

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

**FINDINGS**

**in Complaint**

**by**

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

**(Complainers)**

**against**

**ALASDAIR DAVID MACKIE of  
Mailers, Solicitors, 88 Henderson  
Street, Bridge of Allan**

**(Respondent)**

1. A Complaint dated 26 May 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Alasdair David Mackie of Mailers, Solicitors, 88 Henderson Street, Bridge of Allan (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 Secondary Complainer is Ms Lorraine Taylor of Woodlane Cottage, Redgate Hill, Kippen, Stirling (hereinafter referred to as "the Secondary Complainer").
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.

4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 8 October 2014 and notice thereof was duly served on the Respondent.
5. At the hearing on 8 October 2014 the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented by Mr Jim McCann, Solicitor, Clydebank. The Secondary Complainer was present and was represented by Mr Iain Nicol, Solicitor, Livingston.
6. Mr Reid advised that he wished to make a number of deletions from the Complaint. He advised that at page 4 of the Complaint at Article 2.5 he wished to delete the following sentence from lines 7 & 8 of that article – “She engaged the Respondent to act on her behalf.” He advised that he wished to delete the last four sentences of Article 3.9 as follows – “She had concerns regarding the terms of the lease. An independent solicitor would have advised her on break clauses in the lease. The Respondent did not. He simply states that she did not instruct them.” Lastly Mr Reid advised that he wished to delete the words “Without independent advice” where they appear in line 8 of Article 5.2 of the Complaint. The Tribunal agreed that the Complaint could be amended accordingly.
7. Mr McCann advised that the Respondent pled guilty to the Complaint as amended. No evidence required to be led.
8. After having heard submissions from Mr Reid and Mr McCann in respect of the Complaint the Tribunal found the following facts established:-
  - 8.1 The Respondent was born on 12 July 1958. He was admitted as a solicitor and enrolled in the Register of Solicitors practising in Scotland on 26 October 1981. From 1 January 1984 to date he has been a partner in the firm of Mailers, Solicitors of 88 Henderson Street, Bridge of Allan.

- 8.2 The Secondary Complainer is Ms Lorraine Taylor. She resides at Woodlane Cottage, Redgate Hill, Kippen, Stirling. In or about 2006 she was living with and involved in a relationship with a Mr A. Both Ms Taylor and Mr A consulted with the Respondent regarding the purchase of commercial premises situated at Property 1. Missives were issued by the Respondent in the name of both Mr A and the Secondary Complainer. Ultimately, the title to the commercial premises was taken in the name of Mr A alone, and only his name appears on the Land Certificate. It was agreed between the parties that the Secondary Complainer would be a tenant of the landlord, Mr A. A review of the file maintained by the Respondent reveals two items of correspondence which were sent directly by the Respondent to the Secondary Complainer and a draft copy of an agreement between the landlord, Mr A, and the tenant, the Secondary Complainer. There was no copy letter of engagement to either Mr A or the Secondary Complainer on the file. There were no formal notices intimated to either the Secondary Complainer or Mr A as was required by Rule 5(2) of the Solicitors (Scotland) Practice Rules 1986 in relation to the Respondent acting on behalf of both parties. There was nothing on the file to indicate Mr A or the Secondary Complainer expressed consent, as was required per Rule 5(2).
- 8.3 A further review of the file reveals an e-mail communication dated 17 February 2006 which was addressed to the Secondary Complainer from the Respondent. This e-mail attached a draft copy of a lease and stated *“I will write to Mr A tonight with a further copy of the draft, just to keep myself right. I am assuming that I am acting on your behalf here also...any queries, please let me know”*.
- 8.4 The file also contained a letter dated 17 February 2006 addressed to the Secondary Complainer from the Respondent

which states *“Further to my e-mail this morning, you now have the draft lease for consideration by yourself and Mr A. As we have previously discussed, this is in standard Scottish terms and is a full insuring and repairing lease which requires you to maintain, repair and insure the building as if it was your own, at no expense to the landlord.*

*As we have discussed, title to the shop is being taken in Mr A’s sole name and you will be the tenant. We have touched briefly in conversation on the fact that I am Mr A’s solicitor. You do not see this as a problem and you will be pleased to know that neither do I. If you wish to seek separate legal advice on the lease, however, you should probably do so sooner rather than later in order that the lease is in place for the date of entry”.* A review of the file maintained by the Respondent revealed there were no notes of any discussions with the Secondary Complainer found on the file.

- 8.5 The draft copy of the lease detailed that the date of entry was to be 1 March 2006. The lease was to endure for ten years with no break clauses, and the annual rent was £20,000, which was to rise to £22,500 on 1 March 2009. The final signed copy lease was not on the file. By a letter dated 9 March 2006 the Respondent sent a professional fee to the Secondary Complainer identifying a sum due of £586 in respect of the work carried out by him regarding the lease. This fee was paid by the Secondary Complainer on 15 March 2006.
- 8.6 On 3 February 2011 the said Mr A deceased. The Respondent was appointed as an Executor Nominate, along with others responsible for the administration of the estate of the late Mr A. The Secondary Complainer then was in the position of a third party/adversary to the Executor. She was a tenant with arrears of rent due to the estate and also was named as a beneficiary.

The Secondary Complainer had paid rent until December 2011. She left the commercial premises at the end of January 2012. As such, she had claims against the executry. A review of the file maintained by the Respondent revealed that no letter of engagement was issued to the Secondary Complainer for advice in relation to the lease insofar as it related to the executry in February 2011. The said Mr A left a Will in terms of which he bequeathed to the Secondary Complainer the sum of £55,000. The Secondary Complainer entered into a Minute of Agreement with the Respondent and other Executors Nominated in terms of which she renounced her legacy of £55,000 as a consequence of which the Executors relieved the Secondary Complainer of any further liability of rent in respect of the commercial premises.

8.7 Between February 2006 and March 2012 the Respondent continuously acted on behalf of the Secondary Complainer as her solicitor in respect of several other matters, including the sale and purchase of domestic property, as well as the implications of the lease. From February 2011 onwards, the Secondary Complainer sought legal advice from the Respondent on a number of occasions in relation to the consequences of the lease. The Respondent corresponded with the Secondary Complainer. It is reasonable to deduce from the terms of the correspondence that the Respondent held himself out to be the solicitor on behalf of the Secondary Complainer and confirmed that he acted on her behalf on 17 February 2006 and continued to act on her behalf until the end of March 2012.

8.8 The conduct of the Respondent was not in accordance with the principles articulated in the Law Society rules which were in force at the time. Insofar as the lease was concerned, it was clear that in or about February 2006 Mr A was an existing client of the Respondent. The Secondary Complainer was

living with Mr A at the time and was initially involved in the purchase. The Respondent considered that he was taking joint instructions from both parties in relation to the purchase of the commercial premises. At some point, however, these instructions changed. This is evidenced by the Respondent's letter of 17 February 2006 addressed to the Secondary Complainer, in which he explained that the shop was to be taken in the name of Mr A alone. At that date the Respondent is acting only for Mr A in relation to the purchase of the shop. However, this letter also stated that he had a draft lease ready for the consideration of both the Secondary Complainer and Mr A. His letter makes reference to an earlier email to the Secondary Complainer that day in which he had stated that he was "*assuming that I am acting on your behalf here*" in relation to the lease, and his letter confirmed that he did not view this as a problem to act for both Mr A and the Secondary Complainer in the matter of drawing up the lease. In these circumstances the Secondary Complainer did not express consent with her full knowledge of the implications of allowing the Respondent to act for her whilst also acting for Mr A in the purchase of the shop, or drawing up of the lease in response to a formal notice under Rule 5.2 of the 1986 rules.

- 8.9 In his letter of 17 February 2006 to the Secondary Complainer the Respondent briefly refers to the issue of her seeking independent legal advice in a very casual manner "*as previously discussed*" but does not explain the reasoning behind her taking such advice. There are no file notes of any discussions between the Respondent and the Secondary Complainer detailing what information was provided to her by the Respondent in relation to her seeking independent legal advice or what instructions she gave to the Respondent regarding the lease. There are only the two separate items of correspondence in the file maintained by the Respondent

addressed to the Secondary Complainer both dated 17 February 2006 in which the Respondent raises the matter with the Secondary Complainer in relation to drafting the lease.

Due to there being no file note of any discussions between the Respondent and the Secondary Complainer there is no independent evidence verifying what or in how much depth the Secondary Complainer was advised about seeking her own separate independent legal advice. There is no reply by the Secondary Complainer to the email or the letter. The Secondary Complainer maintains that she did not receive either correspondence of that date.

- 8.10 Mr A was an existing client. A review of the file maintained by the Respondent reveals no evidence of money laundering checks being carried out or a letter of engagement being issued to the Secondary Complainer detailing the firm's terms (this became mandatory on 1 August 1986.) The Secondary Complainer had some involvement in the purchase of the commercial premises on the basis that she was living with Mr A at the time but she was not the client of the Respondent.
- 8.11 The instructions the Respondent received from the Secondary Complainer changed. The lease should have been treated as a new matter by the Respondent in respect of the Secondary Complainer. The Respondent invoiced the Secondary Complainer for the work carried out by him on her behalf in connection with the lease and sought the expenses of outlays in correspondence to her of 9 March 2006. This invoice was paid by the Secondary Complainer. The Secondary Complainer herself was of the view that the Respondent acted on her behalf at this time.

- 8.12 A review of the file maintained by the Respondent reveals that no proper record was kept in relation to the instructions the Respondent received in respect of the drawing up of the lease. No file was opened by the Respondent in the name of the Secondary Complainer. When she became the client of the Respondent and the solicitor/client relationship was established the conflict of interest immediately arose. It arose because the Respondent was already acting for Mr A, who was the owner and landlord and a party to the lease. The Respondent could not simultaneously provide best advice to a landlord/client and a tenant/client in a lease situation because of the different and conflicting interests. When the Respondent wrote to the Secondary Complainer on 17 February 2006 to advise that he was acting on behalf of the Secondary Complainer he acted contrary to Rule 5 of the Solicitors (Scotland) Practice Rules 2006 as he could not act for both the landlord and tenant in a lease agreement in relation to heritable property. On that occasion the Respondent should have advised the Secondary Complainer to seek independent legal advice.
- 8.13 Although the Secondary Complainer and Mr A were cohabiting they were not married. They were therefore not an exception to the terms of the rules. Mr A was an established client of the firm. The Secondary Complainer was not. The area of the Respondent's practice was not so remote that there were no other solicitors available in the vicinity that the Secondary Complainer could have been encouraged to consult. However, on the presumption that the email and the letter both dated 17 February 2006 were sent to the Secondary Complainer the Respondent states that he was acting for both the Secondary Complainer and Mr A in the matter of a heritable tenancy which confirms that the Secondary Complainer was not an unrepresented party in the matter of the lease.



- 8.14 In relation to the administration of the estate, at the material time the Respondent was aware of the potentially difficult situation between the Secondary Complainer and Mr B who was another executor to the estate of his late father. The Respondent should have been aware that he was placing himself in a situation of a potential conflict of interest. He was appointed as an executor. He was a solicitor acting for another two executors. The Respondent acknowledged he was the solicitor for the Secondary Complainer and that she consulted him in his capacity as her solicitor as well as the Executor to the estate of the late Mr A in relation to her position insofar as the commercial premises were concerned. Whether the executors were formally or informally appointed there was a clear conflict of interest situation and it is difficult to see how legal advice could have been provided by the Respondent to the Secondary Complainer in an independent form. A review of the file maintained by the Respondent reveals that he negotiated with other executors on behalf of the Secondary Complainer. Email communication was sent from the firm and correspondence was sent by the Respondent on his firm's headed notepaper. It is clear that he was acting in his capacity as her solicitor and the Secondary Complainer was entitled to understand that he replied to her enquires in that capacity. He acted in this fashion at a time when he, as an executor himself, was providing legal advice to the executry. The Respondent's duty in that capacity was to administer the estate and to advise the executors. There was a direct conflict of interest between the estate and the Secondary Complainer. There was a direct conflict of interest for the Respondent to provide advice to the Secondary Complainer and to negotiate on her behalf.
- 8.15 The Respondent's actions during the above mentioned periods placed him in a position where he had a conflict of interest. When he negotiated the purchase and lease of the commercial

premises, he continued to act on behalf of the landlord and tenant in the transaction when he should not have done so. When he dealt with the administration of the estate of the late Mr A, he continued to act for and provide advice to the Secondary Complainer who at that time was in conflict with the estate as a consequence of the alleged rent arrears. He should not have so acted.

8.16 The Secondary Complainer claims to have been directly affected by the Respondent's misconduct and wishes to seek compensation for loss resulting from that misconduct.

8.17 The Secondary Complainer avers that she has suffered loss. In particular she avers that as a consequence of the Respondent failing to advise her to obtain independent legal representation, her interests were compromised when the lease of the commercial premises was completed. In particular she avers that her request to have a 3 year and 5 year break clause was ignored leaving her with a 10 year lease and expensive liabilities. The insertion of a break clause would have reduced her liabilities. She contends that she was required to pay rent for a period of 3 years and 4 months in excess of that which she required. She entered into a Minute of Agreement in terms of which she renounced a legacy in her favour amounting to £55,000. She avers that she suffered loss, upset, stress, anxiety and distress as a result of what occurred. The Secondary Complainer accordingly seeks compensation in respect of the said losses and accepts that the power to the Tribunal to award any compensation is restricted to a maximum figure of £5,000.

9. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his conduct not being in accordance with Rules 3 & 5(1) of the Solicitors (Scotland)

Practice Rules 1986, Rule 5(2) of the Solicitors (Scotland) Practice Rules 2006, Article 3 of the Code of Conduct for Scottish Solicitors practising in Scotland 2002, Article 6 of the Solicitors (Scotland) Standard of Conduct Practice Rules 2008 and Rules 1.7.1 and 1.7.2 of the Law Society of Scotland Practice Rules 2011 by his acting on behalf of the landlord and the tenant in connection with a commercial lease in 2006 and also between 2011 and 2012 in relation to that lease and an associated executry when he had a conflict of interest.

10. Having noted a previous Finding of Misconduct against the Respondent and having heard the solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:

Edinburgh 8 October 2014. The Tribunal having considered the Complaint dated 26 May 2014 at the instance of the Council of the Law Society of Scotland against Alasdair David Mackie of Mailers Solicitors, 88 Henderson Street, Bridge of Allan; Find the Respondent guilty of Professional Misconduct in respect of his conduct not being in accordance with Rules 3 and 5(1) of the Solicitors (Scotland) Practice Rules 1986, Rule 5(2) of the Solicitors (Scotland) Practice Rules 2006, Article 3 of the Code of Conduct for Scottish Solicitors 2002, Article 6 of the Solicitors (Scotland) Standard of Conduct Practice Rules 2008 and Rules 1.7.1 and 1.7.2 of the Law Society of Scotland Practice Rules 2011 by his acting on behalf of the landlord and the tenant in connection with a commercial lease in 2006 and also between 2011 and 2012 in relation to that lease and an associated executry when he had a conflict of interest; Censure the Respondent; Fine him in the sum of £5000 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 and may but has no need to include the names of anyone other than the Respondent; and in relation to the issue of compensation fix a preliminary hearing for 15 December 2014 and allow Mr Nicol three weeks to lodge a Minute seeking compensation and Mr McCann three weeks in which to lodge Answers to that Minute; and in relation to the expenses of the Secondary's Complainer intimate that a decision regarding such expenses will be made after the decision of the Tribunal regarding compensation.

(signed)

**Alistair Cockburn**  
**Chairman**

11. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

**IN THE NAME OF THE TRIBUNAL**

**Alistair Cockburn**  
**Chairman**

**NOTE**

The Fiscal advised that he wished to make a number of deletions to the Complaint. The Tribunal allowed the Complaint to be amended accordingly. The Respondent pled guilty to all aspects of the Complaint as amended. No evidence was accordingly required.

Mr Reid lodged a previous finding of misconduct against the Respondent from 2010.

An Inventory of Productions for the Complainers had previously been lodged with the Tribunal by Mr Reid.

An Inventory of Productions for the Respondent, two additional productions labelled R6 and R7, a list of legal references for the Respondent and a written plea in mitigation had previously been lodged with the Tribunal by Mr McCann.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid advised that the Respondent is aged 56 and has been a member of the profession for around 30 years. He stated that the Respondent has spent his entire professional career working at Mailers Solicitors. Mr Reid advised that the Secondary Complainer is Ms Lorraine Taylor. In 2006 she was living with and involved in a relationship with a Mr A. The Secondary Complainer and Mr A consulted with the Respondent regarding the purchase of commercial premises situated in Callandar. The couple originally instructed the Respondent that title to the property was to be in joint names, however the instructions changed and ultimately title to the commercial premises was taken in the name of Mr A alone. It was agreed between the parties that the Secondary Complainer would be Mr A's tenant in the premises.

Mr Reid submitted that the Respondent acted on behalf of both parties in relation to this commercial lease when he should not have done as there was a conflict of interest.

Mr Reid advised that he had lodged a copy of the draft lease in his Inventory of Productions for the Complainers and that this draft lease is found at Production 6 of that Inventory. He advised that the draft lease is identical to the lease which was eventually entered in to between the parties.

Mr Reid referred the Tribunal to Production 32 of the said Inventory, a letter dated 9 March 2006 addressed to the Secondary Complainer from the Respondent enclosing a fee note in connection with the preparation of the lease. He advised that the fee note was paid by the Secondary Complainer.

Mr Reid stated that after 2006 the Respondent continued to act for the Secondary Complainer in relation to a number of matters. He advised that Mr A died in 2011 and the Respondent was appointed as an executor and also acted as a solicitor in relation to the executry. Mr Reid advised that the Secondary Complainer later incurred rent arrears in relation to the lease. He advised that she was left a bequest by Mr A and that following receipt of independent legal advice she entered into a Minute of Agreement with the executors through which she relinquished a bequest in order to settle the rent arrears.

Mr Reid submitted that it was clear that the Respondent was providing legal advice to the Secondary Complainer in the time leading up to the signing of the Minute of Agreement. Mr Reid submitted that it was clear that the Respondent should not have done so as there was a clear conflict of interest because the Respondent was acting for the executry.

Mr Reid lodged copies of previous Findings relating to the Respondent in a case which was considered by the Tribunal in September 2010. Mr Reid advised that these Findings related to a finding of professional misconduct against the Respondent in respect of a case involving a conflict of interest.

Mr Reid advised that in July 2014 the Respondent had instructed Mr McCann to negotiate a plea. Mr Reid indicated that the delay between July and the tendering of the plea related to the fine tuning of the plea but he wished the Tribunal to recognise that the Respondent had indicated at an early stage that he was willing to tender a plea

of guilty to professional misconduct and in so doing he had saved time, inconvenience and expense.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr McCann advised that he had lodged a number of legal references with the Tribunal and also two other recent productions referred to as R6 and R7. He stated that he had lodged a written plea in mitigation with the Tribunal which he wished to be taken as read into the record. Mr McCann advised that he had given a copy of his plea in mitigation to Mr Nicol.

Mr McCann stated that Production R6 was an up to date description of the firm which was to be added to the information contained in the plea in mitigation. Mr McCann indicated that the Respondent plays a major part in the work of the firm as one of only two equity partners.

In relation to the previous Findings Mr McCann submitted that this was not a case where the previous finding of misconduct can be considered as an aggravation in that following the finding the solicitor did the same thing again. Mr McCann indicated that such aggravation was lacking in this case because the case came through the Tribunal system later. Mr McCann stated that the decision of the Tribunal in the case of the previous Findings was made in 2010, well after the lease was entered into.

Mr McCann stated that the history of the case is clear from the emails lodged as productions. He advised that Mr A was a regular client of the firm who was seeking to purchase a commercial property. Mr McCann submitted that the chance to run a business from that property was something that the Secondary Complainer very much wanted. Mr McCann advised that Mr A bought the premises for around £250,000 and that the Secondary Complainer bought the stock following advice she got from a business adviser and the stock cost around £25,000.

Mr McCann submitted that the Solicitors (Scotland) Practice Rules 1986 regarding conflict of interest need careful reading as they contain an exception at paragraph 5 and then an exception from that exception. Mr McCann submitted that if Mr A and



the Secondary Complainer had been married the Respondent would not have done anything wrong in acting for them both. Mr McCann advised that cohabitants were dealt with separately and not recognised in law until the 2006 Act was enacted later that year.

Mr McCann stated that the Respondent as an experienced solicitor should have spotted that the change in instructions took him outside the scope of the rules. Mr McCann advised that the reality is that solicitors cannot act for landlords and tenants in any circumstances. Mr McCann accepted that the Respondent should have identified that it was wrong to continue to act for both parties.

Mr McCann asked the Tribunal to take into account that Mr A and the Secondary Complainer had taken advice from surveyors and accountants before proceeding with the lease. He advised that the Respondent did not provide advice on the business venture, all he did was take a standard lease style and fill in the blanks and for doing so he rendered a very small fee note. Mr McCann submitted that this was done by the Respondent in a desire to have the transaction completed quickly and cheaply to let his clients get on with running their business. Mr McCann submitted that the intention to help his clients was the driving force which led the Respondent into this difficulty. Mr McCann stated that the fee note went out addressed to Mr A but was sent to the Secondary Complainer and paid by her. Mr McCann submitted that this was evidence that they were working together in relation to the business. Mr McCann stated that the issuing of the fee note brought the first matter to a conclusion.

Mr McCann then referred to paragraph 12 of his written plea in mitigation and stated that by the stage when further sums were advanced to the Secondary Complainer that this was evidence that their dream of running a business in Callander was beginning to fade. Mr McCann advised that by then there was a progressive collapse of the economy and the business was trading into difficulties by this stage and would continue to do so.

Mr McCann referred to the issue of possible breaks in the lease and stated that his client was quite clear that he was not instructed to put these in. Mr McCann stated that breaks in a lease work both ways and submitted that had the financial situation

been different the landlord could have sought to increase the rent or bring the lease to an end and operate the premises himself.

Mr McCann stated that after Mr A's death he accepted that the correspondence shows that the Secondary Complainer was getting independent advice from Mr C. Mr McCann referred to a series of emails between the Respondent and the Secondary Complainer and accepted that the Respondent should have clearly advised the Secondary Complainer that he was an executor and he was acting for the executry. Mr McCann stated that the Respondent should have made clear to the Secondary Complainer that the Respondent was speaking to her as an agent for the executry and as an executor but he was not acting as her personal adviser. Mr McCann accepted that the Respondent should have made this absolutely clear particularly as the Secondary Complainer had previously been the Respondent's client.

Mr McCann submitted that a lot of what the Respondent was doing in the correspondence contained within the productions was intervening on behalf of the Secondary Complainer with the other executors. He stated that there was a long period of time when no one was properly appointed by the court to act as executors and during that period the nominated executors could not sign any legal deeds until their appointment was confirmed. Mr McCann submitted that the Respondent was basically trying to referee a family dispute.

Mr McCann referred the Tribunal to the extract which he had lodged from the ninth edition of Currie on Confirmation and stated that an executor needs to speak to the family and the people involved. However Mr McCann accepted that the Respondent he should have made his position clear i.e. that he was acting as an executor when he was sending this correspondence.

Mr McCann stated that in his view the Respondent was not obliged to withdraw from acting on behalf of the executry just because he had a different opinion from the other two executors. Mr McCann submitted that there was nothing wrong in the Respondent putting the Secondary Complainer's case to the other executors.

In response to a question from the Chairman as to how the Secondary Complainer came to waive her bequest, Mr McCann stated that she got advice from Mr C. He advised that the Respondent then wrote the letter of 3 May 2012 to Mr C setting out the terms of an agreement whereby the Secondary Complainer would renounce her legacy in return for her being released from the lease. Mr McCann stated that effectively the bequest was treated as a cash advance for debts already incurred under the 2010 Minute of Agreement and other debts. Mr McCann stated that the Respondent proposed this course of action and the Secondary Complainer and the other executors accepted it.

The Chairman asked if the Secondary Complainer owed Mr A any arrears of rent at the time of his death and also whether the sums advanced under the Minute of Agreement signed in 2010 were still due.

Mr McCann responded that he had no information regarding that and Mr Reid advised that he did not have any information either. The Chairman asked if there was any objection to him asking the Secondary Complainer's representative. There was no objection and the Chairman asked Mr Nicol that question. Mr Nicol advised that the loan was not in respect of any arrears of rent, it was for the purpose of opening another shop and that the £30,000 was fully repaid in 2010. Mr Nicol advised that there were no arrears of rent due at the time Mr A died.

Mr McCann then accepted that the £30,000 had already been paid and that the money due under the bequest was set off against rent arrears and future monies due under the lease. Mr McCann referred the Tribunal to Production 9 at page 30 of the Complainer's Inventory of Productions which was the registered Agreement dated 16 June 2012 between the executors and the Secondary Complainer. Mr McCann then referred the Tribunal to Mr C's letter on behalf of the Secondary Complainer offering to renounce the bequest which is Production 12 at page 35 of the Complainer's inventory. Mr McCann submitted that Mr C as an experienced lawyer must have advised his client that this deal was a good one for her. Mr McCann stated the important point was that the Secondary Complainer got independent advice and she was able to get out of the lease as the shop was doing very badly by this stage.

Mr McCann stated that a lot of what was discussed by the Secondary Complainer with the Respondent in the correspondence lodged were issues about disagreements with the family and her emotional turmoil following her partner's death and also how she had been treated by Mr A's children, by not being sufficiently mentioned at the funeral and not being given Mr A's ashes. Mr McCann stated that the Respondent had no intention of sending the Secondary Complainer a bill or a terms of business letter and never did.

Mr McCann asked that his written plea be taken as read into the record. That written plea was as follows:-

- “1. The Respondent was admitted as a Solicitor in Scotland on 26 October 1981 and from January 1984 to date he has been a partner in the firm of Mailers, Solicitors who carry on practice in Stirling, Alloa and at Bridge of Allan.
2. Prior to the events set out in this complaint and commencing in early 2006, the Respondent had a completely clear disciplinary record with the Law Society. He had been extensively involved in general practice for numerous clients, in conveyancing both residential and commercial, Executry estates and various aspects of Family Law, Civil Law and Criminal Law and had done so without client complaint. The Respondent accepts having a prior appearance before the Tribunal, on a matter of conflict of interest, deriving from events towards the end of 2006.
3. The Respondent was initially instructed, in the matters leading to this complaint, by Mr A for whom he had acted since about 2001. Mr A came to his office along with the Secondary Complainer Lorraine Taylor and he explained that they were in a relationship, were living together, and were engaged to be married. They wished to purchase a shop in Property 1 and also the business which was operated within that shop. The instructions to the Respondent were initially to purchase the property and the business in joint names. At that stage it would have been proper under the prevailing professional rules for the Respondent to act for both parties when purchasing a joint Title. A formal, written offer to purchase the property and the business

carried on therein was accordingly submitted by the Respondent, in the joint names of Mr A and Lorraine Taylor. That is item 1 of the Complainers' Inventory of Productions.

4. Almost immediately, and without any input from the Respondent by way of advice to, or any discussion with, either party, both Mr A and Lorraine Taylor instructed the Respondent's firm that they had altered their arrangements after consultation between themselves and a local firm of Chartered Surveyors Company 1, and also after advice from Perth - based Accountants Company 2. The altered arrangement was that the Title would be taken in the sole name of Mr A, who had separately instructed the firm of Mailers to sell his property at Strathyre and was putting up 100% of the funds for purchase of the Callander property in his sole name. The parties had also arranged, after consultation with these other sources of advice, that the Lease would be in the name of the Secondary Complainer Lorraine Taylor and details of the proposed lease including start-date, term, and an appropriate rent all agreed. Further an agreed valuation of the stock had been reached and she would purchase the stock from her own funds, so that upon the purchase of the property by Mr A she, having bought the existing stock, could operate the shop as a running business immediately on the date of entry to the property by Mr A. All this was arranged between the parties and without any input from the Respondent or anyone else at Mailers.
  
5. It is accepted by the Respondent that the change of circumstances, in regard to converting the plans of the parties from a joint Title into a landlord and tenant arrangement, should have caused the Respondent to realise that the allowance within the existing rules for him to act on both sides in the joint purchase, would cease immediately upon the conversion of the arrangement to one of landlord and tenant. The parties were not yet married although the Respondent understood that they planned to marry very soon. Nonetheless he should have realised that the rules simply did not allow the same Solicitor to advise a landlord and tenant, even in circumstances where they have agreed to marry, are living and planning their future together, have other sources of advice, and have agreed between themselves the terms that they wanted to be

inserted in the Lease. At the time, in early 2006, various important changes in the law were being incorporated in the Family Law (Scotland) Act 2006, particularly in regard to the rights of couples living together but unmarried and with the intention of bringing the rights and obligations of such “co-habitants” more into line with the existing law for married couples. However, that Act did not come into force until later in the year, and in any event the current professional rules on conflict have never been extended to include co-habitants, in regard to allowing a solicitor to act on both sides in a lease arrangement.

6. The Respondent was motivated by the desire to be helpful and was involved only to a limited extent in issuing a draft Lease in standard terms which he understood reflected exactly what they had already agreed. The draft lease which is item 6 in the Complainers’ Inventory was straight from his office styles, and constituted a document of ten pages with a schedule of standard provisions over a further twelve pages. The Respondent wrote to the Secondary Complainer Lorraine Taylor on 17 February 2006 by two separate e-mails sending her a copy of the draft lease and explaining that she should consider the option of early independent legal advice. Those e-mails are items 2 & 3 of the Complainers’ Inventory. The final version of the lease reflected the original draft with the insertion only of the terms averred in paragraph 2.4 of the Complaint, without significant alteration. The final draft of the lease was printed off after being sent by e-mail to the parties and was signed by them outside the Respondent’s office and before a single witness at Kippen on 22 February 2006, and returned to the Respondent’s office with a handwritten note by Mr A, which is produced as no 1 of the Respondent’s Inventory, and the signed lease is No 2 of that Inventory. The circumstances at the time indicated that the parties were still living together and very much working together on their project. It is accepted that the Respondent’s warning to her about separate advice was not sufficient to show compliance with the rules at the time, as the rules simply prevented him acting for landlord and tenant. The Respondent should have gone further and stated to Lorraine Taylor that the professional rules prevented him acceding to their request that he help with a draft lease in the terms they had on separate advice agreed, as that separate

advice was not legal advice. Alternatively, he could under the existing rules have clarified to her that he could act for one side only, and in drawing the lease and sending it to her, she should take advice which failing she should be aware that this was a significant legal document etc. Although the parties were still co-habiting and working wholly together, and there was no apparent conflict, the Respondent should have identified all these relevant factors in the situation and should have insisted that Lorraine Taylor have independent advice at that stage.

7. The Respondent is quite clear that the draft Lease which he sent to Lorraine Taylor with the warning about independent legal advice was in exactly the terms instructed by both. He has a recollection of interviewing both and is sure that as an experienced Solicitor he would have mentioned the option of breaks in the Lease. However the position as he understood it from both parties was that they had advice on all of that already, that there were tax implications of the way the whole transaction was to be structured, that the value of the rental of the Lease had already been agreed on separate expert advice, and the selected term without breaks had been decided upon to give the tenant a degree of security over the term of ten years.
8. The Secondary Complainer Lorraine Taylor did not, until about 2011, raise a complaint or any issue with the Respondent's firm as to whether or not there should have been a break in the Lease at three or five years, or both, which she later alleged. That allegation emerged in her complaint to the Scottish Legal Complaints Commission which the Commission intimated by letter of 8 October 2012. The Commission excluded that allegation as being time-barred on the view that from the draft Lease that they saw it was perfectly understandable to anyone reading the Lease that there were no breaks in it. Those headings of complaint were accordingly excluded by the SLCC who looked at the matter only as a conduct issue and referred it on to the Law Society leading to this complaint before the Tribunal. The SLCC's letter dated 22 October 2012 is produced as Item 4 of the Respondent's Inventory.

9. In any event the Respondent understood that the complainer Lorraine Taylor had run a business with her first husband, and had subsequently taken an MBA at Durham University in Business Studies of which achievement she was very proud. Before she bought the shop in Callander in February 2006 she had been a business adviser in Stirling and had lectured and led seminars on such matters. She continued to practice during the relevant period as “LKT Business Solutions”, and on any view was a very experienced person in business matters.
  
10. The Respondent is quite clear that he was not asked to insert breaks or indeed to advise either party separately on any other aspect of the Lease but rather he simply reflected the joint instructions of the parties. He acted in good faith and out of a desire to help the parties, without thinking through the implications of the change in the plans of the parties whereby he should not have acted at all and he failed to realise that by being helpful he was laying down trouble for himself in the future.
  
11. The Respondent on 9 March 2006 intimated a very modest Fee Note of £200 plus VAT plus the Stamp Duty which was attracted by the terms of the Lease. That VAT invoice No 3 of Respondent’s Inventory was addressed to Mr A but with a covering letter to Lorraine Taylor and may well have been paid to the Respondent’s firm by the Secondary Complainer Lorraine Taylor because both parties were living together and working together in a wholly co-operative way as regards all aspects of the matter. There was no hint to the Respondent or anyone else in Mailers of an actual conflict in the instructions, in the sense of the two parties wanting different things. Rather, this case reflects a failure by the Respondent to apply his mind to the regulations following the change of the plans of the parties and to correctly identify that he should not act or advise on the Lease part of the arrangement at all but should have referred the Secondary Complainer Lorraine Taylor to independent advice.
  
12. The Respondent heard nothing further about the lease after the events of February 2006. At one point, in about October 2009 the Respondent was told



by Mr A that he had been advancing further sums to assist Lorraine Taylor in developing the business, and that both parties wished these transactions recorded in a personal bond or similar document. The Respondent declined to act for both, and referred Mr A to the local firm of Company 3. A Loan Agreement and addendum were drawn up acknowledging Lorraine Taylor's indebtedness to Mr A for a total of £30,896.99 at that stage, i.e. 14<sup>th</sup> January 2012. Those are items 23 & 24 of the Complainers' Inventory.

13. Mr A died on 3 February 2011 and prior to his death Lorraine Taylor had been his carer during his illness. Following his death his Will appointed his son and daughter and the Respondent as joint executors. The issues between the executry and Lorraine Taylor remained unresolved during the remainder of 2011, during which period the usual investigations and the adjustment of Inheritance Tax took place, leading to the issue of Confirmation in favour of the three executors on 5 December 2011. The Respondent faced the difficulty that the Complainer Lorraine Taylor was on very poor terms with the other 2 executors. She was in regular touch with him to discuss not only issues arising from the shop lease, but also her unhappiness with the way she was being treated by the other 2 executors. She felt that her tenancy of the shop should be dealt with as a family relationship rather than as a commercial one. The Secondary Complainer told the Respondent that she was taking advice from her own accountants, bankers, and solicitors to resolve matters. The e-mail No 31 of the Complainers' Inventory shows her having taken separate advice in April 2011 from her niece who was a solicitor, and No 30 is an e-mail from a Mr D who is a very experienced solicitor who had been advising her and had checked with Mr Bruce Ritchie at the Law Society as to the prevailing rules at the time. However it remained unclear whether Lorraine Taylor would continue with the independent advice she had taken. She continued to 'phone the Respondent, and he did try to speak to her as sympathetically as possible. In March 2011 after the death of Mr A she asked him to meet with her to put a proposal to the executors. The Respondent agreed to frame a letter setting out her proposals, and on 5 March 2011 wrote to Lorraine Taylor confirming both that he was an executor, and that his firm would be acting for the Executry. That letter is item 20 of the Complainers'

Inventory. As is evidenced by the Complainers' productions 19 through to 30 and 31, the Respondent's difficulties were compounded by the attitude of the other two executors, and he was often in the position of interceding for Lorraine Taylor to achieve a less strict view of her position in the eyes of the other two executors. The resolution of her dispute with the executry was eventually reached by a Minute of Agreement after she had gone to independent advice from Company 4. It was Mr C who advised her to offer to abandon her claim for a legacy under the Will of £55,000 in return for the cancellation of other substantial claims that had arisen from the operation of the Lease over the years, and he set out that proposal to Messrs Mailers by letter of 25 April 2012. All that is evidenced by items 7,10,11, & 12 of the Complainers' Inventory. The Respondent thought that as an executor, particularly in the circumstances where he was in the district and the other two executors were in England and some distance away, it was proper for him to speak to the complainer, rather than refuse to take her calls. He had no thought of issuing her with a Fee Note or Terms of Business and did not do so. Rather he viewed himself as necessarily having to communicate with anyone having an interest in the executry, and as a Trustee and executor himself along with the other co-executors, he had a duty to enter into such contact with persons who had issues with the executry, which is a necessary part of the duties of any executor or group of executors in dealing with all the problems arising from a death and eventually winding up the estate.

14. The Respondent understands that the view of the Law Society is that the conflict had existed from the moment he accepted instructions to give the parties the draft Lease in February 2006, and continued up to the time that Lorraine Taylor, actually went to independent advice from Company 4 in the spring of 2012 and thereafter entered into the Agreement to resolve her issues with the executry. However he was not motivated by anything other than a desire to be polite and sympathetic to Lorraine Taylor, who had been his client in other matters. She often expressed to him how unhappy she was at the various events in her personal life, including the late Mr A having gone back on his engagement that they would become married, and how she was then his carer in his illness without any help from the family. The type of issue which

she raised was often family and emotional, rather than legal. The entire negotiations and final agreement between Lorraine Taylor and the executors, to resolve all her issues with the estate, were conducted only after she had been to independent advice.

15. The Respondent deeply regrets his error in this case and has been very anxious and remorseful throughout the process. He has instructed that a plea of guilty and a suitable plea in mitigation be offered as soon as possible to minimise inconvenience to the Law Society and to the regulatory system as a whole. He undertakes to be extremely careful about observance of the rules in the future and not to fall prey to the desire just to be helpful without thinking things through. He will take independent advice on all situations where issues arise in regard to proper observation of the various compliance rules within the profession. He has made arrangements in his firm since the previous matter emerged and was taken to the Tribunal, to ensure that where the solicitors within the firm are effectively being treated as the family lawyers by different branches and members of families within the firm's client base, that the type of conflict that can be unexpected or undetected will be dealt with properly and professionally. His firm now contact the Law Society regularly, as often as five or six times a year for a waiver or alternatively guidance on potential conflict situations. He will take every possible step to see that this type of regrettable situation will never recur."

Mr McCann stated that in conclusion he wanted to address two other matters, firstly to stress that the firm of Mailers now takes a very robust view in relation to potential conflicts of interest and often go to the Law Society to get waivers where appropriate. Secondly, Mr McCann referred to Respondent's Production R7, a letter from the Respondent to the Secondary Complainer offering a sincere apology and compensation of £2000. Mr McCann stated that the offer of compensation had been rejected but was still on the table. Mr McCann stated that he had no further submissions to make other than that he accepted that the usual orders should be made for publicity and expenses.

## QUESTIONS BY THE TRIBUNAL

The Chairman asked Mr Reid if the Tribunal was only concerned with the factual circumstances up to the signing of the lease in 2006.

In response Mr Reid stated that this was not correct and he had lodged emails showing that advice was given to the Secondary Complainer after Mr A's death. These emails included draft emails prepared for her comments. Mr Reid submitted that one of these emails showed that the Respondent was aware that he should not have been purporting to act for the Secondary Complainer at this stage.

Mr Reid then advised that he would refer the Tribunal to a number of emails. He firstly referred the Tribunal to Production 29 at page 63 of the Complainers' Inventory of Productions, an email dated 3 October 2011 from the Respondent responding to the Secondary Complainer's enquiries about the lease and the break clauses.

Mr Reid then referred the Tribunal to Production 28 at page 62 of the said Inventory and directed the Tribunal to the last paragraph of the email where the Respondent states -

*“As I am now advising you on this matter, it is probably best that you do this yourself directly to Mr B and then let me know what he says. If you wish to run the draft of such notice past me, please do so.”*

Mr Reid then referred the Tribunal to Production 27 at page 60 of the said Inventory where the Respondent is replying to the Secondary Complainer when she is asking for advice. Mr Reid submitted that the tone of that email was giving her advice and that this continued in Production 28 of the said Inventory.

Mr Reid then referred the Tribunal to page 49 of the said Inventory at Production 20, a letter from the Respondent to the Secondary Complainer dated 5 March 2011-

*“As regards the shop, I understand your position and what you want to achieve. As we discussed, I think that the best way forward is to write to Mr B and put to him the prior agreement that you had reached with Mr A.*

*I enclose a draft of a letter for your information and approval before I send it.*

*I think that it is worth mentioning at this stage that I am keeping an eye on my own position in this situation. While there may not be an actual conflict of interest, it is possible that there may be a duality of interest on my part and I am not keen to find myself in a position that I have to defend my actions that either you or Mr B feel that I am being disingenuous – or worse.”*

Mr Reid submitted that in the last paragraph above there is a hint that the Respondent is aware that he is getting himself into difficulty with a conflict of interest.

Mr Reid then referred the Tribunal to Production 14 at page 39 of the said Inventory, an email of 9 January 2012 sent by the Respondent to the Secondary Complainer which quoted from an email sent by the Respondent earlier that day to Mr B, the son of Mr A, on behalf of the Secondary Complainer.

*“As you will appreciate, Lorraine was and, in certain respects still is my client but of course I am reluctant to find myself acting on both sides of a dispute. I think that Lorraine is looking for some clarification and has come to me as one of your father’s executors if not also, as someone she knows.”*

Mr Reid stated that the tone of the above communication reflects a solicitor trying to help the family; but he submitted that it is the position of the Law Society that the Respondent should have withdrawn from acting for the executry at this stage.

Mr McCann stated that in relation to the email where the Respondent said *“if I have a conflict”* that the Respondent did not realise that he already had a conflict by that stage. Mr McCann submitted that a lot of the emails contained within the productions arise from the Secondary Complainer emailing the Respondent after speaking to the executors. Mr McCann accepted that the Respondent failed to tell the Secondary

Complainer that she needed to get a legal adviser as he was not able to act as her legal adviser.

Mr McCann submitted that neither in 2006 when the lease was prepared nor in 2011 or 2012 did the Respondent ever do anything against the Secondary Complainer's interests. Mr McCann submitted that the Respondent was merely being a referee in a family dispute.

The Chairman asked Mr McCann why, after being found guilty of professional misconduct in 2010, was the Respondent not aware that he was acting in a conflict of interest situation in this case. The Chairman asked whether the Respondent had ever taken any steps to educate himself as to what he should have been doing in this case.

In response Mr McCann stated that the Respondent did not get any help from the Legal Defence Union helpline at this stage. He submitted that the Respondent, together with his colleagues in the firm, now takes a very strict line in relation to potential conflicts of interest. Mr McCann advised that the firm now take advice from the Law Society and seek the necessary waivers.

Mr McCann stated that in his view, the more serious sanctions of striking off, suspension or supervision should not apply in this case as he submitted that it is not really a case where there is a previous finding of professional misconduct for an analogous matter. Mr McCann stated that the Tribunal could take comfort from the robust position that the firm are now taking regarding possible conflicts. Mr McCann submitted that if the Respondent's practising certificate was restricted there would be a drastic effect on the others in the firm as there are only two equity partners. Mr McCann stated asked the Tribunal to Censure his client and impose a fine and compensation in view of the significant mitigation.

A member of the Tribunal suggested to Mr McCann that the productions show that the Secondary Complainer stated that she asked for break clauses in the lease but noted that the Respondent says that she did not. Mr McCann was asked if that was correct. In response Mr McCann advised that the Secondary Complainer clearly signed the lease without the break clauses and stated that this matter was not before

the Tribunal because the SLCC found it was time-barred. Mr McCann stated that the Secondary Complainer had received advice from accountants and surveyors regarding the lease and the Respondent's position is that he drafted the lease in accordance with what was asked of him. Mr McCann submitted that there was no evidence that a break clause was asked for.

The Chairman suggested that the Respondent should have advised the Secondary Complainer that it would be best for her if she considered break clauses and stated that in such a case a solicitor is bound to ask about this. In response, Mr McCann stated that it was the Respondent's position that he did discuss break clauses with the Secondary Complainer and that the fact there is no break clause was part of the deal she negotiated with her advisers. Mr McCann advised that this had always been his client's position.

The Chairman stated that there was a big difference as to whether break clauses were discussed or not and there may need to be a proof in mitigation. He asked Mr Nicol what his position was. Mr Nicol responded that the Secondary Complainer's position was that break clauses were never discussed with her.

Mr McCann stated that the issue about the lack of a break clause was not part of the Complaint before the Tribunal. He advised that this matter had been already been dismissed by the SLCC. Mr McCann stated that there are no averments in the Complaint that the Respondent had been instructed to put in a break clause and did not do so.

The Chairman indicated that in his view this issue does not affect the issue of misconduct but would be relevant to the potential level of compensation. Mr McCann stated that he did not accept that the Respondent acted cynically and submitted that the Tribunal could not infer that. Mr McCann stated that there were no averments before the Tribunal that the Respondent failed to give obvious advice. Mr McCann stated that he did not have notice of that.

## DECISION

Despite the Respondent's admission of professional misconduct, the Tribunal required to be satisfied that the facts he had admitted met the test set out in the case of Sharp.

The Tribunal considered the terms of the Complaint as amended, the submissions made by both parties and the documents lodged. The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v- The Council of the Law Society of Scotland [1984 SC 129]. The Tribunal was of the view that the Respondent should have immediately withdrawn from acting for both parties in 2006 after their instructions changed and should have realised that to continue to act for both parties in a commercial lease was a breach of the Practice Rules which are very clear in this regard. The Tribunal considered that it was impossible in practice to be able to advise both a landlord and a tenant as to what was best for them in relation to a commercial lease. The Tribunal also considered that in 2011 and 2012 when the Respondent was dealing with the administration of Mr A's estate that he was clearly acting in a conflict of interest situation by continuing to act for the Secondary Complainer at that time albeit in an unpaid capacity.

In all the circumstances the Tribunal considered that such clear breaches of the Practice Rules would be viewed by the profession as serious and reprehensible departures from the standards expected from a competent and reputable solicitor. The Tribunal therefore considered that the Respondent's conduct amounted to professional misconduct.

The Tribunal had regard to the previous Findings relating to the Respondent from 2010 which also involved a conflict of interest. The Tribunal did not agree with Mr McCann's proposition that these Findings did not represent an aggravating factor in this case as they related to circumstances which predated the transaction in 2006. The Tribunal noted that the earlier case was disposed of in September 2010 and considered that following that case the Respondent should have exercised extreme caution to avoid any possible cases of conflict of interest in future. The Tribunal noted that despite the findings by the Tribunal in 2010 the Respondent became involved in



2011 in providing advice to the Secondary Complainer regarding a dispute involving an executry in which he was not only one of three executors but also the solicitor dealing with that executry. The Tribunal considered it to be a matter of concern given the previous Findings against him that the Respondent should have acted in this way.

However, the Tribunal noted that unlike the previous case there was no suggestion that the Respondent's failings were commercially motivated. The Tribunal noted that a very modest fee had been charged in relation to the preparation of the lease in 2006 and that the Secondary Complainer had not been charged any fees in relation to the correspondence in 2011 and 2012. The Tribunal accepted that the Respondent had acted out of a desire to be helpful.

The Tribunal took into account that the Respondent co-operated with the Complainers from a very early stage and had shown insight into his errors of judgement. The Tribunal also noted that the Respondent had appeared personally before the Tribunal, admitted his failures and had taken steps along with his colleagues in the firm to prevent a reoccurrence of such failures.

The Tribunal considered carefully whether the imposition of a restriction on the Respondent's practising certificate was necessary to protect the public. However, the Tribunal was persuaded by Mr McCann's submissions that the Respondent has shown full insight into his failures and has taken steps to ensure that he and his firm are now taking a robust view in relation to all potential conflicts of interest and so decided that it was not necessary to impose a such a restriction. However, the Tribunal considered that in all the circumstances a substantial fine of £5000 should be imposed in addition to a Censure. The Tribunal ordered that the Respondent be liable for the expenses of the Tribunal and of the Law Society in respect of this Complaint and made the usual order in relation to publicity.

The Tribunal noted that it was stated within the Complaint that the Secondary Complainer claims to have been directly affected by the Respondent's misconduct and wishes to seek compensation for loss resulting from that misconduct and that the issue of compensation is not agreed by the parties. The Tribunal fixed a preliminary hearing for 15 December 2014 and allowed Mr Nicol three weeks to lodge a Minute

seeking compensation and Mr McCann three weeks in which to lodge Answers to that Minute. In relation to the expenses of the Secondary's Complainer the Tribunal intimated that a decision regarding such expenses will be made after the decision regarding compensation.

**Alistair Cockburn**

**Chairman**