

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

FINDINGS

in Complaint

by

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

against

**ALISTAIR MORGAN BOWIE, 35 Broom
Gardens, Kirkintilloch, Glasgow**

1. A Complaint dated 31 May 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Alistair Morgan Bowie, 35 Broom Gardens, Kirkintilloch (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Ms A.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 4 September 2019 and notice thereof was duly served upon the Respondent.
5. At the hearing on 4 September 2019, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Alison Grant, Solicitor, Glasgow.
6. A signed Joint Minute of Admissions was lodged with the Tribunal. Both parties made submissions.

7. The Tribunal found the following facts established:-

- 7.1 The Respondent is Mr Alistair Morgan Bowie. He resides at 35 Broom Gardens, Kirkintilloch. He was born on the 20 April 1951. He was admitted to the roll of solicitors on the 20 May 1975. He retired from practice in June 2017 having been a partner with Hennessy Bowie & Co since 1984.
- 7.2 In November 2013, the Respondent opened a file in the name of the Secondary Complainer. He did so without speaking to or meeting with the Secondary Complainer. The Secondary Complainer's name and address, along with her Halifax mortgage account details are recorded in the file on a handwritten note. These details were provided to the Respondent "*per David Johnston*". David Johnston was an alias used by a Mr Edwin McLaren. Edwin McLaren fraudulently misled the Secondary Complainer *inter alia* that following the sale of her property she would be allowed to remain in the property rent free and he would pay off her debts.
- 7.3 The Respondent did not meet or speak with the Secondary Complainer until the 4 June 2014, over 6 months after opening the file. The Respondent at no time met face-to-face with the Secondary Complainer. Prior to that date and without receiving oral or written instructions directly from the Secondary Complainer the Respondent:
- i. Wrote to Halifax Deeds Department on the 12 November 2013 requesting the title deeds for the Secondary Complainer's property;
 - ii. Received the deeds under cover of a letter dated 18 November 2013 from Halifax "*...on the understanding that you either act for us or you have the authority of all the borrowers to obtain them...*" and retained the deeds;
 - iii. Recorded a note of a telephone call on the Secondary Complainer's file from "David Johnston" on the 19 December 2013 advising "*[Firm 1] should be sending an offer*";

- iv. Received and placed upon the Secondary Complainer's file an offer from Firm 2 on behalf of a Mr B for the purchase of the Secondary Complainer's property on the 20 March 2014 made subject to the conditions contained in the Combined Standard Clauses (2013 Edition);
- v. Sent a terms of business letter to the Secondary Complainer dated 21 March 2014 narrating "*We are pleased to confirm that Hennessy Bowie & Co will be acting on your behalf in connection with the sale ...*" and further advising that "*The Solicitor who will be dealing with your work on a day to day basis is Alistair Bowie*";
- vi. Wrote a second letter to the Secondary Complainer on the same day noting that "*I understand that you wish me to act for you in the sale of [the property]. I am happy to do so and have enclosed a copy of an offer received... I have no idea if this offer is acceptable to you and sufficient to clear any existing mortgage on the property with Halifax, Bank of Scotland, but we can discuss that when you call... I will require I. D. from you at the earliest possible opportunity and I would ask that you take your I. D. to a local Solicitor, who can then certify it and send it to me*";
- vii. On 26 March 2014, in response to a chaser from them, wrote to Firm 2 advising that "*the [Secondary Complainer] was on holiday*" notwithstanding that at that date he had not spoken to the Secondary Complainer;
- viii. On the 27 March 2014 wrote to Firm 2, "*We await instructions... We believe however that the offer will be acceptable and that your client is looking for an early entry date. We therefore enclose Land and Charge Certificates ..., draft Discharge and draft Letter of Obligation*" although there is no communication recorded on the file from which the Respondent could have gained the understanding that the purchaser was looking for an early entry date;
- ix. On the 8 April 2014 wrote to Halifax redemption department seeking a redemption figure for the 18 April 2014;

- x. Received a second offer on behalf of Mr B dated 14 May 2014 from Firm 3 and wrote to the Secondary Complainer for instructions on the 14 May 2014 advising “*in fact it would appear the purchaser, [Mr B], has now changed Solicitors and I am enclosing a copy of a fresh offer received. Please phone me just as soon as possible to let me have your instructions*”; and
 - xi. Wrote to Firm 2 on the 3 June 2014 advising “*This transaction is not proceeding so would ask that you return the titles and drafts sent with our letter of 27 March 2014.*”
- 7.4 The Respondent has not released to the Complainer or the Secondary Complainer’s agent (on production of a mandate from the Secondary Complainer) the offer he received from Firm 3 dated 14 May 2014.
- 7.5 The solicitor’s file contains a file note of 4 June 2014 – this is the only file note of a discussion between the solicitor and the Secondary Complainer on the file. It records “*AB phoning [Ms A]. Noting she is happy to proceed and had thought we were getting instructions from Mr Johnstone. Explaining that is not appropriate so noting she is happy to proceed. Noting she will also send AB appropriate ID.*” There is no further file note recording the solicitor discussion or advice to the Secondary Complainer. There is no correspondence from the Respondent to the Secondary Complainer advising her of and/or explaining the terms and implications of the missives.
- 7.6 Following the conversation the solicitor submitted a qualified acceptance to Firm 3 dated 4 June 2014. In particular it notes the “*Clause 30 of your said offer is held to be delete. Our clients forwarding address will only be disclosed in the event of any dispute arising after settlement.*” This is inconsistent with the Secondary Complainer remaining in the property.
- 7.7 The missives were conditional on a title indemnity. In order that Mr B could obtain the same the Secondary Complainer was required to swear a statutory Declaration of Solvency. The declaration required to be notarised. The solicitor received a copy of the statutory declaration from Firm 3 with their letter of 10 June 2014. The

Secondary Complainer's file holds a file note recording the details which required to be added to the declaration dated 11 June 2014.

- 7.8 On the 11 June 2014 the Respondent wrote to Firm 3 inter alia "*We note you ask in your letter of 9th June 2014 what the arrangements for uplift of keys are at settlement. It is our understanding (and also that of our client) that she will be retaining the keys as she is to be a tenant of your client after settlement. Please confirm that is the case.*" The Respondent did not record such instructions from the Secondary Complainer on file. The Respondent did not enquire with the Secondary Complainer whether she had a tenancy agreement. He did not advise the Secondary Complainer had no right to remain in the property should she sign the disposition and not have tenancy agreement or an alternative binding agreement. The Respondent did not enquire with the Secondary Complainer whether she wished legal advice in relation to the tenancy.
- 7.9 Under cover of a recorded delivery letter dated 19 June 2014 the solicitor sent the Secondary Complainer the (1) disposition in favour of Mr B with signing instructions and (2) an Affidavit of Solvency along with instructions "*...please just have signed but do not have witnessed...*" The Solicitor enclosed a stamped addressed envelope for the return of the documents.
- 7.10 The Secondary Complainer sent a letter dated 30 June 2014 enclosing the "signed paperwork" and her bank details. This included the disposition which is signed, witnessed and dated 30 June 2014. The disposition records it was signed at Dundee on the 30 June 2014. The Respondent sent the completed declaration to Firm 3 on the 1 July 2014. The Respondent signed & notarised the declaration outwith the presence of the Secondary Complainer. The Statutory Declaration of Solvency purports to have been signed by the Secondary Complainer and notarised by the Respondent on the 5 June 2014. At that date the Respondent had not had sight of the style declaration required by the Mr B's lender. Firm 3 sent this to the Respondent under cover of their faxed letter dated 10 June 2014. The Respondent only became aware of the Secondary Complainer's age and retirement status (which are typed on the declaration) on the 11 June 2014.

- 7.11 On the 1 July 2014 the Respondent wrote to the Secondary Complainer by recorded delivery advising "*I return your ID having taken the requisite copies*". The Respondent did not meet with Secondary Complainer to confirm her true identity matched the passport provided. The Respondent's file holds a photocopy of the Secondary Complainer's passport and a partial copy of a letter from Halifax containing the Secondary Complainer's address.
- 7.12 The Statutory Declaration of Insolvency utilised by Mr B to obtain the title indemnity was produced. It is signed by the Respondent as a Notary Public. It narrates the Secondary Complainer swore the declaration before the Respondent at Bishopbriggs on the 5 June 2014. This is a false declaration. The Secondary Complainer did not attend at Bishopbriggs. The Secondary Complainer followed the Respondent's instructions in his letter of the 19 June 2014.
- 7.13 On the 2 July 2014 Firm 3 sent a cheque in the sum of £20,000 in settlement of the transaction to the solicitor to be held as undelivered. Missives were concluded and authority to encash the cheque was given on the 4 July 2014.
- 7.14 The Secondary Complainer is over 70 years old. Prior to the instruction of the solicitor she had been duped by David/Dave Johnston/Edwin McLaren. She had answered an advert in a newspaper which offered to provide finance to persons who were struggling financially, as she was, who were in effect capital-rich but income-poor. The Secondary Complainer was the heritable proprietor of the property. The advert suggested that the advertiser would purchase her property from her, clear off all her debts and allow her to continue to reside in the property rent free. Edwin McLaren perpetrated a fraud against the Secondary Complainer. He was convicted of fraud in relation to the property transaction at the High Court of Justiciary on the 16 May 2017.
- 7.15 The solicitor initially opened a file on instruction from Edwin McLaren using the alias of David Johnstone. Mr B purchased the property from the Secondary Complainer. The solicitor did not make enquiries as to the bona fides of David Johnstone. Edwin McLaren was convicted of fraud in relation to this transaction the indictment read

“between 1 May 2013 and 16 September 2014, both dates inclusive, at ...; the premises of Hennessy Bowie, Solicitors, 2 Kenmore Lane, Bishopbriggs, and elsewhere in Scotland, you EDWIN MCLAREN did pretend to [Ms A], c/o Police Service of Scotland, Paisley that your name was Dave Johnstone, that you were willing to purchase her property ... for £5,000 or thereby, and to settle her outstanding mortgage, overdraft and credit card debts totalling £19,300 or thereby and to settle all fees arising from the conveyance, and that she could remain in said property as a tenant rent-free, did obtain her agreement thereto, did induce said [Ms A] to sign documentation that you induced her to believe reflected the foregoing agreement, the truth being as you well knew that said documentation did not reflect said agreement, and in particular that one of the documents you did induce her to sign was a disposition transferring the title of her property to [Mr B] for a declared purchase price of £20,000, and thereafter you did, through the hands of said Hennessy Bowie Solicitors, by means of inter alia providing said solicitors with instructions and said documents you had induced said [Ms A] to sign, cause the title of said property to be transferred to said [Mr B], did fail to remit the agreed sum of £5,000 to [Ms A], did fail to settle all of her outstanding debts and did fail to settle all fees arising from the aforementioned conveyance, and you did thus obtain the foregoing transfer of title, the unwitting assistance of the said [Ms A] in facilitating the foregoing transfer of title by fraud”

7.16 The Respondent did not make enquiries regarding why he was being instructed when she lived in Dundee and he was in Bishopbriggs; why at 70 she had chosen to sell; where she would live afterwards; why she was selling at undervalue; how she came to agree the sale; raise with her the change of the purchaser’s solicitors; discuss with her the implications of signing the statutory declaration of solvency; and when he became aware that the Secondary Complainer was to remain in the property, what if any right she wished to retain in the property and discuss with her the lack of rights to remain in the property once the sale had settled.

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

8.1 Without instruction, he requested the Secondary Complainer’s title deeds from her lender; retained her title deeds; requested, on two occasions, a redemption figure

from the Secondary Complainer's lender; sent the Secondary Complainer's Land and Charge Certificates to Firm 2; and drafted and sent to Firm 2 a draft Discharge and a draft Letter of Obligation in respect of the sale of the property;

- 8.2 He failed to act in the best interest of his client; he failed to discuss with and advise the Secondary Complainer in respect of (a) the terms and conditions of the missives, (b) the warnings which should have been at the forefront of his mind when the Purchasers appears to have instructed three different solicitors, (c) where she would reside on the sale of the property, (d) the lack of real or other right to remain in the property once she concluded missives, signed the Disposition and settled the transaction or at any individual stage thereof, (e) the steps which she could/should take to protect her right to remain in the property on settlement of the transaction; and
- 8.3 He failed to act honestly when acting in the office of Notary Public when he purportedly completed and submitted (to Firm 3) the Statutory Declaration of Solvency dated the 5 June 2014; on that date he did not have documents which satisfied him of the Secondary Complainer's identity; he did not administer the oath to the Secondary Complainer and he falsely narrated the Secondary Complainer swore the declaration.

The finding of misconduct in relation to paragraph 8.1 was made *in cumulo* with the finding at paragraph 8.2. The findings of misconduct in relation to paragraphs 8.2 and 8.3 were made individually.

9. Having given careful consideration to the content of the correspondence sent to the Tribunal Office by the Respondent's agent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 4 September 2019. The Tribunal having considered the Complaint dated 31 May 2019 at the instance of the Council of the Law Society of Scotland against Alistair Morgan Bowie, 35 Broom Gardens, Kirkintilloch; Find the Respondent guilty of professional misconduct in respect that, (1) without instruction, he requested the Secondary Complainer's title deeds from her lender; retained her title deeds; requested, on two occasions, a redemption figure from the Secondary Complainer's lender; sent the

Secondary Complainer's Land and Charge Certificates to Firm 2; and drafted and sent to Firm 2 a draft Discharge and a draft Letter of Obligation in respect of the sale of the property; (2) he failed to act in the best interest of his client; he failed to discuss with and advise the Secondary Complainer in respect of (a) the terms and conditions of the missives, (b) the warnings which should have been at the forefront of his mind when the Purchasers appears to have instructed three different solicitors, (c) where she would reside on the sale of the property, (d) the lack of real or other right to remain in the property once she concluded missives, signed the Disposition and settled the transaction or at any individual stage thereof, (e) the steps which she could/should take to protect her right to remain in the property on settlement of the transaction; and (3) he failed to act honestly when acting in the office of Notary Public when he purportedly completed and submitted (to Firm 3) the Statutory Declaration of Solvency dated the 5 June 2014 as on that date he did not have documents which satisfied him of the Secondary Complainer's identity; he did not administer the oath to the Secondary Complainer and he falsely narrated the Secondary Complainer swore the declaration; said finding of professional misconduct (1) being found *in cumulo* with (2) and the findings of professional misconduct in (2) and (3) being found individually; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and that of Edwin McLaren also known as David Johnston but will not include the Secondary Complainer or any other persons whose details shall be anonymised; and Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation.

(signed)

Nicholas Whyte

Chair

10. 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 *21 OCTOBER 2019*.

IN THE NAME OF THE TRIBUNAL



Nicholas Whyte
Chair

NOTE

At the Hearing on 4 September 2019, the Tribunal had before it the Complaint, an Inventory of Productions for the Respondent and a Joint Minute of Admissions. The Respondent's Answers were withdrawn. The Joint Minute agreed the factual averments of the Complaint in Articles 3.1 to 3.15 inclusive, some of the factual averments of the Complaint in Article 3.16, the averments of duty at Articles 4.1 to 4.6 inclusive, and the averments of misconduct at Articles 5.2 to 5.4 inclusive, although the parties differed on which elements constituted professional misconduct individually and *in cumulo*. The Complainers invited the Tribunal to hold that the averments of misconduct at 5.2 (i), (ii) and (iii) and 5.3 (i), (iv) and (v) amount to professional misconduct individually. The Respondent admitted that the averments amounted to professional misconduct *in cumulo*, except for the averment at article 5.4 which he admitted amounted to misconduct individually.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal summarised the admitted facts in the Complaint. The Respondent opened a file in the name of the Secondary Complainer in November 2013. He received instructions through an intermediary, Edwin McLaren also known as David Johnston. The Respondent had no authority to act on the Secondary Complainer's behalf between November 2013 and when he spoke to her on June 2014. He requested the title deeds to her property and redemption figures for her mortgage without her instruction. The Respondent sent Land and Charge Certificates to other solicitors without consulting her. The Respondent did not discuss with the Secondary Complainer or advise her regarding the declaration of insolvency. He did not ask where she intended to move. He did not warn her that the purchasers had moved on to their third set of solicitors. He did not make enquiries about the value of the transaction. He did not ask her if she required a tenancy agreement. He did not properly identify the client. He made a false declaration as a Notary Public on the declaration of insolvency. The Fiscal submitted that this conduct breached Rules B1.4.1, B1.5.1, B1.9.1 and B1.9.2. He referred the Tribunal to a solicitor's duties when acting as a Notary Public and described how the Respondent had fallen short of these standards.

SUBMISSIONS FOR THE RESPONDENT

Ms Grant referred to the Complaint and the Joint Minute. She submitted that individually, with the exception of the averments relating to the breach of a Notary's duties, each of the acts referred to in the Complaint did not fall foul of the test in Sharp v The Law Society of Scotland 1984 SLT 313. She said

that these were not so serious and reprehensible as to constitute professional misconduct. The Respondent's conduct did not result in any prejudice to the client. She invited the Tribunal to consider the transaction as a whole and the part played by Edwin McLaren, a convicted fraudster. He duped the Secondary Complainer and the Respondent. The Respondent accepted that things were not done as they ought to have been carried out. However, the Tribunal should look at everything in the round. In response to a question from the Chair she indicated that she had nothing particular to say about the averment of misconduct relating to the Respondent's actions as Notary Public.

DECISION

Although the Respondent admitted professional misconduct, it remained for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. There are certain standards of conduct to be expected of competent and reputable solicitors and a departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct.

Solicitors must always be trustworthy and act honestly. They must act in the best interests of their clients. They must have the authority of their clients for their actions. They must communicate effectively with their clients. They must advise their clients of any significant developments in their case. When acting as a Notary Public, a solicitor must identify the deponent, check that he/she understands the document, administer the oath, and witness the signature of the deponent or acknowledgement of the signature. Notaries exist to prevent document forgery. It is crucial to the administration of justice that the public should have faith in deeds authenticated by Notaries. The formality of swearing before a Notary Public confers a higher standing on documents. Third parties are entitled to rely upon them. The public can only have faith in deeds authenticated by Notaries if solicitors who are acting as Notaries act honestly. As this Tribunal has previously noted, it is important for the profession to be aware that in exercising the functions of a Notary Public, a solicitor must at all times respect all the formalities, however inconvenient or time-consuming that this may be.

The Tribunal considered the admitted facts in the Joint Minute (noting that paragraph 3.16 was only partially admitted). It considered that by his admitted conduct, the Respondent had breached the Practice Rules. The averments of misconduct demonstrated a course of conduct which demonstrated a serious and reprehensible departure from the standards of competent and reputable solicitors and accordingly met the test for professional misconduct.

Without instruction, the Respondent requested title deeds and retained these. He requested redemption figures from the Secondary Complainer's lender. He sent her Land and Charge Certificates to another solicitor and drafted a Discharge and Draft Letter of Obligation. He failed to discuss and advise the Secondary Complainer at every stage of the process the consequences of his actions. It was of great concern that the Respondent concluded missives without the Secondary Complainer's instructions. It is not possible to accept the clauses in a standard offer without detailed discussion with the client. If the Respondent had believed that the client was to remain in the house, he should have discussed with her the deletion of the clause regarding vacant possession. He ought to have identified that she had no right to remain in the property and discussed her plans. He made no further inquiry when the purchaser twice changed agents. The Respondent's actions as Notary Public were dishonest. He did not have documents to satisfy him regarding the Secondary Complainer's identity. He did not administer the oath to her. He falsely narrated that the Secondary Complainer had sworn the declaration before him in Bishopbriggs. There were various warning signs throughout this transaction which should have caused the Respondent to pause. If he had considered these as he ought, he could have taken steps to avoid the fraud which was being perpetrated against the Secondary Complainer. Even if he had notarised the document properly in the presence of the Secondary Complainer, this would have given him an opportunity to meet her and have a detailed conversation about the transaction.

The Respondent's misconduct grew more serious as the course of conduct progressed. The Tribunal therefore found the Respondent guilty of professional misconduct *in cumulo* in relation to the earlier misconduct but individually with regard to his later behaviour. The Fiscal reported that the Respondent's record card contained no previous conduct findings.

Ms Grant made submissions in mitigation. She indicated that the Respondent was deeply regretful of the distress caused to the Secondary Complainer. In retrospect he wishes he had paternally enquired into the circumstances of the transaction with the Secondary Complainer. It is not a solicitor's duty to do that. However, he recognised that he should have been more proactive because he had not met the Secondary Complainer and the sale was undervalue. She noted the Respondent's cooperation and that he had been honest and candid throughout the proceedings which had been ongoing since 2015. The Respondent practised for 42 years before his retiral in 2017. He does not intend to reapply for a practising certificate. He has an unblemished record. There was no suggestion that he was going to gain financially from the transaction, except for the fee. He was entirely unaware of Edwin McLaren's fraudulent enterprise. Mr McLaren duped the Secondary Complainer, the Respondent and other solicitors. Lord Stewart commented during the criminal case that Edwin McLaren demonstrated a "breath-taking dishonesty". At all times, the Respondent thought he was acting with the Secondary

Complainer's instructions. He wanted to serve her interests. In his view it was a standard conveyancing transaction albeit the client had been introduced by another. Regarding the finding of dishonesty in relation to the Respondent's actions as Notary, Ms Grant noted that the Respondent was simply trying to expedite the transaction and save the Secondary Complainer having to go to a local solicitor who would charge a fee. His indemnity insurance fully compensated the Secondary Complainer for her losses. She submitted that no further claim for damages should arise from this matter. The Chair asked the Fiscal to advise the Tribunal regarding the Secondary Complainer's position. The Fiscal noted that he last heard from the Secondary Complainer's solicitor in August reporting that he had not heard from the Secondary Complainer for some time.

The Tribunal had regard to the submissions made in mitigation. It noted the Respondent's clean record, the fact he had engaged a solicitor and cooperated with the Fiscal and the Tribunal. He had expressed remorse and had some insight. The professional misconduct was limited to one case and client. The aggravating factors that are sometimes present in these cases were not apparent here. However, the finding of dishonesty meant that the Tribunal had the most serious sanctions in mind. The Respondent completed an affidavit without having confirmed the deponent's identity. He did not know that the person who signed the affidavit was the Secondary Complainer. He issued an affidavit purporting falsely to have been sworn in his presence on a particular date and place. The Tribunal considered similar cases which had previously come before it, Law Society v James Donald, Law Society v Jane Steer and Law Society v Brian Abbott. These cases involved a range of sanctions. It was apparent that each case turned on its own facts and circumstances.

The Tribunal balanced the finding of dishonesty with the Respondent's unblemished record of a lengthy period in practice and considered whether a period of suspension would suffice. It accepted that the Respondent had been duped by Edwin McLaren. However, this kind of fraud can only succeed if solicitors are willing to act in these circumstances. The Respondent ought to have known better. On balance, the Tribunal considered that the professional misconduct was so serious that the only suitable sanction was strike off. In coming to that decision, it took into account the effect on the Respondent and the message to the public and the profession. While solicitors will sometimes become victims of fraud through no fault of their own, the Respondent had failed to engage with the Secondary Complainer about many of the warning signs that had been apparent in this case and then had gone on to act dishonestly with regard to the affidavit. His behaviour went to the root of the trust placed in solicitors. The profession, public and courts must be able to rely on an affidavit as the equivalent of giving evidence in court under oath. Therefore, the Tribunal ordered that the Respondent's name be struck off the roll of solicitors in Scotland. In terms of Section 53(6) of the Solicitors (Scotland) Act 1980 the Tribunal

directed that the order shall take effect on the date on which the written findings are intimated to the Respondent.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent and Edwin McLaren also known as David Johnston. However, there was no requirement to identify the Secondary Complainer or any other person as publication of their personal data may damage or be likely to damage their interests. The Tribunal will allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation if so advised.



Nicholas Whyte
Chair