

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

**F I N D I N G S**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW SOCIETY of  
SCOTLAND, formerly at 26 Drumsheugh  
Gardens, Edinburgh and now at Atria One, 144  
Morrison Street, Edinburgh**

**against**

**JAMES PURVIS, 6 Blair Road, Blairhill,  
Coatbridge**

1. A Complaint dated 18 February 2016 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, James Purvis, 6 Blair Road, Blairhill, Coatbridge (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 6 June 2016 and notice thereof was duly served on the Respondent.
5. The hearing took place on 6 June 2016. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented Mr Ardrey, Counsel. An amended Complaint dated 2 June 2016 was by agreement of the parties substituted for the original Complaint.

6. The Tribunal found the following facts established:-

- 6.1 The Respondent resides at 6 Blair Road, Blairhill, Coatbridge. He was born 31<sup>st</sup> March 1961. He was enrolled as a solicitor in the Register of Solicitors Practising in Scotland on 28<sup>th</sup> November 1985. From on or about 28<sup>th</sup> September 1990 through to 31<sup>st</sup> October 2014 he was associated with the firm Grant & Wylie Solicitors, Glasgow. Initially as an employee, thereafter as an associate and finally as a partner. From 1<sup>st</sup> November 2014 through to 9<sup>th</sup> June 2015 he has was employed as a consultant with the firm PRP Legal Limited, 227 Sauchiehall Street, Glasgow. The Respondent was subsequently employed as an Assistant with Nicholson O'Brien, Solicitors, 12 Stirling Street, Airdrie. The Respondent was then employed for a short period, from 31<sup>st</sup> March 2016, as an Assistant with The Glasgow Law Practice, 534 St Vincent Street, Glasgow.
- 6.2 On or about March 2013 employees of the Complainers acting through the Financial Compliance Department carried out an inspection of the financial records, books and documentation maintained by the firm Grant & Wylie Solicitors. As a consequence of that inspection a number of matters of concern were identified. A further inspection of the firm was carried out on 24<sup>th</sup> and 25<sup>th</sup> September 2013. At this inspection a number of matters of concern were further identified and thereafter a period of correspondence ensued between the Financial Compliance Department and the Respondent. During the relevant period under consideration in this complaint the Respondent was at all times the designated cashroom manager as provided for in terms of the Practice Rules. As a consequence of a failure on the part of the Respondent to adequately address the concerns raised the Respondent appeared before an interview panel comprising members of the Guarantee Fund Subcommittee of the Complainers on 20<sup>th</sup> March 2014.
- 6.3 At that meeting the Subcommittee noted concerns relating to the executry involving the late Mr A and files maintained by the Respondent in respect of the widow of the late Mr A namely a Mrs B. The Respondent was personally responsible for the files. A number of concerns were identified in respect of the management of these files and the client ledger pertaining thereto. These concerns were raised with the Respondent in correspondence from the Financial Compliance Department. The replies received from the Respondent failed to adequately address the concerns

identified as a consequence of which he was invited to attend the meeting of the Guarantee Fund Subcommittee on 20<sup>th</sup> March 2014. In the course of that meeting the Respondent gave certain undertakings that matters would be addressed and rectified. In particular he provided an undertaking:

- (a) To provide a breakdown of the assessed fees in relation to the executry of the late Mr A and Mrs B.
- (b) He would provide copies of terms of business letters which had been sent to Mrs B.
- (c) He would provide evidence that earlier fees had been written back and the client ledgers corrected in accordance with the assessment.

6.4 Following the interview the Manager of the Financial Compliance Department e-mailed the Respondent advising that members of the Compliance Team would return to his office on 25<sup>th</sup> March 2014 in order to review the specific documentation relating to the outstanding issues arising from the original inspection, with a view to concluding these items without further delay. By e-mail of 25<sup>th</sup> March 2014, the Respondent was sent a copy of the note of interview before the Guarantee Fund Sub-Committee of 20<sup>th</sup> March 2014. The subsequent inspection took place on 25<sup>th</sup> March. Regrettably the Respondent had failed to address outstanding issues. On 27<sup>th</sup> March 2014 an e-mail was sent to the Respondent from the Manager of the Financial Compliance Department addressing specific concerns. In particular it was brought to the attention of the Respondent that he had previously confirmed on 18<sup>th</sup> November 2013, 7<sup>th</sup> March 2014 and again before the interview panel on 20<sup>th</sup> March 2014 that separate ledgers for the executry and the affairs of Mrs B would have been created. This was inaccurate and incorrect. The truth being a separate ledger was only created on 24<sup>th</sup> March. This was contrary to the undertaking the Respondent had given. Even having created the separate ledger, this ledger did not contain the correct entries. Many more entries required to be posted. This was in breach of the undertaking given by the Respondent. The failure of the Respondent to properly address the concerns identified, his failure to provide accurate undertakings and his subsequent failure to comply with these undertakings represented an ongoing and continuing failure to

abide by the terms of the Practice Rules in relation to his accounts and the affairs of his clients.

- 6.5 The Complainers also addressed a number of other issues with the Respondent regarding his recordkeeping. In particular a failure on the part of the Respondent to ensure that separate financial records were kept concerning the executry matter and the personal business of Mrs B and that separate fee notes in connection with the work carried out by the Respondent in connection therewith would be issued. This was brought to the attention of the Respondent following the inspection of September 2013. Despite repeated encouragement the Respondent failed to remedy the position until 30<sup>th</sup> May 2014 and 3<sup>rd</sup> June 2014.
- 6.6 Despite undertakings given by the Respondent a number of matters of concern remained outstanding. As a consequence of which the Respondent was invited to attend a further meeting of the Guarantee Fund Sub-Committee on 22<sup>nd</sup> May 2014. At that meeting a number of outstanding issues were addressed. The Respondent appeared and advised the members of the committee that all transfers between the Mr A Executry matter and the matters involving the personal affairs of Mrs B had been corrected and that fees which had been charged had been assigned to the correct ledger. This was inaccurate and incorrect. A subsequent inspection of the records maintained by the Respondent discovered that fees due by Mrs B had only been posted to her ledger on 30<sup>th</sup> May and 3<sup>rd</sup> June 2014 some days after the Respondent had given his undertaking. At the time the undertaking was given by the Respondent, the information he provided was inaccurate and incorrect in that he had clearly not corrected the client ledger. In this fashion the Respondent misled the Committee.
- 6.7 In addition the inspection revealed that the Respondent had failed to provide, correct and maintain accurate client ledgers in relation to the affairs of his clients which would have revealed accurately drawings from the client account. In addition the Respondent had failed to render four separate fee notes to the Mr A Executry over a period from 27<sup>th</sup> February 2013 through to 4<sup>th</sup> June 2014. Whilst the Respondent may have sought to blame a failure on the part of his cashier employee, the Respondent was the designated cashroom partner and as such was acting contrary to the terms of the Practice Rules in that he failed to adequately

supervise staff and have in place adequate practice systems designed to implement the provisions of and to ensure compliance with the Practice Rules. As a consequence of the manner in which fees were taken improperly in this fashion, the client account maintained by the Respondent was temporarily placed in deficit.

7. The Tribunal heard submissions from the Complainers to the effect that the facts were sufficient to amount to professional misconduct and having heard submissions from Counsel on behalf of the Respondent to the effect that the Respondent pled guilty to professional misconduct but was not submitting that the facts did amount to professional misconduct as this was a matter for the Tribunal.
8. After considering the facts in the amended Complaint and the submissions made by both parties, the Tribunal did not consider that the Respondent's conduct was sufficiently serious and reprehensible so as to meet the test for professional misconduct but considered that the Respondent's actions may amount to unsatisfactory professional conduct and accordingly decided to remit the matter under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Council of the Law Society.
9. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6 June 2016. The Tribunal having considered the amended Complaint dated 2 June 2016 at the instance of the Council of the Law Society of Scotland against James Purvis, 6 Blair Road, Blairhill, Coatbridge; Find the Respondent not guilty of professional misconduct; Remit the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Make no finding of expenses due to or by either party; 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**

10. 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**

**Alan McDonald**  
**Vice Chairman**

**NOTE**

The Respondent had lodged Answers to the original Complaint and a Record had been lodged with the Tribunal. On the morning of the Tribunal the original Complaint was substituted by agreement of the parties with an amended Complaint which was admitted into Process and the Respondent confirmed that he pled guilty to the amended Complaint. It was clarified that the Law Society was no longer suggesting dishonesty but instead the failure of the Respondent to address the issues. Counsel for the Respondent confirmed that the Answers in the Record (in respect of the original Complaint) would be deleted and substituted by the written submissions in mitigation.

The Chairman of the Tribunal pointed out that it was always a matter for the Tribunal whether or not the circumstances of a particular case were sufficiently serious and reprehensible so as to meet the test for professional misconduct in terms of the Sharp Test.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid took the Tribunal through the amended Complaint. He pointed out that the Respondent was the designated cashroom partner. The Law Society was of the opinion that he had not addressed the concerns which they highlighted after the first inspection. The Respondent was invited to a Guarantee Fund interview in March 2014. The Respondent gave the Guarantee Fund interview three undertakings. There was a further inspection on 25 March 2014 and the Respondent had failed to carry out these undertakings. Despite being given a number of opportunities to rectify the records, they remained inaccurate. On 22 May 2014 the Respondent attended another Guarantee Fund meeting. At that meeting he gave assurances that matters had been addressed but this was not the case. The ledgers were still inaccurate and the client account was temporarily in deficit. The Respondent had breached the Accounts Rules and Mr Reid asked the Tribunal to make a finding of professional misconduct.

Mr Reid referred the Tribunal to Smith & Barton at page 168 and 169 where the Tribunal had emphasised the importance of solicitors complying with the Accounts Rules and had pointed out that solicitors are in a privileged position of trust in holding clients' funds. Mr Reid also referred the Tribunal the case of McMahon and Others re Petition of 2002 Scot CS36 at paragraph 21 where Lord Gill had referred to it being a fundamental principle of professional life that the client account is sacrosanct and that there is no situation in which the client account can justifiably be in deficit.

Mr Reid emphasised that there was no suggestion of dishonesty but there was chaos and the Respondent had repeated opportunities to sort matters out. Mr Reid also referred the Tribunal to the case of Maccoll-v-The Council of the Law Society of Scotland 1986.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Ardrey stated that he had two meetings with the Fiscal Mr Reid and wished to express his gratitude for the way in which Mr Reid had dealt with the case which had been extremely helpful. He clarified that the Respondent admitted the facts in the Complaint and pled guilty to professional misconduct. It was however accepted that it was a matter for the Tribunal to determine. Mr Ardrey stated that he felt uncomfortable as he had told Mr Reid that it was accepted that the facts amounted to professional misconduct but that if he was wrong he had to protect the interests of his client and accordingly would leave it up to the Tribunal. He invited the Tribunal to decide whether or not the facts amounted to professional misconduct.

Mr Reid confirmed that regardless of any arrangement between the parties, he accepted that it was up to the Tribunal to decide whether or not the conduct amounted to professional misconduct.

Mr Ardrey referred to his written submissions as undernoted.

The following submissions for the Respondent are respectfully submitted for consideration, subject to any additions and / or deletions that may be made in any oral submissions that may be allowed.

1. The Complaint is the Complaint dated 2<sup>nd</sup> June 2016. The Respondent admits the facts and tenders a plea of guilty to professional misconduct in terms of this Complaint.
2. The earlier Complaint dated 18<sup>th</sup> February 2016 along with the Respondent's answers, together constitute a Record: this Record is referred to for its terms. It may be noted from this Record that the Respondent admitted almost all of the terms of the earlier Complaint, and simply provided some background facts, with a view to putting the matters in issue in context. In effect, the Respondent has *put his hands up* as regards the main weight of the matters in issue from an early stage. In his previous pleadings the Respondent did not offer excuses, that is, the Respondent did not seek to excuse his actions and failures to act; he simply sought to explain them.

3. The Respondent has not sought and does not seek to attribute blame or any responsibility to any other person. He accepted and accepts his responsibility with reference to the Complaint dated 2<sup>nd</sup> June 2016.
4. The Respondent did not treat the matters of concern brought to his attention lightly. On the contrary, at an early stage he instructed Mr William MacReath, Solicitor, to assist him. Through Mr MacReath's offices the Respondent brought in a more experienced cashier to assist the Respondent's firm's less experienced cashier. The two cashiers worked together for some two days. The matters of concern which had been brought to the Respondent's attention were not resolved. For the avoidance of doubt the Respondent does not seek to attribute blame or any responsibility to any other person. The Respondent, for personal and professional reasons that are touched upon below, failed to 'get on top of things' as he was bound to do by the Rules. There were times when the Respondent allowed the officers of the Law Society to believe things had been done that had not been done, that is, that he had dealt with the matters of concern that had been brought to his attention. This was not done knowingly. The Respondent believed that he had done all that was necessary, when, in fact, he had not. He has accepted and accepts his responsibility in this connection.
5. The Respondent would have been, indeed anyone would have been well aware that the officers of the Law Society would take steps to ensure that the matters of concern had been dealt with properly. In effect, the Respondent had nothing to gain and much to lose when he did not timeously deal with the matters of concern that had been brought to his attention.
6. The Respondent recognises that his failure, on more than one occasion, to deal with the matters of concern brought to his attention timeously, caused delay and inconvenienced officers of the Law Society. Aside from the consequences of this for the Respondent, this is a matter of regret for the Respondent.
7. Specifically concerns were noted relating to the executry involving the late Mr A and files maintained by the Respondent in respect of the widow of the late Mr A, Mrs B. In a nutshell, they were clients of and personally connected with the Respondent. Mrs B, the residuary legatee, wanted payment made to certain beneficiaries of what would be due to them in due course, sooner rather than later. That is, Mrs B wanted these beneficiaries paid before the executry was completed. This is a relatively unusual circumstance. Mrs B, as an individual, put the Respondent's firm, in effect, because he was cashroom manager, put the Respondent in funds to enable these payments to be made sooner rather than later. This made Mrs B not only a client as an executor but also a client as an individual. The funds paid to the

Respondent by Mrs B as an individual should have been entered into the client ledger under her name as an individual. They were not. The Respondent placed these funds in the client ledger in the name of executry. The Respondent accepts that this was a failure on his part.

8. The above was, in effect, a matter of *means* and *ends*.
  - a. The *end* in view was that the beneficiaries be paid what, in due course, they would have been paid only sooner rather than later, with Mrs B being, in effect, reimbursed in due course.
  - b. The *means* by which this was done were wrong. Instead of the payments to the beneficiaries going through an account in the name of Mrs B as an individual *and* the executry account (with cross-entries) the payments went through the executry account only. There was therefore a time when monies held on behalf of Mrs B did not 'show up' in her name in the Respondent's firm's client ledger. The Respondent being the cashroom manager was responsible in the above connection. He has accepted and accepts his responsibility in this connection.
9. The Respondent lost sight of the fact that, in effect, Mrs B was a client in two capacities. She was an executor client and she was also an individual client. The Respondent failed to make this distinction. There should, as the Complaint says, have been separate ledgers.
10. There was, however, no question of any monies being dealt with in any way that might have benefitted the Respondent directly or indirectly (through his firm).
11. There was no question of Mrs B as an individual or the executry in which she was an executor *losing out*.
12. The Respondent failed to adequately address the matters of concern brought to his attention. Why? This was something that could and should have been relatively simply sorted out. The Respondent failed to do this. The Respondent does not seek to excuse his failings in this connection, indeed, he has admitted his failings in this connection from an early stage. By way of context and explanation, he was unable to, or, at least did not cope when matters of concern were brought to his attention. He did not think things through, get to grips with them, and deal with them timeously. With hindsight the Respondent does *not know what he was thinking*. And so things became of greater concern. With hindsight the Respondent recognises that he should have placed Mrs B's funds in an account in her name as an individual and not in the executry account in which she was an executor. This would have been simple. There was no *down side* for the Respondent in doing this; on the contrary, there was nothing to be gained by the Respondent by doing things the way he did them. Not having

thought this matter through, when the matters of concern in question were brought to his attention - the Respondent now recognises - he should simply have sorted them out. He was unable to do this, or, at least, he did not cope with the matters of concern when they arose.

13. The Respondent knew, anyone would have known that he had difficulties when matters of concern were brought to his attention. As the Complainers say, there were times when, "despite repeated encouragement" the Respondent failed to do what needed to be done timeously. The Respondent would have been; anyone would have been well aware that the officers of the Law Society would take steps to ensure that the matters of concern had been dealt with properly, no matter how long it took. In effect, the Respondent had nothing to gain and much to lose when he did not deal timeously with the matters of concern that had been brought to his attention.
14. The Respondent appreciates how important it is that a client account is not placed in deficit. The Respondent admits and accepts responsibility for the fact that the client account maintained by him "was temporarily placed in deficit." With a view to ensuring that fees were dealt with properly the Respondent passed certain files to an independent Law Accountant. This delayed the timeous rendering of certain fee notes. There was no question of any monies being dealt with in any way that might have benefitted the Respondent directly or indirectly (through his firm). There was no question of Mrs B as an individual or the executry in which she was an executor suffering any loss. There was no prospect of any client losing any monies as a result of the Respondent's admitted failures.
15. The Respondent accepts that as a solicitor he was and is bound to act in the interests of his clients and in the interest of the public: in accordance with the Codes and Rules and others relevant to his profession. The Respondent always has and continues to respect the various provisions that govern his profession.
16. The Respondent has had an active career as a solicitor over more than thirty years. He has no 'previous convictions.' He is acutely conscious that he will not be able to say this in future; that his hitherto 'clean record' is now besmirched.
17. The Respondent is also acutely aware that he has *let down* his fellow solicitors and his clients on this occasion.
18. The Respondent is aware that the Law Society is bound, not just to deal with failings such as the failings to which he has pled guilty but also to look to the future, in the public interest. At the times in issue the Respondent was the designated cashroom manager for his firm. In the circumstances it is unlikely that an occasion will arise when the Respondent might be

considered as a prospective cashroom manager. Be that as it may, the Respondent undertakes to never again accept the position of cash-room manager.

19. It is respectfully submitted that notwithstanding the Respondent has failed to live up to the trust placed in him by his client and by his profession in this instance, that this is not likely to ever happen again. This is not just because the Respondent will not accept the formal position of cash room manager, but because these proceedings and their consequences weigh heavily with the Respondent. The Respondent is especially conscious that he has let down his one-time client and his profession. It is respectfully submitted that for these reasons the Law Society may be confident that the Respondent will not act contrary to the rules or the public interest in future.
20. On one particular occasion the Respondent provided information that he had done something when, as the Complaint says, "...he had clearly not..." It may be thought that something that was clear to the officers of the Law Society should have been clear to the Respondent, and that the clarity surrounding the Respondent's failure in this connection should weigh against him. However, it is respectfully submitted, this evidences the fact that the Respondent was not coping at the time in question. The Respondent has accepted and accepts his failures in fact; that, for example, he failed to provide accurate and correct information. But this was clearly so, this was easy to discover, this was never likely to go undiscovered. The Respondent was unable to face the clear facts of the matter - to cope – when it was his duty to deal with the matters of concern that had been brought to his attention. This failure was contrary to his past practice – he had been able to cope in the past.
21. For the avoidance of doubt the Respondent does not seek to excuse his failures or indeed to claim that his inability to deal with the matters that arose was due to any mental illness. The Respondent has, in recent weeks, been diagnosed by his GP as suffering from depression. These proceedings are, inevitably, one of *the reasons why* the Respondent now has depression. For the avoidance of doubt the Respondent blames himself and only himself for the fact that these proceedings are necessary.
22. The following is by way of explanation and with a view to putting things in context, and not as an excuse. At about the time in question the Respondent was under pressure. The firm in which he was a partner was not thriving. The firm amalgamated with another firm in about November 2014. It is only with hindsight that the Respondent recognises how great this pressure was and the effect it was having upon him. With hindsight the Respondent recognises that at that time he was unable to cope with all he had to deal with. In the event

the Respondent did not cope with all he had to deal with. In the event the Respondent has lost his partnership and now works as an assistant solicitor.

23. The Respondent has pled guilty to a breach of Rule 1.2. This rule has several provisions. The Respondent has pled guilty with respect to the provision that binds him to be “trustworthy.” With reference to the Complaint, the Rules say that a solicitor must be “trustworthy” to the extent that his integrity is beyond question. The Respondent has pled guilty in this connection, in connection with trustworthiness. The Respondent accepts that his actions and failures to act left his integrity open to question. With reference to his past record, the Respondent has been trustworthy throughout his working life, and, it is respectfully submitted, the Law Society may properly conclude that, irrespective of any penalty that might be properly imposed upon him, the Respondent will be trustworthy in the future. Rule 1.2 is the fundamental, overarching rule. Reference is made to the other rules detailed in the Complaint to breaches of which the Respondent has pled guilty.
24. The Respondent is fifty five years old, he was born in 1961. He is a married man. He became a solicitor in 1985, at the age of twenty four. For almost all of his working life he worked with one firm, Grant & Wylie Solicitors, Glasgow. He followed a steady, solid, respectable career path, progressing from employee to associate to partner. He had, as stated, no professional ‘previous convictions.’ He reasonably expected that he would continue with this same firm until he retired in years to come. This has not happened because of the matters detailed in the Complaint. As a result of the matters detailed in the Complaint the Respondent’s partnership was terminated. He has had to seek employment elsewhere with a view to rebuilding his professional life. He has done this successfully, or, at least, he has made a start.

Mr Ardrey emphasised that the Respondent had not sought to dodge anything. He was not blaming anyone else as he was the cashroom manager and took responsibility. He was not however cavalier and did take successful steps to have matters dealt with. The Respondent would like to have believed that the problems had been sorted out but did not look into it as carefully as he should have done. Mr Ardrey explained that the clients were friends of the Respondent’s parents. Mrs B was in a care home and she was worried about the delay in payment of money to her children so asked the Respondent to pay the beneficiaries the funds she provided. He was acting for her as executor under one head and also as an individual and accordingly should have had separated ledgers but he took his eye off the ball. Mr Ardrey submitted that the end was right but the means were wrong. The Respondent felt

paralysed and not able to cope. He indicated that the Respondent would undertake never again to be in a position of cashroom manager.

The Respondent had pled guilty to a failure of trustworthiness which had brought his integrity into question. Mr Ardrey however indicated that the Respondent was likely to be trustworthy in the future. He had worked with a number of firms since leaving the partnership but now had lost his job at a Glasgow law practice. The consequences for the Respondent had been severe.

In response to a question from the Chairman, Mr Reid clarified that there were a number of issues raised by the Law Society and that it was a distorted confusing picture and lurking in the background were considerable fees. Mr Reid however accepted that the fees issue was not before the Tribunal. The Tribunal enquired as to what happened once the other cashier came in to help sort matters out and why the Respondent would say that matters were sorted out if they were not. Mr Ardrey stated that the Respondent was not taking things on board and that sometimes people behave in a way that accords with what they want to believe. Mr Reid confirmed that there was no concern with regard to clients' money but there could have been.

## **DECISION**

The Tribunal considered that the Respondent's failure to ensure that separate financial records were maintained relating exclusively to the matter involving the executry and the matter involving the personal business of Mrs B, in the circumstances of this case, was not, of itself, sufficiently serious and reprehensible to amount to professional misconduct. The Tribunal considered in some detail whether this together with the Respondent's providing inaccurate and incorrect information to the Law Society Committee and failure to adhere to the undertaking given would be sufficiently serious to meet the Sharp Test. This case involved one isolated file. The Respondent did engage with the Law Society and did attend meetings with them. Although he did provide the Law Society with inaccurate and misleading information he did engage with them and did not ignore the Law Society. He incorrectly gave assurance that something had been done when it had not been done under explanation to the Tribunal that this was due to his not coping at the time. There was no dishonesty. The matter was eventually resolved on 30<sup>th</sup> May 2014 and 3<sup>rd</sup> June 2014. The Tribunal considered this to be a very borderline case but in the whole circumstances contained in the Complaint was not satisfied beyond reasonable doubt that the Respondent's conduct was sufficiently serious and reprehensible so as to meet the Sharp Test.

The Tribunal however is in no way saying that the Respondent's conduct was acceptable and consider that his conduct may well amount to unsatisfactory professional conduct. The Tribunal accordingly remitted the case under Section 53ZA to the Council of the Law Society of Scotland.

The Tribunal then asked for submissions on publicity and expenses and enquired as to whether or not there were any circumstances which would require the Tribunal to refrain from giving publicity in full to its decision. Mr Reid asked for publicity in the normal manner and indicated that he no reason to believe that anybody's name should be excluded from the publicity. In connection with expenses, Mr Reid stated that the Law Society had a duty to bring cases to the Tribunal and referred the Tribunal to the Baxendale-Walker case. Mr Ardrey suggested that the Tribunal should make a finding of no expenses due to or by either party and indicated that he had no submissions to make on publicity but would ask that any publicity be minimal.

The Tribunal ordered that there be publicity in the usual manner and considered that an award of no expenses due to or by either party would be the correct award of expenses in this case.

**Alan McDonald**  
**Vice Chairman**