**THE SOLICITORS (SCOTLAND) ACT 1980**
**THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**
**(PROCEDURE RULES 2008)**

**F I N D I N G S**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, formerly at 26 Drumsheugh Gardens, Edinburgh and now at Atria One, 144 Morrison Street, Edinburgh**

**Complainers**

**against**

**ALAN MATTHEW MILLER, 22 Broomknowe Avenue, Lenzie**

**First Respondent**

**and**

**JOSEPH MULLEN, 9 Glen Mark, St Leonard's, East Kilbride**

**Second Respondent**

**and**

**PAUL JOHN MCHOLLAND, 24 Portland Road, Kilmarnock**

**Third Respondent**

**and**

**JAMES PRICE, formerly residing at 2 Rigside, Douglas Water, Lanark and now residing at Calle Java 19, 29591, Malaga, Spain**

**Fourth Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Alan Matthew Miller, 22 Broomknowe Avenue, Lenzie (hereinafter referred to as "the First Respondent"), Joseph Mullen, 9 Glen Mark, St Leonard's, East Kilbride (hereinafter referred to as "the Second Respondent"), Paul John McHolland, 24 Portland Road,

Kilmarnock (hereinafter referred to as "the third Respondent") and James Price, formerly residing at 2 Rigside, Douglas Water, Lanark and now residing at Calle Java 19, 29591, Malaga, Spain (hereinafter referred to as "the fourth Respondent") were practitioners who may have been guilty of professional misconduct.

2. The Secondary Complainers were:

(a) Thomas Aulds, ARM Architects LLP, 2a Berkeley Street, Glasgow G3 7DW

(b) Dr Peter Thornton, 49 Carlogie Road, Carnoustie, DD7 6EW

(c) Ian Stephen, 19 Glen View Crescent, Gorebridge, EH23 4BT

(d) The PRG Partnership, 111 Cowgate, Kirkintilloch, Glasgow G66 1JD

(e) Ifeyinwa Omwuazor, 28 Todds Walk, Andover Road, London N7 7RB

(f) Ewa Daly, Pierwsza Pomoc Polscotia, St George's Building, 5 St Vincent Place, Glasgow, G1 2DH

(g) David Bartolo, 2/52 Rallinson Road, North Coogee, WA6163, Western Australia

(h) Colin Howard, Harris Howard Psychology Practice, 25/1 Frederick Street, Edinburgh EH2 2ND

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondents. No Answers were lodged for the First Respondent. Answers were lodged for the Second, Third and Fourth Respondents.

4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 5 February 2016 and notice thereof was duly served upon the Respondents.

5. A procedural hearing was held on 5 February 2016. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was neither present nor represented but had emailed the Tribunal Clerk on 4 February 2016 indicating that he was unable to attend on 5 February 2016 but that he intended to participate in proceedings in the future. The Second Respondent was represented by Mr Hennessy, Solicitor, Glasgow. The Third Respondent was present and represented himself. The Fourth Respondent was represented by Mr Mullan, Advocate. The Chairman indicated that he had represented a firm of shorthand writers and had instituted proceedings on their behalf against the firm of Ross Harper. He had also many years ago been a member of the

Glasgow and North Argyll Legal Aid Committee. The Chairman enquired of parties as to whether or not anyone felt that it was necessary for him to recuse himself in these circumstances. Those present did not indicate any objection to the Chairman's involvement in the case as a result of either of these matters. Of consent the Tribunal granted the Fiscal's motion for a further procedural hearing in 10 weeks' time, this period being required to adjust the pleadings and prepare joint minutes. The Tribunal directed the First Respondent to lodge Answers within 21 days of 5 February 2016 and that a further procedural hearing be held on 26 April 2016.

6. A procedural hearing was held on 26 April 2016. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was not present nor represented but it was reported that he was now represented by Mr Reid, Solicitor, Glasgow. Mr Reid had sent an email to the Tribunal Clerk indicating that he would not be able to attend on 26 April 2016. The Second Respondent was represented by Mr Hennessy, Solicitor, Glasgow. The Third Respondent was neither present nor represented. The Fourth Respondent was represented by Mr Mullan, Advocate. The Tribunal fixed a further procedural hearing on 21 June 2016.

7. A procedural hearing was held on 21 June 2016. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was represented by Donald Reid, Solicitor and Mr Manson, Advocate. The Second Respondent was represented by Ms Irvine on behalf of Mr Hennessy, Solicitor, Glasgow. The Third and Fourth Respondents were neither present not represented. All parties present moved the Tribunal to fix another procedural hearing. The Tribunal fixed a further procedural hearing on 30 August 2016.

8. A procedural hearing was held on 30 August 2016. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was represented by Mr Manson, Advocate. The Second Respondent was represented by Mr Hennessy, Solicitor, Glasgow. The Third Respondent was present and represented himself. The Fourth Respondent was neither present nor represented. The Fiscal indicated that the Fourth Respondent's representative could not attend due to another court commitment. Mr Manson raised a concern about the Tribunal as presently constituted addressing the same facts as those in

the case of the Council of the Law Society of Scotland v Alan Susskind and Cameron Fyfe. He indicated that he was considering a motion to invite the Tribunal members to recuse themselves. The Chairman advised that if he wished the Tribunal to consider recusal, the First Respondent should enrol a motion to that effect and the Tribunal would fix a date to hear arguments. Mr Manson indicated he would take instructions on this matter but wished it to be recorded that he had raised the issue on this date. The Tribunal fixed 16th, 17th, 18th and 19th January 2017 for a hearing in this case. The three Respondents who were present or represented confirmed that service of all future notices could be effected by email. The Fiscal was also content to receive service in this way.

9. On 21 December 2016 the case called again for a procedural hearing. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was neither present nor represented. The Second Respondent was present and represented by Charles Hennessy, Solicitor, Glasgow. The Third Respondent was not present nor represented. He had informed the Tribunal Clerk that he would not be present and had no objection to the Fiscal's motion which had been intimated to him. The Fourth Respondent was not present but was represented by Owen Mullan, Advocate. The Fiscal formally moved the Tribunal to grant the Complainers' motion to allow the Judicial Factor, Ian Mitchell, to give evidence on 21 December 2016 because this witness was not available to give evidence on the dates set in January 2017. The Tribunal considered an email from the First Respondent to the Tribunal Clerk dated 6 November 2016 in which he stated his objection to the motion to hear the evidence of the Judicial Factor on 21 December 2016. The First Respondent relied on the lack of precedent upon which to base the decision to allow the matter to proceed in this way. In the First Respondent's submission, to hear the Judicial Factor's evidence on 21 December 2016 was contrary to the principle of natural justice and his ECHR Article 6 rights because it shortened his time to prepare for the hearing and denied him the opportunity to have the Judicial Factor's evidence heard at the same or similar time as the other witnesses in the case. The Tribunal noted that the First Respondent was not present to make his objections to the motion and also that he had not submitted Answers to the Complaint. The Tribunal indicated that it is generally preferable to hear all evidence together if possible. However, this is more difficult in larger cases. The Tribunal was of the view that on balance it was best not to inconvenience witnesses cited for January 2017 and that it would be preferable to hear the Judicial Factor on 21 December 2016 since he was present and available to give evidence.

It was also in the public interest to deal with the case sooner rather than later. The Chairman indicated that if the Tribunal were to proceed to hear the Judicial Factor's evidence then it would not be appropriate to entertain any motion for recusal at any subsequent calling of the case. All parties present indicated that as presently advised, they did not intend to make a motion for recusal. It was noted that the parties were still in the process of adjusting the Record. The Tribunal indicated that a final Record should be produced to the Tribunal Clerk seven days before the next Hearing date. The Tribunal determined that it should proceed to hear the Complaint in the absence of the First Respondent. In accordance with Rule 14(4) of the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008, the Tribunal Clerk gave evidence on oath that the Complaint and notice of hearing relating to 21 December 2016 had been served upon the First Respondent by Sheriff Officers. Ian Mitchell, the Judicial Factor, gave evidence in chief, was cross examined by Mr Mullan and re-examined by Mr Stephenson. The case was continued to 16 January 2017 at Perth Concert Hall.

10. The case called for a hearing on 16 January 2017. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was neither present nor represented. The Second Respondent was present and represented by Charles Hennessy, Solicitor Advocate, Glasgow. The Third Respondent was present on the 16 and 17 January 2017 and represented himself. He did not attend on 18 January 2017. The Fourth Respondent was present and represented by Owen Mullan, Advocate. The Tribunal was not quorate on 16 January 2017. Therefore, the Hearing was adjourned to 17 January 2017. On 17 January 2017 three joint minutes were tendered in relation to the facts agreed by the Complainers and the Second, Third and Fourth Respondents. The Fiscal made a motion to allow the Complainers' witness Ian Ritchie to be present throughout the proceedings. Of consent this motion was granted. The Fiscal had instructions to dismiss two of the "hybrid" complaints made by Secondary Complainers and made a motion to delete paragraphs 2.2(a), 2.2(b), 2.14 and 2.15 from the Record. Of consent these deletions were made to the principal Record. The Fiscal also made a motion to delete paragraph 4.4(c) of the Record and substitute the following paragraph:

*"The Fourth Respondent acted dishonestly in reporting matters to the inspection team of the Financial Compliance Department of the Complainers, as hereinbefore condescended upon, and that in breach of Rule B6.12 of the Law Society of Scotland Practice Rules 2011."*

This motion was opposed by Mr Mullan for the Fourth Respondent. The Tribunal heard submissions from both parties on this issue and determined that it should hear the evidence and then invite the Fiscal to renew his submission at the conclusion of the evidence. The Fiscal indicated his intention to call the Third Respondent as his first witness. The Third Respondent and the representatives of the Second and Fourth Respondents indicated that they had no objection to this course of action. The Third Respondent gave evidence on the morning of 17 January 2016. The Complainers' witness Christina Heywood gave evidence on the afternoon of 17 January 2016 and all day on the 18 January 2017. The case was continued to 13 and 14 March 2017, 26 April 2017 and 8 May 2017.

11. The case called for a continued hearing on 13 March 2017. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was neither present nor represented. The Second Respondent was present and represented by Charles Hennessy, Solicitor Advocate, Glasgow. The Third Respondent was neither present nor represented. The Fourth Respondent was present and represented by Owen Mullan, Advocate. Christina Heywood continued giving evidence on 13 March 2017. She was cross examined by Mr Hennessy and Mr Mullan and re-examined by Mr Knight. Janice Parr gave evidence for the Complainers. She was cross examined by Mr Mullan. Ian Ritchie gave evidence for the Complainers. He was not cross-examined. The Complainers closed their case. The Second Respondent gave evidence and examination-in-chief was completed on 13 March 2017. He was cross examined by Mr Knight on 14 March 2017. The Fourth Respondent did not give evidence. It was agreed that written submissions would be sent to the Clerk in advance of the next hearing for the Tribunal's consideration. The case was continued to 26 April 2017. The Fiscal renewed his motion to delete paragraph 4.4(c) of the Record and substitute the new paragraph recorded in paragraph 10 above. This motion was opposed by Owen Mullan for the Fourth Respondent. The Tribunal considered that the motion was made late in the proceedings but had regard to the fact that it was made before evidence was led in support of the averment of fact on the Record. The averments were grave. There was reference to misinformation being given to the Financial Compliance Team. Putting aside the question as to whether averments of duty are required in a Complaint of professional misconduct, the Tribunal did not see any material prejudice to the Fourth Respondent. The facts themselves may indicate a breach of his general duty as a solicitor in terms of

openness, honesty and integrity. There was a denial in the Record and the Respondent had chosen not to give evidence in his own right. The motion was allowed.

12. The case called for a continued hearing on 26 April 2017. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor Advocate, Edinburgh. The First Respondent was neither present nor represented. The Second Respondent was present and represented by Charles Hennessy, Solicitor Advocate, Glasgow. The Third Respondent was neither present nor represented. The Fourth Respondent was present and represented by Owen Mullan, Advocate. Mr Knight made a motion to amend paragraphs 4.3(a) and 4.3(b) of the Complaint. He invited the Tribunal to delete the words *"caused or permitted to be instituted, operated, or"* where they occur in the second line of paragraph 4.3(a). He also invited the Tribunal to delete the words, *"Further the firm took unauthorised and excessive fees despite there being insufficient funds at the credit of the client ledgers to meet those fees and without having had any legitimate basis for taking fees at the point in which they were deducted from the client ledgers. The fees in these instances as hereinbefore condescended upon were deducted for the purposes of assisting the firm's cash flow and financial position and to conceal the true level of the firm's liabilities and overdraft. Said funds and fees were taken and rendered in a dishonest wrongful and improper use of client's funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities"* where they occur in lines 15-24 of paragraph 4.3(a). Lastly, he invited the Tribunal to amend paragraph 4.3(b) making various deletions and substitutions so that it read, *"The Third Respondent, as a Partner in the said former firm of Ross Harper, knew or ought to have known that false Accounts Certificates were submitted to the Complainers covering the periods hereinbefore condescended upon thereby concealing from the Complainers the true financial position of said firm."* There being no opposition to the motions to amend, the Tribunal indicated that it would consider the proposed amendments as part of its deliberations. The amendments were subsequently allowed. The Tribunal had already had the opportunity of considering the written submissions provided by the Complainers, Second Respondent, Third Respondent and Fourth Respondent. The parties present were given an opportunity to supplement their written material with oral submissions. Mr Hennessy did so. In response to a request from the Tribunal the parties made submissions on the operation of Rule 12 of the Solicitors (Scotland) Accounts etc. Rules 2001. The Tribunal considered two emails sent to the Clerk by the First Respondent on 25 April

2017 at 2351 hours and 26 April 2017 at 0103 hours. The Tribunal had regard to the fact that the First Respondent did not submit Answers to the Complaint and did not participate in the hearings. The Tribunal was of the view that it must decide the case on the basis of the evidence properly put before it at hearings and could not take any cognisance of any evidence the First Respondent attempted to introduce by way of these emails. However, the Tribunal decided that it would refer to the second email for mitigatory material in the event of a finding of professional misconduct being made against the First Respondent. The First Respondent was informed of the Tribunal's decision by email. The case was continued to 8 May 2017 for an advising at Perth Concert Hall, Mill Street, Perth.

13. The case called for an advising on 8 May 2017. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor Advocate, Edinburgh. The First Respondent was neither present nor represented. The Second Respondent was present and represented by Charles Hennessy, Solicitor Advocate, Glasgow. The Third Respondent was present and represented himself. The Fourth Respondent was present and represented by Owen Mullan, Advocate. Mr Knight clarified that he was not seeking conviction with regard to averments of professional misconduct originally labelled (e) and (f) in relation to the First Respondent as these related to allegations of fact which had previously been withdrawn from the Tribunal. In his written submissions, his references to paragraph (e) referred to the original paragraph (g) and references to paragraph (f) referred to original paragraph (h). The Tribunal indicated that it would continue to refer to the original labelling so that it was clear if the findings were compared to the Complaint.

14. Having regard to the Complaint, Answers, Joint Minutes of Admissions, parole evidence, the productions spoken to in evidence, and the parties' submissions, the Tribunal found the following facts established:-

14.1 (a) The First Respondent is a solicitor enrolled in the Registers of Scotland. His date of birth is 20 September 1979 and he was enrolled as a Solicitor on 13 November 2003. Between 1 November 2007 and 5 April 2012 he was a Partner in the firm of Ross Harper. Between 20 February 2010 and 5 April 2012 he was the Managing Partner of the said firm. In October 2010 the Fourth Respondent was appointed Joint Managing Partner with the First Respondent. Between 1 April 2010 and 5 April 2012 he was the Designated Cashroom

Manager with the said firm. He was also a member of its Management Committee formed in or around mid-2009.

(b) The Second Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 24 August 1952 and he was enrolled as a Solicitor on 9 November 1984. Between 1 September 1988 and 5 April 2012 he was a Partner in the firm of Ross Harper. He was the said firm's Client Relations Partner.

(c) The Third Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 22 November 1966 and he was enrolled as a Solicitor on 5 August 1999. Between 1 April 2008 and 5 April 2012 he was a non-equity Partner in the firm of Ross Harper. He is presently in a Solicitor in the employ of the firm of Colvin Houston & Company which has a place of business at 24 Portland Road, Kilmarnock.

(d) The Fourth Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 30 December 1957 and was enrolled as a Solicitor on 11 July 2001. Between 1 April 2003 and 5 April 2012 he was a Partner in the firm of Ross Harper. Between October 2010 and 5 April 2012 he was Joint Managing Partner with the First Respondent of the said firm. He was also a member of its Management Committee formed in or around mid-2009.

(e) The said firm was dissolved on 5 April 2012 following the appointment of an interim Judicial Factor. As at said date the Partners of the said firm were the First to Fourth Respondents. A number of solicitors had been former Partners of the said firm. In particular, Alan David Susskind was a Partner between 1 September 1983 and 22 March 2011. He was the said firm's Cashroom Manager from 15 October 1999 until 1 April 2010, when the First Respondent assumed that role. He was the said firm's Managing Partner from April 2001 until 20 February 2010 when the First Respondent assumed that role. He was also a member of its Management Committee. The First to Fourth Respondents along with the said Alan Susskind, and two other former Partners Cameron Stuart Fyfe and Gerard John Devaney, were the Pursuers in an action for

Interdict and Damages raised at the Court of Session in November 2010 against two other former Partners, Harvie Diamond and Richard Freeman.

14.2 There are Secondary Complainers in relation to the First Respondent who may claim to have been directly affected by the First Respondent's misconduct and may thereafter seek compensation for losses resulting from that misconduct. Those Secondary Complainers are:-

(a) Thomas Aulds, ARM Architects LLP, 2a Berkeley Street, Glasgow G3 7DW.
(b) Dr Peter Thornton, 49 Carlogie Road, Carnoustie, DD7 6EW.
(c) Ian Stephen, 19 Glen View Crescent, Gorebridge, EH23 4BT.
(d) The PRG Partnership, 111 Cowgate, Kirkintilloch, Glasgow G66 1JD.
(e) Ifeyinwa Omwuazor, 28 Todds Walk, Andover Road, London N7 7RB.
(f) Ewa Daly, Pierwsza Pomoc Polscotia, St George's Building, 5 St Vincent Place, Glasgow, G1 2DH.
(g) David Bartolo, 2/52 Rallinson Road, North Coogee, WA6163, Western Australia.

14.3 There are two Secondary Complainers in relation to the Second Respondent who may claim to have been directly affected by the Second Respondent's misconduct and may thereafter seek compensation for losses resulting from that misconduct. Those Secondary Complainers are:-

(a) Thomas Aulds, ARM Architects LLP, 2a Berkeley Street, Glasgow G3 7DW.
(b) Colin Howard, Harris Howard Psychology Practice, 25/1 Frederick Street, Edinburgh EH2 2ND.

14.4 The Financial Compliance Department of the Complainers conducted an inspection of the financial records, books, accounts, and documentation of the firm of Ross Harper (hereinafter referred to as "the firm") on 5-8 March and 2-3 April, both 2012. The said firm had previously been inspected on 20-22 June 2011. These inspections in 2012 identified a number of matters of serious concern including poor and inadequate record keeping, inaccurate recording of

the said firm's financial position, incorrect and inappropriate rendering of accounts, clients' funds being held in the firm account, breaches of the money laundering regulations, and clients' funds not being adequately invested. Prior to said inspections in 2012 the Complainers' said Department requested that a Pre-Visit Questionnaire be completed. Said Questionnaire was completed, by the First Respondent as Managing Partner and Designated Cashroom Manager, and by the Second Respondent as the Client Relations Partner and Money Laundering Reporting Officer. Said Questionnaire confirmed inter alia that all partners were authorised to sign cheques on behalf of the said firm. Following said inspections the said Financial Compliance Department produced a Special Inspection Report, a Summary of Findings and an Investigation report dated 4 April 2012 hereinafter referred to as "Executive Summary". An invitation was submitted to the then Partners of the said firm, being the First to Fourth Respondents, to attend a meeting of the Complainers Guarantee Fund Committee on 4 April 2012. The First Respondent attended said meeting on behalf of the Partners of the said firm. He was at that date the Joint Managing Partner and Designated Cashroom Manager. As a result of the said serious concerns regarding the said firm's financial position, and the said concerns not being adequately addressed by the Partners of the firm, namely the First to Fourth Respondents, the complainers presented a Petition at the Court of Session on 5 April 2012 for the appointment of a judicial factor. An interim appointment was granted on 5 April and confirmed by the Court on 16 May, both 2012. As a result of these proceedings, the First to Fourth Respondents were suspended from practice by the Complainers on 5 April 2012.

14.5 Following further investigations by the Complainers' Financial Compliance Department and subsequently the Judicial Factor, thirty seven particular files and issues were identified. Those are as follows:-

Miss A's Executry

(a) The firm was first instructed by the executor-nominate in January 2009, Miss A having died on 7 January 2009. The Partner responsible for the file was shown as Cameron Fyfe.

(b) Terms of business were issued to the executor in February 2009, confirming that the fees to be charged would be determined by an independent Law Accountant who would provide a certificate in respect of fees and outlays once the administration of the estate had concluded. A joint mandate signed by the executor and the firm authorised John Gallagher, Law Accountant, to assess the fees incurred.

(c) The estate was extensive in respect that the deceased had owned multiple small shareholdings. Mr Gallagher was asked to assess an interim fee on 29 July 2009, and the firm's ledger shows that a fee of £3,981.30 was deducted on that date.

(d) Confirmation was granted on 29 September 2009. Work on ingathering the estate and paying legacies continued, before Mr Gallagher was approached on 16 December 2009 to assess a further interim fee. The ledger shows that a fee of £3,270.60 was debited on 31 December 2009 but was immediately re-credited; and a different entry shows a fee of £1,233.95 to have been deducted on the same date.

(e) On 26 May 2010, Mr Gallagher was asked to assess a further interim fee and the ledger records show that a fee of £1,254.90 was deducted on 28 May 2010.

(f) The administration continued. The ledger recorded *inter alia* the following entries:

| | | |
|---|---|---|
| 24 March 2011 | £1,200.00 Dr | Render Bill |
| 28 April 2011 | £300.00 Dr | Render Bill |
| 1 December 2011 | £1,800.00 Dr | Render Bill |
| 20 December 2011 | £250.00 Dr | Render Bill |

(g) On 20 December 2011, the firm wrote to a different Law Accountant. The letter asked for a fee to be set for the period from 28 May 2010 to the close of administration but that the Law Accountants were to "*ignore any interim fees*

*raised during this period*". Credit Notes dated 22 December 2011 ostensibly cancelled the fees which had been charged on 24 March 2011, 28 April 2011 and 1 December 2011.

(h) The Law Accountant issued a certificate of assessment on 21 December 2011 indicating a fee of £7,501.48 exclusive of VAT and outlays. A fee note was duly drawn up on 22 December 2011 for £9,001.78 (*ie.* £7,501.48 plus VAT @ 20%). The ledger was debited by that amount on 21 December 2011.

(i) A further ledger entry dated 26 January 2012 purported to "Render Bill" in the sum of £1,676.11.

(j) The Account of Charge and Discharge was signed off by the executor on 2 February 2012. It included entries for the interim fees of £3,981.30 on 31 July 2009; £1,233.95 on 31 December 2009; £1,254.90 on 28 August 2010; and the final fee of £9,001.78. There was no entry for any of the other fees which had been ostensibly taken.

Miss C's Executry

(a) The firm was first instructed in or around December 2010, Miss C having died on 28 November 2010. The Second Respondent was the Partner responsible for the file. Terms of Business were issued to the executrix-nominate on 13 December 2010 which confirmed that the fees to be charged would be determined by an independent Law Accountant who would provide a certificate in respect of fees and outlays either once the administration of the estate had concluded, or as and when the firm deemed it appropriate throughout the administration of the estate. A joint mandate authorising Patricia Kee, Law Accountant, to assess the fees incurred was signed by the executrix.

(b) The firm wrote to Ms Kee on 22 March 2011 requesting that an interim fee be set. Ms Kee provided a certificate of assessment on 24 March 2011, and a fee note for £2,920.16 was duly drawn up; with the appropriate entry being made in the ledger.

(d) A ledger entry dated 27 May 2011 recorded that a fee of £600 was taken on that date; and a further entry dated 1 August 2011 recorded that a fee of £3,377.90 was then taken.

(e) On 16 August 2011 Ms Kee assessed a fee at £2,814.92 exclusive of VAT, and a fee note for £3,377.90 (representing the assessed fee and 20% VAT) was produced on 19 August 2011. A letter of 19 August 2011 from the firm to the executrix purported to enclose "*our Fee Notes and Auditors Certificates in relation to our fees*", together with the estate account, which recorded each of the fees which had been assessed by Ms Kee (but not the other purported interim fee of £600). The executrix approved the estate account on 22 August 2011.

(f) Thereafter, a fee note for £1,200 dated 1 December 2011 was raised by the firm, and deducted from the ledger. A further fee of £720 was debited from the ledger on 26 January 2012.

(g) Ms Kee submitted a certificate of assessment dated 24 February 2012, setting the fee at £1,832.40 exclusive of VAT; and a fee note for £2,198.88 was duly raised on the same date. Credit notes were raised which purported to refund the £1,200 fee from 1 December 2011, and the £720 fee from 26 January 2012.

Mr E

(a) The firm acted between 2003 and 2011 for Mr E in a claim for damages he was pursuing in the Court of Session against Glasgow City Council. The Partner responsible for the file was Cameron Fyfe.

(b) The firm's ledger recorded that a payment of £6,064.57 had been made to the Edinburgh agents, Drummond Miller LLP, in respect of their fees, on 30 December 2011 (SLAB having paid the firm in respect of the legal aid account on 23 December 2011). As at the date of the appointment of the Judicial Factor *ad interim* on 5 April 2012, the cheque ostensibly sent to Drummond Miller had not been cashed.

Mr F

(a) Mr F, an existing client of the firm, instructed the firm in respect of a family law matter in December 2010. The Partner responsible for the file was Alan Susskind.

(b) In the course of the proceedings, the court ordered a bar report which was compiled by Ms Lorna Anderson of Messrs Kelly & Co Solicitors. The account of expenses in respect of same, amounting to £3,008.37, was forwarded to the firm on 4 August 2011.

(c) The ledger recorded that payment of £3,064.89 was received by the firm from SLAB on 16 September 2011 (albeit the ledger entry is dated 30 September 2011. The ledger recorded further that £3,008.37 was paid to Messrs Kelly & Co on 30 September 2011.

(d) The ledger entry recording the payment of 30 September 2011 to Messrs Kelly & Co was reversed by the Judicial Factor *ad interim* on 18 April 2012, in respect that the cheque purportedly issued by the firm previously had not been presented nor encashed.

Mr H Executry

(a) The firm was consulted in or around September 2010 by Mrs I, the niece of the late Mr H who had died on 6 September 2010. Mrs I was the executrix-nominate in terms of Mr H's will. The Partner responsible for the file was initially a Kevin Hughes but was latterly the First Respondent. Terms of business were issued to her on 24 September 2010. The terms of business also confirmed that the fees to be charged would be determined by an independent Law Accountant who would provide a certificate in respect of fees and outlays either once the administration of the estate had concluded, or as and when the firm deemed it appropriate throughout the administration of the estate. A joint mandate authorising Patricia Kee, Law Accountant, to assess the fees incurred was signed by the executrix.

(b) On 22 November 2010, the papers were referred to Ms Kee for the purposes of her assessing an interim fee. A fee note for £2,156.13 was duly produced on 26 November 2010.

(c) Confirmation was granted in favour of Mrs I on 15 December 2010. Further fee notes, for £1,200 and £300, were raised on 31 January 2011 and 21 February 2011 respectively. The ledger recorded those two fee notes, and another one for £300 on 24 March 2011, having been contemporaneously deducted from the funds held on the client account.

(d) Ms Kee was asked by letter of 13 April 2011 to assess a further interim fee. The letter of instruction issued to her by the firm asked her to "disregard the other fee notes on the file" since the date of her last assessment. A certificate of assessment dated 14 February 2011 assessed the fee at £1,332 exclusive of VAT and outlays; and a fee note for the value-added amount of £1,598.40 was raised on 18 April 2011.

(e) Three credit notes, all dated 18 April 2011, bore to refund to the client account the fees taken on 31 January 2011, 21 February 2011 and 24 March 2011. There are no corresponding entries in the client ledger on that date, and instead on 21 April 2011 the ledger recorded that further fees of £300, £300, £1,200 and £1598.40 were debited. On 27 April 2011, entries refunding sums of £360, £360, £1,200 and £1,440 were credited to the ledger, but were immediately re-debited; and on the same date, entries crediting the ledger by £300, £300, £1,200 and £1,200 were posted to the ledger.

(f) On 27 October 2011, Ms Kee was asked to assess a further fee, and did so per certificate of assessment of the same date, which assessed fees at £1,008.53 exclusive of VAT and outlays. A fee note for the value-added amount of £1,210.23 was raised on 4 November 2011. The ledger recorded that fee being deducted from the sums held on the client ledger on 4 November 2011. Previous entries in the ledger dated 27 October 2011 purported to cancel two fee notes of £300 each.

Mr J's Executry

(a) Mr J died on 11 December 2008, and the firm was instructed thereafter by his executrix. The First Respondent was the Partner responsible for the file. Terms of business were issued to her on 8 January 2009 together with a letter of authority authorising John Gallagher, Law Accountant, to assess the remuneration due and payable in respect of the administration. The letter of authority was duly signed by the executrix.

(b) The firm wrote to Mr Gallagher on 25 June 2009 asking him to assess an interim fee for the work undertaken to date. The ledger recorded a fee of £4,255 having been deducted on 20 June 2009.

(c) Confirmation was granted on 7 September 2009. A second interim fee assessment was requested from Mr Gallagher on 22 October 2009. A further fee note dated 29 October 2009, for £3,808.80, was duly raised, and recorded in the ledger on 30 October 2009.

(d) A further fee note, for £2,400, was raised by the firm on 31 January 2011. The ledger recorded that the fee was taken on 31 January 2011.

(e) The ledger recorded another fee, of £300, having been taken by the firm on 21 February 2011.

(f) On 21 March 2011, the firm wrote to Kee Law Accountants, enclosing the firm's file and asking for a further interim fee "from the date of John Gallagher's last fee" to be assessed. The letter asked Ms Kee to "Please ignore any payments to account raised in this file". Ms Kee provided a certificate of assessment on 29 March 2011, and a fee of £2,677.50 was deducted from the ledger on that date. Also on that date the firm issued a cheque to Equiniti Financial Services Ltd for £74.11.

(g) The firm requested that a final fee be assessed by Ms Kee by letter dated 28 June 2011. Ms Kee provided a certificate of assessment dated 29 June 2011 for the sum of £5,195 exclusive of VAT and outlays. A fee note for the value-

added amount of £6,234 was raised on 1 July 2011. The final fee was not deducted from the ledger until 1 August 2011 when the account was approved by the executrix. Also dated 1 July 2011 were credit notes in respect of the £2,400 fee purportedly charged on 31 January 2011, and the £300 fee purportedly charged on 21 February 2011; and the ledger recorded that those fees were written back to the ledger on 29 July 2011.

(h) On 3 October 2011, the cheque in favour of Equiniti Financial Services Ltd was cancelled and the consequent credit balance of £74.11 was taken to fees.

Mr and Mrs K

(a) The clients instructed the firm in or around March 2007 in respect of the sale of their heritable property and the purchase of another property. The Second Respondent was the Partner responsible for the file. When each had concluded, a fee of £400 ex VAT was charged by the firm for the sale; and a fee of £425 ex VAT was charged for the purchase.

(b) As at 29 June 2007, the purchase ledger had a debit balance of £360, whereas the sale ledger had a credit balance of £302.24. On 21 October 2011, a fee of £300 was debited from the sale ledger, leaving a balance of £2.24. The debit balance on the purchase ledger remained.

Mr L's Executry

(a) Although Mr L died in January 2008, the firm was not instructed by his wife until in or around August 2009. The First Respondent was the Partner responsible for the file. The terms of business confirmed, that the fees to be charged would be determined by an independent Law Accountant who would provide a certificate in respect of fees and outlays either once the administration of the estate had concluded, or as and when the firm deemed appropriate during the administration of the estate. A joint mandate was signed by the executrix.

(b) The only property owned by the late Mr L had been a Scottish Widows policy worth £7,567.41 but despite the relatively low value of his estate, Scottish Widows insisted that Confirmation be obtained. Confirmation was granted by the court on 16 April 2010.

(c) The firm requested that interim fees be assessed by Mr Gallagher on 27 January 2010 and 26 April 2010, and corresponding certificates of assessment and fee notes for £669.75 and £359.55 were deducted from the ledger on 29 January 2010 and 30 April 2010 respectively. Thereafter, on 4 March 2011, the firm requested a further interim fee assessment from Kee Law Accountants, and a further fee note for £810.68 was raised on 15 March 2011, and deducted from the ledger, based on Ms Kee's certificate of assessment.

(d) The firm was notified on or around 26 October 2011 by the son of the late Mr L that his mother, the executrix, had died, and Messrs Watersrule, on behalf of the executrix's daughter, Mrs M, wrote to the firm on 3 November 2011 with Mrs M's mandate for all papers to be delivered to them on the basis that Mrs M had become dissatisfied with the way the firm had handled matters.

(e) On 7 November 2011, the firm requested a further assessment of fee from date of instruction to date from Ms Kee, asking that she disregard all interim fee notes on the file. Ms Kee produced a certificate of assessment on 11 November 2011, and a fee note for the value-added amount of £1,494.89 was raised, and deducted from the ledger, on 14 November 2011.

(f) The firm wrote directly to Mrs M on 21 November 2011 "enclosing our fee notes and statement of intromission for your approval"; and thereafter wrote to Messrs Watersrule noting that they had reviewed the file. The firm observed that the executrix had been experiencing difficulties in ingathering her late husband's estate and "did not instruct ourselves until eighteen months after her late husband's death. Scottish Widows appears to have insisted on being provided with a Certificate of Confirmation despite the relatively low value of their policy. Some difficulties were experienced in securing Confirmation. Thereafter, it was brought to our attention that there was an AXA Policy of which we had not been advised prior to Confirmation. In the circumstances

despite the auditor fixing the fee I have decided to apply an abatement and reduce the fee to a total figure of £2,500". The firm's letter bore to enclose the balance of the estate of £7,187.39.

(g) Messrs Watersrule wrote to the firm on 25 November 2011, observing that they had by then reviewed the firm's file, and had taken the view that the executry had been billed twice for a large part of the administration work, such that, even with the abatement, the fee was grossly excessive. They noted that interim assessments had been made at regular intervals, but that the assessment obtained from Kee Law Accountants per the instruction of 7 November invited them to disregard all interim fee notes. Messrs Watersrule asked for the overcharged amount to be refunded, on the basis that £1,494.89 represented the actual assessment of all the work undertaken by the firm.

(h) The firm replied on 5 January 2011, setting out that there had "occasionally been the need to raise interim fees in some of our files where we have not had the opportunity to send our files to the Law Accountant. In such cases we have advised our Law Accountant to disregard these 'interim fees' from whatever fee is being set at that time. It just so happens that in this particular file no interim fees were raised which were not already assessed by the Law Accountant and the letter was simply a style that had been copied over from another case. You will note from Ms Kee's email of 17 November (15:40) that the final fee covers from the date of John Gallagher's last fee (7 March 2010) to the close of the file. Therefore all assessed fees would have been chargeable to the estate. The fee was however restricted to £2,500 (inclusive of VAT)".

(i) The firm asked Ms Kee to look at matters again, and she confirmed that in light of her own misinterpretation of the firm's instructions on 4 March 2011, she had included the interim fee of £810.68 in the final total of £1495.89, and the former sum therefore fell to be deducted. The firm confirmed the position to Messrs Watersrule, observing that the final assessed total should have been £2,525.19 inclusive of VAT, and that the restricted fee did not, therefore, fall to be restricted further, albeit the audit fee would be refunded.

Mr N Executry

(a) Mr N died on or around 15 February 2004 and the firm was instructed by his son. The firm's Mr James Herald was nominated as executor in terms of the late Mr N's will, and Confirmation in his favour was granted by the court on 28 January 2005. The Partner responsible for the file was initially James Herald but latterly the First Respondent.

(b) The firm's ledger card reflected that certain sums were received by the firm in respect of the closure of the late Mr N's bank accounts and periodic payments were received from Co-Operative Insurance Society Ltd, which sums were transferred intermittently to an interest bearing account.

(c) The ledger recorded that a fee of £1,200 was taken on 26 January 2012; and a further fee of £240 was taken on 27 February 2012 without either fee note having been issued to the executor.

Ms P Executry

(a) The firm was instructed on or around 29 July 2010 by Mr O, the nephew and residuary beneficiary of the late Ms P. The First Respondent was the Partner responsible for the file. In terms of her will Ross Harper Nominees Limited was nominated as her executor, and terms of business were issued to Mr O on 30 July 2010. The terms of business also confirmed that fees to be charged would be determined by an independent Law Accountant who would provide a certificate in respect of fees and outlays either once the administration of the estate had concluded, or as and when the firm deemed appropriate during the administration of the estate.

(b) The firm requested that Ms Kee assess an interim fee on 30 September 2010. A certificate of assessment dated 1 October 2010 assessed the fee at £2,493.37 exclusive of VAT and outlays and the value-added amount of £2,929.71 was deducted from the ledger on 30 September 2010.

(c) Confirmation was granted on 20 October 2010, and Ms Kee was asked to assess a final fee on 16 November 2010. A certificate of assessment was duly compiled by Ms Kee, and a fee note for the value-added amount of £615.52 was raised on 22 November 2010, and deducted from the ledger the following day.

(d) Throughout 2011, the firm continued to deal with the last remaining part of the estate which involved primarily a transfer of a shareholding. The ledger narrated that a fee of £960 was taken on 24 March 2011; and a further fee of £571.68 was taken on 26 January 2012. On 7 February 2012, the firm referred back to Ms Kee, asking her to have another look at the final fee which had been assessed, and to clarify whether it had incorporated the firm's commission on the estate. Ms Kee confirmed that it had not, and provided a revised certificate of assessment dated 8 February 2012 for £4,412.48. A fee note for the value-added amount of £5,294.98 was raised on 14 February 2012, was issued to Mr O on 15 February 2012; and deducted from the ledger on the latter date.

(e) The firm's covering letter explained that the previous invoice had mistakenly omitted commission, and that as a result there had been an overpayment to him; and requested that he settle the balance of £3,773.30. Mr O responded on 29 February 2012, and enclosed a cheque as had been requested. That was credited to the ledger which had been operated in respect of the drafting of the late Ms P's will, which consequently showed a credit balance of £3,763.30.

(f) In the meantime, a credit note for £571.68, bearing to refund the fee which had been taken on 27 January 2012 was raised. There was no corresponding entry in the ledger. A further credit note for £3,763.30 was raised on 26 March 2012; and an undated credit note for the fee of £960 which had been taken on 24 March 2011 was raised. There were no corresponding ledger entries which would suggest that the credit notes had been posted.

(g) The credit balance on the will ledger (of £3,763.30) was taken to fees on 26 March 2012.

Mr Q

(a) Mr Q was charged in connection with an alleged assault. The Partner responsible for the file was Gerard Devaney. The client was assessed as ineligible for legal aid, and the firm confirmed to him on 20 April 2011 that its fee for representing him would be £750 plus VAT. The ledger records that a payment to account of £300 was made by the client on 4 May 2011.

(b) The case was abandoned by the Crown, and the firm sent out a fee note on 10 May 2011. The ledger was debited accordingly on 11 May 2011. Thereafter, the client settled the balance in instalments of £300 on 3 June 2011 (recorded in the ledger on 8 June 2011), £200 on 4 July 2011 (recorded in the ledger 7 July 2011) and £100 on 4 August 2011 (recorded in the ledger 8 September 2011). A receipted fee note was issued to the client on 18 August 2011.

(c) The ledger did however record the rendering of a further bill of £900 on 2 August 2011, which was eventually cancelled on 30 March 2012. The ledger accordingly showed a net debit balance between 2 August 2011 and 30 March 2012.

Mr R

(a) The firm was instructed in or around August 2008 in respect of the proposed purchase by Mr R of his council house at Property 1 from the local authority. The Second Respondent was the Partner responsible for the file. Terms of business were issued to Mr R on 19 August 2008 which provided that a fee of £450 would be incurred for the transaction, subject to VAT and outlays.

(b) The transaction proceeded and completed on 15 October 2008. The firm issued its account and fee note on 17 October 2008, on which date the ledger was debited accordingly. The fee note set out the various outlays and VAT which, when added to the fee, amounted to £688.75.

(c) The ledger had shown a debit balance of £60 as at December 2008 in respect of registration dues which had been paid out. A corrective entry dated 13 January

2009 transferred £130 back to the credit of the account, thereby leaving the ledger with a £70 credit balance. On 18 October 2011 the ledger recorded that a further fee of £70 was taken, reducing the balance to nil. A further entry on the ledger recorded a fee of £70 being taken on 8 November 2011, giving the ledger a debit balance.

Ms S

(a) Ms S instructed the firm in or around April 2010 in respect of a potential claim for medical negligence. She had the benefit of Legal Advice and Assistance. The Partner responsible for the file was Cameron Fyfe.

(b) SLAB granted sanction for £900 plus VAT for the purposes of obtaining an expert medical report from Professor Roger Grace at Nuffield Hospital in Wolverhampton, and a report was duly obtained from him on 1 February 2011. It was not helpful to Ms S, and the firm wrote to her on 18 February 2011 confirming that they would be unable to progress matters standing its terms. The firm's letter indicated that if they did not hear from Ms S within 7 days, they would assume that she did not wish to discuss matters further, and would close their file.

(c) Not having heard from the client, an account of expenses was submitted to SLAB. The account recorded that Professor Grace's fee had been paid on 2 February 2011. The ledger operated by the firm for Ms S recorded the following sample entries.

| Date | Narrative | Amount |
|---|---|---|
| 13/05/2011 | SLAB payment received 10/05/2011 | £1427.19 Cr |
| 13/05/2011 | Paid The Nuffield Hospital re liability & Causation report for Ms S | £1080 Dr |
| 30/11/2011 | Cancel cheque 013251 to be reissued | £1081 Cr |
| 30/11/2011 | Paid Nuffield Hospital re earlier cheque reissued | £1081 Dr |
| 30/11/2011 | CORRECT ABOVE ENTRY | £1080 Cr |

| | | |
|---|---|---|
| 30/12/2011 | Cancel cheque 013251 paying Nuffield Hospital uncashed and out of date | £1080 Cr |

Mr U Executry

(a) Mr U died on 12 September 2011. The executors in terms of his will, his son and daughter, instructed the firm to act in the administration of his estate on 14 September 2011. The Partner responsible for the file was initially James Herald but latterly the Second Respondent. Terms of business were issued to the executors on 14 October 2011 and confirmed that the fees to be charged would be determined by an independent Law Accountant who would provide a certificate in respect of fees and outlays either once the administration of the estate had concluded, or as and when the firm deemed it appropriate throughout the administration of the estate. A joint mandate authorising Patricia Kee, Law Accountant, to assess the fees incurred was duly signed and returned by each of the executors.

(b) An interim fee note for £1,800 was raised on 21 November 2011, and deducted from the ledger that day.

(c) On 18 January 2012, the firm wrote to Ms Kee asking her to assess an interim fee from the commencement of the firm's involvement to obtaining Confirmation. Ms Kee was invited to ignore the interim fee raised in November 2011 of £1800. A certificate of assessment was duly sent to the firm on 19 January 2012. A fee note for the value added amount of £3,611.16 was raised on 23 January 2012, albeit it had been deducted from the ledger on 20 January 2012, and a credit note for the interim fee note raised on 21 November 2011 was also raised.

(d) Confirmation was granted by the court on or around 7 February 2012, and the firm proceeded to ingather the estate. On 23 February 2012, a further interim fee note for £1,200 was raised. Another fee note for £198 was raised similarly on 27 February 2012, and deducted from the ledger on that date. One more fee note for £2,400 was raised on 26 March 2012, and ledger was debited on that date.

(e) Credit notes for each of the fee notes dated 21 November 2011, 23 February 2012, 27 February 2012 and 26 March 2012 were raised after the appointment of the Judicial Factor.

Mr V

(a) Mr V first instructed the firm in or around 2007 in respect of a family law matter. The Partner responsible for the file was Alan Susskind. By an interlocutor, Stuart Munro, a solicitor at Messrs Livingston Brown was appointed by the Sheriff at Glasgow Sheriff Court to prepare a report in respect of Mr V's son, who was the subject of the residence and contact proceedings. Mr Munro duly compiled a report for the court, sending a copy to the firm on 2 June 2011. A separate letter on the same date from Mr Munro to the firm enclosed his account of expenses.

(b) A Form SLA/ROL/2 in respect of the account of expenses, amounting to £7,339.30, was completed on 22 June 2011.

(c) On 31 August 2011, the ledger was credited with a payment of £7,339.30 which had been received by the firm from SLAB. Also on 31 August 2011, the ledger was debited by the same amount ostensibly making payment of the invoice in respect of Mr Munro's report to his firm, Messrs Livingstone Brown. The ledger entry was reversed on 29 February 2012 under the descriptor "Cancel cheque 012726 paying Livingstone Brown re uncashed & out of date to be reissued". The ledger was duly debited the same day with a replacement payment under the narrative "Paid Livingstone Brown re earlier cheque cancelled". On 16 March 2012, the entry was once again reversed with the narrative "Cancel cheque 013994 paying Livingstone Brown to be reissued"; and ostensibly yet another cheque drawn under the narrative "Paid Livingstone Brown re earlier cheque cancelled".

Ms X

(a) Ms X was a legally aided client of the firm in respect of a child welfare matter. The Partner responsible for the file was Alan Susskind. Susan Oswald of Sheehan Kelsey Oswald was the Edinburgh agent acting on Ms X's behalf, on the instructions of the firm, in respect of appeal proceedings which were heard in the Court of Session on 8 February 2011. Ms Oswald's firm incurred certain expenses in the course of those proceedings, and wrote to the firm by e-mail on 24 February 2011.

(b) Ms Oswald wrote again, by letter, on 10 May 2011 a reminder for payment.

(c) The firm's ledger recorded that the sum of £3,017.40 was credited on 13 January 2011, having been received from SLAB. The ledger recorded that separate payments of £1,491.46 and £1,525.94 [*ie.* cumulatively £3,017.40] were made to K2 Legal Support on 13 January 2011. Those ledger entries were subsequently reversed on 17 May 2011. Also on 17 May 2011, the ledger recorded that a payment of £3,017.40 was made to SKO. On 31 May 2011, the cheque to Ms Oswald's firm was cancelled and a CHAPS transfer for the same amount was debited to the ledger.

Mr Z

(a) Mr Z, a legally aided client, consulted the firm in January 2010 in respect of a child contact matter. The Partner responsible for the file was Alan Susskind. In the course of proceedings the court ordered a bar report from Mr Stuart Munro of Messrs Livingston Brown, Solicitors.

(b) Mr Munro's report was duly compiled and forwarded to the firm on 5 October 2011, together with his fee note for £3,735.50.

(c) The firm's ledger was credited by £3,735.50 on 16 December 2011, in respect of payment which was received from SLAB on 7 December 2011. A debit

entry on the same date recorded that Messrs Livingstone Brown had been paid for the bar report compiled by Mr Munro.

(d) That ledger entry was reversed on 16 March 2012 under the descriptor "Cancel cheque 013043 paying Livingstone Brown to be reissued"; and the ledger showed a further cheque to have been drawn on that date in respect of "Paid Livingstone Brown re earlier cheque cancelled".

Mr AA

(a) Mr AA, a legally aided client, consulted with the firm in or around September 2009 in respect of a child contact matter. The Partner responsible for the file was Alan Susskind.

(b) In the course of proceedings the court ordered a bar report from Ms Collette Connell of Messrs Bell Russell & Co, Solicitors. Ms Connell's report was duly compiled and was submitted by her to the firm on 13 June 2011; her account of expenses following thereafter on 28 June 2011.

(c) The firm's ledger was credited with a SLAB payment of £2,251.03 on 31 August 2011 (representing £2,128.69 in respect of the bar report, and two other unconnected outlays). On the same date the ledger was debited with payment to Messrs Bell Russell & Co.

(d) Messrs Bell Russell & Co wrote to the firm formally on 4 November 2011, noting that they had asked "on numerous occasions whether or not our account has been paid. On 2 November 2011 we telephoned the Legal Aid Board and we were advised by them that our account had been paid to your office on 26 August 2011". They intimated that they accordingly looked forward to payment of their account "as a matter of some urgency". That letter was followed up by a further letter from Bell Russell & Co on 9 November 2011, which set out that they considered their fee to be "extremely overdue", and insisting upon payment by 11 November 2011 failing which they intended to complain to SLAB and the Law Society. Ledger entries dated 9 November 2011 duly purported to cancel the previous entry from 31 August 2011 under

the narrative "Cancel cheque 012745 to be reissued"; and to debit the ledger under the narrative "Paid Bell Russell & Co earlier entry cancelled and now reissued".

(e) Further in said action a report was ordered from a child psychologist, Dr Jack Boyle. Dr Boyle submitted his report to the firm under cover of a letter dated 25 January 2012, which was accompanied by his invoice for £2,028.

(f) Ledger entries dated 21 March 2012 recorded that £2,028 had been received from SLAB on 16 March 2012, and payment of that sum to Dr Boyle. No such payment had in fact been made on 21 March 2012; and the Judicial Factor instructed the payment to be made to Dr Boyle on 5 April 2012.

Mr DD

(a) Mr DD, a legally aided client, consulted with the firm in or around September 2010 in respect of a child contact matter. The Partner responsible for the file was Alan Susskind.

(b) In the course of proceedings the court ordered a bar report from Ms Kirstine MacRae of Messrs Raeburn Hope, Solicitors. Ms MacRae's report was duly compiled and was submitted by her to the firm on or around 4 August 2011 and her account of expenses for £3,721.72 following thereafter on 25 August 2011.

(c) Ms MacRae wrote to the firm again on 19 September 2011, asking for an update as to whether the firm had heard from SLAB in relation to the settlement of her account. A further letter from Ms MacRae to the firm dated 4 November 2011 sought a further update.

(d) The firm's ledger recorded on 21 October 2011 that a payment of £3,721.72 had been received on 19 October 2011 from SLAB; that the ledger had been debited on 21 October 2011 in that amount ostensibly in payment of Messrs Raeburn Hope's account; that the cheque had been cancelled on 18 November 2011 "to be reissued"; and that it was reissued on 18 November 2011.

(e) Separately, in the course of the proceedings the firm of Messrs Macintosh Humble entered appearance in Dumbarton Sheriff Court on behalf of both parties to the contact action. Mr Kenneth MacRae of that firm wrote to the firm on 14 October 2011 confirming that he had appeared in court that day. He confirmed that he had spoken to the solicitor acting for Mr DD's opponent, who had confirmed to him that he was to "appear for both parties and report to both of you and split my fee. I had expressed reluctance because of the outstanding Ross Harper fees but she had confirmed that you had undertaken that my fee would be paid and I agreed to appear in that circumstance. Accordingly my firm's account is attached. I should be obliged if you would arrange for payment to be made as soon as possible. If you have any persuasive powers to allow your cash room to part with some of the cash I am owed for other appearances then that would be helpful". Mr MacRae's fee note was for £24.

(f) Mr MacRae wrote once more to the firm on 23 January 2012, referring to his letter of 18 November 2012, and noting that he had not received any response to it.

(g) A ledger entry dated 7 February 2012 bears to relate to Mr MacRae's fee but was not debited from the ledger.

Mr GG

(a) Mr GG instructed the firm in or around April 2010. He had previously been instructing a different firm in connection with a complex series of commercial litigations which had been raised against him in the Court of Session. He had however encountered difficulties in funding the defences to those claims, and his switch of agency to the firm was motivated primarily by the fact that the firm had indicated that it would be prepared to act for him on a legally aided basis, which arrangement the previous agents were not able to accommodate. The Partner responsible for the file was initially the Third Respondent, but was transferred to the First and Fourth Respondents in June 2010.

(b) At a hearing shortly after the firm was instructed, the actions were sisted for a period of three months to allow Mr GG to apply for Legal Aid standing that essentially all of his assets had been arrested and inhibited on the dependence. A ledger was created for Mr GG on 23 April 2010 with a payment of £1,000 by him to account of fees. The ledger recorded thereafter that on 30 April 2010, a fee of £1,532.95 was taken by the firm. Mr GG made a CHAPS transfer to the firm of £3,000 on 12 May 2010.

(c) An interim fee note was issued to the client by the Fourth Respondent by letter of 30 June 2010; and £1,936.56 was deducted from the ledger on that date.

(d) Mr GG made a credit card payment of £5,000 to the firm on 28 July 2010.

(e) Further deductions from the ledger in respect of fees were made on 30 July 2010 of £3,250, and 18 August 2010 of £1,175. An interim fee note was issued to the client by the Fourth Respondent by letter dated 17 September 2010.

(f) By letter of 6 September 2010, SLAB refused Mr GG's application for legal aid.

(g) Mr GG wrote to the firm by e-mail on 3 November 2010 in the following terms: "I wonder if you would be able to confirm what I have on deposit with yourselves as I have paid £9,000 into the firm and I think my invoices have totalled approx £2,500. On 3 November 2010, the firm replied to Mr GG's e-mail, and provided a statement which showed that of the £9,000 which had been deposited by him, £1,065 had been spent on outlays (specifically to the Edinburgh agents and for Counsel), and £8,169.51 had been incurred to the firm's fees. In response, Mr GG requested copies of his fee notes.

(h) Mr GG made another credit card payment of £3,000 to the firm, on 14 January 2011, and a fee of £2,502.98 was deducted on 31 January 2011.

(i) A letter to Mr GG from the firm dated 2 February 2011 enclosed the receipted invoice, and requested that Mr GG make a further interim payment of £5,000. The fee of £2,502.96 was written back to the ledger on 4 February 2011.

(j) A letter to Mr GG from the firm on 9 February 2011 enclosed an amended fee note, which had been revised on the basis that the Edinburgh agents' agency fee had been omitted. A copy of the revised fee note was showing the same total of £2,502.98, which was constituted this time by a fee element of £1,735.82 exclusive of VAT (*ie.* £2,082.98 value-added), and an outlay of £420. The ledger showed a fee of £2,082.98 having been deducted on 4 February 2011, but written back the same day.

(k) A further payment of £5,000 was made by CHAPS transfer by Mr GG's wife, Mrs GG, on 15 February 2011, from which £4,800 was deducted to fees on 18 February 2011.

(l) Further sums of £5,000 from Mrs GG, and £3,000 from Mr GG, were received by the firm on 23 February 2011. A fee note for £6,500 plus VAT totalling £7,800 was prepared on 21 March 2011.

(m) CHAPS payments of £9,900 and £9,700 were thereafter recorded in the ledger as having been received from Mrs GG on 4 and 5 May 2011; and a further £3,000 was received from her by telex on 18 May 2011. A fee of £2,400 was deducted from the ledger on 25 May 2011.

(n) The fee of £2,400 was written back to the ledger on 31 May 2011; and a different fee of £3,600 was deducted on that date. A separate fee note, also dated 26 May 2011, for £3,600 and also including the £3000 outlay for Counsel was prepared.

(o) The next fee of £3,600 was deducted from the ledger on 30 June 2011.

(p) A credit card payment of £540 was thereafter received from Mr GG on 8 September 2011; and two telex payments of £2,500 and £2,000 were received from Mrs GG on 12 and 21 October 2011.

(q) A fee of £600 was deducted from the ledger on 20 December 2011.

(r) A CHAPS transfer of £5,000 was duly received from Mrs GG on 6 March 2013. A fee of £3,000 was thereafter deducted from the ledger on 21 March 2012. A further fee of £233.50 was deducted on 26 March 2012.

(s) The Judicial Factor arranged for the file to be assessed by Kee Law Accountants for the period between June 2010 and March 2012. The fee payable to the firm in respect of the work it had undertaken on Mr GG's behalf was thereby assessed at £7,728.60 inclusive of VAT, whereas, per the ledger, fees in excess of £30,000 had been taken by the firm during that period. The Judicial Factor, in his Report dated 1 February 2013, concludes inter alia that the said client had been overcharged fees to the extent of £26,020.83.

Mr HH Executry

(a) Mr HH died on 22 February 2007. In terms of his will Ross Harper (Nominations) Ltd was his executor. Confirmation was granted in favour of the firm's Cameron Fyfe *qua* director of the nominee company in May 2009, the firm subsequently required to petition the court for the assumption of the late Mr HH's civil partner, a Mr II, as executor. The Partner responsible for the file was David McIndoe but latterly the First Respondent.

(b) Terms of business were issued to Mr II on 15 June 2007. It confirmed that fees to be charged would be determined by an independent Law Accountant who would provide a certificate in respect of fees and outlays incurred.

(c) The firm referred the file to John Gallagher Law Accountants by letter dated 28 May 2008, asking for an interim fee to be calculated; and a fee of £743.78 was duly deducted from the ledger on 30 May 2008. A second interim fee assessment was requested on 24 November 2009, and a fee of £1,555.95 was deducted on 30 November 2009.

(d) By mid-2011, it became apparent that the executor, Ross Harper (Nominations) Ltd, was unable to continue in that capacity. Mr Fyfe had resigned as a partner of the firm.

(e) A further interim fee of £1,200 was taken by the firm on 31 January 2012. That fee was recredited to the ledger on 23 February 2012. A fee of £1,900.72, based on a certificate of assessment compiled by Kee Law Accountants and stated to cover the period 1 December 2009 to close of administration, was deducted on 23 February 2012. Thereafter, a fee of £198 was deducted on 24 February 2012, and a fee of £60 was deducted on 13 March 2012; the £198 fee was recredited to the ledger on 30 March 2012.

Ms JJ Executry

The First Respondent was the Partner responsible for this file.

(a) The firm's ledger recorded *inter alia* the following fees having been taken.

| Date | Narrative | Amount |
|---|---|---|
| 27 October 2011 | Render Bill | £1,200.00 Dr |
| 20 December 2011 | Render Bill | £750.00 Dr |
| 26 January 2012 | Render Bill | £600.00 Dr |
| 26 March 2012 | Render Bill | £1,200.00 Dr |

(b) The Complainers Financial Compliance Executive Summary hereinbefore referred to, recorded that the file which had been examined in the course of the inspection of the firm was silent, and no work undertaken from 4 August 2011. All of these entries were reversed by the Judicial Factor following his appointment.

Mr KK

(a) Mr KK instructed the firm with a purchase transaction. There is no Partner noted as being initially responsible for the file but latterly it became the First Respondent.

(b) The ledger was opened in October 1999. The purchase transaction settled on or around 19 October 1999 with payment of the purchase price, and subsequent redemption of an existing mortgage loan held by Mr KK. A fee note was duly rendered on 26 October 1999, leaving, after outlays, £1,868.25 at the credit of the ledger card. That sum was placed on deposit on 17 November 1999.

(c) Certain small sums were transferred back to the ledger in December 1999 and October 2001 to pay further registration outlays, but interest accrued monthly on the balance until February 2002 when the entire balance of £1,381 was placed in a different deposit account. Interest accrued on that account annually, until the balance of £1,559.13 was transferred back to the ledger on 10 November 2008.

(d) On 20 August 2010 fees of £293.75 were deducted from the ledger; and on 25 October 2011 a further fee of £660 was deducted. Finally on 26 March 2012, a fee of £360 was deducted on the instruction of the First Respondent.

Mr LL

(a) Mr LL instructed the firm in relation to Court of Session proceedings. The Partner responsible for the file was Cameron Fyfe.

(b) The firm's ledger was opened in June 1999, and intromissions continued until 1 March 2012. Disclosed within the firm ledger are the following entries:-

Re Dr R J Sellar:

| Date | Narrative | Amount |
|---|---|---|
| 10/03/2010 | Pay Dr R J Sellar – Reading Reports and Notes | £1000 Dr |
| 30/09/2010 | Cancel chq 003981 paying Dr R J Sellar – To be reissued | £1000 Cr |
| 30/09/2010 | Dr R J Sellar– Earlier entry cancelled and now reissued | £1000 Dr |
| 31/03/2011 | Cancel chq 005539 paying Dr R J Sellar– | £1000 Cr |

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|---|---|---|
| | to be reissued | |
| 31/03/2011 | Dr R J Sellar – Earlier entry cancelled and now reissued | £1000 Dr |
| 29/11/2011 | Cancel cheque 005976 to be reissued | £1000 Cr |
| 29/11/2011 | Paid Dr R J Sellar re earlier cheque cancelled | £1000 Dr |
| 05/04/2012 | Cancel entry 012830 as per JF ad interim | £1000 Cr |

Re Ms NN:

| Date | Narrative | Amount |
|---|---|---|
| 30/09/2010 | Pay Ms NN – Secretarial Fee | £15 Dr |
| 31/03/2011 | Cancel chq 005524 paying Ms NN – To be reissued | £15 Cr |
| 31/03/2011 | Ms NN – Earlier entry cancelled and now reissued | £15 Dr |
| 29/11/2011 | Cancel cheque 005977 to be reissued | £15 Cr |
| 29/11/2011 | Paid Ms NN re earlier cheque cancelled | £15 Dr |
| 05/04/2012 | Cancel entry 012829 as per JF ad interim | £15 Cr |

Re ARM Architects:

| Date | Narrative | Amount |
|---|---|---|
| 11/10/2010 | Slab reimbursement of outlay sent | £2761.25 Cr |
| 10/11/2010 | Pay ARM Architects – Fee in respect of architectural services | £2761.25 Dr |
| 03/02/2011 | Cancel chq 005815 paying ARM Architects – to be reissued | £2761.25 Cr |
| 03/02/2011 | Paid ARM Architects – Earlier entry cancelled and now reissued | £2761.25 Dr |
| 30/06/2011 | Pay ARM Architects – Architectural Services | £1620 Dr |
| 30/12/2011 | Cancel cheque paying ARM Architects uncashed and out of date | £1620 Cr |
| 30/12/2011 | Paid ARM Architects re earlier cheque cancelled | £1620 Dr |

| | | |
|---|---|---|
| 05/04/2012 | Cancel chq 013053 paying ARM Architects – As per Judicial Factors ad interim | £1620 Cr |

Re Yorkhill Childrens Foundation

| Date | Narrative | Amount |
|---|---|---|
| 30/09/2010 | Pay Yorkhill Childrens Foundation – Report | £150 Dr |
| 31/03/2011 | Cancel chq 005523 paying Yorkhill Childrens Foundation– to be reissued | £150 Cr |
| 31/03/2011 | Yorkhill Childrens Foundation | £150 Dr |
| 30/11/2011 | Cancel cheque 005978 to be reissued | £150 Cr |
| 30/11/2011 | Paid Yorkhill Childrens Foundation re earlier cheque cancelled | £150 Dr |
| 05/04/2012 | Cancel chq 013013 paying Yorkhill Childrens Foundation – As per Judicial Factors ad interim | £150 Cr |

Re Case Management Services Ltd:

| Date | Narrative | Amount |
|---|---|---|
| 14/02/2011 | SLAB payment received 04/02/2011 | £1468.75 Cr |
| 14/02/2011 | Pay Case Management Services Ltd – Reviewing Reports | £1468.75 Dr |
| 31/08/2011 | Cancel Cheque 013884 paying Case Management Services Ltd – to be reissued | £1468.75 Cr |
| 31/08/2011 | Case Management Services Ltd – Earlier entry cancelled and now reissued | £1468.75 Dr |
| 29/02/2012 | Cancel cheque 006118 paying Case Management Services Ltd re uncashed and out of date to be reissued | £1468.75 Cr |
| 29/02/2012 | Paid Case Management Services Ltd re earlier cheque cancelled | £1468.75 Dr |
| 05/04/2012 | Cancel entry 002005 as per JF ad interim | £1468.75 Cr |

Re Drummond Miller:

| Date | Narrative | Amount |
|---|---|---|
| 25/05/2011 | SLAB payment received 24/05/2011 | £2445.67 Cr |
| 25/05/2011 | SLAB fee allocated [*ie.* to Ross Harper] | £1069.26 |
| 25/05/2011 | Pay Drummond Miller – Interim Fee & VAT [*ie.* the balance of the SLAB payment] | £1376.41 Dr |
| 30/11/2011 | Cancel cheque 013261 to be reissued | £1376.41 Cr |
| 30/11/2011 | Paid Drummond Miller re earlier cheque cancelled | £1376.41 Dr |
| 05/04/2012 | Cancel entry 013026 as per JF ad interim | £1376.41 Cr |
| also | | |
| 25/05/2011 | Additional VAT owed to Drummond Miller | £29.29 Dr |
| 30/11/2011 | Cancel cheque 013262 to be [r]eissued | £29.29 Cr |
| 30/11/2011 | Paid Drummond Miller re earlier cheque cancelled | £29.29 Dr |
| 05/04/2012 | Cancel entry 013025 as per JF ad interim | £29.29 Cr |
| also | | |
| 30/06/2011 | Slab payment received 29/06/2011 | £5794.90 Cr |
| 30/06/2011 | Pay Drummond Miller – Outlays pid by SLAB | £5794.90 Dr |
| 30/12/2011 | Cancel cheque 013292 paying Drummond Miller uncashed and out of date | £5794.90 Cr |
| 30/12/2011 | Paid Drummond Miller re earlier cheque cancelled | £5794.90 Dr |
| 05/04/2012 | Cancel entry 013055 as per JF ad interim | £5794.90 Cr |
| also | | |

| | | |
|---|---|---|
| 29/07/2011 | Slab payment received 05/07/2011 | £543.07 Cr |
| 29/07/2011 | Pay Drummond Miller – Re Outlays to Company 6 | £543.07 Dr |
| 31/01/2012 | Cancel cheque 013296 to be reissued | £543.07 Cr |
| 31/01/2012 | Paid Drummond Miller re earlier cheque cancelled | £543.07 Dr |
| 05/04/2012 | Cancel chq 013077 paying Drummond Miller – As per Judicial Factors ad interim | £543.07 Cr |
| also | | |
| 31/08/2011 | Slab payment received 09.08.11 | £227 Cr |
| 31/08/2011 | Pay Drummond Miller – Outlays due | £227 Dr |
| 05/04/2012 | Cancel chq 012724 paying Drummond Miller – As per Judicial Factors ad interim | £227 Cr |

(c) The summary of findings compiled by the Financial Compliance Department showed that a fee of £25,000 had been deducted from the ledger by the firm on 25 October 2011, where there was a credit balance on the ledger of only £3,574.

Ms OO

(a) Ms SS was a legally aided client. The Partner responsible for the file was Cameron Fyfe. The ledger was opened in May 2007 and disclosed the following entries:-

Re Mr S M Kelly

| Date | Narrative | Amount |
|---|---|---|
| 23/07/2010 | Pay Mr Sean M Kelly – Medical Report | £590 Dr |
| 31/01/2011 | Cancel chq 005102 paying Sean Kelly – Uncashed and out of date – to be reissued | £590 Cr |

| | | |
|---|---|---|
| 31/01/2011 | Mr Sean Kelly – Earlier entry cancelled and now reissued | £590 Dr |
| 31/08/2011 | Cancel Cheque 005887 paying Sean Kelly – to be reissued | £590 Cr |
| 31/08/2011 | Mr Sean Kelly – Earlier entry cancelled and now reissued | £590 Dr |
| 29/02/2012 | Cancel cheque 006097 paying Sean Kelly re uncashed & out of date to be reissued | £590 Cr |
| 29/02/2012 | Paid Sean Kelly re earlier cheque cancelled | £590 Dr |

Re Drummond Miller

| Date | Narrative | Amount |
|---|---|---|
| 11/08/2010 | SLAB payment received 10/08/2010 | £238.10 Cr |
| 11/08/2010 | Pay Drummond Miller – Funds due to DM | £238.10 Dr |
| 30/08/2010 | Cancel chq 005237 paying Drummond Miller – to be reissued | £238.10 Cr |
| 30/08/2010 | Drummond Miller – Earlier entry cancelled and now reissued | £238.10 Dr |
| also | | |
| 28/02/2011 | SLAB payment received 25/02/2011 | £9415.87 Cr |
| 28/02/2011 | Pay Drummond Miller – Outlays Dues to DM | £9415.87 Dr |
| 01/04/2011 | Cancel chq 000589 paying Drummond Miller – to be reissued | £9415.87 Cr |
| 01/04/2011 | Paid Drummond Miller – Earlier entry cancelled and now reissued | £9415.87 Dr |
| also | | |
| 15/03/2011 | SLAB payment received 11/03/2011 | £2191.10 Cr |
| 15/03/2011 | Paid Drummond Miller | £2191.10 Dr |
| 15/04/2011 | Cancel chq 013913 paying Drummond Miller – to be reissued | £2191.10 Cr |

| | | |
|---|---|---|
| 15/04/2011 | Paid Drummond Miller – Earlier entry cancelled and now reissued | £2191.10 Dr |
| also | | |
| 13/05/2011 | SLAB payment received 10/05/2011 | £652.95 Cr |
| 13/05/2011 | Paid Drummond Miller re shorthand writers fee and attending commission | £652.95 Dr |
| 08/07/2011 | Cancel chq 013255 paying Drummond Miller – to be reissued | £652.95 Cr |
| 08/07/2011 | Paid Drummond Miller – Earlier entry cancelled and now reissued | £652.95 Dr |

(c) Similar entries are disclosed in respect of other payments owed to Drummond Miller which were received by the firm from SLAB on 13 May 2011 and 25 May 2011; with a payment of £4,558.40 which was owed to ARM Architects which was received from SLAB on 13 May 2011; with a payment of £2,368.80 owed to Peter Davies which was received by the firm from SLAB on 29 October 2010; and with a payment of £4,169.30 which was purportedly made to Jacqueline Webb & Co on 18 October 2010 (the amount was later corrected to £3,671.29, which accorded with a receipt from SLAB on 18 October 2010): all of these payments were ostensibly issued, but then later cancelled and reissued.

(d) Additionally, a fee of £12,000 was taken by the firm on 29 February 2012, the ledger recorded that it was on the instructions of the First Respondent and the deduction of the fee created a deficit on the ledger of £10,292.68. The Judicial Factor subsequently re-credited the ledger with that fee on 13 April 2012.

Mrs RR

(b) Mrs RR had been a client of the firm since the late 1980's. Latterly the First Respondent was the Partner responsible for the file. In a divorce action, the client had been awarded a capital sum, together with interest at the then judicial rate of 15% per annum. The firm agreed at an early stage that it would be content to represent her on the basis that its fees would be settled from the

capital sum when it was eventually recovered, which was in September 2009 following upon the sale of the former matrimonial home, with outlays (including Counsel's fees) being settled by the client as they occurred.

(c) The firm uplifted from sums held on deposit of £12,000 on 15 December 2011, and that sum was taken to fees on that date. The Judicial Factor subsequently instructed that that sum be re-credited to the client account on 5 April 2012, as following investigations he concluded that it was not a legitimate fee.

(d) The firm received from Messrs PKF the sum of £71,985.72 on 17 January 2012. Fees were recorded through the ledger in the amount of £20,213.24 including two fee notes of £3,000 (from 30 June 2011) and £4,800 (from 31 January 2012) which were re-credited to the ledger by the Judicial Factor on the basis that the firm had not been entitled to charge them.

Ms SS

(a) The ledger was opened in September 2009. The Partner responsible for the file was Alan Susskind. A fee was taken and debited to the ledger of £13,607.08 on 24 November 2010. At the point at which that fee was deducted, the ledger had a debit balance of £197.70, and the net effect of the fee being taken was to accrue to the ledger a debit balance of £13,804.78.

(b) On 24 May 2011 funds were transferred to SLAB in respect of judicial expenses, and the following day an interim payment was made to the client; before SLAB returned £11,438.39 to the firm on 31 August 2011. Various outlays were shown paid on that date, and thereafter a further payment was made to the client from those funds.

(c) On 31 August 2011 payments were recorded to Faculty Services of £2,940 and Penman Garden of £181. On 29 February 2012 these entries were re-credited to the ledger. The Judicial Factor reversed these entries following his appointment on the basis that no cheques had ever been issued.

(d) The fee of £13,607.08 was re-credited to the ledger on 22 November 2011. A final payment of £5,522.71 was made to the client, and the balance of £9,544.47 was taken to fees.

Ms TT

(a) Ms TT instructed the firm in or around 2002 in connection with a claim for damages against her employer. The Partner responsible for the file was Cameron Fyfe.

(b) A draft account of expenses was duly prepared by Law Accountants, which assessed the firm's entitlement to fees at £23,951.68 inclusive of VAT. The ledger thereafter recorded on 31 March 2009 that the sum of £17,300 was deducted on that date "To estimate for Judicial fee pending settlement". At the point at which the fee was deducted from the ledger, it had a credit balance of £1,742.33, meaning that the net effect of the deduction of the fee was to create a debit balance on the ledger of £15,557.67.

(c) Separate ledgers were opened for the reclaiming motion which was pursued by the employers, and the ledger for the principal claim retained a substantial debit balance until 30 March 2012. On that date, an entry of £17,300 purporting to "cancel above" was posted to the ledger, but appeared inadvertently to also be debited from the ledger rather than being credited, resulting in an exaggeration of the debit balance on the ledger by that amount rather than the intended reversal of the previous intromission.

(d) A fee of £28,114.88 was deducted from the ledger on 29 July 2011, immediately placing the ledger into a deficit of that amount. On 13 September 2011, £9,000 was uplifted from the sums on deposit, and was paid out to the client the following day.

(e) A further £5,000 was uplifted from the sums on deposit on 2 December 2011 and applied to the credit of the ledger. Settlement of £67,500 in respect of fees and outlays was received from the employers' insurers on 18 January 2012, and the deposit account was closed on 19 January 2012. The aggregate result of

these two receipts on the ledger was a credit balance of £45,578.72. From that, a further fee of £3,000 was deducted on 20 January 2012; a further payment to the client of £3,193.60 was made on 1 February 2012; and two separate fees of £28,114.88 and £3,600 were deducted on 21 March 2012. The fee of £3,600 was re-credited to the ledger on 26 March 2012, and the fees of £3,000 and £28,114.88 were re-credited on 30 March 2012.

Mr UU

(a) Mr UU first instructed the firm in or around August 2009 in respect of a prospective claim for medical negligence. Latterly the First Respondent was the Partner responsible for the file.

(b) The firm wrote on 12 August 2009, setting out that if Mr UU wished him to obtain an expert report he would require to make a payment to account of £1,150 specifically for the purpose of meeting the costs of recovery of the relevant medical records and preparation of the report. Mr UU duly provided a cheque for £1,150 under cover of a letter dated 1 October 2009, and a ledger was opened in his name on 6 October 2009, placing that sum at credit.

(c) A fee of £600 was debited from the ledger on 25 March 2011 and a fee of £540 was deducted from the ledger on 30 June 2011.

(d) By March 2012 an expert had been identified. Mr UU submitted, at the request of the firm, a further £500 to account, which was credited to the ledger on 28 March 2012. Thereafter, on 30 March 2012, the previous fee of £600 was cancelled, and re-credited to the ledger.

Mr VV Executry

(a) Mr VV died on 13 June 2011. His daughter, Mrs WW, was nominated as the executrix in his will and was the sole beneficiary in his estate. The Second Respondent was the Partner responsible for the file.

(b) Terms of business were issued to Mrs WW on 21 June 2011 which included a section in relation to costs, and set out that the firm's fees would be determined by an independent law accountant who would provide a certificate in respect of fees and outlays incurred either once the administration of the estate had been concluded, or as and when the firm deemed appropriate throughout the administration of the estate; the right to raise interim fee notes was expressly reserved and the executrix signed a joint mandate authorising Patricia Kee to assess fees.

(c) On 29 August 2011 the firm wrote to Ms Kee inviting her to set an interim fee, and the ledger recorded that a fee of £3,584.28 was deducted on 31 August 2011.

(d) Confirmation was issued by the Court in favour of Mrs WW on 5 September 2011. The administration continued, and a further fee of £600 was deducted from the ledger on 27 September 2011. A further fee of £1,200 was deducted from the ledger on 27 October 2011, and another fee of £360 was deducted from the ledger on 2 December 2011. A further fee of £1,200 was deducted from the ledger on 23 January 2012.

(e) The administration continued, and the firm wrote to Ms Kee on 15 February 2012, asking for a further fee to be set "from the date of your last fee being 29 August 2011 to close of the moveable estate. Please ignore the interim fees of £600, £1,200, £360 and £1,200 raised in September, October, December and January". Credit notes dated 17 February 2012 for those four fees were revised and on the same date assessed the fee at £3,095.75 ex VAT. A fee note for the value-added amount of £3,714.90 was raised, and was deducted from the ledger on 17 February 2012.

(f) The firm's Account of Charge and Discharge was issued to the executrix on 22 February 2012 for her approval. It did not detail any of the fees which had been deducted and subsequently recredited, and included only the fees which had been assessed by Ms Kee.

(g) Another fee of £198 was deducted from the ledger on 24 February 2012. A credit note in respect of that fee was subsequently drawn up and was posted to the ledger on 5 April 2012 by the Judicial Factor.

Mr XX Executry

(a) The file for this matter has not been exhibited, the Judicial Factor having been unable to trace it. The ledger was exhibited and recorded that the Third Respondent was the Partner responsible for the file and it was opened on 29 April 2009. Insofar as relevant to this Report, the ledger also recorded the following intromissions:-

| Date | Narrative | Amount |
|---|---|---|
| 25/03/2010 | Mr YY re legacy in the estate | £1000 Dr |
| 30/03/2010 | Ms ZZ re legacy in the estate | £1000 Dr |
| 30/3/2010 | Mr AAA re legacy in the estate | £1000 Dr |
| 30/09/2010 | Cancel chq 019365 paying Mr AAA – Uncashed and out of date | £1000 Cr |
| 30/09/2010 | Cancel chq 018364 paying Ms ZZ – Uncashed and out of date. | £1000 Cr |
| 21/03/2011 | Mr YY sums due | £1000 Dr |
| 21/03/2011 | Ms ZZ sums due | £1000 Dr |
| 21/03/2011 | Mr AAA sums due | £1000 Dr |
| 03/10/2011 | Cancel chq 020659 to Mr YY – Uncashed and out of date. | £1000 Cr |
| 03/10/2011 | Cancel chq 020660 to Ms ZZ – Uncashed and out of date. | £1000 Cr |
| 03/10/2011 | Cancel chq 020661 to Mr AAA – Uncashed and out of date. | £1000 Cr |

(b) The ledger showed a credit balance of £3,000.01 as at 3 October 2011 following upon the recrediting to it of the three cancelled cheques, but there is no evidence to suggest that the cheques were reissued thereafter to the legatees, whether actually or even only nominally. The firm nevertheless deducted fees

from the ledger of £1,000 of 20 December 2011, and two fees each of £960 on 26 March 2012, leaving a credit balance of only £80.01 at the date of the appointment of the Judicial Factor.

Mr BBB Executry

(a) Mr BBB died on or around 3 March 2012. The firm was instructed by his daughter, Mrs CCC, who was also nominated as his executrix in terms of his will, on 6 March 2012. The Second Respondent was the Partner responsible for the file. Terms of Business were issued to Mrs CCC on that date, and included a section in relation to costs, and set out that the firm's fees would be determined by an independent law accountant who would provide a certificate in respect of fees and outlays incurred either once the administration of the estate had been concluded, or as and when the firm deemed appropriate throughout the administration of the estate; the right to raise interim fee notes was expressly reserved and the executrix signed a joint mandate authorising Patrical Kee to assess fees.

(b) Correspondence was issued to the deceased's bank, utility suppliers etc., and to his other daughter, intimating that she had a claim in respect of legal rights. Prior to the date on which the Judicial Factor was appointed to the firm, the only sums ingathered amounted to £2,193.61 which had been received from Prudential, and had been credited to the ledger on 15 March 2012.

(c) On 26 March 2012, an unassessed fee of £2,160 was deducted from the ledger.

Mr DDD Executry

(a) Mr DDD died on 22 February 2012, and the firm was approached by his son, Mr EEE, on 2 March 2012 with a view to them undertaking the executry administration. In terms of the late Mr DDD's will, Clydesdale Bank plc was executor-nominate. The Second Respondent was the Partner responsible for the file.

(b) A ledger was opened for the executry on 2 March 2012 and £1,280 cash which had been found in the late Mr DDD's house was credited to it.

(c) Terms of business were issued to Mr EEE on 5 March 2012.

(d) The terms of business also included a section in relation to costs, and set out that the firm's fees would be determined by an independent law accountant who would provide a certificate in respect of fees and outlays incurred either once the administration of the estate had been concluded, or as and when the firm deemed appropriate throughout the administration of the estate; the right to raise interim fee notes was expressly reserved, and Mr EEE, in the capacity of residuary beneficiary, signed a joint mandate authorising Patricia Kee to assess fees.

(e) Sundry correspondence was issued and received by the firm over the course of March 2012. A fee of £1,140 was deducted from the ledger on 26 March 2012.

(f) The Judicial Factor appointed to the firm, recredited the fee to the ledger on 5 April 2012.

Mr FFF Executry

(a) Mr FFF died on 23 August 2010. His wife instructed the firm on or around 21 September 2010 in respect of the administration of his estate. A ledger was opened on 23 September 2010, with a payment of £200 to account which had been received from Mrs FFF being placed at its credit. The First Respondent was the Partner responsible for the file.

(b) Terms of business were issued to Mrs FFF on 23 September 2010.

(c) Those terms included a section in relation to costs, and set out that the firm's fees would be determined by an independent law accountant who would provide a certificate in respect of fees and outlays incurred either once the administration of the estate had been concluded, or as and when the firm deemed appropriate throughout the administration of the estate. Mrs FFF

signed a joint mandate ostensibly in the capacity as executrix authorising Patricia Kee to assess fees.

(e) Correspondence in connection with the administration of the estate was issued and received by the firm. A fee for £540 dated 31 January 2011 was posted to the ledger on that date.

(f) A fee note for £720, dated 28 April 2011, was raised, and deducted from the ledger on that date.

(g) On 1 August 2011, the firm wrote to Ms Kee, enclosing the file for an interim fee to be assessed. Her letter invited Ms Kee to "Please disregard all interim fees on this file and assess your fee from the date of instruction". Ms Kee assessed fees of £1,196.14 and £2,190.20 which were deducted from the ledger on 2 August 2011.

(h) The file ledger recorded further fees being deducted on 20 December 2011 of £750, 21 February 2012 of £300 and 26 March 2012 of £600. All were re-credited to the ledger on 5 April 2012 under the instruction of the Judicial Factor.

Mrs GGG Executry

(a) Mrs GGG died on 7 July 2011. In terms of her will, her pre-deceased husband had been nominated as her executor, whom failing the firm's former partner, Mr Herald. Mr Herald had, however, by that time retired from practice, and Mrs GGG's son, Mr HHH, wished to be assumed as her executor. He instructed the firm on or around 12 July 2011, and terms of business were issued to him on 27 July 2011. The Second Respondent was the Partner responsible for the file.

(b) The terms of business also included a section in relation to costs, and set out that the firm's fees would be determined by an independent law accountant who would provide a certificate in respect of fees and outlays incurred either once the administration of the estate had been concluded, or as and when the

firm deemed appropriate throughout the administration of the estate; the right to raise interim fee notes was expressly reserved. Mr HHH signed a joint mandate authorising Patricia Kee to assess fees. Mr Herald and Mr HHH, in due course, executed the appropriate deed of assumption and resignation.

(c) A ledger was opened on 29 July 2011, and the first intromission is the deduction of a fee of £1,576.04 on 27 September 2011. The firm wrote to Ms Kee on 4 October 2011 inviting her to set an interim fee from commencement of the executry to obtaining Confirmation; and Ms Kee's Certificate of Assessment, dated 5 October 2011, was for £1,313.37 ex VAT.

(d) On 7 November 2011, the firm wrote to Ms Kee requesting that a further interim fee be assessed from date of instruction to the obtaining of Confirmation. Her letter invited Ms Kee to "Please disregard any previous fee notes on the file". Ms Kee's Certificate of Assessment dated 11 November 2011 assessed the fee at £168 ex VAT, and the value-added amount of £201.60 was deducted from the ledger on 14 November 2011.

(e) Confirmation was granted by the court in Mr HHH's favour on 24 November 2011. Further fees were deducted from the ledger on 21 February 2012 of £600 and 24 February 2012 of £198.

(f) A further fee of £600 was deducted from the ledger on 26 March 2012 on the instruction of the First Respondent. All of the foregoing fees were re-credited after 5 April 2012.

Mrs III Executry

(a) Mrs III died on 20 November 2011. She had nominated her two daughters, Mrs JJJ and Mrs KKK as her executrixes, and they consulted with the firm on 15 December 2011. The Second Respondent was the Partner responsible for the file. Terms of business were duly issued separately to each of them on 21 December 2011 and included a section in relation to costs, and set out that the firm's fees would be determined by an independent law accountant who would provide a certificate in respect of fees and outlays incurred either once the

administration of the estate had been concluded, or as and when the firm deemed appropriate throughout the administration of the estate; the right to raise interim fee notes was expressly reserved. The executrixes each signed a joint mandate authorising Patricia Kee to assess fees.

(b) On 30 January 2012, an interim fee of £1,200 was deducted from the ledger.

(c) Correspondence was issued and received by the firm, and on 28 March 2012 the firm wrote to Ms Kee asking for an interim fee to be set "from commencement of this Executry to obtaining confirmation". Ms Kee was invited to "ignore the fee raised by us in January 2012 for £1,200". A Certificate of Assessment dated 29 March 2012 was retained on the file, assessing the fee at £2,447.10; and a fee note for the value-added amount of £2,936.52 was raised on 30 March 2012.

(d) A credit note in respect of the 31 January 2012 fee note was also raised.

Mrs LLL Executry

(a) Mrs LLL died on 24 August 2011. Her husband, Mr LLL, instructed the firm on or around 15 September 2011. In her will, Ross Harper Nominees Ltd was nominated by Mrs LLL as her executor, and Mr LLL was her sole beneficiary on the basis that he survived her for more than 30 days. The Second Respondent was the Partner responsible for the file.

(b) Terms of business were issued to Mr LLL on 6 October 2011 and included a section in relation to costs, and set out that the firm's fees would be determined by an independent law accountant who would provide a certificate in respect of fees and outlays incurred either once the administration of the estate had been concluded, or as and when the firm deemed appropriate throughout the administration of the estate; the right to raise interim fee notes was expressly reserved, and Mr LLL signed a joint mandate authorising Patricia Kee to assess fees.

(c) A ledger was opened on 13 October 2011 with a credit of the proceeds of an account which Mrs LLL had held. A fee of £600 was deducted on 27 October 2011, and a further fee, also of £600, was deducted on 1 December 2011.

(d) Confirmation was issued by the Court in favour of Ross Harper Nominees Ltd on 12 January 2012.

(e) On 18 January 2012, the firm wrote to Ms Kee asking for an interim fee to be assessed "from commencement of this executry to date". Ms Kee was invited to "Please ignore the interim fees of £600 each raised October and December 2011". Credit notes in respect of each of those fees were prepared and retained on file. Ms Kee's Certificate of Assessment set the interim fee at £2,336.65, and the value-added amount of £2,803.98 was deducted from the ledger on 20 January 2012.

(f) The firm wrote to Ms Kee on 16 February 2012 requesting that a further interim fee be set, and a Certificate of Assessment bearing that date duly set the fee at £1,497.39 ex VAT. The value-added amount of £1,796.87 was deducted from the ledger on 20 February 2012.

(g) A further fee of £198 was deducted from the ledger on 24 February 2012, recorded on the file in a fee note dated 27 February 2012 which narrated that it was in respect of "Management review and supervision of file".

(h) A credit note was raised for the £198 fee, and it was recredited to the ledger on 30 March 2012.

14.6 The said firm operated a system or policy known as "the drawer" in order to improve the firm's cash flow. This operation existed primarily in legally aided cases. The funds were received from the Scottish Legal Aid Board and paid into the firm account. Cheques were printed or written in respect of payments due to third parties according to invoices received but then were not signed and sent out but were placed in a drawer until such time as the firm's cash flow permitted the cheques to be issued.

A number of entries were then created on the client ledgers to show that cheques were issued in payment to third parties in respect of these outlays. These entries were then reversed in the following months to show that the cheques had not been cashed and the funds were re-credited to the client ledger. New entries were then made to show that fresh cheques had then been issued. These entries were also then reversed in the following months to show that the cheques had not been cashed and funds re-credited to the ledger. New entries were eventually made to show that fresh cheques had been issued in respect of the outlays.

The creation of these entries in the ledgers were made to show that cheques had been issued and funds had left the firm's account when the cheques were being held and had not been issued outside the firm's premises. The client ledgers gave the impression that payments due to third parties had been made by the said firm when the funds remained in the firm's account. This was designed to show that there were sufficient funds in the firm's accounts to meet all its current liabilities to clients. Payments issued by the Scottish Legal Aid Board to the firm are deemed to be client's funds and are to be utilised to pay specific outlays on behalf of specific clients and to specific third parties. They were therefore not used for this purpose but were used to improve the financial position and cash flow of the said firm, and to conceal the true level of the said firm's liabilities and overdraft. They created a false, misleading and inaccurate presentation of the firm's accounting position. The operation of this system or policy was a dishonest, wrongful and improper use of clients' funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities.

The First Respondent was a Partner with the firm from 1 November 2007 and was the Designated Cashroom Manager for the said firm from 1 April 2010 until the appointment of the Judicial Factor on 5 April 2012. He was based in the firm's head office at 58 West Regent Street, Glasgow as was the said firm's cashroom. The operation of "the drawer" and the entries on the clients' ledgers as hereinbefore mentioned had previously been put in place by former Partners and employees and continued to be operated by the firm during the period when the First Respondent was a Partner and in particular the firm's Cashroom Manager. Further, the First Respondent and the Fourth Respondent issued

specific instructions to members of staff and in particular Cashroom staff under their supervision to operate "the drawer".

A Judicial Factor, Mr Ian D Mitchell, was appointed on 5 April 2012. He produced a Preliminary Report dated 9 May 2012 which confirmed *inter alia* a deficit on the firm's client account as at 5 April 2012 of £298,700.12. He produced a further more detailed Report dated 1 February 2013. Said Report confirmed, following investigations, the operation of "the drawer" and its implications and consequences.

Further, in or around 27 January 2011, proceedings were raised in Glasgow Sheriff Court against the said firm and its partners including the First to Fourth Respondents, by Drummond Miller LLP (hereinafter DM). DM were the said firm's Edinburgh agents. In said action they sought payment of a sum of £70,059.87. Interim diligence was executed on the dependence of said action resulting in the said firm's accounts being arrested.

Said proceedings narrated *inter alia* that "the Pursuers and Defenders are firms of solicitors carrying on civil litigation business. The Defenders instruct the Pursuers to act as their Edinburgh agents in cases before the Court of Session. The present action concerns cases where the Defenders' clients are legally aided. When the case resolves, the Pursuers have an Account of Expenses prepared for the work they have carried out for submission to the Scottish Legal Aid Board. The solicitor dealing with the case for the Defenders is the nominated solicitor with SLAB. Therefore when an Account of Expenses is submitted to SLAB, this is submitted by the nominated solicitor and payment of both the Defenders and Pursuers account is made direct to the Defenders. The Defenders have received payment totalling the sum sued for from SLAB. The sum is properly due to the Pursuers for the work they have carried out."

The said firm had accordingly delayed in making payment properly due to DM. It is believed that said payments were utilised in support of this policy to ensure the continued trading of the said firm. Said sums fell to be paid to DM during the period when the First to Fourth Respondents were partners within the said firm, and in particular when the First Respondent was the firm's designated

Cashroom Manager. The First to Fourth Respondents failed to make timeous payment of said sums due to DM.

Further, in or around 10 March 2011, the Finance Manager of the said firm, Reina Gardiner, swore and signed an affidavit in respect of the court proceedings raised by the then Partners against two former Partners. Said affidavit was drawn, sworn and notarised by the Second Respondent, and lodged as a production in said proceedings. All of the then Partners, and in particular the First to Fourth Respondents, were aware of the contents of said affidavit. Said affidavit expressed a view inter alia that the said firm's system or policy known as "the drawer" may be fraudulent, or at least a breach of the Accounts Rules.

14.7 The Second Respondent was a Partner with the said firm from 1 September 1988 until 5 April 2012. He was based in the firm's head office at 58 West Regent Street, Glasgow as was the said firm's cashroom. The Second Respondent was aware of the operation of "the drawer" system. The Second Respondent was aware of the entries on the client ledgers being made by cashroom staff and which continued to be operated by cashroom staff during the period when the Second Respondent was a Partner within the firm up until the date of the appointment of the Judicial Factor. The Complainers Financial Compliance Department found ten client files and ledgers where the Second Respondent was the partner responsible for the management of the file where entries were made in accordance with the said system or policy.

14.8 The Third Respondent was a Partner with the said firm from 1 April 2008 until 5 April 2012. He was based in the firm's head office at 58 West Regent Street, Glasgow as was the said firm's cashroom. The Third Respondent was aware of the operation of "the drawer" system. The Third Respondent was aware of the entries on the client ledgers made by cashroom staff and which continued to be operated by cashroom staff during the period when he was a Partner within the firm up until the date of the appointment of the Judicial Factor.

14.9 The Fourth Respondent was a Partner with the said firm from 1 April 2003 until 5 April 2012. He was based in the firm's head office at 58 West Regent Street,

Glasgow as was the said firm's cashroom. The Fourth Respondent and members of staff under his supervision were aware of the operation of "the drawer" system. The Fourth Respondent was aware of the entries on the client ledgers made by cashroom staff and which continued to be operated by cashroom staff during the period when he was Partner within the firm up until the date of the appointment of the Judicial Factor. Further, the Fourth Respondent and the First Respondent issued specific instructions to members of staff, and in particular Cashroom staff, under their supervision to operate "the drawer".

14.10 In terms of Rule 6 of the Solicitors (Scotland) Accounts etc. Rules 2001 (hereinafter "the 2001 Rules") and Rule B6.5 of the Law Society of Scotland Practice Rules 2011 (hereinafter "the 2011 Rules") funds are not to be drawn from the client account without the client's authority and may only be drawn if properly required for or to account of payment of a Solicitor's account which has been debited to the client's ledger and where said account has been rendered to the client. The firm, under the authority and instruction of the First and Fourth Respondents, took unauthorised fees despite there being insufficient funds at the credit of the client ledgers to meet those fees thereby creating a debit balance on the client ledger. The net result of the fee deductions was that other clients were funding the fees on these transactions. Further, fees were charged in excess of the sums due to the firm. Fees were then subsequently re-credited to the client ledgers at a later date by the posting of credit notes and the firm had the benefit of the funds in question in each case in the interim period without having had any legitimate basis for taking fees at the point in which they were deducted from the client ledgers. The fees in these instances were deducted for the purposes of assisting the firm's cashflow and financial position and to conceal the true level of the firm's liabilities and overdraft. Said funds and fees were taken and rendered in a dishonest, wrongful and improper use of client's funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities. The Judicial Factor appointed to the firm produced a report dated 1 February 2013. Said report confirmed, following investigations, the removal of clients' funds by the firm to meet unauthorised fees and outlays.

14.11 Accounts Certificates dated 14 October 2010, 27 April 2011 and 23 November 2011 were sent by the First Respondent to the Complainers in his capacity as the firm's Designated Cashroom Manager. The First Respondent also countersigned a certificate dated 26 October 2009 as a partner, that certificate having been signed by a former partner, the aforesaid Alan Susskind.

The said certificates confirmed that the firm had maintained the necessary books of account etc. required by the 2001 Rules. They certified that the accounting records were up to date and balanced as at the last day of the accounting period and that they were to the best of the First Respondent's knowledge and belief in accordance with the terms of the said 2001 Rules. The said three latter certificates design the First Respondent as the Cashroom Manager.

Rule 12 of the said 2001 Rules provides that the designated Cashroom Manager of any firm is responsible for the supervision of the Cashroom staff and the Cashroom system employed by any firm to carry out the provisions of the said rules. The First Respondent signed the firm's Accounts Certificates, dated 26 October 2009, 14 October 2010, 27 April 2011 and 23 November 2011 confirming that the said firm's accounts were accurate during the periods of 1 April to 30 September 2009; 1 April to 30 September 2010; 1 October 2010 to 31 March 2011; and 1 April to 30 September 2011, respectively, when he was the Designated Cashroom Manager. The First Respondent knew that the statements made within said certificates were false and inaccurate due to the ledger entries and fee note entries as hereinbefore condescended upon, and that the firm's accounts and the statements made within said certificates were in breach of the terms of the said 2001 Rules.

The Fourth Respondent was a Partner within the firm as at the dates of the submission of the said accounts certificates. The Fourth Respondent as Joint Managing Partner within the said firm had access to the accounts and ledgers of the said firm. As Partner, he was aware of the duties and obligations upon them in terms of the said 2001 Rules. He knew that the said firm required to submit accounts certificates to the Complainers in accordance with said Rules. He countersigned the three latter certificates. He accordingly knew that the said

certificates submitted on behalf of the firm to the Complainers were false and inaccurate and in breach of the said 2001 Rules, and in particular Rule 14.

14.12 The Financial Compliance Department of the Complainers conducted an inspection of the firm on 5-8 March and 2-3 April, both 2012. During the course of the initial inspection and following upon said initial inspection members of the said Department interviewed members of the cashroom staff employed by the firm. Information was gleaned from the said members of staff in relation to the operation of "the drawer." The First and Fourth Respondents were then themselves interviewed by Natalie Cooke and Janice Parr being members of the said team. The First and Fourth Respondents denied the existence and operation of "the drawer" system and maintained that all cheques debited from the firm's accounts but yet to be encashed were in the hands of the relevant payees and were not retained on the firm's premises. At a further meeting attended by Tina Heywood and other members of said team with the First and Fourth Respondents on 27 March 2012, said Respondents again confirmed that all cheques were in the hands of the relevant payees and were not retained on the firm's premises. Said statements made by the First and Fourth Respondents to the members of the said Department were untrue and in making said statements, the First and Fourth Respondents were dishonest in fully and properly reporting matters to the said Department.

Rule B6.12 of the said 2011 Rules requires a Solicitor not to act or omit to act in a manner which is dishonest in respect of the writing up of the accounting records in respect of client's money or of the firm, in the balancing of the firm's books on in respect of the financial affairs of his clients or the firm. Further, in terms of Rule B1 of the said 2011 Rules, a Solicitor must be trustworthy and act honestly at all times such that is personal integrity is beyond question. The First and Fourth Respondents' responses to enquiries from the said Department were in breach of said 2011 Rules.

14.13 In terms of Rule 12 of the 2001 and Rule B6.13.1 of the 2011 Rules a Solicitor as Designated Cashroom Manager requires to secure the firm's compliance with the said Rules. The position of designated Cashroom Manager is a specialised position within a firm of Solicitors which attracts an increased responsibility for

accounting compliance and responsibility for the supervision of the Cashroom staff and the Cashroom system employed by any firm to carry out the provisions of the said Rules. In operating the system or policy known as "the drawer" and further by instructing, authorising and supervising the firm's Cashroom staff in the misuse of client's funds and in particular inappropriate excessive and unauthorised fees being taken to improve the financial position and cashflow of the said firm, the actings and conduct of the First Respondent were in breach of the terms of said 2001 and 2011 Rules.

14.14 On 30 September 2010, the firm instructed Thomas Aulds of ARM Architects to prepare a report in respect of one of their clients, Ms OO, and that in relation to a personal injury claim. The said client had the benefit of legal aid and the firm obtained sanction from the Scottish Legal Aid Board to instruct Thomas Aulds in accordance with his fee quotation. The said report was received from Thomas Aulds on 1 November 2010 along with his firm's fee note in the sum of £4,678.79. The firm then sought reimbursement of that outlay from the Scottish Legal Aid Board and the Board made payment to the firm of the sum of £4,558.40 on 6 May 2011. Following receipt of the sums from the Scottish Legal Aid Board, the firm failed to remit those sums to Thomas Aulds's firm. The firm's ledger discloses a purported payment to Thomas Aulds of said sum on 13 May and a further entry on 12 August 2011 cancelling said payment and re-crediting the said sums to the ledger. The said Thomas Aulds issued reminder letters to the firm on 22 and 29 July which reminders did not result in payment being made.

The First Respondent was the designated Cashroom Manager of the said firm from 1 April 2010. In accordance with established practice and guidelines issued by the Complainers, the firm and, in particular the First Respondent, were liable for the fees incurred to an expert witness instructed by them on behalf of their client. The firm and the First Respondent having instructed the said expert witness and received reimbursement of his fee from the Scottish Legal Aid Board in terms of the Legal Aid Certificate issued to the firm's client, was under a duty to timeously settle the fee and invoice rendered by the said expert witness. He failed to do so. Instead, the said sums were retained by the said firm on the instruction of the First Respondent.

14.15 Between November 2010 and January 2011 the firm instructed Dr Peter Thornton to provide expert opinions in respect of claims for alleged clinical negligence on the part of four clients of the firm namely Ms OOO, Mr PPP, Ms QQQ and Ms RRR. Dr Peter Thornton understood that all four clients had the benefit of legal aid cover. He duly provided his opinions along with fee notes dated 5 and 15 November, 15 December all 2010 and 14 January 2011. The firm failed to settle these invoices. They received funds from the Scottish Legal Aid Board to settle the fee note for the client Ms OOO on 29 December 2010 and they received funds from the Scottish Legal Aid Board to settle the fee note for Ms QQQ on 10 August 2011. They failed to make these payments to Dr Peter Thornton. Dr Peter Thornton sent reminders to the firm which were responded to by the First Respondent in his capacity as designated Cashroom Manager. By letter dated 19 July the First Respondent advised Dr Peter Thornton that it was the firm's policy in legal aid cases only to pay fees once funds had been received from the Scottish Legal Aid Board. As at the date of that letter, the firm had received the fees for the invoice for the client Ms OOO but had failed to remit these to Dr Peter Thornton. The firm thereafter failed to make payment of the sums due in respect of the client Ms QQQ despite being placed in funds by the Scottish Legal Aid Board. They failed to make payment of the two remaining notes of fee and failed to submit any applications for reimbursement of these outlays to the Scottish Legal Aid Board. The First Respondent was, throughout this period, the designated Cashroom Manager and responsible for the supervision and administration of the firm's cashroom.

In accordance with established practice and guidelines issued by the Complainers the firm is liable for the fees incurred to an expert witness instructed by them on behalf of their clients. The firm having instructed said expert witness and received reimbursement of their fees from the Scottish Legal Aid Board in terms of the Legal Aid Certificate issued to the clients, were under a duty to timeously settle the fees and invoices rendered by the expert witness. They failed to do so.

14.16 The firm instructed Ian Stephen, a Forensic Clinical Psychologist to prepare expert reports in respect of sixteen separate cases which the firm was conducting

on behalf of clients. Ian Stephen duly provided the reports during the period covering February 2009 to June 2011. The total fees due by the firm to Mr SS in respect of these fee notes amounted to £5,775. Of the sixteen fee notes in question, the firm received reimbursement either from the Scottish Legal Aid Board or the opponent's solicitors in the litigation, in ten of those cases but then failed to make timeous payment to Ian Stephen. Despite being in funds and holding a credit on the respective client ledger, payment to Ian Stephen was held back and delayed. Further, in four of those ten cases, despite being in funds, no payment at all was made to Ian Stephen.

In accordance with established practice and guidelines issued by the Complainers, the firm and the First Respondent in his capacity as designated Cashroom Manager, were liable for the fees incurred to expert witnesses instructed by them on behalf of their clients. The firm having instructed said expert witness and received reimbursement of his fees from either the Scottish Legal Aid Board or the opponent's agents, were under a duty to timeously settle the invoices rendered by the second expert witness. They failed to do so.

14.17 The firm were instructed by a Mr TTT in relation to family proceedings. In those proceedings Mr John Sullivan of the PRG Partnership, was instructed by the Court to prepare a supplementary report. The firm were responsible for payment of his fee in the first instance. Their client was legally aided. The supplementary report along with Mr Sullivan's account was submitted to the firm on 24 February 2011. The fee amounted to £3,104.64. The account went unpaid. Mr Sullivan made a number of enquiries by telephone and email to the firm for the period 22 April to 13 September 2011 but the account remained unpaid. The firm had received reimbursement from the Scottish Legal Aid Board for his fee on 20 April 2011. The firm, on the instruction of the First Respondent, finally settled the account due to Mr Sullivan on 19 January 2012 despite being in funds to do so since 20 April 2011.

In accordance with established practice and guidelines issued by the Complainers, the firm and the First Respondent were liable for the fees incurred to a Court Reporter. The firm having instructed said report and received reimbursement of the Reporter's fee from the Scottish Legal Aid Board in terms

of the Legal Aid Certificate issued to their client, were under a duty to timeously settle the fee as rendered. They failed to do so.

14.18 The First Respondent was instructed by Ifeyinwa Omwuazor in respect of her purchase of property 2 in March and April 2007. Ifeyinwa Omwuazor consulted new agents in 2011 and a letter was sent by her new agents to the First Respondent on 25 March 2011 enclosing a mandate seeking the release of her file. No response was received. Reminders were issued on 1, 21 and 28 April to which no response was received. An email was sent to the Client Relations Partner of the firm, the Second Respondent, on 27 May 2011. The file remained undelivered. The new agents for Ifeyinwa Omwuazor then raised proceedings in Glasgow Sheriff Court craving delivery of the file. The firm defended said action but a motion for Summary Decree was granted against the firm on 26 August on the basis that the Defences lodged by the firm revealed no defence to the action. The file was finally delivered to Ifeyinwa Omwuazor's new agents on 27 October 2011 when it was handed to Sheriff Officers when attended at the firm's offices to enforce the said Decree.

In accordance with established practice and guidelines issued by the Complainers, a solicitor must respond to any mandate received for a client's file timeously either by sending the file requested to the new agent or indicating if a lien is being exercised for any reason. Further, solicitors must act with other solicitors in a manner consistent with persons having mutual trust and confidence in each other.

14.19 The firm, and in particular the Third Respondent, were instructed to act on behalf of their client Ms XXX in family proceedings. A Bar Report in those proceedings required to be translated from English to Polish for their client and also the Defender. The parties' agents were to be jointly responsible for the fee incurred for the translation of the said report. Ewa Daly was instructed to carry out the translation on 16 August 2011. The share of her fee due by the firm amounted to £200. An application was submitted to the Scottish Legal Aid Board for reimbursement of this outlay and payment was received from the Scottish Legal Aid Board by the firm on 22 February 2012. Despite reminders, the firm, under the supervision of the First Respondent, as designated Cashroom

Manager failed to settle the outstanding account despite being in funds to do so and the account remained outstanding and unpaid as at the date of the appointment of the Judicial Factor.

14.20 The firm instructed David Bartolo to provide expert reports in respect of six separate cases of alleged clinical negligence which the firm were conducting on behalf of their clients. David Bartolo provided these reports during the period from 27 March 2010 to 18 October 2011 and rendered fee notes for those reports totalling £3,800. The firm failed to settle any of these fee notes by the date of the appointment of the Judicial Factor in April 2012. The firm had in fact received reimbursement of two of those fee notes on 15 May 2010 and 2 September 2010 but had failed to remit those funds to David Bartolo in settlement of two of his invoices. David Bartolo sent reminders to the firm in respect of his outstanding fee notes but received no response.

In accordance with established practice and guidelines issued by the Complainers, the firm and in particular the First Respondent as designated Cashroom Manager, were liable for the fees incurred to an expert witness instructed by them on behalf of their clients. The firm having instructed the said expert and received reimbursement of the fees in relation to two of the six fee notes, were under a duty to timeously settle those invoices as rendered by the expert witness. They failed to do so.

14.21 The firm acted on behalf of a client, Ms OO in connection with a reparation claim. Thomas Aulds of ARM Architects was instructed by the firm to prepare a housing needs report. The client had the benefit of a Legal Aid Certificate. Thomas Aulds duly carried out those instructions and provided the report and his invoice to the firm in October 2010. The firm failed to make payment despite receiving reimbursement of his fee from the Scottish Legal Aid Board on 6 May 2011 in the sum of £4,558.40. Thomas Aulds issued reminders to the firm and in particular addressed these reminders to the Second Respondent as the firm's Client Relations Partner. He failed to investigate matters and failed to arrange payment of the outstanding invoice. As at the date of the appointment of the Judicial Factor on 5 April 2012, the fee note remained outstanding.

In accordance with established practice and guidelines issued by the Complainers, the firm was liable for the fee incurred to an expert witness instructed by the firm on behalf of the clients. The firm having instructed said expert and received reimbursement of his fees from the Scottish Legal Aid Board was under a duty to timeously settle the outstanding fee as rendered. They failed to do so. The Second Respondent as the Client Relations Partner being under a duty to investigate the matter it having been raised with him by the expert witness, failed to do so and failed to arrange to make any payment whether timeous or otherwise. He had authority to write cheques.

14.22 In August 2010 the firm instructed by Colin Howard of Harris Howard Psychology Practice to prepare two expert psychological reports on behalf of two clients, Mr BBBB and Mr CCCC. Both clients were in receipt of legal aid. Mr Howard duly prepared the reports as instructed and submitted these to the firm on 16 and 17 August 2010. He also submitted his invoices totalling £2,232.50. On 3 December 2010 and 20 February 2011, the Scottish Legal Aid Board made payment to the firm in reimbursement of these two notes of fee. The firm failed to settle the invoices thereafter despite being funds and having received funds from the Scottish Legal Aid Board to do so. Colin Howard wrote to the Second Respondent in his capacity as the Client Relations Partner on 19 July 2011 seeking payment of his invoices and an explanation for the delay in settling the same. The Second Respondent failed to address the correspondence received from Colin Howard and failed to arrange settlement of his invoices. The invoices remained outstanding and due as at the date of the appointment of the Judicial Factor.

In accordance with established practice and guidelines issued by the Complainers, the was liable for the fees incurred to an expert witness instructed by them on behalf of their clients. The said firm having instructed said expert witness and received reimbursement of their fees from the Scottish Legal Aid Board were under a duty to timeously settle the invoices rendered by the expert witness. They failed to do so. He had authority to write cheques.

15. The Tribunal found the First Respondent guilty of Professional Misconduct singly and *in cumulo* in respect that:

(a) The First Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper and in particular during the period when he was the designated Cashroom Manager being 1 April 2010 to 5 April 2012, operated a system or policy whereby the business of the former firm was improperly funded by payments due to third parties, whereby in particular, sums received from the Scottish Legal Aid Board and others were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and purported payment of third parties outlays made which had been incurred on behalf of the former firm's clients. Said system or policy resulted in sums validly due to Third Parties not being timeously paid. Further, the firm, under the authority and direct instruction of the First Respondent, took unauthorised and excessive fees despite there being insufficient funds at the credit of the client ledgers to meet those fees and without having had any legitimate basis for taking fees at the point in which they were deducted from the client ledgers. Said funds and fees were taken and rendered in a dishonest, wrongful and improper use of client's funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities. All of the foregoing in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, the Law Society of Scotland Practice Rules 2011.

(b) The First Respondent submitted false and inaccurate Accounts Certificates to the Complainers thereby deliberately concealing from the Complainers the true financial position of the said firm.

(c) The First Respondent acted dishonestly in reporting matters to the inspection team of the Financial Compliance Department of the Complainers, and that in breach of Rule B6.12 of the Law Society of Scotland Practice Rules 2011.

(d) The First Respondent in his specific capacity as Designated Cashroom Manager between 1 April 2010 and 5 April 2012 failed to supervise the cashroom staff and cashroom systems to keep proper accounting records and that in breach of Rule B6.13 of the Law Society of Scotland Practice Rules 2011 and Rule 12 of the Solicitors (Scotland) Accounts etc. Rules 2001.

(g) The First Respondent failed to settle invoices rendered by professional expert witnesses timeously, and that despite having received reimbursement of these sums from third parties.

16. The Tribunal found the Second Respondent guilty of Professional Misconduct in respect that:

(a) The Second Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper acquiesced in the operation of a system or policy whereby the business of the former firm was improperly funded by payments due to third parties whereby, in particular, sums received from the Scottish Legal Aid Board and others were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and purported payment of third parties outlays made which had been incurred on behalf of the former firm's clients. Said system or policy resulted in sums validly due to Third Parties not being timeously paid. All of the foregoing in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and the Law Society of Scotland Practice Rules 2011.

17. The Tribunal found the Third Respondent guilty of Professional Misconduct in respect that:

(a) The Third Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper acquiesced in the operation of a system or policy whereby the business of the former firm was improperly funded by payments due to third parties whereby in particular, sums received from the Scottish Legal Aid Board and others were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and purported payment of third parties outlays made which had been incurred on behalf of the former firm's clients. Said system or policy resulted in sums validly due to Third Parties not being timeously paid. All of the foregoing in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, and the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and the Law Society of Scotland Practice Rules 2011.

18. The Tribunal found the Fourth Respondent guilty of Professional Misconduct singly and *in cumulo* in respect that:

(a) The Fourth Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper operated a system or policy whereby the business of the former firm was improperly funded by payments due to third parties, whereby in particular, sums received from the Scottish Legal Aid Board and others were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and purported payment of third parties outlays made which had been incurred on behalf of the former firm's clients. Said system or policy resulted in sums validly due to Third Parties not being timeously paid. Further, the firm, under the authority and direct instruction of the Fourth Respondent as Joint Managing Partner, took unauthorised and excessive fees despite there being insufficient funds at the credit of the client ledgers to meet those fees and without having had any legitimate basis for taking fees at the point in which they were deducted from the client ledgers. The fees in these instances were deducted for the purposes of assisting the firm's cashflow and financial position and to conceal the true level of the firm's liabilities and overdraft. Said funds and fees were taken and rendered in a dishonest, wrongful and improper use of client's funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities. All of the foregoing in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, and the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and the Law Society of Scotland Practice Rules 2011.

(b) The Fourth Respondent countersigned and submitted false and inaccurate Accounts Certificates to the Complainers thereby deliberately concealing from the Complainers the true financial position of the said firm.

(c) The Fourth Respondent acted dishonestly in reporting matters to the inspection team of the Financial Compliance Department of the Complainers, and that in breach of Rule B6.12 of the Law Society of Scotland Practice Rules 2011.

19. Having heard the representatives for the Respondents in mitigation the Tribunal pronounced Interlocutors in the following terms:-

(a) Perth 8 May 2017. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against Alan Matthew Miller, 22 Broomknowe Avenue, Lenzie, Joseph Mullen, 9 Glen Mark, St Leonard's, East Kilbride, Paul John McHolland, 24 Portland Road, Kilmarnock and James Price, formerly residing at 2 Rigside, Douglas Water, Lanark and now residing at Calle Java 19, 29591, Malaga, Spain; Find the First Respondent guilty of Professional Misconduct in respect that (a) The First Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper and in particular during the period when he was the designated Cashroom Manager being 1 April 2010 to 5 April 2012, operated a system or policy whereby the business of the former firm was improperly funded by payments due to third parties, whereby in particular, sums received from the Scottish Legal Aid Board and others were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and purported payment of third parties outlays made which had been incurred on behalf of the former firm's clients. Said system or policy resulted in sums validly due to Third Parties not being timeously paid. Further, the firm, under the authority and direct instruction of the First Respondent, took unauthorised and excessive fees despite there being insufficient funds at the credit of the client ledgers to meet those fees and without having had any legitimate basis for taking fees at the point in which they were deducted from the client ledgers. Said funds and fees were taken and rendered in a dishonest, wrongful and improper use of client's funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities. All of the foregoing in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, the Law Society of Scotland Practice Rules 2011: (b) The First Respondent submitted false and inaccurate Accounts Certificates to the Complainers thereby deliberately concealing from the Complainers the true financial position of the said firm; (c) The First Respondent acted dishonestly in reporting matters to the inspection team of the Financial Compliance Department of the Complainers, and that in breach of Rule B6.12 of the Law Society of Scotland Practice Rules 2011; (d) The First Respondent in his specific capacity as Designated Cashroom Manager between 1 April 2010 and 5 April 2012 failed to supervise the

cashroom staff and cashroom systems to keep proper accounting records and that in breach of Rule B6.13 of the Law Society of Scotland Practice Rules 2011 and Rule 12 of the Solicitors (Scotland) Accounts etc. Rules 2001; (g)The First Respondent failed to settle invoices rendered by professional expert witnesses timeously, and that despite having received reimbursement of these sums from third parties; Find the Second Respondent guilty of Professional Misconduct in respect that The Second Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper acquiesced in the operation of a system or policy whereby the business of the former firm was improperly funded by payments due to third parties whereby in particular, sums received from the Scottish Legal Aid Board and others were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and purported payment of third parties outlays made which had been incurred on behalf of the former firm's clients. Said system or policy resulted in sums validly due to Third Parties not being timeously paid. All of the foregoing in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and the Law Society of Scotland Practice Rules 2011; Find the Third Respondent guilty of Professional Misconduct in that The Third Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper acquiesced in the operation of a system or policy whereby the business of the former firm was improperly funded by payments due to third parties whereby in particular, sums received from the Scottish Legal Aid Board and others were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and purported payment of third parties outlays made which had been incurred on behalf of the former firm's clients. Said system or policy resulted in sums validly due to Third Parties not being timeously paid. All of the foregoing in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, and the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and the Law Society of Scotland Practice Rules 2011; Find the Fourth Respondent guilty of Professional Misconduct in that (a) The Fourth Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper operated a system or policy whereby the business of the former firm was improperly funded by payments due to third parties, whereby in particular, sums received from the Scottish Legal Aid Board and others were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and purported payment of

third parties outlays made which had been incurred on behalf of the former firm's clients. Said system or policy resulted in sums validly due to Third Parties not being timeously paid. Further, the firm, under the authority and direct instruction of the Fourth Respondent as Joint Managing Partner, took unauthorised and excessive fees despite there being insufficient funds at the credit of the client ledgers to meet those fees and without having had any legitimate basis for taking fees at the point in which they were deducted from the client ledgers. The fees in these instances were deducted for the purposes of assisting the firm's cashflow and financial position and to conceal the true level of the firm's liabilities and overdraft. Said funds and fees were taken and rendered in a dishonest, wrongful and improper use of client's funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities. All of the foregoing in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, and the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and the Law Society of Scotland Practice Rules 2011; (b) The Fourth Respondent countersigned and submitted false and inaccurate Accounts Certificates to the Complainers thereby deliberately concealing from the Complainers the true financial position of the said firm; (c) The Fourth Respondent acted dishonestly in reporting matters to the inspection team of the Financial Compliance Department of the Complainers, and that in breach of Rule B6.12 of the Law Society of Scotland Practice Rules 2011; Order that the name of the First Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that the order shall take effect on the date on which the written findings are intimated to the First Respondent; Censure the Second Respondent; Censure the Third Respondent; Order that the name of the Fourth Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that the order shall take effect on the date on which the written findings are intimated to the Fourth Respondent; 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 restricted in the case of the Second Respondent to 20% and in the case of the Third Respondent to 10%; and Direct that named publicity be given to this decision, declaring that such publicity

shall not contain the name of the clients or otherwise identify them as the publication of their personal data is likely to damage individuals' interests.

**(signed)**
**Alistair Cockburn**
**Vice Chairman**

(b) The Tribunal having made findings of professional misconduct in respect of matters complained of by Thomas Aulds, ARM Architects LLP, 2a Berkeley Street, Glasgow; Dr Peter Thornton, 49 Carlogie Road, Carnoustie; Ian Stephen, 19 Glen View Crescent Gorebridge; The PRG Partnership, 111 Cowgate, Kirkintilloch, Glasgow; Ewa Daly, Pierwsza Pomoc Polscotia, St George's Building, 5 St Vincent Place, Glasgow and David Bartolo, 2/52 Rallinson Road, North Coogee, Western Australia, appoints them if so advised to lodge statements of claim with the Clerk to the Tribunal at Unit 3.5, The Granary Business Centre, Coal Road, Cupar, Fife, within 21 days of the date of intimation hereof.

**(signed)**
**Alistair Cockburn**
**Vice Chairman**

20. 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 Respondents by recorded delivery service on 28 JUNE 2017.

**IN THE NAME OF THE TRIBUNAL**

**Alistair Cockburn**

**Vice Chairman**

**NOTE**

The Tribunal had before it an amended Complaint and three Joint Minutes of Admissions. Said Joint Minutes admitted some of the facts and all of the averments of duty contained in the amended Complaint in relation to the Second, Third and Fourth Respondents.

**NOTE OF EVIDENCE**

**Evidence for the Complainers**

**Witness One: Ian Mitchell**

Ian Mitchell gave evidence under oath that he was 65 years old and a retired chartered accountant. He previously worked for Henderson Loggie in Dundee. He was appointed as the Interim Judicial Factor for the firm of Ross Harper. He explained that the purpose of a Judicial Factory was to take over an estate and administer it. He confirmed that he visited the Ross Harper premises in May 2012 and that he was familiar with the cashroom. He agreed that part of his role was to secure the books, records and banking information of the firm.

Mr Mitchell was referred to his reports which were contained within the Complainers' Second Inventory of Productions at Productions 1 and 2. He read out the report contained at Production 2. He noted that the accounting records of Ross Harper showed that at 5 April 2012 the funds held in the client bank accounts was £643,340.79 and balances to clients were £942,040.91, a deficit of £298,700.12. Mr Mitchell agreed that he produced Productions 1 and 2. Production 2 was prepared because he was due to retire and Morna Grandison was due to take over.

Mr Mitchell referred to Appendix 3 of Production 2. He explained that this appendix lists the *"unmatched items"* which was another term for unpresented cheques. The witness confirmed that the deficiency on the client account is partially made up of the re-crediting to the ledger of the outstanding cheques which he described as the *"cheques in the drawer"* issue, and partially as a result of the updating of the accounting system with credit notes which reversed fees or partially removed fees previously charged. At the time he wrote the report he expected the deficit to increase because the cash room staff told him there was a pile of credit notes which had not been put on to the accounting system. He did not manage to find these.

Only Mr Mullan chose to cross-examine this witness. In response to Mr Mullan's questions, Mr Mitchell confirmed that he was experienced in financial matters and that he had acted as a Judicial Factor three or four times before this occasion. On this occasion he tried to build up a picture of the firm's finances. He did this by looking at the accounting records and also by speaking to the cash room staff.

Mr Mitchell agreed with Mr Mullan that although the finances of the firm were not running smoothly, the Ross Harper reports suggested that all was well. Up until his appointment, the daily report showed the client bank accounts were in surplus. Mr Mitchell discovered the problem because on his appointment the bank accounts were effectively frozen. Even if cheques were issued they would not be honoured. He had therefore instructed the cash room staff to *"write back"* all unpresented cheques to adjust the balance. The reversal of the unpresented cheques created a bigger balance due to clients. The daily reports were in accordance with the financial records but they did not reflect the true position of the firm.

**Witness Two: Paul McHolland (Third Respondent)**

The witness took the oath and confirmed that he was currently employed as a solicitor working for Colvin Houston in Kilmarnock. He confirmed that Production 48 in the Complainers' Second Inventory of Productions was his affidavit dated 22 August 2016 and that it represented his personal position before the Tribunal. He confirmed that he had provided the documents attached to the affidavit.

The witness agreed that he had made the following statement in his affidavit at the end of paragraph 11:

*"After Alan Miller and Jim Price took over the managerial roles only they would allow any transaction to be carried out by the cashroom staff and any transaction which had to be carried out had to be approved or verified by them."*

The witness said that there was no memo or instruction to this effect but it was generally accepted that the First and Fourth Respondents were *"micro-managing"* the business.

Only Mr Mullan chose to cross-examine the witness. In response the this questioning, the witness indicated that Ross Harper was a busy firm which did a lot of legal aid work but also dealt with private client work. There were thousands of cases. Each fee-earner would be responsible for 200-300 files.

The trainees and solicitors were given a certain degree of autonomy and the partners did not take a detailed overview of the work. The witness said that accounts went out to be fee'd every day. He had no idea how many were sent out each day. All were sent out to the legal aid manager liaising with the accountants. The solicitor would not see the file again unless there was a query.

The witness said that the First and Fourth Respondents became joint managing partners around 2011/2012. He was aware of the Court of Session action involving Mr Diamond and Mr Freeman. He thought that the First Respondent and Mr Devaney might have attended the court hearing but the Third Respondent did not. He did not know what steps were taken to pay off debts before the appointment of the Judicial Factor. The First Respondent had been dealing with the banks. The Fourth Respondent had dealt with the re-structuring and re-financing because he had an employment and industry background. This led to redundancies. The witness said that the Fourth Respondent was dealing with the strategy and organisation of the business and the First Respondent was dealing with the finance. They were *"working in tandem"*. The witness confirmed that he knew about the Law Society inspections. He also said that he was aware that an accountant had been looking at the firm's books in 2011 and 2012.

In response to a question from a member of the Tribunal the witness confirmed that he was never consulted about a fee note value unless a client queried it. It was not the practice for a fee note to be authorised by a partner before it went out.

The Chairman asked the witness whether he was satisfied that the Joint Minute between himself and the Complainers covered everything he wished to put before the Tribunal. The witness indicated that it did. The Chairman asked the Fiscal whether he thought as a matter of fairness he ought to ask some further questions of the witness.

In response to the Fiscal's questions the witness indicated that the Fourth Respondent would only deal with the cashroom *"insofar as he was strategising"*. The witness himself had no access to the cashroom or records. He never tried to look at any client ledgers. His days were frantic and he described himself as *"firefighting"*. His emphasis was on trying to meet the fee target.

The witness indicated that he remembered seeing Reina Gardiner's affidavit which was contained at Production 47 of the Complainers' Second Inventory of Productions. He first saw it one Friday afternoon when he was called to the office. At that time there were many issues going on within the firm. Four partners had left and the firm was involved in two separate court actions. There was a lot

of innuendo and gossip within the firm. The witness said that he was told that an affidavit was being sent by courier to Alan Susskind's home. The witness said that the *"context seemed to be wrong."* He did not think the issue was one of whistleblowing. Instead, he thought it must be something to do with the partnership dispute. He said he appreciated that it might be suggested that the affidavit should have put him on notice regarding financial compliance. However, he said that as a salaried partner in the context of complicated circumstances in a huge business he did not know that there was any breach of the Accounts Rules. Any time *"the drawer"* had been mentioned to him, he had understood it to be a historical practice. He thought it was an accounting term. He did not know that the practice was contrary to the Accounts Rules. He thought it was a device which was being used within the context of compliance with the Accounts Rules. He did not believe that the affidavit revealed any wrongdoing. He did not think that it spoke to anything illegitimate. He did not realise how serious the position was. He only had any sense of the gravity of the situation once the Judicial Factor was appointed and only then at the end of May 2012 when the situation was explained to him. His *"light bulb moment"* occurred when the Judicial Factor explained to him that there was a £298,000 trading deficit beyond the firm's overdraft of £600,000.

The Fiscal asked the witness when he finally realised what *"the drawer"* did. The witness said he did not know how cheques got paid but he understood that creditors were not getting paid. He had no idea about the mechanics or specifics of the drawer. He was aware that there were lots of complaints but that these were dealt with by the Second Respondent, the client relations partner.

The Chairman asked whether the witness was concerned that his firm was being sued by its former Edinburgh agents. The witness said that there were so many things to be concerned about at that time, this was just one of many. He expected the First Respondent to deal with the matter. The witness was preoccupied with the day-to-day business. He was aware that the firm needed to generate £220,000 a month and he focussed on this, leaving others to deal with the debts.

The Chairman asked whether the witness had ever heard of *"the drawer"*. The witness said he first heard of the term during management committee meetings in 2009. At that time the reference had been to *"cheques in the drawer"*. However, the witness was not immediately concerned. The Chairman asked whether the witness had ever thought it was in his interest to make enquiries about the drawer. He said that at the end of a partnership meeting in 2010 he spoke to an accountant. He asked the accountant about *"the drawer"* and was told it was a *"cash management system."* Whenever the term was raised again, the witness referred to this definition and made no further inquiries.

**Witness Three: Christina Heywood**

The witness took the oath and indicated that she was retired but used to be the Head of Financial Compliance at the Law Society of Scotland. She retired on 31 March 2016. The witness explained that Production 1a in the Third Inventory of Productions for the Complainers was the pre-visit questionnaire sent to Ross Harper before the inspection in March 2012. She noted that the First Respondent was recorded as being the cash room partner and the Second Respondent was the money laundering officer. She noted that on page 1d it was recorded that all payments required the First Respondent's authority and it was the cash room partner and senior cash room staff who had access to the online banking system and passwords. She spoke to there being a statement on page 1g that there had been no deficits since the date of the last accounts certificate. She agreed with the fiscal that this statement was incorrect. She also agreed that the answer to the question regarding the breaches of the Rules was incorrect. On page 1f the form indicated that bank reconciliations were carried out daily and reviewed daily. Page 1k appeared to have been completed by the First Respondent on 28 February 2012.

The witness explained that each member of a Law Society inspection team has a task. They each produce their own summaries which are collated into one document. The witness confirmed that Production 4 in the Complainer's Second Inventory of Productions is the inspection report following the inspection on 5 and 8 March 2012. With reference to page 4/3 of the report she noted that four partners of the firm had left, the firm had arrears of VAT amounting to £120,000 and no documentation had been seen. There was a deficit in the December day books. Scottish Legal Aid Board (SLAB) funds were going into the firm account but not being paid out. When the team reviewed the firm bank reconciliation it was noted that many cheques paid in respect of outlays were being cancelled as the cheques were older than six months and were out of date. On review of the client ledgers it appeared that this was a regular occurrence and entries were seen where the cheque was cancelled and re-issued several times. The Compliance Team discussed this in detail with the First and Fourth Respondents as it was thought this might be a bookkeeping exercise and that the cheques were not being issued outwith the firm. Both partners confirmed that these cheques were issued outwith the firm. She realised that if the cheques were all cashed the bank account would be overdrawn by £867,000 although the firm overdraft was only £600,000. She could also see instances where fees had been taken and later credited but the fees had never been rendered. Credit notes on files were not posted to the records of the firm. Therefore, the surplus position of the firm was overstated.

The witness spoke to an anonymous telephone conversation received by a member of Law Society staff and believed to have been made by a member of Ross Harper's cash room staff. The telephone call was made on 27 March 2012. The witness was present for part of it. The caller was very concerned about instructions to move money from the client account to the firm account because there were insufficient funds to do this. The caller was unable to close off the day book postings. She was aware of a deficit of £28,000 on the client account. She said that the partners were aware of the deficit. The latest instruction had been to transfer £60,000 from the client account and this would create a deficit of about £90,000. Following this telephone call this witness caught a train to Glasgow and went straight to Ross Harper's offices.

The witness had a meeting with the First and Fourth Respondents on 27 March 2012. She told them of her concern that the outstanding cheques could never be cashed because they had never left the firm. She read out to the Tribunal the section of her note contained on page 14 of Production 4 of the Second Inventory of Productions for the Complainers:

*"Tina Heywood asked the partners whether or not all cheques had in fact left the building and were physically in the hands of the payees to allow them to be encashed. Both partners confirmed that they were".*

The witness explained that she had subsequently found this to be untrue. The First Respondent advised her that the current surplus was around £5,000. This too was untrue. The witness noted that the First Respondent was the cash room manager and responsible for the electronic banking system. He said he would obtain prints from the banking system and send them to her but he did not do so. The First Respondent told her that he was not aware of any credit notes relating to overcharged fees not yet posted to the system other than the specific examples she had discussed with him. The First and Fourth Respondents did not provide an explanation for examples of overcharged fees which the witness showed them. The Fiscal quoted the following part of the witness' report and she agreed that it was an accurate note of the meeting:

*"During the meeting it was discussed that Mr Miller and Mr Price dealt with the financial side of the firm and the other two partners leave this to them. They stated that they hold complete control of the cashroom. Mr Mullen is the money laundering reporting officer and Mr McHolland is a salaried partner. All four were said to be authorised by the bank to sign cheques."*

The witness said she was concerned that the books did not show the true financial position of the firm. She had asked to see "the drawer" but the cash room staff said the cheques had been removed by the First or Fourth Respondent.

The Fiscal referred the witness to a number of ledger cards contained in the Second Inventory of productions for the Complainers. The witness used these to describe various instances of overcharging, inaccurate entries on ledger cards, cheques being cancelled and reissued, fee notes not rendered, fees being taken many months after the last work done on the file, credit notes posted without explanation and credit notes found at the firm's offices but not posted to the ledgers.

The witness explained that the firm's accounts could not be relied upon because of the volume of fees overcharged, the volume of credit notes not posted, the sums received for outlays not being held in the client account and late entries for SLAB receipts. The firm's records were incorrect. The firm could not accurately state the surplus on 30 March 2012.

The Fiscal referred the witness to Production 6 in the Second Inventory of Productions for the Complainers. She confirmed that it was her investigation report and that she signed it on 4 April 2012. The witness confirmed that her team had spoken to the cash room staff. The cashroom staff had explained that the First and Fourth Respondents had given them instructions regarding the entries and records to be made. The witness did not remember them saying anything about the Second or Third Respondents. The cash room staff told the Law Society team that the cheques had been kept in a drawer but the number of cheques grew too large and they started storing them in a box. The box had been kept in the cash room but was moved before the Law Society staff spoke to the cash room staff. The witness indicated that her team had seen many credit notes so at least some of them were in the cash room during the inspection. However, by the time she got to the cash room, they were no longer there.

The witness was referred to page 2 of Production 6 in the Second Inventory of Productions for the Complainers where it says in reference to the cash room staff,

*"They stated that Mr Price has asked them to say that he is not involved with the problem issues, and if his name is mentioned he has said that he will blame the cashroom staff for everything."*

The witness said that all the staff were in the same room when this was said. She could not remember which one of them said it but she did remember that they all agreed with it.

The witness indicated that the fee notes had been posted to boost the firm's fees. Fees being rendered and credit notes not posted did not affect the surplus but was used to mislead the bank regarding fee income.

The Fiscal quoted the first paragraph of page 3 of Production 6 in the Second Inventory of Productions for the Complainers where it says

*"During the conversation we explained that we had discussed matters with his cashroom staff and they had confirmed to us that there were many cheques drawn for client outlays which were held in a drawer. Mr Price said that he had been advised by his lawyer not to answer this."*

The witness agreed that the staff's contention that there were many cheques held in a drawer was contrary to the Fourth Respondent's statement that all cheques had left the building.

The witness confirmed that she had spoken to the Second Respondent on 02/04/12. She had told him there was a draft report which contained serious issues. She told him he could contact her if he had anything to add. He did not do so. They also met the Third Respondent that day but had no further discussions with him either. The witness said that the most concerning aspects of the case were the state of the records, false entries (including those made in operation of *"the drawer"*), misleading entries regarding the credit notes and overcharging of fees. She was asked if she formed a view as to who was responsible for *"the drawer"* and she said that the First and Fourth Respondents seemed to be dealing with the cash room.

Use of *"the drawer"* had created a deficit of over £200,000. The money should have been in the firm account but it was overdrawn. The monies must have been used to meet firm expenses such as bills, VAT, salaries etc. However, this was clients' money and should not have been used in this way.

The witness agreed with the Fiscal that a practice unit must keep accounting records and send certificates which are accurate to the Law Society. She agreed that the accounting position was not true and accurate and neither were the certificates.

The witness gave evidence that firms are required to submit accounts certificates to the Law Society. The signatories certify that the books are up-to-date, rule breaches are reported and the amount of money due to clients is recorded. If the entries on the client ledgers are false, then the certificates

would also be false provided the false entries remained unreported and uncorrected. The witness spoke to the accounts certificates found at Productions 9-12 in the First Inventory of Productions for the Complainers. The first of these dated 26 October 2009 had been signed by Alan Susskind and the First Respondent. The last three had been signed by the First and Fourth Respondents. The certificates claimed that the firm had a surplus. This was inaccurate. There was a longstanding deficit.

The witness gave evidence that the role of a cashroom manager is to supervise the financial system of the firm, manage and train the staff and keep up-to-date with the Rules.

The witness was cross-examined by Mr Hennessy. During cross-examination the witness agreed that she did not carry out the inspection of Ross Harper in 2011. However, she had attended the offices to *"sum up"* with the First Respondent. She had provided him with a report which noted the Law Society's concerns that SLAB outlays were not being paid timeously. She said that she only spoke to the First Respondent on this occasion and if the Second Respondent claimed to have had no information about that problem at that stage she could not contradict this. Mr Hennessy asked whether as a matter of routine, the team would speak to those responsible for the firm. The witness replied that the team would speak to the cashroom manager and cashroom staff and anyone else who is thought to be relevant, for example a particular partner for a file. Mr Hennessy asked what a person would need if they were doing an inspection and wanted to find out about outstanding cheques. She said that the bank reconciliations for the firm account would be required. The cheques or cheque stubs would also be useful.

The witness was cross-examined by Mr Mullan. During cross examination the witness indicated that it is the cashroom manager who is responsible for the entries, regardless of the member of staff who actually makes them. She had not taken any steps to find out more about who had access to the financial systems and whether any others were excluded by way of password protection.

Mr Mullan referred the witness to page 13 of Production 4 of the Second Inventory of Productions for the Complainers which was the witness's report. He quoted the section which recorded the telephone call from Ross Harper cashroom staff to the Law Society on 27 March 2012 as follows:

*"She was concerned that the onus would be placed on the staff for carrying out these postings and advised that copies of the relevant daybooks, and partners' instructions to carry out these transfers had been kept as a result."*

Mr Mullan noted that the report referred to *"partners'"* and not *"partner's"*. The witness made no comment on this. Mr Mullan asked the witness whether her team had asked for copies of the relevant daybooks and partners' instructions which had been kept. The witness indicated that her team did their own investigation and interviewed staff. She formed her own view on all the available evidence. She noted that the team did the inspection and she was doing the face-to-face work. Someone else had been responsible for opening the records.

The witness explained that the she took statements from the staff and they told her that their instructions came from the First and Fourth Respondents. Mr Mullan suggested that without supporting evidence, the cashroom staff could say anything. She replied that she had listened to the cashroom staff and put their evidence in the context of the other information gathered. Once she had come to the conclusion that there was not enough money to cover the client account, the matter had to go back to the Committee of the Law Society.

Mr Mullan referred the witness to Productions 17, 31 and 43 of the Second Inventory of Productions for the Complainers. These were all ledger cards with entries on 26 March 2012 which read, *"render bill as per AMM instructions."* The witness agreed that these initials could refer to the First Respondent and that the entries took place the day before the cashroom staff called the Law Society.

The witness indicated that a firm the size of Ross Harper would have had many files. It was a busy practice. The firm would have been inspected every three or four years. There had been no mention of *"the drawer"* during these inspections.

Mr Mullan referred the witness to page 10 of production 6 in the Second Inventory of Productions for the Complainers which was the witness's report. He noted the sentence,

*"The stated that Mr Price has asked them to say that he is not involved with the problem issues, and if his name is mentioned he has said he will blame the cashroom for everything."*

Mr Mullan suggested that this could be interpreted as the Fourth Respondent urging the cashroom to tell the truth because he was not involved. The witness said she wrote down the words which were said. Her interpretation was that the Fourth Respondent was involved but did not want staff to mention him to the Law Society.

Mr Mullan asked the witness to explain what evidence used to support her view that the Fourth Respondent was involved in wrongdoing. The witness explained that she based it on the evidence given to her by the cashroom staff. Mr Mullan asked her whether there was anything incriminating on the financial systems, emails, letters or memos. The witness responded that she did not deal with the records and so could not say whether his name was on any financial records. The team had difficulty getting records from the firm. She had asked the Fourth Respondent to provide information but he did not do so.

During re-examination the witness confirmed that her note on page 14 of Production 4 of the Second Inventory of Productions for the Complainers read,

*"Mr Price confirmed that the outstanding cheques were not an issue and that the sums due to the firm by SLAB were at least three times more than the firm owed in outlays."*

She said that the Fourth Respondent had made this statement to her.

In answer to a question from the Chair, the witness confirmed that she prepared the report very shortly after the investigation and that it was a fair representation of the conversations which had taken place.

**Witness Four: Janice Parr**

The witness gave evidence on oath that she had worked for the Financial Compliance Department of the Law Society for nine years. She attended Ross Harper on 5 March 2012. Her role was to look at the books. However, they were not available on her arrival. She became aware that there was an issue with SLAB payments going into the firm account. She did the firm reconciliations. She was aware of an imbalance due to unpresented cheques. The thing that stood out to her was the number of outstanding cheques which ran to the hundreds. They were for varying amounts from £30 or £60 up to a few thousand pounds. She was concerned about these and brought them to the attention of her team leader. They decided to speak to the First and Fourth Respondents. The First and Fourth Respondents told her that the cheques had been issued. She agreed with the Fiscal that both partners seemed to know about the finances and the overdraft limit.

**Witness Five: Ian Ritchie**

The witness gave evidence on oath that he was employed by the Law Society in the Regulation Department as one of the Clerks to the two professional sub-committees. His primary role in this case

was minuting the sub-committee meetings. The witness gave evidence about the Secondary Complainers in the case.

He told the Tribunal that Thomas Aulds of ARM Architects LLP was due £4,550 for an expert building report instructed by Cameron Fyfe in a legal aid case. The work had been done in 2010. Payment was received from SLAB but never paid to Mr Aulds who made a complaint against the First Respondent as cashroom manager and the Second Respondent as client relations partner. The fee was not paid by the firm before the appointment of the Judicial Factor but was paid by the Guarantee Fund in 2013.

Dr Peter Thornton provided a medical report. He complained about the First Respondent as the designated cashroom manager when his fee was not paid despite payment having been made by SLAB. The client protection fund paid out £900.

Ian Stephen is a clinical psychologist who provided various reports. The complaint was against the First Respondent as the designated cashroom manager. Part payment was made and the Guarantee Fund paid out the remainder which was about £2,700.

Mr Sullivan of The PRG Partnership complained about the First Respondent as the designated cashroom manager. The fee was for a child welfare report. The firm received £2,500 from SLAB but Mr Sullivan was never paid and was eventually compensated from the Guarantee Fund.

Ifeyinwa Omwuazor complained about the First Respondent. He had failed to comply with mandates. He had written to the new agents saying he would deal with the matter but court proceedings were eventually raised for delivery. The files were eventually delivered to Sheriff Officers.

Ewa Daly provided translation services to two firms of solicitors for court proceedings. The first firm settled their half share. SLAB was due to pay Ross Harper's share. The First Respondent dealt with the case. Ms Daly was never paid and was eventually compensated by the Guarantee Fund. She received £200.

David Bartolo was a colorectal surgeon. SLAB paid Ross Harper £3,000 in fees for Mr Bartolo who made a complaint against the First Respondent because he had not been paid. Mr Bartolo now lives in Australia and did not make a claim against the Guarantee Fund.

Colin Howard of Harris Howard Psychology Practice complained about the Second Respondent as the client relations partner. The complaint related to unpaid fees. The Second Respondent had said that he would get the matter settled. However, Mr Howard was never paid. He made no claim against the Guarantee Fund.

**Witness Six: Joseph Mullen (Second Respondent)**

The Second Respondent gave evidence on oath that he was admitted as a solicitor in 1984. He was an apprentice at Ross Harper and worked there until April 2012. He mainly did conveyancing and dealt with developers and builders. Although he had dealt with some executries earlier in his career he had not done that for many years before Ross Harper ceased trading. He gave evidence that the structure and organisation of the firm changed over the years. During the last ten years of trading, all cash went to the St Vincent Street office in Glasgow. If he needed cash information he would ask his secretary to get it for him. He never had any involvement with the cashroom. He had nothing to do with the management of the business.

The witness gave evidence that he first came to know about *"the drawer"* when he took an affidavit from Reina Gardiner. The First Respondent had asked him to do this as part of the preparation for the court case against former partner Mr Freeman and Mr Diamond. The witness was referred to his own productions and he indicated that Production 1 of the First Inventory of Productions for the Second Respondent was a copy of his handwritten notes made when he was preparing the affidavit. Production 2 was the first draft of the affidavit. He took this to Ms Gardiner and she made corrections which he handwrote on the draft affidavit. He took it back to her after making the amendments and she signed it after he administered the oath as notary public. The witness confirmed that Production 3 was the final draft which Ms Gardiner had signed. He gave the principal to the First Respondent and it was copied to the other partners.

The witness confirmed that Production 4 was a copy of an email he sent to Alan Susskind the day after the affidavit was taken seeking more information about *"the drawer"* and noting his concern about its use. He said he was not aware of *"the drawer"* before the day he took the affidavit. He was concerned because it was a device, hidden from the partners, which was a possible breach of the Rules. He agreed that he had written to Alan Susskind in the following terms:

*"I do not pretend to be an expert in the Accounts Rules, cashroom procedures or even practice management but the information from Reina in this affidavit does not in any way alleviate my concerns...The actual process and system concerns me simply as a partner in this firm."*

At the time he wrote the email Alan Susskind was still a partner in the firm serving out his period of notice. Further emails were exchanged until Alan Susskind informed the witness that he had spoken to the First Respondent about the matter. In April 2012 the First Respondent told the Second Respondent that he had spoken to Alan Susskind and had also taken advice from the firm's solicitor and was confident on the advice of their solicitor that they were not in danger of being in breach of the Accounts Rules. The Second Respondent indicated that although he was a party to the case involving Mr Diamond and Mr Freeman, he did not give instructions to their solicitors. The witness also told the Tribunal that the First Respondent told him *"the drawer"* was *"a cash flow exercise"* not in breach of the Law Society Rules. He also said that the First Respondent told him that the Law Society was aware of *"the drawer"*. This alleviated his concern and he did not inquire any further.

The witness said that he was aware that the Complaint made allegations of *"unauthorised fees"*, fees that had not been rendered outside the office, and a large number of credit notes not posted to ledgers. He had become aware of these issues when the Law Society staff handed him paperwork to that effect. He denied that he was involved in any of these cases. He was not involved in executry work then and was unaware of any credit notes.

During cross examination by the Fiscal the witness indicated that he became an equity partner on assumption as partner. The witness re-iterated that he had only become aware of *"the drawer"* in March 2012. He disagreed with the suggestion that the matter had been discussed at partnership meetings before that.

He denied that he had turned a blind eye to the financial practices of Ross Harper. He said that he did not know the firm was using clients' money but accepted that in fact that was what was occurring.

He said that he did not know anything about unauthorised fees being taken from ledgers. He had no access to client ledgers. The witness agreed that he had a computer on his desk at work. However, did not have accounts software on his computer. He had asked for it but never received it. He said however that the managing partner and the client relations partner had it.

The Fiscal moved on to ask the witness about the Secondary Complainers. The Fiscal asked the witness whether he accepted that he had received a complaint for Mr Aulds saying that his bill had not been paid. The witness said that he did accept that he had received the complaint but that he had passed it on to the First Respondent. When the witness was asked to be client relations partner he said

he would do it an administrative role only. He passed the mail to individual solicitors and the First Respondent dealt with all financial complaints.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal's written submissions are reproduced below:

The Complaint is directed against four Respondents. As a general and opening submission the Complainers will be inviting the Tribunal to find that the Complaint in its entirety has been established and proved.

The averments of professional misconduct against each Respondent are contained at Statements 4.0 - 4.4 and they differ in terms of each Respondent's role, involvement, responsibility and culpability.

The factual averments in support of the averments of professional misconduct are in many respects common to all four Respondents, although again there are differences in terms of each Respondent's role, involvement, responsibility and culpability.

There has been some agreement with each of the Second, Third and Fourth Respondents and these are recorded in the three Joint Minutes of Admission.

The First Respondent has not entered the process, there is no agreement with him, and as a result it has been necessary to take the Tribunal through the entire Complaint and lead evidence in support of all of the averments. In doing that, albeit there being agreement of certain averments with the Second, Third and Fourth Respondents, the Tribunal has now heard full evidence in regard to, in particular, Statement 2.5 which sets out at length the 37 files in which irregularities were found by the Complainers Financial Compliance Department and thereafter the Judicial Factor.

It is proposed to take the Tribunal, hopefully briefly, through a summary of the Complainers position of each Statement of Fact. Having done that submissions can then be made outlining details for each Respondent and in particular the details regarding each narrated in Statement 2.1.

In regard to Statement 2.4, this is admitted by the Third Respondent and partially admitted by the Second and Fourth Respondents. These are largely factual averments. Evidence came from Tina Heywood which was uncontested.

She was referred to one particular production, the pre-visit questionnaire, production number 3/1. This was completed by the First and Second Respondents. The First Respondent completed it as the Designated Cashroom Partner or Manager and also the Joint Managing Partner with the Fourth Respondent. Other parts were completed by the Second Respondent as the Incidental Financial Business Contact and also the Money Laundering Officer for the firm.

There are two particular instances within that form worth noting and those are at page 1(g) where it is confirmed that there are no deficits on the client accounts since the last Accounts Certificate and that there are no Accounts Rules breaches.

Both of those statements were false and Tina Heywood gave evidence in that regard. There are separate averments in Statement 2.12 in relation to untrue statements being made by the First Respondent to the Complainers and this would be a further instance of that.

The other documents referred to in Statement 2.4 are what is referred to collectively as the "Executive Summary" which are the three documents spoken to by Tina Heywood, production numbers 2/4, 2/5 and 2/6.

The Tribunal is invited to find that statement is established in its entirety and there can be no dispute that the concerns identified by the Complainers were not adequately addressed and thereafter the appointment for the Judicial Factor took place.

Statement 2.5 narrates thirty seven particular files where issues were identified and highlighted and are referred to in the Executive Summary comprising 2/4, 2/5 and 2/6.

Again the evidence of Tina Heywood was led in support of these averments and was uncontested. Her evidence took the Tribunal through each file, its ledger card and where required reference to certain fee notes, credit notes and in one particular instance to a cheque which had been drawn but not issued to the payee. That file was the file for Ms OO which is narrated at pages 37 and 38 of the Complaint.

What these thirty seven files highlighted were, in general terms, instances of the use of the system or policy known as "the drawer", and the taking of unauthorised or illegitimate fees.

Of those thirty seven, twenty nine were examples of unauthorised fees, ten were examples of the use of the drawer of which eight were examples of the use of the drawer on its own. There are therefore two files which show instances of both. Those two files are Mr LL at pages 34-37 of the Complaint and Ms OO at pages 37-39 of the Complaint.

The first chronological example of unauthorised fees occurs in March 2009 and that on the file for Anne Hinshelwood narrated at pages 40-41 of the Complaint. The first chronological example of the use of the drawer occurs in March 2010 and again that is the file for Mr LL.

Whilst the majority of the evidence in respect of this statement came from Tina Heywood, two of the files were addressed solely by the Judicial Factor in his evidence those being the files on the Mr U Executry narrated at pages 23-24 of the Complaint, and Mr GG at narrated at pages 29-32 of the Complaint. Those two files were referred to his report and included as Appendices in that report. The report is production 2/3.

Again his evidence was taken and was uncontested.

It is therefore submitted that this Statement of Fact has therefore been proved in its entirety and in doing so establishes the factual basis upon which it is contended that these averments represent breaches of the Accounts Rules and thereby constitute professional misconduct.

In regard to Statement 2.6 it should be noted that the Third Respondent admits the whole of this statement and that as a non-equity partner in the firm. The other three Respondents were equity partners and must surely therefore be in a position of having more rather than less knowledge than the Third Respondent, despite the position advanced by the Second Respondent in his evidence.

The first three paragraphs of that statement narrate the process by which the system or policy known as "the drawer" operated. It was spoken to in evidence by both Tina Heywood and Mr Mitchell the Judicial Factor and again their evidence was uncontested.

The fourth paragraph on page 52 of the Complaint narrates the involvement of the First Respondent as Designated Cashroom Partner and the First and Fourth Respondents as Joint Managing Partners.

The clear evidence from not only Tina Heywood and Mr Mitchell but also the Third Respondent is that these two Respondents were those primarily responsible for its operation, and supervision of its operation. Indeed, the Third Respondent described their role as one of micro-management of the firm.

The fifth paragraph narrates the position advanced by the Judicial Factor in his uncontested evidence. It refers to his two reports dated 9 May 2012 and 1 February 2013 which are production numbers 2/2 and 2/3. The second of these reports also deals with the unauthorised fees matters which will be referred to later within the Submissions. The Tribunal is specifically referred to pages 9 to 11 of the second report by Mr Mitchell, production number 2/3, where he narrates the information gleaned by him regarding the First and Fourth Respondents control of the firm and its cashroom. These matters were also referred to by Tina Heywood in her evidence when she spoke to her report, production number 2/6, when she advised of the discussions she had with cashroom and staff and took statements from them.

Paragraphs 6, 7 and 8 of that statement narrate that proceedings were raised against the firm by its Edinburgh agents, Drummond Miller and those proceedings are lodged as production number 2/7.

Paragraph 9 narrates the Affidavit from the former Cashier, Reina Gardiner. Both the Second and Third Respondents admit this document and its terms. Indeed the Second Respondent would have to admit it given that he prepared it and notarised it. It is Production number 2/47.

We heard evidence from the Third Respondent that he was handed the principal by the First and Fourth Respondents in their office before it was being delivered to a former partner, Alan Susskind, who was in the process of leaving the firm. The Second Respondent's evidence was that all the partners at that date received a copy. Therefore the Tribunal is entitled to conclude that all partners of the firm as at 10 March 2011 knew of the contents of the Affidavit, and in particular the existence and operation of "the drawer".

The Second Respondent gave evidence that in preparing and notarising the Affidavit he had concerns that "the drawer" might be a breach of Law Society Regulations and the Accounts Rules but he maintained that he was reassured by the First Respondent in April 2011 that advice had been given by the Solicitors instructed by the First Respondent and Counsel, that "the drawer" was not a breach of the Rules and further the First Respondent advised him that the Law Society were aware of "the drawer".

It has to be borne in mind that the person giving those assurances was the First Respondent who was the Designated Cashroom Partner from April 2010 and therefore the partner primarily supervising the operation of "the Drawer". He was also the partner instructing agents to represent the firm but we do not know what those instructions were, and what advice was received. Additionally, it has to be commented that in Answer 2.6, the Second Respondent maintains that he spoke to the "partners" and got assurances from the First and Fourth Respondents but his evidence did not reflect that and that therefore raises an issue about his credibility.

The Second Respondent's position in evidence was that he attempted to undertake an investigation which he did not progress, and apart from the assurances of the First Respondent, he made no further investigations to alleviate his concerns. He accepted that he made no efforts to seek independent advice, nor contact the Complainers and evidence was led that it was left to a member of the firm's cashroom staff to whistle-blow and uncover the practices to the Complainers. The Tribunal will recall the evidence from Tina Heywood when she referred to pages 12 and 13 of her report, production number 2/4, in which she relayed the information which was provided by the anonymous caller. That information included instructions to make improper transfers to allow clients funds to be utilised to meet salaries, that the partners were aware of the deficit on the client account, that excessive fees were being taken, false credit notes were being created, all resulting in the cashroom staff being unable to carry out their duties and accurately prepare the firm's daybooks. This telephone call was the catalyst to Mrs Heywood and her colleagues immediately attending at the firm's offices and thereafter instigating the investigation, as opposed to an inspection, of the firm's financial position.

The Second Respondent's evidence displayed a staggering naivety and ignorance of his duties and responsibilities as a partner in a firm of solicitors. His position to this Tribunal was

that his ignorance of the Accounts Rules in some way exculpates or mitigates his conduct. The Inner House in the case of *Law Society of Scotland –v- J 1991 SLT 662* has held that ignorance of the Rules is not a valid defence to allegations of professional misconduct. The Tribunal is accordingly invited to reject his evidence as being neither credible nor reliable. The Tribunal is further invited to make a finding that the Second Respondent fully understood the import and consequences of the operation of "the drawer" and for him to maintain that he was given appropriate assurances by the First Respondent is not credible. He gave evidence of his own notes being prepared when he took the details from Mrs Gardiner for the content of her Affidavit. Those notes are Production 1 in the Inventory for the Second Respondent. On page two of those notes, in the first paragraph, he has recorded an answer from Mrs Gardiner that a procedure would be "even more fraudulent". That phrase and the emphasis on "even" does not appear in the final Affidavit, and the Second Respondent's poor explanation of how the phrase "...would have been more fraudulent" on page 2 paragraph 4 of the Affidavit, came to be in the Affidavit was neither credible nor reliable. He could offer no reasonable explanation and attempted to gloss over its content and import.

Further to that even if he is given some benefit of any doubt, he would know from November 2010 of the existence of "the drawer" when the firm sued Messrs Diamond and Freeman, and even if that is still not established he knew about the operation of "the drawer" from 2011 onwards until the firm ceased trading. He accordingly, at least, acquiesced in its operation.

In essence what the firm was undertaking under the management of the First and Fourth Respondents with the First Respondent being the Designated Cashroom Partner, was to pay all sums received from the Scottish Legal Aid Board into the firm account. There is no issue with that. That is not contrary to the Accounts Rules. They were then transferring the fees and VAT over to the client ledger from the firm account in respect of these payments which is also not contrary to the Accounts Rules. What was however contrary to the Accounts Rules was retaining the funds within the firm account which are in respect of outlays or sums due to third parties without transferring those funds into the client ledger. Those are clients funds and the Accounts Rules as will be narrated provide that they should be transferred without delay and remitted to whom they are due.

Ledger entries were created and cheques prepared for those entries but the cheques were not signed, nor issued and were held back in what became known as "the drawer". This created an accurate, but false, representation of the firm's accounts as if you looked at the

client ledger you would think that the cheque had been issued to the payee when it had not. The issue of the cheque to the payee if it had occurred would then have impacted on the firm account as it would have increased the overdraft balance. By holding the cheque back the firm's accounts looked at face value in order but in reality the cheque was held back so that the firm account balance, or overdraft, was not increased. It also meant that the client account was in deficit, and the records therefore held by the firm were false.

Instead, therefore, what was taking place was that those funds were remaining within the firm account and being utilised to finance the operation of the firm and it's continued trading. Those funds were client funds and therefore there was a dishonest, wrongful and improper use of client's funds without those client's knowledge or consent to allow the firm to continue to trade and operate within the limit of its banking facilities.

The Complainers recognise that the use of "the drawer" appears to have been implemented by others some years prior, perhaps dating back to 2008, and prior to these Respondents taking a supervisory role in the partnership. To a degree this is supported by the evidence of the Second Respondent that he commenced an investigation against Mr Susskind, as the Designated Cashroom Partner during the period from 2008 through to April 2010, and Mrs Gardiner's Affidavit refers to the operation "the drawer" being implemented perhaps in around 2008. Its use appears to have become more prevalent in the approximate two year period prior to the firm's dissolution. Nevertheless the collective actions of these four Respondents led to the downfall and demise of one of Scotland's foremost and well known legal firm. The Judicial Factor appointed in 2012 has estimated that claims in the region of £400,000 will require to be settled by the Complainers Guarantee Fund.

An example of the circumstances in which the firm found itself in the operation of "the drawer" relates to the firm instructing Drummond Miller LLP in Edinburgh to act as their Edinburgh correspondents in Court of Session matters. Due to the failure of the firm to pay Drummond Miller the sums that were due to them, they were forced to raise proceedings against the firm in January 2011. In those proceedings they sought a sum in excess of £70,000 and it was averred in those proceedings that all of those sums has been received by the firm from the Scottish Legal Aid Board but they had not been accounted to Drummond Miller for the sums due to them. Those sums will have been paid by the Scottish Legal Aid Board to the firm, lodged in their firm account but then not transferred into the client ledger and not remitted to Drummond Miller. The consequences of that were that Drummond Miller were seeking the

sum mentioned and they took steps to execute diligence against the firm in relation to the operation of their firm and client accounts. This therefore highlights that significant sums of those clients' monies were being retained to finance the operation of the firm and the previous examples narrated and discovered are perhaps only a proportion of the system or policy. It also highlights a potential deficit of in excess of £70,000 on the firm's client account at that date and time.

A further consequence of the operation of this system or policy was that sums which were validly due to third parties, namely expert witnesses, Sheriff Officers, Bar Reporters and other agents, were not being paid timeously. Instead the funds were being used for the firm's own purposes. This Tribunal has already held on many occasions that the failure to pay timeously sums due to third parties such as these individuals is of itself professional misconduct particularly where those funds have been received by the firm and held on to for one reason or another. In this case they were held on to fund the operation of the firm and to allow the firm to meet its liabilities.

Statement 2.7 narrates the Complainers position regarding the Second Respondent's role in the firm and avers his knowledge, which he disputes. He now accepts that he knew of the existence of "the drawer" from March 2011 and he now accepts that this operation was a breach of the rules although he contends that he did not know that at the time. The Tribunal is invited to reject his evidence as not credible. Evidence has been led that he would have attended partners meetings when the financial difficulties were discussed. He was the longest serving equity partner within the firm and therefore there was no suggestion that as such he did not have full access to the firm's accounting records although he maintains that he had to get a member of his staff to request any information.

Ten of the thirty seven files are noted as being his responsibility and his wife is also disclosed as a fee earner on one of these matters yet he expects the Tribunal to believe that he had no knowledge of what entries were being placed on these ledgers. That is just not credible. In evidence he admitted seeing a ledger card but not being able to understand it because of the "entries and the re-entries". Many examples of these types of ledgers were referred to by Tina Heywood in her evidence.

Even if that were accepted either by November 2010 or March 2011 he knew what was happening in relation to at least the operation of "the drawer". He made no effort to seek

professional advice. He made no effort to speak to any of the Complainers staff when they attended at his firm's offices to carry out the inspections. He made no effort to seek clarification of the position from the Complainers separately either. He accordingly appears to have abdicated all of his responsibilities in terms of the Accounts Rules and in particular Rule 12 and Rule 6.4.1.

Throughout the whole period he is benefiting to the extent that the firm continues to trade and he was paid his salary or drawings until February 2012.

Statement 2.8 narrates the Third Respondent's position in the firm and also avers the extent of his knowledge. The Complainer's position regarding his culpability and responsibility will be dealt with when summarising the averments of professional misconduct but, in short, the Complainer's position is that he acquiesced in or reasonably knew, there was in operation a system known as "the drawer".

He was however not involved in its operation, did not issue instructions for its operation and did not supervise its operation. He did, however, know about it as he also saw the Affidavit in March 2011 and he had been served with the proceedings by Drummond Miller in January 2011.

Statement 2.9 narrates the position of the Fourth Respondent and is almost identical to the position of the First Respondent aside from him not being the Designated Cashroom Partner.

The evidence which has been led points to him being equally involved in the day to day administration of the firm and its cashroom. That unchallenged evidence came from Tina Heywood, Ian Mitchell and Janice Parr. He also lied to both Mrs Heywood and Mrs Parr, and her colleague Ms Cooke, about the cheques having left the firm's premises.

He was the Joint Managing Partner from October 2010 and on the Management Committee for the firm from mid 2009. He therefore knew exactly how the firm was trading and was part and parcel of the instructions being given to administer its finances.

Statement 2.10 narrates the averments in relation to the taking of unauthorised or illegitimate fees.

The position in relation to all Respondents in relation to this matter will be summarised when dealing with the averments of professional misconduct but it is the Complainer's position that this statement is only directed against the First, Second and Fourth Respondents. There has been no evidence led to substantiate the involvement of the Third Respondent in this particular activity.

Evidence has been led from Tina Heywood and Ian Mitchell of how the procedures were instigated and acted upon by, in particular, the First and Fourth Respondents, how that impacted on client's funds and how it allowed the firm to continue to trade. There is no evidence whatsoever that any clients had any knowledge of these, nor that they gave their consent.

The evidence of these two witnesses was not challenged and the entire statement is accordingly established.

It naturally follows that actions of the First and Fourth Respondents and the apparent inaction of the Second Respondent were a dishonest, wrongful and improper use of clients funds and breaches of the 2001 and 2011 Rules as the instances of these fees being taken straddled both sets of those Rules.

If these matters had come to light, or been brought to the attention of the Complainers, earlier rather than them having to rely on an initial anonymous telephone call from a member of the cashroom staff, the losses to the clients and the Guarantee Fund may have been less. It is clear that the firm was in financial difficulty from 2008 onwards, that the firm's financial position deteriorated through until April 2012, and that the use of client's funds increased, whereby the deficit on the client account when the Judicial Factor was appointed was £298,700.12.

Statement 2.11 narrates the averments in relation to the submission of false Accounts Certificates.

Evidence was led again from Tina Heywood in respect of these matters. There can be no doubt that the four Certificates which were submitted were false. Those four Certificates covered the whole period from 1 April 2009 to 30 September 2011, a period of two and half years. They appear at production numbers 1/9, 1/10, 1/11 and 1/12.

The first Certificate is countersigned by the First Respondent and the other three Certificates are signed by the First Respondent as Designated Cashroom Partner and countersigned by the Fourth Respondent.

Tina Heywood gave evidence of the reasoning why these Certificates are so important, the consequences of them failing to be accurate, and why these Certificates were false and inaccurate. Her evidence again in these respects was unchallenged. Again, if the firm's true financial position had been disclosed to the Complainers in these certificates, the ultimate consequences to the clients and the profession may have been lessened.

As a direct of the consequence of the manner in which the firm and its Cashroom was being operated and managed by the First and Fourth Respondents, the Accounts Certificates which required to be submitted to the Complainers on a six monthly basis were submitted by this firm, but all were false and inaccurate. They were false and inaccurate because due to the manner in which the entries were posted on the client ledgers, and those entries in fact being false, the figures within both Certificates were accordingly false and inaccurate and as a result they did not disclose the true financial position of the firm to the Complainers. The Complainers are the regulatory body for matters of this nature and require a full and proper disclosure of the financial position of any firm of solicitors in Scotland.

These averments therefore establish a breach of two separate rules. The First Respondent's duty to supervise cashroom as designated Cashroom Partner and all four Respondents duty to deliver Accounts Certificates and to ensure compliance with the rules.

Statement 2.12 narrates the averments of false, misleading and dishonest statements being made to the Complainers Financial Compliance Department staff. These averments are directed primarily against the First and Fourth Respondents.

The Tribunal has heard the evidence of Tina Heywood, and Janice Parr in these respects and again that evidence was unchallenged. The Tribunal is accordingly invited to find that this statement has been established. It cannot be disputed that these two Respondents deliberately misled and lied to the Complainers in respect of the Pre-Visit Questionnaire and at the two meetings held with these witnesses in the firm's offices. Mrs Parr gave evidence of the lies told at the meeting she had with Ms Cooke and those Respondents during the

inspection of 5 to 8th March 2012, and Mrs Heywood gave evidence of those Respondents repeating those lies at her meeting with them on 27 March 2012. The details of those meetings were also referred to by Mrs Heywood at pages 11 and 14 of her report, production number 2/4.

Statement 2.13 narrates a summary of the 2001 and 2011 Rules requiring all partners in a firm to ensure compliance with the rules, and narrating the particular duties of the designated Cashroom Partner or Manager.

The drawer is a breach of these rules. The taking of unauthorised fees is another breach. Submitting false accounts is a third category of breach.

All of the breaches are established. The role of each Respondent in respect of these breaches will be referred to in summarising the averments of professional misconduct.

The new Statement 2.16, following the dismissal of two of the Secondary Complaints, is the first of nine statements dealing with Secondary Complaints. The Secondary Complaints run through to Statement 2.24.

Evidence was led from Mr Ritchie from the Complainers and his evidence was uncontested in relation to the all of the Secondary Complaints. In relation to the matter raised in Statement 2.16 we also heard evidence from Tina Heywood of the client ledger card, production number 2/33, which showed that the firm held the funds for a period of eleven months prior to its dissolution. No payment was made and the Guarantee Fund met the liability of £4,558.40.

In Statement 2.17 the Guarantee Fund paid out £900. In statement 2.8 the Guarantee Fund paid out £2,700. In Statement 2.9 the Guarantee Fund paid out £2,963.13 and in Statement 2.21 the Guarantee Fund paid out £200.

Statement 2.23 is directed against the Second Respondent and it is the same matter narrated in 2.16 directed against the First Respondent. The same position applies. His evidence cleared showed that he had no understanding of the role and duties of a Client Relations Partner. Him simply abdicating any responsibility for that matter to the First Respondent was and is unacceptable, and a breach of the relevant rule. It is important to

mention that at the date of this issue being raised by the Secondary Complainer, the Second Respondent knew "the drawer" was in operation.

Statement 2.24 is the same situation as 2.23 insofar as the Second Respondent is concerned.

The Tribunal is accordingly invited to find that all of the Secondary Complaints have been established.

Statements 3.0 through to 3.5 narrate the averments of duties and the Accounts Rules which apply in these particular matters. They also briefly narrate the averments of how each rule has been breached with reference to the factual averments which the Complainers contend have been established in full.

As the Tribunal will be aware it is held on many occasions, and in particular in the case of *McMahon –v- The Law Society of Scotland* 2002 SLT 363 that the client account of a firm is sacrosanct. Any firm or solicitor utilising client's funds for anything other than the benefit of a client is a matter of serious concern and has to be viewed by the Tribunal at the very top end of any scale of professional misconduct. Reference is made in particular to paragraphs 20 and 21 of that case. Those passages also refer to the case of *Bolton –v- The Law Society* 1993 EWCA CIV 32 at paragraphs 9.14 and 15. Both of these cases are also referred to in the recent decision of the Inner House of the Court of Session in the case of *Fyfe –v- The Law Society of Scotland* 2017 CSIH 6 which as the Tribunal and all Respondents are aware, deals with the practises ongoing at this very firm.

These cases refer to whether the acting's of a solicitor amount to dishonesty. The Complainers aver and maintain that the Respondents were acting dishonestly taking into account the whole circumstances and those authorities. In light of those authorities and the facts of this case the Tribunal can undoubtedly hold that the First and Fourth Respondents were acting without any propriety and that their conduct was deceitful, and that the Second Respondent, by abdicating his responsibilities as a partner, also acted deceitfully.

Although all of the relevant rules are narrated within the Complaint but some further comment on some particular rules is perhaps necessary.

Rules 4 (1) (a) and (b), and 4 (3) (b) all specifically apply in this matter as the operation of "the drawer" would mean that the client account was truly in deficit although the cashroom entries sought to obscure that.

Rule 6 has been breached by the operation of "the drawer" and the debiting of unauthorised fees from the clients' ledgers, in that both utilised clients' money without their knowledge or consent.

Rule 8 has been breached as it is clear that the books were not properly written up, and that the books falsely reflected the true financial position of the firm.

Statements 3.4 and 3.5 narrate Rules 12 and 14. Rule 12 covers the position that has been advanced here namely that the First Respondent in his role as Designated Cashroom Partner is wholly responsible for the supervision of the staff and the systems employed within the cashroom of the firm. Rule 14 is the rule which covers the Accounts Certificates and the provisions applicable to those. Four Certificates were signed and submitted to the Complainers and were false an inaccurate and that by reason of the operation of the firm's policy referred to as "the drawer" and the taking of unauthorised fees. Rule 12 also covers the position that all four Respondents have a responsibility for compliance with the Accounts Rules. They have all breached that rule. Although referred to previously, the Second Respondent's purported ignorance of these Rules does not provide him with a stateable position to advance before the Tribunal. The Third Respondent's level of knowledge was at a level less than that of the First, Second and Fourth Respondents but nevertheless as of March 2011 when he was presented with Mrs Gardiner's affidavit he became aware of the operation of "the drawer".

The Tribunal has on many occasions stated that the Accounts Rules set down by the Complainers are in place to protect the public, and solicitors who breach them undermine public confidence in the profession. That is exacerbated when solicitors attempt to conceal the breaches of the Accounts Rules from the Complainers and that is precisely the position here insofar as the Certificates are concerned.

The Complainers have issued guidelines to the profession and further guidelines are also available to the profession in the text book by Patterson & Ritchie namely Law Practice & Conduct for Solicitors.

In addition the Complainers have produced a guide to the Accounts Rules which is formally within the Parliament House Book at Section F1238 to F1240. There is also a passage within the text book referred to at pages 291-293, paragraphs 9.1A and 9.20 and copies of those are all produced for the Tribunal's consideration.

The guidelines and guidance make it clear that the production of an Accounts Certificate is the responsibility of the Designated Cashroom Partner and that the signatories to the Certificate on behalf of the firm have a direct responsibility for its accuracy and the information contained within it. The position in this matter is that the First and Fourth Respondents knew that the statements within the Accounts Certificates were inaccurate and therefore concealed the true financial position of the firm from the Complainers. That is obviously a matter of serious concern and again given the ultimate consequences to this firm in 2012 must be viewed by this Tribunal at the higher end of any scale of professional misconduct.

Lastly insofar as the Complaint is concerned, the Complainers have narrated averments of professional misconduct at Statement 4.1 - 4.4. The submissions made on behalf of the Complainers are made on the basis that the Complaint incorporating all of the factual averments at Statements 2.0 - 3.5 are established in their entirety and the Tribunal then has to consider which, if not all, of those averments apply to each Respondent.

The First Respondent is a solicitor enrolled in the Registers of Scotland and his date of birth is 20 September 1979. He was enrolled as a solicitor on 13 November 2003. Between 1 November 2007 and 5 April 2012 he was a partner in the former firm of Ross Harper. Between 20 February 2010 and 5 April 2012 he was the Managing Partner of the firm. In October 2010 the Fourth Respondent was appointed Joint Managing Partner along with the First Respondent. Between 1 April 2010 and 5 April 2012 he was the designated Cashroom Partner or Manager with the said firm and he was also member of the firm's Management Committee formed in or around mid 2009.

The Tribunal is invited to find the First Respondent guilty of acts or omissions which singularly or *in cumulo* constitute professional misconduct on his part and that within the meaning of the Solicitors (Scotland) Act 1980 as amended, Section 53 and in particular guilty of those matters narrated in full in Statements 4.1 (a), (b), (c), (d), (e) and (f). Sub-paragraph

(a) is the operation of "the drawer" and the taking of unauthorised fees, (b) is the false accounts certificates, (c) are the lies told to the Complainers, (d) is the failure to supervise the cashroom, and (e) and (f) are the secondary complaints.

It is clear from the unchallenged evidence that this Respondent, along with the Fourth Respondent, through their management of the firm were guilty of a sustained and continuous course of dishonest conduct towards the clients of the firm and their monies, and the Complainers.

The Second Respondent is a solicitor enrolled in the Registers of Scotland having been enrolled on 9 November 1984. His date of birth is 24 August 1952. Between 1 September 1988 and 5 April 2012 he was a partner in the former firm of Ross Harper and he was also the firm's Client Relations Partner.

The Tribunal is invited to find the Second Respondent guilty of professional misconduct in respect of acts or omissions which singularly or *in cumulo* constitute professional misconduct and that as outlined in Statements 4.2 (a), (b) and (c).

The Second Respondent by his own admissions and evidence was the longest serving equity partner in the firm but displayed a horrifying ignorance and abdication of his duties and responsibilities as a partner towards the clients of the firm and the Complainers, and in respect of the governance of his former firm. He was a partner within the former firm for a period of nearly twenty four years yet he would invite the Tribunal to excuse his conduct on the basis that he had no knowledge, by his own admission, of the Accounts Rules and the Practice Rules incumbent upon him as a partner in that firm. It again has to be raised that this Respondent in particular had the opportunity to raise the concerns he admitted he had with the firm's administration elsewhere but failed to do anything pro-active leaving it ultimately to a member of staff to uncover the now established unlawful practices. He is similarly and accordingly guilty of his involvement in a sustained and continuous course of dishonest conduct towards the clients of the firm and their monies, and the Complainers.

The Third Respondent is a solicitor enrolled in the Registers of Scotland having been enrolled on 5 August 1999. His date of birth is 22 November 1966. Between 1 April 2008 and 5 April 2012 he was a non-equity or salary partner in the form firm of Ross Harper. He is

presently a solicitor in the employ of a firm in Kilmarnock and is the only one of the four Respondents currently engaged as a solicitor.

The Complainers are seeking a finding of professional misconduct in respect of the Third Respondent and that in respect of Statements 4.3 (a) and (b). Having considered the evidence heard in this matter the Complainers seek to amend both of those statements and a motion is made for amendment based on that evidence. A revised narrative for these two statements is tendered to the Tribunal. In essence, it is now conceded by the Complainers that this Respondent did not have any active role in the operation of "the drawer" but was aware that it was in operation. Further, this Respondent had no knowledge or active role in the firm debiting unauthorised fees from client's ledgers.

The Third Respondent's own evidence may give the Tribunal some concerns about his lack of understanding of his duties as solicitor and partner to the clients of the firm and the Complainers, and that in his position as a salary partner. He appears to have shown an almost blind reliance and trust in the equity partners and their management of the firm. There seems to be no doubt about his hard-working attitude and loyalty to the firm, but that loyalty and trust was in hindsight mis-placed.

The Complainers however recognise and accept that his acts and omissions can be distinguished from those of the three other Respondents and the level of his culpability is not on the same level as the three other Respondents. The Complainers also wish to record their recognition of the considerable level of co-operation provided by the Third Respondent to them in the prosecution of this Complaint, which co-operation has not been reciprocated by any of the three other Respondents.

The Fourth Respondent is a solicitor enrolled in the Registers of Scotland and was enrolled on 11 July 2001. His date of birth is 30 December 1957. Between 1 April 2003 and 5 April 2012 he was a partner in the former firm of Ross Harper. Between October 2010 and 5 April 2012 he was Joint Managing Partner with the First Respondent of the said firm and he was also a member of its Management Committee formed in or around mid 2009.

The Tribunal is invited to find the Fourth Respondent has been guilty of acts or omissions which singularly or *in cumulo* constitute professional misconduct on his part again within the meaning of the Solicitors (Scotland) Act 1980 as amended, Section 53 and in particular in

relation those matters narrated within Statements 4.4 (a), (b) and (c), the latter sub-paragraph having been amended. Sub-paragraph (a) is the operation of "the drawer" and the taking of unauthorised fees, (b) is the false accounts certificates, and (c) are the lies told to the Complainers.

The Fourth Respondent is in an almost identical position to that of the First Respondent apart from him not being the Designated Cashroom Partner or Manager. That said the evidence led unchallenged puts him in joint control of the firm with the First Respondent. It is clear from the unchallenged evidence that this Respondent along with the First Respondent through their management of the firm were guilty of a sustained and continuous course of dishonest conduct towards the clients of the firm and their monies, and the Complainers.

Finally in relation to the issues of expenses and publicity, the normal motion for publicity is made. In regard to expenses, the Complainers would primarily seek an award of expenses against the First, Second and Fourth Respondents on a joint and several basis. In relation to the Third Respondent, the Complainers would wish, in so far as these submissions are concerned, to reserve their position on expenses until the Tribunal's determination is made known. This Respondent has co-operated and the full length and duration of the evidential hearing is not down to the position advanced by him. The Complainers will make a separate motion in this regard.

ADDENDUM

The Complainers have had the opportunity of considering Submissions intimated by the Second and Third Respondents, and would briefly comment on those as follows.

The Second Respondent's Submissions appear to be predicated upon the Tribunal accepting the evidence led by him, in support of his Answers, as being both credible and reliable. The Complainers, as has been submitted, would be inviting the Tribunal to find the Second Respondents evidence and position as being neither credible nor reliable. That evidence and position, was not as the Second Respondent maintains, unchallenged and it remains the Complainers position that the Second Respondent's actings and conduct, and in particular his level of knowledge, are as set out in Statement 4.2 of the Complaint.

There is one particular matter raised in the Second Respondent's Submissions which requires to be brought to the Tribunal's attention. At page 8, final paragraph with that paragraph continuing over on to page 9, reference is made to three former partners, being Messrs Diamond, Freeman and Devaney. No evidence was led by the Second Respondent in respect of these individuals. Whatever their positions may or may not have been, these sentences within the Submissions are irrelevant and should be ignored by the Tribunal.

In regard to the Third Respondents submissions, the Complainers do not wish to make any further submissions in response, their position in respect of him having been set out in full. It is however worth commenting that in addition to his evidence, the information he provides in his Submissions regarding the day-to-day operation of the firm in the period leading up to its dissolution, gives a detailed insight into the level of awareness of the activities and financial position of the firm in that period, but from his position as a salaried partner. The Tribunal can then contrast that with the position advanced by the Second Respondent, who despite being an equity partner, maintained he had lesser knowledge than that of the Third Respondent, or perhaps chose not to have the same level of knowledge.

**SUBMISSIONS FOR THE FIRST RESPONDENT**

No submissions were received from the First Respondent who did not enter the process.

**SUBMISSIONS FOR THE SECOND RESPONDENT**

BREACH OF DUTY

The averments of breach of duty against the second respondent (JM) are contained in paragraphs 3.1 to 3.5 (Pages 79 to 87) of the Complaint. They comprise breaches of :-

Rule 4(1) of the 2001 Rules - Sums at credit of client account must not be less than the client's money held by solicitor : and SLAB money received by solicitor for the benefit of client in order to pay outlays to third party must be credited to client account without delay if outlays not being paid.

Rule 6 of 2001 Rules - Sums received by solicitors from SLAB for outlays must be used for that purpose within a reasonable period of time.

Rule 8 of the 2001 Rules - Failed to maintain accurate and adequate records to show dealings with clients' funds : could not demonstrate that the records of the firm showed the true financial position during any relevant period.

Rule 12 of the 2001 Rules - Each partner of the firm shall be responsible for securing compliance with the rules : every firm shall designate a partner or partners (the Designated Cashroom Partner) as being responsible for supervision of staff and systems and for securing compliance with the rules ; and for providing a certificate with the name of the DCP.

Rule 14 of the 2001 Rules - Obligation to deliver an Accounts Certificate and failure to do so on two occasions : falsifying the true status of the transactions and the firms accounting records. : failing to disclose the position to the Law Society at inspections.

In response, JM admits the terms of all of the rules (See pages 80 to 87 and the Joint Minute of Admissions paragraphs 4 to 8). His position generally –and he gave unchallenged evidence to that effect - is that :-

He had no knowledge of the daily operation of the accounts.

He had nothing to do with the making of entries on the client ledgers.

He had no knowledge of the practices followed by the cashroom.

The cashroom were subject to the sole instruction of the managing partners who had delegated powers in relation to the firm's financial affairs.

He was unaware of the "drawer" practice until March 2011

JM did not acquiesce in the creation of false entries on the ledgers.

He was unaware of any complex series of entries on ledgers and records to conceal any such practice.

He did not obscure and falsify the records.

He did not expressly or impliedly authorise this, nor permit, acquiesce in or concur in such conduct.

He has no responsibility for such conduct carried out by others and concealed from him.

PROFESSIONAL MISCONDUCT

The allegations of professional misconduct against the second respondent are contained in Para 4.2 (page 90) of the Complaint. Reading it shortly at this stage they comprise :-

- His involvement in the drawer ; and his involvement in the firm taking excessive and unauthorised fees.

- Submitting false and inaccurate Accounts Certificates.
- Failing to deal with, and settle, invoices from two professional expert witnesses in his capacity as Client Relations partner.

His responses, again reading them shortly, in Answer 4.2 (Page 91) are as follows:-

- He did not know about the drawer until March 2011; he took certain steps once he became aware of the practice : he had no knowledge of the taking of unauthorised or excessive fees.
- He did not submit Accounts Certificates; he had no personal knowledge of, nor control over, the financial management of the firm.
- He has no detailed knowledge of the two cases concerned. (See Answer 2.23 page 76 and 2.24, page 78).

He submits that his own actings, individually and/or *in cumulo* do not amount to professional misconduct.

GENERAL

The Tribunal must :-

- Consider the allegations made against this particular respondent in the statement of facts.
- Focus on the subject matter of the complaints against him.
- Consider carefully the evidence placed before it regarding him.
- Make findings thereon; and
- Determine whether the complaints against him have been established.

The complainers must satisfy the tribunal of the facts upon which the complaints are based.

Facts can be established by agreement, admissions and/or by the leading of evidence.

The standard of proof of professional misconduct is beyond reasonable doubt.

The test of professional misconduct is set out in *Sharp v Law Society of Scotland 1984 SC 129* .

"Acquiescing" in the operation of the drawer has already been held to be professional misconduct in the case of *Cameron Fyfe v The Council of the Law Society of Scotland [2017] CSIH 6.*

However, each case must be considered on its own facts and *"... in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made."* Sharp (supra). In the *Fyfe* case the tribunal was presented with an agreed wording which attempted to characterize the individual's knowledge, involvement and responsibility . In this case the tribunal has the respondent's evidence which was subjected to cross examination and clarification and will no doubt make of it what it will.

EVIDENCE

There was a joint minute of Admissions between the Complainer and the Second Respondent to which detailed reference can be made.

Oral evidence was led by the fiscal from :-
Paul McHolland, a former partner of the firm,
Tina Heywood, retired Head of Financial Compliance with the Law Society,
Janice Parr, member of the Law Society inspection team, and
Ian Ritchie, Clerk to the Law Society Professional Conduct sub committee.

The Second Respondent gave evidence on his own behalf. He was cross examined briefly by the fiscal regarding his position in the firm, his responsibility for the firm's financial affairs and his knowledge of the operation of the drawer and the taking of unauthorized and excessive fees. The cross examination simply confirmed his evidence in chief.

ANALYSIS OF EVIDENCE

JM's position was set out with candour and in considerable detail in his Answers first lodged back in April 2016. These were expanded upon to some extent in response to adjustments by the fiscal but long before the tribunal hearing there was absolutely no doubt as to what JM's position was. Indeed it had been consistent throughout and if it was to be properly challenged it was open to the fiscal to have brought oral and documentary evidence to do so. He did not.

For example it was averred that

*2.7 (Page 57) The Second Respondent and members of staff under his supervision were aware of the operation of "the drawer" system. The Second Respondent was aware of the entries on the client ledgers being made by cashroom staff and which continued to be operated by cashroom staff during the period when the Second Respondent was a Partner within the firm....*

In answer, JM averred :-

*The complainers are called upon to state, as a matter of fair notice, (1) when they allege the 2nd respondent became aware of the "drawer", (2) how the 2nd respondent became aware of entries on the client ledgers being made by cashroom staff, (3) what "entries" are being referred to, (4) the names of the members of staff who are said to have been "under his supervision", (5) in what way that was so, and (6) how any such member of staff became aware of the "drawer".*

Although members of the ex Ross Harper staff were on the witness list, as were other members of the Law Society Inspection team, none of them was called to speak to any of the above. No documents purporting to prove any of the above were lodged. JM was not cross examined about his awareness of the actual entries on the client ledgers.

It is relevant to point out that none of the witnesses called by the law Society mentioned JM as having anything to do with the management of the affairs of the firm and it was clear that at a time when the Law Society were plainly seeking information about what was going on, no one questioned him about it.

He was told by Alan Miller that the firm had taken advice (about the drawer) from Brodies and had not been advised that it was a breach of account rules. AM's report to the Law Society in April 2012 (Production No. 10 for JM) is consistent with what he told JM in 2011, for what that is worth. Whether it was foolish or naïve for JM to believe this and to take it at face value is one thing. To suggest that he was lying about this is quite another thing and there is nothing inherent in his evidence to make it unbelievable. The fiscal's efforts to challenge his evidence were ineffective. It was never put to him that he was telling lies generally or specifically.

Inter alia he testified that the drawer *"was hidden from me"*. He felt that there was *"something untoward talking place"*. It did not *"strike me that this could be deemed to be client's funds"* and he

conceded that *"If I knew then what I know now I would accept that this was a breach .."* It was suggested to JM that he had turned a blind eye to what was going on. His reply was that he *"did not know that the firm was using clients' money"*. Given the definition of "clients' funds" as explained by Tina Heywood in her evidence he accepted that this would be a breach. JM did fail to make enquiry and satisfy himself about the implications of the drawer system. However, it is not implausible that since he did not know that the SLAB money was credited to firm account and that at the same time false entries were being made on the ledgers he did not appreciate the full implications from the point of view of maintaining true records of the firm's affairs.

Finally, attention is drawn to Answer 2.5 for JM (Pages 50 and 51). It is submitted that the statement of facts set out in full there were established by JM and the tribunal should consider his own responsibility and culpability in that context and with that factual background. Namely :-

*Answer 2.5 ..... In general, the firm was a large and busy law firm which had been in business for many years and had an exceptionally high turnover of clients and cases. The firm conducted a very substantial volume of business of all different types with numerous fee earners. They had a very large legal aid practice and private client practice. Until about 2010, the firm had considered it necessary and appropriate to delegate the financial management of the firm to certain of the partners. A number of the partners left the firm. The first and fourth respondents took control of the financial affairs of the firm and all of its cash room responsibilities. The second defender had no authority to direct cash room staff. The second respondent had no direct or indirect knowledge of the transactions specifically referred to. He did not handle any of them personally. He was not responsible for any of the entries in the ledgers. He did not represent legally aided clients. Within the long established management structures of the firm the second respondent had never had any right or power to control or direct its financial affairs, nor to control or direct the way in which its cash room operated. He was unaware of its systems and practices. He was not part of the firm' s management committee. He took no part in its internal management and financial affairs. He was never consulted about them. The Law Society conducted an inspection of the firm in June 2011. They sought no information from the second respondent personally about the firm's financial affairs nor its record keeping. They examined the books and records of the firm. They formed the view that many of the books and records were incorrect. They did not resolve to take any action at that time. They resolved to re-inspect the firm in March 2012 to monitor compliance with the Accounts Rules. They duly did so.*

KNOWLEDGE OF THE DRAWER

Much has been said about the operation of "the drawer". The tribunal will be familiar with the "drawer" and its consequences for the firm's financial record keeping. This practice cannot be justified in any circumstances.

Tina Heywood said on more than one occasion in her evidence that it was not the drawer itself (i.e. the fact that cheques to pay outlays were actually written and secreted in a drawer) that was the problem. It was the fact that cheques were written, and entries accordingly made on the ledgers when it was known that the cheques were never going to be sent out. This amounted to false accounting, with the ledgers not disclosing a true view of the client balances and the firm's financial position. The combination of crediting the SLAB money into the firm account, putting entries on the ledger purporting to show that the payment had been made and the account being debited enabled the firm to use the SLAB money for its own purposes.

Again, putting this in context, it seems to have been accepted by the complainers that Harvie Diamond, who was on the firm's management committee, did not know about the practice before he resigned in October 2010 and it must presumably be accepted that Richard Freeman and Gerry Devanney also did not know before their resignations otherwise one assumes that they would have been included in any complaint arising out of the firm's affairs. Paul McHolland did not know until he made an enquiry about it in June 2010, when it was described as, or understood by him to be, a "case management system".

There is no evidence of JM'S actual knowledge of the drawer pre March 2011 nor any from which it can reasonably be inferred. Once JM acquired that knowledge one must look at what he did and consider whether his acts and omissions thereafter amount to professional misconduct. In my submission JM's evidence, supported by contemporaneous documents shows us an individual who is *"concerned"* at what he has been told by Reina Gardner. Production 4 of the Second Respondent's Inventory of Productions is a note to Alan Susskind which states, amongst other things, *"...I do feel as a partner in the firm that I am entitled to seek reassurance that the process and system ...is not as depicted."* Unless it is going to be suggested that this note has been fabricated by JMto back up his own evidence, then there could not be a clearer indication that he did not know about this before then and that he was immediately and seriously concerned about it. The subsequent correspondence takes place against a background of upheaval amongst the partners in the firm, but

again demonstrates that this situation continues to worry my client. My client may well have been foolish (or overly trusting) to rely on assurances from others, but it is submitted that it cannot be seriously disputed that he was given them. The fiscal submits that JM "displayed a staggering naivety". Leaving aside the hyperbole, JM concedes that.

He was further reassured by the knowledge that the Law Society had done an inspection in June 2011 and no action was taken. Of course, as with earlier and subsequent inspections, no one from the Law Society saw fit – no criticism intended – to ask JM about any aspects of the firm's financial affairs for the obviously good reason that they appreciated from their detailed knowledge of the running of the firm that it had nothing to do with him and he had nothing to do with it. A further illustration of the reality of JM's status as a partner in the firm – equity partner or not – is the e mail from Brodies who acted for the firm in the Court of Session proceedings, in which they advised that they would need confirmation from AM that they could release information about the action to his agents. JM was, of course, a partner of the firm and a party to the action. It is quite easy to see that the firm's affairs were run in such a way as to conceal from partners what was really happening and that JM had no control over them.

It is accepted that he allowed the state of affairs to continue until April 2012. During that time he had been told that the firm had received advice that there was nothing wrong with it. Maybe he should not have relied on that advice. He assumed that the law Society knew of the practice and the inspection of June 2011 mentioned the outstanding cheques but made nothing of it. It was plain in his evidence that JM knew little about the financial management of law firms. He was not knowledgeable about the Accounts Rules. He did not think that there was a breach and he held that view genuinely, albeit naively. It is easy to see with the benefit of hindsight that he should not have relied on second hand advice and should have considered more carefully what he was being told and whether the rules were being breached. It is submitted that the essence of the breach was the creation of false entries on the ledgers and the distortion of the fair view of the firm's financial affairs . It is not unreasonable to suggest that he was unaware of the detail and the accounting implications of the system. He was uneasy about the principle that cheques were being written and not being sent out, but not aware of the implications of this from a professional practice perspective.

UNAUTHORISED AND EXCESSIVE FEES

In essence, the allegation against JM is set out in 2.10 :-

*2.10 ..the firm, under the authority and instruction of the First to Fourth Respondents, took unauthorised fees despite there being insufficient funds at the credit of the client ledgers to meet those fees thereby creating a debit balance on the client ledger. The net result of the fee deductions was that other clients were funding the fees on these transactions. Further, fees were charged in excess of the sums due to the firm. Fees were then subsequently re-credited to the client ledgers at a later date by the posting of credit notes and the firm had the benefit of the funds in question in each case in the interim period without having had any legitimate basis for taking fees at the point in which they were deducted from the client ledgers. The fees in these instances as hereinbefore condescended upon were deducted for the purposes of assisting the firm's cashflow and financial position and to conceal the true level of the firm's liabilities and overdraft. Said funds and fees were taken and rendered in a dishonest, wrongful and improper use of client's funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities.*

The responses are :-

*ANS 2.10 for 2nd Resp. The 2nd respondent did not authorise or instruct the taking of unauthorised fees as averred. He had no authority within the management structure of the firm to do so. The cashroom would not have taken any instruction from him in relation to such a matter. He was unaware directly or indirectly of any practice of rendering interim fee notes in executries and subsequently issuing credit notes as averred. He had no management, supervisory or executive responsibility for the executries referred to in the complaint.*

*....The complainers are called upon to specify in what practical, or other, sense the 2nd respondent is alleged to have had "responsibility" for those files or transactions in which it is stated that he was the "partner responsible for the file". The 2nd respondent has no knowledge of these matters. He had no dealings with the files personally. He had no input to the file nor authority within the firm to direct the carrying out of work, the submission of fees nor the drawing of cheques in any of these particular files. For example, in the case of the Estate of Mrs Ill, none of the documentation produced by the complainers make any reference to the 2nd respondent nor is there any sign of his reference on any of the documents. He was not consulted by any member of staff about this file.*

The fiscal appeared to be trying to suggest that JM himself had authorized the taking of excessive and/or unauthorized fees. There was no evidence whatsoever to that effect.

In addition, it was apparently suggested that because JM`s name was on certain ledger cards as "Partner" it could be implied that he instructed or authorized the taking of fees in that case. I have the fiscal noted as saying elsewhere (re Paul McHolland) that he was not making anything of such a designation appearing on a ledger.

The files were not lodged (an easy way of establishing who was dealing with them or supervising them) and the fee notes themselves gave no indication of the involvement of JM in the case.

There was some passing reference by the fiscal to a case in which JM's wife had been involved but this is not worthy of response.

There might well be circumstances whereby turning a blind eye to certain matters may be regarded as professional misconduct but it is not uncommon for partners to delegate the financial management of a firm to other partners and have nothing to do with it themselves. For a person not handling a particular case to find out if a fee was excessive and/or unauthorized would require a level of knowledge and understanding of the detail of a case which could not reasonably be expected of any individual partner in a firm. In the absence of any indicator of such a practice or circumstances which could be regarded as putting a partner on warning that such might be the case, it would not be professional misconduct simply to be a partner in a firm in which this happened.

ACCOUNTS CERTIFICATES

JM did not sign any Accounts Certificates and it cannot be professional misconduct for him simply to be a partner in a firm which does so. It was plain that he had no control over, nor influence in, the financial affairs and the management of the firm.

CLIENT RELATIONS PARTNER CASES

There is no evidence before the tribunal of the details of either of these cases. No files or letters were lodged about them and no witnesses called. JM confirmed that he was Client Relations partner but, apart from saying that he would normally pass requests for payment of outstanding fees to AM as the cashroom partner and the only person capable of drawing cheques as per the firm`s standing

arrangements, he could say no more. He has reasonably explained that without access to the files he is unable to respond in any detail.

REBUTTAL

This section answers briefly some of the specific submissions made by the Law Society which may not have been directly addressed in the earlier submissions for the Second Respondent.

- The Pre visit questionnaire – It is not clear if it is being suggested that JM's completion of the sections of the questionnaire relating to Incidental Business and Money Laundering have any relevance to this complaint. They do not.
- It is illogical to suggest that an equity partner *"must surely be in a position of having more rather than less knowledge than the Third Respondent (a salaried partner)."* The tribunal heard evidence about their respective states of knowledge.
- I do not understand the point made about Answer 2.6 not being reflected in JM's testimony and its impact on his credibility. The tribunal heard his evidence and the matters on which he gave evidence were tested in cross examination. There is no merit in the point, but even if there might have been, it was not put to JM.
- The fiscal misrepresents JM's position to the Tribunal (paragraph at the bottom of page 4). The second Respondent`s position is that for the purposes of assessing whether he is guilty of professional misconduct his acts and omissions must be looked at in context.
- The grounds on which it is suggested that he is neither credible nor reliable (paragraph at the top of page 5) are fatuous. I have no note of him being asked about this and the suggestion that he "glossed over" is entirely without foundation on the evidence.
- It is implied that JM only "now" accepts that he knew about the drawer in March 2011 (paragraph at the bottom of page 6). This has been his position since defences were lodged. Many offers by JM to agree this state of facts with the fiscal were rejected.
- In that same paragraph and in the next paragraph at the top of page 7 JM's credibility is impugned without any reason or justification. The reference to his wife is irrelevant. JM invited the fiscal to suggest that he and his wife were "conspiring to take £70 off a client". This invitation was declined.
- It is not clear if it is being suggested that if a firm delivers an Accounts Certificate which is false, all of the partners at the material time, no matter what their knowledge and involvement, are guilty

of professional misconduct. There is no authority for that proposition if that is what is being suggested.

- I do not know what is meant by the phrase "abdicating his responsibilities as a partner" nor how it logically follows from such a description that JM acted "deceitfully".
- In the third paragraph on page 13 JM's position is misrepresented or misunderstood. It seems to be suggested that it may be professional misconduct not to "whistleblow" to the Law Society. There is no authority for that proposition. See Paterson & Ritchie paragraph 1.27.
- Finally, with regard to expenses, JM has stated his position fully and clearly since the commencement of these proceedings and has been consistent throughout. He has produced correspondence and offered to agree matters wherever possible. For example he offered to agree knowledge of the existence of the "drawer"in March 2011. This was rejected but no effort made to lead substantive evidence to contradict that position. He has *"co-operated and the full length and duration of the evidential hearing is not down to the position advanced by him"* – as the fiscal puts it in relation to the Third Respondent.

***EXTRACTS FROM THE OPINION IN FYFE V LAW SOCIETY***

***Knowledge of the system***

[32] The argument that his knowledge was limited in the way advanced by senior counsel on his behalf is one which is contrary to the admitted material which was placed before the Tribunal, and the terms of the misconduct which he admitted. Acquiescence requires knowledge. In our view the argument that the Tribunal was not entitled to proceed on the basis that the petitioner's knowledge extended to the general operation of the scheme and its consequences is not tenable. Paragraphs 2.7 and 2.8 of the complaint were admitted in their entirety, and unequivocally. The misconduct of which the petitioner was guilty was set out in paragraphs 4.2(a) and (b), both of which were also admitted unequivocally. Apart from the admissions noted above, it was accepted on the petitioner's behalf that "the memos and letters do demonstrate a knowledge of the system", page 101. It is true that despite these admissions senior counsel for the petitioner submitted to the Tribunal in written submissions (p 85 of the determination) that it not suggested that he wrote any cheques or made any ledger entries (which position would not be inconsistent with knowledge of the system) nor that he "knew of the system described in para 2.7 ....where entries were created in client ledgers to show cheques were issued in payment and reversed. I understand it is accepted by the fiscal that it cannot be shown he knew anything of the system."

[33] Not surprisingly, that submission led to an exchange with the Tribunal (p 101 of the determination):

"The chairman clarified with Miss Sutherland whether the second respondent accepted knowledge of the drawer. She indicated that he did. The chairman clarified with her whether the second respondent knew in consequence therefore that third parties were not being paid timeously. She indicated that this was the case. The chairman clarified that the second respondent knew or ought to have known that in consequence there was utilisation of funds by the partnership to help the overdraft position. Miss Sutherland said that this was factually correct. However the second respondent did not 'know' that."

In fact, contrary to the submission made by counsel, the fiscal had made the following submission relating to the petitioner (p 78):

"Statement 2.7 of the Complaint, at pages 42 to 44 of the Complaint narrate the process by which the policy operated and Statement 2.8 on pages 44 and 45 narrate circumstances in which the Second Respondent was aware of the operation of the policy and also its consequences."

In our view the Tribunal was entitled to proceed on the basis that the **extent of the petitioner's knowledge** was as specified in paragraphs 2.7, 2.8, 4.2(a) and 4.2 (b).

.....We set these matters out not to suggest that there was a suggestion of dishonesty, but to show the context in which the Tribunal's findings must be put. In our view the Tribunal's approach reflects that it understood, and was entitled to understand, that there was no suggestion of dishonesty in any criminal sense. That accords with the reference to the absence of personal gain, namely that there was no question of individual misappropriation of property for personal financial benefit. However, **the Tribunal found that the petitioner had taken part in a deceitful course of conduct over a period of years.**

[36] We are satisfied that the facts as known and admitted by the petitioner justified such findings. Acquiescing in the practice in question could not in our view be described as anything but deceitful. The fact that the Tribunal did not make, and were not asked to make, a finding of dishonesty does not prevent a conclusion that the conduct was deceitful. Effectively, the Tribunal concluded that the actions of the petitioner, whilst not dishonest, lacked integrity. As was noted in *McMahon* v *Law Society of Scotland* 2002 SC 475:

"It is a fundamental principle of professional life that the client account is sacrosanct."

A lack of integrity may arise where a solicitor, without dishonesty, has shown disregard for his obligations to protect client money (*Scott* v *Solicitors Regulatory Authority* [2016] EWHC 1256 (Admin), paras 12, 35): it is not inconsistent with a finding that the conduct was not dishonest. In that case, Sharp LJ, quoting other authority, noted (paras 39 & 40) that:

"... a person lacks integrity if he/she acts in a way which, although falling short of dishonesty, lacks moral soundness, rectitude and steady adherence to an ethical code. For this purpose a person may lack integrity even though it is not established that he/she has been dishonest."

**"Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case."(***Scott* v *Solicitors Regulatory Authority* [2016] EWHC 1269 (Admin).

....

Senior counsel submitted that there had not been any suggestion of a lack of integrity or deceit. We disagree. In respect of the drawer system, the matter is clearly one from which an inference of deceit arises. Furthermore, in relation to the signing of a certificate which he must have known did not represent the firm's true accounting position, (because the drawer system meant that it could not do so) there was also an element of deceit which was specifically alluded to by the fiscal:

"The Tribunal has on many occasions stated that the Accounts Rules set down by the Complainers are in place to protect the public, and solicitors who breach them undermine public confidence in the profession. That is exacerbated when solicitors attempt to conceal the breaches of the Accounts Rules from the Complainers and that is the position here insofar as the Accounts Certificates are concerned." (pp 81/82).

**"The position here is that the Second Respondent knew or at least had sufficient knowledge and ought to have known that the Statements within the Accounts Certificate was inaccurate and therefore concealed the true financial position of the firm from the Complainers"** (p 82).

The suggestion that deceit was never in issue at the Tribunal cannot be supported.

[42] **As to the role of the petitioner**, it is true that he did not have a managerial role in the firm at the relevant time and that he did not initiate the system. The fact that the petitioner did not personally sign any cheques or examine the ledgers is of no real moment, given his admission of knowledge and acquiescence in the operation of the scheme. Although the other solicitor involved

was the managing and cash room partner, he too was operating a system devised by others. He was also responsible for two false certificates, rather than one. However, the petitioner's involvement in operating the drawer system continued over a longer period of time, by about 13 months.

[43] As the respondent's counsel submitted, the purpose of the system of accounts certificates is to have two partners accepting responsibility for stating to the Law Society that the accounts of the firm are in order. The primary responsibility for the discharge of this duty may lie with the cash room partner, but all partners have the responsibility for ensuring that the accounts are kept in order. The petitioner, knowing of the scheme in operation, took no steps to satisfy himself on the matter. The Tribunal considered whether greater blame lay with the cash room partner by virtue of his having occupied that office and been managing partner. However, given that the petitioner was also aware of the system and knew of the benefit to the firm, the Tribunal considered each of them to be equally responsible. It has to be remembered that the Tribunal was assessing the conduct not primarily with the aim of punishing culpability, but with addressing the need to protect the public, to uphold the reputation of the profession and maintain public confidence therein. We are not persuaded that the Tribunal erred in any way its assessment of the relative roles of the two partners.

**SUBMISSIONS FOR THE THIRD RESPONDENT**

Mr Chairman, members of the Discipline Tribunal, I, Paul John Mc Holland hereby lodge the following information which is my written submission in response to the formal complaint. The submission is in 3 parts: the management structure of the business; personal conduct; legal conclusion. I would respectfully invite the tribunal to consider and review this written submission with:

(1) Answers.
(2) Inventory of Productions.
(3) Affidavit.
(4) Joint Minute.
(5) Oral Evidence.

MANAGEMENT STRUCTURE.

Throughout the period April 2008 till April 2012 I was a salaried partner at Ross Harper Solicitors. I was a non-equity partner who did not profit share. I was a junior partner with no management duties. I had no regulatory roles or cash room involvement. This is confirmed at points 15 and 17 of

the Joint Minute that I have agreed with The Law Society of Scotland. There was in place at Ross Harper a management structure where the managing partner managed the business and reported to the partnership. Cameron Fyfe was the managing partner until 2001. Alan Susskind then became the managing partner. The partnership was managed by the managing partner and there were regular monthly meetings. I was assumed as a salaried Partner on 1st April 2008. The first partnership meeting I attended was in June 2008. The managing Partner Alan Susskind informed the partnership that the firm was in an excellent trading position having secured a profit in 2007/2008 of one million pounds. Towards the end of 2008 the partnership became embroiled in a contentious internal dispute. As a result there was no clarity regarding the firm's true financial status.

I invite the tribunal to accept my evidence on these matters. I have provided the tribunal with a sworn affidavit and a series of memorandums. These confirm the partnership was in dispute. On or around June 2009 the partnership established a management committee comprising 4 partners who managed the business. The 4 partners who were in the committee were Alan Susskind, Harvie Diamond, Alan Miller and James Price. The committee met every Wednesday evening to manage the business. There were no partnership meetings. The partnership meetings ceased prior to when the management committee was established. In April 2010 Campbell Dallas were appointed as the Partnership accountants. Over a 3 month period they carried out an extensive review of the business. A full partnership meeting was convened in June 2010 to consider their review. The accountants made various recommendations which were agreed and implemented by the partnership. Thereafter up until November 2011, 5 of the 8 equity partners resigned and left the firm without obtaining a formal discharge of their partnership obligations. During this period there were no partnership meetings. I remained as a junior salaried partner with no financial investment in the partnership. In summary from 2008 onwards the partnership was involved in internal dispute and external litigation. From 2010 till 2012 the partnership dealt with the departures of the majority of the equity partners.

Throughout these 2 distinct periods my focus was on fee earning to produce as much income as possible for the business. I had no personal belief, nor reason to believe, that the firm was acting in breach of the accounts rules. An affidavit by Reina Gardner was obtained in March 2011. This document was exhibited to me in highly un-usual circumstances. I did not believe its purpose was to whistle blow or expose non-compliant practice(s), conversely, I viewed its production as another element of a bitter and contentious partnership dispute between the equity partners. I did not scrutinise or retain a copy of the document. I provided an explanation and context for this incident to the tribunal. The author of that affidavit retired a few months later. She gave a glowing tribute towards the business and the remaining staff as part of her retirement presentation in a speech to all

of the staff. Mrs Gardiner never raised any issues or concerns personally with me. She produced another affidavit 18 months later in September 2013 indicating the original affidavit was not accurate and required to be clarified. In this supplementary affidavit she indicated that the drawer was introduced as a stop gap to manage cash flow.

I had always considered that if the firm stayed within its agreed overdraft limit of £600k and the salaries were paid every month then it was a viable trading entity. Until April 2012 these 2 criteria were met. I lodged confirmation of this with the tribunal (No.3 of second inventory of productions) which is correspondence from Lloyds bank dated 25th May 2012 showing the overdraft at £595K. On some occasions the partners were paid (late) which was always after the staff were paid (on time) once a monthly fee target of around £220k was met. I interpreted this payment methodology as the managing partners being prudent and working within compliant guidelines.

I continued to work as best as I could to generate fee income. I fulfilled this responsibility by making additional income to the business out with general fee earning with clients. I was a court appointed Bar Reporter at Glasgow Sheriff Court and was regularly personally appointed to compile reports for the court. This was a personal appointment and not linked to Ross Harper. I paid the fee`s that I received into the business. I did this to assist with cash flow and to generate fee income for the company. As well as this appointment and my role as a Solicitor I was also a civil procedure Diploma Tutor at Glasgow University. I was also studying and training to become a solicitor-advocate under the guidance of Bruce Ritchie at The Law Society. I left school aged 16 and returned to complete my education aged 24 as a mature student. I enjoyed and benefitted from the entire education experience. I had made reasonable progress in my career given that I had left school with no formal qualifications. I would very respectfully submit to the tribunal that I would not have jeopardised these important appointments and paid significant funds into the business if I was aware that there was in place a non-compliant system that was in breach of the accounts rules. There was no personal gain to myself as I was a salaried partner with no equity investment. There was no logic or benefit to me in ignoring an illegitimate system. I would suggest that these points by way of external information help to establish the credibility of my position.

The departure of 5 partners had a significant impact on cash flow. The equity partners who departed did so with files and clients which automatically restricted the firm's immediate income stream. It also impacted on the good will and trading name of the partnership. Many suppliers became concerned and sought payments immediately. Historically the firm had a reasonable credit worthy reputation. This altered when many of the equity partners departed. Many of the firm's creditors

automatically became pro-active in seeking payments. The firm was in a lot of debt. The firm had a large turnover and could normally service the indebtedness. However many creditors who accepted payment by instalments or payments over a deferred period now refused this and sought to be paid in full immediately. Many of the creditors took formal action by way of various express methods of enforcement or diligence.

One of these was Drummond Miller who were the firms Edinburgh Agents. I never personally instructed them or dealt with them, nor was I involved in the litigation. I had knowledge of an action being raised. However although I was a nominated defender the writ was not served on me personally. It was not an isolated matter because at this period many of the firm's other creditors were aggressive in seeking payment. By way of example I confirm that the firm had a long standing association with our law accountants Quinn's. During this period they also raised an action seeking payment of their fee`s for preparing private accounts. I dealt with this personally as I knew the solicitor who was acting for them. His name was Billy Smith and he had previously been a trainee then an assistant at Ross Harper partly under my guidance. I contacted him and sought a payment plan. I recall the debt was for several thousand pounds. I asked for payment plan to be paid via instalments over a 12 month staged period in order to assist with cash flow. I am providing this information to illustrate to the tribunal that although the Drummond Miller court action may be interpreted as significant it was not the only litigation the business was involved with. Our Sheriff Officers were Stirling Park and they were also seeking to be paid along with many of our other suppliers who were seeking immediate payments. I did not deal with the miscellaneous debts on a daily basis. I was of the view that this was being managed at cash room level. I associated the Drummond miller debt, with all others, forming part of the firms overall global debt. I am aware that the Chairman focused on this issue and by way of assistance I seek to provide an explanation regarding the debt/litigation position.

I did not view the litigation by Drummond Miller (and others) as evidence of non-compliance procedures. I considered it in the context of the overall firm debt as the business sought to balance all the creditors seeking payment with the reduced income and cash flow difficulties. I did not believe the indebtedness to be a permanent position. I considered that there would be a solution when all the partners who had left resolved their negotiations with the managing partners. If they did this then it would have potentially allowed the partnership to return to a normal or regular trading position. I assumed that the Drummond miler debt would have been dealt with appropriately and possibly in a similar manner to all other trade debts. For my part I was pro-active in dealing with other litigation

that the firm had accrued. In particular I did so when I was aware of a Decree being granted against the Firm and I acted promptly.

The issue of 'debt and 'firm debt' was latterly one of the most frequently raised and challenging issues facing the business when I was a salaried partner. The partnership was seeking to manage the business and deal with all forms of current and historical debt. I raised the issue of the drawer with the firm accountants in June 2010. As the partnership could not properly manage itself anymore then Campbell Dallas Accountants were appointed to report to the partners on the firm`s status as a business. I was informed that the payment system in operation was a cash management system. The system referred to has now become known as 'the drawer'. I associated that phrase with a historical cash management system. It was not a standard accountancy term such as long term or short term or deferred liabilities. It was, I assumed to be, a frame of reference to manage debt. The firm had so much debt. I only became aware of the true scale of the debt at the end of May 2012 when the partnership had ceased trading. I met Iain Mitchell, the court appointed judicial factor on the Mayday bank holiday Monday at Café Nerro in Glasgow. He explained to me that if all firm cheques were issued and cashed then the level of debt would have been approx. £298 beyond the £600k overdraft limit. His interim report has been lodged as a production which confirms this.

My objective throughout the 4 years I was a salaried partner and in particular the last year of trading was to sustain the business as a viable going concern. During that final year the firm`s bankers Lloyds appointed a large firm of accountants, Zolfo Cooper to review the business. They were assisted by Dundas and Wilson who were a large corporate firm of Solicitors. This was the second occasion an external firm of accountants had been appointed to review the business. I never met or spoke to them but was advised by the managing partners that the accountants were going to recommend to the bank that if the firm remained able to sustain the income stream in its reduced partner capacity then the bank should continue to support the partnership. This was another indication to me that the firm was still a viable business. There was to my mind objective information to suggest that the firm could survive its challenges and difficulties.

During 2011/2012 when there were now 4 partners all management duties and cash room functions were carried out by the managing partners. This is confirmed in the relevant pages ( page 11,para 4, and page 77 para 3 and page 103 para 21) which is referred to, in part, within the extensive Law Society report that I have lodged as a production. I confirmed to the tribunal that my focus during this period was to fee earn as well as to maintain trading. The departures of the 5 equity partners put the firm in jeopardy. I taught civil procedure to diploma students at Glasgow University. I witnessed

how hard the students worked to become Solicitors. Within the business I could also see how hard the staff were working to maintain their careers and generate fee income for the company. My objective by paying personal earned income into the business was an attempt to assist with cash flow and keep people, many of whom had become personal friends, in employment. In the course of my evidence I sought to convey this information to the tribunal.

I would respectfully invite the tribunal to consider that I had no personal knowledge or belief that there was being operated a non-compliant system and that I did not personally know of, or acquiesce in, or reasonably know of a mechanism where the business was improperly funded. In summary there was an internal dispute; I was not operating in a management capacity; there were no monthly partnership meetings from 2009; after a comprehensive review by two separate and independent external accountants in June 2010 and in 2011/12 no cash room concerns were raised with me. I generally acted upon and followed professional advice. The correspondence from the director of the professional practice unit at the law society that I have provided along with this submission independently confirms this.

CASHROOM.

When I was assumed as a salaried partner there was in place a defined structure regarding the operation and management of the cash room. There were approximately 10 members of staff within the cash room who had been employed by the firm for a number of years. Some staff had been employed for 20/30 years. They were vastly experienced and dealt with all cash room and accounts functions. They liaised with and reported to the cash room/managing partner. Specifically, once the files were sent to the cash room by the solicitor they were operated independently and autonomously within the cash room staff. There was a clearly defined division of control that did not over lap at any point. The solicitor dealt with the litigation and the client. The cash room dealt with all the financial aspects of the file. This applied to me when I was a trainee, an assistant, an associate and a salaried partner. Once the file had been concluded it was sent via memo to prepare an account. Furthermore, once the file left the solicitors desk thereafter the solicitor did not deal with or have any more contact with the file unless there was a query from the legal aid board.

All other functions such as preparing the account, sending the account to the legal aid board, receiving and processing payment, credit control, and regulating cash flow would operate at cash room level without any input or intervention from the solicitor. The amounts received from the legal aid board, or how and when it was received, would not be known to the solicitor either. That was also operated and controlled via cash room. It was the cash room partner/ managing partner who held exclusive and autonomous jurisdiction of the management and operation of the cash room. The

functions of the solicitor and the cash room did not operate collectively or overlap. They were regulated separately and independently. They were always distinct and separate areas of the business. That process had been in place throughout my full tenure. In my role as a solicitor or salaried partner this did not alter my knowledge, involvement, or insight regarding the internal workings or process of the cash room department. It was always controlled via the cash room/ managing partner.

PERSONAL CONDUCT.

The partnership endured many challenging issues and was surrounded with current and historical debt. Despite the difficulties I sought to act with fairness and integrity. In support of that position I would refer the tribunal to my personal conduct. This is to illustrate that I was never blasé or deliberately failed to make proper enquiries. When called upon to act with professional responsibility I would respectfully submit that I did. As well as court actions by Drummond Miller, Quinns Law Accountants, there was litigation involving HMS 250 for Dilapidations regarding leased premises. HMS 250 was a company set up by Cameron Fyfe, Alan Susskind, Lorne Crerar, Rod Mc Kenzie and Kevin Hughes as a tax efficient vehicle separate from the partnership. All of them were or had been partners at Ross Harper. They were the landlords and Ross Harper were the tenants of various premises they traded from. They raised a court action against the partnership as well. There was also another court action for payment of rent of approx. £40k for premises that the partnership did not trade from but had leased. This occurred on 30th March 2012. I personally dealt with this. I instructed Mark Allison from Livingstone Brown Solicitors as local agents to appear at court and seek a continuation of the court hearing with a view to establish a payment plan. When this was refused and a Decree was granted I subsequently took advice from a law society fiscal who was a part time sheriff. I then called a partner's meeting and requested to the remaining partners that we contact the Law Society and advise them of our financial difficulties. This meeting was on April 3rd 2012. I had planned to resign after the Easter break as I was of the view that the firm was in severe difficulty. This was not possible as I was prevented from doing so. The Judicial Factor was appointed the day before the Easter weekend on the 5th April 2012.

On the day the Judicial factor was appointed I lost my job as a tutor at the university and as a bar reporter. I was suspended from practice. I remained conscious of my professional duties and acted upon them. On the same day I contacted the head of the professional practice unit at The Law society, Mr Bruce Ritchie and offered to assist in any capacity that I could. I also offered to make myself available to assist with staff and clients during and after the weekend. Thereafter I offered to make myself available to provide any input with litigation files. The correspondence from Mr Ritchie

which is attached to this submission confirms this to be factually accurate. I fully co-operated with the judicial factor and met them and gave details of my personal finances.

I have fully co-operated with The Law Society. At the first procedural hearing I agreed to provide my assistance to the fiscal. I indicated that I would provide any background information or general assistance. I met with the fiscal at his office to provide him with information and I provided him with a series of memos to illustrate and prove the partnership dispute as well as the partnership debt. I did not seek anything in return for this. I did not request or seek any leniency or compromise with the current prosecution. If there was to be any attempt to re-consider my prosecution, which there was, it was not at my request. My offer of assistance was un-conditional. I did not seek any favourable treatment. I did not wish that my assistance or co-operation was in any way to be linked to how this matter was to be considered. I indicated that I would assist regardless of my personal position. I wanted to assist in an attempt to try and give as much information as possible and an explanation regarding a very complex set of circumstances that had occurred at Ross Harper Solicitors. Thereafter I adhered to my offer of assistance. I provided the fiscal and the law society with a lengthy statement and then a sworn affidavit. I have entered into a joint minute, I have lodged answers, I have lodged productions. On the 17th January 2017 at the SSDT I gave oral evidence and sought to encapsulate my position to this tribunal.

LEGAL POSITION.

I would invite the tribunal to dismiss the complaint against me personally with no finding of professional misconduct. I would support this with reference to my evidence and this submission. I would respectfully invite the tribunal to conclude that my personal acting's and conduct do not meet 'The Sharp Test' for professional misconduct. In order to be found guilty of professional misconduct an individual solicitor must have acted beyond reasonable doubt in a serious and reprehensible manner. I would respectfully submit that my conduct was at no point 'serious and reprehensible' – beyond reasonable doubt. I was a salaried partner with no equity investment and no cash room involvement. The partnership was involved in an internal dispute. There was significant debt. There were multiple creditors seeking payment. I relied on external advice from accountants regarding the financial position and the accounting procedures. When I had concerns I took legal advice and then invited the remaining equity partners to liaise with the law society. I liaised with the Law Society when the judicial factor was appointed. I assisted the fiscal in any way that I could. I have never acted dishonestly and would invite the tribunal to acknowledge this.

On a factual level, I was personally unaware of any wrongdoing in cash room matters. This position is supported by the sworn Affidavit on 31st January 2013 by Caroline Kane at page 5 paragraph 10. It was sworn 7 months after the firm ceased trading and is lodged as a production. I therefore invite the tribunal to conclude that my conduct was not serious or reprehensible and does not meet 'the sharp test'. I would request that the tribunal dismiss the complaint with no finding of professional misconduct. The issue of knowledge - or lack of - is in my submission a relevant factor that I would invite the tribunal to consider in assessing whether my personal acting's and behaviour constituted serious and reprehensible conduct. I would invite the tribunal to consider that it should only be serious and reprehensible conduct when you believe and know that that there is in operation a non-compliant system and then ignore that system. I would submit to the tribunal that I did not. The independent evidence contained within certain parts of The Law Society Report(s) and the Affidavit from Ms Kane corroborates this.

I also acknowledge and submit that the events that occurred at Ross Harper were significant and I held a junior management position. In no way do I seek to minimise or discount the concerns and issues that have been discovered. However, the partnership that I joined in April 2008 had been trading for almost fifty years. The combined partnership experience of the sitting partners was around 150 years as many of them had been partners for 20-30 years. The managing partner had been in that position for 10 years. Mr Susskind whilst managing partner was professor of practice management at Strathclyde University. I had been a trainee, and an assistant and an associate under his guidance. I held him in high regard and considered him to be a contentious and diligent person. The partnership had 5 offices and 80 staff. There was a designated cash room staffed with 10 employee`s. There were thousands of files and clients. There was in place a management structure and a chain of command. The cash room reported solely to the cash room/managing partner not the partners.

During my tenure the following factual events occurred: In June 2008 it was reported the firm made a million pounds profit. Four months later in October the partnership were offered and refused to purchase the company HMS 250. This was a company which the managing partner and one of the senior partners owned. The partners then fell out the same month. There ensued an intensely bitter dispute. The following month in November it was suggested that despite the alleged profitably of the firm it was now in serious financial trouble and the salaries may not be paid. There was no proposal or suggestion at this same point that the drawings were stopped or reduced. There was then a year of rivalry, accusation and acrimony. The partners meetings ceased. There was a management committee established. External accountants analysed the business. A business plan was established and

implemented. The managing partner then resigned. 5 equity partners then exited the business. Two of the criminal partners departed with hundreds of files out of business hours during the night. The staff were shattered by this event. The third criminal partner who became in charge also departed with files in a similar manner leaving the same staff to arrive at the office the next day. I personally visited the criminal office on my own that morning to support and re-assure them. The former managing partner and the senior civil partner left seeking to depart with numerous files and clients. The cumulative departures resulted in external and internal litigation. There was a Court of Session action against 2 partners for interdict and then a separate potential action for breach of that interdict. HMS 250 then raised a court action against Ross Harper. This rendered Mr Fyfe and Mr Susskind as the Pursuers and Defenders in the same action. The equity partners were in constant dispute over financial issues. All of the staff were anxious and concerned. Thereafter the senior cash room accountant signed and then retracted an affidavit. The partnership was reduced to 4 people and a second internal audit was undertaken. In 2012 the managing partners nominated the firm which was accepted for 'Firm of the Year' and 'Managing Partners' of the year at two of the Scottish annual prestigious Law Awards. In March 2012 two weeks before the judicial factor was appointed there was a Ross Harper 50 th anniversary celebration at The Thistle Hotel in Glasgow.

I would respectfully submit to this tribunal that by any definition this constitutes a wholly remarkable set of events. Perhaps they are unprecedented in recent legal times. During this period I contributed financially towards the business. I was not acting in any management or cash room capacity. I did not personally contribute to the actions and conduct of the bulk of the equity partners whose collective actions brought about the down fall and demise of one of Scotland`s foremost and well known legal firm`s. The fiscal implies in his submission that I placed too much trust, reliance and loyalty to the firm. I would agree with and fully acknowledge this. I would however very respectfully submit that perhaps these very values are the qualities that a Solicitor should aspire to and up-hold. Being loyal, hardworking, trusting and reliant on your fellow colleagues and partners are perhaps virtues which are central to the legal profession. This is why I very respectfully invite the tribunal to grant a full disposal with no findings of any form or level of misconduct.

I am also aware that the tribunal may also consider a finding of professional misconduct and apply it to the partnership. I would ask that the tribunal apply the 'Sharp' test and consider me to be a junior partner and distinguish me personally from the equity partners. When there was an important issue that required a decision by the partnership I was excluded from voting. In the Sharp case it states at page 317 : "In every case it will be essential to consider the whole circumstances and the degree of culpability which ought to be properly attached to the individual against whom the complaint is

made". I was the only salaried partner (amongst nine) within the whole partnership. It is further stated at page 317 : " It appears to us, having regard to all the material before the tribunal, that no reasonable tribunal properly directed could have found the junior partners, profit sharing and salaried, guilty of the charge of professional misconduct". This is why I ask the tribunal for a full dismissal of the complaint.

In the event that the Tribunal were to consider a finding of professional misconduct I would respectfully request that any sanction be applied retrospectively. I have already been suspended from private practice for almost a year from April 2012 until January 2013. I was then working via a restricted practicing certificate for approximately two and a half years until July 2015. I lost my post as a diploma tutor at Glasgow University. This was a position which was a long held ambition and was a cherished appointment. I would very much aspire to be able to return to it one day if at all possible. I also lost my position as a Bar Reporter with Glasgow Sheriff Court. I was held in high regard by the sheriff`s. I am attaching a personal historical note between Sheriff Bill Totten and Sheriff Suzie Raeburn commenting on this. The bar reporters list was full. They indicate that despite this they should 'seize the opportunity' to 'endorse outstanding applicants' and add my name to the list. This document was provided to me in 2008 when I was accepted to become a Bar Reporter. I was unable to conclude my solicitor-advocate training.

My earnings are now significantly reduced. I am working as an assistant in a small practice. I have endured significant personal, professional and financial loss as a result of being a salaried partner at Ross Harper. I have spent the last 4 years seeking to resurrect and restore my career and reputation. Since returning to private practice in January 2013 (four and a half years ago) no disciplinary or regulatory matters have occurred regarding my conduct. On a personal level I would respectfully conclude and invite the tribunal to consider that I was a first time salaried partner who was at best trusting and at worst naïve. I would respectfully invite the tribunal to consider that this does not equate to professional misconduct. Consequently I would invite the tribunal not to make such a finding.

I would finally request that whatever decision is made that no findings of expenses are awarded. I have sought to be fair, reasonable with the law society as well as the process of the SSDT. I offered and then provided significant information as well as my full assistance and co-operation. I did not seek favour or anything in return for doing so. I do not have any surplus funds at my disposal. I have no disposal income to pay any fine or contribute to the expenses incurred. My earnings are significantly reduced and I currently earn £24k per annum. I have no means to make any further

payments. Hence the fact I have required to represent myself before this tribunal. I still have to account to my trustee from WRI Associates who were the appointed trustee`s. I was discharged in June 2016. However my family home is still captured by the sequestration. I am still presently required to pay £1,000.00 to them by June 2017 to have the trustee(s) interest removed and discharged over the property. I am enclosing an email from the trustee that confirms this. I am also enclosing a current TSB bank statement from February 2017 which confirms as at the recent month end on 27th February 2017 that I have £11.17 in my bank account. This is my consistent financial monthly position. Therefore I have no additional disposable income. I would invite the Tribunal to take account of these factors.

In conclusion I was not at any point involved with cash room, finance or accounts. No one acting in a cash room, accountancy or external accountancy position ever informed me personally that the partnership, which I had recently joined as a salaried partner, was operating a non-compliant system that was in breach of the accounts rules. Therefore, I would very respectfully invite the tribunal not to make any finding of professional misconduct personally against me. Thereafter I invite the tribunal to then dismiss the complaint and not to make any award of expenses against The Third Respondent.

**SUBMISSIONS FOR THE FOURTH RESPONDENT**

**Introduction**

Evidence was led against all four respondents. This submission relates to James Price, and relates to the averments of professional misconduct against him.

These averments involving Mr Price were amended after all the evidence was heard, not a result of the evidence adduced, but rather as a result of a failure of the Complainers to realise over a period in excess of two years that, apparently, certain of the allegations they had detailed against Mr Price at Statement 4.4 did not, in fact, relate to him but were a 'cut and paste' from another Respondent.

**Outline**

The Tribunal is respectfully invited not to uphold the Complaint against Mr Price: the evidence adduced by the complainers being of insufficient quality to reasonably substantiate the allegations made.

It is for the Complainers to produce such evidence as they wish to prove their case. They decide which witnesses to present to the Tribunal, and the documents upon which they will rely. The onus is on the Complainers to make out their case.

However, this Tribunal is entitled to consider the evidence presented and to weigh this in the wider context of the evidence available to the Complainers.

The Tribunal will no doubt be cognisant of the need to test the evidence; that is to say, not only is it credible, but can we rely upon it? Was there opportunity for the evidence to be tested in cross-examination, and so forth. In my respectful submission, the Complainers failed to present their case such as to provide comfort to the Tribunal that the evidence adduced was both credible and reliable.

Hearsay evidence is, of course, permissible. In my respectful submission, the Complainers case is to a significant extent based on hearsay evidence. (The human rights implications under article 6 ECHR on cases which rely on hearsay evidence to a large extent for their success is discussed in *Al-Khawaja v United Kingdom* (2012) 54 EHRR 23. The Tribunal will be mindful of their obligations in this regard.) As will be shown, there was a conscious decision on behalf of the complainers to lead evidence in this way, knowing that the original sources of evidence were available to the Tribunal.

As Lord Normand observed in Teper v Regina [1952] AC 480:

*"The rule against the admission of hearsay evidence is fundamental. It is not the best evidence and it is not delivered on oath. The truthfulness and accuracy of the person whose words are spoken to by another witness cannot be tested by cross-examination, and the light which his demeanour would throw on his testimony is lost"*

To repeat, it is acknowledged that hearsay evidence is allowed in these proceedings. However, the criticisms of such evidence remain: hearsay evidence is not best evidence; the maker of the hearsay statement is not on oath when they make it; there is a risk that the hearsay statement loses its accuracy through repetition; the hearsay statement might be manufactured; and the Tribunal is unable to observe the demeanour of the original witness and see how they react and respond to cross examination.

**The Evidence Led by the Complainers**

The evidence presented by the Complainers was perfunctory. The Complainers did not bring to the Tribunal evidence, by way of witnesses or documents, that would seem to be easily available to them and would assist the Tribunal when deciding the ultimate issues in these proceedings.

By way of illustration, the first witness produced by the Complainers was Mr Mitchell, the Judicial Factor. The evidence said to be incriminatory of Mr Price as spoken to by him was hearsay evidence: that certain staff had made certain allegations involving Mr Price.

How can that evidence be tested? The members of staff were not before the Tribunal. Despite confirmation that statements were taken from these meetings, these were not made available. No notes from the meetings were provided to the Tribunal.

Accordingly, the ability to test this evidence by any meaningful cross-examination is lost. Which members of staff said what exactly? If instructions were given by Mr Price, how were they given? Was there documentary evidence of this? Which files did the instructions relate to, what were the instructions, where were they given and so on.

Instead, what is before the Tribunal from Mr Mitchell is, essentially, that he was told by others that Mr Price was involved, without the reasonable prospect of testing the accuracy or veracity of that evidence.

While it might be the case that each of the four persons mentioned in the evidence of Mr Mitchell was either dead, ill or unwilling to attend these proceedings, there can be no good reason why notes and statements prepared as a result of the meetings should not have been produced. Had they been produced, then this Tribunal could someway go to better evaluate the evidence of Mr Mitchell.

As matters stand, the evidence before the Tribunal as spoken to by Mr Mitchell as regards Mr Price is to the effect that he was told something: it is not disputed that he was told things.

The important point, however, is whether what he was told was the truth.

It is a consistent feature of the evidence from the Complainers that evidence is presented without any thought as to how it might be tested.

Evidence of 37 files was gone through at length. Not one related to James Price. Not one related to any subject matter that covered his part of the business. Not one had any notes or other indication that he had in any way interacted with those files. If these files are evidence of 'the drawer' in action then Mr Price is not involved to this extent.

The Tribunal was told of an electronic system which recorded the transfer of monies. No attempt was made to establish who had access to these records, and who had permissions to transfer monies, make entries and the like. Unlike the case with the First Respondent, there was no evidence at all on the electronic records that Mr Price instructed any entries on those files (files, of course, to which he had no apparent reasonable need to inspect/consider).

If any instructions were given by Mr Price to move monies, make entries or the like, then evidence of that would assist the Tribunal.

What the Tribunal has been told, from the evidence of Tina Heywood, that another person (Sharon Brownlee) took an anonymous telephone call from an employee of Ross Harper

about, *inter alia*, certain practices that were being undertaken in relation to various executory files.

The Complainers chose not to provide the Tribunal with evidence from Sharon Brownlee.

The Complainers chose not to provide the Tribunal with the notes of the telephone call taken by Sharon Brownlee.

However, and fundamentally, despite being told that "copies of the relevant daybooks, and partners' instructions to carry out these transfers had been kept as a result" there was no evidence that this had even been asked for, let alone provided.

Failure to secure what could hardly be more relevant evidence is flat out incompetence in the investigation of these matters. Moreover, and despite being asked directly about this, the explanation from Ms Heywood as to why this wasn't obtained is unsatisfactory.

Given that the Law Society planned and prepared their investigations, it is beyond belief that evidence of the instructions as spoken to in the telephone call were not asked for by the Law Society, or offered by employees.

Such evidence could hardly be more obviously pivotal, relevant or damning.

This Tribunal should conclude that no such instructions were given by Mr Price. The only evidence of such instructions being provided were those contemporaneous entries in various ledgers which detailed (by way of initials) that the instruction had been specifically provided by the First Respondent.

Again, and this was a deliberate decision by the Complainers (despite the employees' evidence being best evidence and despite allowing the hearsay evidence of matters to be

tested) they chose not to put before the Tribunal any evidence from the employees of Ross Harper.

The Complainers chose not to lodge any statements from the employees of Ross Harper, nor any notes taken from their meeting with the employees of Ross Harper.

It is not possible to make any meaningful cross-examination of Ms Heywood's evidence when the Complainers deliberately choose not to lodge any notes of meetings; any statements they obtained; or to lead any evidence from the employees of Ross Harper.

Instead, the Complainers wish to have the Tribunal believe that the details of what Ms Heywood (or other members of her team) were told by the staff of Ross Harper is credible and reliable, without the responsibility of that evidence being tested properly. This is an abrogation of the Complainers' responsibilities and the Tribunal should be slow to accept any evidence that cannot, at some reasonable level, be tested.

That they were told things is not the issue. It is what exactly they were told, what did they mean, how can they be sure, who did what, what are their motivations and so forth.

It is accepted that for reasons that are outwith a prosecuting authorities control, such as death of a witness, illness and the like, that evidence can be presented as hearsay evidence and the adjudicating Tribunal must weigh it and be cognisant of its limits: the situation here is quite different. The Complainers had witnesses cited. They chose not to lead them. The Complainers had statements and notes of meetings. They chose not to provide them. That, in the respectful submission, is an entirely unsatisfactory way to present evidence to the Tribunal.

(The Complainers rely upon notes provided by the Second Respondent in an attempt to undermine his credibility and reliability as regards the affidavit. The irony of this will not be lost on the Tribunal.)

The First Respondent was the Cash Room partner. The evidence against him is overwhelming. He has chosen not to engage with the Tribunal for reasons that are not entirely clear to Mr Price. There does appear to be a considerable weight of evidence against the first respondent. However, to assume without a proper foundation for this, that both the first and fourth respondents were responsible for the operation of the drawer is without a reasonable evidential basis.

Not a single file relates with any entries relate to Mr Price. Not as a supervising partner, or having any intromission with the file at any time. There is no evidence that he could even access the Cashroom software. If any instruction was given by Mr Price to operate the drawer, then where is it? A proper reading of the evidence of the Second and Third Respondents does not afford the conclusion that Mr Price was actively operating the drawer.

The workings of the Firm were also spoken to by the Third Respondent, and can be accurately reflected his reliance "...on Miller for finance and Price for strategy".

At best, it is a lazy assumption to conflate the fact that Mr Price was a prominent figure in managing the firm, with his operation of a 'drawer' system. Further, to say that the first and fourth respondents were equally responsible for the operation of 'the drawer' is not borne from the evidence led at the Tribunal. This is an over statement of the evidence before the Tribunal.

As an example as to where the Complainers over state their position, and simply ignore evidence, is when it is stated that it cannot be disputed that Mr Price deliberately misled and lied to the Complainers in respect of the pre-Visit Questionnaire: he did not draft nor sign this document.

It is all very well to lead evidence that Mr Price opined to Law Society staff about cheques no longer being on the premises: to say that he lied about that is a different matter. If this was a

lie, as opposed to an inaccuracy, the Complainers must show knowledge. The first Respondent was the Cash room partner, and Mr Price is entitled to rely on what he is been told by the Cash room partner in matters of the financial management of the Firm, or by counter-signing certificates. Mr Price is entitled to rely on what he is being told about litigation involving Drummond Miller. In my respectful submission, there is no evidence before the Tribunal which reasonably should lead to the conclusion that Mr Price knew that cheques were still in the Firm's premise.

Mr Price has had regard to the evidence of the Second Respondent. He specifically wishes to disagree with the position adopted by the Complainers that the Second Respondent is a liar, and in particular when the Second Respondent received assurances from the First Respondent that operation of 'the drawer' was not nefarious or against Law Society Rules. Such a position is in line with Mr Price's denials as regards "the drawer".

The First Respondent, on any reasonable reading of the evidence fled at the return of the Law Society to investigate the Firm. Someone had to provide documents, organise meeting rooms and that was Mr Price. It cannot be emphasised enough that the reason Mr Price is answering these financial questions is because the First Respondent decided to turn tail and not face his responsibilities, something that appears to have continued to the present day.

Positive evidence that certain partners of the firm of Ross Harper knew of the operation of the drawer was before the Tribunal: at 2/49 there were emails exchanged between First respondent and Harvey Diamond and Richard Freeman, two other partners in Ross Harper. These unequivocally show that all three knew of the operation of 'the drawer'. Pointedly for Mr Price, the emails were not addressed to him, nor was he copied in to any of the correspondence. This does not sit with him being in control of the Firm, or deciding how the finances were to be managed in this particular way.

It does afford with the First Respondent keeping particular financial matters away from other partners in the Firm.

It is also noteworthy that the First Respondent may well have, confirmed in the evidence from the Third Respondent, a motive to disguise the true financial picture of the Firm given that Mr Price had an investor and monies available for the Firm.

And even if Mr Price does exert a certain control in the Firm, this does not of itself mean that he was aware of every aspect of everything happening in the Firm. That is simply lazy thinking.

For reasons not known to Mr Price, and despite unambiguous evidence in emails, the Complainers chose not to prosecute either Mr Diamond or Mr Freeman, nor have their evidence before the Tribunal. This is another opportunity removed from the Tribunal to test evidence.

**Expenses**

Lastly, as far as a motion for expenses is made, it is understood that expense are to be sought against the First, Second and Fourth Respondents, with the position reserved as against the third Respondent for reasons that "the full length and duration of the evidential hearing is not down to the position advanced by him".

It is the Fourth Respondent's position that he has co-operated in these proceedings. However, and in any event, the position adopted by the Complainers as regards the Third Respondent (and Mr Price does not suggest that expenses should be awarded against him) is somewhat curious given that, at the outset, they recognise that:

"The First Respondent has not entered the process, there is no agreement with him, and as a result it has been necessary to take the Tribunal through the entire Complaint and lead evidence in support of all of the averments."

**Conclusion**

The evidence involving the Fourth Respondent is based to a significant extent on hearsay evidence. The Tribunal should have particular regard to the inherent difficulties with such evidence. Documentary evidence involving the Fourth Respondent is relatively insignificant in the circumstances of these proceedings.

There is little doubt that certain things may have been said to witnesses before the Tribunal. How accurate that information was, or even who exactly said it, is not clear. Their motivations unknown. Their response to questioning? Unknown.

The words they said were not recorded contemporaneously, and if they were, such statements were not before the Tribunal.

The evidence, when looked at forensically and in the round, is simply not good enough.

**DECISION**

The four Respondents faced a Complaint alleging misconduct in relation to the financial management of the former firm of Ross Harper which was dissolved in April 2012. All four Respondents were partners in said firm, although the Third Respondent was a non-equity sharing, salaried partner only.

The Tribunal considered the evidence individually with regard to each Respondent carefully bearing in mind the standard of proof to be applied which was of that beyond reasonable doubt. The Tribunal noted that there was no requirement for evidence to be corroborated in proceedings before the Tribunal. The Tribunal was also entitled to take hearsay evidence into account while keeping in mind the limitations of such evidence. The members had regard to the Complaint and Answers, oral evidence, productions spoken to by the witnesses and the joint minutes of admissions. The Tribunal noted that the First Respondent had not submitted Answers to the Complaint and had not taken part in the process. The Tribunal was of the view that all the witnesses who gave evidence before the Tribunal were credible and reliable. The Tribunal considered whether the evidence supported the averments of fact and went on to decide whether those facts supported findings of professional misconduct.

Each of the four Respondents faced different allegations of professional misconduct which overlapped to some extent. These are considered individually and in detail below. However, all were accused of causing or permitting to be instituted, operating, or acquiescing, or reasonably knowing that there was in operation a system or policy whereby the business of the former firm was improperly funded by payments due to third parties. That practice became known as "the drawer" and involved:

(a) The depositing into the firm account all sums received from the Scottish Legal Aid Board, and

(b) The placing into a "drawer" remittances drawn to pay third party accounts until the firm received funds to pay these accounts but latterly until the financial position of the firm and in particular the overdraft arranged with its bankers permitted the cheques to be issued appreciating that if a cheque was issued and dishonoured that would probably cause the firm's financial position to come to light and potentially lead to disciplinary action.

The practice of paying all Scottish Legal Aid Board funds into the office account in no way contravened the Accounts Rules. However, any sums due for payment of outlays should be transferred to the client account as soon as possible and accurate postings made to the relevant client ledgers.

The firm's financial position came increasingly under pressure. Although sums from the Scottish Legal Aid Board were received to pay outlays such as medical reports, the funds were retained in the firm account. To mask the position an entry would be made to cancel the posting made in the client ledgers. Sometimes there would be multiple entries on a client ledger issuing a cheque and cancelling it with funds being retained for many months or years. All Respondents became privy to the practice which permitted the firm to use the client funds, for that is what the monies received from the Scottish Legal Aid Board to pay third party invoices were.

The Tribunal invited submissions from all parties regarding the operation of Rule 12 of the Solicitors (Scotland) Accounts etc. Rules 2001. Mr Knight indicated that the position he was instructed to adopt by the Complainers in relation to the interpretation of Rule 12 was that "reasonable efforts" need to be made by the Partners to ensure compliance with the Rules. Once the Partners had acquired the requisite knowledge, each one had a duty under Rule 12 to be responsible for compliance with the rules. Mr Hennessy for the Second Respondent and Mr Mullen for the Third Respondent agreed that the Tribunal's approach should be whether, looking at the evidence in the round, the Respondents made reasonable efforts to ensure compliance with the Rules

First Respondent

The first averment of professional misconduct is contained within paragraph 4.1(a) of the Complaint and contains allegations relating to "the drawer" and also the taking of unauthorised and excessive fees.

The Tribunal considered that the averment relating to "the drawer" was proved beyond reasonable doubt to the extent that the First Respondent operated "the drawer". The available evidence suggested that the practice was created by others and so the Tribunal did not consider that he had caused or permitted the policy to be instituted. The First Respondent was the designated cashroom manager. The relevant duties of this individual are contained within Rule 12(2) of the 2001 Rules and Rule B6.13 of the 2011 Rules. Under both sets of rules, the designated cashroom manager is responsible for the supervision of the staff and systems to ensure compliance with the Rules. It was obvious from the evidence of Christina Heywood that the system was not compliant with the Rules. Christina Heywood and Ian Mitchell reported that the cashroom staff told them that the First Respondent not only knew of the scheme but also gave instructions for its continued operation. Reina Gardiner's affidavit disclosed that she discussed the operation of the drawer with the First Respondent. The Third Respondent gave evidence that the First Respondent was the designated cashroom manager and the joint managing partner. He said that the First Respondent was in charge of the finances and was "micro-managing" the firm. The Second Respondent gave evidence regarding the First Respondent's role within the firm and the secretive nature of the cashroom's operation in the last few years of the firm's existence under his supervision. He spoke to emails from October 2010 between the First Respondent and departing partners Mr Diamond and Mr Freeman describing in detail "the drawer", including the false entries to the ledgers. The First Respondent was therefore privy to and directed a continuing breach of Rule 6 by permitting SLAB funds to be held in the firm account rather than them being transferred to the client account, and then falsifying the cashroom books by notionally drawing cheques to pay third parties which were left in a drawer and not issued to payees. This was a deliberate course of deceitful conduct over a prolonged period of time in the knowledge that as a partner of the firm he was directly benefitting.

The Tribunal noted the evidence given by Christina Heywood regarding the taking of unauthorised and excessive fees. Specific examples were highlighted to the Tribunal. Some of these were for very large amounts, often taken a significant period after the work on the file had been completed, and on a few occasions specifically noted to have been taken "As per AMM instructions", those particular entries being made the day before the cashroom staff reported their concerns to the Law Society. It was noted that the First Respondent's initials are "AMM". The effect of taking those fees was to improve the

appearance of the firm's cashflow and finances and to conceal the true level of the firm's liabilities and overdraft both to the bank and to the Complainers. The Tribunal was satisfied that the fees were taken dishonestly and without the knowledge of the clients concerned. The First Respondent held the dual position of cashroom manager and managing partner and the Tribunal was satisfied beyond reasonable doubt that he had participated in the deliberate overcharging of fees to secure a reduction in the client account balance. The Tribunal accordingly found him guilty of this averment of misconduct.

The second averment of professional misconduct is contained within paragraph 4.1(b) of the Complaint and contains an allegation that the First Respondent submitted false and inaccurate Accounts Certificates to the Law Society deliberately concealing from the Complainers the true financial position of the firm. The purpose of the system of certificates is to have two partners accepting responsibility for stating to the Law Society that the accounts of the firm are in order. The relevant accounts certificates were produced by the Complainers and spoken to by Christina Heywood. It was established through the evidence of Christina Heywood and Ian Mitchell that the firm's records did not reflect the true financial position of the firm. The Accounts Certificates which were based on those records were therefore false and inaccurate. The First Respondent signed the Accounts Certificates certifying that the information given in the Certificates was true to the best of his knowledge and belief. The First Respondent's conduct in relation to "the drawer" meant that he could not honestly certify that the information was true. He must have known and believed it to be inaccurate. In consequence of his knowledge of "the drawer" and the overcharging of fees, the Tribunal had no difficulty in finding him guilty of submitting accounts certificates which he knew to be false and that this conduct was serious and reprehensible and therefore constituted professional misconduct.

The third averment of professional misconduct is contained within paragraph 4.1(c) of the Complaint and contains an allegation that the First Respondent acted dishonestly in reporting matters to the inspection team of the Financial Compliance Department. This was in breach of Rule B6.12 which provides that a regulated person shall not act, or omit to act, in a manner which is dishonest, reckless or intentionally misleading in respect of

(a) the writing up of accounting records in respect of clients' money or of his practice;
(b) balancing his books; or
(c) the financial affairs of his clients or of his practice.

The Tribunal considered that the First Respondent's assurances to Christina Heywood on 27 March 2012 that all cheques had in fact left the building and were physically in the hands of the payees to allow them to be encashed was dishonest. His assurances to the team that the firm had a surplus were dishonest.

The fourth averment of professional misconduct is contained within paragraph 4.1(d) of the Complaint and contains an allegation that the First Respondent in his specific capacity as designated Cashroom Manager between 1 April 2010 and 5 April 2012 failed to supervise the cashroom staff and cashroom systems to keep proper accounting records in breach of Rule 12 of the 2001 Rules and Rule B6.13 of the 2011 Rules. This averment overlaps with the first averment of misconduct and the Tribunal is of the view that the same evidence applies. The Tribunal was therefore satisfied that this averment was proved.

The fifth averment of professional misconduct contained within paragraph 4.1(e) of the Complaint was withdrawn by the Complainers.

The sixth averment of professional misconduct contained within paragraph 4.1(f) of the Complaint was withdrawn by the Complainers.

The seventh averment of professional misconduct is contained within paragraph 4.1(g) of the Complaint and contains an allegation that the First Respondent failed to settle invoices rendered by professional expert witnesses timeously and failed to respond to reminders having received reimbursement of these sums from third parties. The evidence relating to "the drawer" was relevant to this averment as was the evidence of Ian Ritchie regarding the claims of the secondary complainers. The Tribunal was satisfied that this averment of professional misconduct was established.

The eighth averment of professional misconduct is contained within paragraph 4.1(h) of the Complaint and contains an allegation that the First Respondent failed to implement a validly received mandate in breach of Rule 14 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008. The Tribunal heard evidence from Ian Ritchie regarding a failure with mandates regarding the secondary complainer Ifeyinwa Omwuazor. It was satisfied that a mandate was delivered but was not satisfied beyond reasonable doubt on the evidence as to the identity of the person who had responsibility for the failure to implement it. Accordingly, the Tribunal found the First Respondent not guilty of this charge.

Second Respondent

The first averment of professional misconduct is contained within paragraph 4.2(a) of the Complaint and contains allegations relating to "the drawer" and also the taking of unauthorised and excessive fees.

The Tribunal considered that the allegation relating to "the drawer" was proved beyond reasonable doubt to the extent that the Second Respondent acquiesced in the operation of "the drawer". The available evidence suggested that the practice was created by others and so the Tribunal did not consider that he had caused or permitted the policy to be instituted. The Tribunal accepted the Second Respondent's evidence that he became aware of "the drawer" when he prepared an affidavit for signature by Reina Gardiner on 10 March 2011. Thereafter he acquiesced in its use but did not "operate" the policy within the cashroom which appeared to be the sole preserve of the First and Fourth Respondents. Nevertheless, as a partner of the firm, he had a responsibility for securing compliance by the firm with the provisions of the Rules (Rule 12 of the 2001 Rules and Rule B6.2.3 of the 2011 Rules). Although he took some steps to find out more about "the drawer" he too readily accepted assurances from the First Respondent that the system was compliant, particularly when it should have been obvious that if the system was contrary to the Rules it had been the cashroom manager who had been operating or overseeing it. The statement contained in the affidavit from the firm's finance manager that an alternative system would have been "more fraudulent" and the claims of departing partners Mr Diamond and Mr Freeman that they left the firm due to the operation of "the drawer" and the secretive operation of the cashroom, should have prompted a thorough investigation which should only have been satisfied on the production of positive independent evidence that the system was in fact compliant. The Second Respondent's inquiries with Alan Susskind and the First Respondent, without any independent vouching or advice from the Complainers, were insufficient in the face of such a serious allegation. His apparent ignorance of the Accounts Rules is no excuse or defence to his conduct. His behaviour constituted a serious and reprehensible departure from the standards expected of competent and reputable solicitors. He showed disregard for his obligations to protect client money and to keep the client account sacrosanct. For thirteen months he knew "the drawer" was operating to delay payment to those parties entitled to payment, while continuing to receive drawings from the firm.

As is noted above, the Tribunal accepted the evidence of Christina Heywood that unauthorised and excessive fees were taken by the firm. However, the Tribunal accepted the Second Respondent's evidence that he had no knowledge of these fees having been taken. Although some were taken on his cases, it was clear that often these had been taken long after the Second Respondent had ceased to

work on the file and there was no evidence to suggest that the Second Respondent had knowledge of these fees. The Tribunal saw no reason to make a distinction between the Second and Third Respondents in this regard. The Tribunal considered that before the Second Respondent could be guilty of this averment of misconduct under Rule 12, in a situation where he was not directly responsible for the primary misconduct, he would have to have had knowledge that there was non-compliance. The Tribunal did not consider that Rule 12 imposed joint and several liability with the wrongdoer. Accordingly, the Tribunal found the Second Respondent not guilty of this part of the averment of misconduct which related to the taking of excessive fees.

The second averment of professional misconduct is contained within paragraph 4.2(b) of the Complaint and contains an allegation that the Second Respondent submitted false and inaccurate Accounts Certificates to the Law Society deliberately concealing from the Complainers the true financial position of the firm. The evidence of Christina Heywood was that the first accounts certificate was submitted by Alan Susskind and the First Respondent and that the last three accounts certificates were submitted by the First and Fourth Respondents. There was therefore no evidence that the Second Respondent had submitted any of these certificates. The Tribunal therefore found the Respondent not guilty of this averment of misconduct.

The third averment of professional misconduct is contained within paragraph 4.2(c) of the Complaint and contains and allegation that the Second Respondent, in his capacity as Client Relations Partner of the firm, failed to settle validly rendered invoices from professional expert witnesses and failed to respond to reminders having received reimbursement of said sums from third parties. The Tribunal accepted the Second Respondent's evidence that he asked the First Respondent to deal with any complaints relating to non-payment of invoices in his capacity as designated cashroom manager. The Tribunal considered that he was entitled to do so and that failure on two occasions to confirm that the matter was settled did not constitute professional misconduct. The Tribunal therefore found the Respondent not guilty of this averment of misconduct.

Third Respondent

The first averment of professional misconduct is contained within paragraph 4.3(a) of the Complaint and contains an allegation relating to "the drawer" only, the Fiscal having moved the Tribunal to delete the allegation relating to the taking of unauthorised and excessive fees and the Tribunal having done so. The Tribunal considered that the allegation relating to "the drawer" was proved beyond reasonable doubt to the extent that the Third Respondent acquiesced and reasonably knew of "the drawer". The available evidence suggested that the practice was created by others and so the Tribunal did not

consider that he had "caused or permitted" the policy to be instituted. The Tribunal accepted the Third Respondent's evidence that he became aware of "the drawer" when it was mentioned at a partnership meeting in June 2010 and then again when he had sight of Reina Gardiner's affidavit. Thereafter he acquiesced in its use but did not "operate" the policy within the cashroom which appeared to be the sole preserve of the First and Fourth Respondents. Nevertheless, as a partner of the firm, albeit a non-equity partner, he had a responsibility for securing compliance by the firm with the provisions of the Rules (Rule 12 of the 2001 Rules and Rule B6.2.3 of the 2011 Rules) and failed to do so. Reina Gardiner's affidavit should have put him on his guard, even if the conversation with the accountant had previously allayed his concerns. The statement contained in the affidavit from the firm's finance manager that an alternative system would have been "more fraudulent" and the claims of departing partners Mr Diamond and Mr Freeman that they left the firm due to the operation of "the drawer" and the secretive operation of the cashroom, should have prompted a thorough investigation which should only have been satisfied on the production of positive independent evidence that the system was in fact compliant. His apparent ignorance of the Accounts Rules is no excuse or defence to his conduct. His behaviour constituted a serious and reprehensible departure from the standards expected of competent and reputable solicitors. He showed disregard for his obligations to protect client money and to keep the client account sacrosanct. For at least thirteen months he knew "the drawer" was operating to delay payment to those parties entitled to payment.

The second averment of professional misconduct is contained within paragraph 4.3(b) of the Complaint as amended by the Fiscal and contains an allegation that the Third Respondent, as a partner in the firm knew or ought to have known that false accounts certificates were submitted to the Complainers thereby concealing from the Complainers the true financial position of the firm. The Tribunal was satisfied that there was no evidence to suggest that the Third Respondent had knowledge of the contents of the accounts certificates submitted by Alan Susskind and First and Fourth Respondents, or that he should have had such knowledge. Accordingly the Tribunal found the Respondent not guilty of this averment of misconduct.

Fourth Respondent

The first averment of professional misconduct is contained within paragraph 4.4(a) of the Complaint and contains allegations relating to "the drawer" and also the taking of unauthorised and excessive fees.

The Tribunal considered that this allegation was proved beyond reasonable doubt to the extent that the Fourth Respondent operated "the drawer". The available evidence suggested that the practice was

created by others and so the Tribunal did not consider that he had "caused or permitted" the policy to be instituted. The system was not compliant with the Rules. Ian Mitchell and Christina Heywood reported that the cashroom staff told them that the Fourth Respondent knew of the scheme and also gave instructions for its continued operation. The whistleblowing member of staff reported to Christina Heywood that two of the partners had "taken control" of the cashroom and she was unaware how much the other two partners knew. It was clear from the evidence of Christina Heywood, Janice Parr, the Second Respondent and the Third Respondent that the Fourth Respondent was one of the two partners controlling the cashroom and the finances of the firm. Christina Heywood noted in her report (Page 15 of Production 4 of the Second Inventory of Productions for the Complainer) that during her meeting with the First and Fourth Respondents,

*"It was discussed that Mr Miller and Mr Price deal with the financial side of the firm and the other two partners leave this to them. They stated that they hold complete control of the cashroom."*

The Third Respondent gave evidence that the Fourth Respondent was the joint managing partner with the First Respondent and together they were "micro-managing" the firm. The cashroom staff told Ian Mitchell that the First and Fourth Respondents were the partners who provided specific instructions regarding accounting matters and they were fully aware of the cheques in the drawer issue and the credit note issues. Reina Gardiner's affidavit notes that she would have expected the Fourth Respondent, as a member of the management committee to have been aware of "the drawer". It was significant that Christina Heywood gave evidence that the cashroom staff reported to her that,

*"Mr Price has asked them to say that he is not involved with the problem issues, and if his name is mentioned he has said he will blame the cashroom for everything."*

The Tribunal noted the evidence given by Christina Heywood regarding the taking of unauthorised and excessive fees. Specific examples were highlighted to the Tribunal. Some of these were for very large amounts and were often taken a significant period after the work on the file had been completed. It was noted that the effect of taking those fees was to improve the appearance of the firm's cashflow and finances and to conceal the true level of the firm's liabilities and overdraft. The Tribunal was satisfied that the fees were taken dishonestly and without the knowledge of the clients concerned and that the Fourth Respondent was sufficiently involved with the firm's financial practices to have had an awareness of them even if they were not directly instructed by him.

The second averment of professional misconduct is contained within paragraph 4.4(b) of the Complaint and contains an allegation that the Fourth Respondent submitted false and inaccurate accounts certificates to the Complainers thereby concealing from them the true financial position of the firm. The purpose of the system of certificates is to have two partners accepting responsibility for stating to the Law Society that the accounts of the firm are in order. Christina Heywood spoke to the three accounts certificates countersigned by the Fourth Respondent. According to the information he gave Christina Heywood, the Fourth Respondent was looking for investors for the firm and liaising with the banks. The Fourth Respondent was joint managing partner of the firm and must have been aware of the financial situation of the firm. The Fourth Respondent signed the last accounts certificate on 23 November 2011. "The drawer" had operated for many years prior to this date and the Fourth Respondent must have known that the false entries made in pursuance of that policy meant that the records could not be relied upon when submitting the accounts certificates.

The third averment of professional misconduct is contained within paragraph 4.4(c) of the Complaint and contains an allegation that the Fourth Respondent acted dishonestly in reporting matters to the inspection team of the Financial Compliance Department in breach of Rule B6.12. Rule B6.12 provides that a regulated person shall not act, or omit to act, in a manner which is dishonest, reckless or intentionally misleading in respect of the writing up of accounting records, balancing books or the financial affairs of his practice. The Tribunal considered that the Fourth Respondent's assurances to Christina Heywood on 27 March 2012 that all cheques had in fact left the building and were physically in the hands of the payees to allow them to be encashed was dishonest. Christina Heywood noted in her report at Production 4 of the Second Inventory of Productions at page 14 that

*"Mr Price confirmed that the outstanding cheques were not an issue and that the sums due by SLAB were at least three times more than the firm owed in outlays."*

His assurances to the team that the firm had a surplus were dishonest.

Conclusion

The essential qualities of a solicitor are honesty, truthfulness and integrity. It is imperative if the public is to have confidence in the legal profession that solicitors comply with the Accounts and Professional Practice Rules. In holding funds for clients, a solicitor is in a privileged position of trust. The Accounts Rules are in place in order to provide protection to the public. It is well accepted that the Tribunal will treat breaches of the Accounts Rules as a serious matter. The test to be satisfied in terms of Sharp v The Council of the Law Society of Scotland 1984 SC 129 is that the conduct proved

represents a departure from the standards to be expected of a competent and reputable solicitor that would be regarded as serious and reprehensible.

It would be easy to lay greater blame on the First and Fourth Respondents due to their positions as managing partners and the First Respondent as cashroom manager. They were guilty of the operation of the system. Theirs was a continuing course of deceitful conduct in relation to the firm's cashroom operating practices. However, the Second and Third Respondents were also aware of the system and knew of the benefit to the firm and ought to have known of the breaches of the Accounts Rules. The Third Respondent was a junior partner and might have had more limited opportunity to influence or supervise the accounting systems or administration of the firm. However, he and the Second Respondent had actual knowledge of "the drawer" and took insufficient steps to attempt to ensure the firm's compliance with the Rules. The Tribunal could not ignore that all Respondents obtained a benefit through the wrongful use of the client funds which are meant to be sacrosanct. To their knowledge, third parties were denied either timeous payment or payment at all for services the firm had requested. A long established firm was dissolved with a significant shortfall. Had any of the Respondents brought their wrongful conduct to the attention of the Law Society earlier perhaps the shortfall would not have risen to such an extent.

**MITIGATION**

The First Respondent submitted an email at 0020 hours on 8 May 2017 containing a written plea in mitigation. He asked the Tribunal to take into account the fact that he was the youngest and newest partner in the firm. He said he received no formal training before becoming the designated cashroom partner. He became the designated cashroom partner out of necessity rather than choice. He inherited the cash room procedures, systems and staff. All financial information was produced by an automated computer system. He had never been a legal aid solicitor. He was reliant on more experienced partners and staff for direction regarding legal aid matters. There were significant, exceptional matters requiring his attention and the vast majority of his time was spent dealing with the Firm's bank, accountants, lawyers and HMRC, not to mention the unusual exits of Mr Susskind, Mr Fyfe, Mr Diamond, Mr Freeman and Mr Devaney. He noted that the firm's former accountant and solicitor both remained supportive of him and his version of events. He had suffered as a result of the investigation and proceedings against him. His health, finances and reputation were all significantly impaired. His family had also suffered. He claimed he did not personally benefit from the matters complained of. He did not intentionally contravene the Law Society's regulations. He claimed he was not dishonest in

reporting matters to the Law Society and this was accepted by the Law Society's complaints investigator.

Mr Hennessy submitted a number of references on the Second Respondent's behalf. He noted that these came from a former colleague, fellow solicitors, business and personal contacts. He suggested that this range of references demonstrated that the Second Respondent was trusted and respected by many people after a lifetime as a solicitor. The Second Respondent will be 65 in August. He is married, with three grown up children and six grandchildren. He had originally worked as a Sheriff Clerk and had sat the Law Society exams to become a solicitor. His whole legal career was spent with Ross Harper. Mr Hennessy said that he did not intend to comment on the Second Respondent's evidence. The Tribunal had formed a view and he did not think it would be helpful to comment. However, he asked the Tribunal to accept that the Second Respondent had trusted others and that his explanation had been genuine and honest. The Second Respondent had not come to the attention of the Law Society before this matter. After the Judicial Factor was appointed the Second Respondent was suspended in April 2012. He has therefore been suspended for five years. He was sequestrated in February 2013 in respect of the debts of the firm. He obtained employment with MacDonald Hotels. He still works there assisting the legal team. He has no immediate desire to return to work as a solicitor but would like to have that option open to him if he chose to do so. He never wanted to manage a law firm but would like to work as a solicitor again.

The Third Respondent noted that he had lodged lengthy written submissions which contained a plea in mitigation and so he did not intend to make any oral submissions.

Mr Mullan said that the Fourth Respondent had noted the decision but did not agree with it. He maintained his position that there was no reasonable foundation upon which to convict. He did not accept that he was operating the system. He trusted others. He did not sign any cheques. He made representations to the Law Society on trust. Mr Mullan said his client is not in employment and does not have any income. In response to a question from the Chair Mr Mullan indicated that his client was not sequestrated following the collapse of Ross Harper.

**SANCTION**

The Tribunal considered carefully what the parties said in mitigation and the range of sanctions available to it. The Tribunal considered the actions of the First and Fourth Respondent together. Although the First Respondent was cashroom manager, they were both joint managing partners of the

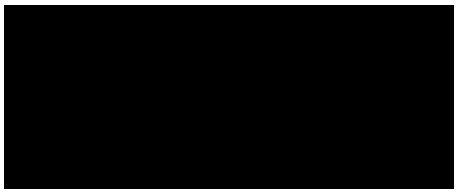
firm and there was evidence that they had controlled the cashroom and finances together. The Tribunal was of the view that strike off was the appropriate sanction for both Respondents. These individuals had been involved in dishonesty. They did not show any remorse or insight into their conduct. Their behaviour constituted an ongoing course of conduct over a significant period of time. This conduct was a danger to the public and was likely to seriously damage the reputation of the legal profession. They were not fit people to be solicitors. Any lesser sanction would not adequately protect the public or maintain the reputation of the profession. In terms of Section 53(6) of the Solicitors (Scotland) Act 1980 the Tribunal directed that the order for strike off shall take effect on the date on which the written findings are intimated to the Respondents.

The Tribunal considered the Second and Third Respondents together. They had been found guilty of a lesser charge of professional misconduct. Although the Third Respondent was salaried, they both had the same obligations as partners. The Third Respondent knew of the drawer for a slightly longer period than the Second Respondent but they both failed to do enough following it being brought to their attention in March 2011. The Tribunal was of the view that a censure was appropriate for both the Second and Third Respondents. The offence occurred over five years ago. The Second Respondent has already been suspended for five years. The Third Respondent was suspended for a period and then worked under a restriction. The Tribunal did not think that a further restriction imposed by the Tribunal in either case would serve a material purpose. The nature of their professional misconduct was the failure of management, not duties to clients. They were not active participants in the scheme. They have already suffered significantly financially in consequence of their actions.

The Tribunal heard submissions on publicity and expenses. It found the Respondents jointly and severally liable in the expenses of the Complainers and of the Tribunal restricted in the case of the Second Respondent to 20% and in the case of the Third Respondent to 10%. The Tribunal directed that named publicity be given to this decision, declaring that such publicity shall not contain the name of the clients or otherwise identify them. Publication of their names and the reasons why they had consulted the firm of Ross Harper were likely to damage their interests and accordingly the Tribunal refrained from publishing their names in accordance with paragraphs 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980.

The Tribunal having made findings of professional misconduct in respect of matters complained of by Thomas Aulds, Peter Thornton, Ian Stephen, The PRG Partnership, Ewa Daly and David Bartolo appointed them if so advised to lodge statements of claim with the Clerk to the Tribunal within 21 days

of the date of intimation of this decision. The Tribunal did not make findings of professional misconduct in respect of the matters complained of by Ifeyinwa Omwuazor and Colin Howard and therefore they are not entitled to lodge statements of claim with the Clerk to the Tribunal in relation to this matter.



**Alistair Cockburn**

**Vice Chairman**