

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL  
(PROCEDURE RULES 2005 and 2008)**

**FINDINGS**

**in Complaints**

**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**

**JOHN GERARD O'DONNELL, formerly of 14  
Winton Drive, Glasgow and now residing at  
Flat 1/2, 322 Kelvindale Road, Glasgow**

**Respondent**

1. Six Complaints (Tribunal reference numbers DC/11/05 dated 31 January 2011; DC/11/26 dated 19 September 2011; DT/15/29 dated 30 September 2015; DT/16/07 dated 1 March 2015; DT/16/08 dated 1 March 2016; and DT/16/30 which is not dated but was received on 2 November 2016) were lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers"). Complaints DC/11/05 and DC/11/26 were lodged under the 2005 Rules and requested that John Gerard O'Donnell, formerly of 14 Winton Drive, Glasgow and now residing at Flat 1/2, 322 Kelvindale Road, Glasgow (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statements of facts which accompanied the Complaints. Complaints DT/15/29, DT16/07, DT/16/08 and DT/16/30 were lodged under the 2008 rules and averred that the Respondent was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer in Complaint DT/16/08.
3. In accordance with the Rules, the Tribunal caused a copy of the Complaints as lodged to be served upon the Respondent.

4. Complaint DC/11/05 called for a proof before answer on 16 May 2011. The Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow, on behalf of Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The case was adjourned on the Respondent's motion to 20 July 2011.
5. On 20 July 2011 the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was neither present nor represented. A further proof before answer was fixed for 28 October 2011.
6. On 28 October 2011, the Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow. In relation to Complaint DC/11/05, the Tribunal repelled two preliminary pleas submitted by the Respondent. Firstly, the Respondent argued that it was prejudicial to a fair hearing of his case that the Complaint disclosed that the Tribunal had previously made a finding of professional misconduct against him and placed a five year restriction on his practising certificate in respect of a separate matter. Secondly, the Respondent argued that the case was prejudiced because the legal members of the Tribunal were nominated by the Law Society which was also the body bringing the case against him. A proof before answer took place with regard to the Respondent's plea that the Law Society were personally barred against proceeding with the Complaint due to the allegation that the Complainers' Fiscal had made a declaration of relinquishment or discharge of the right to prosecute. The Tribunal repelled the plea regarding personal bar and ordered that a procedural hearing be fixed for 15 December 2011.
7. On 15 December 2011, Complaints DC/11/05 and DC/11/26 called for procedural hearings. The Complainers were represented by their fiscal Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. A further procedural hearing was fixed for 23 February 2012.
8. On 23 February 2012, Complaints DC/11/05 and DC/11/26 called for procedural hearings. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented himself. The cases were adjourned to 30 April 2012.

9. On 30 April 2012, Complaints DC/11/05 and DC/11/26 called for procedural hearings. The Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was neither present nor represented. The cases were adjourned to 10 September 2012.
10. On 20 July 2012, Complaints DC/11/05 and DC/11/26 called for procedural hearings. The Complainers' Fiscal Paul Reid, Solicitor Advocate, Glasgow represented both the Complainers and the Respondent. On the Complainers' motion, the Tribunal sisted the cases in view of information received regarding the Respondent's health.
11. On 3 August 2016 Complaints DT/15/29, DT/16/07 and DT/16/08 called for procedural hearings. The Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented himself. The Complainers' motions to recall the sists in Complaints DC/11/05 and DC/11/26 were granted. All procedural hearings were continued to 20 September 2016.
12. On 20 September 2016, Complaints DC/11/05, DC/11/26, DT/15/29, DT/16/07 and DT/16/08 called for procedural hearings. The Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented himself. The Respondent sought leave to lodge six preliminary motions. This was opposed by the Complainers but granted by the Tribunal. Five preliminary hearings were fixed for 20 December 2016.
13. At the preliminary hearing on 20 December 2016, the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented himself. After hearing submissions from both parties and considering the authorities referred to them, the Tribunal refused the motions by the Respondent to dismiss the Complaints DC/11/05, DC/11/26, DT/15/29, DT/16/07 and DT/16/08 on the basis of delay (Article 6 ECHR); the constitution of the Tribunal (Article 6 ECHR); freedom of association (Article 20 UDHR and Article 11 ECHR); equality of arms and lack of legal representation (Article 6 ECHR); mora, taciturnity and acquiescence; and res judicata. Of consent, the Tribunal granted the Fiscal's motion to conjoin the Complaints. The Tribunal ordered that a hearing of the conjoined Complaints be fixed for 15 February 2017.

14. On 15 February 2017 Complaints DC/11/05, DC/11/26, DT/15/29, DT/16/07 and DT/16/08 called for a hearing and Complaint DC/16/30 called for a procedural hearing. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was neither present nor represented. The Fiscal indicated that the Respondent had received advice from a solicitor and that the parties had an agreed position including pleas (under amendment) to put before the Tribunal in respect of all six complaints. The Fiscal produced faxed copies of a handwritten joint minute signed by the Fiscal and the solicitor for the Respondent.
15. The Tribunal found the following facts established:-

**Complaint DC/11/05**

- 15.1.1 The Respondent is a solicitor enrolled in the Registers of Scotland. He was born on 14.9.50. He was admitted on 25.3.77 and enrolled in the Register of Solicitors in Scotland on 15.4.77.
- 15.1.2 He formerly practised as a partner of the firm of O'Donnell Vaughan ("the former firm"). He became a partner in that business on 01.10.79 and ceased to be a partner on 31.10.02. He commenced practice on his own account as John G O'Donnell & Co on 1.11.02 ("the firm").
- 15.1.3 Effective as of 1 June 2009 Mr O'Donnell's practising certificate was restricted in terms of an Interlocutor of the Scottish Solicitors' Discipline Tribunal dated 17 February 2009. On 29 June 2009 Mr O'Donnell voluntarily relinquished his practising certificate to the Law Society of Scotland. On 25 January 2010 Mr O'Donnell's practising certificate was restricted for 5 years to run concurrently with the restriction of 1 June 2009 above. The Respondent is presently sequestered.

**15.2.0 Ms A-IPS**

- 15.2.1 Ms A lodged a service complaint in relation to the service provided by the Respondent in relation to the Executry of the late Ms B in terms of which executry Ms A was a beneficiary.

15.2.2 On 27 April 2010 the present complainers considered Ms A's complaint of inadequate professional service and determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 ("the Act") to uphold the complaints in respect of:

1. A delay in administering the estate in respect of which the Respondent was acting as executor, during the period from 18 October 2006 to August 2009 and
2. A failure to account properly to the residuary beneficiaries in respect of payments to account in the sum of £1,500 and £700.

15.2.3 Following on from paragraph 15.2.2 above the present complainers determined, in terms of Section 42A(2)(a)(i) of the Act that in the event that any fees were to be charged by the Respondent then they should be abated to nil and that in terms of Section 42A(3)(b) that the Respondent waive his right to recover any fees and outlays. In addition, the complainers determined in terms of Section 42A(2)(c) of the Act that Ms A should be entitled to appoint a firm of her choice to a) Appoint a replacement Executor and b) to deal with the winding up of the estate.

The complainers also determined that the new firm's fee should be submitted for Taxation and intimated to the Respondent for payment requiring payment to the new firm fee within 14 days of notification.

The complainers also determined in terms of Section 42A(2)(d) of the Act that the Respondent pay the total sum of £1,000 compensation to the estate of the late Ms B.

15.2.4 By letter dated 10 May 2010 the present complainers intimated the decision narrated in paragraphs 15.2.2 and 15.2.3 to the Respondent. No response was received. By Recorded Delivery letter of 31 May 2010 the present complainers served a Notice in terms of Section 42B of the Act on the Respondent. As at the date of this complaint, no response has been received nor has the Respondent complied with the finding of inadequate professional service set out above.

**15.3.0 Ms A – Law Society – failure to respond**

- 15.3.1 The Respondent acted as Executor in the estate of the late Ms B as set out in Section 15.2 above.
- 15.3.2 As part of the complainer's processes in handling Ms A's complaint, it requested access to and provision of the file and papers in relation to the said Executry. A request was initially made to Mr C who was assisting the Society to collate the Respondent's business files after he ceased to trade in or around July 2009. Mr C was unable to trace the file and papers.
- 15.3.3 Accordingly by letter dated 29 September 2009 a complaint in terms of Section 14.2 above was intimated to the Respondent. No response was received.
- 15.3.4 By letter 29 October 2009, the complainers sent a Section 15 Notice in terms of the Act to the Respondent. No response was received.
- 15.3.5 By letter of 29 October 2009 the complainers also served a Section 42 Notice in terms of the Act on the Respondent. Again no response was received.
- 15.3.6 By letter 30 September 2009 the complainers wrote to Mr C to see if he could be of any assistance. He remained unable to trace the file and papers.
- 15.3.7 By letter 16 December 2009 the complainers served a Notice under Section 15(2)(i) of the Act and intimated to the Respondent a complaint of a failure to respond. No response was received to that letter as at the date of this Complaint.

**15.4.0 Firm A – Bank 1 – failure to respond**

- 15.4.1 Firm A acted on behalf of Bank 1 in relation to the Property. Bank 1 had initially instructed the Respondent on or about 14 November 2003 to act on its behalf in the registration of a Standard Security over the property.

- 15.4.2 By letters of 18 June and 16 July both 2007 Firm A wrote to the Respondent in relation to the transaction outlined in 15.4.1 above and highlighted concerns about the lack of documentation having been unable to find any evidence of the Standard Security having been lodged for registration. No response was received to either of said letters.
- 15.4.3 On 18 July 2007 at least one telephone message was left by Firm A with the Respondent's colleague. No return call was received by Firm A from the Respondent.

#### **15.5.0 Firm A – Bank 1 – Mandate**

- 15.5.1 Firm A were instructed by Bank 1 as set out in paragraph 15.4.1 above. By letter of 1 August 2007 Firm A requested transfer of all papers held by the Respondent to Firm A's Glasgow Office forthwith. No response was received.
- 15.5.2 By further letter of 2 August 2007 Firm A enclosed a mandate from Bank 1. No response was received.
- 15.5.3 By letters of 14 August and 18 September both 2007 Firm A again requested a response from the Respondent. None was received.
- 15.5.4 On 23 November 2007 Ms D of Firm A telephoned the Respondent; spoke with him and was advised by the Respondent that the transaction had been dealt with and that he would send everything to Firm A. Nothing was received.
- 15.5.5 By letter 3 December 2007 Firm A again attempted to obtain a response from the Respondent highlighting the contents of the conversation referred to in the preceding paragraph and the lack of evidence of registration of the Standard Security. No response was received.
- 15.5.6 As at the date of this Complaint, the Respondent failed to implement the mandate and failed to give any substantive response to the requests to implement the mandate.

**15.6.0 Law Society – Firm A – Bank 1**

- 15.6.1 The factual background in relation to Firm A, Bank 1 and the Respondent is detailed in Sections 15.4 and 15.5 above.
- 15.6.2 By letter 8 May 2008 the present complainers intimated the complaints narrated in Sections 15.4 and 15.5 to the Respondent.
- 15.6.3 By letter 23 January 2008 the Respondent indicated he would respond in the course of the following week. No response was received.
- 15.6.4 By letter 31 January 2008 the complainers served Notices in terms of Section 15(2) and Section 42C of the Act both by Recorded Delivery on the Respondent. No response was received to either.
- 15.6.5 By letter 5 March 2008 a further Notice under Section 52(2) of the Act was sent by Recorded Delivery to the Respondent with no response.
- 15.6.6 By letter 10 March 2008 the Respondent indicated he would prepare a response. No such response was received.
- 15.6.7 By letter 26 March 2008 the Respondent indicated he was preparing a response and would be provided to the complainers by the Monday of the following week. No such response was received.
- 15.6.8 By letter 3 April 2008 the complainers reminded the Respondent of his lack of response.
- 15.6.9 By letter 31 July 2008 the Respondent indicated that a full response would be received by the end of August and a new regime would be put in place.
- 15.6.10 By letter 8 August 2008 the Respondent indicated he was making his file available to his solicitor and that his solicitor would be in touch.



15.6.11 As at the date of this Complaint no substantive response has been received.

**15.7.0 Ms E – IPS**

15.7.1 Ms E lodged a service complaint with the present complainers in relation to the service provided by the Respondent arising out of the Executry of the late Mr F.

15.7.2 On 23 March 2010 the present complainers considered Ms E's complaints and determined in terms of Section 42A(1) of the Act to uphold the complaint that the Respondent had provided an inadequate professional service in relation to the Executry of the late Mr F in respect of:

- (1) Failure or delay in responding to correspondence sent by Social Work Services, Glasgow City Council, in relation to the late Mr F's affairs;
- (2) Failure to keep Ms E and her family properly advised in relation to the late Mr F's affairs;
- (3) Failure to copy the correspondence received from Social Work Services, Glasgow City Council, after the Respondent had ceased to act for the Executry, to Ms E and her family; and
- (4) Failure to copy the correspondence received from Social Work Services, Glasgow City Council, once the Respondent had ceased to act for the Executry, to the solicitors who took over acting on the Executry's behalf.

15.7.3 Following on from paragraph 15.7.2 above the present complainers determined:

- (1) In terms of Section 42A(2)(a)(i) of the Act that the fees to which the Respondent was be entitled would be nil and in terms of Section 42A(3) of the Act that all fees and value added tax due in respect of the work carried out on behalf of the Executry of the late Mr F be waived;
- (2) In terms of Section 42A(2)(d) of the Act that the Respondent pay the sum of £600 compensation to the Executry of the late Mr F.

15.7.4 By letter of 1 April 2010 the present complainers intimated the decision narrated above in paragraphs 15.7.2 and 15.7.3 to the Respondent. No response was received. By Recorded Delivery letter of 23 April 2010 the present complainers served a Notice in terms of Section 42B of the Solicitors (Scotland) Act 1980 upon the Respondent. As at the date of the Complaint, no response was received from the Respondent. As at the date of this Complaint, the Respondent has not complied with the finding of inadequate professional services as set out above.

**15.8.0 Law Society – Ms E – failure to respond**

- 15.8.1 The factual background in relation to Ms E and the Respondent is detailed in Section 15.7.0 above.
- 15.8.2 As part of the complainers' processes in handling said complaint, it requested access to and provision of the file and papers in relation to the Executry of the late Mr F. The initial intimation was sent by letter 20 October 2009.
- 15.8.3 On 30 November 2009 the present complainers sent Section 15 and Section 42C Notices in terms of the Act to the Respondent by Recorded Delivery mail. No response was received.
- 15.8.4 On 21 December 2009 the present complainers served a Section 15(2) Notice in terms of the Act on the Respondent again by Recorded Delivery. No response was received.
- 15.8.5 As a result of the Respondent's failure to respond, the present complainers required to determine the complaint referred to in Section 15.7.0 above without access to the appropriate file and papers.
- 15.8.6 As at the date of this Complaint no response has been received by the Respondent to the correspondence narrated in this Section.

**15.9.0 Law Society – Firm B**

- 15.9.1 The Respondent acted on behalf of the seller of the property. Firm B acted on behalf of the purchaser of the property.
- 15.9.2 The purchase and sale transactions were due to settle in August 2008. By Letter of Obligation on 29 August 2008 the Respondent *inter alia* undertook to deliver to Firm B within seven days of the date of 29 August 2008 executed Discharges by Bank 2 and Firm C in connection with Inhibitions disclosed in the Form 12 Report referred to within the Letter of Obligation. Firm B sent reminders of 5 and 25 November 2008 and 7 January 2009 with no response.
- 15.9.3 As at the date of this Complaint the Respondent had not honoured the Letter of Obligation as detailed above.

**15.10.0 Firm B – Law Society – Failure to Respond**

- 15.10.1 The Respondent acted in the sale of the transaction referred to in Section 15.9 above.
- 15.10.2 As part of the Complainer's process in handling Firm B's complaint it requested access to and provision of the file and papers in relation to the transaction. By letter dated 20 May 2009 the present Complainers requested *inter alia* the business file. No response was received.
- 15.10.3 By letter of 17 June 2009 a reminder was sent to the Respondent. No response was received.
- 15.10.4 The present Complainers contacted Mr C who was assisting the Society to collate the Respondent's business files after he ceased trading around July 2009. Mr C did not hold the files and the Respondent indicated to Mr C that he was dealing with this matter.

- 15.10.5 On 6 July 2009 a Notice under Section 15(2)(i)(i) and Section 42(c) of the Act were served on the Respondent. No response was received. Both were sent by recorded delivery mail.
- 15.10.6 By recorded delivery letter of 4 August 2009 a further Notice under Section 15(2)(i)(i) of the Act was served on the Respondent. No response was received.
- 15.10.7 The complaint referred to in Section 15.9.0 above required to be determined in the absence of the Respondent's file and papers.

### **15.11.0 Mr G**

- 15.11.1 Mr G, a client of the Respondent, lodged a service complaint with the present Complainers in relation to the service provided by the Respondent arising out of the lease of commercial premises.
- 15.11.2 On 1 October 2009 the present Complainers considered Mr G's complaint of inadequate professional service and determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 to uphold the complaint that an inadequate professional service was provided by the Respondent in relation to:-
1. Failure/delay in transferring the lease of property 1 into the name of Mr G.
  2. Failure to provide Mr G with adequate advice in relation to the Stamp Duty requirements and liabilities in relation to the lease.
  3. Failure to ensure Stamp Duty on the lease was paid timeously.
  4. The Respondent making an appointment for Mr G to call at the solicitor's office at 11am on 20 October 2009 and then failing to attend the same or inform Mr G of his inability to attend.
  5. Failure/delay in returning and making calls to Mr G.
  6. Failure to make contact with Mr G following the meeting arranged on 20 October 2009 despite leaving a message with the staff that he would do so.
  7. Failure/delay in keeping Mr G advised as to the progress of the lease transaction.

- 15.11.3 Following on from paragraph 15.11.2 above on 1 October 2009 the present Complainers determined, in the absence of the Respondent's file and papers that:-
1. In terms of Section 42A(2)(a)(i) that the fees and VAT to which the Respondent shall be entitled should be restricted to nil.
  2. In terms of Section 42A(3) of the Solicitors (Scotland) 1980 Act that the Respondent repay to Mr G the said abated fees plus VAT.
  3. In terms of Section 42A(2)(d) of the Solicitors (Scotland) Act 1980 that compensation in the total sum of £1200 be paid by the Respondent to Mr G comprising compensation of £1000 and the penalty stamp duty land tax of £200.
- 15.11.4 By letter of 14 October 2009 the present Complainers intimated the decision narrated above in paragraphs 15.11.2 and 15.11.3 to the Respondent. By recorded delivery letter of 24 November 2009 the present Complainer served a Notice in terms of Section 42B of the Solicitors (Scotland) Act 1980 upon the Respondent. The Respondent failed to comply with any of the determinations detailed above. Section 53C orders were granted by the Scottish Solicitors Discipline Tribunal on 25 January 2010.
- 15.11.5 As part of the Complainer's processes in handling Mr G's complaint it requested access to and provision of the file and papers in relation to the transaction referred to in paragraph 15.11.1 to 15.11.3 above.
- 15.11.6 By letter of 20 April 2009 Mr G's complaint was intimated to the Respondent and he was requested to produce *inter alia* his file in relation to the matter. No response was received.
- 15.11.7 On 13 May 2009 Notices in terms of Section 15(2)(i)(i) and Section 42(c) of the Act were served on the Respondent by recorded delivery. No response was received to either Notice.

- 15.11.8 On 10 June 2009 a Notice was served on the Respondent under Section 15(2)(i)(i) of the Act along with a request for a response within fourteen days. No response was received.
- 15.11.9 By letter of 10 June 2009 a complaint was intimated to the Respondent in relation to a failure to respond. No response was received.
- 15.11.10 By letter of 10 July 2009 the Respondent was requested to respond to the issues in the complaint attached to the letter. No response was received.
- 15.11.11 A further letter of 24 July 2009 was sent to the Respondent. No response was received.
- 15.11.12 By letter of 17 August 2009 the Respondent was called upon to produce his file and respond within seven days of the date of that letter. The request was not complied with.
- 15.11.13 As at the date of this complaint, there was no substantive response from the Respondent.

#### **15.12.0 Mr H**

- 15.12.1 Mr H was selling the Property. The Respondent was purchasing it on behalf of a client. The property was a commercial property and in the normal course Mr H's solicitors provided the Respondent with the title deeds by letter of 14 December 2007. The transaction then fell through between the parties.
- 15.12.2 By letter 26 March 2008 Mr H's solicitors, Firm D, requested return of the title deeds which had been sent by letter of 14 December 2007. No response was received.
- 15.12.3 As at the date of this Complaint, the Respondent has failed to return the title deeds and has failed to respond to the above correspondence.

**15.13.0 Mr H – Law Society**

- 15.13.1 The factual background in relation to Mr H and the Respondent is detailed in Section 15.12 above.
- 15.13.2 As part of the Complainers' process in handling Mr H's complaint, it requested access to and provision of the file in relation to this transaction. By letter dated 26 March 2009 the present Complainers intimated Mr H's complaint and requested *inter alia* the business file. No response was received.
- 15.13.3 By letters 29 April 2009 Notices under Sections 15(2)(i)(i) and Section 42C of the Act were served on the Respondent. No response was received. Both were sent by Recorded delivery mail.
- 15.13.4 By letter 26 May 2009 the Complainers intimated a complaint in respect of the respondent's failure to respond and also sent Notices dated 25 May 2009 under Section 15(2)(i)(i) of the Act. No response was received.
- 15.13.5 Mr H's complaint was determined in the absence of the Respondent's file. As at the date of this complaint, the Respondent has not responded to correspondence from the Complainers.

**15.14.0 Ms I – Law Society – failure to respond**

- 15.14.1 Ms I instructed the Respondent in relation to an accident which occurred on 2 September 1995 whilst working in the course of her employment. The instructions related to claiming damages for injuries sustained in the accident. The relevant court action was raised on 25 August 1998 shortly prior to expiration of the triennium. The action was sisted until 2009 when agency transferred to Firm E.
- 15.14.2 Ms I complained to the Law Society in relation to the service provided by the Respondent.

- 15.14.3 As part of the Complainer's process in handling Ms I's complaint, it requested access to and provision of the file in relation to this matter. By letter dated 2 September 2009 the present Complainers intimated Ms I's complaint to the Respondent and requested *inter alia* the business file. No response was received.
- 15.14.4 By letters 15 October 2009 Notices under Sections 15(2)(i)(i) and Section 42C of the Act were served on the Respondent. Both were sent by Recorded Delivery mail and returned marked "not called for".
- 15.14.5 By letter 30 November 2009 the Complainers intimated a complaint in respect of the Respondent's failure to respond and also sent Notices dated 30 November 2009 under Section 15(2)(i)(i) of the Act. No response was received.
- 15.14.6 Ms I's complaint required to be determined in the absence of the Respondent's file and the lack of the file significantly hampered the present Complainers in considering and determining Ms I's complaint. As at the date of this complaint, the Respondent had not responded to the correspondence from the Complainers.

#### **15.15.0 Ms I – Law Society**

- 15.15.1 The factual background in relation to Ms I's and the Respondent is detailed in Section 15.14 above.
- 15.15.2 As part of the present Complainer's consideration of Ms I's complaint, a letter from the Respondent to Ms I dated 3 June 2009 was produced.
- 15.15.3 The letter of 3 June 2009 from the Respondent to Ms I was on letter-headed paper reading "John G O'Donnell & Co, Solicitors & Notaries" and designating the present Respondent as the only Partner.
- 15.15.4 As at 3 June 2009 the Respondent's Practising Certificate was limited to him acting as a qualified assistant to such employer as may be approved by the



present Complainers for a period of five years with effect from 1 June 2009 in terms of an Interlocutor of the Scottish Solicitors Discipline Tribunal dated 17 February 2009. No appeal was marked to that finding and Mr O'Donnell was present and in attendance at the Discipline Tribunal's determination of 17 February 2009 and thereafter would have received intimation of that Interlocutor formally from the Discipline Tribunal. Accordingly the letter of 3 June 2009 signed by the Respondent inaccurately and in breach of Section 31 of the Solicitors' (Scotland) Act 1980 held the Respondent out as a solicitor entitled to practice as a sole practitioner and so misled Ms L.

**15.16.0 Mr J and Ms K – Law Society – failure to respond**

- 15.16.1 Mr J and Ms K were clients of the Respondent in relation to the Executry of the late Ms L. They made a complaint to the present Complainers of inadequate professional service.
- 15.16.2 On 17 July 2008 the present Complainers considered Mr J and Ms K's complaint of inadequate professional service and determined, in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 to uphold the complaint that the Respondent had provided an inadequate professional service in respect that the Respondent:-
- (1) delayed in dealing with the administration of the executry.
  - (2) completed the sale of the executry house without having obtained confirmation.
  - (3) failed to obtain or produce the grant of confirmation for the Complainers as executors or to their new solicitors Firm F.
  - (4) Failed to keep the Complainers informed as to the reasons for confirmation not being obtained.
  - (5) delayed in responding to the repeated requests from the Complainers solicitors Firm F for accounting of their intromissions with the estate as well as the estate funds they were holding.
  - (6) failed to respond to Firm F's enquiries as to whether they had intimated the claim regarding the lost Will to their professional indemnity insurers.

- (7) failed to timeously lodge the Inheritance Tax form IHT 200 with HM Revenue & Customs and failure to settle the Inheritance Tax liability and
- (8) lost Ms L's Will.

15.16.3 Following on from paragraph 15.16.2 above the present Complainers determined:-

- (1) In terms of Section 42(2)(a)(i) that the fees relating to the executry which the Respondent is entitled should be reduced to nil.
- (2) In terms of Section 42(a)(3) of the said 1980 Act to repay to the estate of Ms L the said fees in order to comply with this determination.
- (3) In terms of Section 42A(2)(b) the Respondent should produce the share certificate and Building Society passbook held by him or alternatively be responsible for any costs incurred in obtaining duplicates of the same.
- (4) In terms of Section 42A(2)(c) to pay any penalty due to HM Customs & Excise in respect of the late submission of the IHT 200 and to pay the fees and outlays of the agents acting on behalf of Mr J and Ms K in respect of an action to prove the tenor of the Will with said fees and outlays to be taxed on a solicitor/client basis.
- (5) In terms of Section 42A(2)(d) that the Respondent pay to the estate of Ms L the sum of £4000 compensation.

15.16.4 By letter 10 January 2008 the present complainers provided details of the complaints of inadequate professional service as narrated in paragraphs 15.16.2 and 15.16.3 to the Respondent.

15.16.5 By letter 23 January 2008 the Respondent indicated he would respond in the course of the following week. No response was received.

15.16.6 As part of the complainers' process in handling the complaint referred to in the preceding paragraphs, it requested access to and provision of the file and papers in relation to the said Executry from the Respondent. By letter 21 February 2008 an initial request was made by the present complainers for *inter alia* his business file or files. No response was received.

- 15.16.7 By letter 17 March 2008 notices under Sections 15 and 42C of the Act were sent to the Respondent. No response was received.
- 15.16.8 By letter 20 March 2008 the Respondent indicated he anticipated an account of charge and discharge would be provided to the new solicitors the following week and he would then write more fully in relation to this complaint.
- 15.16.9 By letter 26 March 2008 the present complainers requested a substantive response from the Respondent to the list of issues and for production of the file.
- 15.16.10 By fax received 26 March 2008 (dated 25 March 2008) the Respondent enclosed a copy of the account of charge and discharge. No other information was provided by the Respondent.
- 15.16.11 By fax of 27 March (dated 26 March) 2008 the Respondent advised the present Complainers of action that he had taken in relation to the account of charge and discharge and that he had elected to charge no fee. No further information or documentation was provided as had been requested.
- 15.16.12 By letter 31 March 2008 the present Complainers requested a response to the list of issues and the file by 4 April 2008 highlighting that if a response was not provided a further issue regarding a failure to response would be raised. No response was received.
- 15.16.13 On 9 April 2008, a further Notice was served under Section 15(2)(i)(ii) of the Act and at the same time intimation of an additional complaint in respect of his failure to respond. No response was received.
- 15.16.14 At no stage did the Respondent provide his file to the present Complainers. The file was eventually obtained through Mr J and Ms K's new solicitors.

**15.17.0 Mr M – Law Society**

- 15.17.1 The present Complainers became aware, through a Senior member of Faculty, of a personal injury claim for Mr M who had instructed the Respondent to act on his behalf.
- 15.17.2 Mr M sustained an accident at work on 5 March 1990. He initially instructed Firm G to represent him in a personal injury claim arising from that accident but in December 1990 he instructed the firm of O'Donnell Vaughan to represent him and on 16 December 1991 the Respondent mandated the file and papers from Firm G.
- 15.17.3 The file and papers were sent to the Respondent at O'Donnell Vaughan on 20 January 1992.
- 15.17.4 The Respondent was the solicitor solely responsible for progressing Mr M's claim for the period between 1993 and November 2002.
- 15.17.5 The Respondent first met Mr M on 3 February 1992 to discuss his claim and to commence preparations. The Respondent carried out preparations in 1992 including instruction of a psychiatric report; a precognition from Mr M's mother; a work colleague; seeking a report from the meteorological office and instructing Counsel to consider the papers.
- 15.17.6 On 12 February 1993 the Respondent instructed Firm H to act as Edinburgh Agents for him to commence the Court of Session action due to the imminent time-bar. The action was commenced and served by Firm H on 1 March 1993.
- 15.17.7 A proof was set down for June 1994 and a consultation and preparation for that proof took place on 17 May 1994 which identified matters that required to be carried out in preparation for Proof. The Respondent confirmed in a letter of 18 May 1994 that he would undertake various tasks for the preparation of Mr M's case.

- 15.17.8 The proof was discharged apparently due to the unavailability of an expert witness, Professor N. Mr M was so advised.
- 15.17.9 A further consultation took place on 27 June 1994 where further work requiring to be carried out was identified including applying for Legal Aid for Mr M. The Respondent indicated he would complete the Legal Aid papers and provide them to Firm H. In turn on 20 July 1994 he wrote to Mr M suggesting that a Legal Aid application should be submitted. The Respondent advised Drummonds on 30 August 1994 that Mr M had completed legal aid papers. The Respondent's file discloses no evidence that that had occurred.
- 15.17.10 On 23 November 1994 Firm G wrote to the Respondent advising "this case seems to have been overlooked".
- 15.17.11 On 20 March 1995 Firm G again wrote to the Respondent indicating that the case was at a standstill and requesting a response. By letter 21 March 1995 the Respondent acknowledged Firm G's letter and the Respondent indicated that he had written to Mr M. There was no letter to Mr M within the Respondent's file at that time. The next letter to Mr M was dated 1 September 1995.
- 15.17.12 By letter 17 August 1995 Firm G again requested an update since nothing had happened since their letter of 21 March 1995. The response dated 18 October 1995 indicated the Respondent was having difficulty locating Mr M but he had arranged for him to attend the office and would report to Firm G.
- 15.17.13 By letter 19 November 1995 Firm G again sought an update.
- 15.17.14 By letter 18 October 1995 the Respondent advised Firm G that he regretted the delay and advised he had had "some difficulty locating Mr M".
- 15.17.15 A further follow-up letter was sent by Firm G on 9 November 1995 asking if it would be possible to get instructions from Mr M.

- 15.17.16 By letter of 8 January 1996 the Respondent wrote to Mr M indicating “I would hope that within the next 10 days I should be able to confirm to you how matters stand as far as the Court of Session action is concerned”.
- 15.17.17 On 15 February 1996 the Respondent met with Mr M, assessed his limited finances, Mr M receiving only £93 a fortnight, and indicated he would be in touch with Mr M “after he processed matters further”.
- 15.17.18 By letter 9 May 1996 the Respondent wrote to Firm G regretting the delay and indicating he had arranged to meet with Mr M and he would reply to Firm G’s recent letter.
- 15.17.19 On 13 May 1996 the Respondent wrote to Mr M on a separate matter but in that indicated he would write to him later that week in relation to the court action. There is no such letter on file.
- 15.17.20 By letter 22 May 1996 the Respondent wrote to Mr M requesting a meeting so that he “can review certain matters regarding the action in the Court of Session”. There is no entry on file to disclose a meeting.
- 15.17.21 By letter 17 June 1996 the Respondent requested Mr M attend the firm’s office. Again there is no entry on file relevant to any meeting.
- 15.17.22 Firm G again wrote to the Respondent by letters 20 June 1996 and 29 January 1997, the latter referring to the history of the litigation indicating that matters appeared not to have moved on since 19 July 1994 with no reason as to why the action could not be progressed. They sought input from the Respondent as to the position. No response is disclosed on the Respondent’s file to this letter.
- 15.17.23 By letter 11 March 1997 the Respondent wrote to Mr M requesting an appointment to discuss the Court of Session action.
- 15.17.24 By letter 27 June Firm G again wrote to the Respondent asking if anything could be done and again on 3 September 1997 indicating *inter alia* they would like to get matters going.

- 15.17.25 By letter 15 October 1997 the Respondent wrote to Firm G apologising for the continued delay but indicating that within the fortnight matters would be completed; to confirm how matters stood regarding Legal Aid and that Mr M “was not terribly co-operative”.
- 15.17.26 By letter 2 February 1998 the Respondent wrote to Mr M rescheduling a meeting to 5 February 1998.
- 15.17.27 By letter 3 April 1998 Firm G again sought an update.
- 15.17.28 By letter 20 May 1998 the Respondent again wrote to Mr M indicating that “having updated your medical evidence with the Edinburgh case” he would “hopefully have dates fixed for you to attend the hospital” and he would be in touch.
- 15.17.29 By letters 25 June 1998 the Respondent wrote to a Consultant Psychiatrist to instruct a report and advised Mr M of this.
- 15.17.30 By letter 1 October 1998 the Respondent wrote to Mr M’s mother indicating that he would write to Mr M to arrange to meet him. He did not do so until 14 October for a meeting on 21 October.
- 15.17.31 By letter 14 October 1998 the Respondent wrote to Firm G indicating he intended to meet Mr M to obtain Legal Aid and “get the case back on the rails”. This was in response to a letter from Firm G of 13 October 1998 advising they had not received a response to their letter of 3 April 1998. Firm G followed this up by a letters of 16 October 1998 and 7 January 1999 requesting “can you let me know what is happening if anything”.
- 15.17.32 On 22 January 1999 the Respondent again rescheduled a meeting with Mr M due to other commitments.
- 15.17.33 On 2 February 1999 the Respondent wrote to Mr M indicating that he had he had been in correspondence with Firm G concerning his claim and that he

expected to be able to arrange some form of a hearing or Proof within the next few months. No such correspondence is disclosed on file.

- 15.17.34 On 13 September 1999 the Respondent again wrote to Mr M requesting a meeting in relation to his case “presently pending in the Court of Session”. The file discloses no entry of such a meeting.
- 15.17.35 By letter 9 February 2000 the Respondent wrote to Mr M advising he hoped to be in a position later that month to advise concerning the Court of Session action. No further contact that month is disclosed on file.
- 15.17.36 On 27 March 2000 the Respondent wrote to Mr M indicating “I am in Edinburgh this Friday and will make enquiries regarding dates for your hearing”; that he hoped to hear from “the Authorities” to ascertain the date for a hearing and that “he would be in touch later that month”. No such contact is disclosed on file.
- 15.17.37 On 4 April 2000 the Respondent wrote to Mr M indicating that he had been in Edinburgh and had made enquiries of the court and that “it would appear there have been some difficulties regarding the availability of Judges however I understand I will hear from the Edinburgh Agents in the near future to confirm the dates”. There is no evidence on file of any such enquiries.
- 15.17.38 By letter 6 April 2000 Firm G wrote to the Respondent asking for an update.
- 15.17.39 Another letter was sent by the Respondent on 6 June 2000 to Mr M’s mother to the effect that he had been enquiring about dates and hoped to come back in the next month about a full hearing. No enquiries are disclosed on file.
- 15.17.40 By letter 25 July 2000 the Respondent wrote to Mr M’s mother confirming that he was waiting for the court to let him have “appropriate dates for Mr M”. The file does not disclose any contact with the court or Firm G.



- 15.17.41 By letter 12 October 2000 Firm G wrote to the Respondent referring to a letter 14 August 2000 requesting to hear from the Respondent. No response is recorded on file nor is a letter of 14 August 2000.
- 15.17.42 By letter 26 January 2001 the Respondent wrote to Mr M's mother to rearrange an appointment and that he would "be in touch with Edinburgh to see when we have got a date". The file does not disclose any meeting nor contact with Edinburgh.
- 15.17.43 By letter 16 May 2001 the Respondent wrote to a Consultant Psychiatrist expert indicating that it may be towards the end of the year that a Proof would be fixed and requesting a review. There was no indication at that time of any Proof date being fixed or in the process of being fixed.
- 15.17.44 By letter 23 May 2000 the Respondent wrote to Mr M's mother confirming he was going to Edinburgh and he would ascertain when the Proof would be in Mr M's case. There is no evidence on file of any such enquiries.
- 15.17.45 By letter 29 May 2001 Firm G wrote to the Respondent confirming that in October 1998 they had hoped to get Legal Aid and get the case back on the rails and requested an update. They also advised of a debit balance on their account.
- 15.17.46 By letter 6 September 2001 the Respondent wrote to Mr M's mother referring to a recent meeting with her and that he was "grateful to her for her understanding. It was awful news to receive". He indicated would be in touch later that month in relation to Mr M's case. There is no meeting note on file.
- 15.17.47 By letter 27 September 2001 the Respondent wrote to Mr M's mother confirming that he had been in touch with Edinburgh for an update on matters and that they would be incorporating the Consultant Psychiatrist's medical report into the court action and he would be back in touch. There is no correspondence on file to support the assertions made by the Respondent to Mr M's mother.

- 15.17.48 By letter 23 October 2001 the Respondent wrote to Mr M's mother indicating he hoped to update her very shortly on court dates. By letter 30 October 2001 the Respondent wrote to Mr M's mother confirming he had met with the Edinburgh agents and was hopeful that matters could move forward quickly and dates be fixed. In doing so the Respondent referred to the depletion of Judges in the Court of Session due to the Lockerbie Trial and that he hoped to come back by the end of the week to report. There is nothing on file to support a meeting with Edinburgh Agents or further contact with Mr M's mother that week.
- 15.17.49 By letter 20 November 2001 the Respondent again re-organised a meeting which he had had with Mr M's mother for 28 November and yet again from 28 to 30 November by letter of 27 November as he was returning from the United States.
- 15.17.50 By letter 28 January 2002 the Respondent wrote to Mr M enclosing a mandate to enable a further medical report to be obtained from his General Practitioner.
- 15.17.51 On 28 February 2002 Firm G wrote to the Respondent indicating that they had understood as at 9 July (presumably the previous year) the Respondent was waiting an updated medical report within a couple of weeks and then would deal with other matters. The letter records that nothing had been heard from the Respondent and asked if anything was to be done.
- 15.17.52 By letter 11 March 2002 the Respondent cancelled a meeting with Mr M due to having to travel to England on a family matter and that he would be in touch to set up a meeting. Nothing is disclosed on file to suggest that that was done.
- 15.17.53 By letter 18 March 2002 the Respondent wrote to Mr M's mother saying that he had written to Firm G to see whether a date was available. There is nothing disclosed on the file to show that he had done so.
- 15.17.54 By letter 17 April 2002 the Respondent wrote to Mr M's mother referring to a missed call; that he had just returned from Ireland; that his nephew had been involved in a car accident and also members of his staff; that he had written

“today to Firm G to ask for an update on Mr M’s case and “asked for dates” and that he would be in touch within the next 10 days. There is no evidence of any such correspondence with Firm G or the Court to that effect.

- 15.17.55 By letter 1 May 2002 the Respondent wrote to Mr M’s mother advising he had been in touch with Edinburgh; that he had paid Counsel’s fees for £2,400 and that he hoped this would enable matters to come to a conclusion, advising “I am doing everything I can to ensure that this is dealt with speedily”. There is no such correspondence to Firm G disclosed on file.
- 15.17.56 By letter 18 July 2002 Firm G wrote to the Respondent’s partner, Mr O advising him concerning the procedural history of the case. From that date on the file was dealt with by Mr O, the Respondent being off work unwell.
- 15.17.57 A consultation took place on 6 November 2002 and at that time Firm G confirmed that Counsel’s fees were being treated on a speculative basis and they could not understand a letter from the Respondent confirming he had paid £2,400 by way of Counsel’s fees. It was agreed Legal Aid would be applied for.
- 15.17.58 On 27 October 2004 Mr O met with Mr M and Mrs M’s sister with comment being made about the lack of progress over the years and that they used to attend the Respondent’s office sit for a long time in a waiting room only to be seen for a couple of minutes; to be told by the Respondent that everything was ok and that he would get matters settled or that there was a day fixed in court which had just been cancelled or in their words “basically every excuse in the books”.
- 15.17.59 From August 1994 until July 2002 no meaningful progress or significant active steps were taken by the Respondent to progress Mr M’s court case.
- 15.17.60 From August 1994 until 1 May 2002 the Respondent deliberately misled Mr M or his representative, his mother Mrs P, on numerous occasions in relation to the progress of his case and in particular that he was attending to the necessary work when he was not.

**15.18.0 Mr M – Law Society- Failure to respond**

- 15.18.1 The Respondent acted on behalf of Mr M as set out in section 15.17 above.
- 15.18.2 The complaint was raised *ex proprio motu* by the present complainers as a result of a referral by a senior member of the Faculty of Advocates in relation to the lack of progress by the Respondent in relation to Mr M's case. The complaint was intimated to the Respondent on 14 August 2007 as well as to his own personal solicitors. The Respondent's solicitors indicated that they were taking instructions. From that date until 16 January 2008 there was correspondence between the Respondent's solicitors and the present Complainers. This correspondence was essentially to deal with a legal issue rather than the merits of the complaint itself.
- 15.18.3 By letter 16 January 2008 the present Complainers wrote to the Respondent's solicitors requesting a full response within 21 days. That letter was acknowledged with confirmation that the Respondent had been provided with a copy of it. No response was received.
- 15.18.4 By letter of 21 February 2008 a Notice under Section 15 of the 1980 Act was served on the Respondent. By letter 28 March 2008 the Respondent indicated that he had difficulties of a health nature and requested the Society identify the client to which the letter referred. By letter 7 April 2008 the Complainers did so and this letter was copied to the Respondent's solicitors in April 2008. This letter was acknowledged by the Respondent's solicitors on 16 April 1988 with confirmation that a copy had been forwarded to the Respondent seeking instructions. No further response was received.
- 15.18.5 On 30 June 2008 the present Complainers served a Notice in terms of Section 42C on the Respondent. No response has been received.

**15.19.0 Law Society – Mr Q – Property 2**

- 15.19.1 Mr Q a client of the Respondent, lodged a service complaint with the present complainers in relation to the service provided by the Respondent arising out of the lease of commercial premises at Property 2. Mr Q owned said property and wished to lease them to a third party. The Respondent was instructed to enter into a 21 year lease in that regard.
- 15.19.2 On 21 September 2010, the present complainers considered Mr Q's complaint of inadequate professional service and determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 to uphold the complaint that an inadequate professional service was provided by the Respondent in relation to:-
1. Failure/delay in having the lease registered in the Books of Council and Session and;
  2. Failure to advise Mr Q that the Respondent's practice had ceased and that he should arrange alternative representation, the Respondent having written to Mr Q on 25 August 2009 when the firm has ceased to trade on 31 May 2009.
- 15.19.3 Following on from paragraph 21.2 above, on 21 September 2010, the present complainers determined that:-
1. In terms of Section 42 A (2) (a) (i) that the fees and VAT to which the Respondent shall be entitled should be restricted to nil and directed the Respondent's firm to refund or waive the right to charge fees.
  2. In terms of Section 42 A (2) (d) that compensation in the total sum of £1,500 be paid by the Respondent to Mr Q.
- 15.19.4 By letter 5 October 2010 the present complainers intimated the decision narrated above to the Respondent. By Recorded Delivery letter of 17 December 2010 the present complainers served a Notice in terms of Section 42B of the Act upon the Respondent. The Respondent failed to comply with any of the determinations as detailed above.

**15.20.0 Mr Q re Property 2**

- 15.20.1 The factual background in relation to Mr Q and the Respondent is detailed in Section 15.19 above. In or around 2007 Mr Q instructed the Respondent to prepare a lease for Property 2. The lease was to be for a period of 21 years.
- 15.20.2 Mr Q made contact with the Respondent on many occasions between the initial instruction in 2007 and until his complaint to the present complainers in November 2009 in relation to the finalisation of the lease. The tenants took occupation around August 2007. With effect from 1 June 2009 the Respondent was limited to acting as a qualified assistant to such employer as may be approved by the present complainer. Reference is made to paragraph 15.15.4 above.
- 15.20.3 By letter 25 August 2009, the Respondent wrote to Mr Q enclosing a copy of a land transaction return and indicating that he had “requested an extract of the lease and will forward this to you as a matter of urgency”. The letter was sent on letterhead of “John G O’Donnell & Co, Solicitors and Notaries”, designating the present Respondent as the only partner. It was designed to mislead and did so mislead Mr Q. The letter of 25 August 2009 by the Respondent inaccurately in breach of Section 31 of the Solicitors (Scotland) Act 1980 held the Respondent out as a solicitor entitled to practice as a sole practitioner and so misled Mr Q.
- 15.20.4 As at 25 February 2010, the lease had not been registered in the Books of Council and Session.

**15.21.0 The Law Society – Mr Q – failure to respond**

- 15.21.1 The factual background in relation to Mr Q and the Respondent is detailed in Sections 15.19 and 15.20 above.
- 15.21.2 As part of the complainer’s process in handling Mr Q’s complaint, it requested access to and provision of the file in relation to the transaction namely the lease of Property 2. By letter 4 March 2010, the present

complainers intimated Mr Q's complaint and requested *inter alia* the business file. No response was received. By letters 23 April 2010 Notices under Sections 15(2)(i)(i) and Section 42C of the Act were served on the Respondent by Recorded Delivery. No response was received.

- 15.21.3 By letter of 14 May 2010, the complainers intimated a complaint in respect of the Respondent's failure to respond and also sent a Notice of the same date under Section 15(2)(i)(i) of the Act. No response was received. Mr C who was assisting the present complainers to collate the Respondent's business files after he ceased to trade in or around July 2009 advised that he was having difficulty tracing this particular file. Mr Q's complaint was determined in the absence of the Respondent's file. As at the date of this complaint the Respondent had not responded to correspondence from the complainers.

#### **15.22.0 The Trustee in Sequestration of Mr S**

- 15.22.1 On 16 January 2007 The Trustee of Company 1 was appointed by the Sheriff at Glasgow as a Permanent Trustee ("the Trustee") on the sequestrated estates of Mr S. The Respondent contacted the Trustee in November 2006 to confirm that he acted for Mr S and that his client wished to seek recall of the sequestration. The Respondent asked the Trustee to provide details of the sum required to meet the creditors' claims and the costs of administration. The Trustee provided this information. There was ongoing correspondence between the Trustee and the Respondent until 21 June 2007.
- 15.22.2 By letter of 9 August 2007 the Trustee sought an update from the Respondent. No response was received from the Respondent.
- 15.22.3 By letter of 29 August 2007 the Trustee again sought an update from the Respondent. No response was received from the Respondent.
- 15.22.4 By letter of 25 September 2007 the Trustee again sought an update from the Respondent. No response was received from the Respondent.

15.22.5 By letter of 15 November 2007 the Trustee sought immediate progress and indicated if there was no such progress the matter would be reported to the present Complainers. No response was received from the Respondent.

15.22.6 In fact no response was ever been provided to the Trustee to any of the above correspondence narrated within paragraphs 15.22.2 to 15.22.5 above.

**15.23.0 Law Society of Scotland - Trustee in Sequestration of Mr S -failure to respond**

15.23.1 The Trustee lodged a complaint with the present Complainers in relation to the matters set out in Section 15.22 above.

15.23.2 By letter of 19 February 2008 the Complainers provided the Respondent with the initial complaint form and enclosures provided by the Trustee.

15.23.3 By letter of 6 March 2008 the Complainers provided an update to the Respondent.

15.23.4 By letter of 10 March 2008 the Respondent acknowledged receipt of the letters of 19 February and 6 March both 2008 and indicated that he anticipated being in a position to fully answer the complaint within a 7 day period. No such response was provided within said period.

15.23.5 By letter of 18 March 2008 the Complainers formally intimated the complaint with the list of issues to the Respondent.

15.23.6 By letter of 25 March 2008 the Respondent indicated that he had "drafted a reply"...and "will let you have a reply by the end of the week". No such reply was received within said timescale.

15.23.7 By letter of 26 March 2008 the Respondent indicated that he was arranging to meet with his clients to get a full response.



- 15.23.8 By letter of 27 March 2008 the Complainers sought a response to the list of issues intimated with their letter of 10 March 2008.
- 15.23.9 By letter of 14 April 2008 the Complainers advised the Respondent that no response to the list of issues had been received and issued Notices under Sections 15 and 42C of the Solicitors (Scotland) Act 1980 by recorded delivery mail on said date.
- 15.23.10 By letter of 29 April 2008 the Complainers again wrote to the Respondent indicating that no response has been received to the Notices referred to in the preceding paragraph and a further Notice in terms of Section 15 was sent by recorded delivery on said date.
- 15.23.11 As 28 August 2008, the final date of consideration of the Trustee's complaint set out in 14.22 above, no substantive response had been provided nor had the Respondent provided his file to the Complainers.

#### **15.24.0 The Trustee in Sequestration of Ms T**

- 15.24.1 On 26 February 2007 the Trustee of Company 1 was appointed by the Sheriff at Glasgow as the Permanent Trustee ("the Trustee") on the sequestrated estates of Ms T.
- 15.24.2 The Respondent acted on behalf of Ms T and was in correspondence with the Trustee between December 2006 and 6 August 2007 in relation to recall of sequestration.
- 15.24.3 By letter of 8 August 2007 the Trustee advised the Respondent that recall should be progressed immediately. No response was received to that letter from the Respondent.
- 15.24.4 By letter of 29 August 2007 the Trustee sought a further update. No response was received to that letter from the Respondent.

15.24.5 By letter of 16 November 2007 the Trustee sought an immediate response failing which the matter would be reported to the present Complainers. No response was received.

15.24.6 In fact no response has ever been provided to the Trustee to any of the above correspondence narrated within paragraphs 15.24.3 to 15.24.5 above.

**15.25.0 Law Society of Scotland - The Trustee of Ms T-failure to respond**

15.25.1 The Trustee as narrated in Section 15.24 above lodged a complaint with the present Complainers on or around 13 February 2008.

15.25.2 By letter of 18 March 2008 the Complainers intimated said complaint to the Respondent.

15.25.3 By letter of 26 March 2008 the Respondent indicated that he was arranging to meet with his client "this week and at that stage will give her a full response".

15.25.4 By letter of 27 March 2008 the Complainers sought a response to the issues as well as provision of the file. No response was received.

15.25.5 By recorded delivery letter of 11 April 2008 the Complainers intimated Notices in terms of Sections 15 and 42C of the Solicitors (Scotland) Act 1980. No response was received.

15.25.6 By letter of 29 April 2008 the Complainers intimated a further Notice under Section 15 of the Solicitors (Scotland) Act 1980 due to a lack of response as well as intimating a further complaint in relation to the failure of the Respondent to respond to the complaint by the Trustee and failure to provide the file. No response was received.

15.25.7 As 28 August 2008, the final date of consideration of the Trustee's complaint set out in 15.24 above, no substantive response had been provided nor had the Respondent provided his file to the Complainers. The complaint was

therefore determined in the absence of said file which as at the date of this Complaint is yet to be produced.

### Complaint DC/11/26

#### 15.26.0 Mrs U, Ms V

- 15.26.1 The Respondent acted on behalf of Mrs U and Ms V in relation to the lease of off-license commercial premises at property 3. He commenced acting on or around 28<sup>th</sup> March 2007 (“the lease”).
- 15.26.2 Firm I acted for the landlord of said premises.
- 15.26.3 The Lease was signed by Mrs U and Ms. V on or around 2<sup>nd</sup> April 2007.
- 15.26.4 The Lease transaction settled on 12<sup>th</sup> June 2007.
- 15.26.5 By letter of 12<sup>th</sup> June 2007 the Respondent undertook to provide Firm I with the SDLT 5 Form within 21 days of the date of that letter.
- 15.26.6 By letters 29<sup>th</sup> June, 20<sup>th</sup> July, 2<sup>nd</sup> August all 2007 requests were made for production of the SDLT Form by Firm I to the Respondent.
- 15.26.7 By letter 8<sup>th</sup> August 2007 the Respondent indicated that he would hope the certificate would be available by the end of the week.
- 15.26.8 By letters 18<sup>th</sup> September 2007 and 18<sup>th</sup> March 2009 Firm I again sought compliance with the undertaking. In a telephone call on 25<sup>th</sup> March 2009 the Respondent advised the solicitor at Firm I that he would deal with it that day and get the SDLT returned to them by Monday.
- 15.26.9 As at the date of this Complaint, the Respondent has failed to comply with the undertaking.

**15.27.0 Mrs U & Ms V – Law Society - failure to respond**

- 15.27.1 The Respondent acted on behalf of Mrs U and Ms. V as set out in Section 15.26 above.
- 15.27.2 As part of the complainer's process in handling this complaint, it requested access to and provision of the file and papers in relation to the said Commercial Lease transaction.
- 15.27.3 Accordingly, by letter dated 9<sup>th</sup> October 2009 a complaint in terms of Section 15.26 above was intimated to the respondents. No response was received.
- 15.27.4 By letter of 2 November 2009 the complainer sent a Section 15 Notice in terms of the Act to the Respondent. No response was received.
- 15.27.5 By letter of 2 November 2009, the complainer's also served a Section 42 Notice in terms of the Act on the Respondent. Again, no response was received.
- 15.27.6 On 2 November 2009 contact was made with Mr C who had agreed to see if he could be of any assistance in tracing the file. He was unable to do so.
- 15.27.7 By letters of 16 November 2007 further Section 15 and Section 42 Notices were served in terms of the Act on the Respondent as the Notices referred to in paragraphs 15.27.4 and 15.27.5 above had been returned marked "not called for".
- 15.27.8 By letter of 13 November 2009 a Notice under Section 15(2)(i) of the Act was sent to the Respondent.
- 15.27.9 By letter 21 May 2010 the complainers intimated the complaint of failure to respond to the Respondent. As at the date of this complaint no response has been received to that letter.

- 15.27.10 In light of the additional complaint sent by letter of 17 June 2010, a further Notice under Section 15(2)(i) of the Act was sent to the Respondent along with a Section 42(c) Notice. No response has been received to either.
- 15.27.11 By letter of 10 August 2010 a further Notice under Section 15(2)(i) was served by recorded delivery, said letter being returned marked “not called for”. The complaint was determined in the absence of the Respondent’s file.

### **Complaint DT/15/29**

#### **15.28.0 Property 4**

- 15.28.1 The Respondent was instructed by the lender Bank 3 to prepare, have executed and register a first ranking standard security in its favour over the subjects at Property 4. The offer of loan issued to the Respondent advised that the purchase price was to be £602,500.00. The Respondent certified this as the purchase price in a Certificate of Title sent by the Respondent to the lender on 7 September 2005. The actual purchase price of the property was £567,500.00. Copy missives and a copy disposition delivered to the Respondent clearly showed that the purchase price was £567,500.00. It is clear that the Respondent was aware prior to loan funds being ordered and drawn down that the actual purchase price was £567,500.00. The Respondent failed to advise the lender of the discrepancy that the stated purchase price was materially different from the price identified in the offer of loan and the price identified by the Respondent on the Certificate of Title. The Respondent did not advise the lender of the discrepancy in the purchase price nor did he seek the approval of the lender to intromit with loan funds on the basis of the actual purchase price. In this fashion the Respondent misrepresented the purchase price of the subjects to his client, namely the building society acting in a fashion which was in breach of his duty to act in the best interests of his client and acting contrary to his duties to the lender as provided for in terms of the CML Handbook.
- 15.28.2 In this conveyance Firm J were acting on behalf the client, Mr W. The Respondent was acting on behalf of the lender. The Respondent had Mr W execute a Standard Security. The Standard Security was delivered by the

Respondent to Firm J on either 12<sup>th</sup> October 2005 or 26<sup>th</sup> October 2005, the file of the Respondent is not clear. Firm J delivered the Standard Security and Disposition to the Land Register in or about 8<sup>th</sup> November 2005. The Keeper of the Land Register identified an issue with the Standard Security. The Standard Security was returned to Firm J requesting that an apparent error in the title number be rectified. The Standard Security was delivered to the Respondent for rectification. Thereafter the Respondent failed to address the matter timeously. A search of the Registers of Scotland reveal that the Disposition in favour of Mr W, the client, was submitted for registration by Firm J on 2<sup>nd</sup> December 2005 and was registered on 9<sup>th</sup> December 2005. No Standard Security in favour of the lender was submitted by either Firm J or the solicitor contemporaneously. The Standard Security in favour of the lender was eventually submitted for registration on 15<sup>th</sup> November 2006. This contained an error and was returned to the Respondent who failed to address the error. Eventually the Standard Security was returned to the Keeper at some point during 2009. During the period between the Standard Security initially being presented for registration and eventually being presented for registration by the Respondent, the borrower, Mr W granted some 5 further Standard Securities over different plots of the property thereby compromising the interest of the lender whom the Respondent represented. The Respondent was aware by at least January 2006 that Mr W had granted a second Standard Security over the property.

#### **15.29.0 Failure to Reply (Property 4)**

- 15.29.1 A complaint was intimated to the Society for their investigation. The Society sought a reply from the Respondent in respect of the nature and the extent of the complaint. No reply was received. Formal Notices in terms of section 15(i) and 15(ii) of the Solicitor (Scotland) Act 1980 were intimated to the Respondent on 27 August 2014 and 16 September 2014. They were intimated by recorded delivery to the correspondence address provided by the Respondent. Separately the Complainers intimated the said Notices by first class post. In addition they were intimated by email communication to the Respondent. The Respondent advised his preferred method of communication was by email. No reply was received from the Respondent.

**15.30.0 Mr X**

- 15.30.1 Mr X was a friend and client of the Respondent. In May 2008 the Respondent acted in the sale of a flat belonging to Mr X at Property 5. The flat was sold to a commercial entity, Company 2. The arrangement provided that Mr X was able to immediately rent the subjects back from that commercial entity. The Respondent held the proceeds of sale of the flat in his client account. From the sale proceeds of the flat he borrowed with the full knowledge and consent of the said Mr X the sum of £60,000.00 to assist in meeting his personal liabilities due to HMRC. The said Mr X deceased on 24 January 2010. He left a twin brother Mr Y and a sister Ms Z who resides in the United States of America. The said Mr X instructed the Respondent to prepare a personal bond by him in favour of twin brother Mr Y. Said personal bond was signed and left on the file. Said personal bond was never delivered to Mr Y.
- 15.30.2 In communication with the said Mr Y the Respondent held himself out to be the executor on the estate of the late Mr X. He made this assertion despite not having applied to the Court for his appointment nor having produced a Will of the late Mr X. Indeed the Respondent has made it clear he has never had sight of or been in receipt of a signed Will since before the date of the passing of Mr X. The Respondent relied upon the terms of a Will which he did not know existed.
- 15.30.3 In terms of an interlocutor issued by the Scottish Solicitors' Discipline Tribunal the Respondent ceased to hold a practicing certificate in June 2009. In correspondence and communication with Mr Y he not only claimed to be the executor in the estate of the late Mr X but also as his solicitor. Despite providing an assurance to Mr Y that matters would be resolved the Respondent has failed to properly account for funds that he is due to the estate namely the sum of £49,972.47 which he removed in order to meet his Revenue liability. The Respondent in acting in this fashion has been dishonest.
- 15.30.4 The Respondent has failed to account to the beneficiaries of the estate of the late Mr Y. The estate would appear to have comprised the net free proceeds

of sale of a heritable property belonging to the deceased and the proceeds of an insurance policy. The records maintained by the Respondent were in considerable disarray. The heritable property was sold in May 2008 for a sum of £191,300. A payment was made to settle an outstanding mortgage of £110,129.50. Modest payments were made apparently to Mr Y and thereafter the sum of £70,238.28 was lodged in a separate account. From this account the Respondent removed the sum of £60,000 on 26<sup>th</sup> June 2008. Thereafter the ledger identifies a number of credit entries some of which are marked "paid by cash". These total £10,027.53. This should leave a repayment balance of £49,972.47. The ledger maintained by the Respondent was inaccurate, confusing and contained numerous duplicate entries. It failed to properly reveal the manner in which the sale proceeds of the heritable property and the proceeds of a life insurance policy with Company 3 had been distributed. Having examined the ledger and the receipts, vouching and files maintained by the Respondent, the Complainers believe there is a sum of £49,972.47 which is unaccounted for.

#### **15.31.0 Failure to Reply (Mr X)**

15.31.1 The Respondent failed to respond to correspondence intimated to him by the Complainers including a letter dated 10 September 2010 and a statutory notice dated 14 October 2010. The statutory notice was intimated to the home address of the Respondent by recorded delivery on 14 October 2010 and an email address he had intimated on 30 November 2010. The supplementary aspect of the notice was intimated to him on 17 December 2010. This was followed by a chaser letter of 21 February 2011. No substantive response was received by the Respondent until 28 April 2014.

#### **Complaint DT/16/07**

#### **15.32.0 Mrs AA**

15.32.1 Ms AA resides at Property 6. She instructed the Respondent to act on her behalf in connection with a debt recovery action from a Mr BB in or about January 2011. During the currency of his appointment, the behaviour of the



Respondent was of concern to Mrs AA to such an extent that she wrote to the SLCC complaining regarding his conduct. A complaint process was instigated. The process concluded that in a number of respects the behaviour of the Respondent amounted to unsatisfactory professional conduct and in that respect he was ordered to pay a fine of £2,000.

- 15.32.2 During the course of the complaint process, the Respondent failed to reply to enquiries made of him by the Complainers. The complaint was intimated to the Respondent on 9 February 2015. No reply was received. Statutory Notices were intimated to the Respondent on 3 March 2015. An examination of the Royal Mail Track and Trace Process identified that one of these Notices had been signed for by the Respondent on 4 March 2015. No reply was received. The consequential part of the Statutory Notice was intimated by recorded delivery to the Respondent on 26 March 2015. An examination of the track and trace identified that this was signed for by the Respondent on 27 March 2015. No response was received by the Respondent. The Notices had been properly served and it was clear from the track and trace that the Respondent was aware of these Notices and had failed to reply.

### 15.33.0 Mr CC

- 15.33.1 The Complainer here is a Mr CC who is designed c/o Firm K. He is involved in this matter as the Executor of the estate of his late wife, a Mrs CC. Mrs CC had dealings with the Respondent regarding his conduct in managing the affairs of a Mr and Mrs FF. In particular the management of welfare and financial matters from May 2010. In particular she had concerns regarding the disposal of a property belonging to Mr and Mrs FF which had been sold without the appropriate Guardianship Order being in place. At this time the Respondent was working for the firm Davidson Fraser & Company, Solicitors. That firm ceased to trade on 31 October 2011. Mr DD of that firm died on 6 February 2012.
- 15.33.2 A letter of complaint was sent by Mrs CC to the then Senior Partner of the firm Mr DD on 9 October 2011. This letter articulated a number of concerns which she held. It advised Mr DD that in the year before the letter she brought to the

attention of the Respondent the suspected disappearance of money belonging to Mr FF. The matter had come to her attention when a Nursing Home informed her that nursing home fees in respect of the care of Mrs FF had not been paid. All of the information had been provided to the Respondent. The Respondent assured Mrs CC that matters were in hand. In February 2011 a meeting occurred where the Respondent was instructed to apply for a Guardianship Order relating to the affairs of Mrs FF. Mrs CC would have been appointed Guardian. At this meeting the behaviour of the Respondent was unprofessional and inappropriate. Mrs CC reported that she received from the Respondent personal abuse and that the Respondent was rude and unprofessional towards her. As a consequence of the behaviour of the Respondent, Mr DD agreed to assume responsibility for the file.

- 15.33.3 A meeting was held with the Social Work Department to discuss the affairs of Mr and Mrs FF. At this meeting information was provided that another relative had been removing money from the bank account of Mr and Mrs FF. The Respondent assured Mrs CC that the bank cards pertaining to the account of Mr and Mrs FF were deposited in a safe within the premises of Davidson Fraser & Co, Solicitors. When Mrs CC was subsequently appointed to manage the affairs of Mr and Mrs FF, she made enquiries of the Post Office. These enquiries revealed that money was still being withdrawn. The individual who was responsible for withdrawing the money had access to the original bank cards. This meant the bank cards were not within the safe of Davidson Fraser & Co as had been advised by the Respondent. A sum of approximately £12,000/14,000 was removed in this fashion.
- 15.33.4 The Respondent had been interdicted by the Complainers from holding himself out as a Solicitor or Notary Public. The Complainers received information that the Respondent was acting flagrantly in breach of this order. Proceedings were brought alleging a breach of interdict. A Proof was heard in July 2014. A Judgement was issued on 19 November 2014 in terms of which the Judge upheld the complaint of the Complainers that the Respondent was acting in breach of interdict. This decision is reported at 2014 CSOH 166. Part of the evidence led during the hearing on the breach of interdict included evidence from a Consultant Forensic Document Examiner which concluded that a

number of letters, relating to the affairs of clients, purportedly sent by Davidson Fraser & Co and/or signed by Mr DD had in actual fact been signed by the Respondent.

- 15.33.5 The Social Work Department of Glasgow City Council held a number of concerns regarding the affairs of two vulnerable adults, Mr and Mrs FF. In particular there were concerns raised about financial exploitation by their son. There had been police involvement. On 18 May 2011, a Social Worker called at the Care Home to introduce himself to Mr FF and to explain their involvement. At that meeting the Social Worker met the Respondent who advised that he had called to get a Will signed by Mr FF. A copy of the signed Will was produced. It was executed by Mr FF on 18 May 2011 and was witnessed by “John Gerard O’Donnell, Lawyer at 311 Clarkston Road, Glasgow.”
- 15.33.6 Following the meeting of 18<sup>th</sup> May 2011, the Respondent wrote to Mr FF from the Clarkston Road office of Davidson Fraser & Co in the following terms:-  
“I refer to my meeting with you on Wednesday afternoon. I enclose a copy of your completed Will. I confirm I will hold the completed document at my offices. If you require to make any further alterations I will meet with you.”
- 15.33.7 The letter was signed “John” by the Respondent and issued on the notepaper of Davidson Fraser & Co. During the period 23 May 2011 to 8 August 2011, the Social Worker wrote on 6 occasions to the Respondent addressing his correspondence as “John O’Donnell, Solicitor”. The Social Worker believed the Respondent was a practising solicitor. At or about this time the Social Worker was alert to concerns on the part of the family that the Respondent was proceeding with the sale of a heritable property belonging to Mr and Mrs FF on the instructions of only one of them and without the authority or on behalf of the other. Mrs FF was incapax. No Guardianship Application had been submitted. The Respondent advised the Social Worker the sale could progress “using implicit authority” and that a transaction could be finalised once the Guardianship paperwork was in place.

- 15.33.8 Nine letters issued by Davidson Fraser & Co dated between 1 April 2011 to 7 July 2011 were examined by a handwriting expert who concluded that all letters were found to have been signed by the Respondent. The letters concerned the sale of a property belonging to Mr and Mrs FF. In determining that the Respondent was in breach of the interdict, the Judge found that the evidence of the Social Worker proved that the Respondent had impliedly held himself out as or pretended to be a solicitor by providing services that solicitors normally provided whilst allowing third parties the impression that he was a qualified solicitor.
- 15.33.9 The Complainers intimated a complaint to the Respondent on 13 March 2015 by post and e-mail. Enclosed with this correspondence was a copy of the relevant papers from the SLCC together with a copy of the written Judgement in the breach of interdict action. No response was received from the Respondent. A Notice in terms of Section 15 of the Solicitors (Scotland) Act 1980 and in terms of Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 were intimated by recorded delivery to his home address on 7 April 2015. A track and trace internet facility identified the notices were signed for by "O'Donnell" on 8 April 2015. The Notices were also e-mailed to the Respondent and sent first class post and by covering letter dated 7 April 2015. No reply was received from the Respondent. A further Notice was sent by recorded delivery to his home address on 29 April. This Notice was also e-mailed to him and sent first class post on that date. Further correspondence was intimated to him on 8, 21 and 22 May 2015 and 12 June 2015. To date no reply has been received by the Respondent.
- 15.33.10 The Respondent on a repeated basis falsely presented himself as a practising solicitor whilst working for Mr DD of Davidson Fraser & Co when in actual fact, and was known to him, he did not possess a full valid practising certificate. On a repeated basis he made false representations to officers of the Social Work Services Department, Glasgow City Council and to Mrs CC that he held the bank cards of Mr and Mrs FF in his office safe knowing this was untrue. On a repeated basis he advised the Social Work Services Department of Glasgow City Council that he was progressing the matter of the application on behalf of Mrs CC to be appointed as the Guardian to Mrs FF and the

Attorney to Mr FF when in actual fact he had not progressed these matters at all. Finally having received notice of a complaint from the Society, the Respondent failed to reply in any fashion at all.

### **Complaint DT/16/08**

#### **15.34.0 Ms EE**

- 15.34.1 Ms EE resides at care of Property 7. Ms EE was married to a Mr GG. In January 2011, Mr GG sent a Mandate to the Complainers asking that his files held with the former firm of John G O'Donnell & Company be sent to the firm of Davidson Fraser & Co of which a Mr DD was the sole partner. The files were sent to that firm in February 2011. That firm ceased to trade on 31 October 2011. Files were then passed to a separate firm who had agreed to deal with outstanding cases.
- 15.34.2 Ms EE was unhappy at the manner in which the Respondent dealt with affairs during the currency of her marriage. In particular she complained that an Affidavit prepared by the Respondent and purportedly signed by Mr DD was fraudulent. The existence of the Affidavit had come to light during the course of divorce proceedings between Ms EE and Mr GG. Ms EE disputed the contents of the Affidavit and advised that the first occasion she had laid eyes on the Affidavit was when it had been copied to her agents by the then agents acting for Mr GG in May 2014. She recalled having been at the offices of John G O'Donnell & Co, on 9 September 2011. She was asked by the Respondent to provide signatures on several documents under the direction of both the Respondent and Mr GG. At no time during these meetings were the contents of the Affidavit made apparent to her. Having been presented with a copy, she identified a number of falsehoods contained within the document. The document was apparently notarised by Mr DD. Ms EE advised that she had never met Mr DD. During the course of the meeting the Respondent advised Ms EE that he wished her to sign a blank sheet of paper which he advised her he would complete later.

- 15.34.3 As a consequence of behaviour on the part of the Respondent, the Complainers sought and obtained an interdict to prevent him from practising or holding himself out as a solicitor. Reports of further misbehaviour on the part of the Respondent were made to the Complainers as a consequence of which they instigated proceedings in the Court of Session alleging a breach of interdict on the part of the Respondent. During these proceedings, evidence was led from a handwriting expert being a Consultant Forensic Document Examiner. In particular an Affidavit was produced purportedly sworn by Ms EE on 9 September 2011. The Affidavit sought to persuade that heritable property in Ballater was not a matrimonial home and was therefore not matrimonial property. During the currency of the divorce action, this Affidavit was lodged by agents on behalf of Mr GG. This was lodged in process with the Sheriff Clerk at Aberdeen Sheriff Court. The document was secured and examined by the handwriting expert. The handwriting expert concluded that the deed was executed by the Respondent using the signature of the solicitor Mr DD on 9 September 2011. Mr DD was not at the meeting when Ms EE was present.
- 15.34.4 The Complainers received notice of the complaint at the instance of Ms EE. They articulated heads of complaint and wrote to the Respondent requesting a reply. No reply was received. As a consequence statutory notices in terms of the Solicitors (Scotland) Act 1980 and the Legal Aid & Profession (Scotland) Act 2007 were intimated to the Respondent by first class post, recorded delivery and by e-mail. No reply was received. Consequentially notices in terms of the legislation were intimated, again by first class post, recorded delivery and e-mail. No reply was received.

### **Complaint DT/16/30**

#### **15.35.0 Interdict Proceedings**

- 15.35.1 The Respondent has been the subject of disciplinary proceedings at the instance of the complainers on previous occasions. On 17<sup>th</sup> February 2009 he was found guilty of professional misconduct by the Scottish Solicitors Discipline Tribunal. He was censured by the Tribunal and a restriction was placed on his ability to practice as a solicitor such that he would only be able to

practise as an assistant solicitor supervised by another solicitor approved by the complainers for a period of five years. As a result of these proceedings the Respondent undertook to give up his professional practice and has never sought approval from the complainers for a restricted practising certificate. As a consequence of outstanding professional matters the name of the Respondent is retained on the roll of solicitors maintained by the complainers.

15.35.2 As a consequence of information brought to the attention of the complainers, a petition was brought before the Court of Session in terms of which an Interdict was sought by the complainers to prevent the Respondent from carrying on the business of or holding himself out to be a solicitor. By Interlocutor dated 21<sup>st</sup> August 2009 Interim Interdict was granted against the Respondent in the following terms:-

“From holding himself out as entitled by law to practice as a solicitor; from pretending to be a solicitor; or from taking or using any name, title, addition or description, including without prejudice to the foregoing generality the style notary, notary public or notaries public or anything colourably similar which implies that he is duly qualified to act as a solicitor”. A certified copy of the Interlocutor was served on the Respondent on 21<sup>st</sup> August 2009.

15.35.3 Following receipt of further information the complainers lodged a Minute with The Court of Session alleging that the Respondent had breached the terms of this Interdict. The Respondent denied any such breach. A Proof took place on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> July 2014 before Lord Stewart. Having heard evidence and representation Lord Stewart decided that the Respondent was in breach of the Interdict. Lord Stewart was satisfied that the breach had been established beyond reasonable doubt. The matter was continued for Lord Stewart to be addressed on the appropriate disposal and mitigation. On 27<sup>th</sup> February 2015 the Respondent was sentenced to a period of three months’ imprisonment with no early release for breach of the Interim Interdict. The Respondent marked an appeal against this decision. On 1<sup>st</sup> July 2015 the Inner House of the Court of Session held that Lord Stewart had erred in imposing a period of imprisonment. The sentence was recalled and the Respondent was subsequently admonished.

15.35.4 The behaviour which led to the proceedings and the outcome of the proceedings was brought to the conduct committee of the complainers. The complaint was intimated to The Scottish Legal Complaints Commission. It was returned to the complainers for investigation. The complaint was intimated to the Respondent on 12<sup>th</sup> November 2015. No reply was received. A Notice in terms of Section 15 of The Solicitors (Scotland) Act 1980 was intimated to the Respondent on 8<sup>th</sup> December 2015. No reply was received. The Notice was intimated by both regular post and recorded delivery. On 12<sup>th</sup> January 2016 the subsequent part of the Notice in terms of Section 15(2) was intimated by ordinary post, recorded delivery and email to the Respondent. No reply was received from the Respondent.

15. Having heard submissions from the Complainers, the Tribunal found that the Respondent had failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland in terms of s42A of the Solicitors (Scotland) Act 1980 in respect of Ms A, Ms E and Mr Q within the respective periods specified and resolved to make Orders under Section 53C of the Solicitors (Scotland) Act 1980.
16. Having given consideration to the accepted facts and the Fiscal's submissions in relation to the question of professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect of the following:

**Complaint DC/11/05**

- 16.1 He delayed unreasonably to respond to the reasonable enquiries of the Complainers as narrated within:
- a) Articles 14.3.1 to 14.3.7 from 29 September 2009 to 16 December 2009
  - b) Articles 14.6.1 to 14.6.11 from 8 May 2008 to 8 August 2008
  - c) Articles 14.8.1 to 14.8.6 from 20 October 2009 to 21 December 2009
  - d) Articles 14.10.1 to 14.10.7 from 20 May 2009 to 4 August 2009
  - e) Articles 14.11.1 to 14.11.13 from 20 April 2009 to 17 August 2009
  - f) Articles 14.13.1 to 14.13.5 from 26 March 2009 to 26 May 2009
  - g) Articles 14.14.1 to 14.14.6 from 2 September 2009 to 20 July 2010
  - h) Articles 14.16.1 to 14.16.14 from 10 January 2008 to 9 April 2008
  - i) Articles 14.18.1 to 14.18.5 from 14 August 2007 to 30 June 2008
  - j) Articles 14.21.1 to 14.21.3 from 4 March 2010 to 21 September 2010



- k) Articles 14.23.1 to 14.23.11 from 18 March 2008 to 28 August 2008
  - l) Articles 14.25.1 to 14.25.7 from 18 March 2008 to 28 August 2008.
- 16.2 Between 18 June 2007 and 18 July 2007 he delayed unreasonably and/or failed to respond to requests, written and verbal, from Firm A, the solicitor who took over acting for his client, Bank 1, as set out in Articles 14.4.1 to 14.4.3.
- 16.3 He failed to comply with the Guidelines on Mandates 1998 issued by the Complainers as narrated within Articles 14.5.1 to 14.5.6.
- 16.4 He failed to comply with a Letter of Obligation given to Firm B to deliver two Discharges of Inhibition, within seven days of 29 August 2008 or to date as set out in Articles 14.9.1 to 14.9.3.
- 16.5 Between 26 March 2008 to date he delayed unreasonably and/or failed to respond to requests from and to return title deeds to Mr H, who was the solicitor acting on the other side of a potential commercial property transaction, as set out in Articles 14.12.1 to 14.12.3.
- 16.6 He misled Ms I by expressly or implying suggesting in his letter of 3 June 2009 that he was the Partner of the firm of John G O'Donnell when knew that that was not the case and that effective as of 1 June 2009 his Practising Certificate had been restricted in terms of a prior determination of the Scottish Solicitors' Discipline Tribunal all as set out in Articles 14.15.1 to 14.15.4.
- 16.7 He failed to act in the best interests of his client, Mr M by failing to make any meaningful progress or take significant active steps to progress his personal injury claim between August 1994 to July 2002 when the file was taken over by his business partner, as set out in Articles 14.17.1 to 14.17.60.
- 16.8 Between August 1994 and May 2002 he deliberately misled Mr M and/or his mother, Mrs P, on numerous occasions, in relation to the progress that was being made on his case and in particular that he was attending to the necessary work when he was not, as set out in Articles 14.17.1 to 14.17.60.

- 16.9 He misled Mr Q by expressly or implying suggesting in his letter of 25 August 2009 that he was the partner of the firm of John G O'Donnell when he knew that that was not the case and that effective as of 1 June 2009 his practicing certificate had been restricted in terms of a prior determination of the Scottish Solicitors Discipline Tribunal all as set out in Article 14.19.1 to 14.19.4.
- 16.10 He failed and/or delayed unreasonably to respond to the reasonable requests of the Trustee between 9 August 2007 to the date of this Complaint as narrated within the averment of fact 14.22.1 to 14.22.6.
- 16.11 He failed and/or delayed unreasonably from 8 August 2007 to 16 November 2007 to respond to the reasonable enquiries of the Trustee as narrated within averments of fact 14.24.1 to 14.24.6

**Complaint DC/11/26**

- 16.12 He failed to comply with an Undertaking given to Firm I to deliver the appropriate SDLT Form as set out in Articles 14.26.1 to 14.26.9;
- 16.13 He delayed unreasonably to respond to the reasonable enquiries of the Complainers as narrated within Article 14.27.1 to 14.27.11 over the period 9 October 2009 to 10 August 2010.

**Complaint DT/15/29**

- 16.14 His behaviour was contrary to Rules 1, 5 and 7 of the Code of Conduct for Scottish Solicitors 2002.
- 16.15 His behaviour was contrary to the terms of Rule 1 of the schedule attached to the Solicitors (Scotland)(Standards of Conduct and Practice) Rules 2008.
- 16.16 He acted contrary to the common law principal of honesty and integrity expected of a Scottish solicitor.
- 16.17 He failed to properly reply timeously or at all to the reasonable enquiries made of him by the Complainers.

**Complaint DT/16/07**

16.18 His acting contrary to the basic principal of honesty and integrity expected of Scottish Solicitors.

16.19 His failure unreasonably to respond to the reasonable enquiries of the Complainers.

**Complaint DT/16/08**

16.20 His acting contrary to the basic principal that a solicitor should be a person of honesty and integrity.

16.21 His failure to reply to the reasonable enquiries of the Complainers as narrated.

**Complaint DT/16/30**

16.22 Acting contrary to the basic principal of honesty and integrity expected of practising Scottish Solicitors.

16.23 Acting contrary to Rule B1.2 of The Law Society of Scotland Practice Rules 2011.

16.24 Failed unreasonably to respond to the reasonable enquiries of the complainers.

17 The Tribunal heard submissions from the Fiscal in relation to disposal having ascertained that the Respondent did not intend to make a plea in mitigation. Having given careful consideration to the submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 February 2017. The Tribunal having considered the Complaints at the instance of the Council of the Law Society of Scotland against John Gerard O'Donnell, formerly of 14 Winton Drive, Glasgow and now residing at Flat 1/2, 322 Kelvindale Road, Glasgow; Find the Respondent guilty of professional misconduct *in cumulo* in respect of six complaints; specifically in relation to Complaint DC/11/05, his delay unreasonably to respond to the reasonable enquiries of the Complainers; between 18 June 2007 and 18 July 2007 his unreasonable delay/failure to respond to requests, written and verbal, from Firm A, the solicitor who took over acting for his

client, Bank 1; his failure to comply with the Guidelines on Mandates 1998 issued by the Complainers; his failure to comply with a Letter of Obligation given to Firm B to deliver two Discharges of Inhibition, within seven days of 29 August 2008; between 26 March 2008 and January 2011 unreasonable delay/failure to respond to requests from and to return title deeds to Mr H, who was the solicitor acting on the other side of a potential commercial property transaction; his misleading Ms I by expressly or implying suggesting in his letter of 3 June 2009 that he was the Partner of the firm of John G O'Donnell when he knew that that was not the case and that effective as of 1 June 2009 his Practising Certificate had been restricted in terms of a prior determination of the Scottish Solicitors' Discipline Tribunal; his failure to act in the best interests of his client, Mr M by failing to make any meaningful progress or take significant active steps to progress his personal injury claim between August 1994 to July 2002 when the file was taken over by his business partner; between August 1994 and May 2002 the deliberate misleading of Mr M and/or his mother, Mrs P, on numerous occasions, in relation to the progress that was being made on his case and in particular that he was attending to the necessary work when he was not; his misleading Mr Q by expressly or implying suggesting in his letter of 25 August 2009 that he was the partner of the firm of John G O'Donnell when he knew that that was not the case and that effective as of 1 June 2009 his practising certificate had been restricted in terms of a prior determination of the Scottish Solicitors Discipline Tribunal; his unreasonable delay/failure to respond to the reasonable requests of the Trustee between 9 August 2007 and 31 January 2011; his unreasonable failure/delay from 8 August 2007 to 16 November 2007 to respond to the reasonable enquiries of the Trustee; in relation to Complaint DC/11/26, his failure to comply with an undertaking given to Firm I to deliver the appropriate SDLT Form; his unreasonable delay in responding to the reasonable enquiries of the Complainers during the period 9 October 2009 to 10 August 2010; in relation to Complaint DT/15/29, his behaviour contrary to Rules 1, 5 and 7 of the Code of Conduct for Scottish Solicitors 2002; his behaviour contrary to the terms of Rule 1 of the schedule attached to the Solicitors (Scotland)(Standards of Conduct and Practice) Rules 2008; his acting contrary to the common law principle of honesty and integrity expected of a Scottish solicitor; his failure to properly reply timeously or at all to the reasonable enquiries made of him by the Complainers; in relation to Complaint DT/16/07, his acting contrary to the basic principle of honesty and integrity expected of Scottish Solicitors and his failure unreasonably to respond to the reasonable enquiries of the Complainers; in relation to Complaint DT/16/08 his

actings contrary to the basic principal that a solicitor should be a person of honesty and integrity and his failure to reply to the reasonable enquiries of the Complainers; in relation to Complaint DT/16/30, his actings contrary to the basic principal of honesty and integrity expected of practising Scottish Solicitors, his actings contrary to Rule B1.2 of The Law Society of Scotland Practice Rules 2011 and his unreasonable failure to respond to the reasonable enquiries of the complainers; Direct that Orders be issued under Section 53C(2) of the Solicitors (Scotland) Act 1980 in respect of Ms A, Ms E and Mr Q; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent; 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 and that publicity should be deferred pending the outcome of associated proceedings or confirmation that there will be none.

**(Signed)**

**Nicholas Whyte**

**Chairman**

18. 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 *15 MARCH 2017*.

**IN THE NAME OF THE TRIBUNAL**



**Nicholas Whyte**  
**Chairman**

**NOTE**

At the hearing on 15 February 2017 the Tribunal had before it six Complaints and a signed faxed copy of a Joint Minute. By way of the Joint Minute, the Respondent pleaded guilty to all six complaints as amended and admitted that the breaches of duties amounted to professional misconduct. In the circumstances evidence did not require to be led and the Tribunal proceeded to hear submissions from the Fiscal who advised that the Respondent's agent had confirmed that the Respondent did not intend to make any submissions.

The Chairman noted that the Tribunal allowed the first five cases to be conjoined on the last occasion but noted that cases DC/11/05 and DC/11/26 were older complaints subject to the 2005 Rules and an earlier version of the legislation. The Fiscal asked for the sixth complaint to be conjoined to the other five and indicated that he was content that the Tribunal produce one set of findings in respect of all six Complaints. The Fiscal sought a *cumulo* finding of misconduct in respect of all the matters contained in all six Complaints as amended by the Joint Minute.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal noted that the Respondent was 66 years old. He indicated that the Respondent had previously appeared before the Tribunal and highlighted in particular the Tribunal Findings dated 25 January 2010 (Production 3 of the Seventh Inventory of Productions for the Complainers).

The Fiscal indicated that there were a substantial number of matters before the Tribunal. A considerable number of these related to failures to respond to the Complainers. There were also three clients where inadequate professional service awards had not been implemented and the Fiscal invited the Tribunal to make the relevant orders under s53C(2) of the Solicitors (Scotland) Act 1980.

The Fiscal highlighted the parts of Complaint DC/11/05 which he thought represented the items of most significance before the Tribunal. He described briefly the misconduct in relation to Firm A, Firm B, Mr H, Ms I, Mr M, Mr Q and the two cases involving the Trustee in Bankruptcy.

The Fiscal noted that Complaint DC/11/26 involved a commercial lease. The Respondent had failed to comply with the undertakings he had given. Reminders sent to him were ignored. He also ignored the Law Society and the statutory notices.

In relation to Complaint DT/15/29 the Fiscal noted that Property 4 had been bought by the Respondent's former partner, Mr DD. The Respondent was instructed by the Building Society. The Loan instructions were found at Production 20 of the Fifth Inventory of the Complainers' Productions. The price was stated to be £602,500 but was actually £567,500. The Respondent did not draw this to the Building Society's attention. The Respondent did not seek the consent of the building society prior to intromission with the funds. The Fiscal alleged that the Respondent knew that the information was incorrect and that he acted dishonestly. Furthermore, the security was not finally registered until 2009 which represented a four year delay. Five other standard securities were granted over the subjects in the intervening period. This was prejudicial to the lender who was supposed to have first ranking. The Respondent also failed to respond to the Law Society.

The Law Society had examined the firm's books and had concerns about a loan advanced by Mr X to the Respondent. The Fiscal indicated that Mr X was a friend and client of the Respondent. From documentation available it was clear that Mr X was aware that the Respondent was using his money. The Respondent's conduct in taking the loan from this client was previously dealt with by the Tribunal in relation to the Findings of 25 January 2010. However, the money was not repaid in full before Mr X died. The Respondent held himself out as a solicitor and executor to Mr X's relatives. The Fiscal said that the failure to account for the missing money which amounted to £49,972.47 after Mr X's death was dishonest. In addition, he failed to cooperate with the Law Society investigation.

In relation to Complaint DT/16/07, the Fiscal noted that the Law Society had sent correspondence to the Respondent in the Ms AA case but that even statutory notices had been ignored. The Fiscal indicated that the clients in the Mr CC case complained to the Respondent's partner, Mr DD who took over the file. Following the interdict which prohibited the Respondent from holding himself out as a solicitor, letters were sent by the firm purportedly signed by Mr DD. However, a handwriting expert confirmed that the signature was in fact made by the Respondent. The Fiscal referred the Tribunal to the handwriting expert's report which was contained at Production 1 of the Ninth Inventory of Productions for the Complainers.

In relation to Complaint DT/16/08 the Fiscal noted that Ms EE had been brought to the Respondent's office by her husband and had been asked to sign a blank sheet of paper in addition to a number of other documents. Later, in a divorce action at Aberdeen Sheriff Court, an affidavit was produced which was detrimental to her interests. It purported to have been notarised by Mr DD. Ms EE said that she had not signed an affidavit in these terms. The Fiscal referred to Production 3 in the Ninth Inventory of Productions for the Complainers which was the handwriting expert's report on this matter



which concluded that the Respondent had notarised the affidavit. The Fiscal noted that the Respondent had also failed to cooperate with the Law Society with regard to this matter.

In relation to Complaint DT/16/30, the Fiscal noted that the Respondent had pleaded guilty to this case fairly early on. The Law Society had become concerned about the volume of complaints against the Respondent and so had sought an interdict to prevent him from holding himself out and working as a solicitor. The Fiscal referred to Lord Stewart's decision relating to the breach of interdict which was contained in Production 1 of the Sixth Inventory of the Complainers' Productions. It was held beyond reasonable doubt that the respondent had acted as a solicitor when he did not have a practising certificate. Lord Stewart sentenced him to three months' imprisonment although the sentence was quashed on appeal and the Respondent admonished. The Fiscal submitted that this was conduct which was likely to bring the profession into disrepute.

The Fiscal reiterated that he sought a finding of professional misconduct in relation to all six Complaints *in cumulo*. He also sought the usual orders regarding publicity and expenses.

## **DECISION**

Having heard submissions from the Fiscal who also indicated that neither the Respondent nor his agent intended to make any submissions in mitigation, the Tribunal retired for deliberations. Although the Respondent admitted the averments of professional misconduct detailed in the Joint Minute, the Tribunal considered whether or not the conduct admitted amounted to professional misconduct.

The Tribunal was satisfied that the averments of fact as amended by the Minute of Agreement and noted above were proved beyond reasonable doubt. The test for professional misconduct 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.

The Tribunal noted that there were a large number of allegations made against the Respondent in six Complaints. Some were more serious than others. The Tribunal was satisfied that *in cumulo*, the Respondent's conduct amounted to professional misconduct. However, the Tribunal also considered that elements of the misconduct were themselves extremely serious and independently could have justified a finding of professional misconduct.

In particular, the Tribunal was concerned about the Respondent's failure to advise the lender of the difference in the purchase price stated on the Certificate of Title and the actual price paid for Property 4. The Respondent did not seek the approval of the lender to intromit with loan funds on the basis of the actual purchase price. The Respondent had misrepresented the true position to his client the building society. This was a blatant breach of a solicitor's duty to act in the best interests of his client, the lender, and breached the CML Handbook. The Respondent had also failed to register the security timeously which had allowed other securities to rank before his client's.

The Tribunal was alarmed at the Respondent's conduct in relation to Mr X's Executry. The Tribunal considered that the Respondent had been dishonest when he failed to account to Mr X's Executry for money which he had received as a loan from Mr X. The Tribunal was satisfied that the Respondent's conduct met the objective and subjective tests for dishonesty. Failure to repay a loan in and of itself would not have been sufficient to meet the test but the Tribunal was satisfied that on Mr X's death the Respondent had attempted to hide the money from the estate and had not reported that it should be treated as an asset to be ingathered to the estate. He fraudulently held himself out to be an executor and a solicitor to the potential beneficiaries. He made use of the circumstances to enable him to fail to account to the estate for the balance of the loan. In this way his conduct was dishonest.

The Tribunal found it of great concern that the Respondent had been found to have breached an order of the court by holding himself out to be a solicitor. In the course of those proceedings it was also proved that the Respondent had forged a signature on documents which might be used in court. The Tribunal has consistently made it clear that to fraudulently notarise an affidavit is a serious matter likely to constitute professional misconduct.

The essential qualities of a solicitor are honesty, truthfulness and integrity. It is imperative that if the public is to have confidence in the legal profession that solicitors maintain the standards of conduct expected of competent and reputable solicitors. The Respondent's conduct included serious and reprehensible departures from those standards at the most serious end of the scale. Accordingly, the Tribunal found him guilty of professional misconduct.


The Tribunal considered that the professional misconduct was so serious that the only suitable sanction was strike off. The Respondent was guilty of dishonesty. His behaviour represented a course of conduct over a significant period of time. The conduct had involved numerous clients. The professional misconduct was of various different varieties which were all likely to damage the reputation of the profession. He had failed to show any remorse and did not appear to have any

insight into his conduct. If he were allowed to continue to practise he would be a significant risk to the public. In view of the all of the foregoing, the Tribunal considered that the Respondent was no longer a fit person to be a solicitor.

The Tribunal ordered that the Respondent's name be struck off the roll of solicitors in Scotland. In terms of Section 53(6) of the Solicitors (Scotland) Act 1980 the Tribunal directed that the order shall take effect on the date on which the written findings are intimated to the Respondent.

Having considered the submissions of the Fiscal and the terms of The Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional, Savings, and Consequential Provisions) Order 2008 the Tribunal made orders in terms of s53C(2) of the 1980 Act in respect of the directions of the Council of the Law Society of Scotland relating to the inadequate professional services provided by the Respondent to the clients Ms A, Ms E and Mr Q.

The Tribunal made the usual order for expenses. The Tribunal determined that publicity would be deferred pending the outcome of any associated proceedings or confirmation that there will be none. The Secondary Complainer will be allowed 28 days after the expiry of the appeal period to lodge a claim for compensation to the Tribunal.



**Nicholas Whyte**

**Chairman**