

**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, Atria One, 144 Morrison Street,
Edinburgh**

against

**PETER MANSON ROBERTSON c/o
Blackadders LLP, 6 Bon Accord Square,
Aberdeen**

1. A Complaint dated 25 November 2016 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Peter Manson Robertson, c/o Blackadders LLP, 6 Bon Accord Square, Aberdeen (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Secondary Complainers are Mr A and Mrs A.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent. Of consent and on the Complainer's motion, the case was sisted on 22 December 2016. The Complainers sought to recall that sist by motion of 19 July 2017. The Respondent's representative indicated that there was no opposition to that motion.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 13 September 2017 and notice thereof was duly served upon the Respondent.
5. The hearing took place on 13 September 2017. The Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The sist was formally recalled. The

Respondent tendered a plea of guilty to the Complaint as libelled. No evidence was led. Submissions were made on behalf of both parties.

6. The Tribunal found the following facts established:-

- 6.1 The Respondent is Peter Manson Robertson. He was born 18 December 1955. He was enrolled as a solicitor on 18 October 1979 in the Register of Solicitors Practising in Scotland. From on or about 1 September 1982 through to 31 December 2013, he was a partner in the firm Adam Cochran Solicitors. On 1 January 2014 to date, he has been employed as a partner with the firm Blackadders LLP, 6 Bon Accord Square, Aberdeen.
- 6.2 The Complainers received a complaint in connection with a Mr A and Mrs A. The complaint raised a number of matters of concern which prompted the Complainers to carry out further investigation. The complaint related to the purported transfer of a heritable property known as Property 1 from Mr and Mrs A to Mr B. Following receipt of the complaint, the Complainers recovered the file maintained by the Respondent.
- 6.3 The file was labelled Mr B. The description on the file suggested 'purchase of Property 1'. It would appear the file was opened by the Respondent on 18 January 2011.
- 6.4 On the file was a survey report from a firm of surveyors dated 18 January 2011 which provided a value of the heritable property of £150,000. The date of the survey was 14 January 2011. The client was identified as Mr B. The covering letter on the file of 17 January 2011 revealed the report having been delivered to the Respondent.
- 6.5 Thereafter, there is a letter from the Respondent to Lloyds TSB dated 18 January 2011. This letter identified the clients to be a Mr A and Mrs A. The letter detailed the property and the mortgage account of the Complainers. The letter stated "we act for the above named Mr A and Mrs A in connection with their sale of the above property. We would be grateful if you would send us the title deeds as soon as possible."

- 6.6 A further letter on the file is dated 21 January 2011 and is addressed to a Mr B. The letter makes reference to the purchase of the heritable property and states “I enclose a survey report for the above property together with the Surveyor's invoice and we would be grateful if you would settle this directly with them.”
- 6.7 A further review of the file revealed the existence of four draft letters which related to the four parties involved in the transaction. These letters were dated 7 February 2011. Although all of the signed printable letters are dated 7 February 2011, they appear at different stages throughout the file. Only one signed printable letter for an Mrs B appears at the proper chronological stage of the file.
- 6.8 A further review of the file revealed a letter dated 8 February 2011 from the Respondent to Lloyds TSB referring to Mr and Mrs A's mortgage account and seeking a redemption statement as at 11 February 2011.
- 6.9 The Respondent on 9 February 2011 wrote to Mr B. The letter provided “as you are aware, I propose to settle the purchase of Property 1 on Friday 11 February 2011. Accordingly, I enclose a statement for settlement that shows a balance due by you of £101,430. I have assumed that you are meeting your brother's legal fees but would be grateful if you could let me know if this is not correct. In the meantime, I look forward to receiving your cheque in early course.”
- 6.10 The transaction settled. The Respondent on 14 February 2011 sent a cheque for £95,663.62 to Lloyds TSB in full redemption of the outstanding mortgage account. On the file, there was a receipted fee note which was addressed to Mr B and dated 14 February 2011.
- 6.11 Further enquiries with the Complainers revealed that in or about the end of 2010, Mr and Mrs A were enduring financial difficulties. They had borrowed money from their brother Mr B in order to alleviate their difficulties. They maintained that Mr B proposed he would buy from them their heritable property at a value equating to the sum due to their lender of approximately £95,000 and that Mr B would thereafter rent back the subjects to them at a rate of £500 per month for as

long as they wished.

- 6.12 The first and only contact with the Respondent occurred at brief meetings in January 2011 and on 11 February 2011 at the instigation of Mr B who was a client of the Respondent. At the point of requesting the title deeds of the complainer's heritable property, the Complainers were not clients of the firm. The Respondent had no instructions from the Complainers to act on their behalf. The Respondent had not carried out enquiries with the Complainers to establish if they wished him to act on their behalf prior to contacting the lender. The Respondent acted inappropriately and without instruction in requesting that the lender send the title deeds of the subjects to him, in requesting from the lender a redemption statement and dealing with communication surrounding the property and secured their deeds without the knowledge of the Complainers or their permission.
- 6.13 Delivery to a client of terms of business was mandatory for all types of business in 2005. The Practice Rules 2005 provide that a solicitor shall, at the earliest opportunity, upon receiving instructions provide in writing details of the work to be carried out, an estimate of the total fees and outlays likely to be incurred and the basis upon which fees will be charged and the identity of the solicitor responsible for the work and of the solicitor to whom any concerns about the manner in which the work is being undertaken may be addressed. The Respondent contended that the signed letters dated 7 February 2011 were sufficient to satisfy the requirement to provide a terms of business letter. This was incorrect.
- 6.14 The Respondent had two brief meetings with Mr and Mrs A. It is clear that what was proposed between the parties introduced the issue of conflict of interest. The Respondent should have gone through the nature and detail of what was proposed with Mr and Mrs A to ensure that they understood the terms of same and that he had their explicit instructions to proceed. The Respondent should have advised Mr and Mrs A that they were entitled to consult with and instruct their own solicitor to act on their behalf.
- 6.15 There is no evidence that Mr and Mrs A were provided with a copy of the survey report or provided with information as to fees. The receipted fee note revealed a

charge of £500 being applied in respect of a sale which was separate from a charge of £500 in respect of the purchase. A review of the file revealed no evidence as to Mr and Mrs A being advised that the transaction had settled nor what had happened to the balance of £100,000 purported to be the purchase price and why this was not passed to them.

6.16 Other than the two brief meetings, there was no communication at all between the Respondent and Mr and Mrs A. They had transferred their property at a value which was considerably below the survey value of the heritable property with no written communication from the Respondent.

6.17 The Respondent acted for both Mr and Mrs A and Mr B in relation to the transfer of the heritable property. He was acting for both the seller and the purchaser of the subject. It is a well-established principle that a solicitor should not act for clients where there is a conflict of interest between them. The Respondent did not issue a rule 5(2) letter to any of the parties involved and in the circumstances of this particular case, there was an identifiable conflict in the transaction from the start. The heritable property had been valued at £150,000. The consideration was a figure of £100,000. The mortgage outstanding on the subjects was £96,000. The principle contact of the Respondent was Mr B who was one of the beneficiaries in terms of the transaction. The Respondent, when confronted with a transaction for substantially undervalue should have sought an explanation as to why the transaction was proceeding in this fashion. Such explanation would require to be verified by both parties involved. Such enquiry would have revealed that the Complainers were to remain in occupation of the heritable subjects and that there was no formal agreement relating to this occupancy. In the circumstances, the Respondent acted in a conflict of interest situation.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect that he:

7.1 Acted in a conflict of interest situation; and

7.2 Breached Rule 3/1, Rule 4/1 and Rule 9 of the 2008 Practice Rules, and Rule 3 and Rule 5 of the 1986 Practice Rules.

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

Edinburgh 13 September 2017. The Tribunal having considered the Complaint dated 25 November 2016 at the instance of the Council of the Law Society of Scotland against Peter Manson Robertson, c/o Blackadders LLP, 6 Bon Accord Square, Aberdeen; Find the Respondent guilty of professional misconduct in respect that he acted in a conflict of interest situation and breached Rule 3/1, Rule 4/1 and Rule 9 of the 2008 Practice Rules, and Rule 3 and Rule 5 of the 1986 Practice Rules; Censure the Respondent; Fine the Respondent in the sum of £7,500 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not name any other person; and allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with the office of the Tribunal.

(signed)

Kenneth Paterson

Vice Chairman

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on
12 OCTOBER 2017 .

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson
Vice Chairman

NOTE

At the Hearing on 13 September 2017, the sist was formally recalled. The Respondent tendered a plea of guilty to the Complaint as libelled. No evidence was led. Submissions were made on behalf of both parties.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal informed the Tribunal that the Respondent was a 61 year old man who had been practising as a solicitor for 38 years. He had never previously appeared before the Tribunal. There were no pending cases against him.

In 2011 the Secondary Complainers were in financial difficulties. They sought assistance from Mr B who was Mr A's brother. Mr B was an established client of the Respondent. Mr B explained to the Respondent that he was to buy the Secondary Complainers' house at the value of the outstanding mortgage (which was far below the market value of the house) and rent it back to the Secondary Complainers. The Respondent had never acted for the Secondary Complainers before. In the circumstances, it was inappropriate to act for both parties due to the clear conflict of interest between them. The Respondent did not check with the Secondary Complainers whether they wanted him to act. He did not take their instructions on the matter. There were no notes of calls or correspondence with them on the file. There was no information on the file regarding costs, fees or outlays or what was to be done with the balance of funds. The Respondent wrote to the security holders identifying the Secondary Complainers as his clients. He requested titles when he was not instructed and had not issued terms of business to the Secondary Complainers. He wrote to Mr B with the survey but did not share this with the Secondary Complainers. He continued to correspond with the bank on behalf of the Secondary Complainers but sent the fee notes to Mr B. The transaction settled on 14 February 2011 and the loan was redeemed. The property was then owned by Mr and Mrs B. Throughout this transaction, the Respondent acted for two parties whose interests conflicted. In time, relations deteriorated between the parties and eventually the Secondary Complainers were evicted from their home.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath noted that the plea had been arranged about a year ago but that the case had been sisted to await the Court of Session opinions in Anderson Strathern LLP & Another v SLCC [2016] CSIH 71 and

Law Society of Scotland v SLCC [2017] CSIH 36. He indicated that the Respondent's conduct came to light during an action for recovery of the property by Mr B.

The Respondent accepted that he acted in a conflict of interest situation and recognised that if the Secondary Complainers had consulted him independently he would have given them different advice regarding alternative options to selling their home to Mr and Mrs B. At the time, his understanding was that the brothers had been discussing matters during December 2010 and that all parties wished to proceed with the sale and purchase. However, the Respondent acknowledged that even if the transaction was proceeding on an execution only basis, there ought to have been a letter of engagement and a Rule 5(2) letter. The letters of 7 February 2011 purported to be letters of engagement and Rule 5(2) letters but were not actually consistent with either. The Respondent misled himself into believing that he could act because of the blood relationship between the parties. However, even if that was so, he didn't follow up with the proper letters. They should have been separately advised or at the very least the Secondary Complainers should have been told they were at risk regarding their security of tenure.

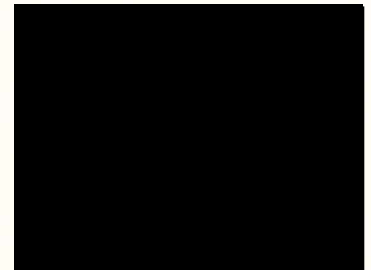
Mr Macreath highlighted in mitigation that the Respondent has had the matter hanging over him for a long time. The Respondent breached his obligation not to act in a conflict of interest situation but should not be held responsible for all the consequences of that breach. Mr Macreath drew the Tribunal's attention to the references provided by the Respondent's colleagues who were professional men held in regard within the legal community. He noted that this incident was a difficult stain at the end of a long career. Mr Macreath asked the Tribunal to reflect upon the Respondent's good background and integrity.

DECISION

Although the Respondent pleaded guilty to professional misconduct, the Tribunal considered carefully the admitted averments of fact in the Complaint and had regard to the relevant test as defined in Sharp v Council of the Law Society of Scotland 1984 SLT 313. In that case it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors may be properly categorised as professional misconduct. However, in every case it is essential to consider the whole circumstances and the degree of culpability of the individual against whom the complaint it made. The Respondent acted in a clear conflict of interest situation. In doing so he failed to act in the best interests of his clients, the Secondary Complainers. He acted without their authority. He did not communicate effectively with them regarding the sale and the funds which passed through his firm. Therefore, the Respondent's conduct clearly fell below the standard to be expected of a competent and reputable solicitor to a degree that could only be considered serious and reprehensible.

The Tribunal had regard to the fact that the Respondent had not previously appeared before the Tribunal and that he was an experienced solicitor. The Respondent rightly recognised that his conduct had fallen short of the standards expected of him. He acknowledged his guilt at an early stage. The Tribunal recognised that this case represented a single incident towards the end of a long career. It did not consider that there was any risk to the public in allowing the Respondent to continue to practise unrestricted. However, it also had regard to the damage to the reputation of the profession caused by this kind of professional misconduct. Therefore, the Tribunal Censured the Respondent and Fined him £7,500.

After hearing submissions on expenses and publicity, the Tribunal made the usual order with regard to expenses and ordered that publicity should be given to the decision but that the clients should not be named or otherwise identified as publication of their personal data would be likely to damage their interests. The Tribunal allowed the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with Tribunal Office.



Kenneth Paterson
Vice Chairman