same as set out in our instructions. If it is not, you must tell us (unless we say differently in part 2). You must tell us (unless we say differently in part 2) if the missives provide for:
6.3.1.1 a cashback to the buyer; or
6.3.1.2 part of the price is being satisfied by a non-cash incentive to the buyer. This may lead to the mortgage offer being withdrawn or amended.
6.3.2 You must report to us (see part 2) if you will not have control over the payment of all of the purchase money (for example, if it is proposed that the borrower pays money to the seller direct) other than a deposit held by an estate agent or a reservation fee of not more than £1000 paid to a builder or developer.

6.5.3.1 the letting must be a Short Assured Tenancy and the borrower must serve notice on the prospective tenants before the tenancy commences of Ground 2 of Schedule 5 of the Housing (Scotland) Act 1988 that the property is subject to a heritable security and that we may seek to recover possession of the property in the event that the borrower fails to keep to the conditions of the loan. If the property is already let, and the existing letting does not comply with these requirements, you must report the position to us (see part 2); and
6.5.3.2 you must confirm with the borrower that he is registered as a landlord on the register of landlords with the local authority where the property is situated in terms of the Antisocial Behaviour (Scotland) Act 2004 and that any letting agent employed by the borrower in respect of the property is also

16.4.2 If the application for our consent (to let the property) is approved and we instruct you to act for us, you must approve the form of tenancy agreement on our behalf. Subject to any conditions that apply to the letting in part 2 or any consent to let we issue, then you should advise the borrower of the requirements that:

16.4.2.1 he must register as a landlord on the register of landlords with the local authority where the property is situated in terms of the Antisocial Behaviour (Scotland) Act 2004 and that any letting agent employed…

The file holds 2 letters on Craxton & Grant letterhead dated 27 April 2009 signed by the sellers (1) enclosing the Disposition for signature and warning them that the signature of the Deed would have legal consequences and (2) a letter including "we understand [Craxton & Grant] that you [the sellers] do not wish to have the services of a solicitor in connection with the sale of your property at the above address to our above named client at the price of £95,000".

There is a letter 8 May signed by JH indicating "I have entered into a Rental Agreement with the sellers. Company A are to act as factors for the property and will deal with collecting rental and other payments as and when required from the sellers as tenants".

The Respondent did not draft or have sight of a executed tenancy agreement.

The Respondent sought a redemption figure and copy titles form Lloyds TSB, the sellers' lenders. The Respondent advised Lloyds he was instructed by the sellers. A redemption figure was received from Lloyds TSB in respect of the sellers' mortgage. The sum of £4,420.44 was paid to Lloyds on behalf of the sellers on 8 May 2009. A sum of £40,539.56 was paid to the sellers by bank transfer on the same day. A further payment of £49,980 was paid to Company A by bank transfer on 8 May 2009. The file holds no written authority from the sellers to make said payment. The Disposition of the property from the sellers to JH was signed in Glasgow in the presence of the employee of One Move.

No Missives were entered in to in connection with the sale of the property. No valuation of the property was obtained. No advice was given to the sellers regarding the consequences of entering into the sale. There was no advice given to either the sellers or JH about their legal obligations in the transaction. The Respondent registered the appropriate Discharge and Standard Security on behalf of JH. The Respondent did not advise the sellers in connection with the sale price, their obligations in respect of the sale nor in respect of their right to remain in the property with or without a tenancy agreement.

APPENDIX 3 – Property 3

The file opens with a letter from NRAM dated 11 January 2011 enclosing the Title Deeds for the property.

The Respondent received an offer dated 20 January 2011 from Firm B on behalf of JH for the purchase of the property at the sum of £120,000.

The file contains a concluding Missive from Firm B. The file does not contain any advice on the level of the purchase price, the sellers obligations in terms of the missives nor does it contain any instructions confirming the offer should be accepted. The file does not contain a signed Disposition. It does not contain any identification for the sellers. There are no AML checks.

The file holds a letter dated 3 February signed by the sellers' authorising payment of the net proceeds of sale to a named bank account. On 3 February 2011 the solicitor received £120,000 from Firm B, and thereafter distributed it as follows: -

1. £69,194.57 to Barclays Bank Plc in satisfaction of their mortgage.

2. £49,917.23 to a named bank account.

3. The solicitor retained sum of £520 plus VAT and outlays in respect of the transaction.

The Respondent did not offer the seller any advice on their right to remain in the home with or without a written tenancy agreement.

APPENDIX 4 – Property 4

The Respondent wrote to the sellers on the 1 March 2011 enclosing his terms of business asking for an advance payment of £150.00. There is no copy of the signed terms of business on the Respondent's file. The first incoming letter is from Firm B dated 29 March 2011 making an offer to purchase from the sellers their property for the sum of £75,000.

The Respondent enclosed a copy of the offer to the sellers by letter dated 30 March – he offered no legal advice on the offer. The Respondent replied with a qualified acceptance on the of 30 March he also prepared a disposition, discharge of a standard security and sought a redemption figure from the sellers' lenders. Firm B concluded Missives by letter dated 18 May 2011. The sellers authorised, by way of a letter dated 18 May 2011 that the net proceeds of sale should be paid into a named bank account. The file does not contain a signed Disposition. It does not contain any identification for the sellers. There are no AML checks.

There is a letter from Firm B dated 25 May 2011 stating, "we thank you for your letter of 19 May and acknowledge receipt of the usual settlement items." The sum of £73,659 was transferred to the named bank account on 19 May 2011 by the Respondent.

The Respondent offered no advice to the sellers in relation to the purchase price, their obligations in terms of the missives nor in relation to their right to remain in their home with and without a lease.

The Respondent retained £200 to meet factoring charges. No bill was forthcoming – the Respondent took the retained sums as a fee in October 2011.

APPENDIX 5 – Property 5

The Respondent sent a terms of business letter to the sellers on the 31 March 2011 and asked for an up-front payment of £150. The Respondent did not meet with them, obtain any client identification or carry out Anti Money Laundering checks. An offer to purchase the property from Firm B on behalf of MH for the sum of £65,000 was received on the 30 June 2011.

There is no correspondence to the sellers enclosing the offer. There is no discussion with the sellers in respect of the offer. There is no advice to the sellers with regard to the value of the offer. There is no discussion with the sellers in respect of their obligations and rights in terms of the Missives. The Respondent did not offer the sellers any advice on their right to remain in the home with or without a written tenancy agreement. A qualified acceptance was sent dated 1 July there is no record of the instructions received. On the 7 July Firm B concluded the bargain.

The Respondent requested a redemption figure and Title Deeds from the Clydesdale Bank on behalf of the sellers.

Payment was received from Firm B of the sum of £65,000 on 7 July 2011. The net proceeds of sale in the sum of £63,991.40 was paid to the sellers' bank account on 8 July 2011.

There is a letter dated 14 July from Firm B acknowledging the usual settlement items.

APPENDIX 6 – Property 6

The Respondent acted for the seller.

The solicitor's scanned file received from the Crown begins with copies of old Title Deeds. Thereafter a draft Disposition in favour of JH, followed by a draft Letter of Obligation.

Further examination of the file shows an offer from Firm B addressed to Craxton and Grant dated 30 June 2011 to purchase the property, on behalf of JH for the sum of £70,000.

The file holds no correspondence to the seller setting out the terms for engagement and does not hold any identification in respect of the money laundering regulations from the seller nor any risk assessment. There is no correspondence giving advice in respect of the purchase price nor her rights or obligations under the Missives.

The Respondent did not offer the seller any advice on her right to remain in the home with or without a written tenancy agreement.

The file does not hold Missive letters from Craxton & Grant to Firm B but does include a letter of 14 July 2011 from Firm B making some final qualifications to the Missives as a result of the entry date being passed. There is therefore no Missive letter including the bargain on the file.

The solicitor paid the net sale proceeds of the property in the sum of £68,995 to the seller on 15 July 2011 by CHAPS transfer. The firm charged the seller £650 fee , VAT £139, Outlay's for the Standard Security discharge £60, multisearch £145, and CHAPS at £20.

APPENDIX 7 – Property 7

The Respondent's firm acted of the sellers. A terms of business letter was sent to the sellers on the 17 August 2011. The firm sought payment of £150 upfront. The file holds no client identification.

An offer for the purchase of the property, was received from Firm B on behalf of MH in the sum of £80,000. The letter is dated 24 August 2011.

There is no record of the firm sending the offer to the sellers, nor any advice on the level of offer, their obligations in terms of the missives or instructions to accept the offer. A qualified acceptance was sent on the 31 August 2011.

A letter from Britannia Building Society dated 2 September 2011 advises of a redemption figure of £2,054.95. The Respondent's state for settlement notes the sum of £76,916.75 due to the sellers which was paid on the 7 September 2011.

The file holds a draft document which purports to be a short assured tenancy between the sellers as tenants and Company A as landlord, in respect of the property with rent at £450 per month, The lease does not conform with the statutory requirements to create a short assured tenancy.

The Respondent invoiced the sellers £650 fee, VAT at £130, x2 Chaps and 2 further unidentified outlays amounting to £208.60.

APPENDIX 8 – Property 8

The Respondent acted for the seller.

There is no client identification on the file.

There is a letter dated 29 September 2011 from the seller addressed to Craxton & Grant authorising the solicitor to pay from the net proceeds of sale the fees incurred by solicitors, their fees in connection with administration of winding up of the Estate of the late AC.

A letter from Firm B Solicitors dated 18 October 2011 contained an offer on behalf of their client GM offering to purchase the property for the sum of £80,000. A qualified acceptance was dated the 19 October 2011 there is no record of the advice the Respondent gave the seller in respect of the amount of the offer, the missives or that he received instructions to accept the offer. There is correspondence from a firm of solicitors who acted for Bank of Scotland Plc, the heritable creditors of AC in relation to a calling up notice on the property.

A mortgage redemption figure was received from the solicitors for the Bank of Scotland Plc on 21 October 2011. The redemption figure was £30,100.97.

The Respondent acknowledged CHAPS payment of the purchase price by letter dated 24 October 2011. After settling the his fee (£200 +VAT) & outlays, making payment of the sums to the solicitors acting in the winding up of the estate of AC and outstanding mortgage the Respondent sent £48,148.46 to the seller.

9. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct as follows:-

9.1 *Singly* in that (a) he acted in breach of his common law obligation not to facilitate fraud and in doing so acted in a dishonest manner and (b) in two transactions, he acted in breach of his common law duty to act with the utmost propriety to his lender clients, withheld information about fraud, that he was acting for both the seller and purchaser, that he failed to carry out his obligations under the CML Handbook and in particular he had not informed them that funds were being returned to the control of the borrowers who were in fact a front for Edwin McLaren; and

9.2 *In cumulo* with each other that he acted in contravention of Rules 3 and 5 of the Solicitors (Scotland) Practice Rules 1986, Rules 2, 5(a) and 5(e) of the Code of Conduct 2002, Rules 1, 3, 4, 6 and 9 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008, Regulations 7, 8, 9, 11 and 14 of the Money Laundering Regulations 2007 and Section 330 of the Proceeds of Crime Act 2002.

10. Having heard further submissions from the Fiscal and having further regard to email correspondence from the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 9 November 2020. The Tribunal having considered the amended Complaint dated 6 October 2020 at the instance of the Council of the Law Society of Scotland against John Charles Nason Craxton, residing at 2A Ashton View, Dumbarton; Find the Respondent guilty of professional misconduct (1) *singly* in respect that he (a) acted in breach of his common law obligation not to facilitate fraud and in doing so acted in a dishonest manner and (b) in two transactions, acted in breach of his common law duty to act with the utmost propriety to his lender clients, withheld information about fraud, that he was acting for both the seller and purchaser, that he failed to carry out his obligations under the CML Handbook and in particular he had not informed them that funds were being returned to the control of the borrowers who were in fact a front for Edwin McLaren; and (2) *in cumulo* with each other that he acted in

contravention of Rules 3 and 5 of the Solicitors (Scotland) Practice Rules 1986, Rules 2, 5(a) and 5(e) of the Code of Conduct 2002, Rules 1, 3, 4, 6 and 9 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008, Regulations 7, 8, 9, 11 and 14 of the Money Laundering Regulations 2007 and Section 330 of the Proceeds of Crime Act 2002; the Respondent's name already having been removed from the Roll of Solicitors in Scotland at his request in terms of Section 9 of the Solicitors (Scotland) Act 1980, prohibit the restoration of the Respondent's name to the Roll of Solicitors in Scotland; 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 but need not identify any other person.

(signed)
Catherine Hart
Acting Vice Chair

11. 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 27 JANUARY 2021

IN THE NAME OF THE TRIBUNAL

Catherine Hart

Acting Vice Chair

NOTE

At the virtual hearing on 9 November 2020, the Tribunal had a number of procedural issues to deal with before considering the substantive matters raised in the Complaint itself.

The first issue raised was whether the Tribunal should allow an amended Complaint to be received. The principal amended Complaint included a docquet handwritten by the Respondent dated 21 October 2020:-

"Dumbarton 21 October 2020

I, John Craxton, Respondent intimate to the Tribunal that I do not wish to take part in any proceedings, nevertheless I confirm that I admit the factual averments made by the Council in paragraphs 3.1 to 3.21 inclusive and the averments made in the Appendices 1 to 8 inclusive.

I admit the averments of professional misconduct contained in paragraphs 4.1 to 4.8 inclusive.

I accept that the averments in the Complaint amount to professional misconduct."

This confirms that the Respondent had had notice of the amendments. Additionally, the Fiscal in his submissions confirmed that the amendments were of a more technical nature, in response to issues raised at the last procedural hearing. In these circumstances, the Tribunal considered it appropriate to grant the Fiscal's motion.

The second motion for the Fiscal was for the Tribunal to proceed in the absence of the Respondent, in terms of Rule 14 of the Tribunal Rules 2008. The Respondent had indicated to the Tribunal Office as early as August 2020 that he did not want to attend any hearings. The Tribunal Office had served notice of the hearing on the Respondent. Correspondence was received by the Tribunal Office from the Respondent, in connection with the hearing date of 9 November 2020, in October and on 6 November 2020. The Tribunal was satisfied that the Respondent was aware of the hearing taking place and that he did not wish to be present or participate. In these circumstances, the Tribunal considered it appropriate to grant the Fiscal's motion to proceed in the absence of the Respondent.

The third motion made by the Fiscal was for the Tribunal to convert the procedural hearing to a full hearing to allow it to deal with the substantive matters in the Complaint. The Tribunal Office had received an email from the Respondent on 6 November 2020 confirming that he had no objection to the procedural hearing being converted to a full hearing. In considering the motion, the Tribunal considered the interests of all parties involved, the Complainers, the Respondent and the public. It

considered that it was clearly in the interests of the Complainers and the Respondent that matters be concluded if possible on 9 November 2020. With regard to the public interest, the Tribunal had regard to the fact that Tribunal hearings are public hearings. However, in this case, the Fiscal had confirmed there were no Secondary Complainers. No member of the public had communicated with the Tribunal Office indicating any interest in the case either for the hearing of 9 November 2020 or 24 September 2020. The Tribunal considered that in general it was in the public interest for matters of professional misconduct to be dealt with expeditiously. The Tribunal had regard to the fact that Tribunal decisions are published. In these circumstances, the Tribunal concluded that it was in the public interest to have this matter dealt with expeditiously and agreed that the procedural hearing should be converted to a full hearing.

The final motion made by the Fiscal was for the Tribunal to treat the Respondent's docquet of 21 October 2020 as a judicial admission of the facts. It appeared to the Tribunal that the docquet itself was perfectly clear in its terms in relation to the factual averments. The Respondent specifically indicated that he admitted the factual averments made in paragraph 3.1 to 3.21 and in the appendices. There was some lack of clarity with regard to the remainder of the docquet, where the Respondent indicated he admitted "the averments of professional misconduct contained in paragraph 4.1 to 4.8 inclusive". Averments 4.1 to 4.8 in fact contain the averments of duty. However, on the basis that misconduct was always a question for the Tribunal, the Tribunal concluded that this did not detract in any way from the Respondent's clear intention to admit the facts. In these circumstances, the Tribunal was satisfied that the Respondent had admitted the facts and that the Tribunal could hold these as established without the necessity of hearing evidence.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal confirmed that the Respondent was no longer on the Roll of Solicitors. However, the Law Society had considered it important to take action in light of the seriousness of the Respondent's conduct. He submitted that the conduct in this case was deplorable.

The background here, as set out within the averments in the Complaint, was that the Respondent was one of the major players in facilitating a fraud perpetrated by Edwin McLaren. Mr McLaren was prosecuted in a long running trial that concluded some two years ago. The fraud involved Mr McLaren building up a property portfolio, promising to pay off all of the debts of a seller, giving some money to the sellers themselves and telling them they could stay in the property. Edwin McLaren was the

controlling mind of this fraudulent scheme and the Respondent knew that. That knowledge is admitted by the Respondent.

The dates of the specific actions of the Respondent cover a time period up to 2011 and so his conduct is covered by the Practice Rules in force prior to the 2011 Practice Rules.

The first red flag within the transactions is that the instructions come from the firm OneMove, the firm run by Edwin McLaren. The details of the transactions are set out within the appendices. In two of the transactions, the Respondent acted for both the seller and purchaser, as well as the lender. In the remaining transactions, he only acted for the seller. In all of the transactions, the purchasers were nominees of Edwin McLaren. Although the work was delegated to his paralegal, the Respondent was the controlling mind and was responsible for and supervised the work done.

The Respondent was given immunity from prosecution in return for giving evidence in the McLaren trial where he fully admitted his involvement. The fraud was perpetrated on all of the owners of the properties. It was McLaren who was purchasing the properties albeit the properties were put into someone else's name. Ultimately, in each transaction a sum was paid back to McLaren from the proceeds of sale, despite the purchase price being paid by one of his nominees on his behalf. In transactions 1 and 2, the money was paid by the Respondent. In the remaining transactions, McLaren attended the bank with the sellers and told them the only way that the sale could go through was if they paid money back to him.

The Respondent knew well what was happening. In transactions 3 to 8, the Respondent released confidential information to Mr McLaren – that the net free proceeds had been transmitted to the sellers' bank accounts.

In response to a question from a member of the Tribunal, the Fiscal confirmed that it was his position that the sellers were defrauded. He also clarified it was his position that in transactions 1 and 2, the Respondent acted for both purchaser and seller where there was a distinct conflict of interest. Whilst there was a letter signed by the seller suggesting otherwise, the Respondent's actions clearly demonstrated that he was acting for them, such as by writing to their lenders.

The Respondent lost 80% of his business after the property crash in 2008. That business had come through McLaren. Following the crash, McLaren had discussed with the Respondent how he might build up a property portfolio. Whilst it was never admitted in the trial that the Respondent helped

create this fraudulent scheme, it was clear that the Respondent was part of the discussions at an early stage.

The files in transactions 1 and 2 commence with contact from OneMove. The files then continue with an offer of loan. The Respondent's paralegal then drafted a disposition. Two letters were created, one from the sellers to Craxton & Grant saying that they did not want their own solicitors and another from Craxton & Grant to the sellers enclosing a disposition for signature. These items were all taken to the sellers by an employee of OneMove, Edwin McLaren's firm. Loan funds would then be transferred to the account of Craxton & Grant. The seller's loans were paid off and a payment was then made back to a company in the control of the purchaser. The Respondent offered no advice to either the purchasers or sellers. At no stage did he meet any of them. At no stage did the sellers receive a real right to remain in the properties.

In the course of an inspection, the Law Society identified issues with some of the transactions but at the time it did not appreciate the full extent of the problems.

In transactions 3 to 8, the Respondent acted only for the sellers. In each case an offer to purchase was received from Firm B. Although the work was completed by the paralegal, the Respondent knew that these instructions came to him as part of Edwin McLaren's scheme. In each case, a Form 12 was submitted before any contact was made with the sellers. No instructions were ever received from the sellers themselves and no advice was ever given to them. The disposition was taken to the sellers by an employee of OneMove for the sellers to sign. The Respondent contacted McLaren to confirm when the net free proceeds had been transferred to the sellers' bank accounts. The Respondent gave evidence in the High Court that he knew this was a fraud. Consequently, he was in breach of the Anti-Money Laundering Regulations and the Proceeds of Crime Act.

The Fiscal directed the Tribunal's attention to the averments of misconduct. He submitted that whilst clearly the important averment of misconduct was that the Respondent facilitated the fraud of Edwin McLaren, it was also important to note the individual steps in the transactions that contravened important Practice Rules.

He drew the Tribunal's attention to a previous case that had come before it against another solicitor also involving a transaction for Edwin McLaren. (Council of the Law Society of Scotland-v-Bowie, 2019)

The Fiscal was asked if he could explain why there had been such a lapse of time in the Complaint coming before it. The Fiscal explained that the Crown had had the necessary papers to investigate their prosecution for over five years and that there had been an ongoing criminal prosecution. The trial itself had lasted for 18 months.

DECISION

The Respondent had admitted all of the averments of fact. He admitted that he facilitated Edwin McLaren's fraud. He admitted that he had discussed with Mr McLaren the scheme of buying distressed sellers' properties in early 2008. He admitted that he accepted instructions from Mr McLaren in the knowledge of his plan. He admitted that Edwin McLaren was the driving and controlling force of all instructions he received and that the purchasers were nominees. At no stage did he meet any of the sellers or purchasers. In all of the transactions, the dispositions with covering correspondence were taken to the sellers by an employee of the estate agency run by Edwin McLaren. In the transactions where he represented only the seller, he contacted Edwin McLaren to confirm when the sellers received the net free proceeds. In two of the transactions, the Respondent acted for the purchasers and their lenders. He has admitted being aware that the purchasers were nominees of Edwin McLaren. He was aware that part of the loan funds would be ultimately paid on to Edwin McLaren.

The Tribunal were satisfied that the admitted facts demonstrated that the Respondent had breached his common law obligation not to facilitate fraud and in doing so he had acted in a dishonest manner. The Tribunal were satisfied that the admitted facts in transactions 1 and 2 established that the Respondent was in breach of his obligation to act with the utmost propriety when dealing with the lenders. He had withheld information about the fraud from them including that he was acting for both the seller and purchaser, that he had failed to carry out his obligations under the CML Handbook, that part of the loan funds was ultimately destined to be paid to Edwin McLaren, and that the purchasers were nominees for McLaren.

The Tribunal was also satisfied that in the course of facilitating this fraud, the Respondent had acted in contravention of the other Practice Rules averred within the Complaint.

In his docquet on the amended Complaint, the Respondent had admitted that his conduct amounted to professional misconduct. He did not admit the averments of professional misconduct. The question of whether conduct amounts to professional misconduct is always one for the Tribunal. In order to answer

that question, the Tribunal considered the test for professional misconduct set out within Sharp v Council of the Law Society of Scotland 1984 SLT 313. There it is said:-

"There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made."

The Tribunal had no hesitation in holding that the Respondent's facilitation of Edwin McLaren's fraud which involved the Respondent acting in a dishonest manner and his failure to act with the utmost propriety to the lenders in transactions 1 and 2, individually were serious and reprehensible conduct. In considering the other issues raised within the Complaint, these were also serious matters but the Tribunal considered that they occurred in the course of the Respondent's facilitation of the fraud and considered that the appropriate finding was that *in cumulo* they together amounted to professional misconduct.

The Tribunal heard further submissions from the Fiscal in relation to sanction, expenses and publicity. The Fiscal referred the Tribunal to a previous finding of professional misconduct against the Respondent dated 26 November 2013. He moved for expenses to be awarded in favour of the Complainers and made no submission with regard to publicity.

DISPOSAL

The Tribunal considered the Respondent's misconduct in this case to be at the very highest level of seriousness. The Fiscal had described it as being deplorable and the Tribunal did not disagree.

The Tribunal noted that the previous finding of misconduct post-dated the conduct of the Respondent in this Complaint, albeit that the conduct within that other matter was of a similar time frame. Additionally, the finding of misconduct from 2013 related to an overcharging of fees.

In relation to the present Complaint, the Tribunal was extremely concerned about the safety of the public and the reputation of the profession. The Law Society had allowed the Respondent to remove

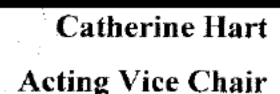
his name from the Roll of Solicitors in Scotland. That did not prevent the Respondent from attempting to have his name restored to the Roll and consequently, in the Tribunal's view, presented a risk to potential clients in the future. The Tribunal also considered it appropriate to underline the seriousness of the misconduct on the part of the Respondent.

The Tribunal had before it an email from the Respondent explaining that he had been sequestrated in October 2011 and pointing out the delay in this prosecution. The Tribunal noted his limited income and his concern that a finding of professional misconduct could affect his employment.

The Tribunal was satisfied that the admitted facts and misconduct established demonstrated that the Respondent was not a fit and proper person to be a solicitor. The Respondent should not be allowed to have his name restored to the Roll in future and so the Tribunal considered that an order in terms of Section 53(2)(aa) of the 1980 Act was appropriate.

The Tribunal considered that the Respondent's limited income was no reason for the Complainers not to be awarded expenses.

With regard to publicity, the Fiscal made no submissions but the Respondent made reference within one of his emails to the possible effect of publicity on him. In terms of Paragraph 14 of Schedule 4 of the Solicitors (Scotland) Act 1980 every decision of the Tribunal requires to be published in full. Paragraph 14A gives the Tribunal a discretion to refrain from publishing any names, places or other facts the publication of which would likely damage or be likely to damage the interests of person other than the Respondent, his partners or family. The Respondent did not fall within this discretion, so accordingly the Tribunal determined that the Respondent required to be named. Others were named within the Complaint. With regard to Edwin McLaren, given that he was the controlling mind in the fraudulent scheme and that he had been convicted in the High Court, the Tribunal concluded that it was appropriate to name him. With regard to the others named within the Complaint, given that they had not been convicted of any crime and given that their reputations could be affected by the nature of the averments within the Complaint, the Tribunal considered it appropriate not to name them.



Catherine Hart

Acting Vice Chair