

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

FINDINGS

in Complaint

by

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

Complainers

against

**WILLIAM MURNIN, 97 Finnart Street,
Greenock**

Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that William Murnin, 97 Finnart Street, Greenock (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. On 27 July 2018, Answers were lodged for the Respondent along with a letter seeking a sist of Tribunal proceedings.
4. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a procedural hearing on 17 September 2018 and notice thereof was duly served on the parties.
5. On 15 August 2018, the Respondent lodged a motion requesting that the procedural hearing fixed for 17 September 2018 and any future hearings should be heard in private due to related ongoing criminal proceedings. This motion was not opposed by the Complainers. On 20 August 2018, the Chair due to deal with the case on 17 September 2018, exercising

the functions of the Tribunal under Rule 56 of the Tribunal Rules 2008, granted the Respondent's motion.

6. At the procedural hearing on 17 September 2018, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by Lesley Johnston, Solicitor Advocate, Edinburgh. As intimated in the letter accompanying the Answers, Ms Johnston moved the Tribunal in terms of Rule 44 of the Tribunal Rules 2008 to sist the Tribunal proceedings. That motion was opposed by the Complainers. The Tribunal refused the motion to sist. An Interlocutor and Note with the Tribunal's reasons was issued to parties after the procedural hearing on 17 September 2018. A preliminary hearing was fixed for 26 November 2018.
7. On 18 September 2018, on the Complainers' motion, the Tribunal adjourned the preliminary hearing fixed for 26 November 2018 and fixed a preliminary hearing for 10 December 2018. Notice thereof was duly served on the parties.
8. At the preliminary hearing on 10 December 2018, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by Alexander Sutherland, Advocate. Mr Sutherland's primary motion was for the Tribunal to dismiss the case on grounds of delay. His secondary motion was for the Tribunal to sist the case. Both motions were opposed by the Complainers. The Tribunal refused both motions. An Interlocutor and Note with the Tribunal's reasons was issued to the parties after the preliminary hearing on 10 December 2018. The Tribunal fixed a hearing for 2 April 2019. Notice thereof was duly served on the parties.
9. On 28 March 2019, on the Respondent's motion which was not opposed, the Tribunal adjourned the hearing fixed for 2 April 2019 and fixed a hearing for 25 and 26 September 2019. Notice thereof was duly served on the parties.
10. The Respondent lodged a written motion dated 14 June 2019 to dismiss the Complaint. This was opposed by the Complainers. The Tribunal fixed a procedural hearing for 11 July 2019. Parties agreed to waive the usual notice period and notices were served on the parties.
11. At the procedural hearing on 11 July 2019, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The

Respondent was not present but was represented by Lesley Johnston, Solicitor Advocate, Edinburgh. On the Respondent's motion, the Tribunal fixed a preliminary hearing for 2 September 2019 to consider the Respondent's motion to dismiss the case. Due to the unavailability of an essential witness, the preliminary hearing fixed for 2 September 2019 was adjourned to 13 September 2019. Notices were served on the parties.

12. At the preliminary hearing on 13 September 2019, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by Dorothy Bain, Q.C., instructed by Francis Gill, Solicitor, Edinburgh. Ms Bain moved the Tribunal to adjourn the preliminary hearing. This was not opposed by the Complainers. The Tribunal continued the preliminary hearing to 4 and 5 November 2019. Notices of the hearing were served upon the parties.
13. At the preliminary hearing on 4 and 5 November 2019, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by Dorothy Bain, Q.C., instructed by Kennedys Solicitors, Edinburgh. Two witnesses gave evidence. Parties made submissions in respect of the Respondent's motion to dismiss the case. The Tribunal continued the preliminary hearing to a date to be afterwards fixed.
14. The Tribunal set the continued preliminary hearing down for 17 December 2019. Notices were served on the parties. Due to the unavailability of a Tribunal member, the continued preliminary hearing was adjourned to 30 January 2020. Notices were served upon the parties.
15. At the continued preliminary hearing on 30 January 2020, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by Leslie Johnston, Solicitor Advocate, Edinburgh. The Tribunal refused the Respondent's motion to dismiss the case. An Interlocutor and Note with the Tribunal's reasons was issued to the parties after the preliminary hearing on 30 January 2020. The Tribunal set the matter down for a hearing on dates to be afterwards fixed.
16. On 26 March 2020, the Tribunal, in view of government advice regard COVID-19 (coronavirus), under Rule 44 of the Tribunal Rules 2008 on its own initiative sisted the

case. That sist was recalled by Interlocutor of 22 May 2020. In terms of its Rules, the Tribunal set a procedural hearing to take place by video conference on 2 July 2020 and notice thereof was duly served upon the parties.

17. At the virtual procedural hearing on 2 July 2020, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by Lesley Johnston, Solicitor Advocate, Edinburgh. The Tribunal fixed a procedural hearing for 7 September 2020 to take place either remotely or in person and a hearing in person to take place on 2 to 6 November 2020. On the Complainers' motion, the Tribunal indicated it would receive evidence at the hearing by way of affidavit on the basis that the affidavits were to be used to shorten cross-examination and the witnesses would be cited for additional examination by the Fiscal, cross-examination by the Respondent's representative and questions from the Tribunal. Notice of the procedural hearing was served on the parties.
18. At the virtual procedural hearing on 7 September 2020 which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The Tribunal continued the case to the hearing in person already fixed for 2 to 6 November 2020. Notice of the hearing was served on the parties.
19. On the Fiscal's motion, the Tribunal fixed an additional virtual procedural hearing. Parties by email agreed to waive the usual notice period. The virtual procedural hearing was fixed for 23 October 2020 and notices were served on the parties.
20. At the virtual procedural hearing 23 October 2020, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The Tribunal continued the case to the hearing already fixed for 2 to 6 November 2020. The Tribunal confirmed that the hearing would take place in private.
21. By letter of 26 October 2020, the Respondent made a motion for the Tribunal to receive Adjusted Answers and to adjourn the hearing fixed for 2 to 6 November 2020. These motions were opposed by the Complainers. The Chair due to convene the hearing on 2 to 6 November 2020, exercising the functions of the Tribunal under Rule 56 of the Tribunal Rules 2008, refused both motions.

22. By email of 29 October 2020, the Respondent made a motion to adjourn the hearing fixed for 2 to 6 November 2020. This was opposed by the Complainers. The Chair due to convene the hearing on 2 to 6 November 2020, exercising the functions of the Tribunal under Rule 56 of the Tribunal Rules 2008, refused the motion.
23. At the hearing on 2 November 2020, which was held in private, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Fiscal moved the Tribunal to hear the case in the Respondent's absence. Following evidence from the Clerk regarding service of the notice of hearing the Tribunal decided to proceed to hear and determine the Complaint in the absence of the Respondent. On 2 November 2020, the Fiscal led evidence from six witnesses. On 3 November 2020, the Fiscal led evidence from four witnesses and made submissions to the Tribunal regarding professional misconduct. The Tribunal deliberated.
24. The Tribunal found the following facts established:-
- 24.1 The Respondent is a Solicitor enrolled on 6 August 1974. He practised as an employee and partner in two firms prior to becoming a partner in Murnin McCluskey (MM) on 12 September 1994. He was:-
- (i) the cashroom partner between at least from 1 June 2000 and 18 May 2010;
 - (ii) the risk management partner between 11 February 2002 and 18 May 2010;
 - (iii) the client relations partner between 24 August 2005 and 18 May 2010 and;
 - (iv) the anti-money laundering partner from 26 October 2006 until 18 May 2010.
- He ceased to be a partner in MM on 18 May 2010. His Practising Certificate was suspended by the Complainers under Section 40 of the Solicitors (Scotland) Act 1980 on 22 July 2010. As at the date of the Complaint he did not hold a Practising Certificate but remained on the Roll of Solicitors.
- 24.2 Accordingly at all relevant times narrated below, the Respondent, as a designated cashroom partner, was responsible for:-
- (a) carrying out the provisions of the Solicitors (Scotland) Etc Rules 2001 (the Accounts Rules); and

- (b) securing compliance by Murnin McCluskey with the provisions of the Accounts Rules
- (c) signing or authorising the signing of accounts certificates for the relevant period.

Financial Compliance Inspection – 18 May 2010

- 24.3 MM, at all the material time in relation to this complaint, had three partners and two offices. Two of the partners were based in the Glasgow office carrying out mostly court work. The Respondent, who at the material time was the senior partner, worked from the Greenock office. The Respondent was in sole charge of the Greenock office. He retained any profit coming from said office. All issues in the Complaint related to fees invoiced and taken by the Respondent in relation to files held by him and under his sole management and control at the Greenock office.
- 24.4 On 9 April 2010 one of the partners in the Glasgow office of MM contacted the Complainers and spoke to Tina Heywood in the Financial Compliance Department (FCD). He indicated that his cashier had come to him with concerns regarding the level of fee charging at the Greenock office. There was a discussion as to what the correct percentage of fees would be taken in executries. Ms Heywood explained that an inspection of the firm was due to take place. This was a routine inspection but that a check of matters would be undertaken at that time.
- 24.5 The inspection proceeded on 18 May 2010 (the May inspection). The Respondent was not available during the inspection which took place at the Greenock office. His partners indicated that they had no advance notice that the inspection was due to take place and on checking with the Complainers ascertained that all letters intimating the inspection had been forwarded by recorded delivery to the Greenock office.
- 24.6 During the inspection, and at an early stage, it became clear to the FCD inspectors that there were concerns about the level of fees that had been taken from many client ledgers. Files were requested but not made available but a

cross-check of the fees nominal ledger against individual client ledgers was carried out and from this a list was produced. At that time 13 client ledgers were examined where 44 fee notes amounting to £231,895 had been invoiced. Said total did not appear to be appropriate. That in turn raised an issue about the client account being in deficit.

24.7 An Inspection report dated 18 May 2010 was compiled. The partners of MM were required to investigate and rectify the issues raised by the FCD inspectors. A further Inspection of the firm took place on 9 and 10 November 2010.

24.8 Following on from the May Inspection, the Respondent's partners instructed an independent Law Accountant, Mullans Law Accountants, Livingston, (Mullans) to independently assess the files identified by the Complainers as well as any further files. Their assessment indicated that of the fees rendered for the following files, only £30,402.47 excluding VAT could be legitimately charged bringing about an overcharging of £217,478.75. That overcharging in turn resulted in a deficit on the client account of £217,478.75. The relevant certificates of fees relating to the following clients were produced:-

- (1) Mr A
- (2) Mr B – Ms C Executry.
- (3) Ms D
- (4) Mr E
- (5) Mr F
- (6) Mr G
- (7) Ms H (linked with Ms O and Mr P files below)
- (8) Ms I
- (9) Mr J
- (10) Ms K Executry
- (11) Ms L Executry
- (12) Mr M
- (13) Mr N.

24.9 Five files could not be located, namely:-

- (14) Ms O and Mr P (subsequently located)
- (15) Ms Q
- (16) Mr R
- (17) Ms S (subsequently located and lost again).

The client and nominal ledgers for these were however available for examination.

24.10 The Complainers then carried out a full examination of the available relevant paperwork, fee notes and ledger cards for the seventeen files detailed above. The files seen confirmed that the Respondent was the individual dealing with those. The ledgers also confirmed the Respondent was involved with all the relevant files. The following narrates the results of the investigation.

Mr A

24.11 Fees of concern, as follows, were seen to have been invoiced and taken from the client ledger totalling £29,375.00 as at 21 April 2010:-

- (i) a contractual dispute between Mr A and Company 1, instructed in February 2006
- (ii) other matters relating to financial problems and
- (iii) Mr A's Will.
- (iv) an Executry file.

24.12 A copy death certificate held on file evidenced that Mr A died on 26 November 2009. The firm commenced acting at the end of November/start of December 2009 in relation to the Executry. A copy of the Certificate of Confirmation, granted by the Commissariat of North Strathclyde at Greenock on 5 March 2010, evidenced that the solicitor had been appointed as his Executor Nominated in terms of his Will dated 17 October 2007, an extract of which was registered in the Books of Council & Session on 2 December 2009. It stated the value of the estate to be £288,350.37.

24.13 Copies of the following fee notes appeared on the file; those in bold relate to the fees taken that were of concern:-

1. 19 November 2007 (£40 plus VAT - £47) - Will.
2. 19 November 2007 (£500 plus VAT - £587.50) - all work relative to Company 1 claim and payment to them of numerous instalments.
3. **17 March 2010 (£18,750 plus VAT - £22,031.25)** - Interim fee note regarding administration of the estate from commencement to 31 January 2010- debited from the ledger on 30 March 2010. No outlays were on the fee note.
4. **13 April 2010 (£1,100, posts and incidents £150 plus VAT - £1,468.75)** - (Executry) fee regarding file relative to claim by Company 1 - debited on 21 April 2010. Accordingly the outlays totalled £176.25.
5. **13 April 2010 (£5,000 plus VAT - £5,875)** - fee in connection with termination of lease of subjects at Property 1 - debited on 21 April 2010. No outlays were on the fee note.
6. 16 August 2011 (£4,550 plus VAT - £5,460) - fee for professional services undertaken on your behalf in connection with the Mr A's Executry for the period 24 May 2010 to close.
7. 30 November 2011 (£400 plus VAT - £480) - fee in respect of work done on administration of estate since date of last fee invoice.

24.14 The three fees above in bold were noted as having been credited back to the ledger by MM on 25 May 2010.

24.15 Mullan's letter to the firm of 2 June 2010 stated that it had firstly prepared an account to reflect the work undertaken in respect of sums due to Company 1 at an agreed hourly rate of £175. It assessed the fees properly due as £907.86 plus VAT and outlays. VAT on that fee amounts to £158.88. The outlays as detailed in Fee note 4 were £176.25 but were for posts and incidents rather than an actual outlay. Accordingly the total fee properly due was £1,066.74.

24.16 Thereafter, a detailed account on the administration of the Executry had been prepared on the hourly rate of £250, which had been intimated to the client.

24.17 Mullan's professional business account detailing Executry work carried out from 1 December 2009 to 24 May 2010 and a second law accountant's Certificate, dated 2 June 2010, both assessed fees due to be £3,953.13 excluding VAT and

outlays. The total fee properly due was £4,897.20 for work undertaken from 1 December 2009 to 24 May 2010.

24.18 On 9 August 2010, as per Mullan's Certificates, fees of £1,066.74 and £4,644.93 were debited. No fee was ultimately rendered in relation to the original fee note 5 above.

24.19 Accordingly the Respondent deliberately deducted fees on the ledger totalling £29,375 during the period 30 March 2010 to 21 April 2010 when he was only entitled to £5,711.67 for Fee notes 3 and 4 alone. He therefore overcharged and took excessive fees for fee notes 3 and 4 alone to the extent of £17,788.33. As narrated MM credited fee note 5 and did not render a further invoice for the work referred to in this fee. That fee note too amounted to an overcharging by the Respondent of £5,875, giving a total of overcharge of £23,663.33 and a consequential deficit on the client account of the same amount.

Ms Q

24.20 Fees of concern, as follows, were seen to have been invoiced and taken from the client ledger totalling £74,347.50 as at 15 September 2009:-

Ms Q — total £74,347.50

- 10 February 2009 - £14,375.00 - fees debited on 10 February 2009, Mr T Executry
- 27 February 2009 - £2,875.00 - fees debited on 27 February 2009, Mr T Executry
- 21 April 2009 - £4,600.00 - fees debited on 21 April 2009, Executry fee
- 30 April 2009 - £5,750.00 - fees debited on 30 April 2009, Mr T Estate
- 16 June 2009 - £14,662.50 - fees debited on 16 June 2009, agreed expenses
- 30 June 2009 - £13,685.00 - fees debited on 30 June 2009, balance of fees
- 15 September 2009 - 8,337.50 - fees debited on 15 September 2009, advice regarding Ms U.
- 15 September 2009 - 10,062.50 - fees debited on 15 September 2009, Mr T Estate.

- 24.21 The fees above were noted as having been credited back to the ledger on 25 May 2010.
- 24.22 On 9 August 2010 fees of £1,066.74 were debited. This may have covered work undertaken in the period after the Respondent's departure.
- 24.23 Notwithstanding that the fees finally taken may have covered work carried out after the Respondent left the firm, the final appropriate fees were £73,280.76 less than the fees that had been taken by the Respondent deliberately during the period 10 February 2009 to 15 September 2009.
- 24.24 On these figures the fees taken by the Respondent during this period were almost a 7000% uplift on the final fees considered appropriate of £1,066.74. He therefore overcharged and took excessive fees to the extent of £73,280.76 resulting in a consequential deficit on the client account of the same amount.

Ms C Executry /Mr B Executry

- 24.25 Fees of concern, as follows, were seen to have been invoiced and taken from the client ledger totalling £13,800 as at 30 April 2009:-

Mr B/Ms C Executry — total £13,800

- 13 January 2009 - £5,750.00
- 27 February 2009 - £2,875.00
- 27 February 2009 - £1,725.00
- 10 March 2009 - £2,300.00
- 30 April 2009 - £1,150.00

The ledger was opened in 1997.

The first fee shown above was taken, then various sums for realisation of assets were received until 27 February 2009 when the balance of funds held invested was £88,004.78 and there was also £260.61 held on the general client ledger. Two payments of £40,060.00 were made to beneficiaries.

At that date, £8,321.50 was still held by the firm, however, following the debit of the last four fees noted above and some small interest and dividends being received, only £324.09 was held on the general client ledger.

24.26 There was correspondence held on the files in relation to:-

- (i) the purchase of a flat, at Property 2 by Mr B and Ms C in 1995,
- (ii) the Executry for Ms C in 2003,
- (iii) a Will for Mr B in 2003,
- (iv) a Power of Attorney for Mr B in 2008 and
- (v) Mr B's Executry in 2008.

24.27 The copy death certificates evidenced that Ms C died on 19 March 2003 and Mr B on 18 November 2008.

24.28 MM was instructed by Mr B, as executor, in relation to his wife's estate. The Respondent was the person acting in this matter.

24.29 Mr B was confirmed as Executor Nominated to his wife's estate by the Commissariat of North Strathclyde at Greenock on 23 June 2003.

24.30 A Statement of Intromission in connection with the administration of Mrs C's estate stated the Sum of the Charge to be £48,374. The sum stated to be taken as fees plus VAT was £5,875. This was signed by Mr B, as executor, in January 2004 as approved and that he had discharged the firm in connection with the administration of the estate.

24.31 Mr B's Will dated 16 April 2003 appointed the Respondent as his executor. It was registered in the Books of Council and Session on 28 November 2008 and the Respondent was confirmed as Executor Nominated by the Commissariat of North Strathclyde at Greenock on 19 December 2008.

24.32 Copies of the following fee notes appeared on the file, those in bold relate to the fee notes taken that were of concern:-

Ms C Executry

1. 5 September 2003 (£2,500 plus VAT - £2,937.50) - interim fee debited from the ledger on 10 September 2003.
2. 4 November 2003 (£1,500 plus VAT - £1,762.50) - balance of fee- debited on 4 November 2003.
3. January 2004 (£1,000 plus VAT - £1,175) - balance of fee- debited from the ledger on 2 February 2004.

These fee notes as taken totalled £5,875.

Mr B Executry

4. **5 January 2009 (£5,000 plus VAT - £5,750) - fee to account - debited on 13 January 2009, re Administration of Estate.**
5. **19 February 2009 (£2,500 plus VAT - £2,875) - fee to account - debited on 27 February 2009, re Executry of Mr B.**
6. **24 February 2009 (£1,500 plus VAT - £1,725 - fee, conveyancing of Property 2 - debited on 27 February 2009.**
7. **9 March 2009 (£2,000 plus VAT - £2,300) - fee relative to balance administration fee- debited on 10 March 2009.**
8. **30 April 2009 (£1,000 plus VAT - £1,150) - fee re completion of executry fees debited on 30 April 2009, re Mr B Executry fee.**

These fee notes as taken totalled £13,800.

- 24.33 Fees 4-8 above were credited back to the ledger on 25 May 2010, fee note 7 being credited for £50 more than the fee note itself.
- 24.34 In addition a credit note of £2,937.50 in relation to fee note number 1 was credited back to the ledger on 9 August 2010, re overcharged as per the accountant's note.
- 24.35 Mullan's professional business accounts detailing work from:-
- (i) 24 January 1995 to 25 April 1995 was for £1,045.70 plus VAT & outlays.
 - (ii) 19 March 2003 to 15 November 2005 was for £1,903.23 plus VAT & outlays.

- (iii) 5 November 2008 to 24 February 2009 was for £1,417.52 plus VAT & outlays. The business account prepared totalled £1864.26 including VAT plus outlays.
- (iv) 24 February 2009 to 11 April 2011 was for £273.47 plus VAT & outlays. The business account prepared totalled £354.56 including VAT plus outlays.
- 24.36 Mullan's Certificate, dated 4 June 2010, assessed total fees for the period from January 1995 to April 2009, due in relation to Mr B & Ms C/Ms C's Executry/Mr B's Executry to be £4,366.45 excluding VAT and outlays and referred to Mullan's first 3 business accounts listed above. On 9 August 2010 MM debited a fee note of £1665.59 for the period 5 November 2008 to 24 February 2009.
- 24.37 Accordingly the Respondent deliberately deducted fees on the ledger totalling £13,800 during for the period 5 January 2009 to 30 April 2009 when he was only entitled as a maximum to £2,218.82 being the total of Mullan's business accounts (iii) and (iv). MM ultimately debited less.
- 24.38 Notwithstanding that the fees finally taken, which totalled £3,218.55, covered work carried out after the Respondent left the firm, the final fees properly due for the period November 2008 to April 2009 were at least £11,560.18 less than the fees that had been taken by the Respondent during the period 5 January 2009 to 30 April 2009. On these figures the fees taken by the Respondent during this period were at least a 500% uplift. He therefore overcharged and took fees to the extent of £11,560.18 resulting in a consequential deficit on the client account of the same amount.

Ms D

- 24.39 Fees of concern, as follows, were seen to have been invoiced and taken from the client ledger totalling £10,350 as at 30 September 2009:-

Ms D — total £10,350

- 24 March 2009 - 5,750.00
- 31 March 2009 - 4,025.00

- 30 September 2009 - 575.00

- 24.40 The file first of all dealt with a mortgage of Ms D's property at Property 3, which settled in April 2008 and then went on to become her Executry file.
- 24.41 A copy death certificate held on file evidenced that Ms D died on 2 February 2009. A copy of the Certificate of Confirmation, granted by the Commissariat of North Strathclyde at Greenock on 11 March 2009, evidenced that the Respondent had been appointed as executor in terms of Ms D's Will dated 22 November 1994. The beneficiaries were her son and daughter.
- 24.42 Instructions were sent to the Bank of Scotland to send £20,000 to both beneficiaries on 12 October 2009 after the account details had been clarified. The payments were acknowledged by email of 15 October 2009.
- 24.43 The file evidenced that the beneficiaries were chasing the final accounting in December 2009 and January/February 2010.
- 24.44 By email of 12 February 2010 the Respondent had apologised for the slight delay and stated that he was arranging for the final accounting and would write regarding proposals on fees as already outlined with a view to settling any balances due in the course of 6-8 weeks.
- 24.45 The next correspondence on the file are letters to both beneficiaries dated 16 August 2010 enclosing the final Account of Charge and Discharge in connection with the Executry, which stated the Sum of the Charge to be £68,246.97, and advising that this brought out a balance of £3,141.68/9 ? due to both of them and enclosing the relevant cheques. This stated MM's fee & VAT to be £3,930.09.
- 24.46 Copies of the following fee notes of concern appeared on the file:-
- 1. 18 March 2009 (£5,000 plus VAT - £5,750) - account of administration of estate, estate agency and conveyancing- debited from the ledger on 24 March 2009.**

2. 27 March 2009 (£3,500 plus VAT - £4,025) - administration of estate - debited from the ledger on 31 March 2009.
3. 23 September 2009 (£500 plus VAT - £575) - balance of fee- debited from the ledger on 30 September 2009.

- 24.47 Fee notes 1 & 2 were rendered shortly after funds were ingathered from the estate.
- 24.48 The above 3 fees were noted as having been credited back to the ledger on 25 May 2010.
- 24.49 Mullan's account stated that from 6 - 27 February 2009 the fees properly incurred were £516.28. The next entry was dated 17 April 2009. The fees up until 12 October 2009 were properly stated to be £3,007.87. The next set of fees from 5 January 2010 to 12 February 2010 was £336.88. Mullan's certificate, dated 2 June 2010, properly assessed the fee due at £3,344.75 excluding VAT and outlays.
- 24.50 On 9 August 2010 fees of £3,930.09 were debited from the ledger in terms of the Mullan's certificate.
- 24.51 The final overall fees taken by MM from 24 March 2009 to 12 February 2010, as evidenced from the ledger was £3,930.09. The fees were £6,419.91 less than the fees that had been taken by the Respondent during the period 30 March to 30 September 2009. On these figures the fees taken by the Respondent during this period were at least a 60% uplift on these final fees. He therefore overcharged and took excessive fees to the extent of £6,419.91 resulting in a consequential deficit on the client account of the same amount.

Mr E

- 24.52 One fee of concern, as follows, was seen to have been invoiced and taken from the client ledger totalling £14,950 as at 15 December 2009:-

Mr E — total £14,950

- 15 December 2009 - 14,950,00

On 15 December 2009 the ledger was opened with two receipts - £20,000 from MS V, and £70,000 from Mr E,

On the same day two payments have been made to Ms W.

And the fee noted above was taken from the ledger leaving a balance of £50 at credit.

These are the only entries on the ledger.

- 24.53 The Power of Attorney file held an email from Mr X to the Respondent of 6 July 2007 advising that he was writing on behalf of his father Mr E in relation to instigating a Power of Attorney naming himself and his sister as Attorney.
- 24.54 The Power of Attorney was duly executed by Mr E on 24 August 2007.
- 24.55 The sum of £70,000 was received by the firm on 3 December 2009 to be credited to Mr E's client account. Another £20,000 was received by the firm on 24 December 2009 to be credited to Mr E's client account.
- 24.56 By letters of 10 December 2009 £37,500 was sent to both Mr X and his sister, "representing a payment to account of the monies held on your father's behalf and issued in terms of your instructions".
- 24.57 Both sums received were credited to the client ledger on 15 December 2009.
- 24.58 Only one fee note appeared on the files, namely:-
1. 8 October 2007 (£250 plus VAT - £293.75) - fee re Power of Attorney. An outlay to the Office of Public Guardian (OPG) fee of £120 was also itemised.
- 24.59 The ledger evidenced that on 15 December 2009 a fee of £14,950 was debited from the ledger. This was the same date as funds of £90,000 were credited as detailed above. There is no evidence on file that this fee note was rendered.

- 24.60 The above fee was noted as having been credited back to the ledger on 25 May 2010.
- 24.63 Mullan's account from 6 July 2007 to 10 December 2009 was for £1,099.01 plus VAT and outlays. This comprised a total of £1,291.34 with VAT at 17.5%. Said amount was the properly assessed fee in terms of Mullan's Certificate dated 2 June 2010. The Certificate should have read in relation to Mr E, not his son Mr X.
- 24.61 On 30 August 2010 fees of £1,291.94 were debited from the ledger in terms of the law accountant's certificate (with a difference of 60 pence).
- 24.62 Accordingly the final overall fees taken by MM from 15 December 2009 to 30 August 2010, as evidenced from the ledger was £1,291.94. Accordingly, the final fees were £13,658.06 less than the fees that had been taken by the Respondent on 15 December 2009. On these figures the fees taken by the Respondent during this period were at least a 900% uplift on these final fees. He therefore overcharged and took fees to the extent of £13,658.06 resulting in a consequential deficit on the client account of the same amount.

Mr F

- 24.63 A fee of concern, as follows, was seen to have been invoiced and taken from the client ledger totalling £ 8,518.75 as at 23 March 2010:-

Mr F — total £8,518.75

- 23 March 2010 - 8,518.75

- 24.64 Copies of the following fee notes appeared on the file, there was no evidence of these having been rendered to the client:-

1. 4 January 2010 (£800 plus VAT - £940) - lease assignation.
2. 18 January 2010 (£700 plus VAT - £822.50) - lease transaction.

- 24.65 No copy of the fee note of concern for £8,518.75 taken on 23 March 2010 was on the file or located elsewhere. There was no evidence that fee note was rendered to the client.
- 24.66 The ledger evidenced the following material entries:-
1. £940 - fees debited from the ledger on 12 January 2010, re lease at Property 4.
 2. £822.50 - fees debited from the ledger on 31 January 2010, re lease.
 3. £8,518.75 - various fees taken re leases as per the solicitor's memo was noted as being debited on 23 March 2010.

These fee notes total £10,281.25.

Fee note 3 for £8,518.75 was noted as having been credited back to the ledger on 25 May 2010.

4. The £20,000 assignation premium and £30 CHAPS - fee debited from the ledger on 26 May 2010.
 5. £588.65 for overcharged fees was credited to the ledger on 9 August 2010.
 6. £350 was debited from the ledger on 6 October 2010 in relation to "Anison Ltd referral fee and broker fee".
- 24.67 Mullan's Certificate, dated 2 June 2010, assessed fees properly due to be £1,439.44 excluding VAT and outlays giving a total of £1,671.55 with VAT. MM did not however render a further fee.
- 24.68 Accordingly the final overall fees that ought to have been charged and taken by MM for work carried as at 23 March 2010 was £1,671.55 namely, £8,609.70 less than the fees that had been taken by the Respondent for the same period. On these figures the fees taken by the Respondent during this period were at least 400% uplift on the properly assessed fees. He therefore overcharged and took excessive fees to the extent of £8,609.70 resulting in a consequential deficit on the client account of the same amount.

Mr G Deceased

24.69 Fees of concern, as follows, were seen to have been invoiced and taken from the client ledger totalling £7,931.25 as at 31 January 2010:-

Mr G Deceased — total £7,931.25

- **31 January 2010 - 3,231.25**
- **31 January 2010 - 4,700.00**

The ledger was opened on 26 January 2010 with a credit of £7,924.41 from Halifax - closure of an account. On the same day, £15 was paid to Scottish court service - no details noted.

On 31 January 2010 the two fees noted above were debited, leaving a debit balance of £21.84 on the general client ledger.

These are the only entries on the ledger.

24.70 This is an Executry file. A copy death certificate held on file evidenced that Mr G died on 20 November 2009. His sister instructed MM at the end of November/start of December 2009 in relation to the Executry.

24.71 A copy of the Certificate of Confirmation, granted by the Commissariat of North Strathclyde at Greenock on 20 April 2011, evidenced that his sister, had been appointed as his executrix-dative by decree of the Sheriff of North Strathclyde at Greenock dated 31 December 2009. It stated the value of the estate to be £38,017.

24.72 The bulk of the work done on the Executry was carried out after the Respondent's departure from MM on 18 May 2010.

24.73 Copies of the following fee notes appeared on the file, those in bold being of concern. There was no evidence of these having been rendered to the client:-

1. **19 January 2010 (£2,750 plus VAT - £3,231.25) - administration of estate.**

2. **28 January 2010 (£3,750 plus VAT - £4,700) - all meetings and discussions regarding the administration of funds and advice regarding gifts to her nephew's children in Canada and dealing with funds uplift regarding same to account.**
3. 21 December 2011 (£895.00 plus VAT - £1,074) - final fee in connection with the winding up of the estate; to include all meetings and telephone calls and correspondence; to include preparation of Disposition relative to property at Property 5 and Deed of Family Arrangement. (Whilst a letter was sent to Ms Y on the same date confirming the balance of the Executry and seeking authority to distribute the sums held there was no reference to the fee note of the same date).

24.74 The ledger provided evidenced the following:-

1. As at 26 January 2010 the sum held on the client account was £7,909.41, re sums received from the Halifax plc less Scottish court dues of £15.
2. **31 January 2010 - £3,231.25 fees debited from the ledger re Executry of Mr G.**
3. **31 January 2010 - £4,700.00 fees also debited from the ledger re Executry fee.**

Both of these fees, totalling £7,931.25 (funds recently received being £7,924.41) were issued and taken on the same day despite only having been instructed since late November/December 2009.

These fees were noted as having been credited back to the ledger on 25 May 2010.

4. £1,074.00 - fees debited from the ledger on 21 December 2011, re final fee Executry of Mr G.
5. £1,680 - fees debited from the ledger on 18 December 2013, re Executry of Mr G

- 24.75 Mullan's Certificate, dated 2 June 2010, assessed fees properly due up to 31 January 2010 to be £542.52 excluding VAT and outlays totalling £640.98 .
- 24.76 On 30 August 2010 a fee for £637.47 was debited to the ledger.
- 24.77 Accordingly the final overall fee charged and taken by MM for work carried out up to 31 January 2010 was £637.47 which was £7,293.78 less than the fees that had been taken by the Respondent for the same period. On these figures the fees taken by the Respondent during this period were at least an 1000% uplift on these final fees. He therefore overcharged and took excessive fees to the extent of £7,293.78 resulting in a consequential deficit on the client account of the same amount.

Ms O (daughter)

- 24.78 Fees of concern on the basis of the client file for Ms H and the client ledgers and nominal ledger, as follows, were seen to have been invoiced and taken from the client ledger totalling £12,700 as at 09 February 2010 :-

Ms O —total £12,700

- 31 August 2009 - £5,750.00
- 30 October 2009 - £4,600.00
- 9 February 2010 - £2,350.00

Funds of £160,656.83 were received onto the client ledger in October 2007 from an executry, and payments were made to the client, to Ms H, one of £15,178.23 for Inheritance Tax, and also £84,000 for the purchase of a house.

On 28 November 2008 matters appear to have settled and the firm was holding £33,648.21 invested for the client as well as £102.35 on the general client ledger. Fees which appeared to be normal were seen to be debited.

Since that date, £21,000 has been paid to Ms H, and the above three fees have been debited, leaving a balance of £112.87 on the client ledger, and no invested funds.

24.79 The files examined relate to Ms H's purchase and sale. She bought and sold to the same parties, and it could be said to be almost an exchange of properties for value. The related fee note, dated 16 February 2007, was a combined one for £5,000 plus VAT. A letter to Ms H, also dated 16 February 2007, stated:-

You wished the conveyancing charges settled from your share of the estate funds and you authorised that these be settled at this stage. The relative invoice is attached.

24.80 A credit entry slip of 16 February 2007 detailed a transfer from Mr P's Exy (husband of Ms H and father to Ms O) for £5,875.

24.81 A statement of account in relation to Ms H's purchase and sale included the £5,000 plus VAT as an outlay and the balance of the sale proceeds paid to her was under deduction of this sum.

24.82 A credit entry held on the file dated 17 September 2007 referred to Ms H's account and stated "*By from [Mr P Executry] (transfer) — share of closing interest £210.40*".

24.83 The ledger for Ms H evidenced the following transfers re the Mr P Exy account:-

1. 5 February 2007 £211.50 and £810.75 received from Mr P Exy account in relation to a survey fee and sums due to the estate agent.
2. **6 February 2007 £5,875 received from Mr P Exy account in relation to fees. No outlays were detailed on the fee note on the Ms H file.**
3. 7 June 2007 £5,875 transferred back to Mr P Exy account relation to fees.

24.84 The ledger for Ms O evidenced the following :-

1. Various transfers from executor to daughter/son and payments to Ms H.
2. £470 - fees debited from the ledger on 2 April 2008, re monies held.
3. £1,175 - fees also debited from the ledger on 30 September 2008, re purchase of Property 7 25.09.08.

4. **£5,750 - fees debited from the ledger on 31 August 2009, re fee raised and taken; £4,600 transferred 21.08.09; £1,150 transferred 25.08.09 and paperwork given to cashier 25.08.09.**
5. **£4,600 - fees debited from the ledger on 30 October 2009, re monies held.**
6. **£2,350 - fees debited from the ledger on 9 February 2010.**

24.85 Fees 4-6 above, totalling £12,700 were noted as having been credited back to the ledger on 25 May 2010.

24.86 Mullan's Certificate (in name Ms H - sale), dated 2 June 2010, assessed fees properly due to be £914.43 excluding VAT and outlays.

24.87 A second Mullan's Certificate (in name Ms H - purchase), also dated 2 June 2010, assessed fees due to be £1,257.67 excluding VAT and outlays. VAT on that figure amounts to £220.09 plus outlays giving a total of £1,689.26. Ultimately no further fee note was rendered by MM.

24.88 Accordingly the final overall fees that could have been charged and taken by MM for work carried as at 9 February 2010 was around £2,500 namely, at least £10,000 less than the fees that had been taken by the Respondent for the same period. He therefore overcharged and took excessive fees to the extent of at least £10,000 resulting in a consequential deficit on the client account of the same amount.

Mr JJ (son)

24.89 Fees of concern on the basis of the client ledger and nominal ledger, as follows, were seen to have been invoiced and taken from the client ledger totalling £22,265 as at 13 April 2010:-

Mr J —total £22,265

- **25 August 2009 – £5,750.00**
- **31 August 2009 – £1,725.00**
- **30 October 2009 – £9,200.00**
- **30 October 2009 – £2,300.00**

- **9 February 2010 – £2,350.00**
- **13 April 2010 – £940.00**

Funds of £160,656.83 were received onto the client ledger in October 2007 from an executry, and a payment of £15,178.23 was made for Inheritance Tax, and £80,000 was transferred to another ledger (not seen during the inspection). Sums were also paid to Ms H, and also to the client.

Three small fees were noted on the ledger, and at 25 August 2009, there was £52,823.61 held invested and £855.54 on the client ledger when the first of the fees noted above was debited.

Since that date, Ms H has been paid a further £13,473.84 and four small sums amounting to £532.81 have been transferred to other ledgers.

At the date of the inspection, £15,104.02 was held invested, and there was £2,333.89 at credit of the general client ledger.

A total of £22,265 has been taken as fees since August 2009 - over 40% of the total sum held.

24.90 The ledger for Ms H evidenced the following:-

1. Various transfers from executor to son and payments to Ms H.
2. £470 - fees debited from the ledger on 30 September 2008, re dealing with disbursements re estate fee.
3. £287.50 - fees also debited from the ledger on 10 February 2009, re administration of estate fee.
4. £575 - fees debited from the ledger on 30 June 2009, re instructions from your mother, meetings etc.
5. **£5,750 - fees - debited from the ledger on 25 August 2009, re fee raised and taken re Executry, paperwork given to cashier 25.08.09; fee transferred 11.08.09.**
6. **£1,725 - fees - debited from the ledger on 31 August 2009 re funds transferred 11.08.09; paperwork given to cashier 25.08.09.**

7. £9,200 - fees - being debited from the ledger on 30 October 2009 re paperwork given to cashier 30.10.09.
8. £2,300 - fees debited from the ledger on 30 October 2009 re paperwork given to cashier 30.10.09.
9. £2,350 – fees debited from the ledger on 9 February 2010.
10. £940 – fees debited from the ledger on 13 April 2010.

Fees 5 - 10 above were noted as having been credited back to the ledger on 25 May 2010.

24.91 Accordingly the Respondent charged and took fees totalling £22,265 over a eight month period where there had been limited activity on the client ledger; the fee for £5,750 had been debited to two other client ledgers; only 10 entries (4 minor) had been made on the ledger between fee notes 5 to 10 and the fees had been credited to the ledger- all indicating they were not justified and had been overcharged. The overcharging resulted in a consequential deficit on the client account of the same amount.

Ms I

24.92 Fees of concern, as follows, were seen to have been invoiced and taken from the client ledger totalling £8,365 as at 18 February 2010:-

Ms I - total £8,365

- 23 June 2009 - £920.00
- 24 November 2009 - £3,450.00
- 16 February 2010 - £3,995.00

Invested funds sums in excess of £44,000 were held since May 2008, then in June 2009 a payment of £30,030 was made 'Pd direct to [Ms BB] 19.06.09 as requested by Ms I to her niece. Following that payment, three fees were debited as listed above.

There was only £5,671.00 held on invested funds, and £621.25 on the general client ledger at the date of the inspection.

24.93 The file related to "General matters" and the first entry was dated 3 March 2008, being a letter from Ms I's nephew, referring to a meeting at his aunt's house on 27 February 2008 and enclosing a cheque for £3,000 to open a trust fund account for Ms I. An account was opened on 17 March 2008. A further cheque for £42,000 was sent on 14 May 2008 and it was deposited on 22 May 2008.

24.94 Copies of the following fee notes appeared on the file, the one in bold being of concern. There was no evidence of it having been rendered to the client:-

1. 6 May 2008 (£250 plus VAT) - administration of funds -debited on 13 May 2008.
2. 5 June 2009 (£600 plus VAT) - all meetings and discussions regarding the administration of funds and advice regarding gifts to her nephew's children in Canada and dealing with funds uplift regarding same to account- debited on 16 June 2009.
3. **18 June 2009 (£800 plus VAT) - transference of monies in accordance with instructions, all meetings and correspondence in connection therewith and in terms of the mandate prepared - debited on 23 June 2009, re estate of Ms I. There were no outlays in this fee note.**

In addition, the following deduction for fees appeared on the ledger, for which no fee notes, nor letter sending the same to the client was evidenced:-

4. **24 November 2009 (£3,450 including VAT) - debited on 24 November 2009, re attorney.**
5. **16 February 2010 (£3,995 including VAT) - debited from the ledger on 16 February 2010.**

Fee notes 3 - 5 above were noted as having been credited back to the ledger on 25 May 2010.

24.95 Mullan's Certificate, dated 2 June 2010, assessed fees due to be £761.25 excluding VAT and outlays totalling £883.32 with VAT at 15% in part and 17.5% in part. No fee was ultimately charged.

24.96 Accordingly the final overall fees that could have been charged and taken by MM for work carried out up to 16 February 2010 was £883.32 namely, £7,481.68 less than the fees that had been taken by the Respondent for the same period. On these figures the fees taken by the Respondent during this period were at least an 800% uplift on the properly assessed fees. He therefore overcharged and took excessive fees to the extent of £7,481.68 resulting in a consequential deficit on the client account of the same amount.

Mr J

24.97 Fees of concern, as follows, were seen to have been invoiced and taken from the client ledger totalling £8,305 as at 09 February 2010:-

Mr J — total £8,305

- **10 March 2009 - £1,150.00**
- **24 November 2009 - £5,980.00**
- **9 February 2010 - £1,175.00**

The ledger was opened in August 2001, for purchase of shares.

In January 2005, two bank drafts were received from Mr J totalling £15,000 'to be held for investment'. The funds were invested, and various amounts of up to £500 are paid out 'on the client's instructions'.

In March 2009, there was £12,113.52 held invested, and a credit balance of £41.25 on the ledger. £1,113.52 was uplifted from the invested balance, which was the first fee noted above taken, 'annual fee for administration of funds'.

On 9 June 2009 £1,400 was paid 'paid [Mr J] sums due to you re Executry'.

The second and third fees were then taken. However, the ledger has no further information as to why they were due to the firm.

- 24.98 As indicated above the file commenced in 2001 in relation to the purchase of shares, but then a number of other matters were detailed thereon, which included disputes with NTL and the housing department of the Local authority.
- 24.99 Then in January 2005 Mr J gave the Respondent 2 remittances totalling £15,000 to be invested in a client's designated account in trust on his behalf. By letter of 25 January 2005 the Respondent acknowledged this and confirmed having invested in a designated client account in MM's name in trust on his behalf.
- 24.100 An internal file note of 28 September 2005 noted that the balance on the account as at 31 August 2005 was £15,258.62.
- 24.101 The firm wrote to Mr J on 19 January 2011 advising that the Respondent had retired from the firm and that the Greenock office had closed. He was advised that the sums held on his behalf were £9,747.15 and that these sums were to be uplifted and sent to him. Mr J had queried this amount believing the sums should be £10,300.
- 24.102 The firm's letter to Mr J of 14 February 2011 stated that they had omitted to mention that the file had been sent to the law accountants for auditing and a copy of their note of professional fees and outlays was enclosed which amounted to £1,088.34. It was stated that the firm had restricted fees with VAT to £552.34, which had left a balance of £9,747.66 due to him and a cheque for this amount was enclosed.
- 24.103 A copy of the following fee note was held on the file, together with a related covering letter remitting the same to Mr J:-
1. 22 April 2008 (£200 plus VAT - £235) - administration of funds.
- 24.104 A copy of the following fee note was held on the file, there was no evidence of this having been rendered to the client:-
1. 9 March 2009 (£1,000 plus VAT - £1,150) - administration of funds and including fee for correspondence and meetings regarding Churchill

Insurance and miscellaneous matters including his Will amendment instructions (there was no evidence of these last 2 matters on the file examined).

24.105 No other fee notes could be located.

24.106 The ledger evidenced the following:-

1. £235 - fees - debited - on 28 April 2008, re administration of funds to Mr J.
2. £293.75 - fees - debited - on 7 October 2008, re administration of funds of estate.
3. **£1,150 - fees - debited - on 10 March 2009, re annual fee for administration of funds.**
4. **£5,980 - fees - debited - on 24 November 2009.**
5. **£1,175 - fees - debited - on 9 February 2010.**

Fees 3 - 5 above were noted as having been credited back to the ledger on 25 May 2010. There is no information to justify the Fees 4 and 5.

24.107 Mullan's Certificate, dated 2 June 2010, assessed fees due to be £927.55 excluding VAT and outlays giving a total of £1,088.34 with VAT at 15% in part and 17.5% in part.

24.108 Accordingly the final overall fees that ought to have been charged and taken by MM for work carried out up to 9 February 2010 was £1,088.34 namely, £7,216.66 less than the fees that had been taken by the Respondent for the same period. On these figures the fees taken by the Respondent during this period were at least a 650% uplift on the properly assessed fees. He therefore overcharged and took excessive fees to the extent of £7,216.66 resulting in a consequential deficit on the client account of the same amount.

Ms K Executry

24.109 Fees of concern, as follows, were seen to have been invoiced and taken from the client ledger totalling £2,530 as at 15 December 2009:-

Ms K — total £2,530**• 15 December 2009 - £2,530.00**

The executry ledger was opened in December 2000. The transactions appeared to run in the normal fashion, and several seemingly reasonable fees were debited. A disbursement of eleven sums was made to individuals in July 2002, and in September 2002, £2400.00 was lodged on an invested funds account, leaving a credit balance of £16.90 on the ledger.

From 2002 until 2008, the only movement on the ledger was the addition of interest to the invested funds balance, then a fee of £293.75 was taken 'fee raised and taken re administration of deposits of estates'.

On 15 December 2009, £2,530 was uplifted from the funds balance leaving £8.96 invested, and the above fee was debited from the ledger.

- 24.110 This is an Executry file. A copy death certificate held on file evidenced that Ms K died on 8 November 2000. The Respondent was instructed at the end of 2000 in relation to the Executry. A copy of the Certificate of Confirmation, granted by the Commissariat of Glasgow and Strathkelvin at Glasgow on 16 February 2001, evidenced that her sister, Ms CC had been appointed as her executrix-dative by decree of the Sheriff of Glasgow and Strathkelvin at Glasgow dated 19 January 2001. It stated the value of the estate to be £13,329.48.
- 24.111 The Respondent wrote to Ms CC on 5 March 2001 enclosing an interim fee note, which it was stated had been paid from funds held. The fee note was not referred to by date nor attached to the copy letter in the file.
- 24.112 A Certificate from the Auditor of Court at Greenock dated 25 March 2001 stated the fees to be £723.91, Commission £133.75 & Postage and Outlays to be £36.19, being a total of £893.85.
- 24.113 The Respondent wrote to Ms CC on 29 March 2001 enclosing a copy of the Auditor of Court's Certificate and an invoice for the balance duly receipted.

- 24.114 The Respondent wrote to another sister of the deceased, Ms DD, on 11 June 2002 enclosing the final account of the administration, together with a receipted invoice in respect of the balance of the administration expenses. To save further time and expenses it was advised that the file had not been re-submitted to the Auditor. Documents were enclosed for signing by Ms CC as executrix and it was explained that the Respondent was writing to Ms DD as Ms CC had advised him in the past that she frequently did not receive her mail.
- 24.115 One of Ms K's brothers, who had predeceased her, had several children. However, none of the other family members were able to provide details of their current whereabouts. Accordingly, the share of the Executry funds due to them was unable to be paid out. On 26 September 2002 the Respondent wrote to the manager at the Bank of Scotland, 56 Bath Street, Glasgow branch enclosing a remittance for £2,400 in relation to the Executry asking for an account to be opened in the firm's name in trust for the Executry.
- 24.116 Copies of the following fee notes appeared on the file:-
1. 24 January 2001 (£500 plus VAT - £587.50) - for account of expenses to date.
 2. 29 March 2001 (£393.85 plus VAT - £462.17) - for balance of fee.
 3. 11 June 2002 (£325 plus VAT - £381.87) - for balance of fee for administration.
- No other fee notes could be located.
- 24.117 The ledger evidenced the following:-
1. £587.50 - fees - debited - on 24 January 2001.
 2. £462.77 - fees - raised on the ledger on 29 March 2001 and debited on 4 April 2001 (60p more than fee note of 29 March 2001).
 3. £381.87 - fees - raised on the ledger on 11 June 2002 and debited on 12 June 2002.
 4. £293.75 - fees - debited - on 7 October 2008.
 5. **£2,530 - fees - debited - on 15 December 2009, re admin of estate fee.**

Fee 5 above was noted as having been credited back to the ledger on 25 May 2010.

6. £480 - fees - debited - on 23 September 2013, re tracing of missing beneficiaries.
7. £480 - fees - debited - on 29 August 2014, re work done from 30.09.2013 to date to include private investigator to trace missing beneficiaries.

The file nor the ledger (which discloses no transactions between fee notes 4 and 5) do not disclose any work post 2008 to justify a fee, particularly a fee of the amount taken in fee note 5.

- 24.118 Fees taken by the firm after 25 May 2010, as evidenced from the ledger amounted to £960. Notwithstanding that the fees finally taken covered work carried out after the solicitor left the firm these fees were £1,570 less than the fees that had been taken by the Respondent on 15 December 2009. On these figures the fee taken by the Respondent on 15 December 2009 was at least 150% uplift on these final fees with there being no justification or proper basis for taking this fee. He therefore overcharged and took excessive fees resulting in a consequential deficit on the client account of the same amount.

Mr R

- 24.119 The file for this client has not been traced. Fees of concern on the basis of the client ledger and nominal ledger totalling £18,457.50 are as follows:-

Mr R — total £18,457.50

- 10 March 2009 - £2,875.00
- 21 April 2009 - £2,875.00
- 30 April 2009 - £4,887.50
- 16 June 2009 - £5,750.00
- 23 June 2009 - £2,070.00

The ledger print for this executry has been taken from 31 January 2009 when a balance of £59,829.50 was held invested, and £459.48 was shown on the general client ledger.

£85,000 was received in payment for a house, and estate agency fees were paid to another firm. Apart from these there have been some very minor payments of bills.

On 31 July 2009 £125,000 was debited 'Paid [Mr EE] and [Ms FF] free proceeds of executry funds'. and this left a balance of £45.26 at credit of the general client ledger, and no invested funds.

The fees shown above amount to £18,457.50, and the cashier has noted that another £10,250 was taken previously.

The cashier had brought this matter to the attention of Paul Dolan as being of concern to her, as seen by copy memos provided to the Financial Compliance Team members, dated 21 April, 16 June and 30 June 2009.

24.120 The ledger evidenced the following:-

1. £558.12 - fees raised on the ledger on 9 December 1998 and debited on 8 January 1999.
2. £35.25 - fees raised on the ledger on 9 March 2001 and debited on 15 March 2001.
3. £35.25 - further fees also raised on the ledger on 9 March 2001 and debited on 15 March 2001.
4. £35.25 - fees raised on the ledger on 3 June 2002 and debited on 14 June 2002.
5. £6,168.75 - fees debited on 4 November 2008, re Executry fee.
6. £5,750 - fees debited on 31 December 2008, re Executry work done to date.
7. **£2,875 - fees debited on 10 March 2009, re sale of Property 8.**
8. **£2,875 - fees debited on 21 April 2009, re Executry.**
9. **£4,887.50 - fees debited on 30 April 2009, re Executry.**
10. **£5,750 - fees debited on 16 June 2009, re conveyancing fee.**
11. **£2,070 - fees debited on 23 June 2009, re Executry.**

Fees 7 to 11 above were noted as having been credited back to the ledger on 25 May 2010. No fees were ultimately rendered to cover work allegedly carried out in relation to fees 7 to 11.

24.121 Accordingly, the Respondent charged and took excessive fees totalling £18,457.50 over a three month period where there had been very limited activity on the client ledger with only 10 entries made on the ledger between fee notes 6 to 10 and the fees 7 to 10 had been credited in full - all indicating they were not justified and had been overcharged. The Respondent therefore overcharged and took excessive fees to the extent of £18,457.50 resulting in a consequential deficit on the client account of the same amount.

Ms S

24.122 This case was picked up in the investigation by the two remaining Partners of MM. Fees of concern on the basis of the client ledger and nominal ledger, as follows, were seen to have been invoiced and taken from the client ledger totalling £3,168.75 as at 26 February 2010.

24.123 The ledger evidenced the following:-

1. £29.37 - fees raised on the ledger on 13 February 2002 and debited on 20 February 2002.
2. **£575 - fees debited on 25 August 2009, re Will.**
3. **£2,300 - fees raised on the ledger on 31 December 2009 and debited on 12 January 2010.**
4. **£293.75 - fees debited on 26 February 2010, re additional inventory.**

Fees 2 to 4 above were noted as having been credited back to the ledger on 25 May 2010.

24.124 Mullan's Certificate, dated 30 June 2010, for the period 10 February 2001 to 18 June 2010, assessed fees properly due to be £1,706.31 excluding VAT and outlays. This gave a total of £2211.51 with VAT.

24.125 On 9 August 2010, a fee of £2004.92 was debited to cover the period from 10 February 2002 to 18 June 2010.

24.126 Accordingly the final overall fees that were charged and taken by MM for work carried out up to 18 June 2010 was £2004.92 namely, £1,163.83 less than the fees that had been taken by the Respondent for the same period. On these figures the fees taken by the Respondent during this period were at least a 30% uplift on these final fees. He therefore overcharged and took fees to the extent of £1,163.83.

Ms L Executry

- 24.127 This file was picked up in the investigation by the two remaining Partners of MM following on from the Inspection. Fees of concern were seen to have been invoiced and taken from the client ledger totalling £9,300 as at 25 April 2009.
- 24.128 This is an Executry file. A copy death certificate held on file evidenced that Ms L died on 18 September 2008. The Respondent was instructed in September 2008 in relation to the Executry. A copy of the Certificate of Confirmation, granted by the Commissariat of North Strathclyde at Greenock on 26 March 2009, evidenced that her nephews, Mr GG and Mr HH had been appointed as her executors nominate. It stated the value of the estate to be £187,843.39.
- 24.129 The Account of Charge and Discharge held on the file was dated 2009 and stated the Sum of the Discharge to be £177,843.39. It also stated the 2 lots of fees & VAT taken, being £4,700 and £4,600. It showed the sums due to both Executors to be £71,748.43.
- 24.130 On 1 September 2009 letters were sent to both executors enclosing cheques for the sums due to them in the sum of £71,750, stated to be their respective share of the Executry. It was stated that a full accounting in respect of the estate administration costs, conveyancing, research on the title problem and other outlays would be issued in the following couple of months.
- 24.131 An internal note dated "8/12" [presumably 2009] stated that there was a diary note for December to prepare a statement of account but it was thought that "Anne" had already prepared a statement, which was inside the folder.

24.132 There is no evidence of a full accounting having been sent out to the executors.

24.133 By letters of 19 January 2011 MM wrote to both executors stating that the legal services had been concluded and that the fees had been assessed by a firm of external law accountants. This exercise had indicated that earlier fees had been overcharged by £4,900.31 and cheques for a one half share of the overpayment were sent to both of them. They were further advised that the Respondent had retired from the firm and that the Greenock office had closed.

24.134 Copies of the following fee notes of concern appeared on the file. There was no evidence of these having been rendered to the client:-

1. **27 October 2008 (£4,000 plus VAT - £4,700) - administration of the estate including establishing title to subjects at Property 5. There were no outlays on the fee note.**
2. **21 August 2009 (£4,000 plus VAT - £4,600) - sale of property and all work relative thereto including research in the estate of the predeceasing uninfest proprietors to establish validity of title by the executors.**

24.135 The ledger provided evidenced the following:-

1. As at 31 October 2008 the sum held on the client account was £6,707.69, being the sums received from the Halifax plc less some small outlays.
2. **£4,700 - fees - debited - on 31 October 2008.**
3. After further sums were ingathered and various legacies paid out the sum on the ledger as at 25 August 2009 was £150,007.01.
4. **£4,600 - fees debited on 25 August 2009.**

Fee 4 above was noted as having been credited back to the ledger as per the fax to the Complainer on 25 May 2010.

Fee 2 above was noted as having been credited back to the ledger as "not justified" on 30 August 2010.

- 24.136 Mullan's Certificate, dated 30 June 2010, for the period 25 September 2008 to 8 December 2009, assessed fees due to be £3,399.95 excluding VAT and outlays. It totalled £4,447.43 with VAT at 15% in part and 17.5% in part including outlays of £516.53 (the latter to be checked by MM prior to rendering).
- 24.137 On 30 August 2010 a fee for £3,994.95 was debited to the ledger.
- 24.138 By letters dated 19 January 2011 MM advised each of the two beneficiaries that earlier fees had been overcharged and sent a cheque to each for their half share. At that time the overcharge was indicated to be £4,900.31.
- 24.139 Accordingly the final overall fees that were charged and taken by MM for work carried out up to 8 December 2009 was £3,994.95 namely, £5,305.05 less than the fees that had been taken by the Respondent for a shorter period. On these figures the fees taken by the Respondent during this period were at least a 55% uplift on these final fees. In accordance with Mullan's Certificate the overcharged fees amounted to £4,853.12 and he therefore overcharged and took excessive fees at of this amount resulting in a consequential deficit on the client account of the same amount.

Mr M

- 24.140 This file was picked up in the investigation by the two remaining Partners of MM following on from the Inspection. Fees of concern were seen to have been invoiced and taken from the client ledger totalling £12,732.25 as at 26 February 2010.
- 24.141 The Curatory file of Mr M (Date of Birth 22 March 1988) commenced in December 2005 with sums of £1,750 being paid to Ms II (Mr M's mother), in respect of a "quarterly payment".
- 24.142 The file disclosed correspondence between the Respondent and The Investment Management Company dealing with Mr M's funds.

- 24.143 By letter of 3 June 2008 the Respondent advised Mr M that they had an agreed administration fee of £2,000 per annum. It was proposed to charge this on a quarterly basis at the time maintenance payments were being made. An invoice for that quarter was stated to be attached.
- 24.144 In March 2009 there was correspondence between the Respondent and Mr M as Mr M was seeking advice about realising his investments.
- 24.145 By letter of 26 January 2011 MM wrote to Mr M stating that the legal services had been concluded and that the fees had been assessed by a firm of external law accountants. This exercise had indicated that earlier fees had been overcharged by £10,332.88 and a cheque for the overpayment was enclosed. He was further advised that the Respondent had retired from the firm and that the Greenock office had closed.
- 24.146 Copies of the following fee notes, all addressed to Mr M, appeared on the file:-
1. 23 December 2005 (£500 plus VAT - £587.50) - all work since date of last account.
 2. 5 June 2006 (£1,000 plus VAT - £1,175) - six monthly fee for administration charges.
 3. 21 August 2006 (£300 plus VAT - £352.50) - work for July and August including arranging sale of shares and correspondence in connection therewith and also settling quarterly payment earlier.
 4. 24 May 2007 (£2,000 plus VAT - £2,350) - agreed administration charges from June 2006 to June 2007.
 5. 5 September 2007 (£1,000 plus VAT - £1,175) - all work relative to instruction regarding sale of shares, discussions with you regarding amount; early settlement of maintenance charges and to balance of one-half of administration charges for 2007/2008.
 6. 27 February 2008 (£475 plus VAT - £587.50) - all work relative to completion of client agreement mandate and settlement of current quarterly payment.
 7. 3 June 2008 (£500 plus VAT - £587.50) - Quarterly fee.
 8. 2 September 2008 (£500 plus VAT - £587.50) - Quarterly fee as intimated.

9. 2 December 2008 (£500 plus VAT - £230 — appears to be error in invoice) Quarterly fee.
- 10. 4 March 2009 (£3,000 plus VAT - £3,450) - administration of funds as agreed.**
11. 6 July 2009 (£400 plus VAT - £460) - administering maintenance payments.
12. 28 October 2009 (£385 plus VAT - £442.75) - instructing sale of shares.
13. 1 December 2009 (£200 plus VAT - £230) - administering maintenance payment.
14. 2 February 2010 (£240 plus VAT - £282) - broker's instructions re obtaining capital sum and settling with you.
15. 18 February 2010 (£200 plus VAT - £235) administering maintenance payment.

Fee 10 as debited above was noted as having been credited back to the ledger on 25 May 2010.

24.147 The ledger, which commenced in September 1988 related to both Mr M's Executry and Mr M's Curatory and evidenced the following:-

1. £1,175 - fees raised on 7 September 2005 and being debited from the ledger on 12 September 2005.
2. £587.50 - fees debited on 23 December 2005.
3. £1,175 - fees being raised on 6 June 2006 and being debited from the ledger on 9 June 2006.
4. £352.50 - fees debited on 21 August 2006.
5. £2,350 - fees raised on 24 May 2007 and debited from the ledger on 12 June 2007.
6. £1,175 - fees debited on 5 September 2007.
7. £587.50 - fees debited on 29 February 2008.
8. £587.50 - fees debited on 10 June 2008.
9. £587.50 - fees debited on 2 September 2008.
10. £230 - fees debited on 3 December 2008.
- 11. £3,450 - fees debited on 10 March 2009.**
12. £460 - fees debited on 7 July 2009.
13. £442.75 - fees debited on 30 October 2009.

14. £230 - fees debited on 15 December 2009.
 15. £282 - fees debited on 31 January 2010.
 16. £235 - fees debited on 26 February 2010.
- 24.148 Fee 11 as debited above was noted as having been credited back to the ledger on 25 May 2010. A further £6,752.85 was noted as having been credited back to the ledger on 9 August 2010 for the overcharges as per the law accountant's certificate from 16.12.05 to 31.05.10. This comprised an amalgamation of prior fees rendered.
- 24.149 Mullan's Certificate, dated 30 June 2010, for the period 16 December 2005 to 31 May 2010, assessed fees due to be £2,152.68 excluding VAT and outlays, totalling £2,517.48 with VAT. No further fees were ultimately rendered.
- 24.150 The final overall fees that ought to have been taken by MM to cover the period from 23 December 2005 to 26 February 2010, as evidenced from the law accountant's certificate and the ledger was £2,517.48. These final fees were £10,214.77 less than the fees that had been taken by the Respondent during the same period. On these figures the fees taken by the Respondent during this period were at least 400% uplift on these final fees. He therefore overcharged and took excessive fees to the extent of £10,214.77 resulting in a consequential deficit on the client account of the same amount.
- Mr N
- 24.151 This file was picked up in the investigation by the two remaining Partners of MM following on from the Inspection. A fee of concern was seen to have been invoiced and taken from the client ledger totalling £7050 as at 26 February 2010, prior to rendering.
- 24.152 The files show that in 1995 the Respondent had acted in the purchase of a property for Mr N. In 1998 the Respondent had been consulted in relation to a family dispute over the property. Between July 2007 and 19 February 2010 there were various attempts to sell the property with it ultimately being sold on 19 February 2010.

- 24.153 By letter of 10 April 2010 Mr N advised the Respondent that as it was now a new tax year he wanted to move on with the sale of a plot of land to his brother.
- 24.154 A later email from Mr N to the firm of 3 June 2010 stated that he was sorry to hear that the Respondent was unwell and noted that he had been dealing with the sale of the house on the property, which had completed in February 2010. He advised that they would note from the files that the original property had been split into 3 plots. The original house had been sold. He had retained a plot with a new house for himself and the other plot was to be transferred to his brother at an agreed price. The firm were asked to progress the transfer. The firm, with consent, acted for both sides in the transaction.
- 24.155 By letter of 19 January 2011 MM wrote to Mr N stating that the legal services had been concluded and that the fees had been assessed by a firm of external law accountants. This exercise had indicated that earlier fees had been overcharged by £201.89 and a cheque for the overpayment was enclosed. He was further advised that the Respondent had retired from the firm and that the Greenock office had closed.
- 24.156 Copies of the following fee notes appeared on the file, the one in bold being of concern:-
1. 6 December 2007 (£700 plus VAT - £881.25) - a remortgage of the property. The covering letter of 7 December 2007 stated that no fee as yet had been levied in relation to the sale as it was proposed to wait until a sale took place in relation to one of the plots.
 2. **19 February 2010 (£6,000 plus VAT - £7,050) - re sale. A letter of 1 March 2010 was sent to Mr N with the financial statement and receipted invoice.**
 3. 16 September 2010 (£995 plus VAT - £1,169.12) - work relative to sale of [the plot to his brother]; to include all meetings and correspondence, completion of missives and preparation of missives.
- 24.157 The ledger evidenced the following:-

1. £7,050 - fees debited on 26 February 2010, re sale of Property 6.

24.158 The fee above was noted as having been credited back to the ledger on 25 May 2010.

24.159 Mullan's Certificate, dated 30 June 2010, for the period 22 March 2004 to 26 February 2010, assessed fees due to be £5,532.70 excluding VAT and outlays, totalling £7,413.02 with VAT and outlays.

24.160 On 9 August 2010 fees of £6,500.93 were debited, as per Mullan's fee assessment for the period from 22 March 2004 to 26 February 2010.

24.161 The final overall fees that were taken by MM for the sale of the property to cover the period from 22 March 2004 to 26 February 2010, as evidenced from the ledger was £6,500.93. These final fees were £549.08 less than the fees that had been taken by the Respondent during the same period. He therefore overcharged and took excessive fees to the extent of £549.08 resulting in a consequential deficit on the client account of the same amount. Only £201.89 was repaid to the client.

25. Having considered the foregoing circumstances, on 4 November 2020, the Tribunal found the Respondent guilty of Professional Misconduct. He had breached Rules 1, 3 and 11 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008, Rules 4 and 6 of the Accounts Rules 2001, and failed to communicate effectively with his clients in respect that he:-

25.1

- (1) Knowingly issued fee notes and took funds from client ledgers which were unjustified and excessive, and improperly overcharged clients up to a total amount in excess of £200,000;
- (2) Created a deficit on the client account up to an amount in excess of £200,000;
- (3) Failed to render fee notes to the following clients:
 - (a) Mr E
 - (b) Mr F

- (c) Mr G deceased
- (d) Ms I
- (e) Mr J
- (f) Ms K Executry
- (g) Ms L Executry

(4) Submitted inaccurate accounts certificates up to and including 30 April 2010.

26. Having found the Respondent guilty of professional misconduct on 4 November 2020, the Tribunal deferred consideration of sanction, publicity and expenses to a continued hearing on 19 November 2020. Parties lodged written submissions with the Tribunal.
27. At the virtual hearing on 19 November 2020, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. He indicated in his written submission that he did not intend to attend the virtual hearing on 19 November 2020. The Tribunal was content to proceed in his absence following its decision on 4 November 2020.
28. Having considered the written submissions, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference 19 November 2020. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against William Murnin, 97 Finnart Street, Greenock; Find the Respondent guilty of professional misconduct in that he (1) Knowingly issued fee notes and took funds from client ledgers which were unjustified and excessive, and improperly overcharged clients up to a total amount in excess of £200,000, (2) Created a deficit on the client account up to an amount in excess of £200,000, (3) Failed to render fee notes and (4) Submitted inaccurate accounts certificates up to and including 30 April 2010; 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 and the witnesses who gave evidence before the Tribunal on 2 and 3 November 2020 but need not identify any other person.

(signed)

Kenneth Paterson

Vice Chair

29. 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
14 JANUARY 2021.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson
Vice Chair

NOTE

This case has a long procedural history which is set out at the start of these findings. Between the last procedural hearing on 23 October 2020 and the hearing on 2 November 2020, the Respondent made two motions to the Tribunal. These were opposed by the Complainers.

The first motion was received on 26 October 2020 and moved the Tribunal to accept late adjusted Answers and adjourn the hearing. The Chair, exercising the functions of the Tribunal under Rule 56 of the Tribunal Rules 2008, refused the Respondent's motion to receive adjusted Answers. The Respondent had repeatedly been advised that if he intended to ask the Tribunal to receive late Answers, this should be done without delay. The Chair of the procedural hearing on 7 September 2020 had advised the Respondent that time was of the essence and that at that stage the hearing was "perilously close". Despite this, the Respondent did not submit adjusted Answers until six days before the five day hearing was due to start. The hearing had been fixed four months in advance. The Respondent had many months to provide substantive Answers to the Complaint and had chosen not to do so. Receiving Answers on 26 October 2020 would not be fair to the Complainers or to the Tribunal. The motion to adjourn the hearing was also refused. The motion was submitted at a very late stage. Adjourning the hearing would inconvenience witnesses, the Complainers and the Tribunal. The motion was made on the basis that the Respondent wished to engage a solicitor to represent him at any future hearing. However, the Respondent had ample opportunity to instruct a representative and had not done so. The Respondent was urged on 7 September 2020 and 23 October 2020 to instruct a solicitor without delay if he wished to be represented. He had chosen not to do so and the Tribunal was not confident that if the case was adjourned, a solicitor would be instructed. Although travel restrictions due to COVID-19 were currently in place, these did not prohibit essential travel for tribunal proceedings.

The second motion was received on 29 October 2020. The Respondent, relying on changes to the travel guidance under the COVID-19 tier system, moved the Tribunal to adjourn the hearing. The Chair, exercising the functions of the Tribunal under Rule 56 of the Tribunal Rules 2008, refused the motion. The hearing was an essential matter for which travel was justified. Other essential services were being provided. Courts were operating. Travel to courts and tribunals was permitted. The Respondent had the opportunity to participate by video conference if he did not want to travel.

The Respondent indicated by email on 30 October 2020 that he did not intend to participate in the hearing either in person or by video conference. He asked the Tribunal to take account of the material he had submitted under Rule 14(5).

At the hearing on 2 November 2020, the Tribunal had before it: the Record; three Interlocutors with Notes dated 17 September 2018, 10 December 2018 and 30 January 2020; a List of Witnesses due to attend the hearing for the Complainers; three Inventories of Productions for the Complainers; a chronology of the case provided by the Complainers; a letter from the Respondent dated 26 October 2020 with enclosed motions, adjusted Answers and a letter from Murnin McCluskey to Levy & McRae dated 3 June 2010; and a letter from the Respondent dated 30 October 2020 with enclosed notes which were on the face of it from Ms Q to the Respondent and dated 29 September 2009, 15 November 2011 and 20 April 2012. The Fiscal clarified that although files for Ms Q and Mr R were listed on the First Inventory of Productions for the Complainers (Productions 239 and 249), no files were ever recovered for these cases. The Ms S file (Production 250) was recovered but then lost. Contrary to what was stated in the Record, files were recovered in the Ms O and Mr P cases. During the course of the hearing on 3 November 2020 the Fiscal also lodged a copy Affidavit from Philip Murnin dated 2 November 2020. She confirmed she had emailed a copy of this to the Respondent. The principal affidavit was not available as it had been posted on 2 November 2020 but not yet received. At the continued hearing on 19 November 2020, the Tribunal had before it submissions lodged by both the Respondent and the Fiscal which were received on 17 November 2020.

At the hearing on 2 November 2020, the Fiscal made a motion in terms of Rule 14(4) of the Tribunal Rules 2008 for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. Referring to case law, she noted that the Tribunal should take great care when deciding to proceed in the absence of the Respondent. However, in her view it would be fair to do so. She said the Respondent had waived his right to attend. He was aware of the hearing. He had informed the Tribunal he did not mean to attend, in person or by video conference. He had sought adjournment of the hearing twice in the week leading up to the hearing. Both motions to adjourn had been refused. There was no evidence to suggest he would attend on another date or be represented in future. While a Respondent's rights are very important, weight must also be given to expeditiously in the regulatory process. In her submission, the balance weighed heavily in favour of proceeding. She quoted from the GMC-v-Adeogba [2016] EWCA Civ 162 where it was noted that:-

"It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned. Where there is not, however, it is only right it should proceed."

The Clerk gave evidence on oath that the notice of hearing was served by Royal Mail “signed for” delivery service on 23 July 2020. The Respondent had also been in frequent email contact with the Tribunal Office and had indicated that he did not intend to attend the hearing in person and that he did not wish to participate by video conference.

The Tribunal was satisfied that the Respondent had received notice of the Complaint and the notice of hearing and that it was fair in all the circumstances to proceed in his absence. The Tribunal had regard to the principles in R-v-Jones [2002] UKHL 5 and the need to exercise its discretion in this matter “with great caution and close regard to the overall fairness of the proceedings.” The Tribunal considered that if it heard the case in the Respondent’s absence, there would be a disadvantage to the Respondent in being unable to give his account of events. However, there was no reason to be confident the Respondent would attend on another occasion or arrange representation if the hearing was adjourned. It is in the public interest that regulatory proceedings take place within a reasonable time. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. In these circumstances, the balance lay in favour of proceeding in the Respondent’s absence. Therefore, the Tribunal granted the Fiscal’s motion to proceed.

EVIDENCE FOR THE COMPLAINERS

WITNESS: DENISE ROBERTSON

The witness gave evidence on oath on 2 November 2020. She confirmed her full name was Denise Helen Robertson. She is a manager in the Registrar’s Department of the Law Society of Scotland. She confirmed that Production 287 for the Complainers was her Affidavit of 9 July 2020. Attached to that Affidavit was a statement given by her on 21 February 2019. The Affidavit and statement remained true to the best of her belief and she was content for the information contained therein to be used as her evidence.

She confirmed that Production 1 for the Complainers was the Law Society’s status report for William Murnin. It came from the Law Society database and had been certified by her as a true copy. It contained the Respondent’s qualifications and the dates he was a partner and held specialist roles within the firm.

She confirmed that Productions 4 to 11 for the Complainers contained accounts certificates signed by the Respondent in his capacity as designated cashroom partner. These had been sent to the Law Society under cover of letters bearing the Respondent’s reference and signature. Production 12 for the

Complainers was an accounts certificate for the firm signed by others after the Respondent had ceased to be a partner.

WITNESS: STEPHEN DIVERS

The witness gave evidence on oath on 2 November 2020. He is a Detective Constable with Police Scotland. He confirmed that Production 296 for the Complainers was his Affidavit sworn on 6 August 2020. He had been given an opportunity to review the Affidavit. It was true to his belief and he was content for the information contained therein to be used as his evidence.

With reference to paragraph 5 of the Affidavit, DC Divers confirmed that he met Paul Dolan on 6 August 2012 and took a statement from him. Paul Dolan is now deceased. A copy of Paul Dolan's statement was attached to the witness's Affidavit at Production 296/19 for the Complainers. The statement was signed by Paul Dolan on every page. DC Divers read out Mr Dolan's statement to the Tribunal.

With reference to paragraph 8 of his Affidavit, DC Divers confirmed that on 16 October 2012, he recovered a number of files from Margot Walker at the Law Society. These files were given to Balfour & Manson in July 2020. The witness confirmed he had been given an opportunity to look again at these boxes of files and that the boxes in the hearing room were the same files he had received from the Law Society and then delivered to Balfour & Manson.

With reference to paragraph 11 of his Affidavit, DC Divers confirmed that on 26 October 2012 he recovered various documents and files from Janet Liu. Ms Liu's handwritten statement was attached to DC Divers' Affidavit at Production 296/32 for the Complainers. A typed statement for Ms Liu was contained at Production 296/106 for the Complainers.

With reference to paragraph 12 of his Affidavit, DC Divers confirmed that on 29 October 2012, he took a statement from Linda Charnley which is contained at Production 296/22 for the Complainers. Her second statement was signed on 29 December 2012 and is contained at Production 296/27 for the Complainers. Another statement was taken on 15 September 2017 and was contained at Production 296/44 for the Complainers. Linda Charnley provided information over a number of meetings which took place over a period of a year and a half. According to the witness, these statements accurately reflect what she told him.

DC Divers also confirmed he took Stephanie Lavelle's statement. This was attached to his Affidavit at Production 296/29 for the Complainers. He took another statement from her on 21 September 2017. This is contained at Production 296/119 for the Complainers. DC Divers met with this witness several times.

With reference to paragraph 20 of his Affidavit, DC Divers confirmed he took a statement from Ms Q on 2 July 2013. He said he remembered her very well. She was a retired lecturer in her 80's. He met her twice. The first time, she was not willing to be involved. He took a statement from her the second time. However, that statement was lost and was not attached to his Affidavit.

WITNESS: TINA HEYWOOD

The witness gave evidence on oath on 2 November 2020 by video conference. She confirmed her full name was Tina Sievewright Heywood. She is retired but was formerly Head of Financial Compliance at the Law Society. She confirmed that Production 281 for the Complainers was her Affidavit of 12 March 2019. She provided a second Affidavit on 29 July 2020 at Production 282 for the Complainers. She also gave a signed statement to the police (Production 283 for the Complainers). She confirmed the evidence in these Affidavits and statement was true and she was content for the Tribunal to accept it as her evidence.

The witness confirmed that Productions 2 and 3 for the Complainers were reports prepared by her. Production 2 was a financial compliance review following the inspection on 18 May 2010. Production 3 was a financial compliance review following an inspection on 9 to 10 November 2010.

With reference to Production 2, the witness confirmed she had a conversation with Paul Dolan on the telephone on 9 April 2010. Everyone in the office stopped what they were doing and listened to her side of the conversation. She confirmed with him that he had concerns about fees in an executry. These were 75% of the value of the estate.

The witness explained the risk matrix contained at Production 2/8 for the Complainers. She assessed the risk in this case to be very serious. Production 2/10 details a potential deficit of £231,452.59. Production 2/14 for the Complainers was a synopsis of fees debited from client ledgers. These were given a weight of 3 which means a serious concern. The cashier had concerns about the regularity and amount of fees debited from the client bank account. She had spoken to the partners in Glasgow but matters had drifted. The witness said in the Mr A case £29,000.00 of fees were taken in a one month period. She never saw the file for this case, just the ledger card. Similar large debits were made in the Ms Q and Mr B and Ms

C cases. The witness confirmed she never met the Respondent during the inspection. She mainly dealt with the cashier who gave them ledger cards relating to 13 clients.

The witness confirmed that Production 14 was the pre-visit questionnaire sent to the firm. It should be completed by the cashroom manager but had not been in this case. Production 15 was an inspection checklist. This document had been completed by the witness and Sharon Brownlee. Production 16 contained the handwritten trial balances created on the day of the inspection. Tina Heywood and Sharon Brownlee created these from the ledgers. They did not see the files. Production 16/6 contained a list of ledgers the witness requested from the firm. Production 16/10 was the witness's handwritten note confirming the work the firm had to do.

Production 17 was a copy of the bank reconciliations at 30 April 2010 for the Glasgow branch. Production 18 for the Complainers was a nominal account transaction report. The witness explained that the nominal account relates to the running of the business. The client account relates to client money. The nominal account transaction reports lists fees rendered or taken. Production 19 for the Complainers was a Bank of Scotland bank statement to 9 April 2010. It shows the client account balance for the Greenock office. The balance brought forward was £261,866.00. Production 20 for the Complainers was a Bank of Scotland bank statement to 13 April 2020. The client account balance for the Greenock office was overdrawn to £47,705.29.

Production 21 for the Complainers was a fax to the witness from the cashier. It contained a list of fees the cashier was concerned about. These fees totalled £217,050.00. This fitted with the inspector's concerns about the deficit. The cashier also detailed her concerns about the money transferred from the client account to the firm account where no paperwork had been given to the cashier (Production 21/4 for the Complainers). The witness said the cashier told her that the Respondent solely worked on these files.

WITNESS: MARGOT WALKER

The witness gave evidence on oath on 2 November 2020. She was formerly Head of Professional Conduct at the Law Society of Scotland. She confirmed that her Affidavit dated 28 July 2020 was contained at Production 295 for the Complainers. Her police statement was attached to that Affidavit. The evidence contained in the Affidavit and statement were true to the best of her knowledge and belief. She confirmed that she delivered files to DC Divers. Those files were listed at Production 295/3 for the Complainers. She also identified those files as being present in the hearing room on 2 November 2020.

WITNESS: JANET LIU

The witness gave evidence on oath on 2 November 2020 by video conference. She was a law accountant and a Director at Mullans Law Accountants. She confirmed that her Affidavit dated 16 July 2020 was contained at Production 276 for the Complainers. The Affidavit was true to the best of her knowledge and belief. She wanted the Tribunal to accept it as her evidence.

With reference to the letter dated 2 June 2010 from Mullans Law Accountants Limited to Philip Murnin contained at Production 276/3 for the Complainers, the witness explained that she was instructed to assess fees for Murnin McCluskey. With reference to the synopsis contained at Production 276/5 for the Complainers, she explained that the files were provided by Philip Murnin and his wife. Usually, fees are assessed according to the firm's terms of business if those were provided to the client, or alternatively by the Law Society's Table of Fees. Most files she was given had terms of business, but not all. She agreed with Philip Murnin that if no terms of business were on the file she would apply an hourly rate of £175.00. Rates can vary between £130.00 to £300.00. They thought £175.00 was relevant for this kind of work. If terms of business had been included, she would use that.

The witness was referred to Productions 33-38 for the Complainers. These concerned the Mr A case. The first business account for the case is at Production 35. The assessed fee was £1,066.74 including VAT and she was comfortable this was a fair fee. Her certificate of fees was at Production 36. The second business account was at Production 37. The assessed fee was £4,897.20 including VAT. She was comfortable this was a fair fee. The certificate of fees was at Production 38.

Production 79 was the business account for the Ms D case. Her fee was assessed at £6,024.00 excluding VAT and outlays.

Productions 58 to 66 for the Complainers related to the Mr B and Ms C files. The first account (Mr B) was assessed at £1,246.68. The second account (Ms C) was assessed at £2,472.05. The third account (Executors of Mr B) was assessed at £1,864.26. The fourth account (Executry of Mr B) was assessed at £354.56.

Production 120 to 122 for the Complainers concerned the Ms H file and fees were assessed at £914.43 and £1,257.67 excluding VAT and outlays.

Productions 130 to 132 concerned the Ms I files. Fees in that case were assessed at £761.25 excluding VAT and outlays (or £883.32 including those items).

Productions 148 to 150 concerned the Mr J file. Fees were assessed at £927.55 excluding VAT and outlays (or £1,088.34 including those items).

Productions 110 to 111 concerned the Mr G file. Fees were assessed at £542.52 excluding VAT and outlays (or £1,349.59 including those items).

Production 87 to 89 concerned the Mr E file. Fees were assessed at £1,099.01 excluding VAT and outlays (or £1,349.59 including those items).

Subsequently, the witness assessed a number of other files at the request of Philip Murnin.

Production 245 concerned the Mr P file. The fee was assessed at £1,788.08 including VAT and outlays.

Productions 181 to 183 concerned the Ms L file. Fees were assessed at £4,447.43 including VAT and outlays.

Productions 166 to 169 concerned the Ms S file. Fees were assessed at £1,706.31 excluding VAT and outlays (or £2,211.51 including those items).

She was content that these were fair assessments. She noted that a colleague Lorna McCrossan assessed the Mr M and Mr N files.

In answer to questions from the Tribunal, the witness explained that an hourly rate of £175.00 is broken down into units of 6 minutes at £17.50 per unit. A short telephone call would be half a unit. File notes should detail the amount of time spent on each task. If there is no file note the law accountant will assume the minimum time. Letters are assessed at 1.25 units per 125 words. She was asked if she had any difficulty assessing the fees. She said if there was anything she could not gauge she would raise this in the covering letter with the account. There were no letter prints in the files. She was asked if the files were fulsome. She said some were good and others were not too great. She was satisfied the fees assessed by her were fair.

WITNESS: LORNA McCROSSAN

The witness gave evidence on oath by video conference on 2 November 2020. She confirmed her full name was Lorna Sinclair McCrossan. In 2010 her surname was Law. She was a law accountant. She

previously worked for Mullans. She confirmed her Affidavit dated 13 July 2020 was contained at Production 279 for the Complainers. The Affidavit attaches her police statement at Production 279/5. She had been given an opportunity to review her Affidavit and statement. She said the police had misunderstood when she left Mullans and went to Alex Quinn. She left in June 2014 and joined Alex Quinn on 4 May 2015. There was an error in the police statement in that Mr N was the conveyancing file and the Mr M file concerned trust finances. Subject to those corrections, the information in the Affidavit and statement was true and correct and she wished the Tribunal to accept it as her evidence.

The witness has been a law accountant since 1986. In June 2010, Janet Liu made her aware of an urgent feeing assessment requested by Philip Murnin. Janet asked her to look at the Mr N and Mr M files.

Productions 215 to 217 concerned the Mr N file. She assessed the fee at £5,532.70 excluding VAT and outlays (or £7,413.02 including those items). Fees were based on the Table of Fees. She believed the assessment was fair.

Productions 194 to 196 concerned the Mr M file which was assessed at £175.00 per hour throughout. She assessed the fee at £2,152.68 excluding VAT and outlays (or £2,517.48 including those items). She considered that assessment to be reasonable.

In answer to questions from the Tribunal, the witness confirmed she received the files for these cases. However, only one case had a terms of business letter present in the file. For the other, she had to call the client and she was told to apply an hourly rate of £175.00. In her opinion, the files were quite disorganised. Some clients are very good at time recording but sometimes a law accountant has to assess what has been done and restrict back to a minimum. A law accountant can only assess the file in front of them but if for example, there was no recording for a perusal charge, the law accountant will add it in. Practice of solicitors in this area varies.

WITNESS: SHARON BROWNLEE

The witness gave evidence on oath on 3 November 2020. She confirmed her full name was Sharon Brownlee. She is a financial compliance department inspector for the Law Society of Scotland. She confirmed that her Affidavit dated 10 July 2020 was Production 284 for the Complainers. She had been given an opportunity to read it and was content it was true and accurate. She wished the Tribunal to accept this as her evidence, including the statement on 6 March 2019 at Production 284/2.

The witness confirmed she was present when Tina Heywood took a call from Paul Dolan in April 2010. Following that call, Murnin McCluskey were inspected in May 2010. The witness took part in that inspection, but not the second inspection. When the witness arrived at the Greenock office with Tina Heywood, they asked to see the cashroom manager. They were told that the Respondent was not available. They asked for the usual accounting records from the cashier. The cashier provided various client ledgers. The cashier had concerns about the level of fees in various executries.

The witness confirmed Production 18 for the Complainers comprised of the fees nominal ledgers. Individual client ledgers show the fees taken in individual cases but the nominal ledger gives the overall pattern. Conveyancing fees should be roughly the same for each transaction. Executry fees are of interest to the inspectors because these can be higher than for other types of work. The witness highlighted a number of fees which were re-credited on 25 May 2010. These had been taken on 27 February 2009 (Ms Q, Mr B and Ms C) and 10 March 2009 (Mr J, Mr B and Mr M).

The witness was referred to her report at Production 2 for the Complainers and asked to look at various ledger cards.

In the Mr A case, three fees were taken between 30 March 2010 and 21 April 2010. These fees were also seen on the ledger card at Production 24 for the Complainers. She noted that fees and payments were taken just as money arrived. These fees were written back at the request of the Financial Compliance Department.

The Ms Q ledger card was at Production 39 for the Complainers. She highlighted that a fee was taken in February 2009 shortly after money was credited to the executry from a bank. Before that, there was insufficient money to take fees. In June 2009, another fee was taken shortly after sums were uplifted from the invested sums account. This pattern was repeated in September 2009. The witness was concerned that fees were being taken on the same day. There did not appear to be any other financial activity taking place regarding the executry. No payments were being engathered. You should see bank accounts being cashed and insurance policies paying out. If work is being done, this should be reflected in the ledger activity. It is a clear problem if it is only fees that are being taken. Fees were re-credited in the Ms Q case on 25 May 2010.

The Mr B case was described in the witness's report at Production 2/15. The ledger card was at Production 40. The witness described fees of concern between 13 January 2009 and 30 April 2009 which were re-credited on 25 May 2010.

The Ms D case was described in the witness's report at Production 2/15 and the ledger card at Production 67. Fees taken between March and September 2009 were re-credited in 2010. The witness highlighted a pattern on this ledger card of money arriving for the executry and then fees being taken immediately thereafter. The witness noted the same issues arose in the Mr E, Mr P, Ms O, Ms I and Mr J cases.

Ms S's ledger card was at Production 165. Fees taken between August 2009 and February 2010 were re-credited in May 2010.

Ms L's ledger card was at Production 170 for the Complainers. Money was received on 28 October 2008 and a fee of £4,700.00 was taken on 31 October 2008. Another fee was taken on 25 August 2009. These were re-credited.

Mr M's ledger card was at Production 184. The witness highlighted a fee of £3,450.00 on 10 March 2009 which was re-credited in 2010.

Mr N's ledger card was at Production 197. The fee of £7,050.00 on 26 February 2010 was of concern and was re-credited.

The witness confirmed that Production 14 was the pre-inspection questionnaire. It had been signed by the cashier on behalf of the firm, but ought to have been signed by the Respondent as cashroom manager. Production 15 was the inspector's checklist completed by the witness and Tina Heywood. Production 16 was the witness's handwritten notes. Productions 19 and 20 were bank statements for the Greenock office. These were provided at the inspection.

The witness explained that before the inspectors left the Greenock office, having looked at the client ledgers and the fees nominal ledgers, they made a list of examples of fees excessively taken or fees in question due to multiple fees being taken on the same day. They asked Linda Charnley and Philip Murnin to give the inspectors a list of fees they considered irregular. This list was at Production 21. The witness noted particularly the reference at Production 21/3 to the £3,000 fee in Mr M flagged as potentially irregular.

The witness described the correspondence between Law Society officers and the Respondent's representative contained at Productions 227 to 232 for the Complainers.

The witness answered questions from the Tribunal members. She explained that it is unusual for fees to be taken on the same day across multiple ledgers. Looking at the nominal fees ledger gives inspectors an indication of the firm's financial position. Multiple fees for significant amounts just before the month end can be an indication a firm is attempting to cover salaries or HMRC payments if there are not enough funds or overdraft available.

The witness noted that fee notes should be on the files but she did not see any files at the inspection. These had been locked away or removed. The fee notes should have details of the work and rendering. You should be able to cross refer these with the ledgers.

The witness explained that in executry cases, you should see various things going out. The ledger activity should be busy. Sometimes interim fees are taken. The concern with these particular ledgers was the minute any funds were received, fees were taken and sometimes another fee the same day or within a matter of days. There was nothing to indicate on the ledger that further fees were justified.

The witness explained that the Respondent knew the inspection team were coming. Notice letters are sent by recorded delivery and ordinary post. Usually, the cashroom manager is present at the outset. They may pass the team on to the cashier or financial manager but usually they will meet inspectors at the beginning and the end of the inspection. However, she never met the Respondent. She was not surprised the Respondent was absent. If the level of fees were known to him then notification of a short notice inspection would have alerted him to the problem when books and records were required to be available for review. The witness never saw any files, just accounting records. The cashier searched the Respondent's office but his cabinets were locked.

WITNESS: WENDY HENDERSON

The witness gave evidence on oath on 3 November 2020. Her full name is Wendy Marie Henderson. She is employed by the Law Society. Her Affidavit dated 27 July 2020 was Production 286 for the Complainers. She wished the Tribunal to accept this as part of her evidence.

The witness confirmed that on 24 June 2012, she received two boxes of files from Murnin McCluskey. The files are listed at paragraph 6 of her Affidavit. Her Affidavit and attached letters described the movement of those files and them being made available to the Respondent. She confirmed those original files were present in the hearing room. She indicated she investigated this case and wrote a report for the Law Society. The witness was referred to various Productions and confirmed that these were the papers

and fee notes she had used to prepare her report. She noted that in relation to the fee notes provided, no detail was given regarding the work carried out.

WITNESS: PHILIP MURNIN

The witness gave evidence on oath on 3 November 2020. His full name is Philip Brendan Murnin. He is a partner in Murnin McCluskey in Glasgow. He is the Respondent's brother. He provided a copy of an Affidavit by email to the Fiscal on the evening of 2 November 2020. This was made available to the Tribunal members on the morning of 3 November 2020. The original was not available. The witness confirmed the copy Affidavit was true to the best of his belief. He agreed that the documents attached to the copy Affidavit were the same as those at Productions 41 and 103 for the Complainers. The Tribunal was content that it could have regard to the content of the copy affidavit.

The witness agreed that he had the files in question delivered to Mullans for assessment. He instructed Mr Macreath to act for Murnin McCluskey. The witness, Paul Dolan and Mr Macreath met Sharon Brownlee and Tina Heywood on 25 May 2010. The witness agreed that Mr Macreath told the Law Society that they considered inappropriate sums had been taken as fees and these amounted to about £252,000 (Production 3/5). The witness confirmed his business partner, Paul Dolan, died in November 2015.

The witness told the Tribunal the Respondent was in charge of all the files in Greenock. He was responsible for all feeing. He took all the profits.

In answer to a question from a Tribunal member, the witness indicated he was aware of a series of sums repaid to the ledgers. He could not give an exact date or the exact amount which was covered under the firm's professional indemnity insurance.

WITNESS: LINDA CHARNLEY

The witness gave evidence on oath on 3 November 2020. She confirmed her full name was Linda Ann Charnley. She is employed by Murnin McCluskey Solicitors as a cashier.

The Respondent was a private person who did not chat with her in the office. He could have an abrupt manner. She would go to Greenock one day a week. She would process whatever had been left in her basket. The Respondent had sole access to the bank. Sometimes he would put through fees but no fee notes would be in her basket and he would blame the girls catching up with typing. She would process

the payments on to the systems. She never saw any files in Greenock. She did not ask for them because she did not think they would be provided.

The witness was at the Greenock office on 18 May 2010. The Respondent had been present at the office that morning, but left before the inspectors arrived. She did not know if he was aware of the inspection. A member of staff tried to call him but the witness was not present during that call.

The witness indicated that Production 21 for the Complainers was a list of fees she believed had been taken from the clients without justification. It is dated 19 May 2010. She prepared it and sent it to Tina Heywood. She provided ledger cards for all matters on the list, but not the files. She believed the files were provided to the Law Society but she did not do that.

She agreed that Production 275 comprised of her handwritten and typed statements to the police. She confirmed the statements were correct. She confirmed that if a client wanted the Respondent to be an executor this meant he was not answerable to anyone, not even the deceased's family. He would gather in the estate, pay bills and take fees without having to provide an account to anyone.

In February 2009, the witness became concerned regarding the pattern of fees taken by the Respondent. She spoke to Paul Dolan in the Glasgow office. He asked her to keep an eye on things. She reported to him almost weekly. She was suspicious about the high value of the fee notes and the repeated fee notes for the Ms Q, Mr B and Ms C and Mr R cases.

The witness was referred to Production 39 which was the Ms Q ledger card. She referred to fees taken on 10 February 2009, 27 February 2009 and 21 April 2009. Above each fee there is a direct transfer from the client's deposit account. She was concerned about the frequency of the fees. In February, almost £15,000 was taken in fees. She did not know whether this could be justified. The Respondent continued to take fees. The money was always on a special deposit account and uplifted from there to fees. The witness confirmed she was involved in the re-crediting of fees in May 2010.

The witness agreed she told police in her statement that:-

"Mr Murnin started to uplift amounts of money on a daily basis by way of a cheque. There was also a large increase in his credit card bill. As the firm were experiencing a significant lack of monies coming in to sustain the overheads, I was concerned at the amount of monies being uplifted by him."

She agreed that a description of her concerns was contained at Production 275/11 onwards. The witness confirmed she did not see or hear from the Respondent after 18 May 2010.

In answer to a question from the Tribunal, the witness said there was no dialogue between her and the Respondent. She was not able to raise her concerns with him. She had no access to files. The fee notes contained no details. Her concerns continued because of the conduct she saw on a weekly basis. At no point did she discuss the matter with the Respondent. She had no information regarding the work which might have been done to justify fees. The big fees were taken starting in January to February 2009. She did not discuss the files with the staff in the Greenock office.

SUBMISSIONS FOR THE COMPLAINERS

At the conclusion of the Complainers' case, the Chair noted that the Respondent had attempted to lodge Answers and late lodging had been refused. However, Rule 14(5) provided that in any case where the Respondent failed to appear or be represented at the hearing and the Tribunal decides to proceed to hear and determine the Complaint in the absence of the Respondent, the Tribunal shall take into account all the documents lodged with the Clerk, whether by the principal or secondary complainer or by the Respondent. The Respondent had also submitted other documents in the week before the hearing.

The Fiscal's primary submission was that the Answers as adjusted were not before the Tribunal if they had been refused. They were received, but not lodged. However, if the Tribunal was not with her she suggested they had no weight in any case. The Answers were not related to factual matters in the Complaint. She did not dispute they had been provided to the Clerk. In her view, the Tribunal had discretion to consider any documents. The Tribunal gave careful consideration to this matter and decided that it should have regard to the documents lodged with the Tribunal. It would determine the weight to be ascertained to each document when considering the evidence in the case.

The Fiscal noted the plethora of documents before the Tribunal. These had been required on the basis that all the Complainers' evidence might be challenged. However, in summary, fees were charged and taken. When assessed against the files, these fees were found to be excessive and the fees were re-credited.

The Tribunal had heard evidence relating to the movement of files from Murnin McCluskey to the Law Society to the police and back to the Law Society. Evidence regarding the ledgers came from the cashier,

Tina Heywood and Sharon Brownlee. However, the central issue was whether the Respondent took money to which he was not entitled. She noted the fees had been re-credited.

The Respondent was the sole figure taking fees. He was not present to give an explanation. In her submission, the facts were proved beyond reasonable doubt. The Respondent's course of conduct could be seen from the nominal ledger. The country had just entered a recession. The conveyancing market "fell off a cliff". The cashier was concerned about the money coming in to the firm. It was telling that the Ms Q file was never recovered. It was the file that first led to suspicion. £75,000 of fees were taken without real explanation or justification. The accounts certificates were signed by the Respondent and given the evidence were incorrect.

SUBMISSIONS FOR THE RESPONDENT

The Tribunal had regard to the documents lodged by the Respondent which were listed at the start of this Note in accordance with Rule 14(5). The Respondent objected to the Tribunal considering hearsay evidence, for example from DC Divers. He also raised concerns about the quality of the assessment carried out by Mullans. He noted that the letter of 3 June 2010 from his former firm to Levy and McRae indicated that all files had been assessed in one day. It is not known how many hours were spent on the assessment. However, the Respondent believed the time could not do justice to the exercise. The Respondent suggested that the files given to Mullans were not accompanied by all relevant papers. He was not involved in the fee assessment. He believed the assessment was incomplete, flawed and invalid. In the adjusted Answers he claimed he had done additional work on particular files which had not been assessed by Mullans. He said no adverse inference should be drawn from re-credited fees as he was no longer a partner in the firm when this occurred.

DECISION

The Tribunal carefully considered the allegations contained in the Record and assessed the evidence led in person and by Affidavit. It found all the witnesses to have been credible and reliable. It considered the productions lodged by the Complainers.

The Tribunal considered the documents provided by the Respondent in accordance with Rule 14(5) and his submissions contained in them. The Tribunal noted that these are civil proceedings and the Tribunal is entitled to have regard to hearsay evidence. It was content to accept DC Divers' evidence of Mr

Dolan's statement and noted that significant parts of its contents were also spoken to by other witnesses, for example, Philip Murnin, Linda Charnley, Sharon Brownlee and Tina Heywood.

The Tribunal considered the notes which were apparently sent by Ms Q to the Respondent but noted that the dates of these were not relevant to the period when the alleged overcharging took place.

The Tribunal rejected the Respondent's suggestion that the assessment carried out by Mullans was flawed. Having heard the evidence of Janet Lui and Lorna McCrossan, it was satisfied that the assessments were fair.

The Respondent contended that the files were incomplete. The Tribunal did not believe that to be the case. The law accountants were able to carry out their assessment in the files they had provided certificates. They raised no concerns about missing documents or paperwork. The Respondent provided no evidence of missing files. He had taken no steps to recover what he said was missing. It was in the firm's interest to provide all files that could be found to the law accountant. It was not clear what the Respondent claimed the law accountants did not have. The Tribunal noted references in the productions to Murnin McCluskey providing the correspondence and document files to the Law Society and the Police and Mullans returning correspondence files "and supporting papers". The Tribunal was satisfied that the law accountants had used their experience and expertise to fix a fair fee on the basis of the papers they were given which represented the work done by the Respondent.

The Respondent claimed to have carried out extensive and complex work on some files. There was no evidence of this. If lengthy and complex work had been done which could justify a higher fee, then this would have been noted on the file. The ledgers and files appeared to have shown relatively normal progression of private client cases until the fees in question were taken.

The Respondent noted that he was not allowed to participate in Mullan's assessment. However, he could have adduced evidence of any additional work at any stage during the investigation and prosecution but did not do so.

Although not conclusive, the fact the fees were re-credited by the firm is an adminicle of evidence which the Tribunal was entitled to consider. Fees taken by the Respondent were returned to clients by his partners.

After carefully considering all the evidence in the case in relation to each file, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner labelled in the Complaint. The Respondent improperly overcharged a number of clients. The total amount of overcharging was in excess of £200,000. The overcharging in some cases was more than others but the Tribunal was satisfied that all overcharged fees were taken as part of a course of conduct whereby the Respondent took clients' money without justification. The Tribunal accepted the evidence of the law accountants regarding a reasonable fee in those cases. The fees taken, as spoken to by the cashier and the Financial Compliance team, were grossly in excess of this. The Tribunal was satisfied that no work had been done to justify these exorbitant fees. They were often taken on the same day or within days of each other. The monies were frequently removed as soon as executry funds were paid into the client account. This occurred at a time with the firm was under financial stress, as was spoken to by Linda Charnley and the details given in her police statement of 15 September 2017 (Production 296/60 for the Complainers). There was no evidence of work in the files or the ledger activity to account for the money taken by the Respondent. As a consequence of the overcharging, the Respondent created a deficit on the client account. He failed to render fee notes to seven clients. He authorised and signed inaccurate accounts certificates. His conduct was dishonest.

The principles of honesty and integrity are fundamental to the profession. Members of the profession are in a very privileged position and members of the public must be able to trust that solicitors will carry out their duties and obligations in an honest and trustworthy manner. Dishonesty with clients' money is one of the most serious matters that concerns the Tribunal. Solicitors belong to a profession which requires high standards of ethical conduct. Members of the public must have confidence that solicitors are trustworthy and honest and that their integrity is beyond question. As was noted in McMahon v Council of the Law Society of Scotland 2002 SC 475, a solicitor who has been guilty of dishonesty with clients' money forfeits the respect and trust of the public and his colleagues and disgraces his profession. Membership of the profession is a privilege. Solicitors undertake a duty throughout their professional lives to conduct their client's affairs to their utmost ability and with complete honesty and integrity. Clients and colleagues should be able to expect these qualities of every solicitor as a matter of course. 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. Solicitors must comply with the Accounts Rules. They must render fees to clients. Failure to do so demeans the trust the public places in the profession. Accounts certificates are one of the means by which the Law Society monitors compliance with the rules and risk to client money. The Law Society is entitled to rely on accounts certificates as showing the matters which have been identified and the measures taken to deal with them.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313:-

“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made.”

The Tribunal was satisfied that the Respondent’s course of dishonest conduct was a serious and reprehensible departure from the standards of and competent and reputable solicitors and accordingly he was guilty of professional misconduct in relation to all charges individually and *in cumulo*.

The Tribunal delivered its decision on professional misconduct on 4 November 2020. The Tribunal deferred consideration of sanction, expenses and publicity to a hearing to be held by video conference on 19 November 2020. Parties were informed by email on 4 November 2020 that if they wished to make written submissions in mitigation, or on publicity and expenses, they should be sent to the Tribunal Office by 17 November 2020. Alternatively, submissions could be made orally to the Tribunal on 19 November 2020.

Both parties sent written submissions to the Tribunal. The Complainers detailed the aggravating factors in the case but noted the Respondent had no prior record of conduct offences. The Complainers moved for expenses on the usual scale. They also moved for publicity to be given to the decision. In his submission, the Respondent explained his financial position. He was aware that publicity would be given to the decision. He noted he would not be present at the hearing on 19 November 2020 as he found it easier to deal with matters in writing.


At the hearing by video conference on 19 November 2020, the Tribunal was content to proceed in the Respondent’s absence following its earlier decision and also following the terms of the Respondent’s letter of 16 November 2020.

The Tribunal had regard to its indicative sanctions guidance. It decided the only appropriate sanction was strike off. The Respondent was involved in a course of dishonest conduct with client money

involving a number of clients. He had not demonstrated any remorse or insight. His conduct was likely to seriously damage the reputation of the legal profession. The duty of honesty and integrity is a fundamental and underpinning obligation of the profession. It has been made quite clear by this Tribunal that proven dishonesty must be seen at the top end of the spectrum of gravity for misconduct. It has also been said on a number of occasions that a finding of dishonesty will lead to a striking off in all but the most exceptional circumstances. There is a need to maintain among the public a well-founded confidence that solicitors are persons of unquestionable integrity, probity and trustworthiness (Bolton v Law Society [1993] EWCA Civ 320). Membership of the legal profession is a privilege. Those who exercise that privilege undertake a duty throughout their professional lives to conduct their clients' affairs to their utmost ability and with complete honesty and integrity. Clients and colleagues should be able to expect these qualities of every solicitor as a matter of course. If the public is to give the profession its respect and trust, it must be assured that when solicitors fail in these duties, they will be suitably dealt with by the profession's disciplinary system. A solicitor who has been guilty of dishonesty with clients' money has forfeited the respect and trust of the public and colleagues and has disgraced the profession (McMahon v Law Society of Scotland 2002 SC 475).

The Tribunal ordered that the name of the Respondent should be struck off the roll of solicitors in Scotland. The order for Strike Off will take effect on intimation of these findings.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. Only the Respondent and the witnesses who gave evidence at the Tribunal hearing will be named in the decision. The Tribunal's usual practice is to publish the Interlocutors and Notes produced during a case relating to its procedural or preliminary decisions. However, in this case, it decided that they should not be published since they contained personal detailed information relating to the Respondent's health which was not pertinent to the final decision on misconduct.



Kenneth Paterson
Vice Chair