

**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

**WALTER FORBES RUARK,
Solicitor, 42 Ireland Street,
Carnoustie**

1. A Complaint dated 20 April 2012 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Walter Forbes Ruark, Solicitor, 42 Ireland Street, Carnoustie (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.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 9 August 2012 and notice thereof was duly served on the Respondent.
4. A hearing was scheduled to take place on 9 August 2012. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Fiscal had received correspondence the evening before

the Tribunal was due to take place from an Agent on behalf of the Respondent indicating that the Respondent was awaiting referral to a consultant psychiatrist and asking for the matter to be continued for four weeks to enable a report to be prepared. The Fiscal indicated despite the fact that she had had to prepare for the hearing, she was asking the Tribunal to adjourn the matter to a procedural hearing in four weeks' time. A Motion was made for the expenses of the day's hearing given the late intimation of difficulties by the Respondent. In the circumstances the Tribunal granted the award of expenses. The matter was continued to a procedural hearing on 10 September 2012 at 10:30am to allow the Respondent to produce a psychiatric report.

5. The procedural hearing on 10 September 2012 proceeded at which the Law Society were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. Ms Johnston also appeared on behalf of the solicitor for the Respondent, Mr Donnelly. The Fiscal had received information to indicate that criminal proceedings had been discontinued, that the facts may be capable of agreement, and that the Respondent may not be suffering from any particular mental health problems. In the circumstances, the Tribunal agreed to fix a further procedural hearing for the 1 October 2012 at 11:30am. As agreed on behalf of both parties, Ms Johnston agreed to dispense with the usual 21 day notice as required in terms of the Rules.
6. At the procedural hearing on 1 October 2012 the Law Society were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was not present but was represented by his solicitor, George Donnelly. Mr Donnelly confirmed that criminal proceedings against the Respondent had been discontinued. He indicated that the Respondent was suffering from health problems and had been seeing a clinical psychologist. The Respondent had indicated to Mr Donnelly that he would lodge Answers within a period of 14 days. Mr Donnelly indicated that it was his understanding that the vast majority of the Complaint would not be denied but he could give no undertakings. It was explained

that there may still be criminal proceedings outstanding against Mr Hughes. Ms Johnston asked the Tribunal to make a formal order for Answers within 14 days. There had already been two procedural hearings but given the possibility for matters to be resolved, she was happy to agree to a further procedural hearing. Additionally, Ms Johnston made a motion that the hearing should continue in private given possible outstanding criminal proceedings against Mr Hughes. The Tribunal agreed that the hearings would continue in private and that a further procedural hearing would be fixed for 15 November 2012 at 2pm. Answers were ordered to be lodged within 14 days of 1 October 2012. Answers were lodged.

7. The hearing took place on 15 November 2012. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was neither present nor represented. However, there was a letter from the solicitors for the Respondent enclosing mitigation on behalf of the Respondent.
8. A Joint Minute of Admissions for the parties was placed before the Tribunal by the Fiscal. The said Joint Minute agreed the facts, averments of duty and averments of professional misconduct in the Complaint. The Fiscal indicated that she had received confirmation that there were no criminal proceedings outstanding against either the Respondent or Mr Hughes. In her view, there was no reason for the proceedings to be in private and she accordingly made a motion that the public be allowed to be present. This was agreed. Given the content of the Joint Minute, no evidence was led.
9. The Tribunal found the following facts established
 - 9.1 The Respondent was born on 14 October 1950. He was admitted as a solicitor on 18 October 1974. He was enrolled as a solicitor in the Registers of Scotland on 1 November 1974. The Respondent was a partner in the firm of Gourley

McBain, latterly of 55 High Street, Carnoustie, between 6 April 1977 and 30 April 2008.

- 9.2 On 31 January 2008 following a number of unacceptable inspections of the firm the partners discovered that the Respondent had intromitted with loan funds without registering a first security on behalf of the lender Paragon Mortgages. The Respondent accepted responsibility. He was excluded from the firm on 6 February 2008. Investigations were made by the other partners of the firm over a lengthy period of time to unravel the actings of the Respondent. Further discoveries resulted in claims on the professional indemnity policy and ultimately police involvement. By letter dated 24 April 2008 the Respondent surrendered his practising certificate. The firm ceased on 30 April 2008 and the assets were taken over by Messrs Blackadders Solicitors on 1 May 2008. The Respondent is not currently the holder of a practising certificate.

THE LAW SOCIETY OF SCOTLAND – ACCOUNTS RULES

- 9.3 The firm of Gourley McBain was based in Arbroath with a branch office at Carnoustie. The Respondent was a senior partner and worked in Carnoustie. The other two partners and the cashroom were in Arbroath. The Complainers became concerned about the variable procedures operated by the partners and the lack of communication between them. A Special Inspection was authorised at the Complainer's expense and took place on 1st to 3rd June 2004. The inspectors found 17 instances of late or non-recording of title deeds and considered the money laundering procedures were inadequate. There were instances where relevant identification had not been obtained and the source of funds had not been recorded.

9.4 The main problems related to transactions dealt with by the Respondent. The partners were invited for interview which took place in August 2004. A number of inspections followed during which it was clear that the Respondent knew his professional obligations to record deeds promptly, to comply with the Accounts Rules and to ensure that his partners and staff did so. It was made clear to him from 2004 onwards that separate ledgers were required for separate clients and transactions and what he had to do to comply with the Money Laundering Regulations.

INSPECTION SEPTEMBER 2005

9.5 At a re-inspection on 12 to 14 September 2005 an improvement was noted in the recording of deeds but the Respondent's transactions continued to cause concern. Sample checks disclosed delays in recording deeds.

a) Mr and Mrs A sold property 1 on 28.7.05 but the Discharge had not been recorded. A Form 4 receipted 21 September 2005 was later exhibited.

b) Mr B and Ms C purchased property 2. The transaction settled on 5.7.02 and the ledger was debited for recording dues of the disposition and a Nationwide security on 8.7.02. The registration was cancelled by the Keeper and on 1.9.04 and £137.50 was returned under deduction of the cancellation fee. A further cheque was issued to the Keeper on 8.9.05 for the sum of £275. The balance of £137.50 was paid from the Respondent's nominal account. A Form 4 receipted 8 September 2005 was later exhibited.

c) Mr D purchased property 3. The transaction settled on 15.11.04 but the disposition had not been recorded. There was a credit balance of £33.00 on the client's ledger. A Form 4 was produced in March 2006.

d) Mr. and Mrs. E sold property 4. The transaction settled on 19.5.00 but a cheque for £22 to the Registers of Scotland for a Deed of Restriction was only issued on 29.3.05 and remained uncashed. The narrative referred to property 5 but the sale of property 4 in 2000 was the last transaction on the ledger. A Form 4 relating the Deed of Restriction to property 5 and receipted 24 November 2005 was exhibited by the Respondent in April 2006.

e) Mr and Mrs F sold property 6. The transaction settled on 3.5.05 but the cheque for £22 payable to the Registers of Scotland for the Discharge of the Abbey National loan and sent to the purchaser's solicitor on 18 July 2005 remained uncashed. A Form 4 receipted 23 September 2005 was later exhibited.

f) Mr. G sold property 7. The transaction settled on 27.2.05 and the loan was redeemed on 2 August 2005 but the ledger disclosed a balance of £22 on 12 September 2005. A Form 4 was produced in March 2006.

g) Mr. and Mrs. H purchased property 8 on 2 July 2004. Copies of the disposition and the standard Security in favour of the TSB in who lent the clients £83,600 were found on the file but the originals were lost and had not been recorded. A Form 4 receipted on 4 November 2005 was later exhibited.

h) The Company 1 ledger disclosed two cheques issued to the Registers of Scotland on 11.11.03 in the sum of £22 relating to a Minute of Agreement. The cheques were cancelled on 21.5.04 and at the June 2004 Inspection the matter was queried by the inspectors. A cheque for £44 was issued to the Registers of Scotland on 17.3.05 but had not been cashed and the Minute of Agreement remained unregistered.

9.6 There were transactions where payments were made to or on behalf of clients from the Respondent's own nominal account.

a) An entry showed payment from the Respondent to the clients Mr. and Mrs. I in the sum of £26,000 which entered his ledger as a loan from Mr J on 24 June 2005. The Respondent later confirmed that the name Mr J was entered in error and that he had personally advanced the funds when the clients were unable to obtain bridging finance to complete their transaction.

b) Monthly transfers of £256 to Ms K from his ledger were shown as credited to the Mr L Deceased ledger and paid to her from there without further explanation. These payments had been made as far back as 2000 when they were shown as financed by his wife. The Respondent later confirmed that the deceased had gifted his estate to the Respondent and his wife on the understanding that they would look after his wife's mother.

c) The client Mr M sold property 9. The ledgers disclosed a transfer of £10,000 from the Respondent to that client without further explanation. The Respondent later confirmed that he had paid this sum as a deposit on behalf of his son.

d) A loan of £35,000 was made to the client Mr N on 24 June 2005 and repaid on the 27 June 2005 without further explanation. The Respondent later confirmed that this was a temporary advance by him personally to the client who had been unable to obtain bridging finance to complete the transaction.

9.7 There were instances of non-compliance with Money Laundering requirements.

a) No identification was obtained for the clients Mr. and Mrs. O, who had introduced funds for their transactions. The Respondent later obtained and produced two forms of identification for Mr. O but only one for Mrs. O.

b) No identification was on file for the clients Mr. and Mrs. P, nor was there a fact sheet explaining why it was not needed. The Respondent later confirmed that they had been clients of the Firm since 1993. He had made payment of £19,111.73 to Mr. P without written authority from Mrs. P on 30 August 2005. He later confirmed that he had her verbal authority at the time and obtained written evidence of this and of her consent from Mrs. P dated 7 November 2005.

c) No identification was on file for the clients Company 1. nor was there a fact sheet explaining why it was not needed. The Respondent later confirmed that they had been clients of the Firm since 1996.

d) Mrs. Q the daughter of the client Mr R introduced £6,500 to his benefit on 18 July 2005 but there was no identification of her on the file and no vouching for the source

of the money. The Respondent later produced identification and her bank statement demonstrating the source of the funds with his letter of 24 October 2005 to the Complainers.

INSPECTION MARCH 2006

9.8 A re-inspection at the Firm's expense took place on 7, 9 and 10th March 2006. At the inspection in March 2006 the Respondent had not yet produced Form 4 documentation for the clients Mr. and Mrs. E and Company 1. The deeds remained unrecorded. The inspectors continued to express concern about a lack of unified procedures. A warning was given to all partners in a letter dated 29 March that failure to take heed of monitoring or guidance left only disciplinary action to be taken. Further problems were noted with delayed or non-recorded deeds. The system employed meant that many files did not contain a Form 4 or a copy. Some were kept elsewhere. There were instances where cheques had been issued to the Registers but were not cashed as at the date of the inspection leaving deeds unrecorded. There were instances where the Respondent undertook multiple transactions for clients and for companies operated by those clients and recorded the financial details within a single ledger. Ledger entries were inadequate and at times lacking in clarity, written authority for payments made on behalf of clients, from clients to the Respondent and between clients were not being obtained.

9.9 The Inspectors considered the following matters dealt with by the Respondent.

a) Mr T sold property 10 on 13 October 2004. A deed of Excambion was to be registered and a cheque for £22.00 for that purpose was issued to the Registers of Scotland on

19.10.04. The cheque was returned on 21.4.05 as it was out of date. A further cheque for that amount was returned for the same reason on 6.1.06. There remained a credit of £22 on the ledger. On 16.9.05 a payment of £1,285 was made to the Respondent for a planning application. No written authority was seen for that payment. The Respondent later produced a Form 4 for a discharge received 14.7.05 and a letter from Mr. T dated March 2006 authorising the payment.

b) Mr and Mrs S purchased property 11 with a loan from Northern Rock obtained but funds recorded as received from GMAC (RFC) Ltd on 22 December 2005. The deeds appeared to have been sent for recording on 12 January 2006 but there was no Form 4. The Respondent later produced a Form 4 received 12.1.06.

c) Mr. and Mrs. U sold ground at property 12 on 11 August 2005 and a cheque for £22 was issued for dual registration. A second cheque was issued to the Registers for £22 for a discharge of a Woolwich loan on 4 November 2005. The first cheque was cancelled on 16 February 2006 as it was out of date and it was re-issued on 27.2.06. The Respondent later produced a Form 4 received 1.12.05.

d) Mr and Mrs V purchased property 13 on 13 January 2006 with an HBOS mortgage. There was no Form 4 to show that the deeds had been recorded. A Form 4 received 6.3.06 was later exhibited.

e) Mr W had a ledger activated on 25.1.94 which contained over 10 transactions for himself and his company, Company 2 which was also a client of the Respondent.

Transfers were made to Company 2 from this ledger of £322.55 on 14.2.06 and £9531.50 on 8.4.04 without written authority. The Respondent later produced written authority dated 26.6.06 for these.

f) The discharge of the Alliance + Leicester security over property 14 for the clients Mr. and Mrs. X remained unregistered. A cheque was issued for that on 10 November 2005.

g) The discharge of the Halifax security on the property 15 for the client Mr. and Mrs. Y remained unregistered. A cheque for that was issued 4 November 2005. The Respondent later produced a Form 4 receipted 14.2.06.

h) Mr Z ledger contained two payments made in the sum of £597.00 on 16.9.05 to Mr AA and £131.67 on 16 September 2005 to Company 3., the client's company, but no details were recorded about those and the correspondence on the file ended on 11.7.05. The Respondent later produced a receipt from Mr. AA dated 11.8.06.

i) Mr. BB died intestate on 11.10.04. The title on the Executry ledger was incorrect as it included the name of the sole beneficiary his widow. His son applied to be appointed executor on 16.3.05. On 7.1.05 a sum of £4,000 was paid from his Bank of Scotland account into the firm's general account and on to his widow. No confirmation had been obtained. A further £ 23,000 was uplifted from his invested funds account on 19.12.05 and paid to his widow. There were no details of either transaction on the file. No written consent was obtained from the executor and no receipts were obtained from the

widow. The balance on the Bank of Scotland account in the confirmation as at date of death was misstated as £1,570 when it was in excess of £8,000. The Respondent later produced a letter of authorisation for the payments dated 31.3.06 and a receipt for both sums dated 7.4.06.

- 9.10 There also continued to be issues about compliance with Money laundering requirements. The Firm's procedures were not sufficient with opening forms stating "existing client" without any further detail and evidence of the source of funds not always obtained. The partners including the Respondent were again informed of the specific issues of concern and the need to clearly record separate transactions for clients was emphasised.

INSPECTION NOVEMBER 2006

- 9.11 A further Inspection at the Firm's expense took place on 6, 8 and 9 November 2006. The Firm had introduced procedures in order to fully comply with the rules including centralized records. The Respondent's partners were increasingly concerned by his work practices and failure to adhere to systems adopted by the firm to address the inspectors and the Guarantee Fund concerns. The Respondent stated that he had put in place a management system to ensure that all deeds were recorded within 30 days which was monitored by himself and his new assistant. The Respondent however did not fully adhere to this or the firm's practices and continued to regularly breach the Accounts Rules and Money laundering requirements.
- 9.12 The Respondent did not always follow the new procedures. He had obtained no verification of the Source of funds for Mr and Mrs CC. He confirmed in March 2007 that he checked the

source in as much as checking that the funds came from Mrs CC's mother and from the mother's savings account. He had no identification on the central record for Mr DD or Mr EE. He confirmed in March 2007 that he held a copy of Mr. EE's passport and had known him for 25 years and he later produced two forms of identification for Mr DD.

9.13 The Inspectors noted the following matters dealt with by the Respondent:

a) On 27.4.06 a Nationwide loan was redeemed for the client Mr FF and a cheque was issued to the Registers of Scotland on 26.4.06 for the Discharge. The cheque was cancelled on 6.11.06 as it was out of date. No replacement was issued and the Discharge was not recorded. In March 2007 the Respondent produced a copy of the Discharge executed 24.4.06 and explained that there had been a mix up as more than one person was dealing with the case. A Form 4 acknowledgement dated 14.3.07 was later produced.

b) On 13.7.06 a Halifax loan was redeemed for the clients Mr. and Mrs. GG but a cheque had been issued to the Registers of Scotland on 30.6.06 for the Discharge. The Discharge was not recorded. The cheque for the recording dues of the discharge was drawn two weeks before the loan was actually redeemed.

c) The purchase of property 16 and property 17 for the client Company 3 had settled on 29 August 2006 but the disposition and the Clydesdale Bank security had not been recorded and there was a balance of £385 on the ledger. The Respondent confirmed In August 2007 that Mr. Z was an architect for whom he was engaged in a number of matters.

Mr. Z and his assistant were directors of the company Company 3., and he was revamping their portfolio with the Clydesdale Bank as well as assisting with the foundation of an LLP for the architects practice. He stated that properties were held in Trust, by Mr. Z personally and by the limited company. Correspondence did not conclude on this matter before the inspection in November 2007 and he was asked to have the file available for the Inspectors at that time.

d) The purchase of property 18 by Mr HH where the loan from Accord Mortgages was £92,284 and the purchase price only £85,000 on the disposition. A transfer of £8,500 was made to Ok Developments and a balance of £6,764 remained on the ledger. The Respondent confirmed in March 2007 that the £ 8,500 difference was "in regard to a sale on to Ms II". He indicated that Mr. HH was lending her the balance of £6,764. He was asked to produce correspondence containing confirmation of the purchase price paid by Mr HH a director of Company 4 and by Ms II. In August 2007 he produced a Disposition to Ms II by the original seller tracing title through Mr. HH with a purchase price of £97,000. Only £ 92,264 was disclosed in the ledger as paid by Ms II which included a loan to her of £6764 from Mr. HH. No details of the registration of the security in favour of Accord Mortgages was produced. In September 2007 he produced a letter from the lender dated 24.8.07 confirming receipt of the Redemption payment. He stated that the property had been in the process of being sold on and the sale had been concluded. In October 2007 the Respondent accepted that he had never registered the Security. Nor had he registered the Disposition in favour of Ms II.

9.14 It was seen that two blank cheques had been drawn on the Respondent's account and given to him. The cancelled cheques had not been returned by the bank and the payee,

believed to be himself, could not be verified. The Respondent's position was considered by the Guarantee Fund Committee on 7 June 2007 and it was decided to defer consideration of professional misconduct and to put all three partners on notice of disciplinary action pending an inspection in November 2007.

INSPECTION NOVEMBER 2007

- 9.15 When the inspection began on 12 November 2007 the cashroom partner and the Respondent asked to bring matters about the Respondent's work to the inspectors' attention. The Respondent stated that he had fallen behind in several transactions and he produced 33 files which had been reviewed by the Firm accountants. Several related to the client Mr HH. The Respondent had adopted a practice of obtaining power of attorney from clients. This allowed him to progress transactions without reference to the clients and left files devoid of correspondence or notes of instructions.
- 9.16 The inspection proceeded and again disclosed a number of breaches of the rules in transactions dealt with by the Respondent. The Respondent acted for Mr. and Mrs. JJ in the purchase of property 19. He issued a cheque to Thorntons Solicitors for £158,053.00 dated 12 October 2007 to be held as undelivered pending settlement which took place on 17 October. Funds of £160,361.00 were held in the Invested Funds from 9 October 2007 but not uplifted and credited to the client account until 19 October. Between 17 and 19 October the firm's books recorded a surplus of £20,000 and this resulted in a deficit on the client account of approximately £138,000.

- 9.17 The Respondent acted for Mr. KK who provided funds for his transaction by way of bank draft. The Respondent did not note the source of the bank draft on the file.
- 9.18 The Respondent acted in the executry of Mr LL Deceased which was effectively completed in 1996 but there had been no movement since then, the firm held substantial invested funds and no account of Charge and Discharge had been prepared. On 18 January 1995 the Respondent issued two cheques drawn from the client's invested funds just before Mr. LL died in the sums of £31,000 and £3,000. Inadequate records were kept by him to account for the use of these funds. It was established that a bond for £31,000 had been taken out on 1 March 2005 on behalf of Mr. LL with Scottish Amicable. After lengthy enquiry it was established that the balance had been invested on his behalf with Prolific and an account for Charge and Discharge was prepared in October 2008 and approved.
- 9.19 The Respondent acted for company 2 in the sale of ground at property 20. A cheque was issued by him for dual registration on 27 April 2007 but was then cancelled on 9 November 2007. It was not reissued. The Respondent acted on behalf of Mr. and Mrs. MM in the purchase of property 21. The transaction settled on 21 September 2006 but the title deeds were not sent for registration until 12 October 2007.

MR HH, COMPANY 4, COMPANY 5 AND MS II

- 9.20 From October 2006 the Respondent intermingled the postings on ledgers relating to a number of transactions in which he acted for Mr HH, Company 4, Company 5 and Ms II. As a result balances were unreliable. By 10 March 2008 investigation had established the correct position and confirmed a number of instances where deeds had not been registered.

- 9.21 Mr HH purchased property 18 From Company 5 for £85,000. The ledger disclosed receipt of £8,000 from a RBS account as a deposit. He sold the property on to Ms II for £97,000 on 2 October 2006. Ms II obtained a loan for £92,284 from Accord Mortgages which sum was received by the Respondent on 2 October 2006. On the same day he paid the £85,000 purchase price due to Company 5 to that company's agents using the Accord funds. £8,500 was transferred to Company 4 for the purchase of property 22. No deeds were registered in these transactions. The loan from Accord Mortgages was unsecured. The property was sold on again with other property 18 flats on 21 August 2007.
- 9.22 On 11 and 13 October 2006 Company 4 purchased flats at property 18 from Company 6 at a total price of £479,000. Mr. HH provided £8,000 and loans of £80,675, £105,925, £105,925, £80,675 and £97,600 were received on 12 October 2006 from Paragon Mortgages. The Respondent did not submit the Disposition and Standard security to be registered until 8 June 2007. The properties were sold in October 2007.
- 9.23 On 14 November 2006 Company 4 purchased property 22 at a price of £99,000. The Disposition narrated the purchase was by Mr. HH who paid £99,000 then sold the property on to Company 4 for £108,000. A mortgage of £91,725 was provided by Paragon Mortgages and the balance was the surplus from property 18. The Respondent did not register the Disposition or the standard security. The loan was repaid by installments the last payment was made on 4 February 2008.
- 9.24 In January 2007 properties belonging to Mr. HH at properties 23 and properties 24 were remortgaged. Five loans were received from Paragon Mortgages for a total of £584,800.

These were £119,000 for each flat in property 23, £114,750 for each of properties 24, and £117,300 for property 24. Paragon Mortgages required the existing loans to be redeemed. The existing securities over the subjects were in favour of Mortgage Works Plc and had been registered. The sums due to redeem the loans from Mortgage Works Plc were stated to be £638,192 and £705,270.29 respectively as at 23 January 2007. The Respondent did not redeem the loans or discharge the existing securities. He did not send the standard Securities in favour of Paragon Mortgages to be registered until 16 May 2007.

9.25 The Respondent intromitted with the Paragon Mortgages loan funds for other purposes. On 25 January 2007 he lodged the full £584,800 in an account with the Bank of Scotland and thereafter uplifted funds to cover Form 12A reports, various payments to HM Revenue & Customs and Nike NCON for debts re Sporting Look, Arbroath. On 21 March he uplifted £22,900 for a further payment to HM Customs & Revenue. On 26 April he uplifted the balance and interest from the Bank of Scotland and credited all sums to the remortgage ledger for the properties a total of £444,747.27. On the same day from that ledger he paid out £6,462.80 to Archibald Campbell & Harley Solicitors in settlement of a court action and £435,190.97 for the purchase of property 25. The following day he paid a balance of £3,000 to Mr. HH. Loan funds of £410,125 from TiutaPLC/ Bank of Ireland for the purchase of property 25 were received on the 26 April and lodged with the Bank of Scotland on 27 April. On 21 August 2007 the Respondent paid £47,823.46 to Mortgage Works Plc, recording this as towards various loans over properties. On 22 August he paid £58,000 to RBS Plc to redeem loans. The latter was Mr. HH residential address. Two payments of £2,500 were made to Mr. HH on 15 May, on 24 August a

deposit of £10,000 was paid for him in his purchase of a property in property 26. Ms II was paid £17,500 on 5 September to repay a loan, £50 was paid for a Notice of Intention to Defend on 21 September and on 4 December 2007 £88,622 was transferred to Mr HH/Ms II to pay off property 18 loan. A balance of £198,274.45 remained from the TiutaPLC/Bank of Ireland funds.

9.26 In March 2007 Mr. HH sold property 27 for £141,000. There were two loans secured over the property one for Northern Rock Plc and the other a second charge in favour of Blackhorse Limited. The Respondent repaid the Northern Rock Plc loan of £116,281.86 on 4 April 2007. He had a redemption figure of £12,922.19 from Black Horse Plc but he did not redeem the loan. He transferred £10,000 to Company 5 ledger on 29 March to assist in the purchase of property 25. He then paid £7,700 to Mr. HH. He did not register Discharges.

9.27 In March and April 2007 the Respondent acted in the purchase of property 25 for Company 5 at a total price of £455,190.97. A loan was obtained from Tiuta Plc/Bank of Ireland and funds of £410,125 were received on 26 April when the transaction settled. The Respondent made no application to register a security in favour of the lenders. In the period from August to November payments were made to Tiuta in the sums £25,500, £50,000 £75,000 and £350,171.87. On 29 November loan funds of £460,844.05 were received from Bridgebank Capital No. 2 Fund as a re-mortgage. The Tiuta loan Was repaid in the sum of £350,171.87 on the same day. An application was submitted by the Respondent to register a Standard Security in favour of Bridgebank Capital No. 2 Fund and Bank of Scotland (Corporate Division) on 10 December. Biggart Baillie Solicitors acted for the lender. The Respondent paid

£6,000 to Ms II, £19,000 to Mr. HH for Development Works and made three payments to Paragon Mortgages from the funds on this ledger. On 31 October the ledger was debited with the sum of £34,880.80 for Seagate and on 4 February 2008 £30,357.19 and £751.51 for property 22. This repaid the loan over property 22 and left a debit balance on the ledger of £180,418.15.

9.28 On 21 August 2007 Company 4 sold eleven flats at property 18 to Company 7 and the Respondent remitted the funds needed to redeem the loans obtained from Paragon Mortgages, Accord Mortgages and Northern Rock Plc. £65,250 was also paid to Paragon Mortgages to redeem the loan on property 22 in part.

9.29 As a result of the Respondent's intromission with loan funds relating to these transactions and his failure to register Securities claims were made on the Master Policy. A payment of £666,000 made by Royal and Sun Alliance to Paragon Mortgages who discharged all claims against the partners and the former firm of Gourlay McBain on 13 June 2008 in respect of the properties 23 and properties 24. The Blackhorse Security was eventually discharged on 30 July 2008 once payment was made to redeem the loan of £12,922 by Royal and Sun Alliance.

MR Z, MRS Z, COMPANY 3

9.30 By letter dated 9 June 2009 Messrs Thorntons Solicitors, Dundee registered a complaint on behalf of their client Mr. Z with the Scottish Legal Complaints Commission. This was forwarded to the Complainers on 11 June for investigation. Thorntons took over representation of Mr. Z and his wife after the cessation of the Respondent's former firm in April 2008.

In files obtained by them they found unregistered dispositions and securities relating to a number of properties. The Respondent had acted for Mr. Z, his wife, Company 8, Company 9, Company 3 and other companies in which Mr. Z had an interest. He frequently obtained Power of Attorney from these clients as individuals and as company directors.

- 9.31 Mr. and Mrs. Z purchased property 16 and property 17 in 2004 with the assistance of a loan from the Clydesdale Bank Plc. Title was registered as was the Bank's Security. In 2006 the Respondent was instructed by them to transfer title of both properties to Company 3 a company in which Mr Z was a director. The Respondent also acted for the Clydesdale Bank PLC who provided the funding for Company 3. The Respondent was to secure the loan by registering securities over both properties in favour of the bank. Letters of Inhibition had been registered against Company 3 on 15 September 2004 and had not been discharged.
- 9.32 On 15 August 2006 the Respondent faxed his report on title to the bank confirming the price was £165,000 and that the funds were required by 22 August 2006. A Standard Security in favour of the bank was signed by the directors of the company on 22 August 2006. The Respondent prepared a Stamp Duty Land Tax return for the purchase and signed it as attorney on behalf of the company giving the effective date of the transaction as 29 August 2006. The sum of £165,000 was received by the Respondent on 29 August and transferred to Mr. Z that same day. On 4 September 2006 a cheque for £1,650 was issued for payment of the Stamp Duty.
- 9.33 On 1 September 2006 the Respondent issued fee notes to both Mr. & Mrs. Z and to Company 3 for the transfer of title. These were paid on 4 September. Nothing happened for a year

during which time on 6 March 2007 the cheque for the Stamp Duty was cancelled as it had not been encashed and was out of time. The Respondent took no action until the disposition in favour of the company was signed by him as attorney for Mr. & Mrs. Z on 22 October 2007 with a price of £125,000. It was 20 November 2007 before he wrote to Her Majesty's Revenue & Customs enclosing fresh SDLT1 and SDLT2 certificates. On cessation of the firm it was established that the deeds were still on the file and had not been registered for these four properties. The dispositions and the Clydesdale Bank Plc security were eventually lodged with an application for registration on 29 July 2008.

9.34 Title to property 28 was held in the name of Company 10 a company in which Mr. Z was a director. The company was incorporated on 24 February 1987 and dissolved following a voluntary winding up on 28 December 2001. As part of the voluntary distribution of assets both properties were to be transferred to Company 3 and the Respondent was instructed to attend to the transfer. He ordered the title deeds from the Clydesdale Bank PLC who held securities over the subjects and these were sent to his firm on 21 September 2000. He was instructed by the Bank to constitute two securities over the properties to secure their lending to Company 3.

9.35 On 3 April 2001 the liquidator signed dispositions for each property transferring ownership to Company 3. No further action was taken by the Respondent until on 16 September 2007 he witnessed the addition of the signature of Mr. Z to the dispositions. He did not submit the dispositions for stamping and he did not register the titles or constitute and register the securities as required by the bank. He did not safely store the title deeds nor did he return them to the bank for storage.

9.36 The Respondent acted in the transfer of title of property 29 from the ownership of the Company 9 in about 2004. The properties were to be split with title to number 3 to be taken by Mr. NN and Number 4 by Mr. Z and his wife. A security over Plot 4 was instructed by the Clydesdale Bank Plc. The Respondent prepared a Report on title for the Bank on 16 May 2005 and sent it to them on 18 May. He did not complete the transfer and at the date of cessation of his firm no dispositions had been registered and no Security registered in favour of the Bank.

9.37 In 2004 Mr. Z instructed the Respondent to act for him in the purchase of property 30. An offer was submitted on 20 August 2004 with a price of £26,000 and entry four weeks later. Mr. Z gave a cheque for the price to the seller direct. Issues arose in relation to access and services. The Respondent kept his client informed and copied correspondence to him for instructions. On 7 September he received loan instructions from the Clydesdale Bank Plc which required a security over this property and property 16 as a condition of the loan being advanced to the client. The bargain was concluded on 7 October 2004. No draft disposition was prepared. On 31 May 2005 the seller's agent sent the seller's Land Certificate to the Respondent. The Respondent did not register title on behalf of his client nor did he register a Security in favour of the Bank.

MISS OO'S TRUST

9.38 The Respondent was responsible for dealing with this Trust. He made loans to other clients without authority. On 11 April 1986 a loan of £6,000 was made to Mr PP and paid back in two instalments, by £4,000 on 12 November 1986 and £2,000 on 2 February 1987. An interest payment was credited to the Trust for this loan. On 30 June 1988 a further loan of £2,000

was made to Mr QQ and repaid on 30 September 1988. An interest payment was credited to the Trust for this loan. A loan of £4,000 was made to Mr RR and Mrs. SS on 3 December 1986. This loan was not repaid.

COMPANY 11

- 9.39 The Respondent wrote a cheque for £7,000 drawn on the Company 11 ledger on 1 February 2007 payable to Thorntons narrating 'To paid Thorntons Law LLP balance of tax due'. There was no tax due to Thorntons in relation to this matter. The Respondent acted for Mr. W and Company 2 at this time. The transaction was for Company 2 to convey a piece of land to a neighbour, and the neighbour to transfer part of his property to the company. On the file for this transaction there was a letter from Thorntons dated 2/2/07 acknowledging a cheque forwarded by the Respondent. No other cheque was issued to Thorntons at that time. The Respondent used the funds of Company 11 to correct defective conveyancing in respect of a property being purchased by Mr. W and his company. In October 2008 the Respondent's former partners paid the sole beneficiary of the Trust a total of £8,500 being the £7,000 plus interest and refunded fees in settlement.

MR TT AND MR UU

- 9.40 Mr HH and Mr UU were directors of Company 12. Messrs Blackadders Solicitors represented the limited company which purchased property 31 from Company 13 on 27 December 2007 at a price of £335,000. Messrs Blackadders then on behalf of the company offered to sell the property to Mr. TT at a price of £460,000. The Disposition by Company 13 was never sent for registration. The Respondent acted for Mr. TT in the transaction.

A loan was arranged from Tiuta Funding to assist Mr. TT in the purchase.

- 9.41 On 4 January 2008 £437,690 was received from Tiuta which was a loan of £460,000 less the first three months interest. The Respondent paid £335,022 to Messrs Blackadders on 7 January and a further £46,531.50 on 8 January a total of £381,553.50. He then deducted his fees and outlays from the balance held and remitted £40,022 to Mr. TT by CHAPS transfer on 7 January. The purchase price in the Disposition was £460,000. He did not send the Disposition in favour of Mr. TT or the Standard Security in favour of Tiuta Limited to be registered. He subsequently gave the file with the deeds still on it to the client. When the documents were sent for registration in April 2008 it was discovered that the original Disposition was defective. The deeds were rectified and sent for registration on 29 January 2009.

MR VV EXECUTRY

- 9.42 The Respondent was an executor of the late Mr VV. His co-executor Mrs. WW. Prior to the death of Mr VV, she had deposited cash found in the deceased's home with the firm. She handed in £ 2,765 on 11 November 2005. Between then and 16 November she gave a further sum of cash in excess of £2,000 to the Respondent. He deposited only £220 to the client ledger. No trace of the balance has been found. On 21 January 2009 Royal and Sun Alliance paid £2,000 in settlement of the claim by the estate on the firm's indemnity insurance.

MR XX EXECUTRY

- 9.43 On 25 April 2003 the Respondent transferred £12,000 from funds held for the executry of the late Mr XX to the benefit of

Mr Z narrating that it was the balance of the price of property 32 No sums were due to be paid to Mr Z for such a transaction which was fictional. The money was taken without authorisation. On the same day an entry showing a credit of £8,000 in cash was made to the ledger of Mr Z bearing to have come from the client. Mr. Z did not make such a payment. The £20,000 was paid out by the Respondent to resolve a problem relating to a Road Bond and access issue in a transaction dealt with by him for a company owned by Mr. Z. Company 14 had purchased land at property 33 from Company 15. Mr. Z was asked by the Respondent to pay £22,000 to the Respondent's personal bank account to cover the sum due which he did in two installments on 27 and 28 November 2007. The £12,000 was not repaid to the executry.

HAY CASSELS SOLICITORS – PROPERTY 27

- 9.44 In or about 2006, Mr HH instructed the Respondent in connection with the conveyancing for the sale of a heritable property in Arbroath. Missives were concluded with a date of entry of 9 March 2007. In terms of the missives, the purchase price was subject to a retention of £4,000 pending the delivery of a certificate from the Scottish Environmental Protection Agency (SEPA) relating to the private water supply.
- 9.45 On 9 March 2007 the Respondent issued two letters of obligation to Messrs Hay Cassels, Hamilton, the purchaser's solicitors. In the first letter of obligation the Respondent undertook in the usual way to exhibit clear searches within 28 days of settlement. In the second letter of obligation the Respondent undertook to deliver to the purchaser's solicitors a discharge from the seller's heritable lender together with Forms 2 and 4 for registration within 28 days of settlement.

- 9.46 The purchaser's solicitors wrote to the Respondent on 3 and 18 April, 10 May, 26 June, 4 and 31 July, 17 and 31 August, all 2007, seeking production of the discharge, in terms of the letter of obligation, and the SEPA consent, in terms of the missives. No response was received.
- 9.47 On 17 September 2007, the Respondent spoke to the purchaser's solicitor by telephone. The Respondent advised the purchaser's solicitor that all matters had been resolved. That was incorrect, as the Respondent knew. The Respondent advised the purchaser's solicitor that he would shortly produce a discharge from the heritable lenders. The Respondent knew however that the lender had not yet issued a redemption statement, that the outstanding loan had not been redeemed, and that no discharge had been prepared or executed.
- 9.48 The purchaser's solicitors again wrote to the Respondent on 17 September, 3 and 17 October, 9 and 28 November, all 2007, again seeking production of the discharge, in terms of the letter of obligation, and the SEPA consent, in terms of the missives. Again, no response was received.

THE LAW SOCIETY OF SCOTLAND – DR YY

- 9.49 In 2002 the Respondent acted for Dr YY in the sale of farmland. A title dispute ensued and Dr YY both complained to the Complainers and commenced proceedings in the Sheriff Court. There were then appeals to the Sheriff Principal and the Court of Session. The Complainers did not investigate the complaint while proceedings were live. The Respondent was aware that a complaint had been made to them. Details were sent to the Respondent on 3 September 2008 and 4 November 2008. A formal letter was sent to him on 22 April 2009 for comment within 14 days. He did not reply.

9.50 On 2 June 2009, a formal Notice was served on the Respondent in terms of Section 15(2)(ii) of the Solicitors (Scotland) Act 1980. He did not respond. On 16 June 2009 the second part of the Section 15(2) Notice was served and he was written to and advised that in view of the fact that he had failed to respond to the merits of the complaint by Dr YY, the Complainers were considering if that failure in itself may amount to professional misconduct. He was required to provide his response to the matter within 14 days. He did not reply. A Reporter was appointed and a Report was sent to the Respondent on 15 October 2009. He was asked to provide any comments by 30 October 2009. He did not respond.

THE LAW SOCIETY OF SCOTLAND – MISS ZZ

9.51 On 1 May 2008 Miss ZZ complained about the service provided to her by the Respondent. Details of the complaint were sent to the Respondent on 26 June 2008. A formal letter in terms of section 33 of the Solicitors (Scotland) Act 1980 was sent to him on 23 July 2008 requiring his written response, any background information that he may wish to provide and the business file or files relating to the matter within 21 days. He did not reply.

9.52 On 21 August 2008, formal Notices were served on the Respondent in terms of Section 15(2)(ii) and Section 42C of the 1980 Act. He did not respond. On 19 September 2008 the second part of the Section 15(2) Notice was served and he was written to and advised that in view of the fact that he had failed to respond to the merits of the complaint by Miss ZZ, the Complainers were considering if that failure in itself may amount to professional misconduct. He was required to provide his response to the matter within 14 days. He did not

reply. A Reporter was appointed and a Report was sent to the Respondent on 3 November 2008. He was asked to provide any comments by 17 November 2008. He did not respond.

MR AAA AND MS BBB

9.53 By letter dated 21 November 2008 Mr. AAA complained on behalf of himself and his mother about the service provided to them by the Respondent. Together with the Mr CCC they had obtained title to property 34 in 1993 with the assistance of a loan from the Abbey National PLC. Mr. CCC died on 6 August 1995. In 2002 the mortgage was redeemed and they instructed the Respondent to discharge the security held by the Abbey National PLC, to obtain confirmation to the estate of the late Mr. CCC and to transfer title of property 34 into the sole name of Mr. AAA.

9.54 The Respondent accepted the instructions and proceeded to record the Discharge. He submitted a fee note dated 25 September 2002 for all three pieces of work in the sum of £400 plus vat of £70.00. He included outlays of £10.00 for the executry petition, £74.00 for the Confirmation dues and £66.00 for the recording dues of the Disposition and Discharge. The fee was paid in October 2002. In 2008 a former partner of the Respondent contacted Mr. AAA and his mother to advise that investigation of a credit balance on their ledger had established that no confirmation had been obtained and no transfer of title effected.

THE LAW SOCIETY OF SCOTLAND – MR AAA AND MS BBB

9.55 The Respondent was advised of the complaint 9 December

2008. A formal letter in terms of section 33 of the Solicitors (Scotland) Act 1980 was sent to him on 29 December 2008 requiring his written response, any background information that he may wish to provide and the business file or files relating to the matter within 21 days. He did not reply.

- 9.56 On 23 January 2009, formal Notices were served on the Respondent in terms of Section 15(2)(ii) and Section 42C of the 1980 Act. The recorded delivery letters were returned marked not called for and re-issued by ordinary post on 10 February 2009. He did not respond. On 24 February 2009 the second part of the Section 15(2) Notice was served and he was written to and advised that in view of the fact that he had failed to respond to the merits of the complaint by Mr AAA and Mrs BBB, the Complainers were considering if that failure in itself may amount to professional misconduct. He was required to provide his response to the matter within 14 days. He did not reply. A further Notice in terms of section 15(2) was sent to him on 18 March 2009. A Reporter was appointed and a Report was sent to the Respondent on 20 May 2009. He was asked to provide any comments by 3 June 2009. He did not respond.

THE LAW SOCIETY OF SCOTLAND – MS DDD

- 9.57 On 2 August 2008 Ms DDD complained that the Respondent might be guilty of professional misconduct in relation to his acting's on her behalf. Details were sent to the Respondent on 20 August 2008. A formal letter in terms of section 33 of the Solicitors (Scotland) Act 1980 was sent to him on 21 October 2008 requiring his written response, any background information that he may wish to provide and the business file or files relating to the matter within 21 days. He did not reply.

9.58 On 25 November 2008, a formal Notice was served on the Respondent in terms of Section 15(2)(ii) of the 1980 Act. On 23 December 2008 the second part of the Section 15(2) Notice was served and he was written to and advised that in view of the fact that he had failed to respond to the merits of the complaint by Ms DDD the Complainers were considering if that failure in itself may amount to professional misconduct. He was required to provide his response to the matter within 14 days. He did not reply. On 22 January 2009 a further copy of the second section 15(2) notice was sent to him. A Reporter was appointed and a Report was sent to the Respondent on 18 March 2009. He was asked to provide any comments by 1 April 2009. He did not respond.

THE LAW SOCIETY OF SCOTLAND – MR Z

9.59 On receipt of the letter from Thorntons Solicitors the Complainers sent details to the Respondent on 8 July 2009. A formal letter in terms of section 33 of the Solicitors (Scotland) Act 1980 was sent to him on 1 October 2009 requiring his written response, any background information that he may wish to provide and the business file or files relating to the matter within 21 days. He did not reply.

9.60 On 2 November 2009, a formal Notice was served on the Respondent in terms of Section 15(2)(ii) of the 1980 Act. A Reporter was appointed and a Report was sent to the Respondent on 2 July 2010. He was asked to provide any comments by 16 July 2010. He did not respond. A supplementary report was required and was submitted to him on 14 September 2010. He was required to provide any comments by 28 September. He did not do so. A new Reporter was appointed and a Report was sent to the Respondent on 21 January 2011. He was asked to provide any comments by 10

February 2011. He did not respond.

THE LAW SOCIETY OF SCOTLAND – MR EEE

9.61 On 11 February 2009 Messrs Maclay Murray & Spens Solicitors on behalf of Mr EEE Complained about the actings of the firm of Gourley Mc Bain solicitors in relation to an executry matter in which the Respondent had acted. A formal letter in terms of section 33 of the solicitors Scotland Act 1980 with details of the complaint were sent to the Respondent on 30 June 2009 seeking his response within 21 days He did not reply.

9.62 On 29 July 2009 a formal notice in terms of section 15 of the Act was served on him. He was advised that as he had failed to respond to the merits of the complaint the Complainers were considering if that failure in itself may amount to professional misconduct. He was required to provide his respond to the matter within 14 days. He did not respond. The second part of the section 15(2) Notice was served on him on 3 September 2009. A Reporter was appointed and a Report sent to the Respondent on 15 January 2010. He was asked to provide any comments by 29 January. He did not reply.

10. Having considered the foregoing circumstances and having heard Submissions on behalf of the Complainers, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

10.1 a) his failure between May 2006 and February 2008 to maintain accurate and adequate records to show his dealings with client monies and to identify the funds of each individual client, failure to obtain written authority for payment of client funds to the benefit of other clients.

- b) his between 11 April 1986 and 6 February 2008 using funds entrusted to him for Miss O's Trust to finance three loans to other clients without authority and in the case of one loan of £4,000 without recovering the funds for the benefit of the Trust.
- c) his between 1 February 2007 and 6 February 2008 misappropriating the sum of £7,000 from funds entrusted to him for the Company 11 to pay to the benefit of another client and his falsifying records to conceal his dishonesty.
- d) his on 16 November 2005 having been entrusted with funds recovered from the home of the deceased Mr VV for the benefit of the executry misappropriating the sum of £2,000 and failing to account for the funds to the executry of the late Mr VV.
- e) his between 25 April 2003 and 6 February 2008 using funds entrusted to him for the estate of the late Mr XX for the benefit of another client Mr Z without authority, his falsifying ledger entries to conceal his actions and his misappropriating the sum of £12,000.
- f) his having a deficit on his Client account of £138,000 between 17 and 19 October 2007.
- g) his repeated delay or failure altogether to Stamp, Register or Record timeously Dispositions, Standard Securities and Discharges.
- h) his failure to comply with the terms of the Money Laundering Regulations, failure to set up and operate systems for the identification of clients and the source of

clients' funds and failure to properly identify clients, or record reasons for not doing so, or the source of their funds.

10.2 In relation to: MR HH, COMPANY4, COMPANY 5 and MS II:

(i) his failure between 2 October 2006 and 21 August 2007 to register title to property 18 on behalf of his clients Mr HH or Ms II whereby the clients remained uninfected, and his failure to register the security in favour of Accord Mortgages in respect of the loan to Ms II for property 18 whereby the lender remained unsecured for the funds advanced.

(ii) his failure between 13 October 2006 and 8 June 2007 to register title to property 18 on behalf of his client the company Company 4., and his client Mr HH whereby the client remained uninfected, and his failure to register the security in favour of Paragon Mortgages in respect of property 18 whereby the lender remained unsecured for the funds advanced.

(iii) his failure between 14 November 2006 and 4 February 2008 to register title to property 22 on behalf of his client company 4., and his client Mr HH whereby the client remained uninfected, and his failure to register the security in favour of Paragon Mortgages in respect property 22 whereby the lender remained unsecured for the funds advanced.

(iv) his between January 2007 and November 2007 using the funds entrusted to him by the lender Paragon Mortgages for the re-mortgage of five flats at property 23 property 24 for the benefit of his client Mr HH and his companies without redeeming the existing security in favour of Mortgage Works, and without discharging the existing securities registered over said properties whereby Paragon's security was not first ranking resulting in a claim made on the Professional Indemnity

Insurance by Paragon Mortgages resulting in a payment of £666,000.

(v) his between 9 March 2007 and 6 February 2008 acting in the sale of property 27 on behalf of Mr HH and failure to redeem the loan or discharge the security in favour of Blackhorse Finance over the said property from the sale funds whereby the loan of £12,922 was not repaid and a claim was made on the Professional Indemnity Insurance by Blackhorse Finance resulting in a payment of £12,922.

(vi) his failure between 26 April 2007 and 29 November 2007 to register title to property 25 on behalf of his client Company 5., and his client Mr HH whereby the client remained uninfert, and his failure to register the security in favour of TiutaPLC/Bank of Ireland in respect of property 25 whereby the lender remained unsecured for the funds advanced.

10.3 In respect of : MR Z, MRS Z and COMPANY 3

(i) his failure between 22 August 2006 and 6 February 2008 to have the deeds Stamped or to register title to property 16 and property 17 on behalf of his client Company 3 whereby the client remained uninfert and his failure to register securities over said subjects on behalf of the Clydesdale Bank PLC whereby the lender remained unsecured for the funds advanced.

(ii) his between 1 and 4 September 2006 rendering fee notes to his clients Mr. and Mrs. Z and to Company 3 for the transfer of title property 16 and property 17 thereby representing to them that the work had been undertaken and completed when he had not done so and his taking payment for that work well knowing that he had not done so.

(iii) his failure between 3 April 2001 and 6 February 2008 to have the deeds Stamped or to register title to the properties 8 and property 28 on behalf of his client Company 3 whereby the client remained uninfert and his failure to register securities over said subjects on behalf of the Clydesdale Bank PLC whereby the lender remained unsecured for the funds advanced.

(iv) his failure between 16 May 2005 and 6 February 2008 to register title to property 29 on behalf of his clients Mr. and Mrs. Z whereby the clients remained uninfert, and his failure to register the security in favour of the Clydesdale Bank PLC in respect of the property 29 whereby the lender remained unsecured for the funds advanced.

(v) his failure between 7 October 2004 and 6 February 2008 to register title to property 30 on behalf of his client Mr Z whereby the client remained uninfert, and his failure to register the security in favour of the Clydesdale Bank PLC in respect of property 30 whereby the lender remained unsecured for the funds advanced.

10.4 In respect of: MR TT

his failure between 4 January and 6 February 2008 to register title to property 31 on behalf of his client Mr TT whereby the client remained uninfert, and his failure to register the security in favour of Tiuta Funding in respect of the loan to the client whereby the lender remained unsecured for the funds advanced and his placing the deeds out with his control or the control of his firm.

10.5 In respect of: HAY CASSELS SOLICITORS – PROPERTY
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(i) his failure between 18 April 2007 and 28 November 2007 to implement a letter of obligation issued to Messrs Hay Cassels Solicitors, Hamilton in respect of the sale of property 27.

(ii) his repeated failure between 3 April 2007 and 28 November 2007 to answer correspondence from fellow solicitors, Messrs Hay Cassels Solicitors, Hamilton in respect of the sale of property 27.

(iii) his on 17 September 2007 knowingly misleading fellow solicitors, Messrs Hay Cassels Solicitors, Hamilton and advising them that all matters had resolved in respect of the sale of property 27 when as he well knew the seller's loan had not been redeemed, no discharge of the existing loan had been prepared and no redemption statement received from the lenders.

10.6 In respect of: THE LAW SOCIETY OF SCOTLAND – DR YY his failure between 22 April and 30 October 2009 to reply to the reasonable enquiries of the Complainers into the complaint of Dr YY or to comply with Notices served upon him and send files required of him.

10.7 In respect of: THE LAW SOCIETY OF SCOTLAND – MISS ZZ his failure between 23 July 2008 and 17 November 2008, to reply to the reasonable enquiries of the Complainers into the complaint of Miss ZZ or to comply with Notices served upon him and send files required of him.

10.8 In respect of: MR AAA and MS BBB his having accepted the instructions of his clients Mr AAA and Ms BBB in 2002 to obtain confirmation to the estate of the late

Mr CCC and to transfer title of property 34 into the sole name of Mr AAA, his failure to act on those instructions and on 25 September 2002 representing to his clients that he had carried out that work for them and his rendering a fee with fictitious outlays to them and taking payment for that work well knowing that he had not done so.

10.9 In respect of: THE LAW SOCIETY OF SCOTLAND – MR AAA and MS BBB

his failure between 29 December 2008 and 3 June 2009, to reply to the reasonable enquiries of the Complainers into the complaint of Mr AAA and Ms BBB or to comply with Notices served upon him and send files required of him.

10.10 In respect of: THE LAW SOCIETY OF SCOTLAND – MS DDD

his failure between 21 October 2008 and 1 April 2009, to reply to the reasonable enquiries of the Complainers into the complaint of Ms DDD or to comply with Notices served upon him.

10.11 In respect of: THE LAW SOCIETY OF SCOTLAND – MR Z

his failure between 1 October 2009 and 10 February 2011 to reply to the reasonable enquiries of the Complainers into the complaint of Messrs Thorntons Solicitors on behalf of Mr. Z or to comply with Notices served upon him.

and

10.12 In respect of: THE LAW SOCIETY OF SCOTLAND – MR EEE

his failure between 30 June 2009 and 29 January 2010 to reply to the reasonable enquiries of the Complainers into the complaint of Messrs Maclay Murray and Spence Solicitors on

behalf of Mr. EEE or to comply with Notices served upon him.

11. Having given full consideration to the mitigation put forward on behalf of the Respondent in his previous Answers and the Statement attached to his solicitor's letter of 8 November 2012, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 November 2012. The Tribunal having considered the Complaint dated 20 April 2012 at the instance of the Council of the Law Society of Scotland against Walter Forbes Ruark, Solicitor, 42 Ireland Street, Carnoustie; Find the Respondent guilty of Professional Misconduct in respect of (1) his failure to maintain accurate and adequate records to show his dealings with client monies and to identify the funds of each individual client, and his failure to obtain authority for payment of client funds to the benefit of other clients; (2) his use of clients' funds for the benefit of other clients without appropriate authority and his falsifying of records to hide these misappropriations; (3) his having a deficit on his client account; (4) his failure to account for the funds to the executry of the late Mr VV; (5) his repeated delay and/or failure to register or record timeously dispositions, standard securities and discharges whereby the lenders remained unsecured for the funds advanced and clients remained uninfert; (6) his failure to comply with the terms of the Money Laundering Regulations; (7) his use of funds entrusted to him by lenders and his failure to discharge existing securities for properties re-mortgaged resulting in a loss to the lenders and a claim on the indemnity insurance; (8) his rendering fee notes for work which had not been undertaken; (9) his failure to obtemper a letter of obligation; (10) his failure to respond to correspondence from fellow solicitors and his knowingly misleading fellow solicitors (11) his repeated and numerous failures to respond to the Complainers; and (12) his breach of Rules 4, 6, 8 and 24 of the Solicitors (Scotland) Accounts etc Rules 2001; Order that the name of the Respondent be Struck Off the Roll of

Solicitors in 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

12. 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

This Complaint was originally set down for a procedural hearing, however a Joint Minute was lodged admitting the averments of fact, duty and misconduct in the Complaint. Consequently no evidence required to be led and the Tribunal dealt with the case at the procedural hearing. The Respondent had indicated that neither he nor his solicitor was to attend and the Tribunal proceeded in his absence. Ms Johnston indicated that she understood that there were to be no criminal proceedings taken against either the Respondent or Mr Hughes and accordingly there was no longer any requirement for the proceedings to be held in private. She indicated that she had advised the Respondent's solicitor of this and he had no difficulty with the proceedings being held in public. The Tribunal accordingly agreed to allow the proceedings to continue in public and at this stage Mr Erskine and Mr Small, the Respondents' former partners entered the Tribunal room.

SUBMISSIONS FOR THE COMPLAINERS

Clarification was given by Ms Johnston that the Respondent was not a senior partner of the firm, although that was what was contained in the Complaint. Additionally she required to clarify that in paragraph 12 at the stage that the funds were handed into the office Mr VV was still living. Ms Johnston indicated that this case involved misconduct over many years involving many areas of professional behaviour. The Respondent clearly did not recognise his obligations, he stole clients' money and took money from trusts to cover liabilities elsewhere. This pattern of behaviour indicated a long term problem adhering to his duty re clients funds, complying with the Accounts Rules, recording deeds and securities and ensuring that clients and lenders were properly safe guarded.

It appeared that the Respondent was aware of his duties. All the partners in the firm worked hard but only the Respondent was incapable of complying with the Accounts Rules. His partner, Mr Small was the senior partner and Mr Erskine was the designated cashroom partner and money laundering officer. The Respondent worked in the Carnoustie office. The other two partners worked in Arbroath. Attempts were made by these partners to get the Respondent to cooperate with obtempering rules and

introducing systems to ensure recording of deeds etc. The Respondent would regularly fob both partners off. However, Mr Small discovered correspondence in the Carnoustie office relating to the Paragon Mortgages incidents, correspondence that should clearly have been passed on. The partners then took appropriate action and the Respondent was excluded from the firm in February 2008. The firm's assets were taken over by Messrs Blackadders in April 2008. For the next four years, the partners, Mr Small and Mr Erskine, acted in an exemplary manner to resolve all issues. The cost to the Guarantee Fund with regard to the Paragon Mortgages cases was £660,000. The Respondent paid £250,000 back.

In response to a request by the Tribunal to clarify the amount that was embezzled, Ms Johnston confirmed that £21,000 had been taken from three Trusts.

In answer to queries from the Tribunal, Ms Johnston confirmed that it would appear that these intromissions with clients' funds appeared not to be for the personal benefit of the Respondent. No explanation could be found as to why the Respondent would have acted in the way that he did.

SUBMISSIONS FOR THE RESPONDENT

The Tribunal gave careful consideration to the submissions by the Respondent in his written Answers and statement.

DECISION

Having considered the conduct admitted by the Respondent, the Tribunal concluded that the Respondent's conduct was clearly so serious and reprehensible as to meet the test as set out in the case of *Sharp-v-The Council of the Law Society of Scotland* [1984] SC 129 at page 134.

The essential and absolute qualities of a solicitor are honesty, integrity and truthfulness. In this case the Respondent misappropriated clients' funds on a number of occasions and also falsified records to hide his dishonesty. He intromitted with loan funds in respect of a re-mortgage without redeeming an existing security resulting in a

claim on the professional indemnity insurance and a payment of £666,000. Although the Respondent obtained a loan to repay some of the money, the Respondent's conduct resulted in a significant pay out from the profession's indemnity insurance. The Respondent also showed a complete disregard for his obligations under the Solicitors (Scotland) Accounts etc Rules 2001 and for his duty to record dispositions, standard securities and discharges timeously resulting in lenders remaining unsecured and purchasers being uninfert. The Tribunal considered the Respondent's conduct disgraceful and dishonourable.

His conduct was persistent and spanned a long period of time. His dishonest acts taken to cover his behaviour, his lack of response to correspondence and the repeated nature of his conduct disclosed a lack of remorse. His actions presented a clear danger to the public and will inevitably tarnish the good reputation of the profession. The Respondent wilfully and persistently had no regard whatsoever to the standards of integrity and respect expected to be demonstrated by a solicitor to his clients and fellow professionals. Due to this persistent and protracted conduct the Tribunal consider that the Respondent is not a fit person to practise as a solicitor and consequently the Tribunal had little choice but to strike the Respondent's name from the Roll.

The Tribunal made the usual order with regard to expenses and publicity.

Chairman