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, 26 Drumsheugh Gardens, Edinburgh

against

JAMES ANTHONY McCUSKER, 1 Orr Square, High Street, Paisley

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, James Anthony McCusker, 1 Orr Square, High Street, Paisley (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 12 January 2015 and notice thereof was duly served on the Respondent.

5. The hearing took place on 12 January 2015. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by Ian Ferguson, Solicitor, Glasgow.

6. An amended Complaint was lodged together with a Joint Minute admitting the averments of fact, averments of duty and averments professional misconduct *in cumulo* in the amended Complaint.

7. The Tribunal heard submissions from both parties and found the following facts established:-

7.1 The Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 9th September 1956 and he was enrolled as a solicitor on 4th December 1980. He was a former partner and cashroom partner with McCusker Cochrane & Gunn Solicitors. On 31 December 2010 said practice incorporated a limited liability partnership and the Respondent became a Director. The said limited liability partnership merged with PRP Legal Limited on 1 August 2012 and the Respondent remains a Director. He continues to practice from 1 Orr Square, High Street, Paisley.

7.2 The Financial Compliance Department of the Complainers conducted an inspection of the Respondent's financial records, books, accounts and documentation on 3, 4 and 5 September 2012. This inspection identified matters of serious concern including his involvement in the conveyancing transactions, hereinafter referred to, where issues were raised regarding the Solicitors (Scotland) Accounts Rules and the Money Laundering Regulations. The Respondent was interviewed by the Complainers Guarantee Fund Committee on 18 April 2013. The Respondent failed to address the issues and concerns which were raised to the satisfaction of the Complainers and as a consequence of which a form of complaint was intimated to the Respondent.

7.3 On 17 August 2010, the Respondent attended a meeting at the Hotel 1. Said meeting was arranged by a Mr A and was also

attended by two other solicitors, James Craig of Messrs Archibald Sharp Solicitors and Christopher Tulips of Messrs Strefford Tulips. At said meeting the said Mr A outlined the instructions which would be given to the Respondent and the two other firms of solicitors in respect of a series of conveyancing transactions, hereinafter referred to. The Respondent and the two other solicitors agreed to accept said instructions and said instructions were confirmed in an email from the said Mr A to the Respondent and the two other solicitors dated 7 November 2010. By said date, the Respondent had already undertaken certain work in relation to the series of transactions.

Purchase of Property 1

7.4 On 15 October 2010 the Respondent received a telephone call from a Mr B of Company 1 to submit an offer to purchase property at Property 1 for the sum of £47,500 with the date of entry to be as soon as possible. The agents acting on behalf of the sellers were the Lints Partnership. In accordance with those instructions an offer was duly submitted. The Respondent also on said date issued his money laundering and terms of engagement letter to Company 1. By letter dated 27 October 2010, the Lints Partnership provided the Land Certificate for the property. Said certificate disclosed that the owner of the property was a Mr C who had acquired the property at a price of £47,500 on 17 August 2010. No formal missive was enclosed with that letter.

7.5 On 7 November the Respondent received said email from Mr A. Said email was also sent to the Lints Partnership, the said Mr C, the said James Craig and the said Christopher Tulips. The subject matter of the said email was "Disposition by Limited Company" and it attached a copy of a draft Disposition to be

used in all part exchange transactions. Said email narrated *inter alia* that the Respondent should have received from the Lints Partnership a Land Certificate for the property at Property 1 and should have sent an offer to purchase this property on behalf of Company 1. The Respondent was then to part exchange the property with another property at Property 2 with the consideration being the exchange of title and a sum of £4,500. The Respondent and the said Mr Craig were then to register the titles detailing the part exchange details which would then satisfy the requirements of the said Mr Tulips who was acting for the end purchasers. Said email also narrated that funding had been offered for each property with a limited lifespan and requested that the transactions be prioritised.

7.6 On 24 November the Respondent sent an email to Mr A advising that the conveyancing formalities had been completed and sought instructions from Mr A as to when settlement was to be effected and how the transaction was going to be initially funded. On the same date, a qualified acceptance to the original offer was received from the Lints Partnership proposing a date of entry of 26 November. On 29 November a missive was issued by the Respondent amending the date of entry to 30 November. On the same date, a further missive from Lints amended the date of entry to 3 December. By letter dated 30 November the Lints Partnership issued a missive concluding the bargain and on 3 December the Respondent sent an email to Mr A confirming that missives had been concluded and requesting confirmation from him as to when the funds would be made available. Said email also indicated that the Respondent would then be in a position to proceed with the part exchange of the property for Property 2. On 15 December the Respondent sent an email to Mr A advising that the settlement figure required to complete the purchase transaction was £47,565 and provided his client account details. On 16 December, a payment of said

amount was received by the Respondent from Mr B and Mr D. On said date, the Respondent sent an email to Mr A confirming receipt of said payment from those individuals but also requesting an explanation as to why the funds had not been received directly from the company purchasing the property namely Company 1. An email dated same date was sent by Mr B to the Respondent confirming that Mr D was a Director and 50% shareholder of Company 1. The said transaction duly settled on 16 December 2010. After settlement the Respondent received copy identification documentation relating to Mr B and Mr D, which did not comply with the Money Laundering Regulations.

Part exchange of Property 1 & Property 2

7.7 On 17 November 2010 the Respondent received an offer on behalf of Company 2 to purchase the property at Property 1 with the consideration being made by way of a transfer of title from Company 2 to Company 1 of Property 2 and a sum of £4,500 and with a date of entry being specified as 10 December 2010. By letter dated 19 November, the Respondent wrote to "Mr A, Company 1" enclosing a copy of the offer received and requesting instructions. By letter dated 25 November the Respondent issued a qualified acceptance. By letter dated 21 January 2011, a further missive was received by the Respondent proposing a date of entry of 21 January 2011. By letter of even date, the Respondent issued a missive concluding the bargain. Further on said date the sum of £4,500 was received from Archibald Sharp & Son in respect of the consideration for the property. The transaction duly settled that day.

7.8 By letter dated 21 December 2010 Archibald Sharp sent a copy of the Disposition in favour of their clients in respect of the property at Property 2. Said Disposition disclosed that Mr A

was the previous owner of the property and had sold said property to Company 2 for a sum of £42,500 on 17 December 2010. Mr A had acquired the property for the same said sum on 10 August 2010.

End sale – Property 2

7.9 By letter dated 25 November 2010 Strefford Tulips on behalf of their client, Ms E submitted an offer to the Respondent offering to purchase the property at Property 2 for a price of £70,000 with a date of entry of 10 December 2010. Strefford Tulips also acted on behalf of the lender providing funding for the purchase by Ms E. On 20 January 2011, the Respondent wrote to Strefford Tulips enclosing the title deeds. By letter dated 25 January Strefford Tulips wrote to the Respondent in which they requested confirmation of their understanding that the Respondent's client's were a developer or builder who had acquired the property under a part exchange scheme. By emails dated 24 and 26 January, the Respondent wrote to Mr A requesting confirmation of the position regarding his clients being either builders or developers and also requesting client identification documentation. By letter dated 2 February, the Respondent issued a qualified acceptance to Strefford Tulips. By letter dated 25 January but received on 3 February, Strefford Tulips issued a missive concluding the bargain. On 2 February, the Respondent received into his client account by way of bank transfer the purchase price of £70,000.

7.10 The Respondent then prepared a State for Settlement in connection with the purchase and sale of Property 1 and the purchase and sale of Property 2. Following the end sale of the property at Property 2, net free proceeds of sale remained in the sum of £71,678.10. By email dated 4 February, the Respondent wrote to Mr A and copied *in gremio* therein to Mr B of

Company 1, enclosing a fee note and cash account and confirmation that the balance due had been sent by telegraphic transfer to Mr A's and Company 1's nominated bank account, being a bank account in the name of Company 1.

7.11 In dealing with the foregoing transactions, the Respondent acted contrary to Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification in relation to identity of his clients and the third parties who provided the purchase price for the property at Property 1. Further, and in particular, the Respondent failed to comply with the provisions of the Money Laundering Regulations and part 7 of the Proceeds of Crime Act 2002, in particular Section 330 thereof. The Respondent was instructed to act in the aforementioned series of transactions by Mr A initially (and later by Mr B of Company 1 and Mr A) and the proceeds from the end sale were remitted on his instructions and Company 1's instructions. The Respondent was instructed to act by Mr A in a series of back to back transactions. Said instructions were also made known to Mr C, the previous heritable proprietor of the property at Property 1. The Respondent was made aware that the solicitors acting for the end purchasers were obtaining lending facilities to complete those end purchases. The Respondent knew or ought to have known therefore that the whole circumstances and his instructions indicated a potential revolving deposit scheme and potential mortgage fraud. The Respondent failed to recognise and accept that a formal report ought to have been submitted to SOCA.

8. Having carefully considered the submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect of:-

8.1 his conduct falling far below the standard to be expected of a competent, reputable and careful solicitor acting on behalf of a purchasing and selling client in a conveyancing transaction;

8.2 his failure to comply with the terms of rule 24 of the Solicitors (Scotland) Accounts Etc Rules 2001;

8.3 his failure to comply with regulations 5, 6, 7, 11, 14 and 17 of the Money Laundering Regulations 2007; and

8.4 his failure to comply with part 7 of the Proceeds of Crime Act 2002 and in particular section 330.

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

Edinburgh 12 January 2015. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against James Anthony McCusker, 1 Orr Square, High Street, Paisley; Find the Respondent guilty of Professional Misconduct *in cumulo* in respect of a) his conduct falling far below the standard to be expected of a competent, reputable and careful solicitor acting on behalf of a purchasing and selling client in a conveyancing transaction; b) his failing to comply with the terms of the Accounts Rules insofar as they relate to Money Laundering Regulations, in particular rule 24; c) his failing to comply with regulations, 5, 6, 7, 11, 14 and 17 of the Money Laundering Regulations 2007; and d) his failing to comply with part 7 of the Proceeds of Crime Act 2002, and in particular Section 330 thereof; Censure the Respondent; Fine him in 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)
Kenneth Paterson
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

Kenneth Paterson
Vice Chairman

NOTE

The Respondent had originally lodged Answers to the Complaint admitting a lot of the averments of fact, averments of duty and averments of professional misconduct in the Complaint. However on the day of the Tribunal an amended Complaint was lodged with the Tribunal together with a Joint Minute admitting all the averments of fact, averments of duty and averments of professional misconduct *in cumulo* in the amended Complaint. It was accordingly not necessary for any evidence to be led.

The Tribunal heard submissions from both parties.

SUBMISSIONS FOR THE COMPLAINERS

Mr Knight thanked the Respondent for his cooperation and entering into a Joint Minute. Mr Knight explained that there were three transactions in a chain of five which took place over a period of four and a half years. The proposal was mooted at a meeting at a hotel in Motherwell which was conducted by Mr A and at which three solicitors attended, the Respondent being one of them. The transactions were set out in detail in an email. Mr Knight submitted that the Respondent should have been alerted and should have been suspicious. The email sent on 7 November 2010 should have raised alarm bells that there was fraudulent activity taking place by Mr A. Mr Knight emphasised that there was no suggestion that there had been any dishonesty by the Respondent. Mr Knight stated that it was accepted that at the time the Respondent did not realise the full picture but he should have taken steps to make the necessary enquires.

In respect of the first transaction, Mr Craig acted for Company 2 and it settled on 17 December 2010. The price was paid and the finance company was under the control of Mr B. Mr A acquired the property for the same money in August 2010.

In respect of the second transaction, Company 1 was instructed by Mr A who was not an office bearer of the company. In December 2010 this settled using funds from Mr B and Mr D. The Respondent did not get proper identification documentation for the two directors of the company. There was then an exchange of two properties plus the

sum of £4,500. The fourth transaction involved Mr Craig selling for £48,000 and Mr Tulips being involved in the purchase and the lender lent £66,000 and this settled in February 2011. The Respondent would not have known that the proceeds were remitted to Mr A's solicitors of £85,137.

The fifth transaction was the Respondent's sale of Property 2 for £70,000. Mr Tulips acted for the purchaser and the Halifax provided £52,000. The Respondent would not have known but Mr A provided the purchaser, Ms E, with £18,000 to facilitate the purchase. There was £71,678 which was left and sent to an account in the name of Company 1 on Mr A's instructions. It was not Mr B and Mr D's account.

The Respondent obtained a fee for £2,500 plus VAT for work on these transactions. The Complainers' position was that solicitors had been well warned with regard to these types of transactions. The Respondent was an experienced conveyancer and must have been alerted to the risk of mortgage fraud in this situation. He should have known better.

Mr Knight confirmed that the Respondent had no previous convictions and that there have been no further concerns since this incident.

SUBMISSIONS FOR THE RESPONDENT

Mr Ferguson referred to his written submissions:-

General Comments

My client has admitted all of the facts in this case, all of the averments and averments of duty and indeed has admitted to professional misconduct *in cumulo*. The parties have adjusted a Joint Minute of Admissions which has considerably assisted the deliberations and matters before this Tribunal. Accordingly there is only need for a Plea in Mitigation for Respondent.

First of all let me say that my client regrets absolutely his involvement in this series of transactions and now accepts that some alarm bells should have been ringing for him. My client admits that he has been naive in his involvement in this matter and that he failed to grasp the bigger picture. My client has been guilty of naivety but not of any conscious wrong-doing.

My client is of good reputation and has a clear record up to this point. He was a partner in the firm of McCusker Cochrane & Gunn for 23 years and a director of McCusker Cochrane & Gunn LLP for over one and one half years and subsequently was a Director of PRP Legal Limited. He has held the position of cash room partner for over 13 years. He is 58 years old and a first offender.

The transactions did not appear to my client to be suspicious. He was of the view that the proposed transactions complied with the terms of CML and were not a breach of them. He was open in that opinion and was not alone in that view as all the solicitors involved thought this too. The Law Society of Scotland as the Complainers clearly had more information available to them having seen the files of all the solicitors involved and probably had other information from other sources. My client did not have access to that information but with the benefit of hindsight he can see that there were some warning signals that he did not pick up.

There are however mitigating circumstances and I would like to draw these to your attention so you can follow the reasoning and understand what led him to his mindset at the time of not being suspicious nor making a disclosure or SAR in accordance with Section 330 of The Proceeds of Crime Act 2002, which is the main charge.

I would like to go through the terms of the Complaint as amended and agreed by the Joint Minute and my Answers for Respondent.

Statement of Fact 2.2

I think it important to explain that the Respondent co-operated with the complainers as he

- gave answers to their queries,
- attended the Complainer's Guarantee Fund Committee interview and did so without legal advice as he felt he could explain his position openly and had nothing to hide.
- did not fail to address the issues and concerns
- nor fail to answer these.

However it is completely accepted that the Complainers were not satisfied with the Respondent's answers and as a consequence a form of Complaint was intimated to the Respondent.

Statement of Fact 3.0

My answer in my Answers for Respondent ("Answers") confirmed relative to the Meeting of Solicitors on 17/08/2010, that the meeting was fairly brief (I can confirm now it was about 30 to 45 minutes) and discussed whether the proposed transactions were compatible with CML Handbook and whether ARTL could be used although ARTL was rejected as not practically helpful nor possible in the circumstances. My client did not feel pressured by this meeting. All the solicitors present agreed that this seemed compatible with CML. It was a preliminary meeting before anyone was instructed and did not go into detail, e.g. names of all the parties and the addresses of the properties.

Note that before the Email of 7/11/2010 my client had contacted Mr B of Company 1 some 3 weeks earlier and already had his instructions to proceed (Tel call note 23/10/2010 No 2 of List of Productions of Complainers) and after 5 letters by my client to the Company and Mr B (Nos. 2-6) of Inventory of Productions for Respondent.

My client was told by Mr B that Mr A was an authorised representative of the Company and he could accept instructions from him. He was not a Director or Secretary but people do frequently act on behalf of corporate bodies through agents (whether relatives of Directors, employees or managers or trusted associates). This was discussed in the recent case of CLSS -v- David Lingard 2013.

Statement of Fact 3.3

The Answers also explained and averred that Mr B and Mr D were the two Directors of Company 1 and each was a 50% shareholder of it. Reference made to productions 7 and 8 of the Inventory of Productions for the Respondent.

Accordingly there was good reason for the funds being sent by Mr B and Mr D as they were the two beneficial owners of Company 1 so the supply of funds from those two individuals was not in the least suspicious. Neither was there anything suspicious with the response of Mr B to the request from the Respondent for an explanation.

Statement of Fact 3.7

The facts here are admitted.

Please note that the email (Production 32 of the List of Productions for the Complainers) is not only addressed to Mr A but was also to Mr B of the company on the face of the email.

The Cash Statement (Production 31 of that List) supplied with that email was a Cash Statement for the 4 transactions involving Company 1. Reference is also made to Production Number 33 of that List which is a Debit Entry on my client's file in respect of the payment to Company 1 of the free proceeds of sale with details of the bank, sort code, account number and the account name of Company 1. It is accepted that the funds did not go back to Mr B and Mr D but they did go back to their company in which they were equal 50% share owners. In the Joint Admissions, the Fiscal accepts that the account details to which funds were paid was supplied by the company and Mr A but that the Account supplied was in the name of the company only.

Averment 4.0

This originally read as if the only instructions that my client received were from Hugh A and no one else. That was not an impression that was correct and the finally agreed Joint Minute and amended Complaint corrects that. The facts agreed are that my client was instructed initially by Mr A but later by Mr B of Company 1 and my

client had numerous items of correspondence with Mr B, the main Director, at the company's Registered Office address in Essex e.g. as a sample of these from one of the purchase files there are the following items:-

1. Telephone attendance note **15/10/2010** with Mr B of Company 1 - Item 3 of List of Productions of the Complainers.

2. Letter - M C & G to Company 1 dated **15/10/2010** - No.1 of Inventory of Production for Respondent.

3. Letter - M C & G to Company 1 dated **01/11/2010** - No.2 of Inventory of Production for Respondent.

4. Letter - M C & G to Company 1 dated **01/11/2010** - No.3 of Inventory of Production for Respondent.

5. Letter - M C & G to Company 1 dated **02/11/2010** - No.4of Inventory of Production for Respondent.

6. Letter - M C & G to Company 1 dated **02/11/2010** - No.5 of Inventory of Production for Respondent.

   (Email Mr A dated **7/11/2010** No.2 of List of Productions of the Complainers)

7. Letter - M C & G to Company 1 dated **16/11/2010** - No. 6 of Inventory of Production for Respondent.

I would like to draw to your attention that the last paragraph of 4.0 indicates that the circumstances indicated a "potential revolving deposit scheme" and "potential mortgage fraud". I would obviously like to draw to your attention that the word used is "potential" and not "actual".

<u>Revolving Deposit Scheme</u>
What is a Revolving Deposit Scheme? is my rhetorical question.

At its most basic, it is money supplied by a central figure in relation to a transaction and which comes back to him at the end.

The most useful and practical explanation which I have been able to find is a Diagram (Attachment 1) and a covering Explanation produced by Richard Farquhar and Tina Haywood of Financial Compliance Department at the Law Society of Scotland (Attachment 2). I thought that I had obtained these from the website of the Law Society of Scotland but Richard Farquhar (who has now left the Law Society) advises that he does not think it was ever on the website. Being that as it may, they are still, for me, the most helpful illustration and explanation of what it is. Copies are attached to this Plea in Mitigation.

You will see that the indicators are:-

1. A Central Figure;
2. money coming from that central figure; and
3. money going back to that central figure.

In the current transactions there is a central figure, Mr A. However there is no evidence that any of the money came from him. You will see from the agreed facts that the money came from 2 individual directors of the company and I would suggest that that is not unusual or in any way unlawful. My client did question why the money had come from the Directors and was told it was because they were 50% share owners and so were the whole beneficial owners of the company. Indeed I have also attached a copy of the last Annual Return of the company before the transactions took place (Item 8 of the Inventory of Productions for Respondent). It confirms all this. It is true that the money at the end of the transactions was sent to a company account in the name of Company 1 instead of back to the account from which the money had arrived. Clearly that was entirely in order and not suspicious.

With the benefit of hindsight, my client can see the involvement of Mr A could have reasonably have been thought to be suspicious but his suspicions were not aroused at the time.

Section 330 of the Proceeds of Crime Act is the "weapon of choice" of fiscals in these kinds of case because it does not matter if there is no actual knowledge and no actual suspicion of a solicitor, it is enough if there were reasonable grounds for suspicion. That involves a subjective judgement call by a solicitor and an objective assessment by a court.

Faced with the situation again, (and my client assures you that he will never again be involved in such a series of transactions), with hindsight, my client would have made an SAR.

2. <u>Potential Mortgage Fraud</u>

Please note that mortgage fraud could only occur if Strefford Tulips (ST) did not do their job. My client had no actual knowledge nor suspicion that they would not do their job. From his perspective, everyone had been open about the transactions and their view that it would comply with CML.

Were there grounds for suspicion of mortgage fraud here? They were not clear to my client at the time. My client expected ST who were acting for the purchasers and for a lender to make full disclosure of the surrounding circumstances as they are of course bound to do under the CML Handbook for Scotland and under common law duties to lenders.

It is true he was asked his view of whether this series of transactions fitted an exception and he gave his view of CML which was his honest view. He also accepts with hindsight that his view was not correct. However it was not his view that mattered to the lender. ST would no doubt be comforted by my client's understanding of the position but it was they and they alone who were under a duty to explain all of the circumstances of the series of transactions to their lender and to explain why they

thought it fell within an exception. My client had no inkling that ST had not done this. Had ST done as they are bound to do (and which this tribunal has made clear to lenders solicitors that they must do by disclosing surrounding circumstances) then there could be no mortgage fraud as the lender would have been fully informed and released the funds accordingly. My client accepts that with hindsight from other circumstances that a different interpretation was possible and that therefore there were some grounds for suspicion overall.

Summing Up

Looking at the culpability of the various solicitors involved, I believe my client is the least culpable of all of those involved in this sorry series of transactions.

- John Lints appears to have actual knowledge in a large number of schemes including this one.
- Christopher Tulips acted for the lender and had he done as he was meant to do and disclose the whole circumstances of the transaction, then there could have been no mortgage fraud. He has not been convicted of criminal mortgage fraud but this Tribunal has effectively done so civilly.
- Jim Craig of Archibald Sharp & Son had previously acted for the company and had referred this piece of business to my client so it was not a direct approach by a new client to my client but one through a known solicitor colleague.
- My client obtained confirmation of instructions at the outset of the conveyancing from his actual client. He did not rely on the meeting nor the email from Mr A. The email was not perceived as an instruction but as an outline or road map of the steps required and by whom.

My client bitterly regrets being caught up and involved in this single scheme or series of transactions. I hope that this detailed explanation of what was in his mind will assist the Tribunal in seeing that there were at the very least mixed signals and indictors and so not all of the obvious indicators of a need to be suspicious were present. **My client was proud of his unblemished record and is ashamed and mortified by these present proceedings.**

To aid your understanding please refer to Attachment 3 to this Plea in Mitigation.
I my view my client does deserve to be treated more leniently than others involved because of the particular circumstances of his understanding and the actions my client took to ensure he was acting with authority of his client Spectrum PCK Ltd and not from a third party but by a person who appeared to be an authorised agent of the company.

Professional Misconduct (PM)

It is of course this Tribunal which decides what this is and is not irrespective of the views of the Respondent, his solicitor, the Complainers and the Complainers' Solicitor and any Plea to PM

1) Not every breach of a rule is Professional Misconduct (PM). That was the position even before the Legal Profession and Legal Aid (Scotland) Act 2007 (the 2007 Act).

2) The 2007 Act also introduced a new lower level or category of misconduct called unsatisfactory professional conduct (UPC).

3) Definition of UPC in the 2007 Act
"Unsatisfactory professional conduct means, as respect to a practitioner who is a conveyancing practitioner, professional conduct which is **not of the standard which could reasonably be expected of a competent and reputable conveyancing practitioner** but which does not amount to professional misconduct and which does not comprise merely inadequate professional services;".

4) Definition of Professional Misconduct from the Sharp case
"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 off 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 made".

5) Rebalancing
There is now a need for the SSDT to consider in every case whether the conduct complained of is PM, UPC or neither. I also think that it likely that some conduct that was previously labelled as PM when there was no other alternative, might now be considered as UPC.

The Sharp case ultimately confirms that whether there is conduct amounting to PM depends upon the circumstances, i.e. the whole circumstances, of the case.

The 2007 Act has introduced a new lower level offence of UPC which needs to be considered by the Professional Conduct Committee of the LSS and by the SSDT as an alternative to PM.

The circumstances of this present case and the perceptions of my client are different from the other solicitors involved and I believe I have shown that my client's conduct was not as serious and reprehensible as the others.

Mr Ferguson also referred to a diagram showing the revolving deposit/rebate scheme which was a diagram prepared by the Law Society of Scotland and he also referred

the Tribunal to a table which showed non-suspicious indicators listed and also suspicious indicators. He pointed out that there were a lot more non-suspicious indicators in these transactions than there were suspicious ones.

Mr Ferguson however confirmed that given the meeting which took place at the hotel and the email from Mr A, it was accepted that the conduct *in cumulo* amounted to professional misconduct.

Mr Ferguson stated that the Respondent was ashamed and mortified by what had happened and suggested that the Tribunal be more lenient with the Respondent than in respect of the other two solicitors concerned who had already been dealt with by the Tribunal. Mr Ferguson also referred the Tribunal to the three references lodged on the Respondent's behalf.

DECISION

The Tribunal firstly considered whether or not the Respondent's conduct was serious and reprehensible enough to amount to professional misconduct. The Tribunal was of the view that given the meeting which took place at the hotel and the terms of the email sent by Mr A, the Respondent should have spotted that there was something obviously suspicious about the nature of the transactions involved. The Tribunal consider that the Respondent who is an experienced conveyancer should have been alert and realised that questions required to be asked. The issue of money laundering and possible mortgage fraud were highlighted in the Law Society Journal at that time. The Tribunal had no hesitation in making a finding of professional misconduct.

The Tribunal is concerned by the fact that the Respondent although an experienced conveyancer appears not to have realised that questions required to be asked with regard to these transactions and that he should have made a SAR report. He should have been alerted to the possibility that these transactions may have been designed to facilitate the obtaining of mortgage funding by deception. The Tribunal has made it clear in numerous findings the importance of solicitors being vigilant in these types of cases. The Tribunal however noted the Respondent's previously unblemished record, the references lodged, the Respondent's full cooperation with the Law Society and his

entering into a Joint Minute and that there had been no further concerns since. The Tribunal noted that the other two solicitors involved, being Mr Craig and Mr Tulips, have both recently been dealt with by the Tribunal in respect of the same transactions and each was Censured and Fined £2,500. The Tribunal considered that the appropriate course of action would be to impose a similar sanction in this case. The Tribunal consider it important that a message is sent out to both the profession and the public that it is not appropriate for solicitors to deal with transactions such as this in such a reckless way. The Tribunal was not persuaded by the Respondent's representative's submissions that this Respondent was less culpable due to his perceptions of the case. If this Respondent was more naïve in dealing with the matters, the Tribunal did not consider this a reason for imposing a lesser sentence. The fact remains that he played an integral part in these illegal transactions and must therefore accept the consequences of his actions. The Tribunal had no hesitation in considering that the principle of comparative justice should apply.

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

Kenneth Paterson

Vice Chairman