

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

**F I N D I N G S**

**in Complaint**

**by**

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

**against**

**RONALD JOHNSTON GLASS,  
Solicitor, formerly of Flat 38, 250  
Camphill Avenue, Glasgow and  
now at 2 Aird's Court, Crail, Fife**

1. A Complaint dated 1 July 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Ronald Johnston Glass, Solicitor formerly of Flat 38, 250 Camphill Avenue, Glasgow and now at 2 Aird's Court, Crail, Fife (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
  
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
  
3. A Complaint dated 14 July 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that the Respondent be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.

4. A copy of this Complaint was served on the Respondent. No Answers were lodged on behalf of the Respondent.
5. A Complaint dated 23 July 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that the Respondent be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
6. A copy of this Complaint was served on the Respondent. No Answers were lodged on behalf of the Respondent.
7. The Tribunal appointed all three Complaints to be set down for a procedural hearing on 30 September 2009. The Respondent sent in a letter asking for the hearing to be adjourned to allow him to obtain legal representation and address the matters in the Complaints. The Respondent attached a medical certificate indicating that he was suffering from nervous disability. The Tribunal fixed a further procedural hearing for 18 November 2009. This procedural hearing was discharged and a fresh procedural hearing was fixed for 9 February 2010.
8. Three Complaints, all dated 3 February 2010 were lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that the Respondent be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
9. No Answers were lodged in respect of any of these three Complaints on behalf of the Respondent. Copies of these Complaints were served on the Respondent.
10. A fresh hearing was fixed for 22 April 2010 and notice thereof was duly served on the Respondent. When all six Complaints called on 22 April

2010 the Law Society was represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented.

11. Mr Lynch indicated that the Respondent had signed a Joint Minute in relation to the six Complaints. Mr Lynch lodged a further two Complaints dated 20 April 2010 with the Tribunal. Mr Lynch advised that the Respondent did not feel able to appear before the Tribunal but wished an opportunity to submit a written plea in mitigation and obtain a report from his doctor. The Tribunal accordingly adjourned the six Complaints until 16 June 2010.
12. The two Complaints dated 20 April 2010 were served on the Respondent. No Answers were lodged in respect of either of these Complaints by the Respondent. Notice of the hearing on 16 June 2010 was duly served on the Respondent.
13. All eight Complaints called on 16 June 2010. The Law Society were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented.
14. Mr Lynch advised that he had only just received the medical certificate from the Respondent's doctor and the Respondent had not yet had an opportunity to look at this. The Respondent had also not yet finalised his written submissions. Mr Lynch suggested that the Tribunal may wish to adjourn the matter to allow the Respondent a further opportunity to lodge written mitigation and the medical report from his doctor.
15. The Tribunal decided to proceed in the Respondent's absence.
16. Mr Lynch lodged a Joint Minute in which the Respondent admitted the averments of fact, averments of duty and averments of professional misconduct in all eight Complaints and the Respondent also consented to the making of the Orders under Section 53C of the Solicitors (Scotland) Act 1980.

17. The Tribunal found the following facts established

17.1 The Respondent was born on 4<sup>th</sup> June 1965. He was admitted as a solicitor on 2<sup>nd</sup> and enrolled as such on 11<sup>th</sup> both days of December 1987. The Respondent formerly carried on business in partnership and latterly as a sole practitioner as Glass McDowall, Solicitors, at 9 Budhill Avenue, Springboig, Glasgow and at 12 Holmlea Road, Battlefield, Glasgow. The Respondent is not currently engaged in practice as a solicitor. He resides at c/o Glass, Flat 38, 250 Camphill Avenue, Glasgow.

Guarantee Fund Inspections: Background

17.2 Inspection of October 2004

Guarantee Fund Inspectors employed by the Complainers carried out a routine inspection of the books and records of the Respondent in October 2004. Many deficits were noted during the inspection. These arose mainly from transferring funds from the client accounts to firm accounts without sufficient funds being available to do so. The day books throughout the period never showed a deficit and the transfers were only posted when there was sufficient surplus to do so. As a consequence the firm was in breach of Rules 4, 6 and 8 of the 2001 Accounts Rules. Breaches of Rules 9, 10, 11 and 24 were also noted.

17.3 The firm was re-inspected in April 2005. It was noted that the firm was in a weak financial position and that there were arrears of PAYE and NIC and VAT. In the case of WK it was noted that the deceased had died on 6<sup>th</sup> February 2002. The executry was not yet finalised as at the date of the inspection. Fees totaling £8,227.50 were debited from the

ledger between 27<sup>th</sup> May 2003 and 26<sup>th</sup> August 2004. On 10<sup>th</sup> June 2004, the auditor assessed the correct fee as £2775.00 plus vat. Even after that, a further fee of £587.50 was debited on 26<sup>th</sup> August 2004. The fees were not cancelled and returned to the ledger until 8<sup>th</sup> April 2005.

- 17.4 The Respondent and his then partner Robert McDowall were interviewed by the Complainers' Guarantee Fund Committee on 18<sup>th</sup> August 2005. Having regard to the explanations put forward by the Respondent and Mr. McDowall it was decided to recommend to the Guarantee Fund Committee that a re-inspection be ordered within six months at the firm's expense. A further inspection took place in March 2006. The partners were said to be in the process of re-mortgaging their properties to introduce funds into the firm and arrangements were in place regarding the repayment of the arrears of VAT, PAYE and NIC. A deficit in the client account, in breach of Rule 4, in the amount of £7642.09, was noted. It was determined to re-inspect the firm in March 2007. That inspection did not take place. The firm as it was then constituted ceased on 30<sup>th</sup> November 2007 at which point Mr. McDowall left the firm and the Respondent became a sole practitioner. At all material times the Respondent was the designated cashroom partner (Rule 17) for the firm as well as being Client Relations Partner for the firm. The Respondent continued after October 2007 to practise as a sole practitioner.

Inspection of 26<sup>th</sup> and 27<sup>th</sup> November 2007

- 17.5 Guarantee Fund Inspectors employed by the Complainers carried out an inspection of the books and records of the Respondent on 26<sup>th</sup> and 27<sup>th</sup> November 2007. They found the following:-

17.6 Shortages (Rule 4)

There was a deficit on the client account from 31<sup>st</sup> July 2007 to 5<sup>th</sup> October 2007. The amount of the shortage fluctuated and was £21,146.13 at its highest on 15<sup>th</sup> August 2007. Despite the shortage, funds were still being transferred from the client account to the firm account during the period condended upon. The Respondent appeared not to be aware of the existence of the shortage when it was discussed with him at the end of the inspection. By the date of the inspection the records showed a surplus of £1,000.92. The following matters were also noted.

17.7 AS

Funds of £1043.51 were uplifted on 24<sup>th</sup> April 2007; the firm's records reflected the fact that these funds were paid out on that date. However the date on the cheque with which they were paid was 20<sup>th</sup> April 2007. Accordingly there was a deficit between 20<sup>th</sup> April 2007 and 24<sup>th</sup> April 2007 as the surplus at that time was not sufficient to cover the amounts paid out.

17.8 Rule 8 Record Keeping

Many instances were noted of incorrect posting dates being reflected throughout the records of the firm thus providing a distorted audit trail. Examples were:-

17.9 Bridging Loans

Mr. & Mrs. McC - the firm had arranged a bridging loan for these clients but this was not correctly recorded within the firm records; in particular, no separate record of bridging loans had been prepared as is required by Rule 20.

17.10 Rule 24 Money Laundering

No identification was seen in respect of the following persons, nor reasons why identification was not necessary:-

J E S,

Mr. & Mrs S. S,

Mr. & Mrs. A M,

DA,

SC or PC,

AH,

Mr. & Mrs S.M,

Mr. & Mrs. J C in this case identification was also required for LC who provided funds,

17.11 Solicitors (Scotland) (Client Communication) Practice Rules 2005 Rule 3

On seven occasions no terms of business letters as required by the above rule had been provided to clients. This had been noted at previous inspections.

17.12 Mr. AM – the invested funds account was in the name of A.

17.13 JGM – purchase of property 1, this purchase transaction settled in September 2004 but the stamp duty and recording of the deeds were not attended to until September 2007.

17.14 Rule 6(2) Cheque designation

A number of instances were noted that cheques payable to banks and building societies had not been correctly designated with the account name on the payee line.

17.15 The financial position of the firm was still considered to be precarious; items were seen to be returned by the bank unpaid and charges were being rendered by the bank in respect of these unpaid items.

Guarantee Fund Committee Interview February 2008

- 17.16 The Respondent was interviewed by the Complainers' Guarantee Fund Committee on 21 February 2008. He stated that over the previous twelve months he had been suffering from stress connected with the breakdown of his marriage. He indicated that since the firm as previously constituted had been dissolved, he had been dealing only with conveyancing and executry matters. Mr. McDowall was now renting a room from him. He was conscious of the financial position of the firm but said that he had about £50,000 to 60,000 of equity in a property in St Andrews which he intended to realise and invest in the business.

Inspection of 9<sup>th</sup> & 10<sup>th</sup> June 2008

- 17.17 A further inspection of books and records of the Respondent was carried out on 9<sup>th</sup> and 10<sup>th</sup> June 2008. The firm's financial position continued to be precarious as at the date of this inspection. The following matters were noted.

17.18 Rule 4 Shortages on Client Bank Account

Shortages on the Client Bank Account were again noted at this inspection. More particularly, the following was noted:-

(a) SR - £4800.00 was received by the firm from the Scottish Legal Aid Board on 25<sup>th</sup> May 2007. The whole sum of £4800.29 was then taken to fees on that date. £3550.09 of the sum received was in respect of outlays for work completed by RW. This created a shortage.

(b) KH – a firm cheque for £252.00 was paid to First Title Insurance on 13<sup>th</sup> May 2008. A posting to the client ledger was made on 21<sup>st</sup> May 2008 which reduced the credit



balance. The cheque remained unpaid on 21 May 2008 and again on 27 May 2008. The surplus was less than this amount (eg on 22 May 2008 it was shown as £149.16) thereby indicating a shortage.

(c) Mrs. NA – a cheque from this client was received on 8<sup>th</sup> April 2008 in the amount of £27,361.63. The cheque was returned unpaid on 11<sup>th</sup> April 2008. In the meantime on 8<sup>th</sup> April 2008 a fee had been put through in the amount of £581.63. Entries to reflect the unpaid cheque and cancel the fee note were effected on 16<sup>th</sup> April 2008 until which this had caused a deficit. On 10<sup>th</sup> April 2008 and 11<sup>th</sup> April 2008 as the surplus was less than £581.63 on those dates.

(d) AE – loan funds of £78,220 were posted to matter 1 and matter 2 in error on 11<sup>th</sup> January 2008. Fee notes for £581.63 were taken from both ledgers on 15<sup>th</sup> January 2008.

Corrective entries were not made until 22<sup>nd</sup> January 2008 until which time a deficit had been created.

(e) KG – Funds were received in respect of this client on 17<sup>th</sup> January 2008. A fee of £581.63 was taken on that date but cancelled on 7<sup>th</sup> March 2008 because it was agreed that KG being a family member a fee should not have been taken. Accordingly a shortage was created during the period between 17<sup>th</sup> January and 7<sup>th</sup> March 2008, as a surplus did not exist to cover the fee.

(f) Fees Taken from Loan Funds

Fees were often seen to have been taken to the firm from loan funds received on behalf of clients and would therefore have created many deficits. A particular instance was ZD – in this case loan funds were received on 15<sup>th</sup> April 2008 and

a fee of £528.75 was taken on that date. From these loan funds £528.75 was then transferred to another client ledger on 24<sup>th</sup> April 2008 and a further fee of £528.75 taken on that date. The second ledger related to the same client. The loan funds were returned to the lender on 9<sup>th</sup> May 2008 and the fees credited.

(g) Loan funds were also noted to have been received by the firm and invested to earn interest rather than being returned to the lender in accordance with the lender's conditions.

17.19 Rule 21 Borrowing from Clients

A firm cheque in the amount of £5,000 was returned unpaid by the Bank on 16<sup>th</sup> May 2008. The cheque was not posted to the firm's records and was seen to be paid to Mr TH. It was confirmed that this was the repayment of a personal loan by TH who was stated by a staff member to be a personal friend and also a client of the firm. It was also noted that £5,000 in respect of a fee was transferred to the firm V.A.T. holding bank account on 6<sup>th</sup> June 2008 and this sum was then transferred to the Respondent's personal account in respect of drawings. The sum was then transferred from the Respondent's personal account to Mr T H on 6<sup>th</sup> June 2008 and a cheque was raised payable to cash for T H on that date. The entries in the client account were posted to a client ledger HUSS11/2TH which bore the title of a proposed lease. No documentation as required by Rule 21 was produced. The Respondent stated that this was a mistake.

17.20 Rule 8 True Financial Position of the Firm

The firm trial balance still did not show the true financial position of the firm. Many nominal ledgers showing

historic balances were noted. In respect of the firm's Royal Bank of Scotland visa account the last statement seen on the file was dated 15<sup>th</sup> March 2008 but nothing was visible in the firm's records to reflect the outstanding liability for this account.

17.21 Rule 24 Money Laundering Procedures

There was no evidence available that suitable anti money laundering procedures had been implemented by the firm in order to comply with the regulations. No evidence was available of any training undertaken by relevant employees or of a system in place regarding reporting etc. No evidence was available to show that customer/client due diligence was appropriately considered or that risk based assessments were being carried out in accordance with the regulations. Instances were noted of no identification being available or reasons why it was not necessary as follows:-

- a) Mr BS
- b) Mr KSL and BK
- c) Mr AL. In this case no identification was seen for E and Mr J R L who provided funds towards the transaction.
- d) IW – no identification was seen for the client or JW who provided funds towards the transaction.
- e) Mr & Mrs C– no identification was seen for Mr C

17.22 Solicitors (Scotland) (Client Communication) Practice Rules 2005 – Rule 3

No Terms of Business letters were seen on the files provided for the following:

- SB – Executry/house sale
- SW & KO'H
- Mrs TH

Mr BS.

- 17.23 In two other cases an introductory letter was seen on the files which detailed many of the relevant details complying with the rule but in neither case did the letter detail the identity of the person with whom the client should make contact if he or she became dissatisfied. This was Mr K S L and B K and the other being LW.

There was no evidence that fee quotes were being issued to many of the clients. Accordingly the first indication of a fee being charged by the firm was often the actual fee note, in contravention of the above rules. This matter had been raised at previous inspections.

- 17.24 Mrs M C – purchase of Property 15. In this case the transaction settled on 15<sup>th</sup> June 2007. The Stamp Duty and registration dues in relation to the Disposition and Standard Security were not paid until April and May 2008 respectively. £146.88 was transferred from the ledger of this client to the ledger of SC on 6<sup>th</sup> July 2007. This was immediately taken to fees. There was no written authority for the transfer.

- 17.25 Recording of Deeds Generally & Associated Matters

The following cases were noted:-

- (a) JMcB – purchase of property 2. This transaction settled in 2004. The Respondents did not pay Stamp Duty or registration dues and the deeds remained unrecorded. In September 2007 another firm of solicitors contacted the Respondent; also in September 2007 the Respondent sent cheques in respect of the Stamp Duty and registration dues to these solicitors. This had been raised at a previous

inspection. It was noted however that the cheque in respect of the registration dues was cancelled on 24<sup>th</sup> January 2008 as being “not required”. A letter from H M Revenue & Customs dated 6<sup>th</sup> February 2008 stated that Stamp Duty of £2,631 had still not been paid. The cheques sent to the solicitors in respect of the Stamp Duty was cancelled (the amount £2,150) on 30<sup>th</sup> April 2008 and not re-issued.

(b) IW - purchase of Property 3.

This transaction settled on 30<sup>th</sup> April 2008 at a purchase price of £184,900.60. As at the date of the inspection no Stamp Duty had been paid.

(c) RW – Purchase of Property 4.

The registration dues of £130 had been posted to the ledger twice. On the firm’s cash statement a survey fee of £188 was included but no posting was made to the client ledger in this respect. A further fee of £58.75 was taken but no fee note appeared to have been rendered to the client.

(d) IM – Sale of Property 5.

A receipted Form 4 was on file dated 18<sup>th</sup> February 2008 but no recording dues were posted to the ledger.

(e) BS – Sale of property 6.

The purchase price for this property was received on 21<sup>st</sup> September 2007 but the loan with Northern Rock was not redeemed until 31<sup>st</sup> October 2007.

(f) RK – Sale of property 7 and Purchase of property 8

These transactions had settled on 17<sup>th</sup> December 2007. The loan in respect of the sale was redeemed on 21<sup>st</sup> December 2007 but no recording dues had been paid and it appeared

that the Discharge and the Disposition remained unrecorded at the date of the inspection.

(g) KSL & BK – Sale of property 8

The Bristol & West loan relative to this sale was redeemed on 18<sup>th</sup> February 2008 but it appeared that as at the date of the inspection no recording dues had been paid and the Discharge remained unrecorded.

(h) IP – Property 9

This transaction settled on 3<sup>rd</sup> September 2007 but recording dues were not paid until 12<sup>th</sup> February 2008.

(i) ZD – purchase of property 10.

ZD purchased this property from another client of the Respondent's on 2<sup>nd</sup> June 2008. The purchase price narrated in the Disposition was £90,000. £10,188.75 was said to have been a gift from the seller and accordingly the full consideration did not change hands. There was no evidence that the lender had been advised of the true consideration or that the transaction was between parties who were related to each other.

(j) LW – purchase of Property 11

This purchase was completed with the assistance of a loan from Abbey plc. The loan documentation showed a purchase price of £59,000 but the price actually paid was £27,310.19. there was no evidence that the lender had been informed of this.

17.26 Solicitors (Scotland) (Incidental Financial Business) Practice Rules 2004 and Rule 22 Incidental Financial Business Terms of Business Rules 14 & 16

In the case of JR (Executor for the late AS).

The firm arranged a Bond of Caution in respect of this Executry. It appeared that no incidental financial business Terms of Business letter had been issued to the Executor. No statement of demands and needs or provision of information sheet was available in respect of this matter.

A W

- 17.27 Purchase of Property 12:
- 17.28 The Respondent's firm acted on behalf of AW in relation to the purchase of Property 12. The Respondent's firm submitted an offer on 5 March 2007 on behalf of the complaining client and his wife to purchase this property at a price of £249,678 and with a date of entry "to be agreed".
- 17.29 A qualified acceptance was received dated 12<sup>th</sup> March which stipulated that the date of entry would be 18<sup>th</sup> May.
- 17.30 An attendance note of a telephone conversation with the complaining client on 14<sup>th</sup> March recorded "taking instructions to conclude missives however agreeing that we should not submit the appropriate letter until such times as we had received notification from the client that there had been an offer received for the sale of their own house".
- 17.31 On 15<sup>th</sup> March 2007 the seller's solicitors sent a further formal letter. This enclosed a Building Warrant in connection with the erection of a conservatory together with a letter from surveyors confirming that they were satisfied that the works had been carried out properly and stated that no letter of comfort for the erection of the conservatory would be provided, albeit that a completion certificate was not available.

- 17.32 The Respondent's firm wrote to the complaining client on 21<sup>st</sup> March 2007 asking that he contact the office to provide further instructions.
- 17.33 No further attendance note exists of any telephone conversation with the complaining client but the Respondent's firm sent a formal letter on 28<sup>th</sup> March 2007 which required that a letter of comfort be obtained.
- 17.34 An offer of loan was issued by Nationwide on 2<sup>nd</sup> April 2007.
- 17.35 Missives were concluded on 3<sup>rd</sup> April 2007 and a letter of comfort was sent by the seller's solicitors on 13<sup>th</sup> April 2007.
- 17.36 The Respondent's firm concluded the conveyancing formalities and the transaction settled timeously, with a bridging loan being obtained from the Bank of Scotland for the balance of the price.
- 17.37 As the Stamp Duty Land Tax was submitted more than 30 days after settlement of the transaction the Inland Revenue automatically imposed a penalty of £100, which sum was paid by the complaining client.
- 17.38 Sale of Property 13; The Respondents firms also acted on behalf of these clients in respect of the sale of property 13. An offer was submitted to Countrywide Estate Agents on 19<sup>th</sup> March 2007 to purchase this property at a price of £200,000 and with a date of entry of 19<sup>th</sup> May 2007 which offer was passed to the Respondent's firm on 22<sup>nd</sup> March 2007.



- 17.39 The purchasers' solicitors sent a message by fax to the Respondent's firm on 2<sup>nd</sup> May 2007 advising that they had been told that their offer had been passed to the Respondent's firm for acceptance were concerned that they had not heard from them. They asked that a qualified acceptance be issued immediately and indicated that the date of entry might require to be postponed due to the delay.
- 17.40 A copy of the offer was sent to the complaining client on 2<sup>nd</sup> May 2007.
- 17.41 On 9<sup>th</sup> May the purchaser's solicitors sent a further reminder. On the same day the Respondent's firm wrote to the complaining client's lenders requesting the titles and a redemption statement and ordered a property enquiry certificate. They issued a qualified acceptance to the purchaser's solicitors which amended the date of entry to 18<sup>th</sup> May 2007. A copy of the qualified acceptance was sent to the complaining client.
- 17.42 On 15<sup>th</sup> May 2007 the purchaser's solicitors sent a fax advising that, since the qualified acceptance had been received, an unforeseen difficulty had arisen in connection with their client's sale which meant that they could not yet conclude missives. They stated that they hoped to resolve this "in the next day or so" and indicated that the date of entry would require to be postponed until 1<sup>st</sup> June 2007. They pointed out that, even if this difficulty had not arisen, they did not believe it would have been practicable to conclude missives and deal with all the conveyancing in such a short period, especially given the passage of over seven weeks from the date of the offer to the issue of the qualified acceptance.

- 17.43 The purchaser's solicitors sent a formal letter on 17<sup>th</sup> May which amended the date of entry to 1<sup>st</sup> June and the Respondent's firm issued a formal letter to conclude the bargain on the same day.
- 17.44 An application for bridging loan facilities was signed by the complaining client on 16<sup>th</sup> May 2007 and a bridging loan was approved on 17<sup>th</sup> May 2007.
- 17.45 The sale settled on 1 June 2007.
- 17.46 The bridging loan was redeemed at a total cost of £2,721.42.
- 17.47 On 13<sup>th</sup> June 2007 the complaining client wrote to the firm indicating his concern about matters. He explained that, following submission of the offer for Property 13 on 19<sup>th</sup> March 2007, so far as he was concerned the matter was in the Respondent's firm's hands and the transaction was proceeding towards settlement. It was only when his wife happened to speak to the mother of one of the purchasers that he became aware of any problem with regard to the date of settlement. In view of the heavy bridging costs he sought the firm's response.
- 17.48 In the absence of a reply the complaining client wrote again to the Respondent's firm on 7<sup>th</sup> July 2007 advising that he would contact the Complainers if no response was received within seven days.
- 17.49 A letter was sent to the complaining client on 11<sup>th</sup> July 2007 explaining that the Respondent was on holiday and would reply on his return on 17<sup>th</sup> July 2007.

17.50 No reply was received and the complaint was raised with the Client Relations Office of the Complainers on 9<sup>th</sup> August 2007.

Complaint by The Law Society of Scotland *ex proprio motu*

17.51 A list of issues arising from the complaint was intimated to Mr McDowall and the firm on 29 October 2007 and he (Mr.Mcdowall) replied on 31<sup>st</sup> October 2007 that the client relations partner was the Respondent and that a copy of the letter had been sent to him.

17.52 The Complainers issued a reminder to the Respondent on 30 November 2007. The Respondent did not reply.

17.53 In the absence of a response, notices under Section 15 2 (i) (i) and Section 42C of the Solicitors (Scotland) Act 1980 were served on the Respondent on 13<sup>th</sup> December 2007.

17.54 A further letter was sent by the Complainers to the Respondent on 21<sup>st</sup> January 2008. The Respondent did not reply.

17.55 The additional conduct complaint (of failure to reply to correspondence from the Society and to obtemper statutory notices) was intimated to the Respondent on 7<sup>th</sup> February 2008.

17.56 The Respondent wrote to the Client Relations Office on 4<sup>th</sup> March 2008 with a reply to all of the issues. He indicated that during the summer and autumn he had been absent from work for a cumulo period in excess of three months due to stress and anxiety following upon the separation from his wife.

17.57 In respect of the failures to comply with Rule 3 of the Solicitors (Scotland) (Client Communication) Practice Rules 2005 more particularly condescended upon in Article 5.6 herein the Complainers served upon the Respondent Notices (a) in terms of Section 15(2) of the Solicitors (Scotland) Act 1980 on 14<sup>th</sup> August 2008, and (b) in terms of Section 42C of the Act also dated 14<sup>th</sup> August 2008. The Respondent did not reply nor did he obtemper the notices.

Complaint by The Council of the Law Society of Scotland  
ex proprio motu.

17.58 In or about March 2007 the Respondent was instructed by SPL in connection with the sale of a development of seventy four flatted dwellinghouses at Property 14. Some of the purchasers were represented by Messrs. Kilcoynes, Solicitors, Glasgow. The properties were subject to securities in favour of Clydesdale Bank plc and Glasgow City Council.

17.59 On 14 March 2007 the Respondent settled the sales of Plots 2, 3, 4, 7, and 8. The purchasers were respectively JH, LL,LL,LL, and JH. All of them were represented by Kilcoyne & Co. In each case the Respondent granted a letter of obligation in favour of Kilcoyne & Co. In each case the Respondent undertook, personally, to deliver to Kilcoyne & Co., within twenty one days of 14 March 2007 (a) a deed of disburdenment by Clydesdale Bank plc in favour of the sellers, with supporting land registration forms and cheque, and (b) a deed of disburdenment by Glasgow City Council in favour of the sellers with supporting land registration forms and cheque. On 6 April 2007 the Respondent settled the sale of Plot 9. The purchaser was LL who was

represented by Kilcoyne & Co. On 6 April 2007 the Respondent granted a letter of obligation in favour of Kilcoyne & Co. in which he undertook, personally, to deliver to Kilcoyne & Co., within twenty one days of 6 April 2007, (a) a deed of disburdenment by Clydesdale Bank plc in favour of the sellers, with supporting land registration forms and cheque and (b) a deed of disburdenment by Glasgow City Council in favour of the sellers, with supporting land registration forms and cheque.

17.60 Messrs. Dallas McMillan, Solicitors, Glasgow acted on behalf of and JPH who bought three of the flats purchased by LL. Kilcoyne & Co. represented LL as seller in each of these transactions. In each sale, Kilcoyne & Co. granted to Dallas McMillan a letter of obligation in which they, of even date with the letters of obligation granted in their favour by the Respondent, undertook to Dallas McMillan *mutatis mutandis* the obligations owed to them by the Respondent in relation to the deeds of disburdenment by Clydesdale Bank plc and Glasgow City Council.

17.61 The Respondent failed to discharge the obligations undertaken by him in his letters of obligation to Kilcoyne & Co, all as hereinbefore condescended upon. None of the deeds of disburdenment condescended upon, amounting in total to twelve in number, was delivered timeously. In consequence of that, Kilcoyne & Co. were in breach of their obligations to Dallas McMillan. In May 2007, Dallas McMillan invoked the assistance of the Complainers.

17.62 In response to the intimation of this request for assistance, Kilcoyne & Co. drew to the attention of the Complainers the failure of the Respondent to implement the letters of obligation condescended upon. The Complainers in due

course took the matter up with the Respondent's firm and received a letter dated 28 August 2007 from the Respondent's then current (and now former) partner who wrote, inter alia, as follows:

*"Our firm is conducting the sale of 74 flatted dwellinghouses which are being released in stages.*

*The deeds of disburdenment are released from Clydesdale Bank plc in stages to reflect the sums which have been paid to them by way of the proceeds of sale of the initial plots.*

*With regard to the deed of disburdenment by Glasgow City Council we have received confirmation from Glasgow City Council that they will sign deeds of disburdenment in stages on confirmation that the plots have been completed to the satisfaction of the Building Control Department. Unfortunately due to particular difficulties which all firms experience with the Local Authority there have been delays in securing the delivery of the deeds of disburdenment. While this is clearly outwith the terms of our letter of obligation, we are making our best endeavours to secure these documents. The other firms involved in the individual transactions have appreciated the situation and have not sought to complain that our letter of obligation has been flouted. It is clearly the case that looking at this matter objectively we cannot argue that we have failed to meet the terms of our letter of obligation. We would respectfully suggest that situations such as this arise frequently where discharges, etc., are delivered late by lenders and other institutions. Letters of obligation of this nature are granted by firms to enable settlement of transactions without them being hindered by this issue. It would be impracticable for this situation to proceed in any other fashion. It is a fact of life that sometimes delivery of the*

*relevant documents does not take place within the timescale referred to in the letter of obligation and we apologise that this is the case in this instance.*

*We are continuing to make our best endeavours to secure delivery of these documents and are certain that these will be delivered in the very near future.*

*I hope that this is all in order and look forward to hearing from you.”*

- 17.64 The deeds remained undelivered.
- 17.65 By letter dated 28 November 2007, the Complainers gave formal intimation of the complaint by Kilcoyne & Co. to the Respondent. They required him within twenty one days of that date, to provide (a) his written response to each of the issues identified in the letter, (b) any further background information the Respondent might wish to provide and(c) the file, which was to be delivered to the Complainers.
- 17.66 The Respondent did not reply.
- 17.67 On 4 January 2008, the Complainers again wrote to the Respondent. They enclosed the first part of a notice under section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980. They required the Respondent to provide a response to the complaint together with an explanation for the earlier failure to respond within fourteen days of that date. They warned the Respondent that a continuing failure to respond would result in a separate complaint of professional misconduct. On the same day the Complainers served upon the Respondent a notice under section 42C of the said Act

requiring the Respondent to produce to them, within twenty one days of that date, all books, accounts, deeds, securities, papers and other documents in his possession or control relating to (1) the sale of Property 14A (2) the sale of Property 14B to JH (3) the sale of Property 14C to LL (4) the sale of Property 14D to LL (5) the sale of Property 14E, to JH and (6) the sale of Property 14F to LL.

17.68 Further copies of the letters and notices of 4 January 2008 condescended upon were sent to the Respondent by First Class Recorded Delivery post on 16 January, 2008 addressed to the Respondent at 12 Holmlea Road, Battlefield, Glasgow, the earlier documents having been sent to the Respondent's previous address at 9 Budhill Avenue Glasgow.

17.69 The Respondent did not reply.

17.70 On 15 February 2008 the Complainers served the second part of a notice under section 15(2)(i)(i) on the Respondent, requiring him to give six weeks' notice of his intention to apply for a practicing certificate for the year commencing on 1 November 2008. The letter accompanying the notice intimated a new complaint of professional misconduct in respect of the Respondent's failure to reply to the professional correspondence above condescended upon. The Respondent was required to provide his explanation, and production of his business file, within fourteen days of 15 February 2008. The Respondent did not reply to the letter or notice.

17.71 On 10 March 2008 the Respondent wrote to the Complainers. He stated that "...the issue at the root of this complaint appears to have been resolved and we are now



negotiating with Kilcoyne & Co. in relation to a payment of a fee to them for the work which they have had to carry out to resolve this matter. We would hope to be able to resolve this matter between our respective firms in early course. We understand that Messrs. Kilcoyne & Co. do not propose to pursue the complaint any further providing the matter of compensation of fees is resolved. We trust that you will allow us a further 14 days to resolve this matter with this firm.” The Respondent did not address the outstanding complaints, correspondence or statutory notices.

17.72 By letter dated 20 May 2008 the Complainers again requested that the Respondent produce his files relative to the transactions condescended upon. The Respondent wrote to the Complainers on 10<sup>th</sup> June 2008 stating that he was enclosing a file but none was enclosed.

17.73 By letter dated 16 July 2008 the Complainers requested the outstanding files and reminded the Respondent of the terms of the section 42C notice. By letter dated 25 July 2008 the Respondent stated:

*“ We had understood that the matter was now close to conclusion and we are awaiting a response from Messrs. Kilcoyne & Co. which should hopefully resolve matters. There is no individual file relating to this matter which involves the multiplicity of transactions between our respective firms and in respect of a single development of property. Can we request a further 14 days in which to resolve this matter failing which we will engather our files and forward them to you.”*

17.74 On 1 August 2008 the Complainers wrote to the Respondent. They pointed out that their investigation had

already been seriously delayed. They requested that the Respondent forward his files no later than 6 August 2008.

17.75 On 1 August 2008 Kilcoyne & Co. withdrew their complaint against the Respondent. Thereafter the Complainers resolved to continue with the complaint *ex proprio motu*. They so advised the Respondent by letter dated 20 August 2008, in which they reminded the Respondent of the need for him to produce the files.

17.76 The Respondent did not reply.

17.77 The Complainers, in those circumstances, investigated the various complaints without the Respondent's file.

Mr IG

17.78 Mr IG is a Solicitor. In 2007 the Respondent instructed Mr IG to carry out work in respect of the Property 14 development above condescended upon. This involved the preparation of a deed of real burdens for the whole development of 74 flats, and the preparation of a suite of standard styles of documents for the sale of each of the flats. The work was carried out under strict time constraints. The deed of real burdens was registered in the Land Register of Scotland on 6<sup>th</sup> February 2007. All of the outlays relative to the registration of the deed of real burdens were borne by Mr IG.

17.79 Mr IG raised an invoice on 29<sup>th</sup> April 2007 in the amount of £5,597.95. On that date the invoice was rendered to the Respondent. Reminders were sent. On 11<sup>th</sup> June 2007 the Respondent promised payment within a week. The invoice however remained unpaid.

- 17.80 On 26<sup>th</sup> June 2007 Mr IG instructed his solicitors to raise proceedings for recovery of the sum invoiced. Decree in absence was granted on 27<sup>th</sup> September 2007.
- 17.81 On 13<sup>th</sup> February 2008, Mr IG invoked the assistance of the Complainers.
- 17.82 Mr IG's solicitors prepared a petition for sequestration of the Respondent. This was served, and was due to call in the Sheriff Court at Glasgow on 18<sup>th</sup> February 2008.
- 17.83 On 14<sup>th</sup> February 2008, the debt together with judicial expenses were settled by the Respondent by bank transfer into the client account of Mr IG's solicitors.
- 17.84 On 4<sup>th</sup> March 2008 the Complainers forwarded details of Mr IG's complaint to the Respondent and requested his comments within 14 days. The letter required to be redirected on 2<sup>nd</sup> April 2008. The Respondent did not reply.
- 17.85 On 5<sup>th</sup> May 2008 the Complainers issued formal intimation of the complaint to the Respondent. They required a response within 21 days. The Respondent did not reply.
- 17.86 On 26<sup>th</sup> May 2008 the Complainers served upon the Respondent the first part of a notice in terms of Section 15(2) of the Solicitors (Scotland) Act 1980. In terms thereof the Respondent had 14 days in which to respond to the complaint and explain his previous failure to do so. Also on 26<sup>th</sup> May 2008 the Complainers served a notice upon the Respondent pursuant to Section 42C of the said Act requiring the Respondent to produce to them within 21 days of that date all files, books, papers and other

documents relating to the instructions given to Mr IG. The Respondent did not reply.

17.87 On 2<sup>nd</sup> July 2008 the Complainers served the second part of a notice under Section 15(2) of the said Act on the Respondent, thus requiring him to give 6 week's notice to the Complainers of his intention to make application to take out a practicing certificate for the practice year commencing on 1<sup>st</sup> November 2008. Also on 2<sup>nd</sup> July 2008 the Complainers intimated a fresh complaint against the Respondent in respect of his failure to deal with correspondence from the Society and failure to obtemper statutory notices.

17.88 On 25<sup>th</sup> July 2008 the Respondent wrote to the Complainers. He enclosed a copy of a letter which he said he had posted on 10<sup>th</sup> June 2008 to the Complainers but which had not been received by them. In this letter the Respondent admitted the terms of the complaints against him at the instance of Mr IG, stated that his professional activity was affected by his separation from his wife and by worries about his business, that he was suffering from depression and anxiety and stating further that Mr IG had previously carried out work for him but that on this occasion his charges were substantially higher than on these previous occasions.

#### Mr AG

17.89 Mr AG instructed the Respondent in October 2007 with a view to him obtaining a Power of Attorney to enable him to deal with his affairs. Mr. AG became dissatisfied with the Respondent and on 1<sup>st</sup> June 2008, invoked the assistance of the Complainers. The Complainers investigated the

complaint as best they were able to without the co-operation of the Respondent all as hereinafter condescended upon and made a finding of “inadequate professional service”. The refund of fees which was ordered, and payment of compensation, are dealt with separately.

- 17.90 On 25<sup>th</sup> July 2008 the Complainers gave formal intimation of the complaint to the Respondent. They drew his attention to the terms of Section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) 1990 and required him to provide a response to the complaint along with his files within 21 days of that date. The Respondent did not reply.
- 17.91 On 22<sup>nd</sup> August 2008 the Complainers served upon the Respondent the first part of a notice under Section 15 (2) of the Solicitors (Scotland) Act 1980. The notice required the Respondent to provide a response to the complaint, and an explanation for his earlier failure to do so, within 14 days of that date. The Respondent did not reply.
- 17.92 Also on 22<sup>nd</sup> August 2008 the Complainers served upon the Respondent a notice in terms of Section 42 (C) of the Solicitors (Scotland) Act 1980 which required the Respondent, within 21 days of that date, to provide his file of papers in relation to the case. The Respondent did not reply.
- 17.93 On 12<sup>th</sup> September 2008 the Complainers intimated to the Respondent a further complaint in respect of his failure to answer correspondence from the Complainers. A response was required within 14 days. The Respondent did not reply.

Complaint by Registers of Scotland

17.94 Between 31<sup>st</sup> March 2008 and 31<sup>st</sup> October 2008 the Respondent made use of the Keepers Registers Direct Service and FAS Service as provided by Registers of Scotland. He incurred charges to the Registers of £264.84. He should have retained funds from his client account to settle this liability. He failed to do so. As at the date of this complaint the fees, despite repeated reminders sent by the Registers, remain outstanding.

Mr. SA

17.95 The Complainers received a request for assistance from Mr. SA. Having investigated the complaint the Complainers determined that the Respondent had provided an inadequate professional service to Mr.SA. The made a determination in terms of Section 42A of the Solicitors (Scotland) Act 1980 that the Respondent was to waive his fees in relation to Mr. SA and further that he was to make a payment of £1000 to Mr. SA by way of compensation.

17.96 The Complainers determination and direction was intimated to the Respondent on 16<sup>th</sup> March 2009. The Respondent was required at that stage to state what steps he had taken to implement the determination and direction. The Respondent did not reply. He did not appeal against the determination and direction within the twenty one day period appointed for that purpose. He did not appeal the determination.

17.97 Having first received Mr. SA's complaint the Complainers wrote to the Respondent on 15<sup>th</sup> July 2009. They drew

attention to the terms of Section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and required the Respondent to provide a response to the complaint and to deliver up his files within twenty one days of that date. The Respondent did not reply.

17.98 On 8<sup>th</sup> August 2008 the Complainers served notices on the Respondent in terms of Section 15(2) and 42C of the 1980 Act. The former required the Respondent to provide a response to the complaint together with an explanation of his earlier failure to do so within fourteen days of that date and required the Respondent to give six weeks notice in writing of his intention to apply for any future practising certificate. The latter required to produce his file and other papers. The Respondent did not respond to or obtemper either of the notices.

17.99 A further notice under Section 15(2) of the Act was served on the Respondent on 28<sup>th</sup> August 2008.

17.100 On the same day the Complainers intimated a new complaint to the Respondent in respect of his failure to reply to the earlier correspondence and notices. They required a response within seven days. The Respondent did not reply.

17.101 On 8<sup>th</sup> September 2008 a member of the Respondent's staff contacted the Complainers and claimed that the correspondence condescended upon had been sent to the wrong address and had only recently been received by the Respondent. In those circumstances the Complainers re-submitted the letters and notices condescended upon to the Respondent on 10th September 2008 and asked for a response within fourteen days.

17.102 The Respondent did not reply.

Mr M deceased

17.103 Mr M was a chartered accountant. He was a bachelor who had no children. He died on 23<sup>rd</sup> April 2008. His will appointed a long serving former employee, Ms S, to be his executrix, whom failing the Respondent. Shortly after Mr. M's death Ms. S instructed the Respondent to deal with the estate. Because Ms. S was herself seriously ill, it was agreed that she would resign as executrix and that the Respondent would assume the role of sole executor.

17.104 On 8<sup>th</sup> May 2008 the Respondent sent the deceased's will for registration and wrote to two credit card companies to ascertain the outstanding sums owed.

17.105 The Respondent arranged for an accountant to ingather the deceased's business papers and to write to his clients.

17.106 The Respondent dealt with the transfer of the deceased's car in accordance with the bequest in his will.

17.107 On 29<sup>th</sup> May 2008 the Respondent and a member of staff spent some time sorting through the deceased's personal papers and collating those regarding his financial interests.

17.108 The Respondent received a number of reminders from the undertakers with regard to the funeral account which went unanswered.

17.109 On 3<sup>rd</sup> June 2008 the Respondent met Ms. S who indicated that she would attend at the deceased's property to remove any personal items which she wished to retain and would then



report back to the Respondent with a view to proceeding to have the house cleared.

- 17.110 The last entry on the Respondent's file is a note handwritten on the attendance note relating to the meeting of 3<sup>rd</sup> June 2008. It reads "house clearance" and records two phone numbers. On 27<sup>th</sup> June 2008 Ms. S telephoned the Respondent and gave him the name and telephone number of a house clearance company with instructions that they be instructed to deal with the clearance of the flat. The Respondent failed to follow this instruction.
- 17.111 Ms. S received assurances from the Respondent that all matters had been taken care of, that the utility companies had been advised of the death, that the deceased's flat had been cleared in preparation for the sale, and that the flat was being checked for mail, as the flat was situated very close to the Respondent's office. The Respondent had not done any of these things despite having undertaken to do so.
- 17.112 Ms. S spoke to the Respondent about the accumulation of mail at the flat when she visited it in June and July and that the Respondent indicated that this was a "catching up process".
- 17.113 Ms. S spoke to the Respondent about a wedding ring which had belonged to the deceased's mother and which had been passed to the Respondent, and he promised on at least three occasions that he would visit her and bring the ring. The Respondent failed to do so.
- 17.114 On 17<sup>th</sup> November 2008 Ms. S visited the deceased's flat. She found an accumulation of mail comprising some seventy eight letters. Included among these was a summons from

Sheriff Officers in respect of non payment of maintenance fees.

- 17.115 Also on 17<sup>th</sup> November 2008 Ms. S spoke by telephone to the Respondent. He apologised to her and promised to contact her again within forty eight hours. Notwithstanding this on 17<sup>th</sup> November 2008 Ms. S spoke to another firm of solicitors and also contacted the Complainers for advice.
- 17.116 The Respondent failed to contact Ms. S. Ms. S duly consulted new solicitors and signed a mandate for them to take over the Executry.
- 17.117 Ms. S invoked the assistance of the Complainers. Following initial enquiries a list of issues was intimated by the Complainers to the Respondent on 17<sup>th</sup> March 2009. The intimation by the Complainers required the Respondent to provide a response within 21days of 17<sup>th</sup> March 2009
- 17.118 The Respondent did not reply. Accordingly on 15<sup>th</sup> April 2009 the Complainers served a Notice in terms of Section 15 (2)(i) of The Scottish Solicitors (Scotland) Act 1980 on the Respondent. In terms of that Notice the Respondent was required to provide a response to the complaint and an explanation of his earlier failure to reply within fourteen days of that date.
- 17.119 The Respondent did not reply. On 1<sup>st</sup> May 2009 the Complainers intimated a fresh complaint in respect of failure to respond to correspondence from the Complainers and failure to obtemper the statutory notice condescended upon. The Respondent did not reply.

- 17.120 On 22<sup>nd</sup> July 2009 the Complainers determined that the Respondent had provided an inadequate professional service in respect of the executry. They directed in terms of Section 42A of the Act of 1980 that the Respondent's entitlement to fees and outlays in respect of the executry should be restricted to nil. They determined that compensation of £1500 should be paid by the Respondent to the executry.
- 17.121 The determination and direction were intimated to the Respondent who did not appeal the determination and direction. On 4<sup>th</sup> November 2009 a notice under Section 42B of the Act of 1980 was served upon the Respondent calling upon him to state what steps he had taken to comply with the determination and direction. The Respondent did not reply.

Complaint by The Law Society of Scotland *ex proprio motu*

- 17.122 The Complainers dealt with a complaint in respect of Mr W. On 5<sup>th</sup> March 2009 they intimated the complaint and required a response within twenty one days of that date. The Respondent did not reply.
- 17.123 On 27<sup>th</sup> March 2009 the Complainers served a notice on the Respondent in terms of Section 15(2)(1) of the Solicitors (Scotland) Act 1980. In terms of that notice the Respondent was required to provide a response to the complaint and an explanation of his earlier failure to reply within fourteen days of that date.
- 17.124 Also on 27<sup>th</sup> March 2009 the Complainers served a notice on the Respondent in terms of Section 42C of the said Act. The Respondent did not reply.

- 17.125 On 25<sup>th</sup> August 2009 the Complainers made a determination in terms of Section 42A(1) of the 1980 Act that the Respondent had provided an inadequate professional service to Mr. W. They directed that there should be a fifty per cent abatement in the Respondent's fees and that the abated fees plus vat should be paid by the Respondent to Mr. W. They further determined that compensation in the total sum of £522.73 should be paid by the Respondent to Mr. W.
- 17.126 On 3<sup>rd</sup> September 2009 the Complainers intimated their direction and determination. The Respondent did not appeal the determination and direction nor did he make the payment required.
- 17.127 On 11<sup>th</sup> November 2009 the Complainers served a notice under Section 42B of the Act of 1980. The Respondent failed to reply.

Complaint by the Council of the Law Society Scotland *ex proprio motu*

- 17.128 Ms CM was a client of the Respondent. He represented her in a conveyancing transaction. On or about 23<sup>rd</sup> December 2008 Ms. CM invoked the assistance of the Complainers in that connection. On 14<sup>th</sup> January 2009 the Complainers wrote to the Respondent at 12 Holmlea Road, Battlefield, Glasgow, G44 4AH which was the Respondent's business address. They intimated the details of the complaint, drew the Respondent's attention to the terms of Section 33 of The Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 and required the Respondent within twenty one days of the date of the letter to furnish the Complainers with a written response to the complaint, and delivery of business

files, and details of fees charged or to be charged. The Respondent did not reply.

- 17.129 On or about 5<sup>th</sup> February 2009 the Respondent wrote to the Complainers and indicated that thereafter his mail should be set to c/o Glass, Flat 38, 250 Camphill Avenue, Glasgow, G41 3AS. On 25<sup>th</sup> February 2009 the Complainers served notices under Section 15 and Section 42C of the Act of 1980 on the Respondent at that address. The notices required the Respondent to provide a response to the complaint, to provide an explanation of his earlier failure to respond, and to deliver up his files.
- 17.130 The Respondent did not acknowledge the notices or respond to them.

Complaint by the Law Society of Scotland *ex proprio motu*

- 17.131 Ms MC was a client of the Respondent. The Respondent acted on her behalf in relation to a conveyancing transaction. On or about 22<sup>nd</sup> January 2009 Ms MC invoked the assistance of the Complainers in that connection.
- 17.132 In the course of dealing with Ms MC's transaction the Respondent gave incorrect advice to MC as to the amount of stamp duty in respect of her purchase. He understated the amount due by £3000. Ms MC paid the stamp duty in due course but incurred penalties of £643.00. On 28<sup>th</sup> February 2009 the Respondent gave an undertaking to make payment of the penalties given that he acknowledged that he was largely responsible for the delay which caused the penalties to be incurred.

- 17.133 The Respondent failed to honour that undertaking and did not make payment of the penalties of £643.00.
- 17.134 On 5<sup>th</sup> March 2009 the Complainers wrote to the Respondent in connection with Ms MC's complaint, drew his attention the terms of Section 33 of The Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 and required him to provide an answer to the complaint along with delivery of his business files within twenty one days of that date. The Respondent did not reply.
- 17.135 On 20<sup>th</sup> April 2009 the Complainers served notices under Sections 15 and 42C of the Act of 1980 on the Respondent. The Respondent did not reply. Nor did he obtemper the notices.
- 17.136 On 15<sup>th</sup> May 2009 the Complainers intimated a further complaint to the Respondent in respect of his failure to respond to correspondence from them. The Respondent did not reply.

Complaint by the Law Society of Scotland *ex proprio motu*

- 17.137 Mr RC was a client of the Respondent. The Respondent represented him in a conveyancing transaction. In that connection Mr.RC invoked the assistance of the Complainers on or about 23<sup>rd</sup> July 2008.
- 17.138 On 17<sup>th</sup> November 2008 the Complainers intimated Mr. RC's complaint to the Respondent. They drew his attention to Section 33 of The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and requested a response to the complaint along with delivery of the Respondent's file within twenty one days of that date.

- 17.139 The Respondent did not reply.
- 17.140 In view of the failure of the Respondent to respond to the complaint, on 30<sup>th</sup> December 2008 the Complainers served notices in terms of Sections 15(2) and 42C of the Act of 1980 on the Respondent. The Respondent did not acknowledge the notices nor did he obtemper them.

Complaint by the Law Society of Scotland *ex proprio motu*

- 17.141 Ms P was a client of the Respondent. He represented her in relation to the winding up of her late father's estate. In that connection Ms. P invoked the assistance of the Complainers on or about 7<sup>th</sup> September 2008.
- 17.142 On 24<sup>th</sup> February 2009 the Complainers intimated the complaint to the Respondent. They drew his attention to Section 33 of The Law Reform (Miscellaneous Provisions (Scotland) Act 1990 and required him to provide a response along with delivery of his file within twenty one days of that date.
- 17.143 The Respondent failed to reply.
- 17.144 On 18<sup>th</sup> March 2009 the Complainers served a notice upon the Respondent in terms of Section 15 of the Solicitors (Scotland) Act 1980.
- 17.145 The Respondent failed to reply.
- 17.146 On 22<sup>nd</sup> April 2009 the Complainers intimated a further complaint in respect of the Respondent's failure to reply to correspondence from the Complainers.

17.147 The Respondent failed to reply.

Mr I

17.148 Mr. I was a client of the Respondent. The Respondent represented him in relation to a conveyancing transaction. Mr. I invoked the assistance of the Complainers. On 20<sup>th</sup> October 2009 the Complainers determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 that the Respondent had provided an inadequate professional service to Mr. I. They determined, and ordered, that the Respondent pay to Mr. I compensation in the amount of £1800.

17.149 The determination and direction were intimated by the Complainers to the Respondent on 20<sup>th</sup> October 2009. The Respondent did not appeal the determination and direction.

17.150 On 4<sup>th</sup> December 2009 the Complainers served upon the Respondent a notice in terms of the Solicitors (Scotland) Act 1980, Section 42B, requiring the Respondent to state within twenty one days of that date what steps he had taken to comply with the determination and direction. The Respondent did not reply.

AW

17.151 AW was a client of the Respondent who invoked the assistance of the Complainers in respect of a conveyancing transaction. On 1<sup>st</sup> May 2008 the Complainers determined



in terms of the Solicitors (Scotland) Act 1980 Section 42A that the Respondent had provided an inadequate professional service to AW. They directed that the fees to which the Respondent was entitled be reduced by £117.50 inclusive of vat, and that this amount should be paid by the Respondent to AW. They further directed that the Respondent was to pay to AW the sum of £100 as compensation in respect of a stamp duty land tax penalty. They further directed that the Respondent was to pay to AW the difference between the amount paid by AW to his mortgage lender in respect of a loan secured over Property 12 in the period between 18<sup>th</sup> May 2007 and 1<sup>st</sup> June 2007 and the amount of bridging loan interest paid by AW in respect of his funding of the purchase of that property. In addition the Respondent was directed to pay AW the sum of £800 by way of compensation. The amount of the difference between the bridging interest and the mortgage account interest is £542.66.

- 17.152 The determination and direction were intimated to the Respondent by letter dated 16<sup>th</sup> May 2008. The Respondent did not appeal against the direction and determination. On 2<sup>nd</sup> July 2008 the Complainers served a notice on the Respondent in terms of Section 42B of the Solicitors (Scotland) Act 1980 in which they required the Respondent to advise what steps he had taken to implement the determination and direction. The Respondent did not reply nor has he implemented the direction and determination.

Mr AG

- 17.153 Mr AG invoked the assistance of the Complainers with regard to the service which he had received from the Respondent. He did so by letter dated 1<sup>st</sup> June 2008.

- 17.154 On 18<sup>th</sup> November 2008 the Complainers determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 that the Respondent had provided an inadequate professional service to Mr. AG. They determined that fees of £305 should be refunded to Mr. AG and that £550 of compensation should also be paid by the Respondent to Mr. AG. The Respondent was thus required to pay the cumulo sum of £855 to Mr. AG.
- 17.155 The determination and direction condescended upon were intimated to the Respondent by the Complainers by letter dated 10<sup>th</sup> December 2008. The Respondent was required, within 21 days of that date, to provide the Complainers with a written explanation of the steps which had been taken by him to comply with the determination and direction. The Respondent did not reply.
- 17.156 On 7<sup>th</sup> January 2009 the Complainers served a notice upon the Respondent in terms of Section 42B (1)(a) of the Solicitors (Scotland) Act 1980 again requiring the Respondent to provide within 21 days of that date an explanation of the steps taken by him to comply with the determination and direction. The Respondent did not reply. He did not appeal the determination and direction. He has not made payment. In the circumstances the Complainers are under the necessity of applying to this tribunal for an enforceable order in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980 requiring the Respondent to make payment to Mr. AG of the cumulo sum of £855.

Complaint by The Law Society of Scotland *ex proprio motu*

- 17.157 The Complainers received a complaint from a firm of solicitors in Ayr in connection with the Respondent's actings arising out of a conveyancing transaction. The Complainers wrote to the Respondent on 2<sup>nd</sup> September 2008. They required him to provide a response to the complaint within fourteen days. On 9<sup>th</sup> September 2007 the Complainers wrote to the Respondent. That letter provided the Respondent with additional information and again requested a response within fourteen days.
- 17.158 The Respondent replied on 15<sup>th</sup> and 17<sup>th</sup> September 2008. On 20<sup>th</sup> October 2008 the Complainers wrote to the Respondent. They enclosed a list of issues in relation to the complaint and required that the Respondent provide a reply within twenty one days and deliver his file.
- 17.159 The Respondent did no reply nor did he deliver the file.
- 17.160 In view of the Respondent's failure to reply, on 9<sup>th</sup> December 2008 the Complainers served upon the Respondent the first part of a notice in terms of Section 15(2) of the Solicitors (Scotland) Act 1980. In terms of that notice the Respondent was required to provide a response to the complaint and an explanation of his failure to reply within fourteen days of that date. On the same date, the Complainers served upon the Respondent a notice under Section 42 (C) of the Solicitors (Scotland) Act 1980. That notice required the Respondent to furnish to the Complainers within twenty one days of that date all books, accounts, deeds, securities, papers and other documents in his possession in relation to the transaction which gave rise to the complaint. The statutory notices were returned by the postal authorities and were re-served on 14<sup>th</sup> January 2009. The Respondent wrote a letter to the Complainers dated 27<sup>th</sup>

January 2009 and received by the Complainers on 30<sup>th</sup> January 2009. He gave some explanation of his personal circumstances. He did not provide an answer to the complaint, nor did he produce the file or other papers which had been called for in terms of the notice.

17.161 The Complainers, without the assistance of the Respondent, recovered the file in March 2009 from another firm of solicitors in Glasgow to whom it had by then been transferred.

18. Having heard submissions from the Complainers and having noted the letter and medical certificate previously lodged by the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- (a) his operating the client account in deficit in breach of Rule 4 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 (hereinafter referred to as “the Accounts Rules 2001”) (paragraphs - 17.6, 17.7 and 17.18 a) – f))
- (b) his failing to maintain books and records as required by Rule 8 of the Accounts Rules 2001 (paragraphs - 17.8, 17.9, 17.12 and 17.20)
- (c) his failure to properly record a bridging loan (Rule 20 of the Accounts Rules 2001) (paragraph – 17.9)
- (d) his breach of the Money Laundering Regulations (Rule 24 of the Accounts Rules 2001) (paragraphs - 17.10 and 17.21)

- (e) his failure timeously to attend to the stamping/recording of deeds (paragraphs - 17.13, 17.24 and 17.25 a) – h))
- (f) his failure to ensure that cheques were properly designated as required by Rule 6(2) of the Accounts Rules 2001 (paragraph – 17.14)
- (g) his failure to follow lenders' instructions in relation to reporting and investment of funds (paragraphs – 17.18(g) and 17.25(i))
- (h) his failure to comply with the requirements of Rule 21 of the Accounts Rules 2001 in relation to borrowing from clients (paragraph - 17.19)
- (i) his failure to comply with the requirements of the Solicitors (Scotland) (Client Communication) Practice Rules 2005 Rule 3 (paragraphs - 17.11, 17.22 & 17.23)
- (j) his failure to obtain written authority for an inter account transfer (Rule 6 of the Accounts Rules 2001) (paragraph - 17.24)
- (k) his failure to comply with the requirements of the Solicitors (Scotland) (Incidental Financial Business) Practice Rules 2004 (paragraph – 17.26)
- (l) his failure to deal timeously with professional correspondence from the Complainers (paragraphs – 17.51 to 17.57, 17.65 to 17.76, 17.85 to 17.87, 17.90 to 17.93, 17.96 to 17.102, 17.117

to 17.119, 17.122 to 17.124, 17.128 to 17.130, 17.134 to 17.139  
17.142 to 17.147, 17.158 to 17.161)

- (m) his failure to obtemper statutory notices (paragraphs – 17.53 to 17.57, 17.67 to 17.76, 17.86, 17.87, 17.98 to 17.99, 17.118, 17.119, 17.122 to 17.124, 17.128 to 17.130, 17.134 to 17.136, 17.140, 17.142 to 17.147, 17.158 to 17.161)
- (n) his failure to timeously to implement the letters of obligation condescended upon (paragraphs – 17.58 to 17.61)
- (o) his failure to timeously to settle Mr IG’s account (paragraphs – 17.78 to 17.83)
- (p) his failure to settle accounts due to the Registers of Scotland (paragraph – 17.94)
- (q) his failure to timeously to administer the estate of the deceased, to follow instructions, and to do that which he had undertaken to the executrix that he would do (paragraphs – 17.110 to 17.116)
- (r) his failure to honour the undertaking given to Ms MC (paragraph – 17.133)

19. Having considered the foregoing circumstances, The Tribunal also found that the Respondent had failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Mr SA, Mr W, Mr M’s executry, Mr I, AW and Mr AG within the respective periods specified and the Tribunal resolved to make Orders in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980.

20. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 June 2010. The Tribunal having considered the Complaints dated 1 July 2009, 14 July 2009, 23 July 2009, 3 February 2010 and 20 April 2010 at the instance of the Council of the Law Society of Scotland against Ronald Johnston Glass, Solicitor formerly of Flat 38, 250 Camphill Avenue, Glasgow and now at 2 Aird's Court, Crail, Fife; Find the Respondent guilty of Professional Misconduct in respect of his operating the client account in deficit, his failure to maintain books and records as required by Rule 8 of the Solicitors (Scotland) Accounts etc Fund Rules 2001, his failure to properly record a bridging loan, his breach of the Money Laundering Regulations, his failure timeously to attend to the stamping and recording of deeds, his failure to ensure that cheques were properly designated as required by Rule 6(2), his failure to follow lender's instructions in relation to reporting and investments of funds, his failure to comply with the requirements of Rule 21 of the Accounts Rules in relation to borrowing from clients, his failure to comply with the requirements of the Solicitors (Scotland) (Client Communication) Practice Rules 2005, his failure to obtain written authority for an inter-account transfer, his failure to comply with the requirements of the Solicitors (Scotland) (Incidental Financial Business) Practice Rules 2004, his failure to deal timeously with professional correspondence from the Law Society, his failure to obtemper statutory notices, his failure to timeously implement letters of obligation, his failure to timeously settle a solicitor's account, his failure to settle accounts due to the Registers of Scotland, his failure timeously to administer an estate and follow instructions to do what he had undertaken to the executrix to do and his failure to honour an undertaking given to a client; Suspend the Respondent from practice for a period of five years; Direct that Orders be issued under Section 53C of the Solicitors (Scotland) Act 1980 in respect of Mr SA, Mr W, Mr M's executry, Mr I, AW and Mr AG; 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.

**(signed)**

**Alistair Cockburn**

**Chairman**



21. 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**

**Chairman**

## NOTE

There were eight different Complaints against the Respondent which had been lodged with the Tribunal over a period of time. There had been a number of different hearings set in respect of the Complaints. The most recent two Complaints had only been lodged with the Tribunal in April 2010 but all Complaints had now been set down for hearing on the same date.

Mr Lynch advised the Tribunal that the Respondent's position was that he was not up to attending the Tribunal but he had wanted to lodge written submissions in mitigation. Mr Lynch explained that it was important to the Respondent to have the medical report from his doctor before he could finalise his submissions. Mr Lynch further explained that because the Respondent was unrepresented and had financial problems, Mr Lynch had obtained a mandate from the Respondent to go to his GP on his behalf on 13 May 2010. Mr Lynch stated that he expected the report from the GP to arrive quickly but as it was not available last week it was chased up but the medical report was only received by him at 6pm last night. Mr Lynch explained that the Respondent had phoned him at 8am yesterday enquiring about the position. The Respondent had phoned him again at 5pm and he still did not have the medical report. Mr Lynch indicated that the Respondent had accordingly asked him to request an adjournment to enable the Respondent to see the medical report and complete his submissions in mitigation. Mr Lynch stated that the Respondent undertook to lodge submissions two weeks before any adjourned diet. Mr Lynch indicated that he had tried to contact the Respondent since he had received the medical report from his GP but had not been able to do so. Mr Lynch advised that as the Respondent had not seen the medical report, Mr Lynch was not in a position to lodge it with the Tribunal. Mr Lynch invited the Tribunal to consider adjourning due to the potentially serious consequences for the Respondent.

In a response to a question from the Chairman, Mr Lynch confirmed that the medical report did not state that the Respondent was unfit to attend the Tribunal. In response to another question from the Chairman, Mr Lynch confirmed that the doctor's report did comment on the Respondent's state of health at the date of the Complaints. The Chairman enquired of Mr Lynch whether the Respondent would have an

understanding of his own medical condition. Mr Lynch indicated that the medical report raised issues which the Respondent would need to address. In a response to a further question from the Chairman, Mr Lynch confirmed that he did not advise the Respondent that the matter would be adjourned today but advised him that it was at the discretion of the Tribunal.

### **DECISION AS TO WHETHER OR NOT TO ADJOURN THE CASE**

The Tribunal considered that it was up to the Respondent whether he attended the Tribunal or not. In this case, the Respondent had chosen not to attend. He had also not lodged submissions in mitigation even though he was aware of the Tribunal date and was aware of the possibility that the Tribunal may proceed in his absence. The Tribunal further considered that it was for the Respondent to lodge any medical evidence with the Tribunal if he saw fit. The Tribunal noted that in this case the Respondent had given Mr Lynch a mandate to help obtain the report but it was still the Respondent's responsibility to have the report with the Tribunal if he wished the Tribunal to take it into account. The Tribunal noted that there had been a number of adjournments in respect of this matter and that some of the Complaints dated back to July 2009. The Tribunal considered that if the Respondent chose not to attend he must take the consequences of the Tribunal proceeding on the information available to it.

The Tribunal allowed Mr Lynch an adjournment to try again to contact the Respondent. This was unsuccessful.

### **SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch confirmed that the Respondent was aware of today's date. He indicated that he did not have much to add to the Complaints but pointed out that the Complaint in relation to the Accounts Rules breaches covered a long period and included matters of significance but no one had suffered any loss as a result of the deficits on the client account. This Complaint also contained failure to record deeds and stamp deeds and failure to respond. In a response to a question from the Tribunal, Mr Lynch confirmed that the Law Society's position was that the deficits were negligent overdrawn rather than anything more sinister. Mr Lynch pointed out that there was a pattern of

failure to respond to correspondence and notices from the Law Society. The Respondent had also failed to discharge his obligations in terms of the letter of obligation and failed to discharge his professional obligations to Mr IG. Mr Lynch also asked the Tribunal to grant the Orders requested.

In connection with the Respondent's circumstances, Mr Lynch indicated that as far as he was aware the Respondent was not sequestered but was being pursued by creditors and presently worked as a caddy with limited income. Mr Lynch stated that the Respondent felt unable to face the Tribunal which reflected the way that he had dealt with correspondence from the Law Society. Mr Lynch advised that as far as he knew, the Respondent had no intention of returning to the legal profession in the short term but hoped that that possibility could remain open to him in the future. Mr Lynch advised that at the time of the Complaints, the Respondent had difficulties in his personal life and medical problems. In a response to a question from the Chairman, Mr Lynch stated that he was unable to comment on whether the medical problems were the cause or the effect of what had happened.

## **DECISION**

The Tribunal conjoined the eight Complaints and dealt with them in cumulo. The Tribunal was extremely concerned by the number of matters contained in the eight Complaints against the Respondent and the fact that these spanned a considerable period of time. The Respondent not only breached the Accounts Rules but failed to record deeds timeously, failed in a number of his professional obligations and has numerous failures to respond to the Law Society. It was clear to the Tribunal that the Respondent had had considerable operational difficulties but he had continued to practise and accordingly must take responsibility for his actions. The Tribunal considered that it was extremely reckless for the Respondent to continue in practice in the circumstances. The Tribunal however took account of the fact that no member of the public had lost out as a result of the Respondent's actions and that there was no dishonesty involved. The Tribunal also accepted that the Respondent had medical problems. The Tribunal considered that a fine would not be realistic due to the Respondent's circumstances. The Tribunal further considered that a Restriction would not be a serious enough sanction given the numerous of failings of the Respondent

and the seriousness of his conduct. The Tribunal however stopped short of striking the Respondent's name from the Roll due to the fact that it was accepted that what had happened was inadvertence and negligence which spiralled out of control as the Respondent ran out of money. In the circumstances the Tribunal considered that a five year suspension would be appropriate.

The Tribunal would hope that the Law Society consider the Respondent's health when considering the issue of any practising certificate at the end of the Respondent's suspension. The Tribunal made the usual order with regard to publicity and expenses. Mr Lynch asked if it was possible for the Respondent's address not to be included in the publicity. The Chairman however advised that to hide the current address would go against the rule of publicity and in this case it was not possible for the Respondent to provide a business address as an alternative to his home address.

The Tribunal also noted that the Respondent consented to the making of the Orders under Section 53C and considered it appropriate to make the necessary Orders.

**Chairman**