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

F I N D I N G S

in two Complaints

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, Atria One, 144 Morrison Street, Edinburgh

Complainers

against

THOMAS BARCLAY DUFF, Messrs Robert F Duff & Co. Limited, PO Box 2, 30 Main Street, Largs

Respondent

1. A Complaint dated 25 June 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Thomas Barclay Duff, Messrs Robert F Duff & Co. Limited, PO Box 2, 30 Main Street, Largs (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was no Secondary Complainer.

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.

4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 24 October 2018 and notice thereof was duly served upon the Respondent.

5. By letter dated 17 August 2018, the Complainers lodged with the Tribunal Office a Joint Minute signed by both parties agreeing the averments of fact and professional misconduct.

6. The Tribunal received a second Complaint, dated 28 September 2018, averring that the Respondent was a practitioner who may have been guilty of professional misconduct in

respect of further matters. There was no Secondary Complainer. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent.

7. By email dated 17 October 2018, the Complainers made a motion to adjourn the hearing previously fixed for 24 October 2018, to allow the opportunity for both Complaints to call together. The Respondent having no objection to that motion, the Tribunal adjourned the hearing administratively in terms of Rules 44 and 56 of the 2008 Rules to 7 December 2018 at 10am.

8. No Answers having been lodged in relation to the Complaint dated 28 September 2018, Notices of hearing were duly served upon the Respondent in relation to both Complaints for the hearing on 7 December 2018.

9. By letter dated 5 November 2018, the Complainers lodged with the Tribunal Office a Joint Minute signed by both parties agreeing the averments of fact and misconduct in relation to Complaint dated 28 September 2018.

10. At the hearing on 7 December 2018, the Complainers were represented by their Fiscal, Paul Reid, Solicitor-Advocate, Glasgow. The Respondent was present and represented himself. On the Fiscal's motion, not opposed by the Respondent, both Complaints were conjoined in terms of Rule 17 of the 2008 Rules. Given the extent of agreement between the parties, no evidence required to be led. The Tribunal heard submissions from both parties.

11. The Tribunal found the following facts established:-

11.1 The Respondent was born 16th October 1953. The Respondent was admitted to the profession and enrolled in the Register of Solicitors practising in Scotland on 25th August 1977. From 1st November 1978 through to date the Respondent has remained as a partner of the firm Robert F Duff & Co Limited.

11.2 Acting in terms of their statutory obligations the Complainers carried out an inspection of the financial records and books maintained by the Respondent at his office on or about the end of August 2015. This inspection disclosed to the Complainers a number of matters of concern. In particular it was revealed to them:-

(a) Two Executry Files were identified where there was no evidence of work having been carried out which would have justified a professional fee having been taken by the Respondent. In one file marked WALK05/1, monies which had been received by the Respondent in January 2003 and October 2013, which should have been paid to beneficiaries, had been taken to fees by the Respondent on 29th May 2015 without any justification or work carried out meriting the payment of a fee. In another file marked SHEP01/2, final payments had been made by the Respondent to beneficiaries in February 2014. After that date the Respondent received the sum of £200 by way of repayment of an overpayment from a care home. This amount was taken to fees by the Respondent on 26th May 2015, again without any justification. A review of both files revealed that the fee notes were never rendered to the clients. In acting in this fashion the Respondent was dishonest.

(b) Prior to the inspection being carried out the Respondent had completed and signed a Pre-Visit Questionnaire dated 9th August 2015. Within the Questionnaire the Respondent indicated that he was reviewing the residual credit balances held by the practice and that these would be cleared by him no later than 31st October 2015. He further advised that he would check these balances on a quarterly basis. He affirmed in the Questionnaire that he checked both large and small credit balances. The inspection revealed that the firm had many historic balances involving both general client monies and invested funds. On 2nd November 2015 the Respondent e-mailed the Complainers and attached a list of client balances as at 31st August 2015 asserting that most had been dealt with and "we are dealing with any outstanding as quickly as possible but the normal everyday business of the company must have priority". The Respondent sent a further e-mail to the Complainers on 18th November 2015. To this he attached Client Trial Balance Reports as at 31st October 2015 and 18th November 2015. The balance as at 31st October 2015 disclosed that the firm held around 150 historic balances and the balance as at 18th November disclosed that the firm still held around 143 historic balances. Very little further information was provided by the Respondent regarding balances despite repeated reminders intimated by the Complainers by way of e-mail on 25th January, 19th February and 21st March 2016. He eventually replied on 30th March 2016 advising

there was no possibility of being able to deal with the balances disclosed on a list dated 29th February 2016 by the 4th April. The Respondent did not provide information regarding the length of time that these balances had been held by the firm. This was contrary to the undertaking given by the Respondent when he had returned the Pre-Inspection Questionnaire on 9th August 2015.

(c) The inspection found no evidence of the Respondent having undertaken due diligence in terms of the Money Laundering Regulations. In particular no diligence was undertaken by the Respondent to establish client identity in respect of 4 separate files. The Respondent e-mailed the Complainers on 2nd November 2015. In this e-mail he acknowledged that his firm's anti-money laundering procedures were inadequate and that all relevant records and systems would not be implemented. Further he stated that he believed documentation for source of wealth was not required if the sums involved were consistent with the age or social status of the client. He claimed that the identification which the Inspector had not seen was in fact held on a central file. Despite this assertion no relevant documentation was provided. The Respondent conceded there had been no training of staff in money laundering procedures and no records were kept. There was no evidence of any due diligence being taken in respect of the source of funds and/or wealth regarding sums introduced into the practice unit in connection with 5 transactions. No documentation was produced. The Respondent appeared not to be aware of the requirement to carry out such checks.

(d) The Respondent was e-mailed on 31st August 2015 with a copy of the Inspection Report. He was invited to respond to the findings and recommendations by 15th September 2015. His initial response did not fully address the matters set out in the report. As a consequence only one of the 10 schedules could be closed. Further correspondence was required with the Respondent between November 2015 and April 2016, some 9 months after the inspection was carried out. Even at that late stage many of the concerns identified had not been resolved by the Respondent.

11.3 A Complaint was intimated to the Respondent on 13th October 2016 by way of legal post enclosing copies of the relevant papers and an information leaflet explaining the procedure which the Complainers followed. The Respondent was advised that he required to reply to the Complaint within 21 days. No reply was received. Statutory Notices were issued on 22nd November 2016. Again no reply was received. Subsequent aspects of the Statutory Notice were served on 16th December 2016. Again no reply was received. Despite this matter being recommended for prosecution, no correspondence had been received from the Respondent in respect of any of the matters referred to.

11.4 The Respondent was appointed as a co-executor in an estate where the deceased had died on 25th March 2011. The other co-executors were disappointed at the manner in which the Respondent went about his task as a consequence of which they instigated a complaint. In particular the co-executor was concerned at what he perceived to be inactivity and a failure on the part of the Respondent to reply or keep him fully informed. In particular he complained that the Respondent had failed to reply to an e-mail of 1st October 2015 which sought information from the Respondent of the circumstances surrounding the loss of files maintained by the Respondent which related to the administration of the estate. Although the e-mail demanded a reply, the Respondent failed to do so. This was a further example of inaction/inactivity on the part of the Respondent and another example of his failure to reply to enquiries made of him by his co-executors. In an e-mail to the Respondent dated 18th May 2015, the Respondent was asked a question regarding a cheque which had been sent to him. Reference was made to an earlier e-mail also sent to the Respondent to which a reply had not been received. The e-mail enquired of the Respondent as to what action had been taken by him in relation to the administration of the estate. No reply was received. A further e-mail was sent to the Respondent on 21st September 2015 enquiring as to what was going on. The e-mail complained that the solicitor had not communicated with the co-executors and had not replied to e-mails dated 24th March 2015 and 18th May 2015. The co-executor made enquiry of the Respondent as to whether he had implemented the sanctions imposed upon him by the SLCC in respect of another aspect of the complaint in particular to refund the sum of £3,699.39 to the estate. The e-mail enquired as to whether that had been dealt with and if so, on what date. No reply was received. Disappointed with the manner in which the Respondent addressed

issues, a complaint was intimated to the Scottish Legal Complaints Commission. They investigated matters and issued a determination on 10th April 2015 in which the Respondent was directed to complete the administration of the estate by 10th June 2015. The e-mail made enquiry as to whether that task had been completed. In reply the Respondent provided a letter dated 24th September 2015. That letter made reference to the e-mail of 21st September 2015 but not the e-mail dated 18th May 2015. It did not provide the co-executor with a print out of the ledger and copy bank statements as requested and did not address the question concerning the issue of a cheque, nor did it reply to the questions posed regarding the SLCC sanctions. The solicitor delayed in replying to the e-mail dated 18th May for a period in excess of four months. When he did reply it was only in response to a further e-mail, received from the co-executor. The reply was brief and did not address the detailed issues raised. This behavior was not an isolated incident on the part of the solicitor. It was a further example of the solicitor failing to properly reply to enquiries made of him by co-executors.

11.5 In a number of different respects the Respondent failed to properly or effectively communicate with his client, namely the co-executor involved in the estate. He failed to provide his client with information which was sought by the client. He failed to reply effectively or timeously to enquiries made of him. He failed to advise his client as to any development in relation to the administration of the estate. He failed to advise his client whether he had complied with a determination of the SLCC.

12. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct:

(a) *Singly* in respect of his breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011; and

(b) *In cumulo* in respect of his contraventions of Rules B6.51, B6.11, B6.23, B6.18.7, B1.9.1, B1.9.2 and B1.10 of the Law Society of Scotland Practice Rules 2011 and his failure to reply timeously, openly and accurately to the enquiries made of him by the Complainers.

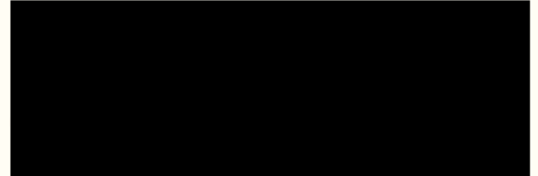
13. Having heard further submissions from the parties, the Tribunal pronounced an Interlocutor in the following terms:-

> Edinburgh 7 December 2018. The Tribunal having considered the Complaints dated 25 June 2018 and 28 September 2018 at the instance of the Council of the Law Society of Scotland against Thomas Barclay Duff, Messrs Robert F Duff & Co. Limited, PO Box 2, 30 Main Street, Largs; Find the Respondent guilty of professional misconduct *singly* in relation to his contravention of Rule B1.2 of the Law Society of Scotland Practice Rules 2011 and *in cumulo* in respect of his contravention of Rules B6.51, B6.11, B6.23, B6.18.7, B1.9.1, B1.9.2 and B1.10 of the Law Society of Scotland Practice Rules 2011 and his failure to reply timeously, openly and accurately to the enquiries made of him by the Complainers; Censure the Respondent; Fine him in the sum of £2,000 to be forfeit to Her Majesty; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to and to being supervised by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least five years; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)
Alan McDonald
Vice Chairman

14. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 10 JANUARY 2019.

IN THE NAME OF THE TRIBUNAL



Alan McDonald

Vice Chairman

NOTE

At the hearing on 7 December 2018, the Tribunal had before it two Complaints together with two Joint Minutes agreeing all of the averments of fact and professional misconduct.

The Fiscal made a motion for both Complaints to be conjoined in terms of Rule 17 of the 2008 Rules. The Respondent confirmed he had no objection to that motion and so it was granted by the Tribunal. Given the degree of agreement between the two parties, no evidence required to be led and the Tribunal proceeded to hear submissions from both parties.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid submitted that it was to the credit of the Respondent that he had agreed to sign Joint Minutes in respect of both Complaints.

He indicated that he would begin with addressing the Complaint dated 22 June 2018. Mr Reid confirmed that the Respondent was 65 years old, admitted in August 1977 and had been in practice for some 41 years. The Respondent had no previous findings before the Tribunal and no pending cases. The matters within the Complaint arose as a result of an inspection of the Respondent's firm which had taken place in August 2015.

In the course of this inspection, two executry files had been considered. It was noted that money that had been received by the firm, which it should have paid on to beneficiaries, was taken by the firm in settlement of fees. It appeared that two fee notes had been contrived and placed on the file. No work had been done to justify the fees and the fee notes were not sent out to any party externally.

The inspectors had also noted that there were a large number of historic credit balances. The Respondent had given the inspectors an assurance that these would be cleared. By November 2015, it appeared that only seven of these credit balances out of 150 had in fact been dealt with. The Law Society had made repeated contact with the Respondent. The response was that he was unable to deal with these credit balances within the time scale previously indicated. This was contrary to the original undertaking given by him.

The inspection had also identified an absence of compliance with the Money Laundering Regulations. In particular, the inspection had identified four files where no effort at all had been made to establish the

identification of clients or the source of wealth. A claimed central file for identification was not produced. The Respondent accepted that there was no staff training in relation to money laundering issues. No records were kept. It appeared that the Respondent was ignorant of such requirements.

The Respondent had presented accounts certificates to the Law Society signed by him indicating a compliance with the Money Laundering Regulations where in fact there had been little compliance.

The Respondent failed to address the issues raised by the inspectors. Months passed with the issues not being addressed. When the complaints process was commenced, the Respondent failed to reply to the Law Society.

Mr Reid invited the Tribunal to find the Respondent guilty of professional misconduct singly in respect of the following:-

(a) His taking of fees in a dishonest fashion, without rendering the fee notes externally and where the fee notes contained a contrived fee;
(b) The holding of a large number of historic credit balances which were not dealt with;
(c) His absence of compliance with the Money Laundering Regulations; and
(d) His failure to respond to the Law Society with its impact upon the reputation of the profession and of the Law Society itself.

Mr Reid then moved on to the second Complaint dated 28 September 2018.

This Complaint was instigated by a co-executor in an executry. There were concerns regarding delay on the part of the Respondent, inactivity and a failure to report to the co-executor with regard to executry matters. Repeated enquiries were not replied to by the Respondent.

There had been an earlier complaint upheld by the SLCC which resulted in the Respondent being ordered to complete the executry by June 2015 and to repay fees amounting to £3,699.39 to the estate. The co-executor made enquiry of the Respondent for confirmation that he had repaid the sum to the estate. The Respondent failed to reply.

In respect of this Complaint, Mr Reid invited the Tribunal to find the Respondent guilty *in cumulo* in relation to his failures to reply. These failures represented a breach of his duty to communicate

effectively with his client, to provide the necessary information to his client and was in breach of the Rules set out within the Complaint.

Mr Reid concluded by expressing his gratitude to the Respondent for his cooperation in relation to the prosecution before the Tribunal which resulted in saving time and expense.

In response to a question from the Tribunal, the Fiscal was unable to indicate the figure taken by the Respondent in relation to the fee taken on file WLK05/1. The Respondent confirmed that this was £140 and this was not disputed by the Fiscal.

In answer to a question from the Tribunal, the Fiscal indicated that the conduct here in relation to the taking of the fees was to be considered dishonest and not an oversight. The Respondent had created two contrived fee notes and taken sums to fees without rendering the fee notes. He submitted that this was a trusted profession and regardless of the inconvenience or difficulty faced by the Respondent in identifying the beneficiaries who should have received the money, the Respondent was not entitled to take the sums to fees.

SUBMISSIONS FOR THE RESPONDENT

The Respondent emphasised that he was pleading guilty to all of the averments within the Complaints. He suggested that there was little point in him trying to make any plea in mitigation.

The Respondent accepted that it was him who had dealt with the taking of fees from the two executries. He explained that in one case the sum received required to be split between six or seven beneficiaries. He submitted that the cost of identifying and writing to these beneficiaries and would have used up the sum involved. Following the inspection, the fees were reversed and the sums were sent out to the beneficiaries.

With regard to the breach of Money Laundering Regulations, he confirmed that the firm had a central file for identification documents. He submitted that there were some dubiety regarding whether or not documents relating to ID required to be kept on individual files or whether they could be kept in a central file. He had no recollection of anyone asking to see the central file.

He explained that his firm was a very small practice and that the solicitors knew most of the clients. He accepted that as a result, the firm was lax in following Money Laundering Regulations. Since this

inspection, the firm had adopted a new money laundering system which had been approved by the Law Society. His firm had been checked in a subsequent audit and the Law Society had expressed satisfaction with the procedures followed.

All client balances were now being dealt with appropriately. He explained that in relation to the list of credit balances identified by the inspection on the Complaint, it had taken a remarkable amount of time to deal with the balances. In each case, he had tried to find the client. The time involved had affected his proper work. It was simply not possible to deal with the credit balances in the time expected. He had not realised that the balances would take so long to resolve.

He accepted that he had not followed the Rules.

Originally it had been his intention to continue to work until he was 70. However, because of the bureaucracy involved in running a firm, he had decided to retire in April 2019 and had already issued notice to his partner of that decision. There are only two partners in the firm and his partner will require to identify someone to replace the Respondent. The Respondent expressed regret that the end of his 41-year long career ended up in a rather embarrassing situation. He explained that he did not believe that it was worth it anymore. He used to enjoy his work but now found the management side of practice too much.

With regard to the Money Laundering Regulations, the Respondent explained that the firm were attempting to observe the Regulations but were not meeting the standard required. He confirmed however that for the past three years the firm had been dealing with matters appropriately.

In response to a question from the Tribunal, the Respondent confirmed that the refund ordered by the SLCC had been paid by the firm. He also confirmed that the estate was finally dispersed in April 2018.

In response to a question from the Tribunal, the Respondent confirmed that repayment of the two fee notes which should not have been submitted was not made until after the audit. The fee notes had been reversed and the funds then paid out to the beneficiaries. In explanation as to why the fees had been taken in the first place, the Respondent explained that someone else in the firm had suggested it to him as a way of resolving the problem and avoiding the “hassle” otherwise.

The Tribunal adjourned to commence deliberations. In the course of these deliberations, questions arose that the Tribunal required to answer and the case was recalled.

As a result, the Fiscal moved to delete averment 3.2(d) of the Complaint dated 25 June 2018.

The Respondent indicated that he had not understood there to be a problem with regard to the client balances until the Law Society inspection. He considered they were making a lot of fuss about nothing. He still could not understand their concern. The credit balances had been there for a while and no clients were asking for money. In many cases, when the credit balances were paid out, the clients were pleasantly surprised. He had no objection to the Fiscal's motion to amend the Complaint and the Tribunal granted same.

DECISION

Although the Respondent admitted professional misconduct, it remained a question for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. There it was said *"There are certain standards of conduct to be expected of competent and reputable solicitors and a departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct."*

There were a number of separate issues before the Tribunal, each of which required to be addressed.

The first of these was the averment of a breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011. That Rule, which restates the common law principle, states *"You must be trustworthy and act honestly at all times so that your personal integrity is beyond question. In particular, you must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful."*

The conduct of the Respondent which was averred and admitted to be in contravention of this Rule was the taking of two sums of money from client ledgers in settlement of two contrived fee notes in order to clear credit balances in connection with two executries where work was otherwise complete. No work had been done. The fee notes were not rendered externally from the firm. The Tribunal had regard to the test for dishonesty set out in the case of Ivey-v-Genting Casinos (UK) Limited [2017] UKSC 67.

The principles of honesty and integrity are fundamental to the profession. Members of the profession are in a very privileged position and members of the public must be able to trust that a solicitor will carry out his duties and obligations in an honest and trustworthy manner. The importance of this principle and

the seriousness of the breach of that principle has repeatedly been emphasised in a number of cases before this Tribunal. In these circumstances, the Tribunal had no hesitation in holding that the Respondent was guilty of professional misconduct in relation to this matter alone.

The remaining issues before the Tribunal were:

(a) A contravention of B6.5.1 which related to the taking of client money for fees in an unauthorised fashion;
(b) Rule B 6.11, the holding of historic credit balances;
(c) Rule B6.23, which related to the failure to comply with the provisions of the Money Laundering Regulations;
(d) Rule B6.18.7, the Respondent's failure to provide reasonable cooperation with the inspection/investigation procedure;
(e) The Respondent's failure to reply timeously, openly and accurately to the enquiries made of him by the Complainers;
(f) Rule B1.9.1 and B1.9.2, which related to the Respondent's failure to communicate effectively with his client and keep the client advised of developments in relation to their case; and
(g) Rule B1.10, which related to the Respondent's failure to carry out instructions adequately and completely within a reasonable time.

The Tribunal was satisfied that each of these contraventions had been established. However, given the explanations for how these contraventions had occurred, and the steps taken to rectify the issues, it was considered that *in cumulo* they amounted to a finding of professional misconduct.

The Complaint dated 25 June 2018 included an averment of a breach of Rule B6.12.1. The Tribunal could not identify any averment of fact which appeared to be in breach of this Rule and so it could not hold that there had been such a contravention.

DISPOSAL

The duty of honesty and integrity is a fundamental and underpinning obligation of the profession. It has been made quite clear by this Tribunal that proven dishonesty must be seen at the top end of the spectrum of gravity for misconduct. It has also been said on a number of occasions that a finding of dishonesty will lead to a striking off in all but the most exceptional circumstances. (Bolton-v-The Law Society [1993] EWCA Civ 32; SRA-v-Imran [2015] EWHC 2572 (Admin)).

In this case, the Respondent had admitted acting in a dishonest fashion on two separate occasions. The sums involved were £140 and £200. Both occasions occurred within a few days of each other. The conduct was not committed for the Respondent's own personal financial gain but rather seemed the exercise of very poor judgment in order to cut corners in dealing with two credit balances. The money had been repaid.

The Respondent had been a solicitor for some 41 years with no other disciplinary matters arising, other than those raised in the Complaints before the Tribunal.

The question for the Tribunal was whether the Respondent fell into the category of exceptional circumstances that meant that a strike off was not necessary. In this regard, the Tribunal required to consider (a) the impact of the conduct on the character of the Respondent himself and (b) the impact on the character of the profession as a whole and the public perception of such conduct.

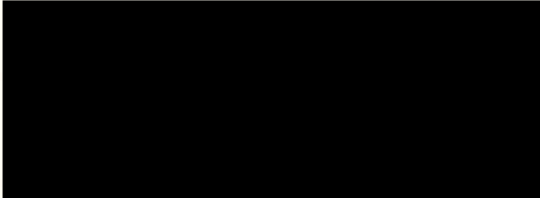
These were incidents involving relatively small sums of money, where there was no personal financial gain and the Respondent had no history in 41 years of practice of such conduct. The monies had been repaid. These were two isolated incidents over a short period of time.

The other issues raised within the two Complaints before the Tribunal all related to the Respondent's role as cashroom manager within the firm. With regard to these issues, they all appeared to have been resolved to the satisfaction of the Law Society, the Respondent's firm having been re-inspected. The Respondent showed some insight into the issues, having signed Joint Minutes at an early stage and having expressed an intention to retire in April 2019. The Tribunal was concerned, however, that the Respondent did not fully appreciate the full importance of the Money Laundering Regulations and the Accounts Rules. Whilst the Respondent had indicated an intention retire, the Tribunal had no way of enforcing that. If these issues had been the only matters before the Tribunal, then the Tribunal considered that the public would adequately be protected by the imposition of a restriction upon the Respondent's practising certificate preventing him from practising on his own account or without supervision and from taking a managerial role within any firm.

Clearly the issue that troubled the Tribunal was the finding of dishonesty. In all of the circumstances, however, the Tribunal concluded that this case fell into the category of exceptional circumstances where a strike off was not necessary. The factual circumstances underlying the dishonesty did not in the Tribunal's view lead to a conclusion that the Respondent was in general untrustworthy and therefore not

fit to be a solicitor. Rather these incidents appeared isolated exercises of poor judgment. Similarly, the Tribunal concluded that the public perception of the conduct would be similar to the Tribunal's and the consequences to the reputation of the profession should be seen in that light. Accordingly, the Tribunal determined that appropriate protection for the public could be provided by a Censure with a lengthy restriction on the Respondent's practising certificate as mentioned above. The Tribunal also concluded that it was essential for it to mark out the seriousness of the breach of Rule B1.2 both for the profession and for the public. Accordingly, the Tribunal concluded that a Fine of £2,000 was also appropriate.

The Fiscal moved for expenses. There was no objection and so the Tribunal awarded expenses to the Complainers. Additionally, the Tribunal directed that the decision should be given publicity which should include the name of the Respondent but need not identify any other person, the identities of such people being irrelevant to the import of the decision itself.



Alan McDonald
Vice Chairman