

**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, formerly at 26 Drumsheugh
Gardens, Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

Complainers

against

**WILLIAM MEECHAN, Campbell & Meechan,
19 Waterloo Street, Glasgow**

Respondent

1. In April 2015 a Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, William Meechan, Campbell & Meechan, 19 Waterloo Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mhairi McGlashan or Morris, 14 Blakett Road, Maidenbower, Crawley, West Sussex.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 7 July 2015 as a procedural hearing and notice thereof was duly served on the Respondent.
5. At the hearing on 7 July 2015, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Clerk confirmed both the Notice of Complaint and the Notice of Hearing had been served upon the Respondent by recorded delivery post. The Fiscal indicated that as there were

other matters outstanding for the Respondent his motion was to continue this case to a further procedural hearing on 22 October 2015 to allow both Complaints to be dealt with together. In the circumstances, the Tribunal granted the motion and continued the case to a further procedural hearing on 22 October 2015.

6. A letter dated 6 July 2015 from the Respondent was received by the Clerk's office on 8 July 2015 indicating that he would be unable to attend the procedural hearing on 7 July and indicating that he had lodged Answers. A Notice of Hearing for 22 October 2015 was served upon the Respondent. A letter was sent to the Respondent indicating that no Answers had been received by the Clerk's office.
7. A Second Complaint dated 1 September 2015 was lodged with the Scottish Solicitors Discipline Tribunal by the complainers averring that the Respondent was a practitioner who may have been guilty of professional misconduct in respect of separate matters.
8. There was no Secondary Complainer.
9. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent.
10. The Respondent agreed to dispense with the induciae in relation to the second Complaint, so that a Notice of Hearing for 22 October 2015 could be served, allowing both cases to call at the same time. A Notice of Hearing was duly served upon the Respondent.
11. On 21 October 2015 the Respondent lodged Answers to the second Complaint, by email.
12. At the hearing on 22 October 2015 the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was neither present nor represented. It was confirmed that the Respondent had still not lodged Answers in respect of the first Complaint and had lodged Answers in respect of the second Complaint the day prior to the hearing. The Respondent had sent an email to the Fiscal's office on the morning of the hearing indicating that he was unwell and unable to attend the procedural hearing. On the Fiscal's motion the Tribunal continued both Complaints to a procedural hearing on 23 November 2015 and the Respondent was directed to lodge Answers to the first Complaint within 14 days, failing which he would be held as having confessed.

13. A Notice of Hearing was duly served upon the Respondent.
14. At the hearing on 23 November 2015, the Complainers were represented by their Fiscal Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented himself. On Joint Motion both Complaints were continued to a substantive hearing on 16 December 2015 and it was intimated to the Tribunal that parties were to enter into a Joint Minute agreeing all matters.
15. At the hearing on 16 December 2015, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented himself. A Joint Motion to conjoin both Complaints in terms of Rule 17 of the 2008 Rules was granted. It was confirmed that the parties had reached agreement. Two amended Complaints and two Minutes of Agreement between the parties were lodged. The Fiscal for the Complainers asked the Tribunal to allow the two amended Complaints to be substituted for the original Complaints. The Respondent confirmed that he had no objection to that Motion and intimated that this was agreed between the parties. Accordingly, the Tribunal allowed the two amended Complaints to be received. Submissions were made on behalf of both parties. In the course of the submissions for the Respondent, a conflict arose between the Respondent's submissions and the terms of the Minute of Agreement and amended Complaint. On Joint Motion the Tribunal adjourned the hearing to 1 February 2016 to allow the Respondent to take independent legal advice and for the parties to resolve the disputed matters.
16. At the hearing on 1 February 2016, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented himself. The Respondent confirmed to the Tribunal that he had taken legal advice. The Fiscal for the Complainers indicated that the dispute between the parties had been resolved. He moved to allow a further amended Complaint to be received, together with a fresh Minute of Agreement between the parties. The Respondent indicated that he had no objection to this motion. The amended Complaint and Minute of Agreement were allowed to be received. Submissions were heard from both parties.
17. The Tribunal found the following facts established:-

- 17.1 The Respondent is William Meechan. His date of birth is 18 August 1964. He was enrolled as a solicitor on 2 October 1989. Since 1 November 1999 he has been a partner in the firm of Campbell & Meechan, Solicitors, 19 Waterloo Street, Glasgow.

Complaint by Mhairi McGlashan

- 17.2 The Secondary Complainer instructed the Respondent in or around March 2010 to pursue the recovery of the Secondary Complainer's personal property and monies from her former partner (the "former partner"), and to pursue her interest in a property previously shared with her former partner at Property 1.
- 17.3 On 13 April 2010, the Respondent sent a letter to the Secondary Complainer enclosing terms of business and an estimate of his fees, which, based on an hourly rate, were estimated at £2,000 to £2,500. Subsequently on a date not known in April 2010, the Respondent and Secondary Complainer had a meeting during which they discussed recovery of the Secondary Complainer's personal property and monies from her former partner.
- 17.4 On 20 April 2010, the Respondent wrote to the former partner in connection with the return of the Secondary Complainer's personal property and her interest in Property 1. The Respondent forwarded a copy of this letter to the Secondary Complainer on 4 May 2010.
- 17.5 On 5 May 2010 the Respondent wrote to the former partner. In that letter the Respondent referred to the return of his client's personal property and her interest in Property 1. He stated "Given the absence of any satisfactory response our instructions are that we are to proceed with a court action in respect of both these matters and in respect of our client's interest in Property 1." He advised the former partner to seek independent legal advice. The Respondent forwarded a copy of this letter to the Secondary Complainer on 7 May 2010.
- 17.6 Stirling and Gilmour were instructed by the former partner to raise a small claims action against the Secondary Complainer for payment of money to recover rent arrears. On 29 July 2010 that action was served on the Secondary Complainer. The Secondary Complainer passed the small claims summons to

the Respondent. On 3 August 2010 the Respondent sent a letter to Stirling & Gilmour advising that his client had passed him the small claims summons. In that letter the Respondent advised that his client sought recovery of personal property and £8,000. The Respondent advised that “We are instructed that in the event that these items are not returned to our client and that the £8,000 is not repaid we are to commence court proceedings.”

- 17.7 On 23 August 2010 the Respondent’s office sent a letter to the Secondary Complainer enclosing a copy letter from Stirling & Gilmour to the Respondent dated 17 August 2010. The letter contained the Secondary Complainer’s former partner’s position in relation to the recovery of the Secondary Complainer’s personal property and the recovery of the sum of £8,000. The Respondent’s office asked the Secondary Complainer to contact him to discuss the letter on the Respondent’s return from holiday on 23 August 2010.
- 17.8 Thereafter on an unknown date between 23 and 30 August 2010 the Secondary Complainer met with the Respondent to discuss her former partner’s action against her.
- 17.9 On 14 September 2010, the Respondent instructed local agents to appear on behalf of the Secondary Complainer at Dumbarton Sheriff Court the following day in connection with the former partner’s action against the Secondary Complainer. He advised that, on receipt of details of payments made by the Secondary Complainer to her former partner, he would lodge written defences. Agents appeared and the case was continued until 13 October 2010.
- 17.10 On 14 October 2010 Stirling & Gilmour wrote to the Respondent to advise that the next court hearing was 10 November 2010. The letter explained that the former partner required to carry out an inspection of Property 1 in order to prepare an inventory of contents. On 19 October 2010, the Respondent wrote to the Secondary Complainer enclosing a copy of the letter of 14 October 2010.
- 17.11 On 21 October 2010 the Secondary Complainer and the Respondent had a meeting at which it was noted that the Secondary Complainer’s personal property had not been returned to her. The Secondary Complainer advised that

she did not intend to remove from Property 1 until her personal property had been returned to her.

- 17.12 On 5 November 2010 the Secondary Complainer and the Respondent had a meeting during which the Respondent gave advice in connection with the locks being changed at Property 1 by her former partner. The Respondent sent a fax to Stirling & Gilmour on 9 November 2010 noting that the locks to Property 1 had been changed, preventing the Secondary Complainer from gaining access, and that no personal property had been returned to her. He also enclosed the Secondary Complainer's Statement of Defence to the former partner's court action.
- 17.13 On 9 November 2010 the Respondent instructed local agents by letter to appear on behalf of the Secondary Complainer at Dumbarton Sheriff Court on 10 November 2010 in connection with the former partner's action for payment. In that letter the Respondent advised that two to three months would be required to prepare for a proof. The local agents appeared at court and wrote to the Respondent on 10 November 2010 confirming that a proof had been assigned for 29 March 2011.
- 17.14 On 23 February 2011 the Respondent had a telephone discussion with the solicitor acting for the former partner. During that call the former partner's solicitor confirmed that he had instructions to dispose of the proof fixed for 29 March 2011 on a no expenses due to or by basis. The Respondent asked "whether or not the former partner was prepared to give the Respondent any money". He was advised that the former partner was not prepared to do so. The Respondent advised that he would take the Secondary Complainer's instructions.
- 17.15 On 2 March 2011, Stirling & Gilmour sent a letter to the Respondent confirming that their client was prepared to dispose of the court action on "a no expense due to or by either party basis" and requested that the Respondent take his client's instructions.

- 17.16 On 21 March 2011 the Respondent had a telephone discussion with the solicitor acting for the former partner. During that call the Respondent confirmed that he had spoken to the Secondary Complainer that day and reported that “she is prepared to forget about the thing next Tuesday”. The Respondent wrote to Stirling & Gilmour on 24 March 2011 to confirm that the Secondary Complainer agreed to dispose of the action on a no expenses due to or by basis. He asked Stirling & Gilmour to appear on behalf of both parties to confirm the position to the court.
- 17.17 On 25 March 2011, the solicitor acting for the former partner wrote to the former partner and confirmed that the Respondent had agreed to dispose of the proof scheduled for 29 March 2011 on a no expenses due to or by either party basis.
- 17.18 On 13 April 2011 the Respondent sent an e-mail to the Secondary Complainer asking her to complete a draft precognition and contact him to discuss. The Secondary Complainer returned the draft on 30 April 2011 and advised that she would contact the Respondent after the bank holiday weekend.
- 17.19 On 22 June 2011, the Respondent sent a letter to the Secondary Complainer enclosing a draft writ. He requested some financial information to be included in the writ.
- 17.20 On 11 January 2012, the Secondary Complainer sent an e-mail to the Respondent asking him whether he had the correct email address for the Secondary Complainer as she had not heard from him. She received no response to that e-mail.
- 17.21 On 1 March 2012 the Secondary Complainer sent an email to the Respondent referring to their telephone discussion that day and attached links to the sale of a property being sold by her former partner’s family and other properties in the area. She asked the Respondent “how long do you expect the decree to take?”. She received no response to that e-mail

- 17.22 On 17 May 2012 the Secondary Complainer sent an email to the Respondent referring to their earlier discussion and stating that her former partner's "failure to adhere to our requests in the past have left me with no choice but to continue with the sequestration of his business and property." She estimated that the money and belongings retained by her former partner amounted to more than £30,000. She requested details of timescales for the bankruptcy proceedings. She received no response to that e-mail.
- 17.23 On 11 July 2012 the Secondary Complainer sent an email to the Respondent stating: "If possible I would like a copy of the details relating to the recovery of my belongings/investment. Can you forward me any correspondence from [my former partner's] solicitor for the time period that you have dealt with the case and a breakdown of the cost accrued. Can you also advise me when full payment is due to be completed?"
- 17.24 Thereafter on a date between 11 July 2012 and 17 July 2012 the Secondary Complainer was informed by the Respondent in a telephone conversation that the Secondary Complainer's former partner had agreed to pay the sum of £25,000 which would be paid in monthly instalments of £5,000. On 17 July 2012 the Secondary Complainer sent an email to the Respondent in which she provided her bank details. The sum of £1,250 was received by the Secondary Complainer on 20 July 2012 after the Respondent deducted his estimated costs. Mr Meechan advised the Secondary Complainer that his costs would be in the region of £3,750. No invoice was issued to the Secondary Complainer for that sum.
- 17.25 On 23 July 2012 the Respondent noted on his client file: "Various telephone conversations with Mhairi. She is obviously distressed at my position. I have been completely remiss on this. Obviously I don't want the thing to turn into a claim. Given my delay it is obviously unlikely she would ever be able to recover the property which is the main part of the claim. I will cover this just now." The Respondent advised the Secondary Complainer that "there had been a change of plan and the remainder would be paid in full". On 25 July 2012, £20,000 was transferred to the Secondary Complainer's bank account by the Respondent. No

action had in fact been raised by the Respondent and no proposal for settlement made by the former partner.

- 17.26 In or around January 2013, the Secondary Complainer contacted the Respondent and suggested that she collect the paperwork relating to her case. The Respondent advised that he would send the relevant papers to her home address. In or around January 2013 the Respondent advised the Secondary Complainer that an Inhibition Order had been obtained against her former partner. On 24 January 2013 the Secondary Complainer sent an email to the Respondent asking him to send her the details of the proceedings that were against her former partner and a copy of the details relating to the inhibition order, and any other relevant information held regarding the case. She also requested copies of all correspondence between the Respondent and her former partner's solicitor and an invoice for the fee taken by the Respondent. The Secondary Complainer received no response to this e-mail.
- 17.27 On 30 January 2013 the Secondary Complainer wrote to the Respondent's firm to make a formal complaint. She complained that she had received no written information about her case from the Respondent and requested that he "forward all details relating to the case including details of the inhibition order and an invoice". On 6 February 2013 the Respondent wrote to the Secondary Complainer advising: "I have been remiss in dealing with this matter on your behalf and I do apologise but will respond in full to you next week".
- 17.28 On 8 February 2013, the Secondary Complainer submitted a complaint to the Scottish Legal Complaints Commission ("SLCC"). On 1 November 2013, the SLCC sent a letter to the Respondent in connection with their investigation of the complaint. The Case Investigator asked the Respondent to forward his file and provide a full and detailed response to the Summary of Complaint.
- 17.29 On 11 November 2013, the Respondent sent a letter to the SLCC advising that he was currently on holiday and would return to the office on 22 November 2013. He wrote that he would respond to the SLCC at "the commencement of the following week i.e. 25th November". In the absence of a further response from the Respondent, the Case Investigator sent a letter dated 4 December 2013,

and asked for a reply together with the Respondent's file "in the next 7 days". There was no response. On 19 December 2013, the Head of Investigations from the SLCC sent a Statutory Notice under section 17(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 requiring the Respondent to produce his business file and provide his explanation regarding the complaint by 9 January 2014.

- 17.30 The matter was referred to the Law Society as a conduct issue and, on 19 March 2014, the Law Society Complaints Investigator sent a letter to the Respondent intimating the complaint and asked for the business file and his response to the complaint to be sent to the Law Society within 21 days from the date of the letter.
- 17.31 No response was received and, after the expiry of the 21 day period, letters enclosing Notices were sent to the Respondent in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 on 23 April 2014 by recorded delivery. A Royal Mail Track and Trace receipt confirms that the Respondent's firm received the letters and signed for them on 24 April 2014.
- 17.32 On 20 May 2014, a further complaint relating to the failure to respond to the Law Society was intimated to the Respondent by recorded delivery. A Royal Mail Track and Trace receipt confirms that the Respondent's firm received the letter and signed for it on 21 May 2014.
- 17.33 On 27 May 2014, the Respondent sent a letter by fax and advised that he was on holiday until 4 June 2014. He wrote that he had already responded "at some length in relation to these matters" but would revert with any further comments on his return to the office.
- 17.34 The Complaints Investigator replied to the Respondent on 28 May 2014 and enclosed a further copy of the complaint, clarifying that the Law Society had not received any response from the Respondent in relation to this particular complaint. She asked again for the file and the Respondent's response on his return from holiday the following week.

- 17.35 The Complaints Investigator sent reminders on 9 and 24 June 2014. On 30 June 2014, the Complaints Investigator sent a letter to the Respondent asking for delivery of the file within seven days, failing which court action would be instigated for the delivery of same. The Respondent delivered the file to the Law Society in the following week.

Complaint by Council of the Law Society

- 17.36 The Respondent was instructed by a Mr A, whose date of birth was 24 March 1966, in connection with the purchase of a plot of land at Property 2 subsequently known as Property 3. In connection with the purchase Mr A was required to grant an affidavit in terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.
- 17.37 The terms of the affidavit provided that it was sworn by Mr A in the presence of the Respondent acting in his capacity as a Notary Public on 23 August 2002 at Glasgow. However as at 23 August 2002 Mr A was a prisoner within HM Prison Glenochil, Tullibody.
- 17.38 The trial of Mr A proceeded at Glasgow Sheriff Court before Sheriff Cathcart. It was established at trial that Mr A was in custody at HM Prison Glenochil, Tullibody between 17 January 2002 and 3 September 2002. Mr A was convicted of defrauding the Bank of Scotland of £78,500 in 2002. This sum was advanced by the Bank of Scotland to Mr A at that time as a mortgage loan. In 2002 Mr A was a prisoner in HM Prison Glenochil having been sentenced to a period of seven years imprisonment by the High Court of Justiciary for having been concerned in the supply of drugs. An application for a mortgage of £78,500 was made to the Bank of Scotland in his name in May 2002. He was the sole applicant for the mortgage. In that application it was stated that he resided at Property 4. The application stated that his date of birth was 24 March 1966. The application stated that he was a warehouse manager earning £32,000 per annum. The Bank of Scotland would not have offered to lend if it had known that Mr A was in custody or it had known that the truth was that he was not a warehouse manager earning £32,000 per annum. A mortgage loan of £78,500 was granted by the Bank of Scotland for the purchase of the plot at

Property 2 subsequently known as Property 3. Mr A's mortgage application was completed by Mr B, a mortgage introducer employed by the Respondent's firm. An affidavit was prepared in connection with the mortgage application declaring that the property was not a matrimonial home. The Bank of Scotland granted the application and loan monies of £78,500 were advanced to Mr A. Following his release from prison Mr A instructed solicitors to act from him in the sale of Property 3, to repay the mortgage loan of £78,500 to the bank and thereafter to transfer the net free proceeds of sale amounting to £107,751.69 to his partner.

- 17.39 On 18 October 2013 the Respondent gave evidence at the trial of Mr A in connection with charges of fraud. The Respondent gave evidence that he had no direct knowledge of Mr A's purchase of the land at Property 2. In the course of giving evidence he was presented with the affidavit referred to above which bore to have been signed by Mr A before the Respondent at Glasgow on 23 August 2002. The Respondent accepted in his evidence that he had signed the affidavit as a notary public. The Respondent agreed in his evidence that he had not met with Mr A in 2002. The Respondent agreed in his evidence that the affidavit had not been signed before him. It was his evidence that he did not know who had signed the affidavit bearing to be Mr A. He accepted in his evidence that he had failed in his professional obligations. Upon returning to his office that day the Respondent established that the affidavit had been signed by the said Mr B. The Respondent was aware that he had given incorrect information to the Court. Despite this, he took no steps to correct the position or provide true and accurate information to the court.

Financial Compliance

- 17.40 On 31 July and 1 August 2013 the Law Society's Financial Compliance Department ("the FCD") carried out an inspection of the Respondent's Firm ("the Firm") in accordance with The Law Society of Scotland Practice Rules 2011. Rule B6.18 provides the process for the conduct of practice unit inspections and investigations. The FCD considered among other things whether or not the Firm was complying with the requirements of the Law Society's Accounts Rules. The FCD completed its inspection on 27 November 2013. Following the completion of its inspection the FCD prepared and issued a

report to the Respondent setting out its findings (“the Inspection Report”). The Inspection Report was referred to throughout the Complaint.

(a) Borrowing from Mrs C – Schedule 1 to the FCD Report

17.41 The FCD inspection found that the Respondent had made an arrangement with Mrs D to borrow £15,000. The Respondent borrowed this sum from Mrs D on 19 October 2012. It was agreed that the Respondent would repay the loan with interest of £2,000 on 19 April 2013. A banker’s draft was provided in the sum of £15,000 as payment of the loan. The Respondent carried out no checks to establish the identity of the bank account against which the banker’s draft was drawn. The FCD established that the banker’s draft was not drawn on the account of Mrs D. It was drawn on the account of her daughter, Mrs C. Mrs C was an existing client of the Respondent’s firm. She was not in the business of lending money. She did not receive independent legal advice before lending the £15,000 to the Respondent.

(b) (i) Failure to carry out customer due diligence in connection with PIE portfolio purchase from Company 1 in liquidation – Schedule 3 to the FCD Report

17.42 The Respondent was instructed in connection with the purchase of a portfolio of 15 properties by PIE from the liquidators of Company 1. The FCD noted that Customer Due Diligence documentation held by the Respondent confirmed that PIE was owned by Mr E and controlled by Ms F. The Inspection Report issued to the Respondent requested, among other things, that he:-

“Please confirm the sum to be provided towards the transaction and confirm that your clients PIE will be providing these funds”.

17.43 On 20 January 2014 the Respondent responded, stating:-

“I do not yet know what the figure is, although the funding shortfall will be provided by PIE.”

17.44 On 7 February 2014 the FCD asked the Respondent to clarify the source of funds that would be used by PIE to meet any shortfall in the purchase price. On 3 April 2014 the FCD noted that a separate property company owned by Mr E had provided £20,393.27 towards the purchase of the portfolio of properties. On same date the FCD noted that in relation to its requests for information on the source of funds to purchase Phase 2 the Respondent had not delivered any verification or explanation of the source of these funds beyond bank account details for a Barclays account. He provided no other verification or explanation of the source of these funds.

(b) (ii) and (f) Failure to carry out customer due diligence in connection with DPL purchase of properties in Area 1 and failure/delay to provide information to the Law Society – Schedule 9 to the FCD Report

17.45 The Respondent was instructed in connection with the purchase of a portfolio of 11 properties in Area 1 by DPL. The proposed purchase price was approximately £210,000. The purchase did not proceed to conclusion. Following inspection the FCD noted that the client ledger stated that the purchase price had been received from the Respondent's "client" on 10 September 2013 and then returned to his "client" on 1 October 2013. It noted that DPL's legal fees were settled by another client of the Respondent, PIL. The FCD noted that the purchase price of £210,000 appeared to have been received from ISA, a firm of accountants and financial advisers, rather than the Respondent's client. The FCD review of the client file noted that when the purchase had fallen through the Respondent had contacted his client to seek confirmation of account details to return the purchase price to. It was not clear to the FCD from their review that the necessary information had been received from the Respondent's client and the money returned to its original account. When the FCD issued its Inspection Report to the Respondent on 27 November 2013 it asked him to provide customer due diligence in connection with, among other things, the beneficial ownership and directors of PIL and ISA and confirmation that the purchase price received from ISA had been returned to the same account. Information was provided by the Respondent to the FCD on 20 January 2014. The FCD did not consider sufficient information had been provided on customer due diligence and the return of the purchase price. On 7

February 2014 the FCD sought further information on these two areas of concern. As a result of the FCD's questions the Respondent made further contact with his client to seek vouching on the source of the funds. On 19 March 2014 the FCD advised the Respondent that on the information provided to date it could not be determined who were the beneficial owners of PIL and ISA and that the Respondent may not have applied sufficient customer due diligence. No further information was provided by the Respondent to the FCD.

(c) (i) Acting in a potential conflict of interest in the purchase and sale of Property 5 – Schedule 4 to the FCD Report

17.46 The FCD noted that the Respondent was instructed by PIE Ltd in connection with the purchase of Property 5. The Respondent subsequently acted for Mr and Mrs G in connection with the purchase of the property from PIE. In connection with the second transaction the Respondent's practice was noted to be acting as the selling and purchasing agents on the Stamp Duty Land Tax form. The sale by PIE to Mr and Mrs G was a back to back transaction and PIE was the mid purchaser. The FCD sought copies of all relevant conflict of interest letters sent by the Respondent to his clients. On 20 January 2014 in his response to the FCD Investigation Report the Respondent stated:-

"I considered that there would be a conflict of interest in my acting for the purchasers while acting for PIE in the sale."

The Respondent attempted to refer Mr and Mrs G to another firm of solicitors, Macpherson Maguire Cook. That firm declined to act and the Respondent continued to act for Mr and Mrs G. He did not provide both clients with full knowledge and obtain their express consent to proceed. The Respondent went on to explain that he did not consider there was a conflict of interest because PIE chose to be unrepresented in the sale. As noted above the Stamp Duty Land Tax form confirmed that he acted for both seller and purchaser.

(c) (ii) Acting in a potential conflict of interest in the purchase and sale of Property 6 – Schedule 5 to the FCD Report

17.47 The FCD noted that the Respondent was instructed by PIE in connection with the purchase of Property 6. The Respondent subsequently acted for Ms H in

connection with the purchase of the property from PIE. The Respondent's practice was noted to be acting as the selling and purchasing agents on the Stamp Duty Land Tax form. The sale by PIE to Ms H was a back to back transaction and PIE was the mid purchaser.

17.48 The Respondent attempted to refer Ms H to Macpherson Maguire Cook. That firm declined to act and the Respondent continued to act for her. He did not provide both clients with full knowledge and obtain their express consent to proceed.

17.49 At interview with the Law Society on 20 March 2014 the Respondent accepted that there was a potential conflict of interest given that he was acting for PIE in connection with the first purchase.

(c)(iii) Acting in a potential conflict of interest in the purchase and sale of Property 7 and (g) withdrawing funds from lender client without written authority – Schedule 10 to the FCD Report

17.50 The FCD noted that the Respondent was instructed by Mr I in the purchase and subsequent sale of Property 7. Missives were concluded with a purchase price of £600,000 on 28 February 2013. The purchase price in this first transaction was never paid by Mr I. On the same date that missives were concluded for the sale to Mr I, the Respondent concluded missives on behalf of Mr I to sell the property to Mr J and Ms K for the same price. This was a back to back transaction. The Respondent acted for the seller Mr I and the purchasers Mr J and Ms K in the second transaction. He did not provide both clients with full knowledge and obtain their express consent to proceed. The purchase price in the second transaction was also agreed at £600,000. It was noted by the FCD that the purchase price paid by Mr J and Ms K was used by Mr I to settle the first transaction. The SDLT form relating to the second transaction stated Levy & McRae to be the agents from Mr I when in fact the Respondent acted for Mr I and the purchasers in that transaction.

17.51 The Respondent acted for the lender Company 2, in connection with the end purchase of Property 7 by Mr J and Ms K. The Respondent was instructed by Company 2 in accordance with their written instructions of loan which

incorporated the terms of the Council of Mortgage Lenders Handbook which required the Respondent to advise of any recent change of ownership of the property. Notwithstanding the back to back arrangements referred to in the preceding paragraph above, the Respondent issued a Certificate of Title to the lender on 17 April 2013 stating:- “...*there has been no recent change in ownership of the Property, the seller has been the registered owner of the Property at least throughout the period since 20 September 2012 and there is no known relationship or collusion between the seller and the owner which we are aware of*”. The FCD noted that given the seller Mr I purchased and sold the property to Mr J and Ms K on the same date, 28 February 2013, that the Certificate of Title ought to have been qualified. At interview with the Law Society on 20 March 2013 the Respondent accepted that “*he had made a CML error*”.

(e) Retention of client funds in connection with executry and brokering loan arrangements between two clients – Schedule 7 to the FCD Report

- 17.52 The Respondent was instructed by Mrs L in connection with the executry of her late husband, Mr L. Mrs L was in receipt of state benefits including Child Benefit, Child Tax Credits, Income Support and Housing Benefit. The proceeds of an Aviva joint life policy amounting to £98,672.01 were received by the Firm on 9 November 2011. Fees of £5,500 plus VAT were drawn from the executry on 16 November 2011. The net proceeds of £92,072.01 were placed in a designated client account on 17 November 2011. On 8 March 2012 the proceeds of a Scottish Widows policy amounting to £3,064.50 were paid into the designated client account.
- 17.53 On 1 March 2012, 8 June 2012 and 30 August 2012, three payments of £3,000 each were withdrawn from the designated client account and made to Mrs L by cheques made payable to cash.
- 17.54 Mrs L arranged with the Respondent to offer a loan to another client of the Respondent, Mr M. On 29 March 2012 the Respondent instructed that £65,000 be transferred from the designated client account to the Respondent’s firm client account. This instruction was carried out on 30 March 2012. On same date the

Respondent arranged for the £65,000 to be paid to his client Mr M as a loan secured over property at Property 8.

17.55 Mr M made a series of loan repayments to Mrs L through the Respondent. The following sums were paid by Mr M to the Respondent and then paid to Mrs L. On 28 September 2012 the sum of £2,000. On 14 November 2012 the sum of £3,000. On 27 February 2013 the sum of £4,000. On 14 June 2013 the sum of £4,000. The Respondent knew that Mrs L was in receipt of state benefits. The actions of the Respondent in retaining the executry funds in his client account and thereafter brokering a loan arrangement with Mr M served to conceal her true financial position.

(h) Failure to ensure appropriate narratives were recorded in the practice records – Schedule 13 to the FCD Report

17.56 The FCD noted that the following funds had been paid into the Respondent's client bank account across the counter at bank branches: On 5 July 2013 the sum of £2,950.28 was paid in by Mr N at Area 2. On 26 July 2013 the sum of £2,500 was paid in by Mr O at Property 9. On 11 September 2013 the sum of £1,000 was paid in by Mr P. On 20 September 2013 the sum of £950 was paid in by Mr Q. In each case the payment was entered in the books and records of the Firm as a telegraphic transfer as opposed to a payment made at the branch counter. The FCD asked the Respondent to provide full documentary evidence regarding the source of funds in each case together with a full explanation. The Respondent was unable to provide the requested vouching and explanation of the source of funds.

(i) Delay or failure to deliver information on client receipts requested by the Law Society – Schedule 14 to the FCD Report

17.57 When the FCD issued their inspection report on 27 November 2013 they requested evidence of the originating source of funding in connection with the following client receipts:- Ms H "21/03/13 received from you £25,660"; Mr R "24/04/13 Received from you per Mr R £11,505.00"; Ms S "12/11/13 Received from you £20,035.00". On 7 February 2014 the FCD repeated their request for clarification on the source of funding. On 19 March 2014 the FCD noted that a response was outstanding in connection with these receipts. On 20 March 2014

the Respondent attended an interview with the FCD at which he stated that the sources of funding were not with his files but that he was “chasing these down”. The Law Society has not received the information requested

(j) Failure to timeously produce trial balance demonstrating failure to maintain sufficient accounting records to show the true financial position – Schedule 17 of the FCD Report

17.58 When the FCD issued their inspection report on 27 November 2013 they advised the Respondent that the records of the practice must be correctly maintained at all times in order that the true financial position of the Firm was shown. At that time the FCD identified a series of discrepancies with the Firm’s records including the Firm’s trial balance. The FCD asked the Respondent to investigate and rectify the discrepancies identified. The Respondent produced the rectified trial balance to the FCD on 20 March 2014

(k) Failure to render a fee note to client prior to taking fee – Schedule 19 of the FCD Report

17.59 The FCD noted that the Respondent was instructed in connection with the executry of Ms T in August 2013. On 18 October 2013 an interim fee of £3,000 was taken from the executry funds. The Respondent did not render a fee note to the executry prior to taking the interim fee.

18. Having given careful consideration to the accepted facts and the parties’ submissions in relation to the question of professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

18.1 His failure to communicate effectively with his client, the Secondary Complainer;

18.2 His failure to respond to the Scottish Legal Complaints Commission;

18.3 His failure to respond to the Law Society of Scotland;

- 18.4 His failure to provide an explanation to his client or to the Law Society in connection with the source of £25,000 purported to be a settlement sum;
- 18.5 His failure to issue an invoice prior to taking a fee of £3,750;
- 18.6 His failure to act with trust and personal integrity in connection with the giving of evidence in relation to an affidavit of 18 October 2013 following his giving of misleading information to the Court;
- 18.7 His failure to demonstrate appropriate customer due diligence in breach of Rule B6 of the Law Society of Scotland Practice Rules 2011 and the Money Laundering Regulations 2007;
- 18.8 His acting for clients in a potential conflict situation in breach of Rule B1 of the Law Society of Scotland Practice Rules 2011;
- 18.9 His retaining of the proceeds of an executry in a client account, making cash payments to the client, and brokering a loan arrangement with another client, all serving to conceal the first client's financial position when she was in receipt of state benefits, in breach of Rule B1 of the 2011 Practice Rules;
- 18.10 His delay or failure to confirm to the Financial Compliance Department that funds provided to the firm were returned to the original sources in breach of Rule B6 of the 2011 Practice Rules;
- 18.11 His drawing down of lender/client funds in the absence of written authorisation and breach of Rule B6 of the 2011 Practice Rules;
- 18.12 His failure to maintain an appropriate audit trail and his recording of incorrect narratives within the firm's accounts in breach of Rule B6 of the 2011 Practice Rules;
- 18.13 His delay or failure to provide the Law Society with information requested in connection with client receipts in breach of Rule B6 of the 2011 Practice Rules;

18.14 His failure to ensure that at all times sufficient accounting records were kept to show the true financial position of his firm in breach of Rule B6 of the 2011 Practice Rules;

18.15 His failure to render a fee note to an executry prior to taking an interim fee, in breach of Rule B6 of the 2011 Practice Rules.

19. The Tribunal heard further submissions from both parties in relation to disposal. Having given careful considerations to these submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 1 February 2016. The Tribunal having considered the amended Complaints at the instance of the Council of the Law Society of Scotland against William Meechan, Campbell & Meechan, 19 Waterloo Street, Glasgow; Find the Respondent guilty of professional misconduct in respect of; his failure to communicate effectively with his client, the Secondary Complainer; his failure to respond to the Scottish Legal Complaints Commission; his failure to respond to the Law Society of Scotland; his failure to provide an explanation to his client or to the Law Society in connection with the source of £25,000 purported to be a settlement sum; his failure to issue an invoice prior to taking a fee of £3,750; His failure to act with trust and personal integrity in connection with the giving of evidence in relation to an affidavit of 18 October 2013 following his giving of misleading information to the Court; his failure to demonstrate appropriate customer due diligence in breach of Rule B6 of the Law Society of Scotland Practice Rules 2011 and the Money Laundering Regulations 2007; his acting for clients in a potential conflict situation in breach of Rule B1 of the Law Society of Scotland Practice Rules 2011; his retaining of the proceeds of an executry in a client account, making cash payments to the client, and brokering a loan arrangement with another client, all serving to conceal the first client's financial position when she was in receipt of state benefits, in breach of Rule B1 of the 2011 Practice Rules; his delay or failure to confirm to the Financial Compliance Department that funds provided to the firm were returned to the original sources in breach of Rule B6 of the 2011 Practice Rules; his drawing down of lender/client funds in the absence of written authorisation and breach of Rule B6 of the 2011 Practice Rules; his failure to maintain an appropriate audit trail and his recording of incorrect narratives within the firm's accounts in breach of Rule B6 of the 2011 Practice Rules; his delay or failure to provide the Law Society with

information requested in connection with client receipts in breach of Rule B6 of the 2011 Practice Rules; his failure to ensure that at all times sufficient accounting records were kept to show the true financial position of his firm in breach of Rule B6 of the 2011 Practice Rules; his failure to render a fee note to an executry prior to taking an interim fee, in breach of Rule B6 of the 2011 Practice Rules; Order that the name of the Respondent be Struck 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; Continues the Complaint to a date to be afterwards fixed in relation to the Secondary Complainer's claim for compensation.

(signed)

Colin Bell

Vice Chairman

20. 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

Colin Bell
Vice Chairman

NOTE

At the hearing on 16 December 2015 the Tribunal had before it the two original Complaints, two Lists of Productions for the Complainers and one set of Answers from the Respondent.

A Joint Motion was made to conjoin both Complaints in terms of Rule 17 of the 2008 Tribunal Rules. That Motion was granted.

Thereafter Mr Marshall referred the Tribunal to two amended Complaints that had been lodged together with two Minutes of Agreement between the parties. Mr Marshall moved the Tribunal to allow the two amended Complaints to be substituted for the original Complaints. Mr Meechan confirmed that he had no objection to that motion and intimated that this was agreed between the parties. The Chairman asked the Fiscal to confirm what the amendments were.

Mr Marshall addressed the amendment to the Complaint dated 21 April 2015, referring to this as the first Complaint. He confirmed that the only amendment here was at page 10 of the original Complaint. Paragraph 4.15 was amended to focus the element of professional misconduct indicating that the Respondent had given evidence under oath that he had signed an affidavit when he had not. In other words, the Respondent had given false evidence under oath. The Chairman asked Mr Meechan directly if he accepted that was his position and he agreed that it was.

With regard to the second Complaint, the one dated 1 September 2015, Mr Marshall indicated that the amendment here was to delete two averments of fact at paragraphs 3.19 and 3.20 together with the associated averments of duty at page 9.

The amended Complaints were allowed to be received.

The Minutes of Agreement agreed all of the averments of fact and duties, and agreed that the Respondent's breaches of these duties amounted to professional misconduct. The extensive terms of the Minutes meant that evidence did not require to be led and the Tribunal proceeded to hear submissions.

SUBMISSIONS FOR THE COMPLAINERS

Mr Marshall confirmed that he had lodged written submissions with the Tribunal and he proceeded to take the Tribunal through these submissions which were as follows:-

“Introduction

Background to the two complaints

There are two separate complaints of misconduct. The first was lodged 21 April 2015. When the first complaint called before the Tribunal there was no response or attendance by the Respondent. At that time the Law Society had advised of a second complaint likely to emerge and the first complaint was continued on 7 July 2015 to allow the second complaint to be referred to the fiscal. Thereafter a second complaint was lodged on 1 September 2015. Following the lodging of the second complaint both matters were set down for a hearing on 22 October 2015. The Respondent did not attend at the hearing on 22 October. However he did lodge answers to the second complaint. At that time no answers had been lodged to the first complaint. A further hearing was fixed for 23 November 2015 and the Tribunal’s position was that if the Respondent did not fully engage and attend that hearing then the matter would proceed in his absence. The Respondent did attend on 23 November and confirmed that he would admit professional misconduct in respect of both complaints. The hearing was continued to today to allow parties to agree the position on both complaints. Parties have now reached agreement.

Respondent admits professional misconduct and Minutes of Agreement entered for both complaints

The parties have agreed a separate Minute of Agreement for each complaint.

In each Minute of Agreement the Respondent admits the facts, duties and averments of misconduct contained in the related Complaint. The Respondent admits that he is guilty of professional misconduct in respect of each Complaint. That said, parties recognise that the question of professional misconduct is a decision for the Tribunal.

The test for professional misconduct is as set out in the decision of *Sharp v The Council of the Law Society of Scotland* 1984 SC 129 at 134:-

“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 of 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.”

I am asking the Tribunal to find the Sharp test satisfied and find the Respondent guilty of professional misconduct in each complaint.

Two complaints – three separate matters

There are two complaints. However there are three matters. The first complaint contains two separate matters. The second complaint contains the third matter. The matters are as follows:-

Matter One – a complaint made by a former client Mrs McGlashan.

Matter Two – a complaint made by the Law Society in connection with evidence by the Respondent given in a criminal trial about the preparation of an affidavit.

Matter Three – a complaint by the Law Society following a Financial Compliance Department inspection of the Respondent's firm.

I will deal with each matter separately.

2 Matter One – complaint by Mrs McGlashan

The Respondent was instructed by his client Mrs McGlashan to recover personal property following her separation from her partner. In the course of that instruction the Respondent misled his client. He subsequently failed to cooperate with the Complaints Commission and the Law Society of Scotland.

2.1 Key facts admitted

All of the facts contained in the Complaint are admitted by the Respondent. I would draw the Tribunal's attention to the following key facts:-

- Mrs McGlashan instructed the Respondent in or around March 2010 to pursue recovery of personal property from her former partner
- The Respondent wrote to the former partner on 20 April 2010 and then on 5 May 2010 in connection with recovery of personal property and Mrs McGlashan's interest in the shared home at Property 1. In the letter of 5 May 2010 he stated "*Given the absence of any satisfactory response our instructions are that we are to proceed with a court action in respect of both these matters...*". This letter threatening legal action was copied to Mrs McGlashan on 7 May 2010.
- However an action was then raised **by the former partner against Mrs McGlashan** for rent arrears at the property.
- On 3 August 2010 the Respondent wrote to the former partner's solicitors against threatening legal action stating "*We are instructed that in the event that these items are not returned to our client and £8,000 is not repaid we are to commence court proceedings.*"

- In the period from August 2010 to 21 October 2010 no property was returned to Mrs McGlashan and she was not repaid the £8,000 sought from her former partner.
- During that period the action **against** Mrs McGlashan made progress and a proof date was fixed in the case against her for 29 March 2011.
- On 21 March 2011 the Respondent agreed with the former partner's solicitors to dispose of the action against Mrs McGlashan on a no expenses due to or by basis.
- During the negotiation of disposal of the action against Mrs McGlashan the Respondent asked her former partner's solicitors "**whether or not the former partner was prepared to give the Respondent any money**". **He was advised that the former partner was not prepared to do so.**
- Thereafter, for the first time, the Respondent started to take action towards raising a court action. On 13 April 2011 the Respondent asked Mrs McGlashan to complete a draft precognition. On 22 June 2011 the Respondent provided Mrs McGlashan with a draft initial writ to review.
- No further progress was made and seven months later, on 22 January 2012, Mrs McGlashan contacted the Respondent to check he had her contact details because she had not heard from him in some time. She received no response.
- Mrs McGlashan contacted the Respondent by e-mail again on 1 March 2012 following a telephone conversation between the two of them. She asked "How long do you expect decree to take?". She received no response.
- On 17 May 2012 Mrs McGlashan wrote to the Respondent referring to the failure to extract any settlement from her former partner and confirming that she felt she had "no choice but to continue with the sequestration of his business.". She estimated the value of her property retained by the former partner at £30,000.
- On 11 July 2012 Mrs McGlashan wrote to the Respondent asking for details of the recovery of her property, copies of correspondence with her former partner's solicitor, and breakdown of costs. She also stated "Can you advise me when full payment is due to be completed."
- During the period in early 2012 when Mrs McGlashan was referring to decree being taken, action for sequestration, the recovery of her property and "full payment" being completed no action had been raised by the Respondent and no settlement proposals had been made by the former partner to the Respondent. (As noted above in February 2011 the former partner's solicitors had confirmed that no settlement would be made in connection with Mrs McGlashan's claim.)
- Then, on a date between 11 July and 17 July 2012, the Respondent advised Mrs McGlashan that her former partner had agreed to pay her £25,000. Initially he advised that this would

be paid in monthly instalments of £5,000. He gave this advice when in fact no offer had been made by the former partner and no agreement reached.

- However on the basis of this advice Mrs McGlashan provided her bank details to the Respondent on 17 July 2012. The Respondent advised that his costs were £3750 and then forwarded £1250, being the remainder of the first £5,000 instalment, to Mrs McGlashan on 20 July 2012.
- No invoice was issued for the £3750 retained.
- On 23 July 2012 the Respondent noted on his file:- *“Various telephone conversations with Mhairi [McGlashan]. She is obviously distressed at my position. I have been completely remiss on this. Obviously I don’t want the thing to turn into a claim. Given my delay it is obviously unlikely she would ever be able to recover the property which is the main part of the claim. I will cover this just now.”*
- The Respondent proceeded to advise Mrs McGlashan that *“there had been a change of plan and the remainder would be paid in full”*. On 25 July 2012, £20,000 was transferred to the Mrs McGlashan’s bank account by the Respondent.
- It is accepted by the Respondent that there was no agreement with Mrs McGlashan’s former partner and that these funds did not come from the former partner in settlement of any claim.
- Subsequently, in January 2013, Mrs McGlashan realised something was amiss and asked the Respondent for all papers relating to “her case”. She also asked for all details of the proceedings against her former partner including a copy of the “inhibition order” granted against him. She requested copies of all correspondence with her former partner’s solicitors. She requested an invoice for the fee of £3,750 taken by the Respondent. She received no response.
- In the absence of any further response from the Respondent on 30 January 2013 Mrs McGlashan made a formal complaint to him. The Respondent replied on 6 February saying he would respond fully in the next week. She received no response.
- Failure to respond to the Scottish Legal Complaints Commission:- On 8 February 2013 Mrs McGlashan complained to the Commission. On 1 November 2013 the Commission wrote to the Respondent asking for his file and a detailed response to the complaint. On 11 November 2013 the Respondent advised he would respond w/c 25 November. There was no response. On 4 December 2013 the Commission sought a response within 7 days. There was no response. On 19 December 2013 the Commission sent a statutory notice to the Respondent seeking a response by 9 January 2014.
- Failure to respond to Law Society:- The Law Society sent letters and statutory notices to the Respondent on 19 March 2014, 23 April 2014, 20 May 2014. On 27 May 2014 the Respondent

advised he returned from holiday on 4 June 2014 and would respond at that time. On 28 May 2014, 9 June 2014, 24 June 2014 and 30 June 2014 the Law Society contacted the Respondent. The 30 June letter advised that if the Respondent did not reply then an action would be raised for the recovery of his file. Finally having received that letter the Respondent delivered his file to the Law Society.

2.2 Duties breached by the Respondent

In my submission in connection with the complaint by Mrs McGlashan the Respondent has breached the following duties:-

1. Duty to act in the best interests of your clients;
2. Duty to communicate effectively with your clients;
3. Duty to act with trust and personal integrity at all times;
4. Duty to render an invoice before taking client monies in settlement of fees; and
5. Duty to respond promptly to the Commission and Law Society.

2.3 Breach of duties amounted to professional misconduct

The Tribunal must be satisfied that the breach of the duties identified amounts to professional misconduct.

In my submission the Respondent's conduct in relation to the Mrs McGlashan matter is a clear breach of the test for professional misconduct as set out in the case of Sharp.

Breach of duties 1-3

At the heart of this complaint is the fact that the Respondent completely misled his client, Mrs McGlashan in breach of duties 1-3 above. She instructed him at a time when her relationship with her partner had broken down and she was vulnerable. Her initial instructions were to seek recovery of property and money. The Respondent failed to make progress with recovery. That was regrettable. The Respondent was advised that there would be no settlement proposals from the former partner. After taking initial steps to prepare a court action on Mrs McGlashan's behalf no action was ever raised. What is most concerning is that the Respondent then proceeded to give Mrs McGlashan advice which is the opposite of the truth. He advised her that her former partner had agreed to make a payment of £25,000. He gave this advice at a time when he has led Mrs McGlashan to believe that proceedings were being taken against the former partner.

The truth is that there were no proceedings. There was no settlement payment of £25,000 from the former partner.

In addition, when Mrs McGlashan sought information in connection with her claim, the Respondent avoided giving it to her. Smith & Barton at paragraph 7.03 consider the duty of keeping the client

informed. In a case where a solicitor was found guilty of professional misconduct the Tribunal stated:-

"...it is of cardinal importance that a solicitor should at all times keep his client fully informed regarding his progress in dealing with his client's business and to respond to any enquiries which are received by him from his client." (case 751/89)

Mrs McGlashan had understood that her former partner had compensated her for throwing her out of their shared property and keeping her personal possessions. She then learned that nothing of the sort had happened. She feels that the Respondent had completely betrayed her trust. These failures are so fundamental that in my submission a finding of professional misconduct is inevitable.

In support of that submission I rely on the decision in *Law Society v Douglas William Spence* (23 January 2013). In that case the Respondent misled clients into believing that court actions had been raised when that was not the case. The notable difference between that case and the present matter is that Mr Meechan provided Mrs McGlashan with a settlement sum to conceal the fact that there was no recovery from her former partner. That was a further attempt to cover up the previous misleading conduct.

Breach of duty 4

There was no invoice issued before a fee was taken. Smith and Barton states at page 175 at paragraph 19.07 under a heading of "Debiting fees to Client's Accounts",:-

"The Tribunal has taken the view that it is a breach of the Rule which permits "money properly required for or to account of payment of a Solicitor's professional account against a client which has been debited to the ledger account of the client and the Solicitor's books" **...if the funds are taken from the account to meet the Solicitor's fees without a fee note being prepared** and without the permission of the client and in such a case found professional misconduct established (case 826/92)."

Breach of duty 5

The Respondent's lack of cooperation with the Commission and the Law Society is of serious concern. It points to a lack of regard for the regulators of the profession and amounts to professional misconduct.

I rely on *Paterson and Ritchie: Law, Practice & Conduct for Solicitors*, which provides at para 12.15:-

*"...it is clear from the decisions of the Discipline Tribunal down the years that one of the most common reasons for finding solicitors guilty of professional misconduct is their failure to respond to communications from the Society...**The Tribunal has continually stressed that failure to respond hampers the Society in the performance of its statutory duty and brings the profession into disrepute.** At a time when both the profession and the Society's regulatory function are under scrutiny as never before, it is even more important to deal promptly and efficiently with correspondence from the Society in respect of its regulatory functions, and if solicitors find difficulty in*

doing that themselves they should consider making use of the facilities afforded by the Legal Defence Union who have considerable experience in dealing with such matters.”

I would submit that this guidance will assist the Tribunal to find professional misconduct in Matter One.

3 Matter Two – Complaint by Law Society re evidence about preparation of affidavit

The Respondent gave false or misleading evidence in a criminal trial in connection with the preparation of an affidavit.

3.1 Key facts admitted

All of the facts contained in the Complaint are admitted by the Respondent. I would draw the Tribunal’s attention to the following key facts:-

- The Respondent was instructed by Mr A in connection with the purchase of a plot of land at Property 2.
- Mr A made an application for a mortgage of £78,500 to fund the purchase.
- In connection with that mortgage application Mr A purported to swear an affidavit confirming that the property was not a matrimonial home.
- The Bank of Scotland granted the loan application.
- The terms of the affidavit provided that it was sworn by Mr A in the presence of the Respondent acting as a Notary Public on 23 August 2002 at Glasgow.
- At that time Mr A was a prisoner in HM Prison Glenochil, Tullibody and so could not have signed an affidavit before the Respondent in Glasgow.
- Mr A was tried on fraud charges in connection with the loan application at Glasgow Sheriff Court.
- On 18 October 2013 the Respondent gave evidence at the trial.
- He initially gave evidence that he had no knowledge of the property purchase.
- He was then presented with the affidavit which bore to have been signed by Mr A before the Respondent in Glasgow on 23 August 2002.
- The Respondent proceeded to give evidence that he had signed the affidavit as a notary public.
- He admitted in evidence that Mr A had not been present at the time.
- He admitted that by signing the affidavit he had failed in his professional obligations.
- He now states that he did not sign the affidavit at all, and that he knowingly gave false or misleading evidence under oath.

3.2 Breach of duties owed

In my submission in connection with the Law Society complaint concerning the affidavit the Respondent has breached the following duties:-

1. Duty to act with trust and personal integrity.
2. Duty to never knowingly give false or misleading information to the court.

3.3 Breach of duties amounted to professional misconduct

This matter relates to a false affidavit. When giving evidence in the course of a criminal trial the Respondent initially denied any knowledge of the transaction in question. He was then presented with the affidavit which appeared to have been sworn by him. He knew that the affidavit had not been signed by him but he proceeded to give evidence that he had signed the affidavit, knowing this to be false. He did not correct the position in the course of the trial. It is particularly concerning that the Respondent gave this evidence in the course of a criminal trial which relates to a fraud perpetrated in part with the assistance of this affidavit. A solicitor requires to be honest and trustworthy at all times. The Respondent must have understood that he required to take extra care to act with honesty and integrity at a time when he was giving evidence in a criminal trial of a former client for fraud, an offence of dishonesty. In spite of that he gave false or misleading evidence.

4 Matter three – Complaint by Law Society – Financial Compliance Inspection

This complaint relates to practice failures, including breaches of the Law Society Accounts Rules, identified following a Law Society Financial Compliance inspection on 27 November 2013. Those failures were set out in the Inspection Report which was lodged with the complaint.

4.1 Failures admitted and breaches of duty

The Respondent admits the following failures and following breaches of duty:-

- Borrowing £15,000 from a client– in breach of the rule that solicitors should ensure clients receive independent legal advice before any borrowing takes place.
- Two failures to carry out due diligence on funds received from third parties on behalf of clients of the firm – in breach of the money laundering regulations. These due diligence failures related to two sums received by the Respondent - £20,393.27 and £210,000 – in connection with separate property transactions.
- Acting in a potential conflict of interest – in breach of the Practice Rules on conflict of interest. On three occasions the Respondent acted on behalf of the mid and end purchasers in back to back transactions, without the knowledge and consent of the end purchasing clients.
- Retaining client funds from an executry **and** brokering a loan arrangement – in breach of the requirement to be trustworthy and honest at all times. The Respondent's client was a widow

in receipt of state benefits. The Respondent retained £92,000 of the widow's funds on his client account following conclusion of the executry. He then made a series of small payments of £3,000 to his client. **Separately**, the Respondent brokered a loan arrangement whereby the widow loaned another client of the firm £65,000. All of this concealed his client's true financial position. Had the true financial position been known this would have impacted on her entitlement to state benefits.

- Failure/delay to provide information to the Law Society – in breach of the requirement to comply with a Law Society inspection. Following the inspection the Law Society sought customer due diligence information from the Respondent in connection with the two sums received from third parties. He failed to provide this information.
- Withdrawing funds from lender client without written authority – the Respondent acted in a back to back transaction in connection with a property in Ayrshire. He also acted for the lenders for the end purchaser. The lenders' terms required compliance with the CML Handbook. This included ensuring that recent changes of ownership be confirmed in the Certificate of Title. The Respondent issued an unqualified Certificate of Title despite this being a back to back transaction. As a result the loan funds were advanced. The failure to comply with the CML handbook meant that the Respondent did not have the lenders written authority to draw down the loan funds.
- Failure to ensure appropriate narratives were recorded in practice records – in breach of the requirement to keep appropriate accounting records for client money. In four cases the Respondent's accounts recorded payments to the client account as telegraphic transfers when in fact these were payments made over the counter in branches. The Respondent could not provide the requested vouching and explanation of the source of funds.
- Delay or failure to deliver client receipt information to the Law Society – also in breach of the requirement to cooperate with a Law Society inspection. The Law Society sought evidence of the source of funds in connection with three sums received from clients of £25,660, £11,505, and £20,035 respectively. That information was not provided by the Respondent.
- Failure to timeously produce trial balances to the Law Society on request – in breach of requirement to keep such accounting records so as to show the true financial position of the firm. In this case the Law Society request was made in the inspection report of 27 November 2013. A trial balance was finally produced on 20 March 2014.
- Failure to render a fee note prior to taking a fee – in breach of the Accounts Rules. A fee of £3,000 was taken from an executry when no fee note had been rendered.

4.2 **Breach of duties amounted to professional misconduct**

In my submission there are three elements to the complaint which relates to the Law Society Financial Compliance inspection.

The first element is that the Respondent was engaged in a series of separate, dubious and high risk financial practices. These included: borrowing money from clients who had not received independent legal advice; accepting money without appropriate due diligence which created the risk of money laundering; concealing the true financial position of clients; and acting in back to back transactions without the authority of both clients.

The second element was the failure to maintain adequate practice records which enabled this type of financial misconduct to carry on and in a number of cases concealed the misconduct.

The third element, which in part follows from the failure to keep the necessary appropriate records, is that the Respondent was unable or unwilling to cooperate with the Law Society requests for cooperation.

It is true that the Financial Compliance complaint contains an array of failures by the Respondent. In my submission this goes to show the breadth and scale of his poor financial practice.

This is a course of financial misconduct which demonstrates dishonesty, failure to act in clients' best interests, and failure to cooperate with the Law Society. In my submission this is a clear case of professional misconduct.

Conclusion: findings of professional misconduct

I invite you to make the following findings of professional misconduct.

Matter one - Complaint by Mhairi McGlashan

Parties are agreed that the Respondent is guilty of professional conduct as a result of his failure to comply with the each of duties set out in paragraph 4 of the Complaint and summarised in this submission.

For the reasons that I have given, I would ask you to find that the Respondent is guilty of professional misconduct in accordance with paragraph 5 of the Complaint which states:-

“5.2 The Council avers that the Respondent has been guilty of acts or omissions which, singularly or in cumulo, constitute professional misconduct on his part within the meaning of the Solicitors (Scotland) Act 1980 (as amended) Section 53. In particular, the Complainer avers that as a consequence of the Respondent’s:-

- a) Failure to communicate effectively with the Secondary Complainer,*
- b) Failure to respond to the SLCC;*
- c) Failure to respond to the Law Society of Scotland;*
- d) Failure to provide an explanation to his client or the Law Society in connection with the £25,000 purported to be a settlement sum; and*

e) Failure to issue an invoice prior to taking a fee of £3,750

that the Respondent is guilty of professional misconduct.”

Matter two – Complaint by the Law Society – evidence on preparation of affidavit

Parties are agreed that the Respondent is guilty of professional conduct as a result of his failure to comply with the each of duties set out in paragraph 4 of the Complaint and summarised in this submission.

For the reasons that I have given, I would ask you to find that the Respondent is guilty of professional misconduct in accordance with paragraph 5 of the Complaint which states:-

“5.4 The Council avers that the Respondent has been guilty of acts or omissions which, singularly or in cumulo, constitute professional misconduct on his part within the meaning of the Solicitors (Scotland) Act 1980 (as amended) Section 53. In particular, the Complainer avers that as a consequence of the Respondent’s:-

f) Failure to act with trust and personal integrity in connection with the giving of evidence in relation to said affidavit on 18 October 2013, and his giving false or misleading information to the Court,

that the Respondent is guilty of professional misconduct.”

Matter three – Complaint by the Law Society – Financial Compliance Inspection

Parties are agreed that the Respondent is guilty of professional conduct as a result of his failure to comply with the each of duties set out in paragraph 4 of the Complaint and summarised in this submission.

For the reasons that I have given, I would ask you to find that the Respondent is guilty of professional misconduct in accordance with paragraph 5 of the Complaint which states:-

“5.1 The Council avers that the Respondent has been guilty of acts or omissions which, singularly or in cumulo, constitute professional misconduct on his part within the meaning of the Solicitors (Scotland) Act 1980 (as amended) Section 53. In particular, the Complainer avers that as a consequence of the Respondent’s:-

(a) Borrowing of money from a client in breach of Rule B6 at 6.20.1;

(b) Failure to demonstrate appropriate customer due diligence in breach of Rule B6 at 6.23.1 and the Money Laundering Regulations 2007;

(c) Acting for clients in a potential conflict situation in breach of Rule B1 at 1.7.2;

...

(e) Retaining the proceeds of the executry in a client account, making cash payments to the client, and brokering a loan arrangement with another client all serving to conceal the first client's financial position when she was in receipt of state benefits in breach of Rule B1 at 1.2's requirement to act honestly at all times;

(r) Delay or failure to confirm to the FCD that funds provided to the firm account were returned to the original source in breach of Rule B6 at 6.18.7;

(g) Drawing down of lender client funds in the absence of written authorisation in breach of Rule B6 at 6.5.1;

(h) failure to maintain an appropriate audit trail and recording of incorrect narratives within the firm's accounts in breach of Rule B6 at 6.7.1;

(i) delay or failure to provide the Law Society with information requested in connection with client receipts in breach of Rule B6 at 6.18.7;

(j) failure to ensure that at all times sufficient accounting records were kept to show the true financial position of his firm in breach of Rule B6 at 6.7.3; and

(k) failure to render a fee note to an executry prior to taking an interim fee in breach of Rule B6 at 6.5.1

...that the Respondent is guilty of professional misconduct."

He was asked by members of the Tribunal to clarify two issues. Firstly he was asked if he knew why Mrs McGlashan had taken so long to become suspicious about the source of the funds paid to her. The Fiscal confirmed that he did not have information to answer that.

Secondly, he was asked if the financial compliance issues referred to in the second Complaint had been resolved and he indicated that he believed that these matters remained outstanding.

SUBMISSIONS FOR THE RESPONDENT

In relation to the issues of financial compliance, he indicated to the Tribunal that since these matters he had had two further inspections by the Law Society and neither of these inspections had given rise to any issues of this kind.

With regard to the back to back transactions that were referred to, he wanted to confirm that they were not CML matters. He had been acting for clients who were conducting cash purchases. There was one

separate back to back matter where he accepted that he had failed to report matters to a lender. He wanted to clarify that this related to an individual purchasing property with his own funds at a purchase price of £750,000 which he then several weeks later re-mortgaged for a much smaller, less significant figure. The Respondent accepted a failure on his part in picking up that this was a back to back transaction in that the borrower had not owned the property for six months. He however wanted to draw a distinction between this and the usual CML breach as this had not been a matter settling on the same day or involving an uplift in the price of the property.

On a broader level, the Respondent indicated that this whole matter began several years ago when he had been sitting quietly in his office enjoying life and then the Mr A case had arisen. He had only acted for Mr A once. He had not acted for him again. The one occasion he had represented him was in 2002. It was then years later that this matter had begun and the Respondent had begun to feel a feeling of doom and foreboding. He had not been troubled by the affidavit. By this time Mr A had become known as a high profile criminal. The Respondent began to fear that he was going to be front and centre in being complicit in a mortgage fraud. As a result of this feeling of foreboding the Respondent's practice fell to pieces. Thereafter the shambles with Mrs McGlashan had occurred and thereafter issues with financial compliance. It all related to a period of time when he was not keeping himself together. Having said that, he was here today to take his punishment. He had pulled himself together to that extent and to the extent that he had had two further financial inspections since these issues and he had not been in any trouble. All of these problems stemmed from this bad feeling.

The Chairman asked the Respondent to clarify his position with regard to the affidavit.

The Respondent indicated that the police had come to his office to take a file. He had not given the matter much thought. The name of Mr A had not meant much to him at that time – he had also acted for the man's father and the man's brothers. He had not given the matter much thought at the time but has since pieced the matter together. At the time of the transaction a man called Mr B had worked in his office as a mortgage broker. The Respondent submitted that Mr B had assisted in the fraud. Over a period of time he had pieced the matter together but he had not considered the question of the affidavit because it was unimaginable to him that he would have signed an affidavit if the person had not been present before him. Then when he appeared in court and the affidavit was presented to him the signature had looked like his signature and at that time he had felt that he had had no option but to say that it was his signature. It was not until he had gone back to his office and spoken to his secretary, who had also given evidence in the case, that she reminded him that at the time when the Respondent was busy with Mr B's business she would pass the security documentation to Mr B, he would say to

her that so and so was coming into the office at such and such a time and that the Respondent would see them to do what he needed to do in terms of affidavits and so on. In this case what the Respondent thought had happened was that Mr B did not make any arrangement with the Respondent to sign the affidavit and had simply forged the Respondent's signature on the affidavit. He did not think that there was any way of proving that now. He confirmed that he had provided the Law Society with handwriting samples namely his bank cheques and a report had been obtained from an expert who had said it is the Respondent's signature. He accepted that this may be wishful thinking on his part but it struck him as odd that when he normally writes his signature it's a scribble. His signature is only full when he is signing an affidavit or a cheque. Mr B could not have given him this affidavit to sign amongst general correspondence or he would have noticed that he had not met the man and Mr B's fraud would have crumbled about him at that stage.

At this juncture, Mr Marshall interrupted saying that was not what the agreed position was in the Joint Minute. The Respondent then went on to say that perhaps it was his mistake because that was what he thought was his understanding when he gave evidence. The Respondent said this was the first time he had even been in a criminal court and the first time he had ever given evidence. If he had been presented with this document in normal course and not under the pressures of appearing in a criminal court he would have said and been adamant that was not his signature.

Mr Marshall again interrupted indicating that was not consistent with the terms of the agreement which indicated at the time that the Respondent gave evidence stating that that was his signature he had known full well that it was not.

At this juncture the Tribunal allowed a short adjournment for parties to clarify the position.

The case was recalled an hour later when Mr Marshall indicated that parties had discussed the disputed part of the Complaint and he believed that it was possible that the parties could agree a position that would allow the ground of misconduct to remain as averred. However, the Respondent required to take legal advice regarding any further potential consequences. The Fiscal indicated that he was anxious to avoid a plea of convenience on the part of the Respondent. The averment before the Tribunal would remain that the Respondent gave false evidence before the court.

Accordingly the Tribunal adjourned the hearing to 1 February 2016. Both parties agreed that the same members of the Tribunal should continue to hear the case.

HEARING OF 1 FEBRUARY 2016

The Respondent confirmed that he had taken legal advice and that he was in a position to proceed.

Mr Marshall confirmed to the Tribunal that both parties had reached an agreement. He submitted that in the course of tendering his plea the Respondent had appeared to depart from the terms of the agreement, particularly in relation to the giving of evidence in relation to the affidavit. It appeared that the Respondent was explaining that when he gave evidence he had not known at that time that the evidence he was giving was false. It was after having given evidence, when he returned to his office that he had realised that in fact he had not signed the affidavit. The Tribunal had agreed to pause proceedings at that stage. Parties have now agreed a revised form of plea. As a result, the Fiscal proposed lodging an updated amended Complaint, revised as agreed with the Respondent. The Fiscal also confirmed that he had a fresh Minute of Agreement signed by the Respondent agreeing this new amended Complaint.

The Fiscal explained that the amendment involved Articles 4.15 and 4.16 of the Complaint. He moved the Tribunal to allow the amendments.

The Tribunal asked the Fiscal to clarify that this amendment was to the effect that at the time of giving evidence the Respondent believed his evidence to be correct. If this was the case, the question arose as to how the Respondent could have failed in his duty to give false or misleading information to the court.

Mr Marshall indicated that he agreed that at the time of giving evidence it was not knowingly false. He submitted that the Respondent knew later that the evidence was false or misleading and that in order to comply with the duty never to give false or misleading information to the court, the Respondent was under a duty to correct his evidence. He submitted that this was an ongoing duty and did not end at the conclusion of his evidence. The duty was not about giving evidence exclusively but the provision of information. After acquiring knowledge and not correcting the position, the Fiscal submitted that the Respondent was in breach of that duty.

The Respondent made no objection to the Motion. The Tribunal allowed the amendment and allowed the amended Complaint to be received. The new Minute of Agreement was lodged.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated that he required to lodge amended written submissions to take into account the change in position. These were lodged with the Tribunal and the amended section was as follows:-

“Key facts admitted

All of the facts contained in the Complaint are admitted by the Respondent. I would draw the Tribunal’s attention to the following key facts:-

- The Respondent was instructed by Mr A in connection with the purchase of a plot of land at Property 2.
- Mr A made an application for a mortgage of £78,500 to fund the purchase.
- In connection with that mortgage application Mr A purported to swear an affidavit confirming that the property was not a matrimonial home.
- The Bank of Scotland granted the loan application.
- The terms of the affidavit provided that it was sworn by Mr A in the presence of the Respondent acting as a Notary Public on 23 August 2002 at Glasgow.
- At that time Mr A was a prisoner in HM Prison Glenochil, Tullibody and so could not have signed an affidavit before the Respondent in Glasgow.
- Mr A was tried on fraud charges in connection with the loan application at Glasgow Sheriff Court.
- On 18 October 2013 the Respondent gave evidence at the trial.
- He initially gave evidence that he had no knowledge of the property purchase.
- He was then presented with the affidavit which bore to have been signed by Mr A before the Respondent in Glasgow on 23 August 2002.
- The Respondent proceeded to give evidence that he had signed the affidavit as a notary public.
- He admitted in evidence that Mr A had not been present at the time.
- He admitted that by signing the affidavit he had failed in his professional obligations.
- He now states that he did not sign the affidavit at all.
- He states that he was not certain who signed the affidavit when he gave evidence.
- Having given evidence that he signed the affidavit he returned to his office to check the position
- He established that Mr B had signed the affidavit.
- He did not contact the Crown to correct his evidence
- He allowed evidence which he knew was not true to stand –
- He allowed this untrue evidence to stand uncorrected in the context of a fraud trial where the preparation of the affidavit was central to the fraud.

Breach of duties owed

In my submission in connection with the Law Society complaint concerning the affidavit the Respondent has breached the following duties:-

3. Duty to act with trust and personal integrity.
4. Duty to never knowingly give false or misleading information to the court.

Breach of duties amounted to professional misconduct

This matter relates to a false affidavit. When giving evidence in the course of a criminal trial the Respondent initially denied any knowledge of the transaction in question. He was then presented with the affidavit which appeared to have been sworn by him. Although not certain of the position he proceeded to give evidence that he had signed the affidavit. He then checked the position and learned the truth of the matter – that Mr B had signed the affidavit. However he failed to take steps to correct his evidence, knowing this to be false. He did not correct the position in the course of the trial. It is particularly concerning that the Respondent failed to take steps to present the true position to the Crown in the course of a criminal trial which relates to a fraud perpetrated in part with the assistance of this affidavit. A solicitor requires to be honest and trustworthy at all times. The Respondent must have understood that he required to take extra care to act with honesty and integrity in relation to a criminal trial of a former client for fraud, an offence of dishonesty. The trial concerned a fraudulent loan. The affidavit had assisted the grant of the loan. Therefore evidence about the affidavit was highly relevant. In spite of that he allowed false or misleading evidence to stand.”

Additionally the Fiscal sought to clarify two further matters.

The first related to the question of the Respondent borrowing money from an existing client. It was the Complainer’s position that £15,000 had come from an existing client who had not been advised to take legal advice.

The Respondent confirmed to the Tribunal that the money he had received came from a client and that he should have identified that at the time.

The second matter the Fiscal wanted to clarify was in relation to the holding onto executry funds. It was the Law Society’s position that in making arrangements for a loan to another client and in making the cash payments as suggested in the Complaint in relation to a client who was a woman in receipt of benefits, had the effect of concealing the client’s true financial position.

The Respondent answered that he accepted that he knew that his actions concealed the client's true financial position.

The Fiscal was asked to explain the difference in terminology in Article 3.23 where it was said that "it was reasonable to assume" that the client was in receipt of benefits whereas in Article 4.17 it was said that the Respondent "understood" that she was in receipt of benefits. The Tribunal asked the Fiscal if it was his position that the Respondent knowingly concealed the client's true financial position.

The Fiscal explained that it was the Complainer's position that the Respondent knew that the effect of his actions was to conceal the true financial position.

The Respondent answered that at the time of the loan being arranged the borrower granted a standard security to the lender which was a public document prepared by the Respondent and therefore was it not indicative of the Respondent concealing anything. The Tribunal asked the Respondent to clarify his position as on the one hand he was accepting that he had carried out actions which concealed the client's true financial position and yet at the same time was suggesting that he had not. The Respondent answered that he had not been complicit in a benefits fraud but that he accepted that that was the net effect of his actions. The Respondent was directly asked if he accepted that he had concealed his client's position in such a way that it amounted to dishonesty. The Respondent answered that he did.

A member of the Tribunal asked the Fiscal to explain what he was referring to in Article 4.3 of the April Complaint which referred to an inhibition. The Fiscal explained that the Respondent had advised the client that he had obtained an inhibition when he had not. The Respondent accepted that was the case and agreed to the Complaint being amended to clarify that.

SUBMISSIONS FOR THE RESPONDENT

The Respondent opened his submissions by apologising to the Tribunal for the delay in proceedings. He confirmed that he did not want to take any issue with the averments of fact and duties. He agreed with all of the Fiscal's averments. He accepted that he had no excuse and that he deserved punishment.

After the Mr A thing arose things had fallen apart. The Respondent was appearing before the Tribunal as a ruined man. Although Mr A was a high profile client it had not really clicked with the

Respondent who he was. It had not crossed the Respondent's mind that there could be any issue with regard to an affidavit. The Respondent had not been asked for a statement by the Crown or the defence. The police simply took his file. At the Trial Mr B had passed all the blame to the Respondent and his secretary. He could not explain why he had not corrected the position. There were so many things on his mind at the time. He has no familiarity with criminal courts and it had not crossed his mind to go and correct his evidence. He conceded in hindsight that he should have.

The Respondent indicated that he had no further submissions to make. A member of the Tribunal asked him to clarify his failure to respond to complaints and correspondence. The Respondent indicated that his whole world had fallen apart. The problem with the Secondary Complainer had arisen as a result of him keeping digging a hole for himself. He conceded that he could have stopped it at any point. He had believed that the fraud trial would put him on the front page of the newspapers as Mr A was a very high profile man.

He submitted that in the last year he had pulled himself together a bit.

The Tribunal adjourned to consider the question of professional misconduct. The Complaint was recalled for the Tribunal to seek further clarification.

The Tribunal asked Mr Marshall to confirm if it was his position that the loan agreement that had been made was with someone, not a client, although the funds actually received by the Respondent came from a client. The Fiscal confirmed that was the case.

The Respondent was asked by the Tribunal to confirm in terms that he was aware that the client in the executry matter was in receipt of benefits and that the manner of paying the estate out to the client had concealed the true inheritance. The Respondent confirmed this to be the case.

The Tribunal adjourned to consider the question of professional misconduct.

DECISION

Although the Respondent had entered into Minutes of Agreement agreeing that he was guilty of professional misconduct, the final question of whether or not the conduct admitted amounted to professional misconduct rested with the Tribunal.

The Respondent had admitted a catalogue of misconduct, including incidents calling into question his honesty. One of the matters however caused the Tribunal some concern at this stage. The Tribunal was not satisfied that the Respondent had breached the rules with regard to borrowing money from a client where the loan arrangement was accepted by the Complainers to have been made with a non client. It appeared to the Tribunal that as far as the Respondent was concerned he was borrowing money from someone who was not at that stage a client. He may have been guilty of some other breach of duty in relation to the receipt of these funds but the Tribunal was not satisfied that it had been established that the circumstances accepted by the parties amounted to a breach of Rule B6.20.1 of the 2011 Practice Rules.

All of the other matters the Tribunal unanimously accepted met the Sharp Test for professional misconduct and accordingly the Respondent was found guilty in relation to all of the other matters.

DISPOSAL

SUBMISSIONS FOR THE RESPONDENT

The Respondent accepted that given the seriousness of these matters he ought to be struck off. His reaction to the case of Mr A did not justify the rest of his behaviour. He accepted that the egregiousness and amount of his conduct led to this conclusion.

He had substantially wound down his practice, although it would be a simple matter to get it going again. He was in a good capital position and income position. He submitted that he could pay a significant fine and a further compensatory payment to the Secondary Complainer.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal for the Complainers indicated that the Respondent's firm had been inspected in March 2015 and there had been two outstanding issues from that. The first had been a question of VAT arrears where the Respondent had been asked to provide information and he had only provided that information by fax at 10.46 on 1 February 2016. The second matter was the question of a firm trial balance. The Respondent had been given an original deadline of 18 December 2015 to provide relevant information and he had not. As at 19 January 2016 the Respondent had still not responded and this failure has been referred to the Professional Conduct Committee.

Mr Meechan indicated that he operated a manual system of bookkeeping and that he had been carrying over a £5.60 error in his trial balance. He has been unable to ascertain where the error occurred and so could not produce a squared balance.

The Respondent confirmed that he had paid the VAT and that there was no VAT outstanding.

The Fiscal produced copies of the Respondent's record card and indicated that he had a record of previous disciplinary matters.

Mr Marshall referred the Tribunal to previous Findings before the Discipline Tribunal where on 4 October 2006 the Respondent had been found guilty of professional misconduct and fined. He submitted that that case had parallels with the current matters in relation to the giving of evidence. In both matters the Respondent made a statement that he later realised not to be true. The Respondent had given evidence, learned that it had not been correct and did not take steps to correct it. In the previous Findings the Respondent had been found guilty of making a reckless statement to another firm of solicitors.

The record card also disclosed a finding of unsatisfactory professional conduct in May 2011. This related to failures to respond to questions arising from a financial compliance inspection and incidents where the Respondent held client mandates to pay commissions to a property company, the property company went into liquidation and the Respondent had paid commissions to an individual rather than the company itself. The Respondent had been directed to carry out training and the Fiscal was able to confirm that the Respondent had arranged for that training to take place.

DECISION

The conduct admitted by the Respondent was undoubtedly extremely serious. The Respondent himself had conceded that the Tribunal was likely to consider a striking off as an appropriate disposal. In recognition of that he himself had begun to wind down his business.

The Tribunal was faced with a whole catalogue of misconduct, some of which called into question the honesty and integrity of the Respondent.

The Respondent had admitted giving false information to a client suggesting that he had raised court proceedings when he had not. He had then paid over a sum of money suggesting that his had come

from the defender when it had not. When questioned about these matters by the client, the SLCC and the Law Society he had failed to provide information and only provided his file after being threatened with legal action.

His honesty was also called into question in relation to the steps taken in the case of the executry to conceal the client's true financial position.

Additionally, whilst the Tribunal accepted that at the time the Respondent gave his evidence in connection with the affidavit he believed it to be true, very shortly thereafter he learned that the evidence was incorrect and he took no steps to correct the situation. In fact, before the Tribunal the Respondent had suggested that it had not occurred to him.

There were significant aggravating factors involved in this case. The behaviour was a course of conduct over a long period of time, involving a large number of transactions, and involving many different aspects of misconduct. Elements of the misconduct disclosed dishonesty. The Respondent had previous Findings of unsatisfactory conduct in analogous matters where he had been ordered to re-train and yet he had still become involved in the current matters. He had a previous Finding of misconduct from this Tribunal. The conduct admitted in many respects suggested that the Respondent was a danger to the public. Likewise, in many respects his conduct was likely to seriously damage the reputation of the legal profession.

The Tribunal accepted that the Respondent had cooperated with the Tribunal proceedings to a large degree. He expressed remorse and understood the seriousness of his conduct.

The Tribunal could not accept that a fine, no matter how large, would address the serious nature of this conduct. The nature of the conduct significantly called into question the honesty and trustworthiness of the Respondent to the extent that it demonstrated that the Respondent was not a fit person to be a solicitor.

The Tribunal unanimously concluded that the appropriate disposal was to strike the name of the Respondent from the Roll of Solicitors in Scotland.

The Fiscal made a motion for expenses and confirmed that he had no submissions to make to the Tribunal that would alter the usual position with regard to publicity. The Respondent confirmed that

he had no objection to these matters. The Tribunal made the usual order with regard to expenses and publicity.

SECONDARY COMPLAINER

The Secondary Complainer was not present at any of the hearings. She had been advised that the Tribunal was unlikely to be able to deal with the question of compensation in the time allowed and that that matter would be addressed after any finding of misconduct.

The Respondent had indicated that he was prepared to pay, as he put it, further compensation to the Secondary Complainer. The Fiscal confirmed that he was prepared to assist in negotiations between the Secondary Complainer and the Respondent with regard to that matter. Accordingly the Tribunal agreed to allow 28 days for the question of compensation to be resolved failing which a hearing would be fixed.

Colin Bell
Vice Chairman