

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

F I N D I N G S

in Complaint

by

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

against

**RODERICK GRAHAM MICKEL,
formerly of Graham Mickel & Co.,
38 James Square, Crieff and now
St Ives, Perth Road, Crieff**

1. A Complaint dated 12 December 2011 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Roderick Graham Mickel, formerly of Graham Mickel & Co., 38 James Square, Crieff and now St Ives, Perth Road, Crieff (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 29 March 2012 and notice thereof was duly served on the Respondent.
4. The hearing took place on 29 March 2012. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The

Respondent was present and represented by Derek Robertson, Solicitor, Alexandria.

5. A Joint Minute was lodged admitting the averments of facts, duty and misconduct in the Complaint. No evidence was led.

6. The Tribunal found the following facts established

6.1 The Respondent is a Solicitor enrolled in Scotland. The Respondent was born on 17 October 1951. He was admitted as a Solicitor on 25 October 1977. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 11 November 1977. From 2 April 1979 to 31 July 1988 he was a Partner in the firm of S Graham Mickel & Company, WS. From 1 August 1988 to 7 May 1993 he was a Partner in the firm of Drysdale Mickel and Anderson, Crieff. From 8 May 1993 to 22 September 2010 he was the sole Partner of Graham Mickel & Co, WS, 38 James Square, Crieff.

6.2 On or about 20 July 2010 the Complainers received a complaint from Mrs A, of Property 1 in relation to the actings of the Respondent in respect of the purchase of a piece of ground bounding her property.

6.3 The Complainers wrote to the Respondent on 7 December 2010 intimating a list of issues.

6.4 In or about May 2007 Mrs A consulted the Respondent in respect of her wish to purchase a piece of ground referred to as Property 2. She understood that the ground might be owned by Mr and Mrs B and that Mr B was already a client of the Respondent.

Prior to Mrs A consulting the Respondent, she had written to Mr B offering to purchase the piece of ground. As a consequence of her letter, Mr B consulted the Respondent.

On 19 October 2007 the Respondent wrote to both Mrs A and Mr B apologising for his delay in examining the Titles but advising that he would deal with the matter following his return to the office on 25 October 2007.

On 12 November 2007 Mrs A wrote to Mr B indicating she understood he owned the whole piece of ground and offered to purchase it.

On 19 November 2007 Mrs A wrote to the Respondent advising that Mr B had confirmed the ground belonged to him and that he was prepared to sell it to her.

6.5 On 27 November 2007 the Respondent wrote to Mr B advising that he had instructions to act on behalf of Mrs A in completing the purchase of the piece of ground.

On 26 December 2007 Mrs A signed and dated a letter to Graham Mickel & Co acknowledging that she was aware they acted for Mr B and confirming she had agreed with Mr B the purchase price for the piece of ground and confirming instructions to act, not only on behalf of Mr B but also on her behalf in relation to the transfer of title to the areas of ground at the agreed price.

6.6 On 3 March 2008 Mrs A emailed the Respondent attaching a note which raised various issues in relation to the terms of the disposition in respect of her requirements as previously advised to the Respondent.

At the end of March/start of April 2008 a disposition with an annexed plan was forwarded by the Respondent to the Registers of Scotland for first registration. A receipted Form 4 was received by the Respondent on 8 April 2008.

6.7 On 7 April 2008 the Respondent faxed Messrs Millar and Bryce requesting a copy of titles for Property 3, a property owned by Mr C, one of Mrs A's neighbours.

6.8 After further correspondence and examination of title deeds, it became apparent that the piece of ground, Property 2, had not been owned by Mr B but was owned by Mr C. Ultimately, by an email dated 21 October 2009, the Respondent informed Mrs A that Property 2 did not form part of Mr B's title.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 his acting for two clients in the same conveyancing transaction when one of the clients was not an established client and there was accordingly a conflict of interest in breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986.

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

Edinburgh 29 March 2012. The Tribunal having considered the Complaint dated 12 December 2011 at the instance of the Council of the Law Society of Scotland against Roderick Graham Mickel, formerly of Graham Mickel & Co., 38 James Square, Crieff and now St Ives, Perth Road, Crieff; Find the Respondent guilty of Professional Misconduct in respect of his acting for two clients in the same conveyancing transaction when one of the clients was not an established client and there was accordingly a conflict of interest in

breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant and to being supervised by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least three years; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Malcolm McPherson

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

A Joint Minute was lodged in which the averments of facts, duty and misconduct in the Complaint were admitted. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that a Joint Minute had been lodged and that he was grateful for Mr Robertson's help with agreeing the terms of that Joint Minute. Mr Reid advised the Tribunal that in terms of the Joint Minute everything in the Complaint was admitted. Mr Reid advised that this was a straightforward matter. He referred the Tribunal to Rule 3 of the Solicitors (Scotland) Practice Rules 1986 which state that a solicitor shall not act for two or more parties whose interests conflict. He advised the Tribunal that there is an exception contained in Rule 5 of those Rules if both parties are established clients. However he advised that Mrs A was not an established client. Mr Reid stated that essentially Mrs A sought to purchase a piece of ground from Mr B, her neighbour. He advised that the transaction got to the disposition stage before a problem was identified. It transpired Mr B did not own the land in question. Mr Reid stated that the problems in the transaction developed from there.

Mr Reid made reference to previous Findings against the Respondent dated 29 July 2008 and lodged a copy of those. Mr Reid stated that he had nothing further to add to the circumstances as outlined in the Complaint.

SUBMISSIONS FOR THE RESPONDENT

Mr Robertson stated that the previous Findings were admitted. He advised that Mr B was an existing client of the Respondent and that Mrs A was not. Mr Robertson submitted that had Mrs A been an existing client the Respondent could have dealt with the transaction and that those circumstances would not have been unusual in a rural practice.

Mr Robertson stated that the Respondent's recollection was that both clients had consulted him advising him that they had struck a deal for the purchase of the land.

Mr Robertson accepted that the Respondent should have raised the issue of the conflict at this stage and that he did not do so. Mr Robertson advised that Mrs A is a lady of some resilience and stated that her instructions were given more in the nature of a command rather than a request. He advised that faced with her strong personality the Respondent did not raise the issue of conflict. Mr Robertson stated that the Respondent knows that he should have refused to act for Mrs A in this case and was not submitting this explanation as an excuse.

Mr Robertson stated that the Respondent is a third generation solicitor whose grandfather and father had previously owned his practice. He had been trained that his function was to help people. He found it hard to turn away clients, feeling that he was letting them down. At the time of the conflict of interest he was a sole practitioner and therefore had no one to turn to for support. Mr Robertson submitted that in a busy office the Respondent would have been able to speak to another colleague regarding this delicate situation.

Mr Robertson stated that to his credit the Respondent made it clear to Mrs A that Mr B was an existing client. She acknowledged that and was content for the transaction to proceed with the Respondent acting for both parties.

Mr Robertson advised that the land in question was a small piece of ground valued at around £2,000. He explained that Mr B owned a large house with a lot of land adjacent to it and had sold off pieces of land over the years. Mr Robertson stated that Mr B had believed that he owned the land in question but that turned out not to be the case. Mr Robertson advised that when the Respondent explained to Mrs A that there were concerns regarding the title, he advised her that he would not render a fee until she got the Land Certificate and Mrs A was happy to accept that.

Mr Robertson advised that this transaction ended up being a very complicated matter and in the end Mrs A did not get title to the land, but she got her money back. Mrs A also got £850 compensation awarded to her by the Law Society in relation to a finding of Inadequate Professional Service. Mr Robertson submitted that the only loss suffered by Mrs A was her expectation of obtaining the piece of land in question.

However, Mr Robertson submitted that it was not the conflict of interest which caused the problem, it was a lack of title.

Mr Robertson advised that this matter was a source of serious concern to the Respondent and he genuinely felt that he had let Mrs A down. Mr Robertson stated that the Respondent is a man of integrity who has not taken this matter lightly. The Respondent was suffering from health problems around the time that this transaction occurred and probably for some time before. Mr Robertson submitted that the 2008 Findings are an indication that the Respondent was getting in to difficulties with his practice and not seeing things clearly. However Mr Robertson submitted that the Findings were not analogous and that the Tribunal should take that into account.

Mr Robertson advised that following the Respondent's appearance before the Tribunal in 2008 he had other problems as well, it became too much for him and he suffered a breakdown in health. Mr Robertson stated that the Respondent went voluntarily to the Law Society in 2010 and advised them of his problems and agreed to be suspended from practice. He was sequestered in October 2010 and has only recently been discharged from that sequestration. He has not been in practice for over two years.

Mr Robertson advised the Respondent is currently working full time as a delivery driver earning a modest wage in a job which involves much less stress. The Respondent relies on his wife for financial support. Mr Robertson submitted that the Respondent was not in a position to pay a fine. Mr Robertson submitted that this was a case at the very lower end of the scale in relation to breaches of Rule 3. Mr Robertson submitted that the Respondent was in practice for 30 years with no problems and stated that this breach would not be repeated as the Respondent has no intention of returning to practice. Mr Robertson submitted that whilst he was reluctant to make a suggestion regarding sanction, he was of the view that the appropriate sanction in this case might be a censure.

DECISION

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 considered that acting for both parties in this transaction involved a clear conflict of interest and breach of the 1986 Practice Rules. The Tribunal considered that the Respondent having acted for both parties in a conveyancing transaction where both were not existing clients could be regarded by competent and reputable solicitors as a serious and reprehensible departure from the standards expected from those within the profession. Having considered all the circumstances, the Tribunal concluded that the Respondent's actions constituted professional misconduct.

In considering sanction, the Tribunal noted that the misconduct was related only to a single transaction. The Tribunal noted that the Respondent had appeared before the Tribunal, had candidly admitted his failure and had shown a keenness to have the matter resolved. The Tribunal noted the previous Findings against the Respondent but considered these not to be analogous and took into account the Respondent's lengthy unblemished record in the profession prior to those Findings. The Tribunal also took into account the fact that the Respondent had shown insight into his failures by voluntarily leaving the profession two years ago. In all the circumstances the Tribunal considered that the Respondent's failure was at the lower end of the scale of professional misconduct.

However, the Tribunal was concerned about the risk of this failure being repeated should the Respondent decide to return to the profession at a later date and again be put under pressure by clients. Taking into account all the circumstances including the previous Findings and the fact that the Respondent has not practised for two years the Tribunal considered that it was necessary for the protection of potential future clients that the Respondent's practising certificate should be restricted if he decides to return to practice and that he be supervised for an aggregate period of three years. The Tribunal did not consider it necessary to impose a fine in addition to the restriction given that the Respondent has already paid compensation in relation to an Inadequate

Professional Service Complaint made by his client arising out of this matter. The Tribunal made the usual order with regard to expenses and publicity.

Vice Chairman