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

STEVEN LILLY, Formerly of 27 Garrallan Square, Kilwinning and presently of 128 Kilmeny Crescent, Wishaw

Respondent

1. A Complaint dated 9 September 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Steven Lilly, residing at 27 Garrallan Square, Kilwinning (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 Mr B.

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 set down a hearing for 13 January 2020 and notice thereof was duly served on the Respondent.

5. At the hearing on 13 January 2020, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The Tribunal allowed the original Complaint to be withdrawn and an amended one substituted in its place. A Joint Minute between the parties was lodged which admitted all

of the averments of fact, all of the averments of duty and the averments of misconduct insofar as they related to Mr A.

6. As the agreement between the parties was extensive, no evidence required to be led. The Tribunal found the following facts established:-

6.1 The Respondent's date of birth is 7 June 1980. He was enrolled as a solicitor on the 17 October 2005. He began his career at Ballantyne Copland whom he left on the 29 February 2008. He was employed by Steven Waters & Co between 3 March 2008 and 21 October 2011. He was a partner in Steven Lily & Co between 23 January 2012 and 26 November 2012. He then became an employee of Bruce McCormack Ltd. He left Bruce McCormack Ltd on the 5 May 2017. He began employment with TF Reid & Donaldson on the 5 June 2017, this employment terminated in September 2019.

Mr A's instructions

6.2 On the 16 September 2016 the Respondent met with Mr A at HMP Shotts where he was incarcerated. Mr A had been transferred to the Scottish Prison Estate from Spain. He had previously been extradited to Spain to serve outstanding prison sentences. Mr A sought the Respondent's advice in respect of a number of matters including an extradition appeal, parole board irregularities and potential appeal re serving the same Spanish sentence twice or alternatively having been convicted for the same actions twice. The secondary complainer signed a mandate and the Respondent sought to in gather papers.

6.3 The Respondent's colleague met with Mr A in HMP Shotts on the 21 September 2016.

6.4 The Respondent met with Mr A on the 7 October 2016 and noted the PCMB (Parole Case Management Board's) Report had been received, he noted the Mr A's points of concern and agreed to write to Scottish Prison Service and enquire what opportunities where available for Mr A to be released on Parole.

6.5 The solicitor met further with Mr A at HMP Shotts on the 27 October, 25 November, 1 & 6 December all 2016. In the meetings prior to the 6 December 2016 the conversations were mainly in connection with various Prison Regulation and Parole Board appeals. However, on the 6 December 2016 the Respondent mentioned an appeal to the Nobile Officium (an over arching supervisory power of the court) to in relation to the duplicate conviction/sentence challenge Mr A had raised.

6.6 The Respondent gathered much paperwork in Spanish. On translation, over time, it became clear, Mr A had not been convicted of separate offences for the same actions and that the sentences which the Scottish Prison Service had been advised of were proper and legitimate. There was no ground of appeal in respect of the either. The Respondent did not seek legal aid or instruct Counsel in respect of an appeal to the Nobile Officium. Such an appeal can only be raised in the Supreme Courts. The Respondent did not raise an appeal to the Nobile Officium on behalf of Mr A.

6.7 Despite this, the solicitor advised Mr A the appeal to the Nobile Officium was continuing. In particular, he met with Mr A on the 21 February 2017 and advised that the appeal to Nobile Officium was proceeding and the likely hearing date would be the 3rd week in October 2017. He further advised an interim liberation hearing would take place in April 2017. No appeal had been lodged at this time. No court dates had been fixed.

6.8 Mr A met with one of the Respondent's colleagues on the 21 April 2017. Prior to meeting Mr A the Respondent briefed his colleague. The colleague was advised an appeal to the Nobile Officium was live, that all matters were in hand, that the Respondent had spoken to Mr A on 8 & 9 March 2017 by telephone. The Respondent advised his colleague the hearing for interim liberation was to take place on the 21, 22 or 23 April 2017. The colleague's discussion with Mr A based upon this information.

6.9 The falsehoods came to light (to the Respondent's employer) in the week before the 21 April 2017. Thereafter the employer arranged for Mr A to meet with another colleague of the Respondent, that colleague advised that no appeal had been

lodged and that there was no interim liberation hearing fixed for that week. The Respondent's colleague advised the secondary complainer he had been misled by the Respondent.

Mr B's Instructions

6.10 Mr B instructed the Respondent to act on his behalf in relation to criminal proceedings raised against him at Airdrie Sheriff Court following upon his appearance form custody on Petition. The Respondent and Mr B met and/or communicated on number of occasions in 2016. The Respondent indicated he would be prepared to act, and Mr B gave him instructions. The Respondent did not discuss the availability of Legal Aid with Mr B. The Respondent indicated his firm would require payment for his services. In due course a complaint was served on Mr B in early 2017.

6.11 The Respondent was working for Bruce the Lawyers the trading name of Bruce McCormack Ltd (the firm) at the time. He was an employee of the firm. Mr B contracted with the firm to provide legal services. Any sums due for the services provided ought to have been paid to the firm.

6.12 On or about the 10 March 2017 Mr B and the Respondent agreed an interim payment would be made for the legal services the firm were providing. The Respondent added bank account details to the exchange of communications. The bank account details added to the request were not those of the firm but those of the Respondent's personal bank account.

6.13 Mr B paid the sum of £600 into the Respondent's bank account. The Respondent did not pay these sums to the firm. The firm has not received payment of these funds. The Respondent retained and retains this sum.

6.14 The Respondent's employment with Bruce the Lawyers was terminated on the 3 May 2017. On the 5 May 2017 the principal of the firm took over the representation of Mr B. A plea was agreed. Mr B was sentenced on 12 July 2017 to an 18-month Community Payback Order, 240 hours unpaid work, a 3-month Restriction of Liberty Order and a £1500 Compensation Order.

6.15 Prior to the Respondent's employment being terminated, Mr B made a complaint to the Client Relations Partner (CRP) of the firm about the Respondent. The Respondent, the CRP and Mr B discussed the best way to resolve the complaint, prior to a written complaint being made to the Scottish Legal Complaints Commission (SLCC) as required by the Commission's process. During these discussions the Respondent undertook to pay Mr B compensation in the sum of £1500. He undertook to pay the sum in three instalments to Mr B. Before the Respondent made payment, Mr B arranged payment of the £1500 himself and undertook to, and then made, a complaint to the SLCC.

6.16 The Respondent has not returned the sum of £600 to Mr B. The Respondent has not made payment of the sum of £600 to the firm.

7. Both parties made submissions with regard to the issue of professional misconduct. Having given careful consideration to the established facts and the submissions of both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:-

7.1 By advising and repeatedly advising Mr A that an appeal to the Nobile Officium had been lodged on his behalf, that an interim liberation hearing was scheduled for April and advising his professional colleagues of the same, he has breached the common law obligation of honesty and in doing so he has brought the profession into disrepute.

7.2 By advising and repeatedly advising Mr A that an appeal to the Nobile Officium had been lodged on his behalf, that an interim liberation hearing was scheduled for April when he had not done so, he acted dishonestly, in contravention of Practice Rule B1.2 of the Law Society of Scotland Practice Rules 2011.

7.3 By advising his professional colleagues, that an appeal to the Nobile Officium had been lodged on Mr A's behalf and, that an interim liberation hearing was scheduled for April 2017 when he had not done so and no hearing had been fixed, he misled his professional colleague in breach of Practice Rule B1.14.1 of the Law Society of Scotland Practice Rules 2011.

7.4 In providing to Mr B his personal bank details, receiving and retaining funds due to his then employers, and not returning the funds to Mr B or forwarding them to his then employers he acted in manner which is likely to bring the profession into disrepute.

7.5 In providing to Mr B, his personal bank details, receiving and retaining funds due to his then employers, and not returning the funds to Mr B or forwarding them to his then employers he acted in breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011.

7.6 In providing to Mr B, his personal bank details, receiving and retaining funds due to his then employers, and not returning the funds to Mr B or forwarding them to his then employers he acted in contravention of Practice Rule B6.12.1(c) of the Law Society of Scotland Practice Rules 2011.

8. Having heard further submissions from both parties, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 13 January 2020. The Tribunal having considered the Complaint dated 17 December 2019 at the instance of the Council of the Law Society of Scotland against Steven Lilly, formerly of 27 Garrallan Square, Kilwinning and presently of 128 Kilmeny Crescent, Wishaw; Find the Respondent guilty of professional misconduct in respect that (a) in relation to his acting for Mr A he breached the common law obligation of honesty and in doing so brought the profession into disrepute, acted dishonestly in breach of Practice Rule B1.2 of the Law Society of Scotland Practice Rules 2011 and misled his professional colleague in breach of Practice Rule B1.14.1 of the Law Society of Scotland Practice Rules 2011 and (b) in relation to his actings for Mr B he acted in a manner which is likely to bring the profession into disrepute, acted in breach of Practice Rule B1.2 of the Law Society of Scotland Practice Rules 2011, and in breach of Practice Rule B6.12.1(c) of the Law Society of Scotland Practice Rules 2011; 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; Allow Mr A and Mr B 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office.

(signed)

Beverley Atkinson

Vice Chair

9. 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 2 MARCH 2020.

IN THE NAME OF THE TRIBUNAL

[redacted]

Beverley Atkinson

Vice Chair

NOTE

At the hearing on 13 January 2020, the Fiscal explained that he had been in discussions with the Respondent since December 2019 and these discussions had resulted in him preparing an amended Complaint. He sought permission to withdraw the original Complaint and substitute it with the new amended Complaint. The Respondent having no objection to this motion, this was granted. Thereafter, the Fiscal lodged a Joint Minute which had been agreed between the parties and the Tribunal allowed this to be received. The Joint Minute agreed all of the averments of fact and averments of duty and the averments of misconduct insofar as they related to the issues in connection with Mr A. Given the extensive nature of the Joint Minute, no evidence required to be led and the hearing proceeded on the basis of submissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal acknowledged that although the Respondent was admitting professional misconduct in relation to Mr A, this remained a question for the Tribunal.

He directed the Tribunal's attention to the averments of fact in relation to Mr A in the course of which a question arose as to exactly when it became clear to the Respondent that there was no right of appeal to the Nobile Officium. The Tribunal granted the parties a short adjournment to discuss matters further. On reconvening, the Fiscal explained that it was not entirely clear from the files exactly when it became clear to the firm that there was no ground of appeal to the Nobile Officium. It was clearly apparent by 21 April 2017 by the time Mr A was advised that he had no right of appeal. It was not clear from the files exactly when all of the papers had been translated. The Fiscal accepted that the Respondent had not had an opportunity to consider all of the translated papers prior to his dismissal by the firm.

Ultimately, this was in his submission irrelevant. The misconduct in relation to Mr A was that the Respondent had advised his client that an application to the Nobile Officium had been lodged and an application for interim liberation made when neither had been done.

In the course of his submissions, it was identified that there was a typographical error in averment 4.6 and that the date in line 2 should read 21 February 2017 and not 2015. The Tribunal allowed this to be amended.

In relation to the issues relating to the client Mr B, the Fiscal explained that most of the Respondent's communications with Mr B were by text message. However, the agreement between him and Mr B that an interim payment towards fees was appropriate was made by email. The Respondent sent the bank details to the client using his mobile telephone. It transpired that the account details forwarded were for a personal account for the Respondent. Payment of the sum was made by the client in March 2017. The Respondent has retained these funds.

Prior to the Respondent's dismissal by his employers, Mr B made a complaint to the client relations partner. An agreement was reached between the Respondent and Mr B that the Respondent would pay compensation to Mr B. There was to be an instalment arrangement. Before that could progress any further, Mr B in fact made a complaint to the Scottish Legal Complaints Commission and so the Respondent and the client relations partner took the view that the agreement that had been reached no longer stood. In answer to a question from the Tribunal, the Fiscal explained that he was not aware of the specifics of Mr B's complaint but believed that in general it was a complaint about the Respondent's handling of the whole prosecution.

The Fiscal advised the Tribunal that he understood that it was the Respondent's position that the wrong bank details had been sent to the client in error. The Respondent apparently kept both the firm's account bank details and his personal account bank details in his mobile telephone. He confirmed that he was not in a position to dispute the Respondent's explanation for how the wrong account details were given but it was his submission that this conduct was reckless. Thereafter, the Respondent's intentional retention of funds, after his knowledge regarding the circumstances crystallised, amounted to dishonesty.

The Fiscal invited the Tribunal to find the Respondent guilty of misconduct. He referred the Tribunal to the test for professional misconduct as set out within Sharp v The Law Society of Scotland 1984 SLT 313.

In relation to Mr A, the Respondent's conduct was dishonest. He had told Mr A that an application to the Nobile Officium had been lodged and that an interim liberation hearing had been fixed when this was not the case. Additionally, he had briefed colleagues telling them the same. This was clear dishonest conduct in contravention of both the common law duty to act with honesty and integrity and in contravention of the Practice Rule B1.2.

With regard to Practice Rule B1.14, the Fiscal accepted that normally this involved a solicitor misleading a colleague on the other side of a transaction. However, the fact that in this case the person misled was

a colleague within the same firm did not prevent the application of this rule. Solicitors have the same obligations to all colleagues.

With regard to Mr B, the Fiscal referred the Tribunal to *Paterson & Ritchie: Law, Practice and Conduct for Solicitors* at paragraph 1.24. It was his position that the providing of the wrong bank details to Mr B in the manner it was done amounted to a reckless misleading of Mr B.

Thereafter, the retention of the funds became dishonesty. The funds should either have been paid on to the firm or repaid to the client. The Tribunal asked the Fiscal if this would still be the case if the Respondent no longer had the funds to repay. He responded that it was his submission that the Respondent was obliged to make repayment and he should have taken the appropriate steps to do so.

The Fiscal emphasised that whilst he was not in a position to dispute that the wrong details were passed to the client as a result of an honest mistake, it was his submission that this action was a reckless mistake and in itself could amount to misconduct. The issue of handling client funds appropriately was so important that this imposed a high duty of care upon the Respondent.

Additionally, the conduct in relation to Mr B also amounted to a breach of conduct Rule B1.12.1(c).

With regard to the Respondent's failure to repay the funds, the Fiscal asked the Tribunal to have regard to the decision of the Tribunal dated 4 September 2019 in Law Society-v-Daniel McGinn. In his submission, the case of the Respondent and Mr B was in a more serious category than the case of McGinn as in McGinn there was a contractual relationship between the Respondent and the Secondary Complainer whereas in the Respondent's case there was no such contractual relationship.

SUBMISSIONS FOR THE RESPONDENT

With regard to Mr A, the Respondent stated that he admitted the statement of facts and did not seek to deviate at all from them. He accepted having told Mr A that an application to the Nobile Officium had been lodged when in fact he had not done so. He accepted that he passed the same information to a colleague. He explained that he had taken some steps to progress the application to the Nobile Officium but had not taken it any further. He had spoken to an advocate for advice on how such an application required to be made and had contacted the court to get an idea of when dates for an application for interim liberation was likely to be heard. He was on holiday when the mess came to light at the firm. On his return to work he was suspended. He had not had access to the translated transcripts that clarified

that there was no ground of appeal. At no point was he definitively aware that there was no ground of appeal.

With regard to Mr B, he accepted that it was factually correct to say that communications between him and the client were predominantly by text. The firm was extremely busy and employees were encouraged to maintain contact by mobile telephone on a 24/7 basis. On this occasion, he was travelling back to the office from Addiewell Prison when he received a message from Mr B. He pulled over to the side of the road to deal with the message. He had kept various bank account details on post it notes within his telephone. He opened and forwarded the wrong post it note. By the time this interim payment was made, the Respondent had undertaken a significant amount of work. He had appeared with the client, tendered a plea of not guilty, had discussions with the prosecutor and reached the conclusion that it was appropriate to negotiate a plea. In these circumstances an interim payment of fees was appropriate. The wrong details being passed to the client was a genuine error on his part. The bank account details were simply copied and pasted into the message.

Over time, Mr B had become unhappy with the advice that he was being given in particular that he had no defence. The Respondent had had two or three discussions with the prosecutor to attempt to have the charges watered down. However, the charges were not watered down enough to make the Respondent confident in advising the client that he could avoid custody. Additionally, because of the working practices of the firm, the Respondent was late in attending for two or three appointments with Mr B. This was not uncommon within the firm because of the volume of work.

He accepted that factually he had not repaid the money. He was ultimately dismissed by his employer. His employer, at no stage, asked for him to pay on the money to them. In fact, his employer had advised him that they had offered to complete the client's case without charging a fee.

The Respondent explained that he had been contacted by the Secondary Complainer in August or September 2017. The Secondary Complainer had advised him that he was considering making a complaint to the SLCC. The Secondary Complainer was aggrieved at the sentence that had been imposed. He asked to meet with the Respondent to discuss if the matter could be resolved. The Respondent had considered this to be an appropriate step and agreed to meet with Mr B. During that meeting it was agreed that the money should be repaid and there was discussion of whether compensation was appropriate. The Respondent had agreed the figure of £1500. He had explained to Mr B that he was not in a good financial position and that the money would require to be paid in instalments. In fact, Mr

B lost patience and sent a text to the Respondent in an angry tone confirming that he had made a complaint to the SLCC and that the Respondent was not to get a chance to resolve the matter.

Thereafter, the Respondent took the view that it was inappropriate for him to repay the money to Mr B. Additionally, he did not have Mr B's details. Mr B had been a difficult man to deal with.

In answer to a question from the Tribunal, the Respondent confirmed that he first became aware of the funds being in his bank account at the first disciplinary hearing he attended with his employer regarding the issues with Mr A. That would have been at the beginning of May 2017. At that time the meeting was concentrating on Mr A's issues. The Respondent had taken the view that these matters were fatal to him. He had not focussed on the problem regarding Mr B.

He confirmed to the Tribunal that he had spoken to his former employer on a number of occasions and he had confirmed that he did not want the money paid on to him. His employer had agreed to do Mr B's case for no charge. In these circumstances, the Respondent took the view that the money should be repaid to Mr B.

The Respondent was asked by the Tribunal if it was the making of the complaint to the SLCC that had prevented him from repaying the sum to Mr B. He explained that was not the only reason. Mr B had been a difficult client from start to finish. The Respondent had felt that the meeting with Mr B was him offering the Respondent an olive branch. The Respondent had concluded that the issues involving Mr A meant he was always going to come to the Tribunal, but he believed that the issues with Mr B could be resolved. Unfortunately, Mr B changed his mind and the Respondent did not get a chance to resolve matters. Additionally, the Respondent was not well at that point. He was not thinking straight. He had thought that at some point there would be a formal direction to return the money to Mr B and as long as he did that then that would go some way to explaining his position. He accepted that it fell far short of best practice but in his submission did not amount to dishonesty.

He invited the Tribunal to distinguish the case of McGinn. In that case the solicitor carried out no work on behalf of the client and there was no attempt to return the funds. In this case, the only reason that Mr B was due to the money back was because the Respondent's former employer had agreed to conduct the case for no fee. There was no doubt in the Respondent's mind that, at the time the interim payment was made, there was a considerable amount of work already done.

In answer to a question from the Tribunal, the Respondent confirmed that he had not at any point sought advice from anyone including the Law Society with regard to what he should do with the money. He confirmed there was nothing physically preventing him from making an effort to repay the funds. He submitted that mentally he was all over the place and not thinking properly. He was trying to deal with having lost his job. The new job he found was only on a temporary basis. He had not retained Mr B's contact details. When Mr B had contacted the Respondent, he had done so at his new place of employment. The Respondent accepted that he could have gone into the bank and made arrangements for the money to be paid back to source but that had not occurred to him.

He invited the Tribunal to accept that there was a genuine willingness on his part to return the funds and that this was not a case of out and out dishonesty.

DECISION

The test of professional misconduct is that set out in the case of Sharp v The Law Society of Scotland 1984 SLT 313. In that case it was said:-

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

With regard to the issue involving Mr A, the Respondent had admitted in the Joint Minute and in his submissions to the Tribunal that he had acted dishonestly. In the full knowledge that he had not in fact lodged a petition to the Nobile Officium, he had told his client that a petition had been lodged, that there was to be a hearing on interim liberation and had then passed the same information on to a colleague for that to be transmitted onto the client. He had lied to his client and had then gone on to repeat the lies to a colleague for onward transmission to the client, thus embroiling his colleague in this course of conduct.

The duty of a solicitor to act honestly at all times is a fundamental duty. It is important that members of the public can have trust in their solicitor. By acting in the way that he did the Respondent has brought himself and the profession into disrepute.

This conduct clearly falls well below the standard to be expected of a competent and reputable solicitor and can only be considered as serious and reprehensible. In these circumstances the Respondent's conduct in relation to his actings for Mr A amount to professional misconduct.

With regard to the issues involving Mr B, the Tribunal accepted the Respondent's explanation that the wrong bank details were passed to the client as a result of a genuine error. The Tribunal however also accepted the Complainer's submissions that this mistake was a reckless one. Thereafter, the Respondent retained the funds in the knowledge that he had no entitlement to them. Other than the discussions with Mr B at the meeting in August/September 2017, the Respondent had taken no steps to repay the money.

The main dispute between the parties appeared to be whether or not the failure to repay the sum of money amounted to dishonesty. In this regard, the Tribunal was not satisfied that the circumstances met the test for dishonesty as set out in the case of Ivey-v-Genting Casinos (UK) Limited [2017] UKSC 67. However, the Respondent's conduct had clearly called into question his integrity. The Respondent had become aware from at the latest May 2017 that the sum of money had been paid into his account in error. Apart from having a meeting with Mr B in August or September 2017, he had done little to resolve the problem. If indeed he had been advised by his former employer that he did not want the money paid on to him, then at the very least, the money required to be repaid to Mr B. He had taken no steps to do so. The Tribunal was satisfied that the Respondent had breached the Common Law duty of integrity and Rules B1.2 and B6.12.1 of the Practice Rules 2011.

In all of these circumstances, the Tribunal considered that the Respondent's standard of conduct fell below that to be expected of a competent and reputable solicitor to a degree to which the Tribunal considered any competent and reputable solicitor would consider as serious and reprehensible. Accordingly, the Tribunal found the Respondent guilty of professional misconduct in relation to Mr B, under deletion to the reference of dishonesty.

The Tribunal invited submissions from both parties in relation to disposal.

The Fiscal advised the Tribunal that the Respondent had a finding of professional misconduct dated 11 March 2016.

The Respondent invited the Tribunal to take into account that the conduct in relation to both clients occurred during the same time period of approximately four or five months. At that stage, the Respondent had been aware that there was something not right with him. He was still dealing with personal issues

that had occurred some 18 months before this conduct. He had not taken time off but had continued to go to work. With hindsight, he observed that the way he was approaching things had been "almost insane". He had thought however that if he kept on going, he could work through it. At the time he was in charge of running the Airdrie office.

With regard to Mr A, he had been aware that he had dug a hole for himself but at the time he thought that it would all work out in the end. Later he realised that he was not acting rationally. As a consequence, he went to see his GP who concluded that he had been suffering from anxiety and depression for approximately five or six years.

He explained that he had been in receipt of medication and had undergone counselling. Although he became upset during his submissions, he wanted to reassure the Tribunal that he was now better. He was no longer in receipt of medication.

The case involving Mr A had "snowballed" and he could not bring himself to do anything about it. There was nothing he could add to what he had already said about the case involving Mr B.

He explained that the previous finding of professional misconduct related to a time when he had set up his own business. It had been a "shambles" from start to finish and he could not afford an accountant to sort things out. Bruce McCormack had employed him and had funded an accountant to sort things out for him. The case did not involve any dishonesty whatsoever.

He explained that he had not renewed his practising certificate and was not working in the profession currently. He was employed as a sales executive for a home improvement company.

He submitted that he had complied fully with the disciplinary process, responding to all correspondence from the Law Society. This, he said, demonstrated that he had learned his lesson from his first conviction for professional misconduct because that had principally related to his failure to cooperate with the Law Society.

He invited the Tribunal to deal with him in such a way that would not prevent him from reapplying for his practising certificate.

SANCTION

The Tribunal considered this to be a case of serious professional misconduct.

The conduct involving Mr A was a course of dishonest conduct which had spanned, at best, a period of three months. It had involved the Respondent lying to his client and to his colleague.

The conduct involving Mr B was a lengthy course of conduct calling into question the Respondent's personal integrity.

The Tribunal had regard to the fact that Mr A did not lose any right of recourse to the court and that the sum involved re Mr B was small. However, it concluded that these factors did not significantly detract from the seriousness of the misconduct.

Both courses of conduct are in their own right damaging to the reputation of the profession. The Tribunal took particular account of what the Respondent had said about his personal circumstances at the time and their effect upon his health. The Tribunal did not have the benefit of a medical report confirming the Respondent's current state of health and prognosis.

The Respondent appeared genuinely remorseful and had cooperated fully with the disciplinary process, including entering into an extensive Joint Minute. Nonetheless, the Tribunal was extremely concerned about the protection of the public and the reputation of the profession.

The Respondent had a previous finding of professional misconduct. Although the findings in that case were not directly analogous to the matters before the Tribunal in this case, they contained a similar theme of the Respondent allowing problems and difficulties to drag on and not dealing with them properly. In that case, the Tribunal had considered that the Respondent was not a risk to the public and had taken into account that the Respondent was working for a supportive employer doing a restricted category of work, namely criminal legal aid work. The conduct in the present case had occurred whilst the Respondent was employed by that employer carrying out that type of work.

The Tribunal took the view that the present Complaint suggested that the Respondent was a danger to the public and a risk to the reputation of the profession. The Tribunal concluded that neither a restriction of his practising certificate nor a suspension would be sufficient to deal with these concerns. In all of

these circumstances, the Tribunal determined that the only suitable disposal was to strike the name of the Respondent from the Roll of Solicitors in Scotland.

The Tribunal invited submissions on expenses and publicity. The Complainers moved for an award of expenses and had no comment to make with regard to publicity. The Respondent had no comment to make in regard to either. Accordingly, the Tribunal made an award of expenses in favour of the Complainers. With regard to publicity, the Tribunal considered that these findings contained sensitive and personal information pertaining to others. As their identities are not relevant to the central finding of professional misconduct, the Tribunal concluded that publicity should include their details.

Beverley Atkinson

Vice Chair