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

F I N D I N G S

in Complaint

by

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

against

DAVID JAMES CLARK, formerly residing at 58 Silverknowes Drive, Edinburgh and now of 6/8 Waverley Park Terrace, Edinburgh
Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, David James Clark, formerly residing at 58 Silverknowes Drive, Edinburgh and now at 6/8 Waverley Park Terrace, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was no Secondary Complainer.

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.

4. In terms of its Rules the Tribunal appointed the Complaint to be set down for a hearing on 15 June 2015 and notice thereof was duly served on the Respondent.

5. A Joint Minute between the parties agreeing the averments of fact, duty and professional misconduct was lodged with the Tribunal on 1 June 2015.

6. At the hearing on 15 June 2015, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and was represented by his solicitor, Ian Ferguson, Solicitor, Glasgow. Both parties confirmed the terms of the Joint Minute. Given the terms of the Joint Minute, no evidence required to be led and the Tribunal proceeded on the basis of submissions. The Respondent lodged Productions in support of his submissions.

7. Having regard to the Complaint, Joint Minute of Admissions, and the parties' submissions, the Tribunal found the following facts established:-

7.1 Between 1 August 2006 and 4 June 2010 the Respondent was a partner in Hughes Walker Solicitors, 21 Stafford Street, Edinburgh, EH3 7BJ. Financial compliance officers of the complainers carried out an inspection of the books and records of that firm on 27 and 28 September 2010. The following matters came to light:-

Mr and Mrs A – Purchase of Property 1

7.2 In or about March 2010 the Respondent acted for Mr and Mrs A in connection with the purchase of property 1. Although title to the property was taken in the joint names of Mr and Mrs A, the client ledger was in the name of Mrs A alone.

7.3 There was no risk assessment carried out by the Respondent. There was no identification of the clients carried out by the Respondent.

7.4 On 12 March 2010 £39,320 was received from Mr B and Ms C. It was entered in the Respondent's ledger as being the balance of the purchase price. There was no evidence on this file as to the source of the fund or any explanation why Mr B and Ms C were providing Mr & Mrs A with £39,320.

7.5 The seller was Mr B.

7.6 The seller Mr B purchased the property from Mr and Mrs D on the same day as the sale to Mr and Mrs A. Mr B purchased the property for £93,000 and sold it on to Mr and Mrs A at a price of £147,500. Mr and Mrs A had a loan of £110,590 from Birmingham Midshires and the Respondent acted in the constitution of the Standard Security in their favour.

7.7 The Respondent failed to inform the lender:-

7.7.1 that the seller had owned the property for less than 6 months,

7.7.2 that there had been an increase in the purchase price as above condescended upon, and

7.7.3 that the balance of the purchase price was provided by third parties, one of whom also happened to be the seller of the property.

Ms D – Purchase of Property 2

7.8 In January and February 2010 the Respondent acted for Ms D in connection with the purchase of Property 2. This was an executry sale.

7.9 There was no risk assessment carried out by the Respondent.

7.10 The Respondent did not obtain identification of his client.

7.11 On 23 March 2010 £21,461.25 was received by the Respondent from Mr B and Ms C. The Respondent did not investigate the source of these fund, nor why Mr B and Ms C were providing funds to the purchaser.

7.12 The Respondent failed to notify The Mortgage Works (a subsidiary of Nationwide Building Society) who were providing a loan of £66,912.75 to Ms D to assist with the purchase of the property that the balance of the purchase price was being provided by a third party.

Mr E and Ms F – Purchase of Property 3

7.13 In or around March 2010 the Respondent acted on behalf of Mr E and Ms F in relation to the purchase of Property 3. He also acted for Godiva Mortgages Limited in relation to the constitution of a Standard Security over the property. Godiva Mortgages Limited were lending £45,000 to assist the purchasers with their acquisition of the property.

7.14 A risk assessment form was held by the Respondent on file but it had not been completed.

7.15 There was evidence of the client's identity on the file but no evidence to demonstrate that the person certifying the identity was a person on whom reliance could be placed in terms of Regulation 17 of The Money Laundering Regulations 2007.

7.16 On 17 March 2010 £20,335 was received from Mr B and Ms C. This was entered on the ledger as being the balance of the purchase price. There was no evidence taken by the Respondent

as to the source of these funds or an explanation as to why Mr B and Ms C would provide funds to the client.

7.17 The seller was Mr B.

7.18 The Respondent failed to disclose to the lenders that the seller purchased the property on the same day as the sale settled. He failed to advise the lender that the price in relation to Mr B purchase was £45,000 and the sale price to Mr E and Ms F was £65,000. The Respondent failed to advise the lender that the property had been owned for less than 6 months, that there had been an increase in the purchase price, or that the balance of the purchase price was being provided by third parties, one of whom was the seller.

Mr G – Purchase of Property 4

7.19 In October 2009 the Respondent acted for Mr G in connection with the purchase of Property 4. He also acted for the lender, Birmingham Midshires. The Respondent failed to complete a risk assessment form which was left blank on file.

7.20 On 6 October 2009 Mr G paid over £35,000 to the Respondent. This was noted by the Respondent on his ledger as "Bank of Scotland deposit for purchase". There was no evidence on the file as to the source of these funds.

7.21 The instruction to submit the offer for the property came from Mr H of Company 1 who were the sellers of the property.

7.22 The sellers, Company 1, purchased the property on 2 October 2009, one week before Mr H's purchase was due to settle, at a price of £90,000. The price to be paid by Mr H was £140,000. Birmingham Midshires were lending £110,000.

7.23 The Respondent failed to advise the lender that the seller had owned the property for less than 6 months, or that there had been an increase in the purchase price or the reasons for this.

7.24 The Home Report valuation was less than the valuation of the property in the Birmingham Midshires offer of loan. The Respondent failed to bring that to the attention of Birmingham Midshires.

MS I – Purchase of Property 5

7.25 In or around January 2010 the Respondent acted for Ms I in relation to the purchase of Property 5. He also acted on behalf of Birmingham Midshires, who were the lenders.

7.26 The Respondent failed to complete a risk assessment in relation to Ms I.

7.27 The client Ms I made payments to the Respondent of £10,000 on 21 January 2010, £10,000 on 22 January 2010 and £8,475 on 25 January 2010. The Respondent did not carry out any checks into the source of the funds.

7.28 Title to the property was taken in the name of Ms I alone but the funds were paid into a ledger for Mr H and Ms I.

7.29 The seller of the property was Company 1. They purchased the property from Northern Rock on the same date as the property was sold to Ms I. The sellers paid £72,500 for the property. The purchase price to be paid by Ms I was £110,000. Birmingham Midshires provided loan funds of £82,465.

7.30 The Respondent failed to advise Birmingham Midshires that the seller had owned the property for less than 6 months, that there had been an increase in the purchase price or the reason for this, or that £80,000 of the purchase price was paid to a third party namely Mr J on 22 January 2010 and a further £30,000 of the purchase price was paid to Mr J on 26 January 2010.

Mr K – Purchase of Property 6

7.31 In 2010 the Respondent acted for Mr K in relation to the purchase of Property 6. He also acted for Clydesdale Bank who were lending to fund the transaction.

7.32 The Respondent failed to carry out a risk assessment in respect of his client.

7.33 He failed to obtain client identification.

7.34 On 12 March 2010 Mr K paid £31,935.00 to the Respondent. This was noted on the ledger as being the balance of the purchase price. No evidence was obtained by the Respondent as to the source of these funds.

7.35 The seller of the property was Mr B. His purchase of the property settled on 2 February 2010. Mr K's purchase of the property settled in March 2010. Mr B paid £40,000 for the property. The purchase price in relation to Mr K's transaction was £75,000. Clydesdale Bank lent £43,900.

7.36 The Respondent failed to advise the lenders that the seller had owned the property for less than 6 months or that the price of the property had changed significantly.

Mr L – Purchase of Property 7

7.38 The Respondent acted for Mr L in relationship to the purchase of Property 7. He also acted for the lenders who were Godiva Mortgages Limited. The transaction took place over February and March 2010.

7.39 The Respondent failed to complete a risk assessment in respect of Mr L.

7.40 On 26 March 2010 the sum of £27,835.00 was received from Company 2 and was entered in the Respondent's ledger as being the balance of the purchase price. There was no evidence held as to the source of these funds or an explanation why a third party Company 2 was providing funding.

7.41 The Respondent failed to advise the lender that the balance of purchase price was being provided by a third party.

Client M – Purchase of Property 8

7.42 Between September 2009 and March 2010 the Respondent acted for Client M in respect of the purchase of Property 8. The Respondent also acted on behalf of Birmingham Midshires who were assisting Client M with the funding of the purchase.

7.43 There was no risk assessment carried out by the Respondent. The Respondent did not obtain evidence of identification of the client.

7.44 On 13 November 2009 the Respondent received £2,010 by cheque from Mr H. On 5 January 2010 a further £400.00 was received from Mr H. On 1 March 2010 £15.00 was received was received from Company 1. These items were entered by the Respondent in his ledger as being the balance of purchase price, the balance of outstanding fees, and balance of shortfall

respectively. The Respondent recorded the first two payments as coming from Client M whereas they did not.

7.45 The offer which was faxed on behalf of Client M (on Mr H's instructions) was for the sum of £115,000 but this reflected the fact that Client M had already paid £28,000. The hard copy of the offer in the Respondent's file was for £91,000 and the title reflected that, but this sum did not pass through the Respondent's firm.

7.46 The sellers purchased the property on the same day as they sold it to Client M. They paid £87,000. That was £4,000 less that the end purchase price. The purchase price paid according to the ledger was £87,820.

7.47 Birmingham Midshires lent £86,215 in respect of that transaction. The price recorded in the Respondent's certificate of title was £115,000.

7.48 The Respondent failed to inform the lender that the seller had owned the property for less than 6 months, that there had been an increase in the purchase price, that the purchase price was not as contained in the offer of loan, nor that the Respondent was not in control of all the funds to be used for the purchase price.

Client M – Purchase of Property 9

7.49 In November and December 2009 the Respondent acted for Client M in respect of the purchase of Property 9. The Respondent also acted for Birmingham Midshires who were lending to fund the transaction.

7.50 The Respondent failed to carry out a risk assessment of his client. He did not obtain identification of his client.

7.51 Three payments totalling £30,000 were received from Mr H. The Respondent failed to verify the source of the funds nor did he obtain an explanation why a third party was funding the transaction.

7.52 The seller (Company 1) purchased the property on the same day as it was sold at a price of £85,000. The price contained in the offer on behalf of Client M was £91,000. The purchase price according to the Respondent's ledger was £127,465.00. The price disclosed in the Disposition was £130,000.00. The amount of funding provided by Birmingham Midshires was £97,465.00.

7.53 The Respondent failed to advise the lender that the seller had owned the property for less than 6 months, that there had been an increase in the purchase price, and that he was not in control of the full purchase price.

7.54 £90,000 of the purchase price was paid on 11 December 2009, and £37,465.00 was paid on 16 December 2009, contrary to the lender's instructions.

Mr N – Purchase of Property 10

7.55 The Respondent acted on behalf of Mr N in relation to the purchase of Property 10 in December 2009 and January 2010. The Respondent also acted for Birmingham Midshires who were lending to fund the transaction.

7.56 There was no risk assessment carried out by the Respondent and no client identification was obtained by him.

7.57 On 22 January 2010 £28,620.00 was received from Mr N. This was entered into the Respondents as being the balance of the

purchase price. There was no evidence as to the source of the funds.

7.58 The seller of the property was Company 1 which appears to be an organisation with which Mr N had some substantial connection.

7.59 The sellers Company 1 purchased the property on 8 December 2009 and sold it to Mr N on 22 January 2010. The original purchase price was £75,000 and the sale price to Mr N was £110,000. Birmingham Midshires lent £82,465 to facilitate the transaction.

7.60 The Respondent failed to advise the lender that the seller had owned the property for less than 6 months or that there had been an increase in the purchase price.

Mr O – Purchase of Property 11

7.61 Between February and June 2010 the Respondent acted for Mr O in connection with the purchase of Property 11. The Respondent also acted for Company 2 who were lending to facilitate the transaction.

7.62 There was no risk assessment carried out by the Respondent.

7.63 On 14 June 2010 £23,370 was received by the Respondent from Company 3. The Respondent recorded this on the ledger as being the balance of the purchase price. There was no evidence as to the source of the funds or any explanations as to why Company 3 were providing funds.

7.64 The Respondent failed to advise the lender that the balance of the purchase price was being provided by a third party.

8. Having considered the foregoing facts and having regard to the submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 his failure in his duties under the CML Handbook and at common law to provide material information to the lenders in conveyancing transactions;

8.2 his breaches of Rule 6(1)(c) of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 as a result of the aforesaid failures in complying with the requirements of the CML Handbook;

8.3 his breach of Rule 8 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001; and

8.4 his breaches of Rule 24 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 in respect of his failure to comply with the Money Laundering Regulations 2007.

9. Having given careful consideration to the established facts, the submissions made by the Respondent's agent in mitigation and two references lodged on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 June 2015. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against David James Clark, formerly residing at 58 Silverknowes Drive, Edinburgh and now at 6/8 Waverley Park Terrace, Edinburgh; Find the Respondent guilty of professional misconduct in respect of his failure in his duties under the CML Handbook and at common law to provide material information to the

lenders in conveyancing transactions, his breaches of Rule 6(1)(c) of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 as a result of the aforesaid failures in complying with the requirements of the CML Handbook, his breach of Rule 8 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001, and his breaches of Rule 24 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 in respect of his failure to comply with the Money Laundering Regulations 2007; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of three years any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as maybe approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland, and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; 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 and may but has no need to include the names of anyone other than the Respondent.

(signed)

Alistair Cockburn

Chairman

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

IN THE NAME OF THE TRIBUNAL

Alistair Cockburn
Chairman

NOTE

Prior to the hearing on 15 June 2015 the parties had lodged with the Tribunal a Joint Minute of Admissions agreeing the averments of fact, duty and professional misconduct. Given the extensive nature of the Joint Minute no evidence required to be led and the Tribunal proceeded to hear submissions on behalf of both parties.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch thanked the Respondent's agent for his assistance in resolving matters. He indicated that he did not propose to go through the averments in detail unless the Tribunal wished him to. He drew the Tribunal's attention to the averments of misconduct and noted that these included references to the relevant transactions.

He asked the Tribunal to hold that it was significant that several of the people appear over several of the transactions including Company 1, Mr H, Mr B and Ms C.

Leaving aside the requirements of the CML Handbook itself and indeed the common law duties as expressed in paragraph 13.3 of the Complaint, it should certainly have been well known to any solicitor who read the Journal of the risks involved in these transactions. These risks had been included in articles in the Journal in the course of 2009.

The conduct on the part of the Respondent in this case involved risks relating to Money Laundering Regulations and the source of funds for the transactions, as well as the breach of the CML Handbook.

SUBMISSIONS FOR THE RESPONDENT

Mr Ferguson lodged with the Tribunal a written plea in mitigation for the Respondent, together with Productions in support thereof. He took the Tribunal through this written note which is reproduced hereafter.

"ADMISSION

David Clark has admitted the facts in this Complaint.

David Clark has admitted the law in this Complaint.

David Clark has admitted professional misconduct.

David Clark has not wasted the time of this Tribunal.

David Clark is ashamed of the conduct complained of and apologises for it..

WHAT WENT WRONG

My client had an apprenticeship with Alan McDougall & Company in Edinburgh whose practise at the time was largely Court of Session, divorce and reparation and virtually no conveyancing or executry work. My client then moved to Wilson Terris & Co in Edinburgh where he had a job as an Assistant in the Court Department. In about 1985 my client started as a sole practitioner trading as David Clark & Co. As a sole practitioner he started practising conveyancing although the business involved a great deal of Court work. After working with Mr P for a few years, the business became Clark Ferguson and traded as such up until 2006 when Mr P was appointed part time Sheriff and decided he did not wish to continue to practise as a solicitor. When Hughes Walker heard in 2006 that Mr P was leaving, they approached my client to see if he would be interested in joining them as their Conveyancing Department. This was not an easy choice for my client to make at the time because their office was very old fashioned and they had the lease of a very odd shaped basement area which was liable to flood and they had no email, no networking and the basement had no windows. He joined in August 2006 and when he started the secretary he was to have did not turn up for several days and eventually he managed to employ his secretary from Clark Ferguson. It was decided that the Property Department would have its own telephone number, fax number, stationery etc and it was intended it would have its own entrance/exit but that fell through for health and safety reasons.

My client recalls that when he started as partner, there were a host of oddities that had to be changed. There was a requirement that all partners signed cheques and the bank was situated some miles away. My client was very much involved at this stage in changing banks to RBS so that they could use their client monies service and bringing

in payments over the phone by streamline, setting up payment by telegraphic transfers without having to send faxes to the bank etc.

As a Conveyancing Partner, my client only ever had typing done for him by his own secretary. At the outset he employed a temp while his secretary was on holiday but eventually thought that not worth the bother and the same applied to answering the phones during holiday periods. He had to answer the property line calls because the others in the office did not like doing so and he thought it made things easier though it did add to his workload significantly. From my client's point of view, it appeared there were two distinct offices running as it were, the Court Department and a separate Property Department and the Property work was either done by him or his secretary. There was no other property typist, conveyancing trainee or assistant nor anyone else in the firm interested in the property side of the business. My client's perception was that he was doing run of the mill domestic conveyancing, estate agency, wills, leases of shops etc.

My client recalls being consulted by one particular Property Investors who was buying from people using readily available "buy to let" mortgages which would usually involve him buying at reduced prices from people who were desperate to sell and usually part of the deal would be that settlement would be effected within a short timescale. This came at the time of the recession and business was hard to come by. This person whom my client met after he joined Hughes Walker was Mr H. My client had bought properties for him before as an individual prior to the matters in this Complaint and had also acted for his parents as individuals. Mr H's father is of Scandinavian descent but he thinks Mr H is Scottish. Mr H was ex army and lived with Client M who is mentioned in the Complaint as indeed is Mr H's father Mr N. Mr H was involved in property and had a Letting Agency and he was involved in various companies including Company 1 and Company 4. Mr H appeared to be on good terms with Mr J, solicitor at the Lints Partnership who was involved in most if not all of these transactions. My client knew Mr J from previous transactions since he started as a conveyancer. At some point my client was persuaded to submit offers to Mr J for properties which would be bought on a back to back basis from one of Mr H's companies. My client cannot recall all the details of the transactions and of course he has not had access to the ledger cards or files since he left Hughes Walker. My

client does remember the individual clients having met them on at least two or three occasions. He is certain that he did obtain their money laundering ID documents but has been unable to produce these as he has no access to Hughes Walkers' files.

My client's understanding was that Mr B was a financier and he emailed my client an example of his financing. This involved Mr B providing a purchaser with a deposit for their purchase in exchange for which Mr B would take a Security usually a Second Security over their house. My client's recollection is that approval had been given by a lender, The Mortgage Works, in this case. My client realises that this should have raised alarm bells with him but it did not.

My client did not hide anything from his fellow partners at Hughes Walker at any time. They never asked him about his part of the business and how it was doing. My client was still acting in normal transactions which were not back to back but there were the transactions detailed in the Complaint in which he was involved. The mail was usually opened by Mr Q, Mr R and my client.

At the time of his resignation, my client was asked if he could guarantee that the MLRO documentation was 100% okay and also that all lenders have been told of the back to back scenarios. The reason he was asked was because an inspection was scheduled for 26th June 2010. My client advised his partners that he could not guarantee both. It was actually my client who raised these two points as being problems for him and which the Law Society would be likely to raise if there was an inspection. My client's resignation was about 4:00pm on Friday 4 June 2010. He then went downstairs to send off the mail including deeds to Register House.

My client's usual working day involved working very long hours. Since starting with Hughes Walker, my client had been in the practice starting at 8:45am after the school run and would work right through until about 6:30pm. He would always go in at the weekend as well, usually for a couple of hours on Saturday or Sunday morning. Latterly, it was really essential to do such hours to make sure titles were being properly registered.

On the Monday after my client resigned, he had several phone calls with Duncan Hughes in which my client indicated to him that he really thought it was essential that he got into the office to help clear the backlog of paperwork and get everything up to date on the files. It was eventually agreed that he would go in under supervision at all times to meet with Mr S from Mackay & Norwell who was going to finish off the conveyancing settlements for the next week or two. My client went in and met him as well as Lesley Cumming (ex Law Society of Scotland Accountant). Mr Cumming wanted to interview my client and spoke to my client for about 20 minutes and my client told him about Mr B. He did not ask my client anything else but seemed to think that he would find lots of unrecorded deeds. My client told him that was not the case but that my client was prepared to spend as much time as he could to ensure that everything was back in order. By that my client meant putting loose filing back on files and ID Documents with files etc. My client found that that seemed to be the wrong thing to say as he later found out that Lesley Cumming had brought in Mr T, a solicitor from another firm to look at things. Thereafter, my client called in at Hughes Walker at least twice a week to help with any enquiries that Mr T had. My client believes that all necessary deeds were sent to Register House and there is no allegation that he did not do this. My client did not see a Report that was prepared by Lesley Cumming.(My client called Ian Messer of the Law Society on the morning of 7th June 2010. He advised Mr Messer of the position so the Society were aware from very early on what the position was. My client asked Mr Messer if he wished my client to come in to see him. Mr Messer said no as there were no financial irregularities. The books balanced. My client formed the view that Mr Messer was disinterested.

EXCEPTIONAL DELAY, WORRY AND STRESS

It is five years since the events complained of. You may wonder why it has taken five years for this Complaint to reach the SSDT. I do. My client does. I think you would be correct to be concerned at this too.

My client realised that he had not been keeping proper records of ID and Risk Assessments but he thought that he had been otherwise complying with requirements particularly in relation to registering titles and securities and indeed there is no complaint that this was a problem here. My client effectively turned himself in. He

realised that he had not dealt with the cases properly and admitted so to his partners. It was actually a cry for help.

However, the reaction was that the other partners made it plain that they were looking for his resignation and my client gave it. That was in June 2010.

Lesley Cumming, Ian Messer of the Law Society and Hughes Walker were aware of the position at that time from my client and my client was certainly under the impression that the Law Society had been made aware of this by Hughes Walker and/or Lesley Cumming and Ian Messer also. There were long delays.

The Guarantee Fund Committee Interview was only conducted on 20 January 2011 when my client and I attended and he gave a full and detailed response to the Committee and the Law Society Conduct Complaint was lengthy and the PCSC Determination given in February 2013. That recommended that a Fiscal be appointed to prosecute for professional misconduct.

Since then, there has been a long and extraordinary gap of over two years and two months when absolutely nothing was heard. There has been no explanation proffered as to the reason for such a lengthy delay. Then on 28 April 2015, my client was served with the Notice of Complaint. My client's position has been to admit everything, including professional misconduct by way of a Joint Minute of Admissions and with extraordinary speed, he is now before this Tribunal barely seven weeks from receipt of the Complaint. That contrasts starkly with the two years and two months delay in deciding whether or not this Complaint was being progressed with. No matter what explanation may be given, it is likely to be an inadequate one and will not justify why it has taken so long for this present Complaint to go ahead.

From my client's point of view, it is the case that he has not sought to work again as a solicitor since leaving Hughes Walker in June 2010. He has not renewed his Practising Certificate since then. He has effectively been working as an admin staff member or paralegal with no legal status for Doyle & Company and now with Davidsons. My client surmised that perhaps he was just not that important in the

Society's list of priorities because he was no threat to anyone, having effectively left the profession by his own choice.

Indeed when I was contacted in relation to the Complaint that had been served and contacted the Fiscal, my client did offer to give an undertaking that he would not renew his Practising Certificate at any time in the future. However, the usual reason has been given that there is a Counsel's Opinion for the Law Society that such an undertaking would be unenforceable. That Opinion has never been produced by the Law Society so it is impossible to see whether that is the strict advice or there is other comment that might indicate that that is not black and white. However I do have to say that surely an Undertaking voluntarily offered by a solicitor, freely given, that has not been requested by the Law Society and is given with the benefit of independent legal advice is of significance. If a solicitor undertakes to do something and then does not do that thing he is breaching his undertaking and breaking his word. While it may be the case that he could not be stopped from applying for a Practising Certificate if he did so that is still a breach of undertaking and is conduct capable of being complained of, particularly as there would have been a quid pro quo.

My client is of limited means. His salary is minimal and his financial situation is precarious.

I have lodged my client's P60 for the year to 5 April 2015 which shows £6474.09. I also lodge his pay slips for November 2014 to May 2015 inclusive. It is likely that if a fine is imposed on my client, he will be unable to pay it and any fees and it is likely to result in his bankruptcy. This has been known since the start of these proceedings. It is one of the reasons that efforts have been made to find an alternative solution.

The Fiscal will tell you that I did contact him with a proposal which had been suggested by a Counsel inviting the Law Society to raise an Action of Interdict against my client based on the various breaches and with an Interdict against my client practising again. My client would agree to consent to decree so there would be no appeal. Unfortunately, there is a flaw in that plan as the Action complained of is not a legal wrong and so unfortunately that was rejected.

PREJUDICE

Looking at the delay once more, I ask this question. Was there prejudice to my client? My answer is, "yes".

There have been years of uncertainty for my client not being able to move on from June 2010. My client has effectively lived for the last five years under this cloud. It is true it is a cloud of his making.

However, the delay and uncertainty hanging over him for such a long period was not of his making and appears to have no rational explanation nor one that would justify the delay. The only reason my client could think of was, that as he was not practising and did not intend to and he was reaching retirement age, the Society had decided to pursue others who were still in practice and had decided not to pursue him if the status quo prevailed and he did not seek a Practising Certificate. That gave him a legitimate expectation that the case would not be pursued the longer the delay went on. That was also my expectation. Cases from well after my client's cases have been raised and settled long ago.

I urge the Tribunal to use their discretion to address this particular case and to take into account the lengthy delays in dealing with this by the Law Society in coming to a conclusion.

The Tribunal will be aware of having dealt with a number of cases which post-dated the events in this Complaint and if one goes back in the history of such complaints, then this is of the category of a "Joy Dunbar" case, rather than of the later cases.

I would ask the Tribunal to take into account the way that my client effectively handed himself in, ceased working as a solicitor, did not renew his Practising Certificate for over five years and judge him in accordance with contemporary cases from around June 2010. My client has cooperated and he has also has given you and others reading this case an insight into how the problems arose by analysing what happened. Hindsight is a wonderful thing. My client just wishes that he had had the foresight and insight to properly understand the nature of these cases at the time and had refused that business.

It is clear that my client utterly regrets his failings in these cases and he has imposed on himself his own sentence of not practising since June 2010 and has no wish to practise ever again. My client apologises for his conduct. He has imposed a sentence on himself harsher than other Tribunal cases have imposed.

He trusts that you will see this is a truly unique case and I ask you to take all of this into account in reaching your decision."

In answer to questions from the Tribunal, Mr Ferguson confirmed that no preliminary plea was being taken on behalf of the Respondent in relation to the question of delay. He explained that he was simply referring to this as of significance to the sentence to be imposed. He clarified that the prejudice he had referred to was referring to the cloud of uncertainty that had been hanging over the Respondent's head. Mr Ferguson submitted to the Tribunal that the Tribunal could take the delay into account when considering sentencing and referred to criminal courts taking such matters into account. He submitted that other cases of breaches of the CML Handbook had been taken before the Tribunal before his client's case and it appeared that his client's case had been left on a shelf.

In answer to a question from the Tribunal, Mr Ferguson submitted that the appropriate penalty here would be a lengthy suspension. He indicated that the Respondent was reaching retirement age and had no reason to practise again.

In response to the Respondent's submissions, the Fiscal confirmed that he had been instructed on 20 June 2013. He explained that at that time there were a number of other cases coming to the Tribunal with a community of facts about them, that he was dealing with. This case had involved 12 transactions and preparation had involved a considerable amount of work. This case was the last of the batch of cases he was referring to.

He asked the Tribunal to hold that standing that the only prejudice described related to uncertainty then it could not be said that there was any prejudice to the Respondent at all.

The Chairman asked the Respondent's agent to clarify whether the Respondent had known at the time of the transactions that he had been acting wrongly. It appeared that the Respondent had himself reported the conduct in the knowledge that the Law Society was coming to inspect the firm. The Chairman asked if he did not know it was wrong at the time of the conduct, how had he become aware that it was wrong?

Mr Ferguson indicated that in advance of the Law Society inspection the Respondent's partners had asked him for certain guarantees regarding his files. Questions started to be asked. He felt that he could not provide these guarantees and although he thought that his partners were overreacting on the basis that he could not provide these guarantees he felt he could not continue as a partner.

The Chairman asked if the reason why the partners had asked for his guarantees was because the wrongdoing had already surfaced.

Mr Ferguson responded that the cashroom partner of the firm had raised with the Respondent that there was going to be an inspection and had asked him for certain guarantees which the Respondent could not give. Mr Ferguson submitted that the Respondent did not think he was acting wrongly at the time.

DECISION

The Tribunal had no hesitation in finding the Respondent guilty of professional misconduct.

The Tribunal had before it a Complaint involving 11 transactions with significant irregularities. The Respondent had failed to report obviously significant matters to the lenders in some of these transactions. In two of these cases the seller of the property had provided the deposits for the purchase. This was not reported to the lenders. In

two of the transactions the purchase price noted in the instructions given by the lenders did not match the purchase price elsewhere within the files. There were significant failures in respect of the Money Laundering Regulations. In many cases he had failed to check clients' identification. He failed to carry out any checks as to the source of the funds for deposits.

This conduct clearly fell well below the standard to be expected of a competent and reputable solicitor and was serious and reprehensible.

With regard to disposal, the Tribunal did not accept the Respondent's submission that this case was towards the lower end of the scale of such cases, or as he put it, "a Joy Dunbar case". The parts of the CML Handbook breached in this case are principally designed to prevent fraud. In addition to his failures to report significant matters to his clients, the lenders, the Respondent was guilty of serious failures in relation to money laundering checks. Given the Respondent's previous experience, he must have known the risks associated with these failures.

In mitigation, however, the Tribunal accepted that these transactions occurred over a fairly short period of time. The Respondent had not appeared before the Tribunal before and the references produced were good. He had demonstrated clear remorse and insight into the serious nature of his conduct by cooperating fully with the Law Society, reporting these matters himself, and not reapplying for a practising certificate. There had been no suggestion of deliberate dishonesty or personal gain.

Having regard in particular to the protection of the public, the Tribunal concluded that the most appropriate disposal was a Restriction on the Respondent's practising certificate, restricting him to working under supervision for a lengthy period and until he had satisfied the Tribunal that he was fit to hold a full practising certificate. Three years was considered the appropriate period for the Restriction. After the expiry of three years, the Tribunal will expect the Respondent to be able to show an ability to comply with the CML Handbook before the Restriction is lifted.

The Fiscal for the Complainers moved for expenses. The Respondent did not oppose that motion. Accordingly, expenses were awarded to the Complainers. The usual order with regard to publicity was made.

Alistair Cockburn

Chairman