

**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**

against

**JOHN JAMES SMITH, Solicitor,
John J Smith & Co., 692
Dumbarton Road Dalmuir,
Clydebank**

1. A Complaint dated 3 November 2008 (Tribunal reference DC/09/03) was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, John James Smith, Solicitor, John J Smith & Co., 692 Dumbarton Road, Dalmuir, Clydebank (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. A further Complaint dated 3 November 2008 (Tribunal reference DC/09/04) was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that the Respondent be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.

4. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
5. A Complaint dated 29 December 2008 (Tribunal reference DC/09/05) was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that the Respondent be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
6. The Tribunal caused a copy of the Complaint as lodged to be served on the Respondent. Answers were lodged for the Respondent.
7. In terms of its Rules the Tribunal appointed all three Complaints to be heard on 6 May 2009 and notice thereof was duly served on the Respondent.
8. The hearing took place on 6 May 2009. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr McCann, Solicitor, Clydebank.
9. Mr Lynch asked for the Complaints to be conjoined. The Tribunal granted that motion.
10. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the three Complaints. No evidence required to be led.
11. The Tribunal found the following facts established
 - 11.1 The Respondent was born on 11 August 1949. He is a solicitor enrolled in Scotland. He was admitted as a solicitor on 26

October and enrolled in the Register of Solicitors in Scotland on 1 November, both months of 1995. He practices on his own account as John J. Smith & Co at 692 Dumbarton Road, Dalmuir, Clydebank.

Complaint by Mrs A

- 11.2 On 21 June 2005 a Client Relations Committee of the Complainers considered a complaint against the Respondent by Mrs A. The committee determined that the Respondent had provided Mrs A with an inadequate professional service, in terms of the Solicitors (Scotland) Act 1980 Section 42A (1). They determined that in terms of the statute the fees due to the Respondent in relation to the transaction should be abated to nil. They further determined that the Respondent was to make payment to Mrs A for compensation in the sum of £1000.00.
- 11.3 On 29 June 2005 the Complainers wrote to the Respondent to intimate the committee's decision to him. They required him to provide to them within 21 days of 29 June 2005, a written explanation of the steps which had been taken by the Respondent to comply with the direction and determination. The Respondent did not immediately reply, but on 13 July 2005 a member of his staff wrote to the complainers to say that the Respondent was off ill from work and that he was not expected to return to business until 19 July. On 25 July 2005 the Complainers wrote (two letters) to the Respondent in which they requested an early response. On 4 August 2005 the Complainers again wrote to the Complainers inviting a response from him within fourteen days of 4 August 2005. On 10 August 2005 the Respondent telephoned the Complainers. He said that he had received a letter on 4 August but did not understand what it related to but undertook to look into the matter as there was a certain amount of mail which he had not seen. On 20 September 2005 the Complainers who had heard

nothing further from the Respondent wrote to him asking for a substantive response within fourteen days of 20 September 2005. On 28 December 2005 the Complainers sent to the Respondent a notice under Section 42B of the Solicitors (Scotland) Act 1980 requiring that the Respondent provide confirmation in writing of the steps which the Respondent had taken to implement the council's determination. The Respondent did not reply. Nor has he lodged a timeous appeal against the determination. The days of appeal have elapsed with no timeous appeal having been marked. The compensation condescended upon was paid in June 2006.

Mrs. B

11.4 Mrs. B and her husband instructed the Respondent during 2004 in connection with a remortgage transaction. They became unhappy with the Respondent's actings and after contacting the Complainers and obtaining a help form, Mrs. B invoked the assistance of the Complainers on 4 April 2005. On 13 April 2005 the Complainers wrote to the Respondent. They requested a response within fourteen days. The Respondent did not reply. On 23 May 2005 the Complainers again wrote to the Respondent. At this stage they advised him that Mrs. B intended to pursue a formal complaint. No further response was required from the Respondent at that stage. On 13 June 2005 the Complainers again wrote to the Respondent. The letter constituted a formal intimation of a complaint of alleged professional misconduct. In response the Respondent was required to provide a written response and production of his business files. The Respondent did not reply. On 5 July 2005 the Complainers again wrote to the Respondent. On this occasion they served upon him the first part of a notice given terms of Section 15(2) of the Solicitors (Scotland) Act 1980. A response was required within fourteen days of 5 July 2005. The Respondent did not reply. At the same time, a notice under

Section 42C of the Act was served on the Respondent. In terms thereof he was required to produce all books, accounts, deeds, securities, papers and other documents in his possession or control relating to the complaint by Mrs. B all within twenty one days of 5 July 2005. The Respondent ignored the notice. On 18 August 2005 the Complainers again wrote to the Respondent. On this occasion they intimated to him an additional complaint, of failing to respond to their correspondence. That letter required an answer within twenty one days. On 24 August 2005 the Respondent telephoned the Complainers' Clients Relations Office. He apologised for his failure to respond and undertook that a letter would be with the Complainers within a few days of 24 August. The Respondent did not however write to the Complainers nor did he answer the outstanding correspondence in any way.

11.5 The Complainers appointed a reporter to investigate the matter and prepare a report. The report was circulated on 7 October 2005; on that date the Complainers sent a copy to the Respondent. The Respondent was advised that the complaints would be considered by a Client Relations Committee of the Complainers on 3 November 2005. On that date, the Client Relations Committee considered the matter, and made a finding that the Respondent had provided an inadequate professional service to the Bs. They ordered that the Respondent pay compensation to Mrs. B in the sum of £400, and that the amount of fees and outlays to which the Respondent was entitled would be restricted to nil. *Quoad ultra* they remitted the matter to the professional conduct committee.

11.6 On 14 December 2005 the Respondent wrote to the Complainers. He stated *inter alia* that he wanted to appeal against the decision of the Client Relations Committee. He did not do so either timeously or in proper form.

Inspection of 26/27 February 2007

- 11.7 Guarantee Fund Inspectors employed by the Complainers carried out an inspection of the books and records of the Respondent on 26 and 27 February 2007. This was a re-inspection at the Respondent's expense, the firm having previously been inspected in May and September 2003, May 2004, April 2005 and April 2006. The Respondent had attended a Guarantee Fund interview in October 2006
- 11.8 Upon the inspectors' arrival at the firm in February 2007 the Respondent expressed his displeasure at being re-inspected. He advised the inspector that he had just arrived back from a holiday and had left under the impression that Ms C (see below) and an assistant recommended by her would have brought all of the books and records up to date by the time she returned. This was not the case. The last fully completed month end noted was 30 November 2006. Part of the postings for December 2006 had been processed but the month was not completed. The inspector inquired whether the firm held a surplus in the client account. The Respondent replied that he did. He stated that this was established from his manual records but that he was not prepared to show the inspector the manual records. The Respondent insisted that the inspector worked from the computerised records only. From the computerised records it appeared that the firm had been in a deficit position since June 2006. During the course of the inspection the Respondent lodged the sum of £5600 from his own funds into the client account to cover the estimated shortage which appeared from the computerised records. (Rule 4, Rule8).
- 11.9 It was noted that the Respondent was a sole practitioner. He employed a part time cashier who attended the office for three half days a week. She wrote all entries into a manual cash book.

The Respondent used the services of Accounting Services for Scottish Solicitors. Ms C of that organisation arranged for the manual entries to be posted onto the computer system.

Guarantee Fund Committee

- 11.10 At the Guarantee Fund Committee meeting on 16 March 2007 consideration was given to the making of an application to the court for the appointment of a judicial factor. This step was not proceeded with because the Respondent produced documentation which supported the view that his records had been brought up to date and were accurate. A further inspection was carried out on 20 and 22 March 2007. At that inspection it was noted that the computerised records had been posted up to the date of inspection and fully reconciled to month and quarter end dates. The work was carried out by accounting services for Scottish Solicitors. The Respondent however indicated that in future he intended rather than using that organisation to employ a new cashier. As at the inspections in February and March 2007 the Respondent's firm was in arrears with PAYE and National Insurance and Value Added Tax

Inspection of 2/3 July 2007

- 11.11 A further inspection was carried out on 2 and 3 July 2007. At the outset of the inspection it was apparent that matters raised at previous inspections were still outstanding. These included old out of date cheques on the bank reconciliations some of which related to the recording of deeds. A number of old client balances were held which appeared to relate to recording of deeds. Despite having being requested to do so on a number of occasions the Respondent had not investigated these balances and cheques.
- 11.12 The Respondent was by now no longer employing the services of Accounting Services for Scottish Solicitors. He relied on a

cashier who attended the office two evenings a week and one day at the weekend. The books and records were being maintained in arrears with postings frequently not processed until over one month after transactions were carried out. Consequently there were delays in completing the month end procedures.

- 11.13 The following matters were still outstanding from previous visits.
- a) The term loan account liability still had not been confirmed by the bank. This had been outstanding since the inspection carried out in April 2006. (Rule 8)
 - b) Mr. & Mrs D – transfer of title re the property known as Property 1: the file was requested during the current inspection but was not provided. The inspector required sight of the receipted Form 4 confirming that the title had been registered. The transaction settled in August 2004.
 - c) In addition to the old ledger balances mentioned above, (at paragraph 11.11) a number of other balances were noted at the current inspection which suggested that recording dues had not been paid in respect of these clients. (Rule 8)
 - d) Two out of date cheques which had been noted at previous inspections still appeared on the current bank reconciliation statement. A further three cheques were noted at the current inspection which still appeared on the bank reconciliation statement. (Rule 8).

- e) In the case of Mr & Mrs E, a credit balance which should have been invested but which was not had been noted at the previous inspection. This sum was invested on 26 June 2007 but compensatory interest had not been paid to the client. (Rule 11).
- f) Mr F: Despite having been noticed at previous inspection, a balance of £1011.75 was held uninvested on behalf of this client. The Respondent claimed that the sum related to fees but no evidence of a fee being rendered was available. (Rule 11).

11.14 The firms' trial balance did not reflect the true position of the firm. The following items were noted:-

- a) A balance of £650 was shown in respect of petty cash. The Respondent had previously advised that this should be brought to nil.
- b) A balance was shown in respect of a credit card liability of £31,875.40. The Respondent had previously been advised to reduce this to reflect the actual amount outstanding but had failed to do so.
- c) A balance of £37,175.64 relating to salary for a former salaried partner remained in the trial balance when it ought to have been removed.
- d) The sums outstanding in respect of Value Added Tax, PAYE and National Insurance could not be verified. (Rule 8).

11.15 As hereinbefore condescended upon a number of out of date cheques still appeared on the client account reconciliation

- 11.16 The accounts certificate which ought to have been submitted in respect of the period ending 30 April 2007 remained outstanding despite reminders. (Rule 14).
- 11.17 Entries were still being posted in arrears; for example the entries for 19 April 2007 were not posted until 27 May 2007 (Rule 8)
- 11.18 Arrears were also noted in respect of producing month end reports. Those for the end of May 2007 were not completed until 1 July 2007. (Rule 8)
- 11.19 The day books were not printed when completed but instead saved on the computer system. When they were printed at a later date, they did not reflect the surplus position at the posting date but instead showed the position at the date of printing. (Rule 8)
- 11.20 In the case of Mr G and separately in the case of Ms H's executry no identification was seen for Mr G nor for Mr I who was the executor of Ms H, nor was any explanation afforded as to why this was not necessary. (Rule 24).
- 11.21 The source of funds received from Mr J (£11,943.23) by bank giro credit on 13 May 2007 and in the case of Mr K £10,288.00 received by bank giro credit on 13 May 2007 could not be verified
- 11.22 A cheque in the sum of £3080.66 was posted through the ledger of Mr & Mrs M as paid to Mr N on 1 March 2007. This was cancelled out of the ledger on the same day but in the sum of £2859.48 and a cheque issued to the clients for £2854.01

- 11.23 In the case of Mr & Mrs O a cheque in the sum of £74,673.99 was issued to Halifax but was not designated with the client name on the payee line as required. Similar breaches of this rule had occurred at previous inspections. (Rule 6(2))

Inspection of 30 & 31 January 2008

- 11.24 Guarantee Fund Inspectors employed by the Complainers carried out an inspection of the books and records of the Respondent on 30 and 31 January 2008. At the outset the Respondent confirmed that no action had been taken to address the outstanding correspondence from the previous inspection. He did however produce an Accounts Certificate for the period ending on 31 October 2007
- 11.25 The books and records were still being maintained in arrears with postings frequently not processed until over one month after the transactions were carried out. Entries were posted in large batches and not in any order and as a consequence no clear audit trail was available. Between July and November 2007 the firm was in deficit due to outlays paid by the Scottish Legal Aid Board not being paid out when the funds were received, having been “lost” within the firm’s account. As at the date of the inspection it was not possible to establish whether the firm was in deficit or not because of the extent of the deficiencies in the records. (Rule 8).
- 11.26 Deeds were still not being recorded timeously and Money Laundering procedures were either not understood or not actioned by staff. (Rule 24)
- 11.27 As no postings had been made for the month of January 2008, it was not possible to ascertain the true position nor to determine whether there were sufficient client funds held to cover client balances. (Rule 8)

- 11.28 Staff advised that client cheques were not copied, and the source of funds was not being otherwise verified. (Rule 24)
- 11.29 No evidence was held for the identification of clients Ms P and Mr Q. (Rule 24)
- 11.30 The bank reconciliation statement dated 31 December 2007 included two out of date cheques dated respectively 9 and 11 May 2007. These should have been cancelled and re-credited to the client ledger for re-issuing if necessary (Rule 8)
- 11.31 While the firm were receiving returned client account cheques from Lloyds TSB, they were not receiving returned cheques from Bank of Scotland. The inspector requested sight of paid cheques for vouching purposes in nine separate instances and these were not available
- 11.32 Mr R purchased the property at Property 3, the transaction settling on 6 July 2007. The disposition remained unrecorded as at the date of the inspection
- 11.33 Mr S purchased the property at Property 4. The transaction settled on 30 October 2007. As at the date of the inspection the disposition remained unrecorded
- 11.34 In the case of client Mr G, no identification evidence was available, although the Respondent indicated that he knew Mr G personally. This was outstanding from the previous inspection
- 11.35 In the Ms H executry no identification was available in respect of Mr I, the executor. This was outstanding from the previous inspection: see paragraph 11.20

- 11.36 In respect of client Mr J, £11,943.23 was received on 13 May 2007 by bank giro credit. The source of the funds could not be verified. This was outstanding from the previous inspection: see paragraph 11.21
- 11.37 In the case of client Mr K £10,288 was received by bank giro credit of 13 May 2007. There was no evidence of the source of funds. This was outstanding from the previous inspection: see paragraph 11.21
- 11.38 Ms L purchased the property at Property 2 on 23 March 2007. The sum of £12,000 was received from Mr U in connection with this transaction on 21 March 2007. No evidence of identification was available as at the date of the inspection.

Inspection of 22 and 23 April 2008

- 11.39 Guarantee Fund inspectors employed by the Complainers carried out a further inspection of the books and records of the Respondent on 22 and 23 April 2008. They found the following:
- a) The books and records of the Respondent's practice were not being kept up to date. Although the postings were up to date as at the commencement of the inspection the records had been continually in arrears throughout February March and April 2008. No postings had been made to the records at all between 6 March 2008 and 27 March 2008. There were a number of mis-postings where funds had been debited from the client bank account but where entries had not been posted to the records until some time later. (Rule 8)

- b) The invested funds listing as at 29 February 2008 showed a balance of £8423.00 held for Mr T. This sum was uplifted on 12 February 2008 and the invested funds account closed. The entry showing the uplift was not posted to the records until 29 February 2008 (Rule 8).

- c) Mr U sold Property 2 to Mr AC. Both were represented by the Respondent. There was an inter client transfer. The purchase price was £165,000 and loan funds in the amount of £145,000 were made available to Mr AC from Bank of Scotland on this basis. The ledgers did not record the transfer and receipt of the purchase price. Mr AC's ledger showed only a payment of £12,000 being transferred to the ledger of Mr U. The sum of £131,275.79 to redeem Mr U's mortgage was paid through Mr AC's ledger instead of being transferred to his own ledger and paid out from there. Taking into account the redemption payment and the transfer of the £12,000 there was a shortfall of £21,724.21 between the sums paid by Mr AC and the expected purchase price of £165,000. The file indicated that £20,000 passed privately between the clients. The file gave no indication that the lender was made aware that the full purchase price did not pass through the firm. In any event the ledgers were incorrect and incomplete. (Rule 8)

- d) The ledger heading for client Mr V was found to be incorrect and should have been in joint names with Mr W. (Rule 8)

- e) The firms' trial balance did not reflect the true financial position of the firm. The trial balance continued to show

the financial information pertaining to the last financial year ending on 31 October 2007 and had not been adjusted to reflect the correct position. During the inspection the Respondent confirmed that there were arrears of approximately £98,000 due to HMRC in respect of VAT, PAYE, NIC and the Respondent's personal tax liabilities. The firm's bank overdraft had exceeded the agreed limit by over £10,000. (Rule 8(4))

11.40 No written authority was seen on file in respect of payments of the following payments:-

- (a) £10,837.38 paid on 24 January 2008 to Ms X from the ledger of Mr Y and Ms Z. (Rule 6.1)
- (b) On 2 November 2007 £2711.46 was transferred from the ledger of Mr AB to the ledger of Ms AA. On 1 February 2008 sums of £933.73 and £3550.49 were transferred from the ledger of Mr AB to Ms AA. (Rule 6.1).
- (c) As previously condescended upon £12,000 was transferred on 19 February 2008 from the ledger of Mr AC to Mr U. The narrative referred simply to a transfer of funds, not connected to the purchase price of the property. (Rule 6.1)
- (d) In the case of Ms AD, a cheque in the amount of £35,569.81 was issued on 1 February 2008 to Birmingham Midshires. The cheque was not designated on the payee line with the client name or account name (Rule 6(2))

11.41 The following instances were found of sums being held uninvested:-

- (a) Mr AE, where £60,210.31 had been held on the ledger from 28 February 2008 until date of inspection.
- (b) Mr AF, where the sum of £35,070.11 had been held in the ledger from 13 March 2008 until 18 April 2008 and only then invested.
- (c) In the case of Mr AO's executry where funds of £54,307.32 were uplifted on 18 March 2008; the outgoing payment to redeem a mortgage was not paid until 31 March 2008.
- (d) In the case of Ms AG's executry funds of £10,074.25 were uplifted on 5 March 2008. Of that sum £4155.00 was still held on the ledger as at the date of inspection

11.42 The following breaches of Money Laundering Regulations were found:-

- (a) In the case of Mr & Mrs AH no identification was seen for Mrs AH.
- (b) The file for Mr U did not disclose any client identification.
- (c) In the case of Mr AI and Mr AJ no identification was held in respect of Mr AI.
- (d) In the case of Mr AK, no identification was seen in respect of Company 1 who provided funds towards the transaction. Identification was seen for Mr AN (not

the client) and the ledger stated that the funds were received from Company 2.

(e) In the case of Mr & Mrs AL £71,289.25 was received on 24 January 2008; there was no evidence of the source of funds.

(f) In the case of Mr AM £54,000 was received on 11 February 2008; there was no evidence of the source of the funds.

12. Having considered the foregoing circumstances, and having heard submissions from both parties, the Tribunal found the Respondent guilty of professional misconduct singly and in cumulo in respect of:-

- 12.1 His persistent failure to reply to correspondence from the Law Society of Scotland;
- 12.2 His failure to obtemper statutory notices issued by the Law Society of Scotland;
- 12.3 His failure to keep books and records of his practice written up as required by Solicitors (Scotland) Accounts etc Rules 2001;
- 12.4 His allowing his client account to be in deficit in breach of Rules 4 and 8;
- 12.5 His failure to invest clients' funds as required by Rule 11 of the said Rules;
- 12.6 His failure to lodge an account certificate timeously in accordance with Rule 14 of the said Rules;

- 12.7 His failure to comply with the Money Laundering Regulations in terms of Rule 24 of the said Rules;
- 12.8 His failure to designate clients' cheques with the client name on the payee line in terms of Rule 6 of the said Rules;
- 12.9 His failure to record deeds timeously; and
- 12.10 His failure to obtain written authority for inter client transfers in terms of Rule 6 of the said Rules.
13. Having heard the solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6 May 2009. The Tribunal having considered two Complaints dated 3 November 2008 and a further Complaint dated 29 December 2008 at the instance of the Council of the Law Society of Scotland against John James Smith, Solicitor, John J Smith & Co., 692 Dumbarton Road, Dalmuir, Clydebank; Find the Respondent guilty of professional misconduct singly and in cumulo in respect of his failure to reply to correspondence from the Law Society of Scotland; his failure to obtemper statutory notices issued by the Law Society of Scotland: his failure to keep the books and records of his practice written up as required by Solicitors (Scotland) Accounts etc Rules 2001; his allowing his client account to operate in deficit; his failure to invest clients' funds as required by Rule 11 of the said Rules; his failure to lodge an account certificate timeously in accordance with Rule 14 of the said Rules; his failure to comply with the Money Laundering Regulations in terms of Rule 24; his failure to designate clients' cheques with the client name on the payee line in terms of Rule 6 of the said Rules; his failure to record deeds timeously and his failure to obtain written authority for inter client transfers in terms of Rule 6 of the said Rules; Censure the Respondent and fine him in the sum of £5000 to be payable to Her Majesty; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that the

Respondent's Practising Certificate be subject to a condition that the books and records of the Respondent's practice be inspected by the Council of the Law Society of Scotland no later than December 2009 and thereafter at six monthly intervals on six occasions the last of which is to take place no later than December 2012 and that such inspections be at the expense of the Respondent; 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)

Kirsteen Keyden

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the three Complaints. It was accordingly not necessary for evidence to be led.

Mr Lynch asked that all three Complaints be conjoined. The Tribunal agreed to his motion.

Mr McCann was granted leave to lodge an Inventory of Productions for the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch indicated that he had very little to add to the terms of the three Complaints. In relation to the Complaint dated 29 December 2008, he indicated that all outstanding matters with regard to the 2008 inspection have been dealt with satisfactorily in correspondence between the Respondent, his solicitor and the Law Society.

In relation to the other two Complaints Mr Lynch advised that these related to service matters and would not have been before the Tribunal but for the existence of the later Complaint. Mr Lynch stated that in both cases the compensation was paid by the Respondent some time ago.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann thanked Mr Lynch for his very fair concession regarding the earlier Complaints and for checking with the Law Society that all issues with regard to the inspections have been satisfactorily resolved. In relation to the service complaints Mr McCann confirmed that the Law Society's Determinations were fully complied with some considerable time ago.

Mr McCann referred the Tribunal to production R2 of the Inventory of Productions lodged for the Respondent and stated that this letter from the Law Society confirms that all outstanding issues have been resolved. He advised that the Mr U referred to in this letter is a well known local Estate Agent and there will be no problem with him providing the information which is required.

Mr McCann referred to Production R1, a medical report and advised that this was tendered to the Law Society at the end of 2006 and that this was a major factor in the Law Society taking a sympathetic view regarding the two failures to respond Complaints.

Mr McCann advised that the Respondent has not previously been convicted of any conduct failure. He was a “late vocation” to the profession having previously worked as a law accountant, although specialising more on the fee - charging aspects of legal business than on the Accounts Rules compliance which has now given him difficulty and led to this Complaint before the Tribunal.

Mr McCann advised that the Respondent has previously been suffering from depressive illness and had consulted appropriately as evidenced by the Medical Report from November 2006 now lodged. He had recently resumed psychiatric consultation and is due to see the Consultant again in the near future. The Respondent feels that progress is being made on his ability to manage the stresses and strains which have been a partial explanation of his difficulties in achieving the appropriate level of Accounts Rules compliance. The Respondent’s difficulties in regard to stress and fighting depression have been exacerbated by a very bitter and long - running matrimonial dispute which should finally be resolved later this month.

Mr McCann advised that the present structure of the Respondent’s office is that he is a single practitioner with two paralegal assistants and a cashier, who is his sister, now working at least four days per week. The gross income of the business, in common with many other small firms, has fallen significantly over the last year or two but he has been able to take a number of measures to keep his overheads down, including shutting an office and cutting down on a substantial volume of Legal Aid work that he had previously undertaken.

Mr McCann advised that the Respondent owns the business property and also his domestic house and there is estimated to be sufficient equity to enable him work through the present downturn in business and to meet all his debts and obligations. Within the recent history of the firm he has had problems with a software program installed, and then requiring to be removed and replaced by "Law Pro" which is now being operated satisfactorily by his sister the cashier. Mr McCann advised that the Law Society per Linda Lyall at the Guarantee Fund department recently confirmed that all the matters arising from the various inspections are now concluded satisfactorily, although he accepted on behalf of the Respondent that the degree of disorder amongst the book-keeping and the delay in bringing matters up to date whereby additional inspections were necessary, properly justified a plea of guilty to professional misconduct in respect of non-compliance with the various requirements of the Accounts Rules.

Mr McCann advised that the Respondent had employed sub-contracting help in the cashroom, but found that this did not bring matters up to date as quickly as he thought should have happened, although the Respondent accepts that he has to bear the responsibility for this. In the course of bringing matters up to date, the Respondent took advice from the Legal Defence Union, installed better Money Laundering compliance structures as recommended on the Law Society website, adopted a new software program as previously mentioned, and instructed Mr Andrew Caldwell as an independent accountancy adviser, all of which were of assistance towards bringing matters up to date. However, additional financial pressures have arisen from the cost of employing these outside sources of help and the costs of the additional inspections libelled within the Complaint.

Mr McCann advised that the Respondent intends to avoid any recurrence of these problems, and is hopeful of being able to cope in the future in regard to compliance with Accounts Rules and all other regulatory requirements within the office.

Mr McCann stated that all matters arising from the inspection have been brought up to date and although this has taken a long time to deal with the Respondent has been cooperative with the Law Society throughout. Over the last year or so there has been

correspondence between the Respondent, Mr McCann and the Law Society and there is due to be a further inspection in June 2009 when hopefully there will be no recurrence of the difficulties.

Mr McCann asked the Tribunal to refrain from imposing a restriction on the Respondent's practising certificate which would prevent him from remaining in practice on his own account. Mr McCann submitted that in the current financial climate such a restriction would be likely to end the Respondent's career. Mr McCann asked the Tribunal to consider that an appropriate sanction in this case would be a censure and a fine as the Respondent has taken a number of steps to resolve issues.

DECISION

The Tribunal was concerned about the various breaches of different sections of the Accounts Rules and the fact that four separate inspections between February 2007 and April 2008 had highlighted numerous failures. It is imperative that members of the profession comply with the Accounts Rules in order to maintain the highest standards of this profession. The Accounts Rules are there to protect the public and the Respondent's numerous breaches of various different Rules are of serious concern. The Tribunal however noted that no one has lost money or suffered as a result of the Respondent's actions. The Tribunal was satisfied that the Respondent's basic integrity was not in question.

The Tribunal also considered that a solicitor acting on behalf of a client in connection with a conveyancing transaction is well aware that he has a duty to prepare deeds to record or have these registered within a reasonable time. The Tribunal is aware that until a deed is recorded or registered the client is not infest in the property and their title is placed at risk and that similarly any security in favour of a lender is also at risk until the deeds are recorded.

The Tribunal noted that the Law Society are satisfied that the books of the practice are now up to date, that steps have been taken to improve the running of the practice and that a further inspection is planned to take place in June 2009. The Tribunal noted the Respondent's position as a sole practitioner and considered that, in the public interest,

it would be appropriate for the Law Society to carry out additional 6 monthly inspections of the Respondent's books commencing December 2009 to ensure that the progress which has been made recently in keeping the practice books up to date is sustained and to ensure that the interests of the firm's clients are protected. The Tribunal considered that said inspections should be carried out on six separate occasions.

In view of the Respondent's numerous repeated failures to comply with the Accounts Rules despite similar failures being highlighted at earlier inspections and the risks to clients through the delays in recording deeds the Tribunal considers that it is also appropriate to impose a fine on the Respondent. The Tribunal accordingly Censured the Respondent, Fined him £5000 and Ordered that a restriction be imposed on the Respondent's Practising Certificate to the effect that his firm's books must be inspected on six occasions at six monthly intervals commencing in December 2009 and that the Respondent should bear the costs of these additional inspections. The Tribunal made the usual order with regard to publicity and expenses.

Chairman