

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL  
(PROCEDURE RULES 2008)**

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW SOCIETY of  
SCOTLAND, Atria One, 144 Morrison Street,  
Edinburgh**

**against**

**ALAN JOHN NICOLL, 33 Victoria Road,  
Ballater**

1. A Complaint dated 2 November 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Alan John Nicoll, 33 Victoria Road, Ballater (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Secondary Complainer is Colin Neville Howie, 138 Mid Stocket Road, Aberdeen.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed a procedural hearing on 7 March 2018 and notice thereof was duly served upon the Respondent.
5. The procedural hearing took place on 7 March 2018. The Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was neither present nor represented although the Fiscal advised that his representative was William Macreath, Solicitor, Glasgow who was unable to attend that day. The Fiscal offered Mr Macreath's apologies. On the Fiscal's motion, which he indicated was of consent, a hearing was fixed for 4 May 2018.

6. On 26 April 2018 and on joint motion, the Chairman, exercising the powers of the Tribunal under Rule 56 of the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008 ("2008 Rules"), adjourned the hearing fixed for 4 May 2018 and fixed a hearing for 28 June 2018.
7. The hearing took place on 28 June 2018. The Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Of consent, the Tribunal received an amended Complaint dated 27 June 2018 and substituted this for the Complaint dated 2 November 2017. On joint motion the Tribunal adjourned the hearing to 2 August 2018.
8. On 2 August 2018 the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was not present but was represented by William Macreath, Solicitor, Glasgow. Of consent, the Tribunal allowed the Fiscal to amend the amended Complaint by deleting the penultimate sentence of paragraph 3.3. Answers lodged on behalf of the Respondent were withdrawn. The Tribunal heard submissions from both parties based on the written outline submissions lodged with the Tribunal in advance of the hearing.
9. The Tribunal found the following facts established:-
  - 9.1 The Respondent is Alan John Nicoll. He was enrolled as a solicitor on 12 January 1979. He was a partner of the firm Laurie & Co Solicitors in Aberdeen ("the firm") from 1 October 1981 until his retirement as a partner on 31 July 2016. He retired from practice on 26 September 2017.
  - 9.2 The Secondary Complainer was a fellow partner at the Firm from 1 April 2007. On or around 13 May 2013, he left the firm.
  - 9.3 Both the Respondent and Secondary Complainer were directors of and shareholders in Baltic Properties (Scotland) Limited ("the company"). The company was incorporated on 17 November 2003. The Respondent and Secondary Complainer were appointed directors from the date of the company's incorporation. They were also shareholders in the company. The firm was appointed as the company's secretary. Shortly after the date of incorporation, three other directors were appointed to the company, none of them solicitors. These



three other directors were also shareholders in the company. They were friends of the Respondent.

- 9.4 The company owned commercial property at 33 Holburn Street, Aberdeen (“the property”). The purchase of the property was funded by way of (i) a loan obtained from a bank and secured against the property by a floating charge; and (ii) loans from the directors of the company. The bank also provided additional finance to the company via an authorised overdraft facility.
- 9.5 Shortly after the Secondary Complainer had resigned as a partner of the firm, the company began to experience financial difficulties. The bank requested repayment of the overdraft facility which it had extended to the company. This ultimately led to a breakdown in relations between the Secondary Complainer and the other company directors/shareholders, including the Respondent.
- 9.6 The Respondent, through the firm, acted as the company’s legal adviser and representative between 2003 and 2014. The Secondary Complainer submitted a complaint to the Scottish Legal Complaints Commission in respect of the Respondent’s role and conduct as legal adviser to the company during the period from December 2013 to February 2014. The Secondary Complainer submitted a complaint against the Respondent in or around October 2014, alleging that the Respondent had placed himself in a conflict of interests due to his position as director/shareholder in the company and his position as the company’s solicitor.
- 9.7 The company leased the property to a commercial tenant. In late 2013 the tenant defaulted on its obligations under the lease and stopped paying rent.
- 9.8 A general meeting of shareholders took place on or around 4 September 2013, attended by four of the company’s directors including the Respondent and Secondary Complainer. There was discussion about correspondence from the company’s bank advising that its current account had gone into an unauthorised overdraft. It was agreed that each of the directors would contribute funds to cover ongoing maintenance costs in respect of the property. The Secondary Complainer indicated that he was unable to contribute his share of the costs at the time. It was recorded in the minute of the meeting that the Secondary Complainer would pay

his share as soon as he was able.

- 9.9 A further meeting took place on 19 December 2013. This was a special general meeting of shareholders. The purpose of the meeting was to consider a special resolution to offer the opportunity of purchasing shares in the company to raise capital for settlement of the company's debts. The Respondent and two other shareholders were present at that meeting and the Respondent held a proxy for the remaining non-solicitor shareholder (who intended to vote in accordance with the majority). The Secondary Complainer did not attend.
- 9.10 In the course of the meeting, the Respondent explained to the other shareholders that he had received further correspondence from the bank regarding the unauthorised borrowing under the overdraft facility. The company was being charged interest at a daily rate of 29.25%, plus an additional flat rate daily charge of £25. There was also still outstanding secured capital borrowing of £72,930.59, giving total borrowing by the company of approximately £80,000. In addition, there were directors' and shareholders' loans to the company in excess of £50,000. The property was valued at around £120,000.
- 9.11 The Respondent told the other shareholders present at the meeting that he considered there to be two options: (i) to take no action in relation to the debt; or (ii) for the shareholders to fund repayment to the bank. He said that option (i) could lead to a loss of shareholders' existing investments, given that the bank could call in the loan and impose significant charges, whereas (ii) would avoid an escalation of bank charges and an increasing level of debt. He noted that with the tenant in default, there was no other income for the company and that until a new tenant could be found the company may also be liable to pay rates in respect of the property.
- 9.12 The shareholders present at the meeting ultimately agreed that it was necessary to settle all outstanding debts with the bank in order to give the company more control over the property. They agreed to do so by way of further loans to the company by the directors/shareholders, with an interest rate of 10%. This proposal was advanced by one of the non-solicitor shareholders/directors and endorsed by the other. The Respondent then agreed to it on behalf of himself and the remaining non-solicitor shareholder for whom he held a proxy.



- 9.13 The two non-solicitor shareholders present at the meeting then suggested that the loans and interest due on them should be secured by way of a first ranking standard security. The Respondent therefore proposed that the resolution to raise capital by way of loans to the company be passed, inclusive of the requirement to obtain a first ranking standard security from the company. All shareholders were to be given the opportunity to lend the company a sum totalling approximately £80,000 and were to confirm their available funding by 10am on 23 December 2013, with the funds to be subsequently transferred into the firm's bank account by close of play. The resolution was passed unanimously among those present and represented by proxy vote.
- 9.14 The minute was emailed to all shareholders on 20 December 2013 and parties were asked to note the timeframe for a response. The Respondent contacted the Secondary Complainer by email on 23 December seeking confirmation of his intention to contribute to the refinancing of the company. The Secondary Complainer failed to respond at that time.
- 9.15 On or around 23 December 2013, the Respondent contacted the three non-solicitor directors/shareholders by email to seek approval of the terms of a draft standard security which he had prepared. The company's lending from the bank was repaid in full by 6 January 2014.
- 9.16 The Secondary Complainer subsequently took issue with the decision that had been made at the meeting on 19 December. He considered that the decision to repay the company's commercial loan and for the directors to lend funds to the company at a 10% rate of interest was "commercially absurd" and not in the best interests of the company acting to benefit its shareholders. He communicated his concerns to the Respondent by email on 20 January 2014. He thought that the Respondent and the other directors / shareholders had acted in bad faith and breached their fiduciary duties to the company. He intimated his intention to raise proceedings against the other directors / shareholders on the basis of unfair prejudice. He invited the other directors / shareholders to make an offer for his shares as an alternative to legal proceedings.
- 9.17 Negotiations took place throughout January 2014 between the majority

shareholders (including the Respondent) and the Secondary Complainer. At times the majority shareholders sought independent legal advice. There was some uncertainty about the quantity of shares issued, the extent of earlier funding provided by the shareholders to the company in its lifetime, and the value of the property.

- 9.18 Emails were exchanged between the Respondent and the three non-solicitor directors on 22 and 23 January 2014. It is clear from these emails that the non-solicitor directors wished to terminate the Secondary Complainer's involvement with the company and a proposal was made to acquire the Secondary Complainer's shareholding. The non-solicitor directors considered that legal advice would be appropriate, on which they deferred to the Respondent. The Respondent did not offer legal advice at this stage, although he noted that the surveyors had advised him that the property was valued at £130,000 to £135,000 while vacant and that any offer to the Secondary Complainer should be based on a valuation of £130,000 to allow for legal fees and outlays associated with the sale of the property.
- 9.19 On 23 January 2014, the Respondent emailed the Secondary Complainer about the interest on the shareholders' loans and the proposal to buy out the Secondary Complainer's shares. The Respondent offered £4,608.68 for the Secondary Complainer's shares in the company. This offer was based on a valuation of £129,000 for the property, less borrowings of £105,956.60, leaving equity of £23,043.40 to be divided equally amongst the five shareholders. The Secondary Complainer was also offered £3,589.15 as a repayment of his loan, giving a total of £8,197.83.
- 9.20 The Secondary Complainer rejected the offer for his shares, on the basis that it was not based on a fair representation of the company's assets. He made a counter-offer of £7,500 for the sale of his shares, failing which he said he would raise court proceedings.
- 9.21 The Respondent wrote back on the same day to confirm that the majority shareholders had agreed to fund the company to buy back the Secondary Complainer's shares for £7,500. Further email exchanges took place on 27 January 2014 regarding draft contract documents for the agreement. The Respondent asked



the Secondary Complainer where the company's books could be found, as he required information about the company's financial position to complete the drafts. The Secondary Complainer suggested that they would likely be located in the firm's basement. Later the same day, having recovered the company's books, the Respondent emailed the Secondary Complainer to say that the books were a "shambles" and were not up to date. The Respondent subsequently referred to the company's accounts for more accurate information. The Secondary Complainer advised that each shareholder had 8,500 shares in the company and that each director had loaned £5,500 to the company when it was set up. This was in addition to the Secondary Complainer's subsequent loan of £3,589.15.

- 9.22 On 28 January 2014, the Respondent and the non-solicitor shareholders exchanged emails regarding the extent of funding provided by the shareholders to the company and the impact this had on the value of the Secondary Complainer's shares. They all agreed that the Secondary Complainer's shares had no value because the value of the company's assets was equal to the value of the directors' loans. Some of the directors were concerned that the Secondary Complainer had been acting in bad faith in trying to sell his shares to the other directors when he ought to have been aware that his shares were of no value.
- 9.23 When the Secondary Complainer chased the Respondent for revisions to his draft documents, the Respondent emailed him saying that, "Due to an essential error in the figures relating to the loans I have instructions not to proceed until the true position is established and meantime I have not approved your drafts and have no instructions to do so."
- 9.24 The Respondent and Secondary Complainer then engaged in a debate via email exchanges about the validity of the contract between the majority shareholders and the Secondary Complainer to purchase the latter's shares. The Secondary Complainer considered that a unilateral error would not invalidate the contract. The Respondent sought instructions from the non-solicitor directors by email on 28 January 2014. The Respondent set out a proposed response to the Secondary Complainer and suggested imposing a time limit on the Secondary Complainer.
- 9.25 The Respondent emailed the Secondary Complainer on 29 January 2014, stating that the Secondary Complainer had acted in bad faith by attempting to take

advantage of a misunderstanding on the part of the majority shareholders. He maintained that it had been understood that the Secondary Complainer's director's loan amounted to £3,500, whereas the Secondary Complainer had subsequently confirmed that it was close to £10,000. The Respondent advised that once the majority shareholders became aware of the true position, they withdrew their offer to purchase the Secondary Complainer's shares. The Respondent also argued that the agreement to purchase the Secondary Complainer's shares was reducible on the basis that the Secondary Complainer would be unjustifiably enriched if the purchase of shares proceeded on the values that had previously been agreed. He stated that the loans to the company amounted to around £135,000 meaning that there was no equity in the property. In his email response of 31 January 2014, the Secondary Complainer denied that there was bad faith, stated that the issue of his director's loan was entirely separate to the purchase of his shareholding, and maintained that the Respondent was not entitled to renege on the agreed contractual terms.

- 9.26 On 4 February 2014, the Secondary Complainer wrote to the firm enclosing a statutory demand for payment in terms of section 123(1)(a) or 221(1)(a) of the Insolvency Act 1986. The Secondary Complainer demanded £9,089.15 from the company, comprising sums he had loaned to the company between November 2003 and April 2013. The company was given 21 days to respond to the demand, failing which the Secondary Complainer would be entitled, in his capacity as creditor of the company, to lodge a petition for the winding up of the company. The Secondary Complainer maintained that there was a separate contractual agreement between him and the other shareholders to purchase his shares for £7,500.
- 9.27 On or around 6 March 2014, the Secondary Complainer lodged a petition in Aberdeen Sheriff Court for the winding up of the company as a result of his demand for repayment of the debt which he considered was owed to him in respect of loans provided to the company. A hearing on the petition and answers took place on 27 May 2014. The sheriff's decision was issued on 2 July 2014 but was restricted to the issue of expenses. In the interim period the parties had settled the action between themselves, with a sum consigned to the court being paid over to the Secondary Complainer. The sheriff awarded expenses in the Secondary



Complainer's favour.

- 9.28 Following the winding up petition, the firm and the Secondary Complainer's agents ultimately negotiated a sale price for the Secondary Complainer's shares and he resigned as a director of the company.
- 9.29 Settlement negotiations relating to the Secondary Complainer's claims against the company took place between the firm and the Secondary Complainer's agents. A sale price was agreed for the Secondary Complainer's shares and he resigned as a director of the company. One of the settlement conditions proposed by the Respondent was that the sum offered would be in full and final settlement of all claims which the Secondary Complainer might have had against the firm.
- 9.30 On 23 January 2014, the Respondent agreed a price with the Secondary Complainer relating to the purchase of his shares. On 28 January 2014, the Respondent claimed that the contract which had been entered into was voidable due to error. The Respondent sought to extricate the majority shareholders from their obligations in terms of that contract.
- 9.31 Any error made in the valuation of the Secondary Complainer's shareholding was an error on the part of the Respondent at a point when he was acting as the legal representative of the majority shareholders. When it came to light that the Respondent had attached a different value to the Secondary Complainer's shares than that reflected by the company's accounts, he ought to have withdrawn from acting. It should have been clear at this point that the other majority shareholders may have a claim against the firm for potentially negligent advice provided by the Respondent in relation to the valuation of the Secondary Complainer's shares. Both the Respondent and the firm required to withdraw from acting for the company and majority shareholders at this stage, as any subsequent advice could have been seen to favour the firm. At this stage the Respondent continued to act in a situation where his firm's interests were in conflict with the interests of the majority shareholders.
- 9.32 The Respondent acted on behalf of the company and the majority shareholders in relation to the subsequent settlement negotiations relating to the Secondary Complainer's claims against the company. During those negotiations and the

Respondent's attempted to impose a condition that the sum offered by the company would be in full and final settlement of all claims against the firm. The wider context to this involved an ongoing dispute between the Secondary Complainer as a former partner of the firm and the Respondent as a continuing partner of the firm. At this stage the Respondent acted in a situation where his firm's interests were in conflict with the interests of the company.

9.33 There was a clear conflict between the interests of the company and the firm. The company should have been advised to take independent legal advice as to any claims it might have. Separately, the Respondent put his own interests and those of the firm and its relationship with the Secondary Complainer ahead of the interests of the company and the majority shareholders in seeking to impose conditions which might have resulted in a waiver of potential claims against the firm.

9.34 For much of this period, an associate within the firm was acting as legal representative, although there was uncertainty about precisely who she was instructed for at different times (either the company, the majority directors or the majority shareholders). At the relevant time, however, the associate was subject to the Respondent's supervision as principal of the firm. In this matter, a draft version of an email from the associate to the Secondary Complainer dated 7 February 2014 was marked with manuscript revisions and marked 'AN approved 7/2/14'. There was no Chinese wall in place between the Respondent and the associate during the relevant period. The Respondent was actively supervising her work when she was acting for the majority shareholders / directors. The Respondent ought to have realised that there was a conflict between his interests and that of the company.

10. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect that he acted in a conflict of interest situation (i) in relation to the advice he provided on the validity of the contract to purchase the Secondary Complainer's shares; and (ii) in relation to the conditions of settlement proposed as part of the offer to settle the Secondary Complainer's claims against the company.



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

Edinburgh 2 August 2018. The Tribunal having considered the amended Complaint dated 27 June 2018 at the instance of the Council of the Law Society of Scotland against Alan John Nicoll, 33 Victoria Road, Ballater; Find the Respondent guilty of professional misconduct in respect that he acted in a conflict of interest situation (i) in relation to the advice he provided on the validity of the contract to purchase the Secondary Complainer's shares; and (ii) in relation to the conditions of settlement proposed as part of the offer to settle the Secondary Complainer's claims against the Company; Censure the Respondent; Fine the Respondent in the sum of £2,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent, the Complainers and the Secondary Complainer but need not name any other person; and allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation with the office of the Tribunal.

**(signed)**

**Colin Bell**

**Vice Chairman**

12. 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 24 AUGUST 2018.

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell**  
**Vice Chairman**



**NOTE**

On 2 August 2018, the Tribunal had before it the Complaint dated 27 June 2018 which was further amended by way of deletion of the penultimate sentence of paragraph 3.3. There were two inventories of productions for the Complainers and an inventory of productions for the Respondent. The parties' representatives had lodged written submissions with the Tribunal Office in advance of the hearing. The Answers previously lodged on behalf of the Respondent were withdrawn.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal explained that the Respondent had acted in a conflict of interest situation and that this had manifested itself at two stages, the conflict becoming sharper as time progressed:-

- (a) when he acted for the company and its majority shareholders in connection with an agreement to buy the Secondary Complainer's shares; and
- (b) when he acted for the company in connection with the settlement of claims raised by the Secondary Complainer against the company, and in particular when he sought to impose a condition on settlement which protected his firm's interests.

The Respondent was not able to provide independent and impartial advice to the company and the majority shareholders because when an issue arose with the sale purchase, and then later at the time of settlement of all claims made by the Secondary Complainer, the interests of the Respondent's firm on one hand and the interests of the company and majority shareholders on the other were in conflict. In both situations he was not able to give independent advice to his clients, whether that was the company or the majority shareholders. He prioritised the interests of the firm over those of his clients and acted for two parties whose interests conflicted.

The Respondent's primary duty was to protect the interests of the company and majority shareholders in negotiating any settlement of potential claims against the company. The company should have had the opportunity of taking independent legal advice on any claims it might have against the firm before any settlement was negotiated in terms of which any claims against the firm were waived. The Respondent ought to have withdrawn and the majority shareholders should have been advised to take independent advice. Once the issue of the validity of the contract was raised, the Respondent was no longer independent and impartial. He had a personal interest in protecting against the risk of any negligence claim against his firm.

At the stage the Respondent attempted to settle all claims against his firm it was in his personal interest for his firm's position to be protected. The firm's interests conflicted with those of the company. The company's interest was in securing a settlement with the Secondary Complainer on best terms. The company had no interest in protecting the Respondent's firm.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath explained that the Respondent accepted that he acted in a conflict of interest which had two separate elements. Mr Macreath described the background to the incorporation of the company and the people involved in it. It was noted that the Respondent did not open a file or charge any fees to the company or the majority shareholders.

Mr Macreath explained that the calculation of the Secondary Complainer's interests in the company was carried out by another director and shareholder, not the Respondent. However, the Respondent did not check the calculations. He should have done so. Mr Macreath submitted that the Respondent failed to consider his different roles as a member/partner of his firm, a director and shareholder of the company and potential adviser to the company. The Respondent should have withdrawn at the stage when it was recognised that there were errors in the share value calculation. At the time, he did not believe he was acting as a legal representative but with hindsight accepted that he was doing so. There was a conflict which he should have recognised. He should not have attempted to incorporate a condition whereby the Secondary Complainer would discharge claims including claims against the firm.

Mr Macreath made submissions in mitigation with regard to the Respondent's insight and contrition. He noted that there was no possibility of repetition of the misconduct. He also described the personal circumstances of the Respondent at the time of the misconduct. Mr Macreath made reference to the Sharp test in terms of the amended Complaint. He noted that there was no suggestion of dishonesty or deceit in the Respondent's conduct.

### **DECISION**

Although the Respondent pleaded guilty to professional misconduct, the Tribunal considered carefully the admitted averments of fact in the Complaint and had regard to the relevant test as defined in Sharp v Council of the Law Society of Scotland 1984 SLT 313. In that case it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable



solicitors may be properly categorised as professional misconduct. However, in every case it is essential to consider the whole circumstances and the degree of culpability of the individual against whom the complaint is made.

Solicitors have a duty to give independent advice free from external influences or personal interests. It is a solicitor's duty to preserve his/her independence. Solicitors must not act for two or more parties whose interests conflict or for any client where there is a conflict between the interests of the client and the solicitor's personal interest or that of the practice unit.

The Tribunal had regard to previous Tribunal authorities on conflicts and agreed with the approach taken in Case 789/90 referred to at p73-74 of Smith and Barton's "Procedures and Decisions of the Scottish Solicitors' Discipline Tribunal". In that case the Tribunal said that a client should be in a position to look to his/her solicitor for advice and obtain advice which is not only independent and impartial, but can be seen to be independent and impartial because the solicitor is not representing the interests of any connected party. Where the solicitor is himself a connected party, the client is unable to look to the solicitor for independent advice to which he is entitled and there is a resultant conflict of interest situation in which the solicitor should not act for the client. The profession condemns any course of action by a solicitor which is for his own personal benefit and adverse to the interests of his client. The public are entitled to know that the profession regards it as an important principle that every client has a right to independent advice and that a solicitor has a duty to ensure that his client is separately advised where the solicitor's personal interests are involved.


The Respondent acted in a clear conflict of interest situation. He acted for the company and its majority shareholders in connection with an agreement to buy the Secondary Complainer's shares. He also acted for the company in connection with the settlement of claims and sought to impose a condition which protected his firm's interests. He failed to act in the best interests of his client. He prioritised his personal interests and that of his firm over those of the client. The Respondent's conduct clearly fell below the standard to be expected of a competent and reputable solicitor to a degree that could only be considered serious and reprehensible. He was therefore guilty of professional misconduct.

The Tribunal had regard to the fact that the Respondent had not previously appeared before the Tribunal in a matter involving professional misconduct, and that he was an experienced solicitor who had provided a number of positive references from eminent members of the profession. The Respondent rightly recognised that his conduct had fallen short of the standards expected of him. He acknowledged his guilt. He had expressed remorse through his representative. At the time of the misconduct, he had

been experiencing difficulties in his personal and professional life. The misconduct arose out of a very specific set of circumstances where there was a great degree of informality between the parties and the Respondent was carrying out several different roles. There was no dishonesty.

However, the Tribunal also had regard to the damage to the reputation of the profession. The fact that the conflict involved the Respondent's own personal interests as a shareholder was serious. His self-interest in seeking to protect his firm was an aggravating factor. Therefore, the Tribunal decided that the appropriate sanction was a censure and a fine of £2,000.

After hearing submissions on expenses and publicity, expenses were awarded to the Complainers and the Tribunal ordered that publicity should be given to the decision but that no parties other than the Complainers, Respondent and the Secondary Complainer should be named as publication of personal data would be likely to damage their interests. The Tribunal allowed the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation with Tribunal Office.



**Colin Bell**  
**Vice Chairman**