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

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, 26 Drumsheugh Gardens, Edinburgh

against

NOEMAAN FAROOQ BUTT, Solicitor, 6 Thornhill Gardens, Newton Mearns

1. A Complaint dated 1 April 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") submitting that Noemaan Farooq Butt, Solicitor, 6 Thornhill Gardens, Newton Mearns (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was a Secondary Complainer, Kalpana Sharma, Supreme Advisory Networks Limited, 48 Clarendon Place, St George's Cross, Glasgow.

3. In accordance with the Rules of the Tribunal, the Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged on behalf of the Respondent.

4. In accordance with the Rules of the Tribunal, a procedural hearing was fixed for 30 June 2014 and notice thereof was duly served on the Respondent.

5. At the hearing of 30 June 2014, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented himself. The Fiscal confirmed that the Complainers were ready to proceed to a full hearing. The Respondent asked the Tribunal to fix a procedural hearing to give him an opportunity to obtain legal representation. The Respondent confirmed that he hoped to be in a position to enter into a Joint Minute in relation to most of the averments of fact but that he required to take further advice and obtain evidence in relation to a potential defence of coercion. It was noted that the Respondent's Answers were not in proper form. The Tribunal continued the matter to a further procedural hearing on 9 September 2014 at 10:30am. The Respondent was ordered to lodged adjusted Answers within two weeks of the 30 June 2014 and that a Joint Minute of Admissions should be agreed between the parties and lodged with the Tribunal by 26 August 2014.

6. Adjusted Answers for the Respondent and a Joint Minute between the parties were lodged with the Tribunal office.

7. At the hearing on 9 September 2014 the Complainers were represented by their Fiscal Valerie Johnston, Solicitor, Edinburgh. The Respondent was neither present or represented. It was explained to the Tribunal that the Respondent had contacted the Fiscal indicating he was unable to attend today's calling due to illness. He had confirmed that either of two possible dates that had been suggested to him for a full hearing were suitable for him. The Fiscal confirmed that she would shortly lodge a List of Productions and a List of Witnesses. She indicated that it was her belief that the Respondent was likely to require one Production from the Police in relation to the element of coercion. It was confirmed that the date of 24 November 2014 was appropriate for both parties for a full hearing and accordingly the case was continued to that date.

8. Prior to 24 November 2014 solicitors instructed by the Respondent contacted the Tribunal office requesting an adjournment of the hearing to allow them time to prepare. The Complainers intimated that they had no objection to this motion and accordingly the Chairman agreed to the full hearing being adjourned until 19 February 2015 at 10:30am. A formal Notice of this hearing date was served upon the Respondent.

9. At the hearing on 19 February 2015 the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and was represented by Graeme Robertson, Advocate. The Fiscal indicated to the Tribunal that the Complainers had been contacted by Crown Office who had indicated that there was a police enquiry ongoing connected to some of the matters raised in the Complaint before the Tribunal. The Fiscal asked the Tribunal for the matter to be heard in private and for any publicity to be deferred pending this investigation and the conclusion of any proceedings arising therefrom. The Respondent concurred with this motion. Accordingly, the Tribunal ordered that the matter be heard in private.

10. An amended set of Answers was lodged on behalf of the Respondent and allowed to be received. The Fiscal withdrew the allegation of professional misconduct contained in paragraph 11.5 of the Complaint. The Complainers led evidence from three witnesses. The Respondent himself gave evidence. Submissions were made on behalf of both parties.

11. The Tribunal found the following facts established:-

11.1 The Respondent's date of birth is 15 May 1977. He was enrolled as a solicitor on 11 November 2000. He was an employee in the firm of Burness LLP between 20 December 2000 and 25 November 2003. From 24 June 2005 to 9 March 2011 he was a sole practitioner solicitor at NRBS, Solicitors, formerly at 365 Victoria Road, Glasgow, G42 8YZ. He was

appointed the Cash-room partner from 27 June 2005, the Client Relations Partner from 14 August 2006, and the Anti-money Laundering Partner & Risk Managing Partner from 1 November 2010. He ceased to work as a solicitor on 9 March 2011 when a Judicial Factor was appointed.

COMPLAINT BY SUPREME ADVISORY NETWORKS LIMITED

11.2 The Secondary Complainer submitted a Complaint Form to the Scottish Legal Complaints Commission in October 2012. The third issue raised was a complaint that the Respondent had failed to adequately supervise his employee, Mr. A, and in particular had failed to ensure that Mr. A communicated effectively with the company of which she was a director or keep it accurately updated in relation to progress of a court action instructed by the company. The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the conduct issue to the Complainers to investigate.

11.3 By letter dated the 2 July 2013 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. By letter dated 4 July 2013 they sent him a copy of the complaints form and advised that the complaint was based on consideration of that form. They required him to comment on the arrangements he had made for the supervision of his employee Mr A.

11.4 On 5 October 2010 Ms Sharma had instructed Mr. A in connection with a dispute between the company Supreme Advisory Networks Ltd., of which she was a director, and Company 1. She had been a client of the Firm of Thomas

Caplan Solicitors which had ceased to exist. Mr. A was a former partner in that firm. His practising certificate was subject to a restriction imposed by the SSDT on 19 November 2008 for an aggregate period of five years with effect from 1 March 2009. The Respondent acquired the premises of the former firm. He traded as NRBS Solicitors until the appointment of a Judicial Factor on 9 March 2012. He was not a court solicitor. The Respondent accepted business of a civil court nature. He employed Mr. A in the role of a paralegal and did not seek the approval of the Complainers to employ him as a solicitor. The only other court solicitor employed by him was recently qualified and dealt with criminal and immigration work only. In February 2010 Mr. A signed a Trust Deed for creditors. On 10 January 2013 he was suspended from practice by the SSDT for a period of five years.

11.5 When correspondence failed to resolve the dispute with the college. Ms Sharma instructed Mr. A to proceed with a court action. She was not told that he was not a solicitor. He was designed as "Legal Executive" in e-mails. On 22 November 2010 he met her, discussed the pros and cons of raising a Court Action and noted that she wished to proceed. He took from her a cheque for £300 towards costs and undertook to have the Writ completed by the end of that week. He prepared a writ and sent it to Glasgow Sheriff Court with a cheque for £90.00. The court returned it as the wrong fee had been sent. In December 2010 he advised Ms Sharma that he had been required to make some changes to the Writ at the request of the Court. He confirmed that he had made the appropriate changes and returned the writ to Court explaining that it would be the next week before it could be served. He resubmitted the writ and attached a fresh cheque to the Scottish Courts Service dated 4 January 2011 for £80. The

cheque was signed by the Respondent. A warrant was issued by the Court for service of the writ. On 7 February 2011 Mr A emailed the complainer to advise that the college had lodged Notice that they wished to contest the action and that he expected that they would now have to lodge a written statement of their Defence. On 3 March 2011 he sent an email to the Secondary Complainer, stating "The college should have lodged their Defences by now but I haven't received a copy of these yet. I'll check what is happening with the Court and let you know". The writ was not served on the defender. Mr. A misled the client who was led to believe her case was progressing when it was not.

11.6 In correspondence with the Society on 23 July and 21 September 2013, the Respondent explained that Mr A was a former Partner of Robert Thomas & Caplan, Solicitors and that when the firm ceased to trade he had taken over their offices. He employed Mr. A in the capacity of a paralegal. He stated that he was not aware of how Mr A would have portrayed himself to the client, whether in the capacity of a solicitor or not, but that his instructions to Mr A were to make it clear that he was a paralegal and not a solicitor. The Respondent explained that if Mr A had come to him asking for a cheque to the Scottish courts service for outlays he would have given this to him. He recalled that he would have asked Mr A if he had checked with the cashier that there were funds for the relevant client before writing the cheque. He stated that at that point he would not ask precise details of every outlays cheque going out as this would take too long in a busy environment. With regard to supervision, the Respondent advised that he had to approve all matters which Mr A worked on but he did not recall this matter which may not have been approved by him. He explained that he had had weekly catch up meetings with each person to run through what they were

working on and discuss if they had received instructions on any new matters. He stated that any formal missives for transactions would be signed by him in the name of the firm and then witnessed by the respective paralegal working on the matter. The Respondent advised that his practice was to leave some signed cheques with his longest serving paralegal who was a trusted member of staff. He reported that the system was that she would provide any necessary cheques, for outlays only, when needed on any occasion the Respondent was out of the office.

11.7 The Respondent did not meet with or correspond with Ms Sharma. Correspondence was issued without his approval. Mr A, as an unqualified person, prepared and issued an Initial Writ, an offence in terms of the S32 of the Solicitors (Scotland Act) 1980. The Respondent had no system of supervision to prevent the submission of a Writ to the court without authority. He allowed a cheque to be issued for the court dues without question. He did not supervise Mr. A in this case. As a result the client was misled. The Respondent has acknowledged that he did not know what Mr A was doing in respect of the client. The Respondent has shown a wilful and reckless disregard for his supervisory obligations. A competent and reputable solicitor would have ensured that there was an adequate system in place to allow him to review the work of Mr A, not only because he was employed as a paralegal but also due to the restriction imposed on Mr. A's practising certificate by the SSDT. The system operated by the Respondent was not adequate in all the circumstances of the case.

11.8 The Complainers compiled an Investigation Report, a copy of which was intimated to the Respondent in a letter dated 26 September 2013.

11.9 By letter dated 24 October 2013 the Complainers provided a Supplementary Report to the Respondent's then advisor who was a solicitor and intimated that the Complaint would be considered by the Professional Conduct Committee 28 November 2013.

11.10 On 28 November 2013 the Complainers' Professional Conduct Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that it appeared to be capable of being proved beyond reasonable doubt and could thus amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Scottish Solicitors' Discipline Tribunal.

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND ACCOUNTS RULES

11.11 Concerns were first noted in an inspection of the Respondent's firm in November 2005. The accounting records were sparse and there was non-compliance with the Accounts Rules. The problems were resolved satisfactorily by correspondence. Anomalies in conveyancing matters in another firm drew attention back to the Respondent in 2008 and an inspection was arranged for September. The Respondent was asked to provide his client files for the conveyancing transactions of concern. He postponed this inspection and attempted on a number of occasions to postpone it further. An inspection took place on 6 February 2009. The accounting system was a manual one. The Respondent was not present at the start of the inspection nor were a substantial number of items required by the inspectors. The records produced were inadequate and

incomplete. No end of month firm or client bank reconciliations, firm or client trial balances, statement of surplus or cashbook were produced. The client cashbook had no running balances or totals and client ledgers were missing or incomplete.

11.12 The Respondent was left a list of books and records required and documents were produced by 13 February 2009. They remained incorrect and incomplete. It was not possible to determine the correct financial position. He was alerted to the serious position he was in at the summing up meeting. He was advised to review all records and ledgers with immediate effect and introduce sufficient funds to negate any potential deficit. At the re-inspection on 17 June 2009 the books and records reviewed contained many errors, mis-postings, incorrect dates or amounts, missing entries, missing ledgers and ledgers not created until requested. The firm trial balance, firm bank and client bank reconciliation, client ledgers, client list of balances and firm nominal ledgers were incorrect and incomplete. There appeared to be a continual deficit on the client account from, at best, November 2008.

11.13 In view of the Respondent's inadequate experience in maintaining adequate books he was advised to engage an external firm of accountants without delay, failing which consideration would be given to removing his Practising Certificate under section 40 of the 1980 Act. There were ongoing concerns about inadequate money laundering systems and procedures and a number of high risk transactions involving former clients of the former firm of Lyons Laing solicitors in the purchase of Company 2 from Company 3. The Respondent was advised not to undertake any further Company 2 transactions until the concerns were resolved to the satisfaction of the lender and the Guarantee Fund

Committee.

11.14 The Respondent engaged Hardie Caldwell Accountants on 26 June 2009. The Complainers required him to deposit £2,000 in the client account, produce balance statements to them every two days, provide a mandate to the Accountants instructing them to (i) provide a weekly report on their activities, (ii) confirm the PAYE and NIC position to them and to HMRC and estimate how long the work would take. By 6 August considerable progress had been made with the books written up from 31 March 2009 showing a surplus of £949. The firm was allowed to continue to operate on condition that the Accountants continued to provide monthly reports.

11.15 The Respondent was interviewed on 17 September 2009. He accepted that there was a serious problem with the deficit shown on his client account. He explained that it was due to his failure to keep up with record keeping and that he would continue to employ the Accountants until he could employ a full time cashier. The concerns about the sixty-two property transactions involving Company 2 were raised with him. He was advised about the signals which should raise alarm in his mind such as conveyancing settlements for less than the purchase price and changes in the source of funding for the purchase. The submission of reports to SOCA was discussed and he was reminded that rogue clients were targeting solicitors. The complainers continued to require monthly reports from the Accountants.

11.16 A further inspection took place in March 2010 by which time the Respondent had taken over client files and balances of the ceased firm Robert Thomas & Caplan. The monthly reports had revealed significant improvement. The cashier and computer system from the ceased firm were present in the

office. The books and records were relatively well maintained. There was a deficit of around £17,500 through December 2009 to January 2010 caused by a problematic inter client transaction where a cheque was issued and cashed before funds received had cleared. The deficit was eradicated by an injection of funds by the Respondent's father. The Respondent was required to deal with correspondence arising from the inspection between 15 April and 5 August 2010. He was asked to provide two files which had not yet been located for the next inspection.

11.17 On 13 September 2010, the Respondent replied to the Complainers enquiry about the firm's Account balances. He stated that that he had submitted his Accounts Certificate by fax and by post on 23 August 2010. He enclosed a copy of his firm's Accounts Certificate signed by him for the period ending 31 May 2010. It contained the Client Account Reconciliation as at 28 February 2010 and 31 May 2010 balancing the figures and indicating that "Nil" balance was due by named clients. He entered the following under "4. Other matters which require to be reported:-

"Deficit in Client Account during December 2009 and January 2010 of £17,279.91 due to a potential fraudulent matter which was reported to SOCA. This matter was fully discussed with and reported to the Law Society. An injection of capital into the client account rectified the deficit"

11.18 An inspection was due to take place on 8 December 2010 but the Respondent asked for a postponement to January 2011 due to a tragic event involving his family in Pakistan. He advised he would be in Pakistan from 3 December to 6 January when he was booked to return. He also advised that there had been a fire in his office and two boxes of files were destroyed. He

was told the inspection would proceed in his absence. He advised that his full records would not be available. The inspection was rearranged for 10 January 2011.

11.19 On 10 January 2011 he submitted his firm's Accounts Certificate signed by him and dated 10 January 2011. It contained the Client Account Reconciliation as at 31 August 2010 and 30 November 2010 balancing the figures and indicating that "Nil" balance was due by named clients, but £8991.09 was due by the firm. He entered the following under "4. Other matters which require to be reported:-

"Deficit in Client Account during end October 2010 and beginning November 2010 of £101,000 due to invested funds not being uplifted on time. We were in funds albeit the funds were invested in the Royal Bank Client Monies Service. We had a temporary IT problem with our systems which meant we also had to call Company 4 for re-installation on a new machine. This caused a temporary problem. And funds were uplifted as soon as the issues were rectified."

11.20 On 10 January 2011 the financial compliance team attended at the firm's offices. The books and records were not up to date. On 8 January 2011 postings were made to 30 November 2010. The Respondent had not provided the cashier with access to the bank statements and held the cheque book and pay-in book personally. There were deficits on several dates due to errors in payments and failure to uplift funds timeously. The cashier did not know what the surplus was. Files requested previously were not made available. Money Laundering procedures were not being followed. The team recommended the appointment of a Judicial Factor as they were concerned that there was a significant risk to the Guarantee Fund.

11.21 A special investigation took place on 16, 17 and 18 February 2011. A significant number of transactions had not been entered into the computerized records. There were twenty-five missing entries and two incorrect entries for the August 2010 Client bank statement alone. The majority of the transactions causing concern were inter-client conveyancing matters where the Respondent acted for both sides. Entire transactions were missing. The firm's books, accounts and other documents were in such a state that it was not reasonably practicable to ascertain whether liabilities exceeded assets.

11.22 Santander contacted the complainers with concerns about transactions dealt with by the respondent's firm. On 9 March 2011 an interim Judicial Factor was appointed to the firm's estates. By order of the Court of Session the Judicial Factor became permanent on 12 April 2011. The Judicial Factor reported on her findings. The Guarantee Fund Sub-Committee referred the matter of the Respondent's conduct to the SLCC who remitted it for investigation on 31 January 2013.

11.23 The Respondent's accounting records were wholly unreliable. Bank statements presented by him to the inspection team had been altered. Transactions on the client account were not recorded through the daybook. The falsified bank statements and accounting records concealed a shortfall on the client account of about £158,000 at the date of appointment of the Judicial Factor. The shortfall related to two conveyancing transactions for properties in Property 1 and a number of cheques paid to a Mr. B who was not a client of the firm. Mr. B is believed to have a number of aliases. A Mr. B was appointed as a director of Company 5 on 25 January 2008 and Mr C as a director on 1 November 2009. The Respondent's details were entered as the presenter of the information to be registered.

PROPERTY 2

11.24 On or about 21 April 2010 the Respondent was instructed by Mr D and an Mr E in the purchase of Property 2. The purchase price was £100,000. He wrote to his clients on 21 April 2010, confirming their instructions and enclosing a Terms of Business letter. On 23 April he received £20,500 by Chaps transfer from Mr D towards the purchase price. On 20 May Cheltenham & Gloucester Plc issued loan instructions to him for the sum of £80,035 from Lloyds TSB Bank Plc. The clients signed the Standard Security on 25 May 2010. On 3 June £80,000 was received from the lender.

11.25 On 11 June 2010 missives were concluded, the purchase price and the Stamp Duty were paid. The Keeper of the Registers acknowledged receipt of the deeds that day and payment was made of the recordings due for the disposition and the Standard Security. On 14 and 28 July the lender wrote for a progress report. On 28 July the Respondent sent a copy Form 4 Receipt to the lender. On 29 July 2010 he requested cancellation of the Standard Security and it was returned by the Keeper. On 11 January 2011 he requested cancellation of the application and return of the deeds. On 13 January that request was cancelled. On 4 February 2011 the lender wrote for an explanation of the actions taken which they had investigated. On 21 February 2011 the Respondent advised them an error was made in connection with the standard security cancelled on 29 July 2010. He undertook to resolve it. He faxed the Registers of Scotland requesting re-registration of the standard security over the property at Property 3 and cancelling the standard security over Property 2. He advised that there was currently no standard security over that property.

PROPERTY 3

11.26 On or about 20 June 2010 the Respondent was instructed by Mr F and Ms G in the purchase of Property 3. The purchase price was £100,000. He wrote to his clients on 21 June, confirming their instructions and enclosing a Terms of Business letter. On 16 June 2010 loan instructions were issued to him by Cheltenham and Gloucester Plc for the sum of £80,035 from Lloyds TSB Bank Plc. The Standard Security was signed on 22 June 2010. A sum of £21,169.88 was received for the benefit of the clients on 23 June. The Respondent sent the Certificate of Title to the lenders on 24 June 2010. On 25 June the Respondent sent a cheque to the selling agents in the sum of £100,250 to be held as undelivered pending a phone call to authorise encashment.

11.27 On 29 June 2010, the Missives were concluded with entry that day. The Respondent requested return of the settlement cheque and, on 30 June, payment of the purchase price and advance factors charge was made by CHAPS transfer. The Stamp duty was paid. The Respondent sent the Disposition and Standard Security to Registers of Scotland by electronic submission acknowledged on 9 July. Payment of the recording dues for both deeds was made. There were no loan funds obtained from Cheltenham and Gloucester Plc or elsewhere. On 29 July 2010 Abbey, part of Santander Group, temporarily withdrew loan instructions relating to this transaction. The only funds received by the Respondent had been the deposit funds of £21,169.88.

11.28 The purchase of Property 3 was settled without sufficient funds in the client account to cover the payment made to the

sellers. The Respondent did not rectify the situation. In a letter of 20 June 2011 he stated:

"As stated in my e-mail, there was a problem with the lender at the last minute and the loan monies did not come through (circa £80,000). The lender did not advise us of this and we proceeded to settle. When my assistant asked if the money was in for Property 3, I confirmed it was. We were settling two at the same time and both were in Property 1. The money that was in was actually for the other settlement and not for this one. My assistant had not advised me of this."

The purchase of Property 2 had settled on 11 June 2010.

11.29 After the second transaction was settled, the Respondent was aware that there was a shortfall on the client account. He did not amend his records to accurately reflect the position. There were fictitious entries on the ledger. The client ledger showed funds of £79,960 received from Cheltenham & Gloucester on 30 June 2010. The shortfall on the client accounting records of the firm was disguised and he misrepresented the position in the Accounting Certificates which he forwarded to the Complainers on 23 August 2010 and 10 January 2011.

UNAUTHORISED PAYMENTS TO THIRD PARTY

11.30 Between 20 September 2010 and 10 January 2011, the Respondent drew seven cheques payable to Mr C for amounts varying between £4,000 and £50,000. The total amount was £94,000. He drew a cheque made out to Cash and given to Mr C on 5 November 2010. The payments were made from funds belonging to other clients. There were no funds in the client account to cover the payments to Mr C. Alterations were made to the accounting records and to bank statements to disguise

the true state of affairs. The Respondent did not disclose the payments to Mr C or the deficit on the client account.

11.31 The Respondent drew two cheques for £10,000 numbers 002298 and 00232 dated 10 February 2011 in the name of Mr C. There were no day book entries or ledger cards to explain their purpose. A further cheque numbered 00229 in favour of Mr C was dated 10 March 2011 the day after the Judicial Factor's appointment. The three cheques were presented to Company 6 for payment on 10 March. They were subsequently dishonoured by the bank as presented after the date of the Judicial Factor's appointment. Company 6 has sought re-imbursement from the Complainers. There was nothing in the firm's records showing the purpose of these payments and the records did not disclose the true position of the Client Account. The Respondent later advised that he had issued these cheques at an earlier date but had post-dated them.

11.32 The Respondent advised that payments were made to Mr G due to extortion. During the period when the alleged threats were being made by Mr G, the Respondent was visited by the Police. He did not inform them of the alleged threats. His actions in his dealings with his clients' funds were pre-meditated and planned. He disguised his behaviour by falsifying his accounts and he misrepresented the position in the Accounting Certificate which he forwarded to the Complainers on 10 January 2011.

12. After giving careful consideration to the Complaint, most recent Answers, the evidence led and the submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in relation to his failure to supervise an employee, his repeated

breaches of Rule 6 of the Solicitors (Scotland) Accounts etc Rules 2001, his repeated breaches of Rule 4(1)(a) of the Solicitors (Scotland) Accounts etc Rules 2001 including falsifying bank records and issuing false and misleading accounts certificates.

13. The Tribunal heard further submissions from both parties and confirmed with the Secondary Complainer that she wished to continue with her claim for compensation. It was explained to the Secondary Complainer that there was insufficient time to proceed to hear her claim and that further procedure would require to be fixed.

14. The Tribunal pronounced an Interlocutor in the following terms:-

> Edinburgh 19 February 2015. The Tribunal having considered the Complaint dated 1 April 2014 at the instance of the Council of the Law Society of Scotland against Noemaan Farooq Butt, Solicitor, 6 Thornhill Gardens, Newton Mearns; Find the Respondent guilty of Professional Misconduct *in cumulo* in respect of his repeated breaches of Rule 6 of the Solicitors (Scotland) Accounts etc Rules 2001, his repeated breaches of Rule 4(1)(a) of the Solicitors (Scotland) Accounts etc Rules 2001 which included his falsification of bank records and issuing false and misleading accounts certificates, and his failure between 5 October 2010 and 9 March 2011 to have in place adequate systems for the supervision of staff; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the Council of the Law Society of Scotland and of the Tribunal including expenses of the Clerk, to today's date, 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 that this publicity will be deferred until the conclusion of Crown Office

investigations into criminal conduct connected to matters contained within this Complaint and any prosecution proceeding thereon and in relation to the Secondary Complainer's claim for compensation continue the case to a procedural hearing on 2 April 2015 at 10:30am.

(signed)
Dorothy Boyd
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Dorothy Boyd
Vice Chairman

NOTE

At the hearing on 19 February 2015 the Tribunal had before it the Complaint, three sets of Answers, a Joint Minute of Admissions, List of Witnesses for the Complainers and two Inventories of Productions for the Complainers. The most recent set of Answers, which was lodged at the hearing, principally superceded the Joint Minute and previous sets of Answers.

The third set of Answers admitted the bulk of the averments of fact, all of the averments of duty and only disputed Article 11.5 of the averments of professional misconduct. The Fiscal sought to withdraw Article 11.5 and was allowed to do so by the Tribunal.

The Fiscal indicated that a number of points raised by the Answers made it necessary for her to lead evidence. She confirmed that she only intended to lead evidence for clarification purposes and to address issues raised in the Respondent's Answers. She indicated that she would lead three witnesses.

EVIDENCE FOR THE COMPLAINERS

WITNESS 1: IAIN DAVID RITCHIE

Mr Ritchie confirmed that he had been employed the Law Society since 2003 and for the last four or five years had been a clerk to the Professional Sub Committee of the Law Society. He was referred to the Complainers' First Inventory of Productions at page 6 which he confirmed was the Law Society record relating to Mr A. He confirmed that this disclosed Interlocutors from the Discipline Tribunal relating to Mr A. He was asked to confirm the procedure followed by the Law Society after a decision was made by the Tribunal. He confirmed that firstly the decision would be noted upon the solicitor's record held within the Law Society. Thereafter publication of the decision would be made in the Journal of the Law Society usually within six months of the decision having been taken. The Interlocutor of 19 November 2008 related to a case involving Mr A and Mr H. They had both been partners of the firm Robert Thomas & Caplan. The Respondent in this case had taken over at least the

premises that had been occupied by the firm of Robert Thomas & Caplan and had employed Mr H and Mr A as paralegals within his own firm of NRBS. The Interlocutor indicated that both of these individuals' practising certificates were restricted for a period of five years from 1 March 2009 so that they could not act as principals. That meant that the Law Society required to give permission for them to work as solicitors for any particular firm. This did not apply to paralegals.

Mr A signed a Trust Deed for creditors in December 2009. This was intimated by Mr A to the Law Society in February 2010. The firm of Robert Thomas & Caplan ceased to practice when both partners had their practising certificates restricted. The way Robert Thomas & Caplan had ceased to practice was quite different to what happened to the firm of Lyons Laing as Lyons Laing were subject to a Judicial Factor and were effectively closed down by the Law Society in May 2009.

CROSS EXAMINATION

Mr Ritchie confirmed that the only formal intimation of the status of Mr A would have been by the publicity in the Journal. Additionally, he suggested that the Respondent should have been aware of the reason the firm closed down when he took over the premises. Mr Ritchie was asked whether the Respondent had communicated with the Law Society regarding Mr A's role within his firm being limited to being a paralegal. The witness indicated that he had checked the Law Society's computerised records and could find no trace of any communication between the Respondent and the Law Society regarding this matter. He went on to explain that Mr H, who was also employed by the Respondent as a paralegal, was sequestrated some time in 2009 and as this would mean that his practising certificate was suspended it would be a criminal offence to employ him in any capacity within a legal firm without the permission of the Law Society.

WITNESS 2: NATALIE COOK

Ms Cook confirmed that she had been employed by the Law Society for nearly 10 years and was a financial compliance manager. She confirmed that she was one of the managers in the department that headed up teams of inspectors that go out to take

charge of inspections of firms within Scotland. She confirmed that Production 2 in the Second Inventory of Productions for the Complainers was a report prepared by her in relation to the firm of NRBS which was owned and operated by the Respondent. This report included information held within the Law Society records. She herself had been directly involved in two of the inspections of this firm including the one that had taken place in 2011. She had also inserted within the report details of interviews and minutes for Guarantee Fund Committee meetings. The report summarised the background for the inspection on 6 February 2009 and confirmed the Respondent was using a manual book system. The records had been inadequate and incomplete. There were no month end firm or client bank reconciliations, no firm or client trial balances, and no monthly statement of surplus. The client cashbook produced to inspectors did not have any running totals. Client ledgers were missing and were found to be incomplete.

At the date of this inspection it was normal to have a summing up interview with the cashroom partner who was the Respondent. He was asked to forward information to the Law Society by the 13 February to allow completion of the inspection. Records were forwarded but they were incomplete. Because of the state of the records it was impossible to rely on there being a surplus. She had not been involved in the 2009 inspection but was aware that there was concern regarding a deficit on the client account. She referred to an extract from the Guarantee Fund Committee meeting of 5 March 2009 that indicated that there were concerns about the true financial position of the firm and that there was the potential for a deficit on the client account. A follow-up letter from the earlier inspection had been sent to the Respondent on 25 February 2009 but no reply had been received.

A re-inspection took place on 17 June 2009. At that inspection it appeared that a deficit had existed on the client account since at least November 2008 although it was not possible to determine the extent of the deficit because of the inaccuracy of the records. She confirmed that from a review of the Society's records a letter had been sent to the Respondent advising him that he should cease to deal with transactions involving Company 2 because of information the Society had received in relation to the case of Lyons Laing.

The firm was inspected again in March 2010. The witness was present at this inspection. The Respondent was using the former cashier of Robert Thomas & Caplan. She had previously dealt with this cashier when she had inspected the firm of Robert Thomas & Caplan. She was able to confirm that the computer system from the firm of Robert Thomas & Caplan was still present within the offices of NRBS although she could not recall whether that was the computer system being used by NRBS. She was satisfied that things had improved by that inspection.

This witness was also present at the inspection that had taken place on 10 January 2011. The same cashier was present at that time. The books and records appeared not to be being kept up to date. Postings had only been made up to the end of November 2010 and these postings had only been completed shortly before the inspectors had arrived at the office. The cashier had confirmed to the team that he was not being given access to the bank statements and that the cheque book and pay in book were held by the Respondent. The Respondent had reported a deficit in his accounts certificate for the period to the end of 30 November 2010 but in fact several deficits had occurred during that period. The team were unable to assess how these deficits had arisen and asked for explanations. The team were working from bank statements produced by the Respondent and information held within the hands of the firm. She herself had not been involved in any of the information that the Judicial Factor had retrieved. The cashier was unable to advise what the surplus was on the client account. Two files had been requested previously only one was produced for this inspection.

The deficits noted within the books were the type of thing that could occur due to errors from not keeping the books up to date.

There were concerns with regard to the firm's compliance with Money Laundering Regulations and as a result of all of this the team recommended an application to appoint a Judicial Factor. The team could not ascertain the true financial position of the firm and it was assessed as a risk. The Respondent had not made any reference to any extortion.

She was also aware of concerns raised by Santander regarding transactions conducted by the Respondent's firm having received this information from Ian Messer, the Director of Financial Compliance at the Law Society.

CROSS EXAMINATION

The witness confirmed that the books of the firm were in a fairly poor state and this was a concern in itself. Advice was given to put that right. She believed from the background to her report that the Respondent had indicated that he was going to employ a firm of accountants. She indicated that it would be surprising if the first intimation to the Respondent of the application for a Judicial Factor had been the eve of the application. She indicated that once a decision is taken to apply for a Judicial Factor, the Law Society have to put a Petition together which would take time. In a previous inspection concerns had been raised with regard to a number of transactions involving Company 2 and NRBS. She was unable to say whether or not these simply involved communications between the two or whether these were actual transactions.

WITNESS 3: CATHERINE MARY RUSSELL

The witness confirmed that she was the Deputy Director of Judicial Intervention and acted as solicitor to the Judicial Factor for the Law Society. She confirmed that she had been involved with the Judicial Factory in this case.

Procedure in these cases is that her department would be advised that the Guarantee Fund Committee had recommended the appointment of the Judicial Factor. Mrs Grandison, the Judicial Factor, had gone to the court for the hearing of the application and met the Respondent. The witness had gone directly to the offices of NRBS. She met the Respondent at the office shortly before Mrs Grandison arrived there. It was explained to the Respondent that this was simply an interim appointment and that efforts would be made to try to trade the firm to preserve it and to assess whether the order could be recalled or made permanent. When Mrs Grandison arrived they had had a meeting with the Respondent in his office where they had spoken in general terms about his personal finances. It seemed that he was in a precarious financial position. The Judicial Factor suggested to him that he go home and discuss matters

with his wife to ascertain how they would live given that all accounts held personally by him or through the business were frozen. It was agreed that there would be a meeting with Cassidy & Co., the firm for whom the Respondent's solicitor Mr I worked, on the following Monday. Mrs Grandison had attended at the offices of Cassidy & Co. with an external solicitor who was advising her. She waited there but no one appeared. The secretary contacted Mr I and he advised that he was not attending any meeting. The Respondent did not turn up either.

In the course of proceedings the Law Society's concerns were substantiated. A review of the firm's books showed that they had been manipulated. He was written to on the 16 March explaining that she had not heard from him with regard to what she do in relation to the business. Mr I had telephoned the Judicial Factor and had alluded to payments being extorted from the Respondent. Because the firm's books were so manipulated it was not possible to allow the business to continue. It was not felt safe to pass the practice on to any other firm. Because of concerns the Judicial Factor had contacted some of the lenders in relation to conveyancing transactions and it appeared that the ledgers did not reflect what was reflected in the bank statements. The ledgers did not appear to show any fee or registration dues. Loan funds could be seen in ledgers but deposits and payments going out could not be seen. The Judicial Factor obtained bank statements direct from the bank for the firm and when these were compared with the copies given to the inspectors it appeared that the copies shown to the inspectors had been manipulated. The Judicial Factor found entries for recording dues in ledgers linked to a Mr C. There were some handwritten entries that referred to a company Company 5 that had Mr C as a director. At one stage the Respondent had attempted to buy the firm of Lyons Laing from the Judicial Factor. The offer the Respondent had made was good in monetary terms but was a little unusual in that the files were to be transferred on 19 June but the price not paid until July. The solicitors for the Judicial Factor asked the Respondent for proof of funding and he produced a letter from Company 5 signed by a Mr C saying that the company was providing the Respondent with a loan to buy the firm. Advice was taken not to proceed with this sale given its speculative nature.

Apart from the meeting in his office on the day the Judicial Factor was appointed, there was never any other meeting with the Respondent. Mr I was written to on 25

March 2011 asking if he could get his client to provide a substantive account of the difficulties that were disclosed. The Respondent was asked on several occasions to come in for a meeting. A meeting was fixed for June 2012, the Respondent cancelled this due to car trouble. Another one was fixed for December to which he did not turn up. In emails to the Judicial Factor he did acknowledge that he had had difficulties. They had come to the conclusion that he was never going to attend a meeting so they did not attempt to fix another one. He did however come to the offices to collect his personal possessions.

The question of coercion was not explained to the Judicial Factor's team by the Respondent. It had been mentioned by Mr I. The next time it was raised was in relation to the repossession of a house owned by the Respondent in Newton Mearns. The lenders wanted to repossess the house that was owned by the Respondent and occupied by Mr and Mrs C as tenants. The Respondent had wanted to persuade the Judicial Factor to sell the house and to put the tenants out. The Judicial Factor had been copied into correspondence with the lender who had queried the Respondent as to why there was a tenant in his home as it affected their security. The Respondent had answered the lenders saying that the tenant was a bad man and was threatening him. In the Respondent's correspondence with the lender he did seem frightened and so the Judicial Factor did not raise it directly with him.

Mr C did contact the Judicial Factor's office asking for files and money but he never made any formal claim. Mrs Grandison was advised that paid cheques issued by the Respondent to Mr C were held by Mr I. The Judicial Factor asked for these but Mr I would not hand them over. The Judicial Factor's legal advisors had written to Messrs Cassidy & Co. and Mr J of that firm sent the cheques to the Judicial Factor. The Judicial Factor later received correspondence from Company 6 indicating that Mr C had gone in to cash cheques. Company 6 had paid money to Mr C on the basis of these cheques which had then not been honoured as the accounts were frozen. The Judicial Factor did not honour these cheques either as the Respondent never explained if he thought this money was due to Mr C from the client account. There was nothing on any ledger with the firm to suggest that this man was due anything from the client account. If this was a personal debt with the Respondent then the man was simply a creditor of the firm like any other.

The witness had never met the cashier of NRBS and had been unable to contact him. There was no suggestion of any wrongdoing on the part of the cashier.

Both she and the Judicial Factor were prepared to accept that the explanation for what happened in relation the conveyancing transactions in Property 1 was quite plausible. The transactions involved properties at the same address, with purchasers bearing the same surnames, and loan funds from the same lender. The Judicial Factor's concern was however that the ledger did not reflect what had taken place. Nor were the firm's insurers advised of the error. She believed that the Respondent may well have tried to get the mortgage broker to find another lender. The ledger however still suggested that the loan had been paid. She had in fact written direct to the lender to confirm that the loan had indeed not been paid over. The Judicial Factor had agreed with the purchasers that the title would be transferred into the Judicial Factor's name and the house put on the market. It took a long time to sell. The property had been purchased for £100,000 and was sold for £45,000. The purchasers were repaid a proportion of their deposit and the rest was put towards other creditors.

CROSS EXAMINATION

The witness confirmed that it was obvious from the records that manipulation had taken place. In particular the bank statements provided to the financial inspection team had been tampered with and this could be seen when compared with the bank statements obtained by the Judicial Factor direct from the bank. Whilst she was happy to concede that the deficit in relation to Property 1 had occurred due to negligence the concern was that even that had been glossed over by manipulation. If the ledger had truly reflected what had taken place then a deficit on the client account would have been apparent. The witness agreed that although the Respondent did not make clear to her team at the beginning what had taken place with Mr C later in correspondence relating to the repossession of his house in Newton Mearns he stated that he was afraid of the man and he was anxious for someone else to go to the police not him. The Judicial Factor did contact the police twice but was advised that the police needed to speak to the Respondent himself. There was no way of testing the truth of what was said.

The Fiscal closed her case and Counsel for the Respondent sought a short adjournment to take instructions.

EVIDENCE FOR THE RESPONDENT

The Respondent confirmed that he had been involved in the preparation of his Answers, had had a full opportunity to read and re-read these and confirmed that the Answers reflected his position. The Respondent indicated that he accepted the majority of the facts but sought to offer an explanation.

With regard to the Secondary Complainer's case, he accepted that the essential allegations were factually correct. He had not met Ms Sharma prior to today. He first became aware of her dealings with his firm when he received a communication from the SLCC. The Respondent had no knowledge of what Mr A may have said to the Secondary Complainer. He accepted that he was clearly open to criticism for not being aware of the relationship of this client with Mr A. Mr A was clearly told not to hold himself out as a solicitor. Mr A was a paralegal. Mr A and Mr H had asked the Respondent to employ them when he had taken over the premises of Robert Thomas & Caplan. He had felt sorry for them and paid them a salary of £10,000 a year. It was made clear to them that they were employed as paralegals.

The Respondent insisted that he had sent emails to a member of staff within the Law Society (Ms K) stating that he was taking over the premises only on a lease from the Landlord and that he was not taking over the firm. Mr A and Mr H's names were clearly on files when they were inspected and they were present at later inspections. At no stage did the Law Society advise the Respondent that they should not be there. He did not accept that he had turned a blind eye to this situation. He did however accept shortcomings in relation to his supervision of Mr A.

The Respondent accepted that his preparation of the accounts, books, ledgers and his bookkeeping were inadequate. He thought he had done the right thing by employing a firm of accountants. He believed he had taken the rights steps to deal with the problems by employing Hardie Caldwell who were an expensive firm of accountants

referred to him by other firms. He was unable to confirm the exact time frame taken to actually engage the accountants but assessed it as probably weeks, preceded by an attempt to identify the right firm of accountants.

He accepted the factual position with regard to the conveyancing transactions in Property 1. He indicated that what had taken place was not deliberate. The purchasers of the two premises had the same surnames. He recalled being asked by the cashier if the funds were in for a transaction involving the surnames. He was aware that loan funds had come in. He simply said yes. He did not check the position to confirm which transaction the loan funds related to. He was rarely at the office at that time. His mind was not there as he was preoccupied with other things.

The Respondent was asked if he had deliberately doctored documents to obfuscate the act. He responded that he did not remember that particular ledger. He conceded that the aim would have been to cover it up. He said he had in the meantime been liaising with the mortgage broker who was trying day and night to get replacement mortgage finance. He accepted culpability for these acts.

The Respondent admitted he knew the name Mr C and that he had written the cheques to that individual. He was asked to confirm how much he had written cheques for. After some hesitation the Respondent's confirmed he thought it was £70-80,000 approximately. The Respondent said that the money was coerced out of him. He said that Mr C was introduced to him by another man well known and respected in the Asian community as a wealthy property investor. There had been nothing untoward about Mr C at the meeting. The men had been discussing the property market when the Respondent had mentioned that he himself was selling a house. Mr C had indicated that he was looking to buy a house in Newton Mearns and asked to see the Respondent's house. Either that evening or the next day the Respondent met Mr C at the property. Mr C agreed that he would buy the property but asked to be able to rent it for two months pending the sale of property he owned overseas. Mr C had asked him how much the rent would be and as the mortgage was £1,463 the Respondent had suggested that the rent would be £1,500 per month. Mr C had volunteered to pay the Respondent £3,000 to cover the first two months' rent. Not long after that meeting Mr C kept giving the Respondent excuses about the delay in the sale of the overseas

property. Mr C offered excuse after excuse for not paying more rent. The Respondent had appeared at the premises several times at the request of Mr C but on no occasion had he paid any further sums. On one of these occasions Mr C's wife or partner said that he was in the conservatory. The Respondent had been told to take a seat and asked if he was there for money. Mr C produced a revolver, called over his four year old son and asked the boy to shoot a wall in the garden. Mr C took the gun back, held it to the Respondent's head and challenged the Respondent to ask for money again. The Respondent had not dealt with anything so frightening before. The Respondent was told not to ask for money again. The Respondent was told not to tell anyone about his involvement with Mr C. He was told that Mr C had people in the police who would tell him what the Respondent had done and that his "guys" would get to the Respondent first. This had happened sometime in 2009. He was too frightened to go to the police. Mr C had sent a number of texts demanding instant responses. He would telephone the Respondent telling him that he had "guys" outside the Respondent's home – Russians and Slovakians. The Respondent would look outside and would see "guys" outside in a car. Mr C would send the Respondent photographs of the Respondent's wife in Asda saying that he knew where she was and that he could get at the Respondent at any point.

The Respondent was asked why he had not contacted the police given that there appeared to be lots of evidence to give the police assistance. The Respondent answered that Mr C had said that he had been responsible for the death of a lawyer in Cardonald. Mr C had said that he had Russians who would take the Respondent's wife and sell her for prostitution. At 2am there would "guys" outside the Respondent's house. The Respondent was scared for his life. The Respondent was constantly at home. Mr C would be outside the school that the Respondent's child attended. The Respondent had not told his wife what had happened. Mr C had said he would pick the children up from school for the Respondent.

He was asked if he had ever gone to the police and he responded "never to this day". The Respondent stated in hindsight his position would be exactly the same. His primary object was to protect himself, his wife and his children. Accordingly to this day he had not picked up the phone to call the police.

He was asked how anyone else was able to test the truthfulness of his evidence. He responded that he did not believe that anyone in the room had been in the same position where the fear was such that he could not risk "guys" coming in. On 16 January 2010 Mrs Butt had called him to tell him that two policemen had attended at his home to speak to him. The Respondent was in the office at the time. He had gone home and two uniformed policemen were in the driveway of his home. They asked him to go inside and then advised them that they were there to issue him with a threat to life warning. In his mind that had solidified what he had been told by Mr C. On asking what that had meant, the officers would only confirm that there was a plot to murder him. They had asked him if he had suspected anyone. He stated that at that point he had looked at his son and all the threats had come back to him. He had decided he could not risk reporting the matter and so told the police he could not think of anyone. Within a few minutes of the police leaving his home, the Respondent had received a call from Mr C asking if he had received his threat to life warning.

He said he had tried to get confirmation of this visit from the police for the Tribunal. As late as the night before the hearing he had attended at Stewart Street to get information. The police had told him they could not give him information as this was the highest form of intelligence. This had been confirmed to him by the police at Giffnock and Paisley.

The Respondent confirmed that he had still not reported matters to the police. He advised the Tribunal that Mr C was currently in prison for some serious crimes but that he knew people could organise things from jail. The Respondent knew that if he contacted the police Mr C would know and he had threatened the Respondent that whatever happened Mr C's "guys" would get the Respondent first. The Respondent thought he might have been able to report Mr C through the backdoor using the Judicial Factor. He had made it clear to Catherine Russell that she could not let it be known that it was the Respondent who was reporting the matter.

Mr I had said that he had wanted to hold onto the paid cheques as evidence. Mr J had sent the cheques to Mrs Grandison with a letter saying they were being provided under coercion.

The Respondent was asked what actual steps he had taken to obtain confirmation of the death threat intimated to him by the police. He responded by saying that the police had gone through a complete revamp. He was asked again what steps he had taken and responded that he had attended at Giffnock police station, more recently quite a few times. He had been given a crime reference number but did not know the name of the officer who had given the number. He had the telephone number for Mr L who was with CID Intelligence in Paisley. The Respondent had confirmed the night before that Mr L was indeed in the system. The Respondent said that he had spoken to Mr M with the Serious Crimes Unit. He said that both officers had pushed to get the Respondent this letter. The Respondent had been assured last night that the letter was in the internal system at Stewart Street awaiting the relevant boss' to sign it. It had been made clear to the Respondent that the letter could not give any details. The Respondent conceded that there was no obvious connection to Mr C but the Respondent was unable to think of any other possible threat. He had asked the police to reveal who had made the threat but they would not tell him. The police officers who had come to give him the information had said they did not even know who had made the threat. The relationship with Mr C had started from 2009 and it had been the only thing in his mind. He could not sleep. He would check his car to make sure it had not been tampered with.

The Respondent was not aware of anyone he could have contacted even anonymously to tell about what was going on. When the Respondent had received the call from Mr C saying that he knew that the police had attended at the Respondent's home the Respondent had lost faith in the system. He had not sought medical assistance.

The practical result of all this was that he was hardly at the office. His mind was not there. He was under constant fear and threats. He could only apologise for not following these rules. It was fine to say that he was in breach of these rules but only someone who knew what he was going through could understand. He knew in theory that it was the right thing to contact the police but accepted that he had not done so.

The Respondent confirmed that he had not been in practice since March 2011.

The Respondent was asked repeatedly by his Counsel to explain if he would treat the situation any differently on Mr C's release from prison. The Respondent asked his agent to repeat the question. After a long hesitation he responded that he hoped that Mr C would have been taken care of by the authorities. He was asked if it was his intention to speak to the authorities about Mr C and responded that he did not know how he could do that without making it clear that the information was coming from him.

The Respondent was asked by the Tribunal what steps he had taken to protect his family. The Respondent answered that he picked his son up and dropped him off personally at school not letting his wife or parents do so. He referred to an occasion when the family had visited Legoland and the Respondent had received a telephone call from Mr C asking him if he was enjoying himself in Legoland and describing the Respondent's son's clothing. The Respondent had instantly gathered up his family and taken them home. Mr C had put his own son into the same fee-paying school as the Respondent's and would constantly say to the Respondent that he would pick up the Respondent's son aswell. The Respondent's son had been withdrawn from the school shortly afterwards because of the appointment of the Judicial Factor. It was the school's practice that a teacher would come out and stay with the pupils until they were collected.

He accepted that he had allowed Mr C to occupy his home after a first meeting with him and without any contract. The Respondent indicated that he had had no reason to doubt the man and that he had given the Respondent £3,000 upfront as rent.

CROSS EXAMINATION

The Respondent was questioned as to the precise time he met Mr C. He confirmed that he took over the Victoria Road office after Robert Thomas & Caplan ceased trading in October 2009 and that he met Mr C earlier that year. He had been introduced to him by a respected member of the Asian community in connection with Mr C wanting to buy himself property and making property investments. The man who had introduced him had a significant portfolio of property. He denied that he himself was interested in investment in property.

He and his wife had put their home in Newton Mearns on the market and purchased another property. This was at the beginning of 2009. A purchase of the house fell through. In conversation with Mr C, Mr C found out about the Newton Mearns house. It all happened quickly after that. Mr C ticked all of the boxes and paid £3,000 up front. The house was vacant anyway and this was a business decision. To do anything through a letting agent would have caused at least a two week delay.

The Respondent denied that he and Mr C were associates before that. He insisted that Mr C was brought to his office sometime in 2009. He was asked to explain why Mr C' company appeared to be financing a purchase of Lyons Laing and he said that he had various conversations about investments and at that point there was nothing untoward. He insisted that it was he who had pulled out of the purchase of Lyons Laing and not the Judicial Factor.

The Fiscal asked the Respondent to look at Production 12 of her Second Inventory at page 107 – a Companies House form recording a new registered office for Company 5. This form was dated 25 June 2008 and NRBS Solicitors were noted as contact details for the company. The Respondent's explanation was that he could not remember exactly when he met Mr C. He was asked if he could produce anything to confirm that Mr C had this kind of personality. After some hesitation he said it would be possible to produce the Barrhead News. The Fiscal indicated to the witness that he had said in November 2014 that he would produce something from the police confirming their meeting. He responded that legal services were faxing something over to his phone that afternoon. He accepted that he had had three years to produce something but suggested that it was only at the last preliminary hearing that he had been asked to produce proof. He conceded that he had had dealings with the SLCC, the Judicial Factor, the Law Society, the Professional Sub Committee and then the SSDT but had not produced any proof of these threats.

It was suggested to him that he had in fact had a relationship with the man he referred to and the company of which he was a director from a much earlier stage. The Respondent said anything that he had done or signed had been done by the man forcing him to do it.

The extortion of money had not begun until December 2010 and had been instigated by Mr C simply demanding money and telling the Respondent that he knew how lawyers worked and that he had access to a client account. He had no explanation for what Mr C did with the money. He could not put the payments through the books properly because it would have been discovered and Mr C would have known that the information came from the Respondent. He said he was prepared to falsify the firm's books to protect himself, his wife and children.

He was asked if he was also prepared to falsify his books in relation to the mistake made in the conveyancing transaction in Ayr. He responded that he could not remember the detail of that. He said he could not remember the actual ledger. He then conceded that it was possible that he had falsified the records to cover his mistake.

He insisted that he had employed Mr A as a paralegal only to assist in conveyancing transactions and not to do any court work at all. He was asked to explain why he would have then signed a cheque made payable to the Sheriff Court for court dues. He accepted he had given the cheque to Mr A and explained that he would have done so having checked with the cashier that there was money in the account to cover the cheque. He accepted that he failed to monitor Mr A because his mind was not there. He had made it clear that his firm would look at any ongoing transaction of Robert Thomas & Caplan and that it would take over any wills. NRBS had agreed to store files for the former firm. He could not recollect taking over any court actions. Credit balances of the former firm were transferred over to NRBS. He remembered many historic small balances being paid over to the QLTR. The firm had taken on Mr N to do immigration work as there was a good opportunity for that business in the area. Mr N had then wanted to do some road traffic work. The witness did not recollect any other civil court work. He signed the cheque for court dues because he was asked to do so. The witness was asked to look at page 16 of the Complainers' First Inventory of Productions – an email from Mr A saying that he had been asked to carry out civil court work. The witness said that this was untrue. The witness was asked to look at page 13 of the First Inventory of Productions which was an email from the Respondent to the Law Society with his responses to the aforementioned email. It was pointed out to him that again no explanation had been given for the signing of a

cheque for court dues. He was asked why this would be if Mr A had not been employed to carry out civil court work. After a significant pause the witness indicated that he could not recollect the matter.

The witness was asked to look at pages 25 and 26 of the First Inventory of Productions which was an email from Mr N, the man he had employed as a solicitor. The witness said that the contents of this email were completely untrue. He insisted he had only employed Mr N and one other as a qualified solicitor. The other was an elderly lady who was employed part-time to work with wills. He denied previously saying that he had employed Mr N to supervise Mr A and insisted that he would not have asked Mr N to do that. In March 2011 all his staff had lost their jobs and they all blamed him. The Fiscal asked the witness to look at page 26 of her First Inventory of Productions and in particular paragraph 3 where Mr N stated that "in most civil court matters the firm always instructed other agents to deal with these on their behalf. I had a chance to appear in a few civil cases which were raised by Mr A or Mr H." After hesitation the witness responded that he could not remember what these cases could be. He was asked to look at page 29 of the First Inventory of Productions which was his response to the Law Society in relation to Mr N's email. He was asked to explain why he had not stated in that email that his firm did not do any civil court work. The witness did not answer the question. The Fiscal drew the witness' attention to the penultimate paragraph of page 29 where he had stated that he was in the office every morning but had said in evidence that he was hardly in the office. He denied that he was prepared to tell lies to dig himself out of a hole.

The witness accepted that he did not supervise Mr A. He explained that he was saying that whatever happened had to be considered against the background of his evidence as his explanation went to the heart of it.

The witness was unable to explain how he could see the coercion coming to an end. He was asked if he was saying in evidence today that he would do the same again. The witness suggested that today was the first time of him speaking about this matter and with hesitation he stated he would have to discuss this with the police. He said that the decisions he had taken were the best he could have done at that time.

He was asked to explain why he was still using manual books after he had introduced a computerised system. He said he did not have an answer for that. The witness was asked if there appeared to be many transactions between him and Mr C and the firm Company 5. He said he could not remember. The Fiscal asked the witness to look at the Second Inventory of Productions, in particular Production 15 which included ledger cards. Page 78 disclosed six payments of recording dues for six different properties under the name Mr C. The witness explained that these properties were being transferred between the Asian gentleman he had previously referred to and Mr C because Mr C had been owed money by that gentleman. The witness was asked to look at page 87 and page 88 which recorded search dues being paid from the end of 2009 up to April 2010 under the name Company 5. He was asked to explain if he had ever taken a fee for the work disclosed. The witness stated the threat to life he had referred to came through in January 2010. No fees were charged at all as he had been coerced to do the work.

The witness was asked if his interest in the firm of Lyons Laing and then Robert Thomas & Caplan showed that he had an interest in acquiring firms with difficulties. He said that he had leased the Robert Thomas & Caplan offices because he had wanted to get High Street premises. A client of his had told him about the sign in the office window saying that it was to let. The Lyons Laing issue involved Mr C financing it because Mr C was interested in making investments.

The witness was asked by the Tribunal to clarify if the purchasers involved in the two Property 1 transactions were different people. He confirmed that the purchasers were different people and that in 90% of the Sikh community, the males were named S and the females K.

He was asked to clarify what his position was with his attendance in the office. He accepted that he had said in evidence that he was rarely in the office. It was pointed out to him that this conflicted with what had been said by him in correspondence. The witness explained that when he said he was rarely in the office he meant it in comparison with other sole practitioners who were in the office for long hours. The Respondent was in the office until 2:30 in the afternoon which was practically a half

day by those standards. He insisted that the only time he was not in the office was a day here and there.

He was asked if he could reconcile his position with not reporting or creating a situation to pick up the threats because of fear of retribution, with his disclosure of the situation in the Tribunal proceedings. He said he was aware that the matters would be reported but hoped that these things would not be published.

He clarified to the Tribunal that in all of the occasions where he had disclosed these threats to the Judicial Factor, to the Law Society and to the SLCC he had emphasised that it could not at any point be shown that he was the source of this information. He conceded that he had not communicated these threats directly to the Judicial Factor. He said that he had not been aware of the application of the Judicial Factor until the night before the petition called in court. The first time he had met Mrs Grandison was when he shook her hand at court and he had asked if he could please go to his office to speak to the staff before she got there. In fact they had walked into the office at the same time as him, together with a locksmith. The first meeting he had missed was because he was at Victoria Infirmary with an injury. The meeting in December he failed to attend because all of the trains had been cancelled due to weather. Whenever the Judicial Factor had emailed him he had emailed her back with the information requested. In all this correspondence he had stated that there was a serious threat to him. He had stated that the things he had done had happened in that situation and he did not think that anyone would have risked their partner.

In response to a question from the Tribunal, the witness confirmed that Mr C' son had fired the gun in the back garden of the home in Newton Mearns. He accepted that this was in the middle of populated area and could have been heard by anyone. He stated that Mr C was a Greek-Cypriot bodybuilder who was ex-military and covered in tattoos. He said this reinforced just how dangerous the man was. He could not attempt to put an end to the threats because if he did that would be the end of him.

The Tribunal asked what advice the Respondent had received from Mr I in connection with the threats being issued. The witness indicated that it was Mr I's opinion that the police were hopeless. The witness said that there was clearly a leak in the police.

The witness said that Mr C had simply demanded money and told the Respondent he had to do what he had to do. Mr C had all sorts of Russian guys coming to the Respondent's office. The Respondent had made large withdrawals from the firm account for cash to be paid to Mr C. He said he had mentioned this to the witness Russell. He said that if he had gone to the police Mr C would have known.

RE-EXAMINATION

The witness insisted that he was ignorant of the actions of Mr A. He said he was negligent in relation to the Ayr conveyancing transactions. He accepted that he had not taken any course of action that was open to him in relation to threats made by Mr C. He accepted that he had been at risk whether he went to the police or not. He accepted he had elected not to report the matter to the police and explained that he would not be sitting here now if he had done. The witness stated that he would have been killed, his children would have been killed and his wife. That was his belief firmly even today.

With regard to proof of these threats, he stated that Mr L had told him over the lunch break that legal services would be faxing him a letter. He stated that the police were aware that the Respondent was currently at the Tribunal.

SUBMISSIONS FOR THE COMPLAINERS

Mrs Johnston submitted that the Respondent had accepted all of the averments of professional misconduct, apart from the one that had been withdrawn. Whilst the Respondent accepted these averments, there were elements of the averments of fact which he had not accepted. The Tribunal had heard about these and it was a matter for the Tribunal to assess.

She submitted that the Respondent's submission of misconduct had been established. The coercion he had described was not a defence and she referred to the case of Cochrane-v-Her Majesty's Advocate, with which Mr Robertson confirmed he had no issue.

She asked the Tribunal to hold that the Respondent was untruthful, unreliable and incredible. Only the Respondent could speak to the communications with Mr C. Cheques to Mr C were written between 29 September 2010 and 10 February 2011. The Respondent had claimed that he had met Mr C in 2009 before taking over the property of Robert Thomas & Caplan but after the marketing of his own house. This conflicted with his firm at its previous premises being referred to in 2008 in the Company 5 document. The Respondent had stated that Mr C had moved into his former home just after he had met him. Just after that Mr C was then offering him a loan to buy the firm of Lyons Laing. The firm's records disclosed numerous transactions for the company of Company 5 and for Mr C in his own name. Whilst she accepted that the payment of the second property in Property 1 was probably as a result of negligence, it should be pointed out that the purchase of the first property occurred on 5 June 2010 and the second was 29 or 30 June 2010. The Respondent had falsified records to cover this up. He was willing to falsify records and cover up an error.

She asked the Tribunal to look at the matters relating to Messrs Mr A, Mr H and Mr N in assessing the Respondent's reliability and credibility. She said that there were many contradictions in the paperwork. The Respondent said he did not do court work in evidence but this was a cheque for court dues. The statement of Mr N that the firm did do civil court work was not disputed by the Respondent at the time in correspondence.

The Respondent contradicted himself repeatedly in evidence.

SUBMISSIONS FOR THE RESPONDENT

Mr Robertson suggested that this was an unusual case. A great deal of the averments were effectively admitted. The Respondent was the responsible party. Mr Robertson's submissions were restricted to the instructions that he had and the evidence that he could reasonably and rationally understand.

The Respondent was responsible and culpable with regard to his ignorance and negligence. With regard to the whole chapter of evidence regarding Mr C, despite representing the Respondent's interests, he conceded that the facts were all square with the case of Cochrane referred to by Mrs Johnston. There is a whole raft of cases dealing with the same issue – Raiker [1989], Thomson [1983], Moss-v-Howdle, Dawson and McKay.

In response to a question from the Chairman, Mr Robertson accepted that he was stating that coercion was not a defence in this case. Coercion requires immediate serious threat and an inability to take alternative action. Even if there had been a real threat to life in this case on the evidence given one could not say that there had not been an alternative course of action. Mr Robertson invited the Tribunal to give weight to the subjective element of the situation. If the Tribunal accepted the subjective element here it could extend a measure of mitigation to the Respondent. Having assessed the situation he was in the Respondent chose the direction in which to travel. Mr Robertson submitted that some measure of sympathy could be given to the Respondent without it being a complete defence.

Mr Robertson submitted that the Respondent's evidence showed he was dealing with an individual who said he had killed before and whose profile matched the things he was saying. It may have been banter or puff but the Respondent took what was being said as real and subsequent events that occurred he took to support the conclusion he made. Whilst it was being said that his mind was diminished in some sense, there was no evidence of this produced and no medical evidence. All the Respondent has been able to do in the course of these proceedings and earlier correspondence was to disclose elements of the dealings he had with Mr C in a limited way. Whilst he could have done this in a similar manner with the police or security services he chose not to. Mr Robertson asked the Tribunal to accept that the Respondent was indeed contacted by the police and that he had sought to obtain confirmation of that. The Respondent had phoned the authorities in Mr Robertson's presence. Unfortunately, this would not prove Mr C' role but simply confirmed that the police came to the Respondent's home.

Mr Robertson asked the Tribunal to take account of the Respondent's shortcomings. The Respondent had not been in practice for four years. He was an intelligent man who knew that he faced serious allegations. He asked the Tribunal to give the Respondent credit for candour in giving evidence and to exercise a degree of leniency, tempering justice and mercy. The Tribunal might be persuaded that the Respondent could be given some hope of returning to the profession with any necessary restriction or other restraint. The Respondent would seek to get back to some degree of normality with awareness of his situation. It had been stressed upon the Respondent the importance of cooperating with the police in any further investigations.

Mr Robertson invited the Tribunal to discriminate wilful dishonesty from someone who acted in an ill-conceived fashion as a result of being put upon.

DECISION

The Respondent had admitted the majority of the averments of fact. Little challenge was taken to the parole evidence of the Complainers' witnesses that proved the remaining averments. Substantially, the weight of the Respondent's case appeared to be directed towards mitigation.

Although the Respondent admitted professional misconduct, the Tribunal required to assess whether or not the conduct admitted and/or proved amounted to professional misconduct.

The Respondent admitted, in relation to the properties in Property 1, drawing money from the client account in breach of Rule 6 of the Accounts Rules. He admitted having a deficit on his client account between 30 June 2010 and 23 August 2010 which he disguised by falsifying bank records and by issuing a false and misleading accounts certificate. He admitted issuing seven cheques to Mr C drawn on the client account, and drawing one cheque to cash which was paid to Mr C from the client account, all totalling £101,000, in breach of Rule 6 of the Accounts Rules. Additionally, he admitted issuing a further two cheques to Mr C. The Respondent had admitted having a deficit on his client account between 29 September 2010 and 10 March 2011 which he had disguised by falsifying bank records and by issuing a false

and misleading accounts certificate. In addition to these matters the Respondent had also admitted failing to supervise a member of staff.

This conduct clearly fell far below the standard of conduct to be expected of a competent and reputable solicitor to the degree that would be regarded as serious and reprehensible. The Tribunal had little hesitation in finding the Respondent guilty of professional misconduct.

In fairness to the Respondent, the Tribunal felt unable to say that the failure to supervise Mr A in itself would have justified a finding of professional misconduct. Therefore the appropriate decision was to hold the Respondent guilty of professional misconduct *in cumulo*. The Tribunal however did consider it important to emphasise that the other elements of misconduct were themselves extremely serious and independently could have justified a finding of professional misconduct.

PENALTY

Parties were invited to address the Tribunal following the finding of misconduct. The Fiscal confirmed that she had nothing further to add and that the Respondent had no other item on his record card.

Mr Robertson indicated that he had little more to say on behalf of the Respondent. He confirmed that the letter previously referred to in relation to the visit from the police had arrived two minutes previously but that the letter was in very bald terms. Mr Robertson confirmed that the Respondent was not currently in employment but would be considered essentially a househusband.

The Secondary Complainer was invited to address the Tribunal with regard to her claim for compensation. Ms Sharma confirmed she wished to proceed with her claim. It was her position that she had not been appropriately compensated for financial loss. Whilst the company had received compensation from the Master Policy amounting to £4,250.00, Ms Sharma had had to pay legal fees and if these fees were deducted from the sum paid then the only compensation she had received for financial loss was £3,276.00. Ms Sharma also submitted that she had suffered mental distress. She

confirmed to the Tribunal that she was the director of a limited company and that company still existed. She lodged with the Tribunal a folder containing a typewritten statement of her claim.

The Tribunal explained to the Secondary Complainer, that due to the lateness of the day, there was insufficient time left for the Tribunal to give her claim adequate consideration. The Tribunal adjourned the hearing to allow the Tribunal members to consider penalty and any appropriate further procedure in relation to the claim for compensation.

DECISION ON PENALTY

The Respondent admitted a catalogue of professional misconduct which included acts of dishonesty.

Whilst the Tribunal accepted that what had taken place in relation to the conveyancing transactions in Ayr was originally a mistake, the steps taken thereafter by the Respondent were taken by him on his own admission deliberately and with the intent of covering up his original error.

The Respondent had misappropriated funds from the client account to pay to Mr C and then had taken elaborate and deliberate steps to falsify records to cover up the true position. These steps had included falsifying bank statements.

It had been accepted by the Respondent that the alleged extortion by Mr C was not a defence to his conduct. The Tribunal however was invited to give these allegations significant weight in considering mitigation. No evidence of these threats had ever been produced, beyond the Respondent's testimony. The only evidence that was vaguely offered beyond the Respondent himself was confirmation of a meeting with the police that had taken place at the beginning of 2010. Even then, however, it was accepted that this in itself would not have confirmed the involvement of Mr C.

Therefore, in considering what weight to give these allegations the Tribunal had to assess reliability and credibility of the Respondent.

There were many contradictions in the Respondent's evidence. The Respondent claimed to have met Mr C in 2009 and suggested he quickly entered into the agreement for Mr C to live in his house. The Productions for the Complainers clearly disclosed documents relating to the company of Company 5dating from 2008. The ledgers that had been produced suggested a relationship that had gone on with Mr C of a more involved nature than the Respondent had disclosed in evidence. In evidence in chief, the Respondent had suggested that there was nothing untoward from his first introduction to Mr C. In cross examination however the Respondent described Mr C as having a terrifying physical appearance that was consistent with the Respondent's allegation that the man was a danger to him. Even the very description of the course of threatening behaviour caused the Tribunal to have some doubt. It seemed a little strange that such an individual would have been satisfied with post-dated cheques. The description of a gun being fired in the middle of Newton Mearns and raising the very real risk of drawing attention to the situation seemed inherently implausible.

In other aspects of the evidence the Respondent contradicted himself. He had given clear evidence that he was rarely in the office as a result of the threats made against him but later when being asked to explain his lack of supervision of Mr A had suggested that was not what he meant. In evidence the Respondent had stated that his firm did not do civil court work but that was contradicted by previous correspondence and indeed by the admissions the Respondent made in his Answers.

There were many long pauses before the Respondent answered straightforward questions. Whilst in some situations he had clear and detailed recall of small details in other more significant instances he had no recollection of events.

The Respondent had admitted dishonesty covering up his error in relation to the conveyancing transactions in Ayr.

In all of these circumstances, the Tribunal found the Respondent to be a wholly unreliable and incredible witness.

The conduct admitted by the Respondent in this case clearly represented significant dishonesty. Even if the Tribunal had been prepared to accept that there was mitigation for the payments to Mr C, this in no way explained the Respondent being prepared readily to resort to dishonest conduct to cover up negligence. In giving evidence the Respondent disclosed little remorse or insight into the serious nature of his conduct. The conduct had persisted over a long period of time and clearly suggested that the Respondent was a danger to the public. To say the least his conduct would inevitably seriously damage the reputation of the profession. The public are entitled to expect and rely upon standards of honesty and truthfulness of a solicitor which were clearly not met in this case. The Tribunal could not see how any restriction of the Respondent's practising certificate would provide the public with the necessary protection, given the Respondent's position in evidence.

The inevitable conclusion of the Tribunal was that the only disposal available was to Strike the Respondent's name from the Roll of Solicitors.

With regard to the claim for compensation, the Tribunal held that it was appropriate to fix a procedural hearing for the 2 April 2015 to allow the Secondary Complainer to confirm if she wished to proceed with her claim for compensation and for an appropriate date to be identified for a full hearing.

An award of expenses in favour of the Law Society for proceedings up to today's date was made. In the circumstances explained by the Fiscal and accepted by the Respondent, the Tribunal held that it was appropriate that publicity of this decision should be deferred until the conclusion of any Crown Office investigation and any prosecution that might proceed thereon. Nothing had been said by the Respondent to allow the Tribunal in terms of paragraph 14A of Schedule 4 of the Solicitors (Scotland) Act 1980 to refrain from publishing this Decision thereafter.

Dorothy Boyd

Vice Chairman