

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

F I N D I N G S

in Complaint

by

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

against

**MICHAEL THOMAS McSHERRY, Solicitor,
51 Morven Road, Bearsden, Glasgow**

1. A Complaint dated 26 October 2015 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Michael Thomas McSherry, Solicitor, 51 Morven Road, Bearsden, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mr Edward Warren, Cottage Road, 33 Lindsay Gardens, Kilmarnock.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 21 January 2016 and notice thereof was duly served on the Respondent.
5. At the hearing on 21 January 2016, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was not present or represented.

6. A Joint Minute was lodged admitting the averments of fact and averments of duty in the Complaint. The Respondent had advised that he did not intend to appear at the Tribunal. The Tribunal proceeded to deal with the Complaint in the absence of the Respondent.
7. Given the terms of the Joint Minute, the Tribunal found the following facts established:-
 - 7.1 The Respondent's date of birth is 11 October 1949. He was a partner in the firm of Michael T McSherry from 23 May 1986 to 31 October 2001 and cashroom partner there from 1 June 2000. He became a consultant with HBM Sayers, then Hamilton Burns & Company and latterly with Steen Bali Solicitors. He was appointed a solicitor-advocate. He became a partner in Steen Bali Solicitors, 6 Cadogan Square, Glasgow on 1 November 2007. The firm became Steen Bali McSherry on 1 July 2008 and he was the firm's cashroom partner, anti money laundering partner and client relations partner from that time. He was suspended from practice between 10 and 16 January 2013. The firm ceased to trade on 31 October 2013. On 24 February 2014 the firm of SBM Law Limited commenced trading from Trident House, 175 Renfrew Road, Paisley, PA3 4EF. The Respondent was the principal of that firm. Between 31 October 2013 and 24 February 2014 he was not the holder of a practising certificate and was not affiliated to any firm of Solicitors. The firm of SBM Law Limited ceased trading on 17 July 2014 when the Respondent was suspended from practice.

EDWARD WARREN

- 7.2 In August 2012 the Secondary Complainer instructed the Respondent then of Steen Bali McSherry, Solicitors, to act on his behalf in a matrimonial dispute. The Respondent entered into correspondence with the agent representing the estranged wife. On 8 August 2013 he e-mailed the Secondary Complainer asking for a payment of £150 to account. He provided his personal bank details and asked that the money be lodged in that. The Secondary Complainer made the payment and paid another £200 into the Respondent's personal account on 26 November 2013 as requested. The Respondent accepts that he received these funds under explanation that he made a silly mistake due to stress and illness.

- 7.3 When the firm of Steen Bali McSherry ceased to trade on 31 October 2013 the Respondent did not notify the Secondary Complainer. He received correspondence from the agent for the estranged wife on 8, 22 and 28 November, and from the Secondary Complainer on 1, 19, 22, 27 November, 2, 4, 6, 20 December all 2013, and on 6, 8, 12, 16 January 2014. He sent correspondence to the estranged wife's agent on 8 and 26 November, to the Secondary Complainer on 21, 26 November, and 2, 6 December 2013. The Secondary Complainer was unable to travel due to illness and by agreement the Respondent met with his partner on 26 November 2013 and 14 and 15 January 2014. At no time did he advise the Secondary Complainer or his partner that the firm was no longer trading. He did not hold a practising certificate until 20 February 2014 and he was not covered by professional indemnity insurance.

INSPECTIONS 2009 and 2012

- 7.4 The Complainers carried out an inspection on 26 November 2009. They identified a number of concerns, including: failure to comply with the Money Laundering Regulations; the crediting of client funds including outlays received from the Scottish Legal Aid Board (SLAB) to the firm's account instead of the client account; failure to open separate ledger accounts for each client; and, failure to disclose all rule breaches within the accounting period when completing the half yearly Accounts Certificate. The Respondent was warned that if future inspections highlighted unreported breaches it would be viewed as a very serious matter. He was assessed as low risk as he specialised in litigation and immigration law.
- 7.5 On 21 November 2012 a further inspection took place. A deficit of £9,886.64 on the firm's client account was identified and a report was made to the Guarantee Fund Sub Committee. The Respondent was offsetting debit balances for some clients against credit balances for others leading to a fluctuation in the deficit which was further increased by the continued practice of retaining outlays paid by SLAB in the firm account. A sample of 21 cases revealed a total of £3,269.31 held but not paid out timeously to doctors, and £2,362.21 for translation services. The Respondent advised that the interpreter was now a trainee with the firm.

- 7.6 For the six months to 30 June 2012 the Respondent certified that his client account(s) books and accounts had at all times during the relevant accounting period(s) been properly written up in accordance with Rule 6.7; that at all times the total of clients' money held had been equal to (or in excess of) the total sum at the credit of the client accounts; that the systems he employed to carry out and/or secure compliance with the Accounts Rules were fit for this purpose; and that, during the relevant accounting period(s), he had the skills necessary to discharge his responsibilities as Cash room Manager. These declarations were incorrect.
- 7.7 The books of the practice unit were not balanced monthly at the month end date and were sometimes a month in arrears. They were made up to 24 October 2012 which was the date of the trial balance and the last bank statements obtained were from 1 October. There were no surplus statements being produced. The Royal Bank of Scotland client Account was reconciled erratically and only to 24 October. A cheque for £4,586 dated 13 June 2012 was written to the client BM when funds had already been paid out by CHAPS. Various cheques amounting to £73.88 were out of date from before 1 July 2011 and 8 for small sums between £10 and £95 for periods between 24 August 2011 and 30 March 2012. The Respondent had not paid Value Added Tax or National Insurance Contributions up to date. He had exceeded the agreed overdraft limit of £2,000 on his firm bank account, as in his reconciliation dated 31 October 2012 and items had been returned by his bank unpaid.
- 7.8 The Respondent had not undertaken 'client due diligence' on a risk sensitive basis, and had not kept appropriate records for the purpose of ensuring compliance with the Money Laundering Regulations. He had not undertaken risk assessments for each individual matter he transacted. He did not evidence or retain evidence as to the source of funds in relation to a cheque for £75,624 which he received from his client N.H. on 11 May 2012, for the purchase of subjects at Property 1. He did not evidence or retain evidence as to the originating source of funds generally. The Respondent opened and maintained a client ledger which was named incorrectly in the purchase of subjects at Property 2. The purchase was in joint names of N.R. and P.M. but the ledger was opened and maintained in the sole name of N.R. The narrative within the client ledgers did not always contain

sufficient full details to provide a full audit trail or show details of what transaction or transactions were involved on the ledgers.

- 7.9 The Respondent had undertaken conveyancing work. He had engaged Mrs Eileen Coogans to assist him in carrying out the transactions. She had been sequestered on 30 September 2010 and her Discharge was submitted on 19 February 2013. The Scottish Solicitors' Discipline Tribunal Society had twice found her guilty of professional misconduct. Mrs Coogans did not hold a current Practising Certificate at the time she worked for him. He did not seek permission from the Complainers to employ her. In one transaction he purchased a property in Hamilton, on behalf of his client A.M. The lenders, Northern Rock PLC, were informed that the subjects had changed hands within the preceding six months but the Respondent intromitted with the mortgage funds before obtaining the lender's written authority to proceed. He transacted the sale of subjects at Property 3 on behalf of his client M.A. The discharge was granted on 27 June 2012 but he did not redeem his client's mortgage until 14 September 2012. At the time of the inspection the redemption cheque had not been cashed.
- 7.10 Due to concerns about the deficit which he stated he could not resolve, the state of his books and his business relationship with Ms. Coogans the Respondent was invited to interview by the GFSC on 20 December 2012. He was allowed further time to clear the deficit but did not do so and was suspended on 10 January 2013. He introduced £3,600 from personal funds and the suspension was lifted on 16 January.

INSPECTION 18-19 MARCH 2013

- 7.11 When the inspectors attended on 18 March the firm's books were not in a proper state to be inspected and some were to be brought by the accountant on the second day. The books were two weeks in arrears and there were no firm bank reconciliations or trial balances being prepared at each month end. The trial balance to 19 March did not show the true position. A suspense ledger showed a credit balance of £32,537.88 which was being used during a reconstruction of the books. It was mainly fee income and current client and trade creditors. The HP

ledger showed a credit balance of £4,650 as the liability at 1 July 2012, the firm bank ledger showed a debit balance of £1,830.95 and the petty cash ledger had a debit balance of £5,690.96. The figures were incorrect and were to be corrected once postings were made. The capital introduced ledger incorrectly showed a balance of £2,700. The Respondent had not paid VAT or NIC payments up to date.

- 7.12 There was a deficit on the client account of £668.42 plus £900 of unpaid SLAB outlays. This had increased to £2,495.91 on 7 January 2013 and on 28 February the deficit was £271.99 in the records. A sum of £300 was credited from the firm account to clear that but on 28 February the actual position of the account was a deficit of £1,627.52 of which £1,201.53 represented unpaid SLAB outlays and £154 in transfers from the firm to the client account posted but not implemented. Although the firm account balance was (£276.08) with an overdraft limit of £2,000 available the Respondent had instructed that the SLAB outlays remain unpaid until 22 March. The RBS client bank account was not reconciled at each month end. The only reconciliations produced were dated 7 January 2013 and 28 February 2013. No formal surplus statements were being produced. Entries were being backdated. The Respondent was aware of the rule breaches but had taken no steps to rectify the deficit position or the state of the books and records. No client account cheques dated January 2013 were obtained from the bank.
- 7.13 Record keeping was inadequate as the narrative within the entries on the practice unit's books and records was not seen to contain full details in order to provide a full audit trail. Many instances were noted where the narrative was incorrect or insufficient. The following client ledgers appear to be named incorrectly: CFOL01 KDF – Lease Property 4 which ought to have been in joint names with TB; and, CACH01 MA – Sale Property 5 which ought to have been in joint names with SA.
- 7.14 There was no compliance seen with the record keeping requirements of the Anti Money Laundering Regulations. The staff member with responsibility for most of the client files did not know what such records were or where they could be found. The firm did not carry out risk assessments. The unqualified member of

staff who was dealing with the conveyancing transactions also acted as secretary and bookkeeper and was inadequately supervised by the Respondent.

INSPECTION 13 AUGUST 2013 TO CESSATION 30 OCTOBER 2013

- 7.15 The inspection of the firm's books and records on 13 August 2013 disclosed that work had been carried out but the records still did not comply with the rules. In May 2013, the Respondent had stated his intention to ensure that "[t]he practice of backdating entries will cease" but backdating of entries was again detected within the records. As at 30 June 2013, the records of the firm showed a surplus of £723.55. Payment of outlays by SLAB on 8 March, 5 April and 4 June 2013 totalling £313.23 remained in the firm account. There was an actual deficit of £304.36. The Respondent and his accountant were unaware of this deficit. He undertook to ensure that bank transfers in the future were "*timeously actioned*". He confirmed that he would disclose details of the deficit on the Accounts Certificate. The firm's Accounts Certificate to 30 June 2013 did not disclose any rule breaches.
- 7.16 The narrative within the entries on the firm's books and records did not contain full details in order to provide a full audit trail. Many instances were noted where the narrative was incorrect or insufficient. Outstanding items were noted on the firm/client reconciliations involving transfers of sums from the firm bank to the client bank. Two transfers had been posted to the firm's books and the date recorded was 30 June 2013 but the transfers did not occur until later. In one case, the transfer took place the following month and in the second case, several months later, after the item had had been brought to the attention of the Respondent.
- 7.17 After previous inspections the Respondent had undertaken to ensure that monthly surplus statements were produced. He did not do so. After the August inspection he was asked to provide the client bank reconciliations, client bank nominal ledgers and surplus statements at 31 August and 30 September 2013 in order to verify the month end position. The surplus statement produced to 30 September 2013 showed a surplus of £61.00. This was incorrect. A SLAB outlay had not been dealt with, there were outstanding transfers from the firm bank which had

not been done, and, a fee had been taken from funds posted but not received at that date. The correct position at 30 September 2013 was a deficit of £546.20.

- 7.18 Consideration of the firm's records revealed that the trial balance as at 31 July 2013 did not appear to show the true position and 13 months were shown instead of one. At previous inspections, it had been noted that where there were sums owed to clients in respect of outlays received from SLAB, the position was not accurately reflected on the firm trial balance. The solicitor was asked to produce a trial balance showing the true financial position of the firm at 31 August 2013. The review of the trial balance at 31 August 2013 suggested that irregularities highlighted at an earlier inspection had not been addressed and amendments to the trial balance had not been made. Client balances held according to a list of client balances provided at 31 August 2013 had not been included within the trial balance of the same date and sums held in the SLAB outlays nominal ledger had not been dealt with in accordance with prior advice given.
- 7.19 In October 2013, the Financial Compliance Department reviewed records provided by the firm. The firm was again in deficit by £685.33 at 31 August 2013. The Respondent had confirmed in September 2013 that the Accounts Certificate to 30 June 2013 would disclose the deficit and the rule breaches. He submitted a Certificate on which no deficit and no rule breaches were disclosed. The Respondent continued to demonstrate an inadequate understanding of the Rules, particularly Rules 6.3 and 6.7, and a failure as Cashroom Manager to implement adequate systems to ensure compliance.
- 7.20 There continued to be no compliance seen with the record keeping requirements of the Anti Money Laundering Regulations. The staff member with responsibility for most of the client files still did not know what such records were or where they could be found although the Respondent had advised the Complainers on 27 March 2013 that "Anti Money Laundering folder has been opened now". In one sample case file CRAZ01 client SR the client identification requirements had not been met.

POST CESSATION OF STEEN BALI MCSHERRY

- 7.21 The firm ceased to trade on the 31 October 2013. The Respondent was interviewed by the GFSC on 21 November 2013. The GFSC required to be satisfied that the firm's books and records were up to date and the proper arrangements in place for the winding up of the firm. He was asked to provide evidence of this to the GFSC in advance of their next meeting on 5 December 2013. He did not do so. At their meeting the GFSC did not have information to enable them to satisfy themselves that the firm was being wound up properly. The Respondent later wrote that he had passed papers to other solicitors and no client was placed at any risk.
- 7.22 In January 2014 he submitted an Accounts Certificate to 31 October 2013 it was inaccurate and was returned for amendment. He was asked to submit further certificates for November and December 2013 and January 2014. The trial balances produced for the months of September, October, November and December were forwarded but did not reflect the amendments suggested by the Financial Compliance Department. The solicitor was again asked to address the matter. At the beginning of February 2014 he submitted a final Accounts Certificate to 31 January 2014. The firm still held client funds at this stage and continued to do so in March 2014 with fee notes still to be rendered. The Respondent submitted a final Accounts Certificate on 6 February 2014. On 6 March 2014, his bookkeeper forwarded a "*corrected list of balances which were re-lodged in the client bank account on 17th January*". The following day, the Financial Compliance Department emailed the Respondent drawing his attention to the deficit on the client bank and asked him to transfer the sum of £498.64 without delay and correct the position "*immediately*". The solicitor was asked to forward documentary evidence to support payment into the client bank.
- 7.23 Having explained why there were apparent discrepancies in the firm's figures, the solicitor's bookkeeper confirmed to the Financial Compliance Department on 12 March 2014, that the bank entries on the firm's client accounts would be updated. The Financial Compliance Department reminded the Respondent that while balances were still held by the firm, the firm had not ceased. They highlighted that

the main reason for the deficit occurring was because fee notes had not been rendered, as required by the Accounts Rules. On 21 March 2014, one of the inspectors from the Financial Compliance Department sent an email to the solicitor reiterating that all fee notes must be rendered to the clients and client balances must be dealt with. She wrote: *“It is a concern that balances remain held, despite a cessation certificate stating otherwise. This has also meant a further deficit on the client bank.”*

7.24 At their meeting in March 2014, the GFSC noted that there were matters still outstanding since the cessation of the firm in October 2013. The Respondent apologised for the breaches of the Rules accepted by him and wrote that he wished to be allowed to become an assistant in a law firm as he did not have confidence in his ability to manage a firm at that time. He stated that he had been very ill, including suffering a stroke in 2012, for which he had medication which had side effects. On 16 April 2014, he sent an email to the Financial Compliance Inspector and advised that as soon as he had been told there was a deficit, he had contacted the Compliance team and *“[w]e put money in to cover it”*. The inspector responded the same day and reiterated that the firm had not ceased until the balances were disbursed. On the 17 July 2014 the Respondent’s Practising Certificate was withdrawn under Section 40 of the Solicitors (Scotland) Act 1980.

7.25 The Respondent became ill in 2009 and was suffering from a number of health problems and on medication.

8. Having given careful consideration to the facts, having heard submissions from the Complainers and having noted the terms of the Respondent’s Answers and documents lodged on behalf of the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 His on 8 August and 26 November 2013 taking £150 and £200 respectively from his client Mr. Edward Warren without crediting those payments to his client account and requiring payment to be made to his personal bank account in breach of Rule B6.3.1 of the Law Society of Scotland Practice Rules 2011.

- 8.2 His between 31 October 2013 and 15 January 2014 failing to advise his client Mr. Edward Warren that the firm of Steen Bali McSherry had ceased to trade and continuing to act on behalf of the client in his capacity as a solicitor when he was not the holder of a practising certificate, was not affiliated to any practising firm of solicitors and had no professional indemnity insurance cover.
- 8.3 His between 30 November 2011 and 31 October 2013 consistently failing to comply with Section B6 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2011 regulating the financial management of the firm of Steen Bali McSherry, solicitors. In particular:
- i) He repeatedly allowed the client account to fall into a deficit in breach of Rule B6.3.1.
 - ii) He repeatedly failed to promptly rectify breaches of the rules brought to his attention or to replace money improperly withheld or withdrawn whereby the practice unit was regularly in a deficit position, in breach of Rule B6.4.
 - iii) He repeatedly failed to keep properly written up accounting records to show all dealings with client's money and to demonstrate compliance with the Money Laundering Regulations: B6.7.1
 - iv) He repeatedly failed to maintain written up accounting records to show the true financial position of the firm or to balance the firm's books monthly and on the last day of each month: B6.7.4
 - v) He repeatedly failed to keep accurate bank reconciliations: B6.8.1
 - vi) He repeatedly failed to keep an accurate Statement of Surplus: B6.8.2
 - vii) He consistently failed to acquire and maintain the skills necessary to discharge his responsibilities as Cashroom Manager, and consistently failed to supervise his staff and the systems employed by the practice unit to comply with the provisions of Rule 6 of the 2011 Rules: B6.13

viii) He failed to declare the true financial position of his firm on his Accounts Certificate to 30 June 2013: B6.15

ix) He failed to disclose the true financial position of his firm on his final Accounts certificate submitted 7 February 2014: B6.15

x) He failed to comply with the Money Laundering Regulations in relation to identity checks including client due diligence, Risk Assessment of transactions, evidence of the source of funds and the wealth of clients, the undertaking of random sample file checks or regular reviews of anti-money laundering procedures: B6.23

8.4 His between 31 October 2013 and 16 April 2014 repeatedly delaying or failing entirely to cooperate with the Complainers in the exercise of their regulatory functions or to make suitable arrangements for the winding up of his firm. In particular he failed to respond to communications timeously, to provide accurate accounts certificates on time or at all, or to produce accounting records and information to ensure an adequate standard of record keeping and demonstrate the true financial position of the firm of Steen Bali McSherry, Solicitors, following its cessation on 31 October 2013: B6.18.7

Find that the Secondary Complainer has been directly affected by the Respondent's professional misconduct.

9. After having considered the matter very carefully, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 21 January 2016. The Tribunal having considered the Complaint dated 26 October 2015 at the instance of the Council of the Law Society of Scotland against Michael Thomas McSherry, Solicitor, 51 Morven Road, Bearsden, Glasgow; Find the Respondent guilty of professional misconduct in respect of his between 8 August and 26 November 2013 taking £150 and £200 respectively from a client without crediting those payments to his client account and requiring payment to be made to his personal

bank account in breach of Rule B6.3.1 of the Law Society of Scotland Practice Rules 2011, his between 31 October 2013 and 15 January 2014 failing to advise his client that the firm of Steen Bali McSherry had ceased to trade and his continuing to act on behalf of the client in his capacity as a solicitor when he was not the holder of a practising certificate, was not affiliated to any practising firm of solicitors and had no professional indemnity insurance cover, his between 30 November 2011 and 31 October 2013 consistently failing to comply with Section B6 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2011 regulating the financial management of the firm of Steen Bali McSherry, solicitors and in particular his breach of Rule B6.3.1, B6.4, B6.7.1, B6.7.4, B6.8.1, B6.8.2, B6.13, B6.15, B6.15 and his failure to comply with the Money Laundering Regulations in breach of Rule B6.23, his between 31 October 2013 and 16 April 2014 repeatedly delaying and failing entirely to cooperate with the Law Society in the exercise of their regulatory functions or to make suitable arrangements for the winding up of his firm and his failure to respond to communications timeously or provide accurate accounts certificates on time or at all, or to produce accounting records and information to ensure an adequate standard of record keeping and demonstrate the true financial position of his firm following its cessation on 31 October 2013 contrary to Rule B6.18.7; Suspend the Respondent from practice for a period of four years; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Kenneth Paterson
Vice Chairman

10. Edinburgh 21 January 2016. The Tribunal having considered the Complaint dated 26 October 2015 at the instance of the Council of the Law Society of Scotland against Michael Thomas McSherry, Solicitor, 51 Morven Road, Bearsden, Glasgow and having

determined that the Respondent was guilty of professional misconduct considered that it was appropriate to award compensation to the Secondary Complainer, Edward Warren; Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Mr Edward Warren, Cottage Road, 33 Lindsay Gardens, Kilmarnock the sum of £150 by way of compensation in respect of loss, inconvenience and distress resulting from the misconduct within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

(signed)

Kenneth Paterson

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Kenneth Paterson
Vice Chairman

NOTE

The Respondent had lodged Answers to the Complaint and also entered into a Joint Minute admitting the averments of fact and averments of duty in the Complaint. Ms Johnston advised that she had spoken to the Respondent yesterday and he had indicated that he was unwell and would not be attending the Tribunal. The Respondent's position was that he would prefer the Tribunal to consider whether or not his conduct amounted to professional misconduct.

In response to a question from the Chairman, Ms Johnston confirmed that the Respondent had not sought an adjournment and was happy for the matter to proceed today. In the circumstances the Tribunal proceeded to deal with the matter in the absence of the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston referred the Tribunal to Article 4.1 of the Complaint and explained that Mr Warren had instructed the Respondent in respect of a matrimonial matter. The Respondent had asked Mr Warren to provide a payment to account of fees and asked for this to be paid into his personal account rather than the firm account. Ms Johnston stated that at this time there were already signs that the Respondent's firm was in trouble. There had been a number of inspections and one was pending. The Respondent had already had some financial problems by that time. Ms Johnston stated that she accepted that the Respondent was stressed and ill.

In respect of Article 4.2, the Respondent ceased to trade without notifying Mr Warren. He was then without a practising certificate for three months and 20 days and despite meetings and phone calls, he did not mention this to his client. Ms Johnston submitted that these facts alone were sufficient to amount to professional misconduct.

Ms Johnston submitted that the Respondent's firm was in disarray. He had failed to communicate with the Law Society. He ceased to practise and failed to credit payments to his firm client account. He was in clear breach of the Practice Rules. Ms Johnston referred to Article 5.1 and pointed out that this showed that he had had a previous inspection and knew that there were problems. Ms Johnston stated that it was a worrying picture of how he ran his cashroom and there were deficits. The Respondent was continuing to practice by retaining outlays paid by the Legal Aid Board in the firm account despite having been told before not to do this. The declarations in his accounts certificate were incorrect. He

did not balance his books monthly, did not do reconciliations and his books were not up to date. He had not paid VAT and national insurance and this showed that the firm was not doing well financially. He had exceeded his overdraft limit. The Respondent was also not doing risk assessments for money laundering purposes.

Ms Johnston stated that around this time the Respondent took on Eileen Coogans to do conveyancing work which was a higher risk area and Ms Coogans had been before the Tribunal twice and did not hold a practising certificate. Ms Johnston submitted that this was a very worrying development. The Respondent instructed staff not to pay legal outlays and it was drawn to his attention again and again that this should not be done but nothing was done to sort it out. His firm was a shambles and the Respondent said he would produce things but then he did not or he produced inaccurate documentation. The Respondent either couldn't or wouldn't address the irregularities.

Ms Johnston pointed out that in August 2013 the Respondent was in deficit which was the time when Mr Warren paid him money. The Respondent did not provide what he should have done on cessation. Ms Johnston stated that the main reason for the deficits was that the Respondent was not rendering fee notes. Ms Johnston stated that the Respondent himself recognised that he should only be an assistant.

Ms Johnston pointed out that the Respondent had been advised of the basic issues in 2009 and warned that he must improve the financial side of his business. He breached a number of rules over a prolonged period despite repeated inspections, interviews and advice. Over a period of one year and 11 months he did not improve and continued in practice and added a riskier area of work to his practice. The Respondent then failed to apply himself properly to the winding up of the practice. Ms Johnston stated that it was accepted that the Respondent had been ill but this was not an excuse. Ms Johnston asked the Tribunal to make a finding of professional misconduct and also find that Articles 10.2 and 10.3 on their own would be sufficient to be professional misconduct on a standalone basis.

DECISION

The Tribunal had no hesitation in making a finding of professional misconduct. The Respondent breached numerous accounts and practice Rules over a prolonged period of time despite repeated inspections, interviews at the Law Society and advice given by the Law Society. It is imperative if the public is to have confidence in the legal profession that solicitors comply with the Accounts and Professional Practice Rules. Given the financial and chaotic situation with the Respondent's firm at the

time when the Secondary Complainer was asked to pay two sums of money directly into the Respondent's personal account and given that the Respondent continued to act for the Secondary Complainer without advising him that he no longer had a practising certificate, these are sufficiently serious in themselves to amount to professional misconduct. The Respondent is a solicitor of 39 years' experience and would know perfectly well that it is not appropriate to have a client pay money into a solicitor's personal account.

The Tribunal noted the Respondent's various medical conditions but if the Respondent was ill he should not have continued to operate his practice. The Tribunal was particularly concerned about the fact that the Respondent rather than realise that he was not coping and wind up his business, instead took on an assistant who did not have a practising certificate and started doing conveyancing work which was a more risky area of practice. The Tribunal was also concerned to note that the Respondent was given so many chances by the Law Society to rectify the situation and yet failed to do so. The Tribunal considered whether a restriction on the Respondent's practising certificate would provide sufficient protection for the public. However despite the Respondent's firm being closely monitored by the Law Society and despite matters having been brought to his attention, he failed to address the issues. The Tribunal consider that this casts doubt on his ability to work safely even under supervision. In the circumstances the Tribunal considered that a Suspension for a period of four years would be an appropriate penalty.

Ms Johnston asked the Tribunal to make a finding of expenses and make the usual order with regard to publicity. The Tribunal saw no reason to depart from the usual practice of awarding expenses where a finding of professional misconduct is made and made the usual order with regard to publicity.

COMPENSATION CLAIM

The Tribunal then went on to hear the compensation claim from the Secondary Complainer. The compensation claim had been sent to the Respondent in advance of the hearing and the Respondent was aware that the matter may be dealt with today.

The Secondary Complainer lodged various papers with the Tribunal and gave evidence to the Tribunal in support of his claim.

EVIDENCE BY MR WARREN

Mr Warren advised that he had separated from his wife in 2011 and had wanted a divorce. He made contact with the Respondent and told him the situation and asked if the Respondent could prevent his wife from selling the house. The Respondent asked for £100 which he gave to him. Mr Warren then moved to Ireland with his partner. The correspondence that the Respondent was sending to Mr Warren's wife had mistakes in it and Mr Warren was concerned about this. In December 2013 he stopped hearing from the Respondent so his partner, Ms James, came over and went to his office. She saw the Respondent who asked her to put a direct debit for a sum of money in to his account. Despite this they did not hear further from the Respondent so Ms James went back over and found the offices all boarded up in January 2014. Security guard said that he thought that the offices had moved to Paisley so Ms James went to Paisley to confront the Respondent. The Respondent had said he had sent emails and letters but they had not received anything. Mr Warren stated that he did not know what was happening with the divorce or the house. He and his partner had come back to Glasgow and he was now having to work again and had to instruct another lawyer to do the divorce. The divorce had just come through. Mr Warren explained that his wife had sold the house and he had been awarded half of it but he would not get it because his wife had sold it to her son for a nominal sum. If the Respondent had done what he should have done, his wife would not have been able to sell the house. Mr Warren indicated that he had lost £30-35,000 as a result of this.

In response to a question from the Tribunal, Mr Warren confirmed that the title to the house was in his wife's name and explained that she had been the tenant and it was a right to buy situation. Mr Warren stated that the money paid to the Respondent was for work done but no fee notes were issued and he was never given any terms and conditions or any receipts. Mr Warren indicated that he just wanted an apology from the Respondent and a bit of compensation for the work the Respondent was supposed to do but did not do. It took a long time to get things sorted out.

In response to another question from the Tribunal, Mr Warren confirmed that he came over to Scotland on one occasion with Ms James because he was attending a football match. He confirmed that his email address had remained the same.

Mr Warren referred to the receipts lodged by him which related to the two trips that Ms James had made to Glasgow on her own to see the Respondent.

EVIDENCE FROM MS MAMIE JAMES

Ms James confirmed that she lived with Mr Warren at 33 Lindsay Gardens, Kilmarnock. She indicated that Mr Warren had consulted the Respondent with regard to his divorce. The Respondent had asked for money and they had asked for an estimate of the costs. They paid £100 up front after a half an hour meeting. Ms James stated that they had asked for terms and conditions and he said he would forward them but they did not get any. She indicated that they saw the Respondent again before they went to Ireland but once they went to Ireland there were problems with communication. It had been agreed with the Respondent that Ms James could correspond on behalf of Mr Warren. She had to fly back to Scotland on occasion to check out the house that they were renting out. Ms James explained that the Respondent had sent them a copy of a letter sent to Mr Warren's wife but there were errors in it. They accordingly had asked the Respondent to email them drafts but this did not happen. They could not get him on the phone and his email responses were vague. The Respondent had still not told them the costs and they were uncomfortable. He asked for more money and Ms James stated that she put £150 or £200 into his account. She phoned to ask what name the account was in and he said to put into Michael McSherry. She paid this but nothing happened. The Respondent stated that he needed more money so Ms James stated that they travelled to the bank and paid in another transfer of money. Ms James explained that they kept phoning but could not get a response. They then received another letter which was incorrect. Ms James explained that she came back to Scotland and hired a car and went to Glasgow but his offices were shut. She managed to find out from a security guard that they had moved to Paisley and she googled it and managed to find his office. She waited for the Respondent and spoke to him and told him that she wanted all the papers for the case. The Respondent did not treat her well. She went back the next morning and obtained all the papers but one letter was missing. Ms James referred to the print out receipt she had provided in connection with the ferry and the flights but said that she had no receipt for the car hire. Ms James also indicated that she stayed in a bed and breakfast and there were phone bills and mobile bills but they did not have receipts for this.

She indicated in response to a question from the Tribunal that the sole purpose of her coming back to Scotland was to see Mr McSherry. She indicated that there was a lot more documentation but the SLCC would have the complete file.

DECISION IN RESPECT OF COMPENSATION

The Tribunal had to consider how Mr Warren had been directly affected by the professional misconduct element of the Respondent's conduct. The Finding of professional misconduct was financial and organisational in nature. The Tribunal was of the view that the major element of the loss and distress suffered by Mr Warren related to the service element of the Respondent's conduct and accordingly would be more appropriately dealt with by the Scottish Legal Complaints Commission which still has to deal with the service element of Mr Warren's complaint. The Scottish Legal Complaints Commission has the complete file and will be in a better position to know what work was done in relation to the money paid etc. The Tribunal did not consider that it had any direct effect on Mr Warren that the money was in a different account and did not consider that their losses were directly arising from the misconduct element.

The Tribunal however appreciate that the Secondary Complainer has had to be involved in these Tribunal proceedings due to the professional misconduct element of the Respondent's conduct. In these circumstances the Tribunal made an award of £150 by way of compensation in favour of Mr Warren for his inconvenience and distress of having to become involved in these proceedings.

The Tribunal recommended to Mr Warren that he pursue his compensation claim through the Scottish Legal Complaints Commission who would receive a copy of the Tribunal Findings in this case.

Kenneth Paterson
Vice Chairman