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, formerly at 26 Drumsheugh Gardens, Edinburgh and now at Atria One, 144 Morrison Street, Edinburgh

Complainers

against

JAMES GERAD MOORE, Solicitor, Messrs Moore Macdonald, Solicitors, 2 Scott Street, Motherwell

Respondent

1. A Complaint dated 7 March 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, James Gerad Moore, Solicitor, Messrs Moore Macdonald, Solicitors, 2 Scott Street, Motherwell (hereinafter referred to as "the Respondent") is a practitioner who may have been guilty of professional misconduct.

2. There was no Secondary Complainer.

3. In accordance with the Rules, the Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.

4. A preliminary hearing was fixed for 9 September 2014. At that hearing the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was present and was represented by Usman Tariq, Advocate, instructed by Ian Ferguson, Solicitor, Glasgow. The motions made by the Respondent were refused and the case was continued to a full hearing on 4 December 2014. The preliminary hearing is reported separately to these Findings.

5. The Respondent lodged an Appeal with the Court of Session and accordingly the hearing of 4 December 2014 was cancelled. On 10 December 2014 the Court of Session held the Appeal to be incompetent.

6. The Respondent's agents intimated an intention to lodge an application for Judicial Review. No progress having been made, a hearing was fixed for 15 June 2015. Subsequently, the Respondent lodged a Petition for Judicial Review dated 26 May 2015. Accordingly, the hearing was cancelled. The Petition for Judicial Review was heard and refused on 30 December 2015.

7. A procedural hearing was fixed for 31 March 2016 and duly intimated to the parties in accordance with the Tribunal Rules. At that hearing the Law Society was represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was not present but was represented by Ian Ferguson, Solicitor, Glasgow. Both parties indicated that they were ready to proceed to a full hearing. The Respondent's agent asked that the hearing be dealt with by members who had not dealt with the preliminary hearing on 9 September 2014. The case was continued to a full day hearing on 14 June 2016 and it was confirmed that none of the members sitting that day had been on the Tribunal at the preliminary hearing.

8. At the hearing on 14 June 2016 the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was present and represented by Charles Hennessy, Solicitor Advocate instructed by Nicola Irvine, Solicitor, Glasgow. A Joint Motion to adjourn the hearing was made. Parties indicated that they continued to discuss a Joint Minute. It was indicated that both parties believed that if they were given time to complete a Joint Minute this would substantially reduce the amount of time required to hear the case. Both parties indicated that the case would not be concluded in one day. The parties believed that the hearing would take a minimum of two days even if the Joint Minute they were discussing was agreed. The Tribunal granted the motion and the case was continued to a hearing on 23 and 24 August 2016.

9. At the hearing on 23 August 2016, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was present and represented by Charles Hennessy, Solicitor Advocate instructed by Nicola Irvine, Solicitor, Glasgow. The Tribunal was advised that the parties were still discussing the terms of a Joint Minute. The Fiscal indicated that he was feeling unwell and unable to proceed with the full

hearing on this date. The Tribunal adjourned the hearing to allow the parties to continue their discussions regarding a Joint Minute. When the Complaint recalled, a Joint Minute was lodged with the Tribunal and the Fiscal made a motion to adjourn the hearing to a later date. The Respondent took no objection to the motion. Parties estimated that the hearing would take two to three days and accordingly the Tribunal adjourned the matter to 8, 14 and 15 December 2016.

10. On 8, 14 and 15 December 2016 the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was present and was represented by Charles Hennessy, Solicitor Advocate, instructed by Nicola Irvine, Solicitor, Glasgow. Evidence was led on each of the three dates and concluded on 15 December 2016. On that date the case was continued to 19 January 2017 for the parties to make submissions.

11. On 19 January 2017 all parties as previously were present. Both the Complainers and the Respondent lodged written submissions and made supplementary oral submissions. The Tribunal commenced deliberations which were continued until 16 February 2017. Deliberations were concluded on that date and a hearing was fixed for 30 March 2017 for the Tribunal's decision to be intimated to the parties and for submissions in mitigation.

12. The Tribunal found the following facts established:

12.1 The Respondent's date of birth is 16 February 1967. He was enrolled as a Solicitor on 11 October 1991.

The Respondent commenced practice on his own account as Moore Macdonald, Solicitors Motherwell in September 2002 and the Respondent was the sole qualified solicitor working in said practice from that date onwards.

Throughout all material periods as averred in the complaint, the Respondent was the Cash Room Partner and the Anti Money-Laundering Partner.

The Law Society of Scotland ("the LSS") carried out inspections of the firm on 14/15 June 2006 and on 17/19 March 2008.

Following the inspection on 17/19 March 2008 the Guarantee fund of the LSS wrote to Messrs Moore Macdonald on 7 July 2008. The terms of that letter were agreed by the parties.

On 07 October 2008 an Interim Judicial Factor was appointed and she took immediate possession of the files of Moore Macdonald.

The appointment of the Interim Judicial Factor was recalled by the court on 22 October 2008, with the expenses of the action being awarded in favour of Moore Macdonald.

Following recall of the Interim Judicial Factor, the Complainers carried out a thorough inspection of the files of Moore Macdonald.

The Complainers' investigation gave rise to a complaint against the Respondent on 5th May 2011.

The Complainers' Professional Conduct Sub Committee considered the Complaint against the Respondent on 30th May 2013.

On 7th March 2014 a Complaint by the Complainers was sent to the Scottish Solicitors Discipline Tribunal.

The LSS carried out further inspections of Messrs Moore Macdonald on 10/12 February and 3 March 2010, 8 and 22/23 February 2011, 4/5 December 2012 and 6/7 July 2015. No issues raised by these inspections were referred to the Guarantee Fund.

The Money Laundering Regulations 2007 came into force on 15 December 2007.

12.2 The Complainers' Financial Compliance Department carried out an inspection of the Respondent's books and records in September 2008. As a result of that inspection and subsequent investigations, the Complainers alleged breaches as averred within the Complaint.

12.3 Under the Solicitors (Scotland) Practice Rules 1986, Rule 3, a Solicitor shall not act for two or more parties whose interests conflict. Rule 5 sets out certain exceptions to Rule 3.

The Respondent represented both the purchaser and the seller in four transactions without having an adequate basis to treat the purchaser in each transaction as an existing client. No evidence was led that any of the other exceptions applied. Accordingly, the transactions did not fall within the Rule 5 exceptions. The transactions were:-

(1) The purchase by Mr F of subjects at Property 1.

The client file for the purchase of subjects at Property 1 by Mr F contains *inter alia* the following:

a) An undated filenote which states "Mr. F called to say that he had been recommended by his mortgage broker. He asked for advice regarding his purchase. Advising him that we would be delighted to act on his behalf and giving him a general breakdown of the conveyancing procedures."

b) Faxed letter dated 13 January 2009 from Company 1 to Moore Macdonald advising Company 1 were the instructed agents on behalf of Mr G in respect of the sale of Property 1 to Mr F. The letter also confirms to Company 1's knowledge Mr F and Mr G have no direct connection whatsoever.

c) Photocopy passport of Mr F with expiry date 02 August 2009.

d) Photocopy photocard provisional driving licence of Mr F with expiry date 03 October 2012.

e) Fax dated 25 January 2009 from Company 1 with copy P60 pertaining to Mr F for tax year 2007-08. Said fax is stamped as follows "I can confirm

that this is a true copy of the original document" and was signed by Mr H dated 27 November 2008.

f) Minute of Agreement between Mr G and Mr F signed by Mr F and by the Respondent as Power of Attorney for Mr G on 23 January 2009. Paragraph (1) of said Minute of Agreement states: "The Purchaser and the Seller both agree to be represented by Messrs. Moore Macdonald, Solicitors, of Eighty four Hamilton Road, Motherwell. The said Solicitors are permitted to act for both the Purchaser and the Seller in terms of Conditions 5(1)c of the Solicitors' (Scotland) Practice Rules 1986 as the relationship between the Seller and Purchaser is that of they are both existing clients of the firm of Moore Macdonald; Both the Seller and the Purchaser agree that if any dispute arises, they or one of them will require to consult an independent Solicitor or Solicitors and that this has been explained to them by Messrs. Moore Macdonald."

g) A Risk Assessment Form for Money Laundering Compliance completed and signed by the Respondent on 23 January 2009.

(2) The purchase by Mr I of subjects at Property 2.

The client file for the purchase of subjects at Property 2 by Mr I contains *inter alia* the following:

a) A filenote dated 01 December 2008 stating: "Telephone call received from Mr I looking for advice regarding the purchase of Property 2. Advising him that we would be happy to act on his behalf in connection with the purchase transaction and that he would need to make sure that he had his mortgage in place. He advised that Andy Frame of Company 1 was doing the mortgage for him. We confirmed to him that we would deal with the conveyancing and he would have to speak to Andy just to get his mortgage sorted out."

b) Email dated 11 December 2008 from Ms J at Moore Macdonald to Ms K, Lending Lawyer at Halifax Bank of Scotland plc stating: "The sellers

name is Mr L. There is no connection between the seller and borrower. The transactions are being conducted at arm's length. Mr L bought the property as a repossession for the sum of £62,000. Mr L has refurbished the property and is now selling to Mr I for the price of £85,000. The seller bought the property with use of a mortgage. The seller purchase has already completed as advised in our letter of 5 December, 2008. The transaction settled on the 19 November 2008."

c) Photocopy Bank of Scotland bank statement dated 01 October 2008 addressed to Mr I showing a balance of £862.27.

d) Photocopy passport of Mr I with expiry date 10 June 2004.

e) A client form within the looseleaf papers which indicates Mr I is a new client – the words "New Client" are circled.

f) A Risk Assessment Form for Money Laundering Compliance completed and signed by Ms J and the Respondent on 16 December 2008.

g) Minute of Agreement between Mr L and Mr I signed by the Respondent as Power of Attorney for Mr L and Mr I on 11 December 2008. Paragraph (1) of said Minute of Agreement states: "The Purchaser and the Seller both agree to be represented by Messrs. Moore Macdonald, Solicitors, of Two Scott Street, Motherwell. The said Solicitors are permitted to act for both the Purchaser and Seller in terms of Condition 5(1)c of the Solicitors' (Scotland) Practice Rules 1986 as the relationship between the Seller and Purchaser is that both are existing clients of Messrs Moore Macdonald; Both the Seller and the Purchaser agree that if any dispute arises, they or one of them will require to consult an independent Solicitor or Solicitors and that this has been explained to them by Messrs. Moore Macdonald."

(3) The purchase by Miss M of subjects at Property 3.

The client file for the purchase of subjects at Property 3 by Miss M contains *inter alia* the following:

a) Copy letter dated 17 December 2008 from Mr J of Moore Macdonald to addressed to Miss M enclosing a draft Minute of Agreement.

b) Fax dated 20 December 2008 from Company 1 with copy Royal Bank of Scotland bank statement addressed to Miss M dated 23 October 208 showing a balance of £7.25. Said fax is stamped as follows "I can confirm that this is a true copy of the original document" and was signed by Andy Frame dated 25 November 2008.

c) Photocopy photocard driving licence of Miss M with expiry date 12 May 2013.

d) A Risk Assessment Form for Money Laundering Compliance completed and signed by Ms J and the Respondent on 05 January 2009.

e) A client form within the looseleaf papers which indicates Miss M is a new client – the words "Existing Client" are scored out.

f) Minute of Agreement between Mr N and Miss M signed by Miss M and witnessed by Ms J on 12 December 2008, and signed by the Respondent as Power of Attorney for Mr N and witnessed by Ms J on 05 January 2009. Paragraph (1) of said Minute of Agreement states: "The Purchaser and the Seller both agree to be represented by Messrs. Moore Macdonald, Solicitors, of Two Scott Street, Motherwell. The said Solicitors are permitted to act for both the Purchaser and Seller in terms of Conditions 5(1)c of the Solicitors' (Scotland) Practice Rules 1986 as the relationship between the Seller and Purchaser is that both are existing clients of Moore Macdonald; Both the Seller and the Purchaser agree that if any dispute arises, they or one of them will require to consult an independent Solicitor or Solicitors and that this has been explained to them by Messrs. Moore Macdonald."

(4) The purchase by Mr O of subjects at Property 4.

The client file for the purchase of subjects at Property 3 by Mr O on or around 12 June 2008 contains *inter alia* the following:

a) Photocopy passport of Mr O with expiry date 30 August 2011

b) Photocopy photocard driving licence of Mr O with expiry date 31 October 2013

c) Photocopy BT phone bill dated 29 February 2008 addressed to Mr O.

d) Photocopy Halifax bank statement of Mrs P and Mr P Decd dated to 01 May 2008 showing a balance of £6,634.83.

e) Photocopy council tax reminder notice letter dated 06 May 2008 from North Lanarkshire Council to Mrs P.

f) Photocopy Halifax Passbook of Mrs P and Mr P dated to 02 July 2008 showing a balance of £87,519.91.

g) Letter from Mrs P to Moore Macdonald dated 10 June 2008 stating "I can confirm that I have given Mr O the sum of £8,197.50 as deposit for the purchase of Property 4. I can also confirm that this has been given in the form of a gift and I do not require this to be paid back. I trust this is sufficient information."

h) Fax dated 8 June 2008 from Company 1 with copy photocard driving licence of Mr O with expiry date 31 October 2013.

i) A client form within the looseleaf papers which indicates Mr O is an existing client.

g) Minute of Agreement between Mr E and Mr O signed by both and witnessed by Ms J on 10 June 2008. Paragraph (1) of said Minute of Agreement states: "The Purchaser and the Seller both agree to be represented by Messrs. Moore Macdonald, Solicitors, of Two Scott Street,

Motherwell. The said Solicitors are permitted to act for both the Purchaser and Seller in terms of Conditions 5(1)c of the Solicitors' (Scotland) Practice Rules 1986 as the relationship between the Seller and the Purchaser is that both clients are existing clients of Messrs Moore Macdonald; Both the Seller and the Purchaser agree that if any dispute arises, they or one of them will require to consult an independent Solicitor or Solicitors and that this has been explained to them by Messrs. Moore Macdonald."

j) There was no money laundering risk assessment form contained within the file.

12.4 In terms of the Money Laundering Regulations 2007, Regulation 7(3)(b), the Respondent had a duty to determine the extent of customer due diligence measures on a risk sensitive basis, depending on the type of customer, the business relationship, produce or transaction and to be able to demonstrate to the Complainers that the extent of the measures was appropriate in view of the risks of money laundering.

The inspection disclosed that the Respondent failed to maintain adequate records to allow him to demonstrate to the Complainers that he had undertaken adequate risk assessments in respect of seven transactions, being:-

(1) The client file for the purchase of subjects at Property 5 by Mr Q on or around 29 September 2008 contains *inter alia* the following:

a) A copy letter of engagement dated 19 September 2008 from Ms J of Moore Macdonald to Mr Q. Handwritten on the copy letter are the words "Existing Client purchased Property 6 in 2007".

b) Photocopy Royal Bank of Scotland bank statement addressed to Mr Q dated 10 September 2008 with a balance of 498.46DR

c) Photocopy passport of Mr Q with expiry date 11 November 2010

d) Photocopy passport of Mr N with expiry date 11 July 2015

e) An estimate electricity statement from Scottish Power addressed to Mr N dated 14 May 2008

f) A letter dated 25 September 2008 from Mr N to Moore Macdonald advising Mr N, owner and sole director of Company 2 has given Mr Q £25,000 as a gift which does not require to be paid back.

g) There was no money laundering risk assessment form contained within the file.

(2) The client file for the purchase of subjects at Property 7 by Mr R on or around 19 December 2008 contains *inter alia* the following:

a) A faxed mortgage offer from the Bank of Scotland dated 16 December 2008. Handwritten on the fax are the words "18/12/08 I spoke to Mr R about Balance + id. Ms S"

b) A copy letter dated 18 December 2008 from Ms S at Moore Macdonald to Mr R advising *inter alia* "We also require two forms of identification being either your driving licence/passport together with a public utility invoice or bank statement in order that we can retain in our file in order to comply with Money Laundering Regulations. As also discussed we are aiming to complete the transaction tomorrow 19th December 2008."

c) Photocopy of a letter from the Bank of Scotland dated 19 December 2008 to Mr R.

d) Photocopy passport of Mr R with expiry date 27 February 2013.

e) Photocopy of a phone bill from 3 dated 09 December 2008 addressed to Mr R.

f) Photocopy of photocard driving licence and counterpart of Mr R with expiry date 27 March 2012.

g) There was no money laundering risk assessment form contained within the file.

(3) The client file for the purchase of subjects at Property 8 by Mr T contains *inter alia* the following:

a) Photocopy passport of Mr T with expiry date of 30 January 2011.

b) Photocopy Bank of Scotland bank statement dated to 26 August 208 showing an overdrawn balance of £84.45.

c) A client form within the looseleaf papers which indicates Mr T is a new client – the words "New Client" are circled.

d) There was no money laundering risk assessment form contained within the file.

(4) The client file for the proposed purchase of subjects at Property 9 by Mr D contains *inter alia* the following:

a) Photocopy passport of Mr D with expiry date 07 March 2015.

b) Photocopy electricity bill from Scottish Power dated 08 July 2008 addressed to Mr D.

c) A client form within the looseleaf papers which indicates Mr D is a new client – the words "New Client" are circled.

d) There was no money laundering risk assessment form contained within the file.

(5) The client file for the purchase of subjects at Property 10 by Mr U on or around 19 June 2008 contains *inter alia* the following:

a) Loan Instructions addressed to Moore Macdonald from Birmingham Midshires dated 11 June 2008. The loan instructions state "You are instructed in accordance with the CML Lenders' Handbook for Scotland and our Part 2 Instructions."

b) Certificate of Title to Bank of Scotland plc signed by the Respondent on 18 June 2008. Loan funds requested was £76,500 and the purchase price is noted at £85,000. The completion date was 19 June 2008.

c) Copy letter dated 18 June 2008 from Moore Macdonald to Mr V stating "We understand from our client Mr U that you have provided the sum of £9,252.50 in payment of the deposit, which Mr U requires in order to purchase the above subjects". The above subjects are listed as "Purchase of Property 10".

d) Letter dated 18 June 2008 from Company 3 addressed to James Moore & Company. The letter advises the sum of £8,500 has been deducted from their members account. Their member is named as Mr V.

e) Copy letter dated 19 June 2008 from Moore Macdonald to Birmingham Midshires stating: "It has come to light that the seller had provided the deposit payable to the purchaser. Due to an oversight this was not reported with our Report on Title. However we will assume if we do not hear from you that it is in order to proceed with this transaction."

f) Photocopy photocard driving licence of Mr V, Property 10 with expiry date 10 July 2013.

g) Photocopy photocard driving licence of Mr U with expiry date 30 May 2017.

h) A Form 12a Report from Company 4 certified correct to 12 June 2008 showing *inter alia* Mr U was subject to an Inhibition under the Proceeds of Crime Act 2002.

i) Minute of Agreement between Mr V and Mr U signed by both and witnessed by Ms S on 19 June 2008. Paragraph (1) of said Minute of Agreement states: "The Purchaser and the Seller both agree to be represented by Messrs. Moore Macdonald, Solicitors, of Two Scott Street, Motherwell. The said Solicitors are permitted to act for both the Purchaser and the Seller in terms of Conditions 5(1)c of the Solicitors' (Scotland) Practice Rules 1986 as both the Seller and Purchaser are both existing clients of Moore Macdonald; Both the Seller and the Purchaser agree that if any dispute arises, they or one of them will require to consult an independent Solicitor or Solicitors and that this has been explained to them by Messrs. Moore Macdonald."

j) There was no money laundering risk assessment form contained within the file.

(6) The client file for the sale of subjects at Property 10 by Mr V contains *inter alia* the following:

a) A handwritten filenote which states: "From Mr W. Mr V is selling Property 10. Morg with Halifax. Selling to Mr U = Property 11. Purchase Price £85,000. New Lender = ? BOS."

Circled on the bottom left hand corner of the filenote is the following: "Get id + F/address for Mr V. Get if there is a factor. No factor."

b) Photocopy passport of Mr V with expiry date 21 January 2014.

c) Photocopy Gas and electricity statement from Scottish Power addressed to Mr V dated 09 January 2007.

d) Photocopy photocard driving licence of Mr V of Property 10 with expiry date 10 July 2013.

e) There was no money laundering risk assessment form contained within the file.

(7) The client file for the purchase of subjects at Property 4 by Mr O on or around 12 June 2008 contains *inter alia* the following:

a) Photocopy passport of Mr O with expiry date 30 August 2011.

b) Photocopy photocard driving licence of Mr O with expiry date 31 October 2013.

c) Photocopy BT phone bill dated 29 February 2008 addressed to Mr O.

d) Photocopy Halifax bank statement of Mrs P and Mr P Decd dated to 01 May 2008 showing a balance of £6,634.83.

e) Photocopy council tax reminder notice letter dated 06 May 2008 from North Lanarkshire Council to Mrs P.

f) Photocopy Halifax Passbook of Mrs P and Mr P dated to 02 July 2008 showing a balance of £87,519.91.

g) Letter from Mrs P to Moore Macdonald dated 10 June 2008 stating "I can confirm that I have given Mr O the sum of £8,197.50 as deposit for the purchase of Property 4. I can also confirm that this has been given in the form of a gift and I do not require this to be paid back. I trust this is sufficient information."

h) Fax dated 8 June 2008 from Company 1 with copy photocard driving licence of Mr O with expiry date 31 October 2013.

i) A client form within the looseleaf papers which indicates Mr O is an existing client.

h) Minute of Agreement between Mr E and Mr O signed by both and witnessed by Ms J on 10 June 2008. Paragraph (1) of said Minute of Agreement states: "The Purchaser and the Seller both agree to be

represented by Messrs. Moore Macdonald, Solicitors, of Two Scott Street, Motherwell. The said Solicitors are permitted to act for both the Purchaser and Seller in terms of Conditions 5(1)c of the Solicitors' (Scotland) Practice Rules 1986 as the relationship between the Seller and the Purchaser is that both clients are existing clients of Messrs Moore Macdonald; Both the Seller and the Purchaser agree that if any dispute arises, they or one of them will require to consult an independent Solicitor or Solicitors and that this has been explained to them by Messrs. Moore Macdonald."

j) There was no money laundering risk assessment form contained within the file.

The firm of Moore Macdonald had been inspected by the Law Society in June 2006 and March 2008 and no issues surrounding risk assessment procedures were raised. The Respondent had prepared and given his staff a manual containing the firm's procedures for carrying out risk assessments in all transactions.

In compliance with the Money Laundering Regulations, the Respondent made five reports to the Serious Organised Crime Agency between April and September 2008 in compliance with the Money Laundering Regulations, copies of which were produced by the Respondent.

12.5 Under the 2007 Regulations, Regulation 17, the Respondent, as a relevant person, may rely on a person falling within Regulation 17(2) to apply any customer due diligence measures provided that the other person consents to being relied on and the relevant person remains liable for any failure to apply such measures. In terms of the Solicitors (Scotland) Accounts, Etc Rules 2001, Rule 24, the Respondent had a duty to comply with the provisions of the Money Laundering Regulations and to comply with the Proceeds of Crime Act 2002, Part 7.

(1) The inspection disclosed a purchase and sale of subjects at Property 2 by Mr L. The Complainers noted that the Respondent relied on certification of Mr L's identity on a copy passport provided by a third party, Andy Frame of

Company 1 and a bank statement provided by Mr L. Andy Frame fell within the definition in Regulation 17(2).

(2) In relation to the purchase of subjects at Property 12 by Mr X, the client file contains *inter alia* the following:

a) Photocopy photocard provisional driving licence of Mr X with expiry date 19 January 2014.

b) Fax dated 06 January 2009 from Company 1 copy Airdrie Savings Bank statement addressed to Mr X dated 01 December 2009 showing a balance of £1,242.29.

Said fax had a stamp as follows "I can confirm that this is a true copy of the original document" and was signed by Mr H dated 18 December 2008.

c) Copy Risk Assessment Form for Money Laundering Compliance completed and signed by Ms Y of Moore Macdonald and the Respondent dated 15 January 2009.

d) A client form within the looseleaf papers for Mr X – neither "New Client" or "Existing Client" are circled.

e) A client form within the looseleaf papers indicating Mr Z was an existing client – the words "Existing Client" are circled. Handwritten on said form is "PLEASE CANCEL – CLIENT NO LONGER PURCHASING".

f) The Respondent relied upon a copy of the a document countersigned by someone not established to fall within the definition in Regulation 17(2).

(3) In relation to the purchase of subjects at Property 13 by Mr C, the client file contains *inter alia* the following:

a) Fax dated 07 August 2008 from Your Mortgage Co copy Virgin Media bill dated 02 July 2008 addressed to Mr C.

b) Fax dated 07 August 2008 from Your Mortgage Co copy photocard and counterpart driving licence of Mr C.

c) There was no money laundering risk assessment form contained within the file.

d) The Respondent relied upon copy documents produced by a third party not established to fall within the terms of Regulation 17(2) and which were not appropriately docqueted.

12.6 The Respondent was instructed by a client, Mr U, in relation to the purchase of subjects at Property 10. Loan instructions were issued to the Respondent by Birmingham Midshires on 11 June 2008. The instructions were in accordance with the Council of Mortgage Lenders (CML) Handbook for Scotland and Part 2 instructions.

The CML Handbook provided that if there was a need to report a matter to the lender, "you must do so as soon as you become aware of it so as to avoid any delay." In addition, it was provided that "after reporting a matter you should not complete the mortgage until you have received our further written instructions."

The Part 2 instructions included 6.4.4 relating to "Does the lender require me to report incentives?" It provided that details should be reported of all cash/financial incentives in various stated circumstances including "Where the property is not a new build being sold by a developer, you must notify us if the deposit is to be paid by the seller."

A deposit for the purchase price of Property 10 was paid by a third party, namely, the seller of the subjects. On 18 June 2008 the Respondent sent a Report on Title to Birmingham Midshires. The Respondent did not mention the deposit paid by the seller. On the same date the Respondent wrote to the seller in relation to provision of the deposit.

A Form 12a Report showed inter alia that Mr U had previously been subject to an Inhibition under the Proceeds of Crime Act 2002.

The transaction settled on 19 June 2008, on which date the Respondent wrote to Birmingham Midshires advising that the seller had provided the deposit.

On that date, the purchaser Mr U attended the offices of Moore Macdonald with the required confirmation as to the source of the funds. That confirmation was in the form of a letter from Company 3 dated 18 June 2008. The Respondent's firm had already requested the loan funds for settlement on 19 June 2008. The transaction was carried out by a paralegal named Ms S. As soon as the paralegal was made aware, she forwarded a letter to the lender to advise that this had not been reported on the Certificate of Title and requesting that if the firm did not hear from them then it was in order for them to proceed. No response was received. The lender has not at any stage sought to question what happened or has taken any action against the Respondent. The provisions regarding the source of the deposit have been complied with. In these circumstances, the matter was reported in accordance with the CML Handbook on the same day that the paralegal became aware of the issue.

12.7 Mr AA approached Andy Frame of Company 1 for advice in relation to mortgage arrears owed on the matrimonial home. On Mr Frame's advice, a telephone conversation took place between Mr AA and the Respondent regarding matrimonial difficulties and the mortgage arrears.

Mr AA instructed the Company 1 to put the property on the market for sale.

No offers to purchase were received. Mr Frame contacted a known property investor, Mr E, who agreed to purchase the property.

The Respondent's firm was instructed to act for the purchaser, Mr E, and the sellers, Mr and Mrs AA.

The transaction was dealt with by the Respondent's paralegal, Ms BB.

The Respondent received instructions from the lenders based on the CML Handbook.

In terms of the CML Handbook, paragraph 2.3, the instructions provided that if there was a need to report a matter to the lenders "you must do so as soon as you become aware of it so as to avoid any delay."

5.2.1 in relation to Conflicts of Interest provided that if any matter came to the attention of the fee earner dealing with the transaction "which you should reasonably expect us to consider important in deciding whether or not to lend to the borrower and you are unable to disclose that information to us because of a conflict of interest you must cease to act for us and return our instructions stating that you consider a conflict of interest has arisen." Under 6.3.1 the purchase price for the property must be the same as set out in the instructions. "If it is not, you must tell us." Under 6.4.4 in relation to Incentives "you must tell us if the Missives provide for or you become aware of any arrangement in which there is a cashback to the buyer".

Ms BB prepared a power of attorney on behalf of Mr AA appointing the Respondent as attorney. The Respondent was advised by Ms BB that Mr AA was to be on holiday, necessitating this power of attorney. Ms BB witnessed and dated the signature of Mr AA.

A Minute of Agreement was entered into by the purchaser and sellers agreeing the purchase price as £105,000 and date of entry as 14 August 2008.

The Respondent completed a Certificate of Title and request for mortgage funds to the lender on 14 August 2008, stating the purchase price as £105,000 and making no report of any relevant issues in terms of the CML Handbook.

Loan funds were received by the Respondent's firm.

On 14 August 2008 Mrs AA signed a mandate in the following terms:

"I, (Mrs AA) hereby confirm that I should receive the sum of £80,000 from the sale of Property 14 to pay all secured loans, fees, vat and outlays and thereafter the balance should be divided equally between myself and Mr AA.

The balance of the funds of £25,000 should be made payable to Mr E."

A note on the file completed by Ms BB was in the following terms:-

"Attendance at meeting with Mrs AA. Advising us that she was to pay the sum of £25,000 to Mr E from the sale proceeds as she owed him same with previous marital affairs."

A letter was sent by Ms BB to Mr and Mrs AA at the address of the sale property, dated 14 August 2008 confirming that *"You have signed a mandate for the sum of £25,000 to be paid to Mr E from the sale proceeds. If this is not the case then we should be grateful if you would please contact us immediately on receipt of this letter."*

A cash statement in relation to the sale disclosed a payment of £25,000 to the purchaser, Mr E.

No evidence was led to establish whether the mandate instructing payment to the purchaser was signed pre or post settlement.

12.8 The Respondent received instructions from Mr G to purchase subjects at Property 15. Loan funds were provided by mortgage lenders, the Bank of Scotland with their instructions to the Respondent being based on the CML Handbook.

Following conclusion of the purchase, a statement with a debit balance of £12,347.50 was issued to Mr G on 30 January 2008.

The Complainers noted that the Respondent's file for the sale of Property 16 by Mr CC contained a Mandate authorising payment of £12,347.50 from the sale proceeds of Property 16 to Mr G "for the purchase of Property 16." The Bank of

Scotland as lenders were not advised that the balance of the purchase price of Property 15 was being provided by a party other than the borrower, Mr G.

In terms of the CML Handbook, paragraph 5.9 other loans, 5.9.1 provided "You must ask the borrower how the balance of the purchase price is being provided. If you become aware that the borrower is not providing the balance of the purchase price from his own funds and/or is proposing to give a second charge over the property, you must report this to us if the borrower agrees (see Part 2) failing which you must return our instructions and explain that you are unable to continue to act for us as there is a conflict of interest." As averred, the Respondent did not advise the lenders that the borrower was not providing the balance of the purchase price.

The payment of £12,347.50 by Mr CC was an indication, or should have been an indication, to the Respondent of the possibility of revolving deposit fraud.

12.9 Upon inspection, the Complainers noted concerns in regard to three transactions where it was thought that the Respondent had failed to undertake or maintain adequate records of money laundering checks.

i) The client file for the purchase of subjects at Property 17 by Mr DD contains *inter alia* the following:

a) A handwritten filenote dated 29 January 2007 stating "Spoke with Mr DD who was recommended to us by Mr EE. Advising him of the procedure and that we were happy to act for him in the purchase."

b) Photocopy photocard Inland Revenue Contractors Tax Certificate for Mr DD acting for Company 5 with expiry date August 2007.

c) A Minute of Agreement between Mr CC ("the Seller") and Mr DD ("the Purchaser") signed by both and witnessed by Ms J on 29 January 2007. Paragraph (1) of said Minute of Agreement states: "The Purchaser and the Seller both agree to be represented by Messrs. Moore Macdonald, Solicitors, of Eighty four Hamilton Road, Motherwell. The said Solicitors are

permitted to act for both the Purchaser and the Seller in terms of Condition 5(1)c of the Solicitors' (Scotland) Practice Rules 1986 as the relationship between the Seller and the Purchaser is both clients are existing clients of Messrs. Moore Macdonald; Both the Seller and the Purchaser agree that if any dispute arises, they or one of them will require to consult an independent Solicitor or Solicitors and that this has been explained to them by Messrs. Moore Macdonald."

d) There was no money laundering risk assessment form contained within the file.

The Respondent was a "relevant business" in terms of the Money Laundering Regulations 2003. In terms of Regulations 4 and 6, the Respondent had an obligation to maintain identification procedures, to obtain satisfactory evidence of identity and to maintain procedures to require the retention of identity records.

The Respondent failed to obtain separate documentary evidence confirming the client's address.

ii) The client file for the purchase of subjects at Property 2 by Mr I contains *inter alia* the following:

a) A filenote dated 01 December 2008 stating: "Telephone call received from Mr I looking for advice regarding the purchase of Property 2. Advising him that we would be happy to act on his behalf in connection with the purchase transaction and that he would need to make sure that he had his mortgage in place. He advised that Andy Frame of Company 1 was doing the mortgage for him. We confirmed to him that we would deal with the conveyancing and he would have to speak to Andy just to get his mortgage sorted out."

b) Email dated 11 December 2008 from Ms J at Moore Macdonald to Ms K, Lending Lawyer at Halifax Bank of Scotland plc stating: "The sellers name is Mr L. There is no connection between the seller and borrower. The transactions are being conducted at arms length. Mr L bought the property as a repossession for the sum of £62,000. Mr L has refurbished the property

and is now selling to Mr I for the price of £85,000. The seller bought the property with use of a mortgage. The seller purchase has already completed as advised in our letter of 5 December, 2008. The transaction settled on the 19 November 2008."

c) Photocopy Bank of Scotland bank statement dated 01 October 2008 addressed to Mr I showing a balance of £862.27.

d) Photocopy passport of Mr I with expiry date 10 June 2004.

e) A client form within the looseleaf papers which indicates Mr I is a new client – the words "New Client" are circled.

f) Mortgage offer from the Halifax addressed to Mr I.

g) A Risk Assessment Form for Money Laundering Compliance completed and signed by Ms J and the Respondent on 16 December 2008.

h) Minute of Agreement between Mr L and Mr I signed by the Respondent as Power of Attorney for Mr L and Mr I on 11 December 2008. Paragraph (1) of said Minute of Agreement states: "The Purchaser and the Seller both agree to be represented by Messrs. Moore Macdonald, Solicitors, of Two Scott Street, Motherwell. The said Solicitors are permitted to act for both the Purchaser and Seller in terms of Condition 5(1)c of the Solicitors' (Scotland) Practice Rules 1986 as the relationship between the Seller and Purchaser is that both are existing clients of Messrs Moore Macdonald; Both the Seller and the Purchaser agree that if any dispute arises, they or one of them will require to consult an independent Solicitor or Solicitors and that this has been explained to them by Messrs. Moore Macdonald."

Given that a face to face meeting had taken place with the client, this was sufficient to satisfy the Regulations.

iii) In relation to the sale of Property 14 by Mr and Mrs AA, the copy file lodged with the Tribunal contained a photocopy of a passport for Mr AA which had

expired in July 2007, a copy Clydesdale Bank statement and a copy letter from a mortgage lender, both addressed to Mr AA at the sale subjects.

Given that a face to face meeting had taken place with Mr AA in August 2008, this was sufficient to satisfy the Regulations.

Subsequent to the implementation of the said 2003 Regulations, the Complainers, prior to March 2005, issued Practice Guidelines in relation to Money Laundering and Rule 24 of the 2001 Rules.

12.10 In June 2008 the Respondent was instructed to act in the sale of Property 18 by Mr FF.

In terms of the Proceeds of Crime Act 2002, Section 120, a Restraint Order was made by the Court of Session on 10 November 2006 which interdicted Ms GG and Mr FF from dealing with their "realisable property" generally and in particular Mr FF's interest in four properties, one of which was Property 18.

In 2007 the Respondent had acted in the sale of Property 19 by Mr FF. In that transaction, Crown Office had agreed that the net free proceeds of sale could be used to pay the mortgages on the other properties subject to the restraint order. Accordingly, Crown Office agreed that the net free proceeds of sale could be paid into an account in the name of Ms GG for this purpose. On 11 October 2007, solicitors acting in the criminal case wrote to Crown Office seeking their consent to the sale of Property 18 and stating *"It would be a condition of the sale that any of the equity realised from the sale which would be on the open market at arms length would be placed in an interest bearing account.*
The only deductions from the interest bearing account, which of course would also be restrained, would be the mortgage payments for Property 20, the home address of the family." Crown Office responded by letter dated 23 October 2007 indicating that they had no objection in principle to the sale of the property on the basis that the sale would be an arms length transaction for the open market value and that any free proceeds would be placed in an interest bearing account. This letter also instructed that the relevant details required to be provided to Crown Office prior to any conclusion of the sale in order that relevant enquiries

could be carried out. Copies of these letters were provided to the Respondent's firm.

On 23 July 2008, the Respondent's firm wrote by fax to Crown Office enclosing a copy of the missives for the sale for Property 18 and seeking confirmation that the net free proceeds could be used to pay off the mortgage arrears on the other property, with the balance of the proceeds to be paid into an interest bearing account to meet future mortgage payments.

On 24 July 2008 at 11:25am Crown Office responded by fax indicating that they had no objection in principal to the sale providing the following conditions were met:

"1. The sale would need to be an arms length transaction with no connection between seller and buyer.
2. The property would need to be sold at the open market value.
3. Any free proceeds arising from the sale would need to be held by selling solicitor in an interest bearing account pending the outcome of the confiscation matter."

The letter concluded *"As this is the first notice we have had in relation to the sale of property 18, we require to carry out our own necessary investigations and will get back to you as soon as possible on whether a sale may be transacted."*

At 17:03 on 24 July 2008 Crown Office forwarded a further fax to the Respondent's firm. This letter stated that Crown Office did not authorise the use of the net free proceeds of sale of the property at Property 18 to make payment of the mortgage arrears on the other property. The letter requested further information and stated *"Our letter dated 23 October 2007 required details of any proposed sale at Property 18 prior to conclusion and you have not complied with this."*

The Respondent's firm wrote to Crown Office on 25 July 2008 providing further information.

Production 20 for the Respondent was a copy of an internal email within Crown Office dated 25 July 2008 confirming that a discussion had taken place between the Respondent and Crown Office and seeking further instructions.

On 29 July 2008 Crown Office wrote to the Respondent's firm consenting to the sale of the property but not authorising the use of the net free proceeds of sale to offset the arrears on the other mortgage. The letter stated *"The net free proceeds of the sale should be placed in an interest bearing account pending the conclusion of the criminal and confiscation proceedings against the Respondents."* The letter concluded by stating *"Please confirm that you will take cognisance of this letter and that the net free proceeds of the sale of Property 18 will be held in an interest bearing account."*

Having made various payments from the sale proceeds, on 6 August 2008 the Respondent transmitted £26,687.48 to a Bank Account in the name of Ms GG.

On 13 August 2008 the Crown Office wrote to the Respondent seeking a reply to their letter of 29 July 2008 and requesting vouching of the sale proceeds being held in an interest bearing Account. On 21 August 2008 the Respondent sent a copy of a cash statement to the Crown Office showing the free sale proceeds but made no other comment.

The Respondent had an obligation to retain the free sale proceeds in an interest bearing account in the name of his firm but failed to do so.

12.11 As noted in paragraph 10.7 above, the Respondent acted for the purchaser and the sellers of the subjects at Property 14.

£25,000 of the purchase price was paid from the Respondent's client account to the purchaser.

Mr AA granted a power of attorney in favour of the Respondent on either the 7th or 14th August 2008. The power of attorney was used by a staff member of the

Respondent's firm to execute a minute of agreement dated 14 August 2008. There was no reference to the figure of £25,000 within that minute of agreement.

On 14 August 2008, precise time unknown, Mrs AA signed a mandate authorising payment of £25,000 to the purchaser. A note within the file made reference to Mrs AA owing the purchaser money in relation to previous marital affairs.

A letter dated 14 August 2008 was sent by the Respondent's firm to Mr and Mrs AA addressed to the sale subjects noting that "You have signed a mandate for the sum of £25,000" to be paid to the purchaser and asking them to contact the firm immediately if this was not the case.

At no stage has Mr AA contacted either the Respondent or the original estate agents instructed to object to the payment made to the purchaser.

13. Having carefully considered the foregoing findings in fact and submissions made by the parties, the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of his:

13.1 breaches of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 in relation to four transactions outlined in Article 12.3 above.

13.2 breaches of Regulation 7(3)(b) of the Money Laundering Regulations 2007, in relation to his failure to demonstrate to the Complainers that the extent of customer due diligence measures taken in the seven transactions outlined at Article 12.4 above were appropriate.

13.3 breach of Regulations 5 and 17 of the Money Laundering Regulations 2007 and consequent breach of Rule 24 of the Solicitors (Scotland) Accounts etc Rules 2001 in relation to his reliance on copy documents detailed in Article 12.5(2) and (3) above.

13.4 his failure to implement loan instructions given to him and his failure to fulfil his obligations in terms of the Council of Mortgage Lenders Handbook for

Scotland, including a failure to report unusual circumstances to a lender in relation to a transaction, a failure to mention a deposit paid by a seller and a failure to mention the balance of a purchase price being paid by a person other than the borrower in relation to the two transactions outlined in paragraph 12.6 and 12.8 above.

13.5 his failure to retain the net free proceeds of sale in an interest bearing account in his firm's name as outlined in Article 12.10 above.

13.6 his breaches of Regulation 4 and 6 of the Money Laundering Regulations 2003 and consequent breach of Rule 24 of the Solicitors (Scotland) Accounts Rules 2001 in relation to Article 12.9(i) above.

13.7 his failure, being a solicitor acting in a transaction for both the purchaser and the lender, to act with the utmost propriety towards both clients, by withholding relevant information from a client such as a deposit being paid by someone other than the purchaser client as outlined in Articles 12.6 and 12.8 above.

13.8 his breach of Rule 6 of the Solicitors (Scotland) Accounts etc Rules 2001 in relation to the drawing of money from a client account without authority, in relation to two transactions where he acted contrary to loan instructions as outlined in Articles 12.6 and 12.8 above.

14. On 30 March 2017 all parties as previously noted were present. The Tribunal intimated its decision to both parties and invited further submissions. Mr Hennessy lodged written submissions in mitigation together with a number of references. The Tribunal heard oral submissions from both parties. Having given the submissions and references careful consideration, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 30 March 2017. The Tribunal having considered the Complaint dated 7 March 2014 at the instance of the Council of the Law Society of Scotland against James Gerad Moore, Solicitor, Messrs Moore Macdonald Solicitors, 2 Scott Street, Motherwell; Find the Respondent guilty of professional misconduct in cumulo in respect of his (a) breaches of Rule 3 of the Solicitors (Scotland) Practice Rules 1986; (b) breaches of Rule 6 and 24 of the Solicitors (Scotland) Accounts etc Rules 2001; (c)

breaches of Regulation 5, 7 and 17 of the Money Laundering Regulations 2007; (d) his breach of Regulations 4 and 6 of the Money Laundering Regulations 2003; (e) failure to implement loan instructions given to him and his failure to fulfil his obligations in terms of the Council of Mortgage Lenders Handbook for Scotland, including a failure to report unusual circumstances to a lender in relation to a transaction, a failure to mention a deposit paid by a seller and a failure to mention the balance of a purchase price being paid by a person other than the borrower; (f) his failure, being a solicitor acting in a transaction for both purchaser and the lender, to act with the utmost propriety towards both clients by withholding information from a client such as a deposit being paid by someone other than the purchaser client; and (g) his failure to retain the net free proceeds of sale in an interest bearing account in his firm's name; Censure the Respondent; Fine him in sum of £1,000 to be forfeit to Her Majesty; 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, restricted to 85%; and Direct that publicity will be given to this decision but that this publicity shall only include the names of the Respondent and the two witnesses. This publicity shall include the decision of the Tribunal in relation to the preliminary hearing on 9 September 2014.

(signed)

Alistair Cockburn

Vice Chairman

15. 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 1 JUNE 2017.

IN THE NAME OF THE TRIBUNAL

Alistair Cockburn

Vice Chairman

NOTE

At the hearing on 8 December 2016 the Tribunal had before it the Complaint, Answers, two Inventories of Productions for the Complainers, and four Inventories of Productions for the Respondent. At the last hearing of the case a handwritten Joint Minute between the parties had been lodged with the Tribunal. A typed written version of this Joint Minute was emailed to the Tribunal on 1 September 2016 and on 8 December 2016 a principal signed Joint Minute was lodged.

At the commencement of the hearing, the Fiscal for the Complainers sought to make minor amendments to the Complaint, most of which related to averments withdrawn by the Fiscal at the conclusion of proceedings. However, in relation to averment 4.9(3), he moved to amend the address to number 32, rather than as stated number 31. No objection being taken to this amendment, the Tribunal granted the Fiscal's motion.

EVIDENCE FOR THE COMPLAINERS

The Fiscal confirmed that he intended to call only one witness.

WITNESS FOR THE COMPLAINERS
WITNESS ONE: IAN MESSER

The witness confirmed that he was 51 years old, and was the Director of Financial Compliance for the Law Society. He has held that position since October 2008. He runs the department which runs the inspection team that inspects firms regarding their compliance with the Accounts Rules and he runs the Scottish Solicitors Guarantee Fund. Prior to this position he was employed by NHS Lothian and then NHS Borders in a similar capacity. He authorised the team to conduct an investigation into Moore Macdonald. The Guarantee Fund Committee appointed him as the named person to carry out the investigation.

He confirmed that Production 16 was a letter dated 28 October 2008 from Ms HH, a member from his team, to Mr Moore confirming the terms of the Solicitors Accounts Rules and noting that the witness had been appointed to conduct an investigation. Production 16/3 was a list of the documents that the team required to see. He confirmed that Production 17 was a letter from him to Mr Moore dated 29 October. Production 15 was a letter from Ms II, another member of his team, to Mr Moore dated 23

October. He confirmed that concerns had been raised following an inspection carried out in September 2008. They had adopted a standard approach.

Once the investigation had begun, his team had requested a large number of files. This turned out not to be a practical approach and a number of the files had to be returned. Production 28 was a letter from Mr Moore to Mr Messer dated 18 January 2010. After Mr Messer was appointed he was provided with files which he considered and then raised questions. Production 22 was issued as a result of the inspection of these files and runs to some 40 odd pages. Production 25 is a letter dated 30 June 2009 raising some 30 plus pages of various points. He agreed with the Fiscal that there was no substantive response from the Respondent to these two letters until the letter of 18 January 2010 which is Production 28. Production 30 is a letter from the witness to Mr Moore dated 29 January 2010 responding to Production 28. The witness indicated that issues had been raised about the quality of copies of files sent to Mr Moore and that the letter of 29 January 2010 addressed that. He confirmed that there had been several deliveries of files. The first the witness was aware of any problems with the quality of copying was Mr Moore's communication on 18 January. The print run was done by the Law Society administration support team. The copies were issued by them. He accepted that issues rumbled on for a while but explained that they had done what they could to get the files back to Mr Moore.

The witness confirmed that one of the points raised by his team was an alleged conflict of interest. He was referred to paragraph 4.2 of the Complaint and asked to look at Production 22. Mr Hennessy objected to this line and queried the relevance of taking evidence where there was a written Joint Minute regarding this file and the file itself was not lodged. He argued that this witness was telling the Tribunal what was said in the letter regarding a file that was not before the Tribunal and questioned whether this was of any assistance to the Tribunal.

Mr Reid clarified that there were various points that he wished this witness to highlight. He indicated that if the evidence varied from that which was agreed in the Joint Minute then it would be on his head.

The Chairman asked if it would be of more assistance to clarify what Mr Reid was wanting to take in evidence from this witness. The Chairman asked Mr Reid if it was not more appropriate to highlight issues that were agreed in his submissions. The Tribunal was adjourned for 15 minutes to allow Mr Reid to narrow the particular matters he wished to raise with the witness.

When the Tribunal reconvened the Chairman raised with Mr Reid that the Joint Minute did not cover averment 4.2(1) and (6). Mr Reid indicated that he did not intend to go back to these issues with the witness.

He asked the witness to have before him Production 19 for the Respondent – a file in connection with the client Mr FF. Mr Reid indicated that this related to averment 4.11.

The witness confirmed that the file contained a letter from Company 4 enclosing a search in the Register of Inhibition and Adjudications and a search in the Diligence and Insolvency Registers. This disclosed an entry dated 28 November 2006 confirming an inhibition of Ms GG and Mr FF in relation to the Proceeds of Crime Act 2002 and specifically referred to property 18. The witness was then referred to a letter on the file from Moore Macdonald to Crown Office dated 23 July 2008 and headed "Sale of Property 18". The witness confirmed that there was a letter from Crown Office and Procurator Fiscal Service dated 24 July 2008 to Moore Macdonald in response to Moore Macdonald's letter of 23 July. This letter stated that the National Casework Division had no objection in principle to the sale, subject to three conditions that are also subject to the Division carrying out their own necessary investigations prior to confirming whether the sale could be transacted. There was a letter dated 24 July 2008 again from Crown office and Procurator Fiscal Service to Moore Macdonald raising further issues.

At this juncture Mr Hennessy interrupted submitting to the Tribunal that it was part of the Joint Minute that the content of this file was what it bore to be and he questioned whether going through the correspondence with the witness was of any help to the Tribunal. Mr Reid responded that he wanted to highlight the important points of the transaction based on the correspondence. The Chairman questioned whether or not highlighting parts of the case was a question for submissions. The Chairman indicated that the Tribunal had thought that the Fiscal was going to lead evidence to prove what was not already agreed by the Joint Minute and that the purpose of the previous adjournment was to identify these points.

Mr Reid indicated that he would move on in the evidence but asked the witness to confirm that the concern with this file was that the instructions of Crown Office had not been complied with by the Respondent.

The witness was asked whether he had identified particular issues of concern in relation to the files overall and the witness confirmed that he had found common issues regarding the application of the

Money Laundering Regulations. Additionally, common names were identified in various transactions and on the different sides of transactions.

CROSS-EXAMINATION

The witness was asked if the number of files provided to the Complainers had exceeded 450 and responded that the number of 400 rang a bell. He could not remember if all of the files were delivered at one time. He confirmed that another department copied the files. He explained that many of the files were copied to meet Mr Moore's request for copy files. One or two original files were not present within his office. Mr Messer had retained originals for a period of time. The witness accepted that Mr Moore reported that some copies were not complete.

The witness confirmed that his team had not looked at all of the 400 files. Once the initial arrangements were made, they took a view to narrow down their investigation. The bulk of the files were returned at that stage. He believed they had looked at pretty much what had been included in the inspection reports involving he thought 30 or so files. He had looked at some files himself. He had looked at the files that he thought produced the most important issues for example Mr FF and Mr and Mrs AA. The draft inspection report and investigation report were sent to him for review and he would have delved into the various files whilst going through these reports. He confirmed that he had written a number of lengthy letters raising queries and that correspondence had gone back and forward. He accepted that Mr Moore had raised points regarding whether there were copies of sufficient quality to enable a response to be made.

The Chairman asked the witness to clarify how it had come about that the 400 files were provided to his office. The witness explained that there had been a meeting by conference call, after the Judicial Factor had been recalled, between him, Mr Moore and Mr Moore's representative Mr Macreath. It had been the Respondent and his agent's position that there was a key issue of the conduct of one of Mr Moore's members of staff. The initial view taken was that any file that that member of staff had handled should be looked at by the Law Society. In other words, this had been suggested by Mr Moore in reference to this member of staff.

The Chairman asked the witness what had led the witness's staff to stop the sift of the files. The witness explained that this decision was taken as a result of the time that was being taken to go through the files. The team needed to be more practical and focussed to complete the investigation.

The Chairman asked the witness if he was describing that his staff had then looked through some 30 or 40 files, prepared a report which he had then gone through. The witness explained that the report was prepared by Ms HH and as the process moved on then he had become the author.

The Chairman asked the witness how the team had discriminated between the files. The witness clarified that a number of files and names had been identified during the inspection process. The team did not have complete answers with regard to queries raised and so these then flowed into the investigation process. All of the files that have been referred to were reviewed and the witness would have looked at these. He needed to look at these files as if he was doing the investigation himself. The files to be reviewed were determined by the nature of the findings of the inspection.

Mr Hennessy was allowed to ask further questions of the witness. The witness confirmed to Mr Hennessy that at an early stage the Respondent had made it clear that there was a problem with a former member of his staff. When the video conference had taken place they had spoken about the Respondent's view that this former member of staff was responsible for some of the problems. It was agreed that there was a need to look at the work of that person and that had involved 400 plus files.

Mr Reid closed his case.

EVIDENCE FOR THE RESPONDENT

Mr Hennessy led evidence from two witnesses

WITNESS ONE: JAMES GERAD MOORE

The Respondent confirmed that he is 49, married with two children and has a 2/1 private law honours degree from Glasgow University. He had trained with McClure Naismith. His experience was primarily in conveyancing – initially commercial conveyancing. Production 8 for the Complainers is a record of his career.

Mr Moore started the firm Moore Macdonald on 9 September 2002 with an office initially at 84 Hamilton Road, Motherwell and then at 2 Scott Street, Motherwell. The area of business was principally conveyancing but in a wider sense was private client work so included some commercial lease work and executry practice. He had recently ventured into some civil court work. As at 2008 the main area of work was conveyancing. He did not have a partner in Moore Macdonald. He had been a

partner previously in a small firm but his then partner had been made an Immigration Tribunal Judge. In 2007/8 the firm had three paralegals that worked during the day and three that did a night shift. He had one or two juniors, a part time cashier and his wife as manageress. The firm was busy before the crash in the property market. Some months had involved 150 – 180 transactions including purchases, re-mortgages and some executries. Initially Mr Moore had done all of the work. Although there were paralegals, all they had done was type tapes. As he got busier, it was impossible for him to do all the work and Ms BB had come into the firm. She got the paralegals doing most of the conveyancing work, whilst Mr Moore would deal with the contracts side. He oversaw and supervised their work. Transactions involving the Registers of Sasine would come back to him.

The witness was referred to Production 19 for the Respondent – the Mr FF file. He agreed the first item on the file was a fax dated 6 June 2008. The witness was asked to explain how files were opened and he clarified that this varied depending on the file. Often the first contact the firm had was from an estate agent. Sometimes they had contact from the client direct. Often the first contact the firm had was when an estate agent contacted the office with an offer to purchase a property. The name Mr FF was familiar to the witness at the time. He had previously acted for Mr FF and his father Mr JJ. Both had bought and sold properties previously. The witness was aware that there was a restriction under the Proceeds of Crime Act but was not sure if it was still in place. One year previously he had carried out the sale of property for Mr FF and had had to get a discharge or variation of the restraint order. He believed the restraint order was against Mr JJ, Ms GG (his wife) and Mr FF (his son). The witness had not been aware of whether or not this restraint order had been dealt with as that matter was being dealt with by a different firm, Company 6.

The previous transaction he was referring to was settled one year earlier. Crown Office had consented to the sale of a property at Property 19. This was on the basis that the two mortgages for Property 20 and Property 18 were brought up to date from the proceeds of sale with the balance being paid into an interest bearing account in the name of Ms GG. She did not own either Property 19 or Property 18. He believed that the restraint order related to an action principally against Mr JJ but the restraint was against all three of them. The Crown had consented to money going into an account in her name. This was a way of the Crown protecting assets whilst the restraint order was still outstanding. One property was sold to raise finance to keep the other two properties and keep them available for the proceeds of crime proceedings. Thereafter, the money from Ms GG's account was to be used to pay the mortgage payments on the other two properties. If a property had been repossessed then it would be sold at (a) a lesser value and (b) would incur legal fees for repossession.

The witness had become aware of correspondence between Company 6 and Crown Office. He agreed that the copy letter from Company 6 to the National Casework Division dated 11 October 2007 matched what Mr FF had told him had been agreed by Crown Office. The witness was also referred to a letter from Crown Office and Procurator Fiscal Service to Company 6 dated 23 October 2007.

The offer to purchase was received in June 2008. The witness was not made aware of the problem with the restraint order at that stage. He became aware of it on 20 or 23 July. On 23 July 2008 Ms J, one of his paralegals, wrote to Crown Office advising them that his firm was instructed in the sale. This letter enclosed a copy of the letter from Crown Office to Company 6. He agreed that ultimately the letter was asking for a response from Crown Office. The witness went on to state that the letter from Crown Office dated 24 July 2008 setting out that the free proceeds would need to be held by a selling solicitor in an interest bearing account was not his understanding of what had been agreed. It was not what Mr FF had told him and not what was in the other Crown Office correspondence. Nor was it what had been agreed to one year previously. The other letter from Crown Office dated 24 July 2008 had caused him to telephone Crown Office. He had pointed out that the content of that letter was not what he had been told by Mr FF. He had pointed out that this was not what was agreed with Company 6 i.e. that the property could be sold to bring the other mortgage up to date and that the balance would be paid into an interest bearing account but not a solicitor's interest bearing account.

The witness was referred to Production 20 for the Respondent, an email dated 25 July 2008 from Ms LL, a senior case officer at Crown Office, to Mr KK. He explained that several people had dealt with this issue at Crown Office. He thought three or four different officials. He did not speak to Mr KK but did speak to Ms LL. He accepted that this was a forceful conversation. He had explained that what his client had said had been agreed appeared to match correspondence from another firm and previous correspondence from Crown Office. The witness said that they seemed not to appreciate what had been agreed and that they asked him to provide them with copies of their own correspondence.

The witness was referred to a letter dated 29 July 2008 from Crown Office and Procurator Fiscal Service to Messrs Moore Macdonald. The house at Property 20 was Mr FF's parents' house. He had interpreted this letter as saying (1) the Crown had completed their investigation and confirmed that the transaction was at arm's length and (2) they were not consenting to the proceeds being used to bring the mortgage account for Property 20 up to date and (3) that the proceeds were to be paid into an interest bearing account, but not a solicitor's interest bearing account. With regard to the latter issue, he had gone back to Crown Office to say that his client had not agreed to the funds being paid into a solicitor's interest bearing account.

The Chairman asked the witness to clarify why the funds were paid into the name of Ms GG. The witness explained that he had taken it that the funds could go into any one of the three names. In the previous transaction for the sale of Property 19 the balance had gone into Ms GG's account. He thought that the funds could go into the name of any of the three as they were all covered by the restraint order.

The witness confirmed that there was a fax on the file dated 6 August 2008 at 9:39am to the Clydesdale Bank enclosing a request for transfer of funds to Ms GG. He confirmed that there was a letter from Crown Office and Procurator Fiscal Service to him dated 13 August 2008 which he had responded to on 21 August 2008 by forwarding a copy of the cash statement for the transaction.

The witness agreed with the Chairman that the cash statement did not show which account the balance was paid into.

The witness insisted that he was entitled to pay the balance into an interest bearing account in the name of one of the parties as had happened the previous year. All of the parties were under a restraint order and this would regulate their accounts.

Moving onto a new area of the Complaint, Mr Hennessy asked the witness if he had had any regular source of business. The witness explained that principally his business came from financial advisors, estate agents and investors. When new business arose it depended on whether or not the Respondent was available whether it was him who saw any new client. Sometimes a client could see a paralegal in order to put in an offer. Sometimes instructions to put in an offer would be taken over the phone. There could be an overlap of the work being done by the paralegal with the work being done by the Respondent. In a purchase you would not want to conclude missives until the client had an offer of a mortgage. The conveyancing would be going on whilst the contract was still not concluded.

No major concerns had been expressed by the Law Society in relation to his business prior to 2008. His firm was inspected in March 2008. He believed the inspection had lasted a day or two and that no major concerns were noted. In the course of 2008 he had referred certain transactions to the police.

The witness confirmed that Productions 21, 22, 23, 24 and 25 for the Respondent were reports made by him to the Serious Organised Crime Agency in relation to transactions where he had had concerns. The witness described how he had become concerned about another firm of solicitors and had

instructed all of his staff to bring any transactions involving that other firm to his attention. The Respondent's firm had been held liable to meet the cost of an unrecorded security in one of the transactions involving that firm. As these matters were all coming to light, the Respondent became suspicious as to the involvement of a particular member of his staff. He described making efforts to get the police to investigate, taking advice from the Law Society and even making enquiries of clients himself that had resulted in him being threatened. These matters came to a head when the Respondent intervened in one transaction where it appeared that the suspected employee was attempting to pay out the proceeds of sale of a property without first discharging an unrecorded security, of which she was aware. This had resulted in the employee's suspension and eventual dismissal.

The Law Society inspection was arranged around that time. He had contacted the Law Society at the same stage he had contacted the police. The Law Society decided to carry out an inspection. The female inspector was placed in a room within his offices. At lunchtime someone ran past the office and threw a brick through the window where the inspector was sitting. The Respondent was in another room at the time. The inspector asked if she could finalise the inspection in Edinburgh and the Respondent had offered to go that very afternoon. This had not been suitable to the inspector and so arrangements were made for him to go through on the following Thursday.

He had then become subject to a petition for the appointment of a Judicial Factor – Production 28 for the Respondent. An Interim Judicial Factor was appointed without him being aware of that as he had no caveat lodged. He had instructed answers to be lodged to the petition and there was a hearing for the recall of the Interim Factor. Production 29 was the answers. The petition for the appointment of the Judicial Factor was not recalled until January 2016. The Interim Judicial Factor was brought to an end as a result of his application. He was awarded expenses on an enhanced rate and the Inner House were scathing about the allegation that had been made in the petition.

The Interim Judicial Factor sent representatives to his office and basically took over the running of his office. He had been allowed to come to work but every time he saw a client, he was accompanied by one of them. When the interim appointment was thrown out the Respondent had gone to Glasgow to meet with his solicitor and had had a video conference with the Law Society. It was the Respondent's suggestion to start going through files dealt with by the dismissed member of staff. The Respondent was trying to work out what she had done. There were some eight or nine transactions that he had not been happy with. The police had arranged to come into the office. He had wanted to tell the police about the transactions but Mr QQ of the Law Society told him that he could not because of client confidentiality. He had indicated to Mr QQ that the police would have to go through all of his files

unless he was allowed to give them an indication of the suspicious people or transactions. Mr QQ allowed him to give the details to the police.

In response to a question from the Chairman, the witness accepted that he could have put in further SOCA reports but he had done that with the earlier five and nothing had happened. On this occasion the police were actually already coming into the office. It had been the Respondent who had phoned the police and reported the matter.

It was his recollection that he had started looking through his files and then stopped when the Interim Judicial Factor was appointed. After the Judicial Factor was thrown out he was able to go back to check the files in detail. He recollected that the Law Society were coming in on what seemed like a weekly basis. The Law Society were asking for files at the same time he was checking through others and proffering them to the Law Society. It had cost him more than £2,000 in delivery costs for the files.

It seemed like over a month that the Law Society were coming into his firm on a weekly basis for one or two days a week. Sometimes it was one individual sometimes it was a team. They would ask him for files and then they would raise questions on the files. Sometimes they sent him a letter with requests. He had volunteered the delivery of files relating to the dismissed employee in the video conference.

He did not keep a note of his observations on each file. He did not find any suspicious files over and above the nine he mentioned. He believed the dismissed employee had only started with this conduct in the four or five months prior to it being discovered.

If he had been suspicious in relation to her files he would have done a SOCA report.

He had sent files to the Law Society that he had not seen anything wrong on because it was possible they might have looked at the file differently and seen something wrong.

He had received many requests for information from the Law Society and had asked for the return of some of his files. He was sent copies with which there were lots of difficulties. He keeps his files in a particular order with correspondence on the right hand side and documents on the left. The copies from the Law Society were all over the place. The copies themselves were poor. There were parts of files missing. There was one file with some 20 pages missing. They could not possibly have checked the

copies. There was another file where he was asked to comment on the colour of the heading of a letter when everything had been copied in black and white. The job was made 10 times worse by all of this.

Mr Moore agreed Production 16 for the Complainers was one of the letters passing between him and the Law Society which included a request for information. 16/3 was a list of files and records the Law Society was asking him to provide. Over time a number of other documents were requested. This whole process led to the lodging of the Complaint on 7 March 2014. The Respondent's firm was the subject of a number of annual inspections between 2008 and 2014. It was agreed that the inspections took place in February and March 2010, February 2011 and December 2012. No matters required to be brought to the Guarantee Fund Committee and no matters were raised regarding Money Laundering Regulations. The Respondent has never had a claim on the Guarantee Fund. His firm had also been inspected in July 2015.

His firm was now made up of himself, a qualified paralegal, who is in the last year of studying law at Strathclyde University, an office junior, a part time cashier and his wife who comes into the office on occasion to act as general manageress.

These events all happened some time ago and unfortunately his recollection has been affected. Some of these incidents happened in 2007, others in 2008. To be honest he is now beginning to forget names and the exact circumstances of transactions. This was a period when there were a number of difficulties and he had had to do five SOCA reports. He had never had to do anything like that before and has not since.

The Respondent's attention was drawn to Production 1 on the Second Inventory of Productions for the Respondent which he confirmed was an invoice from Company 7. He said this was a local firm who looked after his firm's computers. His firm had been affected by ransomware where a deliberate virus blocked down the server and access to the firm's files, subject to a demand to telephone a number in the Philippines in order to arrange to pay money to get a key to unlock the virus. Company 7 told him not to do that and that he would just have to start again. This was the Cryptolocker virus and the person was eventually caught. The key only released part of his files and his firm lost many of the files over a period of two years. The cash ledger files were ok because these were kept separately. This affected his ability to answer Law Society queries. He had significant issues with the copy files provided and had asked for the principal files. He believed the files belonged to him. He had sent them to the Law Society to assist. He had received letters with hundreds of queries. The files returned to him

were photocopies in just a big bundle and not copied properly, with items missing. Trying to find anything was time consuming and difficult.

The witness was referred to paragraph 4.2 of the Complaint, item 1. He provided information regarding 4.2(1), (6), later deleted by the Fiscal.

With regard to paragraph 4.2(5), Mr O, he could not remember who the seller was. He needed to see the file again.

The witness confirmed that although the defences were signed off by his solicitor they were put together by him after researching and reviewing all of the papers. Mr Reid had no objection to the witness referring to the Answers themselves. He had set out at page 6 of his Answers in relation to averment 4.2(5) that he was having difficulty in ascertaining the answers. He was unable to check for the information as he could not get access to computer records for that time, only the ledger cards.

The witness was directed to paragraph 4.3 of the Complaint referring to failure to maintain records. The witness indicated that the Law Society had issued general guidance when the Money Laundering Regulations changed at the end of 2007. He was aware that there had been some roadshows regarding the new system. The old system was based on two forms of identification being produced. The new system was a risk based system where the solicitor has to assess the risk involved. This could end up with being less documentation required to be produced or more, if, for instance, enhanced due diligence was required. The Respondent did not recall any guidance that required written risk assessments to be kept for each file. He was not aware of any firms doing that. The Law Society inspected his firm in March 2008 and did not say at that time that he required to keep written risk assessments. It was not made known to him until after October 2008 and thereafter he brought in written risk assessment forms for the files. Prior to that the indication from the Law Society was that the firm had to demonstrate that procedures were in place. His firm had procedures in place. There was a risk assessment manual and he spoke to his staff on numerous occasions regarding what was needed under the new Regulations. He was often in the same room as his staff. If a paralegal had a difficulty with something, for instance a form of identification, this was discussed with him. His staff was advised that it was no longer a requirement that two strict sources of identification required to be produced. His staff were referred to the criteria set out within the money laundering risk assessment manual. He took advice from the Law Society regarding the factors that required to be taken into account for instance whether it was a face to face meeting, an existing client etc. Regulation 19 required the firm to keep a copy of the ID. The firm has to keep a record of its business activity.

Everything his firm does is on the file and cash ledger cards. He took the view that he had extensive record of his business relationship with his clients. His staff did not keep specific records of risk assessments other than the ID documents.

His firm did not introduce the written risk assessment forms until the end of October 2008. It was his view that the Regulations still did not require a written risk assessment for each file.

The witness was asked by the Chairman if what he was saying was that a risk assessment was carried out but no record was kept. The witness agreed that this was the case but emphasised that there was evidence that the risk assessments were taking place and he referred to the five SOCA reports that he had completed saying that this demonstrated the risk assessment was taking place although individual risk assessment forms were not being kept on each file.

The witness agreed that Production 4 for the Respondent was a copy of the risk assessment form introduced by him at the end of 2008.

With regard to paragraph 4.5 of the Complaint, Production 4 is the risk assessment that was completed for Mr L regarding this transaction.

The Respondent indicated that he rarely relied on Regulation 17 which he said was designed for people with clients outwith the jurisdiction or abroad. In these circumstances he indicated he could rely on another registered body to do due diligence. Virtually all of his transactions were face to face transactions. Clients came in and he was able to risk assess them himself. In relation to Regulations 5 and 7, he recalled that in guidance from the Law Society issued at the time it was said that a solicitor was not entitled to act for a client unless he had seen identification first. This was mentioned in a roadshow he had attended but is wrong advice as Regulation 9 says that risk assessment is ongoing. The Law Society advice at the time caused conveyancers concern as many people will instruct solicitors over the phone to put in an offer to purchase. This would not be possible if ID had to be produced first. Therefore, he asked brokers who contacted him to let him have copies of their ID if they had any. That however did not mean that he did not ask for ID from the clients when they came in themselves. He did not photocopy it if they did as there was no reason to photocopy the same documents twice if he already had copies on the file.

If someone is purchasing a property then that person required to bring in evidence of the source of funds so they will bring in bank statements etc. Confirmation from banks or building societies of the

source of finance in his view was actually enhanced due diligence. If he was provided with a statement from a bank or building society indicating that this money came from Mr X's account then that proves that Mr X has gone through the due diligence of the other registered organisation.

With regard to Production 4(a) for the Respondent, this was a copy passport signed by Andrew Frame, a financial advisor and estate agent. This was on the file because the Respondent had asked people like Mr Frame, when passing clients to the Respondent, to pass on ID they had obtained on the basis that the Law Society had advised that a solicitor was not entitled to act for a client until he had ID.

Production 4(b) was a copy bank statement that the client would have brought in and the Respondent's firm would have copied. The Respondent could not recall who saw the client or when he came in. Some clients come in when they get the terms of business letters just to hand in ID but most present ID when they come in to sign other deeds. This statement came in because, as well as getting ID, the firm required to money launder clients to confirm where the money was coming from.

The Chairman asked how this confirmed the source of funds. The Respondent replied that it confirmed ID.

The witness was asked about Mr X. Mr Reid interjected that these were matters covered by the Joint Minute – the parties had admitted that certain things were on the files and the Respondent was asking about things not in the Joint Minute. Mr Hennessy responded that the Joint Minute includes the words "inter alia".

The witness was directed to paragraph 41(b) of the Joint Minute and confirmed that the Airdrie Savings Bank statement certified by Mr H, who was a financial advisor and estate agent, was provided to the Respondent as requested by him because of the Law Society initial guidance that he needed ID before he could act for a client.

The Respondent indicated that he did not recall this transaction given the length of time that has passed.

The Respondent was asked to comment on the transaction for Mr C in paragraph 4.5 of the Complaint. He confirmed that Production 5 for the Respondent was an offer of loan sent to Mr C by the Halifax. He believed that Mr C was seen by the dismissed employee. From the answers that he had prepared he

could see that as ID, apart from the offer of loan, the firm saw a driving licence and counterpart driving licence and the Virgin Media statement. He thought there was also a bank statement on the file.

In relation to averment 4.6 of the Complaint, he believed that the purchaser was seen by another member of staff who checked his source of funds. A letter was produced from Company 3. This showed that the money went into the purchaser's account from the seller. The staff member had not spotted that and the loan funds were requested before she noticed it. It was only on the day of settlement that she obviously realised that the money was coming from the seller and she faxed this to the bank. No response was ever received from the bank. He believed that the funds were already within the possession of the firm at the time that this came to light. His attention was drawn to the Joint Minute, paragraph 34(d). He believed the transaction settled on 19 June. He confirmed that this issue was brought to his attention but denied that his firm had any knowledge of the source of the deposit until this was noticed on 19 June. He did not think the client advised his firm and believed that his employee had spotted it on the letter from Company 3. His firm never heard from Birmingham Midshires.

The Chairman asked if the letter from Company 3 was addressed to Mr Moore's firm given that it was addressed to James Moore and Company. The witness responded that the address should be Moore Macdonald. He indicated that his firm asks clients to produce proof of the source of funds.

The witness was then referred to paragraph 4.7 of the Complaint and the relevant client file which was Production 17 for the Respondent. He confirmed that the file is split into two halves – correspondence on the right, paperwork on the left. He indicated that he had spoken to Mr AA right at the start. The first item on the file is the referral from Company 1, Mr Frame. The initial contact came when Mr Frame phoned the Respondent because Mr AA was in his office. Mr and Mrs AA had separated and Mr AA advised Mr Frame that he was in financial difficulties. His house was in the process of being repossessed. Mr Frame phoned the Respondent for Mr AA to get advice on two matters (a) how long a repossession would take and what he could do to defend it to give him time to sell the house rather than have it repossessed and (b) given the separation, how the proceeds of sale would be divided. Mr Frame handed the phone to Mr AA who then discussed matters with the Respondent.

The first item on the file (R51) contains his reference with the paralegal in charge of the case. Once the file was started he had no personal dealings with the sellers. The purchaser is referred to in that letter as Mr E for whom the Respondent had previously acted. R49 is the standard form letter terms of

engagement. R45 is a bank statement relating to Mr AA and R44 is a copy of his passport. These must have been brought into the office by Mr AA and copied.

R39 refers to a cash statement which is the cash statement which is L33 on the left hand side of the file. This bears the reference for Ms BB. The numbers noted on the bottom related to the fee note reference. R34 is a letter with an updated cash statement which is reproduced as L30 on the left hand side of the file. The handwriting looks like Ms BB's. The principal loan was with Kensington with a second charge over the property in favour of Welcome. R34 is a bad copy of Mrs AA's passport. R32 is an invoice from Orange addressed to Mrs AA produced as evidence of ID. This was the client according with the request to bring in evidence of ID.

The witness was referred to R30 and explained that after the transaction settled on 14 August Mrs AA contacted the office and said that it had been agreed that £25,000 would be paid to Mr E. Ms BB explained that Mrs AA required to sign the mandate authorising this. Mrs AA came into the office and signed the mandate. R30 is a letter of confirmation. The Respondent did not know about this at the time and did not discuss it with Ms BB at that stage. He became aware of this later when he had to amend the cash statement. This was a considerable time later when it transpired there had been an overpayment to Kensington and money came back into the firm. The file at that stage was with the Law Society and he did not know how to administer the funds without the file. He asked for the file back.

L22 was the mandate signed by Mrs AA which was prepared by Ms BB. R27 and R28 are identical letters, one to Mr AA and the other to Mrs AA both saying they were to be collected. As they were separated there had to be two separate letters and they both wanted to come in and collect the cheques.

L8 on the file is a Minute of Agreement. This was required because the Law Society rules required that there had to be a Minute of Agreement agreeing the division of the funds as the clients were separated. This was drawn up by Ms BB. L17 to 21 is the Power of Attorney by Mr AA appointing the Respondent as his attorney. The office was contacted by Mr AA as he was going on holiday on 6 or 7 August. The transaction was due to settle within the week and he needed to sign documentation. He was going on holiday and so he came in to sign the Power of Attorney to allow him to do that. L21 gives the date 14 August but that is not the right date. The Respondent was sure that Mr AA came in on the 7 August as that was the day he was going on holiday. He believed that Mr AA may well have been back from holiday on 14 August. The 7 August was when Mr AA came into the office and signed the Power of Attorney and provided other documentation.

L1 is a cash statement which says it has been amended by TM and checked by JM. The Respondent was not able to say whether or not this was the final cash statement. This showed that money was due to both Mr and Mrs AA. This was the money sent to them with the letters R27 and R28. The Respondent heard nothing from Mr and Mrs AA after the transaction indicating any unhappiness with regard to the money remitted.

Production 18 for the Respondent was a client file for the other side of the transaction. The file starts at R29 which is a letter in identical content to that on the Mr and Mrs AA file. The Respondent confirmed that it was his habit to use two different files – one for each side of the transaction. R27 was the standard letter noting terms of business, money laundering and giving an ID request. R15 to 23 is a fax of mortgage offer addressed to the purchaser. R17 contains the purchase price and valuation. The valuation would come from the valuation carried out by the purchaser originally passed to the broker and then to the lender. Prior to home reports rarely would the Respondent instruct surveys. The nature of his business was that his clients went through estate agents and brokers. The Respondent only occasionally instructed valuations but not for this client. He organised his own through the Company 1.

R9 is a report on title for the Bank of Scotland and is how the solicitor obtains the loan funds. The solicitor has to report that he is happy with the title and request the funds. R7 is a copy of the bank statement for Mr E. R6 is a copy driving licence for Mr E. R5 is a bank draft payable to Moore Macdonald for £12,461.25. R4 is a letter of confirmation from Mr E's bank that the draft came from monies debited from his account. The Respondent accepted that he would have signed or notarised an affidavit in relation to the loan. L19 was a draft cash statement prepared by Ms BB on 13 August. This was incomplete because she did not have the loan papers at that stage. L18 is an updated cash statement as by then the firm had loan papers and they were able to see how much the deposit required to be.

The Respondent agreed that money was paid to Mr E after the transaction settled. He understood what was meant by a revolving deposit fraud and insisted that this was a ridiculous suggestion in this case. The deposit was for £11,500, the legal fees took the figure to £12,461. This figure bears no relation to a revolving deposit fraud. The price paid was £105,000. The disposition states that to be the price. Mr E brought in funds of £105,000. The transaction went through at £105,000 which the Respondent understood was the valuation. There was no contact from Mr and Mrs AA after this transaction.

The Respondent was directed to paragraph 4.8 in the Complaint and admitted that money came from a third party source. He said that the full deposit was paid. The disposition and transaction went through at the correct price in the loan papers and disposition. The money came from Mr CC because he said he owed Mr G money and he mandated money from this transaction to repay it. He conceded he may have dealt with this case but he could not recall. He dealt with Mr CC on more than one occasion but could not recall the Mr G transaction.

The witness was directed to paragraph 4.9 of the Complaint and paragraph 45 of the Joint Minute. He explained that this transaction happened so long ago he did not remember it in depth although he could recognise some of the names. Ms J was a paralegal in his office. Mr EE was a financial advisor. Item (b) in paragraph 45 of the Joint Minute would have been obtained for identification purposes.

Paragraph 4.9(2) – that file had a written risk assessment dated 16 December 2008. This was assessed as medium risk. Copies of ID documentation were attached – passport, bank statement, and the mortgage offer addressed to the client. This was a face to face transaction. In his view this was enough to comply with enhanced due diligence.

Production 9 for the Respondent is a copy risk assessment form the firm adopted at the end of 2008. This related to the purchase of Property 2. This is a generic form to cover lots of situations and so many of the pages were scored out. 9/9 is the assessment of risk. 9(a) is a copy of Mr I's passport, (b) a copy of a bank statement in the name of Mr I and (c) a copy of an offer of loan from the Halifax dated 4 December 2008.

CROSS EXAMINATION

The Fiscal referred the witness to Production 19 for the Respondent and in particular his letter of 23 July 2008 to Crown Office, their reply of 24 July and a fax of 24 July. The witness confirmed that he had a phone conversation with Crown Office and confirmed that Production 20 contained two emails. He accepted that Production 19 for the Respondent contained a fax from COPFS dated 29 July 2008 which indicated the free proceeds of sale were not to be used to settle any mortgage arrears. The witness accepted that he instructed a CHAPS transfer to Ms GG and explained that in the previous transaction in which he had been involved he had paid off mortgage arrears from the proceeds of sale.

The Fiscal asked the witness why he had paid the free proceeds to Ms GG. The witness responded that the letter to him from Crown Office said that he was not to pay off the mortgage arrears and he did not.

The letter said that the proceeds were to be put into an interest bearing account, it did not say a solicitor's interest bearing account, which a previous letter had done and which he had disputed. In the previous transaction he had paid the balance into Ms GG's account.

The Fiscal asked the witness if that was to allow for continuing mortgage payments because there was no such question in this sale. The witness responded that was not necessarily the case as he was allowed to bring the other two mortgages up to date and to pay the balance to Ms GG who was also subject to the restraint order. So it would be up to Crown Office to decide what to allow her to do. The witness explained that his client was Ms FF and it was he who owned Property 18 and Property 19. The third property belonged to Mr JJ and Ms GG. Although Ms FF had been his client, the Crown had authorised the proceeds of sale from Property 19 to go into Ms GG's account.

The Fiscal asked the witness if it was not the case that Crown Office in the current transaction came back and asked the witness for confirmation of how the mortgages had fallen behind again. The witness responded that an explanation was sent on 25 July and on 29 July Crown Office approved it.

The Fiscal drew the witness's attention to the letter from Crown Office which was faxed dated 29 July and the witness confirmed that it did not make any comment regarding any previous dealings or what had happened before. The witness was then directed to Crown Office's previous letter of 24 July and asked whether that letter asked for confirmation of what had happened to the monies transferred to Ms GG. The witness answered that that letter was responded to with the list that the client had provided. The witness had taken the letter of 29 July from Crown Office to confirm that they had got all of that information and that they had completed their enquiries and that it was safe for him to proceed. He conceded that the letter does not say that they are happy with the arrangements but it was saying that they consented to the sale of the property off the back of all of the information he had provided in his letter of 25 July.

The Fiscal suggested to the witness that the letter from Crown Office did not authorise payment of mortgage arrears or payment of the balance to Ms GG. The witness responded that he accepted that it did not allow his firm to pay off the mortgage arrears and began to give an explanation of his understanding when the Chairman interjected and indicated that it might be appropriate to leave the Tribunal to interpret what could have been reasonably taken from the correspondence. The Fiscal made no response.

The Fiscal asked the witness to look at an undated mandate that was on the left hand side of the file which is Production 19 for the Respondent. The witness explained that as Ms FF was the client and the money was being paid into a third party's account, Ms FF required to approve that. Crown Office had control over the money as a result of the restraint order. The witness said that he knew that Ms GG was also subject to the restraint order.

The Fiscal directed the witness's attention to averment 4.2 of the Complaint and averment 4.2 of the Answers at page 6. The witness explained that certain pieces of work would not necessarily be the subject of a paper file. People often asked for advice on the phone. If an offer is submitted but is not successful then his firm does not open a file simply for putting in the offer. He regularly puts in offers for clients which, if are not accepted, do not result in a file being opened.

He was asked if there would be any paper trail at all and indicated that the filing cabinet has a drawer for pending offers. If an offer is accepted then it is taken out of that drawer and a file is opened. If it is not accepted then it is simply left there. His firm does not charge for submitting an offer. If an offer is not accepted then it will be taken out of the drawer and just "binned". There would be no reason to open a file.

The Fiscal asked the witness if that did not present a difficulty if the same client came along some eight months later, the witness would not be able to tell if this was an existing client. The witness responded that it depended whether the paralegal had saved the offer on a file in the computer – some paralegals did but not all did. There would rarely be a record of someone phoning for advice. He accepted that the file for Mr and Mrs AA was an example of that. He spoke to Mr AA on the telephone regarding (1) the separation of the couple and the division of any profit on the sale of the property and (2) the timescale for preventing the repossession of the house. The witness conceded that there was a difficulty in ascertaining if a client was an existing client as not all paralegals saved offers on the computer.

The Chairman asked the witness to explain when he considered a client ceased to be an existing client and would he be considered an existing client even after 10 years had passed. The witness indicated that it was his view that person would still be an existing client and not a former client unless he had gone to another firm in the interim.

The Fiscal referred the witness to averment 4.3 of the Complaint and paragraph 29 of the Joint Minute at page 7. The Fiscal put to the witness that the Joint Minute agrees that there are documents on several

of his files and on this file there is nothing referring to the client's financial position or source of funds. The Fiscal asked the witness how he could be satisfied that a risk assessment had been carried out without that. Mr Hennessy objected to this line of cross-examination indicating that the Joint Minute uses the words "*inter alia*" and is not an exhaustive list.

The Fiscal agreed to rephrase his question and asked the witness whether the items mentioned in paragraph 29 of the Joint Minute were sufficient for him to carry out an appropriate risk assessment. The witness stated that he took the view that the bank statement is suitable for enhanced due diligence as the bank is a regulated body. The letter from the regulated body and the copy passport were in his view sufficient as the assessment was risk based. Copies of the documents were kept.

The Fiscal drew the witness's attention to paragraph 29(f) of the Joint Minute and asked if this was sufficient information given that money was coming from Mr N. The witness responded that it was his view that was sufficient. He accepted that risk assessments required to have been carried out in accordance with a manual and stated that his firm had produced such a manual. Risk assessments were based on that manual. The firm had not done written risk assessments until the end of 2008. He had not recorded the assessment process itself only whether the conclusion was low, medium or high. The witness would require to speak to the paralegal dealing with the case but if the assessment was one of high risk or one that the paralegal was concerned about she would have come to the Respondent to discuss the matter as he was money laundering reporting officer. He accepted that to a large extent that made him dependant on what the paralegal said he/she had checked but that was not entirely the case. For example, at the end of April he had wanted paralegals to bring to him any cases involving Ms RR. That is what the paralegals do now and this was approved in numerous inspections since 2008. The firm record that the files have been assessed as low, medium or high risk on the basis of the manual. In the last inspection the firm had he was told that the inspectors would be in for three days and they left after one and a half days saying everything was fine. In the inspection before that they took 30 files away and said they were perfect. The firm still uses the same format. There was no record of how the risk assessment was carried out until the end of 2008. All inspections since then have concluded that the Law Society is happy with how the risk assessing is being done and documented. The same applied to all 12 incidents referred to in article 4.3 of the Complaint except that it should be emphasised that three of those transactions involved Mr A who he had reported to SOCA. Mr B was also reported to SOCA. The Respondent accepted that he had an ongoing obligation to risk assess transactions and it was following this that he reported Mr B directly to the police at the beginning of September 2008.

A member of the Tribunal asked the witness if he accepted out of date passports as ID. The witness responded that Regulation 5 simply states that a document has to come from a reliable source. He would not accept the expired passport on its own but would look for another source. He took the view that a solicitor can carry on the transaction with no documentation being produced for instance if the solicitor was acting for his mum or dad or the Chief Inspector of Police. The process was a risk based approach. Previous Money Laundering Regulations were rigid and required two sources of ID. After the process became risk based then sometimes no documents would be required while in other instances three or four might be required dependent on the risk.

A member of the Tribunal asked the witness if risk assessment was a written process as indicated by the form. The witness responded that the form was the written part of the risk assessment process but that it just confirms how the firm have assessed the case as low, medium or high. The form was introduced at the end of 2008, around November or December.

A member of the Tribunal asked if it was not the case that in some cases risk assessments done in November and December did not have a completed form. The witness explained that in October 2008 he was outwith the firm for a three week period as the Judicial Factor was in place. Then he had had staff problems and he was having to deal with Levy & Mcrae, the Law Society, and issues relating to Ms BB all at the same time as bringing in a new risk assessment procedure.

The Chairman directed the witness's attention to Respondent's Production 9 which the witness confirmed was the risk assessment form for Mr I. The witness accepted that Production 9/10 contained two certificates each certifying the same thing and one signed by him. He stated that he had taken the obligation upon him of certification seriously. The Chairman drew the witness's attention to Production 9/1 and the paragraph headed "Name ID". The witness responded by referring to Production 9/2 paragraph (a) that confirmed that the client had been met with personally and suggested that the passport was still valid. He said that the statement in the paragraph referred to by the Chairman was a statement of best practice or an ideal position. If a client has an up to date passport then that is the one that the solicitor should look at. He accepted that in the certificate on Production 9/1 he was certifying that the name ID was still valid. He accepted that the passport was four years out of date but explained that there was also a bank statement from a regulated body. He explained that he was certifying that a paralegal had risk assessed the transaction in accordance with the Regulations.

The Fiscal directed the witness to Article 4.6 of the Complaint and paragraph 34 of the Joint Minute at page 9. The witness accepted that the letter referred to in paragraph (e) would not have arrived until

the next day unless it had been faxed. The Fiscal asked the witness if it would not have been better to have faxed the letter given that the Respondent's firm were aware that a third party was providing the deposit the day before this letter was sent to the building society. The Respondent indicated that this was a mistake and that is why the letter of 19 June referred to in paragraph (e) says that it was due to an oversight.

The Fiscal then directed the witness to Article 4.7 of the Complaint. He asked the witness if the transaction involving Mr and Mrs AA and Mr E had come to him as a result of a phone conversation with Mr Frame and the witness agreed. The witness indicated that two matters were discussed (1) that the couple were in the process of separating and (2) that there was a threat of repossession of the house as a result of non-payment of the mortgage. He came to act for Mr and Mrs AA and Mr E in the transaction. He agreed that someone drew up a Minute of Agreement and agreed that a Power of Attorney had been drawn up because Mr AA was due to go on holiday. The Fiscal asked the witness to look at pages L16 to 21 of the file which was Production 17 for the Respondent. The witness was asked why he thought that the Power of Attorney was signed on 7 August even though the document indicates 14 August. The Respondent explained that this was because Mr AA was in the office on 7 August. The date of signing is Ms BB's writing and she was the witness to the signature. The witness agreed that the transaction settled on 14 August and that after settlement Mrs AA raised with the firm that £25,000 was due to be paid to Mr E. The Respondent indicated that it was not him that Mrs AA had spoken to. The only explanation that the Respondent was aware of for the sum paid was a file note by Ms BB which he thought referred to marital problems. The file note was the only explanation he was aware of. He accepted that Mr E was the purchaser. He explained that Mr E worked in financial services and bought and sold properties. The Respondent indicated that he had acted for Mr E on several occasions. He believed that Mr E was connected to Company 1 and believed that Mr E did some of the insurance work for the Centre. He was not aware of whether Mr E was an employee or director of the Centre, he just knew that Mr E specialised in life insurance. The witness was asked whether Mr E referred anyone to the Respondent's firm. The witness confirmed that the firm received referrals from Company 1 that could either be from Mr Frame or Mr H. He took both of these individuals to be the proprietors of Company 1 but he has never checked. The Fiscal asked why page R10 of Production 17 (an invoice from Company 1) asked the Respondent to pay their fee to Mr E. The witness indicated that he did not know why other than the fee would have been a cheque payable to Company 1 which Mr E would have brought to them. Company 1 did mortgage work and estate agency. If Mr E was going back to Hamilton he would be able to take the cheque to them. He denied that the fee was paid to Mr E and insisted that it was paid to Company 1 and that he had read page R10 as an instruction to give the cheque to Mr E. The Respondent would have been giving the cheque to a

third party as Mr E was not proprietor of Company 1. He believed the owners of Company 1 were Mr Frame and Mr H. He accepted that the instruction at page R10 was just saying give the cheque to Mr E like a courier.

The Chairman asked the witness why he needed authority for the cheque to be delivered. The Respondent answered that this was because Mr E was not a courier. This was an administrative thing saying he could give out the cheque to Mr E.

The Fiscal directed the witness's attention to Production 17 page L1 (cash statement) and page R24 and 25 (CHAPS transfer to Kensington Mortgage for £53,965.32) and the witness confirmed that this was the same figure as in the cash statement. The witness agreed that page L31 was a Welcome Finance statement addressed to Mrs AA showing a settlement figure of £17,363.12 which also was the same figure as shown in L1. The witness accepted that this suggested that the cheque was done by him on the day.

The witness accepted that page L22 was a mandate dated 14 August signed by Mrs AA and agreed that was what happened and that £25,000 was paid. The Fiscal asked the witness if there was any agreement from Mr AA. The witness explained that a cash statement was sent to Mr AA showing that the payment due to him was £25,000 and he had not said anything about that not being in accordance with his understanding. The Fiscal asked the witness if this was not really looking at things after the event and that in fact there were no instructions from Mr AA. The witness agreed that this was the case and that there was nothing on the file to show if there was any agreement from Mr AA. The witness was not aware of whether or not Ms BB had spoken to Mr AA direct. The witness accepted that he held Power of Attorney and denied that Mr AA had spoken to him. He explained that it was Ms BB who carried out the transaction. The Fiscal asked the witness if he would not have expected Ms BB to approach him for instructions on behalf of Mr AA where on the face of it she only had a request from Mrs AA. The witness explained that he did not know if Ms BB had spoken to Mr AA himself as there was nothing on the file to say whether she had or not.

The witness was directed to page R30 of the file and confirmed that this was a letter to both Mr and Mrs AA dated 14 August 2008. The witness accepted that the letter contained strange wording. He explained that the letter was done by Ms BB and he assumed it was done for the benefit of Mr AA. The Fiscal drew to the witness's attention to the letter being addressed to Property 14 which had just been sold. The witness explained that it had transpired that Mrs AA had continued to live in Property 14 with the couple's child. The witness did not accept that this was an odd transaction. It would not

have been odd for Mr and Mrs AA to make an arrangement to rent the house given that is what Mr E did. Many people invested in property.

The witness said he did not know whether Mr E did life insurance work with Company 1 as an employee or not. He was not aware how Company 1 had set up their business. Often such businesses can have separate divisions for dealing with life insurance and financial advice. The witness was not aware who was regulated for what business.

The witness was directed to page R5 of Production 18 which was Mr E's file and confirmed that this was Mr E's bank draft for the deposit and legal fees. He was asked if there was any evidence of the source of funds and he pointed to page R4, the cover letter for the draft. The witness was unable to say if this was a buy to let mortgage.

The Fiscal confirmed he had no further questions.

In response to a question from the Tribunal, the witness indicated that he had acted in the Mr and Mrs AA / Mr E transaction on the basis that Mr E was an existing client and the Rules allow a solicitor to act for both sides of a transaction if he has acted previously for the purchaser.

In response to a further question from the Tribunal, the witness stated that he did not recall ever having met Mr AA. He said that the Power of Attorney was utilised for completion of the Minute of Agreement in the purchase and sale and could not recall if it was used for the disposition. He clarified that the Power of Attorney was not a continuing Power of Attorney and so was an old form still in existence.

In response to a question from a member of the Tribunal, the witness explained that he had gone to a Law Society roadshow around the beginning of 2008 in relation to the change in Money Laundering Regulations. The Law Society guidance being given at that time was that a solicitor could not act for a client without seeing identification. This had caused some dismay that a conveyancer might not be able to put in an offer to purchase a property unless the client came in with ID first. The Respondent had discussed this issue with other firms that did lots of conveyancing and in particular had spoken to one or two of the partners in Streftford Tulips. The form that his firm used for the risk assessment procedure had been borrowed from another firm. He was aware that other firms had adopted a point based system but that was not adopted by him. There had been a manual for his staff in early 2008 drafted by him in terms of the Regulations. The Law Society had given guidance about the things that

required to be taken into account. He had had continual discussions about what required to be done as it was not entirely clear. The Law Society did not ask him to do written risk assessments. The form was adopted later.

In response to a question from the Tribunal, the Respondent confirmed that in relation to Article 4.8 he said in his Answers that the transaction was handled by Ms BB. He had prepared the Answers and checked the files when doing so. He had had severe difficulty with that paralegal and had not been happy with her work. He had realised in his view that she was a fraudulent person. In Answer 4.8 he was not alleging that Ms BB was doing anything wrong with regard to that transaction. He admitted that one and admitted that it was a mistake made in the firm.

WITNESS TWO: ANDREW ROBERT FRAME

The witness confirmed that he resides at Address 1, is 38 years old and is a manager in financial services. He confirmed that he had been the proprietor of the Company 1 which was a partnership between him and Mr H.

In 2008 primarily the nature of the Centre's business was as mortgage and protection advisors. There was a small estate agency side to the business. Mr Frame was an authorised independent mortgage advisor but the Centre had been part of a network of mortgage advisors and the network was called Intrinsic. Independent mortgage advisors can be authorised directly or through a network. There are benefits of going through a network such as enhanced commissions, backup and help with compliance and joining mortgage clubs.

In 2008 the witness had a business relationship with the Respondent as the Centre had been an estate agency and mortgage advisor and the Respondent was a conveyancer. The witness explained that he knew Mr AA through a circle of friends. Mr AA had approached the witness and explained that he was having marital difficulties. Mr AA had been having an affair. Additionally, Mr AA was having financial difficulties. Both the affair and the financial difficulties had put strain on the marriage. The matrimonial home was being repossessed and Mr AA had approached Mr Frame to see if there was anything that could be done. The witness advised Mr AA to speak to the Respondent as he could give Mr AA advice that the witness could not. The witness telephoned the Respondent and then passed the phone over to Mr AA although the witness had remained present while the conversation took place.

After the conversation Mr AA had seemed delighted and had asked if the Company 1 could put the property up for sale and help him stop the repossession. The witness was aware that there had been more than one mortgage on the property although Mr AA was not aware of that. After a number of weeks it transpired that Mrs AA had fraudulently obtained a secured loan without Mr AA's knowledge. It was agreed that the Company 1 would try and sell the property on the open market. Ultimately the property sold and as far as Mr Frame was aware everything was completed. He had seen Mr AA several times after completion. Mr AA had come into the office with a bottle of champagne and thanked Mr Frame. Then Mr Frame had seen Mr AA on a number of occasions in his circle of friends. Mr AA's only complaint had been in relation to not being aware of the second secured loan that his wife had obtained and therefore affected the share of proceeds Mr AA had received.

CROSS EXAMINATION OF MR FRAME

The witness agreed that the property had not sold on the open market. He explained that although the property had been put on the market, there had been no interest. At that point in time there were many people interested in investing in property. His firm approached a few of the people they were aware of who were so interested and it was successful in getting one of them interested in the purchase. That was Mr E.

The witness confirmed to the Fiscal that Mr E was an introducer of business to the Company 1 and had passed self-employed people to the Centre. Mr E was going through mortgage exams himself at the time. Mr E subsequently went on to do life insurance although he was not doing life insurance at the time of this transaction.

The hearing of evidence concluded on 15 December 2016 and the Complaint was continued to the 19 January 2017 for the parties to prepare written submissions. On 19 January 2017 Mr Reid lodged written submissions and a List of Authorities on behalf of the Complainers. Mr Hennessy lodged a written outline of submissions and copies of authorities referred to therein.

WRITTEN SUBMISSIONS FOR THE COMPLAINERS

The written submissions contained the following:

"The Complainers submitted this Complaint to the Scottish Solicitors Discipline Tribunal in respect of the conduct of James Gerad Moore who it is claimed is guilty of professional misconduct.

Over the relevant time period covered by the Complaint Mr Moore practised as Moore Macdonald Solicitors, 2 Scott Street, Motherwell. At all material times he was the Cashroom Partner and the Anti-Money Laundering Partner (Complaint paragraphs 1 to 3 inclusive and JM para 1).

I propose to structure these Submissions by dealing with each individual paragraph of the Complaint and assessing the evidence relative to that paragraph.

Thereafter I will address the claimed misconduct against the background of the alleged duties and the evidence.

4.1 The Complainers carried out an inspection in September 2008 and noted alleged breaches. (JM para 2).

4.2 In terms of the Solicitors (Scotland) Practice Rules 1986 Rule 3 it is provided that a Solicitor shall not act for two or more parties whose interest conflict. Certain exceptions to Rule 3 are set out in Rule 5.

5.1 of the Complaint sets out Rules 3 and 5 verbatim.

It is averred that in six stated transactions there was a conflict of interest in contravention of Rule 3.

(1) <u>A sale by Ms MM of Property 7</u>.

The Complainers do not propose to proceed with submissions that there was a conflict of interest in this transaction.

(2) to (5) inclusive.

Answer 4.2 admits the averments in the Complaint para 4.2 in respect of these four transactions.

In evidence Mr Moore said that he could not confirm if they (the clients) were existing clients for "certain reasons". He indicated that he could not access the records if there was no money going through.

In Answer 2 Mr Moore offers an explanation as to why he was unable to confirm that these four clients were existing clients of the firm. The explanation includes reference to the firm offering advice to all clients who telephoned them and offering a free Will service as part of the service provided to Company 1.

In evidence Mr Moore said that the firm did not keep records anyway if someone had phoned them for advice. On that basis it is submitted any explanation as set out in Answer 2 is irrelevant. If no records were kept then any alleged delay, parties no longer being contactable, clients moved or the computer system being infected by a virus do not matter. Mr Moore's evidence about the virus and its effect is neither here nor there.

Indeed, as an expansion of the point, Mr Moore said in evidence that if offers for properties were unsuccessful no files were opened for these clients and generally the unsuccessful offers were not retained. He made reference to such offers occasionally being retained in an "offers drawer".

It is submitted that it was by and large impossible to tell whether or not any individual might (arguably) be an existing client because he/she might have sought advice or made an unsuccessful offer. There were no written or electronic records to check.

There are therefore no grounds on which to justify any claim that Mr Moore was entitled to make use of the Rule 5 exceptions. In each of these 4 transactions there was a conflict of interest.

(6) The sale by Mr V and the purchase by Mr U of Property 10.

The Complainers do not propose to proceed with submissions that there was a conflict of interest in this transaction.

4.3 The Complainers allege a breach of the Money Laundering Regulations 2007, Regulation 7(3). Regulations 3, 5 and 7 are set out in paragraph 5.4 of the Complaint.

Twelve particular transactions are specified in paragraph 4.3.

Mr Moore's position on the basis of his evidence was that as the 2007 Regulations were recent, it was not generally the case that in at least the first half of 2008 it was understood that it might be appropriate to hold written risk assessments in respect of transactions.

Mr Moore's evidence was to the effect that his staff did in fact carry out the appropriate risk assessments for each transaction but did not retain details of these assessments.

It is submitted that this evidence is strange to say the least. It seems incredible/unbelievable that staff carried out the necessary risk assessment but never retained that assessment on the file. As I understood Mr Moore's evidence, that was his statement of the general position. In other words, this practice was not restricted to the twelve transactions set out in paragraph 4.3 but applied to all transactions carried out by the firm in at least the first half of 2008.

(1) Purchase of Property 5 by Mr Q.

It is agreed between the parties (JM para.29 page 7) that the client file contained certain documentation. In this particular case the file disclosed that part of the purchase price was paid by a third party as set out at JM29(f). There was no evidence as to source of funds and no risk assessment form which might have disclosed source of funds. There was no evidence of any additional documentation as to source of funds.

(2) Purchase of Property 7 by Mr R.

It is agreed that the file contained certain documentation as set out in the JM para.30. There was no documentation to show source of funds and again no money laundering risk

assessment form. There was no evidence of any additional documentation as to source of funds.

(3) Purchase of Property 8 by Mr T.

The JM para.31 sets out documentation on this transaction file. It is clear that there was insufficient documentation to identify the client and to identify the source of funds. This is particularly so given that the client form indicated the client was a "new client". There was no evidence of any additional documentation as to identity or source of funds.

(4) Proposed Purchase of Property 9 by Mr D.

The documentation on the file is agreed in the JM para.32. There is clearly insufficient evidence of source of funds and again the client form indicated that the client was a "new client". There was no evidence of any additional documentation as to source of funds.

(5) Sale of Property 4 by Mr E

The Complainers do not propose to proceed with submissions that this transaction breached the 2007 Regulations.

(6) Purchase of Property 10 by Mr U.

The documentation on the file is agreed in the JM para.34. In this particular case a deposit was paid by a third party. A letter was issued to the lender on the day of settlement, 19 June 2008, drawing the lender's attention to this and stating "Due to an oversight this was not reported with our Report on Title. However we will assume if we do not hear from you that it is in order to proceed with this transaction."

On the basis a letter was issued, the lender would not receive this information until the day after settlement of the transaction.

(7) Sale of Property 10 by Mr V.

The documentation on file is agreed in the JM para.28. There is insufficient evidence of the source of funds and no money laundering risk assessment form. There was no evidence of any additional documentation as to source of funds.

(8) Purchase of Property 4 by Mr O.

The documentation on file is agreed in the JM para.27. In this case the deposit was paid by a third party and there was insufficient evidence of source of funds. There was no evidence of any additional documentation as to source of funds.

(9) Sale of Property 9 by Mr A.

The Complainers do not propose to proceed with submissions that this transaction breached the 2007 Regulations.

(10) Purchase of Property 21 by Mr A

The Complainers do not propose to proceed with submissions that this transaction breached the 2007 Regulations.

(11) Sale of Property 21 by Mr A

The Complainers do not propose to proceed with submissions that this transaction breached the 2007 Regulations.

(12) Purchase and subsequent sale of Property 22 by Mr B.

The Complainers do not propose to proceed with submissions that this transaction breached the 2007 Regulations.

4.4 This paragraph avers breaches of the Money Laundering Regulations 2007, Regulations 5 and 7 in respect of three particular transactions being:-

(1) Sale of Property 22 by Mr B

The Complainers do not propose to proceed with submissions that this transaction breached the 2007 Regulations.

(2) Sale of Property 9 by Mr A

The Complainers do not propose to proceed with submissions that this transaction breached the 2007 Regulations.

(3) Sale of Property 21 by Mr A

The Complainers do not propose to proceed with submissions that this transaction breached the 2007 Regulations.

4.5 <u>The Solicitors (Scotland) Accounts, Etc Rules 2001, Rule 24, the Money Laundering Regulations 2007, Regulation 17 and the Proceeds of Crime Act 2002 Part 7</u>

The Complainers aver that Mr Moore relied on certification of a client's identity by a person who did not fall within the definition in Regulation 17(2). Regulation 17 is set out in para. 5.4 of the Complaint at pages 14 and 15. Three individuals are averred, namely:

Mr L
Mr X
Mr C

Mr Moore's position in evidence was that he rarely ever relied on Regulation 17. He said it was designed "if a party was outwith the jurisdiction" and if he couldn't assess direct he was entitled to rely on another Regulatory body.

In respect of Mr L, his evidence that he rarely ever relied on Regulation 17 would appear to be contradicted by what he said in relation to the purchase and sale of Property 2.

He was referred to RP4, a Written Risk Assessment form for Mr L signed and certified by Mr Moore and dated 26.11.08. That Assessment was accompanied by RP4a, a copy passport certified by "Andy Frame" of COMPANY 1. The Certification covers on page 2 "seen the original documents (not photocopies)". When this discrepancy was questioned, Mr Moore said that he asked people who were passing on clients if they could possibly ID at that stage.

Also with the Assessment was RP4b, a Bank Statement for the period from 1 September to 1 October 2008. When asked by a Tribunal member how this statement showed source of funds after that date, Mr Moore said that it was for identification.

Mr X proposed to purchase Property 12. Documentation on the file, as agreed at JM para.41 included a faxed Bank Statement sent by COMPANY 1 with a stamp to the effect the Statement was a true copy of the original and signed by Mr H. When asked how this came about Mr Moore said he didn't remember the transaction but referred to his earlier evidence and said that Mr H was a Financial Adviser and Estate Agent.

Mr C was purchasing Property 13. As agreed in JM para.42 the file contained 2 faxes dated 07.08.08 from Your Mortgage Co. one with a copy Virgin Media Bill, the other with a copy photocard and counterpart driving licence. There was no money laundering risk assessment form.

4.6 It is averred that in respect of the purchase of Property 10 by Mr U (see above) there was a breach of the CML Handbook.

The parties' averments in 4.6 of the Complaint and Answers are agreed in JM para.5.

Loan instructions were issued by Birmingham Midshires in accordance with the CML Handbook for Scotland and Part 2 Instructions. The Handbook provided inter alia that if there was a need to report a matter to the lender the Solicitor must do so as soon as he/she became aware of the matter so as to avoid any delay. In addition, after reporting a matter it was provided that the mortgage should not be completed until the lender received further written instructions.

As outlined above the deposit for the purchase price was paid by a third party, the seller of the subjects. A Report on Title was sent to the lender on 18 June 2008. That Report did not mention the deposit. On the same day Mr Moore wrote to the seller in respect of the deposit.

Notwithstanding knowledge on 18 June 2008 that the deposit was being paid by the seller, Mr Moore did not draw the attention of the lenders to this matter until 19 June, the day on which the transaction settled. Notification was given to the lender by letter and it is submitted the earliest the lender would have received that letter would have been 20 June 2008.

The Form 12a Report showed that the client had been previously subject to an Inhibition under the Proceeds of Crime Act 2002. Given the information obtained by Mr Moore in respect of the deposit, the transaction should not have been settled on 19 June 2008.

4.7 (See 4.12 below)

4.8 Loan funds to allow Mr G to purchase Property 15 were provided by the Bank of Scotland. The lenders' instructions were based on the CML Handbook.

As averred the CML Handbook provided at 5.9.1 that inter alia the Solicitor was required to ask the borrower who the balance of the purchase price was being provided and if the Solicitor became aware the borrower was not providing the balance of the purchase price from his own funds this must be reported to the lender if the borrower agrees failing which the Solicitor was obliged to return the instructions to the lender and explain they were unable to continue to act as there was a conflict of interest.

The balance of the purchase price, £12,347.50 was paid by a third party, Mr CC. The lenders were not advised of this payment and the transaction settled.

These averments are admitted in Answer 4.8

In evidence Mr Moore said that Mr CC had said that he owed money to Mr G and had mandated the money (ie. for the deposit).

When asked by a Tribunal member if he was blaming Ms BB for what had happened, he replied that he wasn't alleging that Ms BB was doing anything in connection with that transaction and said "I think I've admitted that one"

4.9 The Complainers aver that there were three transactions where Mr Moore had failed to undertake any money laundering identity checks or maintain adequate records of any such checks. In addition they aver he failed to exhibit to them evidence of what checks might have been undertaken or to provide them with an adequate explanation for his failure to carry out any such checks. The clients were:

Mr DD
Mr I
Mr AA (see 4.12 below)

JM para. 45 details four items on the file for the purchase of Property 17 by Mr DD. The inference from a handwritten note was that Mr DD was a new client. There was no documentation in relation to identity or source of funds other than a photocopy photocard Inland Revenue Contractors Tax Certificate. There was no money laundering risk assessment form on the file.

Mr I purchased subjects at Property 2. The client file contained documentation as agreed in JM para. 25.

It seems clear from that documentation and in particular from a filenote (JM para.25a) dated 1 December 2008 and a client form (JM Para.25e) with the words "new client" circled, that Mr I was a new client.

Although the file contained a risk assessment form for money laundering compliance completed and signed by Mr Moore and an employee Ms J (RP9), there was no proper identification of the client or the source of funds. In respect of the client's identity, documentation consisted of a photocopy of a passport with an expiry date of 10 June 2004, some 4.5 years earlier. Page 2 of RP9 contains a statement "that the Name ID is still valid" which clearly it was not.

In apparent contradiction of the file note and client form referred to above, the file also contained a Minute of Agreement between the purchaser and seller to the effect that both were existing clients of Messrs Moore Macdonald.

4.10 Sale of Property 16 by Mr CC

The Complainers do not propose to proceed with submissions that this transaction breached the Money Laundering Regulations 2003.

4.11 The sale of Property 18 by Ms FF

This transaction concluded with the free sale proceeds being sent to the client's mother, Ms GG. The Complainers aver that Mr Moore had an obligation to retain the free sale proceeds in an interest bearing account but failed to do so. In addition he failed or unduly delayed in replying to Crown correspondence in relation to the net proceeds of sale and similarly in advising the Crown of the true destination of the proceeds of sale.

The file for this transaction is RP19. The pages are unnumbered.

On 23.07.08 Moore Macdonald sent a letter by fax to the Crown Office. The letter inter alia asked for authority to make a payment from the net free proceeds of the sale to prevent the client's father and mother from being evicted from Property 20. The Crown responded in a fax of 24.07.08 setting out three conditions, one of which was to the effect that any free sale proceeds from the sale would need to be held by the selling Solicitor in an interest bearing account pending the outcome of the confiscation matter.

A further fax from the Crown Office, also dated 24.07.08, advised that the Crown Office had not agreed that part of the net free proceeds of sale should be used to prevent the eviction of the client's mother and father.

That fax went on to refer to the basis on which the Crown had allowed the sale of a previous property, Property 19.

Moore Macdonald faxed the Crown Office on 25.07.08 referring to the background. They sent a reminder on 29.07.08.

In a letter dated 29.07.08 the Crown responded. They authorised the sale of Property 18 but did not authorise the net free proceeds to be used to pay the arrears of Property 20. They advised that the net free proceeds of the sale should be placed in an interest bearing account pending the conclusion of the Criminal and Confiscation Proceedings against the Respondents.

The file contains a CHAPS payment dated 06.08.08 of the free sale proceeds to Ms GG. This was confirmed by Mr Moore in evidence.

The Crown Office wrote again to Moore Macdonald on 13.08.08 referring to their letter of 29.07.08 and pointing out that that letter remained unanswered. They asked for confirmation that the sale of the property was concluded and for the provision of vouching of the sum now held in an interest bearing account.

On 21 August 2008 Moore Macdonald responded apologising for the delay and enclosing a copy of the Cash Statement. The letter did not specifically state a figure for the free sale proceeds, did not confirm that the free sale proceeds were held in an interest bearing account nor did it make any reference to where the proceeds might have been held.

As I understood Mr Moore's evidence, his position was that the free sale proceeds were transferred to Ms GG because that had occurred in a previous transaction and the Crown had the facility to monitor Ms GG's account.

To transfer the free sale proceeds to a third party, whether related to the client or not, was not in accord with the Crown Office instructions. There is no suggestion in these instructions that the free sale proceeds could be transferred to any third party. For such a transfer to be authorised Mr Moore would have required specific instructions to that effect.

It is submitted that Mr Moore/Moore Macdonald knew very well that there was no authority to transfer the free sale proceeds to Ms GG. They did not respond prior to settlement of the

transaction to the Crown Office letter of 29.07.08 and when they did respond they did not confirm the money was held in an interest bearing account nor did they disclose that the money had been transferred to Ms GG.

4.12 As averred Mr Moore acted for the purchaser and the sellers of Property 14. The sellers were Mr and Mrs AA and the purchaser was Mr E.

The file for the sellers is RP17 and the file for the purchaser is RP18.

The purchase price was said to be £105,000. The sum of £25,000 was paid by Moore Macdonald, apparently from the free sale proceeds, to the purchaser, Mr E.

The file RP17, the documentation on the file includes the following:-

A Power of Attorney by Mr AA in favour of James Gerad Moore (L16 to L21) and apparently dated 14 August 2008 which was the date of settlement of the transaction. Mr Moore gave evidence that it was signed on 7 August 2008 and that the date was added later by the paralegal.

He said that it was 7 August 2008 because "that's when he came in and signed the other documents". A consideration of the file does not appear to disclose any other documents signed by Mr AA and there is no note that he was in the office on 7 August. Even the Minute of Agreement between Mr and Mrs AA (RP17 L8 and L9) is signed by Mr Moore as Attorney.

A filenote (R31) referring to an attendance at a meeting with Mrs AA and saying "advising us that she wants to pay the sum of £25,000 to Mr E from the sale proceeds as she owed him same with previous martial affairs." Presumably "martial" should have read "marital".

A Mandate apparently signed on 14 August by Mrs AA to the effect that she should receive £80,000 to pay all secured loans etc. and that the balance should be divided equally between herself and Mr AA. It then says the balance of £25,000 should be paid to Mr E. The Mandate is not signed by Mr AA or by Mr Moore as his Attorney.

A letter dated 14 August 2008, the settlement date, is addressed to Mr and Mrs AA at Property 14 (RP17 R30 and R31) in what it is submitted is very strange terms. "We refer to your recent meeting and note that you have signed a Mandate for the sum of £25,000 to be paid to Mr E from the sale proceeds. If this is not the case then we should be grateful if you would please contact us immediately on receipt of this letter. If we do not hear from you then we would assume that this is the case."

This transaction is littered with "oddities".

Moore Macdonald were acting for both parties although Mr AA was apparently referred to Mr Moore by Andrew Frame of Company 1 where, in a telephone call, Mr AA referred to marital difficulties and financial problems. Notwithstanding this, Mr Moore acted for both Mr and Mrs AA in the transaction.

According to the evidence of Andrew Frame the property was not sold on the open market. The purchaser, Mr E, was said by Mr Frame to be an "introducer". According to Mr Moore, Mr E was someone who bought and sold properties and was involved in insurance.

This contrasts with CP19/4 (letter dated 24.02.09 from Levy & McRae) where Mr E is said to be with "the Company 1 advisers". Similarly in CP28/10 and 11 (letter dated 18.01.10 from Mr Moore to the Complainers) he is described as a financial advisor "with a firm of financial advisors with whom the firm has a business relationship". Again, in CP31/12 (letter dated 08.02.10 from Mr Moore to the Complainers) he is described as "being a financial advisor with a firm of brokers who introduces work to the firm".

Given his association with Company 1 and his apparently longstanding knowledge of Andrew Frame (his evidence and CP28/9), it might have been expected that Mr Moore would know if Mr E was one of their advisors.

At settlement on 14.08.08 the Cash Statement (RP17 L1) was checked by Mr Moore. When giving evidence there initially seemed to be some doubt in his mind as to whether or not he checked that Statement or a later one but it became clear it must have been that particular

Statement as the lenders' figures for Welcome (RP17 L31 and R29) and Kensington (RP17 L23, R24 and R25) contain the redemption figures as reflected in the Cash Statement.

It was said that following settlement of the transaction Mrs AA then said to the Paralegal Ms BB that £25,000 should be paid to the purchaser, Mr E as per the filenote. No other documentation was produced to support the reason for this payment and so far as I recall, Mr Moore in evidence did not offer any additional information.

In CP32/6 however it said that a reasonable explanation was received from Mr E. If any explanation was obtained from Mr E it isn't noted on RP17 or RP18 nor is it offered in any correspondence with the Complainers.

At CP31/5 Mr Moore refers to the Power of Attorney allowing the Attorney to authorise payment to Mr E. In evidence he did not suggest that the Power of Attorney was used for this purpose. Mr Moore agreed that Mr AA didn't know about the payment and that this was an oversight and something which should not have happened.

As if to emphasise the "oddities" in this transaction, a fax from Company 1 to Moore Macdonald (R10) refers to the client "Mr and Mrs AA" and says "Guys, invoice in respect of address as noted above; please pay our fee to Mr E." The invoice for £750 can be seen at R11.

In evidence Mr Moore denied that, for whatever reason, the Company 1 fee was being paid to Mr E by Company 1 and said that he read the fax as effectively meaning that Mr E would collect the fee from Moore Macdonald and take it to Company 1. Quite why, on this explanation, Mr E should act as postman was not convincingly explained. If of course he was part of COMPANY 1 as per the correspondence referred to above, then perhaps he was a postman!

Duties and Breaches

1. The Solicitors (Scotland) Practice Rules 1986 Rule 3 provides:-

"A Solicitor shall not act for two or more parties whose interests conflict."

Rule 5, as set out in the Complaint (para 5.1) sets out some specifics in respect of conveyancing and at Rule 5(1)(d) provides that Rule 5(1) will not apply if "both parties are established clients of the prospective purchaser, tenant, assignee or borrower is an established client;"

It is submitted in respect of the Complaint, para 4.2 that in four transactions Mr Moore had a conflict of interest. This is admitted in Answer 2.

It is submitted that while a conflict of interest in only one transaction might or might not meet the Sharp test, a conflict of interest in four cases does meet the test and taken together they amount to misconduct on the part of Mr Moore.

If for any reason the Tribunal does not consider that these four cases amount to misconduct then it is submitted that taken in cumulo with other matters (see below) they form part of professional misconduct.

2. <u>The Money Laundering Regulations 2007, Regulation 7(3)</u>

Regulations 3, 5 and 7 are set out in the Complaint, paragraph 5.4.

Under Regulation 3(1) "Independent legal professionals" such as Mr Moore are subject to the Regulations.

Independent legal professionals are obliged to carry out Customer Due Diligence Measures which are defined in Regulation 5.

Regulation 7 sets out the Application of Customer Due Diligence Measures.

In terms of Regulation 7(3) Mr Moore had an obligation to (a) determine the extent of Customer Due Diligence Measures on a risk sensitive basis depending on the type of customer, business relationship, product or transaction and (b) be able to demonstrate to his supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

In paragraph 4.3 of the Complaint the Complainers aver that twelve particular transactions breached Regulation 7(3). It will be noted from the Submissions above that the Complainers now claim breaches in seven out of the twelve averred transactions. It is submitted that in each of these seven transactions Mr Moore was/is unable to demonstrate to the Complainers as his supervisory authority that the extent of the Customer Due Diligence Measures on a risk sensitive basis in these seven transactions was appropriate.

The position in respect of the seven transactions is set out above, it is clear that in these transactions the extent of the Customer Due Diligence Measures, at least as demonstrated to the Complainers, was not appropriate.

Six of the transactions (Mr Q, Mr R, Mr T, Mr D, Mr V and Mr O) had insufficient documentation/information to properly risk assess source of funds.

Three transactions had deposits paid by a third party (Mr Q, Mr U and Mr O).

It is submitted that these seven transactions breached Regulation 7(3) and taken together are sufficient to meet the Sharp test and amount to professional misconduct. Mr Moore gave evidence to the effect that in his view it was not generally realised in at least the first half of 2008 that it was necessary to keep written risk assessments on file. However, even if that argument is accepted as being correct, it in no way removes the obligation to check source of funds and to have sufficient information, particularly in the form of documentation, to be able to demonstrate to the Complainers as the supervisory authority that the extent of the Customer Due Diligence Measures taken were appropriate.

The 2007 Regulations came into force on 15 December 2007. In advance of the Regulations coming into effect the Complainers produced Anti-Money Laundering Guidance.

The Guidance document provided (on page 6) inter alia:-

"Monitor the transaction, in relation to what you know and expect of the client and also issues such as the source of funds, a change of funding arrangements at the last minute or withdrawing from a transaction for no obvious reason and requesting payment of funds."

"Keep full detailed records – if it isn't written down it didn't happen."

The Guidance outlines the Risk Based Approach (page 14 onwards). On page 15 the Guidance, in considering the situation where further checking is required, refers to "A typical example might be a client where the funding for a transaction comes from a third party. It maybe that the person providing the funds is the beneficial owner and further checks will be required on them. The initial client and transaction profile may not have indicated a particularly high risk profile but subsequent actions or information require additional checking to be carried out."

The Guidance provides "some suggested risk profile categories or considerations" (page 17 onwards). In respect of Funding reference is made to "funds provided by someone other than the client".

It is submitted that the Guidance drew attention to the need to check source of funds and particularly so if the funds or any part of them were being provided by a third party.

In addition, the Complainers published 3 Articles in The Journal in May, July and December 2007 on the Regulations.

3. <u>The Money Laundering Regulations 2007, Regulation 17</u>

The 2007 Regulations, Regulation 17(1) provides that a relevant person (such as Mr Moore) may rely on a person who falls within 17(2) to apply any Customer Due Diligence Measures provided that (a) the other person consents to being relied on and (b) notwithstanding the relevant person's reliance on the other person, the relevant person remains liable for any failure to apply such measures.

Regulation 17(2) sets out the persons who may be relied upon in terms of Regulation 17(1).

In the Complaint, paragraph 4.5 the Complainers aver that in respect of three individuals Mr Moore relied on certification of a client's identity by a person who did not fall within the definition in Regulation 17(2).

4. The CML Handbook

In the Complaint, paragraph 4.6 the Complainers aver a breach of the CML Handbook by Mr Moore in respect of a transaction by Mr U.

As outlined above, the deposit for the purchase price was paid by a third party who in fact was the seller of the subjects.

The Handbook provided that if there was a need to report a matter to the lender the Solicitor must do so as soon as he/she became aware of the matter to as to avoid any delay. After reporting a matter the Handbook provided that the mortgage should not be completed until the Solicitor received further written instructions.

A Report on Title was sent to the lender on 18 June 2008. That Report did not mention the deposit and the lender was not notified prior to settlement of the transaction that someone other than the purchaser had paid the deposit.

It is submitted that payment of the deposit by someone other than the purchaser (borrower) was a matter which should have been reported to the lender. The transaction should not have been completed until Mr Moore received written instructions from the lender. It was all the more important that the lender should be made aware of the situation given that the Form 12a Report showed that Mr U had previously been subject to an Inhibition under the Proceeds of Crime Act 2002.

The Tribunal has held in several cases that a breach of the CML Handbook can amount to professional misconduct. It is submitted that this particular transaction considered in isolation is of itself sufficient to meet the Sharp test and to amount to professional misconduct. The payment by a third party appeared close to settlement of the transaction. It

was from the seller and the purchaser had been subject to an Inhibition under the 2002 Act. Loud alarm bells should have sounded.

A not dissimilar situation is averred by the Complainers in the Complaint, paragraph 4.8. The averments in 4.8 are admitted.

In the purchase of Property 15 by Mr G the lenders' instructions were based on the CML Handbook. As it transpired, the balance of the purchase price was paid by a third party. The lenders were not advised of this payment and the transaction settled.

What occurred in this case was a blatant breach of the CML Handbook as averred and as set out above.

It is submitted that this transaction considered in isolation is sufficient to meet the Sharp test and amounts to professional misconduct.

5. The Money Laundering Regulations 2003

These Regulations are set out in the Complaint para. 5.3 (pages 11 to 13).

In the Complaint, paragraph 4.9 the Complainers aver three transactions where Mr Moore failed to undertake any money laundering identity checks or maintain adequate records of any such checks and in addition that he failed to exhibit evidence of what checks might have been undertaken or to provide an adequate explanation for a failure to carry out any such checks.

In the case of Mr DD, as outlined above, there was no documentation in respect of either identity or source of funds other than a photocopy photocard Inland Revenue Contractors Tax Certificate.

In respect of Mr I there was a risk assessment form but again no proper identification of the client or source of funds. Indeed, the client identity documentation was a photocopy of an

expired passport. This meant that certification by Mr Moore, as per the written risk assessment form, was inaccurate.

Notwithstanding Mr Moore's argument that written risk assessments were not required, even the case of Mr I which had such an assessment form had an inaccurate certification.

Submissions have already been made above in respect of the need to check source of funds. These two transactions are in a similar position.

Taken together it is submitted the conduct meets the Sharp test and amounts to professional misconduct.

6. Failure to Retain the Net Free Proceeds of Sale in an Interest Bearing Account and Failing or Unduly Delaying advising the Crown Office of the true destination of the said Net Free Proceeds

As averred in the Complaint, paragraph 4.11 Mr Moore acted in the sale of Property 18, for a client, Mr FF.

The documentary history of this matter has been outlined above. It is submitted that free sale proceeds should not have been remitted elsewhere ie, to the client's mother.

The initial Crown Office correspondence referred to the need for the free sale proceeds to be held by the selling Solicitor in an interest bearing Account.

The client was subject to a Restraint Order. The Crown had refused to allow the free sale proceeds to be used to reduce mortgage arrears on another property.

Mr Moore did not respond to the Crown letter of 29.07.08 allowing the sale to proceed. He could have asked the Crown prior to settlement if the Crown were agreeable to the net free proceeds being transferred to Ms GG. He did not do so.

A Crown Office reminder dated 13.08.08 produced a response of 21.08.08. That response did not however specifically mention the free sale proceeds figure, it didn't confirm that the free sale proceeds were held in an interest bearing Account nor did it make any reference to where the proceeds were held.

Mr Moore, in the circumstances of this transaction, had no authority or entitlement to transfer the free sale proceeds to a third party, Ms GG. It is submitted he must have known perfectly well that the funds should not have been transferred as evidenced by the lack of information provided to the Crown in the letter of 21.08.08. That letter was lacking in candour.

It is submitted the circumstances in this particular transaction clearly meet the Sharp test and amount to professional misconduct.

7. In the Complaint, paragraph 4.12 the Complainers make various averments in respect of Mr Moore's actings which are then reflected in the averred duty in the Complaint, paragraph 5.6 (page 17).

It is said Mr Moore misled or allowed the sellers to be misled in relation to the true price of the subjects to be paid by the purchaser. The Minute of Agreement states the purchase price to be £105,000 whereas the sellers understood the purchase price to be £80,000.

On the basis of the filenote referred to above it cannot now be said that Mrs AA was misled if she did indeed sign the Mandate. On the other hand it was accepted in evidence by Mr Moore that Mr AA knew nothing about the payment to the purchaser, Mr E. He gave no authority for it to be made and had no opportunity prior to settlement to query why Mrs AA was authorising a payment to the purchaser apparently in respect of a sum she was due to the purchaser.

The payment of £25,000 appears to have rested entirely on Mrs AA claiming she was due the purchaser £25,000 and signing the Mandate authorising payment. There was no evidence in respect of any enquiry or investigation by Mr Moore into why such a large sum was being paid

to the purchaser. Neither transaction file (RP17 and RP18) has any information to suggest that the basis for the payment was queried. It was made based solely on Mrs AA's say so.

As a consequence there was a breach of the 2007 Regulations in that there was no due diligence done in respect of this £25,000 payment.

It is clear from the evidence (CP18 the Mr E purchase file) that the purchase was being funded by a lender. This £25,000 payment to the purchaser should have been reported to the lender even if, as claimed, it was made on instructions following settlement of the transaction.

It is averred that Mr Moore failed to advise Mr AA, or failed to ensure that Mr AA was aware, of the precise nature and purpose of the Power of Attorney, alternatively he failed to exercise proper supervision over an employee who arranged for the Power of Attorney to be executed by Mr AA.

The exact position in respect of the Power of Attorney remains shrouded in mystery. Despite its date of 14.08.08 Mr Moore maintained in evidence that it had been signed on 07.08.08 when Mr AA had been in the office and signed other documents. The file (RP17) does not disclose any attendance by Mr AA on 07.08.08 nor any other documents signed by him on that date.

In evidence however Mr Moore did not suggest that the payment of £25,000 to Mr E had been made using the Power of Attorney.

Notwithstanding the Mandate apparently signed by Mrs AA, a letter was sent to both dated 14.08.08 referring to "your recent meeting" noting that a Mandate had been signed but going on to say that if this wasn't the case then they should contact Moore Macdonald immediately on receipt of the letter. "If we do not hear from you then we would assume that this is the case."

There was no evidence as to whether or not Mr and Mrs AA received the letter. Mr Moore said in evidence that they hadn't heard from either of Mr and Mrs AA. Contacted Moore Macdonald.

Mr Moore denied that there was any attempt to create an audit trail to justify the £25,000 payment.

It is submitted however that other than the Mandate apparently signed by Mrs AA there is no evidence whatsoever to justify the payment to the purchaser.

There is sufficient evidence to allow the inference to be drawn that the £105,000 purchase price was a sham and that the true price was £80,000.

Summary

It is submitted as above that many of the matters complained of and as set out in the relevant paragraphs of the Complaint individually justify findings of professional misconduct as defined in the Sharp case.

Should the Tribunal however consider that any individual matter is a breach but not of itself sufficient to constitute professional misconduct, it is open to the Tribunal to take the view that a combination of breaches are sufficient in cumulo to amount to professional misconduct.

Some of the transactions referred to involved one or more of the Paralegals employed by Mr Moore at the relevant time. The Tribunal has however held on many occasions that a Solicitor has a supervisory obligation over his/her staff. In the circumstances of the transactions as set out above it is no defence to allegations of professional misconduct that the transaction was being carried out by a Paralegal."

Mr Reid asked the Tribunal to allow him to make additional verbal submissions.

Mr Reid asked the Tribunal to consider in relation to money laundering in general and what might be expected under the 2007 Regulations to consider that the 2007 Regulations were not the first set of Money Laundering Regulations. These replaced the 2003 Regulations. This was not a new concept and as far back as 1994 ID checks were required under the Money Laundering Regulations of 1993 and the then Accounts Rules.

The Law Society produced guidelines in 2005. At that time Rule 24 of the Accounts Rules obliged solicitors to comply with the Money Laundering Regulations. He referred the Tribunal to his List of Authorities item number 9. These guidelines confirmed that the Money Laundering Regulations applied to conveyancing transactions in relation to the proper identification of clients and the source of incoming funds. These guidelines gave advice on minimising risks and the importance of keeping a record of enquiries made.

New Money Laundering Regulations came into force in December 2007. In advance of this the Law Society published three articles in the Journal and these were reproduced as items 6, 7 and 8 of his List of Authorities. Authority 6, the article printed in May 2007 was particularly pertinent to averments 4.3(6) and 4.6 of the Complaint. The second article was published in July 2007 and refers to the draft Regulations and draft Regulation 4 became Regulation 5. The third article, item 8 on his List of Authorities, was published in December 2007 and emphasised clarifying any issues with regard to the source of funds.

The Chairman asked Mr Reid if it was his submission that in all domestic conveyancing transactions enhanced due diligence was required or was this only required in certain circumstances. Mr Reid responded that it was his submission that further investigation was required in cases where someone other than the client was paying the deposit. He submitted that in the ordinary case the production of one source of photo identification and one utility bill might suffice but that in some cases that would not be enough. For example, a solicitor has to do more if faced by the situation where a third party comes along to pay part of the purchase price particularly if this is at the very last minute as averred in some of these transactions. In these transactions settlements should not have proceeded if the lender did not know or approve of the third party payment. How far the solicitor's investigations would require to go would depend on what came to light as the investigations progressed.

Further guidance was produced by the Law Society at the end of November 2007 and was reproduced as item 10 on his List of Authorities. He drew the Tribunal's attention to reference in the guidance to this being an ongoing risk assessment process which included the source of funds, a change of funding arrangements at the last minute and placed emphasis on keeping full detailed records.

While the 2007 Regulations moved the focus of money Laundering procedures to a risk based and proportionate system it was still essential to know the client and the source of funding. Essentially none of this was new. It was his submission that the overall position in relation to the Respondent was

that he took a poor approach to money laundering procedures and arguably had little consideration for Money Laundering Regulations in the transactions featured within this Complaint. The Respondent had failed to carry out customer due diligence on a risk basis. His failures applied to proof of identification, source of funds generally and source of funds from third parties in particular. Mr Reid asked the Tribunal to have particular regard to the Respondent's failure to tell lenders that deposits were being paid by a third party and that the Respondent proceeded to settle transactions regardless. Whilst he accepted that the Regulations might not require a specific form of document he submitted that the solicitor must be able to evidence on his file that a risk assessment procedure has taken place n relation to identification and source of funds.

With regard to the question of source of funds, in response a question from a member of the Tribunal, Mr Reid indicated that a bank statement itself might not be sufficient to prove source of funds dependent on the information within the statement.

Mr Reid conceded that the Respondent's firm had been inspected by the Law Society when no issues were raised regarding the Respondent's money laundering procedures.

With regard to averment 4.5 where the Respondent seemed to have relied upon a copy passport certified by Andy Frame, Mr Reid submitted to the Tribunal that it was a requirement that the person carrying out the certification on the identification document should consent to the solicitor's reliance upon it. He argued that there was no evidence that Mr Frame had consented to the Respondent relying upon his certification. The Chairman asked the Fiscal if in an ongoing business relationship it could be implied by the introduction of a client and the sending of the documents that the person certifying the documents was providing such consent. Mr Reid conceded that this could be considered a fair approach.

Mr Reid drew the Tribunal's attention to Rule 6 of the Solicitors Accounts Rules in particular 6(1)(c) and emphasised that in relation to the transactions where the Respondent became aware that deposits were being paid by a third party at a stage where the lender was not in a position to comment then these transactions should not have proceeded.

SUBMISSIONS FOR THE RESPONDENT

Mr Hennessy lodged written outline submissions which contained the following:

"GENERAL

The Tribunal must

- Consider the allegations made in the statement of facts
- Focus on the subject matter of the complaints
- Consider carefully the evidence placed before it
- Make findings thereon; and
- Determine whether the complaints have been established.

The complainers must satisfy the tribunal of the facts upon which the complaints are based.

The standard of proof is beyond reasonable doubt.

Facts can be established by agreement, admissions and/or by the leading of evidence.

EVIDENCE

In this case, the Respondent submitted detailed answers which contained certain admissions.

The parties submitted a lengthy Joint Minute of Admissions.

The complainers relied upon the Joint Minute. Inter alia, the JM (paras 23 to 45) agreed that certain documents were contained within certain individual files which were the subject matter of certain complaints. The files themselves, and the documents referred to in those files, were not produced to the tribunal by the complainers.

They also led the evidence of Ian Messer of the Law Society. He spoke to the fact that he was authorized by the Guarantee Fund to conduct an investigation of Moore McDonald. He spoke about issues regarding the transmission of large numbers of files. He spoke to correspondence back and forth when queries were being raised and answered. Objection was taken to him giving evidence about the content of individual files. The questions were withdrawn. The fiscal agreed that he would *"lead evidence on what is in dispute"*. Mr. Messer spoke briefly about the Mr FF case. He was asked about any concerns regarding this case and said that the *"instructions of the Crown had not been complied with"*. He mentioned generally that there were *"common issues"* around the application of

the Money Laundering Regulations and that there were some *"common names"* in certain transactions. He gave no detail.

The complainers led no further evidence.

The respondent also relied upon the terms of the Joint Minute. He gave evidence at length and produced various documents to which he spoke, including full copies of two of the files that were the subject matter of particular complaints (Mr FF and Mr and Mrs AA / Mr E).

The respondent also called as a witness Andrew Frame who spoke to the Mr and Mrs AA / Mr E transaction.

The complainers led no evidence in relation to matters of fact that were plainly in dispute. They did not cross examine the respondent in any significant way regarding his credibility or reliability. They did not put the specific complaints to him. They did not materially challenge his evidence nor that of his witness Andrew Frame.

SUMMARY OF COMPLAINT

1. **PRACTICE RULES 1986 RULE 3.**

   [PARA 4.2 AND 6.2 (a)]

   Acting for both parties where there was a conflict of interest **without having an adequate basis to treat one or other of purchaser and seller as an existing (sic) client.**

   Ms MM - purchaser was Mr R who was an established client.
   Production 1. Joint Minute para 23.

   Mr F - **JM 24 (f)**

   Mr I - **JM 25**

   Miss M - **JM 26 (f)**

Mr O - Purchaser was Mr E. Established client. And **JM 27 (g)**

Mr V / Mr U. Both were established clients. **Production 2 & 3. JM 28.**

JM (paras 23 to 28) show that in each case the parties had signed a Minute of Agreement acknowledging that they were both "existing" clients.

SUBMISSIONS

The rules at the time [quoted in **para 5.1 of the complaint p.9]** were Rule 3 *"...shall not act for two or more parties whose interests conflict...."*

With an exception - Rule 5(1) (d) ... *where no dispute arises or might reasonably be expected to arise between the parties and that ...both parties are established clients or the prospective purchaser....is an established client.*

The respondent produced and spoke to ledger cards showing the purchaser was an established client in two cases.

He spoke to Mr E being an established client.

He was unable to produce similar evidence of this in relation to the other transactions. His ability to do so may have been prejudiced by the passage of time. He did not know the client names personally. His firm handled a very high number of transactions around that time. It was agreed per the JM that both purchaser and seller in each case had entered into a Minute of Agreement to say that they were "existing" clients of the firm.

2. MONEY LAUNDERING REGULATIONS 2007 REG 7(3) (b)

[PARA 4.3 and 6.2 (c)]

Failure **to maintain adequate records to allow him to demonstrate that he had undertaken adequate risk assessments** in 12 transactions.

Mr Q - Purchase **JM 29**

Mr R - Purchase (existing client). See **Production 1**

Mr T - purchase **JM 31**

Mr D - purchase **JM 32**

Mr E - Sale 12 June 2008. Mr E known to firm. **JM33**

Mr U / Mr V - Both known. Existing clients. **JM 34**

Mr O - Purchase **JM 27**

Mr A x 3 transactions - March and July 2008. **SOCA REPORTS** **PRODUCTION 24**

Mr B. - Purchase and sale. Undated.

SUBMISSIONS

We did do risk assessments but we did not keep a formal written record in every case.

At the time, the Joint Money Laundering Steering Group had issued guidance on compliance with the new Regulations. The Law Society had issued guidance dated 27 November 2007 in relation to the new Regulations. The Law Society Guidance had adopted the JMLSG guidance.

See pages 7, 8 and 20 of the guidance. In particular, page 20 *"Failure to document procedures will be taken as prima facia (sic) evidence that there are no procedures. The onus will be on a firm to demonstrate that this is not the case."*

Respondent reported Mr A to SOCA 26 June 2008 **Production 24**.

Respondent reported Mr B to the police.

3. MLR 2007 regs 5 and 7.

[para 4.4 and 6.2 (c)]

Failure to make adequate enquiries to afford him sufficient re purpose and nature of business relationship in 3 transactions, and in particular **failed to undertake adequate enquiry or maintain adequate records of the reasons underlying payment of free proceeds to 3rd party**... in addition, **failed to provide LSS adequate evidence or explanation as to why payments made to TPs.**

Sale by Mr B, Property 22.

JM paragraph 39 (b) - Mandate 23 July 2008 to pay free proceeds of sale to Mr X.

Mr A Sale of **(1)** Property 9 and **(2)** Property 21

(1) **JM paragraph 35 (c)** - Mandate 6 March 2008 to pay free proceeds to Mr NN.

(2) **JM paragraph 37 (a)** - driving licence of Mr X.

(3) **SOCA report PRODUCTION 24.**

SUBMISSIONS

This falls under the general heading of "application of customer due diligence measures" Reg 7.

The "business relationship" established by the transaction was solicitor/client.

The regulations which are said to have been breached contain no specific provisions re *"reasons for payment to a third party"*

This is all subsumed within the CDD measures.

Reported Mr B to the police as part of CDD .

All payments made in accordance with mandates. No professional obligation to enquire why, provided CDD has been undertaken.

4. **MLR 2007 REGULATION 17**

[PARA 4.5 and 6.2 ??]

In 3 cases (Mr L, Mr X and Mr E) we relied on certification of identity by non qualifying person. i.e. person not falling within Regulation 17(2) for customer due diligence.

SUBMISSIONS

Answer is that, as a matter of fact, we did not. All clients attended the office and no reliance was placed on TP for money laundering or risk assessment.

Mr L - risk assessment on file . **Production 4.** Copy passport+ bank statement

Mr X, See JM para 41.

Mr E - Purchase Property 13. Face to face transaction. Letter from RBS. Mortgage offer. Driving license. Virgin Media. **Production 5. JM para 42.**

If this is not accepted then there was evidence that Andrew Frame – Company 1 – was FSA regulated and authorized per the Intrinsic Network.

5. **Failure to fulfill CML Handbook obligations and advise lenders that deposit being paid by seller.**

[PARA 4.6 and 6.2(f)]

Re. Mr U / Mr V. Purchase of Property 10.

Birmingham Midshires.

CML handbook - *"You must report... as soon as you become aware. ..After reporting you should not complete..until you have received further written instructions"*

Certificate of title to Bank of Scotland on 18 June 2008.

Advised them re position on 19 June, which was settlement date.

Paralegal Ms S dealt with case.

Mistake made.

JM paragraph 28 re ID for Mr V.

JM paragraph 34 (e) - Agreed letter to lenders dated 19 June *"if we do not hear from you..it is in order to proceed."*

SUBMISSIONS

Breach of conditions conceded and accepted. Never queried nor letter responded to by lenders. No complaint by them.

6. **Obligation to obtain written instructions from the lenders on account of CML Handbook paragraphs 2.3 (report as soon as aware of issue), 5.2.1 (report matter important to the lending), 6.3.1 (not true price) and 6.4.4 (cashback).**

[PARA 4.7 and 6.2 (b) and (f)]

Lenders not told of £25k being paid to Mr E.

Obligation to get written instructions from lenders because of circumstances.

No authority to deal with loan funds. Therefore breach of Accounts Rules 2001 Rule 6.

Possibility of revolving deposit fraud.

Registers misled re the true price.

SUBMISSIONS

SEE DETAILED EXPLANATION IN MR E/Mr and Mrs AA CASE.

File lodged. Respondent and Frame gave evidence.

No other or contrary evidence.

6. **Failure to advise lenders (Bank of Scotland) that balance of price coming from Mr CC in Mr G purchase of Property 15. [PARA 4.8 and 6.2 (f)]**

JM para 43. Completion date 30 January 2008. Request for mortgage funds 29 January 2008.

Request on 30 January 2008 to client (Mr G) for balance of £12347.50 by bankers draft.

JM para 44. Undated mandate from Mr CC authorizing payment of £12327.50 to Mr G from sale of Property 16.

Must have been after request to Mr G for that exact figure.

Respondent said, in response to questions by the tribunal that this transaction was dealt with by Ms BB and said that this "was a mistake."

7. **MLR 2003 REGS 4 and 6 and MLR 2007 REGS 5 and7**

Failure to undertake ML **identity checks** or maintain adequate records of same. Failed to exhibit evidence of checks or provide an adequate explanation of failure to do so.

[PARA 4.9 AND 6.2 (c) and (d).]

Purchase by Mr DD - There was evidence of Money Laundering having been carried out on the file. Two forms of identification namely: -

(a) Inland Revenue tax certificate.
(b) Unsecured loan completion statement.

In fact this constituted enhanced due diligence under Regulation 14 as the loan completion statement is from a regulation body.

JM para 45 –

Purchase of Property 2. by Mr I - (a) There was a written risk assessment within the file.
(b) There was a copy of the UK passport.
(c) There was a copy of a bank statement.
(d) The letter from the Halifax.
Accordingly, enhanced due diligence was carried out.

Mr and Mrs AA - See the details at Mr and Mrs AA/Mr E

In fact for Mr AA there was the following: -
(a) Clydesdale Bank statement dated 3rd July 2008.
(b) UK passport.
(c) A letter from Kensington Mortgages dated 31st July 2008.

For Mrs AA there was : -
(a) Copy passport.
(b) Copy invoice from Orange.
(c) A letter from Kensington Mortgages Limited.
(d) A credit statement from Welcome Finance.

8. In sale of Property 16 by Mr CC, **relied upon certification of identity by a third party.**

[Para 4.10 and 6.2 (d).]

MLR REGS 2003, regs 4 and 6.

1) The risk based approach.
(2) There was set criteria in terms of the regulations.
(3) Mr CC was an existing client. Respondent had carried out five previous transactions on his behalf.
(4) Evidence of identification had been obtained in the previous transactions.
(5) Respondent had already seen his passport and an RBS bank statement.

JM Para 44.

9. MR FF

1. Failed to **retain** the proceeds in an interest bearing account
2. Failed or delayed to reply to correspondence from COPFS.
3. Failed to advise of **true destination** of proceeds.

[PARA 4.11 and 6.2(g)]

Sale of Property 18 by Mr FF.

SUBMISSIONS

WHOLE FILE LODGED AND REFERRED TO IN EVIDENCE.

The client was Mr FF. The respondents were instructed by him. He was subject to a restraint order. He could only sell the property if the Crown recalled or varied the order. The family, including Ms GG, were all subject to restraint orders under the POCA 2002, s.120. This meant that none of them could deal with any realisable property (including money) held by them. A restraint order can be recalled or varied by the Crown. (s.121.) If not recalled or varied then the sale could not proceed.

The firm had already acted in 2007 in the sale of Property 19 and COPFS had agreed in that transaction that the net free proceeds could be used to clear mortgage arrears in respect of other properties owned by the family and that any surplus should be deposited in Ms GG's account to maintain ongoing mortgage payments and prevent the properties being re possessed.

Relevant letters etc.

- Letter 23/10/07 from COPFS (Mr OO, National Casework Division) to Company 6 agreeing to sale of this property and that *"any free proceeds would be placed in an interest bearing account".*
- Letter 24 7/08 from COPFS (Mr PP National Casework Division) to MM proceeds *"to be held by selling solicitor in an interest bearing account."*
- Letter 24/7/08 from Senior Procurator Fiscal Depute. Re use of free proceeds.
- E mail **PRODUCTION 20** - Ms LL COPFS to Mr KK (Head of National Case work Division) dated 25 July 2008.
- Letter 29/7/08 from COPFS to MM . *" The Crown has completed their enquiries."* The sale can proceed. Does not authorise the net free proceeds to be used to pay arrears of other mortgage. *" The net free proceeds should be placed in an interest bearing account pending the conclusion of...."*

Money was transferred to Ms GG's account which was interest bearing– and which she was restrained from dealing with. There was no evidence of any complaint from the Crown that the Respondent's actings were contrary to what they intended nor any expression of dissatisfaction about what had happened to the free proceeds.

10. Mr and Mrs AA/MR E [PARA 4.12 and 6.2(h)]

Sale of Property 14 by Mr and Mrs AA to Mr E.

Sale price £105k. Sellers got £80k. Mr E paid £25k after sale.

Alleged that **SS knew nothing of the payment.**

1. **Misled** sellers about true price.
2. Failed to take steps to understand the true nature of the transaction (sellers being unaware of the payment of £25k).
3. Failed to maintain adequate records of the payment of £25k
4. Breach of MLO regs 5© and 7(3) (b) and Accounts Rules 24(1) and 24(3).
5. Failed to ensure that **SS aware of the nature and purpose of the Power of Attorney** OR **failed to supervise the employee who had it signed.**
6. Used the **improperly obtained** P of A to execute the Minute of Agreement effecting payment of £25k **without client's authority or knowledge.**
7. Letter of 14 August not sent (?)
8. By **use of subterfuge** attempted to create an audit trail to justify the payment.

SUBMISSIONS

Nothing agreed about this. Respondent lodged the two files.

Respondent spoke to transaction. Not challenged. Serious allegations of wrongdoing not put to him.

SS was going on holiday. That is why P of A signed – at his instigation. Following settlement Mrs. AA said they owed PG £25k. She signed mandate for us to pay PG. Clients got closing cash statements and cheques. No complaint. No issue raised till Law Soc investigated.

Evidence from Andrew Frame. SS happy with the outcome of the transaction. No complaint.

Not challenged."

He made additional oral submissions.

He submitted that it was plain from the very beginning of these proceedings that a number of matters of fact were in dispute between the parties. Where there is such a dispute, he submitted that it was for the Fiscal to produce evidence of fact.

With reference to the evidence given by the witness Ian Messer, reference had been made to "common issues" and "common names" in certain transactions but no attempt was made to give any detail of these particular transactions.

The Complaint contained grave matters which he would have expected to be put to the Respondent when he was giving evidence and they were not.

Looking at the specific allegations in the Complaint, with regard to paragraph 4.2 Mr Hennessy emphasised that the Joint Minute, in the paragraphs indicated in his outline, dealt with the contents of the particular files. By illustration, he referred to the Mr F transaction. He directed the Tribunal to paragraph 24(f) of the Joint Minute which was the document on the file agreeing both clients were existing clients. In response a question from the Tribunal of whether or not this would be an easy way round the Regulation, Mr Hennessy responded that it was for the Tribunal to find facts beyond reasonable doubt. With regard to the Mr N transaction, Mr Hennessy submitted that this had involved Mr E who was an established client. The Chairman asked Mr Hennessy whether or not in this case as the Respondent was arguing that these transactions fell within the exception to the rule it was for the Respondent to prove that they fell within the exception. Mr Hennessy responded that it was led in evidence that Mr E was and had been a client prior to this transaction. He conceded that it was not for the Fiscal to prove that the transaction did not fall within the exception but evidence had been taken from Mr Moore that this man was a client and this evidence was not challenged. He stated that the relevant rule at the time of these transactions included if the purchaser was an established client. He submitted that it was a matter for the Tribunal to determine what amounted to an established client. In answer to a question from a member of the Tribunal, Mr Hennessy confirmed that it was the Respondent's evidence that he had done a number of previous transactions for Mr E. Mr Hennessy was unable to say if they fell into the category of offers to purchase which were unsuccessful and kept in a filing cabinet or "binned".

In relation to averment 4.3 on the Complaint, he argued the essence of this allegation was a failure to maintain adequate records. He emphasised that the Law Society guidance did not say that if a solicitor did not keep a written record of the risk assessment then he was in breach of the Regulations. He argued that the onus was on the firm to prove that it had complied with the Regulations and if the firm could satisfy the Law Society that it had then that was sufficient. The statement in the Law Society guidance that if there was no written record of the risk assessment on the file it would be presumed that no risk assessment had been done was in Mr Hennessy's submission, a rebuttable presumption. There had been an earlier inspection of the Respondent's firm in March 2008 and no issue raised with

regard to risk assessments. In response to questions from the Tribunal regarding whether or not the inspection of March 2008 had included compliance with Money Laundering Regulations, Mr Hennessy submitted that the Tribunal did not have to delve into this in detail. It was his position that the Respondent had given evidence that the firm carried out risk assessments and that evidence had not been challenged.

The Fiscal had made reference to a number of articles in the Journal of the Law Society. Mr Hennessy indicated that his researches had produced numerous articles in the Journal. At one point he had considered leading evidence about the practice of the profession in general in 2008 but that was so long ago it was difficult to say what the profession did. He argued that there was no doubt that there was some degree of uncertainty surrounding compliance with the Money Laundering Regulations and that the Tribunal had to consider these allegations in the light of the standards employed by the profession at the time.

In answer to a question from the Tribunal, he confirmed that there had been evidence from his client that a risk assessment manual was introduced in Spring 2008 but that manual was not produced to the Tribunal. He believed that a paralegal had brought the risk assessment manual with him from another firm. He confirmed to the Tribunal that it was the Respondent's position that a written record of the actual risk assessment procedures was introduced in Autumn 2008. The reality of the situation was that procedures regarding risk assessment were continuing to develop at that time.

The Chairman asked Mr Hennessy if it was possible to assess the significance of these 12 transactions against the number of files dealt with. If the Law Society had identified these 12 transactions out of some 30 files inspected then this would represent problems in 40% of the Respondent's files. Mr Hennessy drew the Tribunal's attention to Production 16/3 of the Complainers' Second Inventory of Productions which he said was a list of files sought by the Law Society from Mr Moore. He confirmed that some 400 files were provided to the Law Society although he accepted that Mr Messer may well have said in evidence that he looked at only 30 to 40. Whilst he accepted that 12 out of 30 gave a high hit rate, he asked the Tribunal to bear in mind that the earlier inspection by the Law Society of March 2008 had not produced any issues surrounding money laundering. The Chairman asked Mr Hennessy how the Tribunal were to approach this issue and whether they should consider that the 12 transactions were 12 out of 30, 12 out of 400 or some other figure. Mr Hennessy drew the Tribunal's attention to a number of letters from the Law Society produced in the Complainers' Second Inventory of Productions. These were letters that extended to many pages and made queries about very large number of files. Whilst Mr Messer in his executive capacity had looked at certain files that was not to

say that others had not looked at other files. Additionally, during the time that the Interim Judicial Factor was in place there were people in the Respondent's office examining his files.

With regard to paragraph 4.5 of the Complaint, Mr Hennessy submitted that it was the Respondent's position that all clients attended the office personally and were seen face to face together with the documents requested. If that evidence was accepted then there was no question of the Respondent relying on a third party certification. If the Tribunal did not accept that evidence then there was evidence from Mr Frame that he was authorised to certify these documents. The Chairman asked Mr Hennessy if it was not the case that if the Respondent had not seen the principal documents themselves then he could not rely on the copies. Mr Hennessy responded that the Law Society guidance indicated that a solicitor could rely on a copy. Mr Hennessy referred to paragraph 8.10 of the Joint Money Laundering Steering Group guidance. It was the Respondent's position that he saw his clients face to face and satisfied himself as to these matters. Each case required to be assessed on its own circumstances as a risk based process, not a tick box exercise. He asked the Tribunal to bear in mind that the transactions took place in 2008, when there was considerable uncertainty amongst the profession as to what the process required.

Moving on to paragraph 4.6 of the Complaint, Mr Hennessy conceded that this was a mistake. The letter advising of the third party payment would not have got to the lenders in time to do anything before settlement. He submitted that it was open to the Tribunal to hold this was not professional misconduct but simply a mistake.

In relation to paragraph 4.11 of the Complaint, Mr Hennessy submitted that there was no evidence led that what the Respondent had done was not within the consent of Crown Office. The Chairman asked Mr Hennessy if the Tribunal was to proceed on the basis that (a) the Respondent proceeded at a time when there was some doubt and simply ignored it or (b) that he sincerely believed he had authority to proceed as he did. Mr Hennessy agreed that he was content for the Tribunal to proceed on the basis that the question to be answered was whether the Respondent proceeded upon a reasonably held belief that he had authority to act as he did.

Referring to paragraph 4.12 of the Complaint, Mr Hennessy submitted that no evidence had been led by the Complainers to contradict the Respondent and the file produced. During these submissions, the Fiscal intimated to the Tribunal that he accepted that it could not be said that Mrs AA had been misled by the Respondent as to price. Mr Hennessy submitted that there was no evidence that Mr AA had been so misled. He argued that the Respondent's firm had no knowledge of the £25,000 payment until

after the transaction had concluded. The Fiscal interjected to intimate that he was not insisting on the averments relating to a failure by the Respondent to ensure that his client was aware of the nature and purpose of the power of attorney or that he failed to supervise the employee who had it signed. Mr Hennessy emphasised that there was no evidence that the sum of £25,000 had been paid without Mr AA's authority or knowledge and no evidence to support any suggestion of subterfuge.

The Chairman asked Mr Hennessy whether the obligations under the Council of Mortgage Lenders Handbook continued after conclusion of the transaction and he responded that this was not part of the current Complaint before the Tribunal.

In response to the Respondent's submissions, Mr Reid stated that it was his position that in relation to paragraph 4.2 of the Complaint, it was not enough for the files to contain the Minutes of Agreement stating that both parties were existing clients. These forms did not absolve the Respondent of the need to carry out the necessary checks.

He directed the Tribunal's attention to Complainers' Production 22 which he stated included 40 conveyancing files.

With regard to paragraph 4.5 of the Complaint, he stated it was his recollection that the Respondent had said in evidence that he did not recollect meeting Mr G and that he had not seen Mr C.

In relation to paragraph 4.11 of the Complaint, he submitted that the ultimate letter from the Respondent to Crown Office did not say where the money was held. He indicated that he accepted that the analysis suggested by the Chairman was the correct approach to take.

On conclusion of these submissions the parties were advised the Tribunal would take some time for deliberations and the hearing was adjourned to a date to be afterwards fixed. The Tribunal commenced deliberations on 19 January 2017 and continued these to 16 February 2017.

DECISION

The first task for the Tribunal was to consider what facts had been established by the evidence before it. The onus of proof lay with the Complainers and the standard of proof was one of beyond reasonable doubt. The evidence before the Tribunal came from admissions in the Respondent's Answers, a

lengthy Joint Minute, parole evidence of the witnesses and documentary productions referred to in the Joint Minute and parole evidence.

The Tribunal found the witnesses, Messer and Frame, to be both reliable and credible. With regard to the Respondent, the Tribunal in the main found him to be a credible witness. However, there were several areas where the Tribunal was troubled by his evidence and found it lacking in any credibility.

Having carefully considered the evidence before it, the Tribunal made the findings in fact noted above.

Finding in fact 12.3 relates to the averments made in paragraph 4.2 of the Complaint. The Fiscal for the Complainers had withdrawn averments 4.2(1) and (6). The remaining averments were admitted in the Answers for the Respondent and the Joint Minute. These admissions were to the effect that the Respondent had acted for both purchaser and seller in transactions where the Rule 5 exceptions did not apply. In relation to 12.3(4), reference was made in submissions to the Respondent's evidence that the client, Mr E, was an established client. Whilst the Tribunal accepted this evidence, Mr E was the seller in this transaction, not the purchaser, and so was not included within the Rule 5 exceptions. Reference was also made in submissions and the Joint Minute to the existence of Minutes of Agreement on the files stating that both parties were existing clients of the Respondent. It was difficult for the Tribunal to assess what relevance should be given to these documents, given the admissions that were made in the Answers and Joint Minute. The Tribunal concluded that it could not look behind the admissions made. Even if the Tribunal had done so, these Minutes of Agreement would not have been sufficient themselves to have brought the transactions within the Rule 5 exception. In two of the transactions (12.3(2) and 12.3(3)) there were Minutes saying both clients were existing clients, whilst there were other documents suggesting one of the clients was a new client. In the transaction in 12.3(1) there was a Minute stating the purchaser was an existing client, whilst there was also a file note saying that he had "been recommended by his mortgage broker".

There was some discussion in the course of the hearing regarding what was meant by the term "established" client and some evidence from the Respondent about how he determined if someone was an "existing" client. Given the admissions made to the Tribunal, it did not require to consider these matters further.

Finding in Fact 12.4 relates to averment 4.3 in the Complaint. The Fiscal had withdrawn averments 4.3(5), (9), (10), (11) and (12). Regulation 7(3)(b) of the Money Laundering Regulations 2007 places the onus on a solicitor to be able to demonstrate to his supervisory authority that the extent of customer

due diligence measures taken in any transaction is appropriate in view of the risks of money laundering and terrorist financing. The Respondent gave evidence that there was a firm manual setting out procedures to be followed and that he had attended roadshows and seminars. The effect of Regulation 7(3)(b) is that it was for the Respondent to satisfy the Complainer about his record keeping in relation to risk assessment. The Tribunal was satisfied on the evidence that the Respondent was unable to demonstrate compliance with Regulation 7 in relation to these transactions.

The Fiscal withdrew averment 4.4.

Finding 12.5 above relates to averment 4.5 in the Complaint. The evidence before the Tribunal was that on three files there were copies of documents provided to the Respondent's firm, used for the purpose of compliance with the Money Laundering Regulations. The Tribunal required to be satisfied that the Respondent had relied upon these documents and therefore on another person who did not fall within Regulation 17(2) of the 2007 Money Laundering Regulations.

The Respondent gave evidence that, in cases where clients were referred to him by estate agents or mortgage brokers, it was his practice to obtain copy documents from the referring party. Although he obtained these copies, he stated that he would still insist the clients brought in the necessary documents. He claimed that he would not take further copies as he already had copies on the file. The Tribunal did not accept the Respondent's evidence in relation to this matter. If the Respondent had seen originals, as a reasonably competent solicitor, the Tribunal would have expected him to have recorded that. In evidence, he could not remember the details of the transaction in 12.5(2) and he did not deal with the client in 12.5(3).

On the evidence before it, the Tribunal was satisfied that the Respondent had relied upon the copy documents.

In relation 12.5(1), the Tribunal was satisfied from the evidence of the witness Frame that he was a person who fell within Regulation 17(2). It had been suggested by the Fiscal that as there was no evidence that the witness had consented on this occasion to being relied upon, he did not fall within the ambit of Regulation 17(2). The Tribunal did not accept this argument and concluded that in an ongoing business relationship of this type, where the witness had sent copy documents docqueted by him that it was reasonable to imply that such consent was given.

With regard to 12.5(2) and (3), there was no evidence that the party providing the copies was a relevant person within Regulation 17(2) and so these two transactions breached Regulations 5 and 17 of the Money Laundering Regulations 2007 and consequently Rule 24 of the Solicitors (Scotland) Accounts Rules 2001.

Finding in Fact 12.6 above was admitted by the Respondent. It was conceded by Mr Hennessy that the letter sent to the lender advising that the deposit was being paid by the seller would not have reached the lender in time to be dealt with prior to the transaction concluding. Nonetheless, the Respondent had proceeded with the transaction and transferred the loan funds. The Tribunal concluded that this was a breach of the lender's instructions, the CML Handbook, the Respondent's common law duty to a lender and Rule 6 of the Solicitors (Scotland) Accounts Rules 2001.

Finding in fact 12.7 relates to averment 4.7 in the Complaint. In this regard, the Tribunal was unable to determine when the instruction to pay £25,000 to the purchaser was received by the Respondent's firm. There was evidence to suggest that it was after conclusion of the transaction. Without evidence that the payment was instructed before conclusion of the transaction, no breach of the CML Handbook could be established, the obligation under the Handbook coming to an end on conclusion of the transaction.

Finding in Fact 12.8 above relates to averment 4.8 in the Complaint and was admitted by the Respondent. This amounts to a breach of the lender's loan instructions, the CML handbook, the common law duty of the Respondent to the lender and Rule 6 of the Solicitors (Scotland) Accounts etc Rules 2001.

Finding in Fact 12.9 relates to averment 4.9 in the Complaint. In relation to Findings in Fact 12.9 i) the evidence came from paragraph 45 of the Joint Minute. The Tribunal determined that the Inland Revenue photocard was sufficient as a source of identification. However, to satisfy the Regulations the Respondent should also have obtained another document to establish the client's address. The evidence for Findings 12.9 ii) and iii) come from the Joint Minute and the parole evidence of the Respondent. In these instances the Tribunal was satisfied that the Respondent had complied with the Regulations.

Finding in Fact 12.10 relates to averment 4.11 in the Complaint. In relation to this finding, the Tribunal had before it the Respondent's file and the detailed parole evidence of the Respondent himself. The history and correspondence are detailed within the Findings in Fact.

The Fiscal for the Complainers had withdrawn the averments of breach of the Proceeds of Crime Act. Both parties accepted that the test to be applied was whether the Respondent had acted in the reasonably held belief that he had the authority to do what he did. The Tribunal concluded that no reasonably competent solicitor could have interpreted the instructions from Crown Office in any way other than that the money was to be paid into a solicitor's interest bearing account. The Respondent's evidence in relation to this matter was not credible. Even given the history of the other transaction, Crown Office specifically made it clear that the funds were not to be used to pay off mortgage arrears and that they were to be preserved pending the outcome of the confiscation proceedings. The Respondent had clearly acted contrary to Crown Office's agreement and in so doing he had allowed his own professional integrity and that of the profession to be brought into question.

The Tribunal was not satisfied that there was sufficient evidence to hold that the Respondent had failed or delayed in advising Crown Office of the true destination of the net free proceeds. No evidence was led regarding the letters of 8 September 2008 and 31 March 2009 referred to in the Complaint.

Finding in Fact 12.11 relates to averment 4.12 in the Complaint.

The Tribunal concluded that there was no evidence that Mr AA was misled about the purchase price, that Mr AA was unaware of the payment of £25,000, or that there was any subterfuge being employed by the Respondent. The Fiscal withdrew any suggestion that the power of attorney had been improperly obtained.

Having determined the Findings in Fact, the Tribunal then required to consider whether the established conduct amounted to professional misconduct. The test to be applied is that contained with the Sharp case, namely was this a departure from the standards of conduct to be expected of a competent and reputable solicitor which would be regarded by other competent and reputable solicitors as serious and reprehensible.

The matter which caused most concern to the Tribunal was the issue contained within Finding in Fact 12.10. No competent and reputable solicitor could have believed that he could pay the net free proceeds into an account other than a solicitor's interest bearing account. Not to do so would without doubt be considered as serious and reprehensible by competent and reputable solicitors. The Tribunal took the view that this finding in itself was sufficient to establish a finding of professional misconduct.

Looking at the other Findings in Fact, the Tribunal was not satisfied that individually they were sufficient to establish misconduct. However, taken together, they clearly demonstrated a departure from the standard of conduct to be expected of a competent and reputable solicitor. Given the number and variety of these issues, they represented conduct that was serious and reprehensible and therefore met the appropriate standard to establish professional misconduct.

It should be noted that, although there was some discussion throughout the case regarding the scale of irregularities on the Respondent's files having consideration to the number of transactions dealt with by the Respondent, it was impossible to establish exactly how many files had been inspected by the Complainers throughout the whole process.

MITIGATION

SUBMISSIONS BY THE RESPONDENT

Mr Hennessy lodged written submissions together with nine references.

The written submissions were as follows:

"PERSONAL

Mr Moore is 50 years of age, married with 2 children, aged 18 and 10. The elder child is at University. He resides in Motherwell where was born and bred. He is currently the sole partner of Moore McDonald, Solicitors, Motherwell.

Mr Moore was Dux of his school. He graduated with a 2:1 private law honours degree. He was awarded several prizes at university including joint top student for delict and the Halliday Conveyancing prize.

BUSINESS PRE 2008

Mr Moore undertook his 2 year traineeship at Messrs McClure Naismith Anderson Gardiner, Solicitors in Glasgow. On completion of his traineeship in 1990 he was asked to stay on as an assistant in their commercial conveyancing department and continued to work there for a further 2 years.

Thereafter, he was employed by Messrs Callan and Co. Solicitors and ran their office in Bishopbriggs where he specialised in conveyancing. In 1996 he became an associate with Nicholas J Scullion & Co Solicitors and ran their office in Hamilton for a period of four years. Around that time there was

considerable demand for conveyancing solicitors and he worked for the firms of Allan Findlay & Co and Pacitti Jones for short periods, before becoming a partner at Murray & Co, Solicitors, Glasgow.

In 2002 his partner, Mrs SS, was appointed to a judicial post, and he decided to set up his own business. In September 2002 he began trading as Moore Macdonald, Solicitors, Motherwell. He was a sole practitioner and has been the only lawyer in the firm from that date onwards. He specialised in conveyancing, primarily in house purchase and sales and built up a thriving practice. The economic climate was favourable and he was extremely business. At its height, the firm was handling around 150 – 180 transactions per month and in around 2007/8 the firm employed inter alia 6 paralegals (3 during the day and 3 at night) as well as ancillary staff. The turnover of the business was approximately £500 to £600k.

BUSINESS POST 2008

By a combination of the evidence of September/October 2008 surrounding the business, and the economic recession which led to a severe downturn in the property market, the firm's level of business declined substantially. They released many of the part time staff. Over time thereafter, the firm stabilised and has sustained a reasonable level of business for the past few years.

When the Respondent commenced his practice in 2002 he conducted all aspects of the conveyancing transactions personally with some assistance. The business model then changed to one whereby the Respondent concentrated on the completion of missives and the actual mechanics of the conveyancing transactions were carried out by paralegals. That was a common place business model for firms at the time. Since 2007/8, however, the Respondent has reverted back to the original business model in the light of the difficulties encountered by the firm.

The Respondent remains the sole partner in the business and continues to specialise in conveyancing albeit he now does other legal work, including executries, wills and court work. Conveyancing accounts for about 75% of his business now. For the past 7 years he has been assisted by a paralegal who is currently being supported by him through an LLB degree at University with a view to qualifying as a solicitor in her own right. His wife works for the business as office manager. He employs an office junior and a cashier who works for him one day a week. His annual turnover is now around £250k per annum. He had considerably less individual transactions than formerly. He has a loyal and local client base and has provided a legal service in the area now for 15 years. He has never had a complaint or a

claim against him and has never had any significant issue raised by the Law Society as a consequence of inspections of the firm either before the events of 2008 or after them.

With the exception of the events which took place spanning a period of about 6 months during 2008, the Respondent's career as a lawyer has been without blemish and it is clear from the references provided by friends, clients and fellow solicitors that he is a respected solicitor who has always been regarded as reliable, hardworking and diligent.

THE EVENTS OF 2008 AND THE SCRUTINY OF THE FIRM

It is worth reviewing the events of 2008 which led to the present position so as to put matters in a proper context.

The firm had been inspected by the Law Society of Scotland in March 2008. There had been no major matters of concern, and no matters which would lead to further investigations by the Law Society.

In about April 2008 Mr Moore became concerned regarding certain transactions, some of which were detailed in the hearing in December. In several of those transactions the firm was the victim of what appeared to be a fraud. In an attempt to get to the bottom of this the Respondent

- Contacted the police and made five separate SOCA disclosures in which he reported 12 different people.
- Spoke with officers in the Fraud Squad (?) and in the Serious Organised Crime Agency.
- Had numerous conversations during that period with Mr QQ of the Law Society of Scotland and other members of the Law Society.
- Refused to act and withdrew from several transactions.
- Asked his own employees to report any suspicious transactions to him.

In early September 2008, Mr Moore became suspicious that his firm was being targeted by criminals and they were being encouraged or assisted by one of their paralegals, Ms BB, an employee in whom Mr Moore had reposed considerable trust and responsibility. He reported matters to the police. Thereafter he sacked Ms BB. All of these matters were spoken to by the Respondent at the hearing and relevant documentation produced.

It appears that the reporting of his suspicions to the police triggered Law Society investigations. At the same time, the Respondent commenced his own internal investigations of Ms BB's files. This led to him reporting several other matters and reported suspicions to the police. Mr Moore also attempted to rectify one matter by personally attending at a clients residence only to be subjected to the threat of physical violence. He required to prevent the possibility of a further fraud. In order to rectify that matter the Respondent had to spend approximately £3,000 of his own money.

The Law Society of Scotland then saw fit to raise Judicial Factory proceedings and an interim Judicial Factor was appointed on 7 October 2008 on the basis of certain averments. The interim appointment was recalled by the Inner House on 22nd October when it was acknowledged that the averments were without foundation and the Law Society were found liable for the expenses of the petition.

After the interim judicial factory was recalled, the Respondent cooperated fully with the Law Society in connection with a Rule 19 Inspection. This inspection, which was conducted over a two and a half year period, included regular inspections of the firm (6 in number, 2 of which were conducted in the offices of a third party solicitor). He submitted 451 files to the Law Society. He engaged in voluminous correspondence with the Law Society.

Once the Rule 19 inspection had completed he was initially put on a yearly inspection rota but for the last two inspections, which are now on two yearly inspection rotas. No significant issues have been raised.

FACTORS TO TAKE INTO ACCOUNT

Maintenance of the reputable of the solicitors profession.

Sustaining of public confidence in the integrity of the profession.

Risk to the public.

Honesty.

Integrity.

Trustworthiness.

Experienced solicitor – sole practitioner since 2002.

Changed systems/model.

Unblemished record.

Supportive references.

No concerns on multiple re-inspections.

Protection of the public.

In one recent inspection, the Law Soc inspectors advised that the 30 files they examined were "perfect". At the last inspection, which was set down for three days, the inspectors left after one and a half days, as they advised there was nothing "untoward" in the files. It is submitted that the firm and the Respondent have been subjected to a most intensive inspection regime. The rigorous scrutiny of the Respondent's firm over the past 8 years and the absence of any Law Society concerns and/or client complaints throughout the history of the firm's fifteen years should provide considerable reassurance to the Tribunal that the public need no protection against him. The conditions which gave rise to the events in 2008 are unlikely to be replicated and the actions taken by the Respondent since then have plainly removed any significant risk to the public if the Respondent was permitted to continue in practice.

None of the clients or other parties mentioned in the Complaint, including the lending institutions and the Crown Office ever made any formal complaint about the Respondent's conduct. So far as he is aware no one lost any money in respect of any of the matters which are the subject of the complaints. No claims have ever been made against him.

With regard to the risk assessment regime, the regime was a new regime in 2008 having only been brought in at the end of 2007. The evidence given in the hearing in December was to the effect that Mr Moore had attempted to comply with and develop appropriate procedures to comply with that regime. This included producing a money laundering manual, attending seminars, discussing the regime with local solicitors and advising his staff as to procedures. He also implemented a written risk assessment regime at the end of 2008.

There is no foundation for any allegation of dishonesty, or personal benefit to Mr Moore of any of the complaint matters."

Additionally, Mr Hennessy stated that perhaps this was a case of the Respondent being too busy and where some of his systems were not capable of coping with the pressures put on them.

He indicated that the only matter he specifically sought to address was that involving the Crown Office. He stated that he remembered the reaction of the Tribunal as the Respondent was giving evidence but submitted that how the funds had been dealt with was the way the Respondent thought he could deal with them. He submitted that the Respondent now regretted the matter, as it had given rise to this complaint. He asked the Tribunal to consider that, although this was an unusual case, the Respondent genuinely held the view that he could proceed in this manner.

The Chairman asked Mr Hennessy if this submission disclosed a lack of insight on the part of the Respondent. Mr Hennessy invited the Tribunal to put this issue in the context of the evidence. No one from Crown Office had given evidence to say that this was not what had been agreed. No complaint had been made by Crown Office. At the time, the Respondent had done what he thought was correct.

In considering the question of integrity, Mr Hennessy asked the Tribunal to consider the Respondent's whole career. This was the only matter on his record. There had been nothing before this and nothing since.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid asked the Tribunal to hold that these findings demonstrated a cavalier attitude to the Regulations.

DECISION

The Tribunal did not accept that the Respondent had demonstrated a cavalier attitude to the Regulations. In particular, in relation to the Money Laundering Regulations, the Respondent had submitted five SOCA reports and the Tribunal accepted his evidence regarding the steps he had taken to assist in the investigation of those matters. The Tribunal accepted that, in general, his firm had a policy of carrying out risk assessments, although in these particular cases, these procedures had failed. The two instances of breaches of the CML Handbook appeared to be isolated incidents.

The Tribunal was not clear that the same could be said for the breaches of Rule 3 of the Solicitors (Scotland) Practice Rules 1986. It was not clear what procedures the Respondent had at that time in order to identify a client as an established client and there was a great deal of contradictory evidence surrounding the Minutes of Agreement between the purchasers and sellers.

It was clear that the Respondent had changed his procedures since this conduct. Almost nine years had passed since these incidents and the Respondent's firm had been inspected thoroughly on many occasions without issue.

The matter of main concern to the Tribunal was the payment of proceeds of sale into an account which was not in the firm's name, in the face of instructions to the contrary. The Tribunal had difficulty understanding why the Respondent had acted in this manner. There was no personal gain to him, other than by pleasing his client. This was a serious matter which called into question the Respondent's integrity and was damaging to the reputation and integrity of the profession.

This had to be balanced against the career of some 25 years without blemish. The references produced spoke highly of the Respondent. The Respondent's firm had been inspected very thoroughly by the Law Society on several occasions since the conduct with no issue being raised.

Given his past record, the Tribunal did not consider the conduct of such gravity to require a striking off. Given the changes he had made to his practice and procedures, and the number of years since this conduct, supervision was not necessary.

Given the seriousness of the issue involving Crown Office, and the number and variety of other matters, the Tribunal considered that a Censure was not sufficient to mark the gravity of the case. It therefore concluded that it was necessary to impose a fine and determined that the appropriate figure was one of £1,000.

The Tribunal invited submissions on publicity and expenses. The Fiscal moved for expenses to be awarded in the Complainers' favour. Mr Hennessy asked the Tribunal to modify any award of expenses taking into account that a number of allegations were withdrawn, a number were not established, and the Respondent had made a number of admissions in his Answers.

DECISION ON EXPENSES AND PUBLICITY

Having regard to the submissions made by Mr Hennessy, the Tribunal considered that it was appropriate to reflect that not all of the allegations had been established by modifying the award of expenses in favour of the Law Society by restricting it to 85%.

Given the personal nature of the information within the findings, and the nature of accusations made against individuals who were not present or party to the proceedings, the Tribunal determined that only the names of the Respondent and the two witnesses should be included in the findings. This publicity shall include the decision of the Tribunal in relation to the preliminary hearing.

Alistair Cockburn

Vice Chairman