

**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, 26
Drumsheugh Gardens, Edinburgh**

against

**JOHN GRAHAM LINTS, 1/6
Succoth Avenue, Edinburgh**

1. A Complaint dated 26 October 2012 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that John Graham Lints, 1/6 Succoth Avenue, Edinburgh (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. No Answers were lodged for the Respondent. However a letter dated 23 November 2012 was submitted by the Respondent to the Tribunal advising that although he had disputed and challenged this Complaint from the start as he has now retired from the profession he is fed up with the whole matter and could not be bothered challenging the Complaint any further.
3. In view of the contents of the Respondent's letter, the Tribunal appointed the Complaint to be heard at a procedural hearing on 16 January 2013 and notice thereof was duly served on the Respondent.

4. The hearing took place on 16 January 2013. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented himself.
5. The Respondent explained the background to this Complaint. He advised that he has been retired from the profession since December 2011 and does not wish to dispute the matters contained in the Complaint and stated that he would accept the findings of the Tribunal. Mr Reid indicated that he was not sure if the Respondent's statement amounted to a plea of guilty. The Respondent confirmed to the Tribunal that he wished to plead guilty to the Complaint. That plea was accepted by the Tribunal and no evidence was led.
6. The Tribunal found the following facts established:-

6.1 The Respondent is a Solicitor enrolled in Scotland. He was born on 18 May 1955. He was enrolled as a solicitor in the Register of Solicitors practising in Scotland on 6 November 1978. Following his enrolment, he traded from office premises in Edinburgh as the firm Lints. He sold that business to the firm Lindsays, Solicitors, Edinburgh and remained with that firm as a consultant. Thereafter his association with Lindsays came to an end and from 1 June 1992 until 1 January 2012 he traded as the Lints Partnership, 8/9 Crichton Place, Leith Walk, Edinburgh.

Ms A

6.2 The Respondent maintained a file in relation to the sale of heritable property 1. A review of this file revealed the existence of a Land Certificate in the name of Ms A in respect of these subjects. As at 12 July 2010 the property was burdened with a Standard Security in favour of Northern Rock plc together with a Discount Standard Security in favour of North Lanarkshire Council. The discount period in terms of the

Standard Security in favour of the Local Authority had expired. The Respondent wrote to Ms A on 12 July 2010 setting out terms of business. In this letter the Respondent confirmed that he had been asked to act on her behalf in connection with the sale. He sought from her two forms of identification. He advised her that the professional fee in respect of the transaction would be met by a commercial organisation Company 1.

- 6.3 An offer dated 13 July 2010 was received from a Neil Whittet Solicitor, Perth. This offer was on behalf of a Ms B. The price offered was £62,000. The date of entry was to be agreed. A review of the file maintained by Respondent revealed a Mandate addressed to the Respondent which he had attached to the inside cover of his file. The Mandate was dated 20 July 2010. It was from Ms A. The Mandate read as follows:-

“Please accept and treat this letter as my irrevocable request and authority to pay to Company 1 or as they may direct, forthwith upon completion of the sale of the property to the buyer for £62,000 (sixty two thousand pounds sterling) and from the net available proceeds of sale thereof the sum of £18,600 (eighteen thousand six hundred pounds sterling) less the amount of your charges against me in connection with the sale, such payment to be made in a manner specified by Company 1 but subject to deduction of any cost incurred in complying with its request being borne by Company 1. This payment is a matter of contractual obligation on my part, and, in consequence, this instruction is intended to be irrevocable by me once contracts for the sale of the property to the buyer have been exchanged and, following such exchange, any subsequent instruction will only be valid if countersigned by or on behalf of Company 1 as evidence of its consent to such subsequent instruction. The purchaser has made me fully aware of the Rebate Scheme and how it will be used to purchase this property. I am happy to proceed with the sale using this

scheme. Please provide Company 1 with the following undertaking:-

I acknowledge having received the irrevocable authority of Ms A to pay Company 1 forthwith upon the sale of the property to Ms B out of the net proceeds of sale the sum of £18,600 less the amount of their charges against Ms A in connection with the sale.

I undertake to pay to Company 1 forthwith upon completion of the sale of the property to Ms B the sum of £18,600 less the amount of our charges against Ms A in connection with the sale.

Contact details for Company 1 are contained on their instruction to Act that you would have received previously.

Please ensure that the amount of your charges against me in connection with this sale are deducted from the sum of £18,600 with the remainder sent to Company 1 as instructed above.”

The Mandate was signed by Ms A and was dated 20 July 2010.

- 6.4 A review of the file maintained by the Respondent revealed a redemption statement in respect of the Standard Security in favour of the Northern Rock plc. The amount due as at 30 July 2010 was £35,250.01. There was an early repayment charge of £813 also due. This statement was never copied to Ms A for her information. Further review of the file reveals an updated Form 12A Report dated 1 September 2010. This revealed no entries against Ms A in the Personal Register. On the file there was a letter dated 14 September 2010 addressed to an organisation Company 2, which enclosed the Account of Expenses of the Respondent. After taking into account outlays of £240, the firm's professional fee and VAT thereon totalled

£1,000 exactly being £646.81 with VAT of £113.19. On 23 January 2011, the Respondent wrote to Ms A at the address of the property enclosing a cheque for the sum of £100 in respect of an unidentified credit balance.

Mr C

6.5 The Respondent acted in connection with the sale of a heritable property 2 on behalf of a Mr C. A review of his file revealed a printout of a Land Certificate from Registers Direct. As at 23 July 2010 the property was burdened with a Standard Security in favour of the Alliance & Leicester plc. The Respondent wrote to Mr C on 23 July 2010 with his terms of business. In that letter the Respondent confirmed that his firm had been asked to act on his behalf. This letter confirmed that the professional fee in respect of the transaction would be met by Company 1.

6.6 An offer dated 6 August 2010 was received from a Neil Whittet, Solicitor, Perth. The offer was on behalf of a Mr D. The price offered was £70,000. The date of entry was 1 September 2010. A Mandate addressed to the Respondent was attached to the inside cover of the file dated 30 July 2010. The Mandate was signed by Mr C. The Mandate reads

“Please accept and treat this letter as my irrevocable request and authority to pay to Company 1 or as they may direct, forthwith upon completion of the sale of the property to the buyer for £70,000 (seventy thousand pounds sterling) and from the net available proceeds of sale thereof the sum of £21,000 (twenty-one thousand pounds sterling) less the amount of your charges against me in connection with the sale, such payment to be made in a manner specified by Company 1 but subject to deduction of any cost incurred in complying with its request being borne by Company 1. This payment is a matter of

contractual obligation on my part, and, in consequence, this instruction is intended to be irrevocable by me once contracts for the sale of the property to the buyer have been exchanged and, following such exchange, any subsequent instruction shall only be valid if countersigned by or on behalf of Company 1 as evidence of its consent to such subsequent instruction. The purchaser has made me fully aware of the Rebate Scheme and how it will be used to purchase this property. I am happy to proceed with the sale using the scheme. Please provide Company 1 with the following undertaking:-

I acknowledge having received the irrevocable authority of Mr C to pay Company 1 forthwith upon the sale of the property to Mr D out of the net proceeds of sale the sum of £21,000 less the amount of our charges against Mr C in connection with the sale.

I undertake to pay to Company 1 forthwith upon completion of the sale of the property to Mr D the sum of £21,000 less the amount of our charges against Mr C in connection with the sale.

Contact details for Company 1 are contained on their instruction to Act document that you would have received previously.

Please ensure that the amount of your charges against me in connection with this sale are deducted from the sum of £21,000.00 with the remainder sent to Company 1 as instructed above.”

The Mandate was signed by Mr C on 30 July 2010.

- 6.7 A further review of the file reveals a redemption statement in respect of the Standard Security in favour of the Alliance &

Leicester plc. As at 13 August 2010 the sum required to redeem this loan was £35,673.36. This statement was never copied to Mr C for his information. There was an updated Form 12A Report dated 1 September 2010 which revealed no entries in the Personal Register against Mr C. There was a letter dated 2 September 2010 addressed to Company 1, Sheffield. This letter confirmed receipt of the Mandate from Mr C and further confirmed that the sum of £21,000 less the professional fees of the Respondent would be remitted to Company 1 upon settlement of the transaction. There was a letter dated 7 September 2010 addressed to Company 1 which enclosed the professional account of expenses of the Respondent. Taking into account outlays, the firm's fee and VAT thereon, totalled £1,000 exactly.

Mr E

- 6.8 The Respondent acted in the sale of heritable subjects at property 3. A review of the file maintained by the Respondent revealed an offer dated 10 August 2010 which was received from Neil Whittet, Solicitors, Perth. The offer was on behalf of a Mr D. The price stated was £58,000. The date of entry was 1 September 2010. The Respondent wrote to Mr E by letter 20 August 2010 setting out his terms of business. This letter confirmed that the Respondent had been asked to act on behalf of Mr E. This letter further confirmed the professional account of the Respondent would be met by Company 1.
- 6.9 The Respondent acted in connection with the sale of heritable subjects at property 4. A review of the file maintained by the Respondent revealed a Mandate attached to the file dated 3 August 2010 from a Mr E, the owner of the subjects. The Mandate read:-

“Please accept and treat this letter as my irrevocable request and authority to pay to Company 1 or as they may direct, forthwith upon completion of the sale of the property to the buyer for £58,000 (fifty-eight thousand pounds sterling) and from the net available proceeds of sale thereof the sum of £20,000 (twenty thousand pounds sterling) less the amount of your charges against me in connection with the sale, such payment to be made in the manner specified by Company 1 but subject to deduction of any cost incurred in complying with its request being borne by Company 1. This payment is a matter of contractual obligation on my part, and, in consequence, this instruction is intended to be irrevocable by me once contracts for the sale of the property to the buyer have been exchanged and, following such exchange, any subsequent instruction shall only be valid if countersigned by or on behalf of Company 1 as evidence of its consent to such subsequent instruction. The purchaser has made me fully aware of the Rebate Scheme and how it will be used to purchase this property. I am happy to proceed with the sale using the scheme. Please provide Company 1 with the following undertaking:

I acknowledge having received the irrevocable authority of Mr E to pay Company 1 forthwith upon the sale of the property to Mr D out of the net proceeds of sale the sum of £20,000 less the amount of our charges against Ms F in connection with the sale.

I undertake to pay to Company 1 forthwith upon completion of the sale of the property to Mr D the sum of £20,000 less the amount of our charges against Ms F in connection with the sale.

Contact details for Company 1 are contained on their Instruction to Act document that you would have received previously.

Please ensure that the amount of your charges against me in connection with this sale are deducted from the sum of £20,000.00 with the remainder sent to Company 1 as instructed above.”

This Mandate appeared to be in the same format as other Mandates executed by clients on other conveyancing files maintained by the Respondent. This Mandate however appears to have been prepared in respect of another client. Certain amendment has been carried out to correct matters. Certain aspects have been missed. Nevertheless, the Mandate was signed by Mr E on 1 August 2010.

- 6.10 A review of the file maintained by the Respondent revealed a redemption statement in respect of a Standard Security in favour of the Halifax plc. The sum required to redeem the loan as at 13 September 2010 was £32,253.43. This amount included an early repayment charge of £310.83. The Respondent did not copy this statement to Mr E for his information. On the file was a Form 12A Report dated 14 September 2010 which revealed a Mr E was sequestered on 18 April 2006. There was no evidence of the Respondent having checked this information with Mr E.
- 6.11 A further review of the file revealed a letter from the Respondent dated 15 September 2010 addressed to Company 1 acknowledging receipt of the Mandate signed by Mr E and confirming that the sum of £20,000 less the professional fee of the Respondent would be remitted to Company 1 upon settlement of the transaction. A letter dated 22 September 2010 addressed to Company 1 enclosed the professional account of the Respondent. After taking into account outlays of £200, the professional fee and VAT thereon totalled exactly £1,000.

Ms G

6.12 The Respondent acted in connection with the sale of heritable property 5. A review of the file maintained by the Respondent revealed a printout of the Land Certificate for the said subjects. As at 12 July 2010, the property was burdened with a Standard Security in favour the Halifax plc. The Respondent wrote to Ms G on 12 July 2010 with his Terms of Business. In this letter the Respondent confirmed that his firm had been asked to act on her behalf. The letter further confirmed that the professional fee of the Respondent in respect of the transaction would be met by Company 1. An offer dated 12 July 2010 was received from Neil Whittet Solicitors, Perth. The offer was on behalf of a Ms H. The price stated was that of £80,000. The date of entry was to be agreed.

6.13 A review of the file maintained by the Respondent revealed a Mandate attached to the file which read:-

“Please accept and treat this letter as my irrevocable request and authority to pay to Company 1 or as they may direct, forthwith upon completion of the sale of the property to the buyer for £80,000 (eighty thousand pounds sterling) and from the net proceeds of sale thereof the sum of £25,000 (twenty-five thousand pounds sterling) less the amount of your charges against me in connection with the sale, such payment to be made in the manner specified by Company 1 but subject to deduction of any cost incurred in complying with its request being borne by Company 1. This payment is a matter of contractual obligation on my part, and, in consequence, this instruction is intended to be irrevocable by me once contracts for the sale of the property to the buyer have been exchanged and, following such exchange, any subsequent instruction shall only be valid if countersigned by or on behalf of Company 1 as evidence of its consent to such subsequent instruction. The

purchaser has made me fully aware of the Rebate Scheme and how it will be used to purchase this property. I am happy to proceed with the sale using the scheme. Please provide Company 1 with the following undertaking:

I acknowledge having received the irrevocable authority of Ms G to pay Company 1 forthwith upon the sale of the property to Ms H out of the net proceeds of sale the sum of £25,000 less the amount of our charges against Ms G in connection with the sale.

I undertake to pay to Company 1 forthwith upon completion of the sale of the property to Ms H the sum of £25,000 less the amount of our charges against Ms G in connection with the sale.

Contact details for Company 1 are contained on their Instruction to Act document that you would have received previously.

Please ensure that the amount of your charges against me in connection with this sale are deducted from the sum of £25,000 with the remainder sent to Company 1 as instructed above.”

The Mandate was signed by Ms G on 20 July 2010.

- 6.14 A review of the file revealed the existence of a Form 13A Report dated 25 August 2010. This revealed entries in the Register of Inhibitions against an Ms I of East Kilbride and an Ms J of Cambuslang. No further enquiries were carried out by the solicitor in connection with these disclosures. There was a redemption statement in respect of the Standard Security which identified the sum required to redeem the loan as at August 2010 was £54,867.31. This figure included an early repayment charge of £1,312.80.

- 6.15 A review of the file maintained by the Respondent revealed a letter dated 7 September 2010 addressed to Company 1 which enclosed the Respondent's professional charges. After taking into account outlays, the professional charges and VAT thereon totalled exactly £1,000. A review of the firm's ledger card in respect of this transaction dated 5 October 2010 revealed a payment of £24,000 being made to a commercial entity Property Source Worldwide on 2 September 2010. There was no explanation on the file maintained by the Respondent as to why these funds were paid to a different third party other than that identified in the Mandate signed by Ms K.

Mr L

- 6.16 The Respondent acted in connection with the sale of heritable property 6. A review of the file maintained by the Respondent commences with an e-mail from a commercial organisation called Company 3 dated 12 May 2010. This is addressed to the Respondent and provides him with an instruction to act on behalf of Mr L, the owner of the heritable subjects at property 6. There is a printout of the Land Certificate on the file which discloses that as at 13 May 2010, the property was burdened with a Standard Security in favour of the Halifax plc. By letter dated 13 May 2010, the Respondent wrote to Mr L advising him that he had been asked to act on his behalf. There is a facsimile transmission message from Company 1 dated 30 July 2010 instructing the Respondent to act in connection with the sale. This sets out that the purchase price was £80,000 with a deposit fund of £24,000. There was a Mandate addressed to the Respondent on the inside cover of the file dated 3 August 2010 which had been signed by Mr L and which read:-

“Please accept and treat this letter as my irrevocable request and authority to pay to Company 1 or as they may direct,

forthwith upon completion of the sale of the property to the buyer for £80,000 (eighty thousand pounds sterling) and from the net proceeds of sale thereof the sum of £28,000 (twenty-eight thousand pounds sterling) less the amount of your charges against me in connection with the sale, such payment to be made in the manner specified by Company 1 but subject to deduction of any cost incurred in complying with its request being borne by Company 1. This payment is a matter of contractual obligation on my part and, in consequence, this instruction is intended to be irrevocable by me once contracts for the sale of the property to the buyer have been exchanged and, following such exchange, any subsequent instruction shall only be valid if countersigned by or on behalf of Company 1 as evidence of its consent to such subsequent instructions. The purchaser has been made fully aware of the Rebate Scheme and how it will be used to purchase this property. I am happy to proceed with the sale using this scheme. Please provide the Company 1 with the following undertaking.

I acknowledge having received the irrevocable authority of Mr L to pay Company 1 forthwith upon the sale of the property to Mr M out of the net proceeds of sale the sum of £28,000 less the amount of our charges against Mr L in connection with the sale.

I undertake to pay to Company 1 forthwith upon completion of the sale of the property to Mr M the sum of £28,000 less the amount of our charges against Mr L in connection with the sale.

Contact details for Company 1 are contained on their Instruction to Act document that you would have received previously.

Please ensure that the amount of your charges against me in connection with this sale are deducted from the sum of £28,000.00 with the remainder sent to Company 1 as instructed above.”

The Mandate was signed by Mr L on 3 August 2010.

- 6.17 A further review of the file revealed an offer dated 9 August 2010 from a Neil Whittet, Solicitor, Perth. The offer was on behalf of a client, Mr M. It stated a price of £80,000. It stated a date of entry of 27 August 2010. On 11 August 2010, the Respondent wrote to Mr L advising that he had been asked to act on his behalf in connection with the sale of the subjects. The letter further confirmed that the professional fees of the Respondent would be paid by Company 1. A review of the file revealed a Form 12A Report dated 27 August 2010 which was clear in its terms. There was a letter from the Respondent dated 27 August 2010 addressed to Company 1. This letter confirmed receipt of the Mandate from Mr L and confirmed that the sum of £28,000 would be paid to them upon settlement.
- 6.18 There then was an e-mail addressed to the Respondent from a Mr N which requests that the funds from the sale be transferred to a Property Source Worldwide and provides their account details. This e-mail indicates that Mr N represented Company 1. There is no evidence on the file that the Respondent disclosed this development with Mr L. There was on the file a redemption statement in respect of the Standard Security in favour of the Halifax plc. As at 27 August 2010, the sum required to redeem the loan was £44,035.46. This included an early repayment charge amounting to £885.08. There was a letter dated 14 September 2010 addressed to Company 1 which enclosed the professional charges of the Respondent which taking into account outlays, the firm's fee and VAT thereon totalled £1,000.

7. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:-

7.1 his undertaking five conveyancing transactions in which he failed to comply with his obligations in terms of the Money Laundering Regulations, the Accounts Rules and the Proceeds of Crime Act 2002 by not applying appropriate due diligence.

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

Edinburgh 16 January 2013. The Tribunal having considered the Complaint dated 26 October 2012 at the instance of the Council of the Law Society of Scotland against John Graham Lints, 1/6 Succoth Avenue, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his undertaking five conveyancing transactions in which he failed to comply with his obligations in terms of the Money Laundering Regulations, the Solicitors (Scotland) Accounts etc Fund Rules 2001 and Proceeds of Crime Act 2002 by not applying appropriate due diligence; Order that the name of the Respondent, John Graham Lints, be Struck Off the Roll of Solicitors in Scotland; 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)

Dorothy Boyd
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

In response to the Complaint being served on him, the Respondent wrote to the Tribunal by letter dated 23 November 2012 advising that although he had disputed and challenged this Complaint from the start, as he has now retired from the profession he is fed up with the whole matter and could not be bothered challenging the Complaint any further. Following receipt of that letter the Tribunal fixed a procedural hearing for 16 January 2013 and served notice of that on the Respondent.

The Respondent attended the hearing on 16 January 2013 and represented himself. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent stated that he had attended the hearing out of courtesy to the Tribunal and to explain his position regarding this matter. The Respondent advised that he has been retired from practice since December 2011. He stated that as far as he is concerned the inspection carried out by the Law Society which ultimately led to this Complaint was carried out in an unsatisfactory manner. The Respondent stated that the inspectors were aggressive and that following that inspection he arranged a meeting with John Scott of the Law Society to discuss the issues raised. The Respondent stated that it was agreed at that meeting that there was no specific Law Society rule dealing with these matters and the Respondent stated that he had offered to help the Law Society in drafting such a rule. The Respondent stated that he heard nothing in response to his offer.

The Respondent advised that correspondence was then served on him by the Complainers detailing issues arising from the inspection. Following that the Respondent stated that he had a meeting with Alastair Morris, an Office Bearer with the Law Society regarding various matters. The Respondent stated that he discussed the Complaint with Alastair Morris who promised to investigate this and to take matters forward. The Respondent stated that he retired from practice in December 2011 and at that stage wrote to Lorna Jack, the Law Society's Chief Executive criticising her and the Law Society. In that letter he expressed dissatisfaction with the way that the Law Society was being run and the way that the profession was going. The Respondent stated that his comments have been borne out since by a number of firms folding after that and the solicitors strike. The Respondent stated that he got a curt response from Ms Jack.

The Respondent advised that he then heard in 2012 that a report into his conduct was being prepared by the Complainers. The Respondent stated that he did not accept the findings of the report but did not see any reason to dispute them as he had already left the profession.

The Respondent advised that once he had received the Complaint he discussed matters with the Fiscal who advised him that the likely outcome of the Complaint was that a finding of professional misconduct would be made against him and that additional expenses would be awarded if the case was prolonged.

The Respondent stated that in his view these proceedings are unnecessary, unreasonable and possibly vindictive. The Respondent advised that he feels like he is being penalised due to his criticisms of the Law Society.

The Respondent stated that he is now carrying out voluntary work involving helping youths in deprived areas to get involved in sport.

In conclusion, the Respondent stated that he did not wish to dispute the matters contained in the Complaint and would accept the findings of the Tribunal.

In response, Mr Reid stated that he was not sure if the Respondent's comments amounted to a plea of guilty. Mr Reid asked the Respondent to confirm that he was willing to plead guilty to the Complaint.

In response, the Respondent stated that if it was required for him to say that he was guilty then he was prepared to say that he was guilty.

In response to a question from the Tribunal, the Respondent confirmed that he was pleading guilty without any caveat.

The plea of guilty was accepted by the Tribunal. No evidence required to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid lodged a copy of an article by John Scott of the Law Society which appeared in The Journal of the Law Society on 17 August 2009 and a copy of the Proceeds of Crime Act 2002 and advised that these documents had a bearing on the Complaint.

Mr Reid referred the Tribunal to the Respondent's personal circumstances as outlined in Article 1.1 of the Complaint. He stated that the Respondent is aged 57 and was no longer working in the profession, however he clarified that the Respondent's name remained on the Roll of Solicitors in Scotland. He stated that the Respondent had been in the profession for 35 years and had never appeared before the Tribunal previously regarding any matter.

Mr Reid stated that the Respondent's firm was suspected of being involved in a number of back to back conveyancing transactions which led to an inspection by the Complainers. That inspection highlighted five conveyancing transactions as detailed in the Complaint. The circumstances of these transactions gave rise to suspicion of mortgage fraud. These transactions all post-dated the article by John Scott in The Journal of the Law Society. Mr Reid stated that in his article Mr Scott categorised this type of rebate scheme transaction as a type of mortgage fraud.

Mr Reid referred the Tribunal to the third last paragraph of that article where it states:-

“What about the seller's agent? Is it simply a matter of implementing the mandate and paying a chunk of the sale price direct to the loan company? If a mortgage has been obtained by fraud, it constitutes proceeds of crime. If you are involved in the settlement of a property transaction where the mortgage has been obtained by fraud, you risk committing a principal money laundering offence.”

Mr Reid submitted that the Money Laundering Regulations do not just deal with the proceeds of drug related crime and stated that they also cover mortgage fraud transactions. Mr Reid submitted that by getting involved in these transactions and not undertaking the appropriate due diligence the Respondent was in breach of Rule 24 of

the Accounts Rules. Mr Reid submitted that the details of the transactions and the suspicious nature of the mandates whereby large percentages of the free proceeds were paid to finance companies must have alerted the Respondent to the possibility of mortgage fraud and should have resulted in him carrying out due diligence.

In all the circumstances, Mr Reid invited the Tribunal to find the Respondent guilty of professional misconduct and to make the usual orders for publicity and expenses.

SUBMISSIONS FOR THE RESPONDENT

The Respondent stated that he had little to add to his previous comments. He advised that he had only acted for five sellers in relation to these transactions. He stated that at this stage the economy was on its knees and the sellers were desperate to sell their properties. He stated that he had no contact with the sellers and had no knowledge of their financial positions other than being aware that he was acting for sellers who were in a very poor financial positions.

The Respondent stated that he did speak to John Scott at the Law Society and discussed with him that there are no rules which apply to these circumstances.

DECISION

The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal noted the details of these transactions including the suspicious nature of the mandates and the large amounts of monies being paid to the finance companies. The Tribunal considered that the Respondent as a very experienced conveyancer must have been aware that there was a strong possibility that these transactions amounted to mortgage fraud and therefore he should have carried out the appropriate due diligence.

The Tribunal was of the view that it would have been obvious to the Respondent that these arrangements were a form of mortgage fraud which relies upon collusion between the parties. By virtue of such schemes the buyer obtains a 100% loan to buy the property and the seller achieves the true market value leaving the mortgage

lenders as the victims of the fraud unwittingly exposed. In the event of default by the borrower, the lenders are likely to face a substantial shortfall on repossession. The Tribunal noted that the success of this scheme is dependent upon the agents involved for both seller and purchaser turning a blind eye and that the existence of these schemes and the need to be alert was brought to the attention of the profession following publication of an article in *The Journal of the Law Society of Scotland* on 17 August 2009 by John Scott. The Tribunal noted that the transactions of concern in this Complaint post-date the publication of that article.

The Tribunal considered that a solicitor involved in the settlement of a property transaction where the mortgage has been obtained by fraud risks participating in a money laundering offence and in particular it would be expected that the seller's agent would apply appropriate due diligence. This would include ascertaining from the seller the purpose of the payment, enquiring of the purchaser's solicitor as to whether he is aware of any rebate scheme and ensuring that the mortgage lender has knowledge of what is occurring and has approved it. The Tribunal noted that in terms of Rule 24(3) of the Accounts Rules, solicitors are obliged to comply with Part 7 of the Proceeds of Crime Act 2002.

The Tribunal considered that the conduct of the Respondent in respect of each of these five transactions was not in accordance with the common law principle of honesty and integrity expected of a solicitor practising in Scotland nor in respect of his obligations in terms of the Accounts Rules. The Tribunal noted that the Respondent never met with his clients in any of the transactions and did not carry out the usual tasks associated with conveyancing such as obtaining clients' instructions, examining titles, negotiating missives, discussing reports and missives with the client and obtaining his clients' instructions thereon.

The Tribunal considered that in all of these circumstances the Respondent should have been alert and suspicious to the nature of these transactions if he was acting in accordance with his duties in terms of the Accounts Rules and Proceeds of Crime Act. The Tribunal considered that the Respondent's failure to apply appropriate due diligence as outlined above would be viewed by competent and reputable solicitors as serious and reprehensible and was therefore sufficient to meet the Sharp Test.

The Tribunal therefore found the Respondent guilty of professional misconduct.

SUBMISSIONS FOR THE COMPLAINERS REGARDING PUBLICITY AND EXPENSES

Mr Reid asked the Tribunal to make the usual orders in relation to expenses and publicity.

SUBMISSIONS FOR THE RESPONDENT IN MITIGATION AND IN RELATION TO EXPENSES AND PUBLICITY

The Respondent stated that he had nothing further to add to his previous submissions regarding the background of these transactions and the circumstances surrounding the Complaint. The Respondent submitted that expenses should not be awarded against him but understood that he was unlikely to be successful in relation to that motion. The Respondent stated that his position was exactly the same in relation to publicity.

DECISION ON SANCTION

In considering sanction, the Tribunal had regard to the submissions made by the Respondent and to his lengthy unblemished record in the profession prior to his retirement in December 2011. However, the Tribunal was of the view that the information available to the Respondent regarding these five transactions clearly indicated a high risk of mortgage fraud. The Tribunal considered that the Respondent as an experienced conveyancer must have had his suspicions aroused by the circumstances of the transactions. The Tribunal noted that the Respondent had accepted that he had not met his clients and had no detailed knowledge of their financial positions. The Tribunal considered that the Respondent deliberately ignored his professional duties in relation to all five transactions and in so doing colluded with the other parties rather than carrying out the due diligence which was required to draw to the lenders attention the unusual circumstances of each transaction.

The Tribunal noted that the Respondent had not demonstrated any insight into the seriousness of his failures and the resultant effect on the lenders concerned. The essential and absolute qualities of a solicitor are honesty, truthfulness and integrity. It

is essential for the public to have confidence in the legal profession and that solicitors will act with integrity and will fulfil their professional duties in all cases. The Tribunal considered that the Respondent's conduct in deliberately turning a blind eye to potential mortgage fraud demonstrated his lack of integrity and has brought the legal profession into disrepute. Given all the circumstances and in particular the Respondent's lack of insight into his failures the Tribunal considered that neither a restriction nor a suspension was appropriate and decided to strike the Respondent's name from the Roll of the Solicitors in Scotland. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman