

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

FINDINGS

in Complaints

by

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

against

**JAMES McRAE, Solicitor, 2
Bellevue Place, Edinburgh**

1. A Complaint dated 25 February 2009 (Complaint 09/10) was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, James McRae, Solicitor, 2 Bellevue Place, Edinburgh (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 27 May 2009 and notice thereof was duly served on the Respondent. The Respondent lodged a further letter and Productions.
4. The hearing scheduled for 27 May 2009 was converted to a procedural hearing as there were other Complaints relating to the Respondent which were due to come to the Tribunal.

5. A Complaint dated 25 June 2009 (Complaint number 09/22), a Complaint dated 26 June 2009 (Complaint number 09/23), a Complaint dated 25 June 2009 (Complaint number 09/24) and a Complaint dated 25 June 2009 (Complaint number 09/25) were lodged with the Tribunal requesting that the Respondent be required to answer the allegations contained in the statement of facts which accompanied the Complaints and that the Tribunal should issue such order in the matter as it thinks right.
6. The Tribunal caused a copy of these Complaints as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
7. In terms of its Rules, the Tribunal appointed all five Complaints to be set down for a procedural hearing on 20 August 2009 and notice thereof was duly served upon the Respondent.
8. When the five Complaints called for a procedural hearing on 20 August 2009 the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. It was clarified that both parties wished the hearing to proceed as a substantive hearing.
9. A Joint Minute was lodged admitting the averments of facts, averments of duty and averments of professional misconduct in all five Complaints subject to some amendments to Complaint 09/10.
10. The Tribunal agreed to deal with the Complaints and found the following facts established
 - 10.1 The Respondent was born on 22 May 1942. He was admitted as a Solicitor on 5 February 1993 and enrolled on 8 February 1993. He formerly carried on business as McRae WS at 183 High Street, Burntisland, Fife. Latterly he was employed as a consultant by Messrs. Thorntons, WS, Dundee. He resides at

2 Bellevue Place, Edinburgh. It is understood that the Respondent practices from that address dealing with Court Martial cases and related work.

Thorntons LLP

- 10.2 The Respondent acted for Mr A in relation to a claim for damages for medical negligence. The Edinburgh agents instructed by the Respondent in connection with the case were Balfour & Manson. On 1 September 2006 the Respondent gave up practice on his own account and from then until 31 July 2007 he was employed as a consultant by Thorntons LLP. After the Respondent became an employee of Thorntons that firm assumed agency in relation to Mr. A's case. Thereafter the Edinburgh office of Thorntons dealt with the work in respect of which Balfour & Manson had previously been instructed.
- 10.3 After the Respondent had left their employment towards the end of 2007 Thorntons settled Mr. A's claim. An agreed sum of damages was to be paid to Mr. A. Thorntons required to produce an account to Mr. A. Various payments to account of both fees and outlays had been made to the Respondent by Mr. A during the lifetime of the case and Thorntons required a breakdown of these as well as an explanation as to how these funds had been applied.
- 10.4 By letter of 15 February 2008 the Complainers gave formal intimation of the complaint to the Respondent. They required him to respond in writing to the complaint, and to produce his business files relative to the case within twenty one days of 15 February 2008. The Respondent did not reply. On 13 March 2008 the Complainers served upon the Respondent a notice under section 42C of The Solicitors (Scotland) Act 1980. The

notice required the Respondent to produce to the Complainers all files papers and accounts relating to Mr. A's case within twenty one days of 15 February 2008. The first part of a notice under section 15 (2)(i)(i) was also served by the Complainers on the Respondent on 13 March 2008 in respect of the Respondent's failure to respond to the complaint. On 9 April the Complainers served upon the Respondent the second part of the notice requiring the Respondent to give six weeks notice to the Complainers of his intention to apply for a practising Certificate. The Respondent did not reply to any of the notices, and in particular did not obtemper the notice given under section 42C condescended upon. It is accepted that delivery of files was beyond the control of the Respondent.

- 10.5 Also on 9 April 2008 the Complainers intimated a further complaint to the Respondent, in connection with his failure to answer the correspondence and statutory notices condescended upon in relation to Mr. A's case. The Respondent did not reply.

Mr B

- 10.6 In March 2005 Mr. B instructed the Respondent to represent him in a matrimonial dispute. At that time the Respondent was in practice on his own account in Burntisland. Mr B set up a regular payment arrangement to deal with the Respondent's fees. Mr B made payments totalling £2473.75 as shown in the following table:-

Date	Amount £		Date	Amount £		Date	Amount £
18 04 05	150		01 02 06	58.75		01 11 06	117.50
18 04 05	150		01 03 06	58.75		01 12 06	117.50
14 06 05	50		03 04 06	58.75		02 01 07	117.50
06 07 05	75		02 05 06	58.75		01 02 07	117.50
08 08 05	50		01 06 06	58.75		01 03 07	117.50
31 08 05	50		03 07 06	58.75		02 04 07	117.50
03 10 05	70		01 08 06	58.75		01 05 07	117.50
07 11 05	50		01 09 06	58.75		01 06 07	117.50
02 12 05	50		02 10 06	58.75		01 06 07	117.50
03 01 06	75					02 07 07	117.50

10.7 On 1st September 2006 the Respondent became an employee of the firm of Thorntons and continued in that capacity to act on behalf of Mr B. Notwithstanding that change of his status and of the basis upon which he was instructed, the Respondent continued to receive the payments above condescended upon. The Respondent did not account to Thorntons for these payments. The Respondent ceased to be an employee of Thorntons on 31st July 2007.

10.8 Mr B received a bill from Thorntons for services provided by them. As the account did not take account of the sums paid by him to the Respondent, Mr. B invoked the assistance of the Complainers. On the foregoing becoming apparent to them, the Complainers decided to take the matter up with the Respondent.

- 10.9 On 26th March 2008, the Complainers wrote to Mr McRae advising that a complaint had been intimated to them by Mr. B. This letter did not require a response from the Respondent.
- 10.10 On 14th April 2008, the Complainers wrote to the Respondent with formal intimation of the complaint. They required the Respondent to provide them with a response within twenty one days of that date. The Respondent did not reply.
- 10.11 On 6th May 2008, the Complainers wrote to the Respondent and served upon him the first part of a notice under and in terms of Section 15 (2) of the Solicitors (Scotland) Act 1980. The Respondent was thus asked to provide a response to the complaint, and an explanation for the delay in replying to the Complainers within fourteen days of that date. On the same date the Complainers served upon the Respondent a notice under Section 42C of the 1980 Act. This required the Respondent to forward to the Complainers his file and other papers in relation to Mr. B within twenty one days of that date. The Respondent did not reply.
- 10.12 On 29th May 2008 the Complainers served upon the Respondent the second part of a notice under and in terms of Section 15 of the Act of 1980. In terms thereof the Respondent was required to give six weeks' notice of his intention to make application for a practising certificate for the practice year commencing on 1 November 2008. The Respondent did not reply.
- 10.13 Subsequently (on 11th November 2008) the Complainers determined that the Respondent had provided an inadequate professional service to Mr. B. They directed that all sums paid by Mr. B to the Respondent, amounting in total to £2473.75, should be refunded by the Respondent to Mr. B. They further

directed that the Respondent should pay compensation to Mr. B in the sum of £500, all in terms of Section 42A of the Solicitors (Scotland) Act 1980. On 27th November 2008 the Complainers intimated the determination and direction to the Respondent. They required him to advise within twenty one days of that date of the steps which had been taken by the Respondent to comply with the determination and direction. The Respondent did not reply. By letter dated 20th January 2009 the Complainers called upon the Respondent in terms of Section 42B of the 1980 Act to provide confirmation of the steps which he had taken to implement the direction and the determination. The Respondent did not reply. He has not appealed the direction and determination. He has not made payment.

Balfour & Manson LLP (1)

- 10.14 Balfour & Manson acted as agents for the Respondent in connection with a reparation claim which Mr C wished to pursue against The Advocate General. At settlement of the case there was, as frequently happens, a shortfall between party and party recovery and the agent and client account in respect of the case. The Respondent retained from the principal sum an amount of £340 in respect of a fee payable to Mr James Christie FRCS who had acted as a witness in the case and who had prepared a report. As the report had been instructed by Balfour & Manson his account was rendered to them rather than the Respondent. Despite repeated requests by Balfour & Manson the Respondent did not settle the account. Balfour & Manson were obliged to make payment from their own funds.
- 10.15 There was an additional outlay in the case which related to a fee charged by Mr D who also prepared a report in relation to

the case. The Respondent was written to by Balfour & Manson about this but again did not respond.

- 10.16 Balfour & Manson wrote to the Respondent on 4th April 2007, 11th July 2007 and on 1st October 2007. Having had no response from the Respondent, Balfour & Manson invoked the assistance of the Complainers.
- 10.17 On 15th April 2008 the Complainers wrote to the Respondent suggesting that he contact Balfour & Manson and to attempt to resolve the outstanding issues, and that he advise the Complainers within fourteen days of progress, failing which the matter would proceed to a formal investigation. The Respondent did not reply
- 10.18 On 28th April 2008 the Complainers wrote to the Respondent inviting him to reply within a further seven days. The Respondent did not reply.
- 10.19 On 9th June 2008 the Complainers wrote to the Respondent informing that they were proceeding with a formal investigation. The Respondent was not required to reply to this letter.
- 10.20 On 21st June 2008 the Respondent sent an email to the Complainers in which he stated that he was abroad, and that he was “signed off by his GP due to stress”. He said that he would endeavour to respond to outstanding correspondence on his return to the UK within the following week. Nothing further was heard from the Respondent. In the meantime the Complainers related information from Balfour & Manson.
- 10.21 On 10th September 2008 the Complainers wrote to the Respondent. They sought from him a written response to the

complaint and production of business files relating to the case within 21 days of 10th September 2008. The Respondent did not reply.

10.22 On 8th October 2008 the Complainers served upon the Respondent the first part of a notice under Section 15(2) of The Solicitors (Scotland) Act 1980. A response to the complaint together with an explanation for the delay was required within 14 days. The Respondent did not reply.

10.23 On 28th October 2008 the Complainers served upon the Respondent the second part of a notice under Section 15(2) of The Solicitors (Scotland) Act 1980. The Respondent did not reply.

Complaint by the Council of the Law Society of Scotland *ex proprio motu*.

10.24 Also on 28th October 2008 the Complainers resolved to proceed with a complaint *ex proprio motu* against the Respondent in respect of his failure to answer correspondence and to obtemper statutory notices, all as above condescended upon.

Balfour & Manson LLP (2)

10.25 Balfour & Manson were instructed by the Respondent to investigate a potential claim for damages by Mr E who was the Respondent's client. Counsel was instructed to advise on Mr E's prospects of success. A consultation took place on 13th June 2006. Counsel advised that the prospects of success were poor. Matters proceeded no further.

- 10.26 Prior to the consultation the Respondent had requested from Balfour & Manson an estimate of counsel's fees so that he could request an increase in authorised expenditure from the Scottish Legal Aid Board as Mr E was being advised under the Legal Advice & Assistance Scheme. The consultation was only arranged once the Respondent had confirmed that funding was in place.
- 10.27 Balfour & Manson's Legal Advice & Assistance account was submitted to the Respondent on 24th November 2006. The account totalled £1,004.95 including counsel fees of £763.75. The Respondent did not reply. He did not pay the account.
- 10.28 Balfour & Manson wrote letters by way of reminders to the Respondent on 12th February, 30th March, 10th July, 27th August, 31st August and 12th December, all 2007, 25th January 2008 (by recorded delivery post on that occasion) and 25th February 2008. On 27th February 2008 the Respondent telephoned Balfour & Manson. He said that he was now working at Thorntons W.S. from where he was now dealing with the case, and confirmed that he would respond to the outstanding correspondence. He did not do so. He did not respond to any of the other letters condescended upon. As far as Balfour & Manson were able to ascertain, the Respondent did not submit an account in relation to this matter to the Scottish Legal Aid Board. Balfour & Manson's account remains unpaid.
- 10.29 By letter dated 15th May 2008 Balfour & Manson invoked the assistance of the Complainers. The Complainers wrote to the Respondent on 27th May 2008. They asked for a response within fourteen days of that date. The Respondent did not reply.

- 10.30 On 17th June 2008 the Complainers wrote again to the Respondent. On this occasion they required a response from the Respondent within seven days of that date. On 21st June 2008 the Respondent contacted the Complainers by email. He advised that he was not in the UK at that time and stated that he had been signed off by his GP "due to the extreme stress of recent events". He stated that he would endeavour to respond on his return "on Tuesday next".
- 10.31 On 23rd June 2008 Balfour & Manson wrote to the Complainers and enclosed with that letter copies of all of their correspondence which the Respondent had failed to answer. On 27th June 2008 the Complainers copied these documents to the Respondent by email. The Complainers in their email required the Respondent to furnish them with a response by no later than 11th July 2008. The Respondent did not reply.
- 10.32 On 19 August 2008 the Complainers attempted service by ordinary and by recorded delivery post on the Respondent of the first part of a notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 and of a notice under section 42C of the said Act. The letters and notices were returned, marked by the postal authorities as "not called for".
- 10.33 On 3rd September 2008 the Complainers learned that the Respondent had acquired an address in Edinburgh. The letters and notices above condescended upon were forwarded to that address on that date. The section 15 notice required the Respondent to furnish to the Complainers within fourteen days of that date a response to the complaint together with an explanation of the earlier failure to do so. The section 42C notice required that the Respondent deliver to the Complainers within twenty one days of the date of the notice

all papers in his possession relating to Mr. E's case. The Respondent did not reply.

- 10.34 On 10th September 2008 the Complainers served the second part of a notice under section 15 of the 1980 Act on the Respondent. Also on 10 September 2008 the Complainers intimated a fresh complaint to the Respondent concerning his failure to reply to the correspondence from the Complainers and the statutory notices condescended upon. The Respondent did not reply.

Mr. F

- 10.35 On 10th February 2005 Mr. F instructed the Respondent to act on his behalf in respect of his matrimonial separation.
- 10.36 On 15th February 2005 the Respondent sent a mandate to Mr. F's previous agents Stirling & Gilmour requesting their file. The Respondent also sent a terms of business letter to Mr. F asking for a payment of £100 and a standing order of £50 per month in respect of fees.
- 10.37 On 16th March 2005 Messrs Stirling & Mair delivered their file to the Respondent.
- 10.38 On 25th April 2005 the Respondent rendered a fee note for his professional services to Mr. F in the sum of £50. The period to which these services related and the nature of the services were not detailed in the Respondent's fee note.
- 10.39 On 31st August 2006 the Respondent wrote to Mr. F and advised him that he was still awaiting a response from Mr. F's wife's solicitors and advised that he would keep him informed.

- 10.40 On 29th November 2007 Mr. F wrote to the Respondent advising that he had been informed by Thorntons Solicitors that the value of the work carried out by him whilst in their employment amounted to £360.00. Mr. F explained that he had paid over £1700 to the Respondent. Mr. F requested an invoice from the Respondent and return of any surplus funds.
- 10.41 On 14th January 2008 Mr. F invoked the assistance of the Complainers in respect that he had not received any response from the Respondent.
- 10.42 On 13th March 2008 the Complainers intimated a complaint against the Respondent and his firm.
- 10.43 On 14th April 2008 the Complainers wrote by recorded delivery post to the Respondent and served upon him a notice in terms of the Solicitors (Scotland) Act 1980 Section 42C formally calling upon him to produce all books, accounts, deeds, securities and other documents relating to Mr. F. The letter advised the Respondent that failure to comply with that request might constitute professional misconduct.
- 10.44 On 26th April 2008 Mr. F wrote to the Complainers attaching copies of his bank accounts showing payments to the Respondent in the sum of £1700. He also produced the fee note hereinbefore condescended upon as well as two further fee notes dated respectively May and June 2005 both for £50 and both detailed as professional services. As with the previous fee note, the period and nature of the service supplied was not detailed. The Respondent did not retain copies of these fee notes on his file

- 10.45 On 7th May 2008 the Complainers wrote to the Respondent by recorded delivery post and served upon him a notice under Section 15(2) of the 1980 Act requiring him to provide six weeks notice in the event that he intended to apply for a practising certificate for the immediately following practice year.
- 10.46 On 4th June 2008 the Complainers, having become aware of the Respondent's change of address, re-intimated all of the foregoing correspondence and statutory notices to him. None of the items consigned upon sent by recorded delivery post had been returned to the Complainers; the Complainers believe and aver that they were received by the Respondent.
- 10.47 On 21 June 2008 the Respondent replied to the Complainers by Blackberry email message to advise that he was not in the UK and had been advised by his doctor to desist from work because of stress.
- 10.48 On 30th June 2008 the Complainers wrote to the Respondent noting that there had been no reply to their letter of 4th June 2008 and enclosing notices in terms of Sections 42C and 15 of the Solicitors (Scotland) Act 1980 requiring delivery of papers and requiring that the Respondent provide six weeks notice' of any intention to apply for a practising certificate.
- 10.49 On 28 July the Complainers wrote to the Respondent by recorded delivery post and advised that in the event of further failure to respond to the complaint a further complaint of professional misconduct would be initiated. The Complainers required a response from the Respondent by 11th August 2008. This letter also was emailed to the Respondent. The Respondent did not reply.

- 10.50 On 15th August 2008 the Complainers wrote by recorded delivery post to the Respondent intimating an additional complaint of failure to respond to correspondence and statutory notices. The Respondent did not reply.
- 10.51 On 17th March 2009 the Complainers determined in terms of Section 42A of the Solicitors (Scotland) Act 1980 as amended that the Respondent had provided his client Mr F with an inadequate professional service. They directed that the Respondent refund to Mr F the sum of £1,850.00, and that he further pay Mr F the sum of £1,800.00 in compensation. The Complainers intimated the determination and direction condescended upon to the Respondent by letter dated 8th April 2009. The Respondent has not advised the Complainers of any steps taken by him to implement the direction and determination. He has not appealed the direction and determination. He has not made payment of the sums which he was required to pay in terms of the direction and determination.

Mr G

- 10.52 Mr G consulted the Respondent at Faslane Legal Clinic on 18th May 2005. He was about to separate from his wife and sought advice in relation to separation and divorce. The Respondent was duly instructed.
- 10.53 In or about September 2006 the Respondent transferred Mr. G;s file to Messrs Thorntons by whom he was by that time employed. At or about this time the Respondent informed Mr G that he would remit the funds received from Mr G to Thorntons. The Respondent did not do so. On 11th December

2006 Thorntons took over the agency and subsequently brought matters to a conclusion.

- 10.54 Mr G made monthly payments to account of the Respondent's fees of £50 by standing order from his bank commencing on 11th July 2005 and ending on 11th February 2008. In this period payments totalling £1,600 were paid to the Respondent.
- 10.55 Mr G's affairs were resolved by the signing of a Separation Agreement dated 1st and 8th February and registered in the Books of Council and Session on 13th February 2008.
- 10.56 On 22nd February 2008 Thorntons issued a Fee Note to Mr G No. 763690 in the sum of £1,418.53. It was settled by Mr G.
- 10.57 On 1st March 2008 Mr G wrote to the Respondent requesting an accounting for the funds paid to them. The Respondent did not reply.
- 10.58 Mr. G invoked the assistance of the Complainers. The Complainers intimated the complaint to the Respondent who failed to comply. In respect of this complaint a notice in terms of section 15 of the Solicitors (Scotland) Act 1980 was served on the Respondent on 13th June 2008.
- 10.59 The Respondent did not reply.

Suspension of Practising Certificate

- 10.60 On 1st May 2008, the Complainers, in the exercise of the Powers conferred upon them by Section 40(1) of the Solicitors (Scotland) Act 1980, withdrew the practising

certificate held by the Respondent, and consequently suspended the Respondent from practice as a solicitor.

Armed Forces Criminal Legal Aid Authority

- 10.61 On 8th October 2008, the Armed Forces Legal Aid Authority, who are the authority responsible for the grant and management of legal aid for the representation of Armed Forces Personnel prosecuted through the service criminal justice system, having become aware of the suspension condoned upon, withdrew legal aid for all matters in respect of which the Respondent was then instructed under the Armed Forces Legal Aid scheme, and made a complaint to the present Complainers about the actings of the Respondent.
- 10.62 Between about 2nd May 2008 and 8th October 2008 the Respondent continued to practice as a solicitor notwithstanding the suspension above condoned upon and represented to various persons including members of the staff of the Armed Forces Criminal Legal Aid Authority, members of the Service Police and members of HM Forces that he was entitled to practice as a solicitor. During that period, the Respondent accepted instructions to provide advice and assistance at 21 interviews after caution conducted by Service Police in Scotland and in England. He provided advice and representation at 12 custody reviews for clients held in detention in Scotland and England. He retained instructions in five cases and accepted new instructions in eighteen cases. He advised the clients, prepared matters for trial, and continued to represent clients in court in ten preliminary or pre-trial hearings and eleven Courts Martial, including one abortive Court Martial where the accused failed to attend. He briefed other advocates to attend some hearings or trials on his behalf,

and provided legal advice, assistance or representation to forty four different clients in respect of which services he received public funding as more particularly set forth in the immediately following paragraph.

- 10.63 Between 2nd May 2008 and 8th October 2008 the Respondent submitted claims for payment to the Armed Forces Legal Aid Authority in respect of clients Mr H, Mr I, Mr J, Mr K, Mr L, Mr M, Mr N (2), Mr O (2), Mr P, Mr Q, Mr R, Mr S, Mr T, Mr U, Mr V, Mr W, Mr X, Mr Y, Mr Z, Mr AA, Mr AB, Mr AC, Mr AD, Mr AE, Mr AF, Mr AG, Mr AH, Mr AI, Mr AJ, Mr AK, Mr AL and Mr AM as the result of which the Armed Forces Criminal Legal Aid Authority made payments to the Respondent totaling £15,899.15 and in respect of Mr N, Mr AN, Mr M, Mr AO, Mr AP, Mr AQ, Mr AR, Mr AS, Mr AF and Mr S totaling £3091.02 which were withheld by the Armed Forces Criminal Legal Aid Authority, despite the Respondents knowledge of the suspension above condescended upon.

Mrs AT (Mrs AU)

- 10.64 The Respondent was instructed in connection with the administration of the estate of the late Mrs. AU. He commenced administration of the estate in January 2004. Mrs. Mrs AT was both a beneficiary and executor. Mrs. AT complained to the Respondent about certain aspects of the service provided to her by the Respondent in connection with the administration of the estate. By the middle of November 2008 another firm had taken over the administration of the estate. It thereafter became apparent that the Respondent had debited fees to the Executry estate in early 2005 of £2718.59 plus vat in conformity with a certificate from the auditor of the Sheriff Court at Lanark.

Separately, the Respondent had taken fees on 30th October 2004 and 31st August 2005 in the total sum of £1326.78 without the authority of the executrix and without any fee note being rendered.

- 10.65 On 11th July 2008 the Complainers wrote to the Respondent intimating the complaint to him and require him to respond to the complaint and produce his files in relation to the matter within 21 days of that date.
- 10.66 On 7th August 2009 the Complainers, by now aware that the Respondent might have moved house, issued copies of the letter of 11th July to the Respondent at this current address in Edinburgh. The Respondent was again required to reply within 21 days. He did not do so.
- 10.67 On 4th September 2008 the Complainers served a notice under Section 15(2) of the Solicitors (Scotland) Act 1980 on the Respondent, They required a response to the complaint and an explanation of the earlier failure to reply, within a period of 14 days of that date. Also on 4th September 2008 the Complainers served on the Respondent a notice under Section 42C of the 1980 Act requiring him to produce his file. The Respondent did not reply.
- 10.68 On 10th February 2009 the Complainers determined that the Respondent had provided and inadequate professional service in respect of the Executry. They determined in terms of Section 42A(2)(a)(ii) and (d) of the Act that the Respondent should refund to the Executry the amount of £1326.78 taken by way of fees, and that in addition the Respondent should pay to the Executry the sum of £600 as compensation. The direction and determination were intimated to the Respondent on 25th February 2009. The Respondent did not reply. He has

not paid the compensation. He did not appeal the direction and determination.

11. Having considered submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

11.1 his failure repeatedly to answer professional correspondence from the Law Society;

11.2 his failure to obtemper statutory notices;

11.3 his failure to account for the funds received by him from Mr. B;

11.4 his failure repeatedly to answer correspondence from Balfour & Manson;

11.5 his failure to secure settlement of agency fees and outlays;

11.6 his failure to provide an accounting in relation to the funds paid to him by Mr. F and Mr. G.

11.7 his between about 2nd May 2008 and 8th October 2008, in the knowledge that his practising certificate had been withdrawn and that he was suspended from practice:-

(a) Continuing to practice as a solicitor and hold himself out to various persons as being entitled to practice as a solicitor and

(b) Submitting claims to the Armed Forces Criminal Legal Aid Authority for payment of fees under their legal aid scheme and receiving payment of fees for legal aid services

provided during that period notwithstanding the suspension condescended upon.

11.8 his taking fees from Mrs. AU Executry without the consent of the executor.

11.9 his taking fees from the Executry condescended upon on two occasions without a fee note being rendered to the executor.

12. The Tribunal also find that the Respondent has failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Mr B, Mr F and the estate of the late Mrs AU within the respective periods specified namely within twenty one days of 27 November 2008 and 20 January 2009, 8 April 2009 and 25 February 2009; and the Tribunal resolved to make Orders in terms of Section 53C of the Solicitors (Scotland) Act 1980.
13. Having noted a previous finding of misconduct against the Respondent and having heard the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 20 August 2009. The Tribunal having considered the Complaints dated 25 February 2009 (Complaint 09/10), 25 June 2009 (Complaint 09/22), 26 June 2009 (Complaint 09/23), 25 June 2009 (Complaint 09/24) and 25 June 2009 (Complaint 09/25) at the instance of the Council of the Law Society of Scotland against James McRae, Solicitor, 2 Bellevue Place, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his failure repeatedly to answer professional correspondence from the Law Society, his failure to obtemper statutory notices, his failure to account for funds received by him from a client, his failure repeatedly to answer correspondence from Balfour & Manson, his failure to secure settlement of agency fees and outlays, his failure to provide an accounting in relation to the funds paid to him by two

clients, his between 2 May 2008 and 8 October 2008 in the knowledge that his practising certificate had been withdrawn and that he was suspended from practice, continuing to practice as a solicitor and hold himself out to various persons as being entitled to practice as a solicitor and his submitting claims to the Armed Forces Criminal Legal Aid Authority for payment of fees under the Legal Aid Scheme and his receiving payments of fees for Legal Aid services provided during that period notwithstanding the suspension, his taking fees from a client's executry without the consent of the executor and his taking fees from the said executry upon two occasions without a fee note being rendered to the executor; Find that the Respondent failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the respective periods specified; Direct that Orders be issued under Section 53C of the said Act; Suspend the Respondent from practice for a period of ten years; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00 and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Kirsteen Keyden

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

The five Complaints had originally been set down for a procedural hearing on this date. It was clarified by both parties when the Complaints called, that a Joint Minute had been agreed and they wished the Complaints to be disposed of on this date. This was accordingly agreed. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in all five Complaints subject to certain amendments to Complaint 09/10.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch clarified that Articles 2.3 to 2.10 of Complaint 09/10 were to be deleted and in respect of Article 2.11, Mr Lynch confirmed that the Law Society accepted that the delivery of the files was beyond the control of the Respondent. Mr Lynch lodged previous findings against the Respondent dated 24 April 2008 which were admitted by the Respondent. Mr Lynch clarified that the Respondent's practising certificate was suspended by the Guarantee Fund Committee on 1 May 2008. The Respondent had thought that the suspension was to be withdrawn on the basis of information provided by him but this did not happen and the Respondent did not renew his practising certificate. Mr Lynch stated that he understood that the Respondent had granted a Trust Deed for creditors.

In connection with Complaint 09/10, Mr Lynch clarified that he was accepting the not guilty plea in respect of the first charge of professional misconduct. He stated that the other Complaints really spoke for themselves. Complaint 09/24 related to the Armed Forces and the Respondent had continued to hold himself out as a solicitor even though he knew he had been suspended.

SUBMISSIONS FOR THE RESPONDENT

The Respondent clarified that he had tried in a recent letter to address the issues in all the Complaints. He explained that he had been upset by his last appearance in April 2008 which had led to him burying his head in the sand. He apologised for not responding to correspondence from the Law Society. He explained that when he

found himself in the position that he was not going to practice again it was difficult for him to focus and he switched off. He stated that it was not defiance, it was just that he was not coping. In connection with Complaint 09/25, the Respondent referred the Tribunal to annex A to his letter of 7 August 2009. He explained that he did not have experience in executries and he had no intention of over charging. He clarified that there was no issue with regard to the amount of the fees. Annex B related to Complaints 09/23 and 09/22. He explained that he took those cases with him when he moved firms. He indicated that he had hoped all matters relating to these cases would be dealt with by his new firm but unfortunately some monies in respect of these cases continued to be deposited into the account for his old firm. He accepted that it should have been sorted out by him. He explained that he was away so much it was impossible to make things work. The Respondent referred to Annex C in respect of Complaint 09/24. He explained that he was in correspondence with the Armed Forces Legal Aid Authority and they said that he should not practice after he had been restricted. He explained that a lot of the Court Martial work was not in Scotland. The Respondent stated that he did not think it was relevant that he had been suspended but he accepted that technically he should not have practised at this time. He emphasised that he did all the work competently and all the money was properly earned. He confirmed that the work was done while he was suspended. He explained that he had started proceedings in the Court of Session to get the suspension uplifted but it was too late. He indicated that he would like in the future to continue with military work but there were now other solicitors getting involved in it and he was not sure if he would be able to face it again. He indicated that he was a respected practitioner and did a good job. He confirmed in response to a question from the Tribunal, that it was a statutory requirement to be a solicitor to undertake Courts Martial work. He confirmed that he signed a Trust Deed in May 2009. The Respondent also confirmed that in terms of the Armed Forces Legal Aid Scheme, you must be a solicitor to be entitled to practice under that scheme.

DECISION

The Tribunal was extremely concerned that the Respondent, knowing that he had already been restricted and also being fully aware that he had then been suspended carried on working when he knew that it was a requirement that such work be

undertaken by a solicitor. The Tribunal considered that this was a wilful disregard of the terms of Section 23 of the Solicitors (Scotland) Act 1980. In doing so the Respondent also misled the Armed Forces Legal Aid Authority, the Service Police and members of HM Forces. The Tribunal considers that such behaviour is regrettably disgraceful and dishonourable and is likely to bring the profession into disrepute. There was no medical evidence available to the Tribunal to suggest that the Respondent was suffering from ill health or did not know what he was doing. The Tribunal was also concerned by the number of matters contained in the five Complaints before the Tribunal and also the fact that the Respondent had previously appeared before the Tribunal for analogous matters in respect of failure to respond to the Law Society. The Tribunal stopped short of striking the Respondent's name from the Roll as it was noted that the Respondent had co-operated fully with the Law Society and entered into pleas in respect of the Complaints. In the whole circumstances the Tribunal considered that a suspension from practice for a period of ten years would be an appropriate penalty. The Tribunal noted the Respondent's failure to comply with the inadequate professional service determinations made by the Law Society and the Tribunal accordingly considered it appropriate to make Orders under Section 53C of the Solicitors (Scotland) Act 1980 in respect of Complaints 09/22, 09/23 and 09/25. The Tribunal made the usual order with regard to expenses and publicity.

Vice Chairman