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

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, Atria One, 144 Morrison Street, Edinburgh

Complainers

against

ANDREW PATERSON PENMAN, 68 Orchard Terrace, Hawick

Respondent

1. A Complaint dated 2 July 2021 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Andrew Paterson Penman, 68 Orchard Terrace, Hawick (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There were two Secondary Complainers neither of whom sought compensation.

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 set the matter down for a virtual procedural hearing on 1 November 2021 and notice thereof was duly served on the Respondent. On the Respondent's motion, the Tribunal directed that the virtual procedural hearing would take place in private.

5. At the virtual procedural hearing on 1 November 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by John Macmillan, Solicitor, Dundee. The Tribunal refused

the Respondent's motion to sist these proceedings to await the outcome of the Respondent's handling complaint to the Scottish Legal Complaints Commission ("SLCC"). On joint motion, the Tribunal continued the virtual procedural hearing to 7 December 2021, to take place in private.

6. At the continued virtual procedural hearing on 7 December 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by John Macmillan, Solicitor, Dundee. The Tribunal continued the case to a hearing in-person to be afterwards fixed. The Tribunal declined to postpone proceedings to await the outcome of the handling complaint. It directed that the hearing would take place in public but all submissions relating to the health of the Respondent would be heard in private.

7. In terms of its Rules, the Tribunal set the matter down for a hearing in-person on 18 February 2022 and notice thereof was duly served on the Respondent. Parties lodged a Joint Minute of Admissions.

8. At the hearing on 18 February 2022, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by John Macmillan, Solicitor, Dundee. At the parties' invitation, the Tribunal made two amendments to the Joint Minute by deleting the words "*he failed to defend proceedings served on [Company 1] at his office*" from paragraph 5.1.8 and the words "*and deal with the proceedings raised by Scottish Water*" from paragraph 5.1.9.2. On the unopposed motion of the Complainers, the Tribunal also made various other amendments to the Complaint. The amendments are reflected in the Tribunal's findings in fact below. Parties made submissions.

9. Having given careful consideration to parties' submissions and the documents before it, the Tribunal found the following facts established:-

9.1 The Respondent is Andrew Paterson Penman. He was born on 19 February 1957. He was admitted as a solicitor on 10 December 1981. He was formerly a partner in the firm of Stormonth Darling WS ("the firm"). He was the Cashroom Partner there between October 1996 until October 2014 when he was suspended from practising as a solicitor. He resides at 68 Orchard Terrace Hawick TD9 9LX.

Law Society Complaint No.1

9.2 The Society's Financial compliance department identified concerns regarding the Respondent's firm's handling of several files. An investigation took place the following was discovered.

9.3 **AC executry – Executry 1**

Ms AC died in June 2010. The Respondent was appointed executor to the estate of the late AC. He was jointly appointed with IF, a relative of AC. The Respondent was responsible for the day-to-day administration of the estate. He carried out that task between June 2010 and July 2014.

9.4 The Respondent prepared or instructed the preparation of the fee notes in the following table. The Respondent instructed that the payment was taken from executory funds and the fee notes be settled. The Respondent did not render the fee notes to his co-executor.

	Date of fee note	Number	Amount	Date payment taken
1	14 October 2011	19/12	£ 1,440.00	14 October 2011
2	15 March 2012	244/12	£ 5,400.00	15 March 2012
3	4 July 2012	372/12	£ 4,200.00	4 July 2012
4	3 September 2012	488/12	£ 1,800.00	3 September 2012
5	19 February 2013	228/13	£ 1,800.00	19 February 2013
6	27 March 2013	295/13	£ 2,400.00	27 March 2013
7	22 April 2013	318/13	£ 600.00	22 April 2013
	TOTAL:		£17,640.00	All including VAT

9.5 Following investigation by the Financial Compliance team of the Law Society of Scotland the executry files were remitted to the Auditor of the Court of Session for taxation. The Auditor carried out a taxation on the 23 April 2015. The Auditor taxed the fee for the period 17 June 2010 – 23 September 2014 at £2,712 inclusive of VAT.

9.6 The difference between the taken fees and the taxed fee amounts to £14,928, which is equivalent to 650%.

9.7 **WK executry – Executry 2**

Ms WK died in August 2011. The Respondent was appointed co-executor of WK's estate with her son D. The Respondent was the partner in charge and CW was the fee earner. CW was an employee with Stormonth Darling from the time of instruction until July 2012 when he became partner with the firm. CW was primarily responsible for the administration of the estate between August 2011 & February 2012. Thereafter the Respondent was primarily responsible for the administration of the estate.

9.8 The fees in the following table were prepared either on the instruction of the Respondent, or while the Respondent was responsible for the supervision of CW. The Respondent instructed that the payment was taken from executory funds and the fee notes be settled. The fee notes were not rendered to the Respondent's co-executor prior to payment being taken.

	Date of fee note	Invoice number	Amount (including Vat)
1	14 December 2011	108/12	£21,600.00
2	27 January 2012	175/12	£4,800.00
3	7 February 2012	185/12	£2,821.72
4	3 May 2012	304/12	£4,200.00
5	6 June 2012	338/12	£900.00
6	6 June 2012	337/12	£3,600.00
7	3 July 2012	337/12	£3,000.00
8	26 July 2012	422/12	£3,000.00
9	20 February 2013	234/13	£3,000.00
10	23 April 2013	320/13	£3,000.00
	Total		£49,921.72

9.9 Two further unnumbered fee notes were settled on the instruction of the Respondent without having been rendered to his co-executor. The fees were dated

2 April 2013 & 27 June 2014. The total of these two additional fees inclusive of vat was £5.4●●.

9.10 In total, fees amounting to £55,321.72 inclusive of VAT were settled. The fee notes were not sent to the Respondent's co-executor. The Executry files were not submitted for taxation.

9.11 Following investigation by the Financial Compliance team of the Law Society of Scotland the files were remitted to the Auditor of the Court of Session for taxation. The Auditor carried out a taxation on the 23 April 2015. The Auditor taxed the fee for the period 9 August 2011 to 23 September 2014 at £22,926.00 inclusive of VAT.

9.12 The difference in the rendered fees and the taxed fee amounts to £32,395.72, which is equivalent to 140%.

9.13 **SR executry – Executry 3**

SR died in August 2006. The Respondent was appointed to administer the estate by SR`s executors WS & MR. The Respondent advised in his terms of business he would be the solicitor principally dealing with the file.

9.14 The Respondent prepared or instructed the preparation of the fee notes in the following table. The Respondent instructed that the payment was taken from executory funds and the fee notes be settled. The Respondent did not render the fee notes to either of the executors.

Date of fee note	Invoice number	Amount	Date payment taken
19 January 2010	139/10	£ 2,350.00	19 January 2010
14 May 2010	296/10	£ 2,937.50	14 May 2010
20 January 2011	126/11	£ 2,350.00	20 January 2011
28 March 2011	220/11	£ 1,200.00	28 March 2011
11 October 2011	7/12	£ 2,160.00	11 October 2011
15 March 2012	243/12	£ 2,400.00	15 March 2012

26 July 2012	424/12	£ 3,000.00	26 July 2012
20 February 2013	232/13	£ 900.00	21 February 2013
27 March 2013	292/13	£ 600.00	29 March 2013
TOTAL:		£17,897.50	All inclusive of vat.

9.15 The fee notes were addressed to the executors of Ms S Richards c/o of the firm at the firm's address. The fee notes were not sent to either of the executors WS or MR prior to payment being taken in settlement of the same from the estate funds.

9.16 **EM executry – Executry 4**

EM died in August 2010. His wife and son were appointed as executors. The Respondent was instructed in the administration of the estate. The terms of business indicated he would be the principal solicitor dealing with the estate, and that CW would assist.

9.17 CW predominantly dealt with the file between August 2010 and February 2011 thereafter the Respondent filled that role. The Respondent sought the assistance of fee assessors Mr & Mrs X in assessing his fees. The Respondent instructed the fees as contained in the undernoted table to be prepared and the fees settled from sums held on behalf of the estate. None of the fee notes were rendered to the executors.

	Date of fee note	**Invoice number**	**Amount**	**Date payment taken**
1	19 November 2010	67/11	£411.25	19 November 2010
2	18 February 2011	174/11	£11,701.15	18 February 2011
3	27 April 2011	254/11	£4,200.00	27 April 2011
4	25 October 2011	37/12	£2,100.00	25 October 2011
5	15 June 2012	349/12	£540.00	15 June 2012
6	25 October 2012	44/13	£8,400.00	25 October 2012
7	8 November 2012	68/13	£3,600.00	8 November 2012
8	27 November 2012	92/13	£3,600.00	27 November 2012
9	20 February 2013	231/13	£2,400.00	21 February 2013
	TOTAL:		£36,952.40	Inclusive of VAT

9.18 The Respondent obtained from Mr X – a fee assessor – a certificate indicating fees of £52,564.20 excluding VAT as being fair and reasonable remuneration for the work carried out in the period from 8 February 2011 to November 2013. This figure was broken down in to £23,703.72 in respect of work carried out and £28.860.48 in respect of commission. The Respondent agreed to cap the firm's fees at £27,326.76 inclusive of VAT prior to November 2013. The agreement is referred to in the finalised Account of Charge and Discharge, which was issued by the Respondent to one of the executors on 14 November 2013.

9.19 Following investigation by the Financial Compliance team of the Law Society of Scotland the files were remitted to the Auditor of the Court of Session for taxation. The Auditor carried out a taxation on the 23 April 2015. The Auditor taxed the fee for the period 2 August 2010 to 19 December 2013 at £32.934 (inc. VAT) but restricted this to £27,326.76 (inc. VAT) as per the agreement. The Auditor observed that the terms of business did not agree that commission would be paid.

9.20 The difference in the rendered fees and the taxed fee (including VAT) amounts to £9,625.60.

9.21 In each of the cases above the Respondent took fees from the executry estates without having rendered a fee note to the executors, in breach of Rule 6(1)(d) of the Solicitors (Scotland) Accounts Etc. Rules 2001 or Rule B6.5.1 of The Law Society of Scotland Practice Rules 2011.

9.22 In each of the AC and WK cases above, the Respondent deducted sums from the funds held for and behalf of his clients by means of spurious and/or grossly excessive fee notes and thereby appropriated said sums for his own or his former firm's use without any lawful authority so to do.

9.23 The Guarantee fund sub committee resolved to make a complaint to the SLCC on the 17 July 2014.

The V Trust

9.24 CV and JV ("the brothers") were the fiars of their grandfather's Trust – "The V Trust". Their father, WV, had enjoyed the liferent of the Trust property – "Property 1". Their father died on 15 April 2007. The full right to the land thereafter passed to the Trust. As of April 2007, the Trustees were CV and the Respondent's partner Terence McNally.

9.25 Terence McNally received instructions to market Property 1 on behalf of the Trust in August 2007. Terence NcNally entered into correspondence with the HMRC. The correspondence secured a reduction in the valuation at date of death for tax purposes and noted, *"If the sale price of a property within 4 years of death is less than the value on death, then the sale price may be substituted for the former figure."* For the purposes of the HMRC the sale date is the date of concluded contract. The fourth anniversary was 15 April 2011.

9.26 An offer was received to purchase Property 1. Terence McNally met with CV on or around the 30 September 2010. The purchaser wished to rent Property 1 until he sold his property – delaying the date of entry. Mr McNally noticed at this point that first registration would be triggered and a new deed plan would be required to satisfy Registers of Scotland. The missives were concluded on the 25 October 2010 for the purchase at £385,000. A lease was entered into between the Trust and the purchaser to allow his residence until purchase funds were available.

9.27 Terence McNally had some ongoing correspondence with the brothers up to and until April 2012 when he retired, this included, extending the lease and postponing the date of entry. The Respondent took over the Trust legal work on or around 1st April 2012. CV emailed the Respondent on the 8 April 2012 *"TMcN managed to bring the amount to pay IHT on down from £520K to £450K. this being the amount we thought [Property 1] would now realistically sell for. Is there any possibility that it could be brought down again to £385K. the actual selling price? It doesn't seem fair to pay tax on money we haven't received! [JV] had asked TMcN if there were any funds (from [Property 1] rent) available for disbursement. we still await an answer for this.*

9.28 The sale transaction settled on or around 30 April 2012. The Respondent advised the brothers he was addressing the inheritance tax ("IHT") issues and would thereafter prepare a "final account" and he would "revert shortly".

9.29 The brothers individually or jointly pressed the Respondent for updates on the IHT and finalisation of the Trust – on 9, 16, 24 and 30 July 2012. On the 31 July 2012, the Respondent agreed to make an interim payment to each brother of £100,000. Cheques were collected on the 2 August 2012.

9.30 The brothers individually or jointly pressed the Respondent for updates on the 1 and 16 of October 2012 which resulted in a meeting of the 16 October where further interim payments were agreed. It was noted an offer for a field ("the field"), owned by the Trust was discussed. The brothers gave instructions by email to sell the field. The brothers met the Respondent on the 21 October 2012. Property 1 rental income was disbursed. A verbal offer for the field had been received and instructions were sought from the brothers. Instructions were provided to the Respondent to accept the offer for the field on the 6 November 2012. A written formal offer to purchase the field was received by the Respondent on the 12 November 2012.

9.31 The Respondent did not progress the sale transaction nor the winding up of the estate between November 2012 and February 2013. The brothers pressed the Respondent for news over that period. The Respondent met with CV in February 2013. Following that meeting an HMRC penalty notice was received (12 February 2013) for failure to lodge Trust accounts. JV emailed the Respondent on the 17 March pointing out the settlement of the sale of Property 1 occurred 12 months earlier asking for details of the funds received and pressing for action (in respect of the Trust and sale of the field). The Respondent did not reply to that letter or JV's chaser of the 31 March 2013.

9.32 The brothers further pressed for action on 7 April 2013. The Respondent did complete a tax claim for relief form and sent it to his former partner and trustee Mr McNally for signature on the 8 April, on which date he also sent a qualified acceptance in response to the offer of November 2012 to purchase the field. He however did not respond to either brother.

9.33 The brothers (individually or jointly) further pressed for action on 10, 19, 21 April 2013. In correspondence of the 21 April the Respondent was specifically asked to confirm the total funds he held on behalf of the Trust. The Respondent replied on the 29 April, giving limited information. He was asked but did not advise of the date the qualified acceptance was sent in response to the offer to purchase the field. He did not advise of the HMRC penalty. He did not confirm the funds held on behalf of the Trust. The Respondent advised he would return to the brothers shortly with all the figures.

9.34 The agent acting for the purchaser of the field pressed the Respondent on the 8, 16, 24 May & 19 June 2013 seeking the deeds for field. The brothers pressed the Respondent on 7 occasions in June and July 2013 and the 1 August 2013 for updates and confirmation the end was in sight. The Respondent did not respond to either the purchasing agent or the brothers' enquiries.

9.35 The field transaction settled on the 23 August 2013. The brothers pressed for completion of the Trust. They had not been given a breakdown of income, expenditure and debts due by the Trust. On the 22 August 2013 the Respondent replied to a letter from HMRC (re the Trust tax affairs) dated 22 July 2013 enclosing the missives for sale of Property 1 along with an UHT38 – tax relief application. HMRC wrote with a calculation of tax due by the it showed a balance due of £48,286.28. That letter to the Trust was dated 3 September 2013.

9.36 On the 10 September 2013, the Respondent replied to an email from JV of the same date. JV's email enquired as to the Respondent adjusting the amount owed to HMRC as a result of the £11,000 payment by his mother in 2007. A revised account was sent by HMRC to the Respondent on the 16 September 2013 requiring payment of £80,547.69. At this time, the solicitor acting for the purchaser of the field was still pressing the Respondent to provide prior titles to allow the registration for his client's title to the field.

9.37 On the 23 September 2013 CV wrote on behalf of himself and his brother, advising they had spoken directly to HMRC and found out about the £80,000 balance. They expressed dissatisfaction with the Respondent. They explained they

understood there was to be a reduction due to the difference in valuation and sale price of Property 1. He queried the delay in progressing the sales of both Property 1 and the field. He highlighted the poor level of communication received from the Respondent. He asked why a full accounting had still not been provided. The brothers advised they had been told by HMRC the Respondent had not contacted them and asked the Respondent for an explanation. The HMRC debt of £83,547.89 was paid on behalf of the Trust by the Respondent on the 27 December 2013.

9.38 As a result of the Respondent's delay, the Trust incurred the late account and a four-figure late payment interest charge. The client account the Respondent operated for the Trust held sufficient funds to meet the IHT liability.

9.39 The Respondent did not respond to the letter of 23 September 2013. CV formally intimated a complaint to the Respondent on the 12 January 2014. His complaint was about the Respondent's actions or lack thereof during his period of service to the Trust, the delays in payment, details of the negotiations with HMRC, delay in the sale of the field, delay in communication, completion of the Trust and a lack of statements in respect of the Trust's funds. The Respondent replied (after the intervention of Mr McNally) on the 7 February 2014. The Respondent did not provide a full accounting and answered only a few of the complaints narrated by CV.

9.40 The Respondent completed a draft account of charge and discharge for the first time in 27 February 2014. The final payment from the Trust to the brothers was not made until 4 April 2014. The brothers requested that the Respondent's firm's fees were sent for taxation. None of the fees (narrated at paragraph 9.41 below) had been intimated to the Trustees between April 2007 (when Mr McNally was dealing prior to retirement) and December 2013. Further HMRC penalties were issued after this date. HMRC wrote to CV in August 2015 advising of 9 penalty notices for the period 21 March 2013 until 24 August 2015 totalling £3,429.83 and forewarning of a further £1200 penalty which would fall due on 20 September 2015 in respect of the Trust finances.

9.41 The Respondent's file for carrying out the administration of the V Trust was "the Capital File". The file for carrying out work in respect of the sale of Property 1 was "the Sale File". The following table shows invoices/fees billed to the Capital account along with dates of the invoice, dates of payment of the bill and the source of funds to pay the bill.

Date of fee note on Capital file	Amount of fee note	Fee note number	Date fee note "paid"	From where Funds used to pay the fee were received	Date of inter office transfer from column 5 to Capital File
25 July 2012	£4,800	420/12	25 July 2012	Sale [Property 1], Jedburgh	25 July 2012
8 November 2012	£3,600	66/13	8 November 2012	Sale [Property 1], Jedburgh	8 November 2012
21 February 2013	£2,400	230/13	21 February 2013	Sale [Property 1], Jedburgh	21 February 2013
27 March 2013	£2,400	293/13	27 March 2013	Sale [Property 1], Jedburgh	27 March 2013
22 April 2013	£3,600	319/13	22 April 2013	Sale [Property 1], Jedburgh	22 April 2013

The Respondent did not render any of the invoices to any trustee of the V Trust. As such the Respondent did not have authority to use the Trust's client funds to settle the fees. As a result of the fees being taken without being rendered, and accordingly without authority, the Respondent's firm's client account was placed in deficit on many occasions. There were insufficient funds in the client account cover theses deficits. Notwithstanding the assessment, the Respondent did not charge more than the figures *in cumulo* at 9.41.

9.42 The Respondent's firm was inspected by the Society's Financial Compliance team in August 2013 (19th-20th). The Respondent was asked to exhibit confirmation that the fees on the Capital file had been rendered. He could not do so. The Compliance team advised the Respondent in writing by email on the 11 September 2013 that he was in breach of Rule B6.4. He was advised to remedy the breach by reversing each fee note and credit the Trust with funds. He delayed in doing so. He did not credit the fee notes until 27 February 2014, a delay of 5 months.

9.43 In addition to pointing out the failure to render the fee notes and the consequences of doing so the Compliance team required the Respondent to produce details of the work carried out for the V Trust in relation to the rendered fees. The

Respondent replied on 22 October 2013 indicating the Trust was being finalised and would be admitted to a fee assessor and upon receipt of an appropriate fee certificate it would be forwarded to the Financial Compliance Team.

9.44 The Society emailed the Respondent on the 1 November 2013 advising that a response to the request mentioned in the immediately preceding paragraph remained outstanding. A deadline of 8 November was set for provision of the required information. The Respondent failed to provide the information by the 8 November 2013.

9.45 The Society sent further communications in regard to the non-rendered and unjustified fees on the 14 and 25 November 2013. A meeting took place between the Respondent and the Financial Compliance Team on the 16 December 2013. The Respondent was advised what was required of him viz; provision of the recredited fees and details of the work done on the Trust file. The Respondent had his files assessed; the fee was assessed at £23,751.40, a sum in excess of the "non-rendered fees".

9.46 The Respondent rendered fees in the same amount as contained in the table at paragraph 9.41 on the 27 February 2014. CV wrote to the Respondent on the 11 March 2014 having received the fee notes. CV disputed the fees as excessive and sought taxation of the fees. CV required to press the Respondent on three occasions in May 2013 re taxation. The Respondent required to attend a continued panel interview of the Scottish Solicitors' Guarantee Fund on the 22 May at which time he advised he had not instigated the taxation process. He was instructed to begin this immediately and show that he had done so by the next Panel meeting of the 5 June 2014. On the 27 May 2014, the Respondent wrote to CV enclosing a joint remit for taxation.

9.47 CV amended the remit by inserting a requirement that the Respondent pay for the taxation and signed the same on the 4 June 2014. The Respondent wrote back on the 1 July indicating the amendment was not acceptable.

Law Society Complaint No.2 – Company 1

9.48 The Respondent was director of Company 1 between 1 June 2007 and 17 September 2012. The Respondent's firm's office was the registered office and the company secretary during the same period up to November and October 2013 respectively. HA was a director and majority shareholder and HB was a director in the period 2007 to 2013.

9.49 The Respondent was the sole solicitor at the firm who acted for Company 1. He responded immediately to all calls, out of hours at weekends and on holiday. However, despite taking calls he did not action all instructions. He attended at board and company meetings. He took notes. He advised the company he had taken action on their behalf when he had not. In particular:

Scottish Water

9.50 Company 1 had accounts with Scottish Water (SW). A dispute arose between SW and Company 1. The Respondent was instructed by Company 1 to raise court proceedings against SW or their Business Stream subsidiary. He did not raise proceedings. The Respondent advised during a company meeting on 29 March 2012 court proceedings were live and there would be a hearing in the summer. No court action had been raised on behalf of Company 1 against SW or any subsidiary.

9.51 On the 26 November 2012, at a Company 1 directors meeting, the company was advised by the Respondent that court proceedings were raised in June 2012 and would reach a court date possibly in June 2013. No court action had been raised by the Respondent.

9.52 In February 2013 the Respondent reported to the company that a court hearing was anticipated in the first or second week of March 2013. Thereafter, in the same month, he advised a hearing date was supposed to be fixed for April 2013. No action had been raised.

9.53 In December 2013 Company 1 were advised by the Respondent that a hearing had been fixed for the case against Scottish Water for the 29 October 2013 no such hearing had been fixed. The Respondent misled the company.

Mr L and Mr & Mrs R

9.54 The Respondent was instructed in connection with the eviction of Mr L, and separately Mr & Mrs R, from Company 1 properties.

9.55 He updated the company on several occasion in respect of Mr L over the period 2005 to 2011. During that period, he misled the company as to the service of statutory notices necessary for eviction. He advised he had served the notices, but he had not done so. He advised court proceedings had been raised when they had not commenced. Subsequently he advised that Sheriff Officers had been instructed to evict when there was no decree upon which the Sheriff officer could act. He advised Sheriff officers were too busy to evict. He advised Mr L had appealed and a court date had been fixed. All these updates were false.

9.56 With regard to Mr & Mrs R, the Respondent served a statutory notice to recover possession of Company 1 property in 2008. He did not commence recovery proceedings following service of the notice. He appeared to have entered into a new agreement re the rent. Matters fell from the attention of Company 1 until November 2012. At that time, the Respondent, advised that Mrs R "*was for the Sheriff in January 2013*" (sic). There was no court action raised. In January 2013 the Respondent advised the Company that Mrs R was to be evicted on 31 January 2013. No eviction had been nor could have been (without a court decree) instructed by the Respondent.

9.57 On the 26 February 2013, the Company noted an update from the Respondent. He advised that some sums had been paid and agreement for further payment had been reached, failing which Mrs R was to be evicted and that the court had no discretion to make an order for possession. It is clear no court action had been raised nor decree obtained.

9.58 In or around late summer of 2013, the Company notes the Respondent advised that the eviction was to occur "hopefully" in September.

9.59 Following consideration of mandated files, new agents for Company 1 advised in October 2013 that the Respondent took no action on behalf of the Estate re Mr and Mrs R since 2009. All advice given by the Respondent in paragraphs 9.52-9.55 above was false.

10. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct *singly* and *in cumulo* in respect that he:-

10.1 Acted dishonestly, when he advised Company 1 he had taken action when he knew had not;

10.2 Misled his clients:-

(a) Company 1, when he said he had taken action when he knew had not; and

(b) The V Trust/trustees when he advised he was dealing with HMRC and the IHT liability of the Trust, and about the true state of the field transaction;

10.3 Took fees which were significantly in excess of the subsequently audited fees on the AC and WK files in breach of the Practice Rules;

10.4 Prepared fee notes and settled the same without rendering the fees to the executors (Law Society complaint No.1) and trustees (V Trust), when he had no authority to intromit with the funds;

10.5 Failed to comply with the requirements of the Accounts Rules and in failing to render fee notes, he failed to keep full record showing his client account was in credit, delayed and/or failed to maintain his client account in credit, and delayed in remedying the breaches when the breaches were identified by the Society;

10.6 Failed to communicate effectively with his client and others, failed fully to keep the Trustee and fiar of the V Trust updated, failed on numerous occasions to respond to correspondence, and failed to communicate effectively with HMRC on behalf of his client, the V Trust, as a result of which the Trust incurred financial penalties;

10.7 Failed to communicate effectively with his client, Company 1, by saying he had commenced and progressed litigations when, in fact, he had not;

10.8 Failed to act in the best interests of his clients,

(a) The executors in the AC and WK executries, by charging and taking fees which were significantly in excess of the audited fees,
(b) The V Trust, for delay in dealing with IHT, disbursement of the Property 1 sale funds, to progress the Field transaction and to account to the trustee and liar of the true funds held by the firm and his fees,
(c) Company 1, in that he did not commence or then progress litigation to evict the tenants as instructed, and he did not raise proceedings against Scottish Water as instructed.

10.9 He failed to carry out the instruction from:-

(a) The V Trust trustees to disburse the funds from the Property 1 transaction, address the IHT liability, complete the Field sale within a reasonable time, report on the funds held and send files for taxation adequately and completely within a reasonable time, and disclose the appropriate skill in dealing with the HMRC.
(b) Company 1 to evict the tenants, pursue Scottish Water adequately, competently and within a reasonable time.

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

Edinburgh, 18 February 2022. The Tribunal, having considered the Complaint dated 21 July 2021 at the instance of the Council of the Law Society of Scotland against Andrew Paterson Penman, 68 Orchard Terrace, Hawick; Find the Respondent guilty of professional misconduct singly and *in cumulo* in respect that he acted dishonestly when he advised a client he had taken action when he knew he had not, he misled clients, he took fees significantly in excess of subsequently audited fees, he failed to render fees, he failed to comply with the Accounts Rules, he failed to communicate effectively with his clients and others, he failed to act in the best interests of clients, and he failed to carry out

instructions; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Beverley Atkinson

Vice Chair

12. 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 22 MARCH 2022.

IN THE NAME OF THE TRIBUNAL

[redacted]

Beverley Atkinson

Vice Chair

NOTE

At the hearing on 18 February 2022, the Tribunal had before it: the Complaint as amended; Answers for the Respondent; the Joint Minute as amended; an Inventory of Productions for the Respondent; and the SLCC handling complaint report dated 16 February 2022 with reference 202100824. By way of the Joint Minute, the Respondent admitted the averments of fact and duty contained in the Complaint as amended. He admitted misconduct as set out in the schedule to the Joint Minute.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal described the factual position set out in the Complaint as amended. The Respondent had been a partner and designated cashroom manager with Stormonth Darling until October 2014 when he was suspended. The Fiscal referred the Tribunal to the averments of duty in the Complaint and the averments of misconduct agreed in the Schedule to the Joint Minute. He noted that the Respondent admitted misconduct although that was a matter for the Tribunal, having regard to the whole circumstances and the Respondent's degree of culpability. He referred to the test for professional misconduct contained in Sharp-v-The Council of the Law Society of Scotland 1984 SLT 313.

In the Fiscal's submission, the medical report lodged by the Respondent did not lessen his culpability and was only mitigatory. It is a solicitor's responsibility to ensure that clients are served. He also noted that the Respondent's diagnosis came sometime after the conduct which was the subject of the Complaint. He invited the Tribunal to find the Respondent guilty of professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macmillan noted that the Respondent had consistently accepted his conduct. However, professional misconduct was a matter for the Tribunal. The Respondent was very regretful to be appearing before the Tribunal but was grateful to have the opportunity to explain his side of the story. This was the first time he had been able to do that.

The Respondent started to practise in 1981. He was with Stormonth Darling his whole career. He worked as a solicitor for 30 years with no significant issues or concerns. However, the banking crisis had a devastating impact on his country firm. Overheads had to be severely reduced. The volume of conveyancing and estate agency work he had been used to was no longer available.

The Chair invited Mr Macmillan to restrict his submissions at this stage to the issue of professional misconduct. There would be an opportunity later in proceedings to make submissions in mitigation if the Tribunal made a finding of misconduct.

With regard to the Company 1 complaint, Mr Macmillan indicated that the client was very demanding. He contacted the Respondent frequently outwith office hours and during periods of leave. The Respondent's personality is non-confrontational. Rather than deal with the issue head-on, he started to make up stories about litigations which did not happen. He accepts that he did this and does not disassociate himself from the conduct.

With regard to the executry complaints, Mr Macmillan noted that although the four cases at first look similar, they were not identical. Mr Macmillan gave some background information about the local fee assessors used by the Respondent. All of the fees were charged in line with their advice and recommendations. The Respondent completely accepted that invoices were not rendered. This was because he was so busy. His practice had been to make a full accounting at the end of each piece of business. However, he accepts this was not done in these cases. Mr Macmillan drew attention to the amendments to the Complaint where the word "overcharge" had been replaced with the word "difference". He said this was because the invoicing had been carried out on the basis of incorrect advice from the fee assessors regarding a charge for commission.

The Chair noted that the only reference to the fee assessors was contained at paragraph 3.17 of the Complaint. Mr Macmillan clarified that not all fees had been assessed by the fee assessors but the accounts had been prepared using their methods. Although the matter had been reported to the police, no action had been deemed necessary. Mr Macmillan highlighted that the admission of a "difference" in the fees taken and the level of the audited fees related only to two files. In the other two executry files, the audited fee was the same or lower than that which was charged. The only conduct issue arising in relation to these latter files and the V Trust case was the failure to render the fees.

The Chair noted that there were no factual averments in the Complaint relating to the AC and WK files that the "difference" related to commission. Mr Macmillan explained that he wished to set out the Respondent's position that the reason for the "difference" was a misunderstanding about what was chargeable.

With reference to the V Trust complaint, Mr Macmillan said that the Respondent accepted that he dealt with the sale of the field and the inheritance tax liability slowly.

ADDITIONAL SUBMISSIONS FOR THE COMPLAINERS

The Fiscal submitted that no matter the advice the Respondent had taken, it was his responsibility to ensure a fair and reasonable fee. He noted that the fee assessors were not law accountants.

DECISION ON PROFESSIONAL MISCONDUCT

The Tribunal was satisfied beyond reasonable doubt on the basis of the admitted facts that the Respondent had acted in the manner set out in the findings in fact above.

The Respondent was instructed by Company 1 to raise court proceedings against Scottish Water. He did not do so. He advised the Company at a meeting on 29 March 2012 that proceedings were live when they were not. At meetings in November 2012, February 2013 and December 2013 he advised the Company of fake hearing dates. In relation to the evictions cases, he said that notices were served, proceedings raised and Sheriff Officers instructed. This was false. He then said Sheriff Officers were too busy to evict. He did not commence recovery proceedings and entered into a new agreement with the tenant regarding rent. He said the tenant was due to appear in court when she was not. He said that some sums had been paid and agreement for further payment had been reached, failing which the tenant was to be evicted. No court action had been raised or decree obtained.

The Tribunal had regard to the test for dishonesty contained in Ivev-v-Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. According to that case, the Tribunal should take into account the actual state of the individual's knowledge or belief as to the facts. Once that is established, the question of whether his conduct was honest or dishonest is determined by applying the objective standards of ordinary decent people. The Tribunal was satisfied on the basis of the admitted facts, and the Respondent's admission of dishonesty, that his reports to Company 1 about court proceedings involving Scottish Water and the tenants were dishonest.

The Respondent misled Company 1 when he advised he had taken action regarding Scottish Water. He misled the V Trust trustees when he said he was dealing with HMRC and IHT liability. He misled them regarding the true state of progress regarding the sale of the field.

The Respondent took fees in two cases (AC and WK executries) which were significantly in excess of the audited fees. The Tribunal noted that it was not asked to make a finding of dishonesty in relation to

this matter although the Respondent had admitted that that the fee notes were "spurious and/or grossly excessive" and that he had appropriated the sums for his own use or his firm's use without any lawful authority so to do. The Tribunal noted what was said on the Respondent's behalf about his usual fee assessors' practice. However, solicitors cannot delegate responsibility for fees. Solicitors have a duty to supervise all aspects of their practice including fees (MacColl-v-Council of the Law Society of Scotland 1987 SLT 524). The fact that the police did not take action in relation to these matters while noted, was peripheral to the question of professional misconduct.

The Respondent failed to comply with the Accounts Rules. He failed to render fees in a number of files over a number of years. The Tribunal noted it was said on the Respondent's behalf that his usual practice was to account to the clients at the conclusion of the case. If that was his practice, he ought not to have taken any fees until the business was complete. He failed to keep proper records. He failed to maintain his client account in credit. He delayed in remedying breaches identified to him by the Society.

The Respondent failed to communicate effectively with his clients and others. He failed to update them. He failed to respond to correspondence. As a result of failures in communication, a client incurred financial penalties.

The Respondent failed to act in the best interests of his clients. He took fees significantly in excess of those subsequently audited. He delayed in dealing with IHT on behalf of the V Trust trustees. He failed to disburse sale funds. He failed to progress a transaction and account to the client. He did not act on instructions to have Company 1's tenants evicted.

The Respondent failed to carry out instructions. He did not do what was required of him by the V Trust trustees. He did not follow Company 1's instructions about proceedings against Scottish Water.

The Tribunal considered the admitted conduct and established breaches of rules in the context of the test for professional misconduct contained in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313. According to that case,

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

the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made."

Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. They must not behave in a way which is fraudulent or deceitful (Rule B1.2 of the Law Society Practice Rules 2011). The Respondent's repeated lies to a client over nine months were an egregious breach of this fundamental rule. Solicitors should not mislead their clients (Rule B1.2). The fees they charge must be fair and reasonable in all the circumstances (Rule B1.11). They must comply with the Accounts Rules (Rule B6). They must communicate effectively (Rule B1.9). They must act in the best interests of their clients (Rule B1.4). They must only accept instructions where the matter can be carried out adequately and completely within a reasonable time (Rule B1.10). The Respondent's conduct was likely to endanger the public and harm the reputation of the profession. The Tribunal was satisfied that the Respondent's conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct.

A medical report was lodged with the Tribunal. The normal practice of this Tribunal is that ill health only goes to mitigation and not to culpability. Solicitors are responsible for their actions, even if suffering from ill health. They must pass on work or bring in additional assistance if they are overwhelmed (Law Society of Scotland-v-Toner 856/1993; Law Society of Scotland-v-Docherty 1047/2000; Law Society of Scotland-v-Hetherington 1692/2002). The Tribunal did not consider that the medical report went to culpability, but that it could be relevant at the stage of considering sanction.

The Fiscal confirmed that there were no previous conduct findings on the Respondent's record card.

SUBMISSIONS IN MITIGATION

Mr Macmillan referred to the submissions he had made earlier in the day in relation to misconduct. He noted the effect of the banking crash on the firm. Mr McNally retired as a partner in 2010 and as a consultant in 2012 creating consequent financial difficulties for the Respondent. Another partner was assumed in 2012 but was ill for a period and then died in 2015 while still a young man. The Respondent was effectively running the firm alone. It was a very heavy burden. He was designated cashroom manager and anti-money laundering officer. He dealt with the estate agency business as well as his agricultural and residential conveyancing business. Due to the financial constraints at the time, he took on some trusts and executry work which he would not have done previously. He was working over 60 hours a week. His life in 2013/2014 was "in chaos" because of these circumstances.

With reference to Company 1, Mr Macmillan described the individual he dealt with as difficult and demanding. He expected the Respondent to drop everything to assist him. He would telephone him at evenings and weekends. He would contact the Respondent even if he was ill or on holiday or at a social event. He required regular meetings. He expected the Respondent to deal with the tenants. The Respondent was bullied and his attempts to defer were met with resistance.

According to Mr Macmillan, the Respondent is very regretful. He apologised. A cocktail of circumstances caused things to go askew. It was of note that the police refused to prosecute him. He accepted that fees should be rendered. He regretted that this was not done and apologised to the executors. The V Trust file was a mess when he received it. He did not concoct any stories for these clients. However, he did fail to get things done and he apologised to the family.

Mr Macmillan described the Respondent's mental health during the relevant time and referred the Tribunal to various passages in the medical report which had been lodged on the Respondent's behalf. He spoke about how the Respondent's health affected him at the time and currently. The report was obtained in 2021 and was the best available evidence. Mr Macmillan urged the Tribunal to take the Respondent's mental state into account when considering sanction.

Mr Macmillan commended the Law Society of Scotland for the remarkable strides it had taken in recent years in relation to practitioners' mental health. He referred to various sections of the Complainers' website, including the Society's recognition that mental health is as important as physical health, the creation of mental health first aiders, and the need to manage emotional well-being. He referred to correspondence with the Law Society on the topic of the Respondent's mental health. However, he noted that none of these things appeared on the Complainers' website before 2018. Their policy on mental health was not formulated until that year.

The Complainers had been aware of the Respondent's health issues in September 2014. Although the report was not instructed until 2021, the Complainers were aware of the situation from various sources. It was of concern that the Law Society report and determination does not consider mental health at all. Mr Macmillan referred to the SLCC handling complaint report and its criticisms of the way the Complainers had dealt with the case, including its failures to obtain a medical report. The Complainers might have addressed this case differently if everything had been done properly. He asked the Tribunal to consider the medical report's conclusion that there had likely been a clear impairment to the Respondent's ability to focus, think clearly and make decisions. He struggled to function and manage

his work. He asked the Tribunal to consider the cocktail of circumstances he had described at the start of his submission as well as the Respondent's mental health. Although the Respondent accepts responsibility, Mr Macmillan suggested that his health was relevant to determining sanction.

According to Mr Macmillan, the Respondent is "broken" both as a solicitor and as a man. He receives medication and treatment for his health. Any form of stress is very difficult for him. He is 64. He has been suspended since 2014. He has no desire to return to practice. He knows strike off is the strongest sanction. The Tribunal was aware of the risk to the Respondent's health if it imposed the ultimate sanction.

The Chair queried whether the report supported the link Mr Macmillan was attempting to make between a deterioration in health and any particular sanction. Mr Macmillan said that the author of the report did not know about the Tribunal's sanctions. However, strike off was the strongest available penalty. Instead, he suggested that the Tribunal could under section 53(2)(b) of the Solicitors (Scotland) Act 1980, continue the order of suspension which currently applied to the Respondent *sine die*. He noted that lengthy suspensions had been imposed in other Tribunal cases (Law Society of Scotland-v-Daniel McGinn, Law Society of Scotland-v-Brian Travers and Law Society of Scotland-v-Philip Hogg). Due to his ruined circumstances, the Respondent could not pay a fine.

The Chair noted that in cases of dishonesty, strike off is the usual starting point for consideration of sanction. She invited Mr Macmillan to address the Tribunal on the nature and scope of the dishonesty which might constitute exceptional circumstances to justify imposing a lesser penalty.

Mr Macmillan invited the Tribunal to consider the schedule to the joint minute. There was only one instance of dishonesty and that was in respect of advising Company 1 dishonestly in relation to two cases. He submitted that the Tribunal should consider what caused the dishonesty. It should ask itself what would cause a solicitor of over thirty years to suddenly make up stories about litigations. There was nothing to gain except shame and embarrassment when he was found out. His only personal gain was to keep the client off the phone. The reason he conducted himself in this bizarre way was because he was not well. His illness provided a perfectly cogent explanation for his conduct.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal considered the handling complaint report carefully. The report made some criticisms of the way the Complainers had dealt with the case, including the failure to obtain a medical report. Mr

Macmillan suggested that the final outcome might have been different if the Complainers had handled the case adequately. However, the Tribunal was obliged to determine the Complaint before it. The Tribunal's own procedures provide mechanisms for consideration of preliminary matters or questions of fairness. No such issues were put before it and the Tribunal's decision was based on the facts admitted by the Respondent in the Joint Minute.

The Tribunal considered the Respondent's conduct to be at the higher end of the scale of misconduct. He had admitted and been found guilty of dishonesty by repeatedly lying to a client over a long period. In relation to the Scottish Water case, the falsehoods were made between March 2012 and December 2013. In relation to the eviction cases, the Respondent admitted that he misled his client on several occasions between 2005 and 2013. He told lies about many different things. This was not a single falsehood, quickly corrected. Rather it was a continuing deceitful course of conduct.

In addition to the dishonesty matter, the Respondent also admitted and was found guilty of professional misconduct in relation to a catalogue of other serious and reprehensible departures from the standards of competent and reputable solicitors. These took place over a significant period and involved more than one client. He misled clients. He took spurious and/or grossly excessive fees in two cases in breach of his obligation to charge a fair and reasonable fee. He failed to render fees, comply with the Accounts Rules and communicate effectively. He failed to act in the best interests of his clients and carry out their instructions.

The Tribunal considered the aggravating and mitigating factors in the present case. The findings of dishonesty and the course of misconduct over a lengthy period were aggravating factors. The conduct was a danger to the public and was likely to seriously damage the reputation of the profession. Mitigating factors included the Respondent's ill health and financial and work pressures present at the time of the misconduct. The Respondent cooperated with the Law Society and the Tribunal. He entered into a joint minute. There were no previous findings of misconduct against the Respondent. He had expressed remorse and apologised. He had attended the hearing in person.

Strike off was uppermost in the Tribunal's mind due to the finding of dishonesty. According to Bolton-v-Law Society [1993] EWCA Civ 32, proven dishonesty will "almost invariably" lead to the Tribunal's ultimate sanction. Conduct falling far below the required standards of integrity, probity and trustworthiness is very serious. Strike off is not inevitable but it may well follow. The Tribunal's function is to protect the public and sustain public confidence in the integrity of the system as well as to discipline solicitors. In an oft quoted passage, the court in that case noted that the reputation of the

profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.

Mr Macmillan urged the Tribunal to suspend the Respondent rather than make an order for strike off due to the context in which the misconduct occurred. In particular, he relied upon the Respondent's health at the time of the conduct. The Tribunal carefully considered the medical report produced on the Respondent's behalf. Although not instructed until 2021, there was supporting evidence that tended to show the Respondent was unwell around the time of the misconduct and the initial investigation by the Complainers. The conduct pre-dated the known medical history, but the Tribunal had no reason to doubt that ill health was likely to have present before that.

The Tribunal invited Mr Macmillan to address it on the nature and scope of the dishonesty as the basis for exceptional circumstances justifying a lesser sanction than strike off. According to Solicitors Regulation Authority-v-Sharma [2010] EWHC 2022 (Admin), save in exceptional circumstances, a finding of dishonesty will lead to a solicitor being struck off the roll. That is "the normal and necessary penalty" in cases of dishonesty. It was said that there will be a small residual category where striking off will be a disproportionate sentence in all the circumstances. Relevant factors include the nature, scope and extent of the dishonesty, whether it was momentary or over a lengthy period of time, whether it was a benefit to the solicitor and whether it had an adverse effect on others. It was noted that there is no distinction in sentencing practice between dishonesty involving appropriation of clients' money and other cases of dishonesty which did not involve financial loss to clients, but questions of financial loss might be relevant in considering the existence of exceptional circumstances. The fact that no client suffered financial loss is not of itself determinative as there is harm to the public every time a solicitor behaves dishonestly.

The Tribunal carefully considered the circumstances of the dishonesty. It persisted over a long period without correction by the Respondent. It had an adverse effect on others. It reflected extremely badly on the Respondent and was likely to have a serious impact on the reputation of the profession. However, there was no financial gain to the Respondent. The only motive appeared to be to deflect the client's attention from his other failures. However, that allowed him to keep his client, and that was to that client's detriment. The Tribunal accepted that, in common with many small country practitioners, the Respondent experienced significant financial pressure because of the 2008 recession. Further economic difficulties were created by retirement of his partner and the illness and death of the partner assumed to replace him. His own health suffered during this period and was likely to have influenced the way he conducted himself.

The Tribunal was aware that it should not place too much emphasis on ill health, particularly in dishonesty cases. It must consider the public confidence and the maintenance of proper professional standards and conduct, giving proper weight to the finding of dishonesty (GMC-v-Stone [2017] EWHC 2534). According to Solicitors Regulation Authority-v-James. McGregor and Naylor [2018] EWHC 3058, once dishonesty was found by applying the Ivey case, solicitors were found to know that their conduct was dishonest, notwithstanding any mental illness or stress. The court also noted that,

"It is difficult to see how in a case of dishonesty, as opposed to some lesser professional conduct, the fact that the Respondent suffered from stress and depression (whether alone or in combination with extreme pressure from the working environment) would without more amount to exceptional circumstances."

Mr Macmillan referred to three cases where the Tribunal had imposed lengthy periods of suspension instead of strike off. The Tribunal considered that there were significant differences between those cases and the present case. Law Societv of Scotland-v-Brian Travers and Law Societv of Scotland-v-Philip Hogg did not involve any findings of dishonesty. The dishonesty in Law Society of Scotland-v-Daniel McGinn occurred when the Respondent failed to return a client's fee when closed his practice, having not carried out any work on the client's behalf. It did not consider that these were comparable to the circumstances of the present case where the Respondent, in addition other misconduct, had repeatedly lied to his client about various matters over a long time. The Tribunal rejected the submission that the medical report supported the choice of one sanction over another.

Taking all this into account, the Tribunal was not persuaded that the context put before it constituted exceptional circumstances justifying a lesser sanction than strike off. Any other sanction would be insufficient to mark the seriousness of the conduct, protect the public and maintain the reputation of the profession. Strike off was necessary and appropriate in the circumstances. The Tribunal therefore ordered that the name of the Respondent be struck off the roll of solicitors in Scotland. The order will take effect on intimation of these findings in accordance with section 53(6) of the Solicitors (Scotland) Act 1980.

The Tribunal invited submissions on expenses and publicity. The Fiscal moved for expenses. Mr Macmillan suggested the appropriate award was no expenses due to or by either party. He indicated that the Respondent had no money to pay expenses. The Tribunal considered that there was no reason to depart from the Tribunal's usual approach that expenses follow success. The Tribunal agreed with parties

that it was required to give publicity to its decision (paragraphs 14 and 14A of Schedule 4 of the Solicitors (Scotland) Act 1980). That publicity will include the name of the Respondent and his former partner but need not identify any other person as publication of their personal data may damage or be likely to damage their interests. The Tribunal noted that the Secondary Complainers did not wish to claim compensation. Therefore, it made no direction in this regard.

Beverley Atkinson

Vice Chair