

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

**FINDINGS**

**in Complaint**

**by**

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

**Complainers**

**against**

**SIMON KENNEDY DUNCAN, Solicitor, Flat  
G/L, 603 Clarkston Road, Glasgow**

**Respondent**

1. A Complaint dated 15 October 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 Simon Kennedy Duncan, Solicitor, Flat G/L, 603 Clarkston Road, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
  
2. There were 22 Secondary Complainers: Ms Sarah Webb, 102 Unitas Crescent, Carlisle, Lanarkshire; Mrs Doreen Fenwick, c/o 6 Castle Street Warkworth, Morpeth, Northumberland; Peter Prokop, 20/1 Granton Medway, Edinburgh; Jack McLachlan, 23 Stonylee Road, Cumbernauld, Glasgow; Alistair Reid, c/o Road Traffic Accident Law (Scotland) LLP, 5 Cherry Court, Cavalry Park, Peebles; Larry Maguire, 2 South View, Lammerlaws, Burntisland; Ms Wilma Keddie, c/o Watermans, Watermans Solicitors Limited, Leith; Ms Amanda Mackenzie, c/o Watermans, Watermans Solicitors Limited, Leith; Ms Mandy McCallum, 4 Corthan Crescent, Aberdeen; George Kennedy, c/o Watermans, Watermans Solicitors Limited, Leith; Ms Ruta Miltenyte, c/o Watermans, Watermans Solicitors Limited, Leith; John Strachan, c/o Watermans, Watermans Solicitors Limited, Leith; Charles Judge, Flat 3/, 24 Kennedar Drive, Linthouse, Glasgow; Ms Debra Currie, 51 Blair Road, Calderwood; Miss Jeanette McAllister, 12 Temple View, Banff; Allan Aitken, 64 Clement Rise, Livingston; Mrs Shona Green, c/o Neil Stewart, Stewart

Legal, Hudson House, 8 Albany Street, Edinburgh; Menna M Guyan, 27 Booth Gardens, Blackdog, Aberdeenshire; Paul O’Grady c/o The Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh, EH3 8EX; Carolanne Dunn, 19 Broadleys Avenue, Bishopbriggs, Glasgow; Paul Jenkins Limited, 12 South View Road, Strathblane, Glasgow; and Sandra Taylor, 59 Kearn Avenue, Glasgow.

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. Procedural hearings were held on 30 August 2022, 14 December 2022 and 17 February 2023. Various amendments were made to the Complaint during that period and a Record dated 22 March 2023 was lodged with the Tribunal. In summary, the Record included allegations of professional misconduct related to the following cases:
  - 4.1 Sarah Webb (see 7.2-7.8 below) – Failure to co-operate with the Law Society of Scotland and respond to correspondence.
  - 4.2 Doreen Fenwick (see 7.9-7.19 below) – Obstruction of a Secondary Complainer’s claim by refusing to hand over documents to her new solicitor and failing to provide the SLCC with the file.
  - 4.3 Peter Prokop (see 7.20-7.41 below) – Failure to communicate effectively with the Secondary Complainer, failure to respond to the Secondary Complainer’s new solicitor, and failure to co-operate with the Law Society of Scotland.
  - 4.4 Jack McLachlan (see 7.42-7.52 below) – Failure to communicate with the Secondary Complainer and failure to co-operate with the Law Society of Scotland.
  - 4.5 Alistair Reid (see 7.53-7.67 below) – Failure to progress the Secondary Complainer’s claim and failure to co-operate with the Law Society of Scotland.
  - 4.6 Larry Maguire (see 7.68-7.76 below) – Failure to implement a mandate, failure to respond to correspondence and a telephone call, failure to respond to a letter of complaint and failure to co-operate with the Law Society of Scotland.

- 4.7 Wilma Keddie (see 7.77-7.85 below) – Failure to implement a mandate, failure to respond to correspondence and failure to co-operate with the Law Society of Scotland.
- 4.8 Amanda Mackenzie (see 7.86-7.94 below) – Failure to implement a mandate, failure to respond to correspondence and failure to co-operate with the Law Society of Scotland.
- 4.9 Mandy McCallum (see 7.95-7.104 below) – Failure to communicate, failure to make substantial progress with a case, failure to obtain a medical report, failure to provide the Secondary Complainer with case related documents, raising a court action without instruction and failure to co-operate with the Law Society of Scotland.
- 4.10 George Kennedy (see 7.105-7.113 below) – Failure to implement a mandate, failure to respond to correspondence and failure to co-operate with the Law Society of Scotland.
- 4.11 Ruta Miltenyte (see 7.114-7.122 below) - Failure to implement a mandate, failure to respond to correspondence and failure to co-operate with the Law Society of Scotland.
- 4.12 John Strachan (see 7.123-7.131 below) - Failure to implement a mandate, failure to respond to correspondence and failure to co-operate with the Law Society of Scotland.
- 4.13 Charles Judge (see 7.132-7.140 below) – Failure to co-operate with the SLCC.
- 4.14 Debra Currie (see 7.141-7.149 below) – Failure to co-operate with the SLCC.
- 4.15 Jeanette McAllister (see 7.150-7.158 below) - Failure to co-operate with the SLCC.
- 4.16 Allan Aitken (see 7.159-7.164 below) – Failure to implement a mandate.

- 4.17 Shona Green (see 7.165-7.173 below) – Undue delay in progressing the Secondary Complainer’s claim, failure to communicate effectively, failure to act in the Secondary Complainer’s best interests, inappropriate withdrawal from acting and failure to implement a mandate.
- 4.18 Menna Guyan (see 7.174-7.182 below) – Failure to co-operate with the SLCC.
- 4.19 Paul O’Grady (see 7.183-7.193 below) – Failure to implement a mandate and failure to communicate.
- 4.20 Carolanne Dunn (see 7.194-7.215 below) – Failure to communicate effectively.
- 4.21 Paul Jenkins Limited (see 7.216-7.131 below) – Failed to settle an invoice for an expert report.
- 4.22 Law Society of Scotland (see 7.132-7.144 below) – Breach of Accounts Rules B6.3.1(a), B6.7.1, B6.7.3, B6.6.1, B6.11, B6.13.2, B6.13.3. B6.15.1, B6.4.1.
- 4.23 Sandra Taylor (see 7.145-7.151 below) – Failure to co-operate with the SLCC.

5. In terms of its Rules, the Tribunal set the matter down for a hearing in person on 2 June 2023 and notice thereof was duly served upon the Respondent.

6. At the hearing in person on 2 June 2023, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Johnston Clark, Solicitor, Dundee.

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

7.1 The Respondent’s date of birth is 17 December 1967. He was enrolled as a Solicitor on 18 December 1991. From 2 April 2001 to 2 May 2019, he was a principal in the firm of Buchanan Campbell, Solicitors, 11 Central Chambers, 11

Bothwell Street, Glasgow G2 6LY. On the latter date the Complainers suspended him from practice and his Client Account was vested in the Complainers.

Ms Sarah Webb, 102 Unitas Crescent, Carluke, Lanarkshire

- 7.2 In or about October 2015 the Secondary Complainer instructed the Respondent to make a personal injury claim on her behalf. She was unable to obtain any information from the Respondent as to progress in her claim.
- 7.3 Between October 2015 and December 2016 she made numerous phone calls to the Respondent's office. She was never able to speak to the Respondent and was advised by his staff that her call would be returned. None of her calls were returned.
- 7.4 She emailed the Respondent on 28 April 2016 and 4 October 2016 referring to the lack of contact and requesting an update. There was no reply. She wrote to the Respondent on 26 December 2016 making a formal complaint.
- 7.5 The Secondary Complainer made a complaint in respect of the Respondent's conduct. The Complainers intimated the complaint to the Respondent but there was no response. Consequently, the Complainers served formal Notices on the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 48(1)(a) and the Solicitors (Scotland) Act 1980 Section 52(2)(i)(i) both by recorded delivery on 29 January 2018. There was no response.
- 7.6 The Section 48(1)(a) Notice required the Respondent to deliver all books, accounts, deeds, securities, papers and other documents in his possession or control relating to the complaint within twenty-one days. These were not delivered.

The Section 15(2)(i)(i) required the Respondent to respond within twenty-one days and to provide an explanation for the delay in replying. There was no response to the Notice.

7.7 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent by email and by hand delivery on 7 February 2019. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.8 The Sub Committee considered the matter on 28 March 2019.

It determined that the Respondent's conduct in that he failed to co-operate with the Law Society of Scotland's investigation in respect of the complaint made by the Secondary Complainer and that he failed to respond to any correspondence sent to him by the Law Society of Scotland including formal Notices in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 48(1)(a) and the Solicitors (Scotland) Act 1980 Section 52(2)(i)(i) appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor; that it appeared to be capable of being proved beyond reasonable doubt; and could therefore amount to professional conduct.

Further, the Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51 to investigate and prosecute the Respondent before the Scottish Solicitors Discipline Tribunal.

Mrs Doreen Fenwick, 6 Castle Street, Warkworth, Morpeth, Northumberland

7.9 On 14 May 2015 the Secondary Complainer instructed the Respondent to make a personal injury claim on her behalf arising from an accident on 19 October 2014.

7.10 The Secondary Complainer and her husband emailed the Respondent on several occasions between January and October 2016 complaining about a lack of progress in the settlement of the claim. Liability had been conceded by the insurers in or about July 2015.

The Secondary Complainer made a formal complaint by email to the Respondent on 19 October 2016. This was followed by the Secondary Complainer's husband submitting a complaint on her behalf on or about 17 November 2016 to the Scottish Legal Complaints Commission (SLCC).

7.11 On 24 November 2016 the Secondary Complainer instructed another firm of Solicitors, HBJ, to take over handling of her claim. On 6 December 2016 HBJ wrote to the Respondent enclosing a copy of a Mandate signed by the Secondary Complainer and advising that they looked forward to receiving the file as soon as possible.

7.12 On 13 December 2016 the Respondent emailed HBJ with a draft letter to the Secondary Complainer and advised that various outlays had been incurred and if HBJ provided their cheque to settle these outlays the Secondary Complainer's file would then be copied. The Respondent also asked for confirmation that HBJ would be responsible for their "reasonable fee at the conclusion of the claim".

7.13 HBJ replied advising that they would seek to recover the outlays once the case had been concluded, that they awaited the file of papers and would not be responsible for any other fee.

On eight occasions between 4 January 2017 and 17 March 2017 HBJ either emailed or called the Respondent's firm seeking the file.

On 20 March 2017 the Respondent wrote to HBJ enclosing the file in implementation of the Mandate.

7.14 Following the complaint to the SLCC, the SLCC wrote to the Respondent on 14 June 2017 requesting his response, his file and all electronic correspondence and telephone logs, all within fourteen days.

On 3 August 2017 the SLCC wrote to the Respondent advising that in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 17 the SLCC were entitled to examine documents and to demand explanations if that was necessary for the purposes of its investigation and determination. *"We require to examine your business file and consider your explanation regarding this complaint in order to undertake our investigation."*

The letter included a Statutory Notice under the 2007 Act Section 17(1) requiring the Respondent to produce or deliver the firm's business file and provide an explanation by 24 August 2017.

- 7.15 The SLCC phoned the Respondent's firm on 25 August 2017, was advised that the Solicitor was not in the office and a message was left asking the Solicitor to contact the SLCC to explain the position in respect of the files.

On 4 September 2017 the SLCC emailed the Respondent referring to the letter of 3 August 2017 and noting that the Respondent had failed to reply. The Respondent was advised that a failure to comply could result in a conduct issue and requested that the file and reply be submitted by 8 September 2017.

On 12 September 2017, the SLCC emailed the Respondent advising that as the file had not been received it was proposed to write to the Secondary Complainer to find out if she wished a conduct issue added to the complaint.

There was no response from the Respondent.

- 7.16 On 9 October 2017 the SLCC emailed the Respondent with a revised summary of complaint which now included a complaint in respect of the failure to produce the file and any reply to the SLCC for a period of six months.

The Respondent was asked to provide any comments on the additional issue by 23 October 2017. There was no response.

On 15 November 2017 the SLCC emailed the Respondent to advise that this issue had been added to the complaint and would be referred to the Law Society for investigation.

- 7.17 On 13 December 2017 the Respondent wrote to the SLCC attaching his file of papers and advising he had attempted to call the SLCC two weeks earlier.



7.18 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.19 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect of obstructing the Secondary Complainer's claim by refusing to hand over documents to a new Solicitor and by failing to provide the SLCC with the file despite being requested to do so on 3 August, 4 September and 12 September 2017 appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

Peter Prokop, 20/1 Granton Medway, Edinburgh

7.20 In June 2015 the Secondary Complainer instructed the Respondent to make a personal injury claim against his employers as a result of an accident at work on 6 May 2014.

The Respondent intimated a claim to the employers on 17 June 2015.

7.21 The Secondary Complainer attempted to call and speak to the Respondent on several occasions but was not able to contact him. He then emailed on 17 September 2015 and received a reply the next day to the effect that the employers' insurers had begun investigations and had three months in which to confirm their position on liability.

On 26 November 2015 the insurers wrote to the Respondent denying liability.

7.22 On 2 August 2016 the Secondary Complainer emailed the Respondent noting he had heard nothing for almost a year and asked for an update. There was no response.

The Secondary Complainer emailed again on 31 August 2016 advising that he would contact another Solicitor unless he received a reply. The Respondent replied the following day advising that liability had been denied and explaining the insurers' basis for that position.

7.23 The Secondary Complainer emailed the Respondent on 6 September 2016 repeating his view on why the employers were at fault, pointing out that this information had been provided to the Respondent a year ago, asking why the Respondent hadn't been in contact for a year and had only contacted him after he had said he would complaint. There was no response.

The Secondary Complainer emailed the Respondent again on 12 September 2016 advising that there had been no response to the earlier email. The Respondent replied on the same day saying he had put the Secondary Complainer's view to the insurers and would be in touch once there was a response.

7.24 On 18 January 2017 the Secondary Complainer made a complaint to the SLCC in respect of the Respondent's services.

7.25 On 31 March 2017 the Respondent emailed the Secondary Complainer setting out his views on the evidential difficulties of proving the case and suggesting that they discuss in more detail.

On 18 April 2017 the insurers emailed the Respondent to repeat that liability was denied.

7.26 On 28 April 2017 the Respondent emailed the Secondary Complainer to confirm that liability remained in dispute. He explained the evidential difficulties and expressed the view that he didn't think there were reasonable prospects of succeeding with a Court Action. If the Secondary Complainer were to instruct the

raising of an Action, the Respondent confirmed he was prepared to do so but emphasised that the Secondary Complainer would bear the risk of the employers' costs if the Action failed. He referred to the time bar as at 6 May 2017.

- 7.27 The Secondary Complainer replied on 29 April 2017 advising he wasn't happy with the Respondent's view, but he could not obtain another solicitor.

On 2 May 2017, the Respondent advised he was prepared to raise protective Court Proceedings and the Secondary Complainer would then be free to instruct another solicitor.

The Respondent emailed the Secondary Complainer on 4 May 2017 advising that unless he heard from the Secondary Complainer by the close of business that day, he would proceed on the basis that the Secondary Complainer did not want him to raise protective Court Proceedings.

- 7.28 On 5 May 2017, the Secondary Complainer advised that he had told the firm (ie, the Respondent's firm) should raise a Court Action for him that day and then the file would be transferred. The Respondent advised that he would raise a Court Action.

- 7.29 An Ordinary Cause Personal Injury Action was raised on the Secondary Complainer's behalf and served on the employer on 5 May 2017. The Action was defended and a Timetable issued in June 2017 with a provisional Proof Diet of 2 November 2017.

- 7.30 There was no correspondence between the Secondary Complainer and the Respondent between 5 May and 24 August 2017.

- 7.31 The Secondary Complainer emailed the Respondent on 5 and 6 September 2017 advising he had instructed Digby Brown, that they needed to know if a Court Action had been raised and asking for a copy of the Summons.

The Respondent did not reply to the emails.

7.32 Separately the Secondary Complainer and the Respondent had signed an SLCC Agreement to Mediate on 24 August 2017. The Agreement noted that the (Respondent's) firm apologised for the lack of communication and for not ensuring that the claims process had been properly explained at the outset. The firm agreed to waive their outlays if the Secondary Complainer's new solicitor was unable to recover these costs.

Subsequently, in an effort to obtain the information needed by the Secondary Complainer, the SLCC attempted to contact the Respondent. The SLCC called the firm on 2, 3, 4 and 12 October 2017 to be advised that the Respondent was unavailable. The calls were not returned.

The SLCC emailed the Respondent on 4, 13 and 25 October 2017 but there was no response.

7.33 On 8 November 2017 the SLCC emailed the Secondary Complainer advising that the Respondent had failed to respond to a deadline.

The Secondary Complainer then, on 10 November 2017, submitted a complaint form to the SLCC.

7.34 On 21 November 2017 Digby Brown wrote to the Respondent enclosing a signed Mandate and asked that the file be provided as a matter of urgency.

On 8 December 2017 Digby Brown wrote again to the Respondent referring to the letters of 21 November and 29 November, a phone call of 5 December and emails of 5 and 6 December, none of which had been responded to. It was pointed out that a Peremptory Diet had been fixed in the Action.

On 11 December 2017 the Respondent wrote to Digby Brown attaching the file. He apologised for the delay and advised he was unaware that there was a Peremptory Diet.

7.35 The matter was referred to the Complainers.

On 3 July 2018, the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal aid (Scotland) Act 2017 Section 48(2) calling on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's personal injury case and correspondence received from and sent to his new Agent along with a written explanation of the matters to which the complaint related.

The Notice was issued by First Class Post and by Recorded Delivery. The latter was returned on 19 September 2018 as "Not called for".

Also on 3 July 2018, the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days. The Notice was issued by First Class Post and by Recorded Delivery post. There was no response.

- 7.36 On 28 August 2018 the Society gave notice that as the Respondent had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2018 all in terms of the 1980 Act Section 15(2)(i)(i).
- 7.37 On 10 December 2018 the Secondary Complainer agreed to add a further issue to his complaint in respect of the Respondent's failure to respond to the Complainers.
- 7.38 On 28 March 2019 the Complainers intimated the additional complaint to the Respondent, who was asked to provide a response to all issues within twenty-one days together with the relevant files and papers. Intimation was made by email. There was no response.
- 7.39 On 26 July 2019 the Respondent's representative wrote to the Complainers and enclosed a copy of the Respondent's file.
- 7.40 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent and his representative on 12 December

2019. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.41 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

1. He failed to communicate effectively with the Secondary Complainer by failing to respond to the Secondary Complainer's requests for information about his case and in particular information about whether the Respondent had filed proceedings on the Secondary Complainer's behalf in respect of the claim, despite the fact that the Secondary Complainer requested this information on 5 and 6 September 2017.
2. He had failed to respond to the Secondary Complainer's new solicitor and in particular failed to respond to the new solicitor's request for the file and information about the case.
3. He failed to co-operate with the Law Society of Scotland's investigation in respect of the principal complaint or to provide relevant papers to the Law Society in connection with the principal complaint by failing to respond to any correspondence sent to him by the Law Society of Scotland including formal Notices in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 48(1)(a) and the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) both dated 3 July 2018.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

Jack McLachlan, 23 Stonylee Road, Cumbernauld, Glasgow

7.42 On 1 April 2016, the Secondary Complainer instructed the Respondent in respect of a personal injury claim following an accident on 26 March 2016. The Respondent intimated a claim on 13 April 2016.

7.43 During the period between intimation of the claim and July 2017 Loss Adjusters for the party allegedly at fault for the accident repudiated liability and following a further approach from the Respondent maintained their position of repudiation.

7.44 On 25 September 2017, the Secondary Complainer sent a letter of complaint to the Respondent. The letter set out the nature of his complaint and included reference to the Secondary Complainer's difficulty in contacting the firm both by email and by telephone and in attending personally at the firm's premises. It made reference to the attempts of his new solicitors to contact the Respondent.

There was no response by the Respondent.

7.45 On 27 October 2017 the Secondary Complainer submitted a complaint to the SLCC who referred it to the Complainers as a conduct issue.

7.46 On 19 September 2018 the Complainers intimated the complaint to the Respondent by letter advising he had a professional obligation to respond and asking he did so within twenty-one days setting out his position and providing his file. The letter made reference to the consequences of a failure to respond and the issuing of Notices under the Legal Aid (Scotland) Act 2007 and the Solicitors (Scotland) Act 1980. The letter also advised that the Complainers might intimate a further conduct complaint if there was any failure or delay on his part in responding.

There was no response.

7.47 On 22 October 2018 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling

on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the complaint along with a written explanation of the matters to which the complaint related. The letter also warned that if there was a failure to respond to the Notice within twenty-one days the Complainers would invite the Secondary Complainer to submit a further conduct complaint in relation to the failure to provide the relevant documentation/explanation and/or his failure to respond to the Society.

The Respondent did not reply.

- 7.48 Also, on 22 October 2018 the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 advising that the Complainers considered he had failed to comply in such a way to allow it to complete its investigation of the matter and required a response along with an explanation for the delay, within twenty-one days.

There was no response.

- 7.49 On 12 December 2018 the Society gave notice that as the Respondent had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2019 all in terms of the 1980 Act Section 15(2)(i)(i).

There was no response.

- 7.50 On 12 December 2018 the Secondary Complainer agreed to add a further issue to the complaint in respect of the solicitor's failure to respond to the Complainers.

The Respondent did not reply to the Complainers' intimation of the additional complaint.

- 7.51 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent on 9 December 2019. The letter advised



that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.52 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

1. He failed to return the Secondary Complainer's phone calls or respond to his letters and emails seeking information regarding his claim and,
2. He failed to co-operate with the Complainers' investigation of the complaint and failed to respond to any of the correspondence sent to him by the Complainers in relation to the complaint including the formal Notices in terms of the 2007 Act Section 47(1)(a) and the 1980 Act Section 15(2)(i)(i) both dated 22 October 2018.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

Alistair Reid, c/o Road Traffic Accident Law (Scotland) LLP, 5 Cherry Court, Cavalry Park, Peebles

7.53 On or about 1 July 2015 the Secondary Complainer instructed the Respondent to make a personal injury claim on his behalf following an accident on 21 May 2015 when a pedestrian walked into the path of his cycle.

7.54 On 14 July 2015 the Respondent wrote to the Secondary Complainer acknowledging signed paperwork and on the same date wrote to Police Scotland requesting an Abstract Report.

The Abstract Report was provided to the Respondent by letter dated 30 September 2015.

7.55 On 13 October 2015 the Secondary Complainer spoke to the Respondent on the phone and the Respondent followed up on the same date with a letter to the Secondary Complainer confirming the Police Report had been received and a claim had been intimated directly to the person who had caused the accident. On the same date the Respondent wrote to the person responsible for the accident.

7.56 On 26 January 2016, given the lack of response from the individual, the Respondent sent a further letter and on the same date advised the Secondary Complainer that he had done so.

7.57 There was no further communication by the Respondent with the Secondary Complainer until a letter dated 4 November 2016 when he wrote apologising for the delay in responding to the Secondary Complainer. The letter noted that the individual had failed to respond and that the only option was to raise a Court Action. It went on to note that the Secondary Complainer didn't have legal expenses cover and explained the basis for applying for insurance to raise a Court Action. It asked for confirmation that the Respondent could instruct a private investigator to check the individual's likely means and assets.

7.58 On 21 November 2016, the Respondent wrote to the Secondary Complainer referring to a recent telephone call, advising he had obtained a quote from a private investigator and asked for a payment to account to cover these costs.

7.59 The Respondent's file disclosed no further entries until he wrote to the Secondary Complainer's new representative on 14 June 2017 in relation to the implementation of a Mandate.

- 7.60 On 25 June 2017, the Secondary Complainer wrote to the Respondent advising that his repeated phone calls and emails did not appear on the Respondent's file, which by now had been transferred to the new representative. He also noted that no statements had been taken from either himself or the witnesses and there had been no follow up with the individual allegedly responsible. Consequently, he had decided to seek new representation.
- 7.61 On or about 2 October 2017, the Secondary Complainer submitted a complaint to the SLCC. The matter was referred to the Complainers.
- 7.62 On 26 September 2018 the Complainers intimated a complaint to the Respondent advising that they had an obligation to investigate the matter and he had a professional obligation to respond. He was asked to provide a written response as well as his file within twenty-one days failing which Notices would be issued. The letter also advised that the Complainers might intimate a further conduct complaint in respect of any failure or delay on the Respondent's part in replying.
- 7.63 On 15 November 2018 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's case together with an explanation of the matters to which the complaint related. The letter advised that if there was a failure to respond to the Notice within twenty-one days then the Complainers would invite the Secondary Complainer to submit a further conduct complaint in relation to his failure to provide the relevant documentation/explanation and/or his failure to respond to the Complainers.

The Notice was hand delivered to the solicitor with a further copy sent by email.

Also on 15 November 2018, the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days.

The Notice was hand delivered and a further copy sent by email.

There was no response to either Notice.

- 7.64 On 24 January 2019 the Complainers gave notice to the Respondent that as he had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2019 all in terms of the 1980 Act Section 15(2)(i)(i). The Notice was issued by Recorded Delivery, First Class Post and by email.
- 7.65 On 21 January 2020 the Complainers intimated an additional complaint in respect of his failure to respond to the Complainers. He was asked to respond within twenty-one days together with the relevant files. A copy of the letter was forwarded to his representative on the same day.
- 7.66 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent and his representative on 30 March 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.
- 7.67 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

1. He failed or unduly delayed in progressing the Secondary Complainer's claim despite having nearly two years to do so and,
2. He had failed to co-operate with the Complainers' investigation in respect of the principal complaint by failing to respond to any correspondence sent to him by the Complainers including formal Notices in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 48(1)(a) and the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i)

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to

be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email on 21 May 2020.

Larry Maguire 2 South View, Lammerlaws, Burntisland

7.68 The Secondary Complainer was involved in an accident on 15 September 2016 and instructed the Respondent in or about October 2016 to pursue a personal injury claim.

7.69 The Secondary Complainer later decided to withdraw his instructions to the Respondent and to instruct Digby Brown.

On 13 November 2017, Digby Brown wrote to the Respondent advising they had been instructed by the Secondary Complainer to take over his claim and asked that the Respondent's file be provided.

The letter enclosed a Mandate signed by the Secondary Complainer.

7.70 On 17 January 2018 Digby Brown wrote again referring to the letter of 13 November 2017 and asking for a copy of the file as soon as possible.

On 28 March 2018 Digby Brown wrote again outlining a complaint on behalf of the Secondary Complainer and enclosing copies of the letters of 13 November 2017 and 17 January 2018 pointing out there had been no response to these letters.

The same letter advised that on 13 February 2018 they had contacted the Respondent's firm by phone and been advised that the file would be posted out at the end of the week.

The letter stated that they wished a copy of the file without delay and if the Respondent did not contact them, they would make a complaint to the SLCC.

- 7.71 In the absence of any response from the Respondent, Digby Brown, on 30 April 2018, submitted a complaint to the SLCC on behalf of the Secondary Complainer alleging a failure to action the Mandate and to answer the correspondence.

Correspondence from the SLCC to the Respondent did not receive any reply.

- 7.72 The SLCC referred the matter to the Complainers who intimated the complaint to the Respondent by letter dated 8 June 2018 advising that the Complainers had a statutory obligation to investigate and the Respondent had a professional obligation to respond. The letter asked that the Respondent provide a written response to the complaint and the file, all within twenty-one days failing which Notices would be issued and that the Complainers might also intimate a further conduct complaint in respect of any failure or delay in responding.

The Complainers emailed the Respondent on 3 July 2018 noting he hadn't responded and asked that he make contact by return failing which formal Notices would be issued.

- 7.73 On 13 July 2018 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's case along with an explanation of the matters to which the complaint related.

Also on 13 July 2018, the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days.

The Respondent did not reply to either Notice.

7.74 On 13 August 2018 the Complainers gave notice that as the Respondent had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2018 all in terms of the 1980 Act Section 15(2)(i)(i).

On 13 August 2018 Digby Brown confirmed that the Secondary Complainer agreed to adding a further complaint in relation to the Respondent's failure to respond to the Complainers.

On 10 October 2018 the Complainers intimated the additional complaint seeking his response to all the complaint issues together with the relevant files and papers to allow the Complainers to investigate.

There was no response from the Respondent.

7.75 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent and emailed to his representative on 30 January 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.76 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in that,

1. He failed to action a Mandate sent by letter by the Secondary Complainer's newly instructed solicitor on 13 November 2017.
2. The Respondent failed to respond to correspondence from the new solicitor, Digby Brown and specifically a letter of 17 January 2018 and a telephone call made to the firm on 12 February 2018.
3. The Respondent failed to respond to a letter of complaint from Digby Brown dated 28 March 2018.

4. The Respondent failed to co-operate with the Complainers' investigation in respect of the complaint and failed to respond to any correspondence sent to him by the Complainers including formal Notices in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 48(1)(a) and the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i).

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

Ms Wilma Keddie, c/o Watermans, Watermans Solicitors Limited, Leith

- 7.77 The Secondary Complainer instructed the Respondent to make a personal injury claim on her behalf arising from a road accident on 10 November 2016.
- 7.78 She thereafter instructed Watermans, Solicitors to take over the handling of the claim on her behalf. On 6 March 2018 Watermans wrote to the Respondent advising they were now instructed and enclosed a signed Mandate to release the file.

On 28 March 2018 Watermans wrote again to the Respondent referring to their earlier letter of 6 March 2018 and to a phone call to the Respondent's firm on 15 March 2018 when they were advised that the file was being photocopied and would be sent out.

On 12 April 2018 Watermans wrote to the Respondent's firm by Recorded Delivery referring to their earlier letters and phone call and advising that if there was no response within seven days the matter would be reported to the SLCC.



7.79 On 30 May 2018 Watermans submitted a complaint to the SLCC on behalf of the Secondary Complainer advising that the file had not been released despite the provision of a Mandate.

The Respondent did not reply to the SLCC's intimation of the complaint.

The matter was referred to the Complainers.

7.80 On 10 October 2018, the Complainers intimated the complaint to the Respondent by letter advising he had a professional obligation to respond and requesting that he did so within twenty-one days setting out his position and providing his file. A failure to respond would result in the issue of Notices and the possibility of a further conduct complaint in respect of any failure or delay on his part in responding.

The Respondent did not reply.

7.81 On 9 November 2018 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's case together with an explanation of the matters to which the complaint related. The letter advised that if there was a failure to respond to the Notice within twenty-one days then the Complainers would invite the Secondary Complainer to submit a further conduct complaint in relation to the failure to provide the relevant documentation/explanation and/or his failure to respond to the Complainers.

Also, on 9 November 2018 the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days.

There was no response to either Notice.

7.82 On 17 December 2018 the Complainers gave notice to the Respondent that as he had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2019 all in terms of the 1980 Act Section 15(2)(i)(i).

There was no reply from the Respondent.

7.83 The Complainers intimated an additional complaint in respect of the Respondent's failure to respond to the Complainers. He was asked to respond within twenty-one days together with the relevant files.

He did not respond.

7.84 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent on 30 January 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.85 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

1. He failed to comply with a Mandate signed by the Secondary Complainer and sent to him on 6 March 2018 requiring his file to be delivered to Watermans, Solicitors as they had been instructed by the Secondary Complainer to deal with her claim.
2. He failed to respond to letters from Watermans dated 28 March and 12 April 2018 seeking compliance with the Mandate sent on 6 March 2018 for delivery of the file to Watermans, Solicitors.
3. He failed to co-operate with the Complainers' investigation of the complaint and failed to respond to any correspondence sent to him by the Complainers

including formal Notices in terms of the 2007 Act Section 48(1)(a) and the 1980 Act Section 15(2)(i)(i).

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email on 22 May 2020.

Ms Amanda Mackenzie, c/o Watermans, Watermans Solicitors Limited, Leith

- 7.86 The Secondary Complainer instructed the Respondent to make a personal injury claim on her behalf arising from a road accident on 02 January 2016.
- 7.87 She thereafter instructed Watermans, Solicitors to take over the handling of the claim on her behalf. On 21 February 2018 Watermans wrote to the Respondent advising they were now instructed and enclosed a signed Mandate to release the file.

On 6 March 2018 Watermans wrote again to the Respondent referring to their earlier letter of 21 February 2018 and requesting the papers as soon as possible.

On 28 March 2018 Watermans wrote again to the Respondent referring to their earlier letters of 21 February and 6 March 2018 and to a phone call to the Respondent's firm on 15 March 2018 when they were advised that the file was being photocopied and would be sent out.

On 12 April 2018 Watermans wrote to the Respondent's firm by Recorded Delivery referring to their earlier letters and phone call and advising that if there was no response within seven days the matter would be reported to the SLCC.

7.88 On 29 May 2018 Watermans submitted a complaint to the SLCC on behalf of the Secondary Complainer advising that the file had not been released despite the provision of a Mandate.

The Respondent did not reply to the SLCC's intimation of the complaint.

The matter was referred to the Complainers.

7.89 On 10 October 2018 the Complainers intimated the complaint to the Respondent by letter advising he had a professional obligation to respond and requesting that he did so within twenty-one days setting out his position and providing his file. A failure to respond would result in the issue of Notices and the possibility of a further conduct complaint in respect of any failure or delay on his part in responding.

The Respondent did not reply.

7.90 On 9 November 2018 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's case together with an explanation of the matters to which the complaint related. The letter advised that if there was a failure to respond to the Notice within twenty-one days then the Complainers would invite the Secondary Complainer to submit a further conduct complaint in relation to the failure to provide the relevant documentation/explanation and/or his failure to respond to the Complainers.

Also on 9 November 2018, the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days.

There was no response to either Notice.

7.91 On 17 December 2018 the Complainers gave notice to the Respondent that as he had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2019 all in terms of the 1980 Act Section 15(2)(i)(i).

There was no reply from the Respondent.

7.92 The Complainers intimated an additional complaint in respect of the Respondent's failure to respond to the Complainers. He was asked to respond within twenty-one days together with the relevant files.

He did not respond.

7.93 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent on 30 January 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.94 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

1. He failed to comply with a Mandate signed by the Secondary Complainer and sent to him on 21 February 2018 requiring his file to be delivered to Watermans, Solicitors as they had been instructed by the Secondary Complainer to deal with her claim.
2. He failed to respond to letters from Watermans dated 6 March, 28 March and 12 April 2018 seeking compliance with the Mandate sent on 6 March 2018 for delivery of the file to Watermans, Solicitors.
3. He failed to co-operate with the Complainers' investigation of the complaint and failed to respond to any correspondence sent to him by the Complainers

including formal Notices in terms of the 2007 Act Section 48(1)(a) and the 1980 Act Section 15(2)(i)(i).

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email on 22 May 2020.

Ms Mandy McCallum, 4 Corthan Crescent, Aberdeen

7.95 On or about 7 May 2014, the Secondary Complainer signed a Questionnaire Form detailing a medical negligence claim arising from surgical procedures undergone on 15 November 2012 and in October 2013.

On the same date she signed a Mandate authorising the Respondent's firm to obtain a Medical Report in relation to her injuries.

On 7 May 2014 a Claims Management Company emailed the Respondent's firm apparently attaching the Questionnaire and the Mandate.

7.96 On 9 May 2014 the Respondent's firm wrote to the Secondary Complainer referring to a telephone call with the Secondary Complainer on 6 May 2014 and acknowledging receipt of documentation. The letter asked for confirmation that the firm could recover Medical Records and obtain a Report costing approximately £1,000. If the Secondary Complainer wished to proceed, she was asked to provide £1,000 and to return five Mandates signed.

On 28 May 2014 the Secondary Complainer wrote to the firm attaching a cheque and five signed medical Mandates.

7.97 Thereafter, between June 2014 and November 2015 the Respondent's firm sought to recover Medical Records and instruct a Report.

On 23 December 2014 the firm wrote to the Secondary Complainer advising that they had a set of Records that could be used and were awaiting details from the Plastic Surgeon.

There was no further contact with the Secondary Complainer other than a letter of 15 January 2015 advising that the firm was still trying to find a Surgeon who would see the Secondary Complainer and prepare a Report.

7.98 On 12 November 2015 the Respondent's firm wrote to Glasgow Sheriff Court enclosing a principal Writ for Warranting.

After initial correspondence and communication with the Defender's solicitor the Action was remitted to Chapter 36A Procedure on 5 February 2016.

The period from 20 January 2016 to 27 April 2017 disclosed no correspondence on the Respondent's file and no communication or report to the Secondary Complainer.

7.99 On or about 2 August 2017 the Secondary Complainer having instructed Lindsays, Solicitors, that firm wrote to the Respondent enclosing a Mandate and requesting the file of papers.

On 22 August 2017 the Respondent wrote to Lindsays referring to their letter of 2 August and attached the file of papers.

The Secondary Complainer had provided the Respondent with £1,000 to pay for an expert report to confirm what her prospects of success were in connection with a clinical negligence claim. No such report was instructed by the Respondent. The Respondent made payments totalling £230 to obtain medical records and settle warrant dues in respect of the court action which he raised. In due course the Secondary Complainer instructed Messrs Lawford Kidd, Solicitors. The balance

of funds (£770) which the Respondent had been holding was transferred to them. Lawford Kidd instructed an expert report on the prospects of success. The author of that report did not support the Secondary Complainer's case. The expert fee for the report was £1,250. At that point, the balance held by Lawford Kidd was reduced to £674 as they had made two payments each of £48 to the Scottish Courts and Tribunals Service in respect of motion dues. The Secondary Complainer paid Lawford Kidd a further £576 to enable them to settle the expert's account. Both defenders in the court action consented to the action being abandoned without any contribution from the Secondary Complainer towards their expenses.

- 7.100 The Secondary Complainer made a complaint to the SLCC on or around 21 January 2018.

The SLCC referred the matter to the Complainers who intimated the complaint to the Respondent by letter dated 16 October 2018 advising that the Complainers had a statutory obligation to investigate and the Respondent had a professional obligation to respond. The letter asked that the Respondent provide a written response to the complaint in the file, all within twenty-one days failing which Notices would be issued and that the Complainers might also intimate a further conduct complaint in respect of any failure or delay in responding.

There was no response.

- 7.101 On 9 November 2018 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling on the Respondent *inter alia* to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's case along with an explanation of the matters to which the complaint related.

Also, on 9 November 2018 the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days.

The Respondent did not reply to either Notice.



7.102 On 17 December 2018 the Complainers gave notice that as the Respondent had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2018 all in terms of the 1980 Act Section 15(2)(i)(i).

On the same date the Secondary Complainer agreed to adding a further complaint in relation to the Respondent's failure to respond to the Complainers.

The Complainers intimated the additional complaint seeking his response to all the complaint issues together with the relevant files and papers to allow the Complainers to investigate.

There was no response from the Respondent.

7.103 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent and to his representative by email on 10 March 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.104 The Sub Committee considered the matter on 30 April 2020. It determined that the Respondent's conduct in that,

1. He failed to provide updates of progress from May 2014.
2. He failed to make any substantial progress with the case between May 2014 and September 2017.
3. He failed to obtain a Medical Report on behalf of the Secondary Complainer despite the Secondary Complainer providing £1,000 in or around June 2014.
4. He failed to provide the Secondary Complainer with any case related documentation after May 2014 drafted in her name, for her approval.

5. He raised a Court Action on 17 November 2015 at Glasgow Sheriff Court on the Secondary Complainer's behalf without her instruction.
6. He failed to co-operate with the Complainers' investigation of the complaint and failed to respond to any correspondence sent to him by the Complainers in relation to that complaint including Notices in terms of the 2007 Act Section 48(1)(a) and the 1980 Act Section 15(2)(i)(i) both Notices dated 9 November 2018.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email on 22 May 2020.

The determination contains an error in that the Court Action was raised in November 2015 (as opposed to 27 September 2017) on the Secondary Complainer's behalf but without her instruction.

George Kennedy, c/o Watermans, Watermans Solicitors Limited, Leith

- 7.105 The Secondary Complainer instructed the Respondent to make a personal injury claim on his behalf arising from a road accident on 26 October 2016.

On 20 April 2018 he e-mailed the Respondent's firm complaining about the lack of contact and information about progress.

- 7.106 He thereafter instructed Watermans, Solicitors to take over the handling of the claim on his behalf. On 22 May 2018, Watermans wrote to the Respondent

advising they were now instructed and enclosed a signed Mandate to release the file.

On 26 June 2018 Watermans wrote again to the Respondent referring to their earlier letter of 6 March 2018 and enclosing a further copy of the mandate.

On 12 April 2018 Watermans wrote to the Respondent's firm by Recorded Delivery referring to their earlier letters and phone call and advising that if there was no response within seven days the matter would be reported to the SLCC.

Watermans sent further letters on 11 July, 18 July, 25 July, 5 September and 12 September all referring to their respective earlier requests for the file.

- 7.107 On 23 May 2018 Watermans submitted a complaint to the SLCC on behalf of the Secondary Complainer advising that the file had not been released despite the provision of a Mandate.

The Respondent did not reply to the SLCC's intimation of the complaint.

The matter was referred to the Complainers.

- 7.108 On 18 October 2018 the Complainers intimated the complaint to the Respondent by letter advising he had a professional obligation to respond and requesting that he did so within twenty-one days setting out his position and providing his file. A failure to respond would result in the issue of Notices and the possibility of a further conduct complaint in respect of any failure or delay on his part in responding.

The Respondent did not reply.

- 7.109 On 8 November 2018 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's case together with an explanation of the matters to which the complaint related. The letter

advised that if there was a failure to respond to the Notice within twenty-one days then the Complainers would invite the Secondary Complainer to submit a further conduct complaint in relation to the failure to provide the relevant documentation/explanation and/or his failure to respond to the Complainers.

Also on 8 November 2018, the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days.

There was no response to either Notice.

- 7.110 On 29 November 2018 the Complainers gave notice to the Respondent that as he had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2019 all in terms of the 1980 Act Section 15(2)(i)(i).

There was no reply from the Respondent.

- 7.111 The Complainers intimated an additional complaint in respect of the Respondent's failure to respond to the Complainers. He was asked to respond within twenty-one days together with the relevant files.

He did not respond.

- 7.112 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent on 8 April 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

- 7.113 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

1. He failed to comply with a Mandate signed by the Secondary Complainer and sent to him on 6 March 2018 requiring his file to be delivered to Watermans, Solicitors as they had been instructed by the Secondary Complainer to deal with her claim.
2. He failed to respond to letters from Watermans dated 28 March and 12 April 2018 seeking compliance with the Mandate sent on 6 March 2018 for delivery of the file to Watermans, Solicitors.
3. He failed to co-operate with the Complainers' investigation of the complaint and failed to respond to any correspondence sent to him by the Complainers including formal Notices in terms of the 2007 Act Section 48(1)(a) and the 1980 Act Section 15(2)(i)(i).

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email on 22 May 2020.

Ms Ruta Miltenyte, c/o Watermans, Watermans Solicitors Limited, Leith

- 7.114 The Secondary Complainer instructed the Respondent to make a personal injury claim on her behalf arising from an accident on 26 November 2015. She received no correspondence from the Respondent after January 2017.
- 7.115 She thereafter instructed Watermans, Solicitors to take over the handling of the claim on her behalf. On 22 May 2018 Watermans wrote to the Respondent advising they were now instructed and enclosed a signed Mandate to release the file.

On 6 June 2018 Watermans wrote again to the Respondent referring to their earlier letter of 22 May 2018 and requesting the file.

Watermans sent further letters on 15 June, 4 July, 18 July and 16 August all referring to their respective earlier requests for the file.

- 7.116 On 12 September 2018 Watermans submitted a complaint to the SLCC on behalf of the Secondary Complainer advising that the file had not been released despite the provision of a Mandate.

The Respondent did not reply to the SLCC's intimation of the complaint.

The matter was referred to the Complainers.

- 7.117 On 25 October 2018 the Complainers intimated the complaint to the Respondent by letter advising he had a professional obligation to respond and requesting that he did so within twenty-one days setting out his position and providing his file. A failure to respond would result in the issue of Notices and the possibility of a further conduct complaint in respect of any failure or delay on his part in responding.

The Respondent did not reply.

- 7.118 On 20 November 2018 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's case together with an explanation of the matters to which the complaint related. The letter advised that if there was a failure to respond to the Notice within twenty-one days then the Complainers would invite the Secondary Complainer to submit

a further conduct complaint in relation to the failure to provide the relevant documentation/explanation and/or his failure to respond to the Complainers.

Also, on 20 November 2018 the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days.

There was no response to either Notice.

- 7.119 On 17 December 2018 the Complainers gave notice to the Respondent that as he had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2019 all in terms of the 1980 Act Section 15(2)(i)(i).

There was no reply from the Respondent.

- 7.120 The Complainers intimated an additional complaint in respect of the Respondent's failure to respond to the Complainers. He was asked to respond within twenty-one days together with the relevant files.

He did not respond.

- 7.121 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent on 30 January 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

- 7.122 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

1. He failed to comply with a Mandate signed by the Secondary Complainer and sent to him on 22 May 2018 requiring his file to be delivered to Watermans,

Solicitors as they had been instructed by the Secondary Complainer to deal with her claim.

2. He failed to respond to letters from Watermans dated 6 June, 15 June, 4 July, 18 July and 16 August 2018 seeking compliance with the Mandate sent on 22 May 2018 for delivery of the file to Watermans, Solicitors.
3. He failed to co-operate with the Complainers' investigation of the complaint and failed to respond to any correspondence sent to him by the Complainers including formal Notices in terms of the 2007 Act Section 48(1)(a) and the 1980 Act Section 15(2)(i)(i).

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email on 22 May 2020.

John Strachan, c/o Watermans, Watermans Solicitors Limited, Leith

- 7.123 In or about January 2017, the Secondary Complainer instructed the Respondent to make a personal injury claim on his behalf arising from an accident on 30 September 2014. There was no communication with him after a letter dated 17 February 2017.
- 7.124 He thereafter instructed Watermans, Solicitors to take over the handling of the claim on his behalf. On 15 March 2018 Watermans wrote to the Respondent advising they were now instructed and enclosed a signed Mandate to release the file.



On 23 March 2018 Watermans wrote again to the Respondent referring to their earlier letter of 15 March 2018 and requesting the file.

On 12 April 2018 Watermans wrote to the Respondent's firm by Recorded Delivery referring to their earlier letters and advising that if there was no response within seven days the matter would be reported to the SLCC.

- 7.125 On 4 June 2018 Watermans submitted a complaint to the SLCC on behalf of the Secondary Complainer advising that the file had not been released despite the provision of a Mandate.

The Respondent did not reply to the SLCC's intimation of the complaint.

The matter was referred to the Complainers.

- 7.126 On 12 December 2018 the Complainers intimated the complaint to the Respondent by letter advising he had a professional obligation to respond and requesting that he did so within twenty-one days setting out his position and providing his file. A failure to respond would result in the issue of Notices and the possibility of a further conduct complaint in respect of any failure or delay on his part in responding.

The Respondent did not reply.

- 7.127 On 17 January 2019 the Complainers issued a Notice to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2017 Section 48(2) calling on the Respondent inter alia to deliver all books, accounts, deeds, securities, papers and other documents relating to the Secondary Complainer's case together with an explanation of the matters to which the complaint related. The letter advised that if there was a failure to respond to the Notice within twenty-one days then the Complainers would invite the Secondary Complainer to submit a further conduct complaint in relation to the failure to provide the relevant documentation/explanation and/or his failure to respond to the Complainers.

Also on 17 January 2019, the Complainers issued a Notice to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect that he had failed to reply and required a response and an explanation within twenty-one days.

There was no response to either Notice.

- 7.128 On 21 February 2019 the Complainers gave notice to the Respondent that as he had failed to reply to the Notices issued, he was now required to give six weeks' notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2019 all in terms of the 1980 Act Section 15(2)(i)(i).

There was no reply from the Respondent.

- 7.129 The Complainers intimated an additional complaint in respect of the Respondent's failure to respond to the Complainers. He was asked to respond within twenty-one days together with the relevant files.

He did not respond although on 26 July 2019 his representative provided a copy of the Respondent's file.

- 7.130 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

- 7.131 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

1. He failed to comply with a Mandate signed by the Secondary Complainer and sent to him on 15 March 2018 requiring his file to be delivered to Watermans, Solicitors.

2. He failed to respond to letters from Watermans dated 23 March and 12 April 2018.
3. He failed to co-operate with the Complainers' investigation of the complaint and failed to respond to any correspondence sent to him by the Complainers including formal Notices in terms of the 2007 Act Section 48(1)(a) and the 1980 Act Section 15(2)(i)(i).

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email on 22 May 2020.

Charles Judge, Flat 3/, 24 Kennedar Drive, Linthouse, Glasgow

- 7.132 The Secondary Complainer instructed the Respondent in January 2016 to handle a personal injury claim.
- 7.133 On 4 June 2018 the Secondary Complainer complained to the SLCC.

On 15 November 2018 the SLCC emailed the Respondent advising that several issues had been accepted for investigation as service complaints.

On 5 December 2018 the SLCC emailed the Respondent advising that as the Secondary Complainer did not wish to mediate the complaint would be investigated. The Respondent was asked to provide his written response to the complaints and his business file within fourteen days. He was advised that a failure to respond to a reminder may lead to a conduct complaint being raised.

7.134 On 7 January 2019 the SLCC emailed the Respondent noting he had yet to submit his response and the file and asked that these be provided within seven days.

On 20 February 2019 the SLCC emailed the Respondent noting they had still to receive the response and his business files.

The email attached a Notice under the 2007 Act Section 17 requiring him to produce or deliver the firm's business files and to provide his explanation regarding the matters to which the complaint related, to the SLCC by 13 March 2019. He was advised that a failure to do so could result in a conduct complaint.

7.135 On 4 April 2019 the SLCC emailed the Respondent advising that they were in the process of instructing solicitors to pursue a recovery of his file and asked that instead he deal with the complaint by close of business on 8 April 2019.

On 9 April 2019 the SLCC emailed the Respondent noting that there had been no response and that the Secondary Complainer now wished to raise an additional issue in respect of this failure.

The email advised that unless detailed responses were provided by 16 April 2019 then the SLCC might instruct their solicitors to exercise their powers under the 2007 Act Section 17.

7.136 On 12 April 2019 the SLCC emailed the Respondent advising that an additional issue had been raised. The Respondent's reply was sought by 19 April 2019.

On 9 May 2019 the SLCC emailed the Respondent advising that they required a response in respect of the additional issue within fourteen days.

There was no response.

7.137 The SLCC accordingly remitted the issue to the Complainers.

7.138 The Complainers intimated the complaint to the Respondent on 22 January 2020 and received a response from the Respondent's representative by letter dated 11 February 2020.

7.139 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent and to his representative by email on 30 March 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.140 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

He had failed or unduly delayed to co-operate with the SLCC's investigation of the complaint issues referred to it in that he failed or unduly delayed to respond to correspondence from the SLCC dated 5 December 2018, 7 January 2019, 20 February 2019 and 9 April 2019.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email on 22 May 2020.

Ms Debra Currie, 51 Blair Road, Calderwood

7.141 The Secondary Complainer instructed the Respondent in or around January 2017 to handle a personal injury claim arising from an accident on 24 October 2016.

7.142 On 6 August 2018 the Secondary Complainer complained to the SLCC.

On 21 August 2018 the SLCC emailed the Respondent attaching the complaint form and that the complaint would be allocated to a handler.

On 19 October 2018 the SLCC emailed the Respondent advising that the matter had been allocated and attached a Summary of Complaint. The Respondent was asked to provide his written response by 26 October 2018.

- 7.143 On 29 October 2019 the SLCC emailed the Respondent noting they had still to receive a response. Further e-mails of 6 November, 5 December, 14 December 2018 and 8 January 2019 all produced no response.

The SLCC e-mailed the Respondent on 20 February 2019. The email attached a Notice under the 2007 Act Section 17 requiring him to produce or deliver the firm's business files and to provide his explanation regarding the matters to which the complaint related, to the SLCC by 13 March 2019. He was advised that a failure to do so could result in a conduct complaint.

- 7.144 On 4 April 2019 the SLCC emailed the Respondent advising that they were in the process of instructing solicitors to pursue a recovery of his file and asked that instead he deal with the complaint by close of business on 8 April 2019.

On 9 April 2019 the SLCC emailed the Respondent noting that there had been no response and that it was understood file had been passed to Digby Brown as the firm had ceased trading. The e-mail noted the Secondary Complainer had expressed a concern about data being passed without her knowledge and requested a response by the following day.

There was no response.

- 7.145 On 23 April 2019 the SLCC emailed the Respondent advising that an additional issue had been raised. The Respondent's reply was sought by 30 April 2019.

There was no response.

- 7.146 The SLCC accordingly remitted the issue to the Complainers.
- 7.147 The Complainers intimated the complaint to the Respondent on 22 January 2020 and received a response from the Respondent's representative by letter dated 11 February 2020.
- 7.148 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent and to his representative by email on 25 March 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.
- 7.149 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

He had failed or unduly delayed to co-operate with the SLCC's investigation of the complaint issues referred to it in that he failed or unduly delayed to respond to correspondence from the SLCC dated 5 December and 14 December 2018, 8 January 2019, 20 February 2019, 4 April and 9 April 2019.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

Ms Jeanette McAllister, 12 Temple View, Banff

- 7.150 The Secondary Complainer instructed the Respondent in or around January 2017 to handle a personal injury claim arising from an accident on 24 October 2016.
- 7.151 On 6 August 2018 the Secondary Complainer complained to the SLCC.

On 21 August 2018 the SLCC emailed the Respondent attaching the complaint form and that the complaint would be allocated to a handler.

On 19 October 2018 the SLCC emailed the Respondent advising that the matter had been allocated and attached a Summary of Complaint. The Respondent was asked to provide his written response by 26 October 2018.

- 7.152 On 29 October 2019 the SLCC emailed the Respondent noting they had still to receive a response. Further e-mails of 6 November, 5 December, 14 December 2018 and 8 January 2019 all produced no response.

The SLCC e-mailed the Respondent on 20 February 2019. The email attached a Notice under the 2007 Act Section 17 requiring him to produce or deliver the firm's business files and to provide his explanation regarding the matters to which the complaint related, to the SLCC by 13 March 2019. He was advised that a failure to do so could result in a conduct complaint.

- 7.153 On 4 April 2019 the SLCC emailed the Respondent advising that they were in the process of instructing solicitors to pursue a recovery of his file and asked that instead he deal with the complaint by close of business on 8 April 2019.

On 9 April 2019 the SLCC emailed the Respondent noting that there had been no response and that it was understood file had been passed to Digby Brown as the firm had ceased trading. The e-mail noted the Secondary Complainer had expressed a concern about data being passed without her knowledge and requested a response by the following day.

There was no response.

- 7.154 On 23 April 2019 the SLCC emailed the Respondent advising that an additional issue had been raised. The Respondent's reply was sought by 30 April 2019.

There was no response.



- 7.155 The SLCC accordingly remitted the issue to the Complainers.
- 7.156 The Complainers intimated the complaint to the Respondent on 22 January 2020 and received a response from the Respondent's representative by letter dated 11 February 2020.
- 7.157 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent and to his representative by email on 25 March 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.
- 7.158 The Sub Committee considered the matter on 30 April 2020.

It determined that the Respondent's conduct in respect that,

He had failed or unduly delayed to co-operate with the SLCC's investigation of the complaint issues referred to it in that he failed or unduly delayed to respond to correspondence from the SLCC dated 5 December and 14 December 2018, 8 January 2019, 20 February 2019, 4 April and 9 April 2019.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

Allan Aitken, 64 Clement Rise, Livingston

- 7.159 In or about September 2015 the Secondary Complainer instructed the Respondent to represent him in a personal injury claim which was the result of an accident at work on 5 September 2015.

7.160 The Secondary Complainer was unable to obtain any response from the Respondent and accordingly submitted a complaint to the SLCC on 4 March 2019.

7.161 On 23 April 2019, the SLCC emailed the Secondary Complainer with their understanding that he had intended to instruct Gildeas, Solicitors to take over the handling of the claim and asked for confirmation if this had been done.

Gildeas had written to the Respondent's firm by recorded delivery on 8 April 2019 enclosing a Mandate and asking for the file by return.

On 25 April 2019 Gildeas wrote again by recorded delivery enclosing a copy of their letter of 8 April 2019. That letter was returned marked "Not called for."

7.162 On 5 June 2019 the SLCC emailed the Respondent attaching a copy of a Summary of Complaint and thereafter attempted to recover the Respondent's firm's file in order to investigate the complaint.

On 10 December 2019 the SLCC advised the Secondary Complainer that they had recovered the file and would begin an investigation.

The matter was thereafter referred to the Complainers.

7.163 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent by email on 23 April 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.164 The Sub Committee considered the matter on 20 June 2020. It determined that the Respondent's conduct in respect that,

He had failed to send the Secondary Complainer's file to the new solicitors following a signed Mandate provided by the new solicitors around the end of April 2019

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

A copy of the determination was sent to the Respondent by email dated 16 July 2020.

Mrs Shona Green, c/o Stewart Legal, Hudson House, 8 Albany Street, Edinburgh

7.165 The Secondary Complainer sought to make a claim for medical negligence following treatment received in September 2015.

In or around December 2015 she was referred to the Respondent and on 17 December 2015 signed a Mandate authorising the Respondent's firm to instruct a Medical Report.

7.166 A claim was intimated to the Central Legal Office and thereafter on 9 February 2016 to the General Practitioner.

7.167 The Secondary Complainer was advised by the Respondent on 27 January 2017 that the claim had been redirected to the General Practitioner's insurers.

7.168 Thereafter the Secondary Complainer sought, without success, a response from the Respondent on 14 August 2017, 3, 10, 11 and 18 October 2017, 18 December 2017, 26 January 2018, 7 and 16 February 2018, 14, 16 and 18 March 2018, 4 April 2018, 14 November 2018 and 3, 4, 8, 11, 16 January 2019.

7.169 The Respondent did not instruct any Medical Report.

7.170 The Respondent raised a Damages Action in the Secondary Complainer's name in Dunfermline Sheriff Court prior to September 2018. He thereafter withdrew from acting for her in or around January 2019 without advising her that he was doing so. He did not provide her with any explanation for withdrawing.

7.171 The Secondary Complainer instructed Stewart Legal who, on 25 January 2019, contacted the Respondent by email and provided a Mandate. In the absence of any response Stewart Legal again emailed the Respondent on 4 February 2019 with the Mandate and requesting the papers.

There was no response.

7.172 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent and to his representative by email on 5 August 2020. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.173 The Sub Committee considered the matter on 10 September 2020 and determined that the Respondent's conduct in respect that,

1. He and/or Buchanan Campbell, unduly delayed in progressing the Secondary Complainer's claim, between January 2016 and January 2019.
2. He and/or Buchanan Campbell, failed to communicate effectively with the Secondary Complainer in that the Respondent did not keep her informed regularly about the progress of matters, despite the Secondary Complainer having emailed the firm repeatedly requesting an update.
3. He, and/or Buchanan Campbell, failed to act in the Secondary Complainer's best interests in that the Respondent did not instruct an expert report in relation to her claim, or advise her that such a report would be required.
4. He, and/or Buchanan Campbell inappropriately withdrew from acting on the Secondary Complainer's behalf, in January 2019, without just cause.

5. He, and/or Buchanan Campbell, failed to communicate effectively with the Secondary Complainer from January 2019, in that the Respondent did not advise her that the firm were withdrawing from acting on her behalf and did not provide her with any explanation for having done so.
6. He, and/or Buchanan Campbell, failed to communicate effectively with the new solicitor, following the Respondent's withdrawal, in that the Respondent ignored email correspondence from me on 25 January 2019 and 4 February 2019.
7. He, and/or Buchanan Campbell failed to implement a mandate for the release of the Secondary Complainer's files, which was initially sent to the firm by email on 25 January 2019 and then subsequently resent by email on 4 February 2019.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined in terms of the 1980 Act Section 51 of the Solicitors (Scotland) Act 1980 that a Fiscal should be appointed to investigate and prosecute a Complaint against the Respondent before the Scottish Solicitors Discipline Tribunal.

A copy of the Determination was sent to the Respondent and to his Representative on 5 October 2020.

Menna M Guyan, 27 Booth Gardens, Blackdog, Aberdeenshire

- 7.174 The Secondary Complainer instructed the Respondent to make a personal injury on her behalf arising from a road accident on 9 December 2016.
- 7.175 Some work was carried out by the Respondent's firm on the claim between February 2017 and July 2018.

On 5 July 2018 the Secondary Complainer phoned the firm to find out about progress on her claim. She was unable to obtain any informative response.

She emailed on 15 October 2018 noting she had still not heard anything about the claim and that she never seemed able to get through to anyone on the phone. She noted that when she had called, she was told that someone would call her back and that did not happen.

7.176 On 8 December 2018 she contacted the SLCC and in a Helpform advised that she hadn't been able to get any information about her case and that it had not been possible to contact the firm by phone. Emails had produced no reply.

7.177 The SLCC attempted to phone the Respondent's firm on 19 December 2018, but the number rang out.

The SLCC emailed the Respondent on 20 December 2018 attaching a copy of the Helpform and advising the matter would be allocated to a Case Investigator.

On 21 February 2019 the SLCC emailed the Respondent and sent a letter advising that the complaint was not premature and the issues of complaint were set out.

The SLCC decided that the complaint was eligible and emailed the Respondent on 4 March 2019.

Further emails from the SLCC produced no response from the Respondent and on 20 March 2019 the SLCC emailed referring to the 2007 Act Section 17 and its powers under that section.

The Respondent was required to provide within fourteen days his full and detailed response to the eligible issues of the complaint and his case files. Any delay or failure to respond would lead inter alia to a conduct complaint being raised.

7.178 The SLCC emailed the Respondent on 4 April 2019 referring to its earlier letter of 20 March 2019 and the lack of response. The letter again referred to the 2007

Act Section 17 powers and to the possibility that a conduct complaint might be raised.

A further email from the SLCC to the Respondent on the same day advised that the SLCC was in the process of instructing solicitors in relation to recovery of the files to assist with the investigation.

On 15 April 2019 the SLCC emailed the Respondent referring to its statutory powers and attaching a 2007 Act Section 17 Notice requiring the Respondent to produce or deliver the business files and provide an explanation regarding the matters to which the complaint related by 6 May 2019.

7.179 The SLCC sent further emails to the Respondent. The firm ceased business and on 17 May and 27 May 2019 the SLCC emailed the Respondent care of the Complainers advising its investigation had been completed and seeking recovery of the files. The Complainers forwarded the SLCC's emails to the Respondent.

7.180 The SLCC wrote to the Secondary Complainer on 23 September 2019 and advised her of the recommendations. The Respondent was written to on the same date.

In an email to the Complainers dated 8 June 2020, the Respondent's representative confirmed that the Respondent admitted to the facts libelled.

7.181 The matter was referred to the Complainers. They compiled a Report, a copy of which was provided to the Respondent and his solicitor representative. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.182 The Sub Committee considered the matter on 11 February 2021. It determined that the Respondent's conduct in respect that

He failed to comply with the written requests of the SLCC dated 20 March, 4 April and 15 April 2019 for their files in respect of the Secondary Complainer's case to be passed to the SLCC

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

Copies of the determination were sent to the Respondent and his solicitor representative.

Paul O'Grady c/o The Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh

- 7.183 The Secondary Complainer instructed the Respondent to take over the handling of a claim arising out of an accident which had occurred on 10 August 2015. The Respondent received the file of papers in respect of the claim from the Secondary Complainer's previous solicitors under a letter dated 27 October 2016.
- 7.184 The Respondent advised the Secondary Complainer on 16 November 2016 that he had recovered the file, that he agreed with the advice provided by the previous solicitors in relation to the prospects of success and that he could not therefore assist the Secondary Complainer.
- 7.185 The Secondary Complainer thereafter instructed Digby Brown Solicitors to take over handling of the claim. On 9 January 2017 Digby Brown wrote to the Respondent advising they were instructed by the Secondary Complainer and enclosing a signed Mandate to release all papers.
- 7.186 On 21 February 2017 the papers not having been received Digby Brown phoned the Respondent's firm and were advised that the file had been ordered out of storage and should arrive within the next week.



7.187 On 21 March 2017 Digby Brown wrote to the Respondent referring to their letter of 9 January 2017 and the phone call on 21 February 2017 and noted the file had still not been received.

Digby Brown called the Respondent's firm on 12 April 2017 but there was no answer.

Digby Brown made a further call on 22 May 2017 but could not obtain any reply and noted there was no voicemail facility.

A further call was made to the firm on 23 May 2017 and Digby Brown were advised that the Respondent would be back in the office later that day and would return the call.

7.188 On 25 May 2017 Digby Brown emailed the Respondent referring to the request for the file on 9 January 2017. The email made reference to the subsequent attempts to obtain the file from the Respondent.

7.189 Digby Brown emailed the Respondent on 19 June 2027 advising that the SLCC had been consulted.

On the same date Digby Brown called the Respondent's firm, was advised that the Respondent was on a call and would call back.

7.190 On 23 November 2017 the Respondent wrote to Digby Brown apologising for the failure to provide the file and enclosing all the relevant papers.

7.191 Digby Brown had submitted a complaint to the SLCC on 3 July 2017. The matter was referred to the Complainers.

7.192 The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.193 The Sub Committee considered the matter on 14 January 2021. It determined that the Respondent's conduct in respect that,

1. He failed or at least delayed unduly in obtempering a Mandate sent to him by his client's new Agent on 9 January 2017,
2. He failed or delayed unduly in responding to the client's new Agents' correspondence with him; and in particular, failed or delayed in responding to their letters of 9 January 2017 and 21 March 2017, emails of 25 May 2017 and 19 June 2017 and telephone calls of 21 February 2017, 12 April 2017, 23 May 2017 and 19 June 2017,

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

Carolanne Dunn, 19 Broadleys Avenue, Bishopbriggs, Glasgow

7.194 The Respondent accepted instructions from the Secondary Complainer in relation to a personal injury matter. The Respondent wrote to the Secondary Complainer on 11 January 2017. The Respondent enclosed forms which were to be completed by the Secondary Complainer including a mandate for release of medical records and a description of an accident at work which occurred on 28 November 2016.

7.195 The Respondent wrote to Santander on 10 February 2017 intimating a personal injury claim on behalf of the Secondary Complainer. The Respondent stated that he considered the claim to be subject to the pre-action protocol and sought a response from their insurer within 21 days.

- 7.196 The Respondent wrote to the Secondary Complainer on 10 February 2017 acknowledging safe receipt of the paperwork. The Respondent advised that a claim had been intimated to her employer who should pass matters to their Employers' Liability Insurer. The Respondent advised that they had a maximum of four months to investigate the claim.
- 7.197 The Respondent wrote to Santander on 11 January 2018. The Respondent referred to a previous letter of 10 February 2017. The Respondent noted no response was received.
- 7.198 The Respondent wrote to XL Catlin on 11 January 2018 intimating a claim. The Respondent noted that he had written to the insured on two occasions but had not heard from their Employers' Liability Insurers. The Respondent noted that an Employers Liability Tracing Office (ELTO) search indicated they were the insurer and enclosed a copy of the intimation of claim.
- 7.199 The papers contain a telephone file note dated 12 January 2018 between the Respondent and Secondary Complainer. The Respondent advised the Secondary Complainer that the insurance company was now investigating her allegations.
- 7.200 The Respondent emailed XL Catlin on 16 January 2018. The Respondent responded to an email sent on 12 January. The Respondent provided the Secondary Complainer's details and injuries.
- 7.201 The papers contain a telephone file note dated 17 May 2018 with XL Catlin, the third-party insurers. The Respondent was advised that they were seeking further information and hoped to respond within the next two weeks.
- 7.202 The Respondent emailed XL Catlin on 17 May 2018. The Respondent referred to a telephone consultation on 17 May 2018 and stated that he looked forward to hearing from them within the 14-day period following their enquiries.
- 7.203 The Secondary Complainer emailed the Respondent on 25 October 2018. The Secondary Complainer noted that they last spoke on 17 August 2018 but had since been unable to reach the Respondent by phone. The Secondary Complainer

referred to two unanswered emails and having attended the firm's office on 25 October 2018.

- 7.204 The Secondary Complainer emailed the Respondent on 3 December 2018. The Secondary Complainer requested a telephone call to provide an update.
- 7.205 The Secondary Complainer emailed the Respondent on 4 January 2019. The Secondary Complainer stated that she was unhappy with the service provided and noted no response to her complaint had been received.
- 7.206 The Complainers intimated the complaint to the Respondent using an email address for Harper Macleod and also to a personal email address on 27 March 2019. The emails enclosed a letter dated 27 March noting that a complaint had been made and seeking a response.
- 7.207 The present Complainers emailed the Respondent on 10 April 2019 regarding obtaining the Secondary Complainer's file. The email noted that the email had been sent to the Respondent's email address recorded in the Society's records and referred to by the Respondent in an email he sent recently to the Society.
- 7.208 The papers contain an email from the Client Protection Fund on 2 May 2019 noting that at a meeting that day the Client Protection Sub-Committee withdrew the practising certificate of the Respondent.
- 7.209 The Complainers wrote to the Respondent on 7 May 2019 to an address on Clarkston Road, Glasgow with notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 requesting a response within 21 days. The Respondent was also called upon under Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007 to deliver documents and provide a response to the complaint. This letter was sent recorded delivery and signed for by "S Duncan" on 8 May 2019.
- 7.210 The Complainers wrote to the Respondent on 21 June 2019 to an address on Clarkston Road, Glasgow. The letter noted that the Respondent had failed to

respond to the notice served on 7 May 2019. The letter was sent recorded delivery and signed for by “Duncan” on 22 June 2019.

- 7.211 The Secondary Complainer emailed the Complainers on 30 August 2019. The Secondary Complainer advised in May 2019 all of the Respondent’s files had been passed to Digby Brown Solicitors as the Respondent ceased business.
- 7.212 Johnston Clark at Blackadders emailed the present Complainers on 29 August 2019. He noted that he did not have instructions from the Respondent and the Respondent was not responding to emails or calls.
- 7.213 Emails on the present Complainers file dated 18 September 2019 noted that tracing agents had confirmed the Respondent’s new address as Linn Drive, Glasgow.
- 7.214 The Complainers emailed Mr Clark at Blackadders on 13 November 2019. The Society sought to confirm that Mr Clark remained instructed.
- 7.215 Mr Clark emailed the Complainers on 28 November 2019 advising that he was meeting the Respondent on 2 December.

Paul Jenkins Limited, 12 South View Road, Strathblane, Glasgow

- 7.216 The Respondent was instructed in a Personal injury claim by a client, Mrs AM. In the context of that claim he instructed a Medico-Legal Report from the Secondary Complainer.
- 7.217 The Secondary Complainer submitted an invoice of 28 November 2018 for £672 to the Respondent. The invoice remained unpaid at the point in time when the Respondent was suspended from practising as a solicitor on 5 May 2019. No explanation was given to the Secondary Complainer as to why payment was not being made or could not be made.

- 7.218 Mrs AM's claim was taken over by Thompsons Solicitors who, in September 2019, were able to achieve settlement and on 25 September 2019 made payment to the Secondary Complainer.
- 7.129 On 16 May 2019, on becoming aware the Respondent "had gone out of business" the Secondary Complainer made a complaint to the SLCC. Following payment of the invoice by Thompsons the complaint was withdrawn.
- 7.130 Notwithstanding the withdrawal of the complaint by the Secondary Complainer the Complainers considered that in the circumstances it was appropriate to pursue a conduct complaint at their instance. The matter was then investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent. The Respondent was advised that the Complaint would be considered by the Complainer's Professional Conduct Sub Committee.
- 7.131 The Sub Committee considered the matter on 10 February 2022. It determined that the Respondent's conduct in respect that,

*"Having instructed PJ to prepare an expert medico-Legal Report in relation to his client Mrs AM for which he was invoiced on 28 November 2018 for £672 inclusive of VAT, failed or at least delayed unduly thereafter in settling the said invoice, his failure or delay in that regard being contrary to his professional ethical duty to settle the amount timeously and thereby being apt to draw the profession into disrepute."*

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond a reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of the 1980 Act Section 51 to investigate and prosecute a complaint before the Scottish Solicitors Discipline Tribunal.

7.132 On 23 April 2018, the Complainers carried out a Financial Compliance Inspection of the Respondent's books and records. The Findings were considered serious resulting in the Report being submitted to the Client Protection Sub Committee.

7.133 The Inspection disclosed that the Respondent took fees, VAT and outlays in cases where he had not made an onward payment of the outlays to which the sums taken related as follows:-

- a. IB v AY Limited. Fees, VAT and outlays taken from the client account on 8 November 2017 without prior payment of the outlays for: Warrant Dues (£120); Waverley Medical Practice re medical reports (£50); Simon Reuben re: orthopaedic report (£600); Premex Services Limited re psychiatric report (£1,767.60); Gordon Cameron Partnership re employment consultant report (£1,654.56);
- b. LA v C Insurance. Fees, VAT and outlays taken from the client account on 21 November 2017 without prior payment of the outlays for Simon Reuben re orthopaedic report (£600);
- c. DA v C Insurance. Fees, VAT and outlays taken from the client account on 21 November 2017 without prior payment of the outlays for Dr Ben Coyle Limited (£354);
- d. DK. Fees, VAT and outlays taken from the client account on 5 December 2017 without prior payment of the outlays for: Ninewells Hospital re medical notes (£16.60); The Erskine Practice re: medical records (£50); [and] Ninewells Hospital re medical report (£600);
- e. NMD. Fees, VAT and outlays taken from the client account on 23 January 2018 without prior payment of the outlays for: GP records (£50); Dr Sam Al-Jafari re medical report (£354); Medical report £500); Equilbria re psychological report (£1,150); [and] Dr Helen Harris re rheumatology report (£1,500)

The effect of the Respondent's failure to retain the above sums in his Client Account created a deficit on the Practice Unit's Client Account between 8 November 2017 and 23 January 2018. During that period there were insufficient funds at the credit of the Client Account to offset the said sums, contrary to the 2011 Rules, Rule B6.3.1(a).

7.134 The Respondent failed to keep properly written up accounting records as necessary to show the Practice Unit's dealings with client's money or any other money dealt with it through a Client Account and in particular,

- a. In the case of DA v C Insurance, £4,300.14 received from C Insurance on 17 November 2017 was not posted to the client's bank nominal ledger/client cashbook and client bank statement until 21 November 2017;
- b. In the case of DK, fees and outlays of £3,699.60 taken on 5 November 2017 were not posted to the client bank nominal ledger/client cashbook and client bank statement until 5 December 2017; and a payment of £15983.24 to the client on 5 December 2017 was not posted to the client bank nominal ledger/client cashbook and client bank statement until 7 December 2017;
- c. In the case of NMD, fees and outlays of £6,426.99 taken on 23 January 2018 were not posted to the client bank nominal ledger/client cashbook and client bank statement until 30 January 2018.

These failures were in breach of the 2011 Rules, Rule B6.7.1.

7.135 The Respondent failed to keep properly written up accounting records as necessary to show the true financial position of the Practice Unit and in particular,

- a. As at the date of the Financial Compliance inspection on 23 April 2018, the practice unit was found to be in arrears in respect of the sums due to HMRC, and the Respondent was unable to exhibit any vouching of the level of arrears which had accrued;



- b. The Respondent was unable to exhibit at the Financial Compliance inspection in April 2018 a reconciled trial balance for the preceding accounting period/s;
- c. The Respondent's trial balance as at 31 March 2018 included nominal ledgers for i. Recoveries - £43,879.36 Cr; ii. Outlays - £5,450.00 Dr, the lack of detail as to what constituted "Recoveries" introducing a risk that a greater value of outlays than had been paid out on behalf of clients had been recovered by the practice unit;
- d. The Respondent's trial balance as at 31 March 2018 included a nominal ledger for i. Creditors - £20,139.81 Cr, without any detail in respect of what precisely that sum consisted, and, in particular, whether it related to creditors other than Medics Network Limited with whom the Respondent confirmed the practice unit to have a credit facility;
- e. The Respondent's trial balance as at 31 March 2018 included a nominal ledger for Capital - £99,321.11 Cr, which balance was irreconcilable with the absence of introduction of capital by the Respondent or any other person on the ledger since July 2016 (when the ledger had shown a balance of £115,024.26 Dr);
- f. The Respondent's trial balance as at 31 March 2018 included a nominal ledger for RJM Loan - £8,668.91 Cr, which the Respondent asserted during the inspection in April 2018 to no longer be payable.

His failure was in breach of the 2011 Practice Rules, Rule B6.7.3.

- 7.136 The Respondent failed to record in the Practice Unit accounting records third party cheques passed on by the Practice or cheques endorsed over to clients or third parties on clients' behalf which had not passed through a Bank Account.

The Respondent's failure was a breach of the 2011 Rules, Rule B6.6.1.

7.137 The Respondent failed to ensure or delayed in ensuring that multiple client balances held by the Practice Unit in respect of concluded matters had been returned promptly to the relevant clients as required by the 2007 Rules, Rule B6.11.

In particular there was a failure or delay in respect of the following,

- a. £500 retained since 26 October 2016 for CB;
- b. £110,799 retained since 8 November 2017 for IB;
- c. £50 retained since 24 January 2014 for HB;
- d. £120 retained since 19 June 2014 for AC;
- e. £199.12 retained since 1 August 2013 for Mrs JD;
- f. £950 retained since 8 January 2015 for Ms JD;
- g. £600 retained since 15 January 2016 for SF;
- h. £30 retained since 6 July 2016 for DG;
- i. £200 retained since 16 March 2016 for TH;
- j. £125 retained since 31 March 2012 for GM;
- k. £33.40 retained since 13 August 2012 under the ledger reference "Misc";
- l. £216 retained since 1 August 2013 for JO;
- m. £30.07 retained since 31 July 2016 for GO;
- n. £200 retained since 31 July 2016 for Miss JR;

o. £1,628.40 retained since 28 June 2016 for Ms MS;

7.137 The Respondent had instructed a Mr B to compile his books and records. Mr B did not prepare the books and records on any regular basis. The Respondent did not check the books and records provided by Mr B.

The Inspection disclosed a failure by the Respondent to use reasonable endeavours to acquire and maintain the necessary skills to fulfil his responsibility as the Practice Unit's CRM or to use his reasonable endeavours to advance and maintain the competence of all officers and employees of the Practice Unit, to adequately supervise or arrange for the adequate supervision of all such officers and employees or adequately train or arrange for the adequate training of all such officers and employees, all as required by the 2011 Rules, Rule B6.13.2 and B6.13.3.

7.138 The Respondent submitted Accounts Certificates to the Complainers in terms of the 2011 Rules, Rule B6.15.1.

The Accounts Certificates for the periods ending 31 March 2015, 30 September 2015, 31 March 2016, 30 September 2016, 31 March 2017 and 30 September 2017 which were misleading.

The Certificates did not disclose any breaches of the 2011 Rules, Rule B6 and in particular as averred above breaches of Rules B6.11 and B6.13. The Certificates stated that the Practice Unit had complied with the requirements of the Rules, which was both incorrect and misleading.

7.139 The Inspection of the Respondent's books and records as at 23 April 2018 was the first Inspection following one carried out by Financial Compliance in April 2015.

At the April 2015 Inspection the Inspector had identified breaches of Rule B6.11.

Said breaches had been drawn to the attention of the Respondent and had been the subject of continuing correspondence thereafter.

At the time of the Inspection on 23 April 2018 several of these breaches remained outstanding.

In particular several historic balances remained in existence as at 23 April 2018. The Inspector had advised the Respondent that he should undertake a review to disburse all old balances which no longer required to be held, to obtain appropriate records and documentation to support the disbursement of the funds and to implement procedures to ensure regular monitoring of client balances in order to hold only client funds regarding current transactions.

In addition, the Respondent was advised balances should not be held after two months of the completion of a transaction and if investigations had not been fully completed and he continued to hold historic client balances these should be disclosed on his Accounts Certificate as a breach of the Rule.

The Respondent had an obligation to remedy these breaches in terms of the 2011 Rules, Rule B6.4.1.

7.140 In terms of the Solicitors (Scotland) Act 1980 Section 40 the Respondent was interviewed by the Complainers' Client Protection Sub Committee on 19 July 2018.

As a consequence of the discussion at the interview, the Sub Committee Panel expressed the view that the Respondent did not understand how to operate a Cash Room properly, that he had not analysed anything provided to him by his Cashier, he kept no books in his office and at best updated the books every two months.

It noted and was astonished that the Respondent had not realised that his online book-keeping system had been replaced with a manual system, that he did not know what outlays were paid in connection with which client, that he did not know whether funds to pay these outlays had been received from the insurers and that he appeared unclear about the firm's debts.

The Panel considered that the Respondent had demonstrated a reckless indifference to the requirements expected of him and noted that he had “simply passed everything to [Mr B] and had abdicated all responsibility.”

It was also noted that the Respondent had provided no information to the Sub Committee until late on 18 July i.e., the day before the meeting. He had failed to engage meaningfully with the Complainers until that time.

7.141 The Sub Committee held a further meeting on 6 August and 6 September 2018.

It was noted that the Respondent had provided further information but that simply confirmed what the Respondent had agreed and accepted at the interview i.e., that he had not treated outlays he had recovered as client money.

Although the Sub Committee initially considered there could be a threat to the client protection fund, it allowed him further time to demonstrate full compliance with the Accounts Rules.

At the 6 September meeting the Sub Committee decided to stop the “Section 40” procedure meantime and to order the Respondent to produce fully satisfactory Accounts Certificates with supporting accounts records on a monthly basis.

In addition, it authorised an Inspection in May 2019 at the firm’s expense.

7.142 The Sub Committee carried out a further interview of the Respondent in terms of the 1980 Act Section 40 on 15 November 2018.

The Panel expressed its concern about the Respondent’s ability to understand and comply with the Practice Rules and in particular to read and understand the emails sent to him. It was noted he claimed he had not realised he needed to submit Accounts Certificates monthly despite receiving emails from the Complainers which he said he had read and understood.

At the interview the Respondent provided an Accounts Certificate for the period to 31 March 2018. It was pointed out to him that the Certificate was incorrect and this was admitted by the Respondent.

7.143 The Respondent's position was considered at a Sub Committee Meeting on 6 December 2018.

It was noted that the Complainers were still lacking information in relation to several findings from the 23 April 2018 Inspection.

It also noted however that the firm appeared to be now compliant and there appeared to be no risk to the client protection fund.

Given the "history" the Sub Committee decided it was inappropriate to terminate Section 40 Proceedings and required the Respondent to prove that the outstanding outlays had been paid, that there would be a further Inspection and that Inspection should take place in February 2019. In addition, the Respondent was required to continue to provide Accounts Certificates on a monthly basis.

7.144 The Sub Committee considered the matter on 29 July 2021.

It determined that the Respondent's conduct in that,

1. He took fees, VAT and outlays in the following cases, without having firstly made onward payment of the outlays to which the sums taken related, as follows:-
  - f. IB v AY Limited. Fees, VAT and outlays taken from the client account on 8 November 2017 without prior payment of the outlays for: Warrant Dues (£120); Waverley Medical Practice re medical reports (£50); Simon Reuben re: orthopaedic report (£600); Premex Services Limited re psychiatric report (£1,767.60); Gordon Cameron Partnership re employment consultant report (£1,654.56);

- g. LA v C Insurance. Fees, VAT and outlays taken from the client account on 21 November 2017 without prior payment of the outlays for Simon Reuben re orthopaedic report (£600);
- h. DA v C Insurance. Fees, VAT and outlays taken from the client account on 21 November 2017 without prior payment of the outlays for Dr Ben Coyle Limited (£354);
- i. DK. Fees, VAT and outlays taken from the client account on 5 December 2017 without prior payment of the outlays for: Ninewells Hospital re medical notes (£16.60); The Erskine Practice re: medical records (£50); [and] Ninewells Hospital re medical report (£600);
- j. NMD. Fees, VAT and outlays taken from the client account on 23 January 2018 without prior payment of the outlays for: GP records (£50); Dr Sam Al-Jafari re medical report (£354); Medical report £500); Equilbria re psychological report (£1,150); [and] Dr Helen Harris re rheumatology report (£1,500);

the Respondent's failure to retain the said sums in a client account serving to create a deficit on the practice unit's client account between 8 November 2017 and 23 January 2018 when there were insufficient funds at the credit of the client account to offset the said sums, in breach of rule B6.3.1(a) of the Practice Rules.

- 2. He failed to keep at all times, properly written up, such accounting records as were necessary to show all the practice unit's dealings with clients' money, any other money dealt with by it through a client account, any bank overdrafts or loans procured by it in its own name for behoof of a client or clients, or any other money held by it in a separate account in the title of which the client's name was specified; and without prejudice to that generality:
  - d. In the case of DA v C Insurance, £4,300.14 received from C Insurance on 17 November 2017 was not posted to the client's bank nominal

ledger/client cashbook and client bank statement until 21 November 2017;

- e. In the case of DK, fees and outlays of £3,699.60 taken on 5 November 2017 were not posted to the client bank nominal ledger/client cashbook and client bank statement until 5 December 2017; and a payment of £15983.24 to the client on 5 December 2017 was not posted to the client bank nominal ledger/client cashbook and client bank statement until 7 December 2017;
- f. In the case of NMD, fees and outlays of £6,426.99 taken on 23 January 2018 were not posted to the client bank nominal ledger/client cashbook and client bank statement until 30 January 2018.

all in breach of his duty in terms of Rule B6.7.1 of the Practice Rules.

- 3. He failed to keep properly written up at all times such accounting records as were necessary to show the true financial position of the practice unit; and without prejudice to that generality, he failed to do so in respect that:

- g. As at the date of the Financial Compliance inspection on 23 April 2018, the practice unit was found to be in arrears in respect of the sums due to HMRC, and the respondent was unable to exhibit any vouching of the level of arrears which had accrued;
- h. The Respondent was unable to exhibit at the Financial Compliance inspection in April 2018 a reconciled trial balance for the preceding accounting period/s;
- i. The Respondent's trial balance as at 31 March 2018 included nominal ledgers for i. Recoveries - £43,879.36 Cr; ii. Outlays - £5,450.00 Dr, the lack of detail as to what constituted "Recoveries" introducing a risk that a greater value of outlays than had been paid out on behalf of clients had been recovered by the practice unit;



- j. The Respondent's trial balance as at 31 March 2018 included a nominal ledger for i. Creditors - £20,139.81 Cr, without any detail in respect of what precisely that sum consisted, and, in particular, whether it related to creditors other than Medics Network Limited with whom the Respondent confirmed the practice unit to have a credit facility;
- k. The Respondent's trial balance as at 31 March 2018 included a nominal ledger for Capital - £99,321.11 Cr, which balance was irreconcilable with the absence of introduction of capital by the Respondent or any other person on the ledger since July 2016 (when the ledger had shown a balance of £115,024.26 Dr);
- l. The Respondent's trial balance as at 31 March 2018 included a nominal ledger for RJM Loan - £8,668.91 Cr, which the Respondent asserted during the inspection in April 2018 to no longer be payable;

all in breach of his duties in terms of Rule B6.7.3 of the Practice Rules.

- 4. He failed to record in the accounting records of the practice unit third party cheques passed on by the practice unit, or cheques endorsed over to its clients or to third parties on its clients' behalf which had not passed through a bank account, in breach of his duty to do so in terms of Rule B6.6.1 of the Practice Rules.
- 5. He failed to ensure, or at least delayed unduly in ensuring, that multiple client balances held by the practice unit in respect of business which had concluded had been returned promptly to the clients for whom they were held, or had been otherwise disbursed in accordance with Rule B6.11 of the Practice Rules; and without prejudice to that generality, has failed or delayed in doing so in respect of the following balances:
  - a. £500 retained since 26 October 2016 for CB;
  - b. £110,799 retained since 8 November 2017 for IB;

- c. £50 retained since 24 January 2014 for HB;
  - d. £120 retained since 19 June 2014 for AC;
  - e. £199.12 retained since 1 August 2013 for Mrs JD,;
  - f. £950 retained since 8 January 2015 for Ms JD;
  - g. £600 retained since 15 January 2016 for SF;
  - h. £30 retained since 6 July 2016 for DG;
  - i. £200 retained since 16 March 2016 for TH;
  - j. £125 retained since 31 March 2012 for GM;
  - k. £33.40 retained since 13 August 2012 under the ledger reference “Misc”;
  - l. £216 retained since 1 August 2013 for JO;
  - m. £30.07 retained since 31 July 2016 for GO’s;
  - n. £200 retained since 31 July 2016 for Miss JR;
  - o. £1,628.40 retained since 28 June 2016 for Ms MS;
6. He has failed to use reasonable endeavours to acquire and maintain the skills necessary to discharge his responsibilities as the practice unit’s CRM, or to use reasonable endeavours to advance and maintain the competence of all officers and employees of the practice unit, adequately supervise or arrange for the adequate supervision of all such officers and employees, or adequately train or arrange for the adequate training of all such officers and employees so far as the duties of such officers and employees involve

compliance with Rule B6 of the Practice Rules., in breach of his duty to do so in terms of Rule B6.13.2 and B6.13.3 of the Practice Rules.

7. He submitted Accounts Certificates to the Law Society in terms of Rule B6.15.1 of the Practice Rules for successive accounting periods from 2015 to 30 September 2017 which did not disclose any breaches of Rule B6 of the Practice Rules (and in particular did not disclose breaches of Practice Rules B6.11 and B6.13 as previously libelled in this complaint), and which stated that the practice unit had complied with the requirements of the Practice Rules, thereby misleading the Law Society as to the practice unit's compliance with the Practice Rules.
8. He failed or at least delayed unduly in taking steps to remedy the breaches of Rules B6.11 identified at the Financial Compliance inspection of the practice unit in April 2015, some of which remained outstanding at the inspection in April 2018, in breach of his duty to do so promptly in terms of Rule B6.4.1 of the Practice Rules.
9. He failed to provide reasonable co-operation to the Law Society's Financial Compliance personnel in the conduct of their inspection of the practice unit on 23 April 2018 and thereafter, in breach of his duty to do so in terms of Rule B6.18.7 of the Practice Rules.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a fiscal should be appointed in terms of Section 51 of the Solicitors (Scotland) Act 1980 to investigate and present a complaint in respect of the said Simon Kennedy Duncan to the Scottish Solicitors Discipline Tribunal.

Sandra Taylor 59 Kearn Avenue, Glasgow

7.145 Sandra Taylor was a client of the Respondent who invoked the assistance of the Scottish Legal Complaints Commission.

7.146 On 23 August 2018 the SLCC wrote to the Respondent by email asking him to provide *“the information requested in my letter dated 14 August 2018 within the following seven days”*

7.147 On 25 September 2018 the SLCC wrote to the Respondent by email stating amongst other things that:

*“Under Section 17 of the Legal Profession and Legal Aid (Scotland) Act 2007 the SLCC is entitled to examine documents and request explanations where required to investigate a complaint. To expedite the investigation process we would now ask that you provide the following within the next fourteen days:*

- 1. Your full and detailed response to the eligible issues of complaint detailed in the Eligibility Determination attached to [AF’s] letter of 14 September 2018, sent to you by email only.*
- 2. Your case file(s) including all electronic correspondence and relevant telephone logs.*
- 3. Full details of any fees/VAT/outlays charged or to be charged and confirmation if they have been paid”.*

7.148 On 11 October 2018 the SLCC wrote to the Respondent by email noting *“that we have not yet received your response to the Summary of Complaint of your file”*

7.149 On 19 October 2018 the SLCC issued by post and email a notice *“under section 17(1) of the [Legal Profession and Legal Aid (Scotland) Act 2007] requiring you to produce or deliver your firm's business file(s), and provide your explanation regarding the matters to which this complaint relates, to the SLCC by 9 November 2018.”*

7.150 The SLCC file shows no response or files of any kind being received from the solicitor.

7.151 This complaint has been intimated to the Respondent twice by recorded delivery, and once to his nominated representative. Neither the Respondent nor his representative have lodged any formal response to this complaint, but neither have they denied it.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that he:-

8.1 Failed to communicate with the Complainers, the Scottish Legal Complaints Commission, his own clients and other solicitors;

8.2 Breached Rules B1.2 and B1.9.1 of the Law Society of Scotland Practice Rules 2011;

8.3 Breached Rules B6, B6.3.1, B6.4.1, B6.6.1, B6.7.1, B6.7.3, B6.11.1, B6.13.1, B6.13.2, B6.13.3 and B6.18.7 all of the Law Society of Scotland Practice Rules 2011;

8.4 Failed to respond to and implement mandates;

8.5 Unduly delayed in progressing, or making substantial progress in, claims;

8.5 Failed to obtain a Medical Report, failed to provide documentation and raised a Court Action without instructions;

8.6 Failed to act in a client's best interests in respect of advice on and instruction of an expert Report, and inappropriately withdrew from acting.

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

Edinburgh, 2 June 2023, The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Simon Kennedy Duncan, Solicitor, Flat G/L, 603 Clarkston Road, Glasgow; Find the Respondent guilty of professional

misconduct in respect that he: Failed to communicate with the Complainers, the Scottish Legal Complaints Commission, his own clients and other solicitors; Breached Rules B1.2 and B1.9.1 of the Law Society of Scotland Practice Rules 2011; Breached Rules B6, B6.3.1, B6.4.1, B6.6.1, B6.7.1, B6.7.3, B6.11.1, B6.13.1, B6.13.2, B6.13.3 and B6.18.7 all of the Law Society of Scotland Practice Rules 2011; Failed to respond to and implement mandates; Unduly delayed in progressing, or making substantial progress in, claims; Failed to obtain a Medical Report, failed to provide documentation and raised a Court Action without instructions; Failed to act in a client's best interests in respect of advice on and instruction of an expert Report, and inappropriately withdrew from acting; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of ten years, any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainers but need not identify any other person; and Allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a claim for compensation if so advised.

**(signed)**  
**Colin Bell**  
**Chair**

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**

**Colin Bell**  
**Chair**

## **NOTE**

At the hearing on 2 June 2023, the Tribunal had before it the Record dated 22 March 2023, a Joint Minute, two Inventories of Productions for the Respondent, and two previous decisions of this Tribunal which had been lodged by the parties, Law Society-v-Park and Law Society-v-Cohen. Mr Clark had also lodged a written plea in mitigation and various supporting documents for the Tribunal's consideration at the appropriate time.

The Fiscal indicated that the Complainers relied upon the terms of the joint minute and did not intend to lead any evidence. He acknowledged the cooperation of the Respondent and the assistance of Mr Clark in bringing the case to a conclusion. He moved the Tribunal to make some changes to the Record. These were not opposed, and the Tribunal made the amendments which had been requested. These are reflected in the Tribunal's findings in fact and findings of misconduct above. The Fiscal noted that the Respondent now accepted that the accounts rules breaches also involved a lack of integrity. The Fiscal did not suggest that any other aspect of the Complaint featured a lack of integrity. There was no allegation of dishonesty.

## **SUBMISSIONS FOR THE COMPLAINERS**

With reference to each Secondary Complainer's individual case, the Fiscal described the Respondent's behaviour which he said amounted to professional misconduct. He noted that the Respondent had failed to cooperate with the Law Society and the SLCC; failed to progress claims; failed to communicate effectively; failed to obtemper mandates; raised a court action without instructions; inappropriately withdrew from acting; instructed an expert and failed to settle the invoice; failed to obtain a report; raised a court action without instructions; failed to act in a client's best interests and inappropriately withdrew from acting; and had breached the accounts rules. The accounts rules breaches involved a failure to keep the books and records of the firm properly written up. There were specific failures relating to client fees, a failure to reconcile third party cheques, and the submission of inaccurate and misleading accounts certificates. The Respondent had failed to take steps to prevent breaches and remedy those which had occurred and cooperate with the Law Society. His failures created a deficit on the client account, but no loss arose from the accounts rules breaches.

The Fiscal referred the Tribunal to the averments of misconduct in the Record. He submitted that a series of service failures can amount to professional misconduct and in this regard, referred the Tribunal to Law Society-v-Park. The Fiscal said that there had always been a distinction between service and conduct although the Law Society had previously dealt with both types of behaviour. In his submission,



a catalogue of poor service can amount to professional misconduct. He noted the similarities between this case and Law Society-v-Park. In both cases, the Respondent solicitor had taken on large volumes of work and had not prosecuted the cases effectively and efficiently. There was no suggestion that the present Respondent had practised in an unfamiliar area. He simply did not get the work done and did not communicate with his clients about that.

The Fiscal noted that the report lodged by the Respondent could be considered mitigatory but was not exculpatory. He invited the Tribunal to make findings of misconduct as set out at (a)-(g) of the Record under the deletions which had already been made. He said the charges were capable of constituting professional misconduct singly or *in cumulo*.

### **SUBMISSIONS FOR THE RESPONDENT**

The Respondent's position was that the behaviour outlined in the Complaint was capable of constituting professional misconduct *in cumulo*. Mr Clark questioned whether the conduct in relation to the Jenkins and O'Grady cases was sufficient to amount to professional misconduct, but said this was a decision for the Tribunal. He disagreed with the Fiscal's interpretation of the law relating to service and conduct matters. In his submission, the 2007 Act had created a separation between service and conduct matters. He said the law had therefore changed after the Park case. It was Mr Clark's position that it was not possible to turn a service issue into a conduct issue simply by having lots of them.

The Tribunal asked about lack of integrity. Mr Clark said that the Respondent had initially denied a breach of Rule B1.2, believing that the words of the rule did not support a lack of integrity in circumstances such as these. However, having been referred to Wingate-v-SRA [2018] EWCA Civ 366 in another case, the Respondent had admitted a lack of integrity on the basis of his intromission with client funds.

### **DECISION ON PROFESSIONAL MISCONDUCT**

Solicitors must always act so that their personal integrity is beyond question (Rule B1.2). They must communicate effectively (Rule B1.9.1). They must comply with the accounts rules (Rule B6), implement mandates and progress cases efficiently. They must only raise actions when they have instructions to do so. They must make payments timeously. They must act in their clients' best interests (Rule B1.4). They must not withdraw from acting in an inappropriate way (Rule B1.12). The Respondent admitted that he had breached these duties in cases involving 22 Secondary Complainers.

Although the Respondent admitted professional misconduct, it was for the Tribunal to consider whether the admitted conduct met 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.”*

The Tribunal carefully considered each individual case outlined in the Record. It found the Respondent not guilty of the misconduct alleged in relation to Paul Jenkins Limited. The Respondent admitted that he had failed to pay an invoice. However, by the time he stopped practising, the invoice had been unpaid for less than 6 months. The Tribunal did not consider this was a serious and reprehensible departure from the standards of competent and reputable solicitors.

In all other matters, the Tribunal found each case capable of constituting professional misconduct individually. The Respondent’s course of conduct in relation to his clients represented a total dereliction of duty. He did not fulfil his professional obligations to his client, professional colleagues or his regulator.

The breaches of the accounts rules showed a complete lack of attention to this important aspect of a sole practitioner’s responsibilities. A solicitor must retain responsibility for the books and records of his/her firm. It is essential that books and records are properly kept and that the Law Society of Scotland can ascertain the true financial position of the firm at any time. The public must have confidence that the profession will comply with the Accounts Rules and can be trusted with their money. If solicitors are to continue to enjoy the public trust in regard to their financial affairs, they must have careful regard to all the requirements and obligations in the Accounts Rules. A solicitor should always be able to account to every client and this requires the solicitor to maintain full and accurate records. The detailed provisions of the Accounts Rules ensure that the funds of each client are separately safeguarded but also enable the solicitor and the Complainers to satisfy themselves at any time that the clients funds are securely held and accounted for.

Accounts certificates are one of the means by which the Law Society monitors compliance with the rules and risk to client money. The Law Society is entitled to rely on accounts certificates as showing the matters which have been identified and the measures taken to deal with them. Accounts certificates are not a formality. They must be completed properly so that the Society can use the information to monitor compliance and assess risk.

The Respondent's conduct regarding to the accounts rules lacked integrity. According to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366, integrity is a broader concept than dishonesty. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one's own profession and involves more than mere honesty. Various examples of lack of integrity are set out in that case but the Tribunal considered these to be illuminative but not exhaustive. The Respondent's breaches of the accounts rules and his failure to record them on the accounts certificates allowed his integrity to be called into question.

The Tribunal noted the Respondent's repeated failures to cooperate with the Complainers. Failure to respond to the Complainers and engage meaningfully with them hampers the Law Society in performance of its statutory duty and brings the profession into disrepute.

Having considered all the circumstances, the Tribunal considered that the Respondent's conduct constituted a serious and reprehensible departure from the standards of competent and reputable solicitors.

## **SUBMISSIONS IN MITIGATION**

Mr Clark referred to the written plea in mitigation and supporting documents which had been provided to the Tribunal in advance of the hearing. He indicated that he and the Respondent were happy to answer any of the Tribunal's questions.

The Tribunal asked about the medical report which had been lodged by the Respondent. The Respondent gave details of various factors which he believed had led to the misconduct. These included health issues as well as business circumstances which had left him attempting to practise on his own account. He acknowledged that this had been a mistake. His last partner had dealt with compliance and with hindsight he recognised that when that person left, he should have closed his business and gone to work for another

firm. He had reflected on the situation and identified that he was not equipped to run a legal firm. His accountant was unsatisfactory, but he appreciated that accounts rules compliance was his responsibility. He explained the impact the circumstances had on his personal and work life.

The Respondent described his current state of health and noted that there were various avenues open to him in terms of accessing other services. He said that he was sorry about the detriment to his clients and his lack of cooperation with his regulator. He paid tribute to Mr Clark whom he said had gone “above and beyond” in representing his interests. He expressed a desire to “sort things out”. He had introduced capital to the firm to ensure that debts were paid. He still owed money to his bank and would like to enter into an agreement to deal with this.

The Respondent noted he had been a solicitor since 1992. He had practised competently with no recorded complaints until this incident. He is currently working as a paralegal for a consumer credit firm. He has no management responsibility and a manageable case load. However, this position is not likely to continue long term due to the nature of the work the business undertakes. He would like to work as a solicitor under supervision of a manager or partner. He could manage a case load of personal injury work. However, he was aware he was not capable of running a firm again. He did not want to stray from his area of expertise. However, his area of expertise was in personal injury and therefore most opportunities were for solicitors.

Mr Clark said the Respondent was at the Tribunal’s mercy. He referred the Tribunal to Law Society-v-Cohen, a case where a Respondent, although sequestrated, was allowed to return to the profession under supervision. Mr Clark appreciated that the Tribunal had to strike a balance between acknowledging the difficulties which had arisen in this case with protection of the public. The Respondent was in a precarious financial position. However, he had not shied away from the complaints. He sold his house and made a substantial downsize to pay his debts and compensation awards. Even if the Tribunal restricted the Respondent, the Law Society would still have to ensure he was a suitable person to receive a practising certificate, in accordance with its role in protecting the public.

## **DECISION ON SANCTION, PUBLICITY AND EXPENSES**

The Tribunal considered the aggravating and mitigating circumstances in the case. The Respondent’s compliance with the accounts rules had been found to lack integrity. There was a long course of conduct affecting a large number of clients and others. The conduct was likely to endanger the public. These were serious matters which weighed heavily on the Tribunal’s mind.

However, to his credit, the Respondent was now doing what he could to tackle matters. He had insight into the circumstances which had led to the misconduct. He had expressed remorse regarding the impact of his misconduct on his clients. He had already paid some compensation to them. The lack of integrity related to management of funds and failing to declare issues or breaches on his accounts certificates. However, there had been no dishonesty and in fact, there had been sufficient funds to make good any deficits. There was no criticism of the Respondent's legal work. His failures related to failing to manage his case load and regulatory compliance. There were no previous findings on the Respondent's record card. He had cooperated with the Fiscal and the Tribunal. He had attended the Tribunal in person and explained the situation.

A censure or a censure and fine would be insufficient in the circumstances to address the seriousness of the offending or to protect the public. The Tribunal considered whether a period of suspension or even strike off was necessary given the long course of conduct and the involvement of so many clients as well as the regulator. However, it was ultimately persuaded that the Respondent ought to be able to return to work. This would allow him to pay his debts and provide for his family. The Tribunal noted the Respondent's own submission that he never wanted to work as a principal again. In order to protect the public long-term, the Tribunal decided that any practising certificate held or issued to the Respondent should limit him to working as an assistant to employers approved by the Council of the Law Society of Scotland. The restriction should remain in place for an aggregate period of ten years. That means that the Respondent must complete 10 years of practice under supervision before he can apply for a full practising certificate. Any periods out of practice do not count towards the ten-year total.

Following submissions on publicity and expenses, the Tribunal found the Respondent liable in the expenses of the Complainers and the Tribunal on the usual basis. The Tribunal's decision will be given publicity. The Respondent will be named. In the absence of any reason given to the contrary, the Secondary Complainers will also be named in accordance with the Tribunal's obligations under paragraph 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. The Secondary Complainers will have 28 days from the date of intimation of these findings to lodge a claim for compensation with the Tribunal Office.

**Colin Bell**  
**Chair**