

**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**

**JOHN GERARD O'DONNELL,  
Solicitor, 15 Clarkston Road,  
Glasgow**

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, John Gerard O'Donnell, Solicitor, 15 Clarkston Road, Glasgow (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 21 June 2007 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. A copy of this Complaint as lodged was served upon the Respondent. Answers were lodged for the Respondent.
5. In terms of its Rules the Tribunal appointed both Complaints to be set down for a procedural hearing on 27 September 2007 and notice thereof was duly served on the Respondent. On this date the case adjourned to a further procedural hearing on 26 October 2007.
6. When the case called on 26 October 2007, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented by David Clapham, Solicitor, Glasgow. The case was adjourned to a further procedural hearing on 14 November 2007.
7. When the case called on 14 November 2007, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented by David Clapham, Solicitor, Glasgow. The case was adjourned to a substantive hearing on 16 January 2008.
8. When the case called on 16 January 2008, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline and also Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented by David Clapham, Solicitor, Glasgow.
9. The Tribunal resolved to deal with both Complaints together. The Respondent pled guilty to the Complaint dated 18 June 2007 and a Joint Minute was lodged in respect of the Complaint dated 21 June 2007 admitting the facts, averments of duty and averments of professional misconduct in the Complaint as substantially amended. No evidence was led.

10. The Tribunal found the following facts established

10.1 The Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 14<sup>th</sup> September 1950. He was admitted as a Solicitor on 25<sup>th</sup> March 1977 and enrolled on 15<sup>th</sup> April 1977.

10.2 He was a Partner in the firm of O'Donnell Vaughan & Co Solicitors, from 1<sup>st</sup> October 1979 until 31<sup>st</sup> October 2002. On 1<sup>st</sup> November 2002 he established his own firm of O'Donnell & Co at 15 Clarkston Road, Glasgow.

#### FACULTY SERVICES

10.3 By letter dated 13th April 2006, the Dean of the Faculty of Advocates invoked the aid of the Complainers in relation to a continuing failure of the Respondent to meet Counsel's fees in terms of the Scheme for Accounting for and Recovery of Counsel's Fees. The Respondent's firm had been sanctioned in terms of the scheme in November 2004 but there was an ongoing failure to pay and substantial sums were due to Counsel. The Complainers wrote to the Respondent on 2nd May 2006 with a view to having him resolve the matter direct with Faculty Services. He was asked to confirm the position within 14 days. He did not reply. The Complainers sought clarification of the issues from the Faculty and advised the Respondent of the action they were taking. He wrote on 18<sup>th</sup> July advising that the best way of addressing the complaint was to pay off Faculty Services and that the clients who had run up the major part of the fees had not paid him. He hoped to address the matter within 28 days.

10.4 A formal letter was sent to the Respondent on 28th August 2006 with details of the complaint and requiring his written

response with any background information and his business file within 21 days. He did not reply. On 22nd September 2006, he was written to again and sent Notices under Section 15(2)(i)(i) and Section 42C of the Solicitors (Scotland) Act 1980. He wrote on 10<sup>th</sup> October 2006 advising that the Faculty of Advocates had outstanding monies due by his former Firm of O'Donnell Vaughan & Company. The clients had not paid the funds and he was making arrangements to deal directly with it and pay the sums himself.

- 10.5 Both while a partner in the Firm of O'Donnell Vaughan and then in practice on his own in the firm of John G O'Donnell & Co the Respondent had instructed Counsel through Faculty Services Limited. Fees were rendered to him for the work done and he persistently failed to pay the full sums due. In particular he instructed Counsel in the following cases:

13.11.1997	Mr I v Mr B & Another
5.10.2001	Mr C
12.7.2000	The Executrix of the late Mr D
28.12.2000	Mr & Mrs J v Mr F
5.8.2004	Clydesdale Bank v Mr and Mrs G
9.3.2004	Mr and Mrs K
5.8.2004	Company 1 v Company 2

Faculty Services Limited wrote to him, phoned him and e-mailed him over the years to arrange payment. The sums outstanding as at 22<sup>nd</sup> March 2007 amounted to a total of £12,807.14.

- 10.6 As of 4 October 2007, the Respondent had made payment of all the sums outstanding.
- 10.7 The Complainers attended to inspect the books of John G

O'Donnell & Co on 19 May 2003 ("the May 2003 inspection"). As a result of the May 2003 inspection the Complainers found that the firm had exceeded its overdraft limit and that the Respondent had been encashing insurance policies to inject funds into the firm. Some files requested could not be located. In the December 2002/February 2003, the Respondent had encashed cheques payable to a local builder through his client account. At that time, the Complainers invited the Respondent for interview.

- 10.8 The Complainers carried out a further inspection in November of 2003 ("the November 2003 inspection"). At that time, the issue of late or non recording of deeds arose and were raised specifically with the Respondent.
- 10.9 At that time a decision was made to re-inspect the Respondent's firm in August 2004, at the Complainer's expense, for the purpose of monitoring the financial position of the firm.
- 10.10 That further inspection took place on 23-25 August 2004 ("the August 2004 inspection"). This inspection disclosed that the financial position of the firm had deteriorated. The firm account was in excess of the overdraft limit and the Respondent had taken out a loan of £25,000 which was used mainly to settle various tax bills. At the time of the August 2004 inspection an experienced conveyancer still assisted the Respondent and the records were generally well kept. A further interview was arranged with the Respondent to impress upon him the need to tend to matters raised in the August 2004 and the prior inspections narrated above. A further inspection was to be carried out approximately 12 months hence, at the expense of the Society, to monitor the position.

10.11 A further inspection took place on 26 - 28 July 2005 (“the July 2005 inspection”) when deficits were noted on the client bank account. These deficits had not been disclosed in the accounting of calculations carried out. In addition, procedures dealing with recording dues did not appear to be fully adequate to ensure that deeds were recorded timeously. Money laundering procedures were in need of improvement. The concerns around the firm’s finances included:-

- (a) 4 ½ months outstanding PAYE and NIC;
- (b) the Respondent’s firm’s current account was over its overdraft limit;
- (c) referral charges were noted in the firm’s account;
- (d) the firm credit card was being used to raise cash for the Respondents personal use;
- (e) the firm loans were identified amounting to around £26,000.

At the time of the July 2005 inspection the Respondent indicated to the Complainers that he hoped that he would be clear of all old liabilities within a year.

10.12 A further inspection took place in February 2006 (“the February 2006 inspection”). At that time, the Respondent had not fully responded to the issues raised after the July 2005 inspection. No improvement had been noted in the firm’s finances although the Respondent indicated that he was re-financing and hoped to be able to clear the firm’s overdraft and firm debts. At that time, the outstanding PAYE stood at £20,000 and VAT of £7,500. In addition, the VAT man no longer accepted firm cheques from the Respondent and insisted that payments were made by bank draft due to the fact that the firm’s cheques were not being honoured. There remained outstanding issues with money laundering, the Society having

requested identification for 11 clients following on from the July 2005 inspection. In addition the Complainers requested four files in relation to Business Q (x2) and Mr E (x2). The Respondent advised these files were not available as they were presently with the police. Issues also arose in relation to the recording of transfer of the title of Properties 1.

10.13 There was a further inspection on 26 – 28 September 2006 (“the September 2006 inspection”) at which time it was noted that issues arising from previous inspections narrated above had still to be resolved but that many points had been answered. The firm’s books at that time showed the firm’s liabilities of around £50,000 but that did not take into account the VAT arrears and personal loans of the Respondent. Although some improvement had been noted, there were sufficient concerns which required further inspection.

10.14 As at the February 2006 and/or September 2006 inspections the following issues remained outstanding from the May 2003; November 2003; May 2004; August 2004 and July 2005 inspections:-

A. Delay or failure to record deeds

i. Mr A – purchase of Property 2.

Issues in relation to the purchase of this property were outstanding since the May 2003 inspection. As at September 2006, the Respondent had failed to confirm whether the Disposition over this property and the Standard Security relating to it had been registered and had still failed to deal with the credit balance of £187 which had been held before March 2003. The Respondent was responsible for the delay for the period between January 2000 and December 2002.

ii. Mr E – purchase of Property 3.

The property was purchased on 15 September 2003 and in the November 2003 inspection the Complainers noted that the Standard Security of the sellers had not been discharged and that the Respondent was dealing with that. As at the inspection of November 2003 a Standard Security relative to the loan provided by the Northern Rock to re-finance had been recorded but the Standard Security in favour of the Clydesdale Bank, who provided the initial funding on the purchase in the September of 2003 had not been discharged. The failure to record the respective discharges of the Standard Securities were only volunteered by the Respondent at the inspection in February 2006 despite issues surrounding the purchase being raised by the Complainers in the November 2003 inspection.

iii. Mr H – purchase of Property 4.

The property was purchased on 27 February 2004 for £80,000 utilising funds of £49,817.39 provided by the Halifax, Building Society via other solicitors. As at the August 2004 inspection, no recording dues had been paid and a credit balance of £171.33 had remained on the ledger since March 2004. It appeared that the Halifax Building Society's solicitors, Golds, were handling the Standard Security but confirmation had been requested by the Complainers from the Respondent that the relevant Disposition and Standard Security had been recorded together with a copy of the ledger card. As at February 2006, that information had not been provided.



10.15 At the February 2006 and/or September 2006 inspections, the following matters remained outstanding from the August 2004 inspection.

A. Delay or failure to record deeds

1. Mr N – purchase of shop premises at Property 5.

Lloyds TSB agreed to provide loan funds of £25,500 for the purchase of this property. These were provided on 3 November 2004 for the settling of the transaction on 5 November 2004. A cheque to record the Disposition and Standard Security was issued on 5 February 2005 to the Registers of Scotland for £110. As at February 2006, the Respondent had not forwarded the original receipted Forms 4 in respect of these transactions or clarification of other agents (if it had been their duty to record) to enable the Complainers to investigate further nor an explanation for the delay.

2. Business Q – sale of Property 6.

The sale settled on 4 June 2004. The discharge was sent to the Registers of Scotland on 19 August 2004 together with a cheque for £33 in respect of a Barclays Bank Standard Security. The cheque was cancelled on 26 May 2005 and not reissued until 22 July 2005. As at the February 2006 inspection, the Respondent had failed to provide the original receipted Form 4 for this matter nor an explanation for the delay.

3. Mr and Mrs R

Matter 2 was the purchase of the plot at Property 7 which settled on 11 November 2004. Loan funds were received

from the Bank of Scotland for £118,080 on 10 November 2004. As at February 2006, the Disposition and Standard Security had not been recorded. Evidence was provided to the Complainers in September 2006 confirming that there were no outstanding Deeds to be recorded. No explanation has been provided by the Respondent for the delay in doing so. In addition at the September 2006 inspection a credit of £286 had been sitting on the client ledger since 30 June 2005.

Matter 6 was the purchase of Property 8 which settled on 13 September 2004 with loan funds from the Bank of Scotland of £120,000. The Disposition and Standard Security were not recorded until 21 July 2005 and the Respondent has failed to provide an explanation for the delay in doing so. In addition, as at the February 2006 inspection, a credit of £156.08 had been sitting on the client ledger since 30 June 2005.

10.16 At the September 2006 inspection the following new issues arose in relation to a delay or failure to record deeds:-

1. Ms S – purchase of Property 9.

The purchase settled on 19 June 2006 with the Chelsea Building Society loan. The Building Society sought clarification of the position in relation to the title deeds by letter dated 14 August 2006. The Respondent's reply on 16 August 2006 was that the relevant deeds had been forwarded to the Keeper for registration and that the Respondent was awaiting their return. As at September 2006 the ledger card did not disclose any evidence of payment of relevant recording dues nor was there evidence on file to disclose that the relevant deeds had been sent for registration.

2. Mr T – purchase of Property 10.

The property was purchased on 30 June 2006 with a loan from the Northern Rock Building Society. As at the September inspection the Disposition and Standard Security had not been recorded.

3. Ms V –sale of Property 11.

The sale transaction settled on 7 July 2006 and a loan with the Southern Pacific Mortgage Corporation was redeemed on 18 July 2006. As at the September inspection no dues of recording of the Discharge had been paid by the Respondent and no Form 4 produced by the Respondent.

4. Mr & Mrs X – sale of Property 12.

The sale transaction settled on 23 June 2006 and a loan with the Royal Bank of Scotland was redeemed on 21 July 2006. As at the September inspection no dues of recording of the Discharge had been paid by the Respondent and no Form 4 produced by the Respondent.

10.17 In addition to the above, the inspections as detailed above, raised issues of breaches of the relevant accounts rules in particular:-

1. Rule 4 (1) (c) –

(i) The February 2006 inspection disclosed a deficit in the Respondent's firms client account at the inspection in February 2006 from 3 – 7 October 2005 as follows:-

- (a) 3 October 2005- £891.37,
- (b) 4 October 2005- £4377.18,
- (c) 5 October 2005- £625.60,
- (d) 6 October 2005-£679.60 and

(e) 7 October 2005-£510.18.

(ii) In addition, a further deficit was found at said inspection following an arrestment from the client account on 5 January 2006 amounting to £18,168.32. No postings were made to the records until 31 January 2006 and therefore in reality the client account would have been in deficit for that amount from 5 – 31 January 2006.

2. Rule 6 (1) (c) – encashment of cheques for clients via client bank.

(a) Mr OO

In April 2005, a cheque for Mr OO from the Inland Revenue for £504.79 was paid into the client bank. The client was identified as the son of one of the Respondent's old school friends and that he had no current account of his own. It was narrated that there were special and particular circumstances and that the cheque represented a tax refund. The Respondent had been advised by the Complainers' Inspectors in the May 2003 inspection that third party cheques should not be encashed via the client account.

3. Rule 8 (1)- properly held records – firm bank reconciliation

At the February 2006 inspection the firm bank reconciliation contained a number of out-of-date cheques that related to recording dues requiring immediate investigation, namely :-

(a) Mr E – purchase of Property 13 – settled 24/02/04.

(b) Mr E – purchase of Property 6 - settled 04/06/04.

(c) Business Q – sale of Property 13 - settled 24/02/04.

(d) Business Q – sale of Property 6 – settled 04/06/04.

- (e) Ms BBB – transfer of half share Property 14 - cheque sent for recording 22/07/05

4. Rule 8(1) -client bank reconciliation.

At the February 2006 inspection a check of the client bank account reconciliation disclosed a number of out-of-date cheques, for sums in respect of recording dues. An explanation was sought, together with the relevant vouching, to show that the relevant deeds were recorded, namely:-

- (a) Mr CCC – Transfer of shed and ground at Property 15.

The dues of Disposition to Registers of Scotland in the amount of £44 dated 12 May 2005 shown as out-of-date.

- (b) Mr & Mrs DDD – purchase of Property 16.

The dues of Disposition and Standard Security cheque in the sum of £132 to the Registers of Scotland was dated 21 July 2005. As at the February 2006 inspection it appeared that the Standard Security and Disposition were unrecorded and clarification from the Respondent was sought for the delays and that the lender had been made aware of the position.

- (c) Client EEE – re finance and purchase of Property 14.

A cheque for £275 relating to the dues of Disposition and Standard Security was sent to the Registers of Scotland dated 22 July 2005. As at the February 2006 inspection the cheque was out-of-date. As a result it appeared that the relevant Disposition and Standard Security had not been recorded. An explanation was sought for the delay together with details of production of the relevant Forms 4 showing recording and confirmation that the lender was advised.

(d) Business FFF – re-finance of Property 17.

By cheque of 15 August 2003 £600 was paid to the Registers of Scotland but as at the September 2006 inspection that was out-of-date. Clarification was sought from the Respondent.

(e) Mr & Mrs GGG – re finance of Property 18.

A cheque for £515 was paid to the Registers of Scotland on 15 December 2005. As at the inspection of September 2006 the cheque was out-of-date. Clarification was sought from the Respondent.

(f) Client HHH

Three cheques dated 23 January 2006 for £200 were paid to each of Mr III, Mr JJJ and Mr KKK respectively and as at the September 2006 inspection were out-of-date. Clarification was sought from the Respondent.

(g) Mr LLL – purchase of Property 19.

A firm bank account cheque for £22 was paid to the Registers of Scotland on 23 September 2005. As at the September 2006 inspection the cheque was out-of-date. Clarification was sought from the Respondent.

5. Rule 24 – Money Laundering Regulations – client identification

A. In the July 2005 inspection a check of the central record containing details of identification was carried out by the Complainers. That disclosed that where it was marked on the system that identification was not required the Respondent's reason was that the client had been referred to him by a friend who was also a friend of the client. The Respondent was made aware that was not sufficient for identification purposes and

identification for the undernoted clients was not found, but required, on the central record, in the selection of files reviewed:-

- (a) Mr QQQ and Mrs & Mrs RRR (who introduced funds)
- (b) Mr & Mrs LLLL
- (c) Mr SSS
- (d) Client TTT
- (e) Mr L
- (f) Mr N
- (g) Mr UUU
- (h) Mr E
- (i) Ms P and Mrs VVV (funds received re introduced funds)
- (j) Ms WWW (Executor of Mr XXX, decd)
- (k) Ms YYY

B. Insufficient money laundering identification was obtained identified in the July 2005 inspection in relation to:

- (a) Ms ZZZ and Mr AAAA
- (b) Mr FFFF

C. In the inspection of February 2006 no client identification was seen on file, or reasons why identification had not been necessary, was provided, in relation to the undernoted clients:-

- (a) Ms BBBB re Mr CCCC (who introduced funds)
- (b) Mr DDDD
- (c) Mr EEEE

6. Rule 24 Money Laundering Regulations – source of funds.

A. As at the July 2005 inspection no evidence of the originating source of funds being received from the undernoted clients or third parties was available :-

- (a) Ms P regarding funds of £28,000 introduced by Mrs VVV for purchase of Property 20;
- (b) Mr QQQ funds of £35,500 introduced by Mr & Mrs RRR towards purchase of Property 21;
- (c) Mr FFFF where £10,000 was introduced by Lloyds TSB by way of a counter cheque / draft.

B. In the February 2006 inspection the requisite information to evidence the source of the incoming funds was not received from the undernoted clients, or that source of funds had been considered:-

- (a) Mr GGGG  
The sum of £14,000 was received 19 December 2005 from the client.
- (b) Mr EEEE  
Funds of £10,727.25 were received on 20/1/06 by BACS transfer. Insufficient detail was recorded on the bank statement to verify the source of these funds.
- (c) Mr HHHH  
The sum of £2320 was introduced to the ledger from Stadtparkasse Hanover cheques from Mr IIII to be invested for children by way of a bank draft of £23,363. No explanation was provided for the receipt of funds and the source of funds.



As money laundering procedures had been highlighted at previous inspections given the repeated failures in the February 2006 inspection, the Respondent was called upon to implement procedures to comply with Rule 24.

C. In the September 2006 inspection, it was noted that the Respondent had introduced enhanced procedures to ensure compliance with the money laundering regulations. Two files however were examined which did not contain any evidence regarding the identity of clients namely:-

1. Mr JJJJ
2. Ms KKKK

Law Society of Scotland re Lloyds TSB

10.18 On or about 14 September 2005, the Law Society of Scotland (“the Complainers”) received a complaint in relation to the service provided by the Respondent to Lloyds TSB in relation to the purchase of Property 5. The Respondent acted for Lloyds TSB in relation to the obtaining and recording of a Standard Security over said property.

10.19 The Complainers wrote to the Respondent by letters dated 16 December 2005; 17 January (including a Notice under Section 15 (2) (i) (i) of the Solicitors (Scotland) Act 1980); 7 February, comprising part 2 of Section 15 (2) (i) (i) Notice; 7 February; 16 February 2006. No response was received by the Complainers from the Respondent.

11. Having considered the foregoing facts and circumstances and the submissions from the parties, the Tribunal found the Respondent guilty in cumulo of Professional Misconduct in respect of:

- 11.1 His repeated failure between 14<sup>th</sup> July 2000 and 22<sup>nd</sup> March 2007 to settle Counsel's fees for instruction in respect of the cases Mr I & Another v Mr B & Another, Mr C, the Executrix of the late Mr D, Mr & Mrs J v Mr F, the Clydesdale Bank v Mr and Mrs G, Mr and Mrs K and Company 1 v Company 2.
- 11.2 His delay and/or failure to record heritable deeds with the Registers of Scotland on behalf of his clients.
- 11.3 His breach of Rule 6 (1) of the Solicitors (Scotland) Accounts etc Funds Rules 2001 by his encashing a cheque for a third party in April 2005 despite having been told by the Complainers that he should not do so.
- 11.4 His breach of Rule 8 of the said Accounts Rules by his failure to keep properly written up books and accounts.
- 11.5 His breach of Rule 24 of the said Accounts Rules by his failure to implement and when in place ensure compliance with systems in place to ensure that the Money Laundering Regulations were complied with.
- 11.6 His unreasonable delay from 16 December 2005 to 16 February 2006 in responding to the reasonable enquiries of the Complainers about the Complaint of Lloyds TSB.
12. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 January 2008. The Tribunal having considered the Complaints dated 18 June and 21 June 2007 at the instance of the Council of the Law Society of Scotland against John Gerard O'Donnell, Solicitor, 15 Clarkston Road, Glasgow; Find the

Respondent guilty of Professional Misconduct in cumulo in respect of his repeated failure between 14 July 2000 and 22 March 2007 to settle Counsel's fees, his delay and/or failure to record heritable deeds with the Registers of Scotland on behalf of his clients, his breach of rules 6, 8 and 24 of the Solicitors (Scotland) Accounts etc Funds Rules 2001 and his unreasonable delay in responding to the reasonable enquiries of the Complainers; Censure the Respondent; Fine him in the sum of £500 to be forfeit to Her Majesty and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that the Respondent's practising certificate be subject to a condition that the books and records of the Respondent's practice be inspected by the Council of the Law Society of Scotland no later than 30 June 2008 and thereafter at nine monthly intervals on two further occasions, the last of which to take place no later than 31 December 2009, all such inspections to be at the expense of the Respondent; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**Kenneth Robb**

**Vice Chairman**

13. 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. Valerie Johnston was the fiscal in respect of one of the Complaints and Elaine Motion was the fiscal in respect of the other. It was agreed that the two Complaints be dealt with together and cumulative findings be issued. The Respondent pled guilty to the Complaint dated 18 June 2007 and a Joint Minute was lodged in respect of the Complaint dated 21 June 2007 admitting the facts, averments of duty and the averments of professional misconduct in the amended Complaint. There were substantial amendments and deletions from the original Complaint. No evidence was led and the Tribunal heard submissions from both fiscals and from the Respondent's solicitor.

**SUBMISSIONS FOR THE COMPLAINERS IN RESPECT OF COMPLAINT DATED 18 JUNE 2007**

Ms Johnston explained that when the firm of O'Donnell Vaughan terminated there were already difficulties with regard to payment of Counsel's fees. Eventually the Dean of the Faculty of Advocates raised the issue of the Respondent and other solicitor's non-payment of fees with the Law Society. The Respondent did respond to the Faculty in 2006 and it was hoped that matters would be resolved but unfortunately this was not the case. Ms Johnston stated that there were matters outstanding from the previous firm of O'Donnell Vaughan but also matters which arose when the Respondent was a sole practitioner. In March 2007 the sum of £12,807.14 was outstanding. Ms Johnston confirmed that she spoke to the Faculty of Advocates yesterday and the Respondent had paid £18,000 which was an overpayment of £4,700.

**SUBMISSIONS FOR THE RESPONDENT IN RESPECT OF COMPLAINT DATED 18 JUNE 2007**

Mr Clapham explained that this situation arose because the clients did not place the Respondent in funds. Mr Clapham however stated that it was accepted that a solicitor has a responsibility to ensure that Counsel's fees are paid. In these cases, the

Respondent was let down by his clients and did not have sufficient funds to pay the fees himself. Mr Clapham referred the Tribunal to the letter from the Faculty of Advocates dated 4 October 2007 which confirmed that the Respondent had paid all the fees due. Mr Clapham further explained that a substantial amount of the fees due was in respect of an action on behalf of clients that the Respondent was confident would be successful but in the event was not.

**SUBMISSIONS FOR THE COMPLAINERS IN RESPECT THE COMPLAINT  
DATED 21 JUNE 2007**

Ms Motion took the Tribunal through the Complaint and the Joint Minute outlining the various amendments and deletions. She advised the Tribunal that the inspection reports which were lodged as Productions had been agreed. Ms Motion advised that the majority of the issues arose from inspections between May 2003 and September 2006. There was a pattern of problems that did not resolve themselves. Ms Motion referred to a summary sheet that she had prepared in connection with the delays and failures to record title deeds. These delays occurred over periods of between three and a half months and two years six months and related to standard securities, dispositions and discharges. There were also concerns with regard to the failure to comply with the Accounts Rules. The Respondent did not appear to have control over his accounting. Ms Motion also referred to the concerns with regard to out of date cheques. Ms Motion referred to a schedule detailing the time periods involved which ranged from no delay to a delay of two years seven months. There were also concerns with regard to the Respondent's money laundering procedures.

Ms Motion confirmed that all the items were now resolved and at an inspection late last year, the Law Society were satisfied that the Respondent now had proper procedures in place. In respect of the failures to respond, the information was not made available to the Law Society previously. However, as at August 2006 the matters behind the failures to respond had been dealt with.

**SUBMISSIONS FOR THE RESPONDENT IN RELATION TO THE COMPLAINT DATED 21 JUNE 2007 AND GENERALLY IN MITIGATION**

Mr Clapham stated that it was very unfortunate that the Respondent was before the Tribunal. He explained that the Respondent had been a partner in O'Donnell Vaughan which had dissolved on 31 October 2002. He then set up in business on his own. In summer 2002 the Respondent who had been suffering from mental illness had a breakdown. Mr Clapham pointed out that a lot of the matters which had originally been in the Complaint had been deleted. He explained that he had provided a lot of information with regard to the factors which caused the delay in recording deeds. He gave examples of the circumstances that had led to some of the delays. Mr Clapham also pointed out that a number of the delays in recording deeds related to discharges and late recording of discharges was not as prejudicial as late recording of dispositions or standard securities. In connection with money laundering, Mr Clapham stated that this was due to a failure of systems, for example where a client was a member of the Respondent's family, there would be no need to see a passport but there should have been a written record of this and this had not been done. Mr Clapham stated that the Law Society was now satisfied with the systems that the Respondent had in place in connection with money laundering. In connection with the cheque that was cashed, this was for the son of an old school friend and was a cheque from the Inland Revenue for £504. In connection with the failure to respond to the Law Society, the delay was only a period of two months and the matters concerned had been resolved. Mr Clapham explained that the Respondent has five staff and a large turn over in a vibrant practice. The Respondent had been involved in a long and expensive wrangle in connection with the dissolution of O'Donnell Vaughan and Co. Mr Clapham referred the Tribunal to the psychiatric report on the Respondent. The Respondent was now fully recovered. Mr Clapham pointed out to the Tribunal that the Respondent had been in the profession for thirty years prior to having any difficulties.

The Respondent then addressed the Tribunal himself and explained that he now had a clean bill of health and things were sorted out in his life. He confirmed that he had been industrious during the last year to ensure that all matters had been dealt with. The Respondent explained that he had not realised that he was suffering from depression and that when he had his breakdown in July 2002, his partner responded in

writing to him ending the partnership. The Respondent explained that his staff had been with him for a long period of time and he now had improved systems in place. The things that had happened had happened due to his illness.

## **DECISION**

The Tribunal noted that a lot of matters which had originally been in the Complaint dated 21 June 2007 had now been deleted and the Complaint was accordingly a lot less serious than as originally presented. There were however still numerous instances of long delays in recording deeds. The Respondent had also not been maintaining proper records. The Tribunal was concerned with regard to delay in recording deeds as this exposes the lending institutes and the public to significant risk. The Respondent also operated without having proper systems in place to ensure compliance with the Accounts Rules and the Money Laundering Regulations. This is damaging to the reputation of the legal profession. Solicitors have a professional responsibility to recognise that they should not continue working if they are unable to operate satisfactorily due to illness. The Tribunal however accepted that all the issues in both Complaints arose during the period when the Respondent was suffering from depression. He was unable to be active in resolving the problems. The Tribunal also accept that the nature of depression is that it is often not recognised to be a problem by the sufferer. The Tribunal noted that the Respondent had previously worked without incident in the profession for thirty years and that things started to go wrong due to his ill health. The Tribunal was impressed that matters have now been resolved and that the Respondent is willing to have further inspections. The Tribunal however also noted the terms of the doctor's letter dated October 2007 and considered that in order to ensure protection of the public, the Respondent's records should be inspected by the Law Society on a regular basis over the next two years. This will ensure that if there are any further difficulties they will immediately be picked up.

In connection with the delay in paying Counsel's fees, the Tribunal by a majority decision, considered that a fine of £500 should be imposed to make it clear to the profession that it is not acceptable to delay for years in payment of Counsel's fees. One member of the Tribunal dissented in connection with the imposition of this fine on the basis that it was an unreasonable demand on the profession for solicitors to

have a personal responsibility to pay Counsel's fees. The Tribunal agreed to issue a composite decision in respect of the two Complaints. The Tribunal made the usual order with regard to publicity and expenses.

**Vice Chairman**