

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

FINDINGS

in Complaint

by

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

against

**ROY WILLIAM ANDREW MILLER, formerly
trading under the firm name of Miller & Co,
latterly as a sole practitioner, at 6 St Ninian
Terrace, Crown Street, Glasgow**

1. A Complaint dated 31 October 2016 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner, at 6 St Ninian Terrace, Crown Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were two Secondary Complainers: Mr A and Mrs C.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 7 March 2017 and notice thereof was duly served on the Respondent.
5. The hearing took place on 7 March 2017. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Tribunal granted the Complainers' motion to sist the case to await the

decision in Anderson Strathern LLP and Another-v-The Scottish Legal Complaints Commission.

6. On 24 October 2017, the Complainers lodged a motion to recall the sist. A procedural hearing was set down for 14 December 2017.
7. On 14 December 2017, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Tribunal formally recalled the sist and fixed a hearing for 7 March 2018. The Tribunal granted the Fiscal's motion to proceed by way of affidavit evidence on 7 March 2018 but noted that should the Respondent enter the proceedings at a later stage, this matter would require to be revisited.
8. The Hearing took place on 7 March 2018. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Fiscal moved the Tribunal to proceed in the Respondent's absence. The Tribunal heard evidence on oath from the Clerk regarding service. Following an adjournment for consideration of the issue, the Tribunal concluded that it was fair to proceed in the Respondent's absence. The Tribunal granted the Fiscal's motion to amend the Complaint by inserting the word "failed" between the words "He" and "or" where they appeared on first line of paragraph 3.125(b). The Tribunal allowed the Fiscal to replace the affidavit for Ms F which had been previously lodged with the Tribunal Office with that of Ms D. The Tribunal allowed all affidavits to be received.
9. The Tribunal found the following facts established:-
 - 9.1 The Respondent is a solicitor enrolled in the Registers of Scotland. He resides at 3 Elm Street, Glasgow. His date of birth is 22 September 1961. He was enrolled as a solicitor on 11 December 1987. He traded under the firm name of Miller & Co, latterly as a sole practitioner, at 6 St Ninian Terrace, Crown Street, Glasgow (the firm), from 12 December 1990 until the firm ceased trading on 31 October 2014. He was a Partner in the firm. He was the firm's Client Relations Partner from 22 February 1999. He was the firm's Cashroom Partner from 1 June 2000. As at 1 November 2014 the Respondent failed to renew his practising certificate.

The Respondent was sequestered on 11 January 2016. The Respondent is presently suspended from practice and does not hold a practising certificate.

MR A

- 9.2 The Respondent, whilst at the firm, was instructed by Mr A in or around August 2008 to pursue a court action to recover sums due to him by Mr B following completion of building and joinery works by Mr A trading as Company 1. The Respondent accepted those instructions.
- 9.3 On 14 August 2008 Mr A sent a handwritten letter by fax to the Respondent, enclosing a copy of an invoice issued by Company 1 to Mr B dated 25 June 2008.
- 9.4 There was no substantive response from the Respondent to this correspondence or telephone calls made by Mr A. Mr A met with the Respondent again in or around March/April 2009 and was informed by the Respondent that he had lost Mr A's paperwork. Mr A thereafter again submitted paperwork to the Respondent.
- 9.5 On or around 16 December 2009 the Respondent advised Mr A that he had lost the paperwork yet again and that he had not raised a court action. On that date Mr A sent by fax to the Respondent a copy of an invoice from Company 1 to Mr B dated 25 June 2008; a letter from Company 1 to Mr B dated 25 June 2008; a letter from Mr A to Company 1 dated 15 July 2008 seeking payment; and a statement of account dated 25 July 2008.
- 9.6 The Respondent presented a summary cause summons to Glasgow Sheriff Court at the instance of Mr A against Mr B seeking payment of £3,101.42 with interest. The summons was warranted on 19 March 2010. The summons had a calling date of 19 May 2010.
- 9.7 On 26 March 2010 the Respondent wrote to Mr A advising, amongst other matters, that the application in respect of his case against Mr B had been lodged and served.
- 9.8 By letter dated 4 May 2010 Kerr Barrie, Solicitors advised that they had been instructed to act for Mr B. They intimated a note of defence.

- 9.9 When the case called in Court on 19 May 2010 Kerr Barrie's court agents appeared for both parties. The case was set down for a proof on 29 July 2010.
- 9.10 On 19 May 2010 the Respondent wrote to Mr A. Amongst other matters, the Respondent referred to the calling of the case on that date. He enclosed a copy of the note of defence.
- 9.11 On a date unknown a handwritten note was created with details of a joiner, D, and an electrician, IC.
- 9.12 On 17 June 2010 the Respondent wrote to Mr A advising that a proof had been assigned "for the above date", although no date was stated in the letter. In order that full preparations could be made, Mr A was invited to make an appointment with the Respondent. It was noted that witnesses required to be identified, arrangements made to take statements from them and have them cited to attend the proof diet.
- 9.13 On a date unknown, a handwritten note was created containing names and addresses of two witnesses, DS and JC.
- 9.14 On a date unknown, the Respondent prepared a document entitled "List of Witnesses for the Pursuer" with four names listed - IR, GM, DS and YK, and another version with handwritten additions for JC, M and JS.
- 9.15 On a date unknown, the Respondent prepared a document entitled "List of Witnesses for the Pursuer" with six witnesses listed - MR B, JC, JC, JS, SG and ID.
- 9.16 On 13 July 2010 Claphams, Solicitors wrote to the Respondent to advise that they had taken over acting for Mr B from Kerr Barrie. They sought and were granted a discharge of the proof diet fixed for 29 July 2010. A new dated for the Proof was fixed for 19 October 2010.

- 9.17 The Respondent did not advise Mr A of the new proof date until after that date has passed.
- 9.18 On 8 October 2010 Claphams wrote to the Respondent to advise that they had withdrawn from acting for Mr B.
- 9.19 On 12 October 2010 the Respondent wrote to Mr B. The Respondent's letter stated that if Mr B was not present or represented at the proof assigned for 19 October 2010 it was the Respondent's intention to request the court to grant decree in favour of Mr A.
- 9.20 Mr B failed to attend or be represented at the proof on 19 October 2010. The proof was discharged and decree granted as craved against Mr B.
- 9.21 On 10 November 2010 Harper Macleod LLP wrote to the Respondent intimating an incidental application for the defender to allow an appeal against the interlocutor of 19 October 2010 to be received late.
- 9.22 On 17 November 2010 the Respondent wrote to Mr A advising that a proof had been assigned to take place on 19 October 2010 and that Mr B's solicitors had withdrawn from acting. The Respondent explained that he had written to Mr B advising that if he failed to attend, decree would be sought against him. The Respondent explained that on 19 October 2010 he appeared at court; that Mr B did not attend; and that decree with expenses was granted against Mr B. The Respondent explained that an appeal against the order had been lodged and that a hearing had been assigned for 7 December 2010. The Respondent sought instructions with regard to opposing the application.
- 9.23 On 7 December 2010 the Respondent wrote to Russells Gibson McCaffrey (RGM) instructing them to appear on behalf of Mr A at the hearing on 7 December 2010 at 12 noon. The letter was brief and stated that the Respondent acted on behalf of Mr A; that the matter was calling to allow the Sheriff to consider Mr B's application for a late appeal; and that the Respondent wished RGM to appear and have the case continued to a proof hearing.

- 9.24 A court report was produced by RGM in respect of the hearing on 7 December 2010. This stated that from the terms of the Respondent's instructions it was taken that Mr B's incidental application was not opposed; that both the Sheriff Principal and Mr B's solicitors were under the impression that Mr A was opposed to the granting of the incidental application, and had prepared for the hearing on that basis; that the agent for Mr B had spoken to the Respondent's office as recently as the previous Thursday and opposition had been confirmed; that RGM had no information to enable them to oppose the application; that the Sheriff Principal had granted the incidental application and specifically asked that RGM convey to the Respondent his disapproval for the "cavalier manner" in which the court and opponent had been treated; and that a diet of appeal would now be fixed, as it was not clear from the Respondent's instructions whether the appeal itself was opposed.
- 9.25 On 10 January 2011 Harper Macleod wrote to the Respondent asking him to advise whether or not he intended to consent to the appeal.
- 9.26 On 18 January 2011 the Respondent wrote to Harper Macleod to advise that he had been instructed by Mr A not to consent to the appeal. The Respondent stated that what was instructed to RGM at the last calling was that there would not be opposition to the late lodging of the appeal.
- 9.27 On 18 January 2011 the court wrote to the Respondent to intimate that the appeal hearing was fixed for 6 April 2011.
- 9.28 On 14 March 2011 the Respondent wrote to Mr A noting that he had requested details about the times when the matter called at court. Amongst other matters, the letter advised that the return date was 19 May 2010; that a proof was assigned for 29 July 2010; that the 29 July 2010 proof was discharged; that a fresh diet of proof was fixed for 19 October 2010; that on 19 October 2010 the Respondent attended at Glasgow Sheriff Court and in the light of the failure of any agents to appear for Mr B or Mr B appearing personally, decree was sought on Mr A's behalf; that in November 2010 Harper Macleod advised they were instructed by Mr B and were lodging an application to allow a late appeal, which was granted on 12 December 2010; and that an appeal hearing was assigned for 6 April 2011.

- 9.29 On 1 April 2011 the Respondent wrote to the Sheriff Clerk and to Harper Macleod advising that the appeal against the granting of decree by default was no longer opposed and seeking that a fresh diet of proof be assigned.
- 9.30 On 13 April 2011 the Respondent wrote to Mr A asking him to arrange an appointment to provide details of his witnesses and discuss the matter in detail.
- 9.31 On 8 June 2011 Harper Macleod intimated to the Respondent a list of witnesses for Mr B.
- 9.32 On 9 June 2011 Harper Macleod intimated to the Respondent a minute of tender.
- 9.33 On 13 June 2011 the Respondent wrote to Cowan and Co, Solicitors with the court pleadings, said to be as discussed, and asked that they run their eye over it. The letter stated that the Respondent had advised Mr A that it was his intention to pass the papers on. He asked whether Cowan and Co was willing to take the matter on, noting that the proof was assigned for 4 July 2011.
- 9.34 The Respondent recorded speaking with Mr A on 23 June 2011 and expressing his opinion that he should accept the tender. It was noted that Mr A had spoken with Cowan & Co direct and that they had provided a second opinion that the tender be accepted. Mr A did not wish to accept the tender. It was noted that Mr A would supply full details of further witnesses and that his friend, D (a potential witness), would be on holiday at the time of the proof diet.
- 9.35 On or around 27 June 2011 Mr A gave the Respondent a list of witnesses.
- 9.36 On 28 June 2011 the Respondent wrote to Harper Macleod to intimate a list of witnesses for the pursuer.
- 9.37 The Respondent recorded speaking with Mr A on 29 June 2011. The Respondent recorded repeating that it was his opinion that the tender should be accepted and that Mr A was unhappy with that and indicated that he may seek a change of agent.

- 9.38 On 30 June 2011 the Respondent spoke to Mr A by telephone. The Respondent recorded that Mr A advised that a witness (D) would be unable to attend the proof as he was on holiday. It was noted that Mr A wanted him to be present. The Respondent undertook to advise Harper Macleod accordingly. The Respondent noted that it was unlikely that the proof would be adjourned. Mr A wished the list of witnesses to be submitted to bring pressure to bear on Mr B.
- 9.39 Harper Macleod advised that they were unwilling to agree to the proof on 4 July 2011 being adjourned.
- 9.40 The Respondent recorded speaking with Mr A on 30 June 2011. The Respondent recorded advising Mr A of Mr B's position that he was leaving the country and did not wish to put off the proof any longer. It was noted that Mr A was unhappy with the position and would instruct other agents.
- 9.41 On 30 June 2011 the Respondent wrote to Harper Macleod stating that he had been advised by Mr A that two of his witnesses would be absent on holiday when the proof was due to call and that it was the Respondent's intention to move that the proof diet be discharged and a further proof assigned.
- 9.42 On 30 June 2011 the Respondent wrote to Mr A noting that he was not willing to accept the tender and referring to the second opinion from Cowan & Co. The Respondent noted that Mr A had indicated that he would instruct new agents. The letter stated that the Respondent would indicate to the court that they were no longer acting on Mr A's behalf and would advise Harper Macleod similarly. The letter concluded that Mr A should attend at Court personally on 4 July 2011, either with or without a new solicitor. The letter concluded that the Respondent would not be attending Court on Mr A's behalf.
- 9.43 On 1 July 2011 the Respondent wrote to Harper Macleod noting that Mr A had intimated that he would not accept their advice and that as a result the client relationship had broken down. He advised that Mr A had proposed to seek alternative representation. He intimated that they would not be acting on Mr A's behalf and that they had intimated same to the Sheriff Clerk.

- 9.44 During his handling of Mr A's case, the Respondent did not contact the witnesses for Mr A to take statements from them. He did not cite any witnesses to attend court.
- 9.45 Following the Respondent and his firm ceasing to act on behalf of Mr A, Mr A instructed the firm of Peacock Johnston to act for him.
- 9.46 A file for Mr A was submitted to the Scottish Legal Complaints Commission (SLCC) by the Respondent on 13 September 2012 and returned to him by them on 16 January 2015. The file was not delivered by the Respondent to the Complainers. Copy papers were submitted to the Complainers by Peacock Johnston on 24 March 2015 and described as being all of what was copied from the original file submitted to them by the Respondent. The papers do not contain information or records about a number of matters throughout the Respondent's handling of Mr A's case.
- 9.47 Accordingly, in acting as he did, the Respondent lost documentation; unduly delayed in raising a court action; failed or delayed in advising Mr A about the proof diet fixed for 19 October 2010; failed to contact and to take any statements from witnesses and to cite witnesses before the proof diets; failed or delayed in advising Mr A that a decree with expenses was granted on 19 October 2010 until 17 November 2010; provided inadequate instructions to a local agent; and failed or delayed in advising upon or providing Mr A with any update following the hearing on 7 December 2010.

Failure to Respond to the Complainers re Mr A

- 9.48 On 29 January 2015 the Complainers wrote to the Respondent at his business address, and by email, to intimate that Mr A's complaint had been passed to them by the SLCC. It was explained that the Complainers had a statutory duty to investigate the complaint, and that the Respondent had a professional obligation to respond. The Respondent was advised that the Complainers were investigating the complaint in connection with lost documentation and undue delay in raising the court action. The Complainers received no response to this letter. The letter was not returned as undelivered.

- 9.49 The complaint was then intimated to the Respondent on 26 March 2015 at the address at which he resides, which address had come to the attention of the Complainers. This intimation was not returned as undelivered.
- 9.50 No response being received, a Notice in terms of 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 (the Act) dated 21 April 2015 was sent by recorded delivery to the Respondent at the address at which he resides. Also on 21 April 2015 a Notice calling for delivery of the file, in terms of Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007, was sent by recorded delivery to the Respondent at that address. Neither of these Notices received a response. Neither Notice was returned as undelivered.
- 9.51 On 8 June 2015 the second part of the Section 15 Notice in terms of Section 15(2)(i)(i) of the 2007 Act was sent by recorded delivery to the Respondent at the address at which he resides. No response was received. The Notice was not returned as undelivered.
- 9.52 On 8 July 2015 the Complainers wrote to the Respondent at the address at which he resides to intimate an additional head of complaint arising out of the Respondent's failure to respond to the Complainers' correspondence including Notices. It was explained that the Complainers had a statutory duty to investigate the complaint, and that the Respondent had a professional obligation to respond. The Complainers received no response to this letter. The letter was not returned as undelivered.
- 9.53 On 4 November 2015 the Complainers wrote to the Respondent by email to advise that an administrative error had been made at an early stage in the investigation. The Respondent had been advised that there was only one issue to be investigated as conduct, when in fact that had changed and it had been decided that all issues should be investigated as conduct as well as service. The Respondent was sent a new intimation, which included also the additional complaint of failure to respond, and was asked to respond within 21 days. The Complainers received no response to this.

9.54 Accordingly, the Report and Supplementary Report prepared by the present Complainers for the Professional Conduct Sub Committee (PCSC) were prepared in the absence of full information from the Respondent, although some information was available in terms of a response the Respondent had submitted to the SLCC in respect of the service complaint.

MRS C

9.55 The Respondent, whilst at the firm, was instructed by Mrs C in or around October 2013 in relation to raising an action of divorce on her behalf. The Respondent accepted those instructions. In October 2013 Mrs C paid the Respondent £319 in cash, representing the cost for getting the divorce. The Respondent did not give Mrs C a receipt for this sum. The Respondent advised Mrs C that she would be divorced by around Christmas time. As Mrs C did not have her marriage certificate, the Respondent advised that he would get a copy. There is no evidence to confirm that the Respondent did so.

9.56 The Respondent, whilst at the firm, had previously acted for Mrs C since around 2009, including in 2011 in an interdict action against her husband.

9.57 By January 2014 Mrs C had not heard anything from the Respondent. She was concerned. She called at the Respondent's office in around February/March 2014. She was advised by the receptionist that the Respondent was at court.

9.58 Mrs C went again to the firm's offices in around May 2014. She was advised by the receptionist that they had lost her marriage certificate.

9.59 Mrs C went again to the firm's offices in around August 2014. She was advised by the receptionist that the Respondent was at court.

9.60 Mrs C became suspicious. She found out that the Respondent had left the firm's premises and that no one knew where he was.

9.61 The only documentation that Mrs C received from the firm was in connection with the 2011 action of interdict against her husband. Mrs C did not receive any paperwork from the firm in relation to her divorce instructions in 2013.

- 9.62 On 24 February 2016 the Complainers made enquiries by telephone with Paisley Sheriff Court. The Complainers were advised that the court held no record on its system of any divorce proceedings having been raised in respect of Mrs C.
- 9.63 On 5 August 2015, the Respondent not having lodged Answers, the Court of Session granted a petition at the instance of the Complainers ordaining the Respondent to produce or deliver to Morna Grandison, Director of Interventions, Interventions Department of the Complainers, within 14 days after intimation, the documentation specified in the petition, including all books, accounts, deeds, securities, papers and other documents in the possession of the Respondent or the firm. No such items have been received to date in respect of Mrs C.
- 9.64 Accordingly, in acting as he did, the Respondent failed or delayed in progressing Mrs C's divorce; failed to communicate effectively with her; and failed to obtain or, having obtained, lost her marriage certificate.

Failure to Respond to the Complainers re Mrs C

- 9.65 By letter of 11 September 2015, believed to have been sent by post to the Respondent's home address, the Complainers formally intimated the complaint in connection with the failure in progressing Mrs C's divorce; the failure to communicate effectively with her; and the lost marriage certificate. A copy of the relevant papers which had been received by the Complainers from the SLCC was sent to the Respondent under cover of this letter.
- 9.66 Due to a glitch within the Complainers' electronic filing system the Complainers were unsure whether or not the letter of 11 September 2015 was sent out. The Complainers accordingly wrote to the Respondent on 25 September 2015 to again intimate these issues and send a copy of the papers received from the SLCC.
- 9.67 As no response was received from the Respondent, the first part of the Section 15 Notice and a Section 48 Notice were sent recorded delivery by the Complainers to the Respondent's home address on 16 October 2015. The Notices were also sent first class post by covering letter dated 16 October 2015.

The recorded delivery Notices were returned by Royal Mail marked “not called for”. The first class post letter was not returned as undelivered.

- 9.68 As no response was received from the Respondent to the formal Notices, the second part of the Section 15 Notice was sent recorded delivery by the Complainers to the Respondent’s home address on 16 November 2015. The Royal Mail Track and Trace evidenced that the letter was signed for by “Cavanagh” on 4 December 2015. This Notice was also sent first class post by covering letter dated 16 November 2015. The first class post letter was not returned as undelivered.
- 9.69 By letter of 19 January 2016, sent by post, the Complainers formally intimated to the Respondent at his home address the complaint in connection with the failures to respond to the Complainers. The letter was not returned as undelivered.
- 9.70 By letter of 18 February 2016, sent by post to the Respondent’s home address, the Complainers advised that as no response had been received it was liaising with Mrs C to ascertain what further information she could provide before progressing the complaint on to the next stage of the complaints process. The letter was not returned as undelivered.
- 9.71 By letter of 24 February 2016, sent by post to the Respondent’s home address, the Complainers enclosed correspondence received from Mrs C and confirmed the details of the telephone conversation with Paisley Sheriff Court. The Respondent was asked to provide any comments he wished to make on this information within seven days. The letter was not returned as undelivered
- 9.72 By letter of 22 March 2016 the Complainers forwarded to the Respondent at his home address a copy of correspondence sent to Mrs C of the same date. The letter was not returned as undelivered
- 9.73 By letter of 13 April 2016, sent by post to the Respondent at his home address, the Complainers sent a copy of further correspondence received from Mrs C. The Respondent was asked to provide any comments he wished to make upon

this or any part of the complaint within seven days. The Respondent was advised that the complaint was moving on to the report stage of the complaints process. The letter was not returned as undelivered

- 9.74 No correspondence has been received by the Complainers from the Respondent in relation to any of the heads of complaint.
- 9.75 Despite the Notices sent to the Respondent and enquiries being made of third party agents who took over some of the Respondent's files when the firm closed, no file for Mrs C has been forthcoming.
- 9.76 Accordingly, the Report and Supplementary Report prepared by the present Complainers for the PCSC were prepared in the absence of a response from the Respondent and the Complainers' ability to properly investigate the complaint has been hampered by the Respondent's failure to respond.

The Law Society of Scotland

- 9.77 On 28 February 2014 the Complainers' Financial Compliance Department (FCD) carried out an inspection of the firm.
- 9.78 On 12 March 2014 the FCD attempted to send to the Respondent by email a copy of the inspection report and a working document. The report set out details of action the Respondent was required to take regarding each of the points noted.
- 9.79 The inspection report included the following schedule 2:

Point	2
Weight	3
Rule	Rule B6.7.4 True Financial Position PAYE/VAT etc
Observation	The pre-visit questionnaire stated that VAT and PAYE are currently in arrears and that arrangements are in hand for repayments. Any negotiations with Customs & Excise and the Inland Revenue regarding payment of the arrears are being dealt with by your accountant.

	The financial solvency of the firm has been raised previously, in particular with regard to outstanding liabilities in respect of VAT and PAYE. This appears to be a continuing problem, raised at the previous two inspections of the practice unit.
Action Required	Please provide details of the exact sums outstanding for VAT and PAYE and the periods to which they relate, providing documentary evidence to confirm the position. In addition, please confirm what arrangements have been made to bring these matters up to date. Please advise how you intend to ensure that all debts and liabilities are kept up to date in future.
Action Taken	
Action Taken Date	

- 9.80 By letter of 31 March 2014 the FCD wrote to the Respondent at his firm address. The letter referred to the executive summary which the Respondent had been provided with following the inspection on 28 February 2014. The letter set out that the executive summary contained details of the action the Respondent was required to take, within two months of the inspection. The Respondent was advised that the FCD would attend his office on 25 April 2014 in order to confirm that all of the appropriate action had been taken.
- 9.81 An error with the email address used for the Respondent having been identified, a copy of the inspection report and working document was re-sent to the Respondent's correct email address on 1 April 2014.
- 9.82 By email from the FCD to the Respondent on 3 April 2014, the FCD confirmed that the Respondent now had a copy of the executive summary report detailing the matters to be addressed, which were summarised in the email.

- 9.83 By letter of 4 April 2014 the FCD wrote to the Respondent at his firm address. The FCD again advised that the executive summary contained full details of the action the Respondent required to take.
- 9.84 During a telephone conversation between the Respondent and the FCD on 24 April 2014, the Respondent advised that all books, records, banks statements, etc were at his accountant's office and were being withheld until payment of outstanding fees. The inspection was re-scheduled for 9 May 2014.
- 9.85 Following the inspection of the firm on 9 May 2014, a copy of the updated inspection report was sent by email from the FCD to the Respondent on 14 May 2014. The Respondent was asked to provide his further response to the remaining/additional inspection matters by 28 May 2014.
- 9.86 The updated inspection report included the following update to schedule 2:

Action Taken	Mr Miller - VAT & PAYE remain outstanding to HMRC. Negotiations re settlement are ongoing.
Action Taken Date	24/04/14
Follow Up Visit 09/05/14	<p>No documentation was provided from HMRC regarding the arrears in question, however you advised that the approximate amount of arrears outstanding is around £30,000.00 (£28,000.00 for VAT and £2,000.00 for PAYE). This was discussed at the outset of the follow-up visit and you advised that the amount owing is reflected through the records of the practice unit, however, this does not appear to be the case as noted in the trial balance to 30 April 2014.</p> <p><u>Action Required</u></p> <p>Please now confirm the actual level of arrears due by your practice unit and provide details of the repayment arrangements in place between the firm and HMRC, attaching supporting documentation from HMRC to confirm the position.</p> <p>Please also forward an updated trial balance which shows the current liability due to HMRC by the practice in respect of the above.</p>
Date	09/05/14

Practice Unit Response	
Date	

It included also an additional schedule 6:

Point	6
Weight	3
Rule	<p>Rule B6.7.4 True Financial Position/Firm Trial Balance</p> <p>The records of the practice unit must be correctly maintained and up to date at all times in order that the true financial position of the practice unit is shown.</p>
Observation	<p>As highlighted in schedule 2, it would be expected that the current position for VAT and PAYE be correctly reflected in the Firm Trial Balance, however, at 30/04/14 the only figures relating to VAT and PAYE is a credit figure for VAT of £86,475.51 and a credit figure for PAYE/ NIC of £18,997.00.</p> <p>In addition, a ledger called "Money due to clients" was seen which shows a debit balance of £65.00. When this ledger was examined, it showed a carried forward balance, but was unclear as to what this related to.</p>
Action Required	<p>Please investigate the above ledgers and provide a breakdown of what the figures relate to in respect of the "Money due to clients" ledger, attaching a corrected ledger as appropriate.</p> <p>Please also forward corrected nominal ledgers in respect of the VAT/PAYE liabilities, which should coincide with the trial balance previously requested under Point 2.</p> <p>Please confirm that all nominal ledgers will reflect the true and correct financial position in future.</p>
Action Taken	
Action Taken Date	

- 9.87 No response having been received, an email was sent from the FCD to the Respondent on 2 June 2014. The Respondent was asked to provide a full response to the updated executive summary report by 9 June 2014. A letter to the Respondent from the FCD was sent on 2 June 2014 to the Respondent's firm address, again advising that the executive summary contained full details of the action the Respondent required to take.
- 9.88 No response having been received, an email was sent from the FCD to the Respondent on 16 June 2014. The Respondent was advised that matters would be placed before the GFSC at its meeting on 3 July 2014. The Respondent was asked to provide any information by 12 noon on 1 July 2014.
- 9.89 By email from the FCD to the Respondent on 18 June 2014 the FCD confirmed that papers were being prepared for the GFSC meeting on 3 July 2014. The Respondent was reminded of the deadline of 12 noon on 1 July 2014 for the submission of any response. The email confirmed the background information and recommendation to the GFSC. The FCD's recommendation was to invite the Respondent to attend an interview under the terms of Section 40 of the Act in order that he could explain a number of matters and why his practising certificate should not be withdrawn as a result of these matters.
- 9.90 By letter of 27 June 2014 to the FCD the Respondent enclosed his response to the inspection matters. The Respondent's response to schedule 2 was:

Practice Unit Response	Attached is copy statement from HMRC confirming present sums outstanding after recent payments to account.
Date	23/06/14

His response to schedule 6 was:

Action Taken	Debit balance of £65 relates to an outlay paid on behalf of client. Has been outstanding for period in excess of 18 months and is likely now to be written off. Stevenson & Kyles Accountants preparing further trial balance to reflect payments
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	to HMRC. Ledgers will be maintained to reflect true position. As detailed above part time book keeper will commence with the practice as of 1 st August.
Action Taken Date	23/06/14

9.91 By email to the Respondent on 1 July 2014 the FCD advised that an updated executive summary would be issued in due course and detailed the FCD's response. The FCD advised that the responses would be considered by the GFSC at its meeting on 3 July 2014.

9.92 At its meeting on 3 July 2014, the GFSC was concerned, amongst other matters, that the firm had not been addressing VAT arrears and that the firm was not clear as to the full amount of the VAT arrears, having been dealing with estimates rather than submitting returns to HMRC. It agreed that it was appropriate to invite the Respondent to interview in terms of Section 40 of the Act.

9.93 By email to the Respondent on 3 July 2014 the FCD sent an updated copy of the executive summary and advised that a further response and supporting documentation was required in relation to matters, including schedules 2 and 6. In respect of schedule 2 the updated summary was:

Financial Compliance Response	<p>The statement of liabilities from HMRC dated 19 June 2014 is noted, showing sums due by your practice unit totalling £19,236.94.</p> <p>No response has been provided from you regarding the repayment arrangements in place, and the updated trial balance showing the full liability due to HMRC within the records of your practice is also still awaited.</p> <p><u>Action Required</u> As previously requested, please now forward an updated firm trial balance showing full liability due to HMRC, together with documentation to evidence the repayment arrangements in place with your practice unit and HMRC.</p>
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Date	03/07/14
Practice Unit Response	
Date	

In respect of schedule 6:

Financial Compliance Response	<p>Your comments are noted regarding the £65 outlay which is to be written off.</p> <p>The corrected nominal ledger regarding the £65 outlay to be written off, and the updated ledgers showing the correct position regarding VAT & PAYE liabilities are still awaited.</p> <p><u>Action Required</u> As requested in schedule 2, please forward corrected firm trial balance showing accurate outstanding liabilities to HMRC.</p> <p>Please also forward a corrected nominal ledger regarding the £65 outlay to be written off, together with updated ledgers regarding the VAT and PAYE liabilities.</p>
Date	03/07/14
Practice Unit Response	
Date	

- 9.94 By letter to the Respondent on 4 July 2014, sent by recorded delivery and first class post to his firm address, the FCD advised the Respondent of the GFSC determination and invited him to interview on 17 July 2014.
- 9.95 A copy of the extract minute of the GFSC meeting of 3 July 2014 was sent to the Respondent's firm address under cover of the FCD's letter of 15 July 2014.
- 9.96 By email from the FCD to the Respondent on 7 July 2014 it was confirmed that papers were being prepared for the interview due to take place on 17 July 2014.

The Respondent was asked to provide any information by 12 noon on 15 July 2014.

9.97 The Section 40 interview took place on 17 July 2014.

9.98 On 18 July 2014 the FCD sent a letter to the Respondent's firm address. The letter advised that all information and documentation which was received by the FCD by 12 noon on 5 August 2014 would be included with papers provided to the GFSC for consideration at the meeting on 7 August 2014. An updated executive summary report was enclosed and the current position shown, in particular:

“Current Position

Schedule 2 – Rule B6.7.4 – True Financial Position - VAT/PAYE

Arrears

The statement of liabilities from HMRC dated 19 June 2014 is noted, showing sums due by your practice unit totalling £19,236.94.

No response has been provided from you regarding the repayment arrangements in place, and the updated trial balance showing the full liability due to HMRC within the records of your practice is also still awaited.

...

Schedule 6 – Rule B6.7.4 – True Financial Position / Firm Trial Balance / Nominal Ledgers

Your comments are noted regarding the £65 outlay which is to be written off.

The corrected nominal ledger regarding the £65 outlay to be written off, and the updated ledgers showing the correct position regarding VAT & PAYE liabilities are still awaited.”

9.99 By letter to the Respondent on 29 July 2014, sent by recorded delivery and first class post to his firm address, a copy of the note of interview and the panel report from the interview meeting of 17 July 2014 were sent to the Respondent. The Respondent was asked to prepare a list of comments for consideration should he

believe that these were not an accurate reflection of the discussions held at interview. Comments were to be received by 12 noon on 5 August 2014. The panel report recommendation was to re-inspect the firm in early February 2015 at the expense of the firm and to continue consideration of a complaint until after that inspection.

- 9.100 The Respondent's letter of 31 July 2014 to the Complainers enclosed information sought in relation to the executive summary, but not forming part of this complaint.
- 9.101 By email from the FCD to the Respondent on 1 August 2014 the FCD advised that its letter of 18 July 2014 had summarised the position following the interview on 17 July 2014. Taking into account the Respondent's response of 31 July 2014, the FCD summarised the current position, which included action on schedules 2 and 6. The Respondent was advised that should he wish to provide a further response to the remaining matters for consideration by the GFSC at their meeting on 7 August 2014, he should do so no later than 12 noon on 5 August 2014. The current position on schedules 2 and 6 was:

“Schedule 2 – Rule B6.7.4 – True Financial Position - VAT/PAYE
Arrears

The statement of liabilities previously provided from HMRC dated 19 June 2014 showing sums due by your practice unit at that time totalling £19,236.94 was noted.

No response has been provided from you regarding the repayment arrangements in place to clear the sums due to HMRC. The required information is still awaited, together with evidence of the sums repaid.

The updated trial balance showing the full liability due to HMRC within the records of your practice is also still awaited. You advise that your accountants expect to have the up to date trial balance available no later than 8 August 2014.

Schedule 6 – Rule B6.7.4 – True Financial Position / Firm Trial
Balance / Nominal Ledgers

The corrected nominal ledger regarding the £65 outlay to be written off, and the updated nominal ledgers showing the correct position regarding VAT & PAYE liabilities are still awaited.”

- 9.102 At its meeting on 7 August 2014, the GFSC noted that the firm had made some improvement with regard to rectifying the breach of Rule B6.7.4. The GFSC noted that the FCD were still awaiting responses in relation to the schedules 2 and 6 issues, but was of the opinion that it was no longer proportionate to continue consideration of Section 40, there bring no risk to the Guarantee Fund. The GFSC decided that given the issues and Rule breaches by the practice unit, it was appropriate that a further inspection of the books and records of the practice unit should be carried out at the expense of the firm. It was also noted that the interview panel had recommended continuing consideration of a complaint against the Respondent for breaches of the Practice Rules 2011 until after a further inspection of the firm, but decided that in all the circumstances the cost of further inspection was sufficient sanction.
- 9.103 By letter from the FCD to the Respondent on 26 August 2014, sent by recorded delivery and first class post to his firm address, the Respondent was advised of the GFSC determination to cease consideration of the Section 40 procedure against him and that the firm was to be re-inspected in or around February 2015. An extract of the minute from the meeting on 7 August 2014 was sent.
- 9.104 In its email to the Respondent on 16 September 2014, the FCD referred to their previous email of 1 August 2014 in respect of the outstanding inspection matters, to which no response had been received. The FCD advised that, irrespective of the decision taken by the GFSC at the meeting on 7 August 2014 to carry out a further inspection of the practice unit in February 2015 at the Respondent's expense, the inspection matters from the current inspection required to be satisfactorily concluded. The FCD set out that the Respondent had confirmed at the interview meeting he attended on 17 July 2014 that he expected to have all outstanding matters fully dealt with within approximately four weeks. The Respondent was asked to forward his full response to the matters noted, which included schedules 2 and 6, to include the supporting documentation requested, by close of business on 24 September 2014.

- 9.105 On 3 October 2014 the FCD wrote by letter to the Respondent at his firm address noting that he had not responded to the correspondence of 1 August 2014 and 16 September 2014. The Respondent was advised that papers were going to be prepared for the GFSC to consider at the November meeting. The outstanding matters in relation to schedules 2 and 6 as detailed in the FCD's email on 1 August 2014 were repeated, to which a response and supporting documentation was still required.
- 9.106 On 22 October 2014 the FCD sent an email to the Respondent noting that he had not responded to the correspondence of 1 August 2014, 16 September 2014 and 3 October 2014. The Respondent was asked to provide any response he wished the GFSC to consider by 12 noon on 4 November 2014 as matters were going before the meeting of the GFSC due to take place on 6 November 2014. The FCD advised the details of the background information and the FCD recommendation being provided to the GFSC.
- 9.107 At its meeting on 6 November 2014, the GFSC noted concern at the Respondent's continued failure to co-operate or correspond with the FCD in relation to the schedule 2 and schedule 6 matters. The GFSC considered that any consideration as to whether or not the Respondent should be invited to a Section 40 interview should be continued.
- 9.108 On 27 November 2014 the FCD wrote by letter to the Respondent at his firm address noting that despite the emails to him of 1 August 2014, 16 September 2014 and 3 October 2014 requesting evidence he had not contacted the FCD. The letter advised that consideration of the Section 40 procedure was continued until the GFSC's meeting of 8 January 2015. An extract of the minute from the meeting on 6 November 2014 was attached.
- 9.109 At its meeting on 8 January 2015, the GFSC noted concern at the Respondent's continued failure to co-operate or correspond with the FCD in relation to the schedule 2 and schedule 6 matters. The GFSC observed that given that the Respondent had not renewed his practising certificate, it was not appropriate or competent to invite him to an interview under the Section 40 procedure.

Although the requirement regarding the £65 outlay to be written off was not a major matter of concern, the GFSC considered that it was both appropriate and proportionate to refer a complaint against the Respondent to the SLCC regarding his conduct in continuing to breach the practice rules and failure to provide reasonable co-operation with the Complainers. The GFSC was also concerned as to what arrangements had been made by the Respondent regarding the cessation of his practice. As there was no information on this, the GFSC considered it appropriate that the FCD ensure that adequate steps had been taken regarding the client funds of the firm and schedule an urgent inspection of the ceased firm if adequate assurance regarding the client funds was not provided promptly. The GFSC agreed that this should supersede its decision taken at its meeting in August 2014 to order a further inspection of the practice unit to be carried out in February 2015 at the expense of the practice unit.

9.110 On 19 January 2015 the Complainers wrote to the Respondent at his firm address by recorded delivery and first class post and advised him of the GFSC determination to refer a complaint against him to the SLCC. Notice was given that his former firm would be the subject of an inspection if adequate assurance regarding client funds was not provided to the Complainers promptly. An extract of the minute from the meeting on 8 January 2015 was attached.

9.111 Accordingly, in acting as he did, the Respondent failed or at least delayed unduly to demonstrate what, if any, repayment arrangements were in place to clear sums due to HMRC or to provide evidence of sums repaid, or to provide an updated trial balance and nominal ledgers showing the full liability to HMRC; failed or at least delayed unduly to exhibit a corrected nominal ledger showing the £65 outlay to have been written off; and failed or at least delayed unduly in responding to the Complainers' reasonable enquiries in connection with the financial affairs of the firm or in co-operating with the Complainers for the purposes of arranging a further inspection.

Failure to Respond to the Complainers re their Complaint

9.112 By letter dated 7 May 2015, sent by post to the firm's address, the Complainers formally intimated the complaint in connection with the sums due to HMRC, the £65 outlay and the failure or delay in responding to the FCD's enquiries. A copy

of the relevant papers which had been received by the Complainers from the SLCC was sent to the Respondent under cover of this letter. The letter was not returned as undelivered.

- 9.113 On 3 June 2015 these issues were re-intimated by letter to the Respondent's home address, again with a copy of the relevant papers which had been received by the Complainers from the SLCC. The letter was not returned as undelivered.
- 9.114 As no response was received from the Respondent the first part of the Section 15 Notice and a Section 48 Notice were sent recorded delivery to the address at which the Respondent resides on 25 June 2015. The Royal Mail Track and Trace evidenced that the Notices were "Not Called For". The Notices were also sent by first class post with a covering letter dated 25 June 2015. This letter was not returned as undelivered.
- 9.115 As no response was received from the Respondent to the formal Notices the second part of the Section 15 Notice was sent recorded delivery to the address at which the Respondent resides on 20 July 2015. The Royal Mail Track and Trace evidenced that the Notice was "Not Called For". This Notice was also sent by first class post with a covering letter dated 20 July 2015. This letter was not returned as undelivered.
- 9.116 By letter dated 12 August 2015, sent by post to the address at which the Respondent resides, the Complainers formally intimated to the Respondent the complaint in connection with the failures to respond to the Complainers. The letter was not returned as undelivered.
- 9.117 In a letter dated 9 September 2015, sent by post to the address at which the Respondent resides, the Complainers advised the Respondent that as no response had been received it was moving the complaint on to the report stage of the complaints process.
- 9.118 Further letters were sent to the Respondent at his home address to keep him updated as to progress with the investigation.

9.119 No correspondence has been received by the Complainers from the Respondent in relation to this complaint.

9.120 Accordingly, the Report and Supplementary Report prepared by the present Complainers for the PCSC were prepared in the absence of a response from the Respondent and the Complainers' ability to properly investigate the complaint has been hampered by the Respondent's failure to respond.

10. Having considered the evidence submitted by way of affidavit and the submissions in relation to the question of professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect that:

- (a) He lost all documentation provided to him by Mr A and unduly delayed in raising a court action,
- (b) He failed or delayed in advising Mr A about the proof diet fixed for 19 October 2010 and failed to contact and to take any statements from witnesses and to cite witnesses before that proof,
- (c) He failed or delayed in advising Mr A that a decree with expenses was granted on 19 October 2010 until 17 November 2010,
- (d) He provided inadequate instructions to a local agent for the appearance at a hearing in Mr A's case on 7 December 2010 and thereafter failed or delayed in advising upon or providing Mr A with any update following the hearing,
- (e) He failed to contact and to take any statements from witnesses and to cite any witnesses before the proof in Mr A's case on 4 July 2011, and
- (f) He failed to respond to the Complainers' correspondence including formal statutory notices relating to Mr A.

And separately *in cumulo* in respect that:

- (g) He failed or delayed in progressing Mrs C's divorce,
- (h) He failed to communicate effectively with Mrs C,
- (i) He failed to obtain or having obtained, lost Mrs C's marriage certificate, and
- (j) He failed to respond to the Complainers' correspondence including formal statutory notices relating to Mrs C.

And separately *in cumulo* in respect that:

- (k) He failed or at least delayed unduly since February 2014 to demonstrate what, if any, repayment arrangements are in place to clear sums due by Miller & Co to HMRC in respect of VAT and PAYE, or to provide evidence to the Complainers of sums repaid, or to provide to the Complainers with an updated trial balance and nominal ledgers showing the full liability to HMRC as part of the records of the practice unit,
- (l) He failed or at least delayed unduly since May 2014 to exhibit a corrected nominal ledger showing a £65 outlay (which had been recorded as client funds held in the firm account) to have been written off,
- (m) He failed or at least delayed unduly since August 2014 in responding to the Complainers' reasonable enquiries in connection with the financial affairs of the practice unit, or in co-operating with the Complainers for the purposes of arranging a further inspection of the practice unit, and
- (n) He failed to respond to the Complainers' correspondence including formal statutory Notices.

11. The Tribunal heard further submissions from the Fiscal in relation to disposal. Having given carefully consideration to those submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 7 March 2018. The Tribunal having considered the Complaint dated 31 October 2016 at the instance of the Council of the Law Society of Scotland against Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner, at 6 St Ninian Terrace, Crown Street, Glasgow; Find the Respondent guilty of professional misconduct *in cumulo* in respect that (a) He lost all documentation provided to him by Mr A and unduly delayed in raising a court action, (b) He failed or delayed in advising Mr A about the proof diet fixed for 19 October 2010 and failed to contact and to take any statements from witnesses and to cite witnesses before that proof, (c) He failed or delayed in advising Mr A that a decree with expenses was granted on 19 October 2010 until 17 November 2010, (d) He provided inadequate instructions to a local agent for the appearance at a hearing in Mr A's case on 7 December 2010 and thereafter failed or delayed in advising upon or providing Mr A with any update following the hearing, (e) He failed to contact and to take any statements from witnesses and to cite any witnesses before the proof in Mr A's case on 4 July 2011, and (f) He failed to respond to the Complainers' correspondence including formal statutory notices relating to Mr A, and separately *in cumulo* in respect that (g) He failed or delayed in

progressing Mrs C's divorce, (h) He failed to communicate effectively with Mrs C, (i) He failed to obtain or having obtained, lost Mrs C's marriage certificate, and (j) He failed to respond to the Complainers' correspondence including formal statutory notices relating to Mrs C, and separately *in cumulo* in respect that (k) He failed or at least delayed unduly since February 2014 to demonstrate what, if any, repayment arrangements are in place to clear sums due by Miller & Co to HMRC in respect of VAT and PAYE, or to provide evidence to the Complainers of sums repaid, or to provide to the Complainers with an updated trial balance and nominal ledgers showing the full liability to HMRC as part of the records of the practice unit, (l) He failed or at least delayed unduly since May 2014 to exhibit a corrected nominal ledger showing a £65 outlay (which had been recorded as client funds held in the firm account) to have been written off, (m) He failed or at least delayed unduly since August 2014 in responding to the Complainers' reasonable enquiries in connection with the financial affairs of the practice unit, or in co-operating with the Complainers for the purposes of arranging a further inspection of the practice unit, and (n) He failed to respond to the Complainers' correspondence including formal statutory Notices; Order that the name of the Respondent be struck off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person; and Allow the Secondary Complainers 28 days from the date of intimation of these Findings to lodge written claims for compensation with the Tribunal Office.

(signed)

Nicholas Whyte
Chairman

12. 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 **27 MARCH 2018**.

IN THE NAME OF THE TRIBUNAL



Nicholas Whyte

Chairman

NOTE

At the hearing on 7 March 2018 the Tribunal had before it a Complaint as amended, a Schedule of Documents for the Complainers numbered 1-97 and a Supplementary Schedule of Documents for the Complainers number 98-101. The documents contained in the Supplementary Schedule of Documents for the Complainers were four affidavits from Ms E, Mrs C, Mr A and Ms D.

At the hearing on 7 March 2018, the Fiscal made a motion in terms of Rule 14(4) of the Tribunal Rules for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Fiscal provided information that she had caused an agent to visit the Respondent at his home address on 5 March 2018. That agent had met the Respondent and showed him the Fiscal's proposed Joint Minute but that the Respondent had refused to take it or sign it. The Fiscal also provided an email from the Respondent dated 6 March 2018 which confirmed that he did not intend to attend the hearing on 7 March 2018.

The Tribunal heard evidence on oath from the Clerk regarding service of the Notice of Hearing. Service had been effected on 19 December 2017 by Sheriff Officers who had confirmed the Respondent's residence with a neighbour. The Notice of Hearing was served by depositing a copy of the Notice at the Respondent's home address. The Tribunal considered whether it was fair to proceed in the Respondent's absence. The Tribunal had regard to R-v-Jones [2002] UKHL5 and the need to exercise its discretion in this matter "*with great caution and with close regard to the overall fairness of the proceedings*". The Tribunal considered that if it heard the case in the Respondent's absence, there would be a disadvantage to the Respondent in being unable to give his account of events. However, he had been given ample notice of the date, was aware of the date of the hearing, and had indicated that he did not intend to attend. There was no reason to be confident that he would attend on another occasion if the hearing was adjourned. It is in the public interest that regulatory proceedings take place within a reasonable time. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. It was in the public interest that the matter was adjudicated upon without delay. In these circumstances the balance lay in favour of proceeding in the Respondent's absence. Therefore, the Tribunal granted the Fiscal's motion to proceed.

The Tribunal granted the Fiscal's motion to amend the Complaint by inserting the word "failed" between the words "He" and "or" where they appeared on the first line of paragraph 3.125(b). The Tribunal allowed the Fiscal to replace the affidavit for Ms F which had been previously lodged with the Tribunal Office with that of Ms D. It was noted that these affidavits were in exactly the same terms. The Fiscal

confirmed that all productions had been intimated to the Respondent. The Tribunal allowed all affidavits to be received.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal made submissions in respect of the Respondent's conduct towards Mr A. The relevant averments of fact were contained within paragraphs 3.2 to 3.47 of the Complaint. She referred to Productions 2 to 40 for the Complainers. She noted that Mr A's affidavit was contained in document 100. She indicated that Mr A was adamant in his affidavit that he did not receive the Respondent's letter of 30 June which was contained at document 38. She noted that Mr A had made lengthy calls to the Respondent's firm just before the letter of 30 June according to the telephone records he had attached to his affidavit. She noted that these might be useful for the Secondary Complainers' claim for compensation if the matter proceeded that far.

With reference to the Respondent's conduct involving Mrs C, the Fiscal explained that the relevant averments of fact were contained in paragraphs 3.55 to 3.64 of the Complaint. Her affidavit was contained at Production 99.

The Fiscal indicated that the Respondent had also failed to respond to the Complainers in relation to their investigation of Mr A's and Mrs C's complaints. The failure to respond to the Complainers regarding Mr A's complaint were described in paragraphs 3.48 to 3.54 of the Complaint and Productions 41 to 46. The failure to respond to the Complainers regarding Mrs C's complaint were described in paragraph 3.65 to 3.76 of the Complaint. The relevant Productions were contained within documents 48 to 59. She also referred the Tribunal to Ms E's affidavit contained at document 98.

The Fiscal said that the averments of fact regarding the financial compliance matters were contained at paragraph 3.77 to 3.111 of the Complaint. The relevant Productions were found at document 60 to 90. She noted that document 79 referred to the first inspection and the Complainers' concerns regarding VAT and PAYE. She explained that the Complainers did not receive any cooperation from the Respondent. She noted paragraph 3.86 of the Complaint which related to the updated inspection report. She highlighted that the arrears at that time were considerable and ran to about £30,000. Paragraph 3.90 referred to a letter of 27 June 2014 from the Respondent to the Financial Compliance Department. The Fiscal explained that this was the first response that the Respondent had made to the Financial Compliance Department since 1 April. The Fiscal noted that the Respondent did attend the section 40 interview with the Complainers referred to at paragraph 3.97 of the Complaint. The Fiscal highlighted

that although the Respondent had written a letter of 31 July 2014 to the Complainers seeking further information as detailed at paragraph 3.100 of the Complaint, this letter had not addressed the issues following the inspection. The Fiscal referred the Tribunal to Ms D's affidavit in this regard.

The Fiscal referred to paragraphs 3.112 to 3.120 of the Complaint regarding the Respondent's failure to respond to the Complainers regarding the financial compliance complaints. The Fiscal highlighted that the relevant productions were contained within documents 91 to 97 for the Complaints. The Fiscal also referred the Tribunal to the Ms E's affidavit contained at document 98.

The Fiscal noted that she had received no response from the Respondent to her correspondence until the email of 6 March 2018. She provided a draft Joint Minute to him on at least four occasions. On 5 March 2018, she had an agent attend at his home but this had not resulted in any cooperation. She confirmed that the documents for the Complainers had been intimated to the Respondent. She invited the Tribunal to find the Respondent guilty of professional misconduct. The Fiscal advised that Mr A had received an award of compensation from the Scottish Legal Complaints Commission of £3,500 and this had been paid by the Respondent.

DECISION

The Tribunal considered carefully the averments of fact in the Complaint. It considered that these were sufficiently proved by the affidavits contained in Productions 98 to 101. The Tribunal was satisfied beyond reasonable doubt that the Respondent had behaved in the manner set out in the Complaint.

In relation to Mr A's case, the Respondent lost documentation; unduly delayed in raising a court action; failed or delayed in advising Mr A about a proof diet; failed to contact and to take any statements from witnesses and to cite witnesses before proof diets; delayed in advising Mr A that a decree with expenses was granted; provided inadequate instructions to a local agent; failed or delayed in advising upon or providing Mr A with any update following a hearing and failed to respond to the Complainers' correspondence including formal statutory notices.

In relation to Mrs C's case, the Respondent failed or delayed in progressing her divorce; failed to communicate effectively with her; failed to obtain or, having obtained, lost her marriage certificate and failed to respond to the Complainers' correspondence and statutory notices.

With regard to the financial compliance matters, the Respondent failed or at least delayed unduly to demonstrate what, if any, repayment arrangements were in place to clear sums due to HMRC or to provide evidence of sums repaid, or to provide an updated trial balance and nominal ledgers showing the full liability to HMRC; failed or at least delayed unduly to exhibit a corrected nominal ledger showing the £65 outlay to have been written off; and failed or at least delayed unduly in responding to the Complainers' reasonable enquiries in connection with the financial affairs of the firm or in co-operating with the Complainers for the purposes of arranging a further inspection and failed to respond to the Complainers' correspondence including formal statutory notices.


The Tribunal had regard to the test for professional misconduct as defined in Sharp-v-The Council of the Law Society of Scotland [1984] SLT 413. In that case it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors may be properly categorised as professional misconduct. However, in every case it is essential to consider the whole circumstances and the degree of culpability of the individual against whom the complaint is made.

The Tribunal considered all the circumstances and found that the Respondent's conduct was sufficiently serious and reprehensible to amount to professional misconduct. He had failed to communicate effectively with his clients and the Complainers. He had failed to act in the best interests of his clients. He failed to keep proper accounting records and failed to remedy the breaches drawn to his attention. A solicitor is under a duty to cooperate with his or her regulatory body. Failure to respond hampers the Law Society in performance of its statutory duty and brings the profession into disrepute. The Tribunal was satisfied that the conduct amounted to professional misconduct.

The Fiscal provided copies of the three previous Tribunal cases against the Respondent. The Tribunal had regard to these analogous matters and the professional misconduct established in the present Complaint which also disclosed serious financial issues. Over a period of six years, the Tribunal had made four Findings against the Respondent. The four cases involved repeated failures by the Respondent to look after the interest of his clients and to respond to the Complainers. The Respondent's attitude towards clients and his regulator was not compatible with him remaining on the Roll of Solicitors. There was a clear risk that if the Respondent was allowed to practise he would repeat the conduct. The Tribunal noted that the Respondent had made no attempt to show any remorse. He had provided no apology either to his clients or to the Law Society. The Tribunal considered that a Censure, Fine, Restriction or Suspension was inappropriate in this case due to the aggravating features present. The Tribunal

considered that the appropriate sanction was to order that the Respondent be removed from the Roll of Solicitors in Scotland.

Following submissions on expenses, the Tribunal decided that the appropriate award in relation to expenses was one in favour of the Complainers. The Fiscal made a motion that all individuals other than the Respondent should be anonymised in the Findings. The Tribunal therefore ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no need to identify any other person as publication may damage or be likely to damage the interest of those persons. The Secondary Complainers will have 28 days from the intimation of the Findings to lodge a written claim for compensation with the Tribunal Office.



Nicholas Whyte
Chairman