

THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS DISCIPLINE TRIBUNAL

F I N D I N G S

in Complaint

by

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

against

DAVID ROBERT SEAGRAVE,
Messrs Seagrave & Co, Solicitors,
practising formerly at 75 Buccleuch
Street, Dumfries and now at Amulree,
Islesteps, Dumfries

1. A Complaint dated 5th May 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that David Robert Seagrave, Messrs Seagrave & Co, Solicitors, practising formerly at 75 Buccleuch Street, Dumfries and now at Amulree, Islesteps, Dumfries (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.

2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No answers were lodged by the Respondent.

3. An amended Complaint was lodged with the Tribunal on 13th January 2006, the terms of which had been agreed between the Complainers and the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint in its amended form to be heard on 1st March 2006 and notice thereof was duly served on the Respondent.
5. The hearing took place on 1st March 2006. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr Macreath, Solicitor, Glasgow.
6. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the amended Complaint were admitted. No evidence was led.
7. The Tribunal found the following facts established: -
 - 7.1 The Respondent was born on 29th April 1943. He is a Solicitor enrolled in Scotland. He was admitted on 1st and enrolled on 15th, both days of August 1978. The respondent carries on business as Messrs. Seagrave & Co., Solicitors, practising formerly at 75 Buccleuch Street, Dumfries and now at Amulree, Islesteps, Dumfries, where he is the sole principal. He formerly had an associate who joined the firm in 1994 and who left in or about November 2004.
 - 7.2 Inspection of 15th/16th March 2004
Guarantee Fund Inspectors employed by the Complainers carried out a routine inspection of the books and records of the

Respondent's practice on 15th and 16th March 2004. They found the following: -

7.3 **Delays in recording deeds**

- a) Miss A purchased Property 1 with the assistance of a loan of £89,500 from Standard Life Bank. £280.00 had been held to cover recording dues since 22nd September 2003 but at the date of the inspection, the deeds had not been sent for recording.
- b) Mr and Mrs B purchased Property 2 at a price of £145,000 with a loan from NatWest of £124,910.00. The transaction settled on 22nd August 2003 and on that date, Stamp Duty was paid. Since that date, £238.00 had been held to pay for recording dues but at the date of inspection, the deeds had not been sent for recording.
- c) Mr and Mrs C re-mortgaged Property 3 on 31st October 2003. The new loan from Alliance & Leicester was in the sum of £30,370 and the old loan with Newcastle Building Society in the sum of £30,359.31 was redeemed. £118.00 was held for payment of recording dues but as at the date of inspection, the deeds had not been sent for recording.
- d) Company 1 purchased Property 4 on 31st July 2002 at a price of £25,000. Since that date, £55.00 had been held to cover recording dues but the Disposition had not been recorded.

- e) Mr D and Ms E purchased Property 5 on 23rd May 2003 at a price of £23,000 with the assistance of a Loan of £29,995 from Dunfermline Building Society. Since that date, £259.50 had been held to cover *inter alia* recording dues. As at the date of the inspection, the deeds had not been sent for recording.

- f) Dr F purchased Property 6 on 19th December 2003 at a price of £195,000 with a loan of £194,975 from First Trust Bank. The Stamp Duty was not paid until 12th March 2004 and although a sufficient sum was held to cover the recording dues, the deeds had not as at the date of inspection been sent for recording.

- g) Mr G purchased Property 7 on 30th January 2004 at a price of £56,050 with a loan of £44,000 from Cheltenham & Gloucester plc. £221.25 had been retained to cover recording dues but as at the date of the inspection, the deeds had not been sent for recording.

- h) Mr and Mrs H purchased Property 8 in September 2003 at a price of £90,000. On 12th March 2004 £198.00 was sent to Registers of Scotland, apparently being the dues on recording the Disposition. A sum of £480.28 was still held at credit of the ledger. It was not clear what this sum represented. A cheque dated 12th September 2003 from the Seller's Solicitors in favour of Registers of Scotland remained in the file. The Discharge in favour of the Seller had not been sent for recording.

- i) Mr and Mrs I re-mortgaged Property 9. The new loan from Alliance & Leicester plc in the sum of £57,470 was received on 1st September 2003. The old Dunfermline Building Society account, in the same sum, was redeemed on 8th September 2003. £162.00 was retained to cover recording dues but as at the date of the inspection, the deeds had not been sent for recording.

- j) Mr J and Ms K purchased Property 10 on 12th December 2003 at a price of £68,000 with the assistance of a loan of £62,500 from Northern Rock plc. The Stamp Duty was not paid until 12th March 2004. £176.00 was retained to cover recording dues but the deeds had not been sent for recording as at the date of inspection.

- k) Mr L re-mortgaged Property 11. An advance of £18,970 was received from Alliance & Leicester plc on 27th November 2003 and the Northern Rock account in the sum of £18,911.06 was redeemed on 28th November 2003. £54.00 had been retained to cover recording dues but the deeds had not been sent for recording.

No identification was held on the client file.

- l) Mr M and Mrs N purchased Property 12 for £83,000 with the assistance of a loan from Northern Rock. The transaction settled at the beginning of February 2004. The stamp duty land tax was paid on 12th March 2004. £189.00 was held for recording dues. A discharge, and a cheque from Conveyancing Direct for £22.00 dated 4th February 2004 in favour of the Registers were also held. As at the

date of inspection, the deeds had not been sent for recording.

- m) Mr and Mrs O purchased Property 13. On 16th July 1999 £121.00 was paid to Registers of Scotland which was re-credited to the ledger on 20th January 2000. £121.00 was then paid to the Registers of Scotland on 12th March 2004. The deeds had been unrecorded until that date.
- n) Mr P and Ms Q purchased Property 14 on 4th August 1999 with the assistance of a loan of £35,130 from Dunfermline Building Society. The purchase price of £37,000, and the relative Stamp Duty, were paid on 6th May 1999. On 29th October 1999, a payment was made to Registers of Scotland in respect of recording dues of £110.00. On 31st August 2000 an out of date cheque for £110.00 was re-credited to the ledger. £110.00 was still held in respect of recording dues. As at the date of the inspection, the deeds relative to this transaction had not been recorded.
- o) Mr R purchased Property 15 for £74,000 with the assistance of a loan of £63,550 from Lloyds TSB plc. The Stamp Duty was paid on 31st October 2003. £177.00 was held for recording dues but at the date of the inspection, the deeds had not been sent for recording.

There was no identification of the client held on file and no source was recorded for £12,072 of the purchase price which had been introduced as cash.

- p) Mr and Mrs S purchased Property 16 for £119,450 on 12th December 2003 with the assistance of a loan of £107,955 from Alliance & Leicester plc. Stamp Duty of £1,194.50 was paid on 12th March 2004. As at the date of the inspection, the deeds (including the Discharge in favour of the Sellers) had not been recorded although sufficient funds were held to cover these.

- q) Mr T purchased Property 17 on 15th December 2003 at a price of £24,570. He obtained a loan of £30,970 from Alliance & Leicester plc. £107.00 was held to cover the dues of recording the disposition and Standard Security but neither of these was recorded nor was the Discharge in favour of the Seller.

- r) Mr U and Miss V purchased Property 18 on 11th September 2003 with the assistance of a loan of £50,000 from Northern Rock plc. £132.00 was held to cover the dues of recording the Discharge and Standard Security but neither of these had been sent for recording as at the date of inspection.

- s) Mr & Mrs W purchased Property 19 on 24th May 2002, with the assistance of funds from Nationwide Building Society. The recording dues of the disposition and standard security were paid on 12th June 2002. The cheque was not cashed and it was cancelled on 29th January 2003. A further cheque was issued on 19th September 2003 which as at the date of the inspection remained uncashed. The deeds remained unrecorded.

- t) Mr & Mrs X purchased Property 20 on 23rd November 2001 with the assistance of a loan from Lloyds TSB PLC. The recording dues of the disposition and standard security were paid on 18th December 2001. The cheque was not cashed and was cancelled on 26th September 2002. A further cheque was re-issued on 19th September 2003 which remained uncashed as at the date of the inspection. The deeds remained unrecorded.
- u) Mrs Y obtained a discharge in her favour of a standard security which was forwarded along with a cheque for £22.00 to the Registers of Scotland on 28th March 2002. The cheque was cancelled on 3rd September 2002 as being out of date but had never been re-issued. The discharge remained unrecorded. A payment of £1400.00 was issued for stamp duty in relation to this client on 28th March 2002 but it was not apparent which deed was to be stamped. Sale proceeds of £115,000.00 were received on 23rd November 2001 and it was not apparent what had been done with these funds. This has since been clarified to the Complainers satisfaction.

All these conveyancing transactions were those undertaken by the Respondent's associate.

7.4 Money Laundering Regulations

In two cases, (Mr & Mrs Z, Mr AA) it was noted that copies of evidence of identity had been requested from clients. In relation to a Mr & Mrs AB, no evidence had been obtained in relation to their identity. The details of sources of funds introduced by clients towards their transactions were not held in all cases. These matters

had been raised with the Respondent at a previous inspection in 2001.

7.5 Undesignated Cheques: Rule 6(2)

Cheques as follows were noted as being payable to banks and building societies which were not designated with the name or account number of the person whose account was to be credited with the funds:-

26/01/04 Ecology Building Society	£22,635.20	(Mr AC)
30/01/04 Clydesdale Bank	£13,067.26	(Miss AD)
30/01/04 Halifax	£33,592.46	(Mr AE)

7.6 Bookkeeping Procedures: Rules 8, 9 and 10

Out of date cheques dated 22nd May 2003 (no: 2433) in the sum of £22.00 and 26th June 2003 (no: 2524) in the sum of £36.00 were out of date and had not been cancelled and re-credited to the ledger nor had investigations been made to see whether they required to be re-issued.

7.7 A column of the clients' ledger was being used to show movements of invested funds. These were always shown in brackets whether they were debits or credits and the balance was not being shown on the ledgers.

7.8 The invested funds account statements for the Royal Bank of Scotland accounts were not always being received quarterly as required by the rules.

7.9 One ledger balance (Miss AF) was not included in the list produced dated 29th February 2004.

7.10 A balance shown in the trial balance was explained as being funds provided by the firm's associate Mr Kenny to cover outlays paid for his clients. The entry was loan/NSK Client Float - £3300.00. This amount had not been included in the sums due by the firm on the accounts certificate.

7.11 Ledger narratives were not always sufficient to fully describe each transaction. For example the headings did not always include the addresses of property being purchased, sold or re-mortgaged. In the case of Mrs AG's executry the narrative regarding the payment of the residue was not sufficient in that the funds were seen to be sent to a building society for the residuary beneficiary but his name was not included in the narrative.

7.12 Guarantee Fund Committee Meeting

The Complainers resolved to interview the Respondent. He attended for interview at Edinburgh on 20th May 2004. The Respondent indicated that the fault lay principally with his associate who he had assumed would be able to work without supervision. The Respondent assured the committee that proper procedures would be put in place. Following upon the meeting the Complainers resolved to re-inspect the books and records of the Respondents' practice in three months time at the firm's expense.

7.13 Inspection of 6th, 7th & 8th September 2004

Guarantee Fund Inspectors employed by the Complainers carried out a further inspection of the books and records of the Respondent on 6th, 7th & 8th September 2004. They found the following:-

- a) Mr AH sold Property 21 on 30th April 2004. His Abbey National loan was redeemed on that date, but recording dues on the discharge were not paid until 26th August 2004 and the deeds remained unrecorded at least until that date.
- b) Mr & Mrs AI re-mortgaged Property 22. The Alliance & Leicester loan was received on 12th March 2004 and the Halifax loan redeemed on 15th March 2004. The deeds remained unrecorded.
- c) Mr & Mrs AJ bought Property 23 on 5th July 2004. As at the date of inspection the deeds remained unrecorded.
- e) Mr AK bought Property 24 on 1st October 2002. Recording dues were paid on 16th October 2002 but the application for recording of the deeds was rejected and these remained unrecorded as at the date of the inspection.
- f) Mr & Mrs AL bought Property 25, on 31st July 2002. They did so with the assistance of a loan from Northern Rock PLC. As at the date of the inspection, the deeds had not been recorded.
- g) Mr AM & Mr AN bought Property 26 on 2nd April 2004 with the assistance of a loan from Nationwide PLC. At the date of inspection the deeds remained unrecorded.
- h) Mrs AO re-mortgaged land at Property 27. The new loan was received and the old loan was redeemed on 2nd December 2002. The deeds remained unrecorded at the date of inspection.

- i) Drs AP bought Property 28 on 29th January 1999. The application for recording of their deeds was rejected and the deeds remained unrecorded at the date of the inspection.
- j) Mr AQ & Mr AR bought Property 29, on 30th March 2004 with the assistance of a loan from Alliance & Leicester plc. As at the date of the inspection the deeds remained unrecorded although they were sent to the keeper on 6th September 2004.
- k) Mr & Mrs AS bought Property 30 on 24th June 1998. The initial application for recording of the deeds was rejected and as at the date of the inspection the deeds remained unrecorded.
- l) Mr AT purchased Property 31 on 5th September 2003 with the assistance of a loan from Northern Rock PLC. The recording dues had not been paid and the deeds remained unrecorded at the date of the inspection.
- m) Mr & Mrs AU re-mortgaged Property 32. The new funds from Alliance & Leicester PLC were received on 25th September 2003 and the old Abbey National Loan was redeemed on 1st October 2003. As at the date of the inspection no recording dues had been paid and the deeds remained unrecorded.
- n) Mr & Mrs AV re-mortgaged Property 33. The new funds from Alliance & Leicester PLC were received on 30th December 2003 and the old Prudential loan was redeemed

on 6th January 2004. As at the date of the inspection no recording dues had been paid, and the deeds remained unrecorded.

- o) Mr & Mrs AW purchased land at Property 34 on 27th February 2004 with the assistance of a loan from Clydesdale Bank PLC. At the date of the inspection the deeds remained unrecorded.

7.14 Further unrecorded deeds

Each of the foregoing cases was recorded in a memorandum prepared by the Respondent prior to the date of the inspection. The following further cases of unrecorded deeds were noted by the inspector which were not mentioned in the Respondent's memorandum:-

- a) Mr & Mrs AX bought Property 35 on 25th June 2004 with the assistance of a loan from National Westminster Bank. As at the date of the inspection the Respondent awaited the signed stamp duty land tax form from the clients and the deeds remained unrecorded.
- b) Mr AY's executry sale of Property 36: the Alliance & Leicester loan over the late Mr AY's property was redeemed on 31st July 2000. A cheque in respect of recording dues in the sum of £22.00 was issued on 23rd August 2000 but was not cashed and was subsequently cancelled. No further cheque had been re-issued and the discharge remained unrecorded as at the date of inspection.
- c) Miss AZ bought Property 37 on 26th June 1998. She did so with the assistance of a loan from Woolwich PLC. The

Respondent issued cheques in respect of recording dues in the sum of £121.00 on 2nd July 1998 and again in the sum of £121.00 on 29th March 2004 both of which remained uncashed and the deeds remained unrecorded.

- d) Mrs BA sold Property 38 on 23rd November 2001. The recording dues of £22.00 on the discharge were paid on 28th March 2002, which remained uncashed and a further cheque for £22.00 was issued on 16th April 2004 which also remained uncashed. The deed remained unrecorded.
- e) Mr BB and Miss BC re-mortgaged Property 39. The New Northern Rock Loan was received on 29th August 2003 and the Dunfermline loan was redeemed on the same date. The deeds remained unrecorded.
- f) Mr & Mrs BD re-mortgaged Property 40. The new Alliance & Leicester loan was received on 1st June 2004 and the Bank of Scotland Loan was redeemed on 2nd June 2004. No recording dues had been paid and the deeds remained unrecorded.
- g) Miss BE and Mr BF bought Property 41 on 30th July 2004. They did so with the assistance of a loan which was received on 30th July 2004 from Portland. The deeds remained unrecorded.

These conveyancing transactions were again all those of the Respondent's associate.

7.15 Various outstanding cheques were noted in the client bank reconciliation which related to recording dues but no follow up action had been taken by the Respondent. They were as follows:

- a) Mrs BG re-mortgaged Property 42. The Alliance & Leicester loan was received on 10th March 2004 and the old Dunfermline loan was redeemed on 11th March 2004. A cheque for recording dues in the sum of £66.00 was written on 19th March 2004 but remained uncashed as at the date of inspection.
- b) Mr & Mrs BH purchased Property 43 on 15th December 2003. They did so with the assistance of an Alliance & Leicester loan and received on 15th December 2003. A cheque for recording dues in the sum of £44.00 was written on 16th April 2004 but remained uncashed.
- c) Miss BI purchased Property 44 on 30th January 2004. A cheque in respect of recording dues was written on 21st April 2004 in the sum of £165.00 and remained uncashed.
- d) Miss BI sold Property 44 on 30th January 2004. A cheque for recording dues was issued on 27th April 2004 but it remained uncashed.

7.16 Money Laundering

In the case of Miss BI no third party identification was seen for Mr BK who introduced funds towards the purchase price.

7.17 In the case of Mr & Mrs BL there was no evidence of identification.

7.18 In the case of Miss BJ mentioned above a cheque in the sum of £33,747.75 was received from Mr BK on 2nd July 2004. The source of the funds was not verified.

7.19 In the case of Mr & Mrs BL mentioned above, the clients provided a cheque in the sum of £108,393.00 on 1st July 2004 and the source of the funds was not verified.

7.20 Invested Funds

The requirement that each individual client ledger must record the invested funds held for that client, the funds column within the client ledger be totalled each month and the totals reflected in the reconciliation column was not always being adhered so. Several client ledgers did not show fund balances or showed incorrect amounts. Statements were not being received at the correct dates to coincide with the quarterly reconciliations.

7.21 Record Keeping

An out of date cheque was noted in the firm bank reconciliation to 31st July 2004 and no action had been taken in that connection.

7.22 The firm operated a special interest account with Royal Bank of Scotland. The account was in the firm name. It was not included within the firm's records and accordingly not reflected in the monthly trial balance. Neither was it being reconciled monthly.

7.23 Cheque Designation

A cheque payable to Lloyds TSB in the sum of £3684.04 was issued on 21st May 2004 in respect of Mrs BM. The cheque was not designated with the client name on the payee line as required.

7.24 Accountants Certificate

Only the firm bank and firm bank number two account balances were included on the certificate. The outstanding balances on the Key Business Finance Loan and Lombard Loan and the balance held in the Special Interest Account previously mentioned were not included on the certificates.

8. Having considered the foregoing circumstances and the submissions from both parties, the Tribunal found the Respondent guilty of professional misconduct in respect of:

- 8.1 His failure to ensure the timeous recording of conveyancing deeds.
- 8.2 His breach of the terms of Rule 6(1) and (2) of the Solicitors (Scotland) Accounts etc Fund Rules 2001. (The 2001 Rules)
- 8.3 His breach of the terms of Rules 8, 9 and 10 of the 2001 Rules.
- 8.4 His breach of the terms of Rule 11 of the 2002 Rules
- 8.5 His breach of the terms of Rule 14 of the 2001 Rules
- 8.6 His failure to comply with the requirements of the money laundering regulations and Rule 24 of the 2001 Rules.

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

Edinburgh 1st March 2006. The Tribunal having considered the Complaint dated 13th January 2006 at the instance of the Law Society of Scotland against David Robert Seagrave, Messrs Seagrave & Co, Solicitors, practising formerly at 75 Buccleuch Street, Dumfries and now at Amulree, Islesteps, Dumfries; Find the Respondent guilty of Professional Misconduct in respect of his

failure to ensure the timeous recording of conveyancing deeds and his breach of Rules 6, 8, 9, 10, 11, 14 and 24 of the Solicitors (Scotland) Accounts etc Fund Rules 2001; Censure the Respondent, and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of five years with effect from 30th April 2007 any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland, with a further condition that while the Respondent is in private practice on his own account his practising certificate will be subject to a condition that the books and records of his practice be inspected by the Council of the Law Society of Scotland no later than 1st August 2006 and thereafter a four monthly intervals, all such inspections to be at the expense of the Respondent; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal, as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85: and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alistair Cockburn

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

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

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch stated that the Respondent was a late entrant to the legal profession. Latterly he had practised on his own and had an associate in the firm. Mr Lynch confirmed that the majority of the matters in the Complaint involved failures by the Respondent to supervise his associate rather than the Respondent's failure in dealing with his own transactions. The first inspection was in March 2004 and there were 21 failures to record deeds identified. There were four contraventions of the Money Laundering Regulations. There were also problems with undesignated cheques and general problems in connection with record keeping. These resulted in a meeting between the Respondent and the Guarantee Fund on 20th May 2004 when the Respondent stated that his associate was principally responsible but gave his assurances that proper procedures would be put in place to prevent any reoccurrence. At the inspection in September 2004 a further 14 examples of failure to record deeds were identified. These were all noted in a memo prepared by the Respondent prior to the inspection which indicated that he was taking some steps to put matters right. The inspection however revealed a further 11 instances of failure to record deeds. There were also four further breaches of the Money Laundering Regulations and more failures to invest funds and general bookkeeping issues. Mr Lynch stated that although the Respondent had been given an opportunity to put matters right, this had not been done which had resulted in his prosecution. The Complaint had been sent to the Tribunal in May 2005 but the Respondent's solicitor had had difficulty in lodging answers because of the failure by the Respondent's associate to co-operate with the making available of files. The amended Complaint had been adjusted. Mr Lynch thanked the Respondent and his agent for their co-operation in dealing with matters. Mr Lynch confirmed that matters appeared now to be moving

satisfactorily so far as the Guarantee Fund Committee was concerned. In response to a question from the Chairman, Mr Lynch confirmed that the Complainers accepted that all the conveyancing transactions related to business carried out by the Respondent's associate rather than the Respondent personally.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath advised that he had had difficulty in obtaining the files as these were held by the Respondent's associate, Mr Kenny. Mr Macreath explained that there had been an informal mediation prior to the Respondent's associate leaving the firm which allowed Mr Kenny to take some of the files with him. Mr Macreath stated that this should not have been done, as the client's approval should have been given. Mr Macreath confirmed that a fresh Complaint had been adjusted with the fiscal in November. The Law Society had intervened in matters and Mr Kenny had agreed to cease practice on 13th January 2006. Mr Macreath referred the Tribunal to the letter from Fiona Grieve at Nigel F Kenny & Associates which confirmed that of all the matters in the Complaint only four cases were still unresolved. Mr Macreath also referred the Tribunal to the references lodged on the Respondent's behalf and to the fact that the referees were surprised that the Respondent took Mr Kenny on. The Respondent's wife also had concerns with regard to the Respondent's employment of Mr Kenny. Although Mr Kenny was an associate of the Respondent each of them retained the income from their own cases. Mr Macreath indicated that the Respondent was now working from home without an assistant on residential conveyancing and was a specialist in timber and woodland work. He hoped to retire from practice next year and was starting to wind down his business. Mr Macreath outlined the Respondent's family and financial circumstances, referred to the Respondent's past exemplary history and asked the Tribunal to take account of the fact that the Respondent had offered every assistance in sorting matters out. Mr Macreath asked that the Tribunal allow the Respondent to continue in practice as a sole practitioner. He gave an assurance on behalf of the Respondent that he would wind his business down and would retire by 30th April 2007. In response to a question from the Chairman, Mr Lynch confirmed that the Money Laundering breaches also related to the

Respondent's associate's clients. Mr Lynch also confirmed that the problems in connection with uninvested funds, undesignated cheques and poor record keeping would not in themselves have led to a prosecution. Mr Macreath, on behalf of the Respondent, indicated that the Respondent accepted that if the Tribunal ordered further inspections of the Respondent's books and further problems were found, there would be very little sympathy for the Respondent from the Tribunal.

DECISION

The Tribunal took account of the fact that the failures to record deeds and breaches of the Money Laundering Regulations all related to clients dealt with by the Respondent's associate rather than directly by the Respondent. The Respondent however, as the sole partner, had responsibility for supervising his associate. The Respondent's failure to do so in this case was a complete abdication of his responsibility. The Tribunal noted that after the Guarantee Fund meeting the Respondent did keep a note of unrecorded deeds but he continued to operate with the same associate and there were still problems. The Tribunal was extremely concerned by the number of instances of non-recording of deeds. This exposed the purchasers and heritable creditors to significant risk. The non-recording of deeds involved a reckless and persistent course of conduct which the Respondent, by failing to properly supervise his associate, allowed to continue. The Tribunal however took account of the fact that the Respondent was winding down his business and had given an undertaking that he would be retiring on 30th April 2007. The Tribunal also took account of the fact that the Respondent may have had difficulties with his associate not co-operating with him after the Guarantee Fund Committee meeting. The Tribunal noted the references provided on behalf of the Respondent and his previous good character. The Tribunal accordingly agreed to allow the Respondent to continue in practice until his retirement date subject to further inspections of his practice at four monthly intervals paid for at the Respondent's expense to ensure that any further problems would be picked up immediately. The Tribunal was also concerned to protect the public by ensuring that the Respondent did not continue as a sole practitioner after April 2007 and accordingly imposed a restriction on his practising certificate for a period

of five years commencing 30th April 2007. The Tribunal made the usual order with regard to publicity and expenses.

Chairman