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

ANTONY DAVID MURPHY, formerly of 31 Chapel Street, Hamilton, Lanarkshire now at 3 Chateau Grove, Hamilton, Lanarkshire

1. A Complaint dated 11 May 2011 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Antony David Murphy formerly of 31 Chapel Street, Hamilton. Lanarkshire and now of 3 Chateau Grove, Hamilton, Lanarkshire (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.

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

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 14 September 2011 and notice thereof was duly served on the Respondent.

4. The hearing took place on 14 September 2011. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was not present or represented.

5. An email letter had been received from the Respondent's solicitor indicating that he did not intend to enter appearance or attend the hearing. The Tribunal accordingly proceeded to deal with the Complaint in the absence of the Respondent.

6. The Tribunal heard evidence from two witnesses and found the following facts established

6.1 The Respondent is Antony David Murphy. He was born 1st March 1960. He was admitted as a solicitor on 1st October 1982. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 20th October 1982. He resided at 31 Chapel Street, Hamilton, ML3 6AP. Following his admission as a solicitor he was employed as a partner with the firm Scullion & Company, Solicitors from 1st February 1984 until 30th August 1989. Thereafter, he was a partner in the firm Murphy & Company, Solicitors from 1st September 1989 until 31st May 1998. Thereafter, he was an employee of the firm, Campbell Sievewright & Company, Solicitors from 1st June 1998 until 26th July 2002. From 29th July 2002 until 8th October 2008, he was a partner in the firm Murphy & Company. Also from 7th November 2007 until 8th October 2008 he was a partner in the firm Murphy Wallace LLP. Also from 7th November 2007 until 8th October 2008 he was a partner in the firm Wallace Construction Law. To the knowledge of the complainers, the Respondent is not presently employed or practising as a solicitor although his name remains on the Roll of Solicitors.

Company A

6.2 Company A is a company which formerly traded from Property 1. The complainers believe it was a company set up to manage and develop a construction of dwellinghouses at a site based in Property 2. The Respondent was the solicitor acting on behalf of Company A. In that capacity the Respondent prepared and delivered to solicitors acting on behalf of various interested parties, missives in a particular format allowing them to purchase if they so wished a flat in the development. As well as other individuals the following parties concluded missives for the purchase of a flat in the development:-

(a) Mrs B who resides at Property 3

In or about 14th March 2006 she concluded missives with Company A to purchase from them Flat 21 of the development at Property 2. The missives provided for a purchase price of £111,000. Mrs B was entitled to a discount of £11,100 leaving a net sum to be paid at settlement of £99,900. Upon conclusion of the missives, she paid the sum of £6,600 by way of deposit. This deposit was paid to the Respondent as agent on behalf of Company A.

(b) Mr & Mrs C of Property 4

In or about 10th March 2006 they concluded missives with Company A to purchase from them Flat 3 of the development at Property 2. The missives provided for a purchase price of £109,000. Mr and Mrs C were entitled to a discount of £10,900 leaving a net sum to be paid at settlement of £98,100. Upon conclusion of the missives, they paid the sum of £6,540 by way of deposit. This deposit was paid to the Respondent as agent on behalf of Company A.

(c) Ms D of Property 5

In or about 19th May 2006 she concluded missives with Company A to purchase from them Flat 23 of the development at Property 2. The missives provided for a purchase price of £96,000. Mrs D was entitled to a discount of £9,600 leaving a net sum to be paid at settlement of £86,400. Upon conclusion of the missives, she paid the sum of £5,760 by way of deposit. This deposit was paid to the Respondent as agent on behalf of Company A.

(d) Mrs F of Property 6

In or about 20th March 2006 she concluded missives with Company A to purchase from them Flat 9 of the development at Property 2. The missives provided for a purchase price of £111,000. Mrs F was entitled to a discount of £11,100 leaving a net sum to be paid at settlement of £99,900. Upon conclusion of the missives, she paid the sum of £6,600 by way of deposit. This deposit was paid to the Respondent as agent on behalf of Company A.

(e) Mr G of Property 7

In or about 20th March 2006 he concluded missives with Company A to purchase from them Flat 14 of the development at Property 2. The missives provided for a purchase price of £109,000. Mr G was entitled to a discount of £10,900 leaving a net sum to be paid at settlement of £98,100. Upon conclusion of the missives, he paid the sum of £6,540 by way of deposit.

This deposit was paid to the Respondent as agent on behalf of Company A.

(f) Mr & Mrs H of Property 8

In or about 20th March 2006 they concluded missives with Company A to purchase from them Flat 1 of the development at Property 2. The missives provided for a purchase price of £109,000. Mr and Mrs H were entitled to a discount of £10,900 leaving a net sum to be paid at settlement of £98,100. Upon conclusion of the missives, they paid the sum of £6,540 by way of deposit. This deposit was paid to the Respondent as agent on behalf of Company A.

(g) Ms I of Property 9

In or about 20th March 2006 she concluded missives with Company A to purchase from them Flat 22 of the development at Property 2. The missives provided for a purchase price of £96,000. Ms I was entitled to a discount of £9,600 leaving a net sum to be paid at settlement of £86,400. Upon conclusion of the missives, she paid the sum of £5,760 by way of deposit. This deposit was paid to the Respondent as agent on behalf of Company A.

(h) Mr J of Property 10

In or about 20th March 2006 he concluded missives with Company A to purchase from them Flat 10 of the development at Property 2. The missives provided for a purchase price of £108,000. Mr J was entitled to a discount of £10,800 leaving a net sum to be paid at

settlement of £97,200. Upon conclusion of the missives, he paid the sum of £6,480 by way of deposit. This deposit was paid to the Respondent as agent on behalf of Company A.

(i) Mr K of Company B, of Property 11

In or about 20th March 2006 he concluded missives with Company A to purchase from them Flat 6 of the development at Property 2. The missives provided for a purchase price of £110,000. Mr K was entitled to a discount of £11,000 leaving a net sum to be paid at settlement of £99,000. Upon conclusion of the missives, he paid the sum of £6,600 by way of deposit. This deposit was paid to the Respondent as agent on behalf of Company A.

(j) Mr L of Property 12

In or about March 2006, Mr L concluded missives with Company A to purchase from them Flat 20 of the development at Property 2. The missives provided for a purchase price of £109,000. Mr L was entitled to a discount of £10,900 leaving a net sum to be paid at settlement of £98,100. Upon conclusion of the missives, Mr L paid a deposit of £6,540. This deposit was paid to the Respondent as agent on behalf of Company A.

(k) Mr M of Property 13

In or about 2006, Mr M concluded missives with Company A to purchase from them Flat 17 at their development in Property 2. Missives were concluded

in terms of which Mr M was entitled to a discount. The missives provided for payment of a deposit by Mr M upon conclusion. The missives were concluded and Mr M paid a deposit of the sum of £6,480. This deposit was paid to the Respondent as agent on behalf of Company A.

(l) Mr N of Property 14

In or about 2006, Mr N concluded missives with Company A to purchase from them Flat 8 of their development at Property 2. The missives provided for payment of a purchase price which took into account a discount offered to Mr N. Upon conclusion of the missives, Mr N paid a deposit equating to 6% of the purchase price. This deposit was paid to the Respondent as agent on behalf of Company A.

6.3 In each transaction the Respondent was the solicitor who acted on behalf of Company A. In each transaction the Respondent produced a set of formal missives which were accepted by each party. In each transaction the deposits paid by the purchasers were delivered to the Respondent in accordance with the terms of the missives. The purchase of the individual flats by the various parties is known as an "off-plan purchase". This involves a purchaser being provided with literature and plans in relation to the proposed development. If the proposed development is to their liking then the individual would conclude missives for the purchase of the property.

6.4 Solicitors acting on behalf of the identified purchasers made contact with the Respondent to ascertain at what stage the development had reached. In each case the Respondent replied by way of letter dated 10th September 2007. The same letter

was passed to each solicitor acting on behalf of a purchaser. The letter read as follows:-

"We refer to the above and advise that regrettably for a number of reasons the development will not now be proceeding. As you may be aware, your client's initial point of contact regarding the development was with a company called Company C. We understand that your client entered into a contract with Company C in terms of which certain sums were authorised to be paid by way of commission to Company C by our clients."

The letter went on to identify the amount of deposit paid by the individual clients. The letter went on to advise that the sum of £2,000 was retained by Company A as a deposit and the balance of the deposit was forwarded to Company C. The letter thereafter enclosed a cheque for the sum of £2,000 representing a refund of the sum received by Company A from the individual purchasers. In simple terms, of the original deposits paid by the individual purchasers, they received from the Respondent a cheque for the sum of £2,000. In each case the individual purchasers suffered a financial loss representing the balance of their deposits

6.5 Agents acting on behalf of the individual purchasers sought to extract further information from the Respondent as to why the transactions could not proceed. Representations were advanced on behalf of each of the purchasers to the Respondent questioning why there had been a deduction from the deposit. There was no mandate to the Respondent authorising payment to Company C in respect of any purchaser. The Respondent did not provide an adequate response to the enquiries made of him by solicitors acting on behalf of the purchasers. A number of purchasers formed an action group and court proceedings

were raised by one party against the company A. The intention was to raise proceedings, seek a warrant to arrest on the dependence of the action and to lodge an Inhibition in an effort to extract accurate information from the Respondent. An action was raised. The Respondent himself was paid a fee of £50,000 plus VAT. At a date later payments of £2,000 were made to individual purchasers who had paid deposits to secure a reservation on a property within the development. The company A was placed into liquidation. As a consequence of Company A being placed in liquidation, the prospects of the purchasers recovering the balance of their deposits is negligible.

Wylie & Bisset LLP

6.6 Whilst in practice the Respondent acted on behalf of the developer known as Company A. This was a company incorporated under the Companies Acts and had its registered office listed at Property 1. The company purchased ground at Property 2 with a view to building a development of flatted dwellinghouses. A number of individuals entered into concluded contracts with a view to purchasing flats at the development. The company A was placed in liquidation on 10th December 2007. The firm of Wylie & Bisset LLP were appointed as Liquidators of the company. The Liquidators caused certain enquiries to be carried out in connection with the affairs of Company A. These enquiries revealed that shortly prior to the company being placed in liquidation, its interest in the site at Property 2 was sold to a third party company. From the net free proceeds of sale, various payments were made after the redemption of a Standard Security. A payment of £235,000 was paid to a company called Company D. The Respondent received a fee of £50,000 plus VAT. Enquiries by the Liquidator revealed that a director of Company A was the sole

director of the company D which received £235,000 from the free proceeds of sale.

6.7 Certain files maintained by the Respondent were considered by the Liquidator. On one file there was a signed Mandate dated 1st October 2007 by a Mr O instructing the Respondent to pay the net proceeds of sale to the company D and to take legal fees "as discussed". There was nothing else on the file which elaborated upon what was discussed regarding the taking of professional fees. On 7th October 2007 the Respondent raised a fee note for the sum of £50,000 plus VAT of £8,750.

6.8 Certain further enquiries were carried out by the Liquidator. They wrote repeatedly to the Respondent advising him that they had received information from Allied Irish Bank plc that there was a credit card issued under the account of Company A which was in the name of the Respondent. The Liquidator sought an explanation from the Respondent as to why it was necessary for the Respondent to have a credit card in this fashion. A credit card in the name of the Respondent was operated on the account of Company A between October 2005 and February 2007. This had been used extensively by the Respondent and revealed debits amounting to considerable sums in the region of thousands of pounds, approximately £21,000. The monies utilised by the Respondent concerned travel, meals, and the purchase of furniture and other personal expenditure. The debit entries on the credit card account were paid by the company A. Monthly statements showed that substantial amounts were utilised by the Respondent and these were paid monthly by Company A. No fee notes have ever been produced or exhibited by the Respondent for work carried out by him in respect of him being entitled to these funds. No fees or fee notes were debited against the client ledger of Company A maintained by the Respondent.

Appointment of Judicial Factor

6.9 The Complainers acting in pursuit of their statutory duties on 8th July 2008 carried out an inspection of the financial records, books and ledgers maintained by the Respondent at his address. The Complainers had carried out numerous previous inspections of the financial records of the Respondent which had revealed a number of concerns on their part. Following these inspections, their concerns were articulated in writing and presented to the Respondent. Advice was given to the Respondent as to remedy the concerns identified. The Respondent failed to take heed of the advice or to alter his methods as a consequence of which the Complainers were particularly concerned regarding the financial management of the Respondent's practice.

6.10 This inspection in general noted that in addition to numerous previous unresolved matters, further and additional matters of concern were arising. The Respondent continued to carry out unusual transactions involving connected clients. The Respondent had little, if any, appropriate procedures in place to comply with his obligations in terms of the Money Laundering Regulations. In addition, his client ledger identified that he was still making payments of funds belonging to clients to other third parties who had no connection to the particular transaction involved. The books of the practice revealed that the firm had no fee income for April or May 2008 and that little, if any, fees had been taken in the past year. Considerable sums remained uninvested belonging to clients.

6.11 It was obvious to the Complainers that the financial affairs, records and documentation of the Respondent were in some disarray. The Complainers corresponded with the Respondent requesting his files and papers. He failed to reply. As a

consequence of this and the numerous serious concerns identified by the Complainers over a lengthy period of time, arising from a number of inspections carried out, they applied to the Court of Session to have a Judicial Factor appointed to manage the affairs of the Respondent and his practice. On 27th November 2008, Morna Grandison of 26 Drumsheugh Gardens, Edinburgh, EH3 7YR was appointed Judicial Factor *ad interim* to the estate of the Respondent and over the former firm of A D Murphy & Company, Solicitors, Hamilton. The Judicial Factor *ad interim* had corresponded with the Respondent with a view to recovering from him the financial records and documentation pertaining to the firm of A D Murphy & Company. The Judicial Factor *ad interim* and members of her staff had attended at the offices of A D Murphy & Company in Hamilton. The Complainers had been unable to gain access to the office premises at an earlier date to collect files and papers belonging to the firm. The Judicial Factor *ad interim* learned that locks on the premises were changed. She gained access and certain files and accounting information were recovered. An examination of this information revealed the accounting information contained therein was incomplete and mainly historic. A meeting was organised with the Respondent at the offices of Kerr Barrie, Solicitors on 4th December 2008. At that meeting the Respondent accepted he had been foolish to ignore previous requests for information from the Complainers and that he was now willing to fully co-operate with the Judicial Factor *ad interim* in connection with her investigations into outstanding accounting issues. The Respondent delivered to her two boxes of accounting records, bank statements and other financial documentation. The delivery of documentation in this fashion was inconsistent with a letter which the Respondent wrote to the Complainers on 4th November 2008 advising that all his accounting records had been destroyed in a flood. To the knowledge of the Judicial Factor *ad interim* there

was no evidence at the office premises or from the documentation delivered to her that that at any time they had suffered water damage.

6.12 The Judicial Factor *ad interim* had the opportunity to review the documentation provided to her by the Respondent. A review of the accounting records produced indicated that a series of fee notes had been debited against individual client ledgers in alphabetical sequence on or about 4th November 2008. Her enquiries revealed the debiting of many of these fees was designed to clear the balance held for these individual clients to nil. The sums removed in this respect amounted to approximately £205,000. Enquiries were made of the Respondent who replied that this was a tidy up exercise undertaken by him to clear down his client account. Further examination of the records revealed that the fee notes which were recovered from the Respondent did not possess details of the client's addresses nor did they itemise or narrate the work which was carried out. It was apparent that the Respondent had contrived fee notes in this fashion to justify the removal of funds from the client account. Enquiries were made by the Judicial Factor *ad interim* of the clients where monies had been taken to fees. Some clients confirmed that they did receive an appropriate fee note, others were unsure of the position as they did not receive appropriate accounting from the Respondent and were therefore unclear as to what, if any, balance was due to them. Enquiries by the Judicial Factor *ad interim* satisfied herself that the Respondent cleared funds from his client account to which he was not entitled. In many cases he cleared the sum at credit of the ledger by narrating this to a fee when in actual fact the fee charged to the client was much less. The excess on the ledger came from an over reservation of outlays and from a post and incidents charge which had not been advised in the letter of engagement to the client.

6.13 Enquiries by the Judicial Factor *ad interim* revealed that on 4th November 2008 a portion of the £205,000 removed was in respect of a fee for the sum of £14,478.13 which was debited from the ledger of the client Company E. Company E was placed into liquidation by HMRC on 14th August 2008 with a permanent appointment being made on 24th September 2008. Agents for the liquidator were endeavouring to trace details of the sale of a property which belonged to the company just prior to liquidation and to ascertain what became of the net free proceeds of sale. The agents for the liquidator requested files and papers in connection with property transactions involving this company. A ledger maintained by the Respondent showed the sale price of property 15 in July 2008 of £135,000. The loan over the property was discharged and a fee was debited by the Respondent on 4th November 2008 for the sum of £1,525.98 which represented the balance held by him on the ledger card at that date. This fee was debited after the date of the liquidator's appointment. The Respondent knew that a liquidator had been appointed. The Respondent should have communicated with the liquidator regarding his intromission with company funds in this fashion and had failed to do so.

6.14 Examination of the records maintained by the Respondent revealed the existence of a further ledger which identified another property sold by the company on 15th November 2007 for approximately £146,000. After various sums were paid, a balance of £34,478.13 was held on 31st December 2007. On 31st July 2008, a fee of £20,000 was debited by the Respondent to the ledger. On 4th November 2008, a fee of £14,478.13 was debited by the Respondent to the ledger thereby reducing the balance held on behalf of this client company to nil. The latter fee was debited by the Respondent after the date of the liquidator's appointment. The Respondent was aware of the

liquidation of the company and had failed to obtain the approval of the liquidator prior to his intromission with company funds. The liquidator of the company wrote on a number of occasions to the Respondent requesting details from him of sums held on behalf of the company together with all files and documentation relating to the company. The liquidator's requests for information of the accounting position of the company has remained unanswered by the Respondent.

6.15 Further enquiry by the Judicial Factor *ad interim* identified a series of fee notes charged to the ledger of a client of the Respondent, Company D. An examination of the financial records maintained by the Respondent suggests that the fee notes were raised to clear expenses charged monthly by the Respondent to a visa card in the name of Company D. The format of the fee note sent to Company D differed from those raised in November 2008. There was a VAT number quoted but not details of the VAT charged and there was no sequential number to identify a fee note.

6.16 The Judicial Factor *ad interim* carried out certain further enquiries which revealed on 3rd November 2008 a transfer from the client account of the Respondent of the sum of £290,027.98 to a joint account in the name of Mr and Mrs Murphy (being the Respondent and his wife). The monies moved from the client account appeared to be made up of a variety of balances including the sum of £40,000 held for Company D. A proportion of the money transferred was held on behalf of Mrs Murphy. A proportion also included balances held on behalf of the client, Mr P. The Judicial Factor *ad interim* carried out enquiries which revealed a number of concerns over the ledgers maintained by the Respondent for the client, Mr P. They requested from the Respondent the client mandates in respect of sums paid out of the Mr P ledgers to third parties.

6.17 Further enquiries made by the Judicial Factor *ad interim* revealed that on 4th November 2008, the sum of £205,000 was removed from the client account of the Respondent and transferred to the firm account. From this lodgement, £200,000 was then transferred to a joint account in the name of Mr and Mrs Murphy. A total of £490,000 was then transferred out of that account on 4th November 2008. The ultimate destination of the sums was unknown. The accounting records and the computer records maintained by the Respondent revealed that the adjustments made to the client balances all took place on or around 4th November 2008 being the same date the Respondent had written to the Complainers to advise that his financial accounts, records and information had been destroyed in a flood. It is clear that the Respondent emptied his client account in November 2008 and failed to account appropriately to his clients in respect of balances held on their behalf. He misled the Complainers regarding the status of his accounting records and failed to ensure that these records accurately reflected the position of each transaction and the balances held. Considerable time, expense and effort was needed to be carried out to ensure that the clients of the Respondent had not been prejudiced by his actions in failing to account to them. At the date of the appointment of the Judicial Factor *ad interim* there was £40,689.32 within the client account maintained by the Respondent. The total sums due to clients at that date amounted to £49,031.22 which produced a shortfall at the date of her appointment of £8,341.90.

6.18 Following her appointment, the Judicial Factor *ad interim* met with the Respondent and agents acting on his behalf. Following negotiations, a Minute of Agreement was entered into to allow clients with claims to be paid and to cover the costs of her involvement. Monies were paid by the Respondent

to the Judicial Factor to settle outstanding sums due to former clients. The money paid was understood to have been provided by Mrs Janice Murphy, the wife of the Respondent. The sums required to repay included:-

(a) the liquidator of Company A, - £58,399.95.

(b) the liquidator of Company E -£16,004.11.

(c) the liquidator of Company F - £6,429.44.

(d) the shortage detailed as at the date of her appointment - £8,341.90.

(e) sums due to clients as a result of fee notes being wrongfully issued and fees taken - £19,111.04.

(f) the sums due to clients as a result of fee notes being wrongly issued and sums taken - £14,342.59

7. Having considered the evidence led and submissions made on behalf of the Complainers, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His bringing the profession into disrepute by knowingly permitting a client to sell heritable property to a third party when his client was contractually bound to sell the property to others in breach of Article 7 of the Code of Conduct for Scottish Solicitors 2002.

7.2 His knowingly falsely representing to his professional body that his accounting records had been destroyed when they had not in breach of Article 7 of the Code of Conduct for Scottish Solicitors 2002.

7.3 His acting recklessly by clearing monies out of his client account that he could not be sure were due to him as fees and in so doing his removing approximately £116,200 worth of client monies to which he was not entitled, all in breach of Article 7 of the Code of Conduct.

7.4 His failure to account to the liquidators of Company A and Company E or to respond to the reasonable enquiries of the liquidators concerning matters of importance identified by the liquidators.

7.5 His breach of Rule 4 of the Solicitors (Scotland) Accounts Etc Rules 2001, by having a shortfall of more than £8000 on his client account.

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

Edinburgh 14 September 2011; The Tribunal having considered the Complaint dated 11 May 2011 at the instance of the Council of the Law Society of Scotland against Antony David Murphy formerly of 31 Chapel Street, Hamilton. Lanarkshire now of 3 Chateau Grove, Hamilton, Lanarkshire; Find the Respondent guilty of Professional Misconduct in respect of his knowingly permitting a client to sell heritable property to a third party when his clients were contractually bound to sell to others, his knowingly falsely representing to his professional body that his accounting records had been destroyed when they had not and his acting recklessly by clearing monies out of his client account that he could not be sure were due to him as fees and in so doing his removing approximately £116,200 worth of clients monies to which he was not entitled, all in breach of Article 7 of the Code of Conduct for Scottish Solicitors 2002, his failure to account to the liquidators of Company A and Company E or respond to the reasonable enquiries of the liquidators and his breach of Rule 4 of the Solicitors (Scotland) Accounts Rules Etc 2001; Order that the name of the Respondent Antony David Murphy be struck off the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the

Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

The Respondent's representative indicated in an email that the Respondent did not intend to enter appearance or attend the hearing. It was accordingly decided to proceed in the Respondent's absence and it was necessary for the Law Society to lead evidence to substantiate the allegations in the Complaint.

EVIDENCE FOR THE COMPLAINERS

The Complainers led the evidence of Morna Grandison, Judicial Factor with the Law Society for 18 years. Ms Grandison explained that she had been appointed Judicial Factor for the Respondent's firm in November 2008. She confirmed that the Law Society had carried out a number of inspections and had a lot of concerns with regard to the Respondent's practice. She further explained that there were a number of outstanding issues from previous inspections which had not been addressed by the Respondent and there were issues with regard to the Money Laundering Regulations. She indicated that in her opinion there were a number of cases where the Respondent was acting for fictitious people and he had no money laundering procedures in place. The July inspection also raised a number of new matters and the Complainers accordingly considered that it was necessary to have a Judicial Factor appointed over the Respondent's firm. Ms Grandison confirmed that she attended at the Respondent's Hamilton offices and cleared out his financial records. These records were not complete as a lot of them had been removed and the Respondent was asked to attend and bring the missing records, which he did. Ms Grandison stated that she had previously asked the Respondent for his papers and he had advised that they had been lost in a flood. Ms Grandison confirmed that she saw the letter dated 4 November 2008 from the Respondent where he stated that his accounting records had been destroyed in a flood. Ms Grandison stated that there was no evidence of any flood damage and that the Respondent's offices were two floors up and there was no evidence of any water penetration. Ms Grandison explained that it was established that substantial funds had been removed from the Respondent's client account on or around 4 November 2008 and there appeared to be a series of fee notes to tie in with this but there was concern with regard to the fee notes which had been sequentially created as if they had all been created on the same day. The fee notes did not have

narratives or clients names or addresses or VAT details and had not been properly rendered to clients. In cumulo the amount was £205,000. Ms Grandison stated that it was considered that this was a device to justify moving £200,000 across in to a joint account in the name of the Respondent and his wife. Ms Grandison explained that they got the ledgers and wrote to the clients to ask them to confirm whether or not they had received a fee note and to ascertain if the fees were appropriately charged. Ms Grandison referred the Tribunal to Schedules 2 and 3 on pages 14 and 15 of the Complainer's productions which was a list of clients and amounts and showed which clients had confirmed that the fees were properly due and which had not and there was also a column for QLTR in connection with the ones where it could not be ascertained what the client's position was. The fees were all dated the same date but the transactions all took place on different dates. The Respondent's explanation was that he had not paid attention to matters such as rendering fees and that this was an administrative exercise carried out by him when he closed his business. Ms Grandison stated that her enquiries revealed that on 4 November 2008, a fee in the sum of £14,478 was debited from the ledger of the client Company E. Company E was placed into liquidation on 14 August 2008 and the agents for the liquidator had been in touch with the Respondent with regard to concerns about missing assets and had asked for the files. The Respondent accordingly knew that the liquidator had been appointed and he did not provide the information that was asked for and she had to do this when she was appointed Judicial Factor. She indicated that she considered that it was inappropriate that he had intromitted with funds without the liquidator's authority. Ms Grandison stated that the Respondent had deducted fees of £20,000 on 31 July 2008 but had not deducted the full fee and took the £14,478 after the liquidator had been appointed. In response to a question from the Tribunal, Ms Grandison stated that the Respondent did not plead compensation in his own hands and there was no evidence that the £14,000 worth of fees had been agreed prior to the liquidator being appointed. In response to a further question from the Tribunal Ms Grandison stated that there was no evidence that the fee had been agreed before the liquidator had been appointed and also no evidence of the liquidator agreeing the fee after he had been appointed.

Ms Grandison stated that the Respondent had also charged fee notes to Company D. Company D shared a company directorship. They were clients of the Respondent and

there were a series of transactions done for the company. Ms Grandison stated that there was concern that the money was moving round the ledger cards and there were no clear explanations for this. Ms Grandison stated that she discovered a credit card in the name of the Respondent and there was a monthly balance on the credit card bill. The company's secretary wrote to the Respondent and asked that the Respondent give him a fee note to balance the amount that was on the credit card. This credit card was used for his own personal expenditure. The fee note raised just said for work done for Company D and was a different type of fee note to the other fee notes that he had issued.

Ms Grandison stated that on 4 November 2008 a transfer was made from the client account of the Respondent in the sum of £290,027 to joint names in the account of the Respondent and his wife. This appeared to be made up from a series of balances including a Mr P and Company D. The Respondent said that £205,000 was for fees and that the £290,000 was in connection with people who owed him and his wife money. Ms Grandison explained that she asked for affidavits from the people the Respondent claimed owed him money and these people had separate solicitors representing them and the affidavits were produced. There was accordingly no claim on the Guarantee Fund in respect of these funds. Ms Grandison stated however that there was no proper explanation for why this had been done. Ms Grandison further stated that on 4 November 2008 £205,000 was moved from the client account to the firm account and then £200,000 was put to a joint account of Mr & Mrs Murphy. A further sum of £290,000 was directly moved into a joint account for Mr & Mrs Murphy. This means that the Respondent had no liquid assets at that time. The Judicial Factor accordingly had to look at recovery from Mrs Murphy.

Ms Grandison clarified that on her appointment as Judicial Factor there was £40,689 in the client account with a shortfall of £8341.90 of monies due to clients. This was due to a series of old cheques that had not been cashed and had to be written back. Ms Grandison confirmed that the liquidator of Company F was part of the £47,222 of fees referred to in Schedule 2. Ms Grandison stated that the final position was that there was £116,200 due to be held for clients. Ms Grandison referred to the Minute of Agreement, page 19 of the Complainer's productions which stated that the Respondent would give the Law Society £47,222 and that the Judicial Factor would

pay back to him anything that was due to him. The Respondent also gave his solicitor £35,000 to hold until matters were sorted out. Ms Grandison confirmed that at the end of the day all sums due to clients were paid once the administration was completed. Ms Grandison explained that the figures in Schedule 2 and Schedule 3 were not the final figures and that £116,200 was actually payable to clients or the QLTR out of the £205,000.

Ms Grandison stated that there were a number of complaints which came into the Law Society that she was asked to look at. There were enquiries from the liquidator of Company A and she pulled together all the paperwork. The Respondent acted for Company A which had the same director as Company D. A number of purchasers bought flats off plan at a development at Property 2. Mrs B concluded missives and bought flat 21 at the purchase price of £111,000 but received a discount of £11,100 leaving a net sum to be paid of £99,900. At the conclusion of missives she paid the sum of £6,600 by way of deposit. The deposit was paid to the Respondent as agent for Company A. Ms Grandison stated that the file showed that there was a discount on the purchase price and the amount was to be paid to Company C as they were the finder of the purchasers. Strefford Tulips acted for all the purchasers and for Company C and they passed the papers to the Respondent's firm to do the missives. The Respondent acted for Company A and each purchaser paid a deposit to Stretfford Tulips who passed it to the Respondent. Ms Grandison confirmed that the position was the same with purchasers Mr and Mrs C, Ms D, Mrs F, Mr G, Mr and Mrs H, Ms I, Mr J, Mr K, Mr L, Mr M and Mr N. All the money went to the Company A ledger. Ms Grandison explained that the view was then taken that the development was not going to make money so Company A decided not to develop the land and to sell it to a third party. They instructed the Respondent to prepare missives for the sale to the third party. Ms Grandison confirmed that she had seen the letter of 10 September 2007 which was sent by the Respondent to each solicitor acting on behalf of the purchasers. £2000 was kept by Company A and Company C got the balance. There was a contract between Company A and Company C which represented a finder fee for the development. Ms Grandison referred to page 139 of the Complainer's productions, being the client ledger. The deposits were paid into the Company A account and when the property was sold on Company A were not able to fulfil the contracts and Company A gave authority to the Respondent to return £2,000 to each

of the purchasers. Ms Grandison stated that the purchasers had agreed to pay the deposits but she found no evidence that they had agreed to pay Company C. The purchasers however must have had a connection with Company C in the first place. Ms Grandison stated that the Respondent was acting on his client's instructions but the issue was that his client had concluded missives with purchasers and it was accordingly a conflict to accept instructions to sell the development on to a third party when he knew then that his client could then not honour the obligations to the purchasers.

Ms Grandison advised that Company A was placed into liquidation on 10 December 2007. The Respondent took a fee of £50,000 on 28 January 2008 after the company had gone into liquidation at a time when he was in correspondence with the liquidator and had not provided the liquidator with an accounting and did not have the authority of the liquidator to take the fees. Ms Grandison stated that she did not establish if there had been a fee note for this. Ms Grandison advised that a payment of £235,000 was paid to a company D. Ms Grandison stated that the liquidator advised her with regard to the credit card issue but that she did not see the papers direct. She indicated that she had no knowledge of there being any fee note.

The Complainers then led the evidence from Ian Ritchie, Clerk to the Professional Conduct Committee with the Law Society. Mr Ritchie confirmed that the Law Society held a database which contained all the information with regard to the Respondent's record card and that he had seen this information and the details set out in Article 1 of the Complaint were correct.

Mr Ritchie also confirmed that he had dealt with the Complaint with regard to Company A as he had minuted all the meetings of the Professional Conduct Committee and he had also been involved in the investigation by the Law Society and had seen the documentation. Mr Ritchie confirmed that solicitors for the purchasers had raised an action in the Sheriff Court and had taken out an inhibition but it was too late. He received a complaint from the liquidator and he saw the accounts in connection with the credit card used by the Respondent in the name of Company A and Mr Ritchie confirmed that this was used between November 2005 and February 2007. The Respondent spent in excess of £21,000 on personal matters such as

holidays, plumbing and domestic issues. The Respondent paid himself a fee of £50,000 plus VAT which was taken after the date that the liquidator was appointed.

Mr Reid then advised that he did not intend to lead evidence with regard to the Guarantee Fund inspections or in connection with Mr Q.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid asked the Tribunal to find the Respondent guilty of professional misconduct and to accept the evidence of Morna Grandison and Mr Ritchie as being credible and reliable. This evidence revealed that on 4 November 2008 the Respondent had been clearing out his client account which suggests a thought out process. He had also sent letters claiming that there had been a flood when there had not and had issued sequential fee notes. He had taken £116,200 which he should not have taken as fees and had breached Rule 4 of the Accounts Rules and Article 7 of the Code of Conduct. Mr Reid also asked the Tribunal to find the Respondent guilty of professional misconduct in respect of not acting in a proper manner by allowing his clients to gazump the purchasers by not acting independently of his client, contrary to Article 1 of the Code of Conduct. Mr Reid also asked the Tribunal to find that the Respondent had compromised his professional standards by promoting the interests of Company A and allowing missives to be entered into with a third party. The Law Society guidance in connection with these matters warned solicitors to withdraw and the Respondent failed to do so. Mr Reid also submitted that the Respondent had been dishonest and disingenuous with his professional colleagues by not properly advising them of what was going on in his letter of 10 September 2007. The Respondent had also been dishonest by using a credit card and Mr Reid invited the Tribunal to make the deduction that the Respondent should have accounted with regard to this to the Inland Revenue and did not. The Respondent made a dishonest allegation with regard to having had a flood at his offices and had been dishonest by producing fictitious fee notes and had been dishonest with regard to the shortfall on his client account. Mr Reid asked the Tribunal to make a finding of professional misconduct in respect of Articles 13.1 (a) to (e) and Article 13.1(f) as amended.

DECISION

The Tribunal found Ms Grandison and Mr Ritchie to be credible and reliable witnesses and accepted their evidence. The Tribunal found the facts in Articles 1.1, 2.1, 2.3, 3.1, 10.1, 10.4, 10.5, 10.6, 10.7, 10.9 and 10.10 of the Complaint to be proved beyond reasonable doubt. The facts in Articles 2.2, 3.2, 10.2, 10.3 and 10.8 of the Complaint the Tribunal found proved beyond reasonable doubt subject to the following deletions and amendments. With regard to Article 2.2 the Tribunal deleted the final two sentences as no evidence was led with regard to this. In connection with Article 2.4 the Tribunal deleted from "Enquiries were made" in line 12 to "Company D" in line 18 and from "Enquiries" in line 21 to "Company D" in line 23, as the Tribunal was not satisfied beyond reasonable doubt that these facts were proved on the evidence. In connection with Article 3.2 the Tribunal deleted the last two sentences as no evidence was led to substantiate this. In connection with Article 3.3 the Tribunal deleted from "They delivered" in line 6 to "of another" in line 13 and from "It was clear" in line 18 to "number of years" in line 25, because the Tribunal did not consider the evidence sufficient to substantiate this and the Tribunal also made a number of minor amendments in this Article to reflect the evidence led. In connection with Article 10.2 the Tribunal deleted the sentence starting "The Respondent" in lines 5 and 6 as this was not borne out by the evidence. In relation to Article 10.3 the Tribunal deleted from the words "The Complainers" in line 2 to "Respondent" in line 6 as the Tribunal was not satisfied that this had been proved on the basis of the evidence led. In connection with Article 10.8 the Tribunal deleted the last three sentences as this was not spoken to in evidence. The Tribunal also deleted Articles 4.1 – 9.1 and 11.1 to 11.2 as the fiscal did not lead any evidence with regard to these averments.

On the facts found as proved the Tribunal had no hesitation in finding the Respondent guilty of professional misconduct. In respect of the Company A matter, the Respondent was aware that his client, Company A had concluded missives with a number of individuals in respect of the sale of units to them. Despite this knowledge and without advising the prospective purchasers or their solicitors, the Respondent acted on behalf of Company A when it negotiated and sold its interests in the development to a third party. The Tribunal considered that the Respondent brought

the profession into disrepute by knowingly permitting his client to sell heritable property to a third party when his client was contractually bound to sell to others. The Tribunal also considered this to be a breach of Article 7 of the Code of Conduct for Scottish Solicitors 2002. It is important in order to preserve the integrity of the conveyancing system in Scotland, that solicitors should not, where they are aware that a client has concluded missives with a number of purchasers, proceed to negotiate a separate transaction and act in the sale of a development site to a third party knowing that the client would be in breach of the various contracts with prospective purchasers. The Respondent should have refrained from acting for Company A in respect of the subsequent transactions. As a result of the Respondent's actions a number of purchasers were financially disadvantaged in that they did not receive their full deposits back. The Tribunal found it unnecessary to decide whether the Respondent's conduct in this matter also amounted to a breach of Article 1 and / or Article 5a of the Code of Conduct. The Tribunal however had no hesitation in finding that the Respondent's conduct in acting in this manner amounts to professional misconduct in terms of the Sandeman test. (Richard Allan Sandeman-v-The Council of the Law Society of Scotland [2011] CSIH 24 P433/10).

The Tribunal also found the Respondent guilty of professional misconduct in respect of his knowingly falsely representing to the Law Society that his accounting records had been destroyed in a flood when they clearly had not been. Article 7 of the Code of Conduct for Scottish Solicitors provides that "solicitors must act honestly at all times and in such a way as to put their personal integrity beyond question". The Respondent was in breach of this code by providing false information to his professional body and the Tribunal consider that this would be regarded by competent and reputable solicitors as serious and reprehensible. The Tribunal was also extremely concerned by the fact that the Respondent acted so recklessly in clearing money out of his client's accounts on 4 November 2008 when he could not be sure that these monies were actually due to him. The Tribunal was satisfied on the basis of the evidence from Morna Grandison that in doing so he removed approximately £116,200 of client's money to which he was not entitled. The Tribunal consider this to be totally unacceptable and it puts the Respondent's personal integrity in severe doubt.

The Tribunal also found the Respondent guilty of professional misconduct in respect of his failure to account to the liquidators of Company A and Company E and failure to respond to the reasonable enquiries of the liquidators concerning matters of importance identified by the liquidators. The Tribunal consider that it puts the Respondent's personal integrity into question when he does not answer questions about client's funds. The Tribunal also had concerns with regard to the apparent unlimited use of a credit card on the Company A and Company D accounts but the clients did not make a complaint about this and the Tribunal was unable to find it proved beyond reasonable doubt that the Respondent was not authorised to use this money.

The Tribunal also found the Respondent guilty of professional misconduct in respect of his breach of Rule 4 of the Accounts Rules due to the shortfall of more than £8,000 on his client account.

The Tribunal was not able to find a breach of Article 9 of the Code of Conduct or find the Respondent guilty of professional misconduct in respect of misleading the solicitors acting for the purchasers of the properties at Property 2, because it is not clear to the Tribunal what the Respondent had been told by Company C. The Tribunal accordingly cannot find that what the Respondent stated in his letter of 10 September 2007 was dishonest. Company C were the finders for the purchasers and accordingly it is likely that the purchasers would have had some contact with Company C. No evidence was led with regard to what any of the purchasers were told. The Tribunal is also not able to find, on the basis of the evidence led, that the Respondent acted dishonestly by not disclosing money to the Inland Revenue.

PENALTY

Given the Findings of professional misconduct made, the Tribunal had no hesitation in striking the Respondent's name from the Roll of Solicitors in Scotland. A solicitor who acts in this way is not acting honestly or with personal integrity and is not a fit and proper person to be a solicitor. The Tribunal made the usual order with regard to expenses and publicity.

Chairman