

**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

**ALASTAIR LINDSAY COWAN,
21a India Street, Edinburgh**

1. A Complaint dated 3 June 2011 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alastair Lindsay Cowan, 21a India Street, Edinburgh (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 4 October 2011 and notice thereof was duly served on the Respondent.
4. The hearing took place on 4 October 2011. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented by Heriot Currie, QC.

5. An amended Complaint dated 23 September 2011 was lodged with the Tribunal. A Joint Minute admitting the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint was lodged. The Tribunal found the following facts established

5.1 The Respondent was born 31st March 1975. He resides at 21a India Street, Edinburgh. He was admitted and thereafter enrolled as a solicitor in the Register of Solicitors practising in Scotland in March 2000. Between 9th May 2000 and 29th June 2001, he was employed with the firm Archibald Campbell & Harley WS, Edinburgh. Between 9th July 2001 and 9th April 2004, he was employed with the firm Shepherd & Wedderburn, Solicitors, Edinburgh. Between 13th April 2004 to 31st December 2009 he was employed with the firm Dickson Minto, Solicitors, Edinburgh. At present he is employed as a Senior Associate with the firm HBJ Gateley Wareing (Scotland) LLP, Exchange Tower, 19 Canning Street, Edinburgh.

Mortgage Application with Halifax plc

5.2 The Respondent was formerly married. In early 2008, his marriage broke down as a consequence of which it was necessary for the former matrimonial home to be sold on 7th March 2008. At this time the matrimonial home was encumbered with a mortgage in favour of the Halifax plc. As a consequence of the sale of the matrimonial home, the mortgage required to be redeemed. The mortgage was redeemed early as a result of which there was a penalty charge payable to the Halifax plc of a sum in excess of £17,000. The agreement with the Halifax plc did provide that if the Respondent or his wife or both of them took out another mortgage with the Halifax plc within a period of three months of the due date when the penalty was to be paid, a proportion of that penalty would be

refunded. The Respondent sought to purchase the heritable subjects at 21a India Street, Edinburgh. He secured lending finance from the Halifax plc. The terms of the loan offered to the Respondent to facilitate this purchase differed materially from the terms of the earlier loan over the former matrimonial home. As a consequence, Halifax plc sought evidence from the employer of the Respondent as to his level of income.

5.3 In reply to the enquiry made by the Halifax plc, on 22nd April 2008, the Respondent drafted a letter on the firm notepaper of his then employers, Messrs Dickson Minto, Solicitors to provide details of his income. The letter was dictated by the Respondent and typed by his secretary. For reasons of confidentiality there were blanks in the letter to be completed by the Respondent relative to the actual amount of his salary and bonus payments. As at 22nd April 2008, the salary enjoyed by the Respondent was £80,000. The Respondent completed the blanks in the letter identifying his salary as being a figure of £130,000. This was not what his salary was. The letter sent significantly overstated the level of his income. The Respondent presented the letter to his supervising partner, which he signed and thereafter passed to the Halifax plc. The mortgage was thereafter processed and the funds utilised by the Respondent in connection with the purchase of 21a India Street, Edinburgh.

5.4 Institutional lenders typically use income multipliers as a tool in their calculation of risk when assessing a mortgage application. In its simplest form, this tool identifies the salary of an applicant and multiplies it by some factor, the product being the maximum amount which the lender will thereafter be prepared to lend. There may be other issues which influence the decision of a lender such as the historical credit rating of an applicant. However, the income of an applicant remains a

major influential factor. In simplistic terms, a lender would wish to be certain that the applicant has sufficient salary making them capable of maintaining the repayments on a loan. On this occasion, the Halifax plc had sought from the employers of the Respondent information regarding his salary in order that they could process his application for a mortgage. The letter of 22nd April 2008 was prepared and formulated by the Respondent. He provided the information contained within the letter. He knew that the letter was to be sent out in the name of Dickson Minto, Solicitors, his employers, and would be construed by the Halifax plc as being certification by his employers that the information contained within the letter was being provided by his employers and was therefore correct. The Respondent knew that the letter contained inaccurate information in that it significantly overstated the salary enjoyed by the Respondent. The letter was on the headed note paper of his then employers and give the impression the information being provided was certified by his employers.

6. Having heard submissions from the parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

6.1 his preparing and completing a letter which inaccurately significantly overstated the level of his salary knowing that the information would be used by the Halifax plc in processing his mortgage application and by doing so his bringing his personal integrity into disrepute.

7. After having heard mitigation on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 4 October 2011. The Tribunal having considered the amended Complaint dated 23 September 2011 at the instance of the Council of the Law Society of Scotland against Alastair Lindsay

Cowan, 21a India Street, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his preparing and completing a letter which inaccurately significantly overstated the level of his salary knowing that the information would be used by a lender in processing his mortgage application and by doing so his bringing his personal integrity into disrepute; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of three years any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alistair Cockburn

Chairman

8. 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

Mr Reid advised that there had been discussions which had resulted in a plea to an amended Complaint which had been lodged with the Tribunal. The Joint Minute admitted everything in the new Complaint.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid explained that the Respondent and his wife had separated and accordingly required to sell their house and redeem the mortgage which resulted in a penalty of £17,000 being payable to the Halifax. However if a further mortgage was taken out by the Respondent or his wife within three months the penalty would not be imposed. The Respondent concluded missives in connection with the property in India Street. The Halifax required information to satisfy themselves that the lending criteria were met. They sought evidence from the Respondent's employers with regard to his level of income. On 22 April 2008 a reply was drafted by the Respondent on Dickson Minto headed paper and the Respondent filled in the blanks for his salary and stated that his basic salary was £130,000 per annum. This information was wrong and his actual salary, at this time, was £80,000. The letter was given to the supervising partner who signed it and it was delivered to the Halifax. Mr Reid submitted that when lenders are considering whether or not to provide a mortgage, income is important and the Respondent had significantly over stated his income by sending a letter on firm note paper which gave the impression that this information was provided by his employer. Mr Reid claimed that this compromises the Respondent's personal integrity and amounts to professional misconduct. Mr Reid stated that it was appreciated by the Law Society that the Respondent had entered into a plea and avoided the requirement for evidence to be given.

SUBMISSIONS FOR THE RESPONDENT

Mr Currie pointed out that the Halifax, despite having been notified of the overstatement, had declined to become involved in the Complaint process. The Respondent wrote to the Halifax in 2009 correcting the information previously provided. The Halifax had not made a complaint. Mr Currie pointed out that the

Halifax had payslips and P60s from 2007 when the Respondent and his wife had made a mortgage application. These showed his salary as being £80,000. The Respondent drafted the letter which was signed by his supervising partner and then scanned and emailed on to the Halifax on 22 April 2008. Mr Currie stated that according to the Respondent the supervising partner was aware of what the Respondent's actual remuneration was. The Respondent's salary went up to £97,000 on 1 May 2008 which was only a few days after the letter was sent on 22 April 2008. The Respondent also had the use of a firm car which cost £34,000. Mr Currie however clarified that it was accepted that a salary of £97,000 plus the car could still not justify claiming that his salary was £130,000 basic. Mr Currie however explained that in April 2008 the Respondent was in a state of emotional distress caused by his marriage break up. Mr Currie pointed out that the initial offer from the Halifax was sent out on 22 April 2008 being the same day that the letter was emailed to them. Mr Currie stated that in the circumstances a reasonable inference could be drawn that the Halifax had already decided to lend before the email letter arrived. Mr Currie also pointed out that the Respondent's mortgage had continued with the Halifax even after the overstatement of salary had been notified to them. Mr Currie explained that the partners of Dickson Minto had discovered the letter when they were investigating the conduct of another member of the firm. The Respondent left Dickson Minto at the end of December 2009 due to this incident. He has been working with HBJ Gateley since January 2010 as a senior associate and Mr Currie referred the Tribunal to a reference from the senior partner of that firm. Mr Currie submitted that the Respondent in effect had a restriction on his practising certificate for the last one and a half years and if he obtained partnership in the future this would be later than it would have otherwise been. This matter has been hanging over the Respondent for two years and he deeply regretted what had happened and was chastened by it. Mr Currie submitted that the Respondent has the opportunity and ability to make a valuable contribution to the profession.

In response to a question from the Tribunal, Mr Currie clarified that as soon as the matter was drawn to the Respondent's attention as a result of the investigation by the firm, he wrote to the Halifax advising of them of the true situation. In response to another question from the Tribunal, Mr Currie stated that the Respondent believed that the salary was not the key to getting a mortgage and that he was unable to give an

explanation for why he had overstated this other than his state of emotional distress at the time. In response to a question from the Chairman, Mr Currie stated that the Halifax had not provided information which would suggest that the respondent had made the misstatement in order to obtain personal gain.

DECISION

It is essential in order to maintain the reputation of the profession that solicitors act with honesty, truthfulness and integrity at all times. The Tribunal considered that in the absence of any explanation from the Respondent as to the purpose in submitting the false information, the Tribunal was forced to conclude that the only motive for the Respondent putting in a salary higher than his actual salary was for personal gain i.e. to obtain something that he did not think he was otherwise going to get. The Tribunal took account of the fact that the Halifax had not made a complaint but note that the Respondent has been unable to provide an explanation for his actions other than to say he was in a state of emotional distress at the time. There is however no evidence to suggest that the Respondent was suffering from any medical condition during this period. On any view his conduct in submitting the false information to the Halifax allowed his personal integrity to come in to disrepute and this is damaging to the reputation of the profession.

The Tribunal took account of the fact that the Respondent has been working for the last year and a half as a senior associate rather than a partner and took account of the Respondent's guilty plea. However the Tribunal consider that in order to protect the public and to mark the severity with which the Tribunal regard a lack of integrity in connection with private matters, a restriction on the Respondent's practising certificate for a period of three years is necessary. The Tribunal would hope that the Respondent has learnt his lesson and will be able to return to practising with a full practising certificate at the end of the three year period. The Tribunal made the usual order with regard to publicity and expenses.

Chairman