

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

D E C I S I O N

**in Appeal under Section 42A(7) of
the Solicitors (Scotland) Act 1980**

by

**RORY CRADOCK, Solicitor, 1
East Craibstone Street, Aberdeen**

Appellant

against

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

First Respondents

and

MS A of Property 1

Second Respondent

1. An Appeal was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42A(7) of the Solicitors (Scotland) Act 1980 by Rory Cradock, Solicitor, 1 East Craibstone Street, Aberdeen ("the Appellant") against a finding of the Council of the Law Society of Scotland ("the Law Society") dated 15th March 2006 that the Appellant's former firm of Messrs Jamieson & Cradock provided an Inadequate Professional Service in relation to their client Ms A of Property 1 ("the Complainer") and a Direction that the Appellant's said former firm should not be entitled to charge fees in relation to the sale of Property 2

or that any such fees paid should be refunded to Ms A; that the Appellant pay to Ms A the sum of one thousand pounds by way of compensation together with the cost of rectification which is required to correct the defective conveyancing detailed in the Law Society's said finding.

2. In accordance with the Rules of the Tribunal the Appeal was formally intimated to the Law Society and Ms A and Answers were lodged on behalf of the Law Society. A Record dated 3rd April 2006 was prepared and lodged with the Tribunal.
3. Having considered the Record, the Tribunal resolved to set the Appeal down for hearing and appointed that the Appeal should be heard on 20th September 2006.
4. At the hearing on 20th September 2006 the Appellant was present and represented by Mr David Burnside, Solicitor, Aberdeen. The Law Society were represented by their Fiscal, Mr Paul Reid, Solicitor, Glasgow.
5. The Tribunal agreed to convert the hearing to a preliminary hearing. Mr Burnside made a preliminary plea that the second head of complaint was time-barred. Mr Burnside then made a motion to have the hearing adjourned to allow him to apply to the Sheriff Court for warrants to cite witnesses who had refused to attend the hearing voluntarily. The witnesses he wished to cite were the lay complainer Ms A, the Law

Society's Reporter, the Case Manager and the Chair of the Client Relations Committee H.

6. Having considered the submissions made on behalf of the Appellant and the Law Society, the Tribunal produced an Interlocutor in the following terms:

Edinburgh 20th September 2006. The Tribunal having considered preliminary pleas in the Appeal by Rory Cradock, Solicitor, 1 East Craibstone Street, Aberdeen ("the Appellant") against a Finding of Inadequate Professional Service by the Council of the Law Society of Scotland ("the Law Society") in relation to Ms A of Property 1 and the Determination and Direction that the Appellant's former firm should not be entitled to charge fees in relation to the sale of Property 2 or that any such fees paid should be refunded to Ms A; that the Appellant's former firm should pay the sum of one thousand pounds by way of compensation to Ms A, in addition to the costs incurred by her in the rectification of the defective conveyancing complained of: Reserve judgement in relation to the preliminary plea of time bar in respect of the second head of complaint until the conclusion of the Appeal hearing and allow the parties to lead oral evidence at such hearing as they think fit; Resolve that a hearing be allowed in respect of the Appeal on a date to be fixed; and with regard to the issue of compelling of witnesses Direct the parties to the provisions of Paragraph 12 of Schedule 4 to the Solicitors (Scotland) Act 1980; and Direct that the issue of expenses be reserved until the conclusion of this matter and Direct that publicity will given to this decision and that this publicity should include the name of the Appellant

(signed)

Kenneth R Robb

Vice Chairman

7. A copy of the foregoing together with a copy of the Decision certified by the Clerk to the Tribunal as correct were duly sent to the Appellant by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

This is a preliminary hearing in an Appeal under the provisions of Section 42A(7) of the Solicitors (Scotland) Act 1980 as amended against the finding of Inadequate Professional Service and Determination and Direction under Section 42A(1) and 42A(2)(a), (b) and (d) of the said Act.

SUBMISSIONS FOR THE APPELLANT

Mr Burnside stated that he appreciated that there had been a delay in fixing a hearing in this case, firstly as the Appellant required to seek representation and then because the Fiscal had been on holiday. However, he advised that he required to seek an adjournment of the hearing.

His preliminary point was in relation to time bar. He submitted that head of complaint number 2 was time barred as the Law Society's booklet entitled "Complaints against Scottish Solicitors" states that complaints must be made within two years. Mr Burnside referred to Ms A's Help Form at page 1 of the Respondent's Second Inventory of Productions. This form was dated 27th May 2004. Mr Burnside submitted that the matter complained about was fully within the Complainer's knowledge as at 2001 and therefore as the Help Form was not submitted until May 2004 the case was time barred unless there were exceptional circumstances for the delay in submitting the complaint. He submitted that the Law Society have never said that there were any exceptional circumstances. Mr Burnside conceded that this point had not been made at the time of the intimation of the Appeal by the Appellant but Mr Burnside stated that as this only arose after the Appellant had sought legal advice and he submitted that it was not too late for this preliminary point to be taken.

His second preliminary point was his motion to adjourn the hearing to allow witnesses to be cited. He had requested the voluntary attendance of the Case Manager, the Reporter and the Chairman of the Client Relations Committee. This request was rejected by Mr Reid on behalf of the Law Society. Mr Burnside stated that he now required to apply to the Sheriff Court to seek an order in terms of paragraph 12 of Schedule 4 of the 1980 Act to compel the attendance of the Lay Complainer, the Case

Manager, the Reporter and the Chairman of the Client Relations Committee H. Mr Burnside stated that he was aware of the identity of the Case Manager who is no longer with the Law Society but that he would require her address in order to cite her as a witness. He did not know the identities of the other witnesses but this information is within the knowledge of the Law Society.

He sought that the Tribunal order the Law Society to reveal this information. He stated that if the Reporter and the Committee Chair do not appear as witnesses, it would be difficult for the Tribunal to understand whether they took cognisance that the transactions between Ms A and Mr B were not at arms length. He submitted that it is important to ascertain if these people had seen the files. In relation to the first head of complaint regarding the failure to record a standard security he submitted the transaction concerned was carried out by Messrs Donald & Budge and it is important to ascertain why a finding was made against Messrs Jamieson & Cradock instead. Mr Burnside submitted that the file shows that this transaction was completed in 1998 some time before the Appellant was in partnership with Mr Taylor.

Further in relation to heads of complaint three and four, the Law Society records show that the partnership between Taylor and the Appellant terminated with Mr Taylor's resignation on 3rd March 2002. Mr Burnside submitted that complaints three and four occurred after the termination of the partnership. If the files were properly examined this should have been apparent but the Law Society appear to have taken no cognisance of what he said were the true facts of the transaction which should have been available to them.

He referred to the Appellant's letter of 23rd February 2006, the first document in the list of documents lodged by the Appellant. This letter gives the Appellant's understanding of the transaction involving Property 3. Mr Burnside also referred to the Law Society's letter dated 25th August 2005, the fifth document on the said list, which contains an acknowledgement stamp of 25th August 2005 confirming receipt of the files which the Law Society claims were not available for consideration by the Reporter.

Mr Burnside stated that the Law Society through the Reporter and the Client Relations Committee stated throughout the investigation that the purchase file for Property 2 was not available for inspection. However, the Law Society's decision letter of 15th March 2006 states clearly that not only was the file available but that it had been in the possession of the Client Relations Committee and despatched to the Reporter prior to the issuing of the report. The Appellant was not familiar with the file. However he got the papers back and was able to ascertain that Property 4 and Property 2 were one and the same property. Mr Burnside submitted that he had lodged copies of the two dispositions, one refers to number Property 4 and the other to Property 2. He stated that both flats were clearly one and the same and described as a southeast most first floor flat.

Mr Burnside stated that the file for the purchase of Property 2 (also Property 4) which is lodged shows that Messrs Jamieson & Cradock had nothing to do with the purchase. The purchase was dealt with by Messrs Donald & Budge who acted for both purchaser and seller 10 months before Jamieson & Cradock were formed. Mr Burnside submitted that Ms A did not make a complaint regarding this property and that this head of complaint was added by the Law Society *ex proprio motu* even though the Law Society had evidence to show that the complaint should have been taken against Messrs Donald & Budge.

Mr Burnside stated that he could say more on the facts of the case however he was aware that this was a preliminary hearing and that what he was trying to do was to justify for the disclosure of the name of the Reporter and the Chair of the Client Relations Committee. This was a fundamental issue on behalf of the Appellant and the profession as a whole. If a Reporter is not challenged when he has either ignored or not been given the all the facts then that is a serious issue.

Mr Burnside then turned to the legal basis for his request. He acknowledged there was little guidance in the legislation or case law. He was making this request on the grounds of natural justice and in terms of the Human Rights Act. In terms of the latter Act his client had a right to a fair trial. This included these proceedings where there is an issue of professional importance at stake and the Tribunal is dealing a matter affecting the livelihood of members of the profession with significant financial

implications. He submitted this is a situation where the Reporter is given information and either does not read it properly or does not read it at all and at this forum the Appellant does not have the right to challenge that. Mr Burnside submitted that the Committee's work must be a transparent process and that the Appellant should be able to know the basis on which the decision is made in order that he can challenge it. Mr Burnside submitted that his client had not had that opportunity. He submitted that the Reporter has got it wrong and that the right of openness should extend also to members of the profession. Mr Burnside stated that he therefore seeks to make the application to the Sheriff unless Mr Reid is agreeable to the witnesses attending on a voluntary basis. Mr Burnside stated that he hoped to obtain the names of the relevant witnesses in order to make the application to the Sheriff.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

Mr Reid stated that he had no objection to the motion to adjourn but was opposed to Mr Burnside's motion to cite the witnesses referred to. Mr Reid stated that the important part of paragraph 12 of Schedule 4 of the 1980 Act referred to by Mr Burnside is the requirement that the Tribunal be satisfied that it is proper to compel the giving of evidence. Mr Reid invited the Tribunal to find that the circumstances as narrated by Mr Burnside do not pass that test and that the application should be refused. Mr Reid referred to Smith and Barton's book "Procedures and Decisions of the Scottish Solicitors' Discipline Tribunal" at page 20 where there was a case quoted from an Inadequate Professional Services Appeal (case 860/93). In that case the Tribunal in its judgement referred to a quotation from Sheriff Macphail's book "Sheriff Court Practice" where he states at para 18 –109:

“The underlying rationale of the appellate court's restrictive approach to the review of discretionary decisions is that it is of the essence of a judicial discretion that on the same material different minds may reach widely different decisions any one of which may reasonably be thought to be the best, and any one of which, therefore, a judge may make without being held to be wrong.”

Mr Reid stated that in that the above-mentioned case the Tribunal took the view that it would follow Sheriff Macphail's reasoning and consider the matter as if it was an appellate court. He referred to the following quotation from the same judgement at page 21 of Smith and Barton's book:

“The standard procedure in an appeal is to proceed on the basis of the facts as established by the inferior *forum* and the Tribunal is not persuaded that in this case it should go behind the facts as established by the relevant Committee of the Law Society as reflected in the Disposal Schedule”.

Mr Reid stated that in that case the Tribunal heard evidence but decided that they would not go beyond the factual findings of the Committee.

Mr Reid submitted that at every stage in the complaints process the parties have an opportunity to make representations. Voluntary representations are often made by solicitors which are considered by the Reporter and reference is made to them in his report. On six occasions the Appellant made representations and set forth his arguments. He envisaged difficulty if in every case like this it is possible to lead oral evidence. Not only will it make the Law Society's job much more difficult but the time spent by the Tribunal will dramatically increase.

Mr Reid made reference to the decision by the Tribunal in the MacRoberts and Richard Barrie Appeal decided on 19 September 2005. In that case the Tribunal allowed evidence to be led. Mr Reid submitted a copy of pages 1-5 of that decision to the Tribunal. He directed the Tribunal to page 5 of the decision where it is stated that it was agreed between the parties that evidence should be led. Mr Reid submitted that there is no such agreement in this case and that he foresaw considerable practical difficulties if the Tribunal allowed evidence in all such cases.

With reference to Mr Burnside's submission that information was not before the Tribunal Mr Reid stated that he has lodged a large number of productions. He referred the Tribunal to production 10 of the Respondent's Second Inventory, a letter to the Appellant from the Law Society's case manager dated 16th August 2005. The second paragraph of that letter states:

“It appears that I may now be able to obtain the files in relation to this matter and will update you in due course”.

He then referred to production 11 of the said Inventory, a receipt dated 25th August 2005, signed by the Law Society’s case manager regarding seven files received from Grampian Police who were investigating an alleged fraud by Mr Taylor, to production 12 of the said Inventory, a letter dated 2nd September 2005 from the Law Society to the Appellant stating that the files were recovered and were sent to the Reporter, to production 13 of the said Inventory, a letter dated 12th October, from the Law Society to the Appellant enclosing the Reporter’s report and to the report itself found in the First Inventory of Productions for the Respondent, marked production 1.

He referred the Tribunal to the second sentence of the first paragraph of that report which states:

“The Solicitors’ file for the sale of Property 2 and the security over Property 2 were available”.

He stated that it is clear from the correspondence that when these files were available they were passed to the Reporter and regard was had to them.

Mr Reid submitted that this illustrates that Mr Burnside’s assertion that the file was not available to the Reporter is not accurate. Mr Reid submitted that it was clear from the correspondence that when the files were available they were made available to the Reporter and that regard was had to the information contained therein.

Mr Reid then referred to production 2 of the First Inventory for the Respondent at page C where it stated:

“With regard to Mr Cradock’s point about the date of the Report, the Committee noted that the Reporter had prepared a Report in July 2005 and had then received the files and redrafted the Report. The Committee was satisfied that the Reporter had omitted then to change the date at the end of the Report

and was satisfied that the files listed had been examined by the Reporter and that the Report was valid in its terms.”

Mr Reid submitted that the Appellant was well aware that the file had been received and considered by the Reporter.

Mr Reid submitted that the issue raised by the Appellant that the information regarding Property 2 was erroneous is a misconception on the Appellant’s part arising as a result of a fairly narrow interpretation of the terms of the report. He referred the Tribunal to production 1 of the said inventory at page ‘B’ regarding Property 2. He submitted that it is clear that the Reporter considered the matter carefully and that the reference on pages B and C of the report was to the standard security in favour of the Bank of Scotland. Mr Reid stated that to be fair to the Reporter he would not have had the file the Appellant is referring to containing the standard security in favour of the Clydesdale Bank. However, Mr Reid submitted that it is clear that the transaction involving a standard security in favour of the Bank of Scotland took place during the currency of the partnership between the Appellant and Mr Taylor.

Mr Reid then referred the Tribunal to page ‘G’ of the report at production 1 of the First Inventory for the Respondent, and in particular to the section headed conclusion. Mr Reid states that in this paragraph the Reporter outlines the reason why the complaint of inadequate professional service is upheld.

Mr Reid submitted that the standard security itself is lodged as production 4 of the Second Inventory for the Respondent and he drew the Tribunal’s attention to pages 4A-4D of that Inventory, including the backing sheet to the standard security which demonstrated that it was over Property 2 and dated 16th May 2000.

Mr Reid then referred the Tribunal to production 3 of the Second Inventory of Productions for the Respondent which is a state for settlement in relation to the sale of Property 2 and the associated fee note at page 3B which is a VAT invoice in relation to that transaction. Mr Reid stated that the work done was carried out within the currency of the partnership. He also referred the Tribunal to production 3C which was a VAT invoice dated 26th June 2001 in relation to work done in connection with

the purchase of Property 3. He also referred the Tribunal to production 3D, an invoice in relation to an assignation of the lease of the Property 3 and to production 3E an invoice regarding miscellaneous company work which mentioned “negotiating for temporary overdraft facility”.

Mr Reid referred to production 4 of the First Inventory which is a ledger card in relation to Ms A and he pointed to the first four entries on that card which referred to monies being taken to fees in relation to the fee notes to which he had just made reference.

Mr Reid submitted that it is easy to establish why the heads of complaint have been made out by the Reporter and that there is no reason to see why the Tribunal should depart from the usual way of dealing with these matters. He submitted that given the dates and the productions it is quite clear that the work was carried out during the currency of the partnership and that fees were taken within the currency of the partnership.

In relation to the identity of the Reporter, Mr Reid advised that he is now aware of her identity. However, he submitted that he has no instructions to make this information available to Mr Burnside on a voluntary basis. Mr Reid stated that he had reviewed the Law Society files and could confirm that there is a letter stating that eight files were delivered to the Reporter for her consideration.

Mr Reid stated that the other aspect which formed the basis for Mr Burnside’s motion appeared to be that the Reporter and the Chairman had not identified that the transactions were not at arms length. Mr Reid stated that he could see nothing in the paperwork to suggest that that was not the case. Mr Reid stated that there are three separate dispositions in relation to one property. He stated that there were no signed standard securities and the impression was given of some disarray regarding the affairs of Ms A, which came as no surprise given the allegations against Mr Taylor. Mr Reid stated that he did not consider that the need to go into the financial aspects of the process provided a valid reason why these witnesses should be cited. He advised that all relevant information was made available to the Reporter and that the Appellant was given every opportunity to contribute to the process. Mr Reid advised

that this was an appellate process and that if the Law Society have failed to have regard to a particular matter or not given it sufficient weight in its deliberations then he was in no doubt that the Tribunal could revisit the issues in their decision and make an appropriate finding as the Tribunal have on other occasions.

In relation to the issue regarding time bar, Mr Reid stated that the Tribunal would be familiar with the decision of the Tribunal against Campbell Riddell which was appealed to the Inner House in early December 2005. Mr Reid submitted that the finding in that case was that it is the Society's practice to entertain complaints within two years of the service being completed or when the defect came to the attention of the member of the public. He referred to production 1 of the Second Inventory which is the Help Form dated 27th May 2004 by Ms A. Mr Reid referred to the final paragraph on page 1E which states:

“I subsequently discovered in June 2002 that no mortgage was ever registered in my name for the flat at Property 2 ...”

In relation to Property 3, Mr Reid stated that he understood that as a result of Mr Taylor's conduct, a judicial factor was appointed and then Ms A sought and obtained alternative representation. He submitted that it was only then that these problems came to light. Mr Reid submitted that Ms A sought alternative representation in June 2002 and that this was clear from the terms of the Help Form and that therefore the second head of complaint was not time barred.

Mr Reid drew the Tribunal's attention to page 1E of the Second Inventory for the Respondent. He referred to the last sentence of the second paragraph which read:

“I was assured by Mr Taylor that the sale was concluded at the agreed price and that the free proceeds of £13,000 and charges of £6,286.71 at that time were held on my account at Jamieson & Cradock as funds towards the purchase of the restaurant at Property 3.”

Mr Reid submitted it is not clear when this assurance was given and nor was it clear when it came to the attention of Ms A that this assurance was inaccurate. Mr Reid

submitted that members of public are entitled to trust their solicitors and that there was nothing to alert Ms A to any difficulties until she sought new representation. Then there was a period when the new solicitors acquainted themselves with the papers and brought to her attention the true factual circumstances rather than what she was led to believe.

Mr Reid drew the Tribunal's attention to page D of the solicitor's report contained in the First Inventory for the Respondent, in particular to the first paragraph on that page and to the sentences which read

“The complainer states that she was told verbally that the free proceeds of sale, plus the payments that she had made to the firm in the sum of £8,600 were held on account with the Solicitors and will provide the necessary funding for the purchase of the restaurant property at Property 3.”

Mr Reid submitted that this indicates the way in which the transaction at Property 2 was interlinked with the transaction at Property 3. Mr Reid submitted that this matter would have been brought to the complainer's attention at the same time as the other matters and that therefore the complaint falls within the Law Society's timescale for the making of complaints.

In relation to the reference to the Human Rights Act, Mr Reid submitted that no authorities were offered and therefore there is no need for him to address this issue. Mr Reid stated that there had been a number of points in relation to the Human Rights Act raised before the Tribunal in the past. Mr Reid submitted that the point in this case is whether or not the process has failed to have regard to the Appellant's representations.

Mr Reid submitted that it is clear from the information before the Tribunal that the Appellant has had a very fair hearing. Mr Reid invited the Tribunal to decide that it would be improper for the warrant process to be followed and stated that he was confident that the Tribunal could reach a decision on the information available to it.

FURTHER REPRESENTATIONS ON BEHALF OF THE APPELLANT

Mr Burnside stated that Mr Reid started his submissions by saying that the procedure regarding oral evidence would increase the time spent in these cases at the Tribunal. Mr Burnside submitted that the Tribunal must weigh the balance of convenience of Tribunal members against the interests of solicitors appearing before it and the effect of the Tribunal's decisions on them. He submitted that if the Tribunal took the view that there was something fundamentally wrong with the Law Society's decision it can re-hear the case as in the case of *MacRoberts and Richard Barrie*.

Mr Burnside stated that he understood Mr Reid's position to be that the files were made available. Mr Burnside stated that it was his argument that either the files were unavailable or that they were not properly considered. Mr Burnside submitted that it is clear from the file for Property 2 that the standard security for Property 2 was in favour of the Clydesdale Bank and that the second security was in relation to a re-mortgage and that Ms A's complaint related to the purchase of the property and not to a re-mortgage. Mr Burnside submitted that Mr Taylor did not process the first mortgage for the Clydesdale Bank and three years later there was a re-mortgage or a second charge in favour of the Bank of Scotland. Mr Burnside submitted it is clear that the standard security referred to is the first one in favour of the Clydesdale Bank and not the subsequent one. Mr Burnside submitted that the second matter took place within the period of the partnership and that when the property was sold it was the Clydesdale Bank who were paid off and not the Bank of Scotland.

In relation to the question of fee notes, Mr Burnside submitted that the issue in this case was not one of excessive fee charging and that in relation to the Bank of Scotland matter the specific complaint is failure to register the standard security and the deed of restriction. Mr Burnside submitted that if Mr Taylor took fees to account in advance he should not have done that, but that does not mean that the obligation to register the deeds cannot be traced back to that time. The deeds could not be registered until after the transaction was over. He submitted that the Appellant could not do anything about that because he was working elsewhere then.

In relation to the issue of time bar, Mr Burnside confirmed that this is only in relation to head of complaint two. Mr Burnside referred to page 1E of the Second Inventory for the Respondent and to the second paragraph on that page which states

“as you will also see from the enclosed letters, after the collapse of Mr B’s leasing company, he agreed to pay my mortgage account from April 2000 until the “so called” settlement in August 2001...”

Mr Burnside submitted that that crystallises the date as August 2001. Mr Burnside submitted that everything within that paragraph was within the context of August 2001 and so that it must be manifestly clear that the date at which Ms A’s awareness commenced was August 2001. In relation to time being required for her new solicitors to look into it, he stated that the other solicitors were only involved in the Property 3 transaction and that they were not involved with Property 2 at all.

In relation to the identity of the Reporter, Mr Burnside stated that Mr Reid has not put forward any reason why her anonymity should be preserved. He submitted that if she has seen the file there is something very wrong with the quality of her report. He submitted that if the Tribunal decides there is something wrong the appropriate method would be to reconsider the whole matter and if the only reason not to allow these witnesses to give evidence is one of time then that would not be equitable as this is such an important matter to the Appellant.

After some initial deliberations the Tribunal invited parties to comment on the effect of paragraph 11 of Schedule 4 to the 1980 Act and the terms of pages 16 –21 of Smith and Barton’s book.

FURTHER REPRESENTATIONS ON BEHALF OF THE RESPONDENT

Mr Reid submitted that paragraph 11 should be read in conjunction with paragraph 12 and merely allows the Tribunal to conduct its business as it sees fit. Mr Reid submitted that the difficulty for Mr Burnside is that he may not be able to cite the witnesses because he does not know who they are.

FURTHER REPRESENTATIONS ON BEHALF OF THE APPELLANT

Mr Burnside submitted that the terms of both paragraph 11 and of the relevant pages of Smith and Barton's book supported his argument and asked the Tribunal to grant his motion. He submitted that it is perfectly competent to bring witnesses in terms of paragraph 11. He stated that paragraph 12 seems to envisage a situation where there may be a reluctant witness. Mr Burnside stated that he had written to Ms A asking if she would attend as a witness and that she had not replied. He indicated that he would have to apply to the Sheriff for a warrant to cite her. He stated that if the Law Society are not prepared to give the information required to cite the witnesses that he would have to apply to the Sheriff for an order for disclosure of that information.

FURTHER REPRESENTATIONS ON BEHALF OF THE RESPONDENT

Mr Reid submitted that he did not depart from Mr Burnside's view. He stated that paragraph 12 is more appropriate when the identity of the witnesses are unknown.

DECISION

The Tribunal noted that it was said that the common procedure of Section 42A Appeals is that they are conducted by debate. However, the Tribunal noted that it was also acknowledged by the parties that Appeals have proceeded on the basis of oral evidence before the Tribunal in the past and that reference was made to the case of Messrs MacRoberts and Richard Barrie. The Tribunal was satisfied that having regard to the terms of paragraph 11 of Schedule 4 of the 1980 Act that the parties in this case, particularly the Appellant, may insist on requiring evidence to be led as set out therein. Accordingly the Tribunal allowed the parties to lead oral evidence at the hearing as they think fit.

With regard to the issue of compelling witnesses to attend, the provisions in respect of that are contained in paragraph 12 of the said Schedule and the Tribunal directed the parties thereto. The Tribunal accordingly deemed it inappropriate to consider at this time the issue of ordering the Law Society to reveal the identity of the Reporter to and the convener of the Client Relations Committee H who considered this matter. The

Tribunal considered that this would be a matter to be decided by the Sheriff Court if an application was made by the Appellant in terms of paragraph 11 of the said Schedule.

Finally on the preliminary issue of time bar in respect of head of complaint two the Tribunal reserved judgement on this matter until the conclusion of the Appeal hearing. Quoad ultra on the Appellant's motion of consent, the hearing of the Appeal was adjourned to a date to be fixed and the matter of expenses was reserved. As this is a decision in terms of schedule 4 to the 1980 Act publicity will require to be given to this decision.

Vice Chairman