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, 26 Drumsheugh Gardens, Edinburgh

against

MALCOLM WELSH THOMSON, Solicitor, Marshall Wilson Law Group Limited, 2 High Street, Falkirk

And

GEORGE RAYMOND MORTON, Solicitor, formerly of Marshall Wilson Law Group Limited, 2 High Street, Falkirk and now of Morton Pacitti LLP, 5 Newmarket Street, Falkirk

1. A Complaint dated 7 October 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Malcolm Welsh Thomson, Solicitor, Marshall Wilson Law Group Limited, 2 High Street, Falkirk (hereinafter referred to as "the First Respondent") and George Raymond Morton, Solicitor, formerly of Marshall Wilson Law Group Limited, 2 High Street, Falkirk and now of Morton Pacitti LLP, 5 Newmarket Street, Falkirk (hereinafter referred to as "the Second 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 both Respondents. Answers were lodged by both Respondents.

3. In terms of its Rules the Tribunal fixed a procedural hearing to be heard on 19 February 2010 and notice thereof was duly served on the Respondents. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The First Respondent was represented by William Macreath, Solicitor, Glasgow and the Second Respondent was represented by Katrina Stewart, Solicitor, Edinburgh. The parties' joint request for a continuation of a further six weeks to adjust Answers and lodge a Record was granted by the Tribunal.

4. The Tribunal fixed a further preliminary hearing to be heard on 22 April 2010 and notice thereof was duly served on the Respondents. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The First Respondent was not present but was represented by Mr Anderson, Solicitor, Glasgow and the Second Respondent was represented by Katrina Stewart, Solicitor, Edinburgh. A Record was lodged by Mr Reid. Mr Reid advised that the parties were hopeful of reaching agreement on a number of disputed issues and asked for a substantive hearing to be fixed. The Tribunal fixed a substantive hearing for 10 August 2010.

5. On 10 August 2010 the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The First Respondent was present and represented by Mr Macreath, Solicitor, Glasgow. The Second Respondent was present and represented by Mr Young Q.C.

6. A Joint Minute was lodged containing pleas on behalf of both Respondents to all of the averments in the Complaint as amended. Mr Reid indicated that following recent investigation of the files, he was now prepared to accept not guilty pleas from both Respondents to some of the averments and to allow any Answers which contradicted such pleas to be withdrawn. The First Respondent plead guilty to averments

2.2, 2.4, 4.2, 5.2, 5.3, 5.4 (as amended), 7.2, 7.3, 7.4, 7.6 and 7.7 (as amended). The Second Respondent plead guilty to averments 4.3 (as amended), 5.5 (as amended), and 5.6. Both Respondents accepted that they were guilty of professional misconduct in cumulo and no evidence was required to be led.

7. The Tribunal found the following facts established

7.1 The First Respondent was born on 27 March 1965. He was admitted as a Solicitor on 2 February 1989. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 15 February 1989. From 1 April 1983 he became a Partner with Marshall Wilson, Solicitors, having previously been with the firm as an employee from 1 November 1989 to 30 September 1991 and as an Associate from 1 October 1991 to 31 March 1993. The First Respondent only became designated Cashroom Partner in around January 2005. He was then appointed Money Laundering Reporting Officer in around 4 March 2005.

7.2 The Second Respondent was born on 9 October 1952. He was admitted as a Solicitor on 5 September 1975. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 19 September 1975. He became a Partner with the then Marshall Wilson Dean & Turnbull, Solicitors, Falkirk in 1980. Prior to that he had been a partner in Blackadder & McMonagle, Solicitors, Falkirk from 1976 and then with John Wilson & Turnbull, Solicitors, as a partner from about 1977 to 1980. Marshall Wilson Law Group Limited had been set up on 1 November 2008. The Second Respondent's connection with that firm terminated with effect from 31 October 2009. With effect from 1 February 2010 the Second Respondent has been a partner in the firm of Morton Pacitti, Solicitors, Falkirk. In the firm of Marshall Wilson he undertook a practice which was primarily conveyancing and commercial transactions.

Law Society Inspection – 9 & 10 February 2005.

7.3 The Complainers carried out an inspection of the Marshall Wilson records on 9 and 10 February 2005 in terms of the Solicitors (Scotland) Accounts, Etc Rules 2001. The Complainers noted breaches of the said Rules.

7.4 Under Rule 8(1) a Solicitor has an obligation to keep properly written up books and accounts. The Complainers noted that entries for cheques drawn on the Client Accounts were being edited to show the correct amount if the cheques were processed by the Bank as a different amount from the original posted entry. Editing the original entry distorts the audit trail and the Client Account month end figures. The appropriate procedure in such a situation is to post an adjustment with an explanatory narrative without any editing of the original entry.

7.5 Under Rule 22(1) there is a prohibition on a Solicitor acting for a lender to the Solicitor or connected persons in the circumstances set out in Rule 22. The Complainers noted that one of the Firm's Partners acted for a lender in relation to a Discharge in favour of herself and separately for two other Partners in the Firm. This was done without the First Respondent's knowledge and was not reported to him until it was drawn to his attention at the time of the inspection.

Guarantee Fund Interview – 21 April 2005.

7.6 As a result of the findings of the Law Society inspection of 9 and 10 February 2005, the First Respondent was interviewed by the Guarantee Fund on 21 April 2005.

The Guarantee Fund Committee advised that the February 2005 inspection had raised serious concerns because the Firm appeared not to be taking account of the Money Laundering Regulations. The Committee went on to express concerns on a variety of other matters, including the checking of balances and ledgers to ensure that Title Deeds were being registered and to ensure that delays did not take place and breaches of Rule 22.

Law Society Inspection – 6 – 8 February 2006.

7.7 In terms of the said 2001 Rules, the Complainers carried out an inspection of the Marshall Wilson records on 6 to 8 February 2006.

7.8 Under Rule 8(1) a Solicitor has an obligation to at all times keep properly written up such books and accounts as are necessary to comply with the provisions of Rule 8(1).

On inspection, the Complainers noted insufficient narrative on the Firm's ledgers and on the Day Book. They noted cheques payable to the Registers of Scotland remaining outstanding after two months. No check was being carried out on such cheques to ensure that there was prompt registration of deeds.

7.9 Under Rule 24 a Solicitor has an obligation to comply with the Provisions of the Money Laundering Regulations as specified in said Rule.

The Complainers noted a client, Company 1, operating from a Jersey address, where cash payments had been made by the Firm on 23 November 2005 of £10,500 and 25 November 2005 of £6,200. There was no evidence of identification for Company 1 or the relevant Director. There was no explanation for the cash payments.

Company 1 were clients of the Second Respondent. The Second Respondent agreed to act for the company as agent for the late Mr A, then an employed Solicitor, an assistant in the firm of Sandemans, Solicitors, Falkirk. The clients were clients of Sandemans who would have had the responsibility of carrying out the completion of the Money Laundering requirements. Company 1 and a number of other companies were formed by Mr B who was resident in Jersey and whose business was primarily to identify land for development purposes. It is understood that for tax reasons, his several companies were registered in the British Virgin Islands. The Second Respondent as agent resolved an outstanding transaction on instructions from Mr A of Sandemans. A signed Disposition was obtained and registered. It had been anticipated that Mr A would recover from illness and return to practice. His illness however progressed and he was unable to return to practice. The Second Respondent then got instructions direct from Mr B to undertake additional transactions as Mr A was not available.

Law Society Inspection – 6 – 8 February 2007.

7.10 In terms of the said 2001 Rules, the Complainers carried out an inspection of the Respondents' records on 6 to 8 February 2007.

7.11 Rule 6(1) provides inter alia that money withdrawn belonging to one client paid to or on behalf of another client requires the written authority of the first client.

The Complainers noted that there was a transfer from Mrs C to Ms D on 24 August 2006 of £11,394.90 with no written authority.

7.12 Rule 6(2) provides that if money is drawn from a Client Account by cheque payable to an account with any Bank or Building Society, the cash book and ledger entries and the cheque shall include the name of the person whose account is to be credited with the payment.

The Complainers noted two payments which did not include the name of the person whose account was to be credited with the payment, being:-

22.12.06 – Mr E - £58,422.93 to the Royal Bank of Scotland
12.01.07 – Mr and Ms F - £35,470.89 to Mortgage Express

7.13 Under Rule 11(1) and 11(2) if a Solicitor holds money for or on account of a client, there is an obligation to earn interest for the client on the money subject to the provisions of Rules 11(1) and 11(2).

The Complainers noted seven un-invested balances being held by the Firm with the clients being:-

Mr G
Mr H
Mr I
Mr J
Mr and Mrs K
Mr L
Mr M

7.14 Under Rule 24 every Solicitor, in respect of all other business carried on by the Solicitor, has an obligation to comply with the Provisions of the Money Laundering Regulations as specified in said Rule.

The Complainers noted that following on from the inspection in February 2006, receipts for the two cash payments in respect of Company 1 (a Company registered in the Virgin Islands) were still awaited.

The current inspection did not disclose full Company, Director or Client documentation under the Money Laundering Regulations in respect of:-

BEN066 – Company 1
CUB001 – Company 2
YOD001 – Company 3
EAS079 – Ms N
Company 4
Mr O

7.15 Under Rule 24 the Complainers noted various payments, including some payments in cash, in respect of Company 1, Company 2, Company 3 and Ms N, all as follows.

BEN066 – Company 1

Matter 1 – Purchase of Property 1

04/01/05 Paid Mr B (Agent) (Cash)	£2,000.00
21/02/05 Paid B (Agent) (Cash)	£2,000.00
21/02/05 Transfer to CUB001/1	£1,000.00

Matter 2 – Sale of Ground at Property 2

03/06/06 Paid Mr P	£1,500.00
03/06/05 Paid Mr Q Fees (Cash)	£25,000.00
	£100.00
07/06/05 Paid Company 4 – free proceeds	£210,400.00
07/06/05 Paid Company 4	

– Consultancy Fee £263,400.00

Matter 3 – Purchase of Ground at Property 3

10/06/05 Paid Company 4

– Balance of funds due £16,790.00

23/11/05 Paid you (Cash) (Requested Previously)£10,500.00

25/11/05 Paid you (Cash) (Requested previously)£6,200.00

04/11/05 Paid Company 1 £11,050.64

CUB001 Company 2

Matter 1 – Purchase of Ground at Property 4

07/03/05 Paid Mr B £600.00

23/03/05 Paid Mr R Estate Agency fee £15,000.00

23/05/05 Transfer to EAS079/1 £567.48

24/03/05 Paid Mr P Fee £7,000.00

06/04/05 Paid You (Mr S) Fees £130,000.00

YOD001 Company 3

Matter 1 – Purchase of Ground at Property 4 22/5/05

22/05/06 From Company 3 per Mr O £166,250.00

Matter 2 – Sale of Ground at Property 4 22/2/05 **£**

22/05/06 By from Company 5 – sale price

23/05/06 Paid Mr O refund from Company 3 £166,250.00

24/05/06 Paid Company 3 per Mr T £10,000.00

31/05/06Paid Mr U per instruction £70,000.00

01/06/06Paid Mr T's per instructions £102,000.00

07/06/06Paid Company 1 free proceeds £181,664.82

08/08/06Paid you retention £2,000.00

EAS079 Ms N

Matter 1 – Purchase of Property 5 24/03/05 **£**

24/03/05 By from Company 4

(ID Required) £26,000.00

Adequate documentation for the vouching of the above payments to meet the Money Laundering Regulations was not produced by the Respondents at the time of the inspection. The transactions were all genuine. The Second Respondent ceased acting for Company 4, Mr B and the other Jersey companies in about 2008 when instructions were passed to other firms.

Guarantee Fund Interview – 17 May 2007.

7.16 As a result of the inspection of 6 to 8 February 2007 and the earlier inspections, the Respondents were interviewed by the Guarantee Fund Committee on 17 May 2007

7.17 The Guarantee Fund Committee advised that the February 2007 inspection had raised serious concerns in respect of the Money Laundering Regulations, and in particular the transactions involving Company 1, Company 2, Company 3, Ms N and Company 4.

The Committee expressed their concerns over various cash payments made.

The Respondents were advised by the Committee that the circumstances were such that money laundering could be taking place. The Second Respondent, who was responsible for the transactions, was not able to advise on the source of funds because there was no information available on the files.

Separately, the Committee expressed concern about un-invested client credit balances.

Law Society Inspection – 31 March – 1 April 2008.

7.18 In terms of the 2001 Rules the Complainers carried out an inspection of the Marshall Wilson records on 31 March and 1 April 2008.

7.19 Rule 6(1) provides inter alia that money withdrawn belonging to one client paid to or on behalf of another client requires the written authority of the first client.

The Complainers noted three transfers with no written authority as follows:-

DIC149 – Mr V £1,500 to Company 6
ODO052 – Mr W, £93,000 on 07.12.07
MUL048 – Mr X, £450 on 07.12.07 to Company 7

7.20 Rule 6(2) provides that if money is drawn from a Client Account by cheque payable to an account within any Bank or Building Society, the cash book and ledger entries and the cheque shall include the name of the person whose account is to be credited to the payment.

The Complainers noted that on WAR031, Ms Y, a cheque paid to Dunfermline Building Society for £45,273.01 dated 2 October 2007, did not include the name of the person whose account was to be credited with the payment. In addition, the client ledger did not disclose any property address.

7.21 Under Rule 8(1) a Solicitor has an obligation to at all times keep properly written up such books and accounts as are necessary to comply with the provisions of Rule 8(1).

The Complainers noted that six cheques on the Royal Bank of Scotland Client Bank Account were outstanding and out of

date. No action had been taken in respect of these outdated cheques.

7.22 Under Rule 10 a Solicitor has an obligation to reconcile client funds invested in specific accounts in terms of the provisions of Rule 10(1) and 10(2).

The complainers noted eight accounts opened in December 2006 in respect of Executry accounts transferred from other invested funds accounts.

Of these eight accounts, seven existed prior to 1999 and the other was opened in 2001. By letter dated 25 April 2008 the First Respondent advised that seven of the eight account balances had been remitted to the QLTR and the remaining account balance paid into a Bond for a beneficiary.

7.23 Under Rule 11(1) and 11(2) if a Solicitor holds money for or on account of a client, there is an obligation to earn interest for the client on the money subject to the provisions of Rules 11(1) and 11(2).

The Complainers noted three un-invested balances being held by the firm with the clients being:-

GIB107 - Mr Z, £670 held from 18.10.07
MCL384 - MR AA, £1,961.61 held from 07.11.07
MUR158 - Company 8, £806 held from 17.05.06

7.24 On or about 23 December 2008 the Respondents wrote to the Complainers making various representations in respect of the inspection of 31 March and 1 April 2008. The Complainers responded by letter dated 28 January 2009 and the Respondents wrote again on 30 January 2009.

8. Having heard submissions from Mr Reid and Mr Macreath, the Tribunal found the First Respondent guilty of Professional Misconduct in cumulo in respect of:

8.1 his breaches of Rule 6 of the Solicitors (Scotland) Accounts, Etc Rules 2001 in relation to his failure to carry out the proper procedures regarding the taking of drawings from client accounts;

8.2 his breaches of Rule 8 of the said Rules regarding his failure to keep properly written up books and accounts;

8.3 his breach of Rule 10 of the said Rules in relation to his failure to reconcile client funds appropriately;

8.4 his breaches of Rule 11 of the said Rules in relation to the payment of interest on un-invested balances;

8.5 his breach of Rule 22 of the said Rules in relation to the firm acting for a lender in circumstances where the transaction related to a loan involving one of the solicitors in the firm.

9. Having heard submissions from Mr Reid and Mr Young, QC the Tribunal found the Second Respondent guilty of Professional Misconduct in cumulo in respect of:

9.1 his breaches of Rule 24 of the said Rules in relation to the requirements of the Money Laundering Regulations;

10. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 10 August 2010. The Tribunal having considered the Complaint dated 7 October 2009 at the instance of the Council of the

Law Society of Scotland against Malcolm Welsh Thomson, Solicitor, Marshall Wilson Law Group Limited, 2 High Street, Falkirk (hereinafter referred to as "the First Respondent") and George Raymond Morton, Solicitor, formerly of Marshall Wilson Law Group Limited, 2 High Street, Falkirk and now of Morton Pacitti LLP, 5 Newmarket Street, Falkirk (hereinafter referred to as "the Second Respondent"); Find the First Respondent guilty of Professional Misconduct in cumulo in respect of his several breaches of the Solicitors (Scotland) Accounts, Etc Rules 2001, namely Rule 6 regarding the operation of client accounts, Rule 8 regarding keeping properly written up books and accounts, Rule 10 regarding the reconciliation of client funds, Rule 11 regarding the payment of interest on un-invested balances and Rule 22 which prohibits the firm acting for the lender to one of the solicitors in the firm; Find the Second Respondent guilty of Professional Misconduct in cumulo in respect of his several breaches of Rule 24 of the said Rules in relation to his failure to comply with the requirements of the Money Laundering Regulations; Censure the First Respondent and Fine him in the sum of £7,500 to be forfeit to Her Majesty; Censure the Second Respondent and Fine him in the sum of £7,500 to be forfeit to Her Majesty; Find the Respondents jointly and severally liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity will include the names of both Respondents.

(signed)

Malcolm McPherson

Vice Chairman

11. 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 both Respondents by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

A Joint Minute was lodged containing pleas on behalf of both Respondents to all of the averments. Mr Reid indicated that following investigation of the files, he was prepared to accept not guilty pleas from both Respondents to some of the averments and to allow any Answers which contradicted such pleas to be withdrawn. There was therefore no need for evidence to be led.

The Representatives of both Respondents accepted that the Respondents were guilty of professional misconduct in cumulo.

An Inventory of Productions for the Complainers was lodged.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid indicated that he was grateful to the Respondents and their representatives for agreeing matters prior to the hearing and therefore dispensing with the requirement for evidence to be led. Mr Reid advised that the background in relation to this matter was that the Law Society carried out an inspection of the firm of Marshall Wilson in February 2005 and as a result of the inspection a Guarantee Fund interview took place on 21 April 2005. A further inspection then took place in February 2006 as narrated in averment 4 of the Complaint which appeared to discover further problems. A further inspection in February 2007 then took place as detailed at averment 5 of the Complaint which raised further concerns especially regarding compliance with the Money Laundering Regulations. This further inspection resulted in a further Guarantee Fund interview on 17 May 2007. Then a further inspection took place in March/April 2008 as referred to in averment 7 of the Complaint at which further problems were noted.

Mr Reid stated that the Respondents' responsibilities in relation to their guilty pleas split into two areas. Firstly, the First Respondent as the Cashroom Partner of the firm was aware from four inspections that there were breaches of several of the Accounts Rules. Two Guarantee Fund interviews were considered necessary because of the

money laundering concerns and it would appear that the appropriate procedures were either not in place or were not working over the period of the inspections.

Secondly in relation to the Second Respondent, Mr Reid stated that the area of concern in relation to him was breaches of Rule 24 of the Accounts Rules in relation to compliance with the Money Laundering Regulations. This was pointed out following the inspection in February 2006. This inspection disclosed a lack of identification in relation to a client called Company 1. As a result of no documentation being produced for this client the February 2007 inspection looked at this client in greater detail. Mr Reid referred the Tribunal to averments 5.5 and 5.6 of the Complaint. The Inspectors noted that following on from the inspection in February 2006 receipts for two cash payments in respect of Company 1 were still awaited together with client lists in relation to a number of clients.

As a result of a closer investigation in relation to these clients, the failures detailed in averment 5.6 came to light. A detailed examination of the client records showed that there was no documentation or vouching for the various payments listed in that averment. This was of considerable concern to the Complainers particularly since some of the payments were in cash, for example, a payment of £25,000 was made in cash from the sale of property in Alloa in June 2005.

These concerns led to a Guarantee Fund interview on 17 May 2007. Mr Reid referred the Tribunal to the minute for that meeting which is contained in Complainer's Production number 5. Mr Reid advised that the Second Respondent took over responsibility for a number of transactions from another local solicitor and there was no documentation available at that stage to properly vouch these clients. Mr Reid advised that the Second Respondent did not follow the correct procedures and carry out the necessary vouching himself.

Mr Reid submitted that there was no suggestion that money laundering was taking place but the lack of documentation left the firm wide open to money laundering activities as there was nothing to say who the clients were, what their business was, who the beneficial owners were, or the third parties who received the funds.

SUBMISSIONS ON BEHALF OF THE FIRST RESPONDENT

Mr Macreath stated that his client was 45 years old and has spent his whole professional life in the same firm in Falkirk which started out having a slightly different name. He became a partner of that firm in 1993 and is mainly involved in family law and civil work. He only became the firm's Cashroom Partner in early 2005 and was appointed the Money Laundering Reporting Officer in or around 4 March 2005 after the former Client Relations Partner and Money Laundering Reporting Officer left the firm. It was initially envisaged that Ms AB, a chamber practitioner, would take over these roles. She undertook training but ultimately did not take on these roles. Mr Macreath advised that it was then left to his client to assume responsibility for both roles.

Mr Macreath advised that at the first inspection it was discovered that Rule 8 was being breached. Mr Macreath submitted this was not the most serious of breaches of the rules but conceded that it is important that this rule is complied with to see the true financial position of the firm. Arising from this there was a partner who acted for a lender in a transaction involving one of the firm's solicitors. Mr Macreath advised that this transaction was carried out without the other partners being aware that she was acting in breach of Rule 22 and this was quickly sorted out.

Mr Macreath advised the Guarantee Fund Committee were concerned that breaches of the Accounts Rules were found shortly after the First Respondent being appointed to the roles of Cashroom Partner and Money Laundering Reporting Officer. The Committee wished to be satisfied that the firm was taking appropriate steps to revise its systems. There was a view from the Committee that the First Respondent may need assistance in future and a further inspection was arranged as a result of this.

Mr Macreath advised that breaches of Rule 8 were again noted because of lack of narrative on ledgers and the day book, cheques to the Registers of Scotland were outstanding and the concern was that this may have been in relation to a lack of registering of deeds.

Mr Macreath advised that the firm was inspected in February 2007 and that averment 5.2 arose from that inspection. Mrs C the mother of Ms D, a partner in the firm, had agreed to a transfer of funds and it is accepted that there was no written authority in place at the time of the inspection but that issue has now been remedied. Mr Macreath asked the Tribunal to accept that Ms D had undertaken that transaction.

Mr Macreath advised that in relation to averment 5.3, there were only two instances of failure in relation to cheques not being appropriately docqueted. In relation to averment 5.4, there were seven uninvested balances over £500 and it is accepted that these were not checked every time. However he submitted that there is now a system in place to check these each week and a Solas trained bookkeeper has been tasked to identify those funds which require to be invested.

In relation to the Guarantee Fund interview on 17 May 2007 which arose from the 2007 inspection, there was concern about the transactions involving Company 1 and related companies from Jersey. Mr Macreath advised that both Respondents were interviewed in relation to this. He stated that the Second Respondent made it clear to the Guarantee Fund Committee that the First Respondent was only there because of the Second Respondent's actions. The Second Respondent made it clear that he had taken the business at face value and had put off advising the Cashroom Partner of the detail of these transactions. In doing so the Second Respondent had stated that he had used his influence over the First Respondent who had previously been his apprentice.

Mr Macreath stated that against that background the First Respondent accepts that there was non compliance under several of the Accounts Rules but not in relation to Rule 24.

Mr Macreath stated that the further inspection in April 2008 gave rise to averment 7.2. There is a requirement that where monies are transferred from one client to another there requires to be written authority. Mr Macreath stated that in all three cases, written authority was obtained but accepted that this was not available at the time of the inspection. Mr Macreath advised that two transactions related to the First Respondent and the other to the Second Respondent.

In relation to averment 7.3, Mr Macreath explained that this related to only one cheque payable to the Dunfermline Building Society where the client's name was not docqueted on the face of the cheque. Mr Macreath advised that in relation to averment 7.4, this related to six out of date cheques for which no action had been taken.

In relation to averment 7.7, in three instances money had not been invested. Mr Macreath submitted that in each case compensation had been paid to the client.

Mr Macreath stated that the First Respondent accepts that what he has plead guilty to amounts to professional misconduct in cumulo in view of the fact that there have been two Guarantee Fund interviews and four inspections.

Mr Macreath stated that the firm of Marshall Wilson changed over the years and became a Limited Company in November 2008. That company no longer exists. The Second Respondent and Ms Pacetti left the firm and commenced practice as Morton Pacitti in Falkirk. Marshall Wilson Law Group Limited has five directors; Brian Travers is now the Designated Cashroom Partner and the Money Laundering Reporting Officer. Mr Macreath advised that the Second Respondent accepted that he had to step back from these roles. He advised that Mr Travers spends a great deal of time on administration and compliance with the Accounts Rules and adheres to the Money Laundering Regulations which, since 2007, have operated on a different basis based on risk analysis. Mr Macreath advised that the firm's cashroom is now operating in terms of the Rules.

Mr Macreath advised that the First Respondent found the role of Cashroom Partner extremely onerous and he now accepts that for a courtroom practitioner it is very difficult to combine these roles.

Mr Macreath advised that the First Respondent is married with two young children and has a previously unblemished professional record. He advised that he co-operated fully with the Complainers and with the Guarantee Fund Committee from the beginning of these problems and sought to bring this Complaint to a speedy conclusion. Mr Macreath advised that this matter has been hanging over his client's head for over two years. Mr Macreath stated that delays in the process are not

inconsiderable. He advised that his client has never come to the attention of the Law Society before either regarding conduct or service.

Mr Macreath advised that the firm has twelve other staff in Falkirk and no longer has a branch office. There are two full time cashiers, three paralegals, five partners and the remaining staff undertake secretarial and administrative duties. Mr Macreath submitted that this firm is well regarded and that many Glasgow firms including his own use Marshall Wilson on an agency basis in the Falkirk area.

Mr Macreath asked the Tribunal to take into account the mitigation which he has put forwarded on the First Respondent's behalf and the fact that the First Respondent accepts that he is guilty of professional misconduct in cumulo.

SUBMISSIONS ON BEHALF OF THE SECOND RESPONDENT

Mr Young stated that the Second Respondent accepts responsibility for breaches of Rule 24 of the Accounts Rules and the narratives contained in averments 4.3, 5.5 and 5.6 as amended and also accepts that these breaches in cumulo amount to professional misconduct.

Mr Young stated that the Complaint has been drafted in chronological order between 2005 and 2008. However he submitted that it is a mistake to believe that averments 4.3, 5.5 and 5.6 relate to discrete events when in fact the narrative in all three averments relates to a series of transactions taking place in a short time between January 2005 and August 2006.

Mr Young submitted that all the failures relate to a series of Jersey based companies where instructions were initially received by the Second Respondent from a Mr B. Mr Young submitted that an illustration of how the failures are connected is that the reference at third paragraph of averment 4.3 on page 7 of the Record relates to two cash payments made by Company 1 in November 2005. Mr Young stated that these cash payments are referred to again at page 12 of the Record at paragraph 5.6 as having been made on 23 November 2005 and 25 November 2005 respectively. Mr Young submitted that he was making this point to illustrate to the Tribunal that what

is shown in averment 4.3 is subsumed in averment 5.6 and that there is a certain amount of overlap.

Likewise Mr Young submitted that averments 5.5 and 5.6 are looking at the same companies. He referred the Tribunal to page 11 of the Record at averment 5.5 where there is a list of companies. Mr Young stated that in averment 5.6 the same companies are narrated regarding a slightly different matter in relation to a lack of documentation regarding the identity of clients.

Mr Young submitted that what has occurred in this case is that the Second Respondent acted for a period of two years for a series of companies based in Jersey and registered in the British Virgin Islands. The company was involved in purchasing land and selling on at a profit. The Second Respondent carried out a number of sales on behalf of the company and failed to secure adequate documentation to identify the beneficial interest behind these companies and to obtain documentation regarding the client's business. Mr Young submitted that it is not suggested that these companies were in fact engaged in money laundering or that the Second Respondent was acting dishonestly. However the Second Respondent failed to obtain the documentation required by the Money Laundering Regulations.

Mr Young stated that the background to the transactions was that the Second Respondent was originally asked by a friend who was a local solicitor to help him out. That solicitor was about to go into hospital for a major operation. One transaction was due to settle while he was in hospital. The Second Respondent settled that transaction and registered the deed. Unfortunately the friend's operation was not successful and he stayed in hospital for a number of months and never fully recovered. Subsequently Mr Bramley, the contact at the Jersey company spoke to the Second Respondent and asked him to help with the other transactions as his solicitor was no longer available.

Mr Young advised that the Second Respondent accepts that he was too trusting and as he was helping out a friend took no steps regarding compliance with the Money Laundering Regulations in relation to these companies. He also accepts that once work started to come to him directly from these companies he should have complied with the Money Laundering Regulations. Mr Young stated that the Second

Respondent acted for these companies for a period of two years and has not acted for them since 2008.

Mr Young accepted on behalf of the Second Respondent that he was guilty of professional misconduct in cumulo and submitted that for three reasons the failures should be viewed towards the lower end of the scale. Firstly, there was no dishonesty on the part of the Second Respondent. Secondly, the failures to which the Second Respondent has pled guilty relate to a discrete series of transactions for a limited period of time for essentially one client, albeit with a number of guises. Mr Young submitted that the Second Respondent took his eye off the ball regarding one particular client. Mr Young submitted that the period over which the failures took place ended in August 2006 and there have been no suggestions of any money laundering irregularities in relation to the Second Respondent then. Thirdly, Mr Young submitted that all the transactions were genuine and there is no suggestion that the companies were involved in money laundering.

Mr Young also asked the Tribunal to bear in mind three further factors. Firstly, the Second Respondent has been a solicitor in practice for over 35 years and has spent most of that time at partner level. He has never appeared before the Tribunal and has never had any professional difficulties with the Law Society. Secondly, the Second Respondent is currently a partner in the new firm of Morton Pacitti operating from premises in Falkirk. He has ensured that proper money laundering procedures are in place within that firm. Thirdly, Mr Young submitted copies of three references for the Tribunal to consider in considering penalty in this case. Mr Young stated that these references deal with the Second Respondent's good character, professional practice and charity work in the local area over a number of years.

Mr Young submitted that this is a case which could be dealt with by way of a Censure or Fine or combination of the two.

DECISION

In relation to the First Respondent the Tribunal had regard to the submissions made by both parties and to the documentation which had been lodged. The Tribunal took

into account the fact that the First Respondent had acknowledged that his failures in cumulo amounted to professional misconduct and had entered into a Joint Minute which meant that no evidence was required to be led.

The Tribunal considered the First Respondent's failures in cumulo and had regard to the definition of professional misconduct as outlined in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC129. The Tribunal considered that the fact that the First Respondent was responsible for repeated breaches of the Accounts Rules brought to his attention in a number of inspections was a serious and reprehensible departure from the standards expected of a competent and reputable solicitor. The Tribunal therefore considered that the First Respondent's conduct amounted to professional misconduct. Whilst all the averred breaches of the Accounts Rules were towards the minor end of the scale, the Tribunal had concerns regarding the First Respondent's failure to heed warnings from his professional body and his inability to address these systems failures when these were pointed out to him. The Tribunal was concerned that as a partner the First Respondent seemed unable to enforce compliance with the Accounts Rules and were concerned that this situation prevailed even after breaches were pointed out to him by the Complainers.

However, the Tribunal noted the First Respondent has now accepted that he was not a suitable person to carry out the role of Cashroom Partner or Money Laundering Reporting Officer. It is also noted by the Tribunal that the First Respondent has never appeared before the Tribunal and has an unblemished professional record.

The Tribunal were concerned that the breaches of the Accounts Rules which went to the very heart of the accounting system got worse rather than better during the three year period averred and noted that despite these concerns being pointed out to him on several occasions, the First Respondent chose to maintain both the onerous positions of Cashroom Partner and Money Laundering Reporting Officer in the firm. However, the Tribunal noted that the First Respondent's failures did not cause any prejudice to anyone other than his firm. In view of all the above circumstances, the Tribunal considered that the appropriate sanction was a Censure and a Fine of £7,500.

In relation to the Second Respondent, the Tribunal had regard to the submissions made by both parties and to the documentation which had been lodged including the references. The Tribunal took into account that the Second Respondent had acknowledged that his failures amounted in cumulo to professional misconduct and had entered into the Joint Minute which meant that no evidence required to be led.

The Tribunal considered that the Second Respondent's failures to comply with the Money Laundering Regulations were very serious. The Tribunal had regard to the definition of professional misconduct as outlined in the Sharp case and noted that the Second Respondent had completely ignored a number of regulations which had been in place for some considerable period of time and which were designed to prevent money laundering. The Tribunal noted that while the affected transactions were ongoing there were two inspections and one Guarantee Fund interview which highlighted the issues and yet the regulations continued to be ignored. The Tribunal therefore considered that the Second Respondent's failures to comply with the Money Laundering Regulations in relation to a number of related companies over a period of over a year amount to a serious and reprehensible departure from the standards expected of a competent and reputable solicitor. The Tribunal therefore considered that the Second Respondent's conduct amounted to professional misconduct.

The Tribunal noted that the Second Respondent is an experienced solicitor with a previously unblemished record in the profession. The Tribunal also noted that there was no suggestion of any dishonesty and that the transactions involved related to essentially one company over a specific period and that no subsequent breaches of the Regulations were averred. Considering all the circumstances, the Tribunal was of the view that the appropriate sanction in this case was a Censure and Fine of £7,500.

The Tribunal Ordered the Respondents to be jointly responsible for the expenses of this matter and made the usual Order with regard to publicity.

Vice Chairman