THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

F I N D I N G S

in Complaint

by

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

against

RICHARD ALLAN SANDEMAN, Solicitor of Messrs Sandemans Solicitors, 256 Main Street, Camelon, Falkirk

1. A Complaint dated 23 June 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Richard Allan Sandeman, Solicitor of Messrs Sandemans Solicitors, 256 Main Street, Camelon, Falkirk (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.

2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 22 October 2009 and notice thereof was duly served on the Respondent.

4. When the Complaint called on 22 October 2009 the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was not present but was represented by James McCann,

Solicitor, Clydebank. It was agreed that the hearing be converted to a procedural hearing and that a full hearing be fixed in January 2010.

5. A full hearing was arranged for 13 January 2010.

6. When the Complaint called on 13 January 2010, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. Mr Reid also appeared on behalf of James McCann, Solicitor, Clydebank on behalf of the Respondent. It was explained that the hearing had been converted to a procedural hearing as there were still papers that required to be examined. The matter was adjourned for hearing until 19 February 2010.

7. When the Complaint called on 19 February 2010 the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and was represented by James McCann, Solicitor, Clydebank.

8. A Joint Minute of Admissions was lodged agreeing the averments of fact in the Complaint as adjusted.

9. In light of this, the Tribunal found the following facts established

9.1 The Respondent was born on 11 July 1953. He was admitted as a Solicitor on 10 December 1976. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 6 January 1977.

9.2 He was a partner with Messrs Milligan, Telford & Morrow from 1 March 1987 to 3 December 1993. From 13 December 1993 he has been a partner with Messrs Sandemans, Solicitors, 256 Main Street, Camelon, Falkirk. From 1 June 1994 to 31 December 1995 he was a partner with Young & Co.

9.3 In or about November 2007 the Complainers received a complaint from Mr A of Property 1 in respect of the Respondent's actings.

The Complainers obtained sufficient information to intimate a complaint to the Respondent.

9.4 On 24 July 2008 the Complainers Professional Conduct Committee determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor and determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51.

The Complainers intimated the Determination to the Respondent in a letter dated 18 August 2008.

9.5 The said Mr A was the joint owner with Ms B of property 2. Mr. A and Ms. B became estranged.

9.6 In or about October 2006 Proceedings for interdict and for an order to sell the jointly-owned property were raised in Falkirk Sheriff Court by Ms B against Mr A. The Respondent acted for Ms B. The defence of the Proceedings at the first calling on 10 October 2006 when Interim Orders were an issue, had been handled for Mr A by other local Solicitors, Stirling & Co. As is common in Interdict Proceedings, Affidavits were lodged on behalf of Ms B and there was an award of Interim Interdict by the Court. Thereafter, on or about 17 October 2006, Morgans, Solicitors wrote to the Respondent advising that they had been consulted by Mr A, that he would not be defending the Action and that property 2 could be marketed. No Notice of Intention

to Defend was lodged. It was thereafter possible to Minute for Decree in Absence.

9.7 In or about December 2006/January 2007 Mr. A and Ms. B reconciled. By June 2007 the reconciliation had broken down, and the parties had agreed to instruct local estate agents to market their jointly–owned property. An offer was received dated 13th June 2007, for £175,000 adjusted by the estate agents verbally to £177,000, and for immediate acceptance. Both parties were anxious to accept.

9.8 On 10 July 2007 the Respondent was re-instructed by Ms. B who wished to take Decree against Mr. A in the said Interdict action and to recover judicial expenses. Subsequent to the receipt of the offer to purchase on 13th June 2007, a period of uncertainty had developed as to which solicitor should act in the joint conveyancing. Morgans, acting for Mr. A since October 2006, offered to carry out the conveyancing work, and sent out Terms of Business to Ms B, but she was not willing to instruct them. Mr Sandeman was reluctant to act, and suggested two other local firms, both of whom refused. By letter of 27th Ms C invited Mr Sandeman to act in the necessary conveyancing, indicating that there was no objection on behalf of their client, and stating *inter alia…."It is quite normal practice in separation situations for one set of solicitors to deal with the conveyancing aspects of the sale."* The Respondent took instructions from his client and by letter of 12th July to Morgans confirmed his willingness to act.

9.9 The Respondent acted for both Mr. A and Ms. B in the conveyancing transaction. No Minute of Agreement was drawn up or executed between Mr. A and Ms. B as to how the free sale proceeds were to be divided between the two parties. The conveyancing therefore proceeded after 12th July without a

formal Minute of Agreement, but with both solicitors reaching agreement on various matters as they arose by the exchange of correspondence, including an issue raised by Mr A about what he had put into the house at purchase. Agreement on that was reached in an exchange of letters, whereby a retention of £20,000 would be created from the eventual sale free proceeds.

9.10 On 12 July the Respondent wrote to Morgans inter alia confirming that "*After deduction of the outstanding loan redemption amount and our fees and outlays and any other expenses there may be, we intend to divide the free proceeds in half and pay half to your client and half to ours but under deduction of £20,000, which we will place on deposit receipt.* There was no reference in said letter to the Interdict Action or the expenses thereof. The Respondent as referred to below sent a detailed draft account of expenses to Morgans by letter of 9th August, but received no response or acknowledgement. In a letter dated 4 September 2007 to Morgans, the Respondent enclosed an Account of Intromissions which included an entry to the effect "Funds due to Ms B re Account of Expenses £2,165.19."

9.11 The various items in the accounting for the proceeds of sale are as set out in the said letter of 4 September. The only item that was raised as controversial by either party was the said figure of £2,165.19 in respect of the Respondent's draft account of expenses for the undefended court proceedings.

9.12 The Respondent had accepted instructions from Ms. A on 10 July 2007 to seek Decree in the said Interdict action and recover judicial expenses. A Minute for Decree for Interdict with expenses as taxed was lodged on the same date. The Respondent attended Falkirk Sheriff Court on 25 July 2007, at a hearing fixed by the Sheriff on his minute, and moved for

Decree in restricted terms, for permanent interdict and expenses, excluding as now unnecessary the original crave for an order to sell the jointly-owned property. The Respondent received the court's interlocutor on 31st July, and immediately asked Law Accountants Messrs Mullens to prepare an account for presentation to Morgans prior to the settlement funds being available, so that appropriate advice could be given to Mr. A by Morgans as to his liability for these expenses from the proceedings of October 2006. The law accountants acceded to the request for a quick turnaround and the Respondent wrote to Morgans with a copy of the account by letter of 9th August and followed the normal professional practice of offering taxation, or adjustment of an agreed figure on this liability.

9.13 In respect of the property sale, the Respondent accepted instructions from Mr. A and issued a Terms of Engagement letter to him on 24 July 2007, at the request of, and with the full knowledge and consent of the agents for Mr. A. The Respondent followed the normal practice in that he did not communicate direct with Mr. A, at any stage, but always through his agents Morgans.

9.14 Accordingly the Respondent accepted instructions to act on behalf of Mr. A in connection with the property sale at a time when he had pre-existing instructions from Ms. B, the co-proprietor to obtain a Decree for Interdict together with expenses against Mr. A.

9.15 The conveyancing work was done by the Respondent throughout, competently and without complaint from Mr. A or his agents. Apart from the issue covered by the agreed retention as previously described, no other contentious matters arose until the eve of the conveyancing settlement on 14th August, when the usual pre-settlement searches revealed an Inhibition

against Mr. A by his previous solicitors Stirling & Co, for unpaid fees of about £3,500. Mr. Sandeman had not previously been told of this debt, but after contact with Morgans and with Stirling & Co, the normal solution was organised, namely undertakings by Mr. Sandeman to pay Stirling & Co and to produce to the buyers' agents within a specified period a discharge of inhibition, so that the settlement took place on 14th August 2007. The final accounting was delayed thereafter because, having also given the usual undertaking to the purchasers to discharge the loan over the property, Mr. Sandeman faced a delay of a few days in getting an exact redemption statement from the Royal Bank of Scotland. He sent a detailed accounting to Morgans for Mr. A on 4th September 2007.

9.16 Having obtained an award of expenses against Mr A on behalf of Ms B, the Respondent, by his letter of 4 September 2007 to Morgans, with the accompanying Account of Intromissions, deducted the expenses of the Interdict Action from Mr A's share of the free sale proceeds. These expenses had not been agreed by adjustments or otherwise, nor had they been taxed. It is agreed that the Respondent had not received any acknowledgement from Morgans of his letter of 9 August 2007 to Morgans advising *"We enclose our Account of Expenses and look forward to your client's proposals, which failing, we will lodge the Account for Taxation."*

9.17 In or about October 2006 the Complainers' Professional Practice Committee approved an amended version of the Guideline on Acting for Separated Spouses. An amended Guideline headed "Prenuptial Cohabitation and Separation Agreements – Conflict of Interest (October 2006)" was placed on the Complainers' website from January 2007.

The guidance provides inter alia for Cohabitation Agreements and provides for the preparation of the same in respect of issues arising from or relating to property on separation and states specifically:-

"5. Cohabitation Agreements

There is an obvious concern that there is a conflict in situations between two parties who are not married and who are cohabiting or about to cohabit. The Family Law (Scotland) Act 2006 provides for Cohabitation Agreements to be prepared, effectively dealing with issues arising relating to property on separation. These are a statutory creation.

There is a clear conflict of interest in representing the parties in a Cohabitation Agreement or Prenuptial Agreement and they should be treated precisely the same as Separation Agreements under this Guideline.

Where parties are subject to a Cohabitation Agreement which deals with the disposal of property and the appropriate trigger event has occurred in regard to disposal of the property then this should be treated as a separate agreement for the purposes of this Guidance.

Given that a Cohabitation Agreement may be given effect to, possibly years after it is drawn, it is inappropriate to provide in such Agreement for a particular Agent to carry out work in the future."

The Law Society did extend to unmarried cohabiting couples and civil partnerships the previous guideline requiring a written minute of agreement prior to initiating the sale of a joint-title matrimonial home.

> The Law Society did not however publish this revised guideline in any of the thirty or so monthly editions of the "Journal", between October 2006 and the raising of the Complaint against the Respondent, nor does the extended guideline appear in the editions of the Professional handbook for 2007/08, or 2008/09. It appears for the first time in the 2009/10 edition of the Handbook, which became available to the profession in August 2009.

10. The Tribunal then heard submissions on whether or not the Respondent's conduct, on the basis of these agreed facts, amounted to professional misconduct.

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

    11.1 his acting where there was an conflict of interest in that he acted for Mr A in a conveyancing transaction when he was acting for Ms B in circumstances where Ms B was seeking Decree for an Interdict against Mr A and was seeking to obtain and recover judicial expenses from the said Mr A.

12. Having noted two previous Findings of misconduct against the Respondent and having heard mitigation on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

> Edinburgh 19 February 2010. The Tribunal having considered the Complaint dated 23 June 2009, as adjusted by the Joint Minute of Admissions, at the instance of the Council of the Law Society of Scotland against Richard Allan Sandeman, Solicitor of Messrs Sandemans Solicitors, 256 Main Street, Camelon, Falkirk; Find the Respondent guilty of Professional Misconduct in respect of his acting

where there was a conflict of interest in that he acted for a client in a conveyancing transaction when he was acting for the client's former cohabitee and co-proprietor in circumstances where the former cohabitee and co-proprietor was seeking Decree for an Interdict against the client and was seeking to obtain and recover judicial expenses from the said client; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00.

(signed)
Kirsteen Keyden
Vice Chairman

13. 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

There had been a number of procedural hearings in the case to allow the parties time to adjust a Joint Minute of Admissions between them. When the case called on 19 February 2010 a Joint Minute of Admissions was lodged which admitted the averments of fact in the Complaint as adjusted.

The Tribunal then heard submissions from the parties in connection whether or not these facts amounted to professional misconduct.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid referred to his written submissions and explained that the situation was one where in October 2006 the parties split and this led to an interim Interdict which was not defended by Mr A. The parties reconciled and then split up again. In June 2007 it was decided to sell the joint property. An offer came in and there was a problem in resolving who was going to do the conveyancing. It was agreed that the Respondent do the conveyancing. On 10 July 2007, the Respondent was instructed to obtain a permanent Interdict and expenses against Mr A. The Interdict action had remained live throughout. Within two weeks of the Respondent being instructed to take Decree, the Respondent did the conveyancing for the joint property. On 25 July there was a hearing on Interdict and Decree was taken and Mr Reid submitted that at this stage there was a very adversarial position because the Pursuer wanted expenses against Mr A and accordingly there was a straightforward conflict of interest. The Respondent was instructed by one of his clients to seek and recover expenses from the other party and this was a problem which was not raised in the correspondence between the two sets of solicitors. Once Decree was granted the Respondent sent the accounts for taxation. The Respondent wrote on 9 August to Morgans in connection with the account of expenses but received no reply. The conveyancing transaction settled on 14 August. On 4 September the Respondent sent a letter and a statement of intromissions and from this he had deducted Mr A's share of the expenses in connection with the Interdict action. These expenses had not been agreed or taxed. Mr Reid submitted that this was a clear and obvious conflict. If there had been a Minute of Agreement this would have resolved matters such as this. If expenses had been

raised with Morgans and agreed this might have resolved the conflict. If there had been a Minute of Agreement and expenses had not been included in this then the expenses could not have been taken off the statement of intromissions for the conveyancing transaction. Mr Reid submitted that what happened in this case fell within the general prohibition in the Code of Conduct for Scottish Solicitors 2002 Article 3 to the effect that:

> "Solicitors shall not act for two or more clients in matters where there is a conflict of interest between the clients"

The Prenuptial Cohabitation and Separation Agreement – Conflict of Interest Guidelines of October 2006 provide that:

> "Unless the parties have agreed in writing (i.e, an Agreement signed by the parties themselves) how the sale proceeds will be distributed, neither of the solicitor's firms acting for the individual spouses in their matrimonial affairs should act in the sale. A separate firm should be instructed. The Agreement to be signed does not have to be a full Separation Agreement. It may be an Agreement about the free proceeds alone. It would not be improper for the firm acting for one of the spouses to accept instructions from both parties to market the property, but unless there is a signed Agreement by the time an offer is received, they should not act in the conveyancing."

Mr Reid submitted that the need for a Minute of Agreement was self evident. Its precise purpose was to avoid what happened in this particular case. Mr Reid submitted that the fact that these particular guidelines were published only on the internet on the Law Society's website and not in the Journal or in the Handbook was not relevant as members of the profession ought to check the Law Society's website at regular intervals. Mr Reid submitted that in any event common sense dictated that there should have been the necessary Agreement in place in respect of the sale proceeds.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann referred to his written submissions and stated that in connection with the absence of a written Minute of Agreement, the Tribunal should infer that neither the Respondent nor Morgans was aware of the existence of the Law Society's guidance on cohabiting partners until it was published in the Professional Handbook in 2009. The Law Society extended the guidelines in connection with married couples to cohabiting couples following from the terms of the 2006 Family Law Act. The change in guidance however was only available on the Law Society website and was not published in the Journal or included in the Professional Handbook until 2009. Mr McCann however accepted that in the correspondence between the Respondent and Morgans the question of a Minute of Agreement was canvassed. Mr McCann explained that Morgans had been going to act for Ms B but she did not want them to act for her. Mr McCann submitted that the fact that Morgans had been intending to do the conveyancing for both Mr A and Ms B showed that they did not think there was a problem with acting for both in the sale. Mr McCann explained that a good offer had come in for the joint property and both Mr A and Ms B wanted to accept it. Two firms however had declined to act for them and Ms B did not want Morgans to act and accordingly reluctantly the Respondent agreed to undertake the conveyancing. Mr McCann emphasised that this was not a self serving decision but was in order to help out clients who had a problem. Mr McCann pointed out that it was dangerous not to accept a good offer and emphasised the importance to the client of having the offer accepted. The offer was made on 13 June 2007. Mr McCann submitted that it was common place for solicitors to act for a couple who were in conflict provided there was cooperation between the solicitors acting for the two parties. He submitted that this is the way that lawyers deal with problems. Mr McCann also pointed out that the sale transaction went smoothly. Mr McCann stated that lawyers developed practical solutions to problems and that it was not possible to have two lawyers doing a single job for example selling a house that was jointly owned. Mr McCann submitted that the Interdict action by Ms B against Mr A was over by this time because the opportunity to defend had not been taken up. Mr McCann stated that accordingly any activity in the action had ceased as Mr A had dropped out of it. The Respondent Minuted for Decree on 10 July 2007 and was invited by the Court to determine which

craves should stay in. On 25 July, the Interdict became permanent and expenses were awarded against Mr A.

Mr McCann stated that when an action is conceded, the only advice a lawyer can give the client is that the client will be open to an expenses award against them. Mr McCann advised that it was not known what Morgans had told Mr A but these type of actions always ended in an award of expenses and so Mr A must have known that this would happen. Mr McCann stated that it was strange that Morgans had not acknowledged the detailed account produced by the Respondent and sent to them. Mr McCann stated that it was not fair to suggest that the Respondent's claim for expenses was in any way devious. Mr McCann submitted that when the Respondent agreed to act in the conveyancing sale there were a number of things that had to be agreed and everything was agreed as it had arisen. It was unfair to blame the Respondent for the account sent by him being a surprise to Mr A. Mr McCann pointed out that outwith the Law Society's guidelines, there is nothing to say that solicitors had to behave in any way other than normally. The Respondent was behaving normally by carrying on with the Interdict action. Mr McCann accepted that it would have been better if the Respondent had specifically specified the expenses of the Interdict action the previous October but that it must have been obvious that there would be an award of expenses. Mr McCann stated that the expenses were judicially determined and accordingly Mr A really had no option but to agree these. Mr McCann explained that the lawyers had identified matters as they had come along on a rolling basis but that the issue of expenses in connection with the Interdict matter seemed not to have been fully discussed between Morgans and Mr A. Mr McCann stated that the Law Society guidelines did not state that the Agreement required to cover everything. Mr McCann submitted that the Respondent did everything within the normal and predictable range of what a Pursuer's agent would be expected and bound to do in that type of action. Mr McCann also pointed out that the decision by the Respondent to act in the joint conveyancing came at the request of Mr A's solicitors. Mr McCann pointed out that the Respondent at no stage was seen to act for, advise or represent Mr A in any way in connection with the Interdict proceedings. Mr McCann also pointed out that at common law, a written Agreement as to the instructing of a solicitor on any matter has never been mandatory and that the intention of the Law Society in requiring a signed Minute of Agreement in joint title cases was to protect solicitors from clients

later quarrelling about what was to happen with the free proceeds. Mr McCann pointed out that the Respondent sent the papers immediately on release of the Court's Decree to professional law accountants and asked them to produce a detailed draft account of expenses as quickly as possible. This action could not be criticised. The accounting was delayed after the conveyancing settlement on 14 August because the Royal Bank of Scotland had not yet issued the exact redemption figure. The Respondent then sent an account for approval by Messrs Morgans on 4 September but this was not even acknowledged by Morgans and the Respondent then required to do the final accounting to both parties on 4 September 2007.

Mr McCann submitted that it was perfectly acceptable for the Respondent to deduct the expenses from the accounting. Mr McCann submitted that the Respondent's actings in this situation did not amount to professional misconduct.

ADDITIONAL SUBMISSIONS ON BEHALF OF THE COMPLAINERS

Mr Reid clarified that the Law Society was not suggesting that in no circumstances could a solicitor act for both parties. He also clarified that there was no suggestion that the Respondent had tried to hide the expenses of the Interdict action. Mr Reid pointed out that if there had been a written Minute of Agreement it would have stipulated what was to come off before the sale proceeds were divided.

DECISION

The Tribunal could not accept Mr McCann's submission that the Interdict action was over as at 10 July 2007 as a final Interlocutor granting Decree with expenses was not issued until 25 July 2007. A Court action cannot be disposed of until a final Interlocutor is granted. This was not done in this case until 25 July 2007 and the Tribunal noted that the Respondent appeared personally in Court before Sheriff Hobb on behalf of Ms B on this date. The Tribunal consider that at this stage there was clearly an adversarial position between Mr A and Ms B. Ms B was pursuing Mr A for expenses in connection with an Interdict, the terms of which were quite far reaching. It was clear that the Respondent felt uncomfortable with regard to acting in the conveyancing transaction probably on the basis that he was aware of the potential

conflict of interest. The Tribunal can understand the urgency to accept the offer but the Tribunal considers that the Respondent had a particular duty in this case, given the circumstances, to make sure he fully communicated with Mr A in connection with the ongoing Interdict action and the issue of expenses. The Tribunal do not accept that the Respondent's Production R14 can be read as a referring to anything other than the expenses of the conveyancing transaction. The Tribunal consider that a solicitor who takes on a case with two people who have clearly had a huge fall out should have ensured that everything was clarified so that there would be no difficulty with either party. It was clear from the correspondence between the Respondent and Morgans that a Minute of Agreement was considered. Production R3 being a letter from Morgans dated 17 October 2006 when they were considering acting in the conveyancing, makes it clear that if they had done so they would have prepared a Minute of Agreement in connection with the sale of the property. Production R6 being a letter from the Respondent dated 19 June 2007 shows that the Respondent also considered that a written Agreement between the parties would have been appropriate. The Tribunal accordingly consider that whether or not the Respondent was aware of the Law Society guidance he was clearly aware of the desirability of having a written Minute of Agreement in such circumstances. It has always been the case at common law, whether or not there is any guidance covering the position, that solicitors should not act in a conflict of interest situation and indeed this is set out in clear terms in the Code of Conduct 2002.

As at 10 July 2007, the parties were in an active adversarial position. The Respondent made no mention of the expenses of the Interdict action to Mr A and yet proceeded to take these expenses from the free sale proceeds. This is despite the terms of the letter R6 from the Respondent which suggests that from the sale price there required to be paid the secured loan on the property, the solicitor's fees and all outlays in connection therewith including the council tax to the date of settlement and thereafter the money would be divided 50/50 and the letter R14 which repeats this but clarifies that £20,000 requires to be placed on deposit receipt. There is no mention of any expenses of the Interdict action.

If there had been a written Minute of Agreement, all the matters to be deducted from the free proceeds of sale would have been detailed in this Agreement. Anything not

included in the Agreement could have not been deducted from the free proceeds of sale and the position accordingly would have been clear. It may well have been the case that Mr A would not have agreed to the Respondent acting on his behalf in the conveyancing transaction if the matter of the Interdict action and the expenses had been fully clarified with him at that time. The Tribunal accordingly find that the Respondent acted where there was a conflict of interest and consider that this is contrary to the Code of Conduct for Scottish Solicitors 2002 and is conduct which could bring the profession into dispute. The Tribunal accordingly found the Respondent guilty of professional misconduct in terms of Article 4.2 of the Complaint with a slightly amended wording reflecting the facts found.

The Tribunal however found that the terms of Article 4.3 of the Complaint were general and unspecific in nature. Article 4.3 seems to suggest that a solicitor acting for joint proprietors who are estranged would always have a duty to have in place a written Minute of Agreement in connection with the distribution of the proceeds of sale. Given that the Law Society guidance was not published until August 2009 and given that there may not necessarily be an active adversarial position between parties in all cases, the Tribunal could not make a finding of professional misconduct in respect of this Article.

Mr Reid lodged two previous findings of misconduct against the Respondent. These were admitted by the Respondent.

MITIGATION

Mr McCann advised the Tribunal that the Respondent had been a solicitor for 33 years and was working as a single practitioner dealing with civil and criminal legal aid. He was providing a valuable service to Falkirk and was well liked in the district. The Respondent had been Treasurer of the local Faculty for 20 years. Mr McCann asked the Tribunal to accept that the Respondent had been acting with the intention of helping his clients in a difficult situation. Mr McCann stated that neither the Respondent nor Morgans had thought that a Minute of Agreement was mandatory. Mr McCann pointed out that the Respondent would have to pay for the costs of his representation before the Tribunal and that the Law Society had already imposed

£1,800 by way of compensation in respect of an inadequate professional service finding for the same matter and they had also ordered that the Respondent refund any conveyancing fees. Mr McCann asked that the Tribunal consider awarding less than the usual Order for expenses in the unusual circumstances of the case. Mr Reid asked for the Tribunal's award of expenses in the usual way.

PENALTY

The Tribunal noted that the previous findings against the Respondent were not analogous and one was some considerable time ago. The Tribunal also took into account the fact that the Respondent had already had to pay compensation and refund of fees in respect of the matter. The Tribunal also accepted that there was no ulterior motive behind the Respondent acting in the way that he did and considered that in the whole circumstances it would be proportionate to merely Censure the Respondent.

Although the Tribunal did not make a finding in respect of Article 4.3 of the Complaint, the Tribunal considered Article 4.2 to be the crux of the matter and Article 4.3 was merely ancillary thereto. The Tribunal did not consider the lack of publication of the guidance to be relevant to the issue of expenses. In the circumstances the Tribunal did not consider it appropriate to deviate from the usual course of awarding expenses with success. The Tribunal made the usual order with regard to publicity.

Vice Chairman