

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

FINDINGS

in Complaints

by

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

against

**ALISTAIR GEORGE KAY,
Solicitor, 73 Bruntland Court,
Portlethen, Aberdeen**

Respondent

1. Four Complaints, one dated 7 February 2013 (DC/13/02) and three dated 25 February 2013 (DC/13/03, DC/13/04 and DC/13/05), were lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alistair George Kay, Solicitor, 73 Bruntland Court, Portlethen, Aberdeen (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaints and that the Tribunal should issue such orders in the matters as it thinks right.
2. The Tribunal caused copies of the Complaints as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaints to be set down for a procedural hearing on 12 July 2013.

4. At the procedural hearing on 12 July 2013 the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was neither present nor represented.
5. The Fiscal made motions to a) conjoin the 4 Complaints, b) amend 3 of the Complaints and to dispense with re-service of the Complaints as amended, c) to allow proof by affidavit evidence. The Tribunal granted these motions and ordered that a substantive hearing be fixed for 11 September 2013. The Tribunal indicated that intimation of the amendments made required to be made to the Respondent in advance of the hearing and intimation was made on the Respondent.
6. At the substantive hearing on 11 September 2013 the Complainers were represented by their Fiscal Valerie Johnston, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Fiscal moved the Tribunal to hear the case in the absence of the Respondent. The Clerk having reported to the Tribunal that: a notice had been sent by recorded delivery to the Respondent intimating the date of the hearing and the previous amendments; that a second notice, had been sent by recorded delivery explaining a change of venue; that both notices had been signed for and these signed receipts had been recovered from the Royal Mail tracking system, the Tribunal agreed to the hearing of the Complaints in the absence of the Respondent. The Fiscal thereafter referred to 4 affidavits she had lodged and asked the Tribunal to proceed on the basis of affidavit evidence. In terms of rule 9, the Tribunal acceded to this request and thereafter heard submissions on behalf of the Complainers.
7. The Tribunal found the following facts established:-
 - 7.1 The Respondent was born on 14 June 1959. He was admitted as a solicitor on 18 October 1996. He was enrolled as a solicitor in the Registers of Scotland on 22 October 1996. Following his admission as a solicitor, the Respondent was employed by the firm of Tait & Peterson, Bank of Scotland Buildings, Lerwick,

from 30 October 1996 until 24 July 1997. The Respondent was then employed by the firm of Storie, Cruden & Simpson, 2 Bon Accord Crescent, Aberdeen from 4 August 1997 until 28 April 1999. On 8 February 1999 the Respondent commenced practice on his own account trading as Kay & Co, 231A Union Street, Aberdeen. He resides at 73 Bruntland Court, Portlethen, Aberdeen.

Ms A

- 7.2 In or about 2006, Ms A instructed the Respondent *inter alia* in connection with a dispute with the Child Support Agency. By letter dated 6 April 2008, Ms A invoked the aid of the Complainers regarding the manner in which the Respondent dealt with the instructions received from her. The Complainers obtained sufficient information to allow them to formulate and intimate a complaint to the Respondent. Eventually, and after a delay as a result of the Respondent failing to reply to the repeated requests made of him by the Complainers, the Complainers made a determination that the Respondent had failed to provide adequate professional services to his client, Ms A.
- 7.3 On 16 December 2008 the Complainers directed in terms of Section 42A(2)(d) of the Solicitors (Scotland) Act 1980 that the Respondent should pay Ms A the sum of £500 by way of compensation for inadequate professional services.
- 7.4 By letter dated 13 January 2009, the direction of the Complainers was intimated to the Respondent. The Respondent has not appealed against said direction.
- 7.5 On 23 March 2009, the Complainers served on the Respondent a Notice in terms of section 42B of the Solicitors (Scotland) Act 1980, calling upon the Respondent to provide confirmation

within 21 days of the steps taken by him to implement the Complainers' direction. No response was received.

- 7.6 The Respondent has failed to implement the Complainers' direction.

Failure to respond to correspondence

- 7.7 The Complainers wrote to the Respondent on 16 April 2008 to seek his comments on the issued raised by Ms A in her complaint. No response was received from the Respondent.

- 7.8 The Complainers wrote to the Respondent by letter dated 18 June 2008 intimating a complaint in terms of an attached list of issues. The Complainers sought, within 21 days of the date of that letter: the Respondent's written response; any further background information the Respondent wished to provide; the Respondent's business file or files relating to the matter; and details of any fees charged or to be charged. No response was received from the Respondent.

- 7.9 On 10 July 2008 the Complainers served on the Respondent a Notice in terms of section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980, requiring from the Respondent within 14 days a response as requested previously and an explanation for the delay. No response was received.

- 7.10 On 10 July 2008 the Complainers also served on the Respondent a Notice in terms of section 42C of the Solicitors (Scotland) Act 1980, calling upon the Respondent to produce the documents requested within 21 days and provide an explanation for the delay. No response was received.

- 7.11 On 18 August 2008 the Complainers wrote to the Respondent to intimate a complaint of professional misconduct and requesting

the Respondent's response, and his business files relating to Ms A, within 14 days. No response was received.

- 7.12 On 9 October 2008 the Complainers wrote to the Respondent to inform him that a Reporter had been appointed.
- 7.13 On 20 November 2008 the Complainers wrote to the Respondent to inform him that the report had been completed and that the complaint would be placed before the Client Relations Committee on 16 December 2008. A copy of the report was enclosed. The Respondent was asked for his comments in relation to the "conduct complaint" (i.e. the failure to respond to correspondence) and the "service complaint" (i.e. the complaints made by Ms A) by 4 December 2008. No response was received.

Repeated breaches

- 7.14 Between April 2008 and December 2008 the Complainers required to carry out investigations into the complaints made by Ms A. These investigations required the appointment of a Reporter. The Complainers repeatedly requested a response from the Respondent and access to his files in order that they might progress investigation of the complaints. The Respondent repeatedly failed to comply with the reasonable requests made of him by the Complainers and the notices served upon him.

Royal and Sun Alliance

- 7.15 In or about 2006 the Respondent received intimation of a claim by a former client, Mr B, for professional negligence. Royal & Sun Alliance, the lead insurers under the Law Society of Scotland Master Policy Scheme, appointed Messrs Simpson and Marwick to defend the claim. In due course the claim by Mr B was settled by the master policy insurers.

- 7.16 On or about 8 November 2006, Simpson & Marwick wrote to the Respondent seeking payment of his Self-Insured Amount of £2,000. The Respondent did not respond.
- 7.17 On or about 3 January 2007, Royal & Sun Alliance wrote to the Respondent seeking payment of the Self-Insured Amount. The Respondent did not respond.
- 7.18 Royal & Sun Alliance subsequently instructed solicitors, Messrs Brechin Tindal Oatts, to pursue the Respondent for the Self-Insured Amount. On or about 4 April 2007, Brechin Tindal Oatts wrote to the Respondent seeking payment. The Respondent failed to respond. An action was subsequently raised at Aberdeen Sheriff Court on behalf of the insurers against the Respondent. Decree was subsequently obtained against the Respondent. The decree was intimated to the Respondent by letter dated 27 June 2007. The Respondent did not respond. He has failed to make payment of the Self-Insured Amount.

The Law Society of Scotland Master Policy for Professional Indemnity

- 7.19 The Certificate of Insurance issued under the Law Society of Scotland Master Policy for Professional Indemnity Insurance on 1 November 2006 states *inter alia*:

“The Insurers shall not be liable in respect of: 1. the Self-Insured Amount”

- 7.20 The Self-Insured Amount is defined as: “the total amount payable by the Insured in respect of each and every claim made against the Insured for all damages and claimant’s costs and expenses the appropriate amount being stated in the Schedule.” For the purposes of the Policy and the Certificate, “the Insured”

is the Respondent, and his Self-Insured Amount in the year commencing 1 November 2006 was £2,000.

The inspection of 21 August 2007

7.21 In pursuit of their statutory duties, the Complainers carried out an inspection of the financial records and other documentation operated by the Respondent at his place of business on 21 August 2007. The inspection revealed to the Complainers a number of breaches of the Solicitors (Scotland) Accounts etc Rules 2001. In particular, the following were identified.

- a) No accounting records had been maintained by the Respondent since at least August 2004 (Rules 8, 9 and 10).
- b) The Respondent had in the two to three weeks prior to the inspection prepared cash book entries for the client account and the firm account in the period 31 July 2004 until July 2007. No records were available to verify the opening position as at 31 July 2004 (Rule 8).
- c) The client cash book had not been totalled in the period between August 2004 and July 2007. No monthly client bank reconciliations had been carried out between August 2004 and July 2007 (Rule 9).
- d) No client ledgers existed for general funds or invested funds. No three-monthly reconciliations of client invested funds had been carried out between August 2004 and July 2007 (Rule 10).

7.22 It was not possible to ascertain the Respondent's client accounting position. The Respondent had no mechanism to ensure that the funds at credit on the client account were sufficient to pay out all balances due to clients (Rules 4 and 8).

- 7.23 It was not possible to determine whether the Respondent had complied with the terms of Rules 5, 6, 7, 11, 20, 21, 22, 23 and 24 of the Solicitors (Scotland) Accounts etc. Rules 2001.
- 7.24 A Judicial Factor was appointed.
- 7.25 After extensive investigation of the Respondent's available accounting papers and records, the Judicial Factor identified that there had been a deficit on the client account throughout the period from August 2004 until September 2007. In September 2007 the deficit amounted to £50,242.23. A breakdown of the amounts was set out in Appendix 1 attached to Complaint DC/13/04. After adjustment for SLAB contributions paid by clients, and other unidentified payments, the total deficit as at September 2007 was calculated to be £47,326.87. As set out in Appendix 2 attached to Complaint DC/13/04.

Accounts Certificates

- 7.26 The Respondent had delivered Accounts Certificates to the Complainers, in terms of Rule 14 of the Solicitors (Scotland) Accounts etc. Rules 2001, on the following dates:
- 31 January 2005
 - 31 July 2005
 - 31 January 2006
 - 31 July 2006
 - 31 January 2007
- 7.27 In each Certificate the Respondent declared *inter alia* that: (1) his accounting records were up to date and balanced as at the last day of the accounting period; (2) his accounting records were in accordance with the terms of the Solicitors (Scotland) Accounts etc. Rules 2001; (3) there were no outstanding reconciling

entries; and (4) that the information given in the Certificate was solemnly and sincerely true to the best of his knowledge and belief.

7.28 In view of the absence of proper accounting records, the Complainers asked the Respondent to explain the declarations made. No explanation was provided.

7.29 The Respondent had not kept his accounting records up to date. He had not complied with the terms of the Solicitors (Scotland) Accounts etc. Rules 2001. None of the Respondent's accounts had been reconciled. In each of the five Certificates submitted between 31 January 2005 and 16 May 2007, the Respondent made false and misleading declarations to the Complainers. The Respondent knew that the declarations were false.

The Estate of the Late Ms A

7.30 On 25 February 2007 the Respondent's former client, the late Ms A, died. The Respondent was appointed her sole executor

7.31 In or about 2007, a Judicial Factor was appointed to administer the Respondent's firm. The Judicial Factor passed the file relating to Ms A's estate to the firm of Andersonbain & Co. Andersonbain & Co prepared an application for Confirmation and relevant forms which were sent to the Respondent for his signature as executor on 4 December 2007. The Respondent did not respond.

7.32 On 12 December 2007 a reminder was sent to the Respondent. The Respondent did not respond.

7.33 On 7 January 2008 a second reminder was sent to the Respondent. The Respondent did not respond.

On 22 January 2008 a third reminder was sent to the Respondent. The Respondent did not respond.

Correspondence with Complainers

- 7.34 By letter dated 4 February 2008, Andersonbain & Co invoked the aid of the Complainers. By letter dated 22 February 2008 the Complainers sought the Respondent's comments in order to investigate the matter. The Respondent did not respond.
- 7.35 By letter dated 17 April 2008 the Complainers sought the Respondent's response within 21 days. The Respondent did not respond.
- 7.36 On 9 May 2008 the Complainers served on the Respondent a Notice in terms of section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980. The Respondent did not respond.
- 7.37 By letter dated 12 June 2008 the Complainers intimated a further complaint to the Respondent and sought the Respondent's response within 14 days. The Respondent did not respond.

The Estate of the late Mrs A

- 7.38 On 10 February 2009, the Complainers determined that the Respondent's firm had provided an inadequate professional service in relation to the estate of the late Mrs A. The Complainers directed that the fees and outlays to which the solicitors shall be entitled for the service received shall be nil and that they shall waive the fees and outlays, that the Firm meet any fees and outlays incurred by the estate for any action to remove the Respondent as executor and appoint a new executor, and that the Firm pay £1,850.00 by way of compensation to the estate.
- 7.39 The determination was intimated to the Respondent by letter dated 25 February 2009 with details of the right of appeal and

requiring him to provide an explanation of the steps taken to implement the determination within 21 days. He did not reply. On 4 May 2009 a formal letter was issued to the Respondent by the Complainers calling upon him to confirm the steps taken to implement the determination within 21 days. The Respondent has failed to reply, waive fees or make payment of the compensation in terms of the determination.”

8. Having given careful consideration to the averments of fact in the Complaints, the affidavits and productions lodged on behalf of the Complainers and the submissions made by their Fiscal, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 8.1 his failure to respond timeously, openly and accurately to reasonable enquiries made of him, and statutory notices served upon him, by the Complainers concerning the Complaints made by Ms A and Messrs Andersonbain & Company;
- 8.2 his failure to pay the self insured amount to the Royal and Sun Alliance in contravention of Rule 6 of the Solicitors (Scotland) Professional Indemnity Insurance Rules 2005;
- 8.3 his failure to respond timeously, openly and accurately to reasonable enquiries made of him by the Master policy insurers and their solicitors;
- 8.4 his breach of Rules 4, 8, 9 & 10 of the Solicitors (Scotland) Accounts Etc Rules 2001;
- 8.5 his misleading of the Complainers on five occasions by making false declarations to them in accounts certificates;

8.6 his failure to sign and return the application for confirmation and other papers sent to him by Messrs Andersonbain & Company;

8.7 his failure to respond timeously to reasonable enquiries made of him by Messers Andersonbain & Company;

9. The Tribunal also found that the Respondent had failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland in respect of Ms and the Estate of Mrs A within the respective periods specified. The Tribunal accordingly resolved to make Orders under Section 53C of the Solicitors (Scotland) Act 1980.

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

Edinburgh 11 September 2013. The Tribunal having considered the amended Complaints at the instance of the Council of the Law Society of Scotland against Alistair George Kay, Solicitor, 73 Bruntland Court, Portlethen, Aberdeen; Direct that Orders be issued under Section 53C(2) of the Solicitors (Scotland) Act 1980; Find the Respondent guilty of Professional Misconduct in respect of his repeated failure to respond timeously, openly and accurately to reasonable enquiries made of him, and statutory notices served upon him by the Law Society; his breach of Rule 6 of the Solicitors (Scotland) Professional Indemnity Insurance Rules 2005; his failure to respond timeously, openly and accurately to reasonable enquiries made of him by the Master policy insurers; his breach of Rules 4, 8, 9 & 10 of the Solicitors (Scotland) Accounts Etc Rules 2001; his false declarations made in five separate accounts certificates; his failure to sign and return the application for confirmation and other papers sent to him by Messrs Andersonbain & Company and his failure to respond timeously to reasonable enquiries made of him by Messrs Andersonbain & Company; Order that the name of the Respondent be struck off the Roll of Solicitors in Scotland; Find the Respondent 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 Resolve to make Orders under Section 53C; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alan McDonald

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 the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

At the hearing on 11 September 2013 the Tribunal had before it four Complaints, (three of which had been amended) which had been conjoined into one hearing. Given that the Tribunal was satisfied that the Complaints, amendments and notice of the hearing had been served upon the Respondent by recorded delivery post and had been signed for, it was content to deal with the hearing in his absence. That being the case, the Tribunal agreed to proceed on the basis of affidavit evidence. Four affidavits were lodged on behalf of the Complainers, together with associated productions.

SUBMISSIONS FOR THE COMPLAINERS

The Complainer's Fiscal, Ms Johnston indicated that the Respondent had not been working as a solicitor for a number of years. There had been a consistent lack of response on his part and an apparent conscious choice not to participate in proceedings. She presented to the Tribunal a written note of her submissions, which she then went on to address.

She submitted to the Tribunal that the Respondent appeared to have been gripped by inactivity, an inability to act, to keep records or to respond to enquiries made of him – all of which had led to very unfortunate results for his clients as well as himself. His business had appeared to be functioning and creating fees prior to the matters now before the Tribunal. Ms Johnston referred to a letter from the Respondent to the Complainers dated 3 September 2007 which she suggested disclosed some explanation on behalf of the Respondent as to how these events came about. It was submitted that this letter disclosed what she described as a not uncommon situation where a sole practitioner had tried to juggle criminal business with a civil practice without success.

The Fiscal directed the Tribunal's attention to the affidavits for the witnesses (1) Ian Ritchie, Clerk to the Professional Conduct Sub-Committee, (2) Christina Heywood, head of Financial Compliance at the Law Society, (3) Morna Grandison, the Judicial Factor for Kay & Company and (4) Robin Leith, a partner of the firm of

Andersonbain. She then went on to demonstrate which averments were spoken to by each of the witnesses.

In relation to the averments regarding the Respondent's failure to keep accounts, Ms Johnston emphasised that there was no claim on the Guarantee Fund. It appeared that the deficits on the client account demonstrated on the Judicial Factor's report, were an accounting exercise. The Respondent had not rendered fee notes in an appropriate manner and had not always taken the fees due to him. If the fee notes had been rendered properly, there would have been a surplus in the client account. In fact, this surplus, along with other assets realised, had been used to meet the Judicial Factor's fees.

The Fiscal sought Orders in terms of Section 53C of the Solicitors (Scotland) Act 1980 in relation to the directions of the Council of the Law Society dated 16 December 2008 and 10 February 2009. In relation to the latter direction, Ms Johnston confirmed that any Order required to follow the detailed determination of the Committee with regard to the expenses of replacing the Respondent as executor.

Thereafter, Ms Johnston asked the Tribunal to find the Respondent guilty of professional misconduct.

She went on to submit that if the Tribunal were in agreement with these motions then it was appropriate to grant an award of expenses in favour of the Complainers. She indicated that she had no further information that could be considered relevant to the question of publicity.

DECISION

The Tribunal gave careful consideration to the content of the four affidavits and associated productions.

In his affidavit, Ian Ritchie stated that he is the Clerk to the Professional Conduct Sub Committee of the Law Society and could confirm the background and personal details of the Respondent. He confirmed that the letters and notices referred to in paragraph

7.2 – 7.14 were sent by the Law Society to the Respondent. Production No 12 for the Complainers is a true copy of the help form completed by Ms A confirming that she had instructed the Respondent in connection with a dispute with the Child Support Agency and that she wished to invoke the aid of the Complainers. Productions 13 – 17 inclusive, 19 and 20 are true copies of the correspondence and notices referred to in the aforesaid paragraphs. Mr Ritchie confirmed that the Respondent had not responded to any of the correspondence or notices. Production No 18 is a true copy of the determination dated 16/12/08, directing in terms of Section 42A(2)(d) of the Solicitors Scotland Act 1980 that the Respondent should pay Ms A the sum of £500 by way of compensation for inadequate professional services. The Respondent has not appealed against the direction and has not implemented the Law Society's direction. He went on to state that between April 2008 and December 2008, the Law Society had required to carry out investigations into the Complaint made by Ms A which required the appointment of a reporter. Repeated requests from the Respondent for a response and access to his files were not answered. The Respondent's failure to respond caused significant inconvenience to the Law Society and gave a very poor impression of the profession and the professional body to the client. Mr Ritchie also spoke to the facts in relation to the unpaid insurance excess referred to paragraphs 7.15 – 7.20. He was able to confirm that Production No 21 included correspondence that confirmed that the client Mr B had raised a claim for professional negligence against the Respondent which had been passed by the Royal & Sun Alliance to Messrs Simpson & Marwick to defend. The claim had been settled and the Respondent had been asked repeatedly, as noted in the copy correspondence, to repay the self insured amount. No response was made by the Respondent and court proceedings were raised. Aberdeen Sheriff Court granted a decree against the Respondent for the excess as noted in the copy decree provided by the Complainers. The Respondent has failed to make the payment of the self insured amount. Mr Ritchie was able also to confirm that Productions No 4 – 8, 10 & 11 were copies of the correspondence and notices sent by the Law Society to the Respondent and referred to in paragraphs 7.38 – 7.43. The Law Society have received no response from the Respondent. Messrs Andersonbain & Company invoked the aid of the Law Society by letter dated 4/2/08. Production No 9 is a true copy of the Schedule of the Client Relations Committee that determined in terms of Section 42A(2)(a)(i) that the fees and outlays to which the solicitors shall be entitled for the service received shall

be nil; that under Section 42A(3)(b) that the solicitors shall waive the right to recover any fees and outlays from the estate; that in terms of Section 42A(2)(c) that Messrs Kay & Company meet any fees and outlays incurred by the estate relating to any action required to remove Mr Kay as an executor and appoint a new executor; and in terms of Section 42A(2)(d) that Messrs Kay & Company pay the total sum of £1850 to the estate of the late Mrs A. The Respondent has failed to give any response to the determination and has failed to waive fees or make payment of the compensation.

In her affidavit, Christina Heywood explained that she was the head of financial compliance at the Law Society of Scotland. She confirmed that Morag Newton had carried out an inspection of the financial records and other documentation operated by the Respondent on 21/8/07. Ms Newton is no longer employed by the Law Society. The report she had prepared is part of the Law Society's records and is Production No 22 for the Complainers. This report contained the information now noted in paragraph 7.21. Basically it disclosed that the Respondent had not kept accounts between August 2004 and July 2007. During this period the Respondent had submitted 5 certificates which contained false and misleading declarations that the Respondent clearly knew were false. Production Nos 23 – 27 are true copies of these account certificates. A Judicial Factor was appointed who, after extensive investigation, identified that there had been a deficit on the client account throughout the period from August 2004 until September 2007. The only response given by the Respondent was the letter of 3 September 2007 which is Production No 32 for the Complainers.

Morna Grandison, in her affidavit, confirmed that she was appointed as Judicial Factor on the estates of Messrs Kay & Company and Alistair Kay by the Court of Session on 7 September 2007. She confirmed that Production No 28 for the Complainers is a certified copy interlocutor confirming her appointment. She undertook an investigation and interviewed the Respondent. She prepared the report dated 29/10/07 which is Production No 30 for the Complainers. Thereafter she completed an addendum to that report dated 28/2/08 and this is Production No 31 for the Complainers. Her report confirms that the Respondent had not kept his accounts written up since July 2004. She required to go through those records that existed as a result of which she ascertained that there had been substantial deficits on the client

account of Messrs Kay & Company as indicated in paragraph 7.23 above. However, after taking into account fee notes and other matters not properly recorded, it was established that there had been a surplus on the client account which together with some of the Respondent's assets was used to pay for the costs of the Judicial Factor. She was discharged on 16/11/10. There was no claim on the Guarantee Fund. In the course of her investigations she retrieved correspondence from the Respondent's files relating to the unpaid excess in relation to the Royal & Sun Alliance claim. This correspondence confirmed that the Respondent had failed to make payment of the self insured amount even after a court decree had been obtained against him.

The fourth affidavit was of Robin Leith who was a partner in the firm of Messrs Andersonbain & Company. His firm agreed to purchase certain files from the Judicial Factor for Messrs Kay & Company. One of the files passed to his firm was the executry of Mrs A, who died on 25/2/07. The Respondent was the sole executor. Messrs Andersonbain & Company prepared and forwarded to the Respondent an application for confirmation. Three reminders were sent. The Respondent did not reply or return the documents. Mr Leith wrote to the Client Relation's office of the Law Society seeking their assistance. The Respondent did not respond either to Mr Leith or to the Law Society and consequently Messrs Andersonbain & Company had to take action to have the Respondent removed as executor and have a new executor appointed. The Respondent has not paid the compensation of £1850 ordered by the Law Society, nor the costs incurred by the estate in replacing the Respondent as executor. Productions 1 & 3 are true copies of the correspondence referred to.

It was satisfied that these affidavits spoke to all of the averments of fact within the Complaints. Given the information before it, the Tribunal found the averments of fact proved beyond reasonable doubt.

It having clearly been demonstrated that the directions of the Law Society dated 16 December 2008 and 10 February 2009 had been made as averred and that the Respondent had failed to comply with these directions, the Tribunal considered that it was appropriate to make an Order in terms of Section 53C of the Solicitors (Scotland) Act 1980 relating to both directions.

The Tribunal then went on to consider whether the facts as proved met the Sharp Test of professional misconduct.

The Tribunal had before it an extensive catalogue of behaviour; two cases of a complete failure to respond to Law Society correspondence and statutory notices; a failure to respond to correspondence to Master Policy insurers; a failure to respond to correspondence from another firm of solicitors; a failure to pay the Respondent's insurance excess; a failure to keep proper accounting records for a period of some three years; false declarations in five accounts certificates; and a failure by the Respondent to complete the appropriate paper work to allow a new executor to be appointed which led to the necessity of a court action being raised to allow the executry to be properly dealt with. This was clearly conduct that fell well below the standard to be expected of a competent and reputable solicitor, that could only be described as serious and reprehensible. Accordingly, the Tribunal found the Respondent guilty of professional misconduct.

The Tribunal then went on to consider what penalty would adequately reflect the reprehensible nature of this conduct.

The Respondent had clearly been involved in dishonesty. The false declarations made in five accounts certificates were deliberate and considered acts of dishonesty carried out over a period of two years.

The Respondent's conduct was an ongoing course of conduct that covered a period in excess of four years.

The Respondent's conduct clearly presented a danger to the public, a clear example of that being the effect of his conduct on the executry of Ms A.

The Respondent's conduct was extremely likely to seriously damage the reputation of the legal profession. His complete failure to co-operate with his professional body could be seriously detrimental to the public trust in solicitors.

The way the Respondent had failed to respond to these matters as they each arose demonstrated both a lack of remorse and insight into the consequences of his conduct.

The Respondent's conduct clearly demonstrated that he was not a fit person to be a solicitor. His misconduct was directed towards his own professional body, his colleagues, the Master Policy insurers, and most seriously his own clients.

The Tribunal considered that there were two particular aggravating factors to the Respondent's case which caused it a great deal of concern. The first was the Respondent's willingness to resort to dishonesty to try to cover his misconduct, by making false declarations in five separate accounts certificates. The second was the apparent complete lack of care or concern on the part of the Respondent for his own clients as particularly demonstrated in his behaviour in relation to the executry of Ms A, resulting in particularly difficult consequences for that executry. The Respondent has also failed to take any part in the Tribunal proceedings.

The only conclusion that the Tribunal felt that it could reach was that the name of the Respondent should be struck from the Roll of Solicitors in Scotland.

The Tribunal made the usual Orders with regard to expenses and publicity.

Alan McDonald
Vice Chairman