

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

DECISION

**in Appeal under Section 42ZA(9) of the
Solicitors (Scotland) Act 1980 as amended**

by

**ALAN CONROY, Conroy McInnes Limited,
268 Kilmarnock Road, Glasgow**

Appellant

against

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

First Respondents

and

**RAJESH HIREMATH, 10 Eskfield Grove,
Dalkeith**

Second Respondent

1. An Appeal dated 24 June 2021 was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42ZA(9) of the Solicitors (Scotland) Act 1980 by Alan Conroy, Conroy McInnes Limited, 268 Kilmarnock Road, Glasgow (hereinafter referred to as "the Appellant") against the Determination and Directions made by the Council of the Law Society, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the First Respondents") dated 13 May 2021 and intimated to the Appellant and Second Respondent on 8 June 2021. The First Respondents' determination upheld a complaint of unsatisfactory professional conduct made by Rajesh Hiremath, 10 Eskfield Grove, Dalkeith (hereinafter referred to as "the Second Respondent") against the Appellant.

2. In accordance with the Rules of the Tribunal, the Appeal was formally intimated to the First Respondents and the Second Respondent. No Answers were lodged for the First

Respondents. Initially, the Second Respondent did not enter proceedings. The Appellant and the First Respondents lodged a Joint Minute on 13 August 2021 inviting the Tribunal to quash the determination of the First Respondents under Section 53ZB(1) of the Solicitors (Scotland) Act 1980. The Tribunal extended the period for lodging Answers to allow the Second Respondent an opportunity to enter the proceedings. The Second Respondent lodged Answers.

3. In terms of its Rules, having considered the Appeal and Answers, the Tribunal set the matter down for virtual procedural hearings on 4 October 2021, 17 November 2021, and a virtual preliminary hearing on 27 April 2022. An Interlocutor and Note was issued to parties following the virtual preliminary hearing. The Tribunal set the matter down for a hearing on 22 June 2022. Notice of the hearing was served on the parties.
4. At the hearing on 22 June 2022, the Appellant was present and represented by Ian Ferguson, Solicitor, Glasgow. The First Respondents were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Second Respondent was present and represented by D. Kordell Fournier, a Canadian solicitor and barrister not on the Roll of Solicitors in Scotland.
5. Having considered the submissions made by the Appellant and the Respondents, together with the documents before it, the Tribunal upheld the Appeal and quashed the determination, censure and directions of the First Respondents. It invited written submissions on publicity and expenses to be lodged by 6 July 2022.
6. The Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 22 June 2022. The Tribunal in respect of the Appeal under Section 42ZA(9) of the Solicitors (Scotland) Act 1980 by Alan Conroy, Conroy McInnes Limited, 268 Kilmarnock Road, Glasgow (“the Appellant”) against the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (“the First Respondents”) dated 13 May 2021 upholding a complaint of unsatisfactory professional conduct made by Rajesh Hiremath, 10 Eskfield Grove, Dalkeith (hereinafter referred to as “the Second Respondent”) against the Appellant, censuring the Appellant and directing that he pay a fine of £1,200 and compensation of £5,000;

Quash the determination, censure and directions of the First Respondents; and Allow parties to lodge written submissions on publicity and expenses by 6 July 2022.

(signed)

Benjamin Kemp

Vice Chair

7. Written submissions were lodged by parties. The Tribunal convened to consider these submissions on 9 August 2022. Having given careful consideration to the submissions, the Tribunal pronounced an interlocutor in the following terms:-

By Video Conference, 9 August 2022. The Tribunal find no expenses due to or by any party and directs that publicity be given to this decision and that this publicity should include the names of the parties.

(signed)

Benjamin Kemp

Vice Chair

8. 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 Appellant, the First Respondents and the Second Respondent by recorded delivery service on **27 SEPTEMBER 2022**.

IN THE NAME OF THE TRIBUNAL



Benjamin Kemp
Vice Chair

NOTE

At the virtual hearing on 22 June 2022, the Tribunal had before it the Appeal, the documents lodged with the appeal (the decision of the Professional Conduct Sub Committee 13 May 2021, report of 7 October 2020 and supplementary report of 4 May 2021), a Joint Minute signed on behalf of the Appellant and the First Respondents, Answers for the Second Respondent, a letter from the Fiscal to the Second Respondent dated 3 August 2021, a letter from the Second Respondent to the Tribunal Office dated 23 August 2021, a Minute of Amendment for the Appellant, and two Inventories of Productions and Authorities for the Appellant. At the start of the hearing, at the Tribunal's invitation, the Fiscal also lodged a letter from the Appellant to the First Respondents and a typed note of a meeting on 17 June 2019 prepared by the Appellant, these items having also been available to the Professional Conduct Sub Committee (PCSC).

SUBMISSIONS FOR THE APPELLANT

Mr Ferguson said it was unusual for the First Respondents to enter into an agreement to concede an appeal. It was an indication that something was very wrong with the PCSC's decision. A hearing was only required because of the actions of the Second Respondent. The Appellant and the First Respondents were agreed that the incorrect identification of a "red flag" was material to the decision on unsatisfactory professional conduct. The PCSC had also made an error of fact by wrongly stating that the property was being sold under value. The Appellant's file entry reflected that the client was selling at a big loss. This was indicative of property values falling, not that the property was being sold under value. The PCSC had disregarded the Reporter's recommendations without explaining why it had reached its decision.

A man claiming to be the Second Respondent called the Appellant asking to sell his property. The Appellant met him and was provided with a driving licence and utility bill. They discussed the offer and the fact the loss was due to the decline in Govanhill. This was a private, off market sale. There was no survey report, and no home report was required. It is not unusual for buyers in England to purchase property in Scotland. It is not unusual for companies to buy properties. Many landlords operate in corporate form. The Appellant wrote to his client at the Second Respondent's address enclosing the disposition. The "GDPR Addendum" was returned and signed by "Rajesh Hiremath". The signed disposition was sent back. This indicated to the Appellant that the client lived in the property. The client got in contact with the Appellant when requested.

Mr Ferguson submitted that there was nothing in the AML guidance which refers to driving licences having precise measurements or that they should be subject to any particular detailed checks. The form of driving licences changes from time to time. The photograph was a good likeness, albeit of a false person. Mr Ferguson referred to the AML Toolkit produced by the First Respondents. There is some guidance about what a driving licence might look like, but it does not specify what the numbers mean. There is no information about dates or measurements. This guidance was not referred to by the PCSC. The members of the PCSC compared the driving licence in question to their own. The Appellant and members did not know that this special knowledge question was going to be raised. Crucially, there was no report from the DVLA to confirm the licence was a forgery. This may be a genuine licence from the DVLA issued to a fraudster.

Mr Ferguson referred the Tribunal to the second list of documents for the Appellant. He had lodged copies of various driving licences. They were all different. There was no absolute rule on the form of driving licences. It was not possible for the members of the PCSC to make a diagnosis with reference to elements of their own driving licences. He submitted that one of the PCSC members had “hijacked” the committee.

In Mr Ferguson’s submission, there was no significant difference between the 2007 and 2017 AML regulations. It was not important that the Appellant had incorrectly referred to the 2007 regulations after the 2017 regulations were in force. He was complying with the 2017 regulations.

Mr Ferguson noted that once the problem was discovered he told the Second Respondent to get independent legal advice. The title sheet was amended on 5 October 2020 to show the Second Respondent was the owner of the property. The Second Respondent and his letting agent failed to provide information to assist the Appellant in tracing the fraudster.

Mr Ferguson said it was not suspicious that the home was not advertised for sale. This frequently occurs, for example, sales to family members or sales from landlord to tenant. It is not unusual for an offer to be received before a solicitor meets the client.

The identification of the purchasing company as a building society was completely wrong. This could have been checked by any member of the PCSC on their phone during the meeting. Even if the purchaser had been a building society, this was of no significance. However, the PCSC called it a

“red flag”. This was an error of fact. The PCSC referred to is as one of a number of red flags, or unusual features of the transaction.

There is no report supporting the assertion that the sale was undervalued. However, this was also described as a “red flag”.

The PCSC noted that the Appellant’s notes were brief in the extreme. However, they are sufficient to show that the Appellant discussed the sale with the person purporting to be the Second Respondent. They discussed property values. The meeting was mainly about the standard clauses.

Mr Ferguson said some of the “facts” relied upon by the PCSC were not facts at all. The legal members of the PCSC did not ensure proper methodology was employed.

It was not significant that arrangements were not made for the transfer of keys to the property. The client was able to return the documents sent to him at the property in question. It had been explained that the purchaser and seller were known to each other.

Mr Ferguson referred the Tribunal to the article in the Journal of the Law Society of Scotland which was mentioned in the PCSC decision (JLSS 10 December 2012 “*Who do you think they are?*”). In the present case, the solicitor was in Glasgow and was instructed by a client in Glasgow. The property was also in Glasgow. This was not inappropriate. The Appellant had not handled the purchase of the property. However, client loyalty is no longer what it was. The article was written in 2012 by a court lawyer.

It was not significant that the title deeds had not been obtained. Title deeds have been dematerialised. Physical deeds are not required for selling properties. Most solicitors will get title sheets from ScotLIS (Scotland’s Land Information Service). It has the updated information. It is much more useful than the old title. Use of these documents would be dangerous now that everything is kept online.

Mr Ferguson referred the Tribunal to Hood, Petitioner [2017] CSIH 21. In his submission, the PCSC decision was contrary of the evidence and the decision was flawed. The PCSC asked the wrong questions and took account of irrelevant considerations. It was a decision no reasonable

subcommittee could reach. Mr Ferguson said this was the worst decision of the PCSC he had ever seen. It raised serious questions about the ability and competence of all members of that PCSC.

Mr Ferguson referred the Tribunal to its powers in relation to section 42ZA appeals. These are contained in section 53ZB of the Solicitors (Scotland) Act 1980. The Appellant and the First Respondents were agreed that the decision ought to be quashed. There had a been a sorry catalogue of serious and numerous errors of fact. Assumptions were made without legal or factual bases. Conclusions were withdrawn without proper legal bases. There was no reference to authority or the AML toolkit and guidance. There was no proper methodology. It used incorrect facts. The PCSC came to unwarranted conclusions. In Mr Ferguson's view it became a "runaway committee" which "went rogue" and "engaged in a fraud of its own". It appointed itself as investigator in its own case and acted like a "Thursday detective club".

The Chair indicated he understood Mr Ferguson's position but that his reference to a fraud by the PCSC was perhaps a little strong. Mr Ferguson said that he was not saying that the PCSC was guilty of fraud but rather that it was not as open and forthright as it should have been.

SUBMISSIONS FOR THE FIRST RESPONDENTS

The Fiscal noted that the First Respondents had not lodged Answers but had entered into a Joint Minute. The Appeal was conceded by the First Respondents. However, it was appropriate to hear from parties since the Second Respondent did not agree that the appeal should be upheld.

The Fiscal referred the Tribunal to Hood, Petitioner [2017] CSIH 21. In his submission, the PCSC had made a finding in fact for which there was no evidence when it said that the purchasing company was a building society. This gives the whole decision "a foundation in sand". Mr Ferguson had highlighted other errors. In the Fiscal's submission, the building society point was too much of a problem for the other "red flags" to be sufficient.

The Fiscal reminded the Tribunal that the PCSC is the decision-maker, not the reporter. Mr Ferguson's appeal demonstrated a misconception in the role of the reporter. There was no requirement for the PCSC to refer to every piece of information. The PCSC is an experienced expert decision maker. Mr Ferguson had made numerous assumptions about the PCSC's reasoning without proper basis. He noted Mr Ferguson's reference to fraud. It was appropriate for the PCSC to

investigate and challenge information contained within the report. The PCSC must use its knowledge and expertise.

In this case the solicitor was duped by an imposter. The fact that the property was not on the open market is unusual but was not enough to put the solicitor on notice. It was not suspicious that the purchasing company was registered in England. However, in the Fiscal's submission the other points in the Journal article were relevant. Risk management is an important factor here.

The Fiscal noted that Mr Ferguson had put various driving licences before the Tribunal and asserted that they were all valid. The PCSC used its own knowledge and experience and their own driving licences. Just because the PCSC came to a different conclusion to Mr Ferguson, does not mean that it was wrong to such an extent that the decision should be overturned. There was no obligation on the PCSC to seek expert evidence. Their reasoning on the driving licences was not so unsound that it would allow the Tribunal to interfere with the decision.

It was incumbent on the PCSC to give reasons and justify its decision. It behaved properly in taking these factors into account. He did not criticise, as Mr Ferguson did, the points raised at paragraphs 2(a), (c), (d), 4(b), (c) and (d) of the Appeal. It was reasonable that the Appellant should have been put on notice and made queries regarding this transaction. There were errors in the Appellant's conduct.

In answer to a question from the Tribunal, the Fiscal explained that the PCSC did not have the sale file. It relied upon the report. The Reporter brings all relevant facts to the PCSC. The reporter is the fact-finder and the PCSC is the decision-maker.

In the Fiscal's submission, the building society issue was too big a problem to allow the PCSC decision to be supported. The Tribunal asked the Fiscal why this point was so significant. If that error was removed, was there insufficient left to support the decision? The Fiscal said that the decision was based on a foundation of sand. The building society issue influenced or "coloured" all the red flags. It is the backbone of the decision. If it was not there, the First Respondents would not have to concede the Appeal.

The Fiscal said that the Journal article was important. It listed the points that should have been in the Appellant's mind. He should know his client. There was a reduced price in a private sale. These

were reasonable issues upon which the PCSC could base its decision. If the error of fact had not been present, there might have been sufficient information to support unsatisfactory professional conduct, but the decision must fall because of the earlier error.

The Tribunal asked why the decision must inevitably fall if the other factors were sufficient to support the decision. The Fiscal said this issue tainted all the other red flags because it was the biggest one. It was a significant new matter, not contested by the parties. The Tribunal suggested that the building society issue could be discrete. The Fiscal disagreed, saying it was a building block supporting the other factors. It was fatal to the whole decision. The fact is wrong and it prejudices the decision. It puts other parts in brighter colour than they would normally appear.

SUBMISSIONS FOR THE SECOND RESPONDENT

In Mr Fournier's submission this case was about risk management, not a check-box exercise. Mr Fournier noted that the Journal article from 2012 was also about risk management.

Mr Fournier noted that the PCSC was the decision-maker, not the reporter. The Appellant claims that the building society factor must be hugely significant. Mr Fournier did not follow that logic. Not all factors are created equal and critical. Mr Stewart acknowledged that the decision could stand without that red flag. There is no connection between the designation error and the file note which was described as brief in the extreme. While the colour of the other flags might have been brightened, they could still stand alone. The Appellant cannot say how it is material. The very existence of the error is not enough to kill the whole decision. In Mr Fournier's submission, it was not a material error. There was no tainting of the other factors.

The purpose of checking a driving licence is not to only to check the photo is the same as the client. The photo will always match the individual. The variation in licences means that additional checks are required. If there is such variety that you cannot tell a forgery, you also cannot tell a valid one. It is not enough to say it looks OK. The numbers mean something.

Mr Fournier said the AML guidance was signposting, not an exhaustive list. Verifying the photograph is not enough. This is not knowing your client, or proper anti-money laundering compliance.

Mr Fournier acknowledged that a fraud occurred. Perfection cannot be obtained every time. However, the level of diligence was insufficient in this case. The Appellant's notes were clearly

insufficient. The red flags should have triggered investigation and that should have been recorded. The problems with the transaction could have been easily discovered. The Appellant played a part in this fraud, whether purposefully or not. The high standards for solicitors exist for a reason. Solicitors must do more than was done here. There were issues with the driving licence. These should have been documented. There was an error regarding the expiry date. Different people with expertise found this to be problematic. There was blind reliance rather than check and challenge or trust and verify.

The Law Society in England is clear that utility bills should not be relied upon. Sales of unmortgaged properties raises risk. A check of the electoral register is recommended. When the title information sheet was obtained, the address of the proprietor was not the address of the property being sold. It would have been quick and easy to check the utility bill. Professionals will have views on the most expedient and commercial way to do this. The Appellant cannot display that he carried out due diligence. Three bullet points and 24 words are not enough. Describing the note as “brief in the extreme” is fairly strong language for the PCSC. There were various risk elements which led to the property fraud. Solicitors should be aware of risk factors. There should be clear evidence of the steps taken to mitigate the risk. The number of steps is not exhaustive.

FURTHER SUBMISSIONS FOR ALL PARTIES

Mr Ferguson noted again that if there had been any doubt about the licence, the PCSC could have obtained a report. The points they made about the driving licence were not borne out if the Tribunal looked at a variety of licences. There is no guidance about what solicitors should do about checking addresses. It was for the PCSC to find the Respondent guilty, not for him to prove his innocence. It is very difficult for a solicitor to spot fake identification. In this case, the Appellant was writing to the client at home and getting replies from him. Instead of pointing the finger at the Appellant, the Second Respondent should make enquiries about the persons who were able to access mail sent to the Second Respondent at that address.

Mr Fournier noted that Eon was able to quickly confirm to his client that the account on the utility bill did not exist. If there was an account, they would indicate a match. The Appellant’s efforts were lacking and not evidenced. Mr Ferguson disagreed that extra diligence was required in these circumstances.

The Tribunal proposed to break for deliberations and reconvene in the afternoon. Mr Fournier indicated he had a prior engagement that afternoon. It was agreed that the Tribunal would deliberate and return to give its decision to parties even if Mr Fournier was not present. The Tribunal would invite written submissions on expenses and publicity and then issue its decision on all matters in writing at the conclusion of the case

DECISION

The background to this case is that an identity fraudster pretending to be the Second Respondent instructed the Appellant to sell the Second Respondent's house. The Second Respondent made a complaint about the Appellant's conduct, alleging a failure to carry out proper identity checks on the client and to ensure that he was the owner of the property in question. Contrary to the recommendation of the Reporter, the Professional Conduct Sub Committee (PCSC) of the First Respondents made a finding of unsatisfactory professional conduct against the Appellant.

Unsatisfactory professional conduct is conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor (Section 46 of the Legal Profession and Legal Aid (Scotland) Act 2007). Unsatisfactory professional conduct lies on a spectrum between inadequate professional services and professional misconduct. The standard of proof to be applied to the evidence is the civil standard of balance of probabilities.

The Appellant lodged an Appeal with the Tribunal against the PCSC's decision to find unsatisfactory professional conduct under Section 42ZA(9) of the Solicitors (Scotland) Act 1980. Initially, the Second Respondent did not enter proceedings. The Appellant and the First Respondents lodged a Joint Minute on 13 August 2021 inviting the Tribunal to quash the determination of the First Respondents under Section 53ZB(1) of the Solicitors (Scotland) Act 1980. It was noted that the PCSC had recorded that the purchasing company's registration number identified it as a building society. The Appellant and the First Respondent agreed that this was an error of fact which was contradictory of the evidence and was grounds for the Tribunal to quash the determination (Hood, Petitioner 2017 SCLR 799). The Tribunal extended the period for the lodging of Answers to allow the Second Respondent an opportunity to enter the proceedings. The Second Respondent lodged Answers and entered the process.

At the virtual preliminary hearing on 27 April 2022, the Tribunal found that in a case where there were multiple factors to the PCSC determination, and on the face of it, the decision also rested on those factors, the Tribunal must assess whether, if the incorrect information is eliminated, the decision could still stand, or ought to be quashed. An assessment required to be made regarding the materiality of that error to the whole decision.

The Second Respondent's complaint was that,

“Mr Alan Conroy and/or the firm of Conroy McInnes failed to carry out proper identity checks on their client and to ensure that their client was the owner of the property in that the property was not owned by their client but was in fact owned by me.”

The PCSC's decision noted that there were “a number of red flags” which should have put the solicitor on notice that there were issues with the client's identification. Various factors were identified. It was noted that the house had not been advertised for sale, that an offer had been received by the solicitor prior to meeting the “client”, and that the house was being sold at below market value. The purchaser was a company registered in England. Erroneously, that company was identified by a member of the PCSC as a building society. The PCSC also noted issues with the driving licence provided by the seller for the purposes of identification. The photograph on it was undated and there was no expiry date printed on the photograph which did not extend below paragraph 8 on the licence as it should. The words “Driving Licence” were too close to the EU flag on the top left of the licence. These were all matters which in the opinion of the PCSC should have given rise in the mind of the solicitor of a risk that the licence was not genuine. The PCSC also highlighted that the note of the meeting was brief in the extreme. There was no information as to why the “client” was instructing the solicitor rather than the firm which had acted in the purchase. There was no information about keys. There was no information as to how the purchaser had found or knew the property to be for sale. There was nothing to suggest that the solicitor had enquired as to the whereabouts of the title deeds which were obtained from the Registers of Scotland. Some of these points had been raised in the December 2012 issue of the Journal of the Law Society of Scotland.

According to the grounds of Appeal, the PCSC insufficiently addressed the facts and conclusions in the Reporter's report. The purchasing company was registered as a real estate agency, not a building society. The AML toolkit does not mention dates or measurements on driving licences. There was evidence of a meeting and discussion between the Appellant and the client and annotations were made on the offer and standard clauses. The red flags do not merit the suspicion or interpretation placed

on them or the weight attributed to them by the PCSC. The PCSC adopted flawed methodology. The Journal article referred to by the PCSC is not supportive of the PCSC decision. Its reasons were based on things which were either wrong in fact or insufficient in fact and law to justify the decision.

The Tribunal applies the principles in Hood, Petitioner [2017] CSIH 21 to its own appeals. In that case it was said that the Court should be slow to interfere with the PCSC's decision on an evaluative question and should only do so in three main situations. The first is where the PCSC's reasoning discloses an error of law, which may be an error of general law or an error in the application of the law to the facts. The second is where the PCSC has made a finding for which there is no evidence, or which is contradictory of the evidence. The third is where the PCSC has made a fundamental error in its approach to the case by asking the wrong question, or taking account of manifestly irrelevant considerations, or arriving at a decision that no reasonable PCSC could properly reach.

The Tribunal was of the view that it should only disturb the decision of the PCSC if one of the Hood grounds was met. It should not interfere with the decision just because it might have come to a different decision on the available evidence. Hood provided a framework within which to analyse the PCSC's decision-making. The Tribunal bore in mind what a competent and reputable solicitor would have done in the circumstances. The PCSC is comprised of legal and lay members and its views on professional conduct should be afforded respect.

The Tribunal's powers when considering an Appeal under Section 42ZA(9) are contained within Section 53ZB(1) of the Solicitors (Scotland) Act 1980. That section provides that the Tribunal may quash or confirm the determination being appealed against. If it quashes the determination, the Tribunal shall quash the censure accompanying the determination. It may also quash, confirm or vary the direction being appealed against. There are other provisions with regard to training, fines and compensation.

It was not disputed that the PCSC had made an error of fact when it had misidentified the purchasing company as a building society. This was one of a number of factors which the PCSC had taken into account. The Tribunal therefore considered that it should analyse all the factors so that it could set that error of fact in the context of the whole decision.

The Tribunal was content that there were no differences between the 2007 and 2017 regulations when applying them to the circumstances of this case. Despite the terms of the Joint Minute, it was

appropriate for the Tribunal to be independently satisfied as to whether it should take any of the actions set out in Section 53ZB(1). The Tribunal considered parties' submissions. Although two of the parties agreed the Appeal should be upheld, their reasons for reaching that agreement were not the same. The Appellant submitted that the so called "red flags" were not issues which should have led the Appellant to take further action. The First Respondents submitted that although the other "red flags" were relevant, the building society error tainted the whole decision. The Second Respondent supported the PCSC decision.

The Tribunal was not concerned that the property was not advertised for sale or that the offer had been received before the first meeting with the client. It is common for solicitors to become involved in sales which have already been privately negotiated. Much depends on the particular market.

The PCSC was wrong to say that the property was being sold "below market value". Markets vary and there was no evidence upon which to say that the purchase price was less than that which could reasonably be expected for properties in the area in that time. There is evidence that the Appellant asked the client about this point and received an answer which appeared reasonable. A low price could be a warning sign in some circumstances but was not in this case.

English companies buy property in Scotland. Landlords frequently operate in corporate form. The Tribunal did not find these points to be suspicious.

The Tribunal did not consider that the misidentification of the purchasing company as a building society was a point that stood out among the other factors identified. The decision does not identify this as the "knock-out" blow. Rather it is referred to as one of several issues which the PCSC said should have led to more investigation by the Appellant. Neither the First Respondents nor the Appellant was able to say why they considered this point to be of such significance compared to the others. The Tribunal was not persuaded that the PCSC considered it to be of any more or less importance than the other factors. The Tribunal itself did not consider that the designation of the purchasing company as a building society was a matter that should have put the Appellant on notice that there was something wrong with the transaction.

The Tribunal noted that the Appellant met the client in person and corresponded with him at the address of the property to be sold. He confirmed his identity by examining the driving licence and utility bill he provided. The Tribunal noted that utility bills should be treated with care. The driving

licence appears on the face of it to be valid. It would not be normal practice for competent and reputable solicitors to get a DVLA report to confirm a licence and there was no reason why the Appellant should have done so in this case. The name and address on the driving licence and the bill were the same and matched the seller's details on the title. The photograph matched the client. Those were reasonable checks to make in the circumstances of this case. The Tribunal was not persuaded that the Appellant actions in relation to these items was wrong.

The Tribunal noted the brief file note of the meeting. While it is useful and best practice to keep full records, it is not unusual for a file note to be brief, particularly if standard terms are being used in a residential conveyancing transaction.

The PCSC noted that the client did not instruct the solicitor who dealt with the purchase of the property. This was not relevant. Clients frequently change solicitor. The client, solicitor and property were all in Glasgow. The Appellant was a residential conveyancer. The arrangements for keys were not unusual in a private sale. In a case where parties have independently negotiated a sale, the solicitor will not always know how the purchaser had found the property for sale.

The Appellant had properly downloaded the electronic deeds. It would not have been appropriate to have relied upon the hard copy documents.

Therefore, in conclusion, there were several problems with the PCSC decision. There was the obvious and undisputed error of fact in relation to misidentification of the purchasing company as a building society. This was a finding for which there was no evidence. This error arose during the PCSC's deliberations and parties were not able to address it. The Tribunal was not convinced that this error alone would have been sufficient for it to overturn the PCSC's decision, had the rest of the reasoning been cogent. However, the PCSC had also made findings which were contradictory of the evidence and it had taken into account manifestly irrelevant considerations. These were all grounds for revisiting the decision and for the Tribunal to assess whether the Respondent's conduct represented a departure from the standards of competent and reputable solicitors.

On reviewing the evidence, the Appellant's encounter with his client appeared to the Tribunal to be a perfectly normal conveyancing transaction. None of the "red flags" identified by the PCSC individually or when considered together would be particularly troubling to a competent and reputable solicitor. The Appellant was taken in by a fraudster who was trying to deceive him. He cannot be

criticised for this in the circumstances of this case. He did not ignore or fail to do something he ought to have done. The bases for the PCSC's criticism of the Appellant's conduct were not well-founded. The Tribunal was not satisfied that the Appellant was guilty of unsatisfactory professional conduct.

Therefore, the Tribunal quashed the determination of the PCSC, the censure accompanying the determination and the direction that the Appellant pay a fine and compensation. The Tribunal had a great deal of sympathy for the Second Respondent. This had no doubt been very distressing and unpleasant for him. However, the blame for that was squarely with the person who had perpetrated the fraud. It was not attributable to the fault of the Appellant who had also fallen victim to the fraud. The Tribunal appreciated this would be a disappointment to the Second Respondent but was the correct outcome in the circumstances. If there was no finding of unsatisfactory professional conduct against the Appellant, no award of compensation was appropriate.

The Tribunal invited parties to make written submissions on publicity and expenses. It indicated that full written reasons would follow at the conclusion of the case. The Tribunal met on 9 August 2022 to make directions on publicity and expenses. It was content to do that on the basis of the written submissions lodged.

The Appellant moved for expenses against the Second Respondent only. The First Respondent suggested that the Tribunal should find no expenses due to or by any party. The Second Respondent submitted that no award should be made against him and sought the expenses which would not have been incurred by him but for the First Respondents' error in conceding the appeal on the basis of one factual mistake.

The Tribunal considered parties' submissions and the whole circumstances of the appeal. The appeal arose because of the PCSC's error. The First Respondents conceded the appeal, although on a narrower basis than that upon which the Tribunal made its decision. The Second Respondent was unsuccessful. He had not initially joined proceedings but had done so once the First Respondents indicated that they were conceding the appeal. The Appellant was the successful party but did not move for expenses against the First Respondents, only the Second Respondent.

Generally, in proceedings before this Tribunal, expenses follow success. Following that principle, no award in favour of the First or Second Respondents was appropriate as they were the unsuccessful parties. Ordinarily, the Tribunal would have considered an award against the First Respondents in

favour of the Appellant. However, the Appellant made no such motion. The First Respondents had also attempted to resolve the case by conceding the appeal at an early stage. The Tribunal therefore considered that it was not appropriate to make an award against them. The Tribunal was also of the view that it would be unfair to make an award of expenses against the Second Respondent in the particular circumstances of this case. He had been drawn into this appeal as a result of circumstances not entirely within his control.

In relation to publicity, the Appellant moved that the name of the Second Respondent should be anonymised. The First Respondents and Second Respondent made no submissions in relation to publicity. The Tribunal had regard to paragraphs 14, 14A and 23 of Schedule 4 of the Solicitors (Scotland) Act 1980 and also considered its previous decision in the Section 42ZA Appeal by Andrew Duthie. It directed that this decision should be given publicity and that all parties should be named.



Benjamin Kemp
Vice Chair