

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

D E C I S I O N  
in

Complaint (First)  
by

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND

against

GORDON COUTTS THOMSON therein designed  
as Solicitor, Unit 6, Sighthill Shopping Centre, Edinburgh  
and now residing at Coalheughhead Farmhouse, Harburn, West Lothian  
FIRST RESPONDENT

and

MARIA THERESA THOMSON therein designed as  
Solicitor, Unit 6, Sighthill Shopping Centre, Edinburgh  
and now residing at Coalheughhead Farmhouse, Harburn, West Lothian  
SECOND RESPONDENT

and

Complaint (Second)  
by

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND

against

The said GORDON COUTTS THOMSON  
FIRST RESPONDENT

and

The said MARIA THERESA THOMSON  
SECOND RESPONDENT

1. A Complaint dated 30th June 1994 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland ("the Complainers") requesting that inter alia Gordon Coutts Thomson and Maria Theresa Thomson both Solicitors of Unit 6, Sighthill Shopping Centre, Edinburgh (hereinafter referred to as "the Respondents" and individually

as "the First Respondent" and "the Second Respondent" respectively) 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 they might think right. The Tribunal caused a copy of the Complaint as lodged to be served upon each of the Respondents. Answers were lodged for each Respondent.

2. After sundry procedure, the initial Hearing took place on 15th November 1994 when the Tribunal heard the submissions for the parties on the Respondents' preliminary pleas, and the Tribunal pronounced an Interlocutor dismissing the Complaint quoad the charges of professional misconduct contained in Articles 19.7(a) and 19.11(a), and 19.11(d) in so far as it related to Article 1.2 of the Complaint. Quoad ultra the Tribunal appointed the Complaint to be heard on Tuesday 10th January 1995.
3. The Tribunal heard evidence for the Complainers on 10th January 1995 and subsequent dates. On 22nd March 1995, it was intimated to the Tribunal that the Fiscal for the Complainers was no longer seeking to establish certain matters and that with the exception of two charges relating to "A", most of the remaining charges were admitted by one or both of the Respondents. In view of this measure of agreement, the Tribunal adjourned the Hearing to 5th April 1995.
4. At the resumed Hearing on 5th April 1995, it was reported that a new Complaint ("the Second Complaint") at the instance of the Council of the Law Society of Scotland against the First and Second named Respondents had been received, that the Tribunal had authorised service of the Second Complaint, that service had

been accepted on behalf of these Respondents and that with the agreement of parties, the Second Complaint had also been set down for Hearing on that date. With the consent of the Respondents, the Tribunal granted leave to the Fiscal to amend the Second Complaint. It was intimated that the First Respondent admitted the whole of the Second Complaint as amended with the exception of the charge relating to “B” and that the Second Respondent admitted the whole of that Complaint with the exception of charges relating to “C” and “D”. With the consent of the Respondents, the Tribunal also granted leave to the Fiscal to amend the Complaint dated 30th June 1994 ("the First Complaint"), and noted the particular charges which were admitted by each party as recorded in correspondence dated 24th and 30th March 1995. The First Respondent gave evidence in relation to “A” and at the conclusion of this evidence, the Fiscal for the Complainers and the then solicitor for the Respondents addressed the Tribunal.

5. The Tribunal made findings in fact and on the basis of the admissions, found the Respondents guilty of professional misconduct in respect of the matters set out in Appendix I to this decision, (the paragraphs numbered 19 and 13 reflecting the corresponding numbered paragraphs in the First and Second Complaints.)
6. The Tribunal found that the First Respondent had provided the said Mr “A” with an inadequate professional service but that the provision of the inadequate service did not extend to professional misconduct. The First Respondent was found not guilty of the charge that he had failed to act honestly at all times and in breach of Article 7 of the Code of Conduct in relation to Mr “A”.

7. Having heard the Solicitor for the Respondents in mitigation, the Tribunal pronounced an Interlocutor in the following terms:

Edinburgh 7th April 1995. The Tribunal having considered the Complaint dated 30th June 1994, at the instance of the Council of the Law Society of Scotland against Gordon Coutts Thomson and Maria Theresa Thomson both solicitors of Unit 6, Sighthill Shopping Centre, Edinburgh and the further Complaint at the instance of the Council of the Law Society of Scotland against the said Gordon Coutts Thomson and Maria Theresa Thomson, find that the Respondents were unable to produce any files or other records to justify fees claimed under the Legal Aid Advice and Assistance Scheme, failed to ensure that only fees properly due were charged to the Legal Aid Board, and were in breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991, that the First Respondent was in breach of Rule 8 of said Rules, that the First and Second Respondents were in breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct for Scottish Solicitors, that the First and Second Respondents failed to supervise assistants adequately, that the First Respondent threatened a member of Lothian and Borders Police and showed discourtesy to the Court and that the First and Second Respondents repeatedly failed to reply to correspondence from the Law Society and other solicitors and that the foregoing amount to professional misconduct; Order that the name of the First and Second Respondents Gordon Coutts Thomson and Maria Theresa Thomson be struck off the Roll of Solicitors in Scotland and direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written Findings are intimated to the First and Second Respondents;...Find that the professional services provided by the First Respondent in connection with "A" were inadequate and in terms of Section 53A of the Solicitors (Scotland) Act 1980, determine that the fees and outlays which that Respondent shall be entitled to for these services shall be nil; in relation to the First Complaint, find the First and Second Respondents jointly and severally liable in respect of two thirds...of the expenses of the Complainers and of the Tribunal as the same may be taxed by the Auditor of the Court of Session on a solicitor and client indemnity basis in terms of Chapter Six of the Law Society's Table of Fees for general business together with a reasonable sum for posts and incidental outlays; and in respect of the Second Complaint, Find the First and Second Respondents jointly and severally liable in the expenses of the Complainers and of the Tribunal on the same basis; and Direct that publicity to include the names of the Respondents be given to this decision.

(signed) IAN S SMITH

Vice Chairman

8. The Respondents presented a Petition of Appeal and on 12th March 1999, the Court of Session pronounced an Interlocutor in the following terms:

The Lords having considered Appeals with the Answers allows the Appeals in both cases: quash the order dated 7th April 1995 striking the Petitioners Mr Gordon Coutts Thomson and Mrs Maria Thomson off the roll of Solicitors in Scotland; remit to a new Tribunal to proceed as accords; continue the question of expenses.

In the accompanying Opinion delivered by Lord Prosser, the Court added:

In these circumstances, any decision as to the appropriate penalty must be considered and reached without regard to these parts of paragraph 10(2), (3) and (4), or Finding 10(65), (66) and (67). Counsel for the (Law Society) submitted that notwithstanding any unsound elements in the basis for the Tribunal's decision to strike Mr and Mrs Thomson off the Roll, we should not disturb that decision, since any error vitiated only a small part of a very substantial catalogue of guilt. We cannot regard that as an appropriate course. It is true that there is a very substantial catalogue of guilt. But it is not for us to consider or reach a conclusion as to its gravity, or the significance of the matters wrongly founded upon; or to decide what would be an appropriate punishment. These matters require a new Tribunal. It is a matter for the parties whether on remit the new Tribunal could be given a clearer documentary basis on which to work. Certainly we would hope that the parties could ensure in advance of the new Hearing that there was an agreed factual basis for the new Tribunal's consideration of the appropriate punishment; and that any submissions in addition to, or in substitution for, those set out in the record of the earlier Hearing could be presented in as convenient a manner as possible to the new Tribunal.

9. The Respondents subsequently presented a Petition to the nobile officium of the Court seeking to recall the foregoing Opinion but in an Opinion delivered by the Lord President on 9th June 1999 it was observed:

However great the powers of this court may be, we cannot rewrite history. Nor can any interlocutor recall the words of an opinion or unsay what the court has said in an opinion which has been issued. The petition is therefore self-evidently incompetent.

None the less, as the petitioners point out, the opinion of the court has been published on the Internet and elsewhere. If the Law Society's position is actually that the Fiscal at the original hearing withdrew the allegations of personal dishonesty and that the Society do

not allege personal dishonesty, then it is proper that this state of affairs should be given equivalent publicity. In the course of the short hearing we accordingly asked Mr Macdonald to clarify the position of the Law Society. He readily did so. Based on what he told us, for the avoidance of doubt, we record that the Law Society of Scotland agree that the findings of the Discipline Tribunal issued on 8th June 1995, so far as inferring personal dishonesty on the part of the petitioners, did not reflect the pleas tendered by the petitioners and accepted by the Fiscal and those findings should therefore not have been made by the Tribunal.

10. The matter under remit was set down for Hearing on 11th and 12th May 1999. The Tribunal heard parties on 7th May 1999 on the Respondents' motion. That diet was discharged and the expenses of the motion were reserved. None of the members of the Tribunal who heard the motion or the subsequent proceedings had participated in the earlier proceedings in 1994 and 1995.
11. The matter was eventually heard on 11th and 14th June and 23rd August 1999. At that Hearing, the Complainers were represented by Mr R.F. Macdonald Q.C. instructed by their Fiscal Ms Elaine Motion, Solicitor, of Messrs Balfour & Manson S.S.C., Edinburgh. The First Respondent initially appeared on his own behalf. At that stage, the Second Respondent was represented by Mr John Mayer, Advocate instructed by Mr G.S. Rasmusen, Solicitor, Livingston but latterly, Mr Mayer, instructed by Mr Rasmusen, also represented the First Respondent.
12. Notwithstanding the hope contained in the Opinion of the Court, the parties failed to reach agreement in relation to the facts to be considered by the Tribunal. On 30th April 1999, the Complainers had lodged an amended version of the earlier Tribunal's Findings in Fact, and a copy of this document with the Respondents' amendments was lodged prior to the proceedings resuming on 14th June 1999. The last mentioned document was in

itself the subject of adjustment, and in response to a direction by the Tribunal, a revised statement of admitted facts headed "Factual basis" was lodged by the Respondents on 30th June 1999. This was followed by a "Statement of Reasoning" containing the Respondents' submissions in relation to the same.

13. At the conclusion of the Hearing on 23rd August 1999, the Tribunal made avizandum.
14. Having considered the direction of the Court and the submissions of the parties, the Tribunal found the facts as set out in Appendix II to be relevant to the established findings of professional misconduct, and having considered the whole circumstances in relation to the findings of misconduct set out in Appendix III, the Tribunal has pronounced an Interlocutor in the following terms:-

Edinburgh 13th October 1999. Following the remit by the Court dated 12th March 1999, the newly constituted Tribunal having resumed consideration of the Complaint dated 30th June 1994 at the instance of the Council of the Law Society of Scotland against Gordon Coutts Thomson and Maria Theresa Thomson and Another and the further Complaint at the instance of the Council of the Law Society of Scotland against the said Gordon Coutts Thomson and Maria Theresa Thomson and the submissions of the parties, in respect of the findings of professional misconduct that the Respondents were unable to produce any files or other records to justify fees claimed under the Legal Aid Advice and Assistance Scheme, failed to ensure that only fees properly due were charged to the Legal Aid Board, and were in breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules

1991, that the First Respondent was in breach of Rule 8 of said Rules, that the First and Second Respondents were in breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct for Scottish Solicitors, that the First and Second Respondents failed to supervise assistants adequately, that the First Respondent threatened a member of Lothian and Borders Police and showed discourtesy to the Court, that the First and Second Respondents brought the profession into disrepute and showed a disregard for the interests of clients, that they failed in their duty to act with fellow solicitors in a manner consistent with persons having mutual trust and confidence in each other and that the First and Second Respondents repeatedly failed to reply to correspondence from the Law Society, and from fellow solicitors, of new Order that the First and Second Respondents Gordon Coutts Thomson and Maria Theresa Thomson, be struck off the Roll of Solicitors in Scotland, Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect upon the intimation of this decision, Reserve the matter of expenses including the expenses occasioned by the motion heard on 7th May 1999, and Direct that publicity to include the names of the Respondents be given to this decision.

(Signed) JOHN W. LAUGHLAN

Chairman

15. A copy of the foregoing Interlocutor together with a certified copy of these Findings was duly intimated to each of the Respondents by recorded delivery post on 9<sup>th</sup> November 1999.

Chairman

NOTE

The Respondents were successful in their Petition to the Court of Session to the extent that the Order dated 7th April 1995, striking the names of the Respondents off the Roll of Solicitors was quashed, the Court remitting the matter to a new Tribunal "to proceed as accords". The basis of the decision of the Court was that the Tribunal had taken into account matters which were not relevant to the charges which had been admitted by the Respondents and which formed the grounds on which professional misconduct was established. In the accompanying Opinion, it was indicated that the Court hoped that parties would agree the facts to be considered by the new Tribunal. No agreement was reached and each party lodged separate statements of fact.

The normal procedure in relation to any prosecution is initially for the adjudicating body to consider the evidence adduced with a view to establishing the material facts; thereafter to determine on the basis of these facts whether the actings of the Respondent amounted to professional misconduct and finally, in the light of the said facts, to establish the gravity of the conduct and determine a suitable penalty.

In regard to the Scottish Solicitors' Discipline Tribunal, the operative provision is contained in Section 53 of the Solicitors (Scotland) Act 1980 which provides that

".... The powers exercisable by the Tribunal ... shall be exercisable if -

- (a) after holding an inquiry into a complaint against a solicitor the Tribunal is satisfied that he has been guilty of professional misconduct."

Counsel for the Respondents submitted in light of the foregoing, that it was incumbent on this new Tribunal to make a fresh determination on the matters of professional misconduct; and in support of this contention, he referred to the following passage in the Opinion of the Court.

On behalf of the (Council of the Law Society of Scotland), counsel referred to Sharp v The Council of the Law Society of Scotland 1984 S.L.T. 313, and in particular the passage at page 317 where the Lord President expresses the opinion, in relation to issues of professional misconduct, that "in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made". This duty to look at all the circumstances, and to consider the degree of culpability, lay upon the Tribunal, whatever the parties might wish. It was a duty that they must fulfil, when carrying out their statutory responsibilities in terms of section 53(1) of the Solicitors (Scotland) Act 1980. Even if there was a "plea of guilty", it was for the Tribunal to be satisfied that any solicitor against whom a complaint had been brought was indeed guilty of professional misconduct. Their powers under section 53(2), including the power to order that the name of a solicitor be struck off the Roll, were exercisable only if the Tribunal itself was satisfied, in terms of section 53(1)(a) that the solicitor had been guilty of professional misconduct (or that the requirements of subsection (1)(b) were fulfilled). The matter was thus not simply one of what the Fiscal and Mr and Mrs Thomson had agreed. It was for the Tribunal to make Findings of Fact, upon which their findings of guilt and their assessment of the degree of culpability could properly be based.

In contrast Counsel for the Complainers maintained that the starting point for the present Tribunal was the charges of professional misconduct which had been established before the earlier Tribunal.

The terms of Section 53 are clear and the statement by the Lord President in Sharp v the Council of the Law Society of Scotland is widely accepted as a fair interpretation of the application of Section 53. However in the opinion of this Tribunal, it is not necessary nor proper for this Tribunal as now constituted to carry out the whole investigative process de novo. Although the Court used the expression "new Tribunal" and none of the members who heard the present matter were among the members of the Tribunal who heard the Complaints in 1994/1995, the members at the relevant time are the embodiment of the Tribunal as a whole. The Tribunal on 7th April 1995, made specific findings of professional misconduct. These findings were not the

subject of challenge in the subsequent appeal process; and accordingly it is not competent for the Tribunal to re-open consideration of charges on which these particular findings were based. The Tribunal finds support for the foregoing in the Opinion of the Court where it is stated that:

There is no question of the Tribunal having erred, or having departed from what the parties agreed, in their identification of the specific charges to which Mr or Mrs Thomson pled guilty. Correspondingly the Petition does not seek to interfere in any way with what one may call the "convictions",- these are set out in paragraph 12 of the Findings for Mr Thomson and paragraph 13 for Mrs Thomson.

and the Court summarised the position as follows:

What the Petitioners asked to have quashed is the "sentence" - the decision to strike the names of the Petitioners off the Roll of Solicitors in Scotland. What is said is that in reaching their decision to impose that particular sentence, the Tribunal erred or acted unreasonably in a number of ways, so that the decision represents an unreasonable exercise of their discretion. It is of course accepted that if the decision is quashed, it will remain necessary that an alternative "sentence" be considered and imposed.

The decision of 7th April 1995, was indeed quashed. The Court did not comment adversely on the findings of professional misconduct. Indeed it was acknowledged "that there is a very substantial catalogue of guilt", and the Court went on to say:

... it is not for us to consider or reach a conclusion as to its gravity, (referring to the "very substantial catalogue of guilt"), or the significance of the matters wrongly founded upon, or to decide what would be an appropriate punishment. These matters require a new Tribunal. It is a matter for the parties whether on remit the new Tribunal could be given a clearer documentary basis on which to work. Certainly we would hope that the parties could ensure in advance of the new Hearing that there was an agreed factual basis for the new Tribunal's consideration of the appropriate punishment; and that any submissions in addition to, or in substitution for, those set out in the record of the earlier Hearing could be presented in as convenient a manner as possible to the new Tribunal.

The Court did not give any guidance to cover the eventuality of the parties failing to reach agreement. Ample opportunity was given to the parties to find a consensus but it was apparent from the significant differences in the documents which were lodged by the parties that there was no reasonable prospect of agreement ever being reached.

The Tribunal has therefore the bare findings of misconduct: but it would be inappropriate for the Tribunal to adjudicate on the basis of these findings alone and it is therefore incumbent on this Tribunal to determine what facts constitute an essential element of each offence.

Where is the Tribunal to find these facts? Whatever, the Tribunal should disregard the particular paragraphs in the earlier Tribunal's Findings, which the Court found objectionable. The Complainers lodged their "Findings in Fact as amended" on 30th April 1999 and the corresponding document "Factual Basis" was lodged by the Respondents on 14th June 1999. Both of these documents incorporate substantial passages from the facts as found by the earlier Tribunal and recorded in the Findings which were intimated to the parties on 8th June 1995.

Where the same facts now appear in each of the parties' present documents, these facts have been accepted by this Tribunal. (Where neither party has put forward particular facts as found by the earlier Tribunal and such facts might be regarded as essential to establish findings of professional misconduct, the effect on these charges is considered at a later stage in this note.) However where material in the earlier Findings which is relevant to an established charge has been put forward by the Complainers, but has been omitted by the Respondents, such material has been accepted by the present Tribunal. Any denial of these facts would be inconsistent with the Respondents' respective pleas of guilty. None of these pleas were withdrawn prior to the decision of the earlier Tribunal on 7th April 1995 and were not subsequently the subject of review on appeal. Indeed the Court, in referring to the first Complaint observed

As we have noted, the actual charges contained in Article 19 refer back to earlier factual Articles or parts of such Articles, so that guilt of any charge, as charged would entail guilt upon the basis of the alleged facts thus referred to in the charge.

It is therefore appropriate that the Tribunal should accept those averments of fact in each Complaint which support the charges of professional misconduct which were admitted.

In the "Factual Basis" lodged by the Respondents, significant material has been added to the earlier Tribunal's findings in fact. In the matter of "A", the first Respondent took the opportunity of giving evidence to the earlier Tribunal. That Tribunal no doubt weighed up the evidence for the Complainers and the first Respondent's own evidence in determining the facts applicable to that matter. Therefore in the opinion of the present Tribunal it is not now open to the Respondents to introduce factual material in relation to "A".

Much of the other matter put forward by the Respondents comprise statements which are inconsistent with the established findings of professional misconduct and for the reasons already given, such statements have been disregarded by the present Tribunal. Other matters introduced by the Respondents which were not established to the satisfaction of the earlier Tribunal or the present Tribunal, or which do not have a direct bearing on the established charges have therefore not been recorded in Appendix II; such matters have been noted as circumstances falling to be taken into consideration in mitigation.

Prior to the lodging of the Respondents' "Factual Basis", the first Respondent and Mr Mayer who was then appearing as Counsel only for the second Respondent, submitted that the Tribunal should hear a "proof in mitigation" as being the appropriate procedure where there might be a significant dispute about mitigating factors, but any such matters were not identified in subsequent submissions, nor did Counsel for the Respondents seek to lead any evidence in the present procedure.

It is on the basis of the foregoing that the present Tribunal now examines all the factual material that has been put forward to determine what should be taken into account in assessing the gravity of the established charges. In carrying out this process, the Tribunal has followed the Court and the respective parties and has used as a starting point, the findings in fact as they appear in paragraph 10 of the original Findings of the Tribunal.

Paragraphs (1) to (6) contain background information. In the Respondents' "Factual Basis", with regard to paragraph (1), there is reference to the second Respondent having been a partner with Messrs McKenzie & Dunn before joining the firm of Messrs Ross Harper & Murphy.

This was prior to the duties which are material to the Complaints, and this information has been noted for the purposes of mitigation.

In relation to paragraph (2) the Court observed that the first four sentences "have an accepted basis" and only these sentences appear in the facts as put forward by the Complainers. These sentences provide significant background material on the manner in which the Respondents conducted their practice and employed their assistants. These sentences were omitted by the Respondents in their "Factual Basis", and in that document they substituted two lengthy paragraphs which give an entirely different impression of the manner in which the practice was managed. However paragraph (2) reflects the averments in Article 1.2. of the First Complaint and as the said Article 1.2 was founded upon in respect of a number of charges which were held to be established, it is appropriate that the Tribunal should take cognisance of that part of the corresponding finding which is free from criticism by the Court; and the Tribunal has therefore accepted the said four sentences.

The Court was critical of the final sentence of the previous Tribunal's paragraph (3) and this sentence has been omitted by the Complainers. In contrast the Respondents have re-written this paragraph and their narrative again creates a wholly different impression to that noted by the earlier Tribunal. In paragraph (4) the Court only found the first four sentences to be acceptable and these are the only part of that paragraph put forward by the Complainers. Part of the paragraph was also accepted by the Respondents, but most of their narrative in this paragraph points only to the steps taken by them to attract business and there is no acknowledgment that the prospective clients might already

have been clients of other solicitors. The Court had no criticism of paragraph (5) and it has been submitted in full by the Complainers. In contrast the Respondents have omitted it in its entirety. Paragraphs (2) to (5) in the findings in fact of the earlier Tribunal correspond with Articles 1.2 to 1.5 of the First Complaint. The Respondents' third proposition to the Court was to the effect that

The Tribunal having heard evidence, had wrongly proceeded to make Findings of Fact, prejudicial to Mr and Mrs Thomson, on the basis of that evidence, above and beyond the facts which Mr and Mrs Thomson had accepted in terms of the pleas as agreed with the Fiscal.

It was upon upholding that proposition that the Court declared that the excepted parts of paragraphs (2), (3) and (4) should not have been made or taken into account. There was no criticism for including the remainder of paragraphs (2) to (5) inclusive. It is also significant that the general comments contained in these paragraphs were referred to in relation to a number of the admitted and established charges, and it is with these considerations that this Tribunal has included these paragraphs, except in so far as objected to by the Court.

Paragraph (6) of the original Findings contained background information principally relating to the second Respondent's brother Mr "DDD". This paragraph was not the subject of comment by the Court. The Complainers have proposed to include the paragraph in full. The Respondents in their "Factual Basis", have significantly modified this paragraph. Although the corresponding Article 10.6 of the First Complaint is not specifically referred to in any of the admitted charges, the substance of that paragraph does provide material background which is relevant to several of the charges, and the Tribunal is therefore satisfied that paragraph (6) of the original Findings should be retained.

The facts set out in paragraph (7) provide the foundation for two charges in the First Complaint which were held to be established, namely under Articles 19.9 and 19.11(c). The Complainers did not propose any variation to this paragraph as it appeared in the Findings of the previous Tribunal. The Respondents have suggested the addition of three sentences to the first paragraph to reflect their former firm's practice and the general practice within the profession, but as this was apparently not established to the satisfaction of the previous Tribunal, the additional material has not been included but noted for the purposes of mitigation.

The following sub-paragraphs (a) to (f) relate to six separate Legal Aid applications. In four of the matters (a), (b), (c) and (e), the Respondents have omitted the statement to the effect that the first Respondent had submitted the respective Legal Aid application forms notwithstanding that an averment to that effect was admitted in each case in the Joint Minute which was lodged with the earlier Tribunal on 31st January 1995. The first Respondent acknowledges to have signed each of the corresponding claim forms but the statement to the effect that he lodged these Claim forms has been omitted and there is substituted the statement that the respective forms were received from the "Respondents' firm". Having regard to the Respondents' previous admission and the first Respondent's then position as a partner in the firm and the nominated solicitor in each of these cases, the Tribunal does not accept the Respondents' various revisals. For the same reasons, the Tribunal does not accept the suggested revisals to subparagraph (f), a matter for which the second Respondent was responsible.

In sub-paragraph 7(d) and also in several other paragraphs, the Respondents have sought to add that the second Respondent was absent from the office from the beginning of July to the end of November 1993 on maternity leave and therefore could not be responsible for the actings which were the subject of complaint. This is a material averment which was not put forward in 1995. That it is only now being submitted, is wholly unsatisfactory, particularly as this averment seeks to negate a series of charges which were previously admitted. The second Respondent's pregnancy at this time is a matter which is taken into account in mitigation, but the Tribunal is not prepared to accept a statement which seeks to exculpate the second Respondent from particular charges which were admitted and established.

Paragraph (7) of the earlier Tribunal's findings had concluded with the words "The changing of each of the dates represented, in the circumstances, unconscionable behaviour by the Respondents." This sentence was omitted by the Respondents. However the statement contained in that sentence is essential to the said admitted and established charges under Articles 19.9 and 19.11(c) and the Tribunal is therefore not prepared to exclude that sentence.

Paragraphs (8) and (9) relate to the representation of "E" and his entitlement to Legal Aid. The Complainers have omitted the last two sentences of paragraph (9). This is accepted by the Respondents and it is appropriate that the Tribunal should accept such a deletion which has the agreement of the parties. There is also a statement in paragraph (9) to the effect that there was a record of a telephone call on 12th November 1992 from the client "advising the solicitor" to proceed with the matter. The form of words suggested by the Respondents is "advising "XX", Law Society Trainee" to proceed. The said Joint Minute refers to "advising the Respondents" and this is a more appropriate form of words.

The subject matter of paragraphs (10) and (11) was “GG” who was initially an assistant in the employment of the Respondents and latterly in partnership with them. The Complainers had no suggested revisals to these paragraphs as they had appeared in the original Findings. The Respondents proposed substantial changes seeking to establish that Mr “GG’s” appearances in Court before he held a Practising Certificate were in accordance with existing practice and acceptable to Sheriff Clerks, but these claims had never been substantiated and if accepted, the result would be to leave no foundation for the admitted and established charge under Article 19.5(c). The Respondents also pointed out that in relation to court appearances between 12th and 14th June 1991, Mr “GG” was still an employee of Ross Harper & Murphy, but as the Respondents were themselves partners of that firm until 14th June 1991, they were therefore in the position of employers of Mr “GG” even at that earlier stage.

Paragraphs (12) to (14) inclusive relate to an employee “YY”. The Complainers did not suggest any revisal. The Respondents, in their "Factual Basis", have omitted two material sentences from paragraph 14 which would have the effect of leaving no foundation for the admitted and established charge under Article 19.5(d) and for this reason, that deletion cannot be accepted. There was no indication that the additions suggested by the Respondents, had been accepted by the earlier Tribunal, and these additions have therefore not been included, but have been noted in mitigation.

“ZZ” was also an employee of the Respondents and the Complainers made no suggested revisals to the facts as established by the earlier Tribunal and which appear as paragraphs (15) to (17) inclusive. “ZZ” was convicted under Section 31(1) of the Solicitors (Scotland) Act 1980 for wilfully and falsely pretending to be a

solicitor. This conviction related to actings by “ZZ” whilst in the employment of the Respondents' firm. The relative charges in the first Complaint concerned an account of expenses rendered by the Respondents' firm to the Legal Aid Board in respect of services provided by “ZZ” for a client “F”; and the Respondents admitted charges of failure to supervise their assistant adequately and a breach of duty to ensure that only fees properly due were charged under Articles 19.5 (e) and 19.9 respectively. The Respondents' suggested revisals to paragraph (15) were to the effect that “ZZ” had also worked for other law firms which thought he was qualified, that it was the second Respondent who ascertained that “ZZ” never had a Practising Certificate and that she reported the matter to the Law Society and the Legal Aid Board. These were not matters which were established before the earlier Tribunal. Nevertheless they are matters to be taken into account in mitigation and are considered by the Tribunal at that stage. Paragraph (17) concluded "the First and Second Respondents knew or ought to have known that the account submitted was ineligible for payment ...". The Respondents have omitted the words "knew or". It is preferable that the Tribunal should have regard to a substantive statement and accordingly the Respondents' revisal is accepted in this regard.

Paragraph (18) was headed "Multiple Applications - minimum fees" and the relative charges were contained in Articles 19.4 (b) and 19.10 of the First Complaint to the effect that the Respondents had failed to provide an adequate professional service in relation to dealings with the Legal Aid Board in regard to applications for minimum fees under Legal Advice and Assistance, and a breach of a duty to provide the Legal Aid Board with adequate information to enable them to properly discharge their statutory functions in relation to claims for minimum fees. The Complainers did not propose any revisals to the facts as found by the earlier Tribunal. In the Respondents' suggested addition it was claimed that the Respondents' practice of not keeping files in connection with

Legal Advice and Assistance matters was common to many other law firms and that when the matter was pointed out to the whole profession the Respondents kept appropriate records. It was never established before the earlier Tribunal that the Respondents had indeed followed the practice of other firms. For this reason, the reference to former practice is not accepted, and the statement regarding the Respondents' subsequent practice is a matter for mitigation which is taken into account at that stage.

Paragraphs (20) to (30) related to "A". The first and second Respondents admitted professional misconduct in respect of the charge that they had been in breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 and the first Respondent admitted professional misconduct in that he had been in breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct and a breach of the general duty on a solicitor not to act for one client to the prejudice of another. There were two further charges, namely under Article 19.4(a) and 19.6(a) which the Complainers insisted upon in relation to the first Respondent and in respect of which the first Respondent had given evidence before the earlier Tribunal. The second Respondent had initially been the subject of the charges in Article 19.3(a), 19.4(a) and 19.6(a) but these had not been insisted upon by the Complainers in relation to the second Respondent.

In submitting suggested facts to the present Tribunal, the Complainers did not make any change to the facts as found by the earlier Tribunal. In contrast, the Respondents made significant revisals which if accepted, would leave no foundation for the admitted and established breach of Rule 5 of the said 1991 Practice Rules. In relation to the first Respondent, the earlier Tribunal had the benefit of hearing the evidence adduced for both the Complainers and the said first Respondent. The findings of fact in relation to "A" were not the subject of any adverse comment in the proceedings before the Court and as

previously indicated it would therefore be inappropriate for the present Tribunal to make any variation on the facts as ascertained by the earlier Tribunal after hearing evidence.

It should also be mentioned that at the end of paragraph (30) the Respondents sought to add an extended passage containing matter wholly of a general nature. The explanations contained in that passage were not the subject of findings by the earlier Tribunal and as they have not been established by way of evidence or admission, it is inappropriate that such matters should be included among the relevant facts. Nevertheless the passage is noted as an ex parte statement to be taken into account in mitigation.

Paragraphs (31) and (32) related to “BB” and gave rise to admitted charges under Articles 19.7(b) and 19.12(a) to the effect that the Respondents were in breach of a duty to ensure that their behaviour was consistent with a need for mutual trust and confidence among fellow lawyers and a breach of a further duty to answer correspondence from fellow solicitors and to do so within a reasonable time. The Complainers did not seek to make any change to the facts as established before the earlier Tribunal. The Respondents sought to add matters to paragraph (31) which were not established before the earlier Tribunal and these revisals are not accepted. Paragraph (32) as noted by the earlier Tribunal, contained a narrative relating to correspondence over the period from 7th December 1992 to 21st January 1993 and thereafter concluding with a reference to correspondence solely attended to by Mr “GG”, who was then a partner of the Respondents and who was the subject of separate findings by the earlier Tribunal. In the facts presently put forward by the Respondents, no reference has been made to the correspondence which was attended to by Mr “GG” and accordingly the present Tribunal has not taken these facts into account.

The subject matter of paragraphs (33) to (38) inclusive was “G”. In submitting their suggested facts, the Complainers have omitted the last three lines of paragraph (38). The Respondents have excluded most of paragraph (37) and the whole of paragraph (38), adding only an additional sentence to the former paragraph to the effect that neither the first Respondent nor Mr “GG” were given any information suggesting a conflict. That is not a matter which was established before the earlier Tribunal and is therefore not accepted. However the remainder of paragraph (37) and paragraph (38) is material to the admitted and established charges based on Articles 19.3(b), 19.5(a) and 19.13(a) and these paragraphs, excepting the final three lines of paragraph (38) have accordingly been retained.

Paragraphs (39) to (42) in the Findings of the earlier Tribunal supported admitted and established charges based on Article 19.2(b) and 19.13(b). In their revised Statement of Facts, the Complainers omitted the whole of paragraphs (41) and (42). The Respondents did not seek to have these paragraphs included and accordingly the content of these paragraphs has been disregarded by the present Tribunal. The Respondents furthermore sought to make extensive deletions to paragraph (40) the effect of which would be to remove all substance for the finding of a breach of Rule 8 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 upon which the admitted and established charge based on Article 19.2(b) is based. For the reasons already stated, the Respondents' suggested deletions are not accepted.

The Complainers did not suggest any revisions to the paragraphs relating to “H”, namely paragraphs (43) to (46) inclusive, which paragraphs support admitted charges under Articles 19.2(c) and 19.7(d). The Respondents proposed extensive deletions and some revisions to paragraph (44) and for the whole of paragraphs (45) and (46) to be omitted. The admitted and established charge under Articles 19.2(c) related to breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 which prohibited any approach to a person whom the solicitor knew or ought reasonably to have known was the client of another solicitor with the intention of soliciting business from that person. The "Factual Basis" as submitted by the Respondents, acknowledges an approach to Ms “H” in mid 1992 in breach of the said Rule, but the Respondents' deletions have the effect of omitting the background to that approach, and excluding the whole circumstances in 1993 leading to a further stated breach of the said Rule. In addition, the separate revisions to paragraph (44) would have had the effect of modifying the gravity of the actings in 1992. There was no suggestion at any time that the Respondents' admission of the charge in Article 19.2(c) was confined to the events in 1992 or that the averments of surrounding facts at that time were disputed. The Respondents' revisions would also have removed all foundation for the separate charge as set out in Article 19.7(d) which concerned the Respondents' conduct in relation to their fellow solicitor, Mr “CC”. For these reasons, the Respondents deletions and revisions are not accepted.

Paragraphs (47) to (50) inclusive related to “I” and particularly concerned the actings of the Respondents' qualified assistant, “YY”. The established charges were under Article 19.2(d) (breach of the Advertising and Promotion Rules) and Article 19.5(b) (failure to supervise an assistant adequately). The Complainers did not put forward any alteration. The Respondents suggested extensive revisions and deletions the results of which are at considerable variance

with the facts as previously found and are therefore inconsistent with the findings based on Article 19.2(d) and 19.5(b). The Respondents' revisals to paragraphs (47) to (50) are therefore not accepted.

No revisals are suggested to paragraphs (51) to (53) ("J") other than a reference to the second Respondent's "maternity leave" which has already been commented upon.

The only revisal suggested in relation to "K" (paragraphs (54) and (55)) is an addition put forward by the Respondents setting out a course of action which might have been followed by the firm which took over acting for "K", and that statement has been noted for the purposes of mitigation.

Paragraphs (56) to (61) inclusive relate to "L" and the charges which were admitted were set out in Articles 19.8(a), 19.12(d) and 19.13(e). The Complainers have made no revisals. The Respondents pointed out that a charge based on an alleged breach of the Solicitors (Scotland) (Advertising and Promotion) Rules 1991 had been withdrawn (in 1995), but nevertheless they sought to make an addition to paragraph (58) setting out circumstances at the time when Mr "L" was visited in prison. There was no indication that the facts contained in the narrative of that addition had been established before the earlier Tribunal, and they have therefore not been included in the facts for the purposes of the present decision, but the statement has been noted in relation to mitigation.

Paragraphs (62) to (64) related to "M" and supported an admitted charge contained in Article 19.2(g) to the effect that the Respondents were in breach of Rule 5 of the Solicitors (Scotland) Advertising and Promotion) Rules 1991. The Complainers had no suggested revisals. The Respondents sought to exclude the finding of a breach of said Rule, and that their assistant Ms "RRR", was acting in accordance with their instructions. As these averments are critical to

the admitted and established finding of professional misconduct, these omissions have not been accepted. It should be added that in paragraph (64) there was a reference to "Articles 10(2) to 10(5) supra - referring to the background information as noted by the earlier Tribunal. However as certain of this background material was the subject of adverse comment by the Court, and has since been omitted by the parties, it is therefore only the present paragraphs (2) to (5) which have been adopted.

Paragraphs (65) to (67) which related to "N" were also the subject of adverse comment by the Court, and these paragraphs have therefore been omitted.

The Complainers had no suggested revisals in regard to paragraphs (68) and (69) which related to "O". The Respondents suggested certain deletions and other additions, principally concerning the involvement of another solicitor and his firm. As two of the admitted Charges under Articles (19.7(e) and 19.12(e)) relate to the Respondents' conduct in regard to that solicitor and there was no indication that the material facts behind these charges had been modified, the revisals as suggested by the Respondents are not accepted. The Respondents also sought to identify the particular sheriff as a "temporary sheriff". It was never demonstrated that this was a matter established before the earlier Tribunal or that it was a significant matter in relation to any of the admitted charges.

Paragraphs (70) to (75) inclusive related to "P" and the corresponding charge (of a contravention of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991) was set out in Article 19.2(i). The Complainers made no suggested revisals. The amendments put forward by the Respondents sought to make radical changes to the facts upon which the admitted and established charge was based, and for the reasons already stated, the Respondents' revisals have not been accepted.

Paragraphs (76) to (79) were headed "Lothian & Borders Police" and concerned the first Respondent's actions in relation to "Q". The Complainers have omitted the final paragraph (79) and this omission has been accepted by the Respondents. The Respondents also sought to make material amendments to the other paragraphs upon which admitted and established charges were based and for the reasons already stated, the Respondents' revisions have not been accepted.

The remaining paragraphs (80) to (92) inclusive relate to matters which were set out in the second Complaint, and the Complainers make no suggested revisions to any of these paragraphs. In relation to paragraphs (80), (81) and (82) ("C", "D" and "B") significant revisions were put forward by the Respondents to facts upon which the respective charges were based: and for the reasons previously stated, these revisions are therefore not accepted.

In the following paragraphs relating to "R" and "S" (paragraphs (83) and (84)), the Respondents had no revisions to the facts as found, but added in each matter a paragraph which did not concern the Respondent's conduct at the material time, and the Tribunal has therefore noted the various additions as matters to be considered in mitigation.

In paragraph (85) ("T") and (92) ("U") the Respondents have sought to add a paragraph pointing out that the time scale of the material events coincided with the present disciplinary proceedings. This can only be a matter of mitigation in that the charge of misconduct was admitted and the circumstances are noted accordingly.

No revisions are suggested in relation to "V" (paragraph 86).

The Respondents' addition to paragraph (87) (“W”) refers to an administrative error. Having regard to the admission of professional misconduct, this explanation is also a matter of mitigation and has been regarded as such.

In relation to “X” (paragraphs (88) to (91)) the Respondents seem to add in paragraph (88) that the assistant “AAAA”, had first consulted with the first Respondent before advising the client, but there was no indication that this had previously been established. The Respondents' other revision was to observe that the client had made no claim for compensation. However any subsequent claim would not affect the culpability of the Respondents, although the point is carried forward to the considerations in mitigation.

As previously recorded, the Order of the Court did not quash any of the findings of professional misconduct made by the earlier Tribunal and these are set out in full in Appendix I. There has accordingly been disregarded the latter part of the Complainers' "Findings in Fact as amended" and the Respondents' "Factual Basis" in which each party has suggested what charges should remain. Nevertheless it is a matter for this new Tribunal to consider the weight to be given to each of the admitted and established charges, and reference is particularly made to the following.

The Complainers sought to exclude the charge reflecting Article 19.8(b) to the effect that there was a breach of duty to maintain due respect and courtesy towards the Court in relation to the actings for “O”. There had been some confusion between the parties in that although it was stated to the Tribunal on 22nd March 1995 that this charge was not to be insisted upon, this item was not recorded in the exchange of correspondence between the parties' agents and a finding as

above was made on 7th April 1995. However the present Tribunal accepts that the previous finding may have been based on a misunderstanding and therefore in considering the present disposal of these Complaints, no weight is placed on the finding under Article 19.8(b).

The Complainers did not insist on the charges based on Articles 19.13(b) and 19.13(f) which related to a breach of duty on the part of the Respondents to respond to correspondence from the Law Society in respect of complaints from Messrs "OO" (in relation to "Y") and Lothian and Borders Police (in relation to "Q"); and indeed the Complainers have not included among their facts, the paragraphs (41) and (42), and (79) upon which these findings depended, and the Tribunal has accordingly not taken these findings into account in the present disposal.

The Tribunal was also concerned, in regard to the findings based on Article 19.11 to the effect that there was a breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of "... the supervision of assistants". The element of failing to supervise assistants appeared in Article 19.11(d) and originally contained a reference to Articles 1.2, 17.3, 17.4 and 17.5 of the first Complaint. That part of Article 19.11(d) which was dependant on Article 1.2 was excluded following on a preliminary hearing on 15th November 1994 and this is recorded in paragraph 5 of the Findings of the original Tribunal. This left Article 19.11(d) in so far as it referred to Articles 17.3, 17.4 and 17.5. In the exchange of letters between the parties' then representatives on 24th and 30th March 1995, it appeared that there was no admission in regard to the remainder of the charge contained in Article 19.11(d) but at the time when Mr Macreath, the solicitor for the Respondent, addressed the previous Tribunal on 5th April 1995, it recorded (at page 59 B - D) of the Shorthand Notes that the charge based i Article 19.11(d) was admitted. The reference to the supervision of

assistants therefore remained and the previous Tribunal found accordingly. It is significant, however, that the matter of the supervision of assistants with particular reference to Articles 17.3, 17.4 and 17.5 was already covered by the finding based on Articles 19.5(c),(d) and (e); and in view of possible confusion, the separate findings based on Article 19.11(d), are being disregarded in the present disposal.

In his submissions for the Respondents, Counsel referred to the case of McKinstry v The Law Society of Scotland 1997 SLT 191 in which it was established that in the circumstances of Criminal Legal Aid, a nominated Solicitor is entitled to disregard a mandate by the client in favour of another solicitor, and has a continuing duty to appear for that client in the matter for which Legal Aid had been granted, until such time as the Legal Aid Certificate is transferred to such other solicitor. The decision in McKinstry was issued after the earlier Tribunal pronounced their decision on 7th April 1995. In the "Statement of Reasoning" which was lodged by the Respondents in support of their "Factual Basis", the case of McKinstry is put forward in relation to the charges based on Article 19.2(g) of the first Complaint (in relation to "M") and Article 13.2(b) of the second Complaint (in relation to "D"). The Tribunal recognises that if the decision in McKinstry had been available to the Respondents in 1995, and if the charges based on these Articles had been challenged, there is sufficient doubt that the then Tribunal might not have made a finding based on these charges, and the present Tribunal has accordingly excluded these findings from their considerations.

The Tribunal has also considered whether the case of McKinstry should be taken into account in the other matters in which the Respondents had apparently disregarded the intimation of a mandate in favour of another solicitor, but it appears that in these other cases, the Respondents did not seek to continue the representation which (on the basis of McKinstry) was open to them.

In their "Statement of Reasoning", the Respondents invited the present Tribunal not to make findings of new in respect of other charges but for the reasons already set out, the Tribunal does not consider that the remit extended to a review of the previous findings. The other submissions in the "Statement of Reasoning" have also been carefully considered. These submissions are largely, however, points which might have been put to the earlier Tribunal if the respective charges were then being resisted, or arguments based on new facts which were not established before the earlier Tribunal; and the present Tribunal has not found in the "Statement of Reasoning", or in the submissions at the recent Hearing, any material which might have caused other findings to be disregarded in relation to the present disposal.

In the "Statement of Reasoning", the Respondents also made submissions of double jeopardy in regard to a number of the charges. The charges referred to included that based on Article 19.11(d) which is, for the reasons already stated, to be disregarded. In relation to other charges, the subject matter might be the same, but each finding is clearly and distinctly set out, and the circumstances do not call for any further findings to be disregarded.

The charges remaining to be taken into consideration are set out in Appendix III.

As Lord Prosser observed, "there is a very substantial catalogue of guilt"; and it is appropriate to categorise these charges remaining.

In relation to Professional Practice Rules, there are findings of a breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 against both Respondents in relation to

“A”  
 “H”  
 “I”  
 “P” and  
 Lothian and Borders Police (“Q”)

also the first Respondent in relation to

“C”

and the second Respondent in relation to

“B”

and findings of a breach of Rule 8 of said Rules against the first Respondent in relation to

“Y”

The purpose of the 1991 Practice Rules was to regulate the conduct of solicitors in regard to the attraction of business in such a manner as not to be prejudicial to other solicitors. Also in regard to other solicitors, there were admitted charges of professional misconduct by both Respondents under Article 19.7 in relation to the following solicitors

“Z”  
 “AA”  
 “CC”

and a failure to answer correspondence from fellow solicitors by both Respondents in relation to

“BB”  
 “J”  
 “K”  
 “L”  
 “O”  
 “W” (“DD”)  
 “X” (“EE”)  
 “U” (“FF”)

In relation to clients, there was a finding that the first Respondent was in breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct (acting where a conflict of interest had arisen) in relation to

“A”

and there was also a finding of a breach of the said Rule 3 and Article 3 against both Respondents in relation to

“G”

The interests of the client were also an issue in relation to the finding that the Respondents had failed to communicate effectively with

“X”

The Tribunal is required to consider a finding that the first Respondent was in breach of a duty to maintain due respect and courtesy towards the Court in relation to

“L”

The conduct of both Respondents towards the Scottish Legal Aid Board is relevant in relation to four separate findings namely

- (a) breach of a duty to ensure that only fees properly due are charged and that fees charged are fair and reasonable, in relation to the matters set out in paragraph (7) to (11) and (15) to (17) inclusive (Articles 17.2, 17.3 and 17.5 of the first Complaint) - charge under Article 19.9.
- (b) breach of a duty to provide adequate information to enable to Scottish Legal Aid Board properly to discharge their statutory functions in relation to claims for minimum fees - charge under Article 19.10 and

- (c) a breach of Article 5 of the Code of Conduct in relation to such applications - charge under Article 19.4(b)
  - both of which relate to the matters found in paragraph (18) (Article 17.6 of the first Complaint)
- (d) breach of a duty not to act in a manner which brings the profession of solicitor into disrepute - charge under Article 19.11(c)
  - which covers the whole of the foregoing and also the matters recorded at paragraphs (12) to paragraph (14) (Article 17.4 of the first Complaint).

Both Respondents were the subject of a charge of bringing the profession of solicitors into disrepute in relation to “X”, also the First Respondent in respect of his dealings with Lothian and Borders Police - the relevant matter being his attempted representation of “Q” referred to in paragraphs (76) to (78) of the Findings of Fact.

Both Respondents admitted a failure to supervise assistants adequately. Each matter was the subject of an established charge namely

- (a) “G” - where there was a breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986.
- (b) “I” - where there was a breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991.
- (c) “GG” - where charges were rendered to the Scottish Legal Aid Board in respect of appearances by Mr “GG” prior to the effective date of his Practising Certificate.

- (d) "HH" - where the Respondents rendered fees to the Scottish Legal Aid Board in respect of an application for advice and assistance submitted by the Respondents' employee "YY" prior to the date on which he was entitled to undertake Legal Aid work in his own name.
- (e) "F" - where the Respondents rendered an account to the Scottish Legal Aid Board in respect of advice and assistance rendered by "ZZ", who was not an enrolled solicitor.

Finally there remains to be considered the admitted charges relating to the Respondents' failure to reply to the Law Society in respect of Complaints made by

"II" ("G")  
 "JJ" ("I")  
 "KK" ("J")  
 "LL" ("L")  
 Scottish Legal Aid Board  
 "R"  
 "Z" ("S")  
 Solicitors for "T"  
 "NN" ("V")  
 "EE" ("X")  
 "FF" ("U")

The Hearing on this remit extended over three days namely 11th and 14th June and 23rd August. The Tribunal heard submissions from Counsel for the Complainers. The first Respondent addressed the Tribunal on his own behalf and he was followed by Mr Scott Rasmusen, Solicitor who was then instructed by the second Respondent, but by the third day Mr John Mayer, Advocate instructed by Mr Rasmusen had accepted instructions for both Respondents and Mr Mayer made submissions for both Respondents. By that time, the Respondents had lodged their "Factual Basis" and the relative "Statement of Reasoning" and the submissions to the Tribunal, supplemented the arguments which had already appeared in the "Statement

of Reasoning." Throughout, those representing the Respondents, including the first Respondent himself, persisted in the view that the members of the present Tribunal had to satisfy themselves that there was professional misconduct in respect of each of the matters in which the previous Tribunal had already made findings on the basis of the Respondent's admissions.

For the reasons already set out, the present Tribunal considers that the starting point is the established findings of professional misconduct which were never challenged in the appeal process and which were not the subject of any adverse comment by the Court.

Mr Mayer emphasised that there had been no dishonesty on the part of the Respondents and he sought to diminish the gravity of the present matters by pointing out that the first Complaint in its original form had contained many more serious matters. Mr Mayer emphasised the success of the Respondents' firm. It was this success that brought about a "blizzard of complaints" (Mr Mayer's own phrase) and he submitted that the Respondents had replied to these complaints as best they could. Mr Mayer criticised the Law Society for not meeting with the Respondents as they had suggested. Mr Mayer pointed to the second Respondent's period of pregnancy and that it had been left to the first Respondent and Mr "GG" to run the firm during the second Respondent's absence. With reference to the altered Legal Aid Forms, Mr Mayer pointed out that these represented only some six forms among about eleven thousand which had been lodged by the Respondents.

The Tribunal has carefully considered the Respondents' written submissions and all that was said on their behalf, including the submissions by the first Respondent himself. However there remains a very substantial catalogue of matters in which professional misconduct has been admitted and established. It is clear from the number of separate breaches of the Solicitors (Scotland) (Advertising and

Promotion) Practice Rules 1991 that the Respondents had a disregard for these Practice Rules in their pursuit of new business, and their disrespect towards colleagues in the profession is reflected in the number of instances in which they failed to reply to correspondence from other solicitors. In certain of these matters, the actings or neglect were at the hands of assistants, both qualified and unqualified. The Respondents by their admission of guilt, accepted responsibility for the actings of these assistants and there was the separate finding of a failure of supervision.

In two matters (“G” and “X”), both the Respondents showed a disregard for the interests of clients and the first Respondent in a further matter (“A”); the first Respondent showed a lack of respect and courtesy towards the Court in relation to one matter (“L”); both Respondents admitted bringing the profession into disrepute in respect of their dealings with the Scottish Legal Aid Board also the first Respondent in his dealings with Lothian and Borders Police.

The gravity of the Respondents' general conduct as reflected by the foregoing is compounded by the Respondents' failure in respect of a large number of matters to reply to correspondence addressed to them by the Law Society of Scotland. This Tribunal has always regarded failure on the part of a solicitor to reply to enquiries from the Law Society as a particularly serious matter, as the lack of response results in the Law Society being unable to reply meaningfully to a complainer. The absence of such a reply is particularly damaging to the reputation of the profession. It is significant that the second Complaint contained a number of cases where the Respondents were persisting in their failure to respond even during the currency of the present proceedings - displaying an utter contempt towards the Law Society as the statutory body which represents not only the profession but also the interests of the public in relation to that profession.

As is exemplified by the failure to reply to correspondence, the matters in these two Complaints extended over a considerable period. The Tribunal is satisfied that during that time, the Respondents had ample opportunity to review their practices and ensure that matters of concern were attended to and resolved and failed to do so.

It was noted that the second Respondent claimed to have had a period of maternity leave and relied on this to reduce her culpability. The Tribunal was not informed of the extent to which she was unable to take an interest in the business during this period but whatever, the events which occurred and the resulting neglect extended over a much greater period than might normally be associated with maternity leave and the Tribunal does not therefore consider that the second Respondent's responsibility for the matters which have been established was materially less than that of the first Respondent.

The Tribunal has carefully considered the alternative forms of disposal set out in Section 53(2) of the Solicitors (Scotland) Act 1980. However having regard to the whole circumstances, it has been demonstrated to the satisfaction of this Tribunal that the course of conduct of the Respondents was a serious and reprehensible departure from the standards expected of competent and reputable solicitors and the Tribunal is of the opinion that on the basis of the foregoing neither Respondent is a fit and proper person to remain on the Roll of Solicitors. Accordingly an order has been made striking the names of the Respondents off the Roll of Solicitors in Scotland.

It is appreciated that the Respondents have not sought to practice since the decision of the previous Tribunal was issued. Nevertheless it is appropriate that the present decision should come into effect at the earliest possible date and accordingly the Tribunal has invoked the provisions of Section 53(6) of the Solicitors (Scotland) Act 1980, and the decision to strike the names of the Respondents off the Roll will therefore take effect upon the intimation of this written Decision.

The matter of expenses including the expenses of the Tribunal, arising from the remit by the Court and including the expenses occasioned by the hearing on 7th May 1999 is reserved in order to allow parties the opportunity to make submissions thereon.

No circumstances were disclosed which might have caused the Tribunal to exercise its limited discretion regarding publicity and accordingly publicity to include the name of the Respondents will be given to this decision.

Chairman

APPENDIX I  
Established charges of  
professional misconduct

(a) First Respondent.

In relation to charges as set out in Article 19 of the First Complaint.

- (1) Breach of Rule 5 of The Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 in respect of actions in relation to “A”, “H”, “I”, “M”, “P” and Lothian & Borders Police and “Q” and Rule 8 of said Practice Rules in respect of actions in relation to “Y”.

(Article 19.2 (a),(b),(c),(d),(g),(i),(j))

- (2) Breach of Rule 3 of The Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct and a breach of the general duty on a solicitor not to act for one client to the prejudice of another.....in relation to “A” and “G”.

(Article 19.3 (a),(b))

- (3) Breach of Article 5 of the Code of Conduct by failing to provide an adequate professional service in relation to dealings with the Scottish Legal Aid Board in regard to applications for minimum fees under Legal Advice and Assistance.

(Article 19.4 (b))

- (4) Breach of a duty to provide an adequate professional service in respect of his failure to supervise assistants adequately in relation to “G”, “I”, “HH” and “F” and in relation to “GG”.

(Articles 19.5 (a),(b),(c),(d),(e))

- (5) Breach of a duty to ensure that his behaviour is consistent with the need for mutual trust and confidence among fellow lawyers, and of a duty to act with fellow solicitors in a manner consistent with persons having mutual trust and confidence in each other in relation to Messrs “Z” and “AA”; and breach of a duty to ensure that his behaviour is consistent with the need for mutual trust and confidence among fellow lawyers, and of a duty not to communicate with a person known to be represented by another solicitor in relation to “CC”.

(Article 19.7 (b),(d),(e))

- (6) Breach of duty to maintain due respect and courtesy towards the Court in relation to the actings for “L” and “O”.

(Article 19.8 (a),(b))

- (7) Breach of a duty to ensure that only fees properly due are charged and that fees charged are fair and reasonable in all the circumstances in relation to fees charged to the Scottish Legal Aid Board.

(Article 19.9)

- (8) Breach of a duty to provide the Scottish Legal Aid Board with adequate information to enable them to properly discharge their statutory functions in relation to claims for minimum fees.

(Article 19.10)

- (9) Breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of dealings with the Lothian and Borders Police, Scottish Legal Aid Board and the supervision of assistants.

(Article 19.11 (b),(c),(d))

- (10) Breach of a duty to answer correspondence from fellow solicitors and others and to do so within a reasonable time in respect of “BB”, “J”, “K”, “L” and “O”.

(Article 19.12 (a),(b),(c),(d),(e))

- (11) Breach of a duty to respond promptly fully and accurately to complaints correspondence from The Law Society in respect of complaints from Messrs “IP”, Messrs “OO”, Messrs “JJ”, Messrs “KK”, Messrs “LL”, Lothian and Borders Police and The Scottish Legal Aid Board.

(Article 19.13 (a),(b),(c),(d),(e),(f),(g))

In relation to charges set out in Article 13 of the Second Complaint

- (12) Breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 in respect of “C” and “D”.

(Article 13.2 (a),(b))

- (13) Breach of a duty to respond promptly, fully and accurately to complaints correspondence from The Law Society in respect of “R”, “S”, “T”, “V”, “X” and “U”.

(Article 13.3 (a),(b),(c),(d),(e),(f))

- (14) Breach of a duty to answer correspondence from fellow solicitors and others and to do so within a reasonable time and to implement their clients' instructions in respect of Messrs “DD”, Messrs “EE” and Messrs “FF”.

(Article 13.4(a),(b),(c))

- (15) Breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of “X”.

(Article 13.5)

- (16) Breach of a duty to communicate effectively with a client namely the said “X”

(Article 13.6)

## (b) Second Respondent

In relation to charges set out in Article 19 of the First Complaint.

- (1) Breach of Rule 5 of The Solicitors (Scotland)(Advertising and Promotion) Practice Rules 1991 in respect of actions in relation to “A”, “H”, “T”, “M” and “P”.

(Article 19.2 (a),(c),(d),(g),(i))

- (2) Breach of Rule 3 of The Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct and a breach of the general duty on a solicitor not to act for one client to the prejudice of another .....in relation to “G”.

(Article 19.3 (b))

- (3) Breach of Article 5 of the Code of Conduct by failing to provide an adequate professional service in relation to dealings with the Scottish Legal Aid Board in regard to applications for minimum fees under Legal Advice and Assistance.

(Article 19.4 (b))

- (4) Breach of a duty to provide an adequate professional service in respect of her failure to supervise assistants adequately in relation to “G”, “I”, “HH” and “F” and in relation to “GG”.

(Article 19.5 (a),(b),(c),(d),(e))

- (5) Breach of a duty to ensure that her behaviour is consistent with the need for mutual trust and confidence among fellow lawyers, and of a duty to act with fellow solicitors in a manner consistent with persons having mutual trust and confidence in each other in relation to Messrs “Z” and “AA”; and breach of a duty to ensure that her behaviour is consistent with the need for mutual trust and confidence among fellow lawyers, and of a duty not to communicate with a person known to be represented by another solicitor in relation to “CC”.

(Article 19.7 (b),(d),(e))

- (6) Breach of a duty to ensure that only fees properly due are charged and that fees charged are fair and reasonable in all the circumstances in relation to fees charged to the Scottish Legal Aid Board.

(Articles 19.9)

- (7) Breach of a duty to provide the Scottish Legal Aid Board with adequate information to enable them to properly discharge their statutory functions in relation to claims for minimum fees.

(Article 19.10)

- (8) Breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of dealings with the Scottish Legal Aid Board and the supervision of assistants.

(Article 19.11 (c),(d))

- (9) Breach of a duty to answer correspondence from fellow solicitors and others and to do so within a reasonable time in respect of “BB”, “J”, “K”, “L” and “O”.

(Article 19.12 (a),(b),(c),(d),(e))

- (10) Breach of a duty to respond promptly fully and accurately to complaints correspondence from The Law Society in respect of complaints from Messrs “H”, Messrs “OO”, Messrs “JJ”, Messrs “KK”, Messrs “LL” and The Scottish Legal Aid Board.

(Article 19.13 (a),(b),(c),(d),(e),(g))

In relation to charges set out in Article 13 of the Second Complaint

- (11) Breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 in respect of “B”

(Article 13.2(c))

- (12) Breach of a duty to respond promptly, fully and accurately to complaints correspondence from The Law Society in respect of “R”, “S”, “T”, “V”, “X” and “U”.

(Article 13.3 (a),(b),(c),(d),(e),(f))

- (13) Breach of a duty to answer correspondence from fellow solicitors and others and to do so within a reasonable time and to implement their clients' instructions in respect of Messrs "DD", Messrs "EE" and Messrs "FF".

(Article 13.4 (a),(b),(c))

- (14) Breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of "X".

(Article 13.5)

- (15) Breach of a duty to communicate effectively with a client namely the said "X".

(Article 13.6 (a))

APPENDIX II  
Matters of fact upon which the present  
Tribunal has based its decision.

- (1) The Respondents are solicitors enrolled in the Register of Solicitors in Scotland. The First Respondent qualified as a solicitor in 1981. He worked as an assistant and thereafter became a partner with Messrs Ross Harper & Murphy, Solicitors, working latterly in their Edinburgh Office. The Second Respondent qualified as a solicitor around 1985. She worked as an assistant and thereafter as a partner with Ross Harper & Murphy, latterly in their Edinburgh Office. She is the wife of the First Respondent. Around 14th June 1991, the First and Second Respondents commenced practice on their own account under the name of Gordon Thomson & Company (hereinafter referred to as "The Respondents' firm" which expression when hereinafter applied to the period between on or around 1st July 1992 and on or around December 1993 throughout which period "GG" was a partner of the First and Second Respondents means the firm constituted by the First and Second Respondents and Mr "GG" as partners and otherwise refers collectively to the First and Second Respondents only). Mr "GG" was admitted as a solicitor on 24th July 1991 and enrolled on 2nd August 1991. He worked as an assistant with the Respondents' firm until being assumed as a partner on or around 1st July 1992. Around August 1992, the Respondents' firm opened a branch office "The Law Cafe" at 343 Methilhaven Road, Methil, Fife. On or around October 1992 the firm opened a further branch office "The Law Cafe" at 16 Church Street, Glenrothes. Around

December 1993, Mr "GG" resigned from the firm and set up business on his own account at "P.1".

- (2) The Respondents operated and ran their firm generally in a manner which brought the profession of solicitors into disrepute. In particular they employed a number of inexperienced assistants, both qualified and unqualified. The Respondents relied significantly upon unqualified assistants or "paralegals" who were without qualifications and inexperienced, to interview clients and provide Legal Advice and Assistance. These assistants were left to their own devices to conduct clients' affairs with little or no supervision and were left largely unsupervised in running the branch offices at Methil and Glenrothes.
- (3) The whole operation of the Respondents' firm was "fees driven" with assistants, qualified and unqualified being under constant pressure from the Respondents to reach high fees targets. The Respondents set fees targets of £800 per day and expected the assistants both qualified and unqualified to achieve these targets and demonstrate the same on a daily basis. Assistants, qualified and unqualified, were required to attend a daily morning meeting in the Edinburgh Office of the Respondents' firm at which these assistants had to demonstrate in tabular form the means by which they had, during the course of the previous day, endeavoured to meet their fees target. They had to report to the Respondents on the number of meetings, letters, pages of precognition

and items of work undertaken by them in the course of the previous day and to demonstrate that the work achieved the set target. The Respondents recorded this information and assistants were criticised at the meeting for failure to meet their targets.

- (4) The Respondents encouraged their assistants and paralegals to take on as much business as possible. The Respondents ran certain of their offices as a "Drop-in centre" into which members of the public could go for a coffee and a chat with members of staff and other members of the public using it for a similar purpose. The Respondents' staff were encouraged to use such visits by members of the public with a view to soliciting business from them whether or not they were already clients of other solicitors. The Respondents' staff were also sent to Court to seek out business and were encouraged to secure the clients of other solicitors.
- (5) The Respondents gave little or no guidance or assistance to their staff as to the ethical standards required in the conduct of clients' business. Even when confronted with any ethical problems or dilemma, such staff were left to their own devices and had no guidance from the Respondents. The pressure upon assistants to take on work and to produce fees was intense. This represented a disincentive to the Respondents' staff, when confronted with any ethical difficulty, of resolving that difficulty appropriately or seeking guidance from the Respondents thereon. This pressure on members of staff to produce fees, encouraged touting for business and a delay in implementing mandates received by the Respondents' firm from other solicitors.

- (6) “DDD” was a precognition agent carrying on business as “CCCC”. From 1991, he regularly carried out work as a precognition agent on behalf of the Respondents' firm. During that period he also acted to all intents and purposes as an unqualified assistant of the Respondents' firm and for a period was indeed employed by the firm in that capacity. The Respondents dealt with him in the same manner as other assistants and he was required to attend the morning meetings of the Respondents' firm. He is a brother of the Second Respondent. The Second Respondent's parents were also employed in the firm.

Legal Advice & Assistance Applications ("Advice and Assistance" applications)

- (7) Applications for Legal Advice and Assistance ("Advice and Assistance") are made in a form prescribed by the Scottish Legal Aid Board. That form provides a space for infilling the date of signature and commencement. In terms of Regulation 10 of The Advice & Assistance (Scotland) Regulations 1987 a solicitor giving Advice and Assistance requires within fourteen days of having begun to give advice and assistance to send to the Board a copy of the client's application. Failure to do so within the specified time limit, unless the Board consider there is special reason for it to excuse such failure, renders the solicitor's fees and outlays ineligible for payment in terms of Section 4(2)(a) of The Legal Aid (Scotland) Act 1986. In the following applications for Advice and Assistance submitted to the Board by or on behalf of the Respondents the date of signature had been altered.

(a) “PP” (SLAB Reference AA/08/2272243/92)

The nominated solicitor in relation to this application was the First Respondent. The form of application was signed by him on 1st March 1993. The date of the applicant's signature had been 12th February 1993 and was altered to 22nd February 1993. The application was sent to the Board by the First Respondent and received by them on 2nd March 1993. On 4th August 1993 the Board received from the Respondents' firm their account synopsis form ACC/AA/1, signed by the First Respondent and submitted by him requesting payment of a minimum fee (£25). This form was accompanied by the solicitor's file copy of the application for Advice and Assistance. That copy shows that the applicant signed the application form on 12th February 1993.

(b) “PP” (SLAB reference AA/08/2272251/92)

The nominated solicitor in relation to this application was the First Respondent. The form of application bears to have been signed on behalf of the applicant by “QQ”. The date of the applicant's signature had been 12th February 1993 and was altered to 22nd February 1993. The application was sent to the Board by the First Respondent and received by them on 2nd March 1993. On 4th August 1993 the Board received from the Respondents' firm their account synopsis form ACC/AA/1, signed by the First Respondent and submitted by him requesting payment of the minimum fee. The form was accompanied by the solicitor's

file copy of the application for Advice and Assistance. That copy shows that the applicant signed the application form on 12th February 1993.

(c) “RR”

The nominated solicitor in this case was the First Respondent. The Advice and Assistance application form was signed by him and is dated 1st March 1993. The date of the applicants's signature had been 16th February 1993 and was altered to 26th February 1993. The application was sent to the Board by the First Respondent and received by them on 2nd March 1993. On 4th August 1993 the Board received from the Respondents' firm their account synopsis for ACC/AA/1, signed by the First Respondent and submitted by him requesting payment of the minimum fee. The form was accompanied by the solicitor's file copy of the application for Advice and Assistance. That copy shows that the applicant signed the application form on 16th February 1993.

(d) “SS”

The application form in this case was signed by the First Respondent. No solicitor is shown as the nominated solicitor on the form. The name of the firm is given in the space provided for the solicitor's name and address. The date of the applicant's signature had been 23rd July 1993 and was altered to 23 August 1993. The application was sent to the Board and received by them on 27th August 1993. On 29th November 1993 the Board received from the Respondents' firm their account

synopsis form ACC/AA/1, signed by the First Respondent and submitted by him requesting payment of the minimum fee. The form was accompanied by the solicitor's file copy of the application for Advice and Assistance and attendance note. That copy shows that the applicant signed the application form on 23rd July 1993. The claim was rejected by the Board and that fact intimated to the Respondents' firm by a letter from the Board dated 2nd December 1993. The Respondents' employee Miss "SSS", Solicitor, replied by letter of 3rd February 1994 stating that the effective date noted by the Board on ACC/AA/1 acknowledgement of the Advice and Assistance must be incorrect and reference was made to the photocopy Advice and Assistance application forwarded to the Board which was dated 23rd July 1993 with the suggestion that the Board had made a typing error. In fact the acknowledgement form ACC/AA/1 recorded the information provided to the Board on the application submitted to them.

(e) "TT"

The nominated solicitor in this application was the First Respondent. The form of application was signed by him. The date of the applicant's signature had been 19th April 1993 and was altered to 29th April 1993. The application was sent to the Board by the First Respondent and received by them on 6th May 1993. On 28th October 1993 the Board received from the Respondents' firm their account synopsis form ACC/AA/1, signed by the First

Respondent and submitted by him requesting payment of the minimum fee. The form was accompanied by the solicitor's file and business account. There are two attendance notes on that file one recording an attendance with the First Respondent on 19th April 1993 at which the application form was completed.

Also on the file submitted with the account was a letter of 29th September 1993 to the Respondents' firm from their Law Accountants Messrs "UU", "P.2". That letter advised the Respondents on submitting their account to the Legal Aid Board to advise the Board that the wrong date was noted as the commencement date on the Advice and Assistance certificate (acknowledgement) and that that date should have been noted as 19th rather than 29th April. The Respondents' firm did not seek to point that out when they submitted their account to the Legal Aid Board.

(f) "E"

(f) “E”

The nominated solicitor was the Second Respondent. The form of application was signed by her. The date of the applicant's signature had been 14th September 1992 and was altered to 24th September 1992. The application was sent to the Board by “XX”, an unqualified assistant in the employment of the Respondents' firm, on 29th September 1992. On 15th July 1993 the Board received from the Respondents' firm their account synopsis form ACC/AA/1, signed by the Second Respondent and submitted by her requesting payment of the minimum fee. The form was accompanied by the solicitor's file and business account. The date on a precognition of the applicant had also been altered from 14th to 24th September 1992. With the letter of 29th September submitting the application the Respondents' firm also submitted an AA/1A150 form certifying to the Board that the nominated solicitor (the Second Respondent) was continuing to provide advice and assistance up to an increased prescribed limit of £150. That form was signed by the Second Respondent. Also with that letter was an AA/1A application by the Second Respondent. That sought an increase in authorised expenditure to £300. That was granted by the Legal Aid Board on 20th December 1992. The Second Respondent subsequently submitted a further AA/1A seeking a further increase to £400 in the authorised expenditure. That was signed by the Second Respondent and granted by the Board on 29th April 1993. The total claim submitted by the Second Respondent was £331.40.

If the said forms referred to in paragraphs (a) to (f) inclusive had been submitted to the Board within the fourteen day time limit specified in Regulation 10, the fees claimed by the solicitor would have been eligible for payment. As the forms were submitted outwith the said time limit, the solicitor's fees were ineligible for payment.

The date of signature and commencement on each of the application forms and the date on the precognition of "E" were fraudulently altered by someone within the Respondents' firm. None of the forms was altered by any of the Respondents or with their knowledge. The alteration of the date on each of the said forms was done with a view to misleading the Board into thinking that the forms had been submitted to the Board within the fourteen day time limit specified in Regulation 10. The changing of each of the dates represented, in the circumstances, unconscionable behaviour by the Respondents.

- (8) The said application by "E" concerned advice given to the client in relation to a "reparation-damages claim". In Part III of the form the applicant answered the question "Has the applicant any other rights or facilities for assistance (such as through a Trade Union, Motoring Organisation or Insurance Company) in connection with this matter?" That question was answered "No". In signing the form the Second Respondent ought to have been aware of that answer.

- (9) There was an attendance note dated 12th November 1992 on the file of the Respondents' firm recording a telephone call from the client advising the Respondents to proceed with the matter as "VV" had given them the go ahead. There was also on file a copy letter addressed to the client from "VV" dated 26th November 1992. That letter was to the effect that "VV" were not prepared to authorise the use of a solicitor not on their Regional Panel of Solicitors and that if the client wished the Respondents' firm to act he would have to instruct them on a private basis. At or around 12th November the Respondents ought to have been aware that Mr "E" had other rights and facilities available to him or had a reasonable expectation of obtaining financial or other help in connection with the subject matter of his application for legal advice and assistance namely from "WW". The Respondents, and in particular the Second Respondent, ought in the foregoing circumstances to have known that the applicant had rights and facilities available to him in relation to the subject matter of the application and that the applicant's declaration on the application for Advice and Assistance that he had no other rights and facilities available, was false.

Mr "GG"

- (10) In terms of Sections 13(2) and Sections 21(4) of the Legal Aid (Scotland) Act 1986 legal aid is defined as consisting of representation by a solicitor or Counsel. In terms of Section 33(1) of the Act, a solicitor acting for a legally aided person is to be paid out of the Legal Aid Fund in accordance with Section 4(2)(a) of the Act in

respect of any fees and outlays properly incurred by him. In terms of Section 4 of the Solicitors (Scotland) Act 1980 no person shall be qualified to practise as a solicitor unless he is admitted as a solicitor, has his name on the Roll and has in force a Practising Certificate. Mr “GG” was a trainee solicitor with the firm in which at that time First and Second Respondents were the principals. He qualified as a solicitor whilst working with them. Mr “GG” was admitted as a solicitor on 24th July 1991. His name was placed on the Roll of Solicitors on 2nd August 1991. He was entitled to practise as a solicitor from 21st August 1991 but not prior to that date. The First and Second Respondents knew the effective date of Mr “GG’s” Practising Certificate. They were responsible for giving him instructions as to what work he carried out on their behalf whilst he was their employee. The First and Second Respondents ought with reasonable diligence to have known that prior to the effective date of his Practising Certificate Mr “GG” was not entitled to undertake court appearances for legally aided clients.

- (11) Legal Aid accounts were rendered by the Respondents' firm to the Scottish Legal Aid Board in respect of fourteen criminal cases in which Court appearances were made by Mr "GG" between 12th June and 22nd July 1991 and a further nineteen cases between 24th July and 19th August 1991. Payments for those appearances were made under accounts submitted by the Respondents' firm. Those accounts bore the Scottish Legal Aid Board vendor code of the First Respondent and payments were made to the Respondents' firm. The Respondents ought to have known that these sums claimed by way of fees from the Legal Aid Board were not sums properly incurred or properly due to be paid from the Legal Aid Fund.

"YY"

- (12) "YY" was an employee of the Respondents having commenced work with them on 1st July 1993. He had a restricted Practising Certificate effective from 16th September 1992. The restrictions on that Certificate included a prohibition on him undertaking legal aid work in his own name. That restriction was not removed until 29th October 1993.
- (13) An application by "HH" for Legal Advice and Assistance was signed by him and by Mr "YY" on 3rd September 1993. It was submitted to the Board and received by the Board on 4th October 1993. The Board assigned a reference number to the application and acknowledged the application in the normal manner.

- (14) By letter of 15th February 1994 the Respondents wrote to the Scottish Legal Aid Board advising that their acknowledgement of the Advice and Assistance application for Mr “HH” had been issued not in the name of a solicitor but in the name of an unqualified person. They requested that the acknowledgement be re-issued in the name of the First Respondent. The Respondents knew or ought to have known that Mr “YY” was not entitled to undertake legal aid work in his own name. They failed adequately to supervise him. Had they supervised him adequately he would not have submitted an Advice and Assistance application in his own name such as that submitted for Mr “HH”.

“ZZ”

- (15) In 1992 and 1993 the Respondents employed “ZZ”. He was convicted under Section 31(1) of the Solicitors (Scotland) Act 1980 for wilfully and falsely pretending to be a solicitor. This conviction related to actings by Mr “ZZ” whilst in the employment of the Respondents' firm.
- (16) The circumstances which gave rise to that prosecution led to the Scottish Legal Aid Board writing to the Respondents' firm on 29th April 1993. They enclosed inter alia a schedule of cases which involved Mr “ZZ” carrying out Legal Aid work when he was not a solicitor and in respect of which no account had been submitted. The Board gave notice that in respect of those cases no account for fees would be accepted by the Board.

- (17) In particular Mr “ZZ” had on 10th June 1992 at a time when he was not a solicitor, purported to grant Legal Advice and Assistance in his name to “F”. Despite the Board writing as aforesaid to the Respondents' firm, the First and Second Respondents subsequently submitted to the Board an account of expenses in respect of the Advice and Assistance undertaken on Mr “F's” behalf. That matter was listed in the Schedule sent with the Board's letter of 29th April. The First and Second Respondents ought to have known that the account submitted was ineligible for payment and would not be accepted by the Board.

#### Multiple Applications - Minimum fees

- (18) Advice and Assistance is regulated under Sections 6 to 12 of The Legal Aid (Scotland) Act 1986 and the Advice & Assistance (Scotland) Regulations 1987. In determining whether to pay an Advice & Assistance account the Scottish Legal Aid Board has to be satisfied that the applicant has been admitted to Advice and Assistance by a practising solicitor on a matter of Scots Law. The fees allowable to a solicitor are only those fees for work actually necessarily and reasonably done in connection with the matter upon which advice and assistance was given. To enable the Legal Aid Board to assess the sum payable, solicitors have to be able to vouch having given the advice and demonstrate to the satisfaction of the Board that the work was actually necessarily and reasonably done in connection with a matter of Scots Law.

During 1992 and 1993 the Respondents submitted about 1200 minimum fee accounts to the Legal Aid Board on behalf of 450 clients. In many instances there were multiple applications and accounts rendered in respect of individual clients. The Respondents were requested in relation to all of these applications/accounts, to produce their file or other documentation vouching the work having been actually necessarily and reasonably done in connection with the matter upon which advice and assistance was given. The Respondents were unable to produce any file or vouchers in respect of any of these cases in that no record was kept either of the advice (if any) given by them in relation to these matters nor was any record kept from which a determination could be made as to whether or not they had done any work or whether any work done represented work necessarily or reasonably carried out. The Respondents did not keep such records themselves nor did they require in the setting up of their office systems that their assistants and paralegals keep records in relation to matters which would have given rise to applications to the Legal Aid Board for payments of the minimum fee in Advice and Assistance matters.

#### Correspondence from the Scottish Legal Aid Board

- (19) The Chief Executive of the Scottish Legal Aid Board wrote to the Law Society complaining about the foregoing matters by letter of 14th March 1994. The Law Society wrote to the First and Second Respondents on 25th March 1994 giving details of those complaints and seeking their response. Despite reminders, no response other than acknowledgements had been received as at the date of the relevant Complaint namely 30th June 1994.

“A”

- (20) By letter dated 12th August 1992 Mrs “AAA”, “P.3” wrote to the Law Society concerning the actings of the Respondents and in particular the First Respondent, on behalf of her son “A”.
- (21) In October 1992 Mr “A” appealed to The High Court of Justiciary by way of Bill of Suspension seeking suspension of his conviction on a charge of Theft by Housebreaking and of a compensation order made against him. The appeal proceeded on the ground that he was misled into tendering a plea of guilty by misconduct on the part of his solicitor, the First Respondent. In terms of an Opinion of the High Court of Justiciary delivered by The Lord Justice General, Lord Hope, and issued on 25th May 1993 the High Court continued the hearing of the Bill of Suspension raised by Mr “A” to give time for a Complaint against the First Respondent to be made and considered by the Scottish Solicitors' Discipline Tribunal. The Bill was removed from the Rolls of Court pending presentation and determination of this Complaint.
- (22) In May 1992 Mr “A” was served with a summary complaint libelling Theft by Housebreaking. His co-accused was “BBB”, “P.4”. Mr “A” instructed “CCC” of Messrs “FF”, Solicitors, “P.17” to act on his behalf. A plea of not guilty was tendered and trial set for 23rd July 1992. Mr “A” told Mr “CCC” he was

innocent of the offence. Mr “CCC” caused the charges against Mr “A” to be investigated and preparations made for the trial. Legal Aid was applied for and granted.

- (23) Around 16th July 1992 Mr “A” was approached in the public street outside his house by “DDD”. At the time of the approach to Mr “A”, Mr “DDD” was in the vicinity of “A's” house undertaking work on behalf of the Respondents' firm. Mr “DDD” undertook such work regularly on behalf of the Respondents' firm. He approached Mr “A” bearing to act on behalf of the First Respondent. He asked Mr “A” if he had a lawyer, indicating that he knew Mr “A” had a case coming up. Mr “A” advised that “FF” were acting for him. Mr “DDD” told Mr “A” that the First Respondent was a good lawyer, that he would "get him off" with the charge against him and that he would do so "nae bother". A similar comment was repeated in the presence of Mr “A's” mother. Mr “DDD” thus induced Mr “A” to sign a form of mandate requiring Mr “A's” existing solicitors to pass on his papers to the Respondents' firm, and in particular the First Respondent, to act for him. Mr “DDD” telephoned the First Respondent from Mr “A's” parents' house and let Mr “A” speak to the First Respondent. The First Respondent spoke to him and confirmed that he would act for him and told Mr “A” just to sign the forms which Mr “DDD” would give him and that he (the First Respondent) would then deal with the matter.

- (24) Mr “DDD” was encouraged by the Respondents to solicit business for them from members of the public including persons such as Mr “A” who were known or who ought reasonably to have been known to be clients of another solicitor. Said approach made by “DDD” to Mr “A” was in contravention of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991.
- (25) On 17th July 1992 a faxed letter and copy of the Mandate was sent by the Respondents' firm and received by “FF”. The principal thereof was received by post thereafter. As a result of this, copies of all Mr “A's” papers were sent forthwith to the Respondents' firm at their Edinburgh office in accordance with the Mandate.
- (26) The First Respondent also acted for the co-accused “BBB” in relation to these proceedings. He was aged around 29. He had several previous convictions for similar offences and faced the prospect of a prison sentence if convicted. Mr “BBB” was a regular client of the Respondents' firm. The First Respondent had precognosed Mr “BBB” in relation to these proceedings on 21st January 1992. Mr “BBB” told the First Respondent that he had been charged by the police with two matters, that under pressure from the police he had admitted committing both offences, whereas in fact he had committed only one of them. Mr “A's” position was that he was innocent of the charge but he had implicated Mr “BBB” in his replies to the police. In these circumstances the First Respondent in agreeing to act

later for Mr “A” in relation to the same proceedings created a situation in which he was acting for two clients whose interests were in conflict in contravention of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct for Scottish Solicitors (the "Code of Conduct").

- (27) Mr “A” appeared at “P.17” Sheriff Court for trial on 23rd July and sought out the First Respondent. Mr “A” had not previously seen the First Respondent. Mr “A's” first meeting with the First Respondent took place in the corridors of “P.17” Sheriff Court that day. Mr “DDD” was not present. Mr “A” discovered the First Respondent speaking in the corridor to his co-accused Mr “BBB” and Mr “A” introduced himself. The First Respondent was busy talking to Mr “BBB” and said that he would speak to Mr “A” later. The First Respondent spoke to Mr “A” later that morning. On the day of trial the First Respondent did not have with him in Court Mr “A's” copy papers which had been sent to the Respondents' firm by “FF” in response to the Mandate.
- (28) At the time Mr “A” was 16 years of age (Date of Birth 25.9.75). He had no previous convictions, had no experience of and was ignorant of Court procedures. He was unaccompanied by any relative, friend or other supporter. Mr “A” is inexperienced, suggestible and easily led. That he was young and inexperienced in Court matters was or ought to have been obvious to the First Respondent. Mr “A” pled guilty erroneously believing that he would be dealt with lightly or let off. Mr “A's” only interview with the First Respondent took place in the corridor of the Court shortly before the

case called for disposal. Mr “A” was admonished and ordered to pay compensation in the sum of £322.67 payable at £7.50 per week. Mr “BBB's” plea of not guilty was accepted leaving him free of the charge. The service rendered by the First Respondent to Mr “A” in relation to his case constituted an Inadequate Professional Service in terms of The Solicitors (Scotland) Act 1980 Section 53A.

- (29) Following his Court appearance, Mr “A” was very distressed. Shortly thereafter he took an overdose of tablets in an attempt to commit suicide and required psychiatric treatment at the hands of Dr “EEE”, “P.5”.
- (30) Legal Aid was granted to Mr “A” in relation to this matter on 18th June 1992. The nominated solicitor was Mr “CCC”. The First Respondent took no steps prior to the trial diet to have Legal Aid transferred to his name from Mr “CCC”. Accordingly when the matter called for trial Mr “CCC” remained the nominated solicitor although Mr “A” had withdrawn instructions from him and instructed the First Respondent. The First Respondent wrote to the Scottish Legal Aid Board only on 27th July 1992 requesting transfer of agency. The Board refused to transfer the Certificate. Legal Aid not having been transferred to the First Respondent, the First Respondent could not be paid by the Legal Aid Board for his actings on behalf of “A”. The First Respondent was aware of this.

“BB”

- (31) In September 1992 “BB” of “P.6” appeared on Petition in “P.17” Sheriff Court on a charge of aggravated assault and was released on bail. His mother arranged for him to be represented by the Respondents' firm. For a number of years previously he had regularly been represented by Messrs “Z”, Solicitors, “P.7”. In early November 1992 he contacted Miss “FFF” of Messrs “Z” seeking to have her act on his behalf in relation to the aggravated assault. A Mandate was prepared and signed by Mr “BB” and sent to the Respondents' firm at their “P.12” office on 10th November 1992. On 12th November 1992 Mr “BB” was appearing in “P.17” Sheriff Court represented by Miss “FFF” of “Z” when he was approached by “GGG”, a solicitor in the employment of the Respondents' firm. Mr “BB” advised him that he indeed wished “Z” to represent him in relation to the aggravated assault. On 24th November having received no reply to the Mandate, “Z” wrote by recorded delivery to the Respondents' firm at their “P.12” office seeking delivery of the papers in implement of the Mandate. A further Mandate was prepared and sent recorded delivery to the “P.8” office of the Respondents' firm on 26th November 1992 with a copy of that being sent on the same date to their “P.12” office . By 30th November no papers had been received by “Z”. That day they wrote a letter of complaint to the Law Society. “Z” had been advised by the Procurator Fiscal that the charge likely to be preferred in an indictment would either be assault to severe injury

or attempted murder. “Z” in these circumstances were anxious to obtain transfer of the papers and of Legal Aid in order to prepare Mr “BB's” case properly.

- (32) The Law Society wrote to the Respondents' firm on 7th December with a copy of “Z's” letter of complaint. By undated letter received by the Law Society on 11th December the First Respondent indicated that the Mandate, though it had been received, had not been brought to a partner's attention, that they were having difficulty locating papers and that they should have contacted “Z” to explain the position to them. The response suggested that “Z” could get copy papers from the Fiscal and the letter indicated that the Respondents' firm had written to “Z” explaining that they were arranging to have Legal Aid transferred which would allow them to commence preparation immediately. On 18th December 1992 and 5th January 1993 “Z” wrote again to the Law Society reporting that the Respondents' firm had still done nothing to deliver the required papers, to transfer the Legal Aid Certificate or otherwise to correspond with them. On 21st January, following further correspondence from the Law Society, the Respondents' firm wrote to the Law Society advising that they had written to “Z” informing them that they had no objection to the transfer of the Legal Aid Certificate and advising that the appropriate approach would have been for “Z” to write to the Scottish Legal Aid Board requesting the transfer.

“G”

- (33) “G”, “P.9” appeared from custody in “P.15” Sheriff Court on 14th September 1992 together with his co-accused “HHH” having both been previously interviewed by the First Respondent at “P.10” Police Station. Both were charged with vandalism contrary to Section 78(1) of The Criminal Justice (Scotland) 1980. Mr “G” was additionally charged with Breach of the Peace and resisting arrest. Mr “HHH” was additionally charged with attempting to rescue Mr “G” from police custody, resisting arrest and a separate Breach of the Peace. Both accused were represented by “III” a solicitor in the employment of the Respondents' firm. Both pled not guilty and were admitted to bail.
- (34) Mr “III” was admitted as a solicitor on 17th October 1991. He had a restricted practising certificate from 1st November 1991 and a full certificate from 28th August 1992. He worked with the Respondents from 1st September 1992 until 2nd September 1993.
- (35) In his initial interview with Mr “III” on 14th September 1992 Mr “G” advised Mr “III” of his intention to impeach his co-accused “HHH” in relation to the vandalism charge. He repeated this to Mr “III” at a meeting with Mr “III” on or around 27th October. On both occasions Mr “G” specifically raised with Mr “III” his concern that there was a conflict of interest between him and Mr “HHH”. Mr “G” was concerned that the Respondents' firm could in the circumstances not properly act for both accused. Mr “III” assured Mr “G” that this did not pose a difficulty.

- (36) On 4th December four days prior to the trial Mr “G” attended with Mr “III” for a pre-trial consultation. He was advised that the Respondents' firm could not act for him due to a conflict of interest and that he would require to instruct separate solicitors. The previous representation of both Mr “G” and Mr “HHH” had been in contravention of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct. On Monday 7th December Mr “G” instructed Messrs “II”, Solicitors, “P.11” to act for him. That afternoon the Respondents' firm sent “II” copies of Mr “G's” papers by faxed message. At the same time they advised that Legal Aid had been granted and that they had no objection to Legal Aid being transferred. That information was inaccurate as Legal Aid was only granted on review by the Legal Aid Board on 8th December. The Respondents' firm had also written to Mr “G” on 22nd October advising him that Legal Aid had been granted. That too was inaccurate.
- (37) In his dealings with the Respondents' firm in relation to this matter Mr “G” dealt with Mr “III” and the First Respondent and Mr “GG”. The First Respondent was the nominated solicitor in the Legal Aid application which was granted. The Respondents were responsible for the actions of Mr “III”, their assistant, in relation to his handling of this matter. In common with other assistants qualified and unqualified within the Respondents' firm Mr “III” was left largely unsupervised and to his own devices in his handling of clients' business. Like other assistants he was under pressure from the Respondents to secure and retain legal

business from members of the public. Like other assistants he had to demonstrate on a daily basis to the satisfaction of the Respondents his having achieved his daily fees target from carrying out Legal Aid work. The Respondents were responsible for the failure by Mr “III” to identify a conflict of interest between Mr “G” and his co-accused and to take appropriate steps in the light of that conflict to ensure that they were both separately represented. Likewise the Respondents were responsible for the inadequate professional services provided by Mr “III” in his handling of Mr “G’s” affairs.

- (38) On 28th January 1993 “II” sent a letter of complaint to the Law Society. The Law Society forwarded a copy of that letter to the Respondents' firm on 24th February 1993 and requested their response to this complaint. The Respondents passed the Law Society's letter on to Messrs Levy & McRae, Solicitors, Glasgow for reply. Levy & McRae were handling on the Respondents' behalf a number of other complaints. On the instructions of the Respondents and in particular the First Respondent, Levy & McRae replied to the Law Society on 3rd August 1993 stating inter alia (in relation to the interview between “III”, “G” and “HHH” on 14th September 1992):-

"Both accused indicated that they could not remember accurately what had happened and that they wished to discuss matters and thereafter piece together the

events of the night in question. At the Pleading Diet there was no question of conflict".

This was untrue in that the conflict was apparent immediately upon Mr "G" indicating that he wished to incriminate Mr "HHH".

"Y"

- (39) Around February 1993 "Y" was on remand in "P.25" Prison in relation to a solemn criminal matter. From the time of his remand Mr "Y" was represented by Messrs "OO" Solicitors, "P.25". The fact that he was remanded in custody was an indication to any competent solicitor that Mr "Y" in all likelihood was already represented by a solicitor.
- (40) Without being requested to do so by Mr "Y", the First Respondent visited him in "P.25" Prison on or around 2nd February 1993. He advised Mr "Y" that he was visiting him at the instance of Mr "Y's" girlfriend "KKK" from whom, he said, he understood Mr "Y" was not happy with his own solicitor. The First Respondent indicated that it would not be proper for him to comment on the reputation of another solicitor. He went on to boast about how good he was, telling Mr "Y" that he had a great reputation throughout the Edinburgh and Fife area and had secured five acquittals in murder cases during the previous year. He went on to guarantee that he would secure an acquittal for Mr "Y" if appointed to act for him. He told Mr "Y" that when he went into Court he did not sit back and let the judge do all the talking. Said statements were in contravention of Rule 8 of the Solicitors

(Scotland) (Advertising and Promotion) Practice Rules 1991. By so saying he induced Mr “Y” to sign a Mandate in his favour requiring transfer of his papers to the Respondents' firm from “OO”. The First Respondent left Mr “Y” with a batch of his business cards asking Mr “Y” to pass these on to anyone else within the prison who might be looking for a solicitor.

“H”

- (43) Prior to the events referred to in the next following paragraph, Mr “CC”, Solicitor, “P.12” had acted for “H” care of “P.13” in relation to various matters.
- (44) In or around 1992 Ms “H” was approached by “DDD” in the precincts of “P.17” Sheriff Court. He indicated that he was an enquiry agent who carried out work on behalf of the Respondents' firm. During the course of 1992 Mr “DDD” regularly met with Ms “H”. He made numerous efforts to persuade her to change solicitors, to stop instructing Mr “CC” and to instruct the Respondents' firm. During the course of 1992 Mr “DDD” regularly transported her in his car to visit her acquaintances in prison and to and from the local Social Security office. Despite being told by her that she was satisfied with the services of her present solicitor Mr “DDD” sought over a period to undermine her confidence in her own solicitor. He told her that her solicitor was telling the police that she was mad and laughing at her behind her back. He told her that her solicitor was doing deals behind her back in relation to her cases. He

approached her regularly in “P.17” Sheriff Court and District Court. He commented on the outcome of cases in which she was involved saying that the outcome would have been much better for her had the Respondents' firm been acting rather than her own solicitor. He claimed to be an independent enquiry agent trading as “CCCC”, and claimed to have no connection with the Respondents. Said approaches were in contravention of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991. She finally succumbed to his entreaties to sign a Mandate in favour of the Respondents. She signed that Mandate on the understanding that it authorised release to the Respondents' firm only of papers in connection with her criminal court work. Her intention was for Mr “CC”, her existing solicitor, to continue with civil matters. She was misled into signing the Mandate which in fact required the transfer of all her papers to the Respondents.

- (45) Ms “H” became dissatisfied with the service provided by the Respondents' firm and she re-instructed Mr “CC” and on 5th March 1993 signed a Mandate in his favour which Mr “CC” sent to the Respondents' firm and was received by that firm on 6th March . On 15th March Ms “H” attended the office of the Respondents' firm in Glenrothes where she was seen by Mr “DDD” who was at that time working as an unqualified assistant or paralegal in the employment of the Respondents. She asked Mr “DDD” to confirm that all her papers had been sent in accordance with her Mandate to Mr ”CC”. He said that they had not all been sent as it was his

understanding that the Respondents' firm were still to act for her in relation to some matters. She advised him that this was not her position and was asked by Mr "DDD" to sign another piece of paper to authorise release of her papers to Mr "CC". She signed a sheet of paper which Mr "DDD" explained would authorise release of her further papers to Mr "CC". This included papers in relation to a case before the Court on the following Wednesday.

- (46) On 16th March 1993 in "P.14" Ms "H" was approached by Mr "DDD". He alighted from a car driven by Mr "GG". Mr "DDD" attempted to persuade her that she was making a mistake in seeking to instruct Mr "CC" and suggested that she should change back to the Respondents' firm. This approach was also in contravention of the said Rule 5. She then met Mr "CC" at Court. He advised her that the First Respondent and Mr "GG" were in Court and that the First Respondent intended to act for her in relation to her case that day. She told Mr "CC" that she wanted him to act. Mr "DDD" was also present and Ms "H" felt intimidated by the presence and actions of the First Respondent, Mr "GG" and Mr "DDD". She was advised by a police constable present in Court to go and sit in a defence witness room to escape their attentions and the officer indicated that he would make sure that they did not enter the room.

Mr "DDD" was treated by the Respondents as though he were an unqualified assistant whether employed by the Respondents' firm as a paralegal (as he sometimes was) or whether trading on his own account as "CCCC". In particular he was required to attend with

other assistants, qualified and unqualified, the early morning meetings held by the Respondents' firm. He was required to demonstrate to the satisfaction of the Respondents that he had, in common with the firm's qualified and unqualified assistants, achieved his Legal Aid fees target for the previous day. In common with the firm's assistants he was encouraged to procure business for the firm whether of unrepresented individuals or of individuals already represented by other solicitors. In common with the firm's assistants he was harangued and vilified by the partners and in particular the Second Respondent if at these meetings he failed to demonstrate success in meeting his fees target and in bringing business into the firm. In these circumstances the Respondents were responsible for his actions towards Ms "H".

"I"

- (47) "I" was a long standing client of "JJ", Solicitors, "P.15". They represented him when he was remanded in custody for a trial to take place in "P.15" Sheriff Court on 14th July 1993.
- (48) Around 7th July Mr "I" was visited in custody by "YY" an assistant solicitor in the employment of the Respondents. Mr "I" had never requested a visit from any representative of the Respondents' firm. He was in no way dissatisfied with the service being provided by his solicitors. Mr "YY" handed him his business card and asked him to sign a scrap of paper. He signed the paper but did not know what he was signing. The following day the Respondents' firm sent "JJ" a mandate signed by Mr "I" requiring transfer

of papers to the Respondents' firm in connection with Mr "I's" outstanding matters. Mr "I" at no time wished his papers transferred and was unaware that what he had been asked to sign was a mandate.

- (49) "JJ" wrote to the Law Society on 5th August complaining about Mr "YY's" actions. The Law Society wrote to Mr "GG" on 25th August seeking an answer to the complaint. Mr "YY" replied in the name of the Respondents' firm on 17th September objecting to the contents and tenor of "JJ's" letter and denying any impropriety. The Law Society wrote on 1st October to Mr "YY" seeking a detailed response. Mr "YY" replied on 19th November in the name of the Respondents' firm again denying any impropriety and indicating that a full and detailed rebuttal would be forthcoming in the near future. Reminders were sent to the Respondents' firm on 2nd December 1993, 17th January, 8th and 25th March 1994. As at the date of the particular Complaint, namely 30th June 1994 no detailed reply had been forthcoming.
- (50) Mr "YY" was required to work under the regime or scheme by which the Respondents operated their firm and was subject to the pressures all as outlined in paragraphs (2) to (5) supra. In those circumstances the Respondents were responsible for his actions in relation to Mr "I".

“J”

- (51) On 12th July 1993 Messrs “KK”, Solicitors, “P.16” (“LLL”) wrote to the Respondents' firm on behalf of “J”, “P.18”. They also asked in the same letter for confirmation of whether or not Legal Aid had been granted to Mr “J”. The Respondents replied on 16th July sending papers relating to Mr “J” and indicating that three Legal Aid Certificates had been granted. On 21st July “LLL” wrote to the Respondents' firm asking them to confirm that they would have no objection to transfer of all Legal Aid Certificates into the name of their Miss “MMM”. On the same date they wrote to the Scottish Legal Aid Board seeking to have a particular Certificate transferred to Miss “MMM”. On 23rd July having had no response from the Board, “LLL” telephoned the Board only to be advised that the Board themselves had written to the Respondents' firm enquiring whether there was any objection to the transfer of the Legal Aid Certificate but had elicited, no response. “LLL” wrote again to the Respondents' firm on 26th July asking them to confirm to the Board or indeed to “LLL” that they had no objection to the transfer of all Legal Aid Certificates. On 26th July the Board sent “LLL” a letter asking for the reason for requesting transfer of one particular Certificate. “LLL” replied to that by letter of 28th July.

- (52) By 11th August “LLL” had received no correspondence from the Respondents' firm nor any response from the Board as to the transfer of the Certificate. “LLL” wrote to the Respondents' firm again on 11th August demanding a response; and again on 23rd August seeking a response within 48 hours. By 27th August no response had been received from the Respondents nor had the Board received any correspondence from them as to whether they objected to transfer of the Legal Aid Certificates. As a result of this delay “LLL” had to conduct criminal court matters on behalf of Mr “J” without Legal Aid being transferred. Accordingly on 27th August “LLL” complained to the Law Society.
- (53) On 22nd September 1993, the Law Society wrote to the Respondents' firm (marked for the attention of the First Respondent) enclosing a copy of “LLL’s” letter of 27th August. The Complaint was acknowledged by Mr “GG” who replied by letter of 4th October indicating that the Respondents had passed the matter on to their solicitors Messrs Levy & McRae for a response. By letters of 8th October and 16th November 1993 Levy & McRae indicated that they awaited seeing the Respondents' file. In those letters they also confirmed what they saw as the basis of the complaint requiring an answer. Following a further letter from the Law Society of 20th December 1993 and a reminder of 10th February 1994 Levy & McRae replied by letter of 15th February 1994. That letter indicated that they had written to the First Respondent for his comments. Following a further reminder from the Law Society of 8th March Levy & McRae

replied on 10th March indicating that they were without instructions. The First Respondent wrote to the Law Society direct on 22nd March indicating that his firm was now handling the complaint themselves. This was the first letter from or on behalf of the Respondents bearing to answer the complaint. The answer given was that Mr "J's" file appeared to have been destroyed. after payment, that it was the firm's policy to agree transfer of Legal Aid, and that if no letter had been written to the Legal Aid Board on this occasion this had been the result of an administrative error.

"K"

- (54) Messrs "LL", Solicitors, "P.15" appeared at Court on 19th May 1993 to represent "K". He asked them to act on his behalf in relation to other matters in room of the Respondents' firm. He said he no longer had any faith in their ability to represent him. He signed a Mandate requiring the Respondents' firm to send his papers to them. That was sent to the Respondents' firm by letter of 24th May. No response was received by 11th June and a reminder was sent that day. The Scottish Legal Aid. Board advised "LL" that the Respondents' firm were acting for Mr "K" with the benefit of Legal Aid. On 23rd June "LL" wrote to the Respondents by Recorded Delivery Post. That letter pointed out the Respondents' failure to reply to the two earlier letters and an early response was demanded in view of the imminence of the trial diet which had been set for 8th July.

- (55) By the trial date the Respondents had not replied, no papers had been passed over and Legal Aid had not been transferred; and “LL” were forced to represent Mr “K” at the trial diet without any of his papers and without the benefit of Legal Aid.

“L”

- (56) On or around 9th November 1993 “L” then a prisoner in H.M. Prison, “P.26”, contacted Messrs “LL”, Solicitors, “P.15” asking that they arrange to visit him. He was seen in prison by their Mr “NNN” on 10th November. He advised that he had hitherto been represented by the Respondents' firm but no longer wished to be so because he was dissatisfied with their service. He had trials due to be heard in “P.15” on 17th November, 8th December and 18th January in which the Respondents were representing him. On 10th November Mr “L” completed a Mandate addressed to the Respondents' firm requiring all papers held on his behalf to be passed on to “LL”
- (57) On 10th November “LL” wrote to the Respondents' firm by First Class Recorded Delivery letter, and by faxed message, sending the Mandate and requesting delivery of the papers, seeking a note of all Legal Aid reference numbers and confirmation that the Respondents had no objection to the transfer of Legal Aid.

- (58) Despite receipt of those communications a representative of the Respondents' firm attended H.M. Prison, "P.26" on or about 11th or 12th November and sought a meeting with Mr "L". Mr "L" advised the authorities that he did not wish to see anyone from the Respondents' firm.
- (59) By 17th November (the date of Mr "L's" first trial) the Respondents' firm had already fully investigated the Crown case. Mr "GG" had been nominated to act for Mr "L" under the Criminal Legal Aid Certificate in relation to this matter. The Respondents' firm were in a position to deliver copy Crown statements, and the copy complaint and transfer the Legal Aid Certificate but failed to do so; nor had any response been elicited from the Respondents' firm following the transmission to them of the Mandate. In the circumstances "LL" had to appear without the benefit of Legal Aid and seek an adjournment of the trial. The circumstances which necessitated the adjournment of the trial were explained to the presiding Sheriff who resolved that the circumstances ought to be reported to the Law Society and the Scottish Legal Aid Board.
- (60) By 9th December 1993 "LL" had received some papers from the Respondents' firm. These papers were incomplete and in particular did not include any papers in relation to the trial which had been adjourned on 17th November. The lack of these papers continued to frustrate "LL" in their proper preparations for the adjourned trial.

- (61) “LL” complained to the Law Society by letter of 17th November. The Law Society wrote to the Respondents' firm on 8th December 1993, enclosing a copy of the letter of complaint. The Respondents' firm instructed Levy & McRae, Solicitors, Glasgow to deal with the complaint on their behalf. The First Respondent reported this to the Law Society by letter of 9th December. Levy & McRae confirmed by letter of 29th December that they were taking matters up immediately with the Respondents' firm. Levy & McRae were sent a reminder on 8th March. They and the Respondents' firm were written to further by the Law Society on 25th March, the Law Society reporting that the matter was being referred to a Complaints Committee Member. As at the date of the relevant Complaint namely 30th June 1994, no substantive response to “LL's” complaint had been received by the Law Society.

“M”

- (62) On 31st. December 1993 “M” then a prisoner in “P.26” Prison wrote to Miss “OOO” of Messrs “DD”, Solicitors, “P.17”. He wrote in unambiguous terms "I am currently in the process of sacking my current lawyers Gordon Thomson & Company. Your firm was recommended to me by my cellmate “QQQ” and by my dad who is serving twelve years at “P.27” Prison. I am in here for three assaults and robberies. Would you be interested in taking over my case? And if so would you come and see me regarding this as soon as possible"

- (63) In response to that letter a representative of “DD” visited “M” in prison on 7th January 1994 when he completed a Mandate. He expressed dissatisfaction with the service he had obtained from the Respondents' firm. “DD” wrote to the Respondents' firm by First Class Mail on 12th January enclosing the Mandate and seeking implement thereof.
- (64) Shortly after they received the Mandate, around 14th January the Respondents' firm caused Mr “M” to be visited in prison by their assistant “RRR”. This approach was in contravention of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991. Mr “M” was asked by Miss “RRR” to sign a Countermandate in favour of the Respondents' firm which he did sign. In so doing she was acting in accordance with the First and Second Respondents' instructions. She was subject to the working practices and pressures imposed by the First and Second Respondents on their assistants as set out in paragraphs (2) to (5) supra. By letter of 17th January 1994 the First Respondent sent the Countermandate to “DD”.
- (68) “O”

In June and July 1993 the Respondents' firm and in particular the First Respondent, were acting for “O” then a prisoner in H.M. Prison “P.26”, “P.15” in relation to various criminal matters. Mr “O” had the benefit of Legal Aid with the First Respondent as his nominated solicitor. Mr “O” was due for trial in “P.15” Sheriff Court on these matters on 19th July. On or around 6th July Mr “O” terminated the agency of

the Respondents' firm and he advised them of this. On 7th July he consulted "AA" of Messrs "JJ", Solicitors, "P.15" and signed a Mandate in his favour. That Mandate was despatched to the Respondents' firm on 7th July by faxed message and by post. Between then and the trial date "JJ" telephoned the office of the Respondents' firm on two occasions seeking delivery of the papers in implement of the Mandate. By the trial date no papers had been delivered. Mr "AA" was not aware of the trial date until 18th July when he was contacted from "P.26" on behalf of Mr "O". On the morning of the trial Mr "AA" approached "YY" an assistant solicitor in the employment of the Respondents, concerning the matter. Through the efforts of Mr "YY", copies of some papers relating to Mr "O" were delivered to him in time for the further calling of the case in the afternoon of 19th July. Mr "AA" was not in a position in these circumstances to go ahead with the trial. The whole circumstances were explained to the Sheriff. Both Mr "AA" and the Sheriff anticipated that the trial would be reasonably complicated, and an adjournment was sought and granted. The adjournment was granted on the basis of the Respondents' failure to implement the Mandate timeously by the delivery of all Mr "O's" papers. Mr "O" was remanded in custody for a further four weeks and eight prosecution witnesses who had been cited were put to unnecessary inconvenience.

(69) The Sheriff asked the Respondents for an explanation. The First Respondent tendered an explanation by letter to the Court of 20th July. In that letter he explained that the initial facsimile was illegible and that instructions were given to a Secretary by Mr “YY”, to the effect that copy papers should be passed to “JJ” when the hard copy letter arrived. It was explained that the letter arrived on 9th July, that “JJ” had not further communicated between then and the trial date and that the Respondents could not explain their failure to implement the mandate because the secretary to whom the instructions had been issued was no longer in their employment. The Sheriff found this explanation unacceptable and inconsistent with what he had been told by Mr “AA”. He considered implement of the Mandate to be ultimately the responsibility of the partners and that in an important matter such as a custody trial where time was short, such partners had a duty to check positively that a Mandate had been implemented immediately. In the circumstances the Sheriff reported the matter to the Law Society by letter of 29th July 1993.

“P”

(70) For a number of years prior to 1994 Messrs “LL”, Solicitors, Edinburgh acted on behalf of “P”, care of “P.19”. They were due to represent him in a summary trial on 2nd March 1994. He had originally appeared on Petition in relation to that matter on 8th December 1993 when he was remanded in custody. Subsequently on 15th December the matter was reduced to proceed by way of

summary complaint. He was granted bail. On both occasions he was represented by Messrs "LL". He was released on bail at 12.30pm on 15th December. Bail had been strenuously opposed by the Crown. On 29th December "LL" received from the Respondents' firm a Mandate. It purported to have been signed by Mr "P" at 4.35pm on 15th December. In the circumstances "LL" were surprised that a Mandate had been signed that day by Mr "P". He had expressed himself as having been most satisfied with their services. In the early morning of 31st December Mr "P" visited "LL's" offices and instructed them not to implement the Mandate.

- (71) Mr "P" having instructed "LL" not to implement the Mandate, "LL" wrote (on 5th January 1994) to the Respondents' firm advising that they would not be implementing the Mandate.
- (72) On 21st January "LL" received a letter of 18th January from the Respondents' firm enclosing a further Mandate signed by Mr "P". The Mandate was dated 11th January 1994 and the letter was written by a qualified assistant Miss "SSS" employed by the Respondents' firm for whom the First Respondent was responsible.

- (73) Shortly after receiving the Mandate two partners of “LL” interviewed Mr “P”. He instructed them not to implement the further Mandate. He indicated that in the light of the extravagant claims made as to the quality of service provided by the Respondents' firm he had made his own informal enquiries and understood those claims to have been exaggerated.
- (74) Mr “P” was arrested on 28th January 1994 and taken to “P.20”. He asked the police to advise “LL” of his arrest. They duly did this and they arranged for him to be visited there on 28th January. He then appeared at “P.15” Sheriff Court (on Petition) on Monday 31st January. He again advised the police there that he wished “LL” to act for him. He was visited by Ms “TTT”, a partner in “LL”.
- (75) On or around 1st February the First Respondent visited Mr “P” in “P.26” Prison. He tendered certain advice in relation to the Petition matter advising in particular that Mr “P” should not be pleading guilty to the charges. The First Respondent also stated that he wished to go over with Mr “P” papers which he had in relation to Mr “P's” forthcoming summary trial. In the circumstances he made this visit when he knew or ought to have known that he was not instructed by Mr “P” and that Mr “P” was instructing “LL”. This approach to Mr “P” by the First Respondent was in contravention of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991.

Lothian & Borders Police

- (76) On 3rd February 1994 "Q" was arrested and taken to "P.20". An "Arrest - Rights of Accused" form was completed by the police in respect of this. That form records that Mr "Q" elected to have a solicitor from Messrs "UUU", "P.21" contacted. The solicitor concerned was notified shortly before 3pm. Shortly after 3pm he was visited at the police station by "VVV" of that firm.
- (77) Later that afternoon the First Respondent called at the police station and asked for a private interview with the prisoner. The police explained that he had already been seen by a solicitor and had made no further request for any other solicitor to be contacted. The First Respondent left the police station. During the course of the evening however he and a paralegal in the employment of the Respondents' firm "RRR", telephoned the police station. They did so on a number of occasions. In these conversations they requested repeatedly that the police approach the prisoner and ask him which solicitor he wished to represent him. These calls were dealt with by the Duty Inspector, "WWW". The police were under no duty to comply with these repeated requests. Nevertheless the Duty Inspector spoke to the prisoner. He intimated that he was not dissatisfied in any way with Mr "VVV" and he had no request to see another solicitor. Later in the evening, a further telephone call was made to the Duty Inspector by the First Respondent. It was explained to him that the accused had been seen by the solicitor whom

he nominated in the "Arrest - Rights of Accused" form. It was explained that following his and Miss "RRR's" earlier phone calls the Duty Inspector had personally interviewed the prisoner. The police position in relation to the "Arrest - Rights of Accused" form was explained to him and an account was provided of the personal interview which had been conducted with the prisoner as a result of the calls by the First Respondent and Miss "RRR". The First Respondent intimated that he was dissatisfied with this explanation and asked the Inspector to ask the prisoner specifically if he wanted to be represented by him. The Inspector explained that he was not prepared to do this. He explained his view that the request was unethical and unprofessional. The Inspector was shocked by the Respondent's conduct and that of Miss "RRR" on his behalf. The Inspector suggested that the First Respondent might be better to discuss the matter with Mr "VVV". The First Respondent indicated that he considered that suggestion impracticable on the basis that he and Mr "VVV" were "rivals". The First Respondent's approaches were in contravention of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991.

- (78) The First Respondent stated to the Inspector that he was tape recording the telephone conversation and threatened to lodge a complaint relative to the matter with the Chief Constable. The First Respondent continued in that vein for several minutes. No further approach was made by the police to the prisoner. No complaint was made by the First Respondent to the Chief Constable.

“C”

- (80) On 7th March 1994 “C” was detained under Section 2 of the Criminal Justice (Scotland) Act 1980 within “P.20”. Her solicitor at that time was Mr “XXX”, Solicitor, a partner with Messrs “YYY”, “P.15”. On being detained she advised the Police that she wished Mr “XXX” informed of her detention. Police Inspector “WWW” was in charge of the cells area at “P.20” at the relevant time that day. Ms “C” did not request the attendance of any other solicitor. The First Respondent knowing her to be represented by another solicitor and without making any enquiry of the Police as to whether or not she wished to be represented by him, visited her in custody. He did so without the consent of her solicitor and without being requested to attend by her or on her behalf. He visited her with the intention to solicit business from her. This approach to Ms “C” by the First Respondent was in contravention of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991.

“D”

- (81) For several years “D” had been a client of Messrs “YYY”, “P.15”. Some time in 1993 he became a client of the Respondents' firm. They were acting for him in relation to certain matters immediately prior to 2nd March 1994. On that date he appeared from custody in “P.15” Sheriff Court. At his request he was represented by a solicitor of “YYY”. On that occasion he asked “YYY” to represent him in connection with all of his outstanding cases. He signed a Mandate requiring the

Respondents' firm to pass on all of his papers to "YYY". That Mandate was sent to the Respondents' firm by letter from "YYY" dated 4th March 1994. The Respondents' firm replied by letter of 8th March forwarding some papers. On 10th March the First Respondent with the knowledge that the Mandate had been received and that his agency had been terminated by Mr "D", attended "P.26" Prison, "P.15" representing himself to be Mr "D's" agent and seeking to approach Mr "D" with a view to soliciting business from him. This approach to Mr "D" by the First Respondent was in contravention of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991. Mr "D" advised the First Respondent through the prison authorities, that he did not wish to be seen by the First Respondent. Mr "D" had not requested any visit by the Respondents' firm. Mr "D" had the benefit of Legal Aid.

"B"

- (82) On 22nd June 1994 "B" a long standing client of Messrs "ZZZ", Solicitors, "P.15" appeared at "P.15" Sheriff Court represented by them. On that date he was approached by "RRR" a paralegal in the employment of the Respondents' firm. She attempted to solicit his business. Mr "B" pointed out to her that he was represented by "ZZZ" and was content to remain represented by them. Despite being told this, Miss "RRR" shortly thereafter visited him on remand at "P.26" Prison, gave him her business card and sought to have him

complete a Mandate in favour of the Respondents' firm and sign a Legal Advice and Assistance Application Form. Miss "RRR's" approach to Mr "B" in "P.26" Prison took place when she knew that he was a client of "ZZZ". The visit was done with the intention on Miss "RRR's" part of soliciting Mr "B's" business. Mr "B" had the benefit of Legal Aid. The Second Respondent was responsible for Miss "RRR's" approach to Mr "B", which approach was contrary to Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991.

"R"

- (83) On 7th December 1993 "R" wrote to the Law Society invoking their aid in relation to his complaint about the service provided by the Respondents' firm. He complained that they failed to represent him adequately by properly advising him as to the implications of allowing a Divorce Decree to pass against him as undefended. The Complaint was put to the Respondents' firm on 8th February 1994. The First and Second named Respondents instructed Messrs Levy & McRae, Solicitors to deal with the complaint on their behalf. These solicitors wrote to the Law Society on 10th February indicating that they would respond when they obtained the file. No response was received. The Second Respondent wrote to the Law Society on 22nd March indicating that "As a result of many of spurious claims that are made against my firm we found it necessary to send our files to SLAB in order for us to receive payment.... as soon as I retrieve it from SLAB I will reply to this matter in full." Reminders were sent to

the First and Second Respondents on 25th March, 29th April and 20th May. The last letter required delivery of the file within 7 days. No reply had been received by 2nd June 1994. On that date the Council of the Law Society resolved in terms of Section 15(2)(i) of the Solicitors (Scotland) Act 1980 that notices be sent to the partners of the firm ordering that a detailed explanation be provided to the Law Society within 21 days. These notices were sent to both the First and Second Respondents by letters of 9th June 1994. Levy & McRae wrote to the Law Society on 28th June indicating that they had been re-instructed in relation inter alia to the complaint by Mr "R" and that they would respond to the Law Society once they had an opportunity of considering the file. A partner of Levy & McRae wrote to the Law Society further on 4th July 1994 indicating inter alia that they had written to the First and Second Respondents "putting them on notice that I require the file". By 4th August 1994 no response had been received and as resolved by the Council of the Law Society, the First and Second Respondents were sent notices in terms of Section 15 of the said Act indicating that they were required to give six weeks notice to the Registrar of their intention to make application for a Practising Certificate for the year commencing 1st November 1994. Both the First and Second Respondents replied by hand-delivered letter to the Law Society dated 8th August 1994 giving notice in terms of Section 15(2) of the said Act that they intended to apply for a Practising Certificate. Following sundry reminders from the Law Society to the First and Second Respondents and to Levy & McRae, as at 28th March 1995,

being the date of lodging the relevant Complaint, no response had been received by the Law Society. Mr “R” had the benefit of Legal Aid.

“S”

- (84) Messrs “Z” acted for “S” and on 22nd February 1994 they wrote to the Law Society complaining of an inadequate professional service rendered to him by the Respondents' firm in connection with their representation of him in relation to a Summary Criminal Complaint. The Law Society wrote to the Respondents' firm on 3rd March taking up the complaint and seeking a response. No substantive response other than a holding letter was sent by the First and Second Respondents to the Law Society. In June 1994 a notice was served on the First and Second Respondents in terms of Section 15(2)(i) of the Solicitors (Scotland) Act 1980. In June 1994 a letter was received from Messrs Levy & McRae, Solicitors, indicating that they had not received any papers from the First and Second Respondents to enable them to make a satisfactory response. Between then and 4th January 1995 correspondence between the Law Society and Levy & McRae indicated that the First and Second Respondents were unable to reply because they could not locate Mr “S's” file. The file was ultimately discovered. A substantive response was ultimately sent to the Law Society by Levy & McRae on 4th January 1995.

“T”

- (85) By letter of 14th June 1994 solicitors acting for “T” invoked the aid of the Law Society in connection with the apparent inadequate service provided to her by the Respondents' firm in connection with their handling of her matrimonial affairs. By letter dated 23rd June 1994 the Law Society sent a copy of that letter to the First and Second Respondents. Despite sundry correspondence between the Law Society and the solicitor for the First and Second Respondents no substantive response had been received by 28th March 1995, being the date of lodging the relevant Complaint.

“V”

- (86) By letter of 10th March 1994 Messrs “NN”, Solicitors, “P.22” invoked the aid of the Law Society on behalf of Miss “V”. The complaint related to an apparent failure to implement a Mandate. The complaint was intimated to the First and Second Respondents by letter from the Law Society dated 21st March 1994. Despite reminders no response was received. On 9th June the Council of the Law Society served notices on the First and Second Respondents in terms of Section 15(2)(i) of the Solicitors (Scotland) Act 1980. No further response was received from these Respondents or on their behalf until the Law Society received a letter from these Respondents' solicitors Messrs Levy & McRae dated 7th December 1994. “V” had the benefit of Legal Aid.

“W”

- (87) On or about 11th December 1992 Messrs “DD”, Solicitors, “P.23” were instructed by “W” in relation to a matter in respect of which she had been previously advised by the Respondents' firm. She signed a Mandate requiring the transfer of her papers from the Respondents' firm to “DD”. That Mandate was sent to the Respondents' firm by faxed message on 14th December 1992. A reply was sent by the Respondents' firm that day sending “DD” a copy of the Complaint and list of witnesses only. No police statements or precognitions were sent. “DD” sent a faxed message on 14th December and a further faxed message on 15th December each seeking delivery of Miss “W's” remaining papers. On 17th December the First Respondent advised “DD” by telephone that there was no objection to the transfer of Legal Aid. Shortly thereafter the First Respondent met a partner of “DD” and confirmed that all papers including precognitions would be forwarded. On 31st December “AAAA”, trainee solicitor in the employment of the Respondents' firm wrote in the name of the Respondents' firm to “DD” professing to enclose all relevant papers. Only a further copy of the Complaint and copies of Miss “W's” precognition were enclosed. On 31st December 1992 Ms “BBBB”, a partner in “DD” attempted to speak to Mr “AAAA” with a view to having Miss “W's” whole papers sent. She was unable to speak to him and spoke instead to “RRR”, a paralegal in the employment of the Respondents' firm. She assured Ms “BBBB” that all precognitions would be sent by faxed message. Shortly

thereafter a further copy of the Complaint and copy of Miss “W’s” precognition were sent. “DD” telephoned again and were advised that precognitions and the whole remaining papers would be sent. Once more a copy of the accused’s precognition was sent. Ms “BBBB” again phoned Ms “RRR” and was then told that the Respondents’ firm did not have precognitions of any witnesses or other papers despite earlier assurances that these would be sent. Crown witness precognitions had been taken by or on behalf of the Respondents’ firm prior to receipt of the Mandate by Miss “W”. Furthermore Central Police had sent the Respondents’ firm copy Police statements on 16th September 1992. Prior to receipt of Miss “W’s” Mandate, the Respondents’ firm had gone over Crown witness statements with Miss “W” and precognosed her in the light of those statements. Miss “W’s” Trial was set for 5th January 1993 in “P.24” Sheriff Court. The First and Second Respondents were both responsible for their firm’s failure to implement said Mandate. In order to be fully prepared for that Trial, “DD” required in the light of the failure to implement the Mandate, to take urgent steps to obtain copies of Police statements direct from Central Police. “W” had the benefit of Legal Aid.

“X”

- (88) “X” had been abducted and raped and instructed the Respondents' firm to make a claim on her behalf to the Criminal Injuries Compensation Board. She dealt with “AAAA”, a trainee solicitor working from the “P.16” Office of the Respondents' firm. The Criminal Injuries Board made an offer of £7,500. Around January 1994 Mr “AAAA” advised Miss “X” to accept that offer and she signed a form of acceptance. On reflection, and having spoken to friends, she doubted whether she had sound advice from Mr “AAAA” as to the acceptability of the offer. She wondered whether the sum offered was adequate compensation for her injuries.
- (89) Around February 1994 Miss “X” instructed Messrs “EE”, Solicitors, “P.16” with a view to obtaining advice on the matter. On 18th February she signed a Mandate addressed to the “P.16” Office of the Respondents' firm, seeking delivery of Miss “X's” entire file. The Mandate was faxed to the “P.16” Office that day. On 25th February Mr “AAAA” replied from the “P.16” Office to the effect that the file would be sent on when the Respondents' firm had received it back from their law accountants. Despite reminder letters from the Law Society no file had been delivered to “EE” by 28th March 1995 being the date of lodging the relevant Complaint.

- (90) “EE” wrote on 24th June 1994 invoking the aid of the Law Society in connection with the whole matter. On 5th July the Law Society wrote to each of the First and Second Respondents enclosing a copy of “EE’s” letter of complaint and requiring a response. Apart from holding letters, no substantive response had been received by the Law Society by 28th March 1995 being the date of lodging the relevant Complaint despite reminders to each of these Respondents dated 5th August, 1st September, 3rd November, 7th December all 1994 and 11th January 1995.
- (91) On 26th April 1994, without replying to “EE”, the Respondents' firm sent Miss “X” a cheque for £7,300 bearing to represent the balance of Miss “X's” criminal injuries compensation award after deduction of the professional fees of the Respondents' firm. As at 28th March 1995 no correspondence had been delivered to “EE” or Miss “X”.

“U”

- (92) Around 22nd December 1994 “U” consulted Messrs “FF”, Solicitors, “P.17” seeking to have them take over acting for him in relation to a criminal matter previously being dealt with by the Respondents' firm. That day “FF” sent the Respondents' firm a Mandate signed by Mr “U” requiring delivery to “FF” of Mr “U's” papers. No reply was received by 4th January 1995 and “FF” sent the Respondents' firm a reminder on that date. As at

1st March 1995 the Mandate had not been implemented. Having received no reply, “FF” invoked the aid of the Law Society by letter dated 16th January 1995. On 27th January 1995 the Law Society wrote to the Respondents' firm with a copy of that letter. The First Respondent replied on 7th March to the effect that his firm were seeking to locate the file. Apart from that and despite a reminder of 16th March 1995 the Complainers have received no response to the letter of complaint as at 28th March 1995. The First and Second Respondents were both responsible for the failure to reply to the foregoing correspondence.

(a) First Respondent.

In relation to charges as set out in Article 19 of the First Complaint.

- (1) Breach of Rule 5 of The Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 in respect of actions in relation to “A”, “H”, “I”, “P” and Lothian & Borders Police and “Q” and Rule 8 of said Practice Rules in respect of actions in relation to “Y”.

(Article 19.2 (a),(b),(c),(d),(i),(j))

- (2) Breach of Rule 3 of The Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct and a breach of the general duty on a solicitor not to act for one client to the prejudice of another .....in relation to “A” and “G”.

(Article 19.3 (a),(b))

- (3) Breach of Article 5 of the Code of Conduct by failing to provide an adequate professional service in relation to dealings with the Scottish Legal Aid Board in regard to applications for minimum fees under Legal Advice and Assistance.

(Article 19.4 (b))

- (4) Breach of a duty to provide an adequate professional service in respect of his failure to supervise assistants adequately in relation to “G”, “I”, “HH” and “F” and in relation to “GG”.

(Articles 19.5 (a),(b),(c),(d),(e))

- (5) Breach of a duty to ensure that his behaviour is consistent with the need for mutual trust and confidence among fellow lawyers, and of a duty to act with fellow solicitors in a manner consistent with persons having mutual trust and confidence in each other in relation to Messrs “Z” and “AA”; and breach of a duty to ensure that his behaviour is consistent with the need for mutual trust and confidence among fellow lawyers, and of a duty not to communicate with a person known to be represented by another solicitor in relation to “CC”.

(Article 19.7 (b),(d),(e))

- (6) Breach of duty to maintain due respect and courtesy towards the Court in relation to the actings for “L”.

(Article 19.8 (a))

- (7) Breach of a duty to ensure that only fees properly due are charged and that fees charged are fair and reasonable in all the circumstances in relation to fees charged to the Scottish Legal Aid Board.

(Article 19.9)

- (8) Breach of a duty to provide the Scottish Legal Aid Board with adequate information to enable them to properly discharge their statutory functions in relation to claims for minimum fees.

(Article 19.10)

- (9) Breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of dealings with the Lothian and Borders Police and Scottish Legal Aid Board.

(Article 19.11 (b),(c))

- (10) Breach of a duty to answer correspondence from fellow solicitors and others and to do so within a reasonable time in respect of “BB”, “J”, “K”, “L” and “O”.

(Article 19.12 (a),(b),(c),(d),(e))

- (11) Breach of a duty to respond promptly fully and accurately to complaints correspondence from The Law Society in respect of complaints from Messrs “II”, Messrs “JJ”, Messrs “KK”, Messrs “LL”, and The Scottish Legal Aid Board.

(Article 19.13 (a),(c),(d),(e),(g))

In relation to charges set out in Article 13 of the Second Complaint

- (12) Breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 in respect of “C”.

(Article 13.2 (a))

- (13) Breach of a duty to respond promptly, fully and accurately to complaints correspondence from The Law Society in respect of “R”, “S”, “T”, “V”, “X” and “U”.

(Article 13.3 (a),(b),(c),(d),(e),(f))

- (14) Breach of a duty to answer correspondence from fellow solicitors and others and to do so within a reasonable time and to implement their clients' instructions in respect of Messrs “DD”, Messrs “EE” and Messrs “FF”.

(Article 13.4(a),(b),(c))

- (15) Breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of “X”.

(Article 13.5)

- (16) Breach of a duty to communicate effectively with a client namely the said “X”

(Article 13.6)

## (b) Second Respondent

In relation to charges set out in Article 19 of the First Complaint.

- (1) Breach of Rule 5 of The Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 in respect of actions in relation to “A”, “H”, “T”, and “P”

(Article 19.2 (a),(c),(d),(i))

- (2) Breach of Rule 3 of The Solicitors (Scotland) Practice Rules 1986 and Article 3 of the Code of Conduct and a breach of the general duty on a solicitor not to act for one client to the prejudice of another .....in relation to “G”.

(Article 19.3 (b))

- (3) Breach of Article 5 of the Code of Conduct by failing to provide an adequate professional service in relation to dealings with the Scottish Legal Aid Board in regard to applications for minimum fees under Legal Advice and Assistance.

(Article 19.4 (b))

- (4) Breach of a duty to provide an adequate professional service in respect of her failure to supervise assistants adequately in relation to “G”, “I”, “HH” and “F” and in relation to “GG”.

(Article 19.5 (a),(b),(c),(d),(e))

- (5) Breach of a duty to ensure that her behaviour is consistent with the need for mutual trust and confidence among fellow lawyers, and of a duty to act with fellow solicitors in a manner consistent with persons having mutual trust and confidence in each other in relation to Messrs “Z” and “AA”; and breach of a duty to ensure that her behaviour is consistent with the need for mutual trust and confidence among fellow lawyers, and of a duty not to communicate with a person known to be represented by another solicitor in relation to “CC”.

(Article 19.7 (b),(d),(e))

- (6) Breach of a duty to ensure that only fees properly due are charged and that fees charged are fair and reasonable in all the circumstances in relation to fees charged to the Scottish Legal Aid Board.

(Articles 19.9)

- (7) Breach of a duty to provide the Scottish Legal Aid Board with adequate information to enable them to properly discharge their statutory functions in relation to claims for minimum fees.

(Article 19.10)

- (8) Breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of dealings with the Scottish Legal Aid Board.

(Article 19.11 (c))

- (9) Breach of a duty to answer correspondence from fellow solicitors and others and to do so within a reasonable time in respect of “BB”, “J”, “K”, “L” and “O”.

(Article 19.12 (a),(b),(c),(d),(e))

- (10) Breach of a duty to respond promptly fully and accurately to complaints correspondence from The Law Society in respect of complaints from Messrs “II”, Messrs “JJ”, Messrs “KK”, Messrs “LL” and The Scottish Legal Aid Board.

(Article 19.13 (a),(c),(d),(e),(g))

In relation to charges set out in Article 13 of the Second Complaint

- (11) Breach of Rule 5 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1991 in respect of “B”.

(Article 13.2(c))

- (12) Breach of a duty to respond promptly, fully and accurately to complaints correspondence from The Law Society in respect of “R”, “S”, “T”, “V”, “X” and “U”.

(Article 13.3 (a),(b),(c),(d),(e),(f))

- (13) Breach of a duty to answer correspondence from fellow solicitors and others and to do so within a reasonable time and to implement their clients' instructions in respect of Messrs "DD", Messrs "EE" and Messrs "FF".

(Article 13.4 (a),(b),(c))

- (14) Breach of a duty not to act in a manner which brings the profession of solicitor into disrepute in respect of "X".

(Article 13.5)

- (15) Breach of a duty to communicate effectively with a client namely the said "X"

(Article 13.6 (a))