

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

FINDINGS

in Complaint
by

THE COUNCIL OF THE LAW SOCIETY
OF SCOTLAND

against

PETER FAIRGRIEVE FALCONER, Solicitor,
29 Dalgety Gardens, Dalgety Bay, Fife.

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") requesting that Peter Fairgrieve Falconer, Solicitor, 29 Dalgety Gardens, Dalgety Bay, Fife (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the Statement of Facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as they might think right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged by the Respondent. In terms of their Rules, the Tribunal appointed the Complaint to be heard on 19th March 1997 and Notice thereof was duly served upon the Respondent. At the Respondent's request this diet was discharged and the Complaint was set down for hearing on 2nd May 1997.
3. The Hearing took place on 2nd May 1997. The Complainers were represented by Mr B.A. Murphy, Solicitor, Ayr as Fiscal and the Respondent by William Holligan of Messrs Brodies WS, Edinburgh. The Tribunal granted leave for the Complaint to be amended in terms of a Minute of Amendment and a Joint Minute was lodged in which the amended Complaint was admitted. In respect thereof no evidence was led.

4. The Tribunal found the following facts established:-

- (1) The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was admitted as a solicitor on 30th November 1990 and enrolled on 15th December 1990. From 1st February 1992, he practised on his own account under the name of Messrs Drew Henderson & Co at 4 Braefoot Terrace, Liberton and subsequently at 63 Ratcliffe Terrace, Edinburgh. He ceased practice in June 1995.

Dr "A"

- (2) The Respondent had acted for Dr "A" in the purchase of "P.1" in 1991 and in an abortive sale transaction in respect of the same property in 1992. In January 1993 Dr "A" consulted the Respondent regarding the letting of the property while he was working in Saudia Arabia. The Respondent undertook to attend to the letting and management of the property and suggested that a rent of £600 per month would be reasonable. No tenant was found until May 1993 when the property was let for the period from 5th May 1993 to 5th October 1993 on what was purported to be a short assured tenancy at a rent of £450 per month with a deposit of £450 being payable on entry. The tenancy was in fact not a short assured tenancy in terms of the Housing (Scotland) Act 1988 as such tenancy must be for a minimum period of six months. The Respondent told Dr "A" that the lease was for six months.

- (3) The Respondent failed to follow Dr “A's” instructions regarding the management of the property and the remittance of the rents to a bank account in Scotland. Dr “A” had difficulty in obtaining an accurate statement of intromissions on the rental account. The Respondent failed to give any advice regarding taxation and no deductions were made in respect of tax, as is required by law where the landlord is abroad.
- (4) Although the tenant left the property at the expiry of the lease on 5th October 1993 the Respondent continued to maintain to Dr “A” that the tenancy had included the month of October and that the rent for that month had been taken from the deposit paid by the tenant. The Respondent did not provide Dr “A” with a final accounting for the tenancy until March 1994. He challenged the figures and as at November 1996 the Respondent had not given an explanation satisfactory to him.
- (5) A second tenant signed a short tenancy agreement for the period from 31st March to 31st October 1994 at a rent of £500 per month with a £500 deposit on entry. The tenant occupied the house during April 1994 and this was known to the Respondent. Nevertheless he wrote to Dr “A” on 3rd May 1994 saying that the tenant had paid the May rental of £500 in cash, but no deposit and that the tenant had been given the keys on 2nd May 1994.

- (6) Again Dr "A's" instructions regarding the remittance of rents were not followed. Eventually after much pressure from Dr "A", the Respondent sent a cheque for £2,746.25 to him in Saudi Arabia on 19th July 1994. The Respondent discovered that in calculating the amount due to Dr "A" he had included a housing benefit cheque for £580.47 which the District Council had stopped. The Respondent then stopped the cheque payable to Dr "A" without advising him of this fact. A replacement payment of £2,165.78 was not sent by the Respondent until 9th September 1994. The Respondent failed to reply to Dr "A's" numerous letters and telephone calls. In September 1994 Dr "A" returned to Edinburgh and called upon the Respondent in an effort to clear the matter up. During his visit the Respondent gave him a further cheque for £854.01.
- (7) The tenant vacated the property at the expiry of the lease on 31st October 1994. The Respondent did not prepare a final accounting for Dr "A" until 19th December 1994. At that time he wrote to Dr "A" saying that the final accounting showed that Dr "A" owed him £268.16 and that he had retained the September and October rents against that sum. The final statement of account prepared by the Respondent and submitted to Dr "A" contradicted the earlier statements provided to Dr "A", omitted certain payments which the Respondent had received and contained arithmetical errors.

- (8) The Respondent failed to carry out Dr “A's” instructions to effect buildings insurance for the property with the result that it remained uninsured for a considerable time.

Mr & Mrs “B”

- (9) In or about 1993 the Respondent acted for Mr & Mrs “B” in the purchase of their property at “P.2”. In 1995 Mr & Mrs “B” consulted other solicitors with regard to a complaint that the Respondent had failed to alert them to the fact that they would be liable to pay maintenance charges for landscaping work in the vicinity of their house. Subsequently the matter was referred to the Law Society and the Respondent was asked to comment. By letter of 27th February 1995 the Respondent claimed that if there had been any unduly burdensome conditions affecting the marketability of the property he would have discussed these with Mr & Mrs “B”.

“C”

- (10) Mrs “C” and her husband “D” separated around June 1994. Mr “D” instructed the Respondent to act for him. Mrs “C” was represented by Messrs Alex Mitchell & Sons. The parties entered into a Minute of Agreement which was registered in the Books of Council and Session. The Minute provided inter alia that the matrimonial home at “P.3” (which was in the joint names of the parties) should be sold as soon as was reasonably practicable, the said property to be marketed and sold by the Respondent. Thus the

Respondent acted for Mr “D” and also separately acted on the express instruction of Messrs Mitchells in respect of Mrs “C's” interest in the sale. In particular, it was agreed that from the sale price, there would deducted:-

- (a) the sum required to redeem the mortgage as at the date of settlement, and
- (b) all fees incurred in respect of the sale including estate agent fees all advertising costs, solicitors' fees, together with all properly incurred and vouched outlays.

The agreement further provided that

"Thereafter the net free proceeds of the sale shall be divisible between the parties equally".

- (11) Upon the Respondent accepting instructions to proceed with the sale for both parties, there was an implied obligation (a) that he would not disburse funds contrary to the agreement and (b) that he would make payment in accordance with that agreement.
- (12) An offer was received by the Respondent and a copy sent to Mrs “C's” solicitors Messrs Mitchells on 2nd December 1994. They replied by fax on 5th December 1994 stating that the price and date of entry were acceptable and on 7th December 1994 they confirmed that the extras sought by the purchasers were also acceptable. On 14th December 1994 the Respondent sent to Messrs Mitchells a copy of the qualified acceptance which he had prepared but thereafter he failed to keep Mrs “C” and her solicitors advised of progress. Messrs Mitchells wrote to the Respondent on 18th January 1995 enquiring whether missives had been

concluded; the Respondent replied on 23rd January 1995 reporting that the date of entry had been delayed and that the Disposition would be available on the following day for execution by Mrs "C".

- (13) On 23rd January 1995 Messrs Mitchells wrote to the Respondent complaining that the purchasers had already taken entry to the property. They asked the Respondent for evidence that missives had been concluded and that the engrossed Disposition was available for signature, and they reminded the Respondent that his client was entitled to a one-half share of the free proceeds. The Respondent stated in a letter dated 24th January 1995 that entry had not been given to the purchasers and that provided settlement took place he would forward Mrs "C's" share of the proceeds on the following day. On 25th January 1995 Messrs Mitchells wrote to the Respondent requesting payment of their client's share. They sent a reminder on 31st January 1995 and a further reminder on 7th February 1995. It was not until 10th February 1995 that a cheque was sent by the Respondent to Messrs Mitchells. He also sent what purported to be a statement of cash intromissions. However it appeared that, despite the terms of the Minute of Agreement, the Respondent had debited a sum of £1,582.64, representing the mortgage payments made by Mr "D" (who had continued to reside in the former matrimonial home), notwithstanding that a higher sum had already been paid to Mr "D" several days previously, to compensate him for the mortgage payments. Messrs Mitchells immediately complained to the Respondent in the strongest possible terms. The Respondent replied

on 27th February 1995 stating inter alia

"the writer realises he has made a grave mistake in forwarding the balance to your client on deduction of these sums he has allowed himself to be pressurised by his client into sending the revised balance to your client rather than, of course consulting with you first".

- (14) By letter dated 27th February 1995, the Respondent advised Mr "D" "In my opinion the clause which you are relying on within the Minute of Agreement is not sufficient to allow you to deduct these mortgage payments from the funds constituting the half net free proceeds of sale due to your wife"; and in a further letter dated 11th April 1995, the Respondent stated to Mr "D", "It may well be that I will require to make payment of the sums to your wife's Solicitor as I was under the duty to forward the full net free proceeds of sale to them. I can assure you that if I am ultimately called upon to do this then I will find it necessary to pursue you for repayment of the sum".
- (15) The Law Society intimated a complaint to the Respondent on 20th February 1995. A reminder was issued on 8th March 1995 followed by a further reminder on 24th March 1995. On 12th April 1995, the Law Society issued Notices to the Respondent in terms of Section 42C and Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 and a reply was eventually obtained from the Respondent on 5th May 1995. In that letter the Respondent stated that he was under the impression that the matter had been resolved between himself and Messrs Alex Mitchells, and that he had at no time acted on behalf of Mrs "C", as his client had only

been Mr "D". By letter dated 11th May 1995 the Respondent was warned that the Law Society was considering treating his delay in responding, as a matter of professional misconduct. The Respondent failed to reply to a number of letters sent by the Law Society after that date.

"E"

- (16) The Respondent acted for "E" when he purchased a flatted property at "P.4" The Respondent did not draw to his client's attention the terms and conditions upon which the property was being purchased, and in particular that the title deed contained what might be regarded as an inequitable formula for meeting the cost of roof repairs and which would be likely to affect the future marketability of the property.
- (17) The problem came to light when Mr "E" instructed other solicitors to sell the property and two potential purchasers withdrew their offers. The Respondent had written these solicitors on 11th March 1994, stating inter alia

"Mr "E" was not advised of the increased liability. It is clear from the file that we have no evidence that Mr "E" was made aware of this and given that he certainly should have been so, we much (sic) accept liability in this specific regard."

When the property was eventually sold, the new solicitors intimated by letter dated 21st April 1994, the extent of their client's losses. At that time the claim was stated to be £545. The Respondent prepared a letter dated 18th January 1995 to these solicitors purporting to enclose a cheque for £545. That cheque was never sent.

- (18) Mr “E” complained to the Law Society in December 1994. The Law Society wrote to the Respondent on 30th January 1995 and he replied on 27th February 1995 stating inter alia "I believe that this complaint can be resolved by payment of the proper compensation agreed as due to Mr “E”". Mr “E” calculated his total loss to be £1040.30. The Law Society intimated the figure of £1040.30 to the Respondent on 31st March 1995. He failed to reply to this letter or to a reminder dated 16th May 1995. A Section 42C Notice was issued by the Law Society on 15th June 1995, and the Respondent produced his file shortly thereafter. However the Respondent failed to reply to a further letter dated 14th July 1995 and as at November 1996, he had made no proposal for settlement of the claim for compensation.

Mr & Mrs “F”

- (19) The Respondent acted for Mr & Mrs “F” in the sale of their “P.5” house and in the purchase of a house in “P.6”.
- (20) The sale transaction settled on 30th March 1994 and the “F’s” were due some £7,750 from the sale. The Respondent failed to account immediately in respect of the proceeds of sale and the “F’s” had to press the Respondent for payment. He did not effect settlement for five weeks and paid no interest on the delayed funds.

- (21) In the sale transaction it was a condition of the missives that the "F's" pay an account for certain roof repairs which had been carried out prior to the date of entry on 30th March 1994. The sum involved was deducted from the price paid and put on deposit receipt. Due to an oversight the contractor was not paid. The "F's" drew the matter to the Respondent's attention on several occasions but there was delay on the part of the Respondent and it took two months to rectify the position.
- (22) In connection with the purchase transaction, the "F's" took out a new endowment policy with the "G" through the agency of the Respondent. The "G" sent the policy to the Respondent and it should have been sent on to the "F's" mortgage lenders, the "H" Building Society. The Building Society wrote to the "F's" some weeks after the mortgage was completed, asking for delivery of the policy. The Respondent apparently overlooked that he had the policy and denied having the same. The "F's" had to arrange to obtain a duplicate which they sent on to the Building Society. Some weeks later the Respondent forwarded the original policy to the Building Society.
- (23) The foregoing matters were the subject of complaint by the "F's" to the Law Society. Following correspondence, the Respondent admitted to the Law Society that the complaints were well founded and by letter of 27th February 1995 he offered to pay compensation of £100 plus half the commission due on the "G" policy, which commission was estimated to be £700. The total value of the compensation offer was therefore around £450.00. The "F's" indicated to the Law Society that this

would be acceptable to resolve matters. The Law Society intimated this to the Respondent but he failed to reply.

Mr & Mrs "I"

(24) The Respondent acted for Mr & Mrs "I" in relation to the purchase of their Council house from "P.5" District Council at a price of £12,600. The "J" Building Society approved a loan of the same amount of £12,600 and instructed the Respondent to act on their behalf. The loan cheque was sent to the Respondent and the cheque was cleared through the Respondent's client account on 27th March 1995. The Respondent subsequently drew a cheque for the same sum which he sent to the District Council, but the transaction failed to settle and the last mentioned cheque was returned to the Respondent. The Respondent did not return the funds to the Building Society. Ultimately there were no funds in the client bank account to cover the said £12,600 and there was accordingly a shortage on the Respondent's client account to that extent, contrary to Rule 4(1)(a) of the Solicitors (Scotland) Accounts Rules 1995. Mr & Mrs "I" had paid to the Respondent the sum of £588.88 in respect of fees, VAT and outlays including the sum of £77.00 for recording dues. No Disposition or Standard Security was ever recorded by the Respondent.

5. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect of

- (i) his failure to effect a Short Assured Tenancy, his delay in remitting funds, his failure to insure property, his failure to account timeously and to respond to enquiries made by his client Dr “A”,
 - (ii) his failure while acting on the instructions of both Mr “D” and Mrs “C”, to adhere to the terms contained in a Minute of Agreement whereby he would divide the net free proceeds of sale equally,
 - (iii) his failure to keep Mrs “C” informed, to account to her and to respond to enquiries by her solicitors,
 - (iv) his failure and unreasonable delay in replying to correspondence from the Law Society and Messrs Alex Mitchell & Son in relation to Mrs “C”.
 - (v) his failure and unreasonable delay in replying to correspondence from the Law Society in relation to “E”,
 - (vi) his failure to account for the proceeds of sale and in respect of funds retained. for a roof repair and to deliver an endowment policy, in relation to conveyancing transactions for Mr and Mrs “F”, and
 - (vii) his failure to comply with Rule 4(1)(a) of the Solicitors (Scotland) Accounts Rules 1995 in respect of a shortage of £12,600 on his client account.
6. The Tribunal further found that the Respondent had provided inadequate professional services to
- (i) Dr “A” in respect of his failure to effect a Short Assured Tenancy, to arrange building insurance when instructed, his failure to follow instructions in remitting rent and his failure to account timeously,

- (ii) Mr and Mrs “B” in respect of his failure to alert them of their liability to pay maintenance charges for landscaping works in the vicinity of the house which they were purchasing,
- (iii) Mr “D” and Mrs “C” in respect of his failure to account properly in relation to the sale of the matrimonial home at “P.3”,
- (iv) “E” in respect of his failure to draw Mr “E's” attention to an important aspect of a title deed which contained adverse financial implications, and
- (v) Mr and Mrs “F” in respect of his failure to account properly and timeously in respect of the proceeds of sale, his failure to deal with funds retained to meet roof repairs and his failure to deliver an endowment policy.

7. Having heard the solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 2nd May 1997. The Tribunal having considered the Complaint dated November 1996 at the instance of the Council of the Law Society of Scotland against Peter Fairgrieve Falconer, Solicitor, 29 Dalgety Gardens, Dalgety Bay. Fife, find the Respondent guilty of professional misconduct in respect of his failure to attend to the affairs of clients, his delay in replying to correspondence, his failure to account and his breach of Rule 4(1)(a) of the Solicitor (Scotland) Accounts Rules 1995; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of three years, 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 as may be approved by the Council of the Law Society of Scotland and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full Practising Certificate; make no order or direction in respect of the inadequate professional services provided by the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal as the same may be taxed by the Auditor of the Court of Session on an agent and client basis on the scale of the detailed charges allowed for the normal case in Chapter Six of the Law Society's Table of Fees for general business together with a reasonable sum for posts and incidental outlays; and Direct that publicity, to include the name of the Respondent, shall be given to this decision.

(signed) JOHN W LAUGHLAND

Chairman

8. A copy of the foregoing Interlocutor together with a copy of the Findings certified by the Clerk to the Tribunal as being correct were duly sent to the Respondent by recorded delivery service on 19th June 1997.

IN NAME OF THE TRIBUNAL

Chairman

NOTE

This Complaint contained charges of professional misconduct and separate charges of having provided inadequate professional services, in relation to seven separate clients. No Answers were lodged by the Respondent but immediately prior to the Hearing, a Joint Minute was lodged wherein the Respondent materially admitted the averments and the charges of professional misconduct as amended in relation to six of the clients and that in respect of five of these clients he had provided an inadequate professional service. In these circumstances, no evidence was led and there was no reference to the productions which had been lodged for the Complainers.

To create a Short Assured Tenancy under the provisions of the Housing (Scotland) Act 1988, it is necessary that the tenancy runs for a period of not less than six months. The Respondent failed to provide for this when letting property for Dr "A". As it happened, the Respondent's failure to comply with the provisions of the particular statute did not have any adverse consequences. There was also no adverse effect resulting from the Respondent's failure to insure the property. However the Respondent also persistently failed to account to Dr "A" or otherwise to communicate with him and the Tribunal is satisfied that these various failures amounted to professional misconduct.

In relation to Mr and Mrs "B", the charge of professional misconduct was of the Respondent's failure to alert his clients to a liability for maintenance charges and in the course of the Hearing, the Tribunal allowed the charge to be amended so as to identify that the maintenance charges were for landscaping. The solicitor for the Respondent did not dispute the charge in that he was unable to show that the Respondent had made his clients aware of the particular conditions. Nevertheless in the opinion of the Tribunal any such failure would

ordinarily come under the heading of negligence; and negligence only extends to professional misconduct where it can be shown that the degree of neglect was serious and reprehensible. In this case, there was no indication that the failure was any more than an omission on the part of the Respondent, and the Tribunal has therefore made no finding of professional misconduct in relation to this charge. There was nevertheless an inadequate professional service and this has been so recorded.

The Respondent acted for Mr “D”, and his wife was separately represented by Messrs Alex Mitchell & Son. Their house had been in joint names and a decision had been taken to sell the property. In such circumstances it is accepted practice for the solicitors acting for the respective parties to agree that one solicitor represents both parties in the sale. Such an arrangement is wholly dependent on that solicitor respecting the interests of both clients and not taking any action in relation to the sale which would prejudice the interest of one of the parties. Accordingly if one or other of the parties instructs the precedent acting solicitor in a manner which would conflict with the interests of the other party, it is that solicitor's duty to cease acting forthwith in relation to the arrangement and confine the representation to that solicitor's principal client - leaving it open to further discussion - and perhaps, involving a third solicitor to act on the basis of the mutual instructions only. Regrettably the Respondent failed to appreciate his dual responsibility; and when Mr “D” gave instructions to the Respondent which were financially disadvantageous to Mrs “C” he regrettably failed to respect his continuing obligation to Mrs “C” and allowed himself to adopt a course of action which was prejudicial to her interests. The Respondent also compounded his culpability by failing to distribute the proceeds of sale and neglecting to communicate with interested parties, including the Law Society of

Scotland. The solicitor for the Respondent explained that the events occurred at a time when the Respondent was under considerable pressure and that Mr “D” was particularly forceful in his instructions relative to the distribution of the proceeds of sale. Nevertheless the Respondent failed to have due regard for the interests of Mrs “C” for whom he had also been instructed; and the Tribunal is satisfied that there was professional misconduct on the part of the Respondent in relation to each of the failures arising from this transaction and that there was correspondingly an inadequate professional service.

In relation to “E”, the principal charge of professional misconduct was that the Respondent had failed to advise his client of an apparently inequitable formula for sharing the cost of roof repairs in relation to a property which he was purchasing. The solicitor for the Respondent submitted that there had been an error of judgement on the part of the Respondent in failing to alert his client to this particular matter. Such failure might extend to negligence but, in the opinion of the Tribunal, was not in itself of such gravity as might be stigmatised as being professional misconduct. There was however an inadequate professional service. The Respondent also failed to reply to correspondence in relation to this matter and the Tribunal is satisfied that this in itself was culpable and warranted a finding of misconduct.

In relation to Mr and Mrs “F”, the Respondent was charged with failing to account for the proceeds of sale of a property and for funds retained to meet a roof repair, and to deliver a life policy. The solicitor for the Respondent pointed out that the Respondent had made an offer of compensation, but there was no indication that any sum had actually been paid. The Respondent clearly neglected the interests of Mr and Mrs “F” and that this neglect warrants findings of professional misconduct and inadequate professional service.

The remaining head of Complaint related to the interests of Mr and Mrs “I”. The Solicitors (Scotland) Accounts Rules contain detailed provisions requiring the retention of all client monies in a separate client account and for the solicitor to maintain adequate records so that not only the solicitor but also any other authorised person can satisfy themselves that the funds held in the client account cover the aggregate of the sums due by the solicitor to individual clients. Regrettably the Respondent failed to maintain adequate records in accordance with the Accounts Rules and although he purported to retain in his client account the funds held for Mr and Mrs “I” towards the purchase of their Council House, he was unable to account to them as he had insufficient funds in his client account. The shortage on the Respondent's client account constituted a serious breach of the Solicitors (Scotland) Accounts Rules and the Tribunal has no hesitation in finding that this breach in itself amounted to professional misconduct. It was explained in the Joint Minute that the Respondent had initially attempted to settle the Council house purchase, and there was no insistence on the separate charge that there had been an inadequate professional service.

The Respondent admitted a previous Finding of professional misconduct by this Tribunal on 26th July 1995 in relation to various breaches of the Solicitors (Scotland) Accounts Rules. At that time, the Respondent was censured and the Tribunal directed in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of ten years, any Practising Certificate held or issued to the Respondent should be subject to such restriction as would limit him to acting as a qualified assistant to such employer as might be approved by the Council of the Law Society of Scotland and thereafter until such time as he might satisfy the Tribunal that he was fit to hold a full Practising Certificate. At that time, it was stated that personal funds had been

injected to his business to clear the shortfall on his client account. He had then disposed of his business and taken up employment outwith the legal profession.

The Respondent is now 31 years of age. His solicitor explained that in 1991, he had borrowed heavily to purchase an interest in a chamber practice. The business had not been sufficiently viable to support the level of borrowing, his health had suffered and he was now insolvent.

The circumstances of this Complaint disclosed a pattern of neglect in relation to the affairs to a number of clients and that he had caused considerable inconvenience to fellow solicitors and the Law Society. The Respondent has also demonstrated his immaturity in that he was unable to manage his practice, and resist the pressures of a client to the extent that he acted contrary to an agreement. The Respondent is already the subject of an order which limits any practice within the profession to that of an employee. In the opinion of the Tribunal, a similar order is appropriate in relation to the present Complaint to reflect the gravity of the Respondent's neglect in the various matters which were the subject of findings of professional misconduct; and the present order will run concurrently with the order which was made in 1995.

The Tribunal has also made findings of inadequate professional services; and in terms of Section 53A of the Solicitors (Scotland) Act 1980, it would have been open to the Tribunal to make appropriate determinations or directions in relation to these findings. However as the Respondent is no longer in practice and is hopelessly insolvent, no useful purpose would be served by making any order under that Section.

No circumstances were disclosed which might have caused the Tribunal to exercise the limited discretion contained in paragraph 14 of the Fourth Schedule to the same Act in relation to publicity, and accordingly publicity to include the name of the Respondent, will be given to this decision.

Chairman