

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW SOCIETY of
SCOTLAND, formerly at 26 Drumsheugh
Gardens, Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

against

**SHEENA JANE SAVAGE, former Solicitor,
45A Colquhoun Street, Helensburgh**

1. A Complaint dated 15 January 2015 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Sheena Jane Savage, former Solicitor, 45A Colquhoun Street, Helensburgh (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. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 31 March 2016 and notice thereof was duly served on the Respondent.
5. The hearing took place on 31 March 2016. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by Alison Grant, Solicitor, Glasgow.
6. It was confirmed that a Joint Minute had been lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint subject to

the substitution of a new paragraph 6.4 in the Complaint. No evidence was accordingly required.

7. The Tribunal found the following facts established:-

7.1 The Respondent was a partner with the former firm of Turner MacFarlane Green LLP (previously Turner Macfarlane Green) from 29 June 1994 to 5 July 2007. In or around 6 July 2007 Turner MacFarlane Green LLP amalgamated with the firm Optima Legal Services Limited. The Respondent ceased to be a partner on that date and became an employee of Optima on 6 July 2007. She ceased employment with Optima in or around 31 March 2010. During the period 3 March 2007 to 5th July 2007 she was the Anti-Money Laundering partner for Turner MacFarlane Green LLP. (TMG)

7.2 Alleged irregularities in conveyancing transactions were reported to the Complainers by Optima Legal in November 2013 as a result of which the Complainers carried out an inspection of a sample of the transactions drawn to their attention by Optima Legal. The inspection disclosed several conveyancing transactions involving the Respondent which caused concern.

7.3 In fourteen conveyancing transactions carried out between February and June 2007 the Respondent was designated as the Supervising Solicitor with the work being carried out by a paralegal, Ms A.

The fourteen transactions related to the purchase of either new build or new conversion properties; namely Plots at Property 1, Plots at Property 2, and Plots at Property3.

7.4 The Respondent acted for the Purchasers and the Lenders in each of the said fourteen transactions.

7.5 In each transaction the Lenders' loan instructions stated that the Lenders should be informed if there were to be discounts or incentives.

7.6 In the said fourteen transactions the following concerns were identified:

- (1) The price stated in the missives and in the disposition in favour of the purchasing client substantially exceeded that paid by the purchasing client;
 - (2) The difference in price was described as a deposit or discount which was deducted by the seller when requesting settlement, on the alleged basis that the balance had been paid direct by the purchaser to the seller or paid by the seller as an incentive;
 - (3) The price disclosed to the lender client was the disposition price, not the actual price nor the price paid at settlement;
 - (4) The lender client was not advised that part of the purchase price was not being paid through the firm, nor that any discount had been granted or might have been granted by the seller, nor that the purchaser was paying no part of the purchase price;
 - (5) The loan advanced by the lender client significantly exceeded the actual price paid to the seller;
 - (6) The unused part of the loan funds and/or the price paid at settlement, after deduction of fees and outlays, was paid either to the purchaser or to some person other than the seller.
- 7.7 The relevant details in respect of the said fourteen transactions are set out in Schedule A attached to these Findings.
- 7.8 If deposits had allegedly been paid by the purchasers, no checks were carried out to ascertain the source of the funds in respect of these deposits. No checks were made in respect of any incentives allegedly granted to any of the purchasers.
- 7.9 The true purchase prices of the properties forming the fourteen transactions were not stated in the respective Certificates of Title. The stated purchase prices did not match either the disposition prices or the prices reported to the various lenders. At least four Certificates of Title were signed by the Respondent personally.

7.10 In 2 transactions, Plots 24 and 37 at Property 2, the identity of the purchasers changed prior to settlement.

Several of the loans were subject to default by the respective borrowers.

8. Having considered the foregoing circumstances and having heard submissions from the Fiscal on behalf of the Complainers and the Respondent's solicitor on behalf of the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 Her failure to inform the lenders in the fourteen transactions of the following material facts:-

- (1) The price stated in the missives and in the disposition in favour of the purchasing client substantially exceeded that paid by the purchasing client;
- (2) The difference in price was described as a deposit or discount which was deducted by the seller when requesting settlement, on the alleged basis that the balance had been paid direct by the purchaser to the seller or paid by the seller as an incentive;
- (3) The price disclosed to the lender client was the disposition price, not the actual price nor the price paid at settlement;
- (4) that part of the purchase price was not being paid through the firm, nor that any discount had been granted or might have been granted by the seller, nor that the purchaser was paying no part of the purchase price;
- (5) The loan advanced by the lender client significantly exceeded the actual price paid to the seller;
- (6) The unused part of the loan funds and/or the price paid at settlement, after deduction of fees and outlays, was paid either to the purchaser or to some person other than the seller.

8.2 Her failure to check the source of funds of any deposits allegedly paid by purchasers and to check any incentives allegedly granted to any of the purchasers.

8.3 Her allowing a system to be instituted and operated where no checks were carried out in respect of any deposits allegedly paid by her clients in the said transactions. She exercised a lack of supervision of the registered Paralegal, Ms A in respect of Ms A's handling of those transactions.

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

Edinburgh 31 March 2016. The Tribunal having considered the Complaint dated 15 January 2015 at the instance of the Council of the Law Society of Scotland against Sheena Jane Savage, former Solicitor, 45A Colquhoun Street, Helensburgh; Find the Respondent guilty of professional misconduct in respect of her failure to inform the lenders in respect of 14 transactions of a number of material facts relating to the price stated in the missives and disposition substantially exceeding the price paid, this being described as a deposit or discount which was deducted by the seller, the fact that the price disclosed to the lender client was the disposition price not the actual price or the price paid at settlement, that part of the purchase price was not being paid through the firm nor that the purchaser was paying no part of the purchase price, that the loan advanced by the lender significantly exceeded the actual price paid to the seller and that the unused part of the loan funds and the price paid at settlement, after deduction of fees and outlays, was paid either to the purchaser or to some person other than the seller; her failure to check the source of funds of any deposits allegedly paid by purchasers or to check any incentives allegedly granted to any of the purchasers and her allowing a system to be instituted and operated where no checks were carried out in respect of any deposits allegedly paid by her clients in the said transactions and her exercising a lack of supervision of a registered paralegal in respect of the paralegal's handling of the transactions; Censure the Respondent; Fine the Respondent the sum of £2,500 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table

of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Malcolm McPherson

Vice Chairman

10. 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

Malcolm McPherson
Vice Chairman

NOTE

In advance of the case calling for hearing a Joint Minute had been entered into between the Respondent and the Complainers admitting the averments of fact, averments of duty and averments of misconduct in the Complaint subject to a substitution of a new paragraph 6.4. It was accordingly not necessary for any witnesses to attend to give evidence.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid referred to the Joint Minute lodged and confirmed that a new paragraph 6.4 was to be substituted for the one in the Complaint. Mr Reid took the Tribunal through the terms of the Complaint. He then referred the Tribunal to the schedule attached to the Complaint and took the Tribunal through some of the transactions in more detail.

In connection with Property 1, plot 54, Mr Reid referred the Tribunal to the Second Inventory of Productions for the Complainers, Productions 8A and B, Mr Reid submitted that the letter from Company 1 showed that the deposit paid was by way of an incentive and was not actually paid by the plot purchaser. The completion statement at Production 9B showed £190,000 as the selling price but a deposit of 20% being £38,000 was not paid. This meant the price paid was £151,000 and the £38,000 was never paid but £190,000 was reported to the lender. This meant that the price actually paid was less than the loan funds which were advanced by the lender.

In connection with plots 62 and 67 the position was the same and the deposits which were not paid were £35,000 and £33,400. The end result was that the price actually paid was less than the loan funds.

In connection Property 3, Mr Reid referred the Tribunal to Productions 2A and B and 3A which again showed that the deposits were not paid. In connection with plot 2, the deposit of £29,800 was not paid. So the price paid was £119,200 but £149,000 was the price reported to the lender. This was the same with plots 3, 4 and 8 where the deposits which were not paid amounted to £30,000, £29,800 and £30,400 respectively. Mr Reid explained that the settlement price plus the deposit which was not paid was the price which was reported to the lender which resulted in the price being less than the loan funds which resulted in the purchaser receive payments of money.

In connection with Property 2 and plot 7, loan funds were £182,375 but the price paid at settlement was £163,000 which resulted in a payment of £15,607 being made to the purchaser. This was the same with the other properties.

Mr Reid pointed out that the total funds received by purchasers and others amounted to £250,000 if you added up the sums in all the cases where the price paid was less than the loan. Mr Reid alleged that this was a blatant rip off of the lenders. In this case the Respondent's complete failure to check on any of the alleged deposits allowed this to occur. In three cases the sums were paid to people other than the purchaser. Mr Reid clarified that there was no suggestion that the paralegal Ms A was conniving in what was going on and accordingly the Respondent had to take responsibility. Mr Reid submitted that this was serious misconduct.

SUBMISSIONS FOR THE RESPONDENT

Ms Grant confirmed that the facts were not in dispute. At the time the transactions occurred the Respondent had 20 years' experience in property and had been a partner for 13 years. When Optima acquired the firm of TMG in 2007 the Respondent became an employee and was tied in for a period of two years. She left in 2010. The Respondent had not practised since then and applied to have herself removed from the Roll of Solicitors in 2014. She had no intention of returning to a legal career.

Ms Grant stated that the Respondent was familiar with the terms of the CML Handbook and was aware of its significance. She was the partner in charge of the remortgaging and conveyancing department and had a number of assistants and paralegals working for her. Ms A was in the domestic conveyancing team and was an experienced paralegal who was highly thought of and the Respondent had promoted her and encouraged her. At this time in 2007 the firm was very busy and it was not unusual for the Respondent to receive 12 new sets of instructions a day, often in connection with new build properties. The Respondent would do the title examination and notes on title which would go on a general master file which was generic for each development. Unfortunately these files appeared to have been destroyed and a search for them had failed. These files would have been of help to the Respondent.

After the Respondent had done the title check, the transactions were formulaic in nature and so it was appropriate for a paralegal to do it. In 2007 it was boom time and TMG had many contacts with brokers and sales agents and targets to meet and were dealing with a lot of new build properties. The firm was recording more securities per year than any other firm.

Ms Grant pointed out that lenders often did not deal with matters in an ideal way either and may not always adhere to their own practises. She pointed out that lenders could often run into difficulty with the Financial Services Authority and breach their own rules. Investigations by the Law Society brought the matter to the Respondent's attention in late 2013. Ms Grant explained that things were not going well when the Respondent was at Optima and there were differences of opinion between her and the Chief Executive Officer. The fact that the generic master files were not available was a disadvantage for the Respondent.

Ms Grant advised that all the transactions occurred over a five month period between February and June 2007 which was just before the crash. She indicated that nine years ago lenders such as GMAC, Bristol and West, and Northern Rock were reputable and the Respondent was also dealing with reputable builders.

In connection with one of the developments, Property 2 - the development agents advised the Respondent that the deposits were going to be paid direct to the seller and there probably would have been evidence of this in the master files. It was agreed at that time that TMG would not do money laundering checks and the lenders were aware of this. The development agents told the Respondent this and the lenders knew that the deposits would not be passed through the firm of TMG. The Respondent however had no evidence of this and it was only in relation to the Property 2 development that this was the case.

When the next development came in the Respondent told the paralegal to do what she had previously done and there was a misunderstanding because she thought matters would just be replicated. She was not aware of any incentives or discounts. The reservation forms which had been produced in the Productions were not on her files at the time. The Respondent did not know that the deposits had not been paid. The States for Settlements stated that they were deposits. Although it is accepted that the letters from Company 1 produced in the Complainers' Productions said what they did, these were issued after the transactions had been carried out and the Respondent had not been aware at the time of the discounts and incentives. The Respondent accepted that she should have carried out more rigorous supervision and the Respondent accepted culpability but asked the Tribunal to judge this against the background that at the time she was not aware of any fraudulent scheme and trusted her paralegal who was held in high regard. The Respondent accepts the lack of supervision and accepts an abrogation of responsibilities.

Ms Grant advised that there had not been any professional negligence claims from the transactions. There had been an action raised but it had been sisted and not pursued. Ms Grant emphasised that the Respondent had fully cooperated with the Law Society and had authorised her at an early stage to enter into a Joint Minute. Ms Grant referred the Tribunal to the letters of support that had been lodged and emphasised that investigations had been ongoing for two and a half years and the Respondent had been out of the profession since 2010. She had suffered stress which had affected her health. The Respondent now had a new career in education but was the sole provider and had two children still in education. Ms Grant pointed out that the Respondent had had an unblemished career for 25 years. She asked the Tribunal not to impose any additional financial penalty given that the Respondent would have to pay the expenses of the investigation and the proceedings.

Mr Reid stated that the Respondent should have exercised more supervision because on the face of it it looked as if there may have been fraud.

DECISION

The Tribunal had no hesitation in making a finding of professional misconduct. In this case there were 14 transactions where the Respondent failed to disclose material information to the lenders which information would have clearly affected the lenders' decision to lend. The failure to disclose this information resulted in the lenders providing funds in excess of the price actually paid by the purchasers for the properties. The Tribunal has made it clear on numerous occasions that a solicitor when acting for a purchaser and a lender has a professional duty to act with utmost propriety towards the purchaser and the lender clients. The Respondent was the partner responsible for these transactions and had a duty to exercise proper supervision over the paralegal who was working for her. If solicitors fail to protect the interests of lender clients it is very damaging to the reputation of the legal profession. The Respondent failed in her duty to check the source of funds of any deposits allegedly paid or incentives allegedly granted. There were a large number of transactions over a five month period.

The Tribunal heard further evidence from the Respondent's solicitor in respect of the Respondent's financial position and heard submissions from both parties in respect of publicity and expenses. The Respondent's solicitor advised that the Respondent was earning around £28,000 per annum and the only other income was rental income from a flat belonging to her husband. Mr Reid asked the Tribunal to make an award of expenses in the usual manner and submitted that there were no grounds not to order publicity. The Respondent's solicitor indicated that she could not argue against publicity or expenses.

The Tribunal considered that the misconduct in this case was at the middle of the scale of misconduct and that it was necessary to impose a Fine in addition to a Censure to show how seriously the Tribunal takes the Respondent's misconduct. The Tribunal considered that the Respondent's conduct is likely to damage the reputation of the legal profession. The Tribunal however took into account the fact that there had been early plea of guilty that the Respondent had shown remorse and insight, had a previously unblemished record, had produced supportive references and had removed herself from the profession and indeed taken her name off the Roll of Solicitors. The Tribunal also noted that the Respondent had no intention of returning to the profession. Given the Respondent's income the Tribunal considered that a Censure plus a Fine of £2,500 was an appropriate penalty.

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

Malcolm McPherson
Vice Chairman

SCHEDULE A

<u>PROPERTY</u>	<u>LENDER</u>	<u>DISPOSITION PRICE</u>	<u>PRICE REPORTED TO LENDER</u>	<u>LOAN FUNDS</u>	<u>PRICE PAID AT SETTLEMENT</u>	<u>SUMS RECEIVED BY PURCHASER</u>
Plot 54 Property 1	GMAC- RFC Limited	£165,000	£190,000	£169,025	£151,000	£14,986.74 Paid to a separate client
Plot 62 Property 1	GMAC- RFC Limited	£175,000	£175,000	£155,675	£139,000	£13,486.74 Paid to purchaser
Plot 67 Property 1	Mortgage Express	£167,000	£167,000	£141,950	£133,600	£5,547.62 Paid to purchaser
Plot 7 Property 2	GMAC- RFC Limited	£205,000	£205,000	£182,375	£163,000	£15,607.37 Paid to purchaser
Plot 14 Property 2	Bristol & West Plc	£182,000	£182,000	£163,745	£144,600	£13,928.29 Paid to purchaser
Plot 18 Property 2	GMAC- RFC Limited	£212,000	£212,000	£169,100	£188,605	£16,167.37 Paid to purchaser
Plot 24 Property 2	Bristol & West Plc	£199,000	£199,000	£160,742.21	£179,045	£22,697.78 Paid to Mr B (initial purchaser)
Plot 29 Property 2	Bristol & West Plc	£200,000	£200,000	£179,945	£159,000	£15,253.95 Paid to Mr C (initial purchaser)
Plot 36 Property 2	GMAC- RFC Limited	£214,000	£214,000	£190,385	£170,200	£16,327.37 Paid to purchaser
Plot 37 Property 2	Bristol & West Plc	£214,000	£214,000	£181,845	£170,200	£61,094.51 Paid to Mr B (initial purchaser)
Plot 2 Property 3	Northern Rock Plc	£149,000	£149,000	£129,630	£119,200	£31,935.46 Paid to purchaser
Plot 3 Property 3	Northern Rock Plc	£150,000	£150,000	£130,500	£120,000	£8,061.74 Paid to purchaser
Plot 4 Property 3	Northern Rock Plc	£149,000	£149,000	£129,630	£119,200	£8,001.74 Paid to purchaser

Plot 8 Property 3	Northern Rock Plc	£152,000	£152,000	£132,240	£121,600	£8,081.74 Paid to purchaser
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