

**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

**WILLIAM MICHAEL LEWIS,
Solicitor, 1 Hope Park Terrace,
Edinburgh**

1. A Complaint dated 28 May 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No answers were lodged for the Respondent.
3. A Complaint dated 28 March 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that 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.

4. The Tribunal caused a copy of the second Complaint as lodged to be served upon the Respondent. No answers were lodged for the Respondent.
5. In terms of its Rules the Tribunal appointed both Complaints to be heard on 17 June 2008 and notice thereof was duly served on the Respondent.
6. The hearing took place on 17 June 2008. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by James McCann, Solicitor, Clydebank.
7. Joint Minutes were lodged admitting the averments of fact, averments of duty and averments of professional misconduct in both Complaints as amended. No evidence was led.
8. The Tribunal found the following facts established

8.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 7th November 1957. He was admitted as a solicitor on 31st March 1982 and was enrolled as a solicitor on 22nd April 1982. He was until 31st August 2007 the sole principal of the firm of Gilmore Lewis which firm then had a place of business at 1 Hope Park Terrace, Edinburgh. He does not at present hold a practising certificate.

The Law Society of Scotland

8.2 By letter dated 21st December 2004 Russel & Aitken, Solicitors, Edinburgh wrote to the Complainers on behalf their clients, the Executors of the late Mrs A. In this letter they intimated a complaint about the level of service which the Respondent had provided to Mrs A and to her husband, Mr B, in connection with the purchase of subjects known as Property

1. Mr B and Mrs A had instructed the Respondent to act for them in this transaction sometime in the latter part of 2002. Following the death of Mrs A on 5th March 2003 Russel & Aitken found that Mr B & Mrs A's interest as proprietors in the property had not been registered in the Land Register of Scotland. In this letter Russel & Aitken advised the Complainers that, despite numerous letters, faxes and e-mails sent by them to the Respondent urging him to take steps to complete the registration process, he had largely ignored all of these communications. They were being hampered in obtaining a grant of Confirmation in favour of their clients so long as the Respondent delayed in the completion of this process. The Respondent undertook to Russel & Aitken that he would take steps to ensure the completion of the registration process and, on that basis, the Complainers closed their file on the matter sometime in or about April 2005. By letter dated 25th January 2006 Russel & Aitken again wrote to the Complainers and, on this occasion, they advised them that the Respondent had not by that time honoured this undertaking. The Complainers duly re-opened their file and thereupon embarked upon their usual process of communicating with the Respondent in connection with the issues which had given rise to the complaint. By letter dated 8th March 2006 the Complainers wrote to the Respondent intimating the grounds of complaint and inviting his written response within 21 days from that date. He did not provide a written response. Accordingly, and by letter dated 19th March 2006, the Complainers wrote to him giving him notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 as amended (hereinafter referred to as "the Act") seeking this response as well as an explanation for his failure to respond within 14 days from that date. By letter dated 29th May 2006 the Complainers wrote to the Respondent giving him notice in terms of Section 42C of the Act calling upon him to produce to them within 21 days from that date documents pertaining to the

said transaction. The Respondent did not reply to either of these letters. Accordingly, and by letter dated 16th June 2006, the Complainers wrote to him giving him notice in terms of Section 15(2)(i)(i) of the Act thereby requiring him to give them six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1st November 2006. The Respondent did not reply to this letter either.

8.3 By letter dated 29th March 2006 Patricia S.Quigley, WS, Edinburgh wrote to the Complainers and, in this letter, she drew the Complainers' attention to concerns she had about the level of service which the Respondent had provided to Ms C when she instructed him to act for her in the purchase of subjects known as Property 2. Specifically, the Respondent had failed to complete the process of registering a title in favour of Ms C in the Land Register of Scotland from September 2002 when the transaction settled and he had also failed to register a Standard Security in favour of Egg Banking plc who had advanced funds to Ms C in connection with this transaction. Ms C was not a client of Ms Quigley. These matters had come to her attention as a result of her having been instructed to act for the purchaser of these subjects from Ms C. She had not instructed the Respondent to act for her in the sale transaction. The Complainers decided to proceed with an ex proprio motu complaint against the Respondent. During the course of their investigation into these matters they ascertained that the Respondent sent the registration deeds to the Keeper sometime in October 2002. The Keeper wrote to the Respondent's firm on 22nd February 2005 in connection with the application to register the title in favour of Ms C and invited a written response from him. When that was not forthcoming the Keeper cancelled the application for registration. He wrote to the Respondent's firm on 4th April 2005 advising of this cancellation. By letter dated 28th March 2006 the Respondent

wrote to Ms C's agents, Boyd Property, and advised them that he was submitting a new application for registration of the title.

8.4 By letter dated 30th November 2006 Company 1 wrote to the Complainers intimating a complaint that the Respondent had failed to communicate with them in connection with a conveyancing transaction where they were acting for the purchaser and the Respondent was acting for the seller of subjects known as Property 3. The Complainers duly embarked upon their usual process of writing to the Respondent in connection with the issues which had given rise to the complaint. The Respondent failed to reply to correspondence sent to him by the Complainers dated 15th December 2006 and 9th January 2007 and accordingly by letter dated 28th February 2007 they wrote to him intimating the grounds of complaint and inviting his written response within 21 days from that date. He did not provide a written response. Accordingly, and by letters dated 26th March 2007, the Complainers wrote to him giving him notice, firstly, in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 as amended (hereinafter referred to as "the Act") seeking this response as well as an explanation for his failure to respond and that within 14 days from that date and, secondly, giving him notice in terms of Section 42C of the Act calling upon him to produce to them within 21 days from that date all documents pertaining to the said transaction. The Respondent did not reply to either of these letters.

8.5 By means of the Complainers' Helpform dated 27th June 2006 Mr D intimated a complaint to them concerning the alleged failure on the part of the Respondent to explain to him the risks associated with the purchase of an endowment assurance policy. The Complainers duly embarked upon their usual process of writing to the Respondent in connection with the issues which had given rise to this complaint. When the

Respondent failed to reply to a letter dated 21st August 2006 from the Complainers calling upon him to provide them with a written response to the issues identified therein within 21 days from that date they wrote to him on 11th October 2006 giving him notice in terms of Section 42C of the Act calling upon him to produce to them within 21 days from that date all documents pertaining to this transaction. The Respondent did not reply to the last mentioned letter.

8.6 By letter dated 15th November 2006 The Office of the Public Guardian (hereinafter referred to as “OPG”) wrote to the Complainers intimating concerns about the actions of the Respondent in relation to his client, Mrs E, who had apparently granted a Power of Attorney in his favour which had not been recorded on the OPG Register. The Complainers thereupon embarked upon their usual process of writing to the Respondent in connection with the issues which were of concern to OPG. By letter dated 13th February 2007 the Complainers wrote to the Respondent intimating the grounds of complaint and inviting his written response within 21 days from that date. He did not provide a written response. Accordingly, and by letters dated 14th March 2007, the Complainers wrote to him giving him notice, firstly, in terms of Section 15 (2)(i)(i) of the Act seeking this response as well as an explanation for his failure to respond and that within 14 days and, secondly, giving him notice in terms of Section 42C of the Act calling upon him to produce to them within 21 days all documents in his possession relating to the complaint. The Respondent did not reply to either of these two letters.

8.7 By letter dated 8th March 2007 Mr F wrote to the Complainers intimating a complaint against the Respondent in connection with a transaction involving a commercial lease and a re-mortgage which the Respondent had been instructed to carry

out on behalf of Mr F. The Complainers duly embarked upon their usual process of writing to the Respondent in connection with the issues which had given rise to the complaint. In particular they wrote to him on 8th May 2007 intimating the grounds of complaint which they had identified and the called upon him to provide them with a written response within 21 days from that date. He did not provide a written response. Accordingly, and by letters dated 31st May 2007, the Complainers wrote to him giving him notice, firstly, in terms of Section 15(2)(i)(i) of the Act seeking this response as well as an explanation for his failure to respond and that within 14 days from that date and, secondly, giving him notice in terms of Section 42C of the Act calling upon him to produce to them within 21 days from that date all documents pertaining to the said transaction. The Respondent did not reply to either of these two letters.

- 8.8 By means of the Complainers' Helpform dated 10th May 2007 augmented by an accompanying letter detailing her complaint, Mrs G intimated a complaint to them concerning the Respondent acting for her and her then husband, Mr H in a conflict of interest situation. By letter dated 7th June 2007 the Complainers wrote to the Respondent intimating the grounds of complaint and inviting his written response within 21 days from that date. He did not provide a written response. Accordingly, and by letters dated 4th July 2007 the Complainers wrote to him giving him notice, firstly, in terms of Section 15(2)(i)(i) of the Act seeking his response as well as an explanation for his failure to respond and that within 14 days and, secondly, giving him notice in terms of Section 42(C) of the Act calling upon him to produce to them within 21 days all documents in his possession relating to the complaint. The Respondent did not reply to either of these two letters.

Company 1

- 8.9 The Respondent acted for the Executor of the late Mr I. Mr I died intestate on 5th April 2006. To enable Confirmation to be granted in favour of his client the Respondent required to obtain a Bond of Caution. The transaction was due to settle on 4th August 2006. By that date Confirmation had not been granted. The Respondent had not by then obtained a Bond of Caution. By 8th November 2007 when the Respondent spoke to Ms J, a partner in the firm of Company 1, he had still not obtained a Bond of Caution. He then admitted to her that he had been culpable in not having done so. In the event Confirmation was not granted until 27th February 2007.
- 8.10 It was Ms K, a partner in the said firm, who was handling this transaction on behalf of her purchasing client, Miss L. After 4th August 2006 she endeavoured on a number of occasions to speak to the Respondent about bringing the transaction to a conclusion. He persistently failed to reply to communings, both oral and written, from her. On 30th August 2006 she faxed the Respondent saying that she had telephoned his office on about 6 occasions and had asked that he respond to her updating her on the position with the transaction. She then asked him to reply to her with a report within 24hours. The Respondent did not respond to this request. On 15th September 2006 she e-mailed the Respondent saying that she had telephoned his office on at least 10 occasions and requested that he call her back. She then asked him to call her on the afternoon of that day again with the purpose of finalising the transaction. The Respondent did not respond to this request either. On 4th October 2006 Ms K e-mailed the Respondent once more saying that she had tried without success to speak to him, that she had still not received any information from him about the state of

the transaction and that a complaint to the Complainers was in contemplation. That too did not produce a response from the Respondent. On 6th November 2006 she e-mailed him again saying that if she did not hear from him by return with an explanation of the situation she would have to proceed with said complaint. That too did not produce a response from him. Finally, and after telephoning his office and leaving a message for him to speak to her, she e-mailed him on 30th November 2006 saying that, with the greatest reluctance, the letter of complaint would be sent to the Complainers if he did not update her on the situation in the transaction by the close of business that day. The Respondent did not respond to this ultimatum.

The Office of the Public Guardian (OPG)

- 8.11 Section 6 of the Adults with Incapacity (Scotland) Act 2000 places a statutory obligation on the Public Guardian to investigate any circumstances made known to her in which the property or financial affairs of an adult appear to be at risk and, if necessary, to intervene to safeguard the adult's interests. Sometime in or about the middle of 2006 OPG was advised of a concern relating to the property and financial affairs of Mrs E who then resided at Property 4. Acting on information received OPG wrote to the Respondent on 3rd and 9th August, 4th September, 16th October and 9th November all in 2006. In these letters OPG sought information from him in relation to Mrs E's affairs as well as a copy of the Power of Attorney document. Apart from an acknowledgement of receipt of the letter dated 3rd August and a promise that the Respondent would reply to it upon his return from holiday, he did not respond to any of this correspondence or indeed provide OPG with this document. He did, however, respond to a telephone message from OPG asking that he be in touch. On 15th September 2006 he spoke on

the telephone to a member of staff of the OPG and he then stated that he Mrs E had granted a Power of Attorney in his favour sometime in either February or March (which OPG presumed was in 2006), that he had sold Mrs E's property and that the Power of Attorney had either been registered or had just been sent to OPG for registration. He then promised to provide OPG with a full financial accounting of his intrusions with her funds no later than 22nd September 2006. This did not happen. On 28th September 2006 a member of staff of OPG spoke to him on the telephone enquiring about this promised accounting. The Respondent explained that he had been off work and he then promised that the accounting would be made available to OPG by 2nd October 2006. This did not happen. In the letter dated 16th October 2006 OPG expressed concern about the Respondent's failure to provide the requested information in relation to Mrs E and also that he had not, according to their records, had the Power of Attorney registered. In the letter dated 9th November 2006 OPG advised the Respondent that in view of the fact that the Power of Attorney had not been registered as is required by law he was not legally authorised to act as Mrs E's Attorney. In this letter OPG requested the Respondent to provide it with a copy of the Power of Attorney which he said Mrs E had granted in his favour together with details of all transactions carried out by him on her behalf and his written confirmation that he was no longer acting in the capacity as her Attorney.

Mrs G

- 8.12 Mrs G and her former husband, Mr H, agreed to separate sometime towards the end of 2006. They also then agreed that Mr H would re-mortgage the matrimonial home at Property 5 with him continuing to reside in the property and that he would pay to his wife a sum equivalent to one half of the market value

of the property after deduction of the existing mortgage. The Respondent accepted instructions from both of them to act in carrying out the associated conveyancing work and also to arrange for a valuation of the property to be carried out. Mrs G was advised by her husband, Mr H, that the property had been valued in the sum of £180000.00. The Respondent did not provide her with a copy of the valuation report to vouch this nor did he otherwise confirm the valuation figure to her. Moreover, he did not advise her of the desirability of her entering into a written Separation Agreement with her then husband nor did he advise her that she should obtain independent legal advice. In the event the Respondent completed the conveyancing work so that title to the property was put into the sole name of Mr H. He rendered a note of his fee to Mrs G and to Mr H.

- 8.13 Sometime in or about the beginning of June 2007 Mrs G instructed Anderson Strathearn to act for her in connection with matrimonial matters. By letter dated 5th June 2007 they wrote to the Respondent enclosing a mandate signed by her and requested him to forward to them all files and papers held by him on her behalf. The Respondent did not comply with this request despite Anderson Strathearn writing to him on 20th June and 3rd July 2007 urging him to implement the mandate as soon as possible.

Complainers' inspection of the firm of Gilmore Lewis on 27th and 28th August 2007 and matters arising therefrom

- 8.14 In advance of the cessation of the business of the firm of Gilmore Lewis on 31st August 2007 the Complainers' Inspector attended at the said firm's premises on 27th and 28th August 2007 for the purpose of carrying out an inspection of the firm's books and records. At a previous inspection which took place

on 7th, 8th and 15th March 2007 the Complainers' Inspector noted that, on the face of it, there were eleven cases where deeds which remained unrecorded since at least September 2006. At this latest inspection in August 2007 the Complainers' Inspector noted that, on the face of it, in ten of these cases the deeds in question had still not been recorded and that, in addition to these ten cases, there were five cases where, on the face of it, there had been inordinate delay in recording deeds. The transactions in question involved the late recording of Dispositions, Standard Securities and Discharges albeit not each in every case.

8.15 At this latest inspection the Complainers' Inspector also identified a number of breaches of the Solicitors (Scotland) Accounts etc Fund Rules 2001 as amended ("the 2001 Rules"). These are summarised as follows:-

- (a) the firm's account and client account records had not been reconciled beyond 31st May 2007. (Rule 8(4)),
- (b) as a consequence of the aforementioned breach of Rule 8(4) there was a failure to reconcile balances in the clients' ledgers with the client bank account. (Rule 9(2)) and
- (c) as a further consequence of the aforementioned breach of Rule 8(4) there was a failure to reconcile invested funds at three monthly intervals. (Rule 10(2)).

8.16 By letter dated 3rd September 2007 Mrs Morag Newton, the Director of the Complainers' Guarantee Fund, wrote to the Respondent requiring his response to these breaches of the 2001 Rules and the other matters of concern which had been identified at this latest inspection and that within a period of

fourteen days from that date. In this letter she told him that it was possible that he would be invited to attend at a meeting to discuss these matters of concern. In the event the Respondent did not provide the requested response. On 18th October 2007 he attended at a meeting with representatives of the Guarantee Fund Committee. The Complainers had by then become aware that on two occasions arrestments had been executed on the firm's client bank account the most recent one having taken place on 6th September 2007. At this meeting the Respondent admitted that he had delayed in redeeming mortgages. He also advised the panel that it had not been possible for him to transfer client balances to the firm of Hadden Rankin, solicitors in Edinburgh (who were then assisting him in completing transactions which had settled in August 2007 as well as handling new business) by reason of the fact that the books and records of his firm had not been brought up to date by the date of cessation of Gilmore Lewis on 31st August 2007. The panel then stressed to the Respondent the urgency of bringing matters up to date and to divest himself of client funds and balances. Of great concern to the panel was that the Respondent was unable to demonstrate that there was a surplus on the client bank account in light of these arrestments which, as the panel understood, resulted in £400,000 of client funds not being available to clients of his firm. The Respondent was advised by the panel that the Complainers needed to have a detailed written report from him by 1st November 2007 giving details of these client balances. On 26th October 2007 Mrs Newton e-mailed the Respondent saying that she wanted his report by return. He did not do so.

Mr and Mrs M

- 8.17 In May 2005 Mr and Mrs M were established clients of the Respondent. On 30th May 2005 they instructed him to submit

an offer to purchase of Property 6. The purchase price was to be £502500. The date of entry was to be 9th August 2005. They then also instructed the Respondent that the offer was to be made subject to survey. The Respondent duly submitted an offer for Property 6. The offer was in the sole name of Mrs M. The sellers of Property 6 instructed the firm of Lindsays to act for them. In due course Lindsays advised the Respondent that the offer was acceptable in principle to their clients subject to withdrawal of the condition anent survey. He duly reported this to Mrs M. A survey of the property was arranged and the Respondent received a verbal report from the surveyor. The surveyor had identified concerns about the state of the roof and the electrical system within the property. Mr and Mrs M were made aware of these concerns. In relation to the roof they agreed with the sellers that the price would be reduced by £1000. On 9th June 2005 Lindsays faxed a qualified acceptance to Gilmore Lewis. The qualifications included the aforementioned adjustment to the price, the removal of the said condition anent survey and also that the qualifications required to be accepted by 4pm on 10th June 2005. Sometime on 9th June 2005 the Respondent conveyed the terms of the qualified acceptance to his clients. Mr and Mrs M met the sellers of Property 6 sometime in the evening of 9th June 2005. At this meeting there was discussion about the electrical system. The sellers then indicated that they wanted the system inspected by a contractor of their choice. This was not acceptable to Mr and Mrs M. On the morning of 10th June 2005 they delivered a letter to the offices of Gilmore Lewis. In this letter they stated that whilst they accepted the qualifications so far as they related to price and moveable items acceptance of the qualifications was to be conditional upon verification by them within 7 days from the date of sale that the electrical wiring system within the property was conform to the relevant regulations at the time it was replaced in 1990 and that, if that was not the case, the cost

of bringing it into conformity would be shared equally between them and the sellers. On 10th June 2005 the Respondent sent a formal letter to Lindsays containing this condition. Lindsays sent a formal letter to Gilmore Lewis accepting this condition. Missives were concluded on 10th June 2005. The Respondent did not send a copy of the missives to Mrs M nor did he otherwise advise her that missives had been concluded for the purchase of Property 6.

8.18 On 13th June 2005 Lindsays wrote to Gilmore Lewis and advised that their clients intended having the electrical system inspected prior to settlement and the sought clarification as to whether they could proceed to instruct an inspection or whether Mr and Mrs M wanted to make their own arrangements. On 14th June 2005 the Respondent's secretary sought instructions from Mrs M on this point. Mr and Mrs M then were assuming that missives had not been concluded for the purchase of Property 6. On 20th June 2005 they delivered another letter to the offices of Gilmore Lewis. In this letter they clarify their position in relation to what they describe (in accordance with their understanding) as "the intended conclusion of missives" and they instruct the Respondent to make it clear to the sellers that unless they agree by 10am on 21st June 2005 that the inspection of the electrical system is carried out by a contractor of their (Mr and Mrs M) choice by 12noon on 28th June 2005 then they will withdraw their offer on 10am on 21st June 2005. In this letter they ask the Respondent to advise them of the sellers' response to this further condition. The Respondent did not, upon receipt of this letter, contact Mrs M and make it clear to them that missives for the purchase of Property 6 had been concluded. She heard nothing from him following expiry of the time limit of 21st June 2005. Accordingly, they tried to contact him by telephone on 23rd June 2005. They were unable to speak to him but they left a detailed message with his secretary. She

subsequently spoke to Mr M on the telephone on that day and she then told him that there was no concluded contract for the purchase of Property 6.

8.19 Mr and Mrs M had by this time sold their house. They had instructed other agents to act for them in this transaction. They were due to give entry to the purchasers sometime in or about the beginning of September 2005. The Respondent was aware of this. They were looking for another property to buy on the basis of their understanding that they had been unable to come to terms to purchase of Property 6. They were in touch with the Respondent during July 2005 to discuss options in this area. On 21st July 2005 they instructed him to submit an offer to purchase of property 7. The purchase price was to be £395000. The date of entry was to be 31st August 2005. In due course the Respondent submitted an offer for Property 7 and a qualified acceptance was received by Gilmore Lewis sometime on or about 28th July 2005. On 2nd August 2005 he sent a copy of the offer and qualified acceptance for Property 7 to Mr and Mrs M. On 5th August 2005 they met him and discussed matters pertaining to the contract, bridging finance and how the title to Property 7 was to be taken. At this meeting there was no discussion about the Property 6 transaction.

8.20 By letter dated 1st August 2005 Lindsays wrote to Gilmore Lewis seeking the urgent return of the titles to Property 6 along with the usual drafts. On 9th August 2005 (the day immediately following the agreed date of entry for Property 6) Lindsays faxed Gilmore Lewis advising that Mrs M had failed to settle the price on time, that the penalty interest provisions in the missives would apply and seeking settlement proposals by return. On Friday 12th August 2005 Mr and Mrs M met the Respondent with a view to finalising arrangements for the purchase of Property 7. At this meeting the Respondent told Mr

and Mrs M that there was a big problem in relation to Property 6. He did not elaborate upon this. He told them that the sellers of Property 6 thought that they had concluded a contract with Mrs M and he said that he might be in a conflict of interest situation if he continued to act for them. He then suggested that they should seek legal advice elsewhere. Mr and Mrs M then requested a copy of the file for this transaction and the Respondent advised them that this would be available for collection on Monday 15th August 2005. At no time during this meeting did the Respondent tell Mr and Mrs M that they did have a concluded contract for the purchase of Property 6, that the settlement date had by then passed and that the sellers were seeking proposals in relation to penalty interest. Mr and Mrs M considered matters over the ensuing weekend. On the basis that the Respondent had not told them that missives for the purchase of Property 6 had actually been concluded they took the view that it was safe to proceed to conclude missives for the purchase of Property 7. On 15th August 2005 Mr and Mrs M delivered another letter to the offices of Gilmore Lewis. In this letter they instructed the Respondent to immediately proceed to conclude missives for the purchase of Property 7. On that day the Respondent wrote to Mr and Mrs M enclosing a copy of the missives for the purchase of Property 6. In this letter he tells them that the sellers of Property 6 consider there to be a concluded contract and he suggests that they should take independent legal advice.

- 8.21 On 16th August 2005 Mrs M was served with a Court of Session Summons and Inhibition at the instance of the sellers of Property 6. She consequently consulted Simpson & Marwick. At 12.48 on 17th August 2005 Simpson & Marwick e-mailed the Respondent seeking his clarification in relation to (a) when he realised that there was a concluded contract for the purchase of Property 6 and (b) when and by what means he advised Mr

and Mrs M of this. In an e-mail timed at 15.46 on 17th August 2005 the Respondent replied to Simpson & Marwick asserting that he advised Mrs M on the telephone that missives had been concluded. He did verbally advise Mrs M that her offer for Property 6 was acceptable in principle but at no time did he make either her or her husband aware that missives had been concluded for the purchase of Property 6 and it was not until they received a copy of the missives from him in or about the middle of August 2005 that they first became aware of this. Notwithstanding the fact that the Respondent knew by 17th August 2005 that Mr and Mrs M had obtained legal advice elsewhere he proceeded to submit a formal letter on their behalf on that day to the solicitors acting for the sellers of Property 7. Missives for the purchase of Property 7 were concluded on 19th August 2005. By letter dated 23rd August 2005 Mr and Mrs M intimated to the Respondent that they were terminating the agency. It was sometime in June 2006 that the action raised by the sellers of Property 6 against Mrs M was settled in the sum of £86500. A claim for negligence has been intimated against Gilmore Lewis and this is at present being considered by the Master Policy insurers. It was by letter dated 29th January 2007 that Mrs M intimated a complaint against the Respondent to the Complainers.

9. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
 - 9.1 his failure to reply to the reasonable requests of the Complainers for information from him.
 - 9.2 his failure to carry out work entrusted to him in an expeditious fashion in the winding up of the estate of the late Mr I.

- 9.3 his failure to respond to communings from Company 1 and from The Office of the Public Guardian.
- 9.4 his acting in conflict of interest situations contrary to Rule (3) of the Solicitors (Scotland) Practice Rules 1986.
- 9.5 his failure to respond to a mandate sent to him by fellow agents.
- 9.6 his persistent failure to timeously record (a) Dispositions, (b) Standard Securities and (c) Discharges.
- 9.7 his breach of Rules 8(4), 9(2) and 10(2) of the Solicitors (Scotland) Accounts etc Fund Rules 2001.
- 9.8 his failure to keep his client, Mrs M, fully and promptly informed about the position in relation to conclusion of missives in a conveyancing transaction.
- 9.9 his failure to promptly clarify with Mrs M the position in relation to conclusion of missives in circumstances where it was or should have been apparent to him that she misunderstood this.
- 9.10 his failure to be open and candid with Mrs M in relation to potential and actual breaches of her contractual obligations under missives.
- 9.11 his failure to spell out to Mrs M in clear and unambiguous terms the background which gave rise to the difficulties she found herself in and the associated risks.

9.12 his failure to register a Disposition in favour of his client, Ms C, in the Land Register of Scotland within a reasonable period of time after settlement.

9.13 his failure to register a Standard Security in favour of his client, Egg Banking plc, within a reasonable period of time after settlement.

10. Having heard the Solicitor for the Respondent in mitigation and having noted previous Findings of misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 17 June 2008. The Tribunal having considered the Complaints dated 28 May 2007 and 28 March 2008 at the instance of the Council of the Law Society of Scotland against William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his failure to reply to reasonable requests of the Law Society for information, his failure to carry out work in an expeditious fashion in the winding up of an Executry, his failure to respond to clients, his acting in a conflict of interest situation, his failure to respond to a mandate, his persistent failure to timeously record Dispositions, Standard Securities and Discharges, his breach of Rules 8(4), 9(2) and 10(2) of the Solicitors (Scotland) Accounts etc Fund Rules 2001, his failure to keep a client fully and promptly informed about the position in relation to conclusion of missives in a conveyancing transaction, his failure to promptly clarify with the client the position in relation to the conclusion of missives where it was apparent or should have been apparent to him that she misunderstood the situation, his failure to be open and candid with his client in relation to potential and actual breaches of her contractual obligations under missives, his failure to spell out to his client the background which gave rise to the difficulties she found herself in and the associated risks, his failure to register a Disposition in the Land Register within a reasonable time after

settlement and his failure to register a Standard Security within a reasonable period after settlement; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to and to being supervised by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least ten years and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

David Coull

Vice Chairman

11. 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

There were two Complaints before the Tribunal and it was agreed that they be conjoined. Joint Minutes were lodged in respect of both Complaints admitting the averments of fact, averments of duty and the averments of professional misconduct in the Complaints as amended. Three previous findings of professional misconduct were lodged with the Tribunal.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir explained that the Complaint of 28 May 2007 was delayed until the other Complaint came before the Tribunal so that both matters could be dealt with together. In connection with Article 2.1, this was another example of the Respondent's failure to respond. In connection with Article 2.2, it was conceded that there was no blame on the Respondent in connection with the period from October 2002 to December 2004, however there was a delay between December 2004 and April 2005.

In connection with the Complaint dated 28 March 2008, Mr Muir submitted that Articles 2.3 and 2.4 showed the common theme of the Respondent not responding to anyone. Mr Muir submitted that the Respondent had not learnt from the Tribunal's Interlocutor of 27 September 2006. The most serious failure to respond was in connection with Article 6.3 and his failure to respond to Morag Newton in connection with his accounting records. The Respondent's failure to respond in Article 3.2 and 4.1 had occurred after the Respondent had been before the Tribunal on 27 September 2006.

In connection with Article 5.2, Mr Muir stated that it was accepted that when a solicitor was acting for two parties, he could not implement a mandate but Mr Muir submitted that the Respondent should have forwarded the file so that it could have been copied. At this time the Respondent was ignoring letters and was burying his head in the sand. Mr Muir clarified that he was not seeking a finding of professional misconduct in connection with failure to implement the mandate but in connection with the Respondent's failure to respond to the mandate.

In connection with Article 7.1, Mr Muir submitted that this was the most sinister of all the matters which had to be dealt with by the Tribunal. The Respondent had allowed the clients to believe that they had no concluded bargain when they had and he did not advise them that they were bound by the missives. This had severe consequences for his clients.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann submitted that there would not be an obligation on a solicitor to copy the file if there were two clients involved as there could be a question of client confidentiality. Mr McCann however indicated that it was accepted that the Respondent failed to respond to the mandate.

In connection with Article 7.1, Mr McCann explained that the file was in a poor state and although the Respondent recalled that there was a verbal discussion with the client, there was no evidence of this in the file. Mr McCann assured the Tribunal that there was no malice or attempt to mislead on the part of the Respondent, it was just part of him not coping with his problems at the time. Mr McCann produced to the Tribunal a timeline showing that a lot of the matters contained in the Complaints before the Tribunal on this occasion occurred prior to the Respondent appearing before the Tribunal in respect of the previous findings. Mr McCann stated that he was anxious to rebut the presumption that the Respondent left the previous Tribunals and then went back and did more of the same. This was not the case. Mr McCann referred to Paterson and Ritchie at page 16 where it was accepted that solicitors who are suffering from depression and not coping is an unresolved problem for the profession. There is a gap between the need to protect client's interest and the need to help solicitors who are not coping. Mr McCann explained that the Respondent had had to cease his business and had had to pay staff redundancies. This resulted in him having insufficient funds to settle the outstanding inadequate professional service awards. Mr McCann explained that the Respondent had not renewed his practising certificate and was presently employed as a paralegal. Mr McCann outlined the Respondent's personal and financial circumstances and suggested that the public would be protected by extending the restriction on his practising certificate. The Respondent still had fines and expenses from previous Tribunal hearings to pay. Mr McCann referred the

Tribunal to the medical reports lodged and emphasised the difficulty for solicitors who are suffering from ill health. Mr Muir indicated that he had sympathy for the Respondent's position as it was acknowledged that it was not easy for sole practitioners.

DECISION

The Tribunal noted three previous findings against the Respondent for analogous matters. The Tribunal was concerned to note that although the Respondent's health seemed to have improved by May 2006, there were matters in the recent Complaints as late as 2007. The Tribunal was extremely concerned with regard to the Respondent's conduct concerning Mr. & Mrs. M who suffered a great deal of loss, stress and anxiety as a result of it. The Tribunal however accepted that what happened in this case was part of the Respondent's inability to cope rather than anything more sinister. It was clear to the Tribunal that there was a catalogue of failure to respond to the Law Society and other parties over a long running period. The Tribunal seriously considered striking the Respondent's name from the Roll or suspending him given the number of times that he had been before the Tribunal and his continued failure to respond even after previous findings of misconduct by the Tribunal. The Tribunal however noted the Fiscal's comments that it is not easy for sole practitioners who are suffering from depression. The Tribunal also noted that most of the conduct in the Complaints occurred prior to the previous Tribunal hearings. The Tribunal noted that the Respondent was already subject to a three year restriction on his practising certificate. The Tribunal considered that the Respondent was not fit to be a sole practitioner and imposed an aggregate restriction of ten years on his practising certificate. This will ensure that the Respondent works under supervision for an extended period prior to being able to obtain a full practising certificate. At the end of the ten year period the Respondent will require to satisfy the Tribunal that he has gained the necessary experience and insight and that his health is such that there would be no repeat of his conduct. The Tribunal stopped narrowly short of striking the Respondent's name from the Roll and should there be any further failures to respond by the Respondent after the date of this Tribunal and the Respondent comes back to the Tribunal, the Tribunal will take an extremely dim view of the Respondent's conduct. The Tribunal considered that there was no point in fining the

Respondent given the amount of previous fines and expenses still outstanding and the Respondent's financial situation.

The Tribunal specifically reserved its position in regard to the obligation of a solicitor who is called upon to implement a mandate in respect of the delivery or copying of a file where the file relates to multiple clients but the mandate has been granted by only one client.

SUBMISSIONS ON EXPENSES

Mr Muir asked the Tribunal to consider increasing the unit rate of £11.85 which he submitted was out of kilter with the commercial rate. Mr Muir stated that the current rate bore no relation to what was paid to solicitors for work of equivalent importance. Mr Muir lodged a copy of the most recent Law Society cost of time survey in 2007 which had produced a recommended unit rate of £13.70. Mr Muir invited the Tribunal to accept this as a very minimum on an interim basis. Mr McCann stated that his formal position in this particular case had to be to adhere to the rate which was prevailing at present. Mr McCann however stated that he accepted that this was a low historic rate and he indicated that the costs required to be predictable and reasonable. He however accepted that the Tribunal had fallen out of practical linkage. He advised that the Legal Defence Union's rate was presently £14.00 an hour. This however was below the contracting out rate. Mr McCann stated that this was close to £13.70 and could be said to be a lean but realistic rate. The Tribunal took onboard the comments with regard to the unit rate but considered that in this particular case, in order to be consistent with other cases decided on the same date, the unit rate would be £11.85. The Tribunal however would review its own unit rate at its annual meeting in light of the submissions.

Vice Chairman