

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

F I N D I N G S

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND**

against

**AJAZ MOHAMMED HUSSAIN,
Solicitor, 12 Albany Terrace,
Dundee**

1. A Complaint dated 5 March 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Ajaz Mohammed Hussain, Solicitor, 12 Albany Terrace, Dundee (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 15 June 2004 and notice thereof was duly served on the Respondent.

4. The Complaint was heard on 15 June 2004. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr J. Myles, Solicitor, Dundee.
5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint as amended.
6. In respect of these admissions no evidence was led and the Tribunal found the following facts established:-
 1. The Respondent is a solicitor enrolled in Scotland. He formerly practised as NIAS (an acronym for Nationality & Immigration Advisory Service) at 67 West Lyon Street, Dundee. He was admitted on 20th March 1997 and enrolled on 25TH March 1997. He was employed as a Qualified Assistant by Messrs. Muirs Myles Laverty from 2nd April 1997 until 31st October 1998, by Messrs. P. R. Anderson from 1st November 1998 until 26th February 1999, by Messrs. McKenzie & Co. from 1st May 1999 until 31st October 1999, by Messrs. Gourley McBain from 10th January 2000 until 7th April 2000, by Messrs. McNabs from 9th May 2000 until 31st December 2000 and by Perth & Kinross Council from 12th January 2001 until 1st April 2001. He commenced practice on his own account as NIAS & Co. on 1st July 2001. He employed one member of staff and had the services of a consultant who was deemed to be self-employed. The Respondent ceased to practice on his own account on 31st October 2003 and was then employed as a Qualified Assistant by Messrs. R.S.B.

McDonald, Solicitors, 31 Reform Street, Dundee until 9th April 2004.

2. **Inspection of 29th April 2002**

Members of the Complainers Guarantee Fund staff carried out an inspection of the books and records of the Respondent's practice on 29th April 2002. At this inspection, the following items were noted:-

- a) As at the date of the inspection and as at 7th May 2002 when the Complainers wrote to the Respondent following upon the inspection, the firm's Accounts Certificate covering the period from 1st July 2001 to 31st December 2001, which should have been submitted to the Complainers no later than 31st January 2002 had not been submitted. (Rule 3(1) of the Solicitors (Scotland) Accounts Certificate Rules 1997.

References to Rules in paragraphs 2(b) to 16 inclusive are to the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001.

- b) As at 31st March 2002 there was a shortage in the client account of £274.76. This was partly due to the account being overdrawn at that date, and because sums of money received from clients in respect of prospective fees and outlays not already paid had not been lodged in the client account. It was noted that the client account first became overdrawn on 21st August 2002. (Rule 4) (1) (a).

- c) The practice of the Respondent was noted to be that he obtained payment in advance of half of the fees in respect of immigration matters. These funds were then used to meet general office and business expenditure. They were not being lodged in the client account, not being recorded within client ledgers and fee notes were not being raised. The same position was noted in relation to outlays. This was disclosed by the Respondent to the Complainers and once he realised this practice was unacceptable the Respondent ceased this practice. (Rule 7(f)).
- d) No cash books and no ledgers were maintained for the recording of accounting information for either the firm's or clients' transactions. (Rule 8(1), (3), (5)).
- e) The Respondent had failed to keep properly written up books so as to show the true financial position of the firm. No monthly trial balance was being prepared. No monthly bank reconciliations of the firm account had ever been prepared. (Rule 8(4)).
- f) No client bank reconciliations had ever been prepared. No list of client balances had ever been produced and correspondingly no statement of surplus or deficit had ever been produced. (Rule 9).
- g) No discharged client account cheques were available for review. (Rule 19).

3. **Other Matters**

No bank statements for either the client or the firm account for period number 5 (November 2001) were available for inspection. It was noted that the Respondent had acted on behalf of Mr A in relation to the sale of heritable property at Property 1 without recording any of the accounting information relating to this transaction. Similarly the Respondent acted on behalf of Mr B and Mr C in relation to the purchase/sale of heritable property and no accounting records were maintained in relation to this. As previously stated there were no ledgers for any clients. (Rule 8).

4. **Remedial Action**

The Respondent engaged the services of a firm of chartered accountants, who agreed to bring the Respondent's accounts up to date before the end of May 2002, and who provided an Accounts Certificate for the period beginning on 1st July 2001 and ending on 31st December 2001, on 23rd May 2002. After inspection by the Complainers' Chief Accountant's staff it was noted that the Accounts Certificate was not in the form required by the Accounts Rules which were in force at the time, and that the balances given were as at 31st October and 31st December 2001 whereas the balances were required on a quarterly basis and should have been reported as at 30th September 2001 and 31st December 2001. The Respondent attended a practice management course during May 2002. The bank statements previously missing were produced to the Complainers. As at 17th June 2002 the Respondent still had not produced the discharged clients' cheques. The Respondent was invited to attend an interview with the

Complainers' Guarantee Fund Committee on 18th July 2002. This interview duly took place and it was subsequently resolved that the books and records of the Respondent's firm would be reinspected three months thereafter.

5. **Accounts Certificate Covering the Period from 1st January 2002 to 30th June 2002**

An Accounts Certificate covering the above period was lodged with the Complainers by the Respondent on 29th July 2002. It disclosed a shortage on the client account of £88. On 2nd August 2002 the Respondent wrote to the Complainers and stated that he had that day lodged the sum of £500 in his client account to serve as a float. (Rule 4).

6. **Inspection of 4th December 2002**

The Complainers resolved that they would carry out a further inspection of the books and records of the Respondent's practice on 4th December 2002. They so advised the Respondent by letter dated 18th November 2002. By letter dated 19th November 2002 the Respondent requested a postponement of the inspection. This postponement was not granted, and this was confirmed to the Respondent by telephone and also by letter dated 20th November 2002. A member of the Complainers' Guarantee Fund inspection staff visited the Respondent's offices on 4th December 2002. She was unable to carry out the reinspection, because the records of the client and firm accounts had not been written up since 30th June 2002. It was not therefore possible to ascertain what the position was, nor if a

surplus existed at 30th November 2002. It was, however, noted that:-

- a) Neither the Respondent nor his consultant had current professional indemnity insurance cover nor practising certificates for the period from 31 October 2002 until 4th December 2002 and were therefore not entitled to practice. The Respondent had applied for finance from Lombard but this had been unsuccessful.
- b) The firm was in serious financial difficulty and on the face of it unable to meet its current liabilities.
- c) Following upon the inspection of 29th April 2002, there had been sent to the Respondent, letters from the Complainers dated 17th May, 17th and 27th June, 9th July, 5th and 23rd September and 30th October 2002, despite which the Respondent had still failed to produce explanations and documentation regarding the breaches of Rules 4, 7(f), 8(1)(3) and (5) and 19 which were noted at that earlier inspection.

The Respondent agreed that he would, by 16th December 2002, deliver to the Complainers, the firm's trial balances from July 2002 to November 2002, the firm's cash book (day book) from 1st July 2002 to date, the client cash book (day book) from 1st July 2002 to date, the monthly firm and client bank reconciliations from July 2002 to date, with relative statements, pay-in books and cheque books for both firm and client accounts, individual client ledger accounts for all clients from start of business to date, it being noted that there

were more than 35 accounts; invested funds client ledger account and statements, monthly listings of client ledger account balances from July 2002 to date with separate totals for debit and credit balances, monthly deficit/surplus statements from July 2002 to date, all returned paid client account cheques, all SLAB paid accounts, all client files for non-SLAB clients (including Mr B & Mr C and Mr A) money laundering documentation for all clients where this was held together with copies of proofs of identity, fee notes from start of business, all firm's records and reconciliations previously written up and reconciled to 30th June 2002 and any other relevant documentation. The Respondent delivered the records of his practice to the Complainers on 16th December 2002. The Complainers wrote to him on 6th January 2003 to remind him that he had still not provided the outstanding information requested in the letters previously condescended upon, and a reminder dated 5th December 2002. On 9th January 2003 the Respondent wrote to the Complainers stating that the Respondent would reply, but that he had been unable to do so due to illness and having broken his arm at Christmas.

7. **Inspection of 10th January 2003**

The Complainers carried out a further inspection of the books and records of the Respondent's practice on 10th January 2003. The following was noted:-

- a) An examination of the client's list of balances as at 30th December 2002 indicated that there was a shortage in the client account (Rule 4 (1)(a)). When this point was raised however, the Respondent was able to prove that the list of

client balances produced by his accountants contained numerous errors and in particular duplication of entries. The Respondent was required to forward a list of client balances, client bank reconciliations, surplus statements and trial balance as at 31st January 2003, during the course of February 2003. It was noted that the narrative within the client and firm ledgers was insufficient to accurately describe the transactions taking place. (Rule 8).

- b) No statement of surplus/deficit was being produced at each month end (Rule 9(2)).
- c) The record for the invested funds account for Mr D required to be updated to reflect the interest credited to the account on 29th November 2002 (Rule 10).
- d) Funds of £1,700 were held for Mr.E from 31st October 2002 to date without being invested. (Rule 11).
- e) The Respondent was still not receiving the returned cashed cheques drawn on his client account (Rule 19).

8. **Other Matters**

- a) The records showed the receipt of £10,000 from client Mr F on 24th June 2002. The funds actually came from Mr G for whom no identity checks were carried out. (Rule 24(1)). The payment recorded on 1st July 2002 to Mr F was actually the client's son. This payment, in the

sum of £816.96, was made in cash and no receipt was available to vouch the payment, nor was there written authority for payment to the client's son, nor was there any record of inter client transfers. (Rules 6(1) and 8(1)).

- b) The ledger for Mr H recorded a deposit of £29,000 being received on 5th November 2001. The file however revealed this to be payment of the purchase price from other solicitors. The discharge in respect of the loan account was not recorded until September 2002. The accounting to the client on the file did not match the actual payment made to the client. The ledger stated £3,745.16. The file indicated £3,446.20. The ledger stated that repayment was made to the bank on 9th November 2001. The bank referred to the repayment date as 6th November 2001. (Rule 8(1)).
 - c) Funds in respect of outlays of £55.70 due to Messrs. McNabs on behalf of a client, Mr. I were held in the firm's account. Rule 4(1)).
9. On 12th February 2003 a letter was sent by the Complainers to the Respondent requiring him to provide appropriate explanations and documentation in relation to the matters recorded at the inspection of 10th January 2003.
10. **Accounts Certificate for Period from 1st July 2002 to 31st December 2002**

As at 6th March 2003 the Respondent had not submitted the Accounts Certificate required for the above period,

which should have been submitted no later than 31st January 2003. (Rule 14(1)). The Respondent was accordingly invited to attend for interview with the Complainers' Guarantee Fund Committee on 20th March 2003. The Respondent indicated that he was unable to attend. He did however provide an undertaking that he would lodge the Accounts Certificate by 28th March 2003. He failed to do so. By fax sent and received that day to the Complainers the Respondent undertook to lodge the certificate by 10th April 2003. The Complainers resolved that a further inspection of the books and records of the Respondent's practice be carried out on 1st May 2003. The Accounts Certificate for the period from 1st July 2002 to 31st December 2002 was delivered to the Complainers on 30th April 2003. The certificate was in proper form although, as hereinafter condescended upon, contained material inaccuracies.

11. Inspection of 1st May 2003

At this inspection the following items were noted:-

- a) The Respondent received a payment for interpreting fees from Bruce & Co. on 3rd December 2002 in the total sum of £1,317.41. This was lodged in a client bank and client ledger was opened for a Mr. J. Mr. J was to receive £1,218.33 and a Ms. K was to received £99.08. Nothing further in relation to these sums is recorded on file.
- b) On 12th December 2002 the Respondent uplifted the sum of £1,317.41 in cash from the client bank account. He took the £99.08 which he said

was due to him for other fees from Ms. K. He went to see Mr J to pay him the £1,218.33 in cash. The Respondent then found out that Mr. J had left the country. He kept the cash in his own house and failed to bank it. (Rule 4(1)(b)).

- c) Accordingly the client credit balances as recorded on the certificate were understated by the amount of £1,218.33 and instead of a surplus of £145.88, a deficit of £1,072.45 existed, so that as at 31st December 2002 the Accounts Certificate submitted for the period ending on that date was incorrect. (Rules 4(1)(a), 14(1)).

- d) On 11th March 2003 Mr. and Mrs. J called on the Respondent and asked for their money urgently. The Respondent wrote them a cheque drawn on client account for £1,218.33. The cash which he had kept at home was not banked until 21st March 2003. As at that date the deficit had increased to £1,777.45. From 22nd March until the date of inspection, the shortage on client account was £565.72 (Rule 4(1)(a)).

- e) On 21st February 2003 the Respondent received the sum of £705 from the Scottish Legal Aid Board in respect of outlays for a client called L. The sum in question related to an immigration consultant's fees. These fees had not been settled by the Respondent as at the date of receipt of the funds. The funds were not credited to the client bank account nor were they written up on a client ledger. The receipt of these funds, the failure to lodge them in a client account and the fact that the fee had not yet been

paid to the consultant created a further shortage on the client account (Rule 4(1)(a) and (b)).

- f) As hereinbefore condescended upon the cash uplifted from the client bank account for payment to Mr. J in the sum of £1,218.33 on 12th December 2002 was not re-banked, nor invested to earn interest for the client (Rules 4(1)(b) and 11(2)).
- g) The firm and client records were written up in arrears for much of the accounting period covered at the inspection. The narrative in many cases was absent or insufficient. The dates recorded were not accurate. The sum of £99.08 taken by the Respondent as fees due by Ms. K had not been transferred to a client ledger account in her name, and appropriate entries were not made in respect of the income the Respondent received on her behalf. (Rules 4 and 8(1)).
- h) The client bank and client balances were understated by the sum of £81 from 5th March 2003 until 1st April 2003. This was in respect of income from Mr M. The income received from this client was wrongly banked in the invested funds account for Mr D instead of the main client bank account. (Rule 9(1)).
- i) The sole invested funds account held by the firm was in respect of Mr D. This account was incorrect regarding the £81 hereinbefore condescended upon. £2,500 was uplifted from the account on 24th February 2003 and paid by

cheque to Messrs. Boyle & Co. on the same date, direct from the invested funds account without being recorded in the main client ledger account. (Rule 10(1)).

- j) The client ledger accounts for 2001 were not available during the inspection. A copy of one ledger account requested had to be faxed from the Respondent's accountants. Such records require to be held for a period of 10 years. (Rule 8(7)).
- k) The interest due to Mr. E had not yet been paid. (Rule 11).
- l) The Respondent had still not obtained returned cheques from the Bank of Scotland in respect of his client account transactions. (Rule 19).

12. The Complainers resolved that they would reinspect the books and records of the Respondent's practice on 29th May 2003.

13. **Inspection of 29th May 2003**

The Guarantee Fund inspector arrived at the Respondent's office at the arranged time of 9.45 a.m. The Respondent was out, apparently at court. No firm or client records were available within the office. An employee went to the accountant's office to collect them. They were not available and were eventually delivered by the accountant to the Respondent's office shortly after 11.00 a.m. The inspector met with the Respondent at lunchtime on 29th May 2003 and asked for certain further information. The Respondent told

the inspector that he was aware of the Society's concerns about his financial position. He stated that he could not live off the income shown in his records. He disclosed to the inspector that some fees in cash had been taken by the Respondent who then took drawings and paid expenses out of his own pocket. Neither these fees being received nor the expenses and drawings being taken were being recorded. (Rules 4, 6, and 8). This procedure had been going on from the commencement of the firm. It was explained to the Respondent that this was a serious matter and involved fraud against the Customs and Excise authorities in respect of value added tax and Inland Revenue in respect of income tax. During the inspection the following matters were recorded:-

- a) Since the Respondent commenced practice on his own account in July 2001 fees received and expenses met in cash were not recorded in the books of his practice. Accordingly the books and accounts of the practice did not show the true financial position thereof. (Rules 4(1), 6(1)(d) and 8(4)).
- b) The Respondent did however state that there was a fee note file where all fees notes were recorded. This file, which had neither been produced to the inspector who carried out previous inspections nor to the accountants who prepared the Respondent's records from the information provided by him, was found to have been written up to mid-January 2003. The inspector was informed by the Respondent that fee notes after this date would be on the client's files or in back-filing. (Rule 8(1)(4)).

- c) Not all fees received by cheque from clients were recorded in the firm's records. £1,000 received on behalf of Ms N was lodged in the only invested funds account in the name of an entirely different client, Mr D, by bank giro credit on 15th April 2003. This sum was drawn on 16th April 2003, noted as Mr O fees. A further £1,000 was received from the same client on 10th April and was not recorded within the firm's records. (Rules 4, 6, and 8).
- d) The deficit previously recorded on 1st May 2003 of £565.72 was not lodged in the client bank account until 28th May 2003. (Rule 4(1)(a)).
- e) The records of the firm continued to be prepared in arrears. (Rule 8).
- f) The narrative in the firm and client records was still unsatisfactory and in some cases non-existent. (Rule 8).

14. **INSPECTION OF 3RD SEPTEMBER 2003**

A further inspection of the books and records of the Respondent's practice was carried out by the Complainers on 3rd September 2003. At this inspection the following items were noted:-

- a) As at the date of this inspection, the firm's accounts certificate covering the period from 1st January 2003 to 30th June 2003 which should have been submitted to the Complainers no later

than 31st July 2003 had not been produced by the Respondent (Rule 14(1)).

b) As at the date of this inspection the Respondent continued to be in breach of Rules 4(1), 11(2), 8(1), 10(1), 11 and 19.

15. On 26th September 2003 the Complainers received from the Respondent a certificate in terms of Rule 14(1) dated 23rd September 2003. The certificate stated that an external accountant had prepared the firm's monthly trial balance and ledger accounts from the books and records supplied and had reconciled the fund's position under Rules 9 and 10. The certificate contained a statement of qualification namely that the books and records did not show a daily surplus of client's funds as the computerised ledgers were prepared in arrears and the fee ledger had not been reconciled.

16. **CESSATION OF BUSINESS**

The Respondent ceased to practice on his own account as at 31st October 2003. Accordingly in terms of Rule 14(1) he was required to submit an accounts certificate no later than 30th November 2003. As at that date he had failed to do so. On 21st January 2004 the Respondent forwarded to the Complainers a final accounts certificate. The certificate contained a statement that it had been completed with the assistance of an external accountant who prepared the firm's monthly trial balance and ledger accounts from the books and records supplied and reconciled the fund's position under Rules 9 and 10. The certificate was qualified to the extent that it reported that the books and records did not show a daily surplus of client's funds as the computerised ledgers were prepared in arrears. The fee ledger had not been written up to date nor had it been

reconciled. No bank statements were available for the funds held for named clients in relation to a balance of £60 brought forward from 30th June 2003. Upon receipt of this certificate the Complainers chief accountant wrote, on 23rd January 2004, to the Respondent pointing out to him that given that the Respondent was no longer practising on his own account, it was inappropriate for him to hold any client's funds in the name of his former practice. It was explained in that letter that the Respondent required to arrange for these balances to be held by another firm in trust for the Respondent's named clients, and that the Respondent's firm's whole records required to be balanced up to date and that without any further delay.

7. Having considered the foregoing circumstances the Tribunal found Respondent guilty of Professional Misconduct in respect of:

- (1) His failure to timeously lodge accounts certificates or lodge an accurate certificate
- (2) His failure to ensure that at all times the sum at credit of the client account was not less than the total of the client's money held by him.
- (3) His failure to pay into a client account without delay any sum of money exceeding £50 held for or received from or on behalf of a client.
- (4) His obtaining payment in advance of fees and outlays in respect of immigration matters, his failure to lodge these in the client account, failure to record them within client ledgers and failure to raise fee notes, and his use of these funds to meet general office and business expenditure.

- (5) His failure to maintain cash books and ledgers for the recording of accounting information for clients' transactions and firm's transactions.
- (6) His failure to keep properly written up books so as to show the true financial position of the firm, and failure to prepare monthly trial balances.
- (7) His failure to prepare client bank reconciliations.
- (8) His failure to receive and retain discharged client account cheques.
- (9) His carrying on practice without having in force professional indemnity insurance and practising certificate.
- (10) His failure to update the record for the invested funds account for Mr D to reflect the interest credited to that account.
- (11) His retaining funds amounting to £1,700 from 31st October 2002 to 10th January 2003 without investing same.
- (12) His failure to carry out identify checks in relation to Mr G.
- (13) His payment of money to the son of a client without written authority from the client or properly recording the transfer.
- (14) His taking a fee in relation to Ms. K without transferring the funds to a client ledger account in her name.
- (15) His uplifting and paying out invested funds without making any record thereof in the main client ledger account.
- (16) His failure to maintain ledger accounts for a period of ten years.

- (17) His failure to pay interest due to a client.
- (18) His appropriation of fees paid in cash without making any record thereof, with the consequence of evading income tax in respect of said fees.
- (19) His failure timeously to make available to the Complainers the books and records of his practice for inspection purposes and failure to recover returned cheques from his bank for inspection purposes.

8. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 June 2004. The Tribunal having considered the Complaint dated 5 March 2004 at the instance of the Council of the Law Society of Scotland against Ajaz Mohammed Hussain, Solicitor, 12 Albany Terrace, Dundee; Find the Respondent guilty of Professional Misconduct in respect of his breach of Rule 3(1) of the Solicitors (Scotland) Account Certificate Rules 1997 and Rules 4, 6, 7, 8, 9, 10, 11, 14, 19 and 24 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001; his carrying on in practice without having in force professional indemnity insurance and practising certificate and his appropriation of fees paid in cash without making any record thereof; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer or successive employers as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least five years and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be

taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed) G Fraser Ritchie
Chairman

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

The fiscal moved to make certain amendments to the Complaint, there was no objection by the Respondent and this was agreed. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the Complaint as amended were admitted. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch stated that it was accepted by the Law Society that with regard to the statement of facts at Articles 7a, b and c, the money referred to was not money received on behalf of clients. The statement of facts set out in Article 7f was there as narrative and it was not submitted by the Complainers that these facts amounted to professional misconduct. With regard to Article 8.1 Mr Lynch stated that the inspector had explained to the Respondent that the practices being carried out by him could involve fraud against Customs and Excise but the inspector had not realised that the Respondent was not registered for VAT and accordingly this would not arise. Mr Lynch stated that in March the Law Society still had concerns with regard to the cessation of the Respondent's business and the transfer of client balances. However Mr Lynch advised that the Law Society were satisfied that there was at present nothing which was causing them concern and there were no claims on the Guarantee Fund and there was nothing outstanding against the Respondent. In response to a question from the Tribunal Mr Lynch stated that the period involved when the Respondent did not have a practising certificate or indemnity insurance would have been from 31 October 2002 until 4 December 2002.

SUBMISSIONS FOR THE RESPONDENT

Mr Myles advised that so far as the averments in connection with money laundering were concerned all the Respondent's relevant files had been inspected by the Law Society and nothing untoward had been found in respect of the transactions. Mr Myles explained that so far as the averments in Article 7 were concerned, the Respondent had been providing services as an interpreter to a firm of Dundee solicitors and he had arranged for Mr J also to do some interpreting work. The

payment had been made to the Respondent in respect of the monies due to the Respondent and to Mr J. The Respondent paid this money into his client account and took out cash and took it to Mr J's house but Mr J was on holiday. When Mr J called on the Respondent on 11 March and asked for his money urgently, the Respondent wrote a firm cheque and it was not until 10 days later that he paid the cash in. The Respondent accepted that he should not have used his client account but Mr Myles emphasised that there was nothing untoward about the Respondent's actions. Mr Myles also pointed out that the Law Society would not have known about the Respondent's practice of using fees from immigration matters to meet general office and business expenditure without this being recorded in ledgers or lodged in the client account unless the Respondent had volunteered this information. Mr Myles stated that the sums involved over the whole period did not amount to more than one to two thousand pounds. Mr Myles outlined the Respondent's work history and pointed out that it was unfortunate for the Respondent that he had worked for a number of firms that had got into difficulties. These firms were not good role models for the Respondent and his history of employment had worked against him when he was trying to secure alternative employment. The Respondent was accordingly forced into the position of setting up his own practice and he liaised with the Law Society in connection with his ability to do so. Mr Myles stated that the Respondent was ill equipped and unprepared for branching out on his own and encountered various difficulties with staff which led to difficulties with his book-keeping. Thereafter when the Law Society discovered that his book-keeping was in a mess, he did engage the services of an accountant. It was well into the Respondent's first practice year before he attended the practice management course, after which he felt somewhat daunted. The Respondent started a para-legal who had done book-keeping and allowed her to go on day release to college but she then left out of the blue. The Respondent also had a consultant who had been off ill and then left in December 2002. The Respondent also broke his right arm in December 2002. With regard to the practising certificate and indemnity insurance the Respondent had applied to Lombard for finance and had thought that it was granted when it was not and he ended up without cover for five weeks. As soon as he was aware of the problem he stopped doing legal work until it was sorted out. He had to raise money from family and friends to pay for his practising certificate and indemnity insurance. In February 2003 the Respondent bought a computer package on the advice of his accountant and delegated the book-keeping task to his para-legal who had returned to work with him.

She did not bring the problems, which were ongoing, to his attention. The Respondent at this time was suffering from depression and was worn out. He realised by this time that he was not cut out to be a sole practitioner and he started looking for a position as an assistant. The Respondent was concerned with regard to the employment of his staff. He was employed as a qualified assistant by RSB MacDonald, Solicitors and one of his members of staff went with him. He was frank and open with them with regard to his difficulties and he started there in November 2003. When this Complaint was served on him his contract was terminated by them. Since then the Respondent had not been successful in gaining employment and has been working in the family business. The Respondent was also being pursued by the Inland Revenue. Mr Myles stressed that the Respondent had been open and co-operative with the Law Society from the start and had made admissions that were contrary to his interests. The Respondent had closed his business voluntarily and had not contested the Complaint. Mr Myles said that the Respondent was very concerned and ashamed with regard to what had happened. Mr Myles suggested that the Respondent required proper guidance and supervision something which had been lacking throughout his period in the profession. Mr Myles referred the Tribunal to a letter from one of the Respondent's clients showing how well regarded he was by that client in connection with the work that he did.

DECISION

The Tribunal were concerned by the number of breaches of the Accounts Rules by the Respondent and his obvious ignorance of the Accounts Rules when he set up in practice on his own. It is imperative that members of the profession comply with the Accounts Rules in order to maintain the highest standards of this profession. The Accounts Rules are there to protect the public and the Respondent's numerous breaches of various different Rules are of serious concern. It was unfortunate that the Respondent had been in practice for several months prior to attending the Law Society's practice management course. His way of working as a sole practitioner was totally unacceptable. The Tribunal were concerned with regard to the fact that the Respondent practised for five weeks without a practising certificate or indemnity insurance. This could have been a very serious matter. The Tribunal accepted that he had made an application to Lombard but he should have enquired with regard to what had happened to that application. The Tribunal accepted that the Respondent had

been driven to setting up on his own due to his unfortunate employment history when he was not ready or capable of doing this. The Tribunal also noted that there were no outstanding matters with the Law Society in connection with the Respondent. The Tribunal were of the view that the Respondent had been very naive and foolish in his actions. The Tribunal however noted that no one has lost money or suffered as a result of the Respondent's actions. The Tribunal was satisfied that the Respondent's basic integrity was not in question.

The Respondent is clearly not fit to continue in practice as a principal and it is with these considerations in mind that the Tribunal have put a restriction on the Respondent's practising certificate. Upon the Respondent securing other employment within the profession, it will be for him to satisfy the Council of the Law Society or the appropriate committee that there is adequate supervision for him within that employment. After five years it will be open to the Respondent to return to this Tribunal and apply for this restriction to be withdrawn on the basis that he has developed the confidence, experience and capacity to practice as a principal. Given the Respondent's financial situation the Tribunal did not consider it appropriate to impose any monetary penalty. The Tribunal made the usual order with regard to expenses and publicity.

Chairman