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, Atria One, 144 Morrison Street, Edinburgh

Complainers

against

CHARLES DAVID JACKSON, c/o Miller Beckett & Jackson Limited, 190 St Vincent Street, Glasgow

Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Charles David Jackson, c/o Miller Beckett & Jackson Limited, 190 St Vincent Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was no Secondary Complainer.

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent. Those Answers were adjusted on 31 October 2018.

4. In terms of its Rules, the Tribunal appointed the Complaint to call for a procedural hearing on 1 November 2018 and notice thereof was duly served on the Respondent.

5. At the procedural hearing on 1 November 2018, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present but was represented by Jonathan Brown, Advocate. On joint motion, the Tribunal fixed a procedural hearing for 7 December 2018.

6. On 6 December 2018, of consent and on the Respondent's motion, the Chair, exercising the functions of the Tribunal under Rule 56 of the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008, adjourned the procedural hearing fixed for 7 December 2018 and fixed a hearing for 22 February 2019.

7. At the hearing on 22 February 2019, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Jonathan Brown, Advocate, instructed by William Macreath, Solicitor, Glasgow. Of consent, the Tribunal granted the Fiscal's motion to amend the Complaint by inserting the words "*No written authority was obtained by the Respondent in relation to these inter-client transfers, nor in relation to those mentioned in the immediately following article of condescendence*" at the end of paragraph 8; deleting paragraph 13(a); inserting the words *"without reasonable excuse"* between the words "Failed" and "to" where they appeared in paragraph 13(e); and deleting the words *"and misled the administrator's solicitors as to his inability to appear at court"* where they appeared in paragraph 13(e). Mr Brown indicated that the Respondent pleaded guilty to the averments of professional misconduct contained in the Complaint at paragraphs 13(b), (c), (d) and (e) as amended. Those pleas were accepted by the Fiscal and both parties indicated that the basis for the plea was contained in the Note provided by Mr Brown.

8. Having given careful consideration to the terms of the Complaint, The Tribunal found the following facts established

8.1 The Respondent's date of birth is 16 November 1950. He was enrolled as a solicitor on 9 August 1974. He has been a partner or director of Miller Beckett & Jackson from 1983 to 1989 and of Miller Beckett & Jackson Limited from 1989 until current date.

8.2

(a) Company 1 along with other companies was part of a group of companies controlled by Mr A. He enjoyed beneficial ownership of the relevant companies. As at the date of the administration of the companies in August 2011 he was the sole director of Company 1 and Company 2. He also acted as a shadow director of Company 3. His son, Mr B was the sole

shareholder and director of Company 4. A secured facility in the region of £17.3 million had been made available to Company 1 by Anglo Irish Bank ("AIB"). That debt was subsequently assigned by AIB to Hadrian Sarl. The other companies in the group, including Company 2 and Company 3 had cross-guaranteed the debt.

(b) The group was involved in the development and letting of commercial and residential properties. Mr A had effective control of all the companies, which were operated as one enterprise. The various companies operated on the basis of one bank account with the Bank of Scotland in the name of Company 3. At the material time Company 5 was 99% owned by Mr A. It later became wholly owned by him. The sole nominal director of Company 5 was Mr C. Company 4 was wholly owned by Mr B.

(c) Mr A and the companies were represented by the Respondent's firm. The Respondent was the principal point of contact for Mr A within the firm. He generally delegated the conveyancing work to Mr Robert Frame.

(d) Company 1 owned a commercial property at Property 1. Prior to 10 November 2010 Mr A had concluded an agreement with Company 6 for the sale and purchase of that property.

(e) On 10 November 2010 Company 1 disponed Property 1 to Company 5 for a consideration recorded as being £762,000. On the same day Company 5 disponed the same property to Company 6 for £2,100,000 plus VAT of £367,500. Both dispositions referred to a date of entry of 16 November 2010.

(f) From the perspective of AIB, the sale of Property 1 was part of a wider series of property transfers which also involved Property 2, Property 3, Property 4 and Property 5. AIB held standard securities over all these properties. On 19 August 2010 Mr Robert Frame, the Respondent's partner wrote on behalf of the sellers to AIB's solicitor Mr D of Messrs McClure & Naismith. The letter included details of the "relevant sale price" of the properties as follows: Property 1 - £762,000; Property 3 -

£934,000; Property 4 - £450,000; Property 2 - £200,000. Mr Frame stated "my clients are keen to settle as soon as possible, but accept that it may be next week before the sanction has been obtained from the bank's credit committee".

(g) In so far as relating to the price of Property 1 this statement was false. Mr Frame was aware that it was false. As he well knew an agreement was in place for the onward sale of Property 1 to Company 6 for a sum in excess of £2.4 million pounds. In so far as relating to the other properties the statements were false. Mr Frame was aware that they were false. As he well knew the other properties were being transferred for no consideration.

(h) On 11 November 2010 Mr D wrote to AIB in connection with the properties' release from AIB's security. He told AIB that he understood that these properties were to be sold and that discharges may be delivered "in exchange for the free proceeds of sale being remitted to you". He enclosed a table showing the following: Property 1 – Owner – Company 1 – sale price £762,000; Property 3 – Owner – Company 2 - £934,000; Property 4 – Owner – Company 1 - £450,000; Property 2 – Owner – Company 1 - £200,000; Property 5 – Owner – Company 3 - £68,000. The purported sale price for the properties totalled £2.414 million. Mr D informed AIB that he had been "advised that the sellers' solicitor will send me the sum of £2,392,000 as free sale proceeds". He enclosed five separate discharges and asked for them to be executed and returned to him with full particulars of execution.

(i) The discharges were to be released only in exchange for the free sale proceeds of each property.

(j) On 16 November 2010 Mr Frame received a letter signed by Mr C on behalf of Company 3 stating that the letter could be accepted as authority to send to AIB the sum of £2,414,000 in respect of the purchase of Property 1, Property 2, Property 3 and Property 4 plus that at Property 5. Once AIB received the funds, the executed discharges were delivered, all as agreed between Mr Frame and Mr D.

(k) Unknown to Mr D, Property 1 had by this time been disponed to Company 5 and then to Company 6 for a sum in excess of £2.4 million, not the £762,000 mentioned in the correspondence.

(l) Subsequently Property 3, Property 4 and Property 2 were disponed to Company 4, and Property 5 to Mr B. The dispositions in respect of those subjects were executed on 24 November 2010, with a date of entry given as 16 November 2010. They recorded that the consideration for each property was as set out above, making a total of £1,652,000. In fact no money was paid for them.

(m) Company 3, Company 1, Company 2 and certain other companies in the group were placed in administration in August 2011. The dispositions of Property 3, Property, 4, Property 2 and Property 5 were challenged by the administrators, as alienations not made for adequate consideration. The Court of Session reduced the dispositions on that basis. That decision was upheld on appeal by the Inner House of the Court of Session and, on further appeal, by the Supreme Court.

(n) The funds remitted to AIB came entirely from the purchase price paid by Company 6 to Company 5 for Property 1. No consideration was paid by Company 5 to Company 1 in respect of the Disposition to Company 5 of Property 1.

(o) Ownership of the properties was as set out in paragraph (h) above. Mr Frame acted for all parties in each of the transactions. He did so entirely upon the instructions of Mr A, save in relation to the instruction from Mr C mentioned in paragraph (j) above. Mr A was not a director of Company 5 nor of Company 4 and accordingly had no authority to give instructions on the company's behalf. Mr Frame was aware of this from company searches.

(p) After settlement of the sale of Property 1 to Company 6, Mr Frame remitted the sale proceeds to McClure Naismith as agents for AIB under

deduction of his firm's fees and outlays and of £45,000 or thereby which he paid to Mr A despite having no authority from the director of Company 5, the sellers, to do so.

(q) In relation to each of the transactions Mr Frame failed to undertake such risk assessment of the transaction or to undertake sufficient enquiry as to the beneficial ownership of the properties, or to obtain identification documentation in relation to the companies, or to retain records of such risk assessment, enquiry or identification, as would demonstrate compliance with part 7 of the Proceeds of Crime Act 2002, Part 3 of the Terrorism Act 2000 or the Money Laundering Regulation 2007.

(r) At all material times the Respondent was the cash room partner of the Respondent's firm. He had no day to day involvement in these transactions once they were under way, Mr A's communication was with Mr Frame. Nonetheless he knew or ought to have been aware of the transactions and the failures set out in the sub-paragraph immediately above. He was responsible for his firm's compliance with the rules even if these were not his transactions.

8.3 On or about 24th July 2012 the Respondent swore an affidavit to comply with the terms of an interlocutor of the Court of Session which required him to provide an account of his dealings with the companies. The administrators, being dissatisfied with the terms of the affidavit, made arrangements for the Respondent to be privately examined before Lord Hodge. The examination took place on 7th August 2012.

8.4 In the course of the examination the Respondent admitted that he would transfer funds on behalf of the companies on the instructions given to him by Mr A, when he did not know the structure, ownership and directorship of the companies. He admitted that he had regularly taken instructions directly from Mr A in relation to all of the companies despite the former not having been formally appointed as a director of those companies, and that he would transfer funds on behalf of the companies on Mr A's sole instruction, in breach of Rule 6(1) of the 2001 Accounts Rules.

8.5 During his private examination before Lord Hodge, asked whether his firm controlled where money was sent the Respondent said "It is not our firm's money. It is not really for us to control the destination of those funds, it is really for the client". In response to a question from the judge as to whether, if Mr A instructed the Respondent to transfer money from the ledger of company A to company B, he would carry out that instruction, the Respondent replied "yes" and acknowledged that there had been movements of funds involving Mr A and his companies. He accepted that one transfer had been made to Miss E and Mr F namely Mr A's daughter and her partner. He rejected a suggestion by counsel that he was obliged to know the structure and share ownership and directorship of any company for which the firm acted. He said that he regarded himself as the principal point of contact for members of the family although Mr Frame had largely taken over the conveyancing work. He said that he would expect that Mr A would come to him for advice in the first instance. There might be an interchange in the partners who actually did the work.

8.6 The Respondent failed adequately to account for client monies and allowed these to be co-mingled across a number of different matters due to inadequate segregation of funds in the firm's client account. In the Company 1 ledger between 25th May 2006 and 27th January 2010 a total of £9,459,899.11 was credited in seven separate sums. The credit on 27th January 2010, of £1,249,970 was "from Mr A ledger". The remaining credits were loans from commercial lenders. The following sums, totalling £642,542, were debited from the Company 1n ledger as follows: 20th April 2007 to Mr A "to account of net loan over Property 6" £48,000; 27th April 2007 to Mr A "to account of net loan over Property 7" £160,000; 18th June 2007 transfer to Mr A "re rent Property 8" £21,000; 2nd June 2008 Company (Group) 7 £84,000; 27th January 2010 paid Mr A per bank to account of sale proceeds Property 9 (this being a property which had been owned by Company 1) £300,000; 29th January 2010 to Ms E and Mr F to cover fees and outlays as per letter of authority £17,877; 29th January 2010 transfer to Mr G ledger £11,665. No further narrative is given in the ledger to explain these payments. No written authority was obtained by the Respondent in relation these inter-client transfers, nor in relation to those mentioned in the immediately following article.

8.7 In the ledger of Company 8 payments were made on 10th November 2003 as follows: paid Mr A £20,000; paid Mr A£30,000.

8.8 In relation to each of the transactions and payments the Respondent failed to undertake such risk assessment of the transaction, or to undertake sufficient enquiry as to the beneficial ownership of the properties, or to obtain identification documentation in relation to the companies, or to retain records of such risk assessment enquiry or identification, as would demonstrate compliance with Part 7 of the Proceeds of Crime Act 2002, Part 3 of the Terrorism Act 2000, or the Money Laundering Regulations 2007.

8.9 The administrators brought proceedings in the Court of Session for reduction of certain dispositions. The Respondent was lawfully cited to appear as a witness in said proceedings before the Court of Session. His citation required him to attend the court on 21st August 2013. Prior to that date the Respondent made representations to the administrators' solicitor, Mr H, that he was unable to attend because of a holiday abroad. On 21st August 2013 the Respondent was seen passing through Queen Street Railway Station in Glasgow. After discussions among counsel this was brought to the attention of the judge who granted an adjournment to establish the Respondent's whereabouts. Mr H telephoned the Respondent at his office. The Respondent stated that he was unwilling to attend court, claimed that there had been a misunderstanding, and stated that he was due to fly to Spain that afternoon. He said that he was unable to attend court due to diary commitments prior to his holiday. The terms of this conversation were relayed to counsel, who after consultation with the Dean of Faculty, instructed Mr H to telephone the Respondent and advise him that it was intended to move for a warrant for the Respondent's arrest. On being so advised by Mr H in a subsequent telephone conversation, the Respondent agreed to come to court which he did later that morning.

9. Having considered the foregoing circumstances and the submissions of the parties, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect that he:

9.1 Failed to comply with the Money Laundering Regulations by not procuring that full and proper client identification checks were carried out on companies represented by his firm;

9.2 Failed to comply with obligations under Part 7 of the Proceeds of Crime Act 2002, Part 3 of the Terrorism Act 2000, and the Money Laundering Regulations 2007;

and individually in respect that he:

9.3 Failed adequately to account for client monies and allowed these to be co-mingled across a number of different matters due to inadequate segregation of funds in the client account, in breach of the rules;

9.4 Failed without reasonable excuse to answer a lawful citation to appear as a witness in the Court of Session on 21 August 2013.

10. Having heard Counsel for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

> Edinburgh 22 February 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Charles David Jackson, c/o Miller Beckett & Jackson Limited, 190 St Vincent Street, Glasgow; Find the Respondent guilty of professional misconduct *in cumulo* in respect that he failed to comply with the Money Laundering Regulations by not procuring that full and proper client identification checks were carried out on companies represented by his firm; and failed to comply with obligations under Part 7 of the Proceeds of Crime Act 2002, Part 3 of the Terrorism Act 2000, and the Money Laundering Regulations 2007; and individually in respect that he failed adequately to account for client monies and allowed these to be co-mingled across a number of different matters due to inadequate segregation of funds in the client account, in breach of the rules; and failed without reasonable excuse to answer a lawful citation to appear as a witness in the Court of Session on 21 August 2013; Censure the Respondent; Fine him in the sum of £6,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis

as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alan McDonald

Vice Chairman

11. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 28 MARCH 2019.

IN THE NAME OF THE TRIBUNAL

[redacted]

Alan McDonald

Vice Chairman

NOTE

At the hearing on 22 February 2018, the Tribunal had before it a Complaint and a Note explaining the basis for the plea agreed between the parties. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal explained that the Complaint arose not as a result of a Law Society inspection but from criticism made by the administrators of a group of companies owned by Mr A. The administrators successfully challenged several transactions. These transactions are also the subject of the Complaint by the Law Society against another partner in the Respondent's firm. The Fiscal drew the Tribunal's attention to paragraph 4(r) of the Complaint. He noted that the Respondent had not had day-to-day involvement in the transactions. He was not involved in the dishonest conduct which is averred against his partner. His culpability related to his failure to oversee the accounts. The Fiscal drew the Tribunal's attention to paragraph two of the Note which described the Respondent's failings.

The Fiscal referred to paragraphs 6 and 7 of the Complaint. The Respondent admitted that he would transfer funds on behalf of the companies on the instructions given to him by Mr A when he did not know the structure, ownership and directorship of the companies. He regularly took instructions directly from Mr A despite him not being formally appointed as director of those companies. He would transfer funds on behalf of the companies on Mr A's sole instruction. He accepted that his cashroom had transferred money between ledgers of companies and related individuals. The Fiscal said that this was indicative of the Respondent's attitude at the time to compliance with the Accounts Rules and the Money Laundering Regulations.

The Fiscal referred to paragraphs 8 of the Complaint. He noted that there were several transactions whereby £9.5 million was credited to the Company 1 ledger between May 2006 and January 2010. £1.25 million came from "Mr A ledger". These were significant transfers of funds. No written instruction was in place from the clients. This behaviour was replicated in relation to paragraph 9 of the Complaint which referred to payments by a company to "Mr A".

The Fiscal referred to paragraph 10 of the Complaint. The Fiscal noted a general failure by the Respondent to undertake risk assessments, to undertake sufficient enquiry as to the beneficial ownership of companies, to obtain identification, or to retain records of these. The Fiscal highlighted the importance of financial compliance. He said it was accepted by the Respondent that as well as potential money

laundering, these circumstances also gave rise to a risk of tax evasion, although the Fiscal did not claim that any such tax evasion had taken place in this case.

The Fiscal referred to Article 11 of the Complaint. The Respondent accepted that he failed without reasonable excuse to answer a lawful witness citation.

The Fiscal therefore invited the Tribunal to find the Respondent guilty of professional misconduct in relation to the averments of misconduct contained at paragraph 13 (b), (c), (d) and (e) as amended.

SUBMISSIONS FOR THE RESPONDENT

Mr Brown said that while professional misconduct was a matter for the Tribunal, it was recognised from an early stage that the behaviour described in the Complaint did represent professional misconduct by the Respondent. For the avoidance of doubt, he did not accept that Mr Frame's conduct had been dishonest. Mr Brown explained the background to the Respondent's involvement in these transactions. Mr A controlled a hire drive company and also owned a property development business. Property assets were separated from the trading business into "propco" and "opco" companies. The propcos held a concentration of properties in the south east corner of Glasgow. The companies had significant borrowing capacity during the 1990s property boom. The lending was refinanced periodically to whichever lender was most generous. Mr Brown said that "when the music stopped" it was Anglo which had given a facility of £17.3 million.

Mr A and his companies had been clients of the Respondent's firm for many years. The firm did a variety of work for them. The Respondent was the point of contact for Mr A and his companies. There was a strong and deep relationship between Mr A and the Respondent. They were on first name terms. There was a degree of informality between them and it resulted in the record keeping and Accounts Rules breaches averred in the Complaint. Mr Brown noted that all money ended up where it was instructed to go. There is no suggestion that written instructions would not have been given if sought. The bodies corporate were held by Mr A and controlled by him. There was one bank account. However, on legal analysis, these were separate entities. There ought to have been proper separation and verification. The absence of the verification procedures creates conditions where money laundering can take place, although there is no suggestion of money laundering in this case.

Mr Brown invited the Tribunal to consider the purpose of the relevant rules. Firstly, there is the public interest function to prevent money laundering, terrorist financing and tax evasion. Secondly, there is the

regulation of the profession. The Law Society, as the regulator, needs to be able to verify in standardised form that these things are being done properly. It is not enough to know the client personally. There must be a contemporaneous record. Solicitors must be able to demonstrate company ownership, the purpose of the transaction, and the flow of cash. They must record that it has been done. Thirdly, it is necessary to have written records of authority for self-preservation. The solicitor is uniquely vulnerable to a client "crying foul" years later.

Mr Brown accepted that the files are sparse. He said this was due to the depth and familiarity of the relationship between the Respondent and Mr A. The Respondent had learned his trade well before these things became mandatory. Latterly, the Respondent's role in the practice was restricted to managing various trusts and acting as "the face" of the firm.

Mr Brown referred the Tribunal to the transaction contained in Article 4 of the Complaint. He noted that this is also the subject of a Complaint regarding another solicitor. Public funding was made available to Company 6 for property acquisitions, due to the forthcoming Commonwealth Games in Glasgow. Company 6 talked to Mr A over a long time about several sites. Negotiations were "on and off" because they depended on other acquisitions and budgets. Then the crash hit. The property portfolio held by Mr A was half the nominal value of the loan. The bank was also below the water line. It ended up being insolvently wound up. At this time there were parallel discussions between Mr A and the bank and Mr A and Company 6. A series of numbers was agreed with the bank. The bank agreed that it would release securities in return for payment of sums. Mr A negotiated a premium price for Property 1. This involved a substantial profit. Mr A determined that he was going to take the profit and use the surplus to get other properties out of their securities. These were assets of greater desirability to him.

The Respondent's firm carried out a back-to-back transaction. Company 1 disponed property to Company 5 for £762,000. This was the price for which the bank had agreed to release the security. Company 5 disponed on the same day to Company 6 for £2.1 million plus VAT. That money was used to repay the bank. The balance also went to the bank in exchange for release of securities. The Respondent was the point of contact for Mr A but he did not do the conveyancing. Mr Brown submitted that it was not necessary for the Tribunal to take a view on the back-to-back nature of this transaction. The Fiscal accepts that the Respondent did not know about the details of the transaction. However, the Respondent was the designated cashroom manager. The value of the sale and the wider context required a degree of oversight from the cashroom perspective. This is a sub-set of the general failing as a whole. This is the transaction which gave rise to litigation which gave rise to the Complaint.

The bank went bust shortly after the transaction in question. The whole Scottish loan book was brought by a company called Hadrian. Hadrian appointed administrators. The Respondent got off on the wrong foot with them from the beginning. The case went to the Court of Session. An Order was obtained and delivered. The Respondent accepted that his hackles were raised and he should not have allowed the relationship to become frosty. A proof was fixed in the administrators' litigation against Mr A and related interests. This case went to the Supreme Court on relatively technical issues involving insolvency law. The court upheld the administrators' view that the whole value of number Property 1 was an asset of the company. From the perspective of Mr A's duties to the company, there was no problem with him taking the money, but the mischief came because these other properties were taken outwith the reach of the companies and the bank so they were not available to the creditors when they became insolvent. These were gratuitous alienations.

Mr Jackson was cited to court. The Respondent had conversations with the administrators' solicitor. This communication was not particularly clear on either side. The Respondent thought he made it clear that he was going away that evening. He asked the administrators' solicitor if it was necessary for him to attend court as he was going on holiday. There was no conclusive denouement to the conversation. The Respondent expected someone to get back to him. The other solicitor took from it that the Respondent was away and could not be expected to attend court. There was a routine discussion at the beginning of the proof. Someone mentioned that the Respondent was away on holiday. Mr A's solicitor then indicated that the Respondent was not away because he had seen him at the train station that morning. Something was lost in translation. Telephone calls were made, the Respondent got on the train and gave evidence for 20 minutes at court without controversy. Mr Brown said the Respondent accepted categorically that a witness citation is a legal obligation and solicitors of all people must comply. One might responsibly not attend court if the solicitor issuing the citation indicates you are excused, but it was not acceptable to do this on the strength of the conversation the Respondent had with the administrators' solicitor. He should have checked he was not required. In Mr Brown's submission *in cumulo* with the record keeping failures, this failure was sufficient to constitute professional misconduct.

The Chair noted the cashroom manager's duties are to oversee the practice unit's compliance with the Accounts Rules. The Chair invited Mr Brown to make further submissions on the depth that the cashroom manager should investigate the source of funds when a case is being dealt with by another partner. Mr Brown noted that in the Company 6 cluster of transactions, the Respondent was the principal client contact. He knew about the deal. The transactions involved millions of pounds and a complex group. The circumstances called at least for a word with the partner dealing with the conveyancing. He paid insufficient attention. With regard to the historical ledgers, the Respondent was much more heavily

involved in these. These are his files. He did not hand over this work. It is not possible in a firm of this size which involves six partners and two offices with a substantial wills, trusts and executry and private client department to monitor everything. However, systemically the Respondent should have focussed on areas of risk.

A Tribunal member asked how common it was for the firm to deal with a transaction of this size and nature. Mr Brown indicated that the firm would deal with a transaction of this value about three or four times a year. Some of the partners have a significant following of owner operated commercial transactions. He gave some examples of the work the firm has done. He described the firm as "slightly charmingly quaint and old fashioned but substantial". However, it was not dealing with huge commercial transactions regularly.

The Chair asked whether the Law Society carried out an investigation of the firm following this matter being drawn to their attention. The Fiscal said he imagined that at least one inspection will have taken place since this conduct. The Fiscal accepted that the cashroom manager cannot supervise every transaction. However, at the very least he would have expected a conversation about fees which would have instigated some investigation into the circumstances. Mr Brown noted that Miller, Beckett and Jackson was a long-established firm with partners who have been there for many years. There is a self-policing "flat" system of partners dealing with their own work rather than a pyramid with a broader base of associates and assistants. Mr Brown said that the Respondent is winding down. He is no longer cashroom manager. The Tribunal can be confident that this situation will not arise again.

The Chair noted that the Complaint invited the Tribunal to find professional misconduct individually and *in cumulo*. Mr Brown said it was not necessary to say whether any individual head was professional misconduct. He accepted on behalf of the Respondent that the four heads *in cumulo* passed the threshold for professional misconduct. The Fiscal said that heads (b), (c) and (d) were clearly professional misconduct but that (e) was more difficult. He was content for the Tribunal to make an *in cumulo* finding.

DECISION ON PROFESSIONAL MISCONDUCT

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

The Tribunal had regard to the Note setting out the factual background to the case which was accepted by the Fiscal. It was noted in particular that all the relevant files related to the interests of Mr A, a member of his family or a limited company controlled by him. All instructions were given by Mr A. There was no suggestion that any money was unaccounted for. Money was only transferred on Mr A's instructions. The Respondent was not involved in the detail of the Company 6 transaction but was the principal point of client contact and knew the broad outline of the deal.

The Tribunal considered carefully the averments of fact which supported the admitted averments of misconduct. The Tribunal noted Mr Brown's position that although the factual circumstances of the Company 6 deal were admitted, he made no concession that Mr Frame's conduct was dishonest. However, the Tribunal did not have to assess Mr Frame's honesty when considering whether the Respondent's behaviour constituted professional misconduct. The Respondent's alleged failures in relation to these transactions related to accounts rules breaches in the context of him acting as cashroom manager. The allegations regarding Mr Frame's professional conduct would be dealt with separately by a differently constituted panel of the Tribunal.

The first two admitted averments of misconduct involved failures to comply with professional duties which guard against money being misused in the context of money laundering, proceeds of crime or terrorist financing (although there is no suggestion that anything untoward took place in this case). The Respondent was the contact for the client and companies in question. Although some conveyancing was carried out by another partner, he had knowledge of all transactions and carried some of them out himself. When dealing with this client and companies, the Respondent failed to ensure that full and proper identification checks were carried out. He failed to undertake proper risk assessments or sufficient enquiry as to the beneficial ownership of the companies required by law. Solicitors must comply with their obligations in this regard. Failure to do so puts the public at risk of criminal acts. Therefore, the Tribunal was satisfied that *in cumulo*, these similar matters amounted to professional misconduct.

The Respondent was the cashroom manager of his firm. He failed adequately to account for client monies and allowed these to be co-mingled across several different matters. There was inadequate segregation of funds in the client account. This created potential money laundering and tax evasion risks (although there is no suggestion that money laundering or tax evasion was taking place in this case). The Respondent knew about the inter-client transfers but did not obtain written authority for them. The transaction involving Company 6 was dealt with by another partner but was very high value. The

Respondent's firm would usually only deal with similar value transactions three or four times a year. The Respondent, as cashroom manager, should have taken a greater interest in the transaction and ensured compliance with the Accounts Rules and money laundering regulations. In a firm of this size, the cashroom manager cannot personally supervise all accounting. However, he/she should institute a system whereby high-risk transactions are overseen. The Respondent knew about these transactions. He had referred the business to his partner. However, clients' money was not clearly identified and there was no system of risk management to identify the cases which should be examined more closely. Mr Brown indicated that the misconduct occurred due to the depth and length of the Respondent's relationship with Mr A who controlled all the companies. However, as was accepted by Mr Brown, this is not an excuse for failing to comply with the Accounts Rules. As has often by highlighted by this Tribunal, if solicitors are to continue to enjoy public trust regarding their financial affairs, they must have careful regard to all the requirements and obligations incumbent on them as contained in the Accounts Rules. Solicitors have a special privilege in being allowed to handle clients' money. The corresponding responsibility is compliance with the rules set by the Law Society. Following the Accounts Rules protects the clients and the solicitor. The Respondent's failures with clients' monies was sufficient to constitute professional misconduct alone.

The last averment of misconduct related to the Respondent's failure without reasonable excuse to answer a lawful citation to appear as a witness in the Court of Session. All persons must comply with a lawful citation but the onus on a solicitor is even higher. If there was any element of doubt as to whether he was excused attendance, he should have made enquiries to ascertain the position in clear terms. The Tribunal was reassured that the Respondent immediately attended court when the matter was drawn to his attention but it is most unsatisfactory that the situation arose. The damage to the solicitor's reputation and that of the profession by such actions is significant. Solicitors must be trusted to attend court when properly cited. The Respondent's failure in this regard was sufficient to constitute professional misconduct alone.

SUBMISSIONS IN MITIGATION

Mr Brown noted that the Respondent has carried on his profession for a very long period. The case is not the least serious but there are no issues regarding integrity or systemic issues regarding recurrence or concern which should prevent the Respondent's continuance as a principal. He said that the Tribunal could be satisfied that the situation will not arise again. The Respondent is at the end of his career. He is no longer cash room partner. He will not undertake this role again. It was not a question of him not coping. The consequences of his sloppiness have been brought home.

Mr Brown submitted that the protection of the public and the reputation of the profession mean that it was not necessary to impose any sanction at the higher end of the scale. It was very grave, upsetting and embarrassing for the Respondent to have a finding of professional misconduct against him. It was a significant wound. There was no question of impecuniosity. He could afford to pay a fine. Mr Brown offered two testimonials to the Tribunal to read. He noted that these have limited value. However, he submitted they were heartfelt testimonials from people high in the profession.

DECISION ON SANCTION

The Tribunal had regard to the testimonials produced but recognised their limited value in this context (Bolton v Law Society [1993] EWCA Civ 32). The Tribunal also considered its indicative sanctions guidance. The professional misconduct was at the lower to middle end of the scale. Censure alone would be insufficient to mark the gravity of the conduct. Censure and a substantial fine was appropriate in the circumstances. A substantial fine would demonstrate the Tribunal's disapproval of the Respondent's conduct which was likely to damage the reputation of the legal profession. However, no greater sanction was required. There was no question of dishonesty. There was no direct impact on the public or a client. There was no risk to the public if the Respondent was allowed to continue with a full practising certificate. There was no requirement for supervision. The Respondent had displayed insight by giving up the cash room manager's role. The Tribunal noted that the Respondent was at the end of his career and did not intend to be a cashroom manager again.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to its decision and that publicity should include the name of the Respondent. The names of individuals and companies have been anonymised to protect the personal data of those referred to in the Complaint. Publication of individuals' identities would be likely to damage their interests. The Respondent's partner is named in accordance with the Tribunal's obligations in paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980.

[redacted]

Alan McDonald

Vice Chairman