

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

FINDINGS

in Complaint

by

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

against

**ELIZABETH ANNE
DINGWALL, Solicitor, Hughes
Dowdall, Sterling House, 20
Renfield Street, Glasgow
Respondent**

**R BRENDAN CAMERON,
Solicitor, Peterkin Robertson Paul
LLP, Kensington House, 227
Sauchiehall Street, Glasgow
Secondary Complainer**

1. A Complaint dated 28 June 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") on behalf of the Secondary Complainer requesting that, Elizabeth Anne Dingwall, Solicitor, Hughes Dowdall, Sterling House, 20 Renfield Street, 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 order in the matter as it thinks right. R Brendan Cameron, Solicitor, Peterkin Robertson Paul LLP, Kensington House, 227 Sauchiehall Street, Glasgow (hereinafter referred to as "the Secondary Complainer") is the Secondary Complainer.

2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 3 October 2013 and notice thereof was duly served on the Respondent.
4. The hearing took place on 3 October 2013. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented by Michael Foster, Solicitor, Glasgow.
5. A Joint Minute of admissions was lodged admitting the averments of facts and averments of duty in the Complaint, subject to the amendments made in the Joint Minute of Admissions. It was also clarified that the Complainers did not take issue with the facts as set out in the Respondent's Answers.
6. On this basis, the Tribunal found the following facts established:-
 - 6.1 The Complaint was made by the Council of the Law Society of Scotland. R Brendan Cameron, Solicitor, on behalf of Peterkins Robertson Paul LLP, Kensington House, 227 Sauchiehall Street, Glasgow, the Secondary Complainer.
 - 6.2 The Respondent's date of birth is 26 May 1955. She was enrolled on 12 January 1979. Her professional history is:-
 - a) She undertook and completed her apprenticeship with the then, Messrs Brechin Robb, Glasgow;
 - b) She then became a Qualified Assistant with Messrs Morrison & Smith in Carlisle for a period of approximately 1 year;
 - c) She then became a Qualified Assistant with Messrs Cartys on a temporary basis for a period of approximately 3 months

whilst awaiting appointment to the Crown Office and Procurator Fiscal Service;

- d) She then became a Procurator Fiscal Depute for a period of approximately 18 months;
- e) She then became Principal Legal Assistant with Shetlands Island Council for a period of three years;
- f) She then became Senior Legal Assistant with Clydesdale District Council for a period of approximately one year;
- g) She then became a Qualified Assistant with Ballantyne & Copland for a period of approximately three years;
- h) She then became a Qualified Assistant with Bishop & Robertson Chalmers for a period of slightly more than one year;
- i) She then became a Qualified Assistant with Robertson Neilson with effect from 20 November 1989 and an Associate in or about June 1990;
- j) She was assumed as a Partner in Robertson Neilson with effect from 1 January 1991; Robertson Neilson then merged to become Robertson Paul which then merged to become Peterkins Robertson Paul which then became Peterkins Robertson Paul LLP; the Respondent was a Partner in the merged Partnerships and a Member of the LLP. She resigned on 19 December 2012. She is currently a consultant with Hughes Dowdall Solicitors.
- k) Throughout her entire employment history, the Respondent performed all of her duties diligently and competently and without any complaint by her employers;
- l) Throughout her professional career to date the Respondent has been the subject of only one other Complaint and she was exonerated.
- m) Throughout her professional career, no issue was ever raised about her competence.

- 6.3 The Secondary Complainer submitted a Complaint Form to the Scottish Legal Complaints Commission in June 2012. The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.
- 6.4 By letter dated 20 June 2012 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on consideration of Mr. Cameron's complaint about her actions whilst she was acting under a Power of Attorney for the Firm's client, Mrs A, between 22 September 2011 and 19 November 2011, in inappropriately withdrawing £8,350 cash from Mrs A's bank accounts and depositing only £4,900 into the firm's client account during the same period. Mr. Cameron further complained that she had failed to provide an adequate or believable explanation for the shortfall in the balance between the funds despite being asked to do so on 17 January 2012. The Respondent provided responses to the Law Society of Scotland at the time.
- 6.5 On 8 July 2008 Mrs A, instructed the firm to set up a Power of Attorney on her behalf. In May 2010 her family were increasingly concerned that persons were misappropriating her funds due to her deteriorating capacity. A Continuing and Welfare Power of Attorney was activated with R Brendon Cameron and the Respondent appointed as the attorneys. This was registered with the Office of the Public Guardian on 1 June 2010. The Respondent dealt with the client's affairs from that time onwards. The client was received into the care of a Nursing Home with a diagnosis of dementia. Between 22 September and 19 November 2011 the Respondent withdrew a total of £8,350 cash from the two bank accounts held on behalf of Mrs A,

Santander Current account 05322589 and Branch Saver account 17894650. She paid in a total of £4,900 in cash into the firm's client account between those dates leaving a shortfall of £3,450. All payments made on behalf of the client were correctly recorded through the client ledger during that time. In December 2012, by which time the Respondent had resigned from the firm, the firm's cashier raised an issue about the ledger entries for Mrs A.

- 6.6 The records disclosed an odd pattern to the transactions undertaken by the Respondent on behalf of Mrs A. There were a total of sixteen withdrawals, some on consecutive days in quick succession, with only four cash deposits to the client's ledger with the firm. Withdrawals were made either from the branch or ATM machines. £2,400 was withdrawn in cash from the branch on 22 September 2011 but only £2,000 credited through the firm's records on that day to cover outlays due to be paid. On four occasions the Respondent paid more into the firm's client account for the client than she had withdrawn from the accounts held. On 14 October 2011 she withdrew £500 from the client's Current account and paid in £1300 to the firm's client account. On 18 October 2011 she withdrew £500 from the client's current account and paid £600 into the firm's client account. On 11 November 2011 she withdrew £300 from the client's saver account and paid in £1000 to the firm's client account. On 24 November she withdrew £400 leaving a debit balance on the client's current account of £70.12. She then began to make cash withdrawals from the client's Saver account. On 10 November she withdrew £500 in cash from each account and again left the current account in debit in the sum of £105.73. The cash debit transactions recorded in the client's Santander accounts and the credits recorded through the client's ledger for that period were reproduced in the Appendix annexed to the Complaint. The withdrawals from Saver Account number 17894650 of £300,

£250, £300 and £250 on 11th, 13th, 16th and 19th November 2011 respectively were withdrawn in error, the Respondent having intended to withdraw funds from her mother's account at her mother's request (to purchase foreign currency for a holiday). The Respondent's errors were caused by disorganisation which was the result of stress and had no sinister import

6.7 The Respondent was asked to return the file for Mrs A. She did so and provided an explanation for her conduct. She advised that the withdrawals were properly made but that funds were not processed through the client's ledger card as the result of errors induced by extreme stress. The cash withdrawals were to pay for care home and incidental expenses at a time when she had temporarily mislaid the cheque book in her office and she used the ATM in order to save time. She could not recall the reason for the withdrawal of £400 on 24 October 2011 but had found an envelope with that sum in it in her papers with no documentation to identify it. She had found the funds withdrawn on 8 and 9 November 2011 with the ATM receipts in bags and boxes taken from her office on her departure. She had meant to pay them into the client account and thought she had done so. She had not intended to make the ATM withdrawals on 11, 13, 16 and 19 November 2011. She stated that her mother had an account with Santander. She kept the card for her mother and that of the client with her. Each card had a Post-it Note attached containing the respective PINs. She stated that she had accidentally used the client's card and given the money to her mother. The Respondent did not normally keep a card for her mother but had been given the card for the specific purpose of making the withdrawals actually made and, because she did not normally make withdrawals from her mother's account, had wrapped a "post-it" note round it with the PIN noted on it, as she had done with the card for Mrs A's account. Not having realised that she still had Mrs A's card, she had not checked that she was using the

correct card before using it. When the matter came to light, it was discovered that her mother had more in her account than she should have had and her mother made reimbursement.

6.8 After her departure the Respondent stated that she had found £500 in an envelope with no documentation amongst her papers. She passed this to the firm as she considered it must relate to an unaccounted for withdrawal. During the relevant period only the Respondent handled the client's affairs. The Respondent made arrangements to reimburse the client from her own funds held in her capital account. The arrangement to reimburse was made immediately it became apparent that an error had been made and before the Respondent had had time to determine if all shortfalls were caused by her, on the basis that the Respondent declared that the client's position should not be prejudiced by the possibility that the Respondent had made an error. The Respondent also paid interest so that the client would not be prejudiced. The Respondent had no fraudulent or deceitful intent and, the errors having occurred as the result of accident, there was no personal interest involved. The acts which gave rise to the complaint were accidental errors caused by disorganisation which, in turn, was caused by stress caused by both professional and personal or family factors.

6.9 The Complainers compiled an Investigation Report, a copy of which was intimated to the Respondent in a letter dated 14 February 2013.

6.10 By letter dated 25 March 2013 the Complainers provided a Supplementary Report to the Respondent's Solicitor and intimated that the Complaint would be considered by the Professional Conduct Sub Committee on 11 April 2012.

6.11 On 11 April 2013 the Complainers' Professional Conduct Sub Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that it appeared to be capable of being proved beyond reasonable doubt and could thus amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Tribunal.

7. Having considered the foregoing circumstances and the submissions made by both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 Her between 22 September 2011 and 19 November 2011 while acting under a Continuing Welfare Power of Attorney, on sixteen occasions making cash withdrawals amounting in total to £8,350 from the two bank accounts held on behalf of her client Mrs. A, Santander Current account 05322589 and the Branch Saver account 17894650, using Automated Telling Machines and at a Branch office; repeatedly failing to make and keep contemporaneous records of the transactions in the firm's accounting records; failing to credit the cash withdrawals fully and promptly in the firm's client account and making only four cash deposits in the firm's client account for the said client amounting to a total of £4,900 leaving a shortfall of £3,450 which she could not account for.

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

Edinburgh 3 October 2013. The Tribunal having considered the Complaint dated 28 June 2013 at the instance of the Council of the Law Society of Scotland, on behalf of the Secondary Complainer against Elizabeth Anne Dingwall, Solicitor, Hughes Dowdall, Sterling

House, 20 Renfield Street, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of her between 22 September 2011 and 19 November 2011, while acting under a continuing welfare power of attorney on 16 occasions making cash withdrawals amounting to a total of £8350 from two back accounts held on behalf of her client using Automated Telling Machines and at a branch office; her repeatedly failing to make and keep contemporaneous records of the transactions in the firms accounting records; her failure to credit the cash withdrawals fully and promptly in the firms client account; and her only making four cash deposits in the firms client account leaving a shortfall that she could not account for; Censure the Respondent and Direct under Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of three years any Practising Certificate held or issued to the Respondent shall be subject to such restriction as will limit her to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Sub Committee of the Council of the Law Society of 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; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alan McDonald
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

A Joint Minute of Admissions was lodged with the Tribunal admitting the averments of fact and averments of duty in the Complaint as slightly amended. The Joint Minute of Admissions also made amendments to the Respondent's Answers. The Chairman enquired as to whether the Complainers accepted the facts as set out in the Answers. Ms Johnston stated that she accepted that these facts were the explanation which was given by the Respondent for her actions. Ms Johnston explained that the Complainer's position was that they did not challenge the facts as set out by the Respondent in the Answers. Their position was that objectively, her conduct looked suspicious but the Complainers did not aver that the Respondent acted dishonestly.

Mr Foster stated that he was to make submissions that on the basis of all the circumstances, the Respondent's conduct did not amount to professional misconduct, although it may be unsatisfactory professional conduct.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston explained that the Complaint was made by Mr Cameron on behalf of the firm of Peterkins Robertson Paul LLP in which he and the Respondent had been partners. Ms Johnston explained that the Respondent and Mr Cameron were appointed as attorneys for Mrs A because her family were concerned with regard to her vulnerability and the fact that she had been exploited by other people. The power of attorney was registered on 1 June 2010 and the Respondent managed the client's affairs. Mrs A was diagnosed with dementia and a nursing home place was found for her. Ms Johnston submitted that the propriety of attorneys is of the utmost importance, particularly in a situation where there had already been a suspicion of dishonesty by others. Ms Johnston stated that people expect solicitors to act with utmost integrity. A solicitor attorney is in a position of trust.

The transactions involved occurred after the client had gone into the nursing home.

Ms Johnston referred to Production 1, being the ledger account which disclosed debits and credits. The client had two accounts with Santander and the Respondent was the

signatory on both accounts. Ms Johnston pointed out that the oddity in the manner in which the Respondent dealt with the client's funds predated any issue of confusion that the Respondent claimed in respect of the two bank cards that she had in her handbag for her mother and her client. Funds were uplifted in cash and not lodged fully or at all in the client ledger and then more was put in than was uplifted. There were 16 cash transactions between 22 September 2011 and 22 November 2011. There were only two monthly repeat payments for this client. There were only 10 transactions between July and December 2011. Ms Johnston stated that there was no apparent reason for all the withdrawals and that even if the accidental ones were left out of account, it was suspicious activity.

Ms Johnston pointed out that there were three transactions on 22 September 2011 in the ledger, a lodgement of £2000 and then the two usual monthly payments. The activity on the client's Santander account revealed that on the same day £2400 was withdrawn, so why was this not paid into the client account with the firm. It does not show up before the next action on the ledger.

On 7 October 2011 a cheque for £300 is written and £500 is uplifted in cash but not lodged, so at this date there was £900 unaccounted for.

It was 14 October 2011 before £1300 is lodged in the account by which time there had been another 4 withdrawals of £500 from the Santander account. A total of £3400 was withdrawn. A lodgement of £1300 was made on 14 October 2011 so total lodgements were £2300, but what happened to the other £100? Then there was £500 withdrawn on both 17 and 18 October 2011 but only £600 lodged into the ledger on 18 October. This meant that the balance missing was now £500, with the lost £100 seemingly re-appearing. £400 was taken out six days later and is not in the records.

Ms Johnston submitted that this was a lot of activity for a client that only had two monthly commitments. Ms Johnston submitted that that pattern showed an awareness of a problem and the Respondent must clearly have realised that the funds had been withdrawn and not properly accounted for. These were not ATM withdrawals.

In connection with the ones that were said to have been withdrawn in error, they were all ATM withdrawals bar one. Ms Johnston submitted that this was not a proper way to handle client's funds. To use an ATM is not acceptable. It must have been intentional as the Respondent had her card and pin in her bag.

Ms Johnston submitted that the Respondent should have gone personally to the bank to make the withdrawals and should have kept receipts and made contemporaneous records in the firm's accounting system. Ms Johnston stated that the Respondent's record of the funds with which she had intromitted was at best incomplete and disorganised. At worst it gave the impression of a person who was dealing inappropriately and less than honestly with client funds. Ms Johnston pointed out the Respondent was not a young solicitor and had 30 years' experience in the profession. It was not good enough to say that she was stressed at the time. Ms Johnston submitted that the Respondent's conduct fell below the standard expected of a competent and reputable solicitor and amounted to professional misconduct. She referred the Tribunal to Webster on Professional Ethics and Practice for Scottish Solicitors 2004, Chapter 2 which stated "In general terms, you must look after all monies entrusted to you by clients and ensure that such funds do not go astray accidentally or deliberately, by guarding against careless or feckless solicitors losing or using monies inappropriately and making it difficult for dishonest solicitors to misuse the monies deliberately, with the dishonesty remaining undetected."

Ms Johnston referred the Tribunal to Articles 5.2 and 5.3 in the Complaint being extracts from the 2008 and 2011 Practice Rules. They referred to trust and integrity and the Respondent's conduct breached the client's trust and brought her integrity into question. Ms Johnston clarified that there was no allegation of misappropriation but that looking at it objectively the perception was that the conduct could be dishonest. Ms Johnston stated that the Respondent had not been acting in the best interests of her clients by failing to properly handle client's funds, failing to properly record dealings through the books, and mishandling it.

Ms Johnston stated that the plea had been tendered on the basis that it had been accidental. Ms Johnston's submissions were however that looking objectively at the pattern of intromissions, it was very reckless conduct. If monies were lying around in

bags how could it be identified as client's money? How is the other attorney going to know what is going on if it is not included in the accounts? Ms Johnston submitted that clients have a reasonable expectation that the sums of money entrusted to their solicitor will be treated with the upmost care and propriety. Whether the Respondent used the clients funds mistakenly or not, her actions were sufficiently alarming so as to potentially draw the profession into disrepute.

SUBMISSIONS FOR THE RESPONDENT

Mr Foster stated that it was accepted that the Respondent's conduct was unacceptable conduct but the question was whether taking account of all the background circumstances it amounted to professional misconduct.

Mr Foster stated that the withdrawals could be divided into two categories. Firstly, deliberate and secondly, accidental. At the time when the Respondent made the cash withdrawals she did not consider that there was anything unacceptable about it and she did it due to convenience rather than have to wait in a busy bank queue. She however now accepted that it was not wise and had led to the errors. The Respondent was not accustomed to using ATMs and that was why she took the pin number. She then forgot to take the card out of her bag and on four occasions she withdrew cash for her mother and did not realise that she still had the client's card in her bag. It was accepted that this was unwise from a security point of view as she had a post-it-note on the card with the pin number on it. There was a limit on the amount that could be withdrawn which is why there were a number of withdrawals. Mr Foster pointed out that the Complainers did not dispute that this was a pure accident. It would be difficult to see how this could amount to reprehensible behaviour.

Mr Foster explained that there was no attempt to do any accounting in respect of these sums because she was not aware that she had intromitted with clients' funds as she thought she was intromitting with her mother's funds. Mr Foster stated that this could not amount to professional misconduct.

In connection with the other withdrawals, Mr Foster submitted that it was necessary to look at all the circumstances including the nature of the solicitor. Immediately it was

drawn to the Respondent's attention she made recompense because she would not allow the client to suffer and she made transfers in from her own capital account even though she was no longer with the firm. Mr Foster submitted that this showed the type of person that the Respondent was. She could not take the chance that it was her mistake. She then carried out an investigation and found monies in bags which were identified as being the withdrawals because the ATM slips were with the money. She then passed this money to Peterkin Robertson Paul LLP to lodge in the client account and her capital account was sorted out later.

Mr Foster pointed out that the Respondent was unable to explain parts of the pattern and why the funds were not put into the client account immediately. She however, once matters came to light, acknowledged it immediately which shows her honesty.

Mr Foster referred to the explanations in the Answers. He advised that the Respondent's office was in a state of disorganisation verging on chaos. Once she became the primary person handling the file she tried to ensure that the funds were in the highest interest earning account for as long as possible and accordingly only withdrew the money as it was needed. She was working to the highest of standards but he indicated that he had personally visited her offices and wondered how she could work in such disorganisation. Part of the problem was her perception that she was no longer wanted in the firm. This made it very difficult because she was not able to approach her colleagues about matters. She was unable to ask for help. This led to an increase in stress. She still managed to cope with her work which was of good quality. She however also had a number of other things to contend with. She was the sole breadwinner given that her husband suffers from diabetes and is unable to work. She has a mother who is suffering from persistent poor health and who was becoming increasing frail and she was having to spend a lot of time caring for her. All this had resulted in her letting herself go and she feared that her physical appearance did not fit in with the corporate image of the firm. She was also participating in the Society of Trust and Executry Practitioner's course which put even more pressure on her. Mr Foster submitted that the withdrawals were a manifestation of all this but there was no suggestion that she was being dishonest. Mr Foster stated that there was a huge distinction between being dishonest and acting in a disorganised manner. He accepted that this did not justify the errors but it did explain them.

Mr Foster stated that the Respondent accepted that her conduct fell short of the standard expected of a competent and reputable solicitor but Mr Foster submitted that it was not so morally reprehensible so as to amount to professional misconduct. Mr Foster stated that there was nothing heinous in what the Respondent had done and that was why the alternatives of unsatisfactory professional conduct and inadequate professional services were available. Due to the absence of an improper motive, Mr Foster submitted that the Respondent's conduct would only amount to unsatisfactory professional conduct. Mr Foster clarified that it was not acceptable for a solicitor to make withdrawals of client's money from an ATM. The Respondent at the time did not see that it was wrong.

Mr Foster emphasised that the Respondent was not stupid and if there had been a deliberate attempt to take money from the client's account this would have been immediately found out. There was a clear paper trail and the bank statements were delivered to the other solicitor who was acting under the Power of Attorney. The file was also left on the Respondent's desk. The other Attorney was the cashroom partner and would have immediately picked up on things had there been any dishonesty.

Mr Foster emphasised that the Respondent's honesty was not in question and this had been conceded by the Law Society. Mr Foster also pointed out that there had been no prejudice to the client in this case and submitted that this was one of the circumstances that should be taken into account by the Tribunal.

Mr Foster also advised that the Respondent had paid interest at the highest rate on the monies. Mr Foster pointed out that the Respondent had 30 years of impeccable service in the profession. At the time the events occurred the Respondent's firm was able to maintain payments to partners and so the Respondent was not at any financial disadvantage due to the recession.

In response to a question from the Chairman, Mr Foster confirmed that the bulk of the Respondent's work was conveyancing but she also did a significant amount of executry work. The firm at the time had a number of Powers of Attorney but the Respondent was only involved in this one.

DECISION

The Tribunal considered the submissions made by both parties very carefully in assessing whether or not the Respondent's conduct amounted to professional misconduct. The Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 state that solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. Although it is accepted that in this case the Respondent did not act dishonestly, the Tribunal consider that her conduct was reckless and unacceptable and when her actions are looked at objectively, they appeared suspicious.

The Respondent was attorney for a client who was incapable of any input into her own financial management and as such she should have acted with utmost propriety and integrity. The Tribunal considered that the public would have grave concerns about a solicitor in such a position of trust having a client's bank card in her bag with the pin number attached to it in such an insecure manner. The Tribunal was also extremely concerned by the fact that the Respondent made so many cash withdrawals and then kept some of the money in her bag and got the cards of the client and her mother mixed up. These are not the actions that would be expected of a solicitor, especially a solicitor who has been entrusted to be attorney for a vulnerable client. Although it is accepted that there was at the end of the day no prejudice to the Respondent's client, she clearly did not act in the best interests of her client and acted in such a reckless manner so as to put her client's money at risk. The Tribunal consider that the way in which the Respondent acted exposed her firm to possible accusations of financial impropriety with client's funds. The Tribunal considered that this conduct had sufficient gravity and culpability to be capable of bringing the profession into disrepute.

The Tribunal has previously found that a solicitor who is exercising Power of Attorney over the financial affairs of a client was in a position of trust and had a duty to act with utmost propriety in all his dealings with client's money.

The Tribunal noted that these events took place over a period of 2 months rather than being a slip made on one day. The Respondent was not able to justify why she took out so much money in this manner or adequately explain why she did not lodge the money contemporaneously in her firm account or keep proper records.

The Tribunal have a duty to protect the public and the Tribunal had no hesitation in finding that the Respondent's conduct in this case was serious and reprehensible and amounted to professional misconduct.

MITIGATION

Mr Foster referred to his previous submissions and also emphasised the Respondent's high degree of contrition and horror about what had happened. Mr Foster explained that he had had a personal friendship with the Respondent for a number of years and she was now engaged by his firm as a consultant on a part time basis and was also an assistant on a part time basis. She undertook the firm's conveyancing and was a mentor and teacher for younger staff in relation to conveyancing and executries. Mr Foster indicated that she was trusted by his firm and they had no concerns about her. Mr Foster outlined the Respondent's finances indicating that she was still the sole breadwinner, was still caring for her mother and had a number of commitments. She was not presently acting as an attorney as his firm did not do much of this type of work but in any event it was always partners who would be attorneys. In response to a question from the Chairman, Mr Foster confirmed that she may be an executor. Mr Foster emphasised that the Respondent's work was exemplary and she was now working in a room that was organised and she had pulled herself together and sorted herself out. Mr Foster indicated that he was hopeful that she would not be dismissed due to the finding of misconduct.

Ms Johnston asked that the Tribunal make the usual order with regard to expenses and publicity. Mr Foster indicated that although expenses would cause his client hardship he had no submissions to make but asked that no publicity be given to the decision.

PENALTY

In respect of publicity, in terms of Paragraph 14 of Schedule 4 to the Solicitors (Scotland) Act 1980, the Tribunal must give publicity unless any of the circumstances in Paragraph 14A apply. No submissions were made that any of these circumstances applied and accordingly the Tribunal ordered that publicity will be given to this decision. In relation to penalty the Tribunal did not consider that there was any purpose in fining the Respondent given her financial situation. The Tribunal took account of the submissions made by Mr Foster to the effect that his firm had complete confidence in the Respondent but it appears to the Tribunal that her life circumstances have not significantly changed since the conduct complained of. The Tribunal cannot have confidence that if the Respondent's stresses increase, something similar would not happen again. The Tribunal would have concerns about the Respondent handling client's money and being in a position where she could be attorney for clients in the future. Although the Tribunal considered that the Respondent's misconduct was at the middle to lower end of the scale of professional misconduct, it did consider that she could be a risk to the public if she was allowed to work unsupervised. The Tribunal accordingly considered that a 3 year restriction on the Respondent's practising certificate would be appropriate. The Tribunal found the Respondent liable in expenses.

Alan McDonald
Vice Chairman