

**Senate Select Committee on  
Superannuation and Financial Services**

**Main Inquiry  
Reference (a)**

**Submission No. 158**

**Submittor:** Ms P McIntyre  
203A Albion Heights Drive  
KINGSTON TAS 7050

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Kingston 7050  
ph: 62 296113

14th May 2001

Office of Senator Nick Sherry,  
P.O. Box 858,  
Devonport 7310

(sent by fax 14/5) to  
(03) 64248555

Dear Sir,

**re: Solicitors Mortgage Fund Enquiry**

As discussed by telephone with your office today I enclose copy of our submission to the recent Legal Profession Review Body. I draw your attention in particular to para. 2 which to us is proof of the Law Society's conflict of interest in dealing with our complaint. We also enclose a copy of the Law Society's reply dated 14th July 99 and signed by Mr. T. Bugg

We are aware that we are too late to put a formal submission to the present enquiry, having missed the notices in the press; however please feel free to use any of the enclosed information as you see fit.

Further details of the incident are:

1. Interview was with Garney Pearce of the ABC.
2. It was Mr. Pearce who advised us that the firm threatening the ABC with defamation proceedings if they put to air the recorded interview was Dobson Mitchell, a firm in which the then President of the Law Society was a senior partner.
3. At no time did Mr. Bugg divulge to us his involvement, nor declare his conflict of interest. We advised Mr. Bugg during a meeting at the Society on 7th July 99 that we felt there was a conflict. Whilst admitting that his firm did issue or threaten to issue proceedings on the ABC, he strenuously denied that this involvement constituted a conflict of interest. He followed up with a written reply dated 14th July 99.
4. For your information I also enclose copy of our second and more detailed complaint to the Law Society(25/6/99).

Thank you for your efforts on behalf of investors in the failed Mortgage Funds. Our experience with the Law Society is pretty well summed up in our submission to the Review Body

Yours faithfully,

  
Pev McIntyre

203A Albion H<sup>th</sup> Drive,  
Kingston 7050,  
Phone 0417 539 114

~~May 14, 2001~~

The Chairman,  
Legal Profession Review Body,  
Department of Justice and Industrial Relations,  
15 Murray Street,  
Hobart 7000.

Dear Sir,

Comments on Issues Paper July 2000

As a member of the public who has recently sought assistance from the Law Society for recovery of money invested in a mortgage fund operated by a large Hobart law firm I would like to comment briefly on Request for Comment No 17 as it relates to my experience. I would also welcome the opportunity to make my files available to the Review Body, and if it would assist, to answer any questions regarding the following and/or my experiences with the Society in general.

17 (Part A)

1. In our case it has been totally inappropriate for the Law Society to investigate our matter. In the first instance they were very reluctant to accept our complaint at all.
  - Our written complaint is dated 14th December 98.
  - Despite further letters to the Society on 18th February 99, 31st March 99, and 24 May 99, our first written communication from the Society was 14 July 99.
  - Our complaint has still not been resolved.
  - It is now nearly 2 years since the law firm in question was unable to meet its obligations to its investors and 21 months since our original written complaint was lodged with the Law Society.
  - Investors funds have been placed at further risk by the Law Society allowing the firm to continue to manage the fund.
2. When in frustration my husband agreed to speak with the ABC, the presenter was forced to "pull" the interview as he had been threatened with legal action. In answer to our enquiry as to who had "pulled" the interview we were astounded to discover that the Law Society President's law firm was responsible. I have confronted the then President on what I perceive to be a conflict of interest and received a written response dated 14 July 99 from him. Events such as this cause a great deal of lack of confidence on the part of the public and could easily be avoided if an independent body were to make the investigations.
3. I am advised that in cases of defalcation the Law Society is required to pay to any shortfall. It is therefore not appropriate for that body to decide whether or not defalcation or negligence has occurred.

3

- 2 -

4. The discussion paper states that the Disciplinary Tribunal may make an order for "payment of damages" in our case we were advised by the Law Society "you should seek your own legal remedies". (and this is before our complaint has been resolved)

5. My experiences with the Law Society are very well summed up in the paragraphs on pages 40 and 41 of the issues paper, particularly that the Law Society "did not see itself as a consumer protection body" and that matters should be investigated "by a person or persons dedicated to the task." I agree that the Law Society definitely lacks rigour.

#### 17 (PART B)

As members of the Council and Disciplinary Tribunal are all legal practitioners and as the Law Society keeps all its deliberations secret I believe a more independent, accountable and open body is required.

#### 17 (PARTS C and D)

1. The Australian Securities Commission advised us that due to the current arrangements whereby the legal profession is self-regulatory ASIC was unable to assist. As the Law Society frequently cites lack of funds as a reason for not acting, it would appear that the current arrangement should be curtailed and in serious matters ASIC should conduct its own enquiries. It is also my understanding that the current legislation allows for ASIC to act when it is deemed to be in the public interest, or where the Law Society is deemed not to be taking appropriate action. However in practice this is not happening.

2. Whilst the complaints process as outlined in the Issues Paper appears to have adequate safeguards, it does not work in practice due to the involvement of the Law Society who are not consumer oriented, cause undue delays, and make it clear that they are there to protect their own and other lawyers' interests, certainly not those of the general public.

3. It is imperative that lawyers should no longer be allowed to self-regulate and should be subject to the same scrutiny as business in general. I believe the Ombudsman's suggestion outlined on page 40 of the issues paper "that there be introduced a system that allows negligence claims against legal practitioners in Tasmania to be investigated by a regulatory body with the power to award damages up to a set amount" is an excellent one. This body should not consist entirely of lawyers - if present at all they should be in the minority.

As a final comment, whilst I have been left totally disillusioned by my dealings with the Law Society, I found the Legal Ombudsman Ms Judith Paxton to be a lady of honour, practical and helpful. I trust that any changes to the complaints process will in no way diminish the role of the Ombudsman.

Yours faithfully,

F. McIntyre

9

4

**THE LAW SOCIETY**

O F T A S M A N I A

28 MURRAY STREET, HOBART 7000, G.P.O. BOX 1133, HOBART, 7001  
 AUSDOC DX 111, TELEPHONE: (03) 6234 4133 (03) 6233 3002 FAX: (03) 6223 8240  
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Our ref: C98/127:TGB/VMC

14 July 1999

Mr R J and Mrs P A McIntyre  
 203A Albion Heights Drive  
 KINGSTON TAS 7050

Dear Mr and Mrs McIntyre

**PIGGOTT WOOD & BAKER**

I refer to your discussion with the Executive Director and me on 2 July 1999 and your discussion with the Executive Director, Mrs Mills of Piggott Wood & Baker and me on 7 July 1999.

I enclose a copy of a letter dated 13 July 1999 from Mrs Mills. You will recall that she agreed to send to me information in relation to Mr McGee's application to another financial institution, Suncorp Metway, to refinance the loan. If you have any queries in relation to the information Mrs Mills has sent, please do not hesitate to contact either me or Mrs Martin.

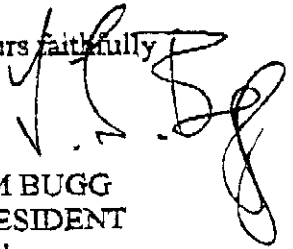
I enclose a copy of a letter I propose to send to Piggott Wood & Baker in relation to your letter dated 25 June 1999. Because of the concerns you expressed on 7 July 1999 about me sending further information to Piggott Wood & Baker I ask you to confirm that you are content not only with the terms of that letter, but also that it should be sent.

Finally, I understand why you were concerned about my involvement in the Piggott Wood & Baker investigation after you became aware of my firm's letter to the ABC. However, as discussed on 7 July 1999 with you, I do not believe that there is any need for you to be concerned. I did not become aware that Mr O'Farrell had written or had had instructions to write to the ABC on behalf of Piggott Wood & Baker until 5 July 1999 when Mrs Martin informed me that he had done so. Further, I confirm that my firm has not acted in any other respect for Piggott Wood & Baker in relation to its mortgage register. After speaking to you on 7 July 1999 I discussed the matter with Mr O'Farrell. He will not take any further instructions from Piggott Wood & Baker in relation to issues involving the media. I have also spoken to one of the partners at Piggott Wood & Baker to indicate that I do not consider that it is appropriate for that firm to instruct my firm in relation to any issues involving its mortgage register.

(S)

I look forward to hearing from you.

Yours faithfully



TIM BUGG  
PRESIDENT  
Encl

ph 03 6224 4999  
MacKinnon has Fri 23/7

6

203A Albion Hts Drive,  
Kingston 7050.  
Phone 018 128 945  
0417 539 114

25 June 1999

Without Prejudice &  
Confidential

Mrs. Jan Martin,  
Executive Director,  
Law Society of Tasmania,  
28 Murray Street,  
Hobart 7000

Dear Mrs. Martin,

re: Figgott Wood & Baker

1. Breach of Contract
2. Breach of Rules of Practice
  - Disclosure
    - (a) nature of Contributory Mortgage
    - (b) withdrawal conditions
  - Security Valuation
  - Unprofessional Conduct

We contacted the Law Society in writing on 14th December 98 to lodge a formal complaint. I am advised that there are formal requirements for a complaint which must be met before the Law Society is obliged to act. I am confident that all of these requirements are satisfied by our letter to the Society and assume it is acting on our complaint.

Further to our original complaint we are advised that in our case FWB has a case to answer on several grounds including:

1. Breach of Contract

We entered into a contract with PWB to invest in their Fund. The terms of the contract are set out in the mortgage investment application signed by us and PWB dated 1/10/96, and the separate Information Sheet given to us just after we signed the mortgage investment application.

The Information Sheet states that:

- (a) it and the application form "set out the investment conditions for your funds"; and
- (b) "one month's notice is required for both partial and total withdrawal of funds".

No other conditions of withdrawal are stated.

We gave one month's notice for withdrawal of our funds on the 24/11/98. PWB's failure to pay at the end of this period is in breach of its contract with us.

2. Breach of Rules of Practice  
Non disclosure

(a) Nature of contributory mortgage *Rules of Practice (s71(5)(e))*

The *Rules of Practice (s71(5)(e))* require that at or before the time the Fund operator accepts money for investment, it must give the investor written notice (signed by or on behalf of the firm or the Fund operator) specifying certain details, including "the nature of the securities in which the money may be invested".

The Information Sheet states that funds are "allocated to a contributory mortgage investment". However, this term is not explained. In particular, there is no explanation that our investment would lead to an exposure to a single borrower, and their ability to meet repayments.  
The Information Sheet is not signed.

(b) Withdrawal conditions *Rules of Practice (s71(5)(a))*

The *Rules of Practice (s71(5)(a))* also require the notice to specify the conditions under which the investor is entitled to:

- (i) "redeem the money"; or
- (ii) "in the case of a contributory mortgage, to a transfer of the security in which the money is invested; or
- (iii) "in the case of any other security, to a transfer of a security equivalent in value of the money."

All 3 conditions are expressed as alternatives. However, it would seem more sensible to read (i) as mandatory and (ii) and (iii) as alternatives as (i) applies to any withdrawal, whatever the nature of the security investment.

Alternatively, if the Rule is read literally, PWB would have satisfied it with the mere statement that the mortgage was not transferable to the investor (which appears in the Information Sheet). It cannot be intended that PWB are not required to fully disclose the conditions of withdrawal. In any event, having disclosed the withdrawal requirement of 30 day's notice, PWB should not be entitled to remain silent on other (allegedly) applicable conditions.

On the basis that (i) is compulsory and PWB now claim that further withdrawal conditions apply (eg that the borrower is not in default), means that PWB have breached the Rule by failing to disclose the (alleged) additional withdrawal condition in the application or Information Sheet.

Security valuation *Rules of Practice (ss62, 64, 66)*

Under the *Rules of Practice (ss62, 64)*, the loan must not exceed:

- (a) if the mortgage is uninsured, 66% of security valuation;
- (b) if the mortgage is insured, 90% of security valuation for the amount of the loan in excess of 66% of security valuation; or
- (c) if there is no security valuation, 50% of the government valuation as at the date of the mortgage.





As to the timing of the valuation, the *Rules of Practice* state that it must be made "by a registered valuer not earlier than 3 months before the date of the (mortgage) on the security of which money is advanced to the borrower". (s66).

We understand that the mortgage was not insured, and that it appears that the conditions relating to both the amount and timing of the security valuation have been breached. If so, both are breaches of the *Rules of Practice*.

Unprofessional Conduct      *Rules of Practice* (s56).

According to the *Rules of Practice* "Unprofessional conduct" is defined to include "conduct that falls short of a standard that a member of the public is entitled to expect of a practitioner of good repute and competence"(s56).

(i) As per the copy of the Statement of Payments by K W McGee (enclosed) provided by PWB and the Mortgage Deed (previously supplied) signed by K W McGee it appears that PWB advanced the Loan (2/10/96) before the Mortgage Deed was signed (3/10/96).

(ii) Also from the copy of Statement of Payments by K W McGee take note that PWB advanced money to K W McGee when the borrower was in default (\$6 319.29 on 19/8/98).

(iii) Again from the copy of Statement of Payments by K W McGee it is obvious that the borrower was constantly in default from the very first quarterly payment (18/11/96) and in one instance for approximately 9 months (18/05/98 - 18/02/99) with no payment at all and yet PWB took no action to protect or recover our money, nor did they advise us that the borrower was in default until mid-November 98.

Yours faithfully

R.J. & P.A. McINTYRE

Encl. Interest Payment Statement of K W McGee  
cc Ms J Paxton  
Mr T Bugg