

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

F I N D I N G S

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**ANNALINE WEBSTER,
Independent Qualified
Conveyancer, The Conveyancing
Shop, formerly at 8 South Bridge,
Cupar, Fife and now at 6
Ladywynd, Cupar, Fife**

1. A Complaint dated 10 January 2011 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Annaline Webster, Independent Qualified Conveyancer, The Conveyancing Shop, formerly at 8 South Bridge, Cupar, Fife and now at 6 Ladywynd, Cupar, Fife (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 27 May 2011 and notice thereof was duly served on the Respondent.

4. The hearing took place on 27 May 2011. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by James McCann, Solicitor, Clydebank.
5. Mr McCann confirmed that the Respondent plead guilty to all three averments of professional misconduct. It was also confirmed that the Respondent did not dispute any of the averments of fact in the Complaint. Mr Lynch confirmed that he took no issue with the averments of fact in the Answers.
6. In the circumstances the Tribunal found the following facts established

6.1 The Respondent was born on 6th December 1974. She is an independent qualified conveyancer and qualified as such on 16th June 2000. The Respondent is also an executry practitioner having qualified in that capacity on 19th February 1998. She carries on business as the Conveyancing Shop in Cupar, Fife. She is subject to the jurisdiction of the Scottish Solicitors Discipline Tribunal by virtue of the Solicitors (Scotland) Act 1980 Section 51(1A).

Complaint by the Council of the Law Society of Scotland *ex proprio motu.*

6.2 In 2005 the Respondent acted in connection with the transfer of the property from the joint names of Ms A and Mr B to the name of Ms. A alone. Ms. A made a complaint in March 2010 arising out of this transaction. The complainers decided that the complaint could not be investigated on the grounds that it was timebarred, Ms. A having been aware of the matters which she wished to raise since about June 2006. In light of the information before them, the complainers decided to bring a

complaint of professional misconduct against the Respondent *ex proprio motu*.

- 6.3 Ms. A and Mr. B had lived together and decided to separate. The title of their property was in joint names and it was agreed that Ms. A would acquire Mr. B's share in exchange for a lump sum, part of which was to be paid immediately and the balance of which was to be secured by a second security to be granted by Ms. A in favour of Mr. B over the property. Mr B and his secretary/assistant Ms. A were both well known to the Respondent as regular business contacts who were fairly often in touch with the office. The Respondent and her staff were on good terms with both, but not friendly on a personal basis with either. The Respondent agreed to act on the understanding that all matters had been agreed and there was no conflict, and that she was effectively only fulfilling what they had already agreed between themselves.
- 6.4 Mr. B, who was a Financial Adviser, arranged a new mortgage with Northern Rock for Ms. A. The Respondent's understanding was that the parties had already agreed a transfer from the joint names to the sole name of Ms A and that Mr B received a £10,000 down payment and a balance of £29,000 to be paid later. Any suggestion of a dispute between the parties on these issues did not emerge at the time.
- 6.5 Mr. B had a business relationship with the Respondent and frequently referred clients to her in exchange for an introduction fee. He therefore proposed to instruct the Respondent in the remortgage and transfer of title. The Respondent did not at any stage take sides in any dispute between her and Mr B and indeed did not realise until afterwards that there was the dispute which later became the subject of a Court Action. As soon as the Respondent became

aware of a dispute between the parties as to the correct calculation of the equity in the property she arranged to drop out of the case and both were thereafter advised independently.

6.6 The Respondent's file, which had been opened in the joint names of Ms. A and Mr B, contained a fax in a standard re-mortgage instruction form from Mr. B's firm, sent on 12 May 2005. It provided details of the clients' names and addresses, the current mortgage with Nationwide of £61,700 and of the new Northern Rock loan of £72,700. Under the heading "fee quoted" was typed – "I will wash, scrub and vacuum your premises plus outlays". Under the heading "special instructions" it read as follows:- "Mortgage is being signed over to Ms A. My share of equity is £39,5000. I am to receive £10,000 from this re-mortgage to use as a deposit for a flat of my own. The remaining £29,500 is to be set up in the form of a second charge against the property and paid out to me with compound interest at an annual rate equivalent to Bank of Scotland plus 1% on or before Ms A's youngest child's 18th birthday in December 2007. I have spoken to Northern Rock regarding this arrangement and they do not have a problem regarding my having a second charge against the property." The rather casual reference to fees, VAT and outlays reflected the informal and friendly relationship that had developed between the parties and the Respondent because of the frequency of their previous business contacts.

6.7 In her complaint Ms. A stated that, so far as she was concerned, the arrangement was that the share due to Mr. B for the property was £29,500 from which the £10,000 already paid was to be deducted, leaving a balance of £19,500 to be paid. The Respondent was not made aware by either party that Ms. A thought the arrangement was for £29,500 including the £10,000

already paid, and that Mr B would take the conflicting view that on transferring the title of the joint property to the sole name of Ms A he would be entitled to £29,500 plus £10,000 as previously averred. That differing view of the arrangement was the basis of the later Court Action but by then the Respondent had ceased to act.

6.8 There was on file a mortgage offer, dated 1 June on for a loan of £73,740 against a valuation of £120,000.

6.9 The Respondent sent a discharge to the Nationwide for execution and a report on title to Northern Rock on 6 June.

6.10 The Respondent then wrote to Ms. A enclosing her terms of business letter and quoting a fee of £200 plus VAT and outlays for “legal services you require in relation to the transfer of title”.

6.11 There was an attendance note on the file dated 7 June which read as follows:- “Q Attendance with Mr B and Ms A to sign papers. Signing disposition, standard security, SDLT. Obtaining identification.”

6.12 The loan funds were received from Northern Rock and the existing mortgage of £61,330.06 redeemed. The Respondent issued an account to both Mr. B and Ms. A showing receipt of loan funds and payment of the mortgage redemption, the Respondent’s fees, £10,000 to Mr. B and the balance of £744.94 to Ms. A.

6.13 In 2006 Ms. A wished to sell the property and move to another one but Mr. B refused to sign the discharge as he disputed the amount to be paid. Ms. A paid him £19,500 together with

interest of £1,500 while he claimed another £10,000. A Court Action was raised against him for declarator that there were no sums due in terms of the standard security and judgement was eventually issued in favour of Ms. A on 21 December 2009. In the Court Action the Respondent was called as a witness. Her status as witness meant, under court procedures, that she would not be present during proceedings except when called to give evidence and would require to be absent during all other evidence and legal debate.

6.14 In his judgement, the Sheriff made findings of facts in accordance with the foregoing paragraphs. He also found that when Ms. A and Mr. B met the Respondent on 7 June 2005, the Respondent did not confirm with Ms. A the instructions she had received from Mr. B, she did not advise her of any possible conflict of interest, and did not advise her to take independent legal advice but simply passed the standard security and disposition to the Parties for execution. No opportunity was afforded to Ms. A to read the disposition. The disposition showed a consideration of £39,500 and the standard security was for £29,500. The Respondent had understood that the parties were in agreement and that she was simply implementing their agreement. There was no intention whatsoever on the part of the Respondent to favour or give advantage to one party against the other.

6.15 In the evidence given by the Respondent at the Proof, she stated that the equity in the property had been calculated on the basis of a mortgage valuation of £140,000 and that she had not been aware of any conflict of interest. The Respondent's position is that both parties were given ample opportunity to read the documentation before signing, and there was no question of disguising any part of the documentation. When it was put to the Respondent while giving evidence, that Ms A had been

subject to pressure , intimidation, or violence from Mr B, the Respondent replied forcefully and truthfully that such matters were wholly outwith her knowledge. She also strongly denied any suggestion that Ms A was not given the full opportunity to read and discuss papers before signing in the same way as any other client.

6.16 In her evidence in the Court Action, Ms. A denied that the Respondent had read over or explained the standard security and disposition to her and stated that she had never seen the faxed instructions this did not reflect the agreement. She stated that the Respondent had covered the documents with her hand when she passed them over for signature and that, as soon as they were signed, the Respondent removed them from the table and placed them in a file.

6.17 In the note appended to his interlocutor the Sheriff made the following statement:

“I was not certain how much reliance could be placed on Annaline Webster’s evidence. She failed, it seems, to have regard to her professional duty to address the question of a potential conflict of interest between the parties which might have been supposed to be an obvious question to address in the circumstances. She did not suggest that the Pursuer should seek independent legal advice. She did not seek to confirm the Pursuer’s instructions. She did not offer the Pursuer an opportunity to read the disposition. Moreover, she appears to have had a close working relationship with the Defender”.

The Sheriff stated that he preferred the evidence of the Pursuer to that of the Defender and Ms. Webster and in any event was of the view that the Defender had failed to prove that the

consideration for the transfer of the share of his property was £39,500. The Respondent regarded herself as only implementing an arrangement previously reached between the parties, and was doing so on a fairly informal and friendly basis and for a very small fee.

6.18 In her response to the complaint, the Respondent stated that the property valuation was £129,000 and the amount to discharge the Nationwide mortgage was £50,000, leaving an equity amount of £79,000 with Mr. B accordingly being entitled to £39,500, contrary to the findings made by the Sheriff.

7. After hearing submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 her acting in a conflict of interest situation in breach of Rule 9 of the Independent Qualified Conveyancer (Scotland) Regulations 1997 (“the 1997 Regulations”);

7.2 her failure to cease to act or to provide written notification and written agreement required by Rule 10 of the 1997 Regulations; and

7.3 her failure to cease to act or provide written notification and written agreement as required by Rule 11 of the 1997 Regulations.

8. Having heard from the Solicitor for the Respondent in mitigation, having noted previous Findings of misconduct against the Respondent and having further noted that neither party would intend to lead evidence if a proof in mitigation was fixed, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27 May 2011. The Tribunal having considered the Complaint dated 10 January 2011 at the instance of the Council of the Law Society of Scotland against Annaline Webster, Independent Qualified Conveyancer, The Conveyancing Shop, formerly at 8 South Bridge, Cupar, Fife and now at 6 Ladywynd, Cupar, Fife; Find the Respondent guilty of Professional Misconduct in respect of her acting in a conflict of interest situation in breach of Rule 9 of the Independent Qualified Conveyancer (Scotland) Regulations 1997 and her failure to cease to act or provide written notification and written agreement required by Rules 10 and 11 of the Independent Qualified Conveyancer (Scotland) Regulations 1997; Censure the Respondent; Fine her in the sum of £500 to be forfeit to Her Majesty; 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

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

Mr McCann confirmed that the Respondent pled guilty to all three headings of professional misconduct. In response to a question from the Tribunal, Mr McCann confirmed that none of the facts as narrated in the Complaint were disputed but clarification was provided in the Answers. Previous Findings of professional misconduct against the Respondent were lodged and these were admitted by the Respondent. Mr McCann pointed out that the facts in this case pre-dated the Findings of professional misconduct made in February 2008.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch stated that the Respondent did not know that she should not have acted in this case but pointed out that the terms of Rule 10(2) of the Independent Qualified Conveyancer (Scotland) Regulations 1997 contained an absolute prohibition on acting in these circumstances and according the Respondent should have been aware that she should not have acted.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann stated that it was accepted that the Rules prohibited acting in a conflict of interest situation but pointed out that in this case the parties were known as regular contacts in the Respondent's office and that on the day in question personal relations appeared cordial and courteous. The Respondent was merely implementing an agreement already made between the parties. The parties had agreed on a sum of £39,000 with £10,000 payment being made to account and a charge for £29,000. Mr McCann stated that the transaction seemed straightforward. There was no hint of controversy at this time and the Respondent thought that it was a pre-agreed deal.

The Chairman indicated that the Complaint seemed to suggest that the Respondent only took instructions from Mr B and not from Ms A. Mr McCann stated that this was not the case and that when the discussion with regard to the £39,000 took place Ms A was present. Mr McCann clarified that the Respondent denied that she did not let Ms A see the documents or take advice and that her position was that she did not take Mr

B's side. The Chairman clarified that the Respondent accepted that the Findings of the Sheriff were that the Respondent did not seek to confirm Ms A's instructions. The Chairman sought clarification from Mr Lynch on whether or not the Law Society accepted the Respondent's allegation that she did take instructions from Ms A. Mr Lynch stated that the averments of professional misconduct were directed to a breach of the Rules and accordingly whether instructions were taken was perhaps less important. The Chairman however indicated that it may well be significant in relation to how the Tribunal would dispose of the matter. Mr McCann stated that the Complaint alleged a breach of the Rules and there was no allegation that the Respondent did not take instructions from Ms A or that she favoured Mr B. Mr Lynch clarified that he accepted the facts as set out in the Answers but was not able to accept that the Respondent took instructions from Ms A.

The Tribunal indicated that a proof in mitigation might be required. Mr Lynch stated that if a proof in mitigation was fixed he did not intend to lead evidence. Mr McCann stated that he likewise would not lead any evidence from the Respondent.

Mr McCann referred to his scripted plea in mitigation and explained that the Respondent had a small practice which had been in decline recently due to the economic climate. Mr McCann further explained that the Respondent was now the last of the Independent Conveyancing Practitioners in Scotland and there was accordingly an issue with regard to indemnity insurance premiums. The Scottish Government was now considering its position in connection with giving backing to the Fund and this may result in the Respondent being unable to continue in practice due to the professional indemnity insurance costs being prohibitive. Mr McCann gave details of the Respondent's income from the business over the last two years which had been extremely low. Mr McCann confirmed that she had no other sources of income. Mr McCann confirmed in response to a question from the Chairman, that what he was alleging was that the Respondent was technically in breach of the Rules but there was nothing in what had happened which would have led her to believe that an actual conflict would occur.

DECISION

The Tribunal, on the basis of the submissions made, was able to make findings in fact based on the averments of fact in the Complaint and the facts as set out in the Answers. The Tribunal was unable to determine the issue of whether or not instructions were given to the Respondent by Ms A given that neither party was inclined to lead evidence with regard to this matter.

It was clear from the facts found that the Respondent acted in breach of Rules 9, 10 and 11 of the Independent Qualified Conveyancer (Scotland) Regulations 1997. The Respondent was bound by the terms of these Regulations and should have known that she should not act in these circumstances. The Tribunal was satisfied that this amounts to professional misconduct. The Tribunal however accept that at the time there was nothing to alert the Respondent to the fact that an actual conflict might arise in this situation. The Tribunal noted that the Respondent had been before the Tribunal in respect of numerous matters in 2008. However the matters giving rise to this Complaint occurred prior to the previous Tribunal Findings and so this is not a case of the Tribunal making a finding of misconduct and the Respondent then going on to commit further misconduct. The Tribunal took account of the Respondent's personal and financial circumstances and also the fact that the Respondent was in the unfortunate position of being the only remaining Independent Qualified Conveyancer practitioner in Scotland. In the circumstances the Tribunal considered that a Censure plus a Fine of £500 would be sufficient penalty. The Tribunal made the usual order with regard to publicity and expenses.

Chairman