

**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

**MICHAEL GERALD ROURKE,
Solicitor, of Robert Thomas &
Caplan Solicitors, 365 Victoria
Road, Glasgow**

And

**JOHN KNOX AITKEN, Solicitor,
of Robert Thomas & Caplan
Solicitors, 365 Victoria Road,
Glasgow**

1. A Complaint dated 18 June 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Michael Gerald Rourke, Solicitor, of Robert Thomas & Caplan Solicitors, 365 Victoria Road, Glasgow (hereinafter referred to as "the First Respondent") and John Knox Aitken Solicitor, of Robert Thomas & Caplan Solicitors, 365 Victoria Road, Glasgow (hereinafter referred to as "the Second 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 both Respondents. Answers were lodged by both Respondents.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 15th October 2008 and notice thereof was duly served on both Respondents.
4. When the Complaint called on 15th October 2008 the Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow, who also appeared for the Respondents. The matter was continued to a further procedural hearing on 19th November 2008.
5. When the Complaint called on 19th November 2008 the Complainers were represented by their fiscal Paul Reid, Solicitor Advocate, Glasgow. The First and Second Respondent's were both present and were represented by Mr O'Rourke, Advocate.
6. A Joint Minute was lodged admitting most of the averments of fact, averments of duty and averments of professional misconduct in the Complaint. No evidence was led.
7. The Tribunal found the following facts established
 - 7.1 The First Respondent is Michael Gerald Rourke. He was born 9th May 1956. He was admitted as a solicitor on 12th November 1980. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 11th December 1980. Initially the First Respondent was employed with the firm Edmonds & Ledingham and thereafter Fraser & Company. Then on 26th June 1987, he became an employee with the firm Robert Thomas & Caplan, Solicitors, 365 Victoria Road, Glasgow. On 1st June 1992 he was assumed as a Partner in that firm. The First Respondent continues in the role of Partner with Messrs Robert Thomas & Caplan, Solicitors to date.

7.2 The Second Respondent is John Knox Aitken. He was born 28th July 1963. He was admitted as a solicitor on 19th September 1986. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 13th October 1986. Following his admission as a solicitor he was employed with the firm Harper Thomson & Lewis until 13th October 1989. From 16th October 1989, initially as an employee and latterly as a Partner, the Second Respondent has been employed with the firm Messrs Robert Thomas & Caplan, Solicitors of 365 Victoria Road, Glasgow. The Second Respondent continues in the role of partner with Messrs Robert Thomas & Caplan Solicitors to date.

7.3 **Inspection of 25th February 2004**

On 25th February 2004, the Complainers, then acting in pursuit of their statutory duties, inspected the financial records, books and documentation maintained by both the Respondents at their practice, Robert Thomas & Caplan, Solicitors, 365 Victoria Road, Glasgow. This inspection revealed to the Complainers a number of breaches of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 (hereinafter referred to as the "Solicitors (Scotland) Accounts Etc Rules 2001). In particular the following was identified:-

- (a) An examination of the client bank reconciliation maintained by the Respondents was carried out. This revealed that the Respondents had failed to reconcile the client bank account for a period of several months as a consequence of which the bank reconciliation was in arrears. As a result it was impossible to ascertain the true and accurate position on the client account maintained by the Respondents (Rule 9).

- (b) The books maintained by the Respondents failed to reflect the accurate and up-to-date position. Within the books maintained by the Respondents, the partnership drawings accounts included figures which were in excess of figures revealed for the current year (Rule 8).
- (c) The records in respect of the clients Mr and Mrs A were examined. This revealed a bridging loan account with The Royal Bank of Scotland plc in the name of the firm Robert Thomas & Caplan for the clients which had not separately been recorded whilst it was current (Rule 8).
- (d) Examination of the records revealed sums were held on behalf of clients which had not been invested as a consequence of which the clients did not receive the interest which was due. In particular:-
- (i) Client B – sum £3,847.67 – uninvested from 12th January 2004 to 25th February 2004
 - (ii) Client C – sum £683.00 – uninvested from 20th November 2003 to 25th February 2004.
 - (iii) Client D – sum £1,252.78 uninvested from 30th June 2003 to 25th February 2004. (Rule 11).
- (e) The inspection revealed a failure on the part of the Respondents to comply with the obligations upon them in terms of Money Laundering Regulations. An examination of the affairs of the client Mr E revealed a Bank of Scotland bank draft for the sum of £5,000 was received from a business partner of Mr E in connection with the purchase of the heritable property 1. The Respondents had failed to evidence the source account of the bank draft or to have the identity of the supplier of the bank draft verified. (Rule 24).

- (f) The Respondents acted for a Mr F in connection with the sale of a property portfolio owned by the client. Certain of the files operated by the Respondents were examined. These files did not reveal that the Respondents had verified the identity of the client. The instructions provided to the Respondent by Mr F in the course of these transactions were unusual and should have been investigated further by the Respondents. They were instructed by Mr F to act for him in the sale of his property portfolio. In relation to three properties, Mr F instructed an alternative firm of solicitors to act for him in the sale and in these transactions the Respondent acted for the purchasers. The purchasers would buy from Mr F the heritable property and thereafter sell it on the same day normally for a considerable profit. After deducting a professional fee, the Respondents would, instead of paying the net free proceeds to the purchaser, paid the net free proceeds to Mr F “per a Mandate”. No Mandate was available for inspection. No enquiry had been made by the Respondents as to what the background was to such an unusual transaction occurring. No enquiry was made by the Respondent regarding what relationship existed between the sellers and the purchasers. At the time no consideration had been given by the Respondents to reporting the matter to NCIS as is their obligation. After the issue was raised by the inspector with them, they then reported it to NCIS. (Rule24).
- (g) The examination also revealed a number of general issues which were of concern to the Complainers. In particular the following was identified:-
- (i) The Accounts Certificate produced by the Respondents was inaccurate. There was no reference to a Capital Account due to a retiring Partner, Mr R Thomas. Until such time as the capital had been repaid to the retiring Partner, it should be shown on the Accounts Certificate

as money due by the firm since it is a loan to the firm by the retiring Partner.

- (ii) The Respondents acted in the administration of an executry relating to a Mrs G (Deceased). The Respondents sold shares in the executry without being licensed to undertake incidental investment business.
- (iii) The inspectors reviewed a number of conveyancing files where transactions had settled some months previously and Forms 4 from the Keeper of the Land Register were not on the file. Said Forms are indicative of the administration of settlement having been finalised. The inspectors were concerned to ensure that conveyancing transactions completed by the Respondents had indeed been finalised. Examples included:-
 - (a) The client, Mr and Mrs A. Transaction settled 10th October 2003. Loan received 9th October 2003. Form 4 in respect of Disposition and Standard Security outstanding.
 - (b) The clients, Mr and Mrs H. Transaction settled 5th November 2003. Standard Security discharged 17th November 2003. Form 4 outstanding in respect of Discharge.
 - (c) The clients I, Transaction settled 12th December 2003. Loan received 12th December 2003. Form 4 in respect of Disposition and Standard Security outstanding.
 - (d) The clients J. Transaction settled 30th January 2004. Loan received 28th January 2004. Form

4 in respect of Disposition and Standard Security outstanding.

- (h) As a result of the issues identified and the concerns expressed by the Complainers to the Respondents following the inspection in February 2004, it was agreed that the Complainers would return to the premises of the Respondents on 13th April 2004 for a follow up inspection. Although the concerns identified by the Complainers had been intimated to the Respondents, the Respondents still failed to attend to the requirements of the Accounts Rules. In particular:-
- (a) Concerns over the bank reconciliation were brought to the attention of the Respondents. The Respondents had failed to properly carry out a bank reconciliation. The bank reconciliation had been prepared only to 31st January 2004. It excluded a considerable number of reconciliation items which required to be investigated. It had failed to incorporate the correct information as a result of which a distorted and inaccurate position was presented. Certain of the issues excluded dated back to August 2002. This suggested that the client bank had not been reconciled properly for a period in excess of twenty months. The items excluded were significant. For example, a bank payment of £8,590 in November 2002 had not been included. Such a payment required to be fully investigated as it impacted upon the surplus position operated by the Respondents.
- (b) Separately the inspection of April 2004 revealed a large number of unencashed cheques which were now of such age they were out of date. These cheques should have been written back and reissued. The sums involved were considerable. In particular there were two cheques

for the sum of £1,600 which had been dated prior to May 2002 and August 2002 which remained unencashed. No investigation had been carried out by the Respondents in respect as to why this was the case.

Inspection of 9th August 2004

7.4 As a consequence of the earlier inspections which had been carried out and the concerns identified by the Complainers, it was determined that on 9th August 2004 the Complainers, acting in pursuit of their statutory duties, would carry out a further inspection of the financial records, books and documentation maintained by the Respondents. This inspection revealed a number of breaches of the Solicitors (Scotland) Accounts Etc. Rules 2001 as follows:

- (a) This inspection revealed a number of instances where funds had been remitted by the firm but were not being posted through the client ledger until some days or on occasion, weeks later. As a consequence of this practice, a shortage on the client account was identified. In particular the following issues were identified:-
 - (i) The affairs of the client Mr K were examined. The Respondents acted on behalf of the client in connection with a conveyancing transaction. The examination revealed the purchase price was issued to the firm Morisons Solicitors by telegraphic transfer on 4th June 2004 for the sum of £98,965.00 together with £20.00 banking charges. The entry reflecting this payment out was not posted through the client ledger until 2nd July 2004. The ledger balance on 4th June 2004 was £93,999.10. This was insufficient to cover the payment made out on that date. The client

ledger was therefore overdrawn by the sum of £4,985.90 until further funds were received from the client on 8th June 2004. The surplus maintained by the Respondents on the client account on 4th June 2004 was £2,403.64. This resulted in a shortage on this date of £2,582.26.

- (ii) The affairs of the client Ms L were examined. This examination revealed that the sum of £41,541.36 was sent by telegraphic transfer to The Mortgage Business to redeem a client loan on 5th May 2004. The entry reflecting this payment was not posted to the client ledger until 30th June 2004. As this entry was not posted immediately, the examination revealed that a further payment of £41,345.68 was issued by cheque in error on 18th May 2004. This created a shortage on the client account from 18th May 2004 until 1st July 2004 when the funds were received back from The Mortgage Business.
- (iii) The affairs of the client Mr M were examined. The examination revealed a payment of £133,620.00 was made by telegraphic transfer on 4th June 2004. This was not posted to the client ledger until 11th June 2004 although the examination revealed funds were available to cover the payment on 4th June 2004.
- (iv) The affairs of the client Mr N were examined. A cheque for the sum of £4,723.75 was issued on 1st June 2004 and encashed by the bank on 4th June 2004. The entry was not posted to the client ledger until 13th July 2004. Funds were available to cover the payment from 1st June 2004.

- (v) The affairs of the clients Mr and Mrs O were examined. A payment of £95,950.00 was made by telegraphic transfer on 23rd June 2004. No entry reflecting this payment was posted to the client ledger until 13th July 2004. Funds were available on the client ledger as at 23rd June 2004.
 - (vi) The affairs of the client Mr P and Mr Q were examined. The sum of £16,807.28 was issued by telegraphic transfer on 30th June 2004. No entry was posted to the client ledger until 7th July 2004. Funds were available on the ledger from 30th June 2004.
 - (vii) The affairs of the client R (Executry) were examined. A cheque for £22.00 was written and debited to the client account on 1st June 2004. No entry in respect of this transaction was posted to the client ledger until 14th July 2004. (Rules 4 and 8).
- (b) As a result of earlier inspections the Complainers had drawn to the attention of the Respondents the need for them to ensure that the client bank reconciliation was updated and accurate. Despite this being drawn to their attention, the Respondents failed to do so. As at 30th June 2004, a number of outstanding cheques were noted which principally related to recording dues. In particular the following were identified:-
- (i) Mr & Mrs S. Paid Registers of Scotland £22.00 on 30th January 2004 relating to a transaction on 22nd December 2002 – the cheque remained outstanding.
 - (ii) Ms T. Paid Registers of Scotland £33.00 on 20th February 2004 relating to a transaction in

November 2001 – the cheque had not been cashed.

- (iii) Mr and Mrs U. Paid Registers of Scotland £66.00 on 25th February 2004 relating to a transaction in October 2003 – the cheque had not been cashed.

The cheques identified were of some date. The Respondents had failed to investigate why the cheques remained outstanding. Cheques which are six months out of date should be cancelled through the records maintained by the Respondents. The transactions identified did not have receipted Forms 4 from the Keeper of the Land Register nor did they disclose any explanation for the delay or why several payments had been made on behalf of clients. (Rule 8).

- (c) Despite the terms of the Money Laundering Regulations being brought to the attention of the Respondents previously and both being advised as to what was expected of them, the inspection revealed that the Respondents were failing in their duties. In many cases throughout this inspection and other inspections, there was a lack of documentation to verify identity, lack of information about the source of funds, monies being introduced to transactions by third parties and payments made from sale proceeds of transactions to third parties. There were also concerns about transactions commencing in one name and thereafter a different individual would actually buy the property. The concern on the part of the Complainers was as a result of the ignorance by the Respondents of their obligations in terms of the Money Laundering Regulations was the considerable potential for mortgage fraud to occur. If funds come from or go to a third party, there is a chance

that the client is either fictitious or simply a name with the person behind the transaction being the person paying or receiving the funds. The net result of the Guarantee Fund is the potential for lenders to lose if the client defaults and the property value is subsequently inadequate to repay the loan and thereafter a claim is made against the fund. If this were to occur, the sums involved could be immense and the Complainers viewed this as a real and current threat to the fund. The inspection revealed one instance where the source of funds received from clients had not been verified by the Respondents. The inspection revealed a number of occasions where identification of clients had not been obtained by the Respondents. In general the manner in which the files were maintained by the Respondents revealed a failure on their part to comply with the obligations imposed upon them in terms of the Money Laundering Regulations. In particular the following was identified:-

- (i) The Respondents acted on behalf of clients, Mr V and Mr W. The sum of £25,000 was received from these clients by way of bank draft on 16th June 2004. No verification of the source of the bank draft carried out by the Respondents was seen.
 - (ii) The Respondents acted for a Mr X. Funds were introduced by third parties. No identification of the third parties was obtained by the Respondents.
- (d) Examination of the client ledger revealed balances in excess of £500.00 were noted which had been held by the Respondents and uninvested, in particular for the clients:

- (i) MrV192/1 - £7,000.00 held since 27th May 2004
 - (ii) MrY6/1 – the sum of £6,226.46 held since 15th June 2004 (Rule 11).
- (e) The Respondents acted on behalf of two parties to the one conveyancing transaction. They acted for an Mr Z who was purchasing subjects at Property 2 and for an Mr AA on whose behalf they also acted in the sale. The transaction settled on 4th June 2004. No letters advising the clients as to the possible conflict of interest situation were found in the files (Solicitors (Scotland) Practice Rules 1986 – Rule 5).
- (f) In general the examination revealed that the Respondents continued to fail to maintain proper and accurate financial records. In particular the following was identified:-
- (a) The total invested funds held at each month end was not reflected in the month end firm trial balance. (Rule 8).
 - (b) The examination revealed that a “Retention for Clients” ledger account was operated. The inspection noted that unrelated client debit and credit balances were being offset against each other through this ledger. It was further noted the sum of £1,309.42 was transferred from this account to the suspense account on 18th May 2004.
 - (c) The examination revealed a number of old and small client balances. These were of some age and growing in number. The Respondents were encouraged to attend to resolving these balances.

- (d) The examination revealed that no payments had been made by the Respondents in respect of Inland Revenue, Income Tax and National Insurance for that tax year. The sums due to date were NIC £3,795.59, PAYE £3,559.10 being a total due of £7,354.69. (Rule 8).

7.5 As at 30th June 2004 the nominal ledger showed a balance in cash held of £1,420.70 however the cash held by the Respondents at that time amounted to £0.20. (Rule 8).

7.6 The Respondents acted in the administration of the estate of Ms BB (Deceased). The inspection revealed that the Respondents had sold shares on behalf of the estate. This constituted incidental investment business, which the Respondents were not licensed to carry out.

Inspection of 3rd and 4th May 2005

7.7 On 3rd May 2005 as a result of concerns identified during earlier inspections, the complainers then acting in pursuit of their statutory duties carried out an inspection of the financial records, books and documentation maintained by the Respondents. A number of breaches of the Solicitors (Scotland) Accounts Etc Rules 2001 were revealed, in particular the following were identified:-

- (a) Previous inspections had revealed a continuing difficulty on the part of the Respondents to proceed with timeous recording of deeds in conveyancing transactions. Despite concerns being identified and intimated to the Respondents, these difficulties

continued and were highlighted during this inspection.

The following were identified:-

- (i) The Respondents acted for an Mr CC in connection with the sale of Property 3. The transaction settled 23rd February 2005. The sum of £75,000.00 was paid to the Allied Irish Bank plc in redemption of a mortgage. As at the date of inspection the Discharge had not been recorded.
- (ii) The Respondents acted for the client Mr BU in connection with the purchase of Property 3 which settled on 23rd February 2005. The client obtained a loan from Preferred Mortgages. As at the date of inspection the Disposition and Standard Security had not yet been recorded.
- (iii) The Respondents acted for a Mr DD in connection with his purchase of Property 4. The transaction settled on 17th March 2005 with a Halifax loan. As at the date of inspection the Disposition and Standard Security had not yet been recorded.
- (iv) The Respondents acted for a Mr and Mrs EE in connection with the purchase of Property 5. The transaction settled on 18th March 2005. The clients used a loan from Northern Rock. As at the date of inspection the SDLT and Recording Dues had not yet been paid.
- (v) The Respondents acted for a Mr FF in connection with his purchase of Property 6 on 27th February 2004. A loan was secured with the Clydesdale Bank plc. As at the date of the inspection the Disposition and the Standard Security had not yet been recorded.

- (b) The Respondents failed to comply with their obligations in respect of bridging loans. All bridging loans are required to be reconciled by the firm on a monthly basis. As at 31st March 2004 there were three accounts with an outstanding sum of £311,042.99. If the accounts had been properly reconciled by the Respondents it would have been noted that the account for Client GG was closed on 18th November 2004. It would have been noted that the account for Client HH was £265,319.99 debit compared to £257,342.00 debit as shown on the records maintained by the Respondents. Separately the Respondents had failed to post on a monthly basis the interest and charges in respect of these loans. (Rule 20 and Rule 8).
- (c) The inspection revealed numerous client cheques were made payable to banks and building societies which were designated with an account number of the person whose account was to be credited and not with the name of the client. From September 2004 the Accounts Rules provide a client's name must be included in the payee line. Examples revealed as follows:
- (i) 10th January 2005 – Birmingham Midshires account 20002658984 sum of £102,344.70.
 - (ii) 25th January 2005 – Royal Bank of Scotland plc account 06641223 the sum of £35,858.43.
 - (iii) 4th March 2005 – Southern Pacific Loans account number 0000947659 the sum of £33,843.54. (Rule 6(2)).

- (d) The inspection also revealed on a general basis a failure on the part of the Respondents to comply with their obligations in terms of the Accounts Rules and in terms of Practice Rules issued by the Complainers. Having brought to the attention of the Respondents previously concerns of the Complainers regarding the Respondents failure to comply with their obligations in terms of the Money Laundering Regulations, this inspection revealed some progress had been made in implementing procedures to ensure full compliance with the Rules. However, certain instances were noted where although copies of bank drafts received from the clients were noted, there was a failure to identify the source of the funds or to obtain original documentation from clients rather than copies. Separately it was noted that where the firm was conducting conveyancing transactions, no Terms of Business Letters had been issued to clients in the accepted style provided for in terms of the Residential Conveyancing Terms of Business Practice Rules 2003.

Inspection of 8th May 2006

7.8 As a result of previous inspections and a number of concerns being identified by the Complainers, on 8th May 2006, acting in pursuit of their statutory duties, the Complainers carried out a further inspection of the financial records, books and documentation maintained by the Respondents. A number of breaches of the Solicitors (Scotland) Accounts Etc Rules 2001 were revealed. In particular the following matters were identified:-

- (1) The Respondents acted on behalf of a client, II. The client purchased Property 7, on 16th December 2005 for the sum of £172,500.00 utilising a mortgage from Birmingham Midshires for the sum of £146,576.00. In

February 2006 the client realised that he may be sequestrated due to non-payment of commercial rates. He thereafter arranged for his wife, Mrs II, to buy the house for £28,000.00 which was the amount of the equity. The loan would be maintained with payments being made by Mrs II. In a few months time Mrs II would obtain her own mortgage and the current mortgage would be redeemed. The Respondents failed to explain to Mrs II that there may be a conflict of interest and that she should have taken separate legal advice. The firm did not contact the lender to explain about the transfer of title to the property.

- (2) The examination revealed further delays in the recording of deeds. In particular the following were noted:
 - (i) The Respondents acted in connection with the estate of the late Mr JJ. The estate sold Property 8. The loan with Bradford & Bingley was redeemed on 20th January 2006. A cheque was issued to the Registers of Scotland for £22.00 on 20th January 2006 regarding this Discharge. The cheque remained unencashed as at 31st March 2006
 - (ii) The Respondents acted for a client, Mr KK, regarding his purchase of Property 9. On 12th August 2005, monies were received from Halifax Building Society. The SDLT certificate had not yet been received. The Disposition and Standard Security had not yet been presented for recording.
- (3) The inspection revealed that the Respondents were failing in their duty to maintain up to date and accurate

financial records. In particular the following was identified:-

- (i) Narratives on client ledgers were poor, lacking information and in certain instances were incorrect. There was a consistent failure on the part of the Respondents to complete a clear narrative which fully described the transactions taking place. Examples of difficulties were identified and left with the Respondents for them to attend to.
 - (ii) The records maintained by the Respondents in respect of an unsecured loan were inaccurate. The amount due to the lender should have been recorded by the Respondents in the firm trial balance and thereafter included in the Accounts Certificate produced by the Respondents as funds due by the firm.
- (4) The examination revealed several payments from client funds were noted where nothing was seen on the file to evidence that they were made on the client's instruction or authority. In particular:-
- (a) The Respondents acted for a Mr LL. Sums were paid as follows:

22nd March 2006 - £12,390.00 to Mr MM

31st March 2006 - £8,990.00 to Mr NN

3rd April 2006 - £470.00 to Mr NN

5th April 2006 - £2,280.00 to Mr NN

All payments made without evidence of clients instruction or authority.

- (b) The examination revealed cheques which were unencashed for considerable periods of time, in particular:-
 - (i) Mr OO (Deceased) – A cheque for the sum of £4,139.98 was issued to a Ms PP in payment of a legacy on 30th January 2006 but remained unencashed as at 31st March 2006. (Rule 8).
5. On a general basis the inspection revealed a number of matters of concern to the Complainers which was indicative of a failure on the part of the Respondents to properly administer the financial records, books and documentation maintained by them in connection with their practice. In particular the following was identified:-
- (a) The inspection revealed a number of small balances which had been retained by the Respondents on their books for a considerable period of time. The Respondents had failed to carry out any work regarding the return of these monies to the particular client
 - (b) It was noted that on a number of occasions the firm had conducted transactions where no terms of business of letter had been issued to clients in the accepted style. This was despite an assurance by the Respondents that this would be attended to when raised previously (Breach of Solicitors (Scotland) Client Communications Practice Rules 2005).

Inspection of 2nd October 2006

- 7.9 As a consequence of concerns identified by the Complainers arising in earlier inspections, on 2nd October 2006 the

Complainers then acting in pursuit of statutory duties, inspected the financial records, books and documentation maintained by the Respondents. This inspection revealed a number of breaches of the Solicitors (Scotland) Accounts Etc Rules 2001.

In particular the following was identified:-

- (A) (a) The Respondents acted for a Mr & Mrs QQ. The sum of £28,905.42 was issued by CHAPS payment on 24th July 2006. The payment was not posted to the client ledger until 27th July 2006. The funds to cover the payment were uplifted on 27th July 2006. This resulted in a shortage of approximately £7,743.43 between 24th July 2006 and 27th July 2006 as the surplus held by the Respondents was insufficient to cover the original outgoing payment.
- (b) The Respondents acted for an Mr and Mrs RR. The sum of £446,580.00 was issued to Shepherd and Wedderburn on 16th June 2006. The payment was not posted to the client ledger until 19th June 2006. Funds of £100,295.89 to cover the payment in full were not uplifted until 19th June 2006. This resulted in a shortage of approximately £7,800.00 between 16th June 2006 and 19th June 2006 as the surplus held by the Respondents was insufficient.
- (c) The Respondents acted for a client Mr SS. The sum of £78,000.00 was paid to Client TT on 16th May 2006. Funds were not received to cover this payment until 19th May 2006. The cheque issued on 16th May 2006 was not posted through the client ledger until 21st September 2006. A shortage existed on the client account between 16th May 2006 and 19th May 2006. Neither was there an explanation as to the lengthy delay in posting the payment to the client ledger.
- (d) An examination of the day book revealed a deficit of £872.04 on 14th June 2006. The Respondents had failed

to investigate the matter and no explanation was available as to how the deficit arose (Rule 4).

(B) Separately, a number of instances were noted where entries had not been posted to the client ledger timeously but where on these occasions no deficit had occurred, in particular:-

- (a) Company 1 – the sum of £170,020.00 was withdrawn on 17th August 2006 but not posted until 10th September 2006.
- (b) The client UU – the sum of £2,020.00 withdrawn on 15th August 2006 not posted until 22nd September 2006.
- (c) The client UU – the sum of £4,020.00 withdrawn on 10th August 2006 not posted until 22nd September 2006.
(Rule 8).

7.10 The inspection revealed a number of outstanding adjustments and entries to the bank reconciliations, some of which related to cheques that had been issued but not posted to the records. The Respondents had failed to post to the client ledgers timeously outstanding entries thereby preventing an accurate audit being maintained. The Respondents should have posted outstanding entries to the records within the following accounting period at the latest and not simply carried forward through to subsequent reconciliation. (Rule 8).

7.11 The inspection revealed a number of out of date cheques over six months from the date of issue were noted in the bank reconciliation. The Respondents had failed to investigate the cheques and deal with them timeously, cancelling any that were out of date and re-issuing any if appropriate.

- (i) The clients Mr and Mrs VV – the sum of £22.00 paid to the Keeper on 20th April 2006 in respect of Halifax Discharge not yet cashed.

- (ii) The client, Mr WW. A new loan from Paragon Funding Ltd. A loan with Nationwide was redeemed. The payment of £77.00 to the Keeper on 24th May 2006 not yet cashed.
- (iii) The client Mr XX - £198.00 paid to the Keeper on 18th May 2006 in respect of Abbey Standard Security – payment not yet encashed. (Rule 8).

7.12 A number of instances were noted where, per the firm's records, credit balances had been held on the client ledger for longer than expected without either being disbursed timeously or invested to earn interest on behalf of the client. A number of examples noted were left for the attention of the Respondents. In addition there was a sum of £2,000.00 being held on behalf of the client, Mr YY, from 4th July 2006 to date. (Rule 11).

7.13 In general, the inspection revealed a number of instances where the Respondents had failed to abide by the obligations expected from them in terms of Money Laundering Regulations, client written authority, correct record keeping and delays in the recording or unrecorded deeds. In particular, a number of instances were revealed of the firm's acceptance of mandates from clients to pay funds to parties other than the client for no apparent reason. The parties being paid did not appear to be connected to the transaction in any way or in other instances the terms as specified in the mandates assigned by the clients were not being adhered to. This was an issue which was highlighted in previous inspections and the Respondents were asked to consider the destination of funds paid to other parties other than the client and how this may inadvertently involve the Respondents in potential money laundering schemes, including tax evasion or benefit fraud. Despite this being brought to the attention of the Respondents, the practice of paying funds to

other parties not involved in the transaction continued. In particular the following was identified:-

- (a) The Respondents acted for a Mr ZZ and Mr AB in relation to the sale and purchase of Property 10, respectively. The purchase price of £175,000.00 was received from Mr AB's ledger on 22nd April 2005. Immediately a sum of £10,000.00 was paid back to Mr AB per a mandate. The file did not reveal the reason for the mandate being accepted and why the person purchasing should receive the sum back from the seller. No concerns were raised by the Respondents. The file showed free proceeds of £164,560 being paid to Mr ZZ on 22nd April 2005. There was an RBS Security to be discharged and that had never been dealt with or recorded. No explanation on the file revealed whether there was a redemption to be paid to the RBS. No explanation revealed why the Discharge was not recorded and whether this had been dealt with.
- (b) The Respondents acted for an Mr AB as referred to in (c) above. The price paid was £175,000.00. The purchase price stated on the SDLT form was £170,000.00 with £1,700.00 Stamp Duty being paid through the ledger. Loan funds for the purchase were received from Lloyds TSB. Their Security had been recorded. It was not first ranking as the RBS Security had not yet been discharged. The file revealed that Lloyds TSB were concerned and had threatened legal action and to have the Respondents removed from their approved panel of solicitors.
- (c) The Respondents acted for Mr AC in the purchase of Property 11 from their client, Mr AB. In respect of this transaction the examination of files revealed that no identification was seen in respect of the client, Mr AC.

Insofar as the mortgage was concerned no loan papers or valuation documents were seen to confirm the price in relation to the lender's position, namely Lloyds TSB. Separately, the file revealed that Mr AB provided the sum of £8,200.00 to Mr AC to allow the purchase to complete. No explanation was on the file as to why such a sum should be provided to assist in the purchase when the client who had provided the sums was in actual fact selling. Mr AB originally purchased the property in August 2005 for £64,000.00. The price being paid by Mr AC to purchase from Mr AB some four months later was £150,000.00. No enquiry was made by the Respondents as to the dramatic increase in price in such a short period of time and it was not evidenced whether Lloyds TSB, who had queried this fact, had accepted their explanation. The transaction settled on 6th December 2005. The Recording Dues of a Standard Security and Disposition were not paid until 30th March 2006. The examination of the file did not reveal any explanation for the delay in the presentation of the deeds to be recorded. In addition to the above queries, it was noted that the full proceeds of £150,000.00 less fees and outlays were paid direct to the client. The client ledger indicated the recording dues were paid through the ledger on 20th July 2006. There was a delay of over seven months before Recording Dues were paid.

The Respondents acted for Mr AB and Mr AD in connection with the purchase and sale of Property 12. In respect of Mr AD, no identification was seen from the client and no indication that a potential conflict of interest letter had been issued to Mr AD was seen in the file. The transaction settled on 8th August 2005 with the

price of £45,000.00 being received from Mr AB. Mr AB then immediately received £15,000.00 back from Mr AD per a mandate. The examination of the file did not explain the reason for the mandate being accepted and why the person purchasing should receive the sum back from the seller. The Respondents appeared to have no concerns regarding this unusual transfer. The ledger also showed a transfer of the sum of £27,500.00 on 12th August 2005 to the ledger of Mr AE per a mandate which was then cancelled on 16th August 2005. However, only the sum of £25,000.00 was transferred back. Examination of the file did not reveal an explanation or an account in respect of the shortfall. A further mandate was seen to pay the sum of £29,450.00 for Mr DD. Instead, the sum of £2,000.00 was paid. Examination of the file did not provide an explanation as to the discrepancy. Examination of the file revealed further payments of £4,000.00 being paid to a Mr AF and £20,518.00 to an Mr AG. No mandates were seen in respect of these payments. Examination of the file did not reveal an explanation as to why these sums were paid nor was there a mandate on the file. The transaction settled on 8th August 2005. Recording dues were paid on 1st March 2006 in respect of a Discharge for the Royal Bank of Scotland. No explanation was on the file regarding the delay. The client, Mr AB, provided £14,220.00 towards the purchase on 8th August 2005. No details were on the file as to evidence of source of the money. No potential conflict of interest letter or terms of business was seen as having been issued on the file. The Clydesdale Bank provided loan funds of £31,500.00 for a purchase of £45,000.00. The Respondents had failed to make the Clydesdale Bank aware that the client was to receive £15,500.00

back from the transaction as a result. Recording Dues in respect of the Clydesdale Bank Security were only paid on 16th September 2005.

(d) The Respondents acted for a Mr AH and a Mr AI concerning the purchase and sale of Property 13. The mandate was seen on the file instructing the following payments to be made.

1. Mr AJ - £10,000 vouched.
2. Mr AJ - £6,000 vouched.
3. Mr AB - £40,000, sum of £29,189 paid.
4. Company 2 - £7,000 vouched.

Examination of the file did not reveal why the firm accepted the mandate and the reasons given for payment of these sums to third parties and their connection to the clients. Separately a reduced sum was paid to Mr AB as opposed to the terms laid out in the mandate. The examination of the file did not reveal whether the client gave her subsequent written authority in this respect. The client ledger indicated that some redemption monies were paid to Allied Irish Bank plc on 10 May 2005. Recording dues were paid on 23 May 2005. Final redemption monies were not paid to the Allied Irish Bank plc until 7 August 2006. Therefore the client ledger was inaccurate as the recording dues were not actually paid on 23 May 2005. There was no explanation for the delay in fully redeeming the loan with Allied Irish Bank or the delay in recording the discharge. Insofar as Mr AI was concerned, Mr AB provided funds of £14,500 towards the client's purchase on 6 May 2005. He then subsequently received the sum of £29,000 back from Mr AH's ledger. No enquiry was

made by the Respondents as to the source of these funds or the connection of Mr AB to the client. Further examination revealed that payments of £470 and £38.78 were received to the ledger from the ledger of Mr AK on 30 June 2005. No enquiry was made by the Respondents regarding the reasons for these payments, the connection to the client or whether written authority was obtained from the client Mr AK. Lloyds TSB provided loan funds to Mr AI. Their Standard Security was recorded. However it was not a first ranking security due to the security of the Allied Irish Bank plc not having been discharged. Again Lloyds TSB was forced to write to the firm in this respect asking for an explanation.

- (e) The Respondents acted for a Mr AL in connection with his purchase of Property 14. Funds of £44,221 were provided by an Mr AM on 19 July 2006 towards the transaction. No explanation on the file as to why the funds were received from the third party and the connection to the client.
- (f) The Respondents acted for a Mr AI in connection with his purchase of Property 15. Funds of £24,271 were provided by an Mr AM on 18 August 2006 towards the transaction. No explanation was on the file as to why the funds were received from a third party or the connection to the client.
- (g) The Respondents acted for a Mr AN in connection with his purchase of Property 16. Loan funds were received from GMAC. Additional funds were also provided by bank draft from Mr AM. The transaction settled early August 2006 with stamp duty being paid 9 August

2006, no recording dues had been paid at the date of inspection. The purchase price was £210,000, however a deposit of £1,000 was paid and that did not show through the client ledger. No explanation was given as to why funds were provided by Mr AM or explaining the connection to the client.

- (h) The Respondents acted for a Mr AO in connection with the purchase of Property 17. Funds were provided by Mr AM towards the transaction. No explanation was received as to why funds were provided by the third party or his connection to the client.
- (i) The Respondent acted for a Mr AP. The ledger was not in the correct name and no identification was seen for the client. The price paid on the SDLT form was £140,000. The ledger showed a price of £119,703 being received. Apparently the £21,000 passed privately between the purchaser and seller. This transaction was not recorded through the client ledger. There was no evidence as to whether the transfer of £21,000 did in actual fact take place.
- (j) The Respondents acted for a Mr and Mrs AQ in connection with their purchase of Property 18 on 11 July 2006. Examination of the file revealed a loan from the Woolwich Building Society 6 July 2006 and stamp duty being paid on 11 July 2006. Recording dues were paid per the ledger on 26 July 2006. The purchase price was £325,000. The ledger showed only £322,000 as having been received. £3,000 was paid directly. The ledger of the Respondents failed to reveal the full transaction going through, thereby preventing a full audit trail. Bridging loan funds of £106,750 were

received from the Royal Bank of Scotland on 11 July 2006 and were repaid on 18 July 2006. There was no closing bridging loan statement for verification purposes on the file.

7.14 The examination also revealed a number of instances where recording dues had not been paid or deeds had not been recorded timeously after transactions settled. In particular:-

1. Mr AR. The Bank of Scotland loan had been redeemed. No receipted Form 4 was seen in respect of discharge of the Standard Security. The transaction settled on 20 June 2006.
2. Mr and Mrs AS. The Respondents acted for the clients in connection with their purchase which settled on 29 August 2006. A loan was received on 25 August 2006 and stamp duty paid 6 September 2006. No recording dues had been paid as at the date of the inspection.
3. The Respondents acted for a Mr AT in connection with a purchase which settled on 7 August 2006, a loan from Lloyds TSB was received with no recording dues having yet been paid at the date of the inspection.
4. Mr AO. The Respondents acted for the client in connection with the purchase of a property which settled on 7 April 2006. A loan from Lloyds TSB was received on 6 April 2006 and stamp duty paid on 25 April 2006. No Form 4 was revealed.
5. The Respondents acted for a Mr AU in connection with a conveyancing purchase. The Birmingham Midshires loan had been received, a credit of £231 had been held since June 2006. No recording dues had been paid or

Standard Security and Disposition presented for registration.

6. The Respondents acted for Client AV in connection with a purchase. Recording dues of £143 and £198 were paid through the ledger in 2003. In this case it appeared recording dues had been paid twice at different sums.
7. The Respondents acted for the client AW in connection with a purchase. Preferred mortgages loan received. Two payments of £187 were paid through the ledger on 25 October 2005 and 10 January 2005, no explanation was revealed as to what they related to. Again it appeared from the records that recording dues may have been paid twice.

Inspection of 14th June 2007

7.15 As a result of the previous inspections which had occurred and the number of concerns identified by the Complainers and intimated to the Respondents, on 14th June 2007 the Complainers, acting in pursuit of their statutory duties, carried out a further inspection of the financial records, books and documentation maintained by the Respondents. This inspection revealed a number of breaches of the Solicitors (Scotland) Accounts Etc Rules 2001. The inspection revealed a failure on the part of the Respondents to attend to concerns which were raised with them previously. In particular the following issues were identified:-

1. The Respondents acted for a Mr AX. The transaction settled on 29 March 2007. The Disposition did not appear to have been recorded.
2. The Respondents acted for a Mr AY. The transaction settled on 9 March 2007 but the Disposition had not been recorded.

3. The Respondents acted for a Ms AZ. A Royal Bank of Scotland plc loan was redeemed on 2 May 2007 but the Discharge had not yet been recorded.
4. The Respondents acted for Ms AZ in connection with another remortgage. The transaction settled on 2 May 2007 but the Discharge of the Royal Bank of Scotland plc loan had not been recorded.
5. The Respondents acted for a Mr BA in a purchase transaction. The transaction settled on 11 May 2007 but the Birmingham Midshires Security had not been recorded.
6. The file of Ms BC was examined. Funds were introduced by an Mr BD. No identification was noted on file and no explanation as to why he was introducing these funds was recorded.
7. The Respondents operated a contra account. It was not clear why this ledger account was being used and although it could be reasonable assumed that any contra account would have a nil balance, in this case a debit balance of £416.90 was shown in the firm's trial balance.
8. The inspection revealed that the Respondents currently received dividends from the Halifax plc which related to shares received from funds held on behalf of clients. The respondents advised that the client's concerned could not be identified. The demutualisation from which these shares originated was in 1997.
9. The firm's trial balance did not reveal accurate figures in respect of the firm's drawings.
10. The examination revealed a number of balances held on the general client bank account without giving interest to the client. In particular

- (a) Ms BE - £1,915 held from 22 May 2007 to date of inspection.
 - (b) Mr and Mrs BF - £628 held from January 07 to date of inspection.
 - (c) Mr and Mrs BG - £1120.91 held from 24 August 2005 to date of inspection.
 - (d) Client BH - £96,915 held from 19 April 2007 to 5 June 2007.
 - (e) Mr BI - £882.75 held from 19 July 2006 to 13 June 2007.
 - (f) Client BJ - £14,459.25 held from 17 April 2006 to date of inspection.
11. Third party cheques were revealed which were not run through the client ledger. In particular cheque for £1,000 for a Mr BK and a cheque for £1,500 for a Mr and Mrs BF. These cheques were provided in respect of their property. No records of these cheques being received and forwarded was recorded on the file.
12. From a review of the day book there were deficits in the client bank account. These were not disclosed on the Accounts Certificate covering the relevant period.
13. The Respondents acted for a Mr BL. The ledger showed invested funds being uplifted and the balance of £124,500 paid to Mr BM on 1 May 2007. The cheque was actually dated 27 April 2007 as a consequence of which there was a deficit in the client bank account from 27 April until 1 May. (Rule 4).
14. The day book on 24 April 2007 showed the client account in a deficit amounting to £1,511.33. It was not clear what caused the shortage in this instance (Rule 4).
15. The Respondents acted for a Mr BN. The ledger revealed entries on 29 August 2006 to the Keeper of £209 and a further entry of 21 September 2006 to the

Keeper £88. The above payments to the Keeper were cancelled on 31 March 2007 and were not reissued prior to the date of inspection which suggests the Standard Security and Disposition had not been recorded.

16. The Respondents acted for an Mr and Mrs BO. A payment of £198 on 12 September 2006 had been cancelled on 31 March 2007. The cheque had not been reissued which suggested the Clydesdale Bank plc discharge had not been recorded. Separately in connection with the sale for the clients of Property 19 in July 2006 a balance of £110 was held on the ledger. Recording dues for the Halifax discharge would appear to have been paid at that time. It was not clear what the balance held was in respect of but it appeared to relate to recording dues.
17. The inspection also revealed a number of other ledgers which held similar balances and for which the complainers sought confirmation from the Respondents that all appropriate deeds had been recorded.
18. The inspection revealed a number of invested funds accounts which did not specify the clients name in the title of the account which accorded with the client's name per the client ledger. A list of these accounts were noted on the summary provided to the respondents following the inspection. This was a matter which was brought to the firm's attention at previous inspections (Rule 11).
19. The Respondents acted for an Mr BP and Ms BQ. The client ledger should have been opened in joint names but had been operated in the name of Mr BP, alone.
20. The Respondents acted for a Mr BR. A payment of £66,020 to Client TT was drawn from the bank account on 31 May 2007 but not posted in the ledger until 1 June 2007. Although this did not cause a shortage in

the client bank account the narrative in the ledger should have disclosed the funds were in actual fact sent on 31 May 2007 (Rule 8).

21. The inspection revealed a number of concerns on the part of the Complainers regarding the failure on the part of the Respondents to maintain accurate records. In particular the following was identified:-

- (1) Concerning the client, Mr YY (deceased) a cheque amounting to £22.00 was issued to the Keeper on 1st November 2006. It remained outstanding on the reconciliation. No loan was seen by the inspectors to be redeemed on the ledger.
- (2) In connection with the client, Mr BS. The inspection revealed a cheque issued to the Keeper to record the National Westminster Security on 24th January 2007 amounting to £66.00 remained outstanding on the reconciliation.
- (3) Concerning the client BH. The inspection revealed a cheque amounting to £30.00 paid to the Keeper on 21st February 2007 to record an Allied Irish Bank plc security remained outstanding on the reconciliation.
- (4) In connection with the client, Ms BT (executry) there was no evidence on the file maintained by the Respondent to confirm that a fee note paid on 28th March 2007 had been rendered to the executor.

8. Having heard submissions from both parties, the Tribunal found the First and Second Respondents guilty of Professional Misconduct in respect of:

- 8.1 Their repeated and numerous breaches of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 and in particular Rules 4, 6, 8, 9, 11 and 24 and their breach of the Solicitors (Scotland) Practice Rules 1986.
 - 8.2 Their failure to protect the interests of lending institutions to their clients and the interests of their clients by delaying unreasonably to present for registration conveyancing deeds in relation to transactions including Standard Securities and Discharges of Securities.
 - 8.3 Their failure to protect the interests of the lending institutions on whose behalf they were acting by drawing to their attention unusual occurrences in the conveyancing transactions in which they were instructed
9. Having heard the Mr O'Rourke on behalf of the First and Second Respondents in mitigation and having noted a previous Finding of professional misconduct against the First Respondent and a previous Finding of professional misconduct against the Second Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 November 2008. The Tribunal having considered the Complaint dated 18 June 2008 at the instance of the Council of the Law Society of Scotland against Michael Gerald Rourke, Solicitor, of Robert Thomas & Caplan Solicitors, 365 Victoria Road, Glasgow (the First Respondent) and John Knox Aitken Solicitor, of Robert Thomas & Caplan Solicitors, 365 Victoria Road, Glasgow (the Second Respondent); Find the First and Second Respondents guilty of Professional Misconduct in respect of their repeated and numerous breaches of the Solicitors (Scotland) Accounts Certificate, Professional Practice and Guarantee Rules 2001 and the Solicitors (Scotland) Practice Rules 1986, their failure to protect the interests of lending

institutions to their clients and the interests of their clients by delaying unreasonably to present for registration conveyancing deeds in relation to transactions and their failure to protect the interests of the lending institutions on whose behalf they were acting by drawing their attention to unusual occurrences in the conveyancing transactions in which they were instructed; Censure the First Respondent; Fine him in the sum of £5,000 to be forfeit to Her Majesty; and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or issued to the First 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 Law Society of Scotland and that for an aggregate period of at least 5 years with effect from 1st March 2009; Censure the Second Respondent and fine him in the sum of £5,000 to be forfeit to Her Majesty; and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or issued to the Second 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 Law Society of Scotland and that for an aggregate period of at least 5 years with effect from 1st March 2009; Find the Respondents jointly and severally liable in the expenses of the Complainers and 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 £14.00; and Direct that publicity will be given to this decision and that this publicity should include the names of the First and Second Respondents.

(signed)

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

The case had been set down for a procedural hearing on 19 November 2008. However when the matter called the parties indicated that they were prepared to proceed to a substantive hearing. A joint minute was lodged admitting the majority of the facts, averments of duty and averments of professional misconduct in the Complaint. The Fiscal indicated that he would not be proceeding with the averments which were not admitted. No evidence was accordingly led.

The Chairman pointed out that it was not clear from the joint minute whether certain paragraphs in the Complaint were in fact admitted. It was confirmed that this had been an oversight and it was intended that these paragraphs were admitted. This was the case particularly in relation to Articles 2.1, 4.1, 5.1, 6.1, 6.5, and 7.1 and a paragraph on page 10.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised that there had been negotiations between the parties and a joint minute had just been finalised. Mr Reid explained that the Respondents were the only partners in the firm and that the issues related to their failure to comply with the Accounts Rules. The first inspection was in February 2004 and identified a number of breaches of the Accounts Rules, especially failure to comply with the Money Laundering Regulations. There was general chaos in connection with record keeping. There was a further inspection on 30 April 2004 and the Law Society were concerned that the issues had not been resolved. A number of continuing breaches were identified and there were 16 breaches of the Accounts Rules. There was another inspection in August 2004 which showed that there were still failures to address the issues previously raised. Mr Reid referred particularly to Article 3.1a(i) and (ii) and to the shortage on the client account. Mr Reid clarified that there was no suggestion of dishonesty but stated that this was an example of the problems caused by the books not being properly maintained. Mr Reid said that the Law Society had further concerns with regard to money laundering and there was a general failure to identify the source of the funds. There were 22 breaches of the Accounts Rules. The

inspection in May 2005 identified another 12 breaches of the Accounts Rules. The inspection in May 2006 showed the same issues arising and matters had not been addressed sufficiently. There were 9 breaches of the Accounts Rules including money laundering issues. The inspection in October 2006 showed there were still difficulties with shortages on the client accounts and records not being kept up to date. There were 29 breaches of the Accounts Rules. The last inspection was on 14 June 2007, which showed that progress had not been made and there were 24 breaches of the Accounts Rules. Mr Reid stated that between February 2004 and June 2007 there had been seven inspections and two Guarantee Fund interviews. 102 Accounts Rules breaches were identified which showed there were frequent and repeated breaches of the Accounts Rules. Mr Reid advised that there had been an inspection in July 2008 and another inspection was scheduled for January 2009. The Chairman confirmed with Mr O'Rourke that he had no objection to reference being made to these post Complaint inspections.

SUBMISSIONS FOR THE RESPONDENTS

Mr O'Rourke addressed the Tribunal on behalf of both Respondents. He advised that the terms of the joint minute had been subject to detailed discussion and explained that he had been instructed last week to appear for both Respondents who had chosen joint representation. Mr O'Rourke stated that the Respondents wished to face matters jointly and showed great resolve to deal with matters. Mr O'Rourke referred to the Answers lodged by both Respondents and the mitigation offered in the Answers. Mr O'Rourke pointed out that the Complaint was much reduced from that which had originally been lodged with the Tribunal. Mr O'Rourke explained that in 2003 Robert Thomas, who had been a partner, resigned but worked full time until April 2004 and then worked four mornings a week until he left in August 2006. This led to a number of difficulties as there were fewer partners and an increase in workload. Mr O'Rourke stated that at the early inspections there was a systematic failure but by the time of the later inspections there was a pattern of individual difficulties. Mr O'Rourke said that the Respondents accepted that there had been significant problems in the management of their practice, which had led to a chaotic picture. He emphasised however that there was no suggestion of malice or dishonesty. Mr

O'Rourke stated that both Respondents were competent solicitors and due to the nature of their clients they had to have a sophisticated knowledge of the law. They faced difficulties because they were short staffed and the numerous inspections also caused further problems as they found it difficult to break the cycle of difficulties. This affected them and their ability to focus on things. Mr O'Rourke explained that the Respondents had to deal with personal difficulties and a very substantial work load. Mr O'Rourke also explained that due to the ethnicity of the Respondent's clients they had desires for different outcomes in transactions from the norm. The Respondents had tried to maintain the correct position. Mr O'Rourke stated that the First Respondent was the cash room partner. The delays in recording deeds had historically been due to problems with stamp duty land tax which had been done on line for the last year. In connection with money laundering, it was the practice of the First Respondent to carry out sampling of the files and regular training was provided to staff during the last two years. In connection with the accounts, a system of daily, weekly, monthly and three monthly checks was introduced to avoid deficits. The day book was also exhibited to the First Respondent on a daily basis prior to closing off and this had been done for the last year. Mr O'Rourke explained that the office has a computer system which is controlled by the cashier. The computer system brings up a warning if there is likely to be a deficit on the day but the cashier had been unaware of this in the past. Mr O'Rourke confirmed that the firm still had the same cashier. Mr O'Rourke stated that the problems were organisational and the Respondents regretted allowing the operational difficulties to occur. They were however determined to face their problems and turn the practice around. The inspection in July 2008 showed some improvements and another inspection had been organised for January 2009 and Mr O'Rourke emphasised that the Respondents knew how critically important this inspection would be. Mr O'Rourke stated that the recent downturn in business should allow the Respondents to focus on the management of their practice. He suggested that they may get external help in advance of the next inspection. Mr O'Rourke invited the Tribunal to find that the Respondents were solicitors who could be trusted to continue to discharge their duties as solicitors of a full basis.

In response to a question from the Chairman, Mr O'Rourke asked for an adjournment to consult with his clients with regard to whether or not they wished to lodge the inspection report from July 2008. After the adjournment Mr O'Rourke indicated that

he would invite the Tribunal to deal with matters without reference to the July 2008 inspection. Mr O'Rourke stated that the Respondents recognised that they had a significant issue with regard to the way the cash room was operated and that they now realised that there may be a problem with the cashier and that systematic change was required. After the February and April 2004 inspections the cashier was told that reconciliations had to be dealt with by the 10th day. In connection with the May 2005 inspection, a lot of the issues here related to stamp duty land tax. In connection with money laundering, the Respondents had meetings with staff and explained the need to have ID checks and source checks done. Mr O'Rourke stated that in respect of each of the inspections, thereafter the Respondents took the issues seriously and had meetings with staff and circulated memos in connection with the issues which had arisen. It was appreciated however that this was not always successful. In response to a question from the Chairman, Mr O'Rourke indicated that from 2003 to April 2008 there were 8 or 9 staff, being a cashier, a solicitor, paralegal, 3 or 4 secretarial staff and an office junior. A registration clerk had been taken on after the 2005 inspection but due to the downturn in business was no longer in post from June 2008. It was confirmed that the Second Respondent had sampled his own files for the last year. Mr O'Rourke stated that in respect of the previous Findings, the failure to respond by the First Respondent was not analogous to the issues before the Tribunal on this occasion.

DECISION

The Tribunal considered the matters in the Complaint to be extremely serious. Between February 2004 and June 2007 there were 7 inspections of the Respondents' books and 2 Guarantee Fund interviews. 102 breaches of the Accounts Rules were identified. The Accounts Rules are in place to ensure that when solicitors are dealing with client's money, client's interests are protected. In this case there were frequent and repeated breaches of the Accounts Rules. The Tribunal was very concerned that despite matters being raised at one inspection further breaches of the Accounts Rules were raised at the following inspection and this continued for a period of just over 3 years in connection with 7 inspections. Mr O'Rourke for the Respondents indicated that the Respondents were aware that the inspection planned for January 2009 was critical and that they may employ external help in advance of the next inspection and

would invest the time and effort required. The Tribunal did not understand why the Respondents had not done this at a much earlier stage. Mr O'Rourke for the Respondents also indicated that due to the recent downturn in business the Respondents would now have more time to focus on the management of their practice. This is something that the Respondents should have been doing after the 1st inspection and should not have left it until after 7 inspections and the raising of a Complaint. The Tribunal was further concerned by the fact that there appeared to have been another inspection in July 2008 and there was no confirmation to the Tribunal that the Respondents had sorted matters out to the satisfaction of the Law Society. It is clear to the Tribunal that there may still be ongoing issues as there is another inspection arranged for January 2009.

The Tribunal consider that the Respondents non compliance with the Accounts Rules after repeated opportunities to correct matters is totally unacceptable. The Tribunal also considered that the Respondents seemed to be unaware of the seriousness of the situation in which they find themselves. They do not seem to appreciate the importance of complying with the Accounts Rules or dealing with the issues raised by the inspections of their professional body. The Tribunal noted the Respondents' Advocate's submissions in connection with the Respondent's clients' ethnicity but did not consider that this mitigated the Respondents' conduct in any way as if anything the type of business undertaken comes with it a higher risk and therefore it was even more important that the Accounts Rules were complied with. Mr O'Rourke on behalf of the Respondents indicated that it was accepted that the Respondents had not conducted their business properly and there was no information provided to the Tribunal which gave the Tribunal confidence that the Respondents had put in place sufficient mechanisms to ensure that if they were allowed to continue in practice their firm would be adequately managed. The Tribunal accordingly considered that in order to protect the public it was necessary to impose restrictions on the Respondent's practising certificates. The Tribunal noted that the First Respondent was the cash room partner but given the fact that it is a two partner firm and that both Respondents accepted joint responsibility, the Tribunal was of the opinion that the penalty should be the same for both Respondents. The Tribunal accordingly restricted both Respondents practising certificates for an aggregate period of 5 years to ensure that they work under supervision for a 5 year period. Given the long running failure to

address the issues, the Tribunal also imposed a fine of £5,000 on each Respondent. Given that the Respondents will require time to dispose of their business and make such arrangements as are necessary to transfer their clients business as required, the Tribunal ordered that the restriction will run from 1st March 2009. The Tribunal made the usual order with regard to publicity and expenses.

Chairman