

**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, 26
Drumsheugh Gardens, Edinburgh**

against

**GEORGE RAYMOND MORTON,
Solicitor, formerly of Marshall
Wilson Law Group Limited, 2
High Street, Falkirk and Morton
Pacitti LLP, 5 Newmarket Street,
Falkirk**

1. A Complaint dated 20 November 2015 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, George Raymond Morton, Solicitor, formerly of Marshall Wilson Law Group Limited, 2 High Street, Falkirk and Morton Pacitti LLP, 5 Newmarket Street, Falkirk (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. A copy of the Complaint as lodged was served upon the Respondent. Answers were lodged for the Respondent.
4. The hearing took place on 23 November 2015. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The

Respondent was not present and was represented by Ian Ferguson, Solicitor, Glasgow.

5. A Joint Minute was lodged admitting all the averments of fact (with the exception of one sentence) all the averments of duty and misconduct and both Mr Reid and Mr Ferguson agreed that no evidence required to be led. Two Inventories of Productions were lodged by the Complainers and a List of Productions was lodged for the Respondent.

6. The Tribunal found the following facts established:-

6.1 The Respondent was born on 9 October 1952. He was a partner with Marshall Wilson, Solicitors, Falkirk from 6 April 1977 to 2 November 2008. From 3 November 2008 to 30 October 2009 he was a Director of the Marshall Wilson Law Group, Falkirk and from 1 November 2009 to 31 January 2010 a Consultant with said Group.

With effect from 1 February 2010 the Respondent was a partner in the firm of Morton Pacitti LLP, Solicitors, Falkirk. He ceased employment with Morton Pacitti LLP on 30 September 2015.

6.2 The Complainers carried out an inspection of the Marshall Wilson Law Group Limited between 25 and 27 May 2009. The inspection noted the purchase of forty-eight flats at Property 1 on behalf of clients, Mr A and Mrs A.

The Solicitor dealing with the transactions on behalf of Mr and Mrs A was the Respondent. Marshall Wilson was also acting on behalf of various commercial lenders who were providing finance for the forty-eight flat purchase.

The transaction was referred to Mr Morton by another Solicitor, Mr B of James Turnbull and Co, Solicitors, Falkirk.

6.3 The Marshall Wilson file contains a copy of a fax dated 6 August 2008 from Company 1 to Company 2 setting out Mr A's intention to purchase the various properties, subject to Heads of Term set out in the letter. It advised that Mr A's Agent for the transaction would be Burness and that Mr A intended to set up a Special Purpose Vehicle for the purchase.

6.4 An email from Mr B to Mr Morton dated 2 September 2008 provided the initial instructions to Marshall Wilson and noted that Marshall Wilson would take the place of Burness in relation to the purchases.

A handwritten file note of 15 September 2008 reads "Flats 150k each. But valued at 200k (48)".

6.5 Subsequent correspondence in relation to the provision of Property Enquiry Certificates concludes with a letter from James Turnbull & Co to Marshall Wilson on 30 September 2008 confirming that the selling agents are only willing to meet the cost of providing five Property Enquiry Certificates on the basis that all the properties are identical.

Mr Morton replied on 1 October 2008 confirming "We are prepared to accept the position regarding the Property Enquiry Certificates."

6.6 In an undated fax bearing a note to the effect it was received on 10 October 2008, Mr B advised Mr Morton:-

"Raymond

We are on the verge of concluding this deal. Settlement may (I stress may) take place 17.10.2008.

Before I conclude, I must have your confirmation that you are satisfied as to the conditions attached to the mortgage offers already issued and that there are no impediments to your submitting the appropriate Certificates of Title to obtain the mortgage funds imminently.

Please let me have the necessary confirmation by return.”

By fax dated 14 October 2008 Mr Morton replied to Mr B advising:-

“I confirm that I have now gone over the conditions and the offer of loan in respect of the various properties. I attach hereto a schedule showing the various lenders and their requirements.

I also note that I am suppose (sic) to confirm to you that certain lenders that the purchase of each flat is £200,000, whereas of course it would appear that the 48 flats are being purchased for £125,000 each.”

In a letter dated 15 October 2008 Mr B advised Mr Morton inter alia:-

“I refer to our telephone conversation when we agreed the position regarding the valuations and purchase prices of the properties.

I enclose, for your information, copy (poor) Money Laundering documentation.

I enclose copies of the Tenancy Agreements for all the flats. (The sellers) have been lax in maintaining rentals at the current levels. It is the client’s intention to rectify the situations on matter of priority.”

6.7 By letter dated 20 October 2008 Mr Morton wrote to Mr B advising:-

“I have to say that I have some concerns regarding the loans which Mr and Mrs A are receiving, in respect of in particular the Bank of Ireland, Birmingham Midshires and Bristol and West. In these three cases I have to submit a Report on Title and confirm that in particular the present rents are sufficient to cover the mortgage payments which are being made by Mr and Mrs A. Having checked the Short Assured Tenancy Agreements, this is obviously not the case in respect of any of the loans applying to these three societies. If I submit a Certificate/Report on Title to these lenders, it will be quite apparent to them that when they receive the Land and Charge Certificate and Tenancy Agreements, that I have falsely reported the position, which would then leave myself and my firm with the possibility of not only being reported to the Law Society but taken off their Solicitors panel.”

6.8 Marshall Wilson received an offer dated 29 October 2008 to sell twenty-seven flats to Mrs A for £2,750,000. Missives were concluded on 14 November 2008.

On the basis of the Missives, the average price paid by A for the twenty-seven flats purchased by her was £101,851.

Of the twenty-seven flats purchased by A, twenty-one flats were subject to loans from commercial lenders, as detailed in Schedule A attached to the Complaint.

The loans for the twenty-one flats totalled £3,060,000. At settlement 5 loans were not drawn down totalling £770,000 resulting in loans actually utilized totalling £2,290,000.

The total of the purchase prices of the twenty-one flats, as certified in the Certificates of Title, was £4,000,000.

- 6.9 Marshall Wilson received an offer dated 29 October 2008 to sell to Mr A twenty-one flats at Property 1 for £2,750,000. Missives were concluded on 14 November 2008.

On the basis of the Missives, the average price paid by Mr A for the twenty-one flats purchased by him was £130,952.

Of the twenty-one flats purchased by Mr A, eighteen of the flats were subject to loans from commercial lenders, as detailed in Schedule B attached to the Complaint.

The loans for the eighteen flats totalled £2,861,596. The total of the purchase prices of the eighteen flats, as certified in the Certificates of Title, was £3,600,000.

- 6.10 The total actual purchase price for all forty-eight flats at Property 1 was £5,500,000. The average purchase price per flat was accordingly £114,583.33.

The total purchase price of the 39 flats as stated in the Certificates of Title was said to be £7,800,000 on the basis of £200,000 purchase price per flat.

The total of the loans for the 39 flats was £5,350,000. Only £150,000 was paid by Mr and Mrs A towards the actual purchase price.

Of the 48 flats, only 34 flats were subject to loans at settlement. As a result, 14 flats were purchased by Mr and Mrs A free from any loans.

- 6.11 The Council of Mortgage Lenders Handbook applied to transactions where loans in respect of various flats were received from Alliance & Leicester, Bank of Ireland, Birmingham Midshires, and the Chelsea Building Society, et separatim Loan Instructions applied in respect of the aforementioned Lenders and the Bristol & West Building Society all as detailed in the said Schedules A and B.

Alliance & Leicester

- 6.12 The offer of loan from the Alliance & Leicester provided that instructions to Marshall Wilson were based on the conditions set out in the CML Lenders Handbook for Scotland.

The offers of loan stated that the Solicitor was required to confirm “The purchase price stated in the mortgage offer is correct and the same amount will be stated in the corresponding contract of sale.”

The Certificates of Title confirmed the relevant mortgage advance figure and that the “price stated in transfer” is £200,000.

Bank of Ireland

- 6.13 The offers of loan instructed Marshall Wilson to investigate the Title in line with the terms of Bank of Ireland’s mortgage offer and the Mortgage Conditions (Scotland) and the CML Lenders Handbook, Parts I and II.

The offers of loan stated that “The Solicitor must state the actual purchase price being paid. Any discount, cash back or allowance should be reported to us as soon as possible.” In addition, the offers stated that the payment of rent should be at least sufficient

to cover the amount of the monthly instalments of interest due under the mortgage.

Birmingham Midshires

- 6.14 The offers of loan stated that Marshall Wilson were instructed in accordance with the CML Lenders Handbook for Scotland and Birmingham Midshires Part 2 instructions.

It was a condition of the offers of loan that the monthly rental income under the Tenancy Agreement must be greater or equal to a minimum of 100% of the monthly mortgage payment.

Bristol & West

- 6.15 The offers of loan stated that Marshall Wilson were instructed in line with the terms of the lenders Offer of Loan and Solicitors Instructions (Scotland).

The offers provided that “The Solicitor must state the actual purchase price being paid. Any discount, cash bank or allowance should be reported to the lender as soon as possible.

In addition, the conditions provided that the payment of rent should be at least sufficient to cover the amount of the monthly instalments of interest due under the mortgage.

The Solicitors Instructions (Scotland) provided that in all purchase cases the Solicitor was required to obtain a Property Enquiry Certificate.

Chelsea Building Society

6.16 The offers of loan stated that Marshall Wilson were instructed in accordance with the second edition of the CML Lenders Handbook for Scotland dated 1 January 2003 and Chelsea Building Society's Part 2 Instructions.

6.17 The total purchase price of the flats was £5,500,000. The Certificates of Title showed purchase prices totalling £7,600,000.

The purchase price covered forty-eight flats. Of the forty-eight flats, only thirty-four flats were ultimately subject to loans/mortgages. Fourteen flats were purchased subject to no borrowings.

The loans/mortgages provided totalled £5,350,000.

6.18 Flat purchases were progressed and Certificates of Title signed and/or completed, all as per the detailed Schedules attached to the Complaint in circumstances where:-

(a) The purchase price in the mortgage offer exceeded the amount stated in the contract of sale.

(b) Payment of rent was not sufficient to cover the amount of monthly instalments of interest due under the mortgage.

(c) The actual purchase price being paid for the flat was not stated.

6.19 Copy identification documents in respect of the purchasers Mr and Mrs A were sent by Mr B to the Respondent. The documents were not "certified a true copy". There was no indication that the Respondent had ever met the purchasers.

There was no indication that Mr B consented to being relied on by the Respondent in terms of the Money Laundering Regulations 2007, Regulation 17(1)(a).

There is no indication that Mr B had carried out due diligence in terms of the 2007 Regulations.

A copy Bank Statement provided showed that one of the purchasers, Mr A, had £2,000,000 in the account. The Respondent raised no adequate queries re the source of these funds.

- 6.20 Marshall Wilson “Money Laundering Compliance Risk Assessment form” was completed and signed by the Respondent’s partner Malcolm Thomson on 4 November 2008. He noted the transaction was “high risk”.

The Respondent was responsible for identification but had not signed the verification section of the form.

He certified as a true copy photocopies of the copy identification documentation provided by Mr B although he had not met the purchasers and the original copy documentation was uncertified.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his failures arising out of a large conveyancing transaction involving the purchase of 48 flats in particular:

- 7.1. his failure to inform the lenders in relation to the purchase of the flats of the following material facts –

- (a) that the purchase price being paid for each of the properties was substantially less than the £200,000 being the price upon

- which the lenders had based the amount which they were prepared to lend on the individual properties;
- (b) that the loan funds being received for each of these properties exceeded the actual purchase price being paid for each of the individual properties;
- (c) that part of the funds being provided for the purchase of designated individual properties by the individual lenders were also being utilised for the purchases of 9 of the flats;
- (d) that the borrowers were contributing £150,000 or less towards the total transaction price of £5,500,000;
- (e) that the rents being paid by the sitting tenants were substantially below the levels stipulated in the respective loan instructions;
- 7.2 his failure to comply with the obligations contained in the CML handbook et separatim Loan Instructions in respect of the requirement to advise the lenders of material facts in the transaction as detailed in (a) to (e) above;
- 7.3 that whilst acting for both the purchasers and various lenders in relation to the abovementioned transaction he failed to comply with his professional duty to act with the utmost propriety towards all of his clients;
- 7.4 his failure to comply with his professional duty not to withhold relevant information from clients; and
- 7.5 his failure to continuously act diligently and with the utmost propriety to retain the trust of lenders during the course of the said transaction;
8. Having heard the Solicitor for the Respondent in mitigation and having noted previous findings of misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23 November 2015. The Tribunal having considered the Complaint dated 20 November 2015 at the instance of the Council of the Law Society of Scotland against George Raymond Morton, Solicitor, formerly of Marshall Wilson Law Group Limited, 2 High Street, Falkirk and Morton Pacitti LLP, 5 Newmarket Street, Falkirk; Find the Respondent guilty of professional misconduct in respect of his failures arising out of a large conveyancing transaction involving the purchase of 48 flats, in particular, (1) his failure to inform the lenders in relation to the purchase of the flats of the following material facts – (a) that the purchase price being paid for each of the properties was substantially less than the £200,000 being the price upon which the lenders had based the amount which they were prepared to lend on the individual properties; (b) that the loan funds being received for each of these properties exceeded the actual purchase price being paid for each of the individual properties; (c) that part of the funds being provided for the purchase of designated individual properties by the individual lenders were also being utilised for the purchases of 9 of the flats; (d) that the borrowers were contributing £150,000 or less towards the total transaction price of £5,500,000; (e) that the rents being paid by the sitting tenants were substantially below the levels stipulated in the respective loan instructions; (2) his failure to comply with the obligations contained in the CML handbook et separatim Loan Instructions in respect of the requirement to advise the lenders of material facts in the transaction as detailed in (a) to (e) above; (3) that whilst acting for both the purchasers and various lenders in relation to the abovementioned transaction he failed to comply with his professional duty to act with the utmost propriety towards all of his clients; (4) his failure to comply with his professional duty not to withhold relevant information from clients and (5) his failure to continuously act diligently and with the utmost propriety to retain the trust of lenders during the course of the said transaction; Strike the name of the Respondent, George Raymond Morton, from the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the

Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent but such publicity will be deferred until the conclusion of any criminal proceedings which might be brought against the Respondent or intimation that no criminal proceedings are to be brought.

(signed)

Alistair Cockburn

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

IN THE NAME OF THE TRIBUNAL

Alistair Cockburn
Chairman

NOTE

A previous Complaint had been lodged against the Respondent and two other solicitors containing inter alia the averments in relation to this matter. That Complaint had called a number of times before the Tribunal at procedural hearings. On 23 November 2015 the Tribunal allowed that Complaint to be withdrawn.

Two Inventories of Productions were lodged by the Complainers and a List of Productions was lodged for the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid took the Tribunal through the agreed facts as outlined in the Complaint in detail and referred the Tribunal to the terms of the correspondence contained in the Productions which supported the averments of fact. He advised that this Complaint related to the purchase of 48 flats when the Respondent was acting for the purchasers and the lenders.

Mr Reid stated that all the averments of fact were agreed apart from one sentence. He advised that the sentence which was disputed was

“The Respondent raised no queries re the source of these funds”.

Mr Reid explained that this sentence related to the copy bank account from one of the purchasers required as a source of funds under the Money Laundering Regulations. Mr Reid asked the Tribunal to consider the productions and make a finding in fact in relation to that. He referred the Tribunal to the email at Production 8 of the Complainer's Second Inventory of Productions and stated that it was clear from that email that Mr B understood that Marshall Wilson were acting for the purchasers and that therefore the responsibility for dealing with everything in the transaction fell to the Respondent.

Mr Reid stated that the total purchase price of the flats was £5,500,000 and the certificates of title showed purchase prices totalling £7,600,000. The total purchase

price covered 48 flats and of those 48 flats, only 38 flats were ultimately subject to loans or mortgages. That meant that 14 flats were purchased subject to no borrowing. Mr Reid stated that the loans and mortgages provided totalled £5,350,000.

Mr Reid stated that the Respondent was the solicitor dealing with the purchase and his firm was also acting on behalf of the lenders. Mr Reid advised that this transaction had been referred to the Respondent by Mr B, another local solicitor. Mr Reid stated that the position regarding these transactions was summarised at Article 5.9 of the Complaint.

“The total actual purchase price for all 48 flats at Property 1 was £5,500,000. “The average purchase price per flat was accordingly £114,583.33. The total purchase price of the 39 flats as stated in the Certificates of Title was said to be £7,800,000 on the basis of £200,000 purchase price per flat. The total of the loans for the 39 flats was £5,350,000. Only £150,000 was paid by Mr and Mrs A towards the actual purchase price. Of the 48 flats, only 34 flats were subject to loans at settlement. As a result, 14 flats were purchased by Mr and Mrs A free from any loans.”

Mr Reid referred the Tribunal to paragraph 7.2 of the Complaint and advised that as stated in sub paragraph (a) in the case of 34 of the 48 flats the purchase price in the mortgage offer exceeded the amount stated in the contract of sale. In relation to sub paragraph (b) in the case of at least 17 of the flats rental payments were insufficient to cover the amount of monthly instalments of interest due under the mortgage. In addition he referred the Tribunal to sub paragraph (c) and advised that in the case of all 34 flats where loans were involved the actual purchase price being paid for each flat was not as stated in the Certificates of Title.

Mr Reid submitted that the Respondent's failures in this transaction amounted to professional misconduct on a monumental scale. He stated that it was difficult to see given these agreed facts that the Respondent could have been acting other than quite deliberately. Mr Reid submitted that it was patently obvious that the Respondent must have known that the rents were insufficient and that the loans exceeded the purchase prices.

SUBMISSIONS FOR THE RESPONDENT

Mr Ferguson stated that whilst the facts were admitted he would not say that his client's actions were deliberate. He referred the Tribunal to his written plea in mitigation which was as follows :-

“You will note from the Answers for the Respondent and now a Joint Minute between the Fiscal and myself as the Respondent's Solicitor, that in relation to my client most of the facts are admitted, the law is admitted and indeed Professional Misconduct itself is admitted.

The Background

This was essentially a single deal for the sale by the Seller to a husband and wife team Mr and Mrs A of 4 blocks of flats at Property 1 each block containing 12 flats, a total of 48 flats.

The deal was carried out by two sets of missives one for Mr A and another for his wife Mrs A. Loans were obtained from various lenders in respect of 34 of the flats.

Who was my client acting for?

If you examine the correspondence on the file you will see that there is some dubiety as to whether Marshall Wilson were acting for Mr and Mrs A. You will see that the Firm of James Turnbull & Co, Larbert were the Firm ostensibly acting for the Purchasers Mr and Mrs A and that they were dealing with the Edinburgh Solicitors acting for the Sellers. James Turnbull & Co adjusted the draft Missives and originally these were to be addressed to James Turnbull & Co. At the last moment, for a reason that is not known to me and that my client cannot recall James Turnbull & Co altered the destination of the Offers to Sell to be issued to Marshall Wilson. My client did not question this and he dealt with the final version of the Offers when they came in to his Firm and concluded missives.

The Fiscal has referred to some ambiguities in relation to this and I have to agree that the position is ambiguous. My client had not been considering himself as acting for Mr and Mrs A at least initially and therefore the identification of Mr and Mrs A was carried out by James Turnbull & Co. My client should have questioned this all of this and perhaps even refused to have the offers sent to him and should have allowed or insisted that James Turnbull & Co conclude missives but he did not. Accordingly it is accepted that the copy ID was not sufficient in the circumstances, although my client had known and worked with Mr B for 36 years and accepted the copy ID in good faith.

My client accepts that he should have made full disclosure to the Lenders concerned about the true purchase price and true position regarding the Leases. My client made a value judgement about what required to be disclosed to the Lender and he accepts that he got that wrong. He made this judgement based on the fact that Mr and Mrs A had known that within the last year the asking price was over £9 million. They also discovered garage lock-ups under the blocks of flats which were included in the sale but had not been valued and were capable of being converted into additional accommodation. There was also sufficient land included in the sale upon which further flats could be erected, subject to planning permission. In other words, my client wrongly concluded that the probable increase in value of the property gave the Lenders additional security. But it was not his judgement to make that call.

Action taken post transactions

You will note that I have lodged with the List of Productions for the Respondent 34 copy letters sent by Marshall Wilson Law Group to all of the Lenders involved in the loans to Mr and Mrs A. If you examine these letters you will see that they contain disclosures which my client should have disclosed during the course of the transactions. It is interesting to note that not one of the Lenders wrote back to Marshall Wilson indicating any concern about the situation. Indeed there were no replies at all.

Furthermore when the new Firm of Morton Pacitti was created in 2010 letters were written to all of the lenders except Bristol & West plc for whom Marshall Wilson had not recently acted for and copies of these are lodged with the List of Productions for Respondent at items 35 - 41. There were no problems for the new Firm who simply applied and were appointed. Production 43 for the List of Productions for Respondent is a list of the panel numbers and Lenders for whom Morton Pacitti were appointed to act.

My Client

My client is a family man and he and his wife celebrated their ruby wedding recently. They have two children both of whom are married. He and his wife are grandparents and their second granddaughter was born in 2015.

My client is a former Dean of the Falkirk Faculty.

He has been for many years the Treasurer of Grangemouth Childrens Day. He is a past President of Falkirk Rotary Club and he is a current member of the Club. He is also a Past President of Falkirk Burns Club.

My client has been held in high regard and esteem by colleagues. Few of them know of these proceedings. My client is a private man.

Medical Position

[REDACTED]

[REDACTED]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

[Redacted line]

Delay, Worry and Stress

I mention this not as a plea in bar of trial but as a factor to be taken into account in sentence. The criminal law cases are clear that delay requires to be taken into account. The law is well known and I am certain well known to the Tribunal but I mention the Leading Case from the Privy Council, *Spiers v Ruddy* (2007) UKPC D2 which has been followed since.

It is 7 years since the events complained of in this Complaint. You may wonder why it has taken 7 years for this Complaint to reach this hearing before the SSDT. It is true that there have been some reasons at times justifying a delay of a period or periods including my own client's health. The delay is exceptional nevertheless. I think you would be correct to be concerned at this. The delay is especially worrying for someone suffering from stress and depression.

There were long delays.

The Guarantee Fund Committee Interview was conducted on 15 October 2009 (Production 29 of the Second Inventory of Productions for the Complainers). That recommended that a Complaint of Professional Misconduct be pursued against the Respondent and others by passing details of the Complaint and all relevant documentation to the complaints investigation team for investigation and report. It further recommended notification to the SLCC be made. That is over 6 years ago. No matter what explanation may be given, it is likely to be an inadequate one and will not justify why it has taken so long for this present Complaint to go ahead.

Summary and Conclusion

My client the Respondent has admitted almost all the facts of this Complaint and he has admitted the law and has admitted professional misconduct (PM).

It is of course the Tribunal's decision whether PM is established whether or not PM is admitted, but I can state that my client accepts that his conduct was such that PM is

established and he regrets that he acted in the way he did. He accepted that at the time the letters were written to the various lenders concerned confessing to the wrong information supplied. It should be borne in mind that there has not been any suggestion made that there has been any loss to the Lenders, any criminal behaviour or any unusual gain by my client or his Firm. I am given to understand that Mr and Mrs A intend to sell on at a substantial profit.

Illness, even as serious as stress and depression, is not an excuse and at the end of the day it is still PM.

It is however a factor to be considered in sentence.

Delay, as explained above in criminal cases, is a factor to be taken into account in sentence.

I urge the Tribunal to view this case taking into account these factors and come to a judgement that is fair, reasonable and proportionate taking these factors into account.”

In response to a question from the Chairman as to why the Respondent considered it was necessary to certify a new copy of the money laundering information as correct, Mr Ferguson replied that there was no rational explanation for that. The Chairman asked whether it was in order to deceive the Money Laundering Partner and if not, could Mr Ferguson think of another reason. In response, Mr Ferguson stated that his client’s judgment was impaired. He advised that his client’s friendship with Mr B made the Respondent think that this was alright.

In response to a question from the Chairman as to what the firm’s “Money Laundering Compliance Risk Assessment form” was for, Mr Ferguson stated that it was an internal document.

The Chairman asked why if the Respondent wanted to give the lenders increased security he did not give the lenders the other 14 flats. Mr Ferguson replied that this would not have worked because the lenders were lending on particular flats.

The Chairman indicated that he noted that the letters to the lenders had been written a year after settlement of the transaction and asked what the trigger was for the Respondent in sending these letters. Mr Ferguson advised that these matters had been pointed out at the Guarantee Fund Committee meeting following the inspection and it was suggested by the Guarantee Fund Committee that these letters be written. Mr Ferguson advised that none of the lenders wrote back and confirmed that there were no replies at all.

In relation to the disputed averment regarding the checks which should have been carried out regarding the source of funding for the transaction, Mr Ferguson stated that in his view his client was not guilty of failing to check the source of funds because Mr A had £2,000,000 in his bank account.

In answer to a question from the Chairman, Mr Ferguson indicated that the firm's fees in respect of this transaction were in the region of £16,000. He stated that the fees were to be much more originally but were reduced.

In answer to a question from the Chairman as to whether the Respondent took direct instructions from Mr and Mrs A to accept the offer, Mr Ferguson stated that he was not sure that the Respondent did and that the matter was confused because of Mr B's involvement in negotiating the deal. Mr Ferguson then stated that he thought that his client was in contact on the phone with Mr A but there were no file notes in the file to support that.

In response to a question from the Chairman Mr Reid indicated that the date of the Professional Conduct Committee decision was 26 April 2012.

DECISION REGARDING THE DISPUTED SENTENCE

The Tribunal considered the productions and the submissions from both parties. The Tribunal concluded that the Respondent as the solicitor acting for the purchasers was responsible for the conveyancing and had not carried out adequate enquiries into the source of the funds for this transaction given its value and the fact that the Respondent had not met the purchasers.

DECISION

The Tribunal considered the terms of the Complaint, the submissions made by both parties and the productions lodged. The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v- The Council of the Law Society of Scotland [1984 SC 129]. The Tribunal was of the view that the Respondent's accepted failures to report a number of material issues to lenders in the course of this high value conveyancing transaction were blatant and clearly amounted to a serious and reprehensible departure from the standards expected from a competent and reputable solicitor. The Tribunal therefore had no hesitation in determining that the Respondent's conduct amounted to professional misconduct.

The Tribunal considered that this is one of the most blatant cases of misconduct it has seen as evidenced by the Respondent's own communication to a fellow agent in a letter dated 20 October 2008 which demonstrated his foreknowledge of wrong doing. The Tribunal was of the view that it was not without significance that the Respondent's actions may have been induced, not by his depression, but by the remuneration to his firm of some £16,000 in fee income. The Tribunal have previously made it clear that depression is not in any way an excuse for wrong doing. The Tribunal considered that in high value transactions solicitors should be aware of the increased level of risk for their clients.

In addition, the Tribunal noted the previous Findings against the Respondent and considered that following that his earlier failures to comply with the Money Laundering Regulations that the subsequent failures in this respect demonstrated a disregard for that legislation. Also the Tribunal was of the view that the inadequate enquiries which the Respondent carried out regarding the source of funds was tantamount to an act of deceit given that the firm's Money Laundering Compliance Risk Assessment form was completed and signed by the Respondent's Money Laundering Partner. The Respondent was responsible for identification but he had not signed the verification section of the form. He had certified as a true copy photocopies provided by Mr B as evidence of identity although he had not met the purchasers and the original copy documentation was uncertified.

The Tribunal considered that the conduct of the Respondent in respect of this transaction was not in accordance with the common law principle of honesty and integrity expected of a solicitor practising in Scotland nor in respect of his obligations in terms of the CML Handbook. The Tribunal noted that the Respondent had not demonstrated any real insight into the seriousness of his failures and the potential resultant effect on the lenders concerned. It is essential for the public to have confidence in the legal profession and trust that solicitors will act with integrity and fulfil their professional duties in all cases. The Tribunal considered that the Respondent's conduct in deliberately turning a blind eye to potential mortgage fraud (whether or not this actually occurred) demonstrated his lack of integrity and has brought the legal profession into disrepute. Given the seriousness of the failures, all the circumstances and in particular the Respondent's lack of real insight into those failures the Tribunal considered that the delay in this matter being concluded was not a factor which changed its view that neither a restriction nor a suspension was appropriate in this case. Accordingly the Tribunal decided to strike the Respondent's name from the Roll of Solicitors in Scotland. The Tribunal made the usual order for expenses and publicity. However to avoid any possible prejudice to any future criminal proceedings which might be brought against the Respondent, ordered that such publicity will be deferred until the conclusion of any criminal proceedings against the Respondent or intimation that no criminal proceedings are to be brought.

Alistair Cockburn

Chairman