

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

**FINDINGS**

**in Complaint**

**by**

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

**against**

**ANNALINE WEBSTER,  
Independent Qualified  
Conveyancer, The Conveyancing  
Shop, 8 South Bridge, Cupar, Fife**

1. A Complaint dated 18 June 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Annaline Webster, Independent Qualified Conveyancer, The Conveyancing Shop, 8 South Bridge, Cupar, Fife (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. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 12<sup>th</sup> December 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 12<sup>th</sup> December 2007. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The

Respondent was present and represented by James McCann, Solicitor, Clydebank. This hearing was improperly constituted and the Tribunal accordingly reconvened on 26<sup>th</sup> February 2008. At the reconvened hearing the Complainers were represented by their fiscal, Sean Lynch. The Respondent was present and represented by James McCann, Solicitor, Clydebank.

5. An amended Complaint dated 11<sup>th</sup> December 2007 was lodged with the Tribunal and a Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the amended Complaint. No evidence was led.
6. The Tribunal found the following facts established

6.1 The Respondent was born on 6<sup>th</sup> December 1974. She is an independent qualified conveyancer and qualified as such on 16<sup>th</sup> June 2000. The Respondent is also an executry practitioner having qualified in that capacity on 19<sup>th</sup> February 1998. She carries on business as the Conveyancing Shop at 8 South Bridge, Cupar, Fife.

**Inspection of 9<sup>th</sup> February 2004.**

6.2 On 9<sup>th</sup> February 2004 a guarantee fund inspector employed by the Complainers carried out an inspection of the books and records of the Respondent. The following matters were noted:-

- (a) It was found that the Respondent operated a general client account in breach of regulation 24(1) of the Independent Qualified Conveyancers (Scotland) Regulations 1997. The account had never been reconciled and it was impossible to tell whether the balance currently held was sufficient to cover client balances as no listing of monthly client balances had been produced nor was there a client control account. Interest was received but was not being allocated to clients.

- (b) A number of lodgments amounting in total to £16,072 were paid into the firm's bank account in error on 28<sup>th</sup> May 2003. These sums should have been paid into the individual client accounts. The sum of £16,072 was transferred to the general client account on 30<sup>th</sup> May 2003. On 9<sup>th</sup> January 2003 £60,070 was lodged in the firm's account and later transferred into the general client account on 14<sup>th</sup> January 2003. This sum should also have been paid into individual client accounts.
- (c) There were in excess of 500 separate accounts held, many of which had been left unattended for many months, in breach of Rules 24 (2) and 24(6) of the regulations condescended upon.
- (d) Previously the Respondent had been in partnership with a Mr. C. He left the partnership on 30<sup>th</sup> June 2003. A balance was held in respect of a client called F in the sum of £1537.01. The ledger account was retained by Mr. C when he left the firm but the funds were not transferred to his new firm. No client ledger account existed in relation to these funds.
- (e) Client account statements remained in their unopened envelopes and had not been attended to.
- (f) Many ledger accounts did not have a year noted on them therefore it was not possible to tell to which year the transactions related. Several client ledger accounts did not reveal whether funds received were coming from a bank or building society or from the clients themselves.
- (g) A ledger account for S L was incomplete. Postings were omitted. The balance at 27<sup>th</sup> August, year not known, was shown to be £39,352.37 at the inspection. The bank certified the balance at 31<sup>st</sup> December 2003 to be £10,221.14.

- (h) The client ledger account for a client called P did not agree with the balance certified by the bank.
- (i) The client ledger account for K S showed a balance of £650.00 held for stamp duty. The Respondent however stated that the stamp duty had been paid. Recording dues were shown as having been paid on 4<sup>th</sup> December, year unknown.
- (j) A client ledger account for K & L D was impossible to understand due to lack of narrative. It was understood that a loan said to have been received was actually a mis-posting. Loan funds from the Bank of Scotland were shown as being received on 27<sup>th</sup> September year unknown. Funds of £110,000 were noted as having been received on 24<sup>th</sup> December year unknown but there was no information as to the source of these funds.
- (k) The ledger account for K O showed a sum of £106,000 being received on 4<sup>th</sup> October, year unknown but did not make it clear that this was a bridging loan. No narrative was available to explain that the payment through the client's sale ledger was for the repayment of a bridging loan and that £441.42 represented interest and charges. Stamp duty and recording dues were paid through the sale ledger which should have been recorded in the purchase ledger.
- (l) There were other client ledger accounts which lacked narrative, and mis-postings which had not been corrected properly and contained incomplete information.
- (m) The clients' cash book had not been reconciled since at least May 2003. Regulations 26(3) and (6) of the regulations condoned upon require this to be done monthly.

- (n) No record of inter client transfers had been kept. One transfer had been noted between the client ledger account for R T and S C (the Respondent's former partner) which was not recorded in such a record.
- (o) Mr. C the former partner, had retained all relevant client ledger accounts that he handled. No copies were retained by the Respondent. Regulation 26(a) of the regulations condescended upon requires firm records and client records to be retained for ten years. Executry records require to be retained for forty years.
- (p) It was noted that there was no system in place establishing proof of the identity of clients, as required by Regulation 28(2) of The Money Laundering Regulations 1993. Nor was a record being kept of the source of income received whether from client's own funds or third parties. Payments made to clients and to institutions could not be verified from the records maintained by the Respondent. Paid cheques were not being returned by the Respondent's bank nor were receipts being obtained from clients and other recipients of funds.
- (q) There was a difference of approximately £1500 on the Respondent's monthly bank reconciliation (firm's account) as a 31<sup>st</sup> October 2003. This item had never been traced or adjusted.
- (r) A report from an accountant as required by regulation 30 (1) of the Regulations condescended upon should have been submitted by 31<sup>st</sup> December 2003 but had not been.
- (s) It was impossible to verify payments made to clients and institutions from the Respondents records. Cheques were not being returned by the bank from any accounts held, whether

general client account or individual accounts, nor were receipts being obtained from clients and other payees.

- (t) There was no firm's monthly trial balance.

### **Late Recording of Deeds**

6.3 The following were noted:-

- a) P B purchased a property on 30<sup>th</sup> May, year unknown and the disposition and standard security were not sent for recording until 30<sup>th</sup> July, year unknown.
- b) E A purchased property on 12<sup>th</sup> August, year unknown. The disposition and standard security were not sent for recording until December 2003.
- c) Similar delays were noted for clients ELM, ELL, FL, and FU.
- d) A & J D purchased property in Perth. The transaction settled on 17<sup>th</sup> March 2003. Loan funds of £48,500 were received from Northern Rock on that date. There was a balance of £110 held on the ledger and the deeds had not been recorded.
- e) B & KF purchased property in Forfar with the assistance of funds of £42,750 received from Nationwide on 9<sup>th</sup> September 2002. £143 remained on the ledger and the deeds had not been recorded.
- f) D & MD remortgaged property in Cupar. Loan funds of £67,000 were received from Northern Rock on 14<sup>th</sup> July, year unknown, and on the same date a loan of £47,653.12 was repaid to the Royal Bank of Scotland PLC. A balance of £110 remained on the clients' ledger. The standard security and discharge had not been recorded.

### **Guarantee Fund Committee Interview**

6.4 As a result of the findings of the inspection the Respondent was invited to attend a meeting of the Complainers Guarantee Fund Committee which took place on 22<sup>nd</sup> April 2004. As a result of the discussion there the guarantee fund committee recommended a further inspection of the Respondent's books and records.

### **Inspection of 16<sup>th</sup>, 17<sup>th</sup> & 18<sup>th</sup> November 2004**

6.5 A Guarantee Fund Inspector employed by the Complainers carried out a further inspection of the books and records of the Respondent on 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> November 2004. Prior to this inspection the Complainers received an annual accounting certificate prepared by a Chartered Accountant instructed by the Respondent. It certified that all matters were correct. It was apparent that a proper check of records had not been carried out. The Accountant was invited to attend for interview but declined to attend. On 1<sup>st</sup> September 2004, the Complainers advised the accountant that they had determined that no further certificates would be accepted from him on behalf of Independent Qualified Conveyancers. The accountant did not inform the Respondent of this decision but continued to work on her records up until the date of this inspection. The following matters were noted.

- (a) The client accounts had not been reconciled at the month ends following upon the last inspection. The bank ledger was originally set out in a book. This system was abandoned in May 2003. Thereafter a Mrs. A recorded the details of the entries from the bank statements rather than from the pay in books, cheque stubs and bank transfer details. She did not have an opening balance, and all attempts at reconciliation of the accounts included an old unexplained static sum noted as "outstanding" of £12,742.05. The balance produced at the

inspection made no allowance for any currently outstanding lodgments or withdrawals.

- (b) Between 28<sup>th</sup> October 2004 and 1<sup>st</sup> November 2004 there was a deficit of £43,500 on the general client account following upon a transfer of £103,000 to a firm of solicitors on 28<sup>th</sup> October 2004 from the client account when the only funds received in respect of the transaction in question were a bridging loan in the sum of £58,500.
- (c) The bank statement dated 6<sup>th</sup> October 2004 showed a credit of £10,069.48. There were however two current outstanding cheques in the sums of £7000 and £660 respectively. No details were available for other outstanding cheques. On the assumption that the sum of £12,742.05 hereinbefore condescended upon required to be deducted there was a deficit in excess of £10,000. There were however no records properly to verify that position.

6.6 On the basis of a random check of two of the twenty eight arch lever files containing current client ledger accounts and designated account statements the following was noted:-

- (a) Interest from 31<sup>st</sup> October 2004 had not yet been posted at date of the inspection.
- (b) Interest from earlier periods was still not posted in all cases. For example in the case of P interest received in April and July 2004 had not been posted at the date of the inspection.
- (c) A closed ledger account for MM&WC should have had £32.41 by way of interest posted to it but this had not been done. There were some accounts (for example AB &SR)



where the balances had been calculated incorrectly. In the example mentioned the balance was overstated by £44.00.

- (d) Accounts were seen where the balances had been adjusted by an entry being made on the account without any corresponding entry being made elsewhere, or cheques issued. For example on the P ledger, the balance was stated to be £38.19. Thereafter there was an entry “Ms B advised that £5.73 o/d and then balance was then reduced to negative balance of £5.73.” On the same client’s sale ledger £75 of income was noted as reimbursement. It was not apparently banked into the designated account. The Respondent indicated that this must be a cancelled cheque. However no cheque in that sum had been issued on the basis of the client ledger account. The interest amounted to £128.00
- (e) A reconciliation was produced as at 31<sup>st</sup> October 2004. It was calculated using a bank list of balances at close of business on 1<sup>st</sup> November 2004.
- (f) The designated accounts, excluding the firm’s accounts and the main account, plus the bank error left a total of approximately £1,402,790 to be reconciled with the client ledger account at 1<sup>st</sup> November 2004. The figure that should have been used for reconciliation at 31<sup>st</sup> October 2004 was approximately of £686,662. The balance at 31<sup>st</sup> October 2004 required to be adjusted for all cheques outstanding as at that date, When the inspector worked on only the very large accounts this reduced the balances to £30,440 held after allowing for the large outstanding cheques. The method of reconciling the accounts was wrong. The bank accounts that were certified by the bank appeared to be checked and agreed to bank statements, rather than client ledger account balances.

- 6.7 (a) At the previous inspection it was explained to the Respondent that client ledger accounts should fully explain transactions without reference requiring to be made to files. Despite that as at the date of the reinspection some accounts were not added correctly, and there were unexplained adjustments. Some client ledgers had been re-written but the original was still held without any reference to having been replaced.
- (b) In the case of M & AS, two sums of £17,000 each were recorded as paid to AJB, the first on 14<sup>th</sup> October and the second on 10<sup>th</sup> November, both 2004. If the sums in the ledger had been added, a debit balance would have existed. The ledger failed to record the fact that the first cheque had been returned to the firm and had been cancelled.
- (c) In the case of M M & WC the ledger did not record the fact that £7000 was received from Northern Rock PLC in September and a cheque issued to WC for that amount. This cheque was then returned cancelled and reissued to WC. There was no authority from MM to enable this payment to be made to WC. It was explained that this was to assist MM with his matrimonial problems.
- (d) Many ledgers read as if shortages existed as payments were made prior to receipt of funds. It was assumed that the cheques were issued to be held as undelivered. However there were no narratives to explain that this was the case. For example KB purchased property at a price of £46,500 with settlement on 29<sup>th</sup> October 2004 and funds were paid out on that date. Funds to cover this were only received on 1<sup>st</sup> and 3<sup>rd</sup> November 2004. The records generally did not conform to regulations 26(1) and (2) of the Regulations condescended upon.

- (e) From May 2003 onwards the client cash book was no longer maintained. The only record thereafter kept was the general client bank account ledger which was not being correctly recorded. No cash book was kept in respect of the designated client account transactions. The only details of transactions were those noted on the client ledger accounts, all in breach of regulations 26(3) and 26(6) of the Regulations condescended upon.
- (f) At the previous inspection the Respondent confirmed that client fact sheets would be completed for clients. As at the date of the reinspection, these were not seen to be prepared for any clients. Accordingly the Respondent continued to be in breach of Regulation 28(2) of the regulations condescended upon and of the Money Laundering Regulations 1993.
- (g) EP purchased property on 12<sup>th</sup> October 2004 at a price of £229,000. The funds apparently came from the client, but there was no evidence of the source.
- (h) JH purchased property on 29<sup>th</sup> October 2004 at a price of £16,501.73. The funds apparently came from JH but again there was no evidence of the source of the funds.
- (i) C W purchased property on 22<sup>nd</sup> October 2004 at a price of £20,000. Again the funds apparently came from the client and again there was no evidence of the source of the funds.
- (j) In respect of DOC, M&AG, JH, and NC all of whom either bought or sold property, there was no proof of identity held.
- (k) In the case of DOC, M& AG, JG, W & C, and NW, no terms of engagement letter had been issued to the clients in breach of regulation 12(1) of the regulations condescended upon.

- (l) The Respondent was still not receiving cancelled cheques back from the bank. Neither was she obtaining receipts from clients and institutions.

6.8 The Respondent made arrangements to have a meeting with an accountant on 19<sup>th</sup> November 2004, this with a view to her records being put in order within a four month period, when a further re-inspection would take place. The inspector made it clear to the Respondent at the summing up at the end of the inspection, and confirmed in a letter dated 13<sup>th</sup> December 2004 to the Respondent, that the Respondent was to obtain and forward the written report and recommendations arising from the involvement of the accountants. This was not received.

**Re-inspection of 11<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> April 2005.**

6.9 A guarantee fund inspector employed by the Complainers carried out a further inspection of the books and records of the Respondent on 11<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> April 2005. At this time the employee of the accountants who was carrying out the work was on holiday. No report had ever been prepared. The inspector spoke to a partner in the firm of James Murray & Co CA and it was agreed that when the employee returned from holiday a report would be prepared. The report was prepared, dated 19<sup>th</sup> April 2005, and identified a number of problems with the bookkeeping. The Account Certificate for the year to 30<sup>th</sup> June 2004 should have been lodged by 31<sup>st</sup> December 2004 but at the date of the inspection remained outstanding. The question of this certificate was raised at the November 2004 inspection and in letters from the Complainers to the Respondent dated 13<sup>th</sup> December 2004, 13<sup>th</sup> January, 11<sup>th</sup> February and 21<sup>st</sup> March 2005. It was noted that the Respondent continued to operate a general client account, in breach of rules 24 (1) and 24(9) (interest) of the regulations condoned upon. The general client account had not yet been

fully reconciled. There was nothing to indicate that interest which was due to clients had been credited or paid to the client to whom it should have accrued. Neither was it apparent that all client ledgers accurately reflected the true position in relation to client funds. It was apparent that funds had been paid to or on behalf of clients when no funds were held on behalf of those clients, thus creating a deficit. Had the Respondent overdrawn an individual client account, that would have constituted a breach of regulation 25 of the regulations condescended upon. It was apparent from the terms of the report by the Accountants that a balancing figure of £224.10DR required to be applied to cause the reconciliation to balance.

6.10 There was a duplication of a payment of £645.00 made for a client in January 2004 which was eventually traced after November 2004 by the accountants.

6.11 Two sums totaling £480 were overpaid for two clients in May 2004, and traced by the accountants after November 2004.

6.12 £3000 was held in the wrong account for a client in January 2004 until August 2004 when this was corrected.

6.13 In March 2004 the Respondent paid out the sum of £5000 on behalf of her parents, as clients of the Respondent, but this sum was either not received, or was lodged in the firm rather than the client account.

6.14 Interest earned from the start of the firm at 2000 until 30<sup>th</sup> June 2004 required to be accounted for. Accordingly the Respondent was in multiple breach of regulation 26 of the regulations condescended upon. The consequence of these errors was that there were deficits on the general client account. Interest received and due to clients was reduced because of the deficits on the

account. Regulation 24(3) of the regulations condescended upon requires a client account to be an interest bearing account which, because there should be a separate account of each client and no general client account, would mean that all interest of each individual client account would accrue to that client.

6.15 The general client account still had not been fully reconciled. The various differences identified by the accountants, including the interest, required to be reallocated to the correct client ledgers and the difference required to be identified. The solution suggested by the Respondent was that she should wait for a period for any unrepresented cheques to come back and then send the balance to the Queens and Lord Treasurers Remembrancer.

6.16 The client bank ledger produced for the old client bank account from November 2004 had an unidentified balance at the outset of £727,566.76. At the previous inspection, an incorrect posting of £27,381.87 DR made on 10<sup>th</sup> November 2004 was pointed out. This entry still remained in the reference column and the balance was not changed by the posting. The balance as at 28<sup>th</sup> February 2005 showed £857,891.52 whereas the actual bank account had just over £4000 at credit. The Respondent still required to create fully balanced reconciliations in place for each month end from 1<sup>st</sup> July 2004 to the date of the inspection. It was explained to her that it was only after all of this had been done that consideration might be given to whether it would be appropriate to remit any balance proved to be held as interest that could not be paid to clients, to the Queens and Lords Treasurers Remembrancer.

6.17 As at the date of this re-inspection the majority of client ledger accounts had the balances held in designated accounts for the firm on behalf of the individual clients. Nonetheless three client ledger accounts were noted from a test check (£44 held for WC, £198

held for Mr I, and £15 debit for LMC) which implied that funds were still being held in or paid from the general client account.

6.18 Despite the terms of the regulations condescended upon, a new general client bank account had been opened on 31<sup>st</sup> January 2005. As at the date of the inspection, only the month ended 28<sup>th</sup> February 2005 could be checked, With the account only one month old, errors already existed with mis-postings.

6.19 DG was a client on whose behalf funds were received in the sum of £63,000 on 10<sup>th</sup> February 2005 and paid out on the following day. The postings were not made until some time between 4<sup>th</sup> and 10<sup>th</sup> March 2005.

6.20 In the case of LG, £10,966.12 was paid out on 17<sup>th</sup> February 2005 but the incoming funds did not arrive until 18<sup>th</sup> February 2005 thus creating a deficit. The postings in relation to these funds were not made until sometime between 4<sup>th</sup> March and 10<sup>th</sup> March 2005.

6.21 Other discrepancies of dates were noted in connection with clients J & T. The explanation given by the Respondent was that the firm would work online, and that may cause a difference in dates between the ledgers and the bank statements.

6.21 The bank ledger supplied for February 2005 did not include a running balance. Two “deletions” were noted in this print out. The first referred to the cancellation of a debit entry of £128,251.00 and the second the cancellation of a debit entry of £51,944.91. There was no indication of where the other side of these entries had been posted and the only explanation which the Respondent could offer was that they were “hidden”. The Respondent was invited to contact her software supplier to obtain an explanation of this.

6.22 Although many of the designated client bank accounts had now been closed, as had the related client ledger accounts, many client accounts were still open and required the interest to be paid over to the client and the accounts closed, in breach of regulations 24(2) and (6) of the regulations condescended upon.

6.23 Client ledger account for B showed a balance of £58,520.82 at credit. This sum had been paid out directly from the bank on 28<sup>th</sup> February 2005 but was not recorded in the ledger. Client ledger account for A & MK did not show a posting of interest in the sum of £48.74 received in January 2005. Client ledger for GRS showed a balance of £36.39 but the bank account appeared to be closed and there was no balance seen on the bank list. These failures to make correct postings were compounded by the failure to carry out adequate reconciliations. The Respondent was accordingly in breach of regulation 26(1) of the regulations condescended upon.

6.24 No formal reconciliation was carried out of the client's cash book. A list showing the balances held in the client ledger accounts was prepared to 1<sup>st</sup> February 2005. The balances held per the bank statements were noted against the clients' names. The total showed the bank balances as £436,914.26. The list of client balances held was shown as £25,252.40. No attempts were noted on the individual bank statements to reconcile the statements to the relevant client ledger accounts and the apparent difference of £410,000 was unexplained as was the basis of the selection of the date of 1<sup>st</sup> February.

6.25 As no proper list of bank balances was held, the inspector arranged for a list to be faxed to the office by the bank. The bank list as at 28<sup>th</sup> February 2005 revealed that a small balance still existed for an account of a client of the Respondents former partner, client M. No ledger was held in respect of this sum. There was an outstanding



lodgment of £2,412.50. A statement was seen for client J, with a balance. This was not seen on the bank list. Closing statements were not held for all cases. The Respondent was accordingly in breach of Regulation 26(6) of the Regulations condescended upon. It was explained to her that the bank statements should be checked against the ledger account balances and the outstanding lodgments and payments adjusted on the bank statement balances to show the true position and the list should be added again noting all of the adjustments. As further explained to the Respondent she required to extract a list of balances from the client ledger at the same month end date and these should be added and agreed in total to the above list thus proving how much money was held invested for each client at the month end.

6.26 Regulation 26(8) of the regulations condescended upon requires a record of the reconciliation to be preserved by the independent qualified conveyancer for at least ten years from the date of the last entry in it. This regulation had not been complied with, as the bank ledgers were not all currently available for the whole period of the firm's existence, commencing in 2000.

6.27 Three client ledger accounts showed that the client individual accounts had been overdrawn for short periods, apparently because the Respondent had not waited for funds to clear before paying funds out, and in these three cases (LJ £750, AM £1,661.63 and JW £4,081.38), the bank dishonoured the cheques.

6.28 Although fact sheets in relation to clients had been put in place, many were left almost blank.

6.29 The accountants report which was due to be lodged by 31<sup>st</sup> December 2004 remained outstanding as at the date of the reinspection. The accountants had managed to reconcile the bank account to within 10p as at 30<sup>th</sup> June 2004. The current

reconciliation for the firm account as at 31<sup>st</sup> January and 28<sup>th</sup> February 2005 had an error noted in the sum of £444.85 which had not been traced or corrected.

### **Late Recording of Deeds**

6.30 The following late recording of deeds were noted:-

- a) A & MK purchased property on 28<sup>th</sup> October 2004. The deeds were not sent for recording until 5<sup>th</sup> April 2005.
  
- b) LJ purchased property on 12<sup>th</sup> August 2004 at a price of £62,000. Stamp duty of £730 was paid late on 13<sup>th</sup> January 2005 by the Respondent. Recording dues were paid by the firm on 2<sup>nd</sup> February 2005 in the sum of £187.00, There was accordingly a delay of almost six months in recording the deeds. During that period the lender, Northern Rock PLC, was unsecured.

6.31 The Respondent was routinely failing to obtain sufficient proof of identity and information in relation to source of funds so as to comply with the money laundering regulations 1993. Regulation 28(2) of the regulations condensed upon requires compliance with the 1993 Money Laundering Regulations.

### **Re-inspection of 11<sup>th</sup> and 12<sup>th</sup> January 2006**

6.32 The Complainers resolved to re-inspect the books and records of the Respondent's practice and did so on 11<sup>th</sup> and 12<sup>th</sup> January 2006. While a general improvement in the standards of the Respondent's record keeping was apparent the following matters were noted:-

- a) The general client bank account which had been noted at previous inspections had still not been fully reconciled. There was still unallocated interest of £176.33.

- b) A test check of old balances taken to fees revealed that five sums each in excess of £25.00 had been taken over into fees in August 2005, against the terms of the guidance issued by the Complainers in relation to dealing with old client credit balances.
- c) Although the general client account was no longer being used for current transactions, two lodgments were made to the account one of £1000 in August 2005 being an error on the part of the Respondent and another in November 2005 by a lender who deposited a £14,000 retention in the account. Both of these sums had been transferred to the correct accounts prior to the date of the inspection.
- d) The Respondent acted on behalf of W and S B in connection with a purchase and sale. The B's changed their lender and the Respondent was unable to act in the constitution of the security relative to the purchase. With the agreement of the B's, the purchase file was transferred to another firm. At that point, the Respondent paid over £37,611.97 to the new firm. She had no written authority to do so.
- e) The Respondent held funds on behalf of D C. On 8<sup>th</sup> July 2005 she transferred £500 of these funds to W T. No written authority was in existence for the payment and none was ever produced.
- f) The Respondent held funds for K D. She transferred £13,138.26 on 21<sup>st</sup> October 2005 to a joint ledger in the name of K D. and a Mr. M. No authority existed for this transfer. The Respondent stated in correspondence subsequent to the inspection that she did not realise that any such authority was necessary.

- g) A cheque in the sum of £7,250.00 received from client F on 20<sup>th</sup> October 2005 was repeatedly dishonoured by the client's bank. The non payment of the cheque and the representation were not recorded within the client ledger. (No shortage arose from this.)
- h) A payment of £7,000 made privately between clients in relation to a conveyancing transaction was not recorded within the ledger narrative relative to the transaction. Specifically, what happened was that WC sold two properties in Newburgh. The ledger showed the total sale price as £39,000. Inspection of the file revealed that the sale price for one property was £25,000 less £7,000 already paid, and the sale price of the other was £21,000. As hereinbefore condended upon this was not recorded in the ledger.
- i) No client cash book was being kept to record all transactions in respect of all the individual client bank accounts as required by Rule 26(3)(a)
- j) As a consequence of the foregoing, a sum of £4,700 was paid into the individual client account of F D on 15<sup>th</sup> June 2005 but was not posted to her ledger account until after 29<sup>th</sup> June 2005.
- k) Although a list of client balances was extracted each month, the absence of control accounts meant that there was no information to indicate discrepancies within the list. Four discrepancies were noted by the inspector totalling approximately £285 as at 30<sup>th</sup> November 2005.
- l) The sums noted on the list in respect of individual bank accounts showed the balance as recorded on the bank

statements, not the reconciled figures to agree with the ledger balances Accordingly no account was taken of, for example, large outstanding conveyancing cheques.

- m) Bridging loans were not included in the reconciliation and did not appear in the client ledger.
- n) The actual list of balance supplied was unclear and contained many unexplained deletions.
- o) The inter client transfer records did not include the transfer of sums between ledgers where sums had been posted to the wrong ledger in error.
- p) Some clients were still found to be have been requested to provide copies of proof of identity rather than the original document. Several clients were advised to call at an estate agents to have their identity verified. Although estate agents are regulated for the purposes of Money Laundering Rules there was no evidence to indicate that the Respondent had satisfied herself that the documents were being verified by a suitable person within the estate agency business.
- q) There were seven separate cases in which proof of identity was not seen at the time of the inspection. The Respondent was able, subsequent to the inspection, to produce evidence of identity for only three cases.
- r) The firm's trial balance contained no reference to motor vehicles, office equipment, depreciation, capital accounts, outstanding balance on hire purchase accounts, outstanding balance on bank loan, the old client bank balance in respect of unallocated client interest, client credit balances and control

accounts for individual client bank accounts including bridging loans.

- s) The sum recorded as being due by clients for outlays was incorrect, omitting as it did eleven instances totalling £365.39 which were due to mispostings.
- t) Two further mispostings were noted which resulted in a debit of £70,000 in the ledger of Client 1 and a credit of £70,000 in the ledger of Client 2. The Respondent explained that this was a simple error which was rectified immediately and altered on the firm account, but not on the trial balance. Remedial action was subsequently taken.
- u) A sum of £138.05 was misposted as commission.

#### **Inspection of 11<sup>th</sup> –14<sup>th</sup> September 2006**

6.33 Guarantee Fund Inspectors carried out a further inspection of the books and records of the Respondent between 11<sup>th</sup> and 14<sup>th</sup> September 2006. *Inter alia* they found the following:-

- a) **General Client Account**  
The old general client account had been more or less reconciled. A payment was identified as requiring to be made to the Q & LTR in the sum of £261.80 and thereafter that account was to be closed. In due course the Respondent confirmed that this had been done.
- b) **General Client Bank Account Ledger**  
In respect of the new general client bank account ledger, there was no opening balance; there was no running balance or month end balance; the dates of postings were not in chronological order, and many overlapped in the following month for no obvious

reasons; there was no month end cut off point to carry out a reconciliation; not all reconciliation papers were retained and could not therefore be produced if required. A balance of £4,092.32 existed at 30<sup>th</sup> June 2006, whereas this account should only be a clearing account. This was made up by a payment on 30<sup>th</sup> June 2006 of £29,17.97 for MB & F where no funds were held to cover the payment, and a receipt of £7,000 for M & JM on 30<sup>th</sup> June 2006 which was not paid into the individual client account until 4<sup>th</sup> July 2006. This created a deficit.

6.34A further deficit was noted in respect of MM & JF where the account was overdrawn by the sum of £57,015 from 1<sup>st</sup> March 2006 to 31<sup>st</sup> March 2006. This resulted from the firm settling a transaction on 1<sup>st</sup> March 2006 using uncleared funds received from the client which did not clear as expected.

6.35 In a number of cases written authority was not available in respect of payments made other than to the client in breach of regulation 23(3)(a). Specifically, in the case of J & L a payment of £850.00 was made without apparent authority to an estate agent on 14<sup>th</sup> July 2006; In the case of Mr & Mrs F a payment was made to an estate agency without apparent authority in the sum of £874.94 on 17<sup>th</sup> July 2006; in the case of KA & MDC a payment was made to KC of £12,017.09 on 29<sup>th</sup> June 2006 without apparent authority; In the case of DD, a payment was made to Company 1 in the sum of £215,593.05 on 15<sup>th</sup> June 2006 without apparent authority.

6.36 Ledger account headings were inadequate: for example the account in the name of MLM should have been in joint names with JF; the account in the name of Company 1 should have been in the name of DD all in breach of Regulation 26(1).

6.37 Despite this having been raised repeatedly at previous inspections, the Respondent was still not recording all transactions through a cash book with a month end balance nor through a global or control bank ledger with a running balance which was capable of being agreed to the total of individual accounts at each month end. From the reconciled list of balances supplied at 31<sup>st</sup> July 2006 five separate errors on the listings were highlighted, meaning that the totals for funds held as recorded in both the client ledgers and the bank were incorrect. Further to that the list supplied by the bank omitted eight balances totalling over £195,000, all in breach of Regulation 26(3) and (6).

6.38 In the case of CT's ledger, no proofs of identity or explanations of reasons why these were not required was seen in respect of H T who paid in £40,000. Evidence of identity was not available for Dr. S R, DAK, MLD, WR&GC, DD, and Company 2, on breach of the Money Laundering Regulations and of Regulation 28(2). Additionally it was noted that in the case of MLM and JF, the client was asked to forward copies of proof of identity, rather than being asked for original documents.

6.39 No details were available regarding the source of the funds in respect of £75,680.51 received on 5<sup>th</sup> May 2006 for MG and LSJW nor in respect of £70,669.59 received from Barclay's bank by counter cheque on 13<sup>th</sup> June 2006 for MRD.

6.40 There were a number of discrepancies in the firm's monthly trial balance, and some of the balances listed appeared to be client balances.

**Mrs. F D**

6.41 In or about April 2005 Mrs. D decided to sell Property 1. She contacted Estate Agents who put her in touch with the Respondent. In due course, the Respondent was instructed by Mrs. D both in



connection with the sale of Property 1 and the purchase of Property 2. Both transactions settled in June 2005. At no time during the currency of either transaction did the Respondent meet Mrs. D, nor did Mrs. D ever attend at the Respondent's office.

6.42 On 13<sup>th</sup> June 2005 the Respondent sent a fax to Mrs. D at her place of work. She enclosed two blank affidavits and the last page of a standard security which Mrs. D was to sign and fax back to the Respondent. Mrs. D duly did so. On the same day (13<sup>th</sup> June) the Respondent wrote to Messrs Rollo Davidson and MacFarlane Solicitors who were representing Mrs. D's lender a letter in which she stated that Mrs. D would attend at her (the Respondent's) office that day to sign the security documents. Neither the outgoing nor the incoming faxes passing between the Respondent and Mrs. D were retained on the Respondent's file.

6.43 On 8<sup>th</sup> June 2005 the Respondent sent to Mrs. D the disposition relative to the sale of Property 3 and the relative Matrimonial Homes Act affidavit. The letter from the Respondent asked Mrs. D to sign the disposition where indicated and have it witnessed. She was also asked to sign the Matrimonial Homes Act affidavit "where indicated". No directions for having this document notarised were given by the Respondent. Mrs. D signed the documents and posted them back to the Respondent. Due to a failure in the postal system however, the Respondent did not receive these documents. On 21<sup>st</sup> June 2005 the Respondent again wrote to Mrs. D. She enclosed a further disposition and Matrimonial Homes Act affidavit with directions for signing both documents but made no mention of the requirement to have the affidavit notarised. Mrs. D signed the disposition and affidavit and returned them to the Respondent.

6.44 The Respondent completed and forwarded to Messrs Rollo Davidson and MacFarlane Solicitors as agents for the lenders a

standard security in favour of Mortgages 1 Ltd and relative Matrimonial Homes Act affidavit. She purported to witness the signature of Mrs. D on the standard security, and to have notarised the Matrimonial Homes Act affidavit, both on 13<sup>th</sup> June 2006 at her offices in Cupar. As hereinbefore condescended upon Mrs. D has never attended at the Respondent's offices at Cupar nor did she ever meet the Respondent. The signatures on the standard security and Matrimonial Homes Act affidavit condescended upon are not those of Mrs. D. Mrs. D's signatures in the documents are believed to have been forged by persons whose identities are meantime unknown.

6.45 The Respondent completed the Matrimonial Homes Act affidavit in respect of the sale of Property 3 aforesaid and represented on it that the document had been signed by Mrs. D at Cupar on 13<sup>th</sup> June 2005, which the Respondent was aware was untrue.

7. Having heard submissions from the Law Society's fiscal and the Solicitor on behalf of the Respondent, The Tribunal found the Respondent guilty of professional misconduct in respect of:

7.1 her operating a general client account, in breach of Regulation 24(1) of the Independent Qualified Conveyancers (Scotland) Regulations 1997, despite having been advised by the Complainers that she should desist from doing so.

7.2 her failure to maintain adequate records, in breach of the said regulations.

7.3 her failure to maintain and reconcile a cash book, in breach of regulation 23(3) and (6) of the said regulations.

7.4 her failure to retain records for the period required by regulation 26 of the regulations.

7.5 her failure to account for interest as required by Regulation 24(1)(6) and 26 of the said regulations.

- 7.6 her making inter account transfers between clients and payments to third parties without written authority required by the said regulations.
  - 7.7 her failure to timeously record deeds.
  - 7.8 her failure to timeously lodge the Accountants Certificate required by Regulation 30(1) of the said regulations.
  - 7.9 her operating with a shortage on the client account in breach of Regulation 25(4) of the said regulations.
  - 7.10 her failure to obtain the necessary proof of identity and evidence as to source of funds as required by Regulation 28(2) of the said regulations and by the Money Laundering Regulations 1993.
  - 7.11 her witnessing and et separatum notarising a signature which she knew had to have been added to a document while she was not present, and her misleading the solicitors acting for her client's lender.
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 26 February 2008. The Tribunal having considered the Complaint dated 18 June 2007 at the instance of the Council of the Law Society of Scotland against Annaline Webster, Independent Qualified Conveyancer, The Conveyancing Shop, 8 South Bridge, Cupar, Fife; Find the Respondent guilty of Professional Misconduct in respect of her operating a general client account despite having been advised by the Complainers that she should desist from doing so, her failure to maintain adequate records, her failure to maintain and reconcile the cash book, her failure to retain records for the required period, her failure to account for interest, her making inter account transfers between clients and payments to third parties without written authority, her failure to timeously lodge an Accountant's Certificate, her operating with a shortage on the client account, her failure to obtain the necessary proof of identity and evidence as to the source of

funds all contrary to Regulations 23(3), 24(1), and (6), 24(1)(6), 26, 25(4), 28(2), and 30(1) of the Independent Qualified Conveyancers (Scotland) Regulations 1997 and the Money Laundering Regulations 1993, her failure to timeously record deeds and her witnessing and et separatum notarising a signature which she knew had to have to been added to a document whilst she was not present and misleading the solicitors acting for her client's lender; Censure the Respondent; Fine her in the sum of £3,000 to be forfeit to Her Majesty; 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 Law Society's last published 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)**

**Malcolm McPherson**

**Vice Chairman**

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

**IN THE NAME OF THE TRIBUNAL**

**Vice Chairman**

**NOTE**

The Complaint was first considered by the Tribunal at a meeting on 12<sup>th</sup> December 2007. Due to the Scottish Government bringing into force legislation altering the Quorum of the Tribunal without advising the Tribunal, this Tribunal was not properly constituted. The Tribunal accordingly reconvened properly constituted on 26<sup>th</sup> February 2008. The Scottish Government has agreed to pay the expenses of the improperly constituted Tribunal. On 26<sup>th</sup> February 2008, the fiscal lodged an amended Complaint. The Respondent pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint. The fiscal moved to make a further amendment to the amended Complaint at paragraph 11. There was no objection and this was agreed.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch advised that a number of items had been withdrawn from the Complaint. Mr Lynch explained that this was the first prosecution brought against a conveyancing and executory services practitioner in terms of the Law Reform Miscellaneous Provisions (Scotland) Act 1990. Mr Lynch referred to Section 16 which established the Scottish conveyancing and executory services board which was set up to regulate conveyancing services provided by persons other than solicitors. Section 16 and 18 required the Board to establish and maintain a register of conveyancing and executory practitioners. The Board regulated the practices of licensed conveyancing and executory practitioners. Section 20 of the Act set out the provisions in connection with professional misconduct and the powers which the Board had. These powers had been transferred to the Tribunal. Mr Lynch stated that there was no distinction in Section 20 between conveyancing and executory practitioners and that if the Tribunal was to exercise power under the Act this would apply to the Respondent equally as a conveyancing and executor practitioner despite the fact that the Complaint only related to conveyancing. Mr Lynch explained that in 2003 the Conveyancing and Executory Services Board was wound up and the disciplinary functions were transferred to the Tribunal. Mr Lynch stated that the Complaint arose from inspections of the Respondent's books. These revealed a number of serious deficiencies in the Respondent's bookkeeping. Mr Lynch stated that the Law Society

acknowledged that the rules had a fundamental difficulty in that rule 24 of the Independent Qualified Conveyancers (Scotland) Regulations 1997 required a separate bank account to be maintained for each individual client. It was not possible to have a general client account, this caused practical difficulties. Mr Lynch stated that there were a number of serious breaches of the 1997 rules. In connection with the signatures, it was clear that Mrs D had not attended the Respondent's office or ever met with the Respondent. The Respondent got the documents with signatures which purported to be Mrs D's. It was not known how this had come about. The Respondent witnessed and notarised the signatures without seeing the signatures admitted. She then presented these documents as notarised and witnessed by her which led the bank to believe that the documents had been signed in her presence. Mr Lynch stated that there had been a recent inspection of the Respondent's books in May 2007 and although there were a number of matters which required attention, none were of sufficient concern to come to the Tribunal and the Respondent's record keeping had improved.

#### **SUBMISSIONS FOR THE RESPONDENT**

Mr McCann explained that in connection with the signatures, the background was that the purchase and sale transaction was running late and documents arrived in the Respondent's office bearing to be signed by the client and she assumed all was in order. She witnessed the signatures and sent them off. There were complications however and the Respondent used £2,700 of her own money to enable the transaction to settle which she then included in the fee note to the client. The Respondent was trying to help the client who had young children get entry to her new property. Mr McCann explained that Mrs D went to a different lawyer and the documentation was re done properly and no harm was done. Mr McCann stated that the Respondent had been wrong to dispense with the formalities in order to have the transaction completed. He, however, emphasised that there was no sinister motive in her doing this. Mr McCann explained that the Respondent had trained to become an executory practitioner and then trained to become a conveyancing practitioner. She had had her own business since 2001. When conveyancing and executory practitioners were established it was thought that there would be a large number of them. However, there were only two or three of them. In the past, conveyancing and executory practitioners

were regulated by the Conveyancing and Executory Services Board which inspected the Respondent's books and only had minor criticisms. When the Law Society took over regulation in August 2003, they found matters of concern. The Respondent attended the guarantee fund interview but did not take advice and she was struggling to manage the requirements of the new regime imposed by the Law Society. Mr McCann emphasised that it was of credit to the Respondent that by April this year, there had been a significant improvement and she had sorted most matters out. Mr McCann stated that the Respondent had run a successful practice for seven to nine years and there had only been one client complaint being Mrs D. Mr McCann referred the Tribunal to various references lodged from local business people. He explained that the Respondent had a cashier, two secretaries and a paralegal, some of whom had been with her for six years. Mr McCann emphasised that all the deeds had been recorded and all the balances had been sorted and there had been no losses or claims as a result of the Respondent's actions. Mr McCann explained the Respondent's personal circumstances and stated that it was difficult for the Respondent as there were so few conveyancing and executory practitioners and she did not have the back up that solicitors did. Despite this she still had a thriving business. Mr McCann stated that the Respondent assured the Tribunal that there would be no repeat of what had happened in the past if she was given a chance to continue in practice. Mr McCann advised the Tribunal that the Respondent made a good income from her business and would be in a position to pay a fine. Mr McCann explained that the Respondent had already had to pay compensation and refund fees in respect of the transaction with Mrs D. She would also require to pay the costs of the Legal Defence Union, the fiscal and the Tribunal which would be considerable. The Respondent had also had to go through the stress of the police enquiry in respect of the signatures which had shown that the handwriting was not hers. The Respondent's business was providing a service in accordance with the statutory intention when conveyancing and executory practitioners were set up. Due to the lack of conveyancing and executory practitioners in business there was no opportunity for the Respondent to work under supervision of another. In response to a question from the Tribunal, Mr McCann clarified that the Respondent was able to legitimately exercise the functions of a notary public. In response to a further question, Mr McCann explained that there was a problem for conveyancing and executory practitioners because banks did not want to pay loan funds into individual client accounts, they would rather pay it into a general client



account which caused problems. The Conveyancing and Executory Services Board did try to have the legislation amended, but this had never been done.

## **DECISION**

The Tribunal was concerned by the Respondent's conduct. The Independent Qualified Conveyancers (Scotland) Regulations 1997 were set up to ensure that independent qualified conveyancers ran their businesses in an appropriate manner. The Respondent has breached a large number of these Regulations which are in place to protect the public. Her conduct clearly amounts to professional misconduct.

The Tribunal, however, took into account the difficult position that the Respondent found herself in. When the Respondent became a conveyancing practitioner, this was under a scheme whereby the Conveyancing and Executory Services Board was there to deal with conveyancing and executory practitioners. Due to the low number of conveyancing and executory practitioners setting up in business the Board was disbanded in 2003. While the Respondent was being inspected by the Conveyancing and Executory Services Board it is clear from the productions lodged that there were only minor issues with her bookkeeping. However when the Law Society took over the regulation of conveyancing and executory practitioners, they found serious deficiencies in the Respondent's bookkeeping and found that the Respondent was failing to comply with the Independent Qualified Conveyancers (Scotland) Regulations 1997. The Tribunal recognise that the Respondent is in the unique and unfortunate position of being one of two or three conveyancing and executory practitioners in Scotland. She therefore does not have a support network of colleagues. The Tribunal was particularly impressed that the Respondent has managed to improve her bookkeeping to such an extent that the Law Society had no serious issues of concern at the last inspection in April/May 2007. The Tribunal also took account of the fact that all the deeds have now been recorded and balances corrected and that there have been no losses or claims as a result of the Respondent's action. The Tribunal further took account of the difficulties for conveyancing the executory practitioners caused by the regulations prohibiting them running a general client account. It is clear that there are practical difficulties for conveyancing and executory

practitioners as a result of this. The Tribunal noted that despite these difficulties the Respondent was still running a thriving business employing four staff. The Respondent is providing a service in accordance with the statutory intention.

The Tribunal's main concern was with regard to the Respondent witnessing and notarising a signature which she knew had been added to a document whilst she was not present and her sending the documents to the solicitors acting for the lender, leading them to believe that she had witnessed her client's signature. This is completely contrary to the duties on conveyancing and executory practitioners. If conveyancing and executory practitioners are to act in such a way, it will undermine public confidence in them. It is not possible for the Tribunal to attach a condition to the Respondent's registration to the effect that she should be employed and supervised by another conveyancing and executory practitioner given that there are only one or two others in Scotland. In the circumstances, the Tribunal felt that a Censure plus a fine of £3,000 would be sufficient penalty when taking into account the fact that the Respondent will also have a very large expenses bill and will suffer the publicity that will follow from the issue of this decision. The Tribunal made the usual order with regard to publicity and expenses.

**Vice Chairman**