

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

**FINDINGS**

**in Complaint**

**by**

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

**against**

**STEVEN ANGUS ANDERSON,  
Solicitor, formerly of Messrs  
Andersons, Solicitors & Notaries, 2  
Hillkirk Street Lane, Springburn,  
Glasgow and residing at 7  
Duthiepark Place, Glasgow  
Respondent**

1. A Complaint, dated 14 March 2011, was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Steven Angus Anderson, Solicitor, formerly of Messrs Andersons, Solicitors & Notaries, 2 Hillkirk Street Lane, Springburn, Glasgow and residing at 7 Duthiepark Place, Glasgow (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 orders in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent.
3. As no Answers had been lodged for the Respondent, in terms of its Rules the Tribunal appointed the Complaint to be set down for a procedural hearing on 7 July 2011.

4. At the procedural hearing on 7 July 2011 the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. The Respondent intimated that he wished to raise a preliminary plea based on excessive delay. The Tribunal fixed a debate for 23 September 2011 and ordered that a) the Respondent lodge a written minute setting out the grounds of his preliminary plea by 15 August 2011, b) thereafter the Complainers lodge Answers within 14 days of the minute, c) notes of argument and lists of authorities be lodged no later than 9 September 2011, and d) the Respondent lodge Answers to the Complaint two months from the date of the debate.
  
5. At the debate on 23 September 2011, the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. The Respondent indicated to the Tribunal that he had lodged a motion to withdraw his minute at 4.45pm on 22 September 2011 and he confirmed that he did not wish to proceed with his preliminary plea. A procedural hearing was set down for 15 December 2011 and the Respondent was ordered to lodge Answers within two months of 23 September 2011.
  
6. At the procedural hearing on 15 December 2011 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. It was noted that Answers had been lodged late by the Respondent on 9 December 2011. The fiscal objected to the format of the Answers. In the circumstances the Tribunal allowed the Respondent 21 days to amend his Answers and asked that thereafter the Complainers prepare a Record. A procedural hearing was fixed for 29 March 2012 and an interim procedural hearing on 23 February 2012 for the parties to update the Tribunal on progress. The amended Answers were ordered to be lodged with the Clerk to the Tribunal at least 7 days prior to the preliminary hearing on 23 February 2012.

7. At the procedural hearing on 23 February 2012 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. It was noted that Answers and Productions had been lodged by the Respondent. Various matters remained outstanding and both parties indicated that they required a further procedural hearing. It was identified that the date of 29 March 2012 was no longer appropriate and a new procedural hearing was set down for 15 May 2012. It was agreed that the fiscal would provide the Tribunal with a copy of the Record 14 days prior to that date.
8. At the procedural hearing on 15 May 2012 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. It was noted that a Record had been lodged. The Respondent intimated that he had no further amendments to make to his Answers. Objection was taken by the fiscal to the content of some of the Answers for the Respondent, which the Respondent indicated would require to be debated at a later date. Both parties agreed that an expert report would be helpful in resolving many of the issues. It was agreed that the Complainers would obtain a report from Mark Thorley, Solicitor, Edinburgh and that a further procedural hearing would be fixed on a date after the report had been produced. The fiscal indicated that he was withdrawing the charges at paragraphs 37 and 62 of the Record.
9. The Tribunal ordered that a procedural hearing be set down for 9 April 2013 and due notice was provided to both parties.
10. At the procedural hearing on 9 April 2013 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Matthew Harding, Solicitor, Glasgow. The Complainers confirmed that they had received an expert report and that a copy of this had been provided to the Respondent at the end of January 2013. Both parties requested a further procedural hearing to allow discussions to take place which could obviate the requirement of

a proof. Accordingly, the Tribunal ordered that the Complaint call again on 8 May 2013 as a procedural hearing.

11. At the procedural hearing on 8 May 2013 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. Both parties confirmed that, although discussions had taken place, no progress had been made and that a full hearing would be appropriate. The fiscal indicated that nothing would be gained by a Joint Minute agreeing any of the evidence due to the nature of the charges and the evidence he would require to lead. The Respondent confirmed that, although he had not instructed his own expert, he wished a substantive hearing to be fixed at this stage. It was agreed that two dates in July would be identified for the proof and that these dates would be intimated to the parties.
12. The 10<sup>th</sup> and 11<sup>th</sup> of July 2013 were identified as appropriate dates for the proof to commence and these dates were intimated to both parties.
13. At the hearing on 10 July 2013 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Matthew Harding, Solicitor, Glasgow. The fiscal lodged a Second Inventory of Productions and indicated that he would call an additional witness. It was confirmed that the fiscal was accepting the Respondent's plea of not guilty to Articles 37 & 62 of the Complaint and that the Respondent was conceding that part of his Answer in Article 6.2 of his Answers was irrelevant and was to be treated as deleted. Evidence was led from the witnesses Lynn Duff, Yvonne McKenna and Judith Cemery. The case was adjourned part heard to 11 July 2013.
14. At the hearing on 11 July 2013 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and was not represented. Evidence was continued from the witness Judith Cemery. The case was adjourned part heard to 5 September 2013.

15. On 5 September 2013 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. A Joint Minute was lodged on behalf of both parties agreeing the productions for the Complainers. The Respondent sought to lodge additional Productions and this was granted. Evidence was led from the witness Judith Cemery. The case was adjourned part heard to 6 September 2013.
  
16. At the hearing on 6 September 2013 the Complainers were represented by their fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. The fiscal continued to lead evidence from the witness Judith Cemery and the Respondent commenced cross-examination. After the Tribunal had adjourned for lunch, the Respondent intimated a change of plea. The Respondent specifically admitted Articles 2 (entirely), 4 (entirely), 5 (entirely), 7 (entirely), 8.1 and 8.1(a), (c), (d) and (e), 11 (entirely), 15 (entirely), 17 (entirely), 19 (entirely), 20 (entirely), 21 (f) and (g), 22 (a) (b) (c) (g) (h) (i) and (j), 23 (c) (d) (e) and (f), 24 (entirely), 25.1 (a) and (c), 26.1 (a) and (b), 30.1 30.1 (a) (b) (c) (d) and (e), 31 (entirely), 32 (entirely), 33.1, 33.1 (a) (e) and (f) , 34.1, 34.1(b) (c) (d) (e) (g) (h) and (i), 35.1, 35.1(a) (b) and (c), 39.1, 39.1 (a) and (b), 47 (a), (c) (g) and (h), 52 (entirely) 60 and 61 (entirely), 67 (b) and (c), and 70 (entirely) of the Complaint and tacitly admitted the associated averments of professional misconduct. Submissions were made on behalf of both parties.
  
17. The Tribunal found the following facts established:-
  - 17.1 The Respondent was born on 1<sup>st</sup> March 1958. He was admitted as a solicitor on 19<sup>th</sup> February and enrolled as such on 5<sup>th</sup> March both months of 1985. He resides at 7 Duthie Park Place, Glasgow, G13 1GA. Until 31<sup>st</sup> October 2010 the Respondent was the principal of Messrs. Andersons Solicitors and Notaries, 2 Hillkirk

Street Lane, Springburn, Glasgow, G21 1TE. The Respondent is not currently employed by any legal firm.

**Mr A**

- 17.2 The Respondent acted on behalf of Mr. A in respect of sheriff court summary criminal proceedings. On 9 May 2007, prior to the involvement of the Respondent, Mr. A appeared before the court. The case was continued for one week without plea to enable a psychiatrist to examine Mr. A.
- 17.3 On 16 May 2007 an Assessment Order in respect of Mr. A was made in terms of Section 52(d) of the Criminal Procedure (Scotland) Act 1995.
- 17.4 On 13 June 2007, the court made a Treatment Order in terms of Section 52(m) of the said Act in respect of Mr. A. Also on that date Mr. A pled not guilty to the charges against him and a trial was set down for 1 November 2007 with an intermediate diet on 17 October 2007.
- 17.5 Section 147 of the Criminal Procedure (Scotland) Act 1995 which was in force at the material time restricted the period for which a person could be remanded in custody for a summary criminal Complaint to no more than 40 days after the calling of the Complaint in court. Section 52(t) of the Act applied the provisions of section 147 to cases in which a treatment order had been made. Accordingly on 18 June 2007 the 40 day period referred to in Section 147 expired. In the absence of a Crown motion for an extension of time, Mr. A was entitled to be

liberated and the Crown were unable to proceed further against him in respect of these charges.

- 17.6 The Respondent received a telephone call on 4 July 2007 indicating that Mr. A wished to see a solicitor urgently. The Respondent on the same date saw Mr. A at Stratheden Hospital, took instructions from him in connection with the sheriff court summary criminal case condoned upon and completed a legal aid application. This was the first instruction the Respondent had received in relation to this matter.
- 17.7 On 12 July 2007 the Respondent wrote to Mr. A to confirm these instructions and on the same date wrote to the Procurator Fiscal requesting disclosure.
- 17.8 On 12 July 2007 the Respondent submitted a legal aid application on behalf of Mr. A. The legal aid application recorded that Mr. A was “remanded for this matter”. Also on 12 July 2007 the Respondent wrote to the Mental Health Advocate who was acting for Mr. A.
- 17.9 In the letters of 12 July 2007 the Respondent confirmed that 17 October 2007 had been fixed as an intermediate diet with the trial due to take place on 1 November 2007.
- 17.10 On 31 July 2007 Mr B, the Mental Health Advocate, contacted the Respondent requesting confirmation that he had received his e-mails about Mr. A. A note of that telephone conversation reflects the view of the Mental Health Advocate that Mr. A had not been treated properly as the trial should have taken place within forty days of his remand.

- 17.11 Following that telephone call there were further telephone discussions between the Respondent, the Mental Health Advocate, the Procurator Fiscal and the Sheriff Clerk's Office and on 8 August 2007 the Respondent was directed by the Mental Health Advocate to the terms of Section 52 of the Criminal Procedure (Scotland) Act 1995.
- 17.12 Mr. A became dissatisfied with the Respondent's services. He sought alternative representation. On 31 August 2007 Mr. A was seen by Miss McKenna of McKennas, Solicitors, who applied for the legal aid certificate to be transferred into her name. This was granted by letter dated 3 September 2007 with effect from 31 August 2007. Following representations from McKennas, the Complaint against Mr. A was deserted on 5<sup>th</sup> September 2007 and the order keeping him in custody fell.
- 17.13 Following the transfer of the legal aid certificate, by letter dated 29 August 2007 McKennas wrote to the Respondent seeking delivery of the case papers. They enclosed with that letter a mandate signed by Mr. A. A further letter was sent by McKennas to the Respondent on 11 September 2007 requesting the papers, requesting an explanation as to why Mr. A had been in custody for 119 days and intimating a claim for damages for professional negligence against the Respondent. By 2 October 2007 the Respondent had not replied to either letter nor had he delivered the papers. On that date a further letter was sent by McKennas asking for a response to previous correspondence. The Respondent did not reply. By letter dated 25 October 2007 McKennas invoked the assistance of the Complainers.



- 17.14 The Complainers wrote to the Respondent on 5 November 2007 with a preliminary intimation of the Complaint. This letter did not require a response. The Complainers wrote a further letter to the Respondent on 16 November 2007. This letter did not require a response. The Complainers wrote to the Respondent on 27 November 2007. This letter did not require a response.
- 17.15 On 29 November 2007 the Complainers wrote to the Respondent with formal intimation of the Complaint.
- 17.16 This letter drew to the Respondent's attention the terms of Section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 which places upon the Complainers the duty of investigating Complaints. In terms of the Complainers' letter the Respondent was required to provide a written response to the details of the Complaint, any further background information which he might wish to provide, to deliver his business files, and to provide details of any fees charges or to be charged whether or not under the Legal Aid scheme. The letter required production/delivery within 21 days of 29 November 2007. The Respondent did not reply.
- 17.17 In view of the Respondent's failure to reply the Complainers on 27 December 2007 served upon the Respondent the first part of a notice under Section 15 (2) of the Solicitors (Scotland) Act 1980. The letter under cover of which the notice was sent required the Respondent to provide to the Complainers within 14 days of 27 December 2007 (a) a response to the Complaint as previously requested and (b) an explanation for the failure to have replied up until that point. On the same date, the Complainers served upon the Respondent a notice under

Section 42C of the Solicitors (Scotland) Act 1980 requiring him to produce within 21 days of that date, all books, accounts, deeds, securities, papers and other documents in his possession or control relating to Mr. A. The Respondent did not reply to any of the foregoing.

17.18 On 28 January 2008 the Complainers served upon the Respondent the second part of a notice under Section 15 (2) of the Solicitors (Scotland) Act 1980 requiring the Respondent to give to the Complainers six weeks' notice of his intention to make application for a practising certificate for the practice year commencing on 1 November 2008. Under cover of the same letter the Complainers intimated to the Respondent a fresh Complaint in respect that he had failed to answer the previous correspondence from the Complainers and had failed to produce the file.

17.19 On 6 February 2008 the Respondent telephoned the Complainers and said that he intended to send the file. On 21 February 2008 the Respondent telephoned the Complainers and stated that he would send a response and the file "within the next day or so." On 3 March 2008 the Respondent wrote to the Complainers. He enclosed the file. He indicated that he would write to the Sheriff Clerk and the Procurator Fiscal "to obtain a brief history of this matter" and that he would thereafter forward a full and detailed explanation. He did neither.

### **Legal Aid in Scotland**

17.20 The Scottish Legal Aid Board (hereinafter referred to as "SLAB") was formed in 1987 to manage the administration of legal aid within the Scottish jurisdiction.

They have a place of business at 44 Drumsheugh Gardens, Edinburgh. They are a non-departmental public body responsible to the Scottish Executive. Ministers in the Scottish Executive decide legal aid policy. Ministers propose laws to set the rules and criteria for the use of Legal Aid together with the fees to be paid to the legal profession. The Scottish Parliament makes and changes legislation including the tests for the granting of legal aid.

17.21 There are two main types of Legal Aid help:-

(a) **Legal Advice and Assistance** covers a wide range of matters as long as they are matters of Scots law. It pays for advice from a solicitor, but apart from a few exceptions, it will not cover representation at court.

(b) **Legal Aid** provides funding for the solicitor to provide representation before courts and certain tribunals. It covers the preparatory work, as well as representation at hearings themselves and can provide funding for counsel, expert reports and witnesses and other associated costs.

17.22 The principal statute governing the administration of legal aid within the Scottish jurisdiction is the Legal Aid (Scotland) Act 1986. In 1997 a number of amendments were made to this legislation. These amendments provided SLAB with *inter alia* increased powers in respect of the investigation of fraud or abuse in respect of the provision of criminal legal assistance. In particular:-

(a) Amendments to Section 25 of the 1986 Act created a Criminal Legal Assistance register in which every

solicitor or firm wishing to provide criminal legal assistance must be entered.

(b) A Compliance Audit Regime was commenced, based upon a Code of Practice in relation to the provision of criminal legal assistance. Every solicitor and firm of solicitors wishing to provide criminal legal assistance must be entered on the Criminal Legal Assistance Register established and maintained by SLAB in terms of Section 25A of the 1986 Act. To be entered on the register, firms and solicitors must undertake, and demonstrate compliance with, the terms of the Code of Practice. This Code of Practice sets out the standards required by SLAB in relation to the provision of criminal legal assistance. *Inter alia* it prescribes standards of professional conduct which solicitors require to meet and determines systems of management and administration which solicitors require to have in place if they are to provide criminal legal assistance.

(c) Further amendments to Section 25 set up a statutory framework providing procedures for removal of the names of solicitors or firms from the register in the event of serious or continued failure to comply with the Code of Practice.

(d) The Compliance Regime provides for the monitoring of each registered firms' continuing compliance with the Code of Practice. This is done by a rolling programme of compliance audits carried out by members of SLAB's staff undertaken in terms of Sections 25(C), 35(A) and 35(B) of the 1986 Act as amended.

- 17.23 SLAB published, from time to time, guidance to the legal profession on various aspects of the Legal Aid system in “The Recorder”. This is a publication which serves as a professional journal for Legal Aid lawyers. In its first edition in 1988, it was described as a quarterly publication. It was then for some time published, on average, three times a year. The guidance published in The Recorder represents the standard of practice which Legal Aid practitioners are expected by SLAB to follow.
- 17.24 The following is an extract from edition 25 of The Recorder, published in January 1999.

NOTES FOR GUIDANCE ON ADVICE AND ASSISTANCE

Increases in authorised expenditure

If it is necessary to apply for an increase in authorised expenditure, you should specify in your request the exact nature and extent of the advice and assistance you wish to provide. You should also provide sufficient information on all relevant issues in the case to enable us to determine whether it is reasonable for you to provide advice and assistance in connection with steps in the proceedings.

You should, in particular, address the following specific factors in your application:

- the value of the claim;
- the importance of the case to the client;
- the complexity or novelty of the issues involved;
- the ability of the client to undertake this work without assistance;

- whether assistance on procedural matters could be obtained from some other source (for example, the clerk of court or, in Edinburgh Sheriff Court, the in court adviser) and, if so, the extent to which this has or the reasons is had not been obtained.

#### Multiple grants of advice and assistance

We have recently been aware of a number of situations where solicitors have made multiple grants of advice and assistance to clients in what we consider to be inappropriate circumstances.

The Legal Aid (Scotland) Act 1986 defines advice and assistance as being:

a) oral or written advice provided to a person by a solicitor (or, where appropriate, by counsel)

1. on the application of Scots Law to any particular circumstances which have arisen in relation to the person seeking the advice;

2. as to any steps which that person might appropriately take (whether by way of settling any claim, instituting, conducting or defending proceedings, making an agreement or other transaction, making a will or other instrument, obtaining further legal or other advice and assistance or otherwise) having regard to the application of Scots Law to those circumstances;

b) assistance provided to any person by a solicitor (or, where appropriate, by counsel) in taking steps mentioned

in paragraph a) 2. above, by taking such steps on his behalf or by assisting him in so taking them.

In terms of that definition, a single grant of advice and assistance should be made to cover the provision of advice and assistance in relation to the client's circumstances.

To clarify, we do not consider it appropriate to make more than one grant of advice and assistance in the following circumstances:

- Where a client is seeking advice on their financial difficulties and, in particular, in relation to a number of debts, it is not appropriate for a solicitor to make a grant of advice and assistance in relation to each individual debt. In particular, it is not appropriate to claim a minimum fee for advice on each individual debt.
- A single grant of advice and assistance should be made in connection with a client seeking advice on their entitlement to state benefits. An individual grant for each individual state benefit is not appropriate.
- Where a client consults a solicitor with matrimonial problems, only one grant of advice and assistance should be made. It is not acceptable to make separate grants for each individual aspect of the client's circumstances (e.g. divorce, children, financial provision, etc).
- In criminal cases where a client has a number of fines outstanding and seeks advice in connection with appearances as means enquiry courts, individual grants of advice and assistance in connection with each fine are not

appropriate. The matter should be dealt with under a single grant.

Where multiple grants are intimated to us in situations such as this, only one grant will be registered and all matters will require to be dealt with under one reference number if necessary, by obtaining increases in authorised expenditure. Minimum fee claims will be rejected in respect of the other grants made.

There may, unusually, be circumstances where more than one grant of advice and assistance can be made. This might, for example, arise where a client has sought advice and assistance in connection with a reparation action and with a matter of family law or where one matter on which advice has been sought can be identified as being likely to lead to a civil legal aid application in its own right. In deciding whether to make separate grants, solicitors should have regard to whether the advice being sought is sufficiently distinct as to be in relation to a wholly separate set of circumstances. Solicitors should, however, expect these situations to be the exception rather than the rule.

Even where there are wholly distinct circumstances, there is nothing to prevent a solicitor from dealing with these under one grant of advice and assistance. Indeed, this will be the preferred option in many cases for the client where a contribution is payable in respect of each grant made. However, if providing advice in relation to a number of distinct sets of circumstances under one grant, it is important always to ensure that the level of authorised expenditure in force is sufficient to cover all advice provided. Where only one grant is in force covering a



range of circumstances, it should be noted that an account cannot be submitted until the entire course of advice and assistance in relation to all matters have been completed. It should also be borne in mind that if property is recovered or preserved for a client in relation to one set of circumstances, that property may be the subject of ‘claw back’ of the whole account. Please also refer to the commentary section of the Scottish Legal Aid Handbook (item 1.1.6 at page A:7) for further guidance.

It has also come to our attention that some firms of solicitors may be using an advice and assistance “checklist.” These checklists contain a list of topics and the client is asked whether they wish to have advice provided on the subjects contained in the list. In our experience, these lists cover all topics from family matters to debt, wills and change of names. While there can be no objection to the use of a checklist as an aide memoir by solicitors to ensure that all aspects of a client’s problems are covered, inappropriate use must not be made of the checklists. In particular, the client must seek advice from the solicitor. Advice and assistance should not be granted simply to enable the solicitor to obtain details from a client for the purpose of finding out if a legal problem might exist. Intimations of grants of advice and assistance are monitored by us and where we see a high instance of multiple applications for clients, these are further investigated by our investigations department. In cases where we have discovered that checklists are being used inappropriately, the firms of solicitors concerned have been reported to the Law Society and our Complaints to date have been upheld”

17.25 In the Recorder, Issue 34 of March 2002, the following appeared:

“MULTIPLE GRANTS OF ADVICE AND ASSISTANCE

A solicitor may be consulted by a client about a number of different matters, either at the time of the initial grant or subsequently. In terms of the definition contained in section 6 of the 1986 Act, in most circumstances a solicitor should deal with these under one grant of advice and assistance, by obtaining increases in authorised expenditure if necessary. This will be the preferred option in many cases for the client where a contribution is payable in respect of each grant made.

Guidance on multiple grants of advice and assistance is contained in the Scottish Legal Aid Handbook on pages A11 and A12.

We are conducting more checks on advice and assistance grants submitted for the same client over given periods. We will be looking for more detailed information about the various intimations and in particular, why separate grants were made in each situation. We will also be looking for confirmation of the distinct work that was done in relation to each intimation”.

17.26 The Legal Aid (Scotland) Act 1986 by section 10(1) provides:

“Where at any time... it appears to the solicitor that the cost of giving [legal advice and assistance] is likely to

exceed the limit applicable under this section [the solicitor]

(b) shall not give it ....so as to exceed that limit except with the approval of the Board.”

17.27 The Legal Aid (Scotland) Act 1986 by section 7 (2) provides:

“This Part of the Act does not apply to Advice and Assistance provided to a person in connection with proceedings before a court or tribunal at a time when he is receiving legal aid in connection with those proceedings”.

Thus where legal aid is in effect, a solicitor cannot admit a client to Legal Advice & Assistance on the same matter.

17.28 The Advice and Assistance (Scotland) Regulations provide *inter alia* as follows:-

17.(1) Subject to paragraph (2) below, fees and outlays allowable to the solicitor upon any assessment or taxation mentioned in regulations 18 and 19 in respect of advice or assistance shall, and shall only, be –

(a) fees for work actually necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy, calculated, in the case of assistance by way of representation , in accordance with the table of fees in Part 1 of Schedule 3 and, in any other case, in accordance with the table of fees in Part II of Schedule 3; and

(b) outlays, actually, necessarily and reasonably incurred in connection with that matter, due regard being had to economy, provided that, without prejudice to any other claims outlays, there shall not be allowed to a solicitors outlays representing posts and incidents.

(2) The fees and outlays allowable to the solicitor under paragraph (1) above shall not exceed the limit applicable under Section 10 of the Act as read with Regulation 12.

17.29 The 1996 Regulations by regulation 18(1) provide that a solicitor shall "...within one year of the date when the giving of advice was complete, submit an account to the Board".

The date of completion of Legal Advice & Assistance is a matter of fact. It is the date on which the solicitor carries out the final piece of work for a client which falls within the definition of Legal Advice & Assistance: Legal Aid (Scotland) Act 1986, Section 6.

The 1986 Act Section 4(2)(a) allows the Board to pay a solicitor out of the Fund for 'properly incurred' fees and outlays in respect of A&A in accordance with the 1986 Act and regulations thereunder.

Section 12(3) of the 1986 Act sets out the hierarchy of payment, with the Fund the payer of last resort (Section 12(3)(d)).

The standard of taxation is set out in Regulation 17 of the 1996 Regulations. The solicitor is entitled to be paid fees and outlays which have been actually, necessarily and

reasonably done or incurred in connection with the matter upon which advice and assistance was given, due regard being had to economy.

**Mr C**

17.30 Mr C was a client of the Respondent from about November 2000 until 2007. He invoked the assistance of the Complainers in relation to a number of matters. Part of his Complaint was that he was asked to sign an application for a grant of legal advice and assistance every time he saw the Respondent.

17.31 The Complainers obtained from the Scottish legal Aid Board the following schedule of Advice and Assistance applications, 69 in number, all in relation to Mr C.

Reference Number /Subject Matter /	Date Granted
(0)273293200 Divorce	17/11/2000
(0)276441400 Family	17/11/2000
(0)276445600 Contact	17/11/2000
(0)313958300 Prison	18/12/2000
(0)313965800 Prison	18/12/2000
(0)313975700 Prison	18/12/2000
(0)385530300 Complaint	22/02/2001
(0)385562500 Repossession	22/02/2001
(0)415935800 Interdict	20/03/2001
(0)415937400 Interdict	20/03/2001
1137437901 Other	24/07/2001
1137443601 Reparation	24/07/2001
1137440201 Non Harassment Order	25/07/2001
1238829601 Other	17/10/2001
1238835301 Complaint	17/10/2001
1238908801 Complaint	17/10/2001

2034956102	Divorce	25/04/2002
2034959502	Other	25/04/2002
2034960202	Will	25/04/2002
2392318002	Will	07/03/2003
3210578703	Appeal	01/10/2003
3254052703	Prison	19/11/2003
3264057703	Reparation	19/11/2003
3265779603	Scottish Court Review to be referenced to the Scottish Criminal	
3273648303	Complaint	24/11/2003
3273655803	Prison	24/11/2003
3273734003	Benefit	24/11/2003
3273662303	Prison	24/11/2003
3297798803	Prison	15/12/2003
3297804303	Sex Offenders Act	15/12/2003
3319834303	Complaint	12/01/2004
3319835103	Prison	12/01/2004
3356302503	Prison	12/02/2004
3350871403	Prison	12/02/2004
3360869903	Prison	12/02/2004
3374580503	Reparation	23/02/2004
3374610033	Prison	23/02/2004
3389567603	Housing	08/03/2004
3389568403	Reparation	08/03/2004
3387616303	Parole	09/03/2004
4001630604	Housing	31/03/2004
4001637204	Complaint	31/03/2004
4036733704	Complaint	31/03/2004
4001641304	Complaint	31/03/2004
4014058504	Complaint	14/04/2004
4014048604	Reparation	14/04/2004
4014042804	Criminal Procedure (Scotland Act)	14/04/2004

4036742804	Sex Offenders Act	05/05/2004
4036747804	Prison	05/05/2004
4036624404	Reparation	05/05/2004
4097886104	Prison	24/06/2004
4097888704	Prison	24/06/2004
4118013404	Complaint	12/07/2004
4115016804	Prison	12/07/2004
4132765304	Employment	28/07/2004
4132766104	Judicial review	28/07/2004
4132767904	Transfer of Agency	
	Criminal	28/07/2004
4366128104	Other	03/03/2005
4366135604	Appeal	03/03/2005
4366132204	Divorce	03/03/2005
5119210305	Divorce	21/07/2005
5119212905	Contact	21/07/2005
5119227805	Other	21/07/2005
5302482505	Benefit	24/01/2006
5302533605	Divorce	24/01/2006
6140444906	Scottish Criminal Cases	
	Review Commission	23/08/2006
No ref	Scottish Criminal Cases	
	Review Commission	23/08/2006
No ref	Scottish Criminal Cases	
	Review Commission	23/08/2006

As can be seen from the foregoing, the Respondent exhausted the initial authorised expenditure and thereafter made multiple grants of legal advice and assistance in relation to the same subject matters. The Respondent made further fresh grants after the increases he had applied for had been exhausted or refused.

**Complaint by the Council of the Law Society of  
Scotland *Ex proprio motu***

- 17.32 Having received Mr. C's request for assistance, the Complainers wrote to the Respondent on 19 April, 14 May, 31 May and 27 July 2007. None of these letters required a response.
- 17.33 On 31 July 2007 the Complainers wrote to the Respondent intimating a list of issues and formally intimating the Complaint, drawing attention to the terms of Section 33 (Scotland) Act 1980 and to the Respondent's duty to respond, and asking for specific information within 21 days of 31 July 2007. The Respondent did not reply.
- 17.34 On 22 August 2007 the Complainers served upon the Respondent the first part of a notice under Section 15(2) of the Solicitors (Scotland) Act 1980 which required the Respondent to send a response to their letter of 31<sup>st</sup> July 2007 along with an explanation for the delay, all within a period of 14 days from 22 August 2007. The Respondent did not reply.
- 17.35 Also on 22 August 2007 the Complainers served upon the Respondent a notice under Section 42(C) of the Solicitors (Scotland) Act 1980 requiring the Respondent to send a response to the service Complaint, an explanation for the delay, and production of papers. The Respondent did not reply.
- 17.36 On 12 September 2007 the Complainers served upon the Respondent the second part of a notice under Section 15(2) of the Solicitors (Scotland) Act 1980 which



required the Respondent to give six weeks notice to the Complainers of his intention to apply for a practicing certificate in respect of the practice year commencing on 1 November 2008.

17.37 Also on 12 September 2007 the Complainers intimated a new Complaint to the Respondent in respect of his ongoing failure to reply to correspondence.

17.38 On 18 September 2007 the Respondent sent a fax to the Complainers in which he stated that on the evening of 16 August 2007 there had been a telephone conversation between Mr. C and the Respondent. After narrating what was said to have been discussed, the Respondent went on to say that in order to prepare a proper reply he required to know exactly what matters Mr. C was complaining about and he requested copies of all correspondence passing between the Complainers and Mr. C.

17.39 On 19 September 2007 the Complainers wrote to the Respondent. They referred to the list of issues previously intimated along with the Complaint on 31<sup>st</sup> July 2007 and confirmed that all correspondence received from Mr. C had already been copied to the Respondent.

17.40 There was a further telephone discussion between a member of the Complainers' staff and the Respondent on 15 October 2007. The Respondent queried the extent of the correspondence which had been copied to him. It was explained to the Respondent that Mr. C had largely dealt with matters by telephone and that it was up to the Respondent to produce the files and provide a response. The Respondent failed to do so.

**Mr D**

17.41 The Respondent made 19 grants of advice and assistance in respect of his client Mr D. Four of the claims were as follows:

**a) Ref. AA4022532904 - Subject matter: Defamation:  
Date of grant: 29th March 2004**

The client alleged that various people were defaming him, including 'Microsoft' and 'Take That'. He wanted to raise an action. The Respondent explained the difficulties involved in pursuing this. £78.50 was claimed by the Respondent in respect of this grant.

**b) Ref. AA4022530304 - Subject matter: Data  
Protection Act: Date of grant: 29th March 2004**

The client complained about people taking photos of him in Stirling and felt that he should be entitled to royalties. Noting that he heard that the Data Protection Act stops this. Noting that there were warnings about CCTV. Noting details of 'Take That', 'Time Frequency', 'Pink Floyd' and other bands were getting money for using his face on video tapes. He felt that they were breaching his human rights and wondered what could be done. £78.50 was claimed by the Respondent in respect of this grant.

**c) Ref. AA40839 19604 - Subject matter: Mental  
Health Act S26: Date of grant: 5th June 2004**

A meeting between the client and the Respondent took place on 5th June 2004. The client had been detained

under the Mental Health Legislation two days earlier. The client had “missed his medication.” He felt that he was being drugged because he was a pop star. Noting that Mr E is playing at the ‘Colourfest’ at Braehead today and his face will be on TV driving a forklift truck. Noting that he said to Mr F in George Square that you thought it was a comedy act. He also asked Mr F ‘Where is my money for ‘The Wall’? This was a ‘Pink Floyd’ song and he had not been paid for it. £75.45 was claimed by the Respondent in respect of this grant.

**d) Ref. AA4083922904 - Subject Matter: Defamation:  
Mr E: Date of grant: 8th June 2004**

The file note refers to a claim for damages against Mr E as he was taking good ideas from him. Lulu and ‘Take That’ were involved. Reference is made to the client not wanting to be a ‘virtual reality’ and noting that ‘Christ was resurrecting him’. Noting they did a forklift truck film on him. Mr E was apparently defaming the client on posters saying that he was dancing at a gig but that it wasn’t him. No details of any advice given was recorded. A phonecall took place the next day where the Respondent indicated that he had thought about the matter and advised the client that he did not think it would be worthwhile doing a letter and legal aid would not pay for raising an action. £70.90 was claimed by the Respondent in relation to this grant.

**Mr G**

17.42 The Respondent made 238 grants of advice and assistance in respect of his client Mr G in a three year period. The following are examples:-

**a) Ref. AA3001932802 - Subject matter: Agreement for supply of ring: Date of grant: 12th March 2003**

The Respondent met the client at Carstairs regarding an agreement for the supply of a ring. The client paid £12.50 and was £1.00 short and wanted to know the effect of this. Subsequent meetings were held with the client at various prisons where the matter discussed was a watch which had been lost. Advice was given over a period spanning one year. The Respondent claimed £74.35 in respect of this grant.

**b) Ref. AA3078069803 - Subject matter: Will: Date of grant: 13th May 2003**

Instructions were taken on making changes to a will the terms of which suggested that the applicant had substantial sums of money and property. The will contained *inter alia* bequests of £20,000 to a patient in Forth Ward and £400,000 and the client's house to another patient in the same ward and various other monies to fellow patients in Carstairs. (No capital or income was declared on the application despite the terms of these instructions.). £77.70 was claimed by the Respondent in relation to this grant.

When challenged by SLAB about this grant the Respondent said that he was aware that the client did not

have any money but the will was prepared on the basis that the client told him that he was going to inherit the money from his aunt. The Respondent said that he had prepared the will because “that was what the client wanted.”

**c) Ref. AA4205606104 - Subject matter: Codicil to will: Date of grant: 24th September 2004**

Although the subject matter referred to a codicil, the client apparently wanted a new will. He wished to leave £500,000 to one prisoner and £10,000 to another. This meeting took place at Perth Prison. The client asked for a letter confirming this so that he was clear about his instructions. The Respondent duly wrote confirming the terms and explained that he was trying to locate the original will and would make arrangements to sign the new will. Two months later at Dumfries Prison, the Respondent met with the client and he stated that he wanted more changes done but had not finally decided what he wanted. The Respondent commented to the client that he had never seen so many changes to a will and the client indicated that this was his legal entitlement. The client was to come back to him but the limit of authorised expenditure had already been exhausted. There was no draft will contained in the Respondent’s file. £82.85 was claimed by the Respondent in relation to this grant.

**d) Ref. AA4302110404 - Subject matter: New codicil to will: Date of grant: 16th December 2004**

**Mr H**

17.43 **Ref. AA4124041704 - Subject matter: Small Claims  
Summons: Date of grant: 7th July 2004**

All prisoners had £2.00 deducted for new ID cards. The money was taken without the client's consent. The Respondent wrote a letter to the chief executive of the prison raising this issue and stated although the client's [existing] card was broken, it still functioned. The prison should have expected wear and tear on the cards and should not charge prisoners for them. There was no reply to that letter and nothing further was done by the Respondent. £70.05 was claimed by him in relation to this grant.

The Respondent in granting the advice and assistance application failed to have due regard to economy as required by regulation 17(1) of the Advice and Assistance Regulations 1996. The subject matter was shown as a small claims summons although apart from being in the heading in the file note, the issue of a summons does not appear to have been discussed with the client. The Respondent should have considered the potential cost benefit to the client at all stages of the case. Against the background of the payment test in Regulation 17(1) the cost of the case is relevant if no financial benefit is going to be produced for the client as the client will have to meet the Respondent's account from any property recovered or preserved on his behalf. Standing the lack of cost benefit in this case the Respondent could not reasonably have been satisfied that there was an issue to advance on behalf of the client.

**Mr and Mrs I**

17.44 **Ref. AA3177262803 & AA3177736303 - Subject matter: Glasgow District Council Order Confirmation Act: Date of grant: 27th August 2003**

A husband and wife sought advice concerning a letter which had been sent to Mrs I about an allegation made by her to the local authority of her neighbour's house being dirty. The Respondent made two separate grants of advice and assistance which bore the above reference numbers. Twenty minutes was charged in each file. The Respondent agreed to take matters up on the clients' behalf and wrote two separate letters in identical terms. Mrs. I denied reporting that the house was dirty. Her Complaint was that the neighbour was a nuisance and she believed that she kept two birds which brought beetles in to the house. The clients felt that the only way for the matter to be properly investigated was to gain access to the house. They alleged that the neighbour might have mental health problems. Identical letters were sent to each of the clients confirming that the Respondent had written to the Environmental Control Unit to explain the background.

On 25th September 2003 a further meeting took place charged as twenty minutes in each file going over paperwork which was not in the file. No details were recorded of any advice provided. It is not clear why this further meeting was necessary as at that time no reply had been received from the Environmental Control Unit. A reply was received from them on 29th October confirming that there was still no evidence sufficient to support the granting of a warrant under the Local

Authority Confirmation Act to obtain access to the neighbour's house. The letter stated that the type of beetle complained of was "endemic" to flatted developments. A copy of this letter was sent to each of the clients and they were asked to arrange an appointment to discuss matters so as to provide further instructions. The clients did not come back in. Identical work was done in each file with £62.60 being charged under Mr I and £66.20 under Mrs I (the difference being one letter was charged at formal, the other non formal). £128.80 was charged by the Respondent in total between the two files. The work was duplicated, resulting in an overcharge of at least £62.60.

**Mr J**

17.45 The Respondent made three grants of legal advice and assistance to his client Mr. J. Mr J had been diagnosed as suffering from paranoid schizophrenia and possibly also from delusional personality disorder. The three grants were as follows:-

**a) Ref. AA1389305401 –Mental Health Appeal: see below**

**b) Ref. AA3177703203 - Subject matter: Damages claim for slopping out: Date of grant: 18th July 2003**

The file does not include any advice on this subject matter and instead involved discussion of the client's right to refuse a transfer to another ward. The Respondent sent a letter to the hospital which expressed the opposite of what the client wanted. This upset the client. Several meetings and phone calls took place which did not appear to achieve anything. At the final meeting, the Respondent



explained to the client his rights in relation to European legislation. The Respondent claimed £112.40 in relation to this grant, restricted to the £80 initial limit of authorised expenditure.

**c) Ref. AA3177682803 - Subject matter: Data Protection Act: Date of grant: 18th July 2003**

The client wanted a copy of a psychologist's report. A copy was requested by the Respondent. There are no further references to this in the file. Several months later, "the up to date position" was discussed, but there is nothing on file to show what that position was. Work was done on this file relative to the mental health appeal reference AA1389305401 and the work in this connection is charged to that file. Two attendances in the data protection file were duplicated in the mental health appeal account. Further correspondence on this file related to the client writing to the BBC 'Panorama' programme regarding the late Dr K which had no relevance to the subject matter, but the client wanted the Respondent to keep the correspondence on file. There is correspondence from the client in this file relating to the mental health appeal and his concerns with the lack of response. A further meeting took place with the client who was still concerned but gave no new instructions. This may have been because the matter was covered under the mental health appeal file. The Respondent claimed £115.05 in relation to this grant, restricted to the £80 initial limit of authorised expenditure.

**Mr L and Mr M**

17.46 On 22<sup>nd</sup> April 2004 the Respondent claimed that he attended at Kilmarnock Prison in respect of Mr L and Mr M. In relation to Mr L there were grants of advice and assistance under references AA4036760004; AA40367653504; AA4036751904 and AA4036756904. In each case he charged £63.30 of fees for travelling and waiting and outlays of £14.00 representing 35miles in respect of each grant. In relation to Mr M, also on 22<sup>nd</sup> April 2004 the Respondent claimed four grants as follows AA4036537304; AA40365401604; AA4036542204 and AA4036547204. In each of these four cases the Respondent charged fees including travelling and waiting of £63.30. In each case he charged outlays of £14 representing 35 miles in relation to each case. All of the foregoing relates to a single trip. The total mileage claimed by the Respondent was 280 miles. The actual return mileage from the Respondent's office to Kilmarnock prison was 52 miles. The total fees charged amounted to £506.40, which is the equivalent of 12 hours.

**Miss N**

17.47 a) **Ref. AA3356757203 - Subject matter: Complaint to Council about Employee: Date of grant: 4th February 2004**

This case related to a Complaint made against a council employee advising that the sheriff would not take any action with regard to Mr. O having urinated on the client's door, as it was a long time ago. The Respondent advised that this was wrong and wrote to the Council. There was no further activity on this file. £25 (the

minimum fee, which could be claimed without the submission of a detailed account of the work done) was claimed by the Respondent in relation to this grant.

Duplicated by:

**b) Ref. AA3360676803 - Subject matter: Complaint against neighbour: Date of grant: 4th February 2004**

The client's neighbour said that Mr O did not urinate on the client's door. The Respondent wrote to the neighbour to advise that the client had a witness and the incident was part of an ongoing legal dispute. £25 was claimed by the Respondent in relation to this grant.

**Mr P**

**17.48 a) Ref. AA4002027404 - Subject matter: Defamation claim against the Sunday Mail: Date of grant: 1st March 2004**

£84.85 was claimed by the Respondent in relation to this grant.

**b) Ref. AA4014002204 - Subject matter: Complaint to Press Complaints Commission: Date of grant: 27th March 2004**

£80 was claimed by the Respondent in relation to this grant.

**Mr Q**

17.49 **a) Ref. AA3210389803 - Subject matter: Complaint re refusal of double visits: Date of grant: 30th September 2003**

The client had been receiving double visits in prison for the previous 18 months and wanted to know why these had now been refused and wanted the Respondent to write about this. Scottish Prison Service (SPS) responded by stating that double visits were a privilege granted in exceptional circumstances. SPS stated that the client was receiving what he was entitled to. The Respondent wanted to visit the client to tell him this although he could easily have done so by letter. The Respondent wrote to the client stating that he could not get an increase to visit him but said that he understood that the client had accepted the position. How he knew this is not apparent from the file. The file did not indicate that the SPS letter was sent to the client. In the letter the Respondent told the client that if he was not satisfied with the outcome then he should contact him. On 4 March 2004 the client was seen at prison for two minutes. (No travel or mileage was charged to this file in respect of this attendance.) The client had been told that others were challenging the SPS position on the basis that it was a breach of ECHR and he wanted the Respondent to raise an action. The Respondent told the client that he would not get legal aid for such an action. Another letter was sent by the Respondent two months later stating that he had checked with other solicitors and there were no other court actions pending in relation to this matter. About another month later he sent a copy of the prison rules in relation to visits and said that he would visit soon to explain the position to the client. There was

no authorised expenditure available in this file to do so. £86.35 was claimed by the Respondent in relation to this grant, restricted to the £80 initial limit of authorised expenditure.

**b) Ref. AA3210394703 - Subject matter: Employment and payment of wages: Date of grant: 30th September 2003**

The client stated that he had only been paid 20p for one week and was in full-time education. He stated that it was not his fault that he could not go to a work party. The Respondent wrote to SPS stating that his client was engaged in full-time education and was not able to work and should therefore be paid the minimum wage. This letter was sent (on 1 October) at the same time as the letter regarding the double visits. SPS responded to both matters in a single letter on 27 October. They stated that the client had not attended his work party for a week and had only attended 6 education sessions out of a possible 15 and for those reasons had not been paid. As he had attended the work party the following week the matter was resolved. Despite this letter the Respondent wrote to the client on 25 November 2003 saying that he had not heard from the Governor and would visit the client soon to discuss the matter. Over a month later he wrote stating that he understood that the client had sorted the matter out himself but if not he was to contact the Respondent within 14 days. Two months later on 4th March the Respondent met the client at Friarton Prison for two minutes with no travel or mileage claimed. The client expressed the view that he was being messed about and the Respondent agreed to send him a copy of the wage structure. £83.95 was claimed by the Respondent in relation to this grant,

restricted to the £80 initial limit of authorised expenditure.

**c) Ref. AA3210397103 - Subject matter: Parole Board  
Hearing Date of grant: 30th September 2003**

Advice was sought in relation to a forthcoming Parole Board hearing. It was not clear what advice was given. The Respondent wrote to the client on 1st October 2003 asking him to contact him after the hearing so that he could take his instructions. On 24 October 2003 another file was opened up under ref. AA325 1442503 for a judicial review of the Parole Board decision: see below. On 1 March 2004 the client's girlfriend contacted the Respondent's office to say that the client needed a visit as soon as possible and mentioned that the client had been moved, she thought, to Friarton prison. On 30 March 2004 the Respondent wrote to the client confirming that he had checked the parole rules and there had been no changes to allow him to have matters reconsidered and said that he would visit to discuss the implications of this. He sought two increases in expenditure, the first to £250 to visit the client to discuss the Parole Board hearing and the second to £600 to visit again after he had been seen by the Parole Board. However as he had opened up another file (referred to below) he continued to act under that grant. £192.50 was claimed by the Respondent in relation to the instant grant.

**d) Ref. AA3407519403 - Subject matter: Prison Rules:  
Transfer to Castle Huntly: Date of grant: 4th March  
2004**

The client had been offered a transfer to Castle Huntly but said that he wanted to go to Noranside instead. Further on in the file note the client stated that he had refused Noranside as well. A letter was sent to the Governor asking if the client would be transferred to Noranside. There was no further correspondence in the file. £35.95 was claimed by the Respondent in relation to this grant.

**e) Ref. AA3406974103 - Subject matter: Race Relations Act: Date of grant: 4th March 2004**

The client felt that there was discrimination in the prison because others were being moved on more quickly than he was and he complained that his downgrades should not have lasted so long. He wondered if it was against the Race Relations Act. The Respondent told him that he did not think that client would be able to do anything about this. £79.85 was claimed by the Respondent in relation to this grant.

**f) Ref. AA3406442803 - Subject matter: Entitlement to pre-release days while in closed prison: Date of grant: 4th March 2004**

The client felt that he was entitled to four days. He was due to be released in May. The Respondent wrote to the Governor but there was no reply from the prison and no follow up. £25 was claimed by the Respondent in relation to this grant.

**g) Ref. AA3407504503 - Subject matter: Complaint to prison re. calculation of liberation date: Date of grant: 4th March 2004**

The Respondent confirmed that the liberation date was correct but told the client that if he was not sure he should lodge a 'CP' with the prison. £79.85 was claimed by the Respondent in relation to this grant.

**Mr R**

17.50 **a) Ref. AA3104355803 -Subject matter: Breach of Human Rights, Degrading Treatment: Date of grant: 12th June 2003**

The client wanted to raise issues separate to slopping out and said that the conditions within the prison were inhumane, he wasn't getting much exercise and the food wasn't very good. He had heard that he would be able to judicially review this as people had done in England and he had heard it was a breach of human rights. It was also mentioned in the 'Inside Times'. The Respondent agreed to look in to the matter. He visited the client six months later and advised him of what he had learned from the internet. The client had some copies of recent cases in the European Court. The Respondent, having only spent two minutes with him said he would have to get an increase to come back and see him about it. (No increase was sought). Two further letters were sent, the latter on 31 May 2004 stating that the Respondent "would visit soon." £101.85 was claimed by the Respondent in relation to this grant, restricted to the £80 initial limit of authorised expenditure.



**b) Ref. AA3127447603 - Subject matter: ECHR, Entitlement to privacy: Date of grant: 4th July 2003**

This grant concerned entitlement to privacy. There was a camera facing the client's cell. The client thought that there was a ruling against this. The Respondent spent 1 hour and 5 minutes, including travel, waiting and mileage. The Respondent stated he would look into this matter in more detail. On 6th November 2003 a further meeting lasting two minutes took place during which it was stated again that the Respondent would look into this. Nothing further was done. £69.30 was claimed by the Respondent in relation to this matter.

**c) Ref. AA3127444203 - Subject matter: Slopping out and entitlement to other facilities: Date of grant: 4th July 2003**

The Respondent spent 1 hour and 5 minutes, including travel, waiting and mileage to discuss breach of human rights and noting that the client was entitled to a family life. The Respondent undertook to look at this in more detail, especially in relation to family life. On 6th November 2003 the Respondent spent 20 minutes explaining what the client was entitled to. £79.85 was claimed by the Respondent in relation to this matter.

**d) Ref. AA3127449203 - Subject matter: Human Rights Act re. privileges in jail: Date of grant: 4th July 2003**

The Respondent spent one hour and 5 minutes, including travel, waiting, etc., to discuss slopping out and entitlement to toilet facilities. Advising client about the

*Napier* case. On 6th November 2003 a period of 20 minutes was spent discussing his entitlement. The Respondent suggested to the client that if he wanted to do anything about this he should perhaps consult Taylor & Kelly. Taylor & Kelly are solicitors with an extensive Human Rights practice. £79.85 was claimed by the Respondent in relation to this grant.

**Mr S**

17.51 **a) Ref. AA3230671503 - Subject matter: Housing benefit: Date of grant: 15th October 2003**

The client was paying off arrears of rent at £22 per month. He received a summary cause summons for payment of the balance due in relation to the rent. He thought this was due to the Department for Work and Pensions not informing Glasgow Housing Association that he was in receipt of Incapacity Benefit. The Respondent wrote to various agencies. £80 was claimed by the Respondent in relation to this grant.

**b) Ref. AA3230671503 - Subject matter: Summary cause summons regarding debt to rent: Date of grant: 15th October 2003**

The Respondent wrote to Glasgow Housing Association advising that his client was paying money back. The case concluded. There was no court action. £79.15 was claimed by the Respondent in relation to this grant.

**Mr T**

- 17.52      **a) Ref. AA4083935204 - Subject matter: Prison rules regarding privileges: Date of grant: 28th May 2004**

The Respondent discussed the prison rule book with his client including visits and advised him of the facilities he was entitled to use. Nothing else was done. £79.30 was claimed by the Respondent in relation to this grant.

- b) Ref. AA4083934404 - Subject matter: Interdict against Peterhead Prison: Date of grant: 28th May 2004**

The client felt he should be moved as he was “clubbed” up with another person. He heard that Napier (the prisoner who won the test case on slopping out) had insisted on being moved and had threatened to take an interdict against the prison. The Respondent advised it would not be appropriate to take the matter further. Nothing else was done. £79.30 was claimed by the Respondent in relation to this grant.

**Mr U**

- 17.53      **a) Ref. AA3254899503 - Subject matter: Divorce: Date of grant: 5th November 2003**

On the same day as this grant relating to divorce was made, another grant was made under AA3255392803 for writing to the Turkish Counsel for a marriage certificate: see below. As a marriage certificate is required to obtain a divorce it was not appropriate to make two separate grants of advice and assistance. £96.15 was claimed by the

Respondent in respect of the grant relating to divorce and £30.90 in respect of the grant relating to the marriage certificate. From the divorce file it was apparent that the client's wife had the marriage certificate and had agreed that she would provide a copy. The additional work writing to the Turkish Consulate was unnecessary and no reply was received from them in any event.

**b) Ref.AA3255392803:** see immediately preceding paragraph.

**Mr V**

17.54 The Respondent made 24 grants of legal advice and assistance to his client Mr V. The following are examples.

**a) Ref. AA/07/4271807504 -Subject matter: Complaint against Prison: Downgrade from Open to Closed Prison: Date of grant: 19 November 2004**

Attendance with client at Kilmarnock Prison 19/11/04. The Respondent took instructions and advised that he would write a letter. Time spent: 1 hour 5 minutes including waiting and travel of 15 miles (apportioned). Telephone call to client's girlfriend 8/12/04. Explained the contents of letter from Kilmarnock Prison dated 7/12/04 advising of client's return to a low supervision level and the process for his return to an open prison. Noting girlfriend is going to visit client and will inform him of the contents of this letter and relay the implications of this to the client. Time spent: 5 minutes. £79.15 was claimed by the Respondent in relation to this grant.

**b) Ref. AA/07/4273360104 - Subject matter: Entitlement to Access to Security Rating System of Scottish Prison Service: Date of grant: 19th November 2004**

Attendance with client at Kilmarnock Prison 19/11/04. The client wanted details of the rating system which he thought would answer some queries for him. The Respondent explained the rating system but the client wanted something "more concrete." The Respondent undertook to write for this despite noting that the client had been told that he was not entitled to this. Time spent: 1 hour 5 minutes including waiting and travel of 10 mile (apportioned). £61.55 was claimed by the Respondent in relation to this grant.

**c) Ref. AA/07/4297802504 - Subject matter: Prison Rules re. Transfer to Friarton Prison and Entitlement to Refuse Same: Date of grant: 22nd December 2004**

Attendance with client at Kilmarnock Prison 23 December 2004. Noting that the sentence management board would be meeting up with the client and that he wanted a meeting with them. The Respondent went over paperwork and agreed with client that it did not contain anything to suggest the client would not be going back to an open prison without having to go to Friarton but it just said that he would be downgraded. The client wanted to go to Castle Huntly or Noranside. The client questioned whether he would be going to Friarton and asked whether the authorities could insist on this. The client was advised of the law on this matter. Noting that if they insist on this move then the client was going to judicially review this. Time spent: 1 hour 10 minutes including waiting and

travel of 14 miles. £58.35 was claimed by the Respondent in relation to this grant.

**d) Ref. AA/07/4331798304 - Subject matter: Judicial Review against Scottish Prison Service re. Refusal/Delay in transfer to Open Prison: Date of grant: 21st January 2005**

Attendance with client at Kilmarnock Prison on 21 January 2005. The Respondent advised that he would do a letter to SPS and explained the only remedy would be Judicial Review. Noting that the client felt as he had had a low supervision level for some time he should be able to move on quicker than he was being allowed to. The client was reluctant to go through a semi-open prison but would take this if authorities insisted on it although he would not be happy about it. The client had heard he could get a Judicial Review for this. The Respondent undertook to look into this. Time spent: 1 hour 20 minutes including waiting and travel of 18 miles.

£82.30 was claimed by the Respondent in relation to this grant.

**e) Ref. AA15003445505 - Subject matter: Return to Open Conditions: Rule 6.11,6.12, 6.13, 6.14: Date of grant: 14th March 2005**

Attendance with client at Kilmarnock Prison 14 March 2005. The Respondent explained the law to client and advised what he should do and told the client that the Respondent could assist the client. The client thought he was being discriminated against. Time spent 1 hour 45 minutes including travel of 28 miles (apportioned).

£80.00 was claimed by the Respondent in relation to this grant.

**Mr W**

17.55 **Refs. AA3374616803 - Subject matter: Theft from Company 1 and Breach of Bail; AA3374620903 – Subject matter: Debt to Company 1: Dates of grant 16th February 2004**

These grants arose out of an allegation of theft of a quantity of food from ‘Company 1’. On the same day as the making of the grant relating to the allegation of theft, a second grant was made purporting to be a debt matter relating to ‘Company 1’ and the client’s obligation to pay. The details were the same in both files and focussed on the issue of a bill which was to be used as part of the defence. There was no claim ongoing for recovery of the “debt.” The Complaint had already been served for the theft of the food and the client’s appearance in court was imminent. There was no separate debt issue to deal with. This was a duplication.

**Mr X**

17.56 Over a period of three years the Respondent made approximately two hundred grants of advice and assistances to his client Mr X. The following are examples:-

**a) Ref. AA4281440104 - Subject matter: Complaint to police re. assault on you at Perth Prison: Date of Grant: 25th November 2004**

Attendance with client at Dumfries Prison noting details of an assault on him at Perth Prison on 11 inst. The client wanted to know whether he should make a Complaint to the police. The client was annoyed the police had done nothing. He wanted them to visit him and was still considering what to do. The Respondent and the client discussed the matter. The Respondent advised he would put in a Complaint if that was what the client wanted. Noting he would think about it further.

3 December 2004: attendance on client at Dumfries prison noting the client thinks the assault on him should have been recorded on camera. Advising about the difficulties of doing anything about this and advising on the law of corroboration. Further telephone calls were made and letters written. Tayside Police wrote to the Respondent (who forwarded a copy to the client) a letter that stated:

“According to prison records, Mr X was assaulted on 11 November 2004 and received “minor” injuries. He declined the offer of police involvement and refused to name his attackers to the Prison Service. CCTV at the prison also failed to provide any evidence. As Mr X did not wish to co operate with the Prison and declined to make any Complaint to the police, the matter was simply recorded as an incident by the Tayside Police Control Room.”

£85.00 was claimed by the Respondent in relation to this grant.



**b) Ref. AA4277120504 - Subject matter: Personal injury claim against Perth Prison, Assault: Date of grant 3rd December 2004.**

Attendance at Dumfries Prison noting the client had been assaulted at Perth Prison on 11 November. Noting all the background details to this and that he feels/knows a “screw” was at the back of the attack and set him up. Fully discussing the situation and advising on the difficulty of proving negligence on the part of the SPS said to be because no officer was on the landing to stop the incident.

On 8 December 2004 the Respondent sent a letter to the Governor of Perth Prison requesting that he treat this letter as intimation of a claim on the client’s behalf.

On 27 January 2005 the Respondent wrote to the client advising of a letter received from SPS. £200.40 was claimed by the Respondent in relation to this grant.

**c) Ref. AA3389737503 - Subject matter: Complaint Officer failed to carry out duties satisfactorily: Date of grant: 20th February 2004**

Attendance with client at Peterhead prison concerning complaints procedure. The client was alleging failure on the part of prison officers satisfactorily to carry out their duties. Noting he wished to complain about them being supposed to look in on him on an hourly basis due to his poor health. Noting he has complained about this 4 times to both prison and medical staff. He wants them to do this. He would like [the Respondent] to telephone them as a matter of urgency.

20th February 2004: telephone call to Peterhead prison explaining client's position and requesting that Governor call back.

28th May 2005: attendance with client at Peterhead prison explaining to him how to complete the Complaint form and explaining the significance of various forms.

19th July 2005: attendance with client at Peterhead prison helping him complete Complaint form and explaining the time limits for replying. Also explaining how far he can take this and when he can go to Complaints Commission. Further discussions with the client who wondered if it was worth taking the matter further. The Respondent did not think so but was willing to do a letter if the client wanted that done. £76.25 was claimed by the Respondent in relation to this grant.

**d) Ref. AA3406410503 - Subject matter: Complaint to Aberdeen Hospital re. treatment: Date of grant: 5th March 2004**

Attendance with client at Peterhead discussing possible Complaint to Aberdeen Hospital regarding his treatment. Noting that the client's GP sent a reminder letter to the hospital but nothing had been done. The client was enquiring about the prison's obligation to provide slippers. Noting the client was being caused a lot of pain, discussing matters and advising.

19th March 2004: writing to Aberdeen Royal Infirmary advising client's problems regarding his feet and

enquiring about the delay in his getting measured for slippers.

1st October 2004: attendance with client in Perth Prison noting he was not receiving proper treatment there. Noting the detail and advising about the CP system and what he should do. Advising him to get back in touch with Respondent if he didn't get anywhere. £36.00 was claimed by the Respondent in relation to this grant.

**e) Ref. AA4083645704 - Subject matter: Complaint to Woodend Hospital re treatment: Date of Grant: 28th May 2004**

Attendance with client at Peterhead Prison discussing Complaint against Woodend Hospital, Aberdeen, regarding his treatment. Noting he was supposed to get special shoes and he wanted [the Respondent] to write about this. Noting all background details and that he felt it was discrimination. Having him sign a mandate.

11 June 2004: writing to Woodend Hospital enquiring as to the up to date position.

24 September 2004: attendance on client at Perth Prison noting he still didn't have special shoes. He wondered what could be done. Advising [the Respondent] would make investigations. £76.95 was claimed by the Respondent in relation to this grant.

**f) Ref. AA4083956804 - Subject matter: Complaint to Medical department re. breach of human rights, facilities in prison: Date of grant: 28th May 2004**

Attendance with client at Peterhead prison discussing Complaint re medical department and breach of human rights re. facilities there. Mr Y of medical department had said he didn't think the client should be there as they did not have the facilities he required and he needed to be moved as soon as possible. Noting they were still slopping out and this was not good for his health. Noting he would like the Respondent to take this up with Mr Y.

1st June 2004: telephone call with Mr Y explaining client's concerns and noting as far as he (Mr Y) was concerned SPS was doing nothing wrong. Telephone attendance client advising of telephone conversation with Mr Y and noting he disagreed with that. Noting he wanted to go over other information he had with the Respondent. Noting he thought they were lying.

30 September 2004: attendance with client at Perth Prison noting he was having the same problems there. Noting details and advising him of the CP complaints system and what he should do. Advising if he got nowhere he should contact the Respondent. £76.55 was claimed by the Respondent in relation to this matter.

**g) Ref. AA4132674604 —Subject matter: Complaint of Failure to give entitlement to Dietician, Medical treatment: Date of grant: 19th July 2004**

Attendance with client at Peterhead prison noting his Complaint that he was not getting what he was entitled to by way of access to the dietician and also medical treatment. Advising what he should do by way of various CPs. Noting all background details, discussing the matter and advising re. his best course of action.

24 September 2004: attendance with client at Perth Prison noting he was still not getting dietary and medical entitlement there in Perth. He wondered what could be done about it. Explaining CP procedure and what he could do with this. Explaining his rights and that if he didn't get anywhere he should contact the respondent. £83.70 was claimed by the respondent in relation to this matter.

**h) Ref. AA4170566904 - Subject matter: Complaints Procedure/medical treatment: Date of Grant: 27th July 2004**

(This grant was made by the Respondent. A further grant was made on the same day by Miss Z (a former employee of the Respondent) with the reference AA4148557604 for the same matter. £50.60 was claimed by the Respondent in relation to that grant).

Attendance with client at Peterhead Prison noting he went to medical centre yesterday around 7.30am but no one was there. He told PO they would need to get someone and this took around 40 minutes. Noting the problems which ensued due to lack of medical staff etc. and that he had put in a CP about it. Noting the officer said that they checked on the client every hour but he was clearly lying. Noting client could get someone to back him up on this. Explaining Complaints procedure to him.

1st November 2004: attendance with client at Peterhead Prison noting [prison authorities] were admitting he had been treated shamefully. Noting that he wanted to put in a

formal Complaint and that he thought he was dying because of his insulin dependency. Advising [the Respondent] would speak to the relevant authorities.

24th November 2004: attendance with client at Peterhead prison explaining what [the Respondent's] investigations had revealed. Explaining his entitlement to retain a CP3 [at Peterhead] but that whatever he did [the Respondent] did not think it would make much difference. Noting the other people in prison were complaining as well and he wondered if he could take legal action. Advising [the Respondent] did not think this would be possible. £79.85 was claimed by the Respondent in relation to this grant.

**i) Ref. AA4186909304 -Subject matter: Complaints procedure re. meals/health/diabetic: Date of grant: 1st September 2004**

Attendance with client at Peterhead Prison noting his Complaint concerning meals served to him and the effect on his health. Noting he put in a CP2 plus appeal. Noting all background details about his diabetes and explaining the rules and what could be done. Receiving a menu from the client and other papers. Advising [the Respondent] would put these in the file. Advising on what the client should do when he got the CP back and how he should answer things. Assisting him and advising.

25th November 2004: attendance with client at Dumfries Prison noting he had read the 'Inside Times' on health. Noting he had not got anywhere on this matter and that he was wondering about petitioning for a damages claim as he was not feeling very well. Explaining [the Respondent] could do this but that [the Respondent] did not think he

would get anywhere with it. £75.30 was claimed by the Respondent in relation to this grant.

**j) Ref. AA4223484904 - Subject matter: Complaint to prison, inhumane conditions: Date of Grant: 12th October 2004**

Attendance with client at Perth Prison regarding Complaint regarding inhumane conditions and completion of CP1's. Noting client had completed a CP1 dated 11.10.04. Looking at this. Noting the first officer did not reply properly. Noting client was making a statement not asking a question. Explaining that the Respondent did not think that was the case. Assisting the in client in filling in the bit of the form for the residential manager. Noting the client wanted [the Respondent] to come back and see him regarding this so that [the Respondent] could assist the client with completing the rest of it. Noting that the client was not very happy about this and the client wanted [the Respondent] to do a letter about this.

26 October 2004: attendance with client at Perth Prison regarding Complaint of inhumane conditions. Explaining the Respondent thought that the client wanted a letter written. Noting the client had no further instructions for [the Respondent]. Noting the client had heard that other people were getting moved because of this. Explaining that [the Respondent] did not think that this was the case. £25.00 was claimed by the Respondent in relation to this grant.

**k) Ref. AA3406406403 - Subject matter: Failure of prison to monitor prisoner properly: Date of grant: 5th March 2004**

Noting that the client was supposed to be watched every 15 minutes. It took the prison 15 minutes to answer the bell and then 15 minutes for someone to be taken to the local hospital. Noting the client's comments: 'You feel that you could be dead. You do not want to be dead. You want the prison to respond to the bell!' the Respondent made a telephone call made to prison regarding the complaints procedure. The file was not available and the prison had to call back. There was no further activity on the file. £71.70 was claimed by the Respondent in relation to this matter.

**l) Ref. AA340642 1203 -Subject matter: Complaint to Scottish Prison Service, refusal/delay re. Security Status: Date of Grant: 5th March 2004**

Attendance with client at Peterhead prison regarding Complaint to SPS. Noting background position and advising of review of any category and advising the Respondent would enquire.

19th March 2004: writing to Prison advising of client's queries on review of category. SPS confirmed that his status was under review. £68.75 was claimed by the Respondent in relation to this grant.

**m) Ref. AA4055617004 - Subject Matter: Appeal Designation as Medium prisoner/challenge same: Date of Grant: 3rd May 2004**

Attendance with client at Peterhead prison regarding appeal against designation as medium category prisoner and entitlement to challenge same. Noting client was



wondering about this. Explaining rules. Explaining that [the Respondent] would take further instructions.

24th June 2004: attendance with client at Peterhead prison regarding appeal against designation as medium prisoner and entitlement to challenge same. Noting the client had already been told that he had been refused Legal Aid. [The Respondent] did not think the client would get legal aid for this in any event. £69.30 was claimed by the Respondent in relation to this grant.

**n) Ref. AA4186923304 -Subject matter: Transfer of Agency re. Judicial Review/Security Category: Date of grant: 1st September 2004.**

Attendance at Peterhead prison relating to transfer of agency and Judicial review of Security Category. Noting client is low and wants to be medium. (This is at odds with earlier grant where the client wanted to appeal his medium category) He went to Mr AA (solicitor) who applied for Legal Aid on client's behalf but this was refused by SLAB. He thinks he might have been judicially reviewed but he is not sure. He felt he should be medium security as his offence was not a sex one but simply a murder. Advising [the Respondent] would look into it on his behalf.

24 September 2004: attendance with client at Peterhead noting he did not recall signing any judicial review forms. Advising it might have been Legal Aid forms but noting he did not remember signing them.

25 November 2004: attendance with client at Dumfries Prison noting he was getting annoyed with Mr AA and

was thinking of sacking him. Noting he had Legal Aid for this matter.

6th February 2005: writing to SLAB about their letters of 8th and 20th October 2004 advising Taylor and Kelly were acting for client since they had managed to get LA for this however client not happy and would be dismissing them.

3rd March 2005: writing to SLAB advising that Taylor and Kelly had again been instructed on this. £87.40 was claimed by the Respondent in relation to this grant.

**o) Ref. AA4302104704 - Subject matter: Crime (Sentences) Act 1997; Transfer to Dumfries Prison: Date of grant: 16th December 2004**

Attendance with Client at Dumfries Prison discussing Crime (Sentences) Act 1997 (*sic*) and his transfer from Dumfries Prison. Explaining the position under the Act and how he might be entitled to a transfer. Nothing they seemed to be messing about with him a bit. Explaining his rights under the act and generally discussing his situation. £75.70 was claimed by the Respondent in relation to this grant.

**p) Ref. AA4302099004 - Subject matter: Delivery of statement from Advocacy and Complaint against State Hospital: Date of grant: 16<sup>th</sup> December 2004.**

Attendance with client at Dumfries Prison discussing the delay in statement from Advocacy being sent to client and his Complaint about getting into the State Hospital. Noting he had asked for statements from Advocacy

regarding his various Complaints and they had not been forwarding these to him. He wondered what could be done about this. Explaining that the Respondent would telephone on his behalf.

20th December 2004: telephone call to Advocacy explaining client's concerns. £73.95 was claimed by the Respondent in relation to this grant.

**q) Ref. AA4302094004 - Subject matter: Mental Health (Care and Treatment) Act 2003: Date of grant: 16th December 2004**

Attendance with Client at Dumfries Prison noting he wondered how the Mental Health (Care and Treatment) Act would affect him. Noting he perhaps wanted to go back into the mental health system and had been told there was a good chance of getting out through that because of the new system. Explaining the new system would not come into effect until October of the following year. Advising nothing could be done at that time. The client wondered what would happen should he go back in. Explaining it was not as simple as that. Generally advising and answering his various questions. £78.80 was claimed by the Respondent in relation to this grant.

**Ms BB**

17.57 In a two year period the Respondent made 123 grants of legal advice and assistance to his client Ms BB who suffered from mental health problems. The following are examples:

**a) Ref. AA4101159504 - Subject matter: Complaint against Royal Edinburgh Hospital: Date of grant: 21st June 2004**

The applicant had been detained under Mental Health Legislation.

(Advice had already been granted by the Respondent in relation to detention under S24 on 16th June 2004 under reference AA4093494604; £222 was claimed by the Respondent in relation to that grant.)

The client was noted to have been seen by doctor as she was in pain. Doctor confirmed there was nothing wrong with her. The Respondent advised and agreed that he was not a dentist and that the client was entitled to attend the dental hospital even although she was sectioned. She did not want to go as she was in pain. She wondered if there was any action that could be taken against the hospital. The Respondent indicated that he would speak to the hospital but no record was made on file to indicate that he did so.

A further meeting with the client took place two months later when she complained of being detained under Section 26. (A separate grant was made by another solicitor in this connection effective from 21 June 2004.) The Respondent agreed to look into this matter and said that he would write but there is no record in the file of anything further having been done. £74.30 was claimed by the Respondent in relation to this grant.

**b) Ref. AA4182067304 - Subject matter: Complaint against Job Centre re. disability discrimination: Date of grant: 24 August 2004**

Attendance with client at St John's Hospital. Client believed that the Job Centre was discriminating against her because of her disability as she had not had a response from them. She thought that they were accusing her of going in there with a hammer and a knife.

On 6 September the Respondent met the client in Linlithgow to discuss how her current status would affect her employment prospects. He explained that there was no point in contacting the Job Centre since she was going to be transferred to England. £79.90 was claimed by the Respondent in relation to this grant.

**c) Ref. AA41949 15004 - Subject matter: ability of employer to obtain information about illness/discrimination: Date of grant: 10th September 2004**

Four days after the meeting above condescended upon the Respondent met the client in St John's hospital to discuss the same issue of the effect on her employment and potential discrimination were she to be refused employment. The client said that she wanted the Respondent to look in to this. Three days later he went back to answer various questions but no details were recorded on file of the advice given. £85.00 was claimed by the Respondent in relation to this grant.

**Mr J**

17.58 The Respondent made the following grants of legal advice and assistances to his client Mr J who has been diagnosed as suffering from paranoid schizophrenia and possible delusional personality disorder.

**a) Ref. AA2020015102 - Subject matter: Murder:  
Date of grant: 8th April 2002**

Attendance at Carstairs regarding the murder of Mr CC in 1997. The client was apparently in hospital when Mr CC was murdered. Noting two people were charged with the murder but had been found not guilty. The victim had apparently told the client that he thought his life was in danger from MI5. The client had not told the police this and wanted to tell the Respondent about MI5. The file does not disclose anything being done by the Respondent. Ten months later the Respondent saw the client again and noted that the client had further information and would contact the Respondent again and arrange a visit. There is no record on file of any advice given at this meeting and it is not apparent why the meeting should have taken place after such a long gap unless it was initiated by the Respondent. After a further ten months there was another meeting with the client when the Respondent noted that the client had further information. The file note that was dictated was destroyed so that there is no record of what was discussed. After yet a further seven months had elapsed the Respondent met the client again. The client updated the Respondent on his dealings with the police and the letters he had written. It is not clear what legal remedy the client was looking for and what advice was given. The Respondent told the client that the police were unlikely to question him about the matter.

A second file was opened up two months later and is dealt with below. The medical evidence in the client's file for the mental health appeal indicates that the client was suffering from a drug induced paranoia which led him to believe that he and his family were in danger. At the time of his admission he had told doctors about his concerns about his friend being murdered and had mentioned the alleged involvement of MI5.

**b) Ref. AA4217469904 - Subject matter: Murder:  
Date of grant: 13th September 2004**

Nothing new was raised in this further grant which was identical to the subject matter of the earlier grant under AA2020015102. A further £79.80 was claimed by the Respondent in relation to this grant.

**c) Ref. AA42 15830404 - Subject matter: Claim  
against hospital re. missing property: Date of grant:  
27th September 2004**

A meeting took place with client to discuss a missing 'Slendertone' belt which could not be found. The client wanted to know the hospital's obligation to recompense him. No details were recorded on file by the Respondent of the advice given but a letter sent to hospital to enquire whether the hospital would recompense the client. The ward manager had submitted a claim which was subsequently rejected as the item was not in the care of the hospital and that the police had been satisfied that the matter had been investigated internally. The client gave no further instructions. £58.55 was claimed by the Respondent in relation to this matter.

**d) Ref. AA4285028104 - Subject matter: Complaint against hospital for refusal/delay in return of property: Date of grant: 7th December 2004**

This file was opened while the previous file referred to above was still open. This concerned exactly the same issue of the 'Slendertone' belt. £41.10 was claimed by the Respondent in relation to this grant. The value of the property was said to be £110.

**e) Ref. AA3320309303 - Subject matter: Interdict against State Hospital, contact with outside agencies: Date of grant: 8th December 2003**

Another file was opened on the same day as the case above concerning correspondence, this time to outside agencies. The client wanted to write to Panorama and was told that he was not allowed to do this. The Respondent said that he would send a letter on the client's behalf. No further work was done on this file. £25 was claimed by the Respondent in relation to this matter.

**f) Ref. AA3353975303 - Subject matter: Interdict against State Hospital, to allow send mail: Date of grant: 21st January 2004**

The client wanted to post a letter to 'World in Action' and was again refused this. This is the same subject matter as is dealt with in the grant referred to in the immediately preceding paragraph. Various meetings took place which overlap with the other grants referred to. Most of these were very brief meetings and nothing was done with the client being recorded as wanting the Respondent 'to



monitor' the position. £55.20 was claimed by the Respondent in relation to this grant.

**g) Ref.AA3373632503 – Subject matter: Mental Health Act Section 115 (opening of mail): Date of grant: 17th February 2004**

This grant covered explaining section 115 of the Act and going over the content of the letter addressed to 'Panorama' which the client then said he did not want sent after all. The Respondent and the client then went over the letter addressed to 'World in Action'. The Respondent explained that he did not think the programme was still in existence but the client wanted the letter to be sent anyway. £80 was claimed by the Respondent in relation to this grant.

**Mr DD**

17.59 Three separate files as detailed below had been opened for this matter incurring a total of £237.15 with no contact with the prisons recorded on the file, except for one reference to a 'conversation with the various parties involved'. Work clearly overlapped and it is apparent that separate grants had been made to avoid applying for increases in expenditure which would have been inappropriate in any event as everything could have been dealt with under one grant within the initial expenditure limit.

**a) Ref. AA3156271403 - Subject matter: Transfer to open prison: Date of grant 31st July 2003**

The client wanted a transfer as he felt he had been in Glenochil for too long. The Respondent advised of the CP procedure and said that he would see what he could do. Two meetings took place and two letters were sent by the Respondent; one indicated that he had contacted the prison and that they were not going to transfer the client directly to the open prison and the second, sending documentation on transfers and advising that the client should now be in a position to be transferred. £80 was claimed by the Respondent in relation to this grant.

**b) Ref. AA3245270803 - Subject matter: Complaint to Governor regarding duty in transfer to open prison: Date of grant: 20th October 2003**

The prison was alleged to have delayed or refused to transfer the client to open prison and to provide him with information regarding the psychiatric test he had submitted to five weeks previously. The Respondent recorded in the second of his file notes that he had had conversations with various parties regarding this but there was nothing in the file to support this. There was no indication of whether or how this matter had been resolved. The expenditure was exhausted with the two meetings. £79.85 was claimed by the Respondent in relation to this grant.

**c) Ref. AA4014079104 - Subject matter: Transfer to open prison: Date of grant: 7th April 2004**

The client had been designated as a low category prisoner for three months and wondered if this could speed up his transfer. The Respondent advised that he would look further into this on his client's behalf but there was

nothing recorded the file to indicate that he did so. £77.30 was claimed by the Respondent in relation to this matter.

Two separate meetings were charged for in two of these files on 22nd January 2004 discussing the same issue. Thirty-five minutes was charged for in one file and five minutes in the other with clear. The Respondent ran these files in tandem and deliberately duplicated his charges.

### **Legal Aid (Scotland) Act 1986 Section 7(2)**

17.60 The Legal Aid (Scotland) Act 1986 by Section 7(2) (see Art 3.9) excludes from the legal advice and assistance scheme any advice and assistance provided to a person in connection with proceedings before a court or tribunal at a time when he was receiving legal aid in connection with those proceedings. Despite that, the Respondent made the following grants:-

### **Mr EE**

17.61 Solemn criminal legal aid was granted on 16th May 2003 under reference number SL3064460403 in respect of two charges of rape. During the currency of this grant of legal aid, two grants of Advice and Assistance were made covering issues which fell within the scope of the criminal legal aid grant. Summaries of the cases are provided

#### **a) Ref. AA/07/3312564303 - Subject matter: Sex Offenders Act: Date of grant: 19th December 2003**

Attendance with client at HMP Barlinnie 19/12/03. Applicant facing two rape charges and querying how the Act would affect him if convicted. Implications explained

to client and general discussion. Respondent spent 1 hour 35 minutes, including waiting time and travel of 15 miles.

Attendance with client at HMP Barlinnie 3/6/04. Explained outcome of check into implications for client and advised of new rules. Time spent: 5 mins. £90.40 was claimed by the Respondent in relation to this grant.

**b) Ref. AA/07/4014099904 - Subject matter: Mental Health (Care & Treatment) Act 2003, not fit to plead: Date of grant: 7th April 2004**

Attendance with client at HMP Barlinnie on 7/4/04. Discussed effect of the Act on the client, noting current medication and a personality disorder. The Respondent discussed the client's opinion that the Act had not been implemented but went on to discuss how it would affect the client anyway and said that he would look into in greater detail. The Respondent spent 1 hour 20 minutes, including waiting time and travel of 5 miles.

Attendance with client at Glasgow High Court Police Cells 4/5/04. Discussed the Act and explained why this would not affect the client. Time spent: 2 minutes. £75.85 was claimed by the Respondent in relation to this grant.

**Accounts submitted twice**

17.62

**a) Ref. AA4013977804 – Mr DD**

A claim was submitted by the Respondent under original synopsis requesting payment of £69.30, location: Glenochil Prison. A duplicate synopsis was submitted by the Respondent claiming £81.70, location: Greenock

Prison. (A charge was also made for requesting the duplicate synopsis form). Both of these accounts were submitted on the same day.

**b) Ref. AA3266471703 Mr FF**

The first claim was submitted on 28 January 2005 and the second in June 2005 which was rendered at £71.80. The file entries were entirely different in each file. The earlier account had one more attendance than the later file. The solicitor's internal reference were the same on each file.

**c) Ref AA3171653503 – Mr GG**

This account was originally submitted in November 2003 and was submitted for a second time in June 2006. The first attendance claimed in the account as originally submitted was for 1 hour 35 minutes, including travel. In the second account this was claimed as 3 hours 20 minutes, apportioned with other cases which were not detailed. Further work had been added to the second account which was not included in the original. Both accounts showed the same internal reference. The Respondent also attempted to charge SLAB for four letters chasing up the acknowledgement form in the later account when this had already been submitted with the original account.

**d) Ref AA3151708203 — Mr HH**

This account was originally submitted on 1 April 2004 as a claim for payment of £91.05 restricted to the limit of authorised expenditure of £80. No details of the apportionment with other cases was provided so that the

account was paid at the minimum fee of £25. The account was resubmitted on 14 March 2006 with a photocopy of the synopsis form and the claim on this occasion was for payment of £78.70. The file notes were not the same. Different times and mileages were claimed.

**Mr II**

17.63 **Ref. AA3359446803 - Subject matter: Possible claim re health problems: Date of grant: 10 February 2004**

The Respondent saw this client regarding three matters of which this was one. The others were a reparation claim regarding sexual abuse and prison category. In relation to this grant the client stated that he felt that the prison was breaching his human rights because he inhaled the cigarette smoke of others. The client stated that he did not want the Respondent to do anything about this. The Respondent wrote to the client advising him that he had investigated the matter and would visit, but he never did. The file was then closed. £74.35 was claimed by the Respondent in relation to this grant.

**Mr JJ, Mrs KK & Ms LL**

17.64 **Refs. AA41688401104 AA4168976404 & AA4170468704**

In this case there were two separate grants of advice and assistance involving a children's panel and an adoption matter. Advice was provided to the natural mother, Mrs KK, her new partner and the child at the centre of the dispute, Ms LL. Ms LL lived separately with her natural father. Mr JJ had no parental rights in relation to Ms LL

and was not allowed any contact with her. When the question of adoption was raised, Mr JJ & Mrs KK wanted to prevent this, and the Respondent gave advice to both of them as well as to Ms LL. No substantive work was carried out in any of the files and advice was provided to Mr JJ for matters in which he had no locus to be involved. £192.85 was claimed by the Respondent in relation to these grants.

**Ms MM**

17.65 **a) Ref. AA4187914104 - Subject matter: Children's welfare hearing: Date of grant: 14 September 2004 - See below.**

**b) Ref. AA4187906804 - Subject matter: Housing/homeless and right to house: Date of grant: 14 September 2004**

This client's children were subject to a supervision order made by the Children's Hearing and were in foster care. The Social Work Department intended to seek a permanent order which would have had the consequence that the children would not return to live with the client. On the housing matter, a letter was sent to the Housing Association stating that the applicant was a single parent with two children and was currently living in a hostel. The applicant was offered housing which she accepted. This happened as a result of the misleading information contained in the Respondent's letter to the Housing Association. The children were in foster care. There was no reason to open two separate files were opened for parental rights & responsibilities and for the children's welfare hearing. There is no mention in the file of a

hearing taking place. Both matters involved the same subject matter. Attempts were made to arrange meetings when there had been no reply from the Social Work Department. The agency was then transferred to another solicitor. The client was not seen by a qualified solicitor at any time. A total of 39 minutes was recorded in the file notes. The Respondent claimed the minimum fee in respect of each of these three grants amounting to £75.00 plus VAT.

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

- 17.66 a) By letter dated 7 May 2007 the Complainers intimated to the Respondent a list of issues relating to the legal aid Complaints. They required the Respondent, within 21 days of that date, to furnish to them his written response to each of the issues, along with any further background information he might wish to provide, and to deliver to them his business files in relation to the matters referred to in the list of issues.
- b) On 17 May 2007 the Respondent telephoned the Complainers. He said that, given the complexity of the issues he would need at least nine months to respond, and in any event would require to see the evidence held by SLAB which supported the allegations. The Complainers' case manager reminded the Respondent of the need for a timeous response and suggested that the Respondent put in writing his request for more time, with a list of questions for SLAB. The Respondent made no further contact at that stage.



c) On 5 June 2007 the Complainers served upon the Respondent a notice under section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980, requiring a response to the Complaint, together with an explanation for the previous delay in doing so, within 14 days of 5 June 2007.

d) The Respondent contacted the Complainers by telephone on 8 June 2007. He said that he needed “lots more time”. The Complainers’ case manager explained to the Respondent that if he needed more time he would have to request this in writing, with reasons in support of the request. The Respondent did not do so. Instead he telephoned the Complainers on 20 July 2007 and again asked for more time. The Complainers’ case manager pointed out that he had been asking for this for the previous six weeks.

e) On 15th August 2007 the Respondent wrote to the Complainers in the following terms:

**“Complaint by Scottish Legal Aid Board**

We refer to your correspondence and discussions with our Mr Anderson regarding the above matter.

We write to inform you that we have considered the Report by the Legal Aid Board.

We have discussed the contents of the Report with a number of Solicitors. The Solicitors who have considered this matter have advised us that in order to prepare a detailed and considered response to the Report a lot of time and effort will have to be put into this matter. This will include looking at the Law, Regulations and

Guidelines in relation to Legal Aid, corresponding with other Solicitors regarding the way they conduct their business and, of course, going over all the files and entry notes and considering these and responding to the comments made by the Board in relation to these files. We are currently going to be discussing this matter with other Solicitors who may be able to act on our behalf.

We would therefore ask that we be allowed say three weeks to find a Solicitor who can deal with this matter at a reasonable cost. We cannot afford to be certain solicitors £200.00 an hour (and in some cases even more).

We look forward to hearing from you.”

f) The Complainers wrote again to the Respondent on 17 September 2007 (more than four weeks after the date of the Respondent’s request for three weeks, during which time nothing further had been heard from the Respondent) and said that as the Respondent had had more than sufficient time to take any necessary steps, the Complaint would proceed to the next stage.

g) The Respondent sent a fax to the Complainers on 18 September 2007 in the following terms:

**“Complaint by Scottish Legal Aid Board**

We refer to our earlier correspondence and relation to the above matter. We write to inform you that we have contacted you by telephone on 14<sup>th</sup> September 2007 and note that you are away from the office. We spoke with a female from your department and explained the position to her very briefly. We explained that our Mr Anderson

would not be in the office during the week commencing 17<sup>th</sup> September 2007. We further explained that we would ask for a further two weeks to find a Solicitor. If we cannot find a Solicitor to act on our behalf at a reasonable cost then we will have to deal with this matter ourselves.

We trust the above explained the position.”

h) On 24 September 2007 the Complainers wrote to the Respondent that the case was awaiting allocation to a reporter.

i) The Respondent has at no time provided the Complainers with a meaningful response to the legal aid Complaint. The Complainers have, accordingly, required to investigate the Complaint without the benefit of any input from the Respondent.

18. Having given careful consideration to the averments of fact, the productions lodged and agreed by the parties, the submissions made by both parties, the evidence led in the course of the proof and the Answers lodged on behalf of the Respondent, the Tribunal found the Respondent guilty of professional misconduct in respect of:

- a) his failure to respond to correspondence from other solicitors (para 17.13 above);
- b) his failure to implement a mandate (para 17.13 above);
- c) his failure to respond to correspondence from the Complainers (paras 17.15, 17.16, 17.33, 17.37 – 17.40, & 17.66 above);

- d) his failure to obtemper statutory notices (paras 17.17-17.19, 17.34-17.36 & 17.66 above);
- e) his obtaining or attempting to obtain payment from the Scottish Legal Aid Board by persistent breaches of the Legal Aid Regulations, Code of Conduct and Relative Guidance and otherwise, and in particular:
  - i) by making multiple and / or repetitive grants of legal advice and assistance (paras 17.30, 17.31, 17.41, 17.42, 17.47, 17.48, 17.50, 17.51, 17.52, 17.53, 17.54, 17.55, 17.56, 17.57, 17.58, 17.59, 17.65 above);
  - ii) by charging or attempting to charge the Scottish Legal Aid Board other than for work actually and necessarily done (paras 17.44 & 17.46 above);
  - iii) by holding unnecessary meetings with clients which inflated fees (para 17.63 above);
  - iv) by acting or accepting instructions to act unprofessionally, giving inappropriate advice and doing work under the Legal Advice and Assistance Scheme where the value of the subject matter rendered it inappropriate to do so having regard to the terms of Regulation 17(1) of the Legal Advice and Assistance (Scotland) Regulations 1996, or where the client claimed to have means that placed him beyond the scope of the Advice and Assistance Scheme (paras 17.42, 17.43, 17.45, & 17.64 above);
  - v) by granting legal advice and assistance to persons already in receipt of Legal Aid for the relevant subject matter contrary to the Legal Aid (Scotland) Act 1996 Section 7(2) (para 17.61 above);
  - vi) by submitting accounts twice in respect of single pieces of work (para 17.62 above).

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

Edinburgh 6 September 2013. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Steven Angus Anderson, Solicitor, formerly of Messrs Andersons, Solicitors & Notaries, 2 Hillkirk Street Lane, Springburn, Glasgow and residing at 7 Duthiepark Place, Glasgow; Find the Respondent Guilty of professional misconduct in respect of his failure to respond to correspondence from another solicitor, his failure to implement a mandate, his failure to respond to correspondence from and statutory notices served upon him by the Complainers; his obtaining or attempting to obtain payment from the Scottish Legal Aid Board by persistent breaches of the Legal Aid Regulations, Code of Conduct and Relative Guidance and Otherwise and in particular: (i) by making multiple and / or repetitive grants of legal advice and assistance; (ii) by charging or attempting to charge the Scottish Legal Aid Board other than for work actually and necessarily done; (iii) by holding unnecessary meetings with clients which inflated fees; (iv) by acting or accepting instructions to act unprofessionally, giving inappropriate advice and doing work under the Legal Advice and Assistance Scheme where the value of the subject matter rendered it inappropriate to do so having regard to the terms of Regulation 17(1) of the Legal Advice and Assistance (Scotland) Regulations 1996, or where the client claimed to have means that placed him beyond the scope of the Advice and Assistance Scheme; (v) by granting legal advice and assistance to persons already in receipt of Legal Aid for the relevant subject matter contrary to the Legal Aid (Scotland) Act 1996 Section 7(2); and (vi) by submitting accounts twice in respect of single pieces of work; Order that the name of the Respondent be struck off the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the 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, restricted by 50% for all procedure prior to 10 July 2013 and unrestricted thereafter; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**Alistair Cockburn**

**Chairman**

20. 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**

**Chairman**

**NOTE**

At the hearing on 6 September 2013, after three and a half days of evidence, the parties intimated to the Tribunal that an agreement had been reached between them. The fiscal for the Complainers listed the Articles of the Complaint that the Respondent was now admitting. The Respondent confirmed that he was admitting the facts as set out in those Articles and, further, that the conduct accepted by him amounted to professional misconduct.

With regard to the question of misconduct, Mr Lynch indicated that he was insisting upon Article 72(1)(a), (b) restricted to Article 2, (c) under deletion of Article 69(1)(2)(3) and substitution of Article 70, (d) under deletion of Article 69.4 and substitution of Article 70, (e), (f) under deletion of Articles 9, 10, 27, 28, 29, 36 and 37 and the insertion of Article 67.1, (g) restricted to Articles 15.1 and 19.1, (j) under deletion of Articles 10, 16, 57, 58, and 59, (k) & (l).

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch tendered a previous Finding from the Tribunal in respect of the Respondent. He indicated that he had nothing to add to the evidence led on behalf of the Complainers other than in relation to Articles 5 and 70.

Article 5, he said, related to the failure of the Respondent to reply to correspondence and statutory notices in relation to the Complaint in connection with Mr C.

Article 70, was the failure of the Respondent to reply to correspondence in connection with the Complaint by the Scottish Legal Aid Board. As there were admissions that the correspondence was sent and received, he indicated that he did not propose to add anything further.

Mr Lynch submitted that this case represented a long running, systematic abuse of the Legal Aid Fund.



When the Tribunal invited the Respondent to make his submissions, he requested a short adjournment to allow him to gather his thoughts. Accordingly, the hearing was adjourned.

On reconvening, the Tribunal asked the parties for some clarification of the agreement reached between them.

The Respondent confirmed that he was also admitting Articles 8.1, 30.1, 33.1, 34.1, 35.1 and 39.1.

The Tribunal asked the parties to confirm to which Article of professional misconduct they were attributing Article 52. Mr Lynch confirmed that in fact Article 72(1)(h) was to be included in his submission, but restricted to reference to Article 52 only.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Anderson indicated that as the Tribunal had heard evidence in the matter he intended to be concise. This case had involved a huge amount of work by all parties and had been a long, complicated and drawn out matter.

Prior to August 2008 the Reporter for the Law Society had looked at the facts regarding alleged overcharging and had formed a view that a 5 year suspension was appropriate. That restriction on providing legal aid had now expired. He considered that restriction to be the least of his worries as he would not be allowed to provide legal aid again.

The Tribunal asked the Respondent if he could offer any explanation for acting in the way he had.

The Respondent indicated that there had been a fundamental disagreement between himself and the Scottish Legal Aid Board about the way things should be done. He accepted, in retrospect, that he had been stupid. In many cases where he had granted more than one advice and assistance certificate, he believed he would have been able to apply for increases in authorised expenditure to be paid as much for the work done

as by multiple grants. He had tried to demonstrate to the Tribunal that it was not so easy in practise. He asked the Tribunal to have some regard to his Answers to the Complaint.

With regard to the averments relating to Mr A, he accepted that he should have responded to Law Society correspondence. He had known that Ms McKenna had been successful in securing the release of Mr A and knew that the information she sought would have been given to her by the court. He was not without blame but he submitted this explanation amounted to mitigation in the matter.

With regard to his failure to respond to the Complainers in relation to the Legal Aid Board's Complaint, he indicated this had been a complicated matter involving a lot of work. He had wanted to respond and in hindsight accepted he should have given it more priority. He had been working all hours to keep clients happy. Subsequent to this, he had moved away from prison work as it had been harder and harder to obtain advice and assistance for these matters, many of which the Legal Aid Board considered to be frivolous but not so the clients.

As a result he had moved into the field of mental health where matters were more straight forward and easier.

He had no excuse for behaving in the way he had pled to. He hoped that his explanations were not frivolous, vexatious or non points. He accepted he had to face up to the consequences.

Looking back he wondered whether it would have been better to accept the Complaint sooner, particularly given that the 5 years suspension was now up. He accepted there would be serious consequences as a result of the conduct he now admitted. He also accepted that any hope he had of renewing his practising certificate might not come to any fruition.

If he was to be allowed to continue practising he indicated he would not be doing legal aid work at all. He thought he might be able to secure some contracting work as he had a diploma in specialist oil and gas work.

While he accepted that the evidence was all against him, he asked the Tribunal to have regard to the reduced plea he had tendered – he had tendered a plea to 30 out of 70 charges.

The Respondent confirmed that he is married and has not been working as a solicitor. He sometimes helps his wife, who is a dog groomer or his brother, who has a farm. His only income was rental income of £900 per month.

The Tribunal asked the Respondent to confirm when he had stopped practising. The Respondent indicated that after his suspension from providing legal aided services, two of his assistants had started their own business. They had allowed him to use their offices as a place to complete his negotiations with the Legal Aid Board regarding outstanding accounts. His last business accounts had been for the year ending 31 October 2010.

The Tribunal asked the Respondent where he considered his case lay in the range of disposals open to the Tribunal, bearing in mind that he had pled guilty to

1. One charge of failing to implement a mandate
2. Four charges of failing to respond to correspondence from solicitors or the Law Society
3. Three charges of failing to respond to statutory notices
4. Seventeen charges of multiple grants for advice and assistance
5. Two charges of charging or attempting to charge for work not actually or necessarily done
6. One charge of holding unnecessary meetings with clients to inflate fees
7. Four charges of acting unprofessionally
8. One charge of granting advice and assistance where there was legal aid in existence
9. One charge of double accounts

The Respondent submitted it would be appropriate to impose a restriction of 5 years back dated to his suspension. In response to being advised that such a disposal was

not competent, the Respondent submitted that he felt he had paid his penance for the Legal Aid Board side of the Complaint.

## **DECISION**

Although the Respondent was clearly accepting that his conduct amounted to misconduct, the first consideration for the Tribunal was whether the conduct admitted by the Respondent amounted to professional misconduct in terms of the Sharp case.

The Tribunal gave very careful consideration to the agreed averments, Productions, evidence led and submissions made by both parties.

Evidence had been led from 3 witnesses, 1, Lynn Duff, a complaints investigator with the Law Society, 2, Yvonne McKenna, a solicitor, and 3, Judith Cemery, the manager of the accounts assessment department of the Scottish Legal Aid Board. In practical terms, most of the evidence led had been superceded by the agreement of facts by the Respondent.

The conduct admitted by the Respondent involved a number of failures to respond to correspondence and statutory notices from his professional body. This Tribunal has indicated many times in the past that such conduct is likely to amount to professional misconduct. The Respondent also failed to respond to correspondence and a mandate from a colleague, in a case where the client was effectively remanded in custody.

The catalogue of contraventions of the regulations and guidance in relation to the provision of legal advice and assistance were well described by the fiscal as a long running, systematic abuse of the legal aid fund. There was a huge number of breaches, carried out in a number of different ways. Many of what were referred to as charges in the submissions actually involved multiple breaches within them.

Having regard to all of the above, the Tribunal held that the Respondent's conduct fell well below the standard to be expected of a competent and reputable solicitor, and that it was serious and reprehensible. Accordingly the Tribunal found the Respondent guilty of professional misconduct.

The Tribunal then turned to consider which disposal would accurately reflect the serious and reprehensible nature of the Respondent's misconduct.

The Tribunal had before it a course of conduct which had persisted for 7 years. The averments relating to the provisions of advice and assistance disclosed considered and wilful behaviour on the part of the Respondent.

A solicitor must act with honesty, truthfulness and integrity. It is important that the public have trust in the profession. The persistent abuse of the Legal Aid Fund and the repeated failure to respond appropriately to his professional body could be seriously damaging to the public trust in the profession.

Elements of the Respondent's conduct in the provision of advice and assistance disclosed a degree of dishonesty on his part, in particular in a) submitting accounts twice in respect of single pieces of work, b) overcharging for travel, and c) holding unnecessary meetings with clients in order to inflate fees.

The Tribunal had found great difficulty in determining whether the Respondent had shown any remorse or insight into his conduct. Clearly, regard had to be given to the fact that the Respondent was now admitting his guilt which to a degree could be interpreted as showing some remorse. Additionally, the Respondent had indicated in his plea in mitigation that he now had to face up to the consequences of his actions. However, his plea in mitigation had demonstrated that he had little insight into his conduct. An example of that could be seen in his attempt to justify failing to obtemper a mandate by saying that the solicitor could obtain the necessary information elsewhere, in a case where the client was unlawfully remanded in custody.

A previous Finding by the Tribunal was lodged by the Fiscal. This related to the Respondent failing to respond to Law Society correspondence in 2007, which resulted in a Finding of professional misconduct on 3 June 2008 and a Censure being imposed.

A number of factors caused the Tribunal particular concern; the lengthy period of the course of conduct; the systematic nature of the abuse of the Legal Aid Fund; the fact that his misconduct was directed towards a fellow solicitor, his professional body and a public fund and that there were elements of dishonesty. The Tribunal concluded that the Respondent's conduct demonstrated that he was not a fit person to be a solicitor. Accordingly, the Tribunal held that the name of the Respondent should be struck from the Roll of Solicitors in Scotland.

Thereafter, the Tribunal invited parties to address it in relation to expenses and publicity.

Both parties indicated they had no submissions in relation to the question of publicity.

The fiscal moved for an award of expenses. The Respondent opposed that motion. Mr Anderson emphasised that he had tendered a plea to 28 out of 70 charges. He indicated that this was mainly as a result of the expert report obtained by the Complainers in the course of proceedings. He submitted that the Complainers should have obtained expert advice before raising the Complaint and accordingly there should be no award of expenses in favour of either party.

The Tribunal asked the fiscal to clarify the history of negotiations between the parties.

The fiscal indicated that the first offer of a plea was made in April / May 2013 but that that plea was no where near as extensive as the one currently tendered. He confirmed that he had made an offer of a plea in the current terms to the Respondent before and during the proof. The fiscal submitted that if the Respondent had made his position clear earlier in the proceedings, then the Complaint may well have been in a different form. It was the Respondent's conduct that had created this position and a general award of expenses in favour of the Complainers was appropriate.

The Tribunal adjourned to consider these submissions. Having careful regard to what had been said by both parties, the Tribunal had a degree of sympathy with the view that the Complainers had raised the Complaint without properly taking expert advice. Whilst it accepted a restriction would be appropriate to reflect that factor, there was

nothing in the Respondent's conduct after the commencement of the proof which would justify departing from the normal award of expenses.

Accordingly, the Tribunal found the Respondent liable in the expenses of the proceedings, restricted by 50% up until the commencement of the proof on 10 July 2013 and unrestricted thereafter.

The Tribunal made the usual order with regard to publicity.

**Alistair Cockburn**  
**Chairman**