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

F I N D I N G S

in Complaint

by

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

against

JOHN ATUAHENE, Solicitor, formerly of 72 Hawkshead Road, Paisley and now at 6A Gallowhill Court, Paisley (the First Respondent)

and

RICHARD THOMAS THORBURN, Solicitor, formerly of Thornhome House, By Carluke and now at 0/1 110 Lancefield Quay, Glasgow (the Second Respondent)

1. A Complaint dated 13th July 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, John Atuahene, Solicitor formerly of 72 Hawkshead Road, Paisley and now at 6A Gallowhill Court, Paisley (hereinafter referred to as "the First Respondent") and Richard Thomas Thorburn, Solicitor, formerly of Thornhome House, By Carluke and now at 0/1 110 Lancefield Quay, Glasgow (hereinafter referred to as "the Second Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.

2. The Tribunal caused a copy of the Complaint as lodged to be served upon both Respondents. Answers were lodged by both Respondents. A Record was prepared and lodged with the Tribunal. Preliminary pleas were intimated on behalf of the Second Respondent.

3. In terms of its Rules the Tribunal appointed a preliminary hearing to be fixed for 1st February 2006 and the Tribunal issued a Decision in respect of the Second Respondent's preliminary pleas dismissing the preliminary plea of ultra vires and relevancy and continuing consideration of the plea of oppression until after evidence had been led. There was no appeal by the Second Respondent against the Decision of the Tribunal.

4. Thereafter the Tribunal appointed the Complaint to be set down for a substantive hearing on 23rd August 2006 and notice thereof was duly served on the Respondents. When the case called on 23rd August 2006, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. Both Respondents were present and represented themselves. An amendment to the Complaint by the Complainers and various amendments to the First Respondent's Answers were allowed and a Joint Minute of Admissions was lodged. The Complainers lodged three Inventories of Productions, the First Respondent lodged three Inventories of Productions and the Second Respondent lodged one Inventory of Productions. The Tribunal heard evidence on 23rd August 2006 and thereafter also heard evidence and submissions on 6th November 2006, 29th January 2007, 30th January 2007, 1st March 2007, 2nd March 2007, 2nd May 2007, 19th June 2007, 6th September 2007, 8th October 2007, 4th December 2007, 24th January 2008, 29th February 2008, 28th March 2008, 17th April 2008, 27th May 2008, 24th July 2008, 29th August 2008, 11th November 2008, 1st December 2008, 22nd January 2009 and 27th February 2009.

5. The Tribunal then met on 16 April 2009, 11 and 12 May 2009, 26 June 2009 and 31 August 2009 to consider its decision.

6. The Tribunal found the following facts established

6.1 The First Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 18th February 1957. He was admitted on 31st May 1988 and enrolled on 14th June 1988.

6.2 The Second Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 12th August 1947. He was admitted on 24th September 1971 and enrolled on 6th October 1971.

6.3 The First Respondent formerly worked for Cumnock & Doon Valley District Council between 3rd April 1989 and 14th February 1995. He then became a Partner in the firm of Atuahene, Sim & Co, 536 Cathcart Road, Govanhill, Glasgow, on 1st June 1995. On 8th November 2002, the First Respondent acquired the practice of Murray & Co, Solicitors, 34 Argyll Arcade, Glasgow, and changed the firm name to Atuahene, Sim, Murray & Co.

6.4 The Second Respondent formerly practised as R T Thorburn & Co, Solicitors, 26 Ettrick Walk, Cumbernauld from 12th June 1980 to 31st October 1989. Thereafter, he practised as a qualified assistant with the firm of Peacock Johnstone, Solicitors, Rosemount Buildings, Glasgow, from about March 1990 to 29th September 1995. He operated as the sole Partner in the firm of Richard Thorburn, Solicitor from 1st

April 1995 at his home address then at 25 Newton Place, Glasgow from January 2000.

6.5 The Respondents agreed to amalgamate their practices and create the firm of the Practical Law Partnership with effect from 1st November 2003. In May 2003, an Interim Judicial Factor *ad interim* had been appointed to the First Respondent. That appointment remained interim until it was discharged on 5th November 2003. The Respondents continued to trade under their respective individual firms and did not effectively constitute the practice of the Practical Law Partnership until 14th May 2004. They continued to practice as Partners until the First Respondent was sequestrated on 23rd August 2004. The Second Respondent continued to practice as a sole practitioner until 7th October 2004 when he was suspended from practice in terms of Section 40 of the Solicitors (Scotland) Act 1980.

Ms A for Client 120

6.6 By Help Form received 29th April 2004, Ms A invoked the aid of the Complainers in relation to concerns about the service provided to her mother, Client 120 by the First Respondent. The First Respondent was advised of the complaint and provided with a copy of the Help Form by letter dated 5th May 2004. At that time, he was advised that a written investigation would be proceeding and he need not respond immediately. By formal letter dated 17th May 2004, the complaint was intimated with a list of the issues. The First Respondent was required to provide his written response, any background information he wished to be considered, his business file and files relating to the matter and details of any fees charged or to be charged plus an indication if they had or had not been paid.

6.7 The First Respondent did not reply. He was served Notice under Section 15(2)(i) of the Solicitors (Scotland) Act 1980 on 10th June 2004 requiring him to send a response and an explanation for the delay in replying within 14 days of the date of the Notice. He did not reply. On 30th June 2004, he was issued with a letter advising him that a report was now going to be obtained and a further Notice under Section 15(2)(i) was issued to him. He did not respond. The Complainers then commissioned a Report and submitted the terms of that to him by letter dated 30th August 2004. The First Respondent has not replied to the correspondence or provided his file or files.

Mr B

6.8 By letter dated 5th May 2004, Mr B invoked the aid of the Complainers in relation to concerns about the service provided to him by the First Respondent. A copy of the correspondence was sent to the First Respondent by letter dated 12th May 2004 advising him that a complaint had been received and would be formally intimated to him in due course. On 28th May 2004, he was advised of further correspondence and that the matter would be dealt with by written investigation.

6.9 By letter dated 9th June 2004, the complaint was intimated to him formally requiring his written response to each of the issues, any background information he wished to provide, his business file or files, confirmation of the details of fees charged or to be charged and whether or not they had been paid all within 21 days. He failed to reply. A formal notice under Section 15(2)(i) of the 1980 Act was issued to him on 1st July 2004 and the second part of the notice under the said

Section on 28th July 2004 together with a letter advising that a Report was being instructed. The Report was intimated to him by letter dated 1st September 2004. The First Respondent has failed to provide any information to the Complainers or any files.

Mr & Mrs C

6.10 Mr & Mrs C instructed the First Respondent in connection with their purchase of Property 1 with a date of entry being 16th December 2002. He was also instructed in connection with the sale of their previous home at Property 2. Said property had been purchased for them by his predecessor, Mrs Murray, and was a newly built property.

6.11 On receipt of the Help Form, the Complainers wrote to the First Respondent on 19th April 2004 with a copy of the Form and advising that the matter would proceed by written investigation. He was advised there was no need to respond at that time. On 18th May 2004, a formal letter intimating the complaint was sent to him requiring his written response to the issues, any background information he wished to be considered, his business file or files, details of any fees charged or to be charged and whether or not they had been paid all within 21 days of the date of the letter. He did not reply.

6.12 On 9th June 2004, a formal notice under Section 15(2)(ii) of the 1980 Act was issued to him. He did not reply. On 30th June 2004, a second notice under Section 15(2)(i) of the 1980 Act was issued. On 30th June 2004, he was advised that a Report was now going to be obtained. He was provided with a copy of the Report and opinion by letter dated 10th September 2004 and the matter then proceeded to

consideration in relation to the allegations of misconduct. At no time did he respond or make any observations nor did he provide his file or files.

Mr D

6.13 Mr D formally instructed the First Respondent in connection with a divorce. On 24th October 2003, he signed a Mandate authorising the forwarding of his files to John Fraser of Messrs Robertson Paul, Solicitors, 95 Bothwell Street, Glasgow. On 4th November 2003, Messrs Robertson Paul submitted the Mandate to the First Respondent and asked for the file. They did not receive a response and wrote again by fax dated 13th November 2003 requesting the file. They did not receive a reply and faxed again on 1st December 2003 advising that in spite of their letters of 4th and 13th November and various telephone calls to the firm, they had still not received the file of papers and indicating that they required this within the next 7 days or they would write to The Law Society. The First Respondent did not reply.

6.14 By letter dated 9th December 2003, Messrs Robertson Paul invoked the aid of the Complainers to obtain the relevant file. By letter dated 12th December 2003, the Complainers wrote to the First Respondent with a copy of the Complaint documentation asking for confirmation that he had implemented the Mandate within 14 days or the reason why he had not. He did not reply. A follow up letter was sent to him on 8th January 2004 advising that as no response had been received, consideration was being given to a formal complaint. He did not respond.

6.15 On 22nd January 2004, the Complainers wrote to the First Respondent advising that they were now dealing with the

matter by written investigation in view of the lack of response. The letter advised that they would be in touch with him further once the full details of the complaint had been identified. The First Respondent implemented the Mandate on 26th January 2004. The First Respondent had difficulty locating the file. On 23rd March 2004, a formal letter intimating the Complaint was sent to the First Respondent requiring his written response, any background information, any business file or files he still held and details of any fees charged or to be charged and whether or not they had been paid all within 21 days. He did not reply. A formal notice under Section 15(2)(i) was issued to him on 30th April 2004. He did not reply. A further formal notice under Section 15(2)(i) was issued to him on 26th May 2004. He did not respond. By letter dated 22nd June 2004, he was advised that a Report was now being obtained. On 20th July 2004, he was sent the Report and opinion. He did not respond. On 17th September 2004, he was provided with details of the Client Relations Committee Finding and a Schedule. He did not respond.

Mr & Mrs E

6.16 By letter dated 28th January 2004, Messrs MacTaggart & Company, Solicitors, Largs, acting on behalf of Mr & Mrs E invoked the aid of the Complainers in connection with obtaining the free proceeds of the sale of a property in Millport and an accounting in relation thereto from the First Respondent. By letter dated 2nd February 2004, the Complainers wrote to the First Respondent requiring him to produce a response to MacTaggart & Company with a full accounting and the free proceeds of sale within 7 days. He did not reply. A follow up letter was sent on 12th February 2004 advising him that the matter was now going to be dealt

with by written investigation and that he would be contacted in due course.

6.17 On 26th March 2004, a formal Complaint was intimated to him requiring his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid all within 21 days. He did not reply. A formal notice was sent to him on 4th May 2004 under Section 15(2)(i) of the 1980 Act. He did not reply. A further notice under Section 15(2)(i) was sent to him on 20th May 2004. He was advised by letter dated 19th May 2004 that a Report was now being obtained. On 27th May 2004, he was issued with a copy of the Report and opinion. He did not respond. On 12th July 2004, he was issued with the Schedule from the Client Relations Committee. He did not respond.

Mr F

6.18 By letter dated 11th April 2003, Mr F invoked the aid of the Complainers in relation to concerns about the service provided to him by the First Respondent. A formal letter with the Heads of Complaint identified was submitted to the First Respondent on 30th May 2003 requiring his written response within 14 days. He did not reply and a follow up letter was sent with copies of Sections 15 and 42C on 16th July 2003.

6.19 As he continued to ignore correspondence, a Recorded Delivery Notice under Section 15(2)(i)(i) was served on him on 11th August 2003 and the second Notice under the said Section on 21st October 2003. He failed to reply. By letter dated 29th October 2003, he was advised that the Complainers were proceeding to instruct a Report to be prepared in relation to his conduct. A Report was received by

the Complainers in November 2003 and copied to the First Respondent on 28th November 2003. He made no representations.

Mrs G

6.20 By letter dated 22nd September 2003, Mrs G, on behalf of her father, Mr H, aged 89, a client of the First Respondent, invoked the aid of the Complainers in relation to concerns about a service provided to her father by the First Respondent. This letter was copied to the First Respondent on 26th September 2003 to establish if conciliation was possible. Mrs G was not willing to engage in conciliation in view of the circumstances of her complaint. By letter dated 23rd October 2003, the First Respondent was formally required to provide a written response to the Heads of Complaint within 14 days. He failed to reply.

6.21 On 23rd October 2003, a formal Recorded Delivery Letter in terms of Section 15(2)(i) was sent to the Respondent. He did not reply. On 14th November 2003, the second letter in terms of Section 15(2)(i) was served. He did not reply. On 15th January 2004, he was advised that a Report was to be instructed. On 28th January 2004, the Report was copied to the First Respondent and representations invited from him. He did not reply.

6.22 In view of her dissatisfaction with the conduct of the First Respondent, Mrs G instructed the firm of Ferguson Dewar, Solicitors, 20 Renfield Street, Glasgow, to act on her behalf and a Mandate was issued to him by the said firm on 19th December 2003. He did not reply. Follow up letters were sent on 21st January 2004 and 9th and 17th February 2004 seeking the Will and other papers relating to Mrs G's late

father. Telephone calls were also made to the firm of the First Respondent but were never replied to. The Will was found and sent to Ferguson Dewar on 11th October 2004.

6.23 The assistance of the Complainers was invoked on 21st February 2004 and the Complainers wrote to the First Respondent by letter dated 25th February 2004 advising that the complaint was being made and that they would provide further details in due course. He was then advised by letter dated 18th March 2004 that the matter would proceed by way of written investigation and he would be contacted in due course for his comments. On 26th March 2004, formal intimation of the complaint was made to him requiring his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid all within 21 days of the letter. He did not respond. A formal notice was served on him on 21st April 2004 under Section 15(2)(i) of the 1980 Act. He was advised of this on the same date that a formal report was being obtained. The Report was copied to him on 1st June 2004. On 19th August 2004, a copy of the Schedule from the Client Relations Committee was submitted to him. He did not respond.

Client 124

6.24 By letter dated 30th January 2004, Client 124, invoked the aid of the Complainers in connection with the First Respondent's representation of him in the purchase of Property 3. The purchase was originally completed in May 2003 and at that time, no provision had been made for Stamp Duty as it was believed the property was in an exempt area. The Deeds were returned by the Keeper as Stamp Duty was payable. When

Client 124 was advised of this, the Stamp Duty was paid in November 2003. Thereafter, the First Respondent failed to return the Deeds and the application for registration was cancelled. Client 124 had purchased the property with the assistance of a loan from The Royal Bank of Scotland whose security had therefore not been registered.

6.25 The Complainers intimated the letter to the First Respondent on 5th February 2004 advising that they would now proceed with a written investigation and be in touch with him in due course. On 2nd April 2004, the Complainers sent a copy Help Form in relation to the matter to the First Respondent for his information advising that the matter was now again under enquiry. It was confirmed on 26th April 2004 that the application to the Land Register had been lodged on 21st April 2004.

6.26 By letter dated 21st May 2004, the formal complaint was intimated to the First Respondent and he was required to provide his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid all within 21 days. He did not reply. On 14th June, he was served with a Notice under Section 15(2)(i) of the 1980 Act. He did not respond. The second part of the Notice was served on him on 1st July 2004. He did not respond. On 1st July 2004, he was advised that the Complainers were instructing a Report. On 28th September 2004, he was sent a copy of the Report and opinion. On 17th November 2004, he was issued with a copy of the Schedule from the Client Relations Committee. He did not respond.

MESSRS R & R S MEARNS, SOLICITORS – Mr I

6.27 By letter dated 21st June 2004, Messrs R & R S Mearns, Solicitors, 2 Carment Drive, Glasgow, made a formal complaint on behalf of their client Mr I against the First Respondent. Mr I sold his business and leasehold interest in the shop at Property 4 to Mr J for whom the First Respondent acted. At settlement on 15th August 2003 the signed Assignation was sent to the First Respondent on an undertaking that he would register the Assignation and deliver an extract for onward transmission to the landlord's Agents. The consent of the landlord was given on the basis that an extract of the Assignation would be delivered.

6.28 The First Respondent failed to register the Assignation and failed thereafter, to respond to letters from R & R S Mearns for the extract. They wrote to him on 10th December 2003, on 19th December 2003, on 16th December 2003, on 19th February 2004 and 17th May 2004. Repeated telephone calls were made to the First Respondent but not replied to. In the interim period, rental was not paid and the landlords eventually required to take action for recovery against Mr I.

6.29 By letter dated 9th July 2004, the Complainers intimated a formal complaint in connection with this matter to the First Respondent requiring his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid all within 21 days of the letter. He did not reply. On 11th August 2004, the Complainers served a Notice under Section 15(2)(i) of the 1980 Act on the First Respondent. He did not reply. The second part of the Notice under Section 15(2)(i) was served on him on 14th September and a letter was sent on the same date advising that a report was now going to be obtained. On 11th October 2004, he was provided with a copy of the Report and opinion but did not

respond. On 17th November 2004, he was provided with a copy of the Schedule from the Client Relations Committee. He did not respond.

CAMPBELL BOATH, SOLICITORS

6.30 Ms N, a Partner in the firm of Campbell Boath, Solicitors invoked the aid of the Complainers in obtaining documentation relating to property at Property 5 by letter dated 4th June 2004. The Complainers submitted the letter of complaint to the First Respondent on 9th June 2004 advising him that the matter would be dealt with by written investigation and he would be contacted again.

6.31 A formal letter of complaint was intimated to him on 22nd June 2004 requiring his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid all within 21 days of the date of that letter. He did not reply. On 28th July 2004, he was served with a notice in terms of Section 15(2)(i) of the 1980 Act. He did not respond. On 31st August 2004, he was served with the second notice under Section 15(2)(i) of the 1980 Act. He was also advised that a Report was now going to be obtained. He did not respond. On 15th October 2004, he was provided with a copy of the Report. He did not respond. On 17th November 2004, he was provided with a copy of the Schedule from the Client Relations Committee. He did not respond.

Ms K

6.32 In November 2002, Ms K invoked the aid of the Complainers in relation to her instruction of Messrs Murray & Co,

Solicitors, which had become Messrs Atuahene Sim Murray & Co. The Complainers wrote to the First Respondent on 13th December 2002 to alert him to the situation and ask him to correspond with Mr Purves of Messrs Grant & Wylie, Solicitors, in connection with the transaction. Ms K wrote further about her concerns regarding the failures of the First Respondent. Said letter was copied to the First Respondent on 21st January 2003 for his comments. He did not reply.

6.33 A follow up letter was sent on 12th February 2003 asking him to respond within the next 14 days. He did not respond. A further follow up letter was sent on 28th February 2003. He replied by letter dated 21st March 2003 saying that he was looking into matters and would revert as soon as possible. He did not do so. A follow up letter was written on 3rd April 2003, requiring confirmation of the position within 7 days. He wrote on 11th April advising that he had written to Ms K suggesting a meeting to resolve matters. Ms K then indicated that she wished to proceed with a formal complaint.

6.34 A formal complaint letter was issued to the First Respondent on 21st August 2003 requiring his written response, any background information, his business file and details of any fees charged or to be charged and whether or not they had been paid all within 14 days. He did not reply. A notice under Section 15(2)(i)(i) of the 1980 Act was served on him on 6th October 2003. He was also served with a notice under Section 42C of the 1980 Act calling upon him to produce the business files relating to Mrs K. He did not respond and a second notice was served under Section 15(2)(i) of the 1980 Act on 5th November 2003 at which time, a further formal notice was served on him requiring his written response, background information, his business file or files and the details of any fees charged or to be charged and whether or

not they had been paid all within 21 days. He was provided with a further opportunity to respond on 23rd January 2004 with a deadline of 7 days. He did not reply and further notices under Section 15(2)(i)(i) and 42C were issued on 9th February 2004. A second notice under Section 15(2)(i)(ii) of the 1980 Act was issued on 9th March 2004.

6.35 The First Respondent wrote by letter dated 7th March 2004 and 10th March 2004 with his position in relation to Ms K and his previous failures to reply to The Law Society. He was written to on 22nd March 2004 and asked to confirm that Ms K's file had been mandated away from him and that he had no file to send. He did not reply and a follow up letter was sent on 1st April 2004. Another follow up letter regarding the file was sent on 27th April 2004 and as he had not replied, he was advised on 19th May 2004 that a Report was being obtained. The report and opinion was intimated to him on 2nd August 2004 but he did not respond. On 21st September 2004, he was provided with a copy of the schedule from the Client Relations Committee and advised that the Conduct Committee would consider this and any representation should be with the Complainers by Wednesday 20th October 2004. He did not respond.

RICHARD THORBURN, SOLICITOR - INSPECTION: 19/20 MAY 2003

6.36 The Complainers' inspectors attended to inspect the books and records of the practice of Richard Thorburn, Solicitors, 25 Newton Place, Glasgow on 19th and 20th May 2003. A prior inspection had highlighted inaccurate and insufficient record keeping, client ledgers not showing enough information, full purchase prices not being recorded and the books and records being kept in arrears. He had been advised

as to the proper records to be kept. On this inspection, the position remained the same. Information required from him after his previous inspection had not been produced.

6.37 There were two deficits on the client account. £111,601.09 was debited twice from the client bank account on 4th December 2002 for the client **1**. The bank re-credited the sum on both 18th and 20th December 2002. Payments amounting to £64,348 were made for the client **2** on 8th April 2002 but the funds of £65,000 to cover this were not lodged in the account until 10th April 2002. The Second Respondent was advised that the writing up of his books in arrears contributed to this situation and that the practice must cease. At the date of the inspection no entries for the firm had been posted to the cash book or ledgers for the month of May and the previous month end procedures had not produced balanced books with there being differences in the firm trial balances in respect of :

(a)	November 2002	25p
(b)	December 2002	£469.21
(c)	January 2003	£10.25
(d)	February 2003	£4.25
(e)	March 2003	£388.69
(f)	April 2003	£5,501.79

The Second Respondent was advised to make corrections to balance the books at each month end and to retain a full note of corrections to provide a full audit trail. He was paying staff wages in cash and keeping no formal records to show the position with regard to Income Tax and Pay as You Earn. He was advised that he must put records in place to show the true financial position with entries to a firm salaries ledger reflecting the payments made.

6.38 A transaction in relation to the client **3** was recorded under the ledger of **4**. The client balances were incorrectly shown as at 31st March 2003 in respect that £438.92 for client **7** was shown as a debit balance instead of a credit balance and a £500 unidentified debit from the client bank account in February was shown as a debit ledger balance while no ledger was opened to record the payment and it was not included in the March client listing. Several balances over £500 were held un-invested, namely:

(a) **8** £1,475.52: December 2001 to April 2002

(b) **9** £5,058.20: 29th November 2002 to date of inspection

(c) **10** £3,500: 12th December 2001 to 29th January 2003

(d) **11** £2,307.43: 9th December 2002 to date of inspection

(e) **12** £820: 10th September 2002 to date of inspection

(f) **13** £4,716.01: 27th August 2002 to date of inspection

Interest was paid to clients 11, 12 and 13.

6.39 Due to the practice of writing up the books in arrears, further errors existed. In relation to the client **16**, a cheque for £10,000 was received from the client on 18th December 2002 but the bank did not honour it. Settlement took place leaving a debit balance of £9,991.98. In relation to the client **17**, £4,924.50 was paid to the client on 19th November 2002. The cash statement showed that sum as being due but did not show that £5,000 had already been paid to the client on 4th November 2002. A debit balance of £4,896.70 was left. There were a number of instances where client's written

authority for payments to another client was not exhibited, namely :

23

8th May 2002	**25**	£3,000
8th May 2002	**26**	£5,200

Procedures for ensuring that deeds were timeously stamped and recorded with evidence of that on file were inadequate. The documentation to evidence the recording of a discharge for the clients **27** and **28** from Glasgow City Council and the client **16** from the Cheltenham & Gloucester was not exhibited although the deeds had been recorded.

6.40 The Second Respondent did not have in place procedures to comply with the money laundering regulations. For example, the files of **4**, **29** and **27** did not contain evidence regarding the client's identity or any reasons why identification was not considered necessary. Sums were provided by clients towards their transactions but evidence was not seen to show that the source was verified. Examples were **29** for whom £32,477 was received on 27th January 2003 and **27** and **28** for whom £4,983 was received on 12th March 2003. A credit entry on 12th December 2001 for **10** did not identify full details of the source of the funds. In respect of client **27** the Second Respondent forwarded copies of identification documents to the Law Society at a later date which were found to be satisfactory by the Law Society.

RICHARD THORBURN, SOLICITOR - INSPECTION: 20/21 OCTOBER 2003

6.41 The Complainers' inspectors attended on 20th and 21st October 2003 and continued to identify the same matters as

noted at previous inspections, namely insufficient and inadequate records, client ledgers not showing enough information, full purchase prices not being recorded, and the books and records being kept in arrears. It was not possible to ascertain the current financial position at the time of the inspection as the books had only been written up to September 2003. In some instances, it was noted that properties were being bought and sold again on the same day or multiple properties were bought within days of each other making the ledgers difficult to read to establish the correct position. In particular, it was difficult to establish whether or not deeds had been sent for registration. Due to insufficient ledger narrative, it was not clear which properties were being registered or on which properties, Stamp Duty was paid. At that time, the Second Respondent advised that he intended to merge his firm with that of the First Respondent in November 2003. He was advised that all of his books and records would require to be up-to-date and reconciled and the true position ascertained prior to client balances being transferred.

6.42 There were no records of staff wages, tax and Pay as You Earn and the Second Respondent continued to pay staff salaries in cash from his personal drawings. In relation to the firm's books and records, no entries had been posted for October 2003 and it was therefore not possible to determine the true financial position at the time of the inspection. The firm's trial balance had still not been fully squared and there were differences noted

(a) July 2003 £179
(b) August 2003 £181
(c) September 2003 £266.38

The trial balance contained a suspense account with £139.34 which had not moved since 10th May 2003. Many entries were completed throughout the books and records out of date order and were backdated. The ledger narrative was insufficient and extremely limited on almost all of the ledgers viewed during the inspection. Many entries simply stated received from client. The ledger for **30** showed entries but no dates. On many the conveyancing transactions had taken place with ledgers showing multiple purchases at the same time but not identifying which property a particular entry related to. The cash books contained entries that were completed in pencil and were not a permanent record.

6.43 It was noted that there were discrepancies within purchase prices paid. The full purchase price of a property was not shown through the records. The Second Respondent was asked to explain this and provide written confirmation from the Bank or Building Society for whom he acted as agent in the transaction confirming that they were aware that the full purchase price was not being passed on. This related to various clients where the Second Respondent acted for both parties

(a) **31** in the purchase of Property 16 from **32** which was an inter client transaction
(b) **31**, purchase of Property 17 from **33** which was an inter client transaction
(c) **34**, purchase of Property 18 from **35** which was an inter client transaction
(d) **36**, purchase of Property 19 from **37** which was an inter client transaction.

There were delays in forwarding deeds to the Keeper for registration or no evidence that deeds had been registered. It

some cases due to the lack of ledger narrative, it was not possible to identify what property was being registered. In particular

(a) **<u>38</u>**, purchase of Property 20, 4 Flats, 8th June 2001, showed a credit of £132 on the ledger since 3rd July 2001 with no indication that recording dues had been paid.

(b) **<u>41</u>**, purchase of Property 21 on 16th January 2003 with a Royal Bank loan of £34,175 where a credit of £110 remained on the ledger with no indication that recording dues had been paid.

(c) **<u>25</u>**, purchase of Property 22, Flats 2/1 and 2/2, for £75,000 each on 24th December 2002 where the Stamp Duty for both flats was not thereafter paid until 3rd July 2003 and there was no indication that the recording dues had been paid.

(d) **<u>42</u>**, sale of Property 23 on 15th August 2003 where £41,842.30 was paid to **<u>43</u>** on 15th August 2003 to redeem the mortgage outstanding on the property. The ledger disclosed a credit balance of £66 and no indication that the discharge had been recorded.

(e) **<u>45</u>**, purchase of 4 properties, Property 24 on 20th October 2000, Property 25 on 20th October 2000, Property 26 on 1st November 2000 and 3rd Property 27 on 6th November 2000 where the recording dues were not paid until 31st July 2003.

(f) **<u>46</u>** in the re-mortgage of Property 28 on 4th July 2003 with a Natwest loan of £212,470 where the redemption of £69,321.43 was paid to the Yorkshire Building Society on 22nd July 2003 and no evidence was shown that either the Standard Security or the discharge had been recorded.

(g) **33**, sale of Property 17 on 18th July 2003 to **31**, where the loan from the Allied Irish Bank was redeemed on 18th July 2003 but there was no evidence shown that the discharge had been recorded.

6.44 A significant number of client credit balances were noted that should have been either disbursed timeously or invested.

(a) **34** £720.96 9th September 2003 to date of inspection

(b) **49** £35,000 24th September 2003 to date of inspection

(c) **50** £209,363.24 24th September 2003 to date of inspection

(d) **51** £807.38 6th June 2003 to date of inspection

(e) **52** £681.07 11th April 2003 to date of inspection

(f) **53** £2,160.50 25th September 2003 to date of inspection

(g) **Mr & Mrs 54** £985 23rd September 2003 to date of inspection

(h) **55** £665.36 31st October 2002 to date of inspection

(i) **56** £625 9th August 2003 to date of inspection

(j) **57** £2,372.43 19th December 2002 to date of inspection

(k) **12** £855 10th September 2002 to date of inspection

(l) **13** £4,661.01 27th August 2002 to date of inspection

(m) **58** £20,338.77 24th September 2003 to date of inspection

(n) **59** £2,734.08 17th September 2003 to date of inspection

(o) **60** £978.30 25th July 2003 to date of inspection

(p) **61** £70,081.73 26th September 2003 to date of inspection

(q) **62** £1,062.63 8th August 2003 to date of inspection

(r) **63** £1,148.71 9th July 2003 to date of inspection

In respect of clients 52, 54, 57, 12, 13 and 62 the Second Respondent accounted to the clients for interest on the sums held.

Client's written authority was not provided for payments made to another client

(a) **37**

3rd July 2003 **68** £48,275

(b) **69**

17th Sept 2003 **70** £3,235.77

(c) Mr and Mrs **46**

9th July 2003 **72** £143,078.57

6.45 Inadequate procedures to comply with the money laundering provisions continued to be a cause of concern. There appeared to be either no identification or no reasons noted as to why identification was unnecessary in respect of the clients **73**, **74**, **53**/**75** and **76**. Insufficient details were produced to show the source of funds received for clients or verification of that source. In particular, for the clients

(a) **73** £11,000 received on 15th May 2003

(b) **74** £23,125 received on 11th April 2003

(c) **53/75** £10,000, £12,000 and £6,760.50 all received on 25th September 2003

(d) **77** £59,320 received on 6th May 2003 and £12,432.50 received on 11th Sept 2003

(e) **78** £56,500 received on 18th July 2003 and £35,000 received on 24th Sept 2003.

CORRESPONDENCE FROM INSPECTION OF OCTOBER 2003

6.46 After the inspection in October 2003, the Second Respondent was written to on 12th November 2003 with full details as above condescended upon regarding the matters brought to his attention at the conclusion of the inspection and those outstanding from the previous inspection. He was asked to provide explanations regarding the records, forward copies of documentation as specified, forward client's agreements, produce original Form 4 documentation regarding transactions, confirm that his books had been fully brought up-to-date with posting done timeously, to correct and identify corrections in relation to the trial balances, to amend ledger narratives, to keep cash book entries in date order, to resolve un-invested balances and explain the action he intended to take about them, to identify the source of funds and to provide identification of clients *inter alia*. He did not reply.

6.47 Follow up letters were sent to him on 28th November 2003, 12th December 2003 and 26th January 2004. The Second Respondent sent an acknowledgment on 3rd December 2003 indicating that he would reply. On 15th January 2004 the

Second Respondent sent a further letter but did not address the specific issues detailed in the Complainer's letter of 12th November 2003.

RICHARD THORBURN, SOLICITOR - INSPECTION: 17th-19th FEBRUARY 2004

6.48 The inspectors returned on 17th February 2004. The staff wages continued to be paid in cash from personal drawing and no records were being kept. All records for the firm were squared up to 30th November 2003, the trial balance at 31st December 2003 had a difference in it and only the bank reconciliations had been prepared for 31st January 2004. The inspectors identified the difference in the trial balance and the inspection was carried out using 31st December 2003 as the date. By the last day of the inspection, the month end for January had been squared and postings had been completed up to 12th February 2004. Intimation had been given by the Second Respondent that the firm of Richard Thorburn ceased as at 31st October 2003. The records disclosed that that was not the case and that it continued to trade. A bank error resulted in an apparent deficit on 31st December 2003 for £27,246.31 on the client account. The suspense account retained the credit balance of £139.34 which had not been dealt with. Two errors made by the bank were not identified due to poor record keeping procedures, namely the under-debiting of a cheque for £99,000 shown as £990 and a duplicate CHAPS payment made by the bank on 2nd December 2003.

6.49 The client records for the firm remained incomplete and inaccurate. Various balances were held for periods where it would be considered that they should have been invested to earn interest for the client. For example,

(a) **31** £75,404.19 from 20th November 2003 to 19th December 2003

(b) **79** £500.00 since 29th October 2003

(c) **80** £52,415.00 from 24th November 2003 to 19th January 2004

(d) **81** £10,810.50 from 6th October 2003 to date of inspection

(e) **64** £9,000.00 from 17th December 2003 to date of inspection

(f) **82** £1,486.00 from 25th November 2003 to date of inspection

(g) **83** £4,000.00 from 27th October 2003 to date of inspection

(h) **13** £4,666.01 from 27th August 2000 to date of inspection

(i) **84** £79,582.08 from 13th January 2004 to date of inspection

(j) **85** £16,750.00 from 9th January 2004 to date of inspection

In connection with clients **80**, **64** and **13** the Second Respondent accounted to the clients for interest on the sums held.

6.50 A number of instances were noted where the registration of deeds was still outstanding or had been late. The Disposition for 4 flats bought at Property 20 for the client **38** in June 2001 remained unregistered, the purchase of Property 29 for **86** on 11th December 2003 with a mortgage with Preferred Mortgages, the sale of Property 23 for the client **42** which settled on 15th August 2003 with the discharge in respect of the Abbey National Loans remaining unregistered, the sale of property for the client **33** in July 2003 with a discharge of a

loan from the Allied Irish Bank, the sale of Property 30 for the client **89** which settled in November 2003 with a redemption of a Preferred Mortgages loan had no evidence of the registration of the relevant deeds. The discharge of the Royal Bank of Scotland loan redeemed on 12th December 2003 for the client **90**, the discharge for the Northern Rock Building Society loan redeemed on 12th December 2003 for the client **91**. The Disposition and Standard Security in favour of the Halifax plc for the purchase Property 31 on 5th September 2003 for the client **93** was unregistered and the Disposition and Standard Security for the purchase of the first floor flat at Property 32 which settled in October 2003 for the client **94** were unregistered.

6.51 The previously raised issued regarding outstanding recording dues and delay in sending deeds for recording as above condescended upon had not been resolved and the position appeared to be the same. The remaining issues regarding the money laundering regulations as above condescended upon remained outstanding. No steps had been taken to amend the insufficient narrative in the clients' ledgers above condescended upon. Identification of properties on the ledgers remained difficult and in some cases, impossible.

ATUAHENE, SIM, MURRAY & CO - INSPECTION: 22nd-24th APRIL 2003

6.52 Due to previous concerns regarding the First Respondent's failure to adhere to the Accounts Rules, the Complainers' inspectors attended at the firm of Atuahene, Sim, Murray & Company for an inspection on 22nd-24th April 2003. The inspection was difficult due to the prolonged absence of the cashier, the inability of the First Respondent to access the accounting system and his unwillingness to allow direct

access to any client correspondence files. The accounting records were found to be extremely unreliable and an apparent shortage was identified. There were numerous delays in stamping and recording deeds and there was no effective system in place to ensure that this was done timeously. It is accepted that the practice acquired, Murray & Co, had inherent accounting difficulties which caused the First Respondent problems after the acquisition.

6.53 The record keeping was so poor that it was not possible to ascertain the true position of the client accounts. There were balances and records from the previous firm Atuahene, Sim & Company which had not been transferred over. Ledger cards for clients showed entries without any narrative and showed disbursement of funds on a number of occasions days before receipt of funds to cover payment. The client bank reconciliation of 31st March 2003 was unreliable, it did not reconcile to the nominal ledger balance, the list of outstanding cheques was inaccurate and the list of outstanding lodgements bore no resemblance to the true position. There appeared to be a shortage of £116,447.21 as at 31st March 2003. The First Respondent was required to lodge £7,000 immediately into the client bank account, transfer all balances in the name of Atuahene, Sim & Co to the current firm, bring all postings up-to-date, post all adjustments from the previous bank reconciliation and provide a full list of all client balances, invested funds, firm's trial balance, client bank reconciliation and a statement of surplus/deficit to disclose the true financial position.

6.54 Specific matters were drawn to the First Respondent's attention. A payment of £16,000 was made to the client **95** on 1st January 2003 but the sale proceeds received for him from **96** on that date amounted to only £1,400 and a further

payment of £12,600 was not received until 9th January 2003 with the balance on 13th January 2003. The property at Property 33 was paid for on 31st January 2003 on behalf of the client **97** while, due to a misposting, it appeared that funds were not received until 16th February 2003. A client account with the Royal Bank of Scotland was closed on 6th January 2003 but was shown in the trial balance records as overdrawn. The funds control was £106,912.12 but the invested funds printout stated £70,171.16, the balance for the client **98** being understated by £36,760.36. Two instances were noted where it appeared that fees had been taken prior to the fee notes being rendered. In many cases, it was noted that identification was not seen to comply with the money laundering regulations and the source of incoming funds was not adequately recorded.

6.55 A number of matters came to light in the course of the inspection which revealed a lack of effective systems within the office leading to inaccurate posting entries and delays and apparent delays in the stamping and registration of deeds. Property 8 was sold on behalf **100** with two Bank of Scotland loans redeemed on 13th November and 19th November 2002 but the discharges were not registered until 10 April 2003, a delay of five months. A property in Property 34 was sold on behalf of the client **101** and the Yorkshire Building Society loan appeared due to a posting error to have been redeemed on 19th March 2003 although the sale proceeds were not received until 25th March 2003. Repayment of a mortgage in respect of Property 6 on behalf of **102** was made to the Kensington Mortgage Company on 27th January 2003 but the discharge was not registered until the 13 May 2003, partly due to difficulties with the Kensington Mortgage Company. A loan in respect of Property 7 was redeemed on behalf of the client **103** in about November 2002, but it appeared due to an

error in the accounting system that the discharge had not been registered. The purchase of Property 10 on 6th February 2003 on behalf of the client **104** showed a delay in the stamping and recording of the Disposition as the client instructed the firm to transfer the title to his son. All relevant deeds were available to do that but no action had been taken. In relation to the purchase of Property 12 on 10th February 2003 for the client **105**, the Disposition and Standard Security for the Clydesdale Bank loan were not recorded and the Disposition had not been stamped. In relation to the purchase of Property 13 on 8th January 2003 for the client **107**, the source of the opening credit balance of £20,000 was not shown and the £30,000 received on 6th January 2003 was erroneously lodged into the firm bank account and then corrected on 8th January 2003.

6.56 The Chief Accountant wrote to the First Respondent on 28th April outlining the concerns and requiring remedial action and explanations in relation to the matters above condescended upon. The First Respondent replied on 4th June 2003 but the Complainers were unable to ascertain whether the firm's assets exceeded its liabilities and continued to be concerned about a potential shortfall on the client account in the sum of £116,000. An interim Judicial Factor had been appointed on 22nd May 2003. After investigation, it was confirmed that there was no shortage on the client account and that any apparent shortfall was as a result of poor book keeping. The total cost of interim Judicial Factory was £93,840.00. This was allocated between the First Respondent and Mrs Isobel Anne Murray respectively as £66,090 and £27,750. The Interim Judicial Factor was discharged on the basis of a payment of £40,000 by the First Respondent towards the cost of the Judicial Factory with agreement being reached that the remaining balance would be the subject of a

moratorium for 12-18 months from the date of the first payment. The appointment was recalled on 5th November 2003 and the First Respondent recommenced practice on his own account in his existing firm.

ATUAHENE, SIM, MURRAY & COMPANY - INSPECTION: 17th and 18th FEBRUARY 2004

6.57 The interim Judicial Factor had maintained the firm and client records up to 31st October 2003, the financial year end. The First Respondent then took over, keeping his records from that date. On 17th February 2004 the inspectors returned. The records produced were stated as reconciled to 30th November 2003. They had not been reconciled to 31st December 2003. No postings had been made in 2004. The November reconciliations had been carried out only a few days before 17th February 2004 and the December postings throughout the night over a 13 hour period from 16th to 17th February 2004. It was impossible to ascertain the true financial position of the Firm. There appeared to be a £200,000 shortage as at 31st December 2003 but the postings could not be relied upon as the First Respondent still did not know how to use the computer system. A check on larger balances by the inspectors reduced the discrepancy. At the end of the inspection, while summing up with the First Respondent, he became distressed, broke down and was unable to continue with the meeting.

6.58 After the inspection, the First Respondent tried to resolve the situation and corresponded with the Complainers. His client balances were inaccurate showing the balance for the client **108** at £47,010.19 to credit instead of £70 to credit from 15th December 2003, the balance for **109** at £46,940.19 credit when it should have been nil from 12th December 2003, the

balance for the client **<u>110</u>** at £20,083.51 in credit when it should have been £258.79 in credit from 15th December 2003 and the balance for the client **<u>111</u>** at £1,678.04 in credit when it should have been nil from 18th December 2003. Debit entries were in some cases posted as credit entries. A cheque issued on 8th December 2003 on the account of the client **<u>112</u>** was omitted leaving an apparent credit balance of £93,000 which should have been nil from 8th December.

6.59 The firm's trial balance as at 30th November 2003 did not show the true financial position of the firm. A Murray & Co client account appeared to have a deficit of £123.30. A firm loan account at £238,319.55 had not been reconciled and payments towards this loan had not been deducted due to insufficient funds in the firm bank account. The true figure as at 30th November 2003 should have been in the region of £248,300. The VAT return for 31st October 2003 was still held and unpaid showing a remittance due of £2,589.53. The trial balance showed negative income during the month of November 2003 but the fee note file and fee note book showed that some fees were received in the region of £1,560 net of VAT. The firm's liabilities appeared to be in excess of £385,000 and the bank had stopped honouring most firm account payments.

6.60 There were a number of uncleared cheques. There were a number of credit balances in excess of £500 which were held un-invested,

(a) **<u>113</u>** £14,121.02 from about 31st December 2003 to 3rd March 2004.

(b) **<u>114</u>** £26,950.10 from 12th November 2003 to 12th February 2004.

(c) **117** £5,000.00 from 31st December 2003 to 24th January 2004.

(d) **118** £15,000.00 from 18th November 2003 to 15th February 2004. There was authority from the client for the funds not to be invested.

Others could not be verified due to lack of accurate printouts

(e) **120** £7,172.17

(f) **121** £4,166.22

(g) **122** £12,316.46

(h) **123** £2,638.00

Three cheques paid to banks or building societies had not been designated and two others were designated at the bottom of the cheque. A payment due to the Q & LTR remained unpaid since the previous inspection. The account certificate produced to 30th November 2003 showed the wrong figure for client balances. If it had been recorded correctly, it would have produced a deficit. The due to firm section did not include a GLG bank account of £1,090. The due by the firm section showed the same bank overdraft figure at both dates which was incorrect.

At the time of the inspection the postings were wrong and the true position only became clear after the errors were corrected.

6.61 In respect of client **124** funds of £265,211.73 had been received by the firm on 2nd April 2003 but no detail of where they came from was recorded in the ledger. Property 14 was purchased for the client **125** on 14th November 2003 with a loan from Scottish Widows. It could not be ascertained at the time of the inspection if the Stamp Duty was paid or that the Disposition and Standard Security had been recorded.

Evidence produced subsequent to the inspection shows that the deeds were recorded in April 2004. In relation to the sale of Property 9 for the client **126** on 14th November 2003, no evidence was available at the time of the inspection that the Discharges of the 2 loans had been recorded. Evidence produced subsequent to the inspection shows that the discharges were recorded in January 2004. The purchase for the client of Property 15 on 13th November 2003, disclosed receipt of a sum of £13,607.15 on 7th November 2003 but not the source of that income. At the time of inspection, the Disposition had not been sent for recording nor the Discharge from the seller's agent which was still held on file with their cheque. The deeds were recorded on 21 April 2004. The First Respondent was written to on 1st March 2004 with details of the action that he required to take in relation to the findings.

6.62 As a result of this the First Respondent employed a new legal cashier to reconstruct the accounts and to address the accounting problems highlighted in the inspection.

ATUAHENE, SIM, MURRAY & CO, SOLICITORS - INSPECTION: 29th and 30th MARCH 2004

6.63 The Complainers' inspectors returned on 29th and 30th March 2004 to ascertain if the First Respondent had addressed the issues raised in their letter of 1st March 2004. They established that the records for the firm were still not up-to-date for January, February and March 2004 and postings were at least one month in arrears. The First Respondent and his wife had made payments on behalf of the firm but those had not been recorded through the firm's books. There was no VAT paid since 1st November 2002. The Pay as You Earn account had not been updated since October 2003. The firm's

liabilities stood at £387,076 with fee income from 1st November 2003 to 29th February 2004 of £18,500.

6.64 The client ledger narratives were insufficient to fully explain the individual transactions and contained inaccuracies. For the client **128**, there were two entries recorded as "From you" on 14th January 2004 for £14,000 and £37,219. The narrative should have stated that these sums were paid by three bank drafts and provided details of the banks and the sums involved. These details should have been included that Property 35 was being purchased. Neither account showed the address of the clients. The entry for **129** of 12th February 2004 read "Purchase £71,506.03" but should have read as a Royal Bank of Scotland redemption. The account for **130** showed 13.02.04 purchase £107,000 but did not identify that Harper McLeod were the other Solicitors involved. No addresses were recorded for the clients **131** or **132** nor details of the properties being sold. Account headings showed inaccurate details of clients such as **133** and **134** where the account should have been in the sole name of **133** and **135** and **136** where the account should have been in the name of **136** only. Client balances still required attention. The ledger account **131** showed a credit balance of £48,248.04 at 27th March 2004 when it should have been nil. There remained an account for “Murray & Co unpresented cheques” with a credit balance of £6,130.80 which required to be allocated to the correct client ledger account. Many small credit balances were noted as held which appeared to resemble recording dues and a number of old credit balances remained which had not been dealt with. Client bank reconciliations contained old outstanding cheques which had not been cancelled or written back to the client ledger. There were no quarterly reconciliations for invested funds. Interest had not been posted on invested funds up-to-date and a balance of

£46,711.80 was still showing for **108** although it had been uplifted on 12th December 2003.

6.65 Many client balances in excess of £500 had not been invested,

(a) **120** £7,172 from 11th November 2003 to 20th April 2004.
(b) **121** £4,166 from 5th November 2003 to 14th May 2004.
(c) **122** £12,316 from 25th November 2003 to 14th May 2004.
(d) **139 (123)** £2,638 from 13th November 2003 to 1st April 2004.

Cheques paid to banks and building societies on a number of occasions had not been designated and in other cases, client details were recorded on cheques after payment. Instances were noted of late or non-stamping or recording of deeds. In relation to the purchase for **112** of Property 36 and sale of Property 37 on 6th December 2003 it appeared at the date of the inspection that a Disposition and Standard Security had not yet been sent for recording nor had the Discharge. The Disposition in relation to the purchase of Property 35 on 19th January 2004 for **128** was not sent for recording until 29th March 2004. The sale of Property 38 on 19th January 2004 and purchase of Property 39 on 6th February 2004 for the client **140** showed the Discharge, Disposition and Standard Security not yet sent for recording.

6.66 No proper money laundering procedures were in place for the firm. No fact sheets were prepared and no proof of identity was seen on files viewed. No reasons were recorded on these files to explain why proof of identity was not required. Funds

received by banker's draft did not appear to have been verified back to source to confirm who the income was received from. Three bank drafts for **128** received on 14th January 2004 appeared to have come from various family members but were not checked. A bank draft of £69,500 for **130** received on 12th February 2004 had not been verified. The First Respondent had taken some steps to implement money laundering procedures but these did not appear to be effective or consistently applied.

THE PRACTICAL LAW PARTNERSHIP - INSPECTION: 5th-8th JULY 2004

6.67 Due to the Complainers' findings in relation to the firms Richard Thorburn and Atuahene, Sim, Murray & Company, the inspectors returned to undertake an inspection of The Practical Law Partnership in which both Respondents were partners from 5th to 8th July 2004. A special inspection had been authorised by the Guarantee Fund Committee on 1st July 2004. The notice of the inspection was posted out recorded delivery on Friday 2nd July 2004 intimating an inspection to take place on Monday 5th July 2004. At the time of the inspectors' arrival on the morning of Monday 5th July 2004 the notice had not been delivered to the First and Second Respondents. As a result the First and Second Respondents objected to the inspection proceeding and it was agreed that the inspectors would return on 6th July when the records would be made available.

6.68 Serious concerns were noted during the inspection. The purchase of Property 40, for **85**, **86** for whom the Second

Respondent acted was highlighted. A Bank of Scotland loan of £337,500 had been obtained on 8th January 2004 in connection with the purchase and on 9th January 2004, £320,750 was paid to Lyons Laing, Solicitors, being the price less the balance of £199,000 secured by a bond. No Disposition had been received and no missives concluded. The Second Respondent had written to the Bank of Scotland on 24th December 2003 advising that **86**'s equity contribution of £137,500 was in place without recourse to borrowing and was now in the hands of the vendors. This was not the case. **85** then went into the hands of liquidators and the Bank of Scotland had intimated that they were holding the Second Respondent's firm, Richard Thorburn liable for any losses. As the client's funds had been paid without concluding missives or a Disposition, the inspectors were of the opinion that a deficit had arisen on the client bank account which at 31st May 2004 appeared to amount to £321,427.72. The First Respondent was unaware of this transaction until it came to light at the inspection.

6.69 In relation to the client **34**, the Second Respondent purchased Property 41 on 25th June 2004 with a bridging loan from the Bank of Scotland pending the receipt of loan funds from Birmingham Midshires. The Second Respondent advised the Bank of Scotland that the price was £75,000 but the price shown on the Disposition was £65,000. In relation to the purchase of Property 42, the transaction settled on 23rd June 2004 at a price of £310,000. A bridging loan from the Bank of Scotland was requested, it did not materialise and a large deficit arose on the client bank until the loan funds from GNAC were received on 25th June 2004. The paperwork sent to the Bank of Scotland and the offer of loan showed the price as £365,000. Due to this there was a deficit on the

client bank account between 23rd June 2004 and 25th June 2004 of up to £294,621.60.

6.70 The inspectors saw transactions in respect of which deeds had not been recorded timeously. It was noted that in relation to the clients **144** and **145**, a credit balance of £2,502.01 had been held since 12th January 2004 following the sale of Property 43 and at the date of inspection there was no evidence available to the inspectors that the discharge of the loans in respect of the property had been recorded. The Disposition and discharge were recorded on 3rd February 2004. Due to the poor systems in place for clients **144, 146, 147, 148** and **149** of the Second Respondent it appeared to the inspectors at the time of the inspection that various deeds had not been recorded timeously.

6.71 At the time of the inspection, the firms of Atuahene, Sim, Murray & Company and Richard Thorburn had been merged to form The Practical Law Partnership. The records for the two firms had not been attended to in terms of the previous requirements of the Complainers and were incomplete. The client bank account for Richard Thorburn and Atuahene, Sim, Murray & Co had not been included in the firm trial balance for The Practical Law Partnership prepared at 30th April 2004. The client bank account of Richard Thorburn had not been reconciled since 30th April 2004. Several loans of the new firm had not been included in the firm's trial balance at 30th April 2004 and the invested funds balances were not included in the firm's trial balance as at 30th April 2004. Income received for the year had not been included in the firm's trial balance as at 30th April 2004 and the list of balances held by both partners at 31st May 2004 was incorrect in that two errors resulted in the list being £1,683.33 understated. There were still no records in place regarding

staff salaries and the Second Respondent advised that he had never paid Pay as You Earn. The VAT records were not up-to-date. Previously uninvested balances on the ledgers of Richard Thorburn, Solicitor, had still not been attended to. There had been no improvement in relation to compliance with the money laundering regulations. There was no evidence of identification of the client **146** nor information regarding the source of £20,017 paid into the client bank on 2nd June 2004. There was no evidence of identification for **148** nor was the source of £45,525 received from the client on 14th June 2004 evidenced.

The First Respondent was not involved in any of the transactions which caused concern to the Complainers at this inspection.

INDEMNITY INSURANCE

6.72 By 5th April 2004, both firms, Atuahene, Sim, Murray & Company and Richard Thorburn were operating from the same premises at Argyll Arcade, Glasgow. The staff from the firm of Richard Thorburn manned the office and both firms continued to trade individually under their old firm names although they had been reported to have ceased on 31st October 2003. The First Respondent, on occasions, added to his headed notepaper the words "incorporating The Practical Law Partnership". The receptionist answered the telephone identifying the firm as The Practical Law Partnership. The First Respondent had advised the Complainers that a Partnership Agreement had been prepared and signed but that no starting date had been decided. No client bank account had been opened for the new partnership although there was an overdrawn firm current bank account at limit of overdraft and a £20,000 loan in the name of the partnership. The said

loan fund was used by the First Respondent towards making part payment of his share of the cost of the appointment of the Interim Judicial Factor prior to recall of the appointment on 5th November 2003. No separate partnership records were in place.

6.73 The Professional Indemnity Insurers issued proposal forms to Richard Thorburn, Solicitor, and Atuahene, Sim, Murray & Company on 26th September 2003. They received a fax from the First Respondent on behalf of himself and the Second Respondent dated 22nd October 2003 advising that they were forming a partnership between them. The insurers wrote to both Respondents on 27th October 2003 presenting the options open to them and issued a proposal form on 4th November 2003 in the name of The Practical Law Partnership (erroneously referred to on the form as The Practical Partnership). On 13th November 2003, they issued a premium request letter plus a letter noting that the previous practices were now under run off cover.

6.74 The Respondents paid the master policy premium for the new practice on 28th November 2003. On 7th April 2004, the Chief Accountant wrote to the insurers advising that the Complainers could not confirm the position regarding the operation of the three firms at that date. The insurers wrote to the Respondents individually seeking clarification and a meeting took place in Edinburgh between the Respondents and J Scollick of the insurers on 28th April 2004. No insurance cover was in force for the two previous firms from 1st November 2003 to 23rd April 2004 and they were advised of the cost of reinstating their individual master policy cover. They completed proposal forms. They advised that they would revert to the insurers with their decision on proceeding by 28th April 2004. As nothing was heard from them, the

insurers faxed both Respondents asking for instructions on 29th April 2004. No cover for the previous firms was arranged by the Respondents.

IMMIGRATION SERVICE

6.75 On 28th October 2004 the Office of the Solicitor to the Advocate General for Scotland wrote to the Complainers with a copy of a letter received from the First Respondent dated 11th October 2004. The letter was written by the First Respondent on behalf of a client, on headed notepaper of the Practical Law Partnership and signed by him on behalf of that practice. At that time the First Respondent did not hold a practising certificate and was suspended from practice due to his sequestration on 23rd August 2004. The First Respondent by his actions represented that he was a solicitor while he was not and while he was uninsured. He did not charge a fee for this. In addition the Second Respondent's practising certificate was suspended on 7th October 2004 at which time the Firm of the Practical Law Partnership had ceased to trade.

7. Having taken account of all the evidence led and also having heard submissions from the Complainers and the First and Second Respondents, the Tribunal made the following findings of Professional Misconduct, either singly or in cumulo;

7.1 Between 5th May 2004 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers about the complaint of Ms A on behalf of her mother, Client 120.

7.2 Between 28th May 2004 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable

enquiries of the Complainers into the complaint of Mr B or to comply with Notices served upon him.

7.3 Between 19th April 2004 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers into the complaint of Mr & Mrs C or to comply with Notices served upon him.

7.4 Between 5th November 2003 (the date the interim Judicial Factor was discharged) and 26th January 2004, the First Respondent failed to implement a Mandate sent to him on behalf of the client, Mr D by Messrs Robertson Paul, Solicitors, or to reply to letters and telephone calls in respect of that Mandate.

7.5 Between 12th December 2003 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers into the complaint of Mr D or to comply with Notices served upon him.

7.6 Between 2nd February 2004 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers into the complaint of Mr & Mrs E or to comply with Notices served upon him.

7.7 Between 5th November 2003 (the date the Interim Judicial Factor was discharged) and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers into the complaint of Mr F or to comply with notices served upon him.

7.8 Between 5th November 2003 (the date the Interim Judicial Factor was discharged) and 13th July 2005 (the date of the Complaint), the First Respondent without reasonable excuse, failed to reply to

correspondence from the Complainers about the complaint of Mrs G or to comply with formal notices.

7.9 Between 19th December 2003 and 11th October 2004, the First Respondent failed to implement a Mandate sent to him by Messrs Ferguson Dewar, Solicitors, on behalf of the client Mrs G or to reply to their letters or telephone calls in connection therewith.

7.10 Between 25th February 2004 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers into the complaint of Mrs G about the failure to implement the Mandate or to comply with Notices served upon him.

7.11 Between 5th November 2003 (the date of the discharge of the Interim Judicial Factor) and 21st April 2004, the First Respondent failed to arrange effective registration of the title of his client, Client 124 to Property 3 and the security in relation to the loan to Client 124 from The Royal Bank of Scotland.

7.12 Between 21st May 2004 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers into the complaint of Client 124 or to comply with Notices served upon him.

7.13 The First Respondent having been provided with a signed Assignation of lease on the basis that he would register the Assignation and deliver an extract to Messrs R & R S Mearns for the client Mr I, failed to do so and repeatedly failed to reply to letters or telephone calls of his fellow Solicitor.

7.14 Between 9th July 2004 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers into the complaint of Messrs R & R

S Mearns on behalf of their client Mr I or to comply with Notices served upon him.

7.15 Between 22nd June 2004 and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply to the reasonable enquiries of the Complainers, into the complaint of Ms N of Campbell Boath, Solicitors, or to comply with Notices served upon him.

7.16 Between 13th December 2002 and 22nd May 2003 (the date the Interim Judicial Factor was appointed) and between 5th November 2003 (the date the Interim Judicial Factor was discharged) and 13th July 2005 (the date of the Complaint), the First Respondent failed to reply timeously to the reasonable enquiries of the Complainers into the complaint of Mrs K and on occasions failed to reply at all and failed to comply with Notices served upon him.

7.17 Between 25th July 2001 and 13th May 2004, whilst acting as a sole practitioner, the Second Respondent:

a) failed to maintain accurate or adequate records to show all his dealings with client monies including separate identification of the funds of each individual client, accurate and complete lists of client balances, written authorities for payments made all as stated at paragraphs 6.38, 6.39, 6.42 and 6.44, in breach of the Solicitors (Scotland) Accounts, etc, Fund Rules 2001. (The Accounts Rules 2001) Rules 6, 8 and 9.

b) in April 2002 had a deficit on his Client account as stated at paragraph 6.37 in breach of the Accounts Rules 2001, Rule 4.

c) repeatedly failed to invest client funds in excess of £500 held for periods of up to eighteen months in interest bearing client

accounts as listed at paragraphs 6.38, 6.44 and 6.49 in breach of the Accounts Rules 2001, Rule 11.

d) failed to comply with the terms of the money laundering regulations, failed to set up and operate systems for identification of clients and the source of clients' funds and failed to properly identify clients, or record reasons for not doing so, or the source of their funds as stated at paragraphs 6.40, 6.45 and 6.51. In breach of the Accounts Rules 2001, Rule 24

e) consistently failed to maintain the books and accounts of the firm in a way which showed the true financial position of the firm and failed to balance his books as stated at paragraphs 6.37, 6.41, 6.42 and 6.48 in breach of the Accounts Rules 2001, Rule 8.

f) repeatedly delayed or failed altogether to stamp, record or register timeously Dispositions, Standard Securities and Discharges as stated at paragraphs 6.43 and 6.50.

7.18 Between 12th November 2003 and 17th February 2004, the Second Respondent failed to reply to the reasonable requests of the Complainers for information about the management of his client funds and his firm accounts or to attend to their requirements to bring his business accounts into order.

7.19 Between 15th November 2002 and 22nd May 2003 (the date when the Interim Judicial Factor was appointed) and between 5th November 2003 (the date when the Interim Judicial Factor was discharged) and 13th May 2004, whilst acting as a sole practitioner, the First Respondent:

a) failed to maintain accurate and adequate records to show his dealings with client monies and to identify the funds of each individual client, maintain a surplus on the client account,

reconcile his client bank account, reconcile his client investment accounts, prepare and retain an accurate extract of his client balances and a surplus statement and to designate cheques as stated in paragraphs 6.52, 6.53, 6.54, 6.58, 6.61, 6.64 and 6.65 in breach of the Accounts Rules 2001, Rules 4, 8, 9 and 10.

b) repeatedly failed to invest client monies in excess of £500 in interest bearing client accounts as stated at paragraphs 6.60 and 6.65 in breach of the Accounts Rules 2001, Rule 11.

c) failed to maintain the books and accounts of his firm in an accurate and adequate fashion to show the true financial position of the firm and failed to balance his books on a regular basis as stated in paragraphs 6.53, 6.56, 6.57, 6.59 and 6.63 in breach of the Accounts Rules 2001, Rule 8.

d) repeatedly delayed or failed to stamp, record or register timeously the Dispositions, Standard Securities and Discharges listed at paragraphs 6.55, 6.61 and 6.65.

e) failed to comply with the terms of the money laundering regulations, failed to set up and operate systems for the identification of clients and the source of clients' funds and failed to properly identify clients, or record reasons for not doing so, or identify the source of their funds as stated at paragraphs 6.54, 6.61 and 6.66 in breach of the Accounts Rules 2001, Rule 24.

7.20 Between 14th May 2004 until 8th July 2004 while in partnership together the First and Second Respondents:

(a) failed to maintain accurate and adequate records to show their dealings with client monies and to identify the funds of each individual client, maintain a surplus on the client account, reconcile their client bank accounts, reconcile their client

investment accounts, prepare and retain an accurate extract of client balances and a surplus statement as stated in paragraph 6.71 in breach of the Accounts Rules 2001, Rules 8 and 9.

(b) had a deficit on their client account of £294,621.60 on 23rd June 2004 as stated at paragraph 6.69 in breach of the Accounts Rules 2001, Rule 4.

(c) consistently failed to maintain the books and accounts of the firm in a way which showed the true financial position of the firm and failed to balance their books as stated in paragraph 6.71 in breach of the Accounts Rules 2001, Rule 8.

(d) repeatedly delayed or failed altogether to stamp, register or record timeously Dispositions, Standard Securities and Discharges as stated in paragraph 6.70.

(e) failed to comply with the terms of the money laundering regulations, failed to set up and operate systems for the identification of clients and the source of clients' funds and failed to properly identify clients, or record reasons for not doing so, or identify the source of their funds as stated at paragraph 6.71 in breach of the Accounts Rules 2001, Rule 24.

7.21 Between 5th November 2003 and 14th May 2004, the Respondents failed to comply with the Solicitors (Scotland) Professional Indemnity Insurance Rules 1995 in that the First Respondent continued to operate the firm of Atuahene, Sim, Murray & Company and the Second Respondent continued to operate the firm of Richard Thorburn without professional indemnity insurance in place.

8. The case then called on 9th October 2009 and the Tribunal repelled the Second Respondent’s plea of oppression and announced its decision. The

Fiscal lodged previous Findings of professional misconduct against the First Respondent. The case was adjourned until 24th November 2009 for submissions in mitigation and submissions on expenses. When the case called on 24th November 2009 the Tribunal heard mitigation and heard submissions from parties on expenses.

9. Having considered the submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 24th November 2009. The Tribunal having considered the Complaint dated 13th July 2005 at the instance of the Council of the Law Society of Scotland against John Atuahene, Solicitor, formerly of 72 Hawkshead Road, Paisley and now at 6A Gallowhill Court, Paisley (the First Respondent) and Richard Thomas Thorburn, Solicitor, formerly of Thornhome House, By Carluke and now at 0/1 110 Lancefield Quay, Glasow (the Second Respondent); Repel the Second Respondent's plea of Oppression; Find the First Respondent guilty of Professional Misconduct either singly or in cumulo in respect of his repeated failure to respond to the reasonable enquiries of the Law Society, his repeated failure to comply with Notices served on him by the Law Society, his failure to implement Mandates and his failure to respond to fellow solicitors, his failure to arrange effective registration of the title of a client and the security in relation to that client's loan, his failure to provide a signed Assignation of lease and deliver an extract, his breach of Rules 4, 8, 9, 10, 11 and 24 of the Solicitors (Scotland) Accounts etc Fund Rules 2001, his repeated delay or failure to stamp, record or register timeously Dispositions, Standard Securities and Discharges and his failure to comply with the Solicitors (Scotland) Professional Indemnity Insurance Rules 1995 by operating without professional indemnity insurance; Find the Second Respondent guilty of professional misconduct either singly or in cumulo in respect of his failure to reply to the reasonable requests of the Law Society for information, his breach of Rules 4, 6, 8, 9, 10, 11 and 24 of the Solicitors (Scotland) Accounts etc Fund Rules 2001, his repeated delay

or failure altogether to stamp, record or register Dispositions, Standard Securities and Discharges, and his failure to comply with the Solicitors (Scotland) Professional Indemnity Insurance Rules 1995 by operating without professional indemnity insurance; Order that the name of the First Respondent John Atuahene be struck off the Roll of Solicitors in Scotland; Order that the name of the Second Respondent Richard Thomas Thorburn be struck off the Roll of Solicitors in Scotland; Find the First and Second Respondents each liable for one half of 80% of 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 indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondents.

(signed)

Malcolm McPherson

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

The Tribunal met on a number of days over a period of 3 years to hear evidence, hear submissions and make its deliberations.

23 AUGUST 2006

The Record was amended to take account of the Minute of Amendment for the Complainers and the first and second Minutes of Amendments for the First Respondent. The position was reserved to a future date in connection with a third Minute of Amendment by the First Respondent to allow the Fiscal an opportunity to consider this. There is also a Joint Minute of Admissions being negotiated between the Fiscal and the First Respondent, which the Tribunal was advised are not yet complete but will be adjusted between the Fiscal and the First Respondent prior to the next calling of the case. The Second Respondent made a submission to lodge Productions but did not have sufficient copies and he was advised that if he was to lodge documents at any later stage he would require to produce the documentation in terms of the Rules. The Second Respondent was advised that although his Productions were not allowed at this time he had the opportunity to make copies of them over lunchtime and make another submission to lodge them in the afternoon, if he so wished. He did not do this. The Second Respondent was also advised that if he had any particular document which he wished to put to a witness in cross-examination, this would be considered by the Tribunal at the time.

EVIDENCE FOR THE COMPLAINERS

The Complainers led the evidence of **Christina Heywood**, Law Society inspector who confirmed that she had been an inspector since 1994 and was SOLAS qualified. She spoke to Article 13 of the Complaint. Ms Heywood confirmed that a letter was sent to the Second Respondent on 5th May 2003 by recorded delivery, notifying him of the forthcoming Law Society inspection on 19th and 20th May 2003. Ms Heywood referred to Complainer's Productions 2.12 to 2.14 in connection with this inspection. She confirmed that this was her report and the letter sent to the Second Respondent on 4th June 2003 was written by her and formed part of the report. Ms Heywood stated

that prior to going to the inspection she checked whether there had been any previous inspections of the Second Respondent and noted that there were outstanding issues from a previous inspection. She knew that the Second Respondent had breached Accounts Rules in the past and had failed to attend for interview. Ms Heywood stated that when the inspectors arrived the Second Respondent's books were not up to date and did not balance. She confirmed that she had prepared a report which showed breaches of the Accounts Rules and she discussed this with the Second Respondent. Ms Heywood stated that there were Rule 4 deficits in connection with client 1, which although had been caused by a mistake by the bank, had resulted in a deficit between 4th December and 18th December 2002. Ms Heywood said that the mistakes were not fully corrected until February 2003. She indicated that if the Second Respondent's books had been up to date the mistake would have been picked up. In connection with client 2, the Second Respondent paid out money two days before it was received, resulting in a deficit for a period of two days. Ms Heywood stated that she identified a number of discrepancies in the Second Respondent's trial balances. Ms Heywood advised that she was unable to establish the position with regard to the payment of staff wages and VAT and there were no PAYE papers. This caused her concern with regard to the Second Respondent's solvency. In connection with clients 5 and 6 and the transaction on 25th July 2001, Ms Heywood conceded that she could have made a mistake with the date. Ms Heywood referred to clients 7 and 8 and the errors in the Second Respondent's books with regard to these matters and stated that she alerted the Second Respondent to the errors and indicated that these errors may have led to the discrepancies in the trial balance. In connection with money laundering, Ms Heywood confirmed that, in connection with clients 4, 29 and 27 there was no evidence of identification for the clients and no indication of why identification was not necessary. Ms Heywood also had concerns with regard to the source of funds, as there was no evidence with regard to the source of funds in cases 29 and 27. There were also a number of uninvested balances for clients 8, 9, 10, 11, 12 and 13 and she confirmed that she asked the Second Respondent to credit interest to these clients in respect of these sums. She indicated that the Second Respondent told her that some of the clients did not want the sums invested and she asked him for written evidence of this. In connection with the ledger narratives re clients 3 and 4, it was the wrong ledger. In connection with client 10, there were no full details. She was concerned with the large debit balances for clients as it was not known if there were enough

funds to cover this. There were a number of cases where Ms Heywood had requested sight of written authority from the clients with regard to payments made out of the client account, for example, clients 18 and 20. Ms Heywood explained that she also looked at the Second Respondent's procedures in connection with the recording of titles and for clients 27, 28 and 16, there were no Form 4's. Ms Heywood advised that she was not involved in the follow up procedure after the letter was sent to the Second Respondent.

In connection with Article 20, Ms Heywood then referred the Tribunal to the Complainer's Productions 2.27, 2.29 in connection with the inspection on 5th to 8th July 2004, of the Practical Law Partnership. Ms Heywood confirmed that letters were sent on 2nd July 2004 to the First and Second Respondents notifying them of the inspection which was a special inspection and was to take place on 5th July 2004. She advised that when they arrived on 5th July they were met by both partners who were very distressed and seemed to be unaware of the fact that the inspection was to take place. They told her that they had not had notice. She indicated that the Second Respondent was angry. Ms Heywood explained that there was a phone call to the Chief Accountant and it was agreed that they would go back the next day. Ms Heywood confirmed that most of the Respondent's records were produced during the inspection between 6th and 8th July 2004. Ms Heywood however stated that there were concerns that due to the delay, a full inspection was not possible. Ms Heywood advised that there was a large deficit in connection with clients 85 and 86, where there had been a loan of £337,500 on 9th January 2004, £320,750 was paid to Lyons Laing but no disposition was received and no missives were in place. Ms Heywood said that in the circumstances she considered that there was a deficit on the client account of £321,427.72. Ms Heywood explained that she also had concerns with regard to the purchase and sale transaction in connection with client 141 whose funds were received on 18th June 2004 but the property was not yet purchased for resale. She also had concerns with regard to clients 96 and 143. The Second Respondent did not deliver a disposition until 8th July 2004 but used sale funds to finance the purchase on 22nd June 2004. There were also concerns that the Second Respondent received loan funds and indicated to the lender that the purchase price of the property was £75,000 but the disposition showed £65,000. She indicated that the lender should have been made aware of the true position. This was also the case in connection with the

property in Kirkcaldy. She also advised the Tribunal of a case where the SDLT tax was not paid and the disposition and standard security had not been recorded. She explained that she considered the late recording to be a period in excess of 2 months after the date of settlement. In connection with clients 144 and 145, there was no evidence of discharges being recorded. Also in connection with client 146, there was no evidence of recording of the disposition and standard security. She indicated that she had asked to see evidence of recording of deeds. Ms Heywood stated that the cash book from the Second Respondent was not available and the records were incomplete. There had been no reconciliation since April 2004. There were still no records with regard to PAYE and VAT and there was still a problem with regard to not investing client funds. Ms Heywood stated that the Second Respondent had manual records and the First Respondent had computerised records. They were operating one firm but with two different systems. There was no trial balance with everything in it. Ms Heywood confirmed that she was aware that there were prior matters in connection with both the First and Second Respondents which had not been resolved.

In cross-examination by the Second Respondent, Ms Heywood explained that the Second Respondent's previous declinature with regard to the invitation to attend for interview was relevant when considering whether or not to invite him for interview again. Ms Heywood confirmed that she would have been aware of the substance of the previous report of the Second Respondent's firm. Ms Heywood accepted that attendance at interview was voluntary. Ms Heywood stated that with regard to interest on client balances, if a sum of more than £500 was held for a period of more than 2 months, this should be invested unless the client gave written authority to the solicitor not to do so. Ms Heywood stated that she could not think of any firms that left the money in the general account and then paid interest to the client themselves. Ms Heywood stated that her interpretation of Rule 11 of the Accounts Rules was that the solicitor should invest money on the client's behalf so that it earned interest. In connection with a breach of Rule 4, Ms Heywood stated that she accepted that the bank was responsible for the error in connection with client 1 but that this did not change the fact that there had been a deficit on the Second Respondent's client account. The Second Respondent lodged a copy of his ledger as his Production 1 and put it to the witness. She indicated that she accepted that this showed that the

transactions in relation to clients 5 and 6 on this ledger took place on 25th July 2002 rather than 2001, but she could not say whether this record was with the books at the time and that if she had seen the document she would probably have marked it. In connection with the report of the inspection, Ms Heywood accepted that she had made a mistake in the report where she had indicated that she had seen the records to date. Ms Heywood stated that the trial balances as at 31 March and as at the end of April 2003, did not balance and that there were no books written up for May. She confirmed that she thought there probably was a bank reconciliation as at 31st March 2003. She also accepted that when the balances and the trial balance were corrected, there was a surplus. Ms Heywood stated that if books were not written up on a daily basis, errors could occur. She would expect the books to be written up on a daily basis. If there were bank entries that had to be made a later stage, the correct way of doing this was to put them in when they became known but show the original date in the narrative. In connection with clients 27, 28 and 16 Ms Heywood accepted that the deeds had been recorded but that there was no evidence of this at the time of the inspection. The Second Respondent referred Ms Heywood to the copy of the passport and driving licence in respect of two different clients in connection with identification for money laundering purposes. Ms Heywood stated that she would expect to see two forms of identification. She indicated that she accepted that you could also rely on your own knowledge and information from those who could be relied upon. Ms Heywood explained that a special inspection meant one that was not routine. In connection with the inspection of the Practical Law Partnership, she confirmed that the required letter was posted 48 hours before the inspection but accepted that the First and Second Respondents did not seem to be expecting them. In connection with a transaction for clients 85 and 86, Ms Heywood stated that as the Second Respondent had used bank funds, which he should not have done, this caused a deficit. In connection with client 144, Ms Heywood stated that she was looking for evidence of a discharge. She accepted that if the loan had been unsecured there would not have been a security. In connection with the firm loans, Ms Heywood stated that she did not know whether the loans were of the Practical Law Partnership or not. She confirmed that she knew that the First and Second Respondents were to amalgamate their records.

In cross examination by the First Respondent, Ms Heywood stated that she accepted that the First Respondent told her that the First and Second Respondents had not merged their records as yet and she confirmed that the inspection was carried out in two parts. She confirmed that her understanding was that the First and Second Respondents were keeping their own accounts for their own clients. Ms Heywood accepted that she told the First Respondent that she was happy with his accounts. She also accepted that the First Respondent told her that he had not been involved in any of the transactions which were causing concern. She could not recall whether the money in connection with clients 85 and 86 came out of the Second Respondent's account or the Practical Law Partnership account. Ms Heywood accepted that the problems identified in the inspection of the Practical Law Partnership all related to the Second Respondent's clients except for the reference to previous concerns which had not been resolved in connection with previous inspections of the First and Second Respondent's former firms. Ms Heywood accepted that most of the issues arising from previous inspections of the First Respondent's firm had been dealt with but there were still some points outstanding.

In re-examination Ms Heywood stated that if up to date records had been kept then the failure to invest funds could have been avoided. She confirmed that although she inspected two lots of records, by the time the inspection took place, the two firms had amalgamated and were operating under the umbrella of the Practical Law Partnership. In connection with clients 85 and 86, it was not until 6 months later that the problems were completely resolved. Ms Heywood also confirmed that the copy driving licence and passport were not produced at the inspections and were not in the file and there was no information in the file regarding any personal knowledge of the persons. Ms Heywood confirmed that the letter sent out after the inspection represented what she saw on the day and the explanations came later.

At this point the case was adjourned due to lack of time until 6th and 7th November 2006.

6 NOVEMBER 2006

The First Respondent spoke to his motion asking the Tribunal to allow his third and fourth Minutes of Amendment and his Third Inventory of Productions. Ms Johnston indicated that a Joint Minute of Admissions had been agreed between her and the First Respondent in connection with the Productions including the Third Inventory of Productions and she had no objections to the lodging of the Third Inventory of Productions. She also indicated that the Third and Fourth Minutes of Amendment would not cause her inconvenience if allowed. The First Respondent suggested that he be allowed to lodge a copy of an amended Record to take account of all the amendments. Ms Johnston objected to this as she had already annotated her version of the Record. The Tribunal agreed to allow the First Respondent's Third and Fourth Minute of Amendment and Third Inventory of Productions. The Chairman indicated that it was hoped that there would no further amendment to the Record. It was also agreed that the Tribunal would work off the Record presently lodged for the next two days but that the First Respondent provide the Fiscal with a copy of his amended Record and she could look at this between now and the next hearing to decide if she was happy with the contents thereof as it might be easier to have a fully typewritten version of the Record.

The Complainers then led the evidence of **Leslie Cumming** who was the Chief Accountant with the Law Society but now retired. In connection with Article 13 Mr Cumming referred to Productions to 2.12-2.14 of the Complainers' Productions and advised that the inspectors attended to inspect the Second Respondent's books on 19 & 20 May 2003. Mr Cumming referred to the letter of 4 June 2003 which was signed by him and sent out with the report to the Second Respondent. Mr Cumming stated that this highlighted issues in connection with breaches of Rules 4, 8, 9, 11 and 24 and issues in connection with VAT and wages, debit balances, and books being in arrears etc. Mr Cumming indicated that the letter detailed all the problems and asked for a response from the Second Respondent. Mr Cumming advised that he attended the Guarantee Fund Committee meeting on 3 July 2003 when it was decided to invite the Second Respondent for interview due to concerns with regard to his lack of response.

Mr Cumming stated that a letter was received from the Second Respondent on 18 July 2003 but the interview still proceeded. Mr Cumming confirmed that he was present at the interview and that the memorandum of the interview was an accurate record. In connection with Article 13.3 Mr Cumming referred to the Second Respondent's Answers, which stated that the Second Respondent did not have a cashier at that time. The Second Respondent explained that the deficit on the bank account in connection with client 1 was due a bank error. Mr Cumming stated that he accepted that it was a bank error and there had been two sets of instructions but the Law Society would have expected the Second Respondent to deal with matters promptly, bring matters to the bank's attention and have matters sorted out. Mr Cumming stated that the Law Society was concerned with regard to any deficit irrespective of how it was caused. The onus was on the solicitor to get matters corrected immediately. Mr Cumming stated that if books were not kept up to date mistakes were difficult to spot. In connection with client number 2 and the £65,000, Mr Cumming indicated that the Second Respondent's explanation was that he forgot to bank the cheque but Mr Cumming's position was that solicitors should not issue a cheque prior to bank funds being received and this caused the deficit. Mr Cumming stated that the panel emphasised to the Second Respondent that it was very important to keep the books up to date on a daily basis. In connection with Article 13.3, clients 5, 6 and 7, there was a problem. Mr Cumming also referred to Article 13.5 and stated that the Second Respondent explained that he asked for identification when the client came in but he did not have any record system in place in connection with money laundering. Mr Cumming indicated that the Law Society would have expected evidence of the source of the funds. In connection with Article 13.3, Mr Cumming indicated that the Second Respondent said that he would get his clients to confirm that they did not want the money invested due to the fact that they were Muslims. Mr Cumming indicated that he was unaware of any instructions from the Second Respondent's clients with regard to not investing funds. In connection with Article 13.4 Mr Cumming indicated that the Second Respondent's poor bookkeeping caused the problems. In connection with Article 13.2 Mr Cumming indicated that the Law Society were concerned with regard to staff wages which appeared to be paid on a cash basis and with regard to lack of registration for VAT. Mr Cumming referred to a letter dated 6 August 2003 signed by him which was a summary of the current position and asked the Second Respondent for further information. A letter was received from the Second Respondent on 8th

August 2003 answering the Law Society's enquiries on a piecemeal basis. By the 10th June 2003 the Law Society resolved that matters would be looked at again at the next inspection. In connection with Article 14 Mr Cumming referred to Production 2.15 and 2.16 but indicated that it was Morag Newton who wrote the letters. In connection with Article 16 Mr Cumming referred to Productions 2.17 and 2.18 in connection with an inspection which took place on 17th, 18th and 19th February 2004. Mr Cumming stated that this was a special inspection as it was felt there was a need to review the firm because the Law Society were aware that there may have been some reorganisation of the Respondent's practice. Mr Cumming advised that the Second Respondent was called in for a third interview on 6th May 2004 and Mr Cumming was in attendance at the meeting. Mr Cumming indicated that the principal concern at this stage was that it was unclear what the partnership position was, how the books were being dealt with and whether the books were up to date. Mr Cumming indicated that the First and Second Respondents told the Law Society that they were intending to merge and form a partnership. There was a difference of opinion between the First and Second Respondents as to when the partnership commenced. Mr Cumming advised that the Second Respondent was asked to explain the position with regard to the merger of the two practices. The Law Society was concerned with regard to loans and indemnity insurance. At this time the First Respondent was in a difficult position as there was an Interim Judicial Factory appointed to his firm. Mr Cumming stated that initially he thought 1st November 2003 was the date of the merger of the partnership but it was unsatisfactory that the principals did not agree the start date for the partnership. Mr Cumming stated that he was still not sure of the date when the Practical Law Partnership commenced. Mr Cumming indicated that the Second Respondent joined the First Respondent at Argyll Arcade in March 2004. In May 2004 the start date of the partnership had still not been resolved. Mr Cumming referred to Article 21 of the Complaint. It was accepted at this interview that the Practical Law Partnership was not in existence in November 2003. Mr Cumming was concerned that the First and Second Respondents former firms did not have separate insurance. Mr Cumming stated that the position was entirely unsatisfactory as it was impossible for the Law Society to know what the exact position was. In connection with Article 17 Mr Cumming referred to Productions 2.19 and 2.20, and the inspection of the First Respondent's firm on 22nd-24th April 2003. The Law Society had concerns with regard to the reliability of the First Respondent's accounting

records which were incomplete and not up to date. Mr Cumming indicated that the First Respondent took over the practice of Isabel Murray who was a sole practitioner. The First Respondent took on a cashier from Mrs Murray's firm. Mr Cumming indicated that there were difficulties obtaining access to the accounts and files of the First Respondent. There appeared to be a shortage on the client account as at 31st March 2003 of £116,447.21, and corrective action was required immediately. There was also concern with regard to uninvested funds and late recording of deeds. Mr Cumming confirmed that the report of the inspection sets out the issues which were identified at the visit. Following an emergency meeting of the Law Society the Law Society applied to the Court for the appointment of a Judicial Factor on 20th May 2003. The Interim Judicial Factor was appointed on 22nd May 2003. Mr Cumming stated that he thought the First Respondent was struggling to get to grips with the business and what was required of him. By letter of 4th June 2003 the First Respondent dealt with the issues raised. Mr Cumming explained that there was a problem in transferring funds from Mrs Murray's practice as these had to go via a third party because agreement was not reached prior to Mrs Murray ceasing to have a practising certificate. This made things more difficult for the First Respondent. The Judicial Factor sorted out the accounts and matters were resolved and accordingly the Judicial Factory was not made permanent. The Judicial Factor spent a lot of time sorting matters out. The First Respondent paid money towards the Judicial Factory and was allowed to re-start practice. Mr Cumming stated that he thought that the Second Respondent was assisting the First Respondent at this time.

In connection with Article 18 Mr Cumming referred to Productions 2.21-2.23, and the inspection of the First Respondent's firm on 17th and 18th February 2004. The inspection was arranged to ascertain the position of the First and Second Respondents' firms. The Law Society tried to inspect all the records of the First Respondent's firm, the Second Respondent's firm and the amalgamated Practical Law Partnership. There was a further inspection in March 2004 very shortly after the February inspection. This was due to confusion with regard to which books were to be inspected. Mr Cumming referred Article 19 of the Complaint and to Production 2.24-2.26, he confirmed that he signed the letter in connection with the inspection. The records were not up to date or complete and there were concerns with regard to the financial position of the firm. The records were a month in arrears by this time.

The Law Society asked for clarification of all the matters contained in the inspection report. Mr Cumming referred to the letter of 7th April 2004 enclosing the inspection report. A letter was received from the First Respondent on 21st April 2004 indicating that matters would be dealt with. Mr Cumming then referred to Article 21 in connection with the indemnity insurance. A loan was given to the First Respondent to assist in connection with the Judicial Factor expenses. In April 2004 the First Respondent's position was that the Practical Law Partnership was not yet in existence. The First Respondent was to get his accountants to look at the books of his practice and the Second Respondent's practice and report on the correctness of the client balances prior to him agreeing to the partnership starting. At the interview on 22nd April 2004 the First Respondent accepted that he put his account in deficit by mistake. The Law Society were comfortable that he, by this time, had Mr M doing his postings. By this time the Second Respondent had moved in to the office with four staff. Mr Cumming stated that the Law Society were told in the application for the practising certificates by the First and Second Respondents in November 2003 that the Practical Law Partnership was in existence and the indemnity insurance was in the name of the Practical Law Partnership. The First Respondent indicated that he had run off cover for Atuahene, Sim & Murray and Mr Cumming explained that the First Respondent did not appear to understand that this only covered matters dealt with up until 31st October 2003.

In connection with Article 20, Mr Cumming referred to Productions 2.27-2.29 and to the letter and inspection report in connection with the inspection on 5th-8th July 2004. Mr Cumming stated that this was a special inspection and the letter was signed by him. Mr Cumming indicated that there was a great deal of concern that loan funds had been paid and yet no title had been taken and there was an unsecured loan and this was the reason for the inspection. Mr Cumming stated that the Second Respondent was concerned with regard to the amount of notice given and it was agreed they would come back the following day. Mr Cumming referred to the letter dated 13th July 2004 in connection with clients 85 and 86. In connection with client 85 the price had been paid and no security was in place and the lender was not told of the position. The property was in the hands of a liquidator and matters were very complicated. Mr Cumming stated that he did not know if the matter had yet been resolved. Mr Cumming stated that as client funds had been paid and there were no missives or

disposition this resulted in a deficit of £321,427. In connection with client 141 the property was purchased and the sale proceeds used to make a purchase but there was no disposition in respect of the original purchase and yet the Second Respondent intromitted with funds. In connection with client 34, bridging finance was in place for £75,000 but the purchase price was only £65,000. It was agreed that the First and Second Respondents be called for interview which was held on 19th August 2004 and Mr Cumming confirmed that he was present at the interview. Clients 85 and 86 were discussed. The Second Respondent stated that it was an oversight by him that there were no missives. The disposition had still not been delivered at the time of the interview. In connection with client 141 the Second Respondent stated that the client got access before paying the purchase price. The Second Respondent indicated at the interview that his judgement was clouded and he conceded that his work was not up to standard and gave an assurance that he would look at all the cases. Mr Cumming stated that the panel's view was that the firm was disorganised and that there were no proper systems in place. By this time the First Respondent had a trustee in sequestration and there was a hearing on 23rd August. On 19th August 2004 a letter was sent to the Second Respondent summarising what the Law Society required. There was an interview on 23rd September with the Second Respondent as the committee were considering suspension. At this interview the Second Respondent indicated that what happened with clients 85 and 86 was an honest mistake. He accepted that he should have told the indemnity insurers that the First Respondent had been sequestrated. The Second Respondent indicated that the salary PAYE was months behind. Mr Cumming stated that he advised the Second Respondent to take legal advice. Mr Cumming confirmed that the interview record was correct. In connection with Article 21 Mr Cumming referred to Productions 2.30 and 2.32. There was a letter from Aird Sakol Accountants indicating that they would inspect the audit balances and which agreed that the closure date of the First and Second Respondents previous firm accounts would be 30 April 2004.

In cross-examination by the Second Respondent Mr Cumming accepted that the Law Society had a duty to act fairly and reasonably. Mr Cumming also accepted that manual systems of bookkeeping do not have the built in checks that computer systems do. Mr Cumming indicated that it would not necessarily be necessary to review records prior to an inspection if solicitors' books were up to date. Mr Cumming

stated that an interim balancing exercise could be done even with a manual system. Mr Cumming advised that if postings were incomplete there would be problems even if there was a computer system. Mr Cumming stated that if the cash book was a complete record of everything then the solicitor would be able to have a view on whether or not there was a surplus. Mr Cumming stated that the Law Society usually give 7-14 days notice of an inspection. In terms of the rules, 48 hours postal notice was required but the Law Society tended to give more than this to avoid problems of missing staff etc. Mr Cumming indicated that if a solicitor asked for a delay this would be considered if there was good reason for it. However there came a time when requests for inspection delays had to be refused in order to achieve an efficient inspection programme. Mr Cumming acknowledged that a letter had been received in 2000 from the Second Respondent in connection with notice of an inspection and that that the Second Respondent had raised problems with notice in connection with inspections in the past. As far as Mr Cumming was aware the Second Respondent was the only one who had a difficulty with this. In connection with the inspection in July 2004, Mr Cumming indicated that the notice of the inspection was posted on the Friday and would be deemed, in terms of the rules, to have been received on the Monday. Mr Cumming accepted that the letter might not have been received prior to the arrival of the inspectors on the Monday morning. Mr Cumming indicated that it was not his practice to phone or fax the firm of solicitors that was being inspected prior to inspection. Mr Cumming indicated that he followed the written procedure. In connection with Article 13 Mr Cumming accepted that although the interview record stated that there had been no reply to the Law Society's letter of 5th July, a letter had actually been sent by the Second Respondent on 18th July but this was not in front of the panel. Mr Cumming also accepted that the morning meeting may have overrun as business took longer than expected. Mr Cumming indicated that he could not comment on whether or not the Chairman of the panel was impatient with the Second Respondent and not listening to him. Mr Cumming recalled that there was a question with regard to taking fees in cash but could not recall exactly what was said. Mr Cumming conceded that perhaps it would have been better if the Respondent's letter of 18th July had been before the panel. Mr Cumming indicated that the Law Society did its best to help solicitors in difficulties and had given advice to the Second Respondent over the years. The Second Respondent had indicated that he was going to improve his systems but this had not been done. In connection with Article 13.2 in

relation to client 1, Mr Cumming stated that it was accepted that there was a bank error. There was a long gap between the error and the correction. In connection with client 2, Mr Cumming indicated that as far as he was aware there was no evidence of the receipt date and that he understood that it was not received until 10th April 2002. Mr Cumming stated that if it was an existing client, at that time it was in order to rely on evidence which was already held on file. Mr Cumming indicated that he was unaware of any favourable comments made by his staff in connection with the Second Respondent's books. Mr Cumming was referred to the letter of 25th May 2004 by the Second Respondent which indicated that the First and Second Respondents had agreed to share profits from 1st November 2003 with client balances being transferred on 14th May 2004. Mr Cumming accepted that the letter of 26th May 2004 from the First Respondent confirmed his agreement with this. Mr Cumming stated that it was up to the insurance company to decide the insurance position and the Law Society did not take a position on this. Mr Cumming stated that there were problems in December 2003 with the lack of a clear position with regard to when the partnership started, especially in connection with clients 85 and 86. Mr Cumming accepted that firms could operate with a number of divisions and with separate names. Mr Cumming explained that when two separate client bank accounts were insured with run off corporate cover and it was only halfway through the year that dates were clarified, this was of great concern. At this stage it was agreed that the hearing be adjourned until the next day at 10.00am.

Mr Cumming confirmed that the Second Respondent's accounts certificates had been in order. Mr Cumming stated that all firms get the same amount of notice and as far as he was aware no-one complained about it apart from the Second Respondent. In connection with the interview in August 2004, Mr Cumming stated that there was an obligation on the solicitor to make good any deficit at once. Mr Cumming stated that he understood that there were enquiries of Lyons Laing and it was ascertained that they had received the money. Mr Cumming stated that he did not know what had happened in connection with the follow up correspondence to Lyons Laing. Mr Cumming stated that he had been in dialogue with the Second Respondent over a number of years and had made suggestions with regard to improvements. The Second Respondent had stated that he would get a computer system and gave assurances that matters would improve but nothing was done.

In cross-examination by the First Respondent, the First Respondent referred Mr Cumming to the letter of 30th July 2004 in relation to the March 2004 inspection. The First Respondent submitted that he responded to the letter of July 2004 which was the First Respondent's Production number 66. Mr Cumming confirmed that he must have seen this letter. Mr Cumming also confirmed that normally letters received from solicitors would be before the panel when they were considering matters and the panel would normally have the letter prior to the meeting. Mr Cumming confirmed that as the Second Respondent was involved in the transactions most of the questions at the interview in August 2004 were for the Second Respondent. Mr Cumming confirmed that the panel understood that the First Respondent was not involved in any of the transactions which were causing concern. Mr Cumming however stated that the First Respondent was there because he was a partner. Mr Cumming indicated that his view was that if one partner did something wrong the other partners would have to consider what was reasonably expected of them and it would depend on the facts and circumstances in each case. If a mistake comes to the attention of the innocent solicitor, the solicitor as a partner has a shared responsibility for the mistake. Mr Cumming stated that he was unaware that the First Respondent did not know about the errors until the auditors brought it to his attention. Mr Cumming confirmed that the First Respondent was called to interview due to his shared responsibility to get the errors corrected. Mr Cumming stated that in connection with clients 85 and 86 it was accepted that the Second Respondent and Lyons Laing were before the Law Society and he had no knowledge with regard to what had happened to Lyons Laing. The First Respondent referred Mr Cumming to First Respondent's Production 66 which was a letter of 13th July which detailed the outstanding matters which had to be dealt with. These transactions all related to the Second Respondent with the exception of matters outstanding from previous inspection in connection with the First Respondent. Mr Cumming confirmed that the money in connection with clients 85 and 86 was paid out on 9th January 2004 at a time when the First and Second Respondents' client accounts had not been merged. The cheque was paid out from the Second Respondent's bank account. The First Respondent referred Mr Cumming to the First Respondent's Production 67 being a letter from Aird Sakol in connection with the merger of the clients accounts. Mr Cumming accepted that the First and Second Respondents confirmed to the Law Society that the client balances were to be merged

after accountants had certified the client balances. Mr Cumming stated that he did not know whether there was a legal partnership in place from 1st November 2003. He indicated that the First Respondent's position for five months had been that he was not in partnership with the Second Respondent from 1st November 2003 but Mr Cumming indicated that he accepted that the First and Second Respondent's joint position now was that they had been in partnership since 1st November 2003. If this was the case then it was the account of the Practical Law Partnership which was put into deficit by the payment in connection with clients 85 and 86. Mr Cumming indicated that in his opinion if there are two separate bank accounts and one has a deficit in it and the two accounts merge the deficit becomes part of the new partnership. Mr Cumming stated that if the client account was taken over by the new partnership then the liability attached to this account was also taken over by the partnership and the new firm would be responsible for the liabilities on the client account but not for the partners' personal liabilities. Mr Cumming stated that in his opinion if the client balances were brought together and one balance had a mistake in it the client was a client of the new partnership and it was the responsibility of the new partnership to sort out the problem.

In connection with the interview on 22nd April 2004, Mr Cumming confirmed that he recalled the First Respondent stating that he needed an accountant to certify the balances in the client accounts before the new partnership commenced. Mr Cumming accepted that he had explained the problem with the indemnity insurance to the First Respondent if the Practical Law Partnership had not been in existence from 1st November 2003. Mr Cumming accepted that the First Respondent at this time appeared to think that run off cover did cover matters after 31st October 2003. Mr Cumming stated that he advised the First Respondent to consult the insurers with regard to the matter. Mr Cumming accepted that on 7th April 2004 he advised Marsh that the partnership, as far as the Law Society understood it, was not in force from 1st November 2003 because this was the information that he had at the time. The First Respondent referred Mr Cumming to First Respondent's Production 71 being a letter of 23rd April 2004 which indicated that the partnership had been ongoing since 1st November 2003. Mr Cumming accepted that this letter had been received and that the Second Respondent agreed with the terms of the letter. Mr Cumming stated that he accepted that it was possible for an office to have separate accounts and that some

firms may have branch accounts but this was different from completely different client bank accounts in different firm names. Mr Cumming stated that he was now persuaded that the First and Second Respondents intended to be in partnership from 1st November 2003. Mr Cumming stated that he may have received a new partnership agreement without paragraph 2 being the section about client balances having to be certified before the partnership commenced. Mr Cumming also accepted that the First Respondent made arrangements to rectify the insurance position once it was drawn to his attention. Mr Cumming indicated that he accepted that the First Respondent employed the legal cashier that had formerly worked for Murray & Company when he took over Murray & Company. Mr Cumming stated that Murray & Company's accounts had been adequate when run by Isabel Murray who had the same legal cashier. Mr Cumming stated that without the detailed working papers he could not explain why the sum of £7,000 was asked for from the First Respondent at the inspection on 22nd April 2003. He however indicated that the inspectors were being helpful in asking for this lesser sum even though the deficit was, on paper, £116,447.21. Mr Cumming confirmed that the First Respondent did respond to the points raised in the letter sent out on 1st June raising the issues highlighted in the inspection. Mr Cumming also confirmed that the First Respondent was given time to correct the position but that certain matters needed to be dealt with urgently. Mr Cumming explained that because the First Respondent did not sort matters out in time an Interim Judicial Factor was appointed. Mr Cumming confirmed that he was aware of what the Judicial Factor was doing and what problems they faced. The First Respondent referred Mr Cumming to the First Respondent's Production 42 being the interim report of the Judicial Factor. Mr Cumming confirmed that he was aware that Mrs Murray transferred clients money to West Anderson. In connection with the First Respondent's Production 46 the letter from Gerber Londa & Gee, Mr Cumming confirmed that he was aware that the First Respondent's share of the costs of the Judicial Factor were £66,090 but that £27,750 of the costs were apportioned to Mrs Murray due to the fact that client credit balances had not all been reconciled at the time of the transfer to the First Respondent. Mr Cumming also accepted that the absence of client balances from Mrs Murray's firm caused the First Respondent major problems. Mr Cumming stated that he accepted that the accountants had to create a separate account for Murray & Company within the First Respondent's accounts. Mr Cumming also confirmed that there was a deficit on the Murray & Company accounts

at the time of the transfer but that Mrs Murray paid this deficit sum to the First Respondent. Mr Cumming submitted that a lot of the discrepancies were not to do with problems arising from Mrs Murray's firm but due to errors in postings by the First Respondent. Mr Cumming indicated that it was the First Respondent's responsibility to ascertain the state of the business that he was taking over. Mr Cumming indicated that he accepted that the Law Society had just audited the accounts of Murray & Company prior to the First Respondent taking over the firm. Mr Cumming stated that he personally did not have any detailed knowledge of exactly how the Judicial Factor's costs had been allocated.

In connection with the inspection in February 2004, Mr Cumming stated that he accepted that the First Respondent had a meeting with Mrs Playfair in connection with the matters raised. He further accepted that the First Respondent was concerned about matters and that the First Respondent sent a letter to the Law Society explaining matters and advising that he had appointed a cashier. Mr Cumming confirmed that due to the concerns from the February 2004 inspection he instructed another inspection in March 2004. Mr Cumming stated that he accepted that the First Respondent wrote to the Law Society with regard to the issues raised. Mr Cumming stated that it was accepted that the First Respondent explained that some of the matters could not be resolved immediately and that his auditor still had matters to sort out. Mr Cumming stated that when he retired from the Law Society he was unaware whether any of the matters in connection with the First Respondent had still not been sorted out. Mr Cumming however confirmed that as at the last correspondence in the file not all matters had been completed. Mr Cumming also indicated that he was told that the auditors were refused access by the First Respondent to the files in the normal way at the April 2003 inspection. Mr Cumming however confirmed that the First Respondent had, as far as he was aware, co-operated with the Judicial Factor. Mr Cumming stated that all auditors give advice to solicitors but in different ways. Mr Cumming indicated that he also gave advice to the First Respondent over the period.

In re-examination Mr Cumming stated that the partnership agreement in the Productions included the clause stating that the partnership would only come into force once both sets of clients accounts had been certified by accountants and the testing clause on this was 19th March 2004. Up until the interview in April 2004 the

First Respondent had consistently maintained that he was not in partnership with the Second Respondent. In connection with the £7,000 paid by the First Respondent in relation to the deficit from the inspection in April 2003, Mr Cumming confirmed that he understood that the First Respondent paid £7,000 as Mrs Murray had paid approximately £4,000 and the deficit was approximately £11,000. Mr Cumming confirmed that it was not possible to know the effect of the errors because there was no exact information with regard to the deficit. Mr Cumming confirmed that there were concerns with regard to inaccurate postings after the First Respondent took over Mrs Murray's firm and the high amount of errors made it impossible to ascertain the position. In response to a question from the Tribunal Mr Cumming confirmed that it was unusual for the Law Society to be involved with firms during a merger but in this case the Law Society were trying to encourage the First and Second Respondent to take what action was necessary as the Law Society had difficulty in knowing exactly what had been agreed. At this stage the case was adjourned due to lack of time to 29th and 30th January 2007 with extra dates also being fixed for 1st and 2nd March 2007.

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Ms Johnston stated that she had looked at the amended version of the Record produced by the First Respondent and was happy with it and would produce four copies and hand them into the Tribunal the next day.

The Complainers then led the evidence of **Donald HD Henderson** who spoke to Article 10. Mr Henderson confirmed that he was a partner with Messrs R&RS Mearns Solicitors and he acted on behalf of Mr I. He advised that he had to write to the Law Society with a complaint in connection with the way that the First Respondent had conducted business on behalf of his client. Mr Henderson referred to Complainers' Production 2.9 and stated that he wrote the letter dated 17th June 2004. Mr Henderson explained that he had had correspondence with the First Respondent and had tried to speak to him on a number of occasions but the First Respondent never returned his calls. Mr Henderson explained that the sale of the business settled and he delivered the signed assignation of the lease and the First Respondent was supposed to have it registered and send an extract. This was not done and Mr Henderson's client then got calls from the landlord with regard to rent arrears. Mr Henderson explained

that things came to a head when his client's bank account was arrested by Sheriff Officers in connection with the non-payment of the rent. The Law Society managed to find the file and the missing assignation was there. Mr Henderson arranged to have it stamped and registered which solved the problem. Mr Henderson indicated that he advised the First Respondent about the arrestment. Mr Henderson stated that on one occasion he managed to speak to the Second Respondent and asked him to help sort matters out but nothing happened.

In cross-examination Mr Henderson indicated that he accepted that the First Respondent's previous office was at Cathcart Road but that the correspondence on file was all to the address at Argyll Arcade. Mr Henderson said that he could not comment as to where the First Respondent actually did his dictation, but all the letters to and from the First Respondent were to the Argyll Arcade address. Mr Henderson said that he did not get any messages with regard to the First Respondent's phone calls. In re-examination Mr Henderson stated that he had to charge his client for registering the assignation.

The First Respondent made a motion to have the file and ledger in connection with Mr I lodged as Productions. The First Respondent indicated that the ledger would show that there was money in the ledger to pay for the cost of the registration. The Tribunal agreed to reserve its decision with regard to this motion until after the evidence of Morna Grandison. The Respondent could then renew his motion if it was still necessary.

The Complainers then led the evidence of **Keith Ross**, Ferguson Dewar, Solicitors in connection with Article 8. Keith Ross referred to Complainers' Production 2.7 and advised that this was a deed of assumption from Isabel Murray to an A Dewar, a partner in his firm and that his firm sent a letter on 19th December 2003 to the First Respondent asking that he send them the will of Mrs G's late father. Mr Ross stated that letters were written on 21st January 2004, 9th February 2004 and 17th February 2004 but the First Respondent did not reply or return phone calls. Mr Ross stated that he had never been given an explanation by the First Respondent as to what the problem was. Mr Ross advised that some months later he spoke to the Second Respondent and told him that he really needed the will and he received it a few days

later. In cross-examination Mr Ross stated that he did not know when the will had been prepared but that he knew that the will had originally been with Mrs Murray's firm. Mr Ross stated that he could not comment on whether or not the First Respondent's staff were looking for the will.

The Complainers next led the evidence of **Ian Ritchie**, Case Manager with the Law Society. Mr Ritchie advised that he had been a case manager with the Law Society since 2003 and previous to this had been in private practice. Mr Ritchie explained that when there were a number of complaints about the same firm, the practice was that the same case manager would be given all the files to deal with so that it could be identified if there was a particular firm causing concern. Mr Ritchie stated that the First Respondent's firm caused a great deal of concern to the Law Society. Mr Ritchie explained that he got the odd reply from the First Respondent in the first few months of 2003 but then he received no replies at all until January 2005. Mr Ritchie explained that he tried to obtain the files in connection with a number of clients but did not receive any at all from the First Respondent. Mr Ritchie further explained that the address for the First Respondent on the Law Society's records was the address at Cathcart Road and also the address at Argyll Arcade. The First Respondent was at Cathcart Road until October 2002 then when he took over Murray & Company he moved to Argyll Arcade but still had an address at Cathcart Road. In connection with Article 2 Mr Ritchie referred to Production 2.1, being the Help Form from Mrs A. Mr Ritchie stated that all the letters were sent to Argyll Arcade, some were by Recorded Delivery and none were replied to. Mr Ritchie advised that the complaint by Mrs A was in connection with a failure to settle a council house purchase. In connection with Article 3, Mr Ritchie referred the Tribunal to Production 2.2 and the letter from Mr B complaining with regard to the First Respondent's failure to communicate. Mr Ritchie stated that the common thread of the complaints by clients was the failure of the First Respondent to reply to the clients. Mr Ritchie stated that as he had no response from the First Respondent he could not comment on the First Respondent's account of the reason for his failure to reply. In connection with Article 4 Mr Ritchie referred to Production 2.3 and the Help Form from Mr & Mrs C. The correspondence in this case was sent to the address at Argyll Arcade. The First Respondent was involved in the sale and there was an issue with regard to a £2,000 retention. The letter of complaint from Mr & Mrs C stated that the First Respondent had done

nothing for 15 months. In connection with Article 5 he referred to Production 2.4 and to the letter from Robertson Paul intimating a complaint on behalf of Mr D, Mr Ritchie indicated that the First Respondent did not reply to the letter. In connection with Article 6 Mr Ritchie referred to Production 2.5 and the complaint by McTaggart & Company on behalf of Mr & Mrs E. The complaint was with regard to failing to account for sale proceeds and failure to reply to correspondence. The First Respondent did not provide any explanation or reply to letters sent. In connection with Article 7 Mr Ritchie referred to Production 2.6 and the complaint by Mr F. This complaint related to the purchase of a shop which was not progressed. Mr Ritchie stated that the correspondence was sent to the Argyll Arcade at the Legal Post address. Mr Ritchie explained that often firms have two addresses but only one Legal Post address. Some of the letters in this case were sent to Argyll Arcade and Cathcart Road. In connection with the Cathcart Road notices some were sent Recorded Delivery and none were returned. The First Respondent did not reply to any of these letters. In connection with Article 8, Mr Ritchie referred to Production 2.7 in connection with the complaint by Mrs G. The complaint related to a Power of Attorney and a lack of response from the First Respondent. On 26th September 2003 Mr Ritchie sent a letter to the First Respondent at Cathcart Road. Mr Ritchie pointed out that the correspondence from the First Respondent's firm had two addresses, one at Argyll Arcade and the other at Cathcart Road. Mr Ritchie indicated that a number of letters were sent to the Cathcart Road address and none were returned. Mr Ritchie explained that there were two complaints in connection with Mrs G, one by her and her husband and then one by Ferguson & Dewar when the First Respondent failed to send the will. Mr Ritchie indicated that Mrs G had been very upset by the First Respondent's failures. Mr Ritchie confirmed that the First Respondent did not reply in connection with either of the complaints. In connection with Article 9, Mr Ritchie referred to Production 2.8 and the letter of complaint by Client 124 in connection with failing to record a disposition and failure to respond. The First Respondent did not reply to the letters sent. In connection with Article 10, Mr Ritchie referred to Production 2.9 and confirmed that the First Respondent did not reply to correspondence. Mr Ritchie stated that there was a confusion with regard to the date when the First Respondent's firm changed to the Practical Law Partnership. Mr Ritchie indicated that the First Respondent continued to operate from the same premises and used Atuahene, Sim, Murray & Co as a trading name. In connection

with Article 11 Mr Ritchie referred to Production 2.10 and the complaint from Campbell Boath Solicitors in connection with the failure to respond to correspondence and failure to return title deeds. Mr Ritchie explained that the land certificate was sent to the wrong firm and should have gone to Campbell Boath. The First Respondent did not reply to any of the letters. In connection with Article 12 Mr Ritchie referred to Production 2.11 and the complaint by Ms L. Mr Ritchie indicated that the complaint was received on 15th November 2002 which was before he joined the Law Society. Other case managers dealt with the complaint but Mr Ritchie explained that he became involved because the matter went to the Ombudsman and the file was re-opened. Mr Ritchie explained that this was a complaint in connection with a divorce action. Mr Ritchie stated that notices were sent in February 2004 and that the First Respondent replied on 7th March 2004 blaming Mrs Mrs D. A letter was sent on 5th November 2004 identifying the heads of complaint being that the First Respondent had failed to reply to letters and failed to reply to the Law Society. In connection with Article 22 Mr Ritchie referred to a complaint by the Advocate General and to Production 2.33. Mr Ritchie explained that the First Respondent had been sequestrated in August 2004 but sent out a letter in October 2004 which he signed and pp'd on behalf of the Practical Law Partnership. Mr Ritchie stated that the letter bore the hallmarks of being a solicitor's letter as it referred to 'we' in the body of the letter. Mr Ritchie indicated that he took this as the First Respondent holding himself out as a solicitor even though he no longer was.

In cross-examination Mr Ritchie confirmed that he had not seen any of the files in relation to the complaints by the various clients as they had never been delivered to him by the First Respondent. Mr Ritchie confirmed that he only had the information which had been provided to him by the complainers. In connection with the complaint by the Advocate General, Mr Ritchie stated that in his opinion the letter was written on behalf of a client by a firm of solicitors and the Practical Law Partnership did not actually exist at the time it was written. In connection with Article 12 Mr Ritchie accepted that the complaint was lodged before he joined the Law Society and was dealt with by Mrs McGowan and Mrs Pasportinkov. Mr Ritchie indicated that he was familiar with the letters in the file and accepted that there was some correspondence from the First Respondent in connection with this. In connection with Article 10 Mr Ritchie again confirmed that he only knew what the

complainer had told him. Mr Ritchie stated that he received some phone calls and the odd letter from the First Respondent in early 2003 but nothing further until January 2005. He accepted that he had had some correspondence from the First Respondent since January 2005. In connection with Article 8, Mr Ritchie stated that he could not remember if he spoke to Mrs G on the telephone but he spoke to her husband who indicated that Mrs G was upset and accordingly her husband had to deal with matters on her behalf. Mrs G was very upset by the failure to send the will. At this point the First Respondent complained that the witness had made statements attacking him personally. The Tribunal found no merit in such an allegation. The First Respondent then asked for permission to ask questions in connection with the inspections held in July 2004. Ms Johnston objected as the First Respondent was trying to lead expert evidence from a witness who knew nothing about the facts of this particular part of the complaint. The Tribunal did not allow the question. The Tribunal will use its own expertise to decide on the case. In connection with Article 7 Mr Ritchie accepted that the address in Cathcart Road was 536 and not 535 as stated on some of the letters from the Law Society. In response to a question from the Tribunal, Mr Ritchie stated that the fact that the First Respondent had pp'd the letter did not cause him to ask questions. In response to another question from the Tribunal, Mr Ritchie stated that if the post office had been unable to deliver letters because they were not properly addressed they would have been returned.

The Complainers then led the evidence of **John Fraser**, a partner with Robertson Paul now Peterkins, Robertson Paul. Mr Fraser stated that he represented Mr D in connection with divorce proceedings. Mr D had previously been represented by the First Respondent but had been unhappy with his representation. Mr Fraser explained that he sent a mandate to both the First Respondent and to David Clapham. The First Respondent failed to respond to the mandate. Mr Clapham replied stating that he did not have any files that would be of any use. Mr Fraser stated that various reminders were sent to the First Respondent and phone calls made with no outcome. Mr Fraser stated that he did finally receive the file on 27th January 2004 from the First Respondent. In cross-examination Mr Fraser did not accept that the terms of the First Respondent's letter of 27th January suggested any previous communication with his office. Mr Fraser was adamant that he was unaware of any calls made by the First Respondent to his office. Mr Fraser stated that he did not recall whether Mr D was

clear with regard to the relationship between the First Respondent and Mr Clapham. Mr Fraser stated that so far as he was aware Mr D had two issues, one being the lack of progress with the action and the other that he had paid court action dues to the First Respondent.

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Ms Johnston lodged an amended record. The First Respondent indicated that he had not had time to check this and it was agreed that he would check it between now and the next hearing.

The Complainers then led the evidence of **Morag Newton**, Director of the Guarantee Fund with the Law Society. Ms Newton stated that she was involved in the inspections of the First and Second Respondent's firms. In connection with Article 14 Ms Newton referred to the report of the inspection which took place on the Second Respondent's firm in October 2003. Ms Newton confirmed that Sharon Brownlee carried out the inspection but she wrote the letters to the Second Respondent in connection with the matters raised by the inspection. There were matters outstanding from previous inspections in connection with staff PAYE and VAT, written authorities from clients, receipts from clients and uninvested funds. In connection with Article 13.4 and clients 18 and 21 there was no written confirmation from clients with regard to the funds being uninvested. In connection with clients 8, 9 and 13 the confirmation was also not seen. In connection with Article 14.3 and clients 31 and 33, Ms Newton stated that the Law Society were looking for Form 4's. Also in connection with clients 34, 35 and 36, there were also a number of instances of delay in recording of deeds and there was a lack of narrative in the ledgers so there was uncertainty with regard to which property had been registered. There was often more than one property bought by the same client and there were no details with regard to this. In connection with clients 38, 39, 41, 25, 42, 43, 44, 45, 46, 33, 31 and 47 there were concerns that there was no evidence of registration of deeds.

In connection with Article 14.2 there were delays in writing up the books. Ms Newton stated that the Second Respondent had manual records, the entries were not up to date and it was not possible to determine the financial position of the firm. The

trial balances were not squared and this had previously been noted as a problem. There was also a problem with the suspense account and with some entries being in pencil. There were also entries that were out of date order. There was again the problem of an insufficient narrative and the issue of multiple purchases which was confusing. In connection with Article 14.4 a number of client balances were not correct. There were also a number of client credit balances which should have been invested and there was no written authority from clients to state that the funds did not require to be invested. These related to clients 34, 49, 50, 51, 52, 53, 54, 55, 56, 57, 12, 13, 58, 59, 60, 61, 63 and 30. Ms Newton stated that in some cases there were large sums uninvested. In connection with Article 14.5 there was no identity for clients or reasons noted as to why this was not necessary. This related to clients 73, 74, 53/75, 77, 78 and 76. In some cases it could not be identified where the funds had come from. In connection with Article 14.4 there was no evidence with regard to client's authority in connection with payments made. This related to clients 64, 37, 69, 46. In connection with Article 13.4 and clients 16 and 17 there was still no explanation provided by the Second Respondent. In connection with Article 15.1 the Law Society asked for a reply to a letter of 12th November 2003 but no reply was received. In connection with Article 15.2 another letter was sent on 28th November 2003 to which the Second Respondent stated that he would provide a response but he had flu. Ms Newton stated that there was a meeting of the Guarantee Fund on 4th December 2003 and that that Guarantee Fund Committee was very concerned. The Second Respondent wrote to Lorna Davis on 16th January 2004 in response to her letter of 29th December 2003. In connection with Article 16 and inspection in February 2004 the inspector was Fiona McCleary. Ms Newton explained that there was an issue because the Second Respondent's firm was about to merge with the First Respondent's firm and there was confusion at the Law Society with regard to when the merger of the two firms took place. Ms Newton stated that the Second Respondent accepted that he did not reply to her letter of November 2003. There were still issues with regard to staff wages and VAT, Ms Newton referred to Complainers' Productions 2-17-2-18 and explained that her letter of 18th March 2004 detailed all the outstanding issues and ran to 16 pages. In connection with Article 16.1 there were no records to show that things had been done properly and as the Second Respondent did not reply to queries raised this caused difficulties. There were no up to date records and the books were still in arrears. Ms Newton stated that at this

inspection there was no information to indicate that the two firms had amalgamated. The deficit of £27,246 occurred as a result of a bank error. It was not remedied by the Second Respondent. The suspense account had still not been dealt with and the records did not show the true financial position of the firm. There was also still an issue with debit balances outstanding from the previous inspection. In connection with Article 16.2 sums remained uninvested for clients in connection with clients 31, 79, 80, 81, 64, 82, 83, 13, 84 and 85. The uninvested funds identified at the previous inspection were also still outstanding. In connection with Article 16.3 there were instances where registration of deeds were still outstanding in connection with clients 38, 86, 87, 88, 89, 90, 91, 92, 93, and 94. Ms Newton stated that the Law Society required to see Form 4s. There were still outstanding concerns with regard to delays from the previous inspection. The Second Respondent was again asked to respond within 14 days. Ms Newton stated that the Second Respondent did then start to respond and sent a letter on 5th May 2004. He tried to address the points raised and explained that he operated with manual records. Ms Newton stated that although the Second Respondent had done postings he was still a week in arrears and required to be up to date because as at 4th May 2004 the ledgers of the First and Second Respondent's firms were to be amalgamated to form the Practical Law Partnership. Ms Newton explained that although the business account for the Practical Law Partnership had been opened from November 2003 there had been limited use of it. Ms Newton stated that although the Second Respondent's letter of 5th May 2004 indicated that Form 4s were enclosed there were no enclosures with the letter.

In connection with Article 18 and the inspection of the First Respondent's firm on 17th and 18th February 2004, Ms Newton stated that this inspection had been carried out by Mrs Playfair. Ms Newton however reviewed the file and wrote the letters. Ms Newton explained that this was a special inspection. The Judicial Factor had brought records up to date until October 2003 and then the First Respondent was back in charge. The records showed a significant shortage although due to errors in the bookkeeping the shortage looked worse than it actually was. However Ms Newton explained that the First Respondent's records could not be relied upon. Ms Newton referred to Complainers Productions 2.21 – 2.23. The First Respondent's letter of 21st February 2004 had an address of Argyle Arcade but also included the Cathcart Road address at the bottom of the letter. Ms Newton stated that the Law Society had

received notice saying that the First and Second Respondent's firms were ceasing at the end of October 2003 as they were amalgamating into the Practical Law Partnership. However there was no amalgamation of records. It appeared that the First and Second Respondents continued as sole practitioners. Ms Newton stated that this would not have been a problem if the correct indemnity insurance had been in place.

In connection with Article 19 and the inspection of the First Respondent's firm in March 2004, Ms Newton stated that by this time the First and Second Respondent were in an office together. She indicated that the First Respondent did attempt to reply to the issues raised. Ms Newton explained that the problem was that the First Respondent had unreliable records and he was not familiar with how bookkeeping should be done. Ms Newton referred to Complainers' Productions 2.24 – 2.26 and stated that the First Respondent's letter of 21st April 2004 no longer had the Cathcart Road address on it. In connection with Article 20 and the inspection of the Practical Law Partnership in July 2004, Ms Newton explained that this was when the problem in connection with clients 85 and 86 arose. Ms Newton stated that Christina Heywood was the inspector involved but that she reviewed the case and wrote the correspondence. Ms Newton referred to Complainers' Productions 2.27 – 2.29 and explained that letters were written to both the First and Second Respondent with regard to the problems with clients 85 and 86. A loan had been obtained and the price paid but no disposition had been forthcoming. Ms Newton stated that as far as she understood it the loan instructions in connection with this case were issued to the Second Respondent as a sole practitioner and not to the Practical Law Partnership. The loan was obtained on 8th January 2004 which was after the Practical Law Partnership had been formed but before the First and Second Respondent's books had been brought together. Ms Newton explained that she was of the opinion that there was a deficit of £321,427 because loan funds had been advanced and could not be recovered.

In cross-examination by the Second Respondent, Ms Newton stated that if a solicitor was in bad health and had flu and the problems had only occurred during the weeks when the solicitor had flu this would be included in the report. Ms Newton however stated that in this case the problems had been ongoing for a long period of time not

just during the time when the Second Respondent had flu. Ms Newton stated that she thought it was important that the inspectors acted fairly. She explained that there was a comment in the report with regard to some clients being Asian/Muslim because with this client group and this type of transaction there was more likely to be lending between friends and being Muslim was often given as a reason for not investing clients' funds. Ms Newton stated that there was a question raised with regard to tax evasion because the Second Respondent did not satisfy the Law Society with regard to his PAYE and VAT being done properly. Ms Newton accepted that there were circumstances where there was a reason for late recording of deeds but stated that the Second Respondent had not explained any of these circumstances to the Law Society. Ms Newton also accepted that if the disposition was a link in title, the middle disposition would not require to be registered. Ms Newton indicated that she was also aware that when the new stamp duty system came in in December 2003 it did cause problems but this would not have caused all the problems in the Second Respondent's case. Ms Newton accepted that by the end of the February 2004 inspection the Second Respondent's books were written up until 12th February 2004. Ms Newton further accepted that there was a surplus at both the October 2003 and February 2004 inspections. Ms Newton stated that the Law Society expected that records be written up on a daily basis although it was accepted that some small firms had accountants who only came in two or three times a week. Ms Newton also accepted that for certain entries the information would only become available when the bank statement was issued. In connection with Article 16, Ms Newton accepted that the correction was made and that the bank statement would have highlighted the problem but was of the opinion that matters should have been sorted more quickly. In connection with Article 14, Ms Newton stated that even if only a few of the entries were in pencil this was still a breach of the rules. In connection with the narrative on the ledger, Ms Newton stated that it was not enough just to put "received from client". The Law Society would need to know what the money was for and what the entries related to. Ms Newton accepted that the Second Respondent's accounts certificate was checked with the trial balance and there was not a problem. In connection with uninvested funds Ms Newton stated that if it was a large sum it would be expected that the sum be invested sooner. Ms Newton stated that it was accepted that the Second Respondent's position was that he had dispersed some of the funds but if the records were not up to date the Law Society could not tell that this had happened. Ms Newton

stated that the rules did not allow a choice as to whether or not clients' funds should be invested but if solicitors failed to invest funds on behalf of clients they sometimes paid the interest themselves. Ms Newton stated that if a payment was made on behalf of a client, the Law Society would expect to see some paperwork to back this up. Ms Newton accepted that there was no obligation on a solicitor to attend a Guarantee Fund interview. Ms Newton stated that the Law Society still did not have answers to some of the queries. In connection with Article 20 Ms Newton accepted that the transaction with clients 85 and 86 was complicated. Ms Newton stated that she could not comment on whether the Law Society was pursuing Lyons Laing in connection with the transaction. Ms Newton stated that it was sometimes necessary to enquire into a solicitor's personal financial position.

In cross-examination by the First Respondent, the First Respondent advised Ms Newton that he accepted that the queries raised by Mrs Playfair at the inspection were legitimately raised. Ms Newton confirmed that she understood that Mrs Playfair advised the First Respondent to obtain a cashier. Ms Newton stated that she was aware that Mr M had reconstituted the First Respondent's records. Ms Newton explained that the March inspection closely followed the February inspection because at the February inspection it was impossible to ascertain what the position was. Ms Newton accepted that there was correspondence from the First Respondent after Mr M became involved. The First Respondent referred Ms Newton to Production 2.34 being the review papers and summary of outstanding matters. Ms Newton explained that this review was carried out for the Judicial Factor in December 2004 when she took over the records for all three firms. At this point the Fiscal clarified that she would only be insisting on matters in the Record and not anything else which the witnesses had spoken to. The First Respondent referred Ms Newton to the First Respondent's Third Inventory of Productions being client ledgers. With regard to the balances of uninvested funds, Ms Newton stated that she was unaware that the First Respondent's clients had told him not to invest the funds but when he had advised the Law Society of this they told him to get written confirmation from his clients to this effect. In connection with clients 113, 114 and 115 Ms Newton accepted that the ledgers as lodged by the First Respondent showed different amounts and different periods in relation to funds being uninvested. Ms Newton however stated that when the Law Society inspectors carried out the inspection the ledgers had not been brought

up to date. At this stage Ms Johnston indicated that she did not know if the ledgers lodged by the First Respondent were accurate but the Judicial Factor would be aware of this.

At this point the Tribunal adjourned the hearing to allow the parties to get together and confirm whether these ledgers were accurate and what the actual amount of the uninvested funds were for which periods once the ledgers had been brought up to date. The matter was adjourned until 1st and 2nd March 2007 with further dates being fixed for 2nd and 3rd May 2007.

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The First Respondent and the Fiscal confirmed that unfortunately they were unable to agree any evidence regarding the accuracy of the ledgers. The First Respondent accepted the amended record was correct.

The First Respondent resumed his cross-examination of the witness Morag Newton. The witness was referred to Article 17 and Article 18.4. The witness was asked if it was correct that the Accounts Rules stated that if a solicitor holds less than £500 of client funds that this does not have to be invested. The witness replied that the figures in the rules were just a guide as to what would be reasonable and that the rule says "when reasonable". The witness confirmed that there were exceptions to these rules when outlays such as stamp duty and recording dues and fees are due to be paid after a fee note has been rendered to a client. Mrs Newton confirmed that if funds were held for these purposes they did not require to be invested in terms of Rule 11 subsection 5, although she was not sure that that was the correct subsection. The witness was referred to the Third Inventory of Productions for the First Respondent and the client's ledger for client number 113. The witness confirmed that this was not the client ledger that she looked at on the day of her inspection. She confirmed that as per this Production the client balance as at the date of inspection was £14,798.52. She confirmed that on the basis of this ledger that sum would have been held from 5th December 2003 to the date of inspection, therefore it was a breach of the said Rules. Mrs Newton confirmed that that figure was reduced slightly by outlays and fees, however, a figure in excess of £14,000 was uninvested and was a breach of Rule 11.

The witness stated that she was happy to accept that the figure of £14,011.02 is the correct figure which was uninvested during the period. Mrs Newton confirmed that she was aware of the exception to this rule if there is authority from the client not to invest. However, she stated that at the time of the inspection, there was no written authority in place.

The witness was referred to the First Inventory of Productions for the First Respondent and to Production number 62, a letter sent to Mrs Newton by the First Respondent dated 30 July 2004. Mrs Newton advised that the reference in that letter to the written authority for client 113 proves that there was a breach of the said Rules because at July 2004 there was still no written authority in place. Mrs Newton explained that verbal authority was not sufficient in terms of the said Rules.

The witness was referred to the client ledger for client number 114. Mrs Newton confirmed that according to this ledger the client balance on 12th November 2003 was £26,950.10. Mrs Newton accepted that outlays had been paid out of that and that with the benefit of this ledger which was not available at the time of the inspection, the figure of £26,950.10 should be reduced to £25,640.10. Mrs Newton confirmed that from 12th November 2003 until 12th February 2004 in excess of £25,000 was held uninvested. Mrs Newton stated that if there were issues to be addressed between the First Respondent and the client's building society regarding a partial redemption during that period that made no difference to her position and the funds should still have been invested.

The witness was referred to the client ledger for client 115, contained in the said Third Inventory of Productions for the First Respondent. Mrs Newton confirmed that on 10th November 2003 the client balance was £259.92. Mrs Newton accepted that on examination of this ledger there was no breach of the Accounts Rules.

In relation to client 116, the witness was referred to the client ledger card in the said Inventory. Mrs Newton was prepared to accept on the basis of the entries in this amended client ledger that there was no breach of the Accounts Rules. However, in relation to the second balance listed in the Record for client 116, Mrs Newton confirmed that even on the basis of the revised ledger card there was still a breach of

the said Rules because the sum had been held since 8th November 2002 until April 2004. Mrs Newton accepted that the balance was less than £500 but stated that the "£500 for two months" was just a guideline and an inspector would have raised this as a query. She stated that a small sum held for a very long time can be a breach of the said Rules.

The witness was referred to the revised client ledger for client 117, contained in the said Inventory. The Fiscal amended the date in the Record from 10th December 2002 to 10th December 2003. Mrs Newton accepted that the balance stated in the Record was not correct because of the First Respondent's bookkeeping errors. Mrs Newton stated that the sum of around £5,000 was uninvested for three weeks and that, in her view, this should have been invested.

The witness was then referred to the client ledger for client 118, contained in the said Inventory. Mrs Newton confirmed that £15,000 was received on 18th November 2003 and invested on 16th February 2004. She confirmed that this was a breach of the Accounts Rules as £15,000 had been held in excess of a two month period. She stated that it was not reasonable to hold this amount of money for almost a three month period before it was invested. The witness was referred the First Respondent's letter of 30th July 2004 contained in the First Inventory of Productions for the First Respondent. Mrs Newton confirmed having seen that letter. Mrs Newton stated that she was willing to accept that a letter from client 118 was sent to the Law Society giving authority for the funds not to be invested. However she stated that she did not know on what date it had been sent, and that if it had been in place when the funds were received this matter would not have been raised in the inspection.

The witness was referred to the client ledger for client 119, contained in the said Inventory. Mrs Newton accepted that on the basis of this revised ledger there was no breach of the Accounts Rules in relation to this client.

In relation to <u>Article 19</u> Mrs Newton was referred to the client's ledger in respect of client 120, contained in the said Inventory. She confirmed that there was a breach of the Accounts Rules in respect of this client as a client balance had not been invested in terms of the Accounts Rules.

The witness was referred to the Third Inventory of Productions for the First Respondent and to the ledger card for client 121. Mrs Newton accepted that the breach was from 5th November 2003 when the Judicial Factor left. Mrs Newton accepted that in relation to this client the First Respondent was responsible for the breach of the Accounts Rules from 5th November 2003 until 14th May 2004.

The witness was referred to the client ledger for client 137, contained in the said Inventory. Mrs Newton accepted that the date in the Record should be from 19th January 2004 to 16th February 2004. Mrs Newton accepted that it was now debatable as to whether or not this was a breach of the Accounts Rules. She stated that it might have been reasonable to have invested the funds sooner.

Mrs Newton was referred to the client ledger for client 138, contained in the said Inventory. Mrs Newton accepted that the dates in the Record may be wrong in relation to this client and that there was a nil balance as at 12th December 2004.

Mrs Newton was referred to the client ledger for client 122, contained in the said Inventory. Mrs Newton stated that almost £3,000 was held from 24th September 2003 to the date of inspection without investment and that there was a breach of the Accounts Rules in relation to this client.

Mrs Newton was then referred to Article 21. Mrs Newton advised that she was confused about the existence of the partnership as she was given conflicting information about this and the circumstances observed did not tie in with that information. Mrs Newton advised that the information given to her came from the First Respondent and the Second Respondent and from information given to the insurers. She advised that there were various letters received saying that there was going to be no partnership in existence until the firm's balances were checked. Mrs Newton confirmed that she did not have any detailed knowledge of the partnership agreement or the various drafts.

The witness was asked what her position was regarding a conveyancing transaction where a cheque was sent in settlement and the seller didn't have the title deeds.

Would she expect the solicitor to cash the cheque in these circumstances? Mrs Newton stated that she would not really expect a solicitor to hand over a cheque in these circumstances. However, she would expect that if it was handed over it would be on special conditions to be held as undelivered. These special conditions should have been spelled out in a covering letter.

In re-examination the Fiscal referred the witness to the date of the Complaint. The witness confirmed that this was 13th July 2005. The Fiscal referred the witness to a number of Productions which Mrs Newton had just looked at during cross-examination. The witness confirmed that the dates of these printouts were between 21st April 2006 and 30th August 2006. The witness was then referred by the Fiscal to Complainers' Productions 2.27-2.29 and within that to a letter from the Law Society dated 16th August 2004 and to the First Respondent's letter of 30th July 2004. Mrs Newton agreed that the First Respondent's letter enclosed written authority in relation to client 118. Mrs Newton confirmed that this written authority did not alter her position regarding the existence of written authority when the funds were received. Mrs Newton advised that in his letter the First Respondent accepts that there are instances where interest will be paid to the clients. Mrs Newton was asked whether it was possible for the First Respondent to tell the true position of his firm at the time of the inspection. Mrs Newton replied that it was not possible to do this at the time of the inspection because the records were not written up to date. She stated that in some instances the inspectors knew that there were errors and the position should be better than it appeared.

The Complainers then led the evidence of **Sharon Brownlee** who spoke to Article 14. Ms Brownlee confirmed that she was a Law Society Inspector and had worked in the Inspections Department for approximately seven years. She advised that she was qualified as a Scottish Law Accountant. She advised that she was the lead inspector at the inspection on 20th/21st October 2003 at the inspection of the Second Respondent. She stated that she was the only inspector there on the first day but that a senior inspector joined her later on the second day. Ms Brownlee referred to Complainers' Productions 2.15 to 2.16 in connection with this inspection. She confirmed that this was her report and that it contained details of her findings from the inspection prepared from her working papers compiled during the inspection. Ms

Brownlee stated that when she attended for the inspection she had similar difficulties as had been experienced in previous inspections in relation to inadequate and incomplete records. She stated that she had the previous inspection report and was carrying out a follow up from these two inspections and carrying out a further inspection. She said it was impossible to establish the current financial position of the firm up to 20th October 2003. She stated that the books and records were up to date as at 30th September 2003 but no October entries had been posted. She stated that there had been properties bought and sold on the same day or within days and that it was difficult to ascertain from the ledgers what properties were involved because of the incomplete details. Ms Brownlee stated that it was difficult to tell from the records if deeds had been sent for registration. Ms Brownlee stated that this was the case in relation to a significant number of transactions and that each such transaction was noted in the letter to the Second Respondent for clarification. Ms Brownlee stated that it was impossible to tell from some of the ledgers whether stamp duty had been paid on particular properties because of the incomplete information. Ms Brownlee stated that the Second Respondent was not available initially but that she saw him later in the morning of the first day. Ms Brownlee stated that throughout the inspection she had to ask the Second Respondent for a number of records and files to be produced to establish the current situation. Ms Brownlee stated that she was advised on the second day of the inspection by the Second Respondent that he was intending to amalgamate his practice with that of the First Respondent. Ms Brownlee stated that the Second Respondent was advised that his records would need to be examined before any amalgamation. Ms Brownlee stated that there were no records of tax or PAYE available. The firm's trial balance had not been squared and there were differences in the figures of £179 in July 2003, £181 in August 2003 and £266.38 in September 2003. Entries had been made out of date order. Some entries said "received from client". The witness stated that there was a difficulty with ledger entries for client number 30. The ledger showed entries but no dates. Ms Brownlee stated that there were many pencil entries in the records throughout the ledger. There were discrepancies regarding the purchase price of properties and the loan documents. Ms Brownlee stated that she asked the Second Respondent to explain these as she went along but she did not get any response at the time from the Second Respondent. The witness was referred to Article 14.3. She stated that there were discrepancies in relation to purchase prices and the Second Respondent was asked to obtain

confirmation from the banks or building society as to the full purchase prices. The witness stated that at Article 14.3 of the Record there were four instances detailed of inter-client transactions where the Second Respondent acted for both parties. The witness confirmed that these were examples of where there were discrepancies in the purchase prices paid. The witness stated that the records showed that there were delays in forwarding deeds to the Keeper for registration or no evidence that deeds had been registered. The witness stated that there did not appear to be a system for ensuring timeous registration of deeds. Ms Brownlee stated that in some cases it was not possible to identify from the ledger which deeds were registered and she referred to the specific examples on page 62 of the Record namely -

- client 38, there was a credit balance of £132 but no indication that recording dues had been paid
- client 44, she had concerns that the stamp duty had been recorded as paid when the property had been sold and therefore that client would not have been responsible for the stamp duty
- client 45, the purchase of four properties, recording dues for all properties were not paid until 2003

The witness also spoke to the queries raised in relation to clients 39, 25, 42, 43, 46, 33 and 47. The witness stated that she highlighted all of these items in her letter to the Second Respondent after the inspection in order that he could explain them.

The witness referred to Article 14.4. Ms Brownlee confirmed that the list of client balances to September 2003 was incorrect. The witness stated that a number of client credit balances should have been either disbursed timeously or invested and she referred to the list contained in Article 14.4 involving clients 34, 49, 50, 51, 52, 53, 54, 55, 56, 57, 12, 13, 58, 59, 60, 61, 62, 63 and 30. The witness stated that there could have been investments made in October which were not recorded but that information was requested and was not produced. The Second Respondent confirmed that he had notes of the October transactions and the witness confirmed she asked for sight of these but these were not produced.

Ms Brownlee stated she had concerns regarding the fact that there was no written authority in place for several payments from one client to another. As listed in Article 14.4 in relation to clients 24, 65, 66, 67, 37 and 69 and in relation to client 46, that involved a large sum of money - £143,078.57. Ms Brownlee confirmed that written authority was required in terms of the Accounts Rules when paying out client's money to anyone else but the other party in a conveyancing transaction or the client.

The witness was referred to Article 14.5. She stated that she had concerns regarding failure to comply with the Money Laundering provisions. She stated that it was not clear from records and files that the identities of clients had been confirmed. She stated that she viewed some but not all files, due to time constraints. She stated that the files examined were as listed in Article 14.5 i.e. for clients 73, 74, 53/75 and 76. She stated she also had concerns regarding insufficient details of the source of funds in relation to the following clients -

- 73 £11,000 received on 15th May 2003
- 74 £23,125 received on 11th April 2003
- 53/75 £10,000, £12,000 and £6,760.50 all received on 25th September 2003
- 77 £59,320 received on 6th May 2003 and £12,432.50 received on 11th September 2003
- 78 £56,500 received on 18th July 2003 and £5,000 received on 24th September 2003

The witness stated that she was not involved in the follow up correspondence after the inspection. She just prepared the report and the letter and the file was then passed to someone else to do the follow up correspondence.

In cross-examination by the Second Respondent, Ms Brownlee explained that every new inspection is carried out in the same way by looking at any previous inspections and correspondence and seeing if any items remain outstanding and then starting from scratch and checking the records. Ms Brownlee advised that she was not in a position to give a firm's records a score out of 10. She said that her opinion in relation to the state of the accounts would depend on what was found in them and there would be no

difference in that respect between manual and computerised records. The Second Respondent suggested that his accounts were in quite good condition and the witness replied that they were not up to date and did not comply in several respects with the Accounts Rules. The witness confirmed that the records as at 30th September, showed a surplus on the client account of around £17,000. The witness agreed that this figure was not queried in the report. Ms Brownlee confirmed that she could not remember exactly when she got all the paperwork but remembered having to await the Second Respondent's arrival before she got certain information. Ms Brownlee confirmed that he had stated that he had been unwell with flu prior to the inspection. She agreed that this was not recorded in any part of her report. The witness was asked if she was given all the files she had asked for in her written list and stated that she could not say whether she was given all the files she asked for because she knew that all the files were not reviewed because of the lack of time. She stated that she went through those files that she had time to go through. The witness confirmed that she asked for information that she did not get in relation to previous inspections.

The witness was referred to Article 14.2. The witness was unable to confirm that the out of date entries were a small minority. She stated that she simply had noted that some entries were out of date. The witness refused to accept that some entries would have to be out of date. She stated that they should be posted in strict date order. In relation to CHAPS payments she indicates that they should be in date order with the CHAPS charge being entered when it was available. In relation to any mistakes made in entries, the witness confirmed that these should be dealt with later. The original entry must be made when the bank advise that a payment has been received. The witness confirmed that the out of date entries were cashbook entries. The witness stated she was unable to refer to specific entries without reference to her working notes or the Second Respondent's records. The witness stated that ledger entries should be in full and detail the name of the client, how the money was received and the account number. The witness was unable to comment on whether this point was mentioned in previous inspections of his books. In relation to multiple properties sold within days of each other, the witness explained that she was not saying that stamp duty was not paid, as stamp duty is not payable in all cases, what she was saying is that it was not clear that stamp duty was paid in relation to certain deeds.

The witness accepted that there would not always be a recorded deed in relation to every transaction. The witness accepted that as an inspector she had seen instances of that. The witness stated that in relation to these transactions she had asked for clarification and did not receive it.

The witness was referred to Article 14.4. The witness confirmed that her understanding of the Accounts Rules was that in the course of a transaction there are several outlays which require to be paid and that there is no requirement for written authority to pay out those, for example, sums required to redeem a loan. However, the payment of free proceeds should only be made to the client unless there is written authority from the client to pay to a third party. The witness confirmed that this is not just good practice but is enshrined in Rule 6.1(c).

The witness was referred to Article 14.3. Ms Brownlee explained that in order to provide a full accounting to the client it is necessary to narrate the full purchase price even where the full funds do not pass through the lawyer's hands. She explained that this was part of the overall transaction and must be recorded in the accounts.

There was no re-examination.

There was no cross-examination by the First Respondent.

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The Complainers led the evidence of **Margaret Playfair**, a senior inspector with the Law Society with 14 years experience in the Inspection Department. The witness spoke to Article 18 of the Complaint. She confirmed that she was involved in the inspection of Atuahene, Sim, Murray & Co in February 2004. She referred to the Complainers' Productions 2.21-2.23 in connection with this inspection. Ms Playfair confirmed that this was her report and letter sent to the First Respondent following the inspection. She stated that this was a special inspection and that she was the lead inspector and the author of the report. She stated that this was a special inspection because it followed on from previous inspections and she was familiar with the issues arising from those previous inspections and she had access to the previous reports.

She stated that she was aware that an Interim Judicial Factor had been in place before she carried out the inspection. She stated that the Interim Judicial Factor had maintained the records of the firm up to 31st October 2003 and that the First Respondent took over the record keeping of the firm from that date.

Ms Playfair said that in relation to the state of the records as at 17th February 2004 it was clear from the printouts that the First Respondent had been up all night posting records and trying to get them as up to date as possible. She advised that the records produced were stated to be reconciled to 30th November 2003 and should have been reconciled at 31st January 2004. The records were not reconciled up to the end of November either because it became clear that the First Respondent was not experienced enough to operate the computer and his efforts to update the records had been wasted. The witness stated that she did not think there were any postings made in 2004. She stated that the December postings had been worked on all night but were not reconciled. She stated that she was unable to tell the true financial position of the firm because there were huge differences and obvious errors. She stated that the postings done by the First Respondent needed to be re-done to establish the correct position. It was obvious that some debits were entered as credits and vice versa. The witness stated that the records showed around a £200,000 shortfall but confirmed that these were unreliable records. Ms Playfair stated that the First Respondent had tried very hard to get his books up to date and during the inspection had become distressed. She had advised him that he needed help with his accounts. The witness stated that the First Respondent was not present at the end of the inspection but that he attended a meeting shortly after at the Law Society's offices and became very distressed at that meeting. Ms Playfair stated that the First Respondent indicated that the whole business was ruining his health and that he had tried to sell the practice and get a job but had not been successful in doing so. He indicated that he had debts of £393,000 and the firm income was in the region of £90,000. The witness advised that when the First Respondent left the meeting at the Law Society he indicated that he was going to try and sell the practice.

The witness was referred to Article 18.2. Ms Playfair stated that her findings from the inspection were contained in the letter attached to her report and amounted to seven pages. The witness stated that the accounts included inaccurate client balances and

that these were listed on page 2 of her letter and were referred to in Article 18.2 of the Record. In relation to client 108, the client balance was shown as a credit of £47,010.19 instead of a £70 credit which should have been shown from 15th December 2003. In relation to client 109, the records showed a credit balance of £46,940.19 when it should have been nil from 12th December 2003. In relation to client 110, the records showed a credit balance of £20,083.51 when it should have been a credit balance of £258.79 from 15th December 2003. In relation to client 111, a credit balance of £1,678.04 was shown when that should have been nil from 18th December 2003. Ms Playfair confirmed that the records showed debit entries sometimes posted as credit entries. Ms Playfair confirmed that the firm's trial balance did not show the true financial position of the firm. The firm's client account appeared to have a deficit of £123.30. She stated that the firm loan account was not reconciled and that the true figure as at 30th November 2003 should have been in the region of £248,300. Ms Playfair stated that the VAT return for 31st October 2003 was still held as unpaid and the First Respondent had been making payments out of his own funds from his personal bank accounts so it was impossible to tell the true financial position. Ms Playfair stated that the bank had stopped honouring cheques. Ms Playfair agreed that this was a man entirely out of his depth.

The witness was referred to Article 18.4. Ms Playfair confirmed that her letter listed a number of credit balances over £500 which were not invested. She stated that this was just a sample of what she found. Ms Playfair accepted that not all these balances were proper balances because the accounts were so inaccurate. Ms Playfair referred to page 5 of her letter and paragraph headed Rule 6.2. She confirmed that this paragraph referred to three cheques which were paid to banks or building societies which had not been designated. Ms Playfair advised that a cheque amounting to £998 which should have gone to The Queen and Lord Treasurer's Remembrancer (Q<R) remained unpaid since the previous inspection.

The witness was referred to Article 18.5. Mrs Playfair stated that she had been told in advance that that the firm was to be trading as The Practical Law Partnership at this time. She was aware that the loan had started off in November. However, the First Respondent told her he was not starting to trade until he had the Second Respondent's

balances checked. Mrs Playfair stated that it was difficult to tell what was going on, some letters were on Practical Law Partnership notepaper and others were not.

Mrs Playfair stated that stamp duty was due to be paid on a transaction for client 124 in April 2003 but appeared to have been paid on 6th February 2004. Mrs Playfair stated that there was not a system for recording of deeds in place which worked. In relation to client 125 Mrs Playfair stated that there was no sign of a recorded standard security or recording dues. In relation to client 126 she stated that there was no sign of a discharge. In relation to the same client there was another property in Beith which gave concern as there was no source of income identified and the disposition seemed not to be recorded. Mrs Playfair advised that the discharge was still in the file. She advised that the Money Laundering information just said that he was an existing client but there was no date as from when he had become a client.

Mrs Playfair stated that she could not recall seeing any system set up for complying with the Money Laundering Regulations. Mrs Playfair stated that the First Respondent was very distressed and she gave him a Law Care booklet as she was very concerned regarding his state of mind. Mrs Playfair stated that the First Respondent was trying to sort out the books but did not have the experience to do it himself. He desperately needed help. Mrs Playfair stated that she was aware of the First Respondent's practice before he took on Isabel Murray's practice as she had visited his practice twice before. Mrs Playfair agreed that his former practice was a small business in comparison to the business she was inspecting in February 2004.

Mrs Playfair was referred to Complainers' Productions 2.21, 2.22 and 2.23. She was referred to a document towards the end of those Productions headed "summing up notes for discussion with Mr Atuahene regarding inspection carried out 17th/18th February 2004, Margaret Playfair and Shaun Sangster." Mrs Playfair confirmed that this document was prepared by her from her working papers of the inspection. She confirmed that this disclosed a true record of what she found in the two days of inspection. Mrs Playfair confirmed that she gave this to the First Respondent when he came to the Law Society and that she had had it typed up that day from her handwritten notes.

The witness was referred to Article 19 of the Record and to Complainers' Production 2.24-2.26. Mrs Playfair confirmed that these Productions contained her report of the inspection on 28th/30th March 2004 of Atuahene, Sim, Murray & Co when she was the lead inspector. Mrs Playfair advised that this was a quick return inspection because the records had only been reconciled up to November. She stated that this inspection was to make sure that the First Respondent had brought his books up to date. Mrs Playfair stated that as at the date of inspection she had had no reply to her letter from the previous inspection. She stated that in March the books were still in arrears. She stated that the firm's records were not up to date for January, February and March 2004 and that the records for the GLG Bank account still had not been updated. Mrs Playfair stated that the First Respondent had advised her that his wife was making payments on behalf of the firm and that it was impossible to ascertain when payments were made as there was no record of these. Mrs Playfair stated that VAT issues were still not resolved. There was no VAT paid since 1st November 2002. The PAYE account had not been updated since October 2003 and the firm's liability stood at £387,076 with fee income from 1st November 2003 to 29th February 2004 of £18,500. Mrs Playfair stated that she was concerned about the debt level when compared with the level of fee income.

Mrs Playfair stated that she had concerns regarding the client ledger narratives being insufficient. She stated that there should be no need to view the file.

She stated there was a test check done on client 104, the entry dated 7th January 2004 read "paid you £45,388.25" but was the wrong entry. In relation to client 128, there were two entries recorded as "from you" on 14th January 2004 for £14,000 and £37,219. The narratives should have stated who the drafts were from and which account. In relation to client 129, the entry read "purchase £71,506.03" but it was not a purchase it should have read as a redemption. In relation to client 130, the ledger showed a purchase on 13th February but did not identify who the other solicitors were. In relation to clients 131 and 132 there was insufficient information on the ledger to identify the client or the properties being sold. In relation to clients 113 and 134 there was incorrect information on the ledger. In relation to client 131 the ledger showed a credit balance of £48,248.04 when it should have been nil.

Mrs Playfair stated that there was an account for "Murray & Co unpresented cheques" with a credit balance of £6,130.80 which required to be allocated to the correct client ledger accounts. Mrs Playfair advised that the Interim Judicial Factor had left by this time. Mrs Playfair stated that there did not seem to be any prospect of resolving the issue of the unpresented cheques.

Mrs Playfair stated that the accounts showed many ledgers with small credit balances on them which looked like recording dues and there were a number of old credit balances which had not been dealt with. Mrs Playfair stated that there was no quarterly reconciliation done of invested funds which should have been done as at December.

The witness was referred to Article 19.3, she stated that a test check had shown many client balances in excess of £500 had not been invested. Mrs Playfair stated these were as listed in Article 19.3 of the Record and involved clients 120, 121, 137, 138, 122 and 139. Mrs Playfair stated that the First Respondent had said that some Muslim clients did not want funds invested and he would get written authority from them to cover that.

Mrs Playfair stated that on a number of occasions cheques paid to banks and building societies had not been designated. Mrs Playfair stated that she noted late or non-stamping or recording of title deeds. In relation to client 112, a sale on 6th December 2003 the disposition and standard security were not yet sent for recording nor was the discharge. In relation to client 128, the disposition dated 19th January 2004 had not yet been sent for recording. In relation to client 140, there was a sale on 19th January 2004 and a purchase on 6th February 2004 and the discharge, disposition and standard security had not yet been sent for recording. In relation to client 129, a sale on 19th January 2004, the discharge had not been sent for recording.

The witness was referred to Article 19.4. Mrs Playfair stated that no proper money laundering procedures were in place. She stated that funds received by bankers draft did not appear to have been verified to confirm who the income was received from. Three bank drafts for client 128 appeared to have come from various family members

but were not checked. In relation to client 130, a bank draft of £69,500 was not verified.

The witness was then referred to Article 21. Mrs Playfair stated that, as mentioned at the end of her report, it was her understanding that the partnership agreement was signed but not yet in force. She advised that the First Respondent had told her that it was delayed. She advised that he had told her this at both inspections in February and in March. She stated that on both occasions the First Respondent said that the Second Respondent's firm's balances needed to be checked to see everything was in order before the partnership could take effect. Mrs Playfair stated that no new firm records had been prepared but there was a bank loan in existence in the name of the partnership. Mrs Playfair stated that the First Respondent produced evidence of this or she would not have been aware of it. Mrs Playfair stated that there was no client account for the new firm. She stated that some letters had the words "incorporating the Practical Law Partnership" typed on the letterhead and some did not.

The witness was referred to Complainers' Production 3-8, a file extracted from the firm in relation to client 131. The witness was referred to page 42 of that file, a copy letter from Atuahene, Sim, Murray & Co to Preferred Mortgages Limited dated 15th March 2004. Mrs Playfair stated that the terms of that letter confirmed that the First Respondent would shortly be entering into a new partnership. Mrs Playfair advised that the statement contained in that letter that the partnership had not commenced was in keeping with what she saw and with what the First Respondent told her.

Mrs Playfair stated that once the inspection was over she gave a summary of her findings to the First Respondent. She advised that she was not involved in any exchange of correspondence with the First Respondent after the inspection to resolve the outstanding issues. Mrs Playfair advised that she was not involved in the later inspection of the Practical Law Partnership.

Under cross-examination from the Second Respondent, Mrs Playfair stated that the Second Respondent was not present at the First inspection. However, by the time of the March inspection the Second Respondent was based in the office and had staff

there. Mrs Playfair confirmed that the Second Respondent did not take any part in the March inspection as she was looking only at the First Respondent's books.

Under cross-examination from the First Respondent the witness was referred to Article 18 and to the First Inventory of Productions for the First Respondent. She was referred to page 44 of that Inventory, a letter from the Judicial Factor dated 6th April 2004. The witness stated that she had not seen this letter. The witness was asked to read the letter. The witness did not accept that the Interim Judicial Factor explained the position on the two accounts referred to therein. She stated that there were still question marks there which needed investigated. The witness was referred to the list of unpresented cheques issued by Murray & Co attached to Production 44. Mrs Playfair stated that Murray & Co should have made arrangements for these cheques to be cleared in Murray & Co's accounts but stated that the First Respondent took over Murray & Co's records.

Mrs Playfair advised that she was not aware of any amendments to the original partnership agreement.

Ms Johnston referred to page 63 of the said Inventory. However, the witness confirmed in answer to a question by the Tribunal that she had not seen this document before.

The witness was then referred to Complainers' Productions 2.19-2.20 and to a letter dated 4th June 2003. Mrs Playfair advised that this letter would have been on the file when she came to do the inspection. Mrs Playfair stated that she could not recall the First Respondent advising her that he had a separate file containing identity information for the Money Laundering Regulations but that he could not locate it. She stated that she could not dispute that this occurred. The First Respondent asked Mrs Playfair to accept that the errors in his books may have made her jump to the wrong conclusions about what his records showed. Mrs Playfair replied that she could only look at his records and that she then asked for more information and was not aware of any errors being corrected.

The witness was referred to the Second Inventory of Productions for the First Respondent. Mrs Playfair confirmed that written authority should be obtained before funds were not invested. However if it was obtained retrospectively, a solicitor would have been given a warning not to do that in future. Mrs Playfair denied that she told the First Respondent to contact Soroba, the makers of his computer system, at the meeting she held with him in Edinburgh after the inspection. Mrs Playfair stated that she told him to contact Solas. Mrs Playfair denied contacting anyone at Soroba and stated that she did not know anyone who worked there. Mrs Playfair stated that, as a result of the two inspections and the queries raised at the meeting, the First Respondent then employed someone to update his records. Mrs Playfair stated that that person had to wipe the whole system and start again and re-post all entries.

In re-examination by the Fiscal Mrs Playfair was asked if she had phoned anyone to assist the First Respondent with his bookkeeping. The witness replied that inspectors do not recommend anyone to do a solicitor's books. However, she did state that she may have phoned Solas via the Law Society. She stated that she thought that the bookkeeper employed by the First Respondent was a member of Solas. She stated that she thought that the First Respondent was confusing Soroba with Solas.

The Fiscal referred the witness to the Second Inventory of Productions for the First Respondent and to item 2 of that Inventory. The Fiscal asked the witness to confirm the date on that printout. Mrs Playfair confirmed the date of the printout was 1st May 2004. The Fiscal asked the witness to confirm when the accounts were last inspected by her and she confirmed March 2004.

The Complainers led the evidence of their next witness, **Gail Robinson**, who spoke to Article 17. Ms Robinson confirmed that she was an inspector with the Law Society, that she was Solas qualified and had worked as an inspector with the Law Society for five years. The witness was referred to Complainers' Productions 2.19-2.20. Ms Robinson confirmed that she inspected Atuahene, Sim, Murray & Co in April 2003 and that her report of that inspection was contained in Complainers' Productions 2.19-2.20. She stated that she was accompanied by Andrew Caldwell who is no longer with the Law Society. She confirmed that her report was an accurate account of her findings during the inspection on 22nd-24th April 2003.

Ms Robinson confirmed that the inspection took place at Argyle Arcade, Glasgow and that there were difficulties with the inspection due to the prolonged absence of the cashier, Ms O. Ms Robinson stated that the First Respondent was present but that he could not access his accounting system as he did not have the password. Ms Robinson stated that there were problems with the First Respondent producing client correspondence files. She stated that she was responsible for checking these and had to sit with him whilst he looked through the files. Ms Robinson stated that he was not happy for her to examine the files alone in view of client confidentiality. Ms Robinson stated that the First Respondent's account records were not reliable. She stated that there were many posting errors. She stated that narratives were missing on client ledgers and it was difficult to work out what was happening. Ms Robinson was referred to page 1 of her report which disclosed an apparent shortage on the client account and delays in recording deeds. She stated that there appeared to be no proper system in place for recording deeds.

The witness referred to Article 17.2. Ms Robinson stated that there were records from Atuahene, Sim & Co which were not transferred over and that these were noted in the letter forming part of her report. The witness confirmed that she compiled this list from her working papers with the assistance of her colleague. Ms Robinson stated that the client bank reconciliation was unreliable and that there were numerous errors in the records. The witness advised that she did not speak to the Second Respondent at this time. The witness referred to page 2 of her letter. Ms Robinson confirmed that the First Respondent was asked to lodge £7,000 in his client bank account and transfer all balances currently held in the name of Atuahene, Sim. He was advised that all postings should be brought up to date and that all adjustments arising from the previous bank reconciliation were to be posted. In addition he was asked to produce a full list of all client balances, invested funds, the firm's client bank reconciliation and a statement of surplus/deficit once all the above points were attended to.

The witness was referred to Article 17.3. Ms Robinson advised that the specific matters were brought to the First Respondent's attention following the inspection. In relation to client 95, a payment of £16,000 was made on 1st January 2003 but the sale proceeds received from him from client number 96 on that date amounted to only

£1,400 and a further payment of £12,600 was not received until January 2003 with the balance on 13th January 2003. In relation to client 97, a property was paid for on 31st January 2003 while the funds were not received until 16th February 2003. A client account with the Royal Bank was closed on 6th January 2003 but was shown in the trial balance records as overdrawn. The funds control was £106,912.12 but the invested funds printout stated £70,171.16, the balance for client 98 being understated by £36,760.36.

Ms Robinson stated that funds were held for periods without reason such as for client 99, in the purchase of a property on 27th February 2003. Ms Robinson stated that there were many uninvested credit balances of over £500 held since November 2002. Ms Robinson stated that there were two instances of fees being taken prior to fee notes being rendered. Ms Robinson stated that she identified this from her file reviews. Ms Robinson stated that she had conversations with the First Respondent regarding the money laundering provisions. She stated that she recalled conversations with him regarding where the information was. These conversations amounted to her asking for the information and him replying that it was not there.

The witness was referred to Article 17.4. Ms Robinson stated that she had concerns about a shortage on client accounts. She stated that in relation to client 100, a property was sold with two Bank of Scotland loans which were redeemed on 13th November and 19th November 2002. In relation to client 101, a property was sold and the Yorkshire Building Society whose loan was redeemed on 19th March 2003 although the sale proceeds were not received until 25th March 2003. In relation to client 102, a repayment of a mortgage was made on 27th February 2003. In relation to client 103, a loan was redeemed in about November 2002 and in relation to all these transactions it appeared that the deeds had not been registered. In relation to client 104, there appeared to be a long delay in stamping and recording of the disposition. In relation to client 105, it appeared that the disposition and standard security were not recorded and that the disposition had not been stamped. In relation to client 106, no stamp duty appeared to be paid although the deeds were recorded. In relation to client 107, the source of the opening credit balance was not shown, no deeds were recorded and £30,000 received on 6th January 2003 was erroneously lodged in the firm bank account and not corrected until 8th January 2003. Ms Robinson confirmed that she

was not involved in any follow up correspondence after the inspection. Ms Robinson stated that the First Respondent was present with her when she was examining the files. She stated that he was very aggressive, that he shouted and pounded the desk when she was asking for certain information to be shown to him.

In cross-examination by the First Respondent Ms Robinson confirmed that she was a Scottish Law Accountant and had qualified 11 years ago. Ms Robinson accepted that as at the date of the inspection there were many errors in the First Respondent's records and that because of these errors it was not possible to ascertain the true position.

Ms Robinson accepted that upon correction of the errors in the records regarding narratives and recording of deeds that the position was different from what she saw but stated that she had to go on the basis of what she saw on the date of the inspection. Ms Robinson was asked how she came to her conclusion that fees had been taken before fee notes rendered. Ms Robinson replied that she looked at the ledger to see when the fees were recovered and then at the files to see when the fee notes were rendered. She stated that in the cases she had highlighted sums which came out of the client ledgers before the fee notes were sent to the client. Ms Robinson did not accept that this might have looked this way due to a mistake in the client ledger. She stated that when the fees were taken they were posted to the client ledger that day and that was before the fee notes were rendered.

The First Respondent suggested to the witness that he only spoke to her on two occasions. Ms Robinson disputed that and said that she spent all day going over all the files with him. She stated that she spent a full day with him. She confirmed that she gathered evidence to prepare her letter from her working papers and from the working papers of the other inspector present at the time of the inspection.

In relation to access to the computerised records, Ms Robinson stated that she did not remember getting access on the first day of the inspection or on the second day either. She confirmed that the inspection took three days and that she got access on the third day.

Ms Robinson stated that normally at the end of the inspection there is a summing up meeting with the solicitor concerned. However, due to the difficulties with the First Respondent's attitude she felt it was not appropriate to have such a meeting at the end of that inspection.

She was asked by the First Respondent if she got everything that she needed. The witness replied that she only got access to the files when she was there and she only got access to individual pages in these files, not to the full files. She stated that inspectors needed to see receipted Form 4s in the files and they need full access to files to see if there are things not recorded on the client's ledger. The witness confirmed that the First Respondent had refused to handover the files on grounds of client confidentiality. The First Respondent asked if the witness was angry at him and she stated that she felt very intimated because of his aggressive manner.

There was no cross-examination by the Second Respondent and no re-examination.

In response to a question from the Tribunal, the witness advised that it was not normal for a sole practitioner or a cashroom partner not to be able to access accounting records. The witness stated that it was very concerning for them as a solicitor must be able to access his records to be able to maintain them.

The Complainers led their next witness, **Fiona McCleary** who spoke to Article 16. She confirmed that she was an inspector with the Law Society and had worked in that capacity for 9½ years. She advised that she was Solas qualified and had previously served part of an accounting apprenticeship. She was referred to Complainers Productions 2.17-2.18 and confirmed that these documents contained her report and a follow up letter regarding the inspection of the Second Respondent on 17th – 19th February 2004. She confirmed that this was a special inspection and that she was aware in advance of problems at the firm and had previous inspection files with her. Mrs McCleary advised that when she arrived the Second Respondent was there. She advised that at the start of the inspection she had three points to ask the Second Respondent about outstanding matters. She advised that he had said that he would respond to these matters in writing but by the end of the third day he had not managed to do that and nothing had been prepared. Mrs McCleary stated that she had concerns

regarding the two firms. She stated that she understood that the partnership was due to have started in November. However, she stated that when she was there they were still working independently. Mrs McCleary stated that the inspection took place at Newton Place, Glasgow although the Second Respondent was preparing to move. Mrs McCleary stated that the Second Respondent told her that it was his intention to start trading as Practical Law Partnership on 1st March 2004.

Mrs McCleary stated that staff wages were being paid in cash from personal drawings. She stated that the trial balance had been drawn up to December 2003 but had not been squared. She stated that the bank reconciliations had been prepared from 31st January 2004. Mrs McCleary stated that by the last day of the inspection the month end for January had been squared and postings had been completed up to 12th February 2004.

Mrs McCleary stated on page 5 of her report that the Second Respondent in general kept good records but that due to the demands on his time he had a problem in keeping them up to date more than anything.

Mrs McCleary was not able to ascertain what the Second Respondent's system was for ensuring that deeds were recorded in time. Mrs McCleary stated that the entries in cash book, trial balance, client balances and client ledgers continued to be made in pencil and not in permanent form. Mrs McCleary identified transactions involving four clients, numbers 31, 34, 35 and 36 where she had concerns that the purchase price in the records differed from what was actually paid.

In cross-examination by the First Respondent Mrs McCleary confirmed that the Second Respondent had told her that the Practical Law Partnership was due to commence on 1st March 2004. The witness advised that she had not seen the original partnership agreement or any subsequent partnership agreement. Mrs McCleary stated that from what she saw at the inspection and from what the Second Respondent told her, the only connection between the two firms at the time was that clients were referred between the two firms.

In cross-examination by the Second Respondent Mrs McCleary agreed that she understood that it had been the Second Respondent's intention to move the weekend before this inspection. Mrs McCleary stated that she could not remember whether any problems identified in the earlier inspection were resolved. The witness was asked by the Second Respondent if she was aware of a practice of him giving interest to clients at rates that banks would offer. The witness advised that there was no evidence of this and a previous inspection would have identified it. Mrs McCleary stated that the narratives on the file ledgers were unsatisfactory as there had to be information sufficient to identify each entry.

The Second Respondent asked the witness if she accepted that pencil entries were made at some stages but that the records were kept in permanent form. The witness replied that she could not accept that as from what she saw there were pencil records and the rule requires all records are in permanent form.

In re-examination Mrs McCleary stated that she had seen pencil entries in the ledgers.

Adjourned until May

2 MAY 2007

Valerie Johnston, Fiscal for the Law Society was present and the Second Respondent was also present. The First Respondent was absent. The Second Respondent advised the Tribunal that he had telephoned the First Respondent that morning to find out where he was and had been told that he was on his way to Stobshill Hospital as he was suffering from sciatica and he was not fit to attend the Tribunal and that he would not be fit to attend tomorrow either. The Second Respondent indicated that the First Respondent was not surprised at his call but was concerned with regard to his medical condition. He did not advise the Second Respondent why he had not contacted the Clerk to advise of his difficulties. Ms Johnston advised that she had witnesses in attendance and asked that the Tribunal proceed in the absence of the First Respondent. The Tribunal adjourned the matter for the Clerk to try and contact the First Respondent. The Clerk made contact with the First Respondent who advised that he was presently at Stobshill Hospital seeing a physiotherapist with regard to his sciatica. The Clerk spoke to the physiotherapist who confirmed that this was in fact the case

and that he had been seeing the First Respondent every two weeks with regard to his sciatica, which had been particularly bad during the last week. The physiotherapist indicated that the First Respondent would have trouble sitting for long periods of time. The First Respondent indicated that he did know about the Tribunal dates but was slightly confused as no letter had been sent and there had been an email with regard to changing the June dates. Miss Johnston indicated that if the First Respondent was unfit to attend she would not insist on her motion to proceed. The Tribunal accordingly agreed to adjourn the proceedings, abandon the proceedings scheduled for 2nd May 2007 and directed that the matter would next call on 19th June 2007. The Tribunal Directed that if the First Respondent had any difficulty attending on 19th June 2007 the Tribunal would require a soul and conscience certificate from his doctor stating that he was unfit to attend.

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The Chairman asked the First Respondent for an explanation in connection with his non attendance at the last hearing, in particular why he did not advise the Tribunal prior to the Tribunal hearing of his medical difficulties. The First Respondent indicated that he did not realise the date was definitely going ahead as he had no written notification from the Clerk's office. He however accepted that he had been told the date verbally at the previous calling of the case. The Chairman advised that a letter was sent as a matter of courtesy and that he should appear on the dates set for hearing by the Tribunal.

The Complainers led the evidence of **Morna Grandison** who has been employed as a Judicial Factor with the Law Society for the past 13 years. Ms Grandison confirmed that she had been appointed Judicial Factor on 15th December 2004 in respect of the Practical Law Partnership and also the Second Respondent's firm. She advised that the First Respondent had already been sequestrated but she was also the Judicial Factor in respect of the former practices of the First and Second Respondents. Ms Grandson advised that her powers were wide as there was confusion as to exactly where the assets were. Ms Grandison explained that they attended at the Argyll Arcade address and found the premises in a state of disarray and confusion; they had to sort out the account records and bring them up to date and try to trace the assets of

the various firms. Ms Grandison explained that the Law Society became involved due to client 85. There were concerns with regard to a claim that had arisen in connection with a purchase of a warehouse owned by a client of Lyons Laing; the sale should have taken place in December 2003 but in January 2004 the Second Respondent drew loan funds from the Bank of Scotland. One of the conditions of obtaining the loan funds was that the Second Respondent confirm to the Bank that the balance of the purchase price was to be paid by Client 85 without further borrowing. The Second Respondent drew the money on 8th January 2004 and forwarded it to Lyons Laing on 9th January 2004 when there were no concluded missives and he did not receive a signed disposition or a letter of obligation. This meant that he was in a position where he had parted with the Bank of Scotland money and put the lenders at severe risk. Ms Grandison advised that the situation was not resolved until much later. She explained that client 85 went into liquidation and it appeared that client 85 was involved in a long term fraud and the Director disappeared. The Bank intimated a claim to the master policy insurance but they declined indemnity under section 1 of the policy due to the Second Respondent having misled them by saying that the Director of client 85 had paid over the balance when he had not. Ms Grandison stated that the Bank had sued the Judicial Factor on the Second Respondent's estate for £337,000. The Liquidator had obtained a disposition for the property. Ms Grandison advised the Tribunal that she had taken Counsel's opinion on whether or not the partnership was in existence at the time of this transaction. If it had been then the First Respondent as an innocent partner would have been able to make a claim on the indemnity insurance. Counsel's opinion however that was there was no partnership in force at the time. Ms Grandison stated that she was aware that there were different views on whether or not the partnership was in existence in November 2003 and January 2004. Ms Grandison stated that when she and her staff went into the Practical Law Partnership's offices there was no power and the files were strewn all over the place. It was one of the worst cases she had dealt with. It took about 650 man hours to sort everything out. They extracted about 16 – 18 boxes of loose correspondence and there were 2 boxes of unimplemented mandates. Ms Grandison explained that the Law Society's main concerns were with regard to work in progress and relocating the clients and dealing with unrecorded deeds. Ms Grandison stated there were a number of files where deeds were not ready to be recorded with some not being signed or having blanks in them. At this stage the Second Respondent objected to the generalised evidence being given

by Ms Grandison. The Fiscal indicated that the witness was giving evidence with regard to the overall maintenance of records. The First Respondent asked that the Fiscal refer the witness to specific clients otherwise it would be difficult to cross examine. The Tribunal allowed the Fiscal an adjournment to speak to her witness to allow the witness to refer to facts which were in the Record. After the adjournment Ms Grandison confirmed that there were 7 transactions which featured in the Record which were still outstanding when she went in as Judicial Factor. These were clients 44 and 46 in Article 14.3, client 93 in Article 16.3, clients 102 and 107 in Article 17.4, client 126 in Article 18.5 and client 145 in Article 20.4.

In connection with Article 21.1, Ms Grandison explained that there was a question as to whether or not there was insurance cover for the Practical Law Partnership and the First and Second Respondent's individual firms. Counsel's opinion indicated that the partnership took effect around the end of April, beginning of May 2004 when the client balances certified by the accountant were transferred. Ms Grandison explained that the First Respondent had made great play of the fact that there would be no partnership until this had been done. Ms Grandison stated that in order to establish when the partnership commenced, she interviewed the First Respondent and the Second Respondent. The First Respondent's position was confused, he maintained that the partnership had commenced earlier but also said that it was important that the balances were certified first. Ms Grandison referred to the Complainers' Production 3.10 in the Third Inventory of the Productions for the Complainers. This was a fax from her to Marsh, and attached to it was a copy of the proposal form with the name the Practical Law Partnership indicating that the Practical Law Partnership commenced on 1st November 2003. The applications for Practising Certificates by the First Respondent and the Second Respondent had the name Practical Law Partnership on them. There were notes saying that this was a new partnership currently being formed. These applications were for the practice year 2003/2004. Ms Grandison referred to Complainers' Productions 3.11, 12 and 13 in the Third inventory Productions for the Complainers being draft Minutes of Agreement between the First and Second Respondents with regard to the Partnership. Ms Grandison stated that she had never located a signed Partnership Agreement. The first draft had a commencement date which had been amended by hand to 1st March 2004. The second draft had this date scored out and a handwritten reference to it commencing when the

balances on the clients' accounts were certified. The third draft had a date conditional on client balances being verified by an accountant. Ms Grandison stated that it was clear by the summer of 2004 that the First and Second Respondents were operating as a partnership and using headed Practical Law Partnership note paper. In January 2004 the note paper was from the original practices. In connection with the bank accounts, one account was set up in September 2003 being a firm account for the Practical Law Partnership and there was also a loan account set up in November 2003 but no other bank accounts were found relating to the Practical Law Partnership until late April 2004 when the client account was opened up and balances were transferred on 14th May 2004. The amalgamation of the two client accounts was only done at that time. Ms Grandison referred to a letter from the First Respondent dated 15th March 2004 which indicated that the Practical Law Partnership was going to exist but there was no client bank account yet. Ms Grandison stated that the indemnity insurance was in the name of the Practical Law Partnership and so the First and Second Respondent's firms were not covered, apart from for run off cover, for any matters in relation to work done prior to the date of cessation. In connection with Articles 21.1 and 21.3, Ms Grandison advised that the First Respondent was sequestrated in August 2004 and the Second Respondent's Practising Certificate was suspended on 8th October 2004. Once she took over as Judicial Factor she did an overview of the accounting records and tried to reconcile all the balances and establish what funds were due to and by clients and this was a difficult process. The accounts had been certified by an accountant on 30th April 2004 so this should have been relatively easy but it was not because some reconciling of items had not been done and adjustments were required. It was also discovered when the clients were written to that the First Respondent's records were incorrect. Ms Grandison stated that she got her colleague Linda Lyall to provide a list of outstanding matters. Ms Grandison referred to the Complainers' Production 3.14 being a letter to Royal & Sun Alliance dated 28th January 2005 in connection with client 85 which sets out the insurer's position. The First and Second Respondents had no insurance cover after 1st November 2003. The insurance cover was for the Practical Law Partnership from that date. The insurer's view was that the Second Respondent had dealt with client 85 as a sole practitioner.

In cross-examination, Ms Grandison indicated that the cost of the 650 man hours would be charged at somewhere between the lowest charge out rate of £40.00 per

hour and a solicitor's rate of £120.00 per hour. Ms Grandison indicated that she was not surprised that the Second Respondent was at the office on 15th December 2004 and she was aware that he had met her colleagues on 15th December 2004. Ms Grandison stated that as Judicial Factor she had to take control and they had their own way of working. She indicated that the solicitor's attendance at the office could sometimes compromise security and accordingly solicitors were usually invited to a formal interview at this stage in the proceedings. Ms Grandison stated that it was not a case of personal judgment in each case. She indicated that the circumstances in which the Judicial Factor was appointed in respect of the First Respondent's practice were different and that in this case the Second Respondent's practice had not been running for two months and the Second Respondent was suspended. Ms Grandison stated that she was not in a position to state whether or not a large number of mandates had been implemented. She accepted that the First Respondent had some accounting records and that accordingly the Second Respondent would not have been able to bring the records up to date. Ms Grandison also indicated that she was aware that the Second Respondent did not know where the First Respondent was at this particular time. Ms Grandison also accepted that the power had only been cut from the date they went into the offices. Ms Grandison accepted that in connection with client 85, the bank did have an internal lawyer but used the Second Respondent as an external lawyer to do the documentation etc. Ms Grandison stated that it would be a surprise to her if solicitors were relaxed with regard to documentation. She indicated that she had not been involved in looking at Lyons Laing's role in the matter. It was the Liquidator's role to look at the issue of Lyons Laing's involvement. Ms Grandison indicated that her position was that the money did not belong to the Second Respondent and so the Judicial Factor had no authority to claim it. She indicated that she had seen copies of papers passed to the Liquidator and the insurers but had not seen the original file. Ms Grandison accepted that the First and Second Respondent's accounts continued after May 2004 when the Practical Law Partnership accounts were up and running. She confirmed that she was appointed by the Court over all three practices. Ms Grandison also accepted that although old letterheads had been used, some correspondence may have made reference to the Practical Law Partnership from March 2004. Ms Grandison confirmed that she had been appointed as Judicial Factor for thirty months but there were still issues outstanding. Ms Grandison confirmed that the sequestration was an automatic discharge and the First Respondent would be discharged in a few

months. Ms Grandison indicated that she could not recall a letter from her to the Second Respondent in November 2004.

In cross-examination, Ms Grandison accepted that she had an interview with the First Respondent in January 2005 when the possibility of making a claim against the insurers on the basis of an innocent partner was discussed with him. Ms Grandison, however, explained that she could only make a claim if she could establish that the partnership was in existence at the time. The insurance company had declined to indemnify. Ms Grandison clarified that she received a copy of the file in connection with client 85 from Brechin Tindal Oats but the Liquidator advised her that these papers were not the original file that the Second Respondent had. Ms Grandison accepted that £20,000 was borrowed by the First and Second Respondents for the Practical Law Partnership and also accepted that there was a definite intention to enter into the partnership. Ms Grandison also accepted that the First Respondent had told her that there was a final partnership agreement which had been signed but she had never seen this. Ms Grandison explained that the Court Order with regard to the Judicial Factory covered all three firms but her understanding of the relationship between the firms became clearer as the situation emerged. Ms Grandison clarified that when she went to the offices in December 2004 the files related to all three firms. Ms Grandison accepted that it was possible that the First and Second Respondents had told their clients verbally of the change of partnership but she did not see any documents to evidence this and was not aware of any clients telling her that this was the case.

In connection with Article 17.4 and client 102, Ms Grandison confirmed that her information with regards to this came from schedules of deeds which were still unrecorded. The First Respondent referred to the Complainers' Productions 2.19 to 2.20 and the First Respondent's letter dated 14th June 2003 which indicates that a Form 4 was being sent with regard to the property at Property 6. Ms Grandison however indicated that this did not necessarily mean that the deeds had been recorded. The First Respondent also referred the witness to Productions 2.24 to 2.26 and a letter dated 21st April by the First Respondent in connection with client 126 which indicates that a Form 4 would be sent in due course and to the First Respondent's Inventory of Productions page 62 which indicated that a Form 4 was enclosed. Ms Grandison

stated that she knew that the deeds for the property had not actually been recorded and the fact that a Form 4 was sent did not mean that the deeds were necessarily recorded.

The matter was then adjourned part heard to 6th September 2007. An additional date of 8th October 2007 was fixed for Hearing of further evidence.

6th SEPTEMBER 2007

Continuation of cross-examination of Morna Grandison by the First Respondent. Ms Grandison confirmed that when the Judicial Factor took over, they inherited two separate sets of accounts, those of the First Respondent and those of the Second Respondent. In connection with the First Respondent, there were three sets of accounts relating to Atuahene, Sim, Atuahene, Sim & Murray and the Practical Law Partnership. Ms Grandison explained that they had problems with the reconciliation done by the First Respondent's accountant and it was difficult to confirm cash payments made. Ms Grandison confirmed that some of the reconciliation entries were wrong and they had to do one and a half pages of reconciliation entries to explain the discrepancies with the cash in the bank. Ms Grandison stated in connection with Article 10.1, Mr Henderson did not claim any money from the Judicial Factor.

In connection with the First Respondent's Answers in relation to Articles 2 to 2.12, Ms Grandison stated that she did remember that there was a lot of correspondence from the Law Society that they passed this onto the First Respondent, some of it being unopened. The First Respondent then indicated that he wished to refer the witness to additional Productions being the First Respondent's Inventory of Productions, Production number 4. An adjournment was allowed for the Fiscal to look at the Productions. The Fiscal confirmed that she had no objection to these Productions being lodged and these were put to the witness. In connection with Production 1b of the Fourth Inventory of Productions, Ms Grandison confirmed that this appeared to be a receipted Form 4 in connection with the property at Property 6 relating to client 102. Production 1c was a discharge and this Form 4 was dated 13th May 2003. These transactions related to Article 17.4. Ms Grandison stated that she could not explain this discrepancy. She said that if the Form 4 had not been returned by the Keeper, she conceded that her office could have made a mistake. In connection item 2b of the

Fourth Inventory of Productions for the First Respondent, Ms Grandison confirmed that this appeared to be a receipted Form 4 in connection with client 126 and two discharges relating to Property 9 dated January 2004. Ms Grandison accepted that on the basis of this, it appeared that it was not her staff that had sent the deeds to be registered.

In re-examination, Ms Grandison confirmed that they had made an inventory of work discovered on the files. A schedule of outstanding work was prepared and they had correspondence with the Keeper in connection with a number of matters including the property at Property 6 and the Keeper stated that there had been no deeds recorded. In connection with client 126 and Article 18.5, Ms Grandison stated that Property 15 was one for which discharges were outstanding. In connection with client 107 and Article 17.4 relating to Property 13, there was only a land certificate and no standard security. The Fiscal referred Ms Grandison to Complainers' Productions 2.27 to 2.29 a letter dated 30th July 2004 from the First Respondent which indicated that a Form 4 was enclosed in connection with client 126 and a letter of 16th August 2004 back to the First Respondent indicating that no Form 4 was enclosed and asking for proof. Ms Grandison was also referred to Complainers' Production 2.34 which was the review papers which indicated that they were still waiting for sight of a Form 4 in connection with this matter in December 2004.

The Complainers then led the evidence of **Jennifer Scollick** who confirmed that she worked with Marsh UK Limited dealing with professional indemnity insurance. Ms Scollick was referred to Complainers' Productions 2.30 to 2.32 in connection with Article 21 and she confirmed that the first page was a summary for the Law Society of what had happened between September 2003 and April 2004 which was prepared on the basis of Marsh records and was accurate. The Fiscal referred the witness to the Third Inventory of Productions for the Complainers, Production 3.10, being a fax with attached copy proposal form prepared in the name of the Practical Partnership. Ms Scollick confirmed that neither the First or Second Respondent renewed their cover for their individual firms, although these firms had run off cover which covered past work. Ms Scollick confirmed that she had a meeting with the First and Second Respondent on 23rd April 2004 to try and resolve the issues because Mr Cumming, the Chief Accountant did not think that the First and Second Respondents were in

partnership at this time. Ms Scollick stated that there was discussion about reinstating indemnity insurance for the two individual practices but the First and Second Respondent indicated that they were to try and persuade the Law Society that they had been in partnership since November 2003 and they were to get back to her. Ms Scollick confirmed that Marsh were not concerned whether or not there was a partnership, they were only concerned with what was on the proposal form.

In cross examination by the Second Respondent, Ms Scollick confirmed that the certificate of insurance was issued for the Practical Law Partnership and the insurance premium was paid in full. Ms Scollick confirmed that what happened in this case was an unusual situation. One option would have been to reinstate the separate insurance cover for each of the Respondent's firms. Ms Scollick confirmed that Marsh were brokers to the Law Society in connection with the master policy and administered the master policy. She indicated that she was involved in trying to resolve matters. She confirmed that if the Law Society had agreed that the partnership had been in place from November 2003 there would have been no problem with regard to the insurance. Ms Scollick confirmed that although the name of the Practical Law Partnership was wrong on the proposal form, it being referred to as the Practical Partnership, this was something that could have been corrected. The Second Respondent referred the witness to Complainer's Production 3.9 a letter of 5th April 2004 from the Law Society. Ms Scollick indicated that she would probably have replied to this letter and would have responded to the effect that the insurance cover was as per the proposal form and that there was no insurance cover for the sole practices of the First or Second Respondent. The insurance position was that there was no insurance cover in place for any gap period prior to the new partnership commencing but as the master policy was there to protect the public, they would have had to find a way to deal with any claims that arose. Ms Scollick confirmed that she accepted that the First and Second Respondent were anxious to reach a resolution to the problem.

In cross examination by the First Respondent, Ms Scollick confirmed that she represented Marsh and that they were not interested in whether or not the partnership was in existence. She stated that if there had not been a merger and no new partnership then there was no insurance cover in place. She confirmed that it was not her remit to say whether or not the partnership was in place, it was for the Law

Society to decide. She confirmed that they had put in place insurance as per the First and Second Respondents' instructions. Ms Scollick stated that they explained the implications of the insurance cover to the First and Second Respondent. She confirmed that she knew a Judicial Factor had been appointed in connection with client 85, she stated that this name was known to her. She also indicated that the insurance premium for the indemnity cover for the Practical Law Partnership had been paid and none of it had been refunded.

In re examination, Ms Scollick confirmed that if that there had been misrepresentation with regard to the operation of a firm, this could invalidate the insurance cover.

The Complainers then led the evidence of **Linda Lyall**, Depute Director of the Guarantee Fund with the Law Society. Ms Lyall confirmed that she reviewed correspondence with the First and Second Respondents' firms and was involved in follow up letters when documentation was not exhibited. Ms Lyall confirmed that when the Judicial Factor became involved she did a summary of outstanding issues and referred to Complainer's Productions 2.34 being the review papers. Ms Lyall confirmed that these were her findings and they were accurate. She explained that they were looking for Form 4s to be produced as a way of checking that deeds had been sent for recording. Ms Lyall stated that she was asked to look at the issue of recording of deeds and did a search using Registers Direct. She took a sample of 4 cases and obtained the dates that the documents were registered. In connection with Article 16.3 and the property at Property 32 and client 94, the documentation was registered on 7th April 2004. In connection with Article 16.3 and Article 14.3 and client 33, the disposition and standard security had been registered on 25th August 2004. In connection with Article 18.5 and client 125 the disposition and standard security had been registered on 12th April 2004. In connection with Article 20.4 and Property 43, the disposition and discharge had been recorded on 3rd February 2004. The witness also referred to Complainer's Productions 2.12 to 2.14 and confirmed that she did the minutes of this meeting held on 24th July 2003 and they were correct.

In cross examination by the Second Respondent, Ms Lyall confirmed that there may have been two transactions involved with Property 32. Ms Lyall also stated that any matters which were carried forward to the next inspection would be the ones which

had not been resolved but she accepted that the ledger might raise a question that the inspector had not realised had been raised before.

In cross examination by the First Respondent**,** she confirmed that in respect of client 125 at Article 18.5 the purchase took place on 14th November 2003, and the deeds were registered on 12th April 2004. She indicated that she accepted that there could be a reason for the delay but advised that they did not get an answer to their queries and there was no information with regard to any delay. The witness was referred to Productions 2.27 to 2.29 and a letter by the First Respondent dated 30th July 2004, Ms Lyall stated that she could only say that at the time the list was prepared she had not seen Form 4s.

At this point the case was adjourned to 8th October 2007 at 10:30am. A further date was fixed for 4th December 2007.

8th OCTOBER 2007

The First Respondent was not present at the Tribunal, the Second Respondent indicated that he had managed to contact the First Respondent who was at home and had made a mistake by putting the hearing in his diary for tomorrow. The Second Respondent indicated that the First Respondent was to make his way from Paisley to the Tribunal. The Tribunal noted that the First Respondent had been told of the date of the hearing twice and had also had a Notice of Hearing served on him on 11th September 2007. The Tribunal was in no doubt that the First Respondent knew that the Tribunal was proceeding on this date. Given the First Respondent's previous failure to attend the Tribunal, the Tribunal resolved to proceed in the First Respondent's absence.

Ms Johnston indicated that her witness Lorna Davies was off sick and unavailable but that she was not asking for an adjournment and was not going to be leading any further evidence. Ms Johnston also confirmed that Client 124 and Mr C had not attended and she was accordingly closing the Complainer's case. Ms Johnston made various amendments to the Record in light of the evidence which had not been led. Ms Johnston moved to delete the averment of professional misconduct contained in

Article 24.8 but indicated that she did not wish to delete the averments of fact relating thereto which are contained in Articles 4.1 and 4.2. Ms Johnston also stated that she wished to delete the averment of professional misconduct contained in Article 24.13 but was not deleting the averments of fact contained in Article 9.1 as these were relevant. In connection with the averments of professional misconduct contained in Articles 24.18 and 24.19, Ms Johnston indicated that she was deleting these averments and was also deleting the averments of fact in Articles 11.1 and 11.2 as there had been no evidence led in respect of this. Ms Johnston also confirmed that she was deleting paragraph c of the averment of professional misconduct in Article 24.28 but the facts in Article 22 remained.

SUBMISSION OF NO CASE TO ANSWER BY SECOND RESPONDENT

The Second Respondent indicated that he was making a submission of no case to answer in respect of part of the Complaint. He referred to the averments of fact in Article 21 and averments of professional misconduct in Article 24.27 in connection with the allegation that there was no professional indemnity insurance. The Second Respondent referred to Complainer's Production 3.10 and averred that there was professional indemnity insurance in place. The Second Respondent stated that it was not clear why the averment in Article 24.27 had an end date of 1st May 2004. The Second Respondent stated that the insurance policy was a contract between the insurers and the insured and that the contract in this case was with the principals of the firm. The Second Respondent indicated that he accepted that the insurance document referred to the principals as carrying on their practice as the Practical Law Partnership, however there was a mistake with regard to the name of the firm and that did not seem to be a problem as it could be readily corrected. The Second Respondent submitted that the problem with regard to the start date of the partnership could also have been resolved. The Second Respondent referred to Complainer's Productions 2.30 to 2.32 and the Marsh summary. The Second Respondent also referred to Complainer's Production 3.9 being the letter from Mr Cumming to Marsh. The Second Respondent indicated that it was unfortunate that this letter had not been lodged at the time that Mr Cumming was giving his evidence. The Second Respondent submitted that the letter displayed confusion with regard to whether or not the Practical Law Partnership was trading. The Second Respondent submitted that

although the Law Society was entitled to be concerned with regard to indemnity insurance, in this case the Law Society went beyond what they were entitled to do. The Second Respondent submitted that he and the First Respondent were unable to resolve the matter with their brokers because of the Law Society's intervention. The Second Respondent submitted that there was no evidence that the First and Second Respondents acted wilfully or recklessly, they had both acted responsibly and accordingly what was alleged and the evidence that had been led to support this could not amount to professional misconduct.

SUBMISSIONS FROM THE COMPLAINERS IN RESPECT OF THE SUBMISSION OF NO CASE TO ANSWER

Ms Johnston stated that there was more than sufficient evidence to establish the allegation of professional misconduct. She stated that there was a common theme which ran through the evidence which was that there were three practices; two were on run off cover and the other one had insurance cover commencing on the 1st November 2003. There was clear evidence that the two original practices continued after the 1st November 2003 and that the Practical Law Partnership did not commence trading until the client balances were reconciled. Ms Johnston asked the Tribunal to repel the submission. She indicated that the date of 1st May 2004 might require to be amended as the evidence had suggested that the client balances were transferred on 14th May 2004.

DECISION WITH REGARD TO NO CASE TO ANSWER SUBMISSION

The Tribunal considered that there was ample evidence to show that there was no indemnity insurance cover other than run off cover for the First and Second Respondents individual firms. There was also ample evidence before the Tribunal to show that the partnership was not to commence until the client balances had been reconciled and the client balances were not reconciled in November 2003. Even if the Practical Law Partnership was in existence, the evidence taken at its highest shows that the sole practices of the First and Second Respondent were still continuing and

did not have professional indemnity cover. The Tribunal consider that operating without professional indemnity insurance can amount to professional misconduct whether or not it is deliberate. The Tribunal accordingly repelled the submission of no case to answer.

The Second Respondent suggested that the Tribunal adjourn for lunch early to give the First Respondent a chance to be present before the Second Respondent commenced his defence evidence. This was agreed. When the Tribunal reconvened at 1:45pm, the First Respondent was still not present and the Second Respondent indicated that he had been unable to make contact with the First Respondent.

EVIDENCE FOR THE SECOND RESPONDENT

The Second Respondent indicated that his personal details and career history were as set out in the Record. The Second Respondent explained that he did his own book keeping and used a manual system. He stated that the inspectors did not have a problem with this. The Second Respondent indicated that the Law Society inspectors were often very helpful and it was only the inspection in October 2003 that he had a real problem with. He, however, indicated that he had a problem with the lack of notice given in connection with inspections. The Second Respondent explained that he wanted his books to be right and did not like using suspense accounts. He submitted that there was a lot of work involved in obtaining the monthly balances. The Second Respondent explained that he had to reconcile the day book and then post the figures to the client and firm ledgers. The Second Respondent submitted that banks now make errors and accordingly it was very important to do a bank reconciliation. He then had to do a list of client debit and credit balances. The Second Respondent explained that the client credit balance was important because the client account must contain enough money to cover it. The Second Respondent explained that he paid fee money into the client ledger and operated on the basis of withdrawal of money from the client account to the firm account as required and as a lump sum. The Second Respondent submitted that he usually had a substantial surplus in his client account. He advised that he balanced his books once a month and that he needed a bank statement before he could do the reconciliation. He confirmed that these books were not written up every day and sometimes it was every week. He

explained that there was a tension between getting it right and keeping matters in order. Sometimes there could be an element of delay because he required to have the evidence and he did not like to put matters through on the basis of what would be because it might not be. The Second Respondent explained that if there was an error and the ledger would not balance he had to go through it and check where the error was, sometimes if he could not find the error it might become clear the next month. He stated that he did not recommend this practice but sometimes it happened that an error had to be continued. He indicated that he was uncomfortable until the error was found. The Second Respondent could see that having incorrect balances could breach the Accounts Rules but it was a matter of judgment in a particular case. In connection with presentation and lack of narrative, the Second Respondent indicated that he wanted to have time to look over the books before any inspection. The Second Respondent referred to his Answer 13.1 in the Record and to his letter to the President in 2000 in connection with the lack of notice of inspections. The Second Respondent submitted that the rules were vague with regard to periods of notice. In connection with the July 2004 inspection, a letter was sent on the Friday in connection with an inspection on the Monday and that the letter did not arrive until the Monday's post. The Second Respondent submitted that his name was known to the Law Society who seemed to have an interest in him in connection with a lot of back to back transactions. The Second Respondent explained that he was involved with the Asian community who often did an informal deal to do a property up when they had not yet purchased it and then they would buy it and sell it on to someone else all at the same time. The Law Society questioned these types of transactions even when the Second Respondent explained exactly what was involved. The Second Respondent submitted that he was known to the Law Society without any justification. The Second Respondent referred to his Answer to Article 14.1 and to the interview in July 2003. The Second Respondent explained that he had sent a letter to the Law Society prior to the interview and he knew that this had been received as he had spoken to the Chief Accountant's secretary prior to the date of the interview.

At this point, the First Respondent arrived and apologised indicating that he was very sorry and that he had got his dates mixed up. The Chairman explained to the First Respondent what had occurred so far and allowed a 15 minute adjournment so that the Fiscal could advise the First Respondent of the amendments that she had made to the

Record. After the adjournment the First Respondent confirmed that he was now up to date and he had no complaint with regard to the Tribunal proceeding in his absence.

The Second Respondent continued with his defence evidence. He indicated that he presumed that his letter had been circulated to the members of the Committee when he went for his interview. The Committee however did not have the letter and appeared to have already formed a view and got very impatient with him. The Second Respondent stated that he did not he receive a fair hearing and was accused of tax evasion which was completely out of order. He explained that he drafted a letter after this but prior to sending it, he received the letter from the Chief Accountant in connection with the re-inspection. He explained that he was relieved about this because he was more on top of things and thought he would be able to show that the problems had been addressed. The Second Respondent, however, explained that he unfortunately got flu in September which prevented him from keeping on top of things. He indicated that the inspectors' attitude to him was hostile and that things went downhill from thereon. The Second Respondent explained that he had a second attempt at writing his letter but he then got the letter from the Law Society indicating that the matter was being treated as professional misconduct with a schedule attached. The Second Respondent sent a reply as set out in Answer 14.1. The Second Respondent indicated that he had never had a substantive response to the letter that he sent prior to the interview. He indicated that it was unfortunate that despite his criticism of the previous Chairman, the same Chairman took the meeting held on 6th May 2004.

In connection with Article 21 and the professional indemnity insurance, the Second Respondent confirmed that the Practical Law Partnership had obtained insurance at the start of the year. The Second Respondent explained that he had discussions with the First Respondent in August/September 2003 with regard to forming the partnership. He had known the First Respondent for a number of years and had given the First Respondent advice in respect of matters in the past. The First Respondent was subject to a Judicial Factor but was still able to carry on business with the accountant signing the cheques. The Second Respondent indicated that the First Respondent approached him with regard to the merger and although he was not particularly keen at First, the First Respondent was persistent and despite misgivings,

the Second Respondent agreed to the merger. The First Respondent had purchased premises and it was agreed that the Second Respondent would move into these premises. The Second Respondent explained that he had to deal with the First Respondent's bank. It was agreed that the First and Second Respondent contribute £40,000 towards the Judicial Factor costs and they had to obtain a loan of £20,000. They did this by way of a joint business loan as the Practical Law Partnership and the firm business account was opened up at this time which was the end of October 2003. The Second Respondent stated that he was in no doubt that at this time they were in partnership. As the new firm was only acquiring assets and not liabilities, they arranged for run off cover for the previous firms. The Second Respondent pointed out that the practising certificates were issued to them as partners in the new firm. The Second Respondent explained that there were delays because the Judicial Factor's discharge was not through until 5 or 6 days after 1st November. This meant that 1st November passed and the physical move had not been made and because they were busy; work carried on as normal but the Second Respondent pointed out that it was not unusual for practices to have different offices. The Second Respondent stated that with hindsight they should have put on the letterheads "a division of PLP". The Second Respondent stated that he felt that he was in a partnership from 1st November 2003 and if he had not been sure of this he might not have gone ahead with the merger because circumstances had changed. The Second Respondent explained that the First Respondent's staff left and this might have made him view things differently. The bank did not require a partnership agreement for the loan but stated that they needed one in connection with opening client accounts and they provided the bank with the draft agreement in late November. The Second Respondent indicated that there was a signed partnership agreement which was later revised. The Second Respondent confirmed that he had no problem with the accounts being audited as neither the First or Second Respondent knew the details of the other one's business. The Second Respondent indicated that he did not see this as a problem but he had not known it was so important to the First Respondent. The Second Respondent indicated that although they had separate accounts it was a joint enterprise. He stated that in connection with profit sharing he assumed it would happen from 1st November 2003 but their minds were much more focused on overcoming practical problems. The Second Respondent explained that there were difficulties with obtaining a book keeper and then with the computer system operated by the First Respondent. The

Second Respondent stated that it was shock to him that there was any suggestion of a difficultly with the insurance policy. He indicated that the option of having the partnership accepted as starting from 1st November 2003 was prevented by what the Law Society did. The Law Society's actions meant that they were left without insurance cover.

In connection with Article 13.1 and the May 2003 inspection, the Second Respondent indicated that this was called at short notice and he had just returned from holiday. He indicated that at this time the accounts had not been balanced for a while and he knew that he required to spend a lot of time to get the imbalances resolved. When the Law Society's inspectors came he told them that there were no balances for a few months and suggested that they went away and came back later, but the inspector said she would work on what they had. The Second Respondent clarified that he had no criticism with regard to the conduct of the inspector at this inspection. The Second Respondent submitted that the actual issues that required to be resolved were not particularly great.

In connection with Article 13 and the alleged deficits, client 1 was as a result of a bank mistake. The bank made the payment twice and this was explained to the inspectors. In connection with client 2, a cheque was issued and dated before the funds appeared in the account. This was because the Second Respondent did his own banking and this involved a journey to the bank and he had no time on the first day and forgot on the second day. He accepted that there were grounds for enquiry in respect of this matter.

At this time the case was adjourned part-heard until 4th December 2007 at 10:30am. A further date of 24th January 2008 at 10:30am was fixed.

4th DECEMBER 2007

The Second Respondent continued with his evidence. In respect of Article 13.2, he indicated that he accepted that his books were not balanced and he was not happy with regard to this but he spent a long time trying to find 25p and he could not balance the accounts until he found the origin of this error. The Second Respondent indicated that

he knew there was nothing seriously wrong as he had a good knowledge of the general state of his accounts despite there having been no balance done. In connection with Article 13.3 the Second Respondent explained that in relation to clients 3 and 4, the husband ran a number of businesses that belonged to his wife. In connection with clients 5 and 6, the Second Respondent submitted that the transaction had been recorded but this was not seen by the inspectors due to the fact that the date was wrong. In connection with client 7, the figure was correct but in the wrong column. The Second Respondent also indicated that he could not remember what the £500 was but asked the bank.

In connection with uninvested balances, the Second Respondent stated that in terms of the Solicitors (Scotland) Act 1980, solicitors either had to invest money on behalf of clients or pay clients interest. He stated he had paid the clients all the interest due and accordingly there was not a problem. In connection with Article 13.4, the £10,000 cheque was not honoured by the bank. The Second Respondent explained that the client had been frank with regard to the fact that the cheque might not be honoured and the Second Respondent had sufficient surplus to accommodate the £10,000. The Second Respondent accepted that a client had been paid twice and although the client gave assurances that he would repay the overpayment, he did not and this was a lesson to be learnt. In connection with written authority, the Second Respondent submitted that the rule requiring written consent related only to payments made from one client to another, not payments made to third parties. In connection with client 18, the payment was made to a party who held a power of attorney. For client 21, the client was the wife. For client 23, the client was a trading name.

In connection with Article 13.5, the Second Respondent stated that he accepted that he did not understand the importance of it, he had however acted correctly and he knew all the clients well. For client 29 he had done 8 transactions between 1998 and 1999 and he obtained the necessary information when the client was first introduced. The Second Respondent explained that he was operating at home and he was not able to make copies of driving licences etc. He stated that bank drafts were often used by clients and these sometimes told you where the money came from. The Second Respondent stated that there may have been occasions where there was no evidence of where the payment had come from but you could not stop settlement because of this.

Clients 14 and 15 were well known clients. Clients 27 and 27a were related to the Second Respondent's secretary. The Chief Accountant accepted his explanation with regard to this.

In connection with Article 14, the Second Respondent explained that he had been let down by technology, his computer had broken down and he lost data. The Second Respondent had replied to the Law Society's letter of 4th June 2003 on 18th July 2003. He had phoned to check that this had been received by the Law Society. At the interview in July 2003 he expected the letter to be available to the members of the Committee. It however was not. The Second Respondent stated that the interview was not conducted in a pleasant manner and the Chairman was impatient with him and accused him of tax evasion. After the interview he was going to write a further letter to the Law Society but he then received a letter from the Chief Accountant in connection with a further inspection and he saw this as a way forward. He had got his accounts up to date and had made progress. He unfortunately then got flu in September and his work suffered. The inspection in October was hostile and the inspector could see that the Second Respondent was not in good health but continued with the inspection anyway. The Second Respondent stated that he had a surplus of nearly £18,000 at the end of September and that he lodged an accounts certificate from the end of October and was everything was ok. The Second Respondent said that the Law Society by this time seemed to be taking the worst view of anything that he did.

In connection with Article 14.2, the Second Respondent stated that he did not suggest that his arrangements were satisfactory but it was not done to avoid tax. His secretary worked on a casual basis and he paid her cash from his personal drawings because he had not got round to getting a proper system in place with regard to PAYE. He stated that this however was not a breach of the Accounts Rules. He stated that his records were in order according to the information that had been available at the time. In connection with the pencil entries, it was only the third column of the client ledger that was done in pencil.

In connection with Article 14.3, the Second Respondent stated that there was nothing in the rules that stated that if you receive a payment from a client and pay a third party

in part payment you were required to state what the full amount was. In connection with client 38, the client bought 4 flats and asked that the title not be registered right away. In connection with clients 39 and 40, the Second Respondent was asked to buy a property for the client because the purchaser was not liked by the seller. He settled the transaction and paid the stamp duty and passed the disposition onto another firm of solicitors and accordingly it was not necessary for the title to be registered. In connection with client 41, the Second Respondent stated that it maybe that properties bought and sold quickly might have been sold on again before the disposition was registered in the client's name. In connection with client 25, this was a back to back transaction. The Second Respondent accepted the delay with regard to stamp duty. Property 44 was also a back to back transaction. In connection with clients 42 and 43, the Second Respondent explained that he took the transaction over half way through and that if he did not pay the stamp duty it was because the previous agent had provided a cheque. In connection with client 44, the Second Respondent stated that it may have been that there was no discharge fee as it was a first registration. In connection with client 45, this client was related to client 38 and was a property developer. In connection with client 46, the discharge was not done as the ranking agreement was not available. For client 33 there was nothing wrong. For client 47 the ledgers were written up until the end of September and this was only 3 or 4 days later, it would have been recorded in October.

In connection with Article 14.4, the Second Respondent submitted that it was easy for these minor errors to arise. In connection with investment of client balances, a lot of these were in August and September 2003 which was within two months. In connection with client 48, the name must be wrong. In connection with client 64, this was not a payment to another client but a payment on client's instructions. Clients 37 and 68 were related parties. In connection with client 69, it was a council house purchase and the payments were made to the son and daughter in law who were clients 70. In connection with clients 46 and 72, the clients were the parents of 72 and he would have had written authority.

In connection with Article 14.5, clients 73 and 74, the Second Respondent submitted that he did provided identification. Client 75 was his own secretary. In relation to Client 77, the Second Respondent had dealt with a number of transactions and for the

same client, it was not the first file. The Second Respondent stated that his morale was low at this time and he started discussions with the First Respondent with regard to setting up the Practical Law Partnership with an intended start date of 1st November 2003. The Second Respondent stated that he had some misgivings but he did not wish to remain a sole practitioner and so went ahead with the merger with the First Respondent's practice. The First Respondent had good staff but by the time the Second Respondent moved to the First Respondent's premises in February 2004, the staff had left. The First Respondent also had a new computer system but the company that made it, had given up maintaining it and there was no future for it.

In connection with Article 16, the Second Respondent explained that he had made arrangements to move into the First Respondent's office on 15th/16th February but this was deferred because of the inspection. The Second Respondent stated that the inspector was helpful but there were problems due to a bank error. A mortgage was repaid twice and the Second Respondent was told that there was no record for the CHAPS payment, so he sent another one but indicated that this was replacing the previous request. The Second Respondent stated that he identified the error as quickly as possible and made calls to the bank. He stated the error in connection with £990 was not obvious but was picked up once he had the bank statement.

In connection with Article 16.2 and client 31, the funds were in the account longer than normal but this was part of a larger situation. In connection with client 80, interest was paid to her.

In connection with Article 16.3 and client 86, the Second Respondent explained that he took over mid way through the transaction. In connection with client 33, the Second Respondent was not sure what had happened but the loan was redeemed. For client 91, this client worked for the Second Respondent and sold the property to her father and it was not clear whether he was to retain it which was why the title was unregistered. In connection with client 94, the client bought and resold two flats, at the same address. The Second Respondent stated that he thought this was the second one and that the purchase began in October and he resold it and the Second Respondent indicated that he thought the security and discharge were available at the same time and accordingly there was no need to register them.

In connection with Article 20, the Second Respondent explained that the inspectors arrived at 9:30am on Monday 5th July 2004 and letters notifying the inspection had been posted out recorded delivery on 2nd July and had not been received by the First and Second Respondents prior to the inspectors arriving. The Second Respondent explained that he spoke to the Chief Accountant who was adamant that adequate notice had been given despite the fact that he had not had any notice at all. It was agreed that the inspectors would go away and come back the following day. The Second Respondent explained that there was concern with regard to clients 85 and 86. This transaction involved the purchase of a factory unit by client 85 who was a new client. Lyons Laing acted for the seller and it was proposed to split the property in two. Client 85 was to be using half of it and the other half was to be leased to a third party. The Second Respondent stated that he did a check on the director of client 86 who impressed him as honest and respectable. It was intended that the transaction would settle before Christmas but there were no missives concluded because the final date had not been agreed and there was a delay over buildings insurance. The Second Respondent explained that this was the first transaction done by him since the stamp duty land tax came into force. After Christmas, the buildings insurance was in place and client 86 moved into the property and the bank released the funds. These were passed over to Lyons Laing by a cheque for the purchase price less the bond. The Second Respondent explained that he had not appreciated that missives had not been concluded and suspected Mr Miller of Lyons Laing also did not realise this. The Second Respondent said that he was concerned because he could not find the stamp duty land tax form. A supplier then asked him where client 86 was and it was brought to his attention by Mr Drummond that there was no disposition or concluded missives. Company 85 was put into liquidation. The Second Respondent stated that he thought he should get his money back and that perhaps he was out of his depth. He accepted that he shilly-shallied around but indicated that his was not the only mistake. Lyons Laing should not have paid the money out, not knowing or not checking whether missives had been concluded. In response to a question from the Tribunal, the Second Respondent explained that he just handed the cheque over without a letter because they were in the same building. He stated that he did write to Lyons Laing to request the return of the funds but did not receive a reply.

In connection with Article 20.3, client 141, the property was bought and done up and sold, and he was in the middle of the transaction buying from one and selling on to another. He stated that he thought he sent the disposition once he received a reminder and that it was not a significant delay. In connection with client 34, it concerned a bridging loan. The property at Property 42 also concerned a bridging loan. He stated that he could not see how there could have been a deficit as the funds from GNAC were on their way.

In connection with Article 20.4, clients 144 and 145 were husband and wife. In connection with client 146, he had a receipted Form 4 and the deeds were recorded in July 2004. In connection with client 147, the client said that he wanted to wait until he was back from holiday. It was possible that the discharge was not recorded. Client 148 was a recent transaction. Client 149 was unusual as the buyer and seller did not talk to each other and his client was the middle man who bought and sold on.

In connection with Article 20.5, the Second Respondent explained that it was a challenge to pull together his manual accounting system and the First Respondent's computer system. It was not done as well as it might have been but this was a short term arrangement. There was not enough money to put in a new system. In connection with clients 146 and 148, the Second Respondent stated that he acted for these clients on a number of occasions and the funds always came from the same bank in connection with client 148.

In connection with Article 15, the Second Respondent stated that he did not send a detailed reply to the Law Society's letter of 12th November 2003 but that the letter that he sent on 15th January 2004 covered a lot of the matters contained in the November 2003 letter.

In connection with Article 1.5, the Second Respondent stated that after the interview in July 2003 he was treated as a difficult person by the Law Society. The First Respondent was sequestrated in August 2004 which led to the suspension of his practising certificate and the Second Responded ended up being a sole principal which was a shock to his system and it was a burden. He was called to the Guarantee Fund Committee on 19th August 2004. The Second Respondent stated that he

appreciated that the Law Society had concerns, but he reassured them that he would do his best. He then got a letter calling him back to an interview on 23rd September and they had decided to suspend him. This led to him feeling defeated and he sent a letter to the Law Society saying that he was not to renew his practising certificate. On the 7th October 2004, the Law Society withdrew the certificate which cut through everything that he was doing to try and sort matters out and deal with outstanding business. The accounts were frozen and he was working on his own as his staff were no longer there. He explained that he tried to order the files, but after the Judicial Factory went in he was excluded as they did not want to work with him.

At this point the hearing was adjourned to 24th January 2008 at 10:30am.

24th JANUARY 2008

The Second Respondent concluded his evidence. He pointed out that none of the issues arose from complaints made by clients. He indicated that he tried to avoid his clients' business being tied up with his business problems. He pointed out that in the period from October 2004 when his practising certificate was suspended until the Interim Judicial Factor was appointed in December 2004, he was on his own in the office trying to sort out matters. He did a lot during this period to assist clients. He stated that there were two interviews with the Law Society after August 2004 and the Law Society were not helpful.

In cross-examination, Ms Johnston referred the Second Respondent to Article 13.1. The Second Respondent accepted that there was an inspection at this time and that questions had been raised at a previous inspection. The Second Respondent however indicated that he did not accept that there had been no proper records at the previous inspection. The Second Respondent accepted that a number of inspectors had made comments which were intended to be helpful. In connection with Article 13.2, the Second Respondent stated that it was not a breach of the rules because it was a bank error in connection with client 1 and in connection with client 2, the Second Respondent stated that this would have only been a breach of the rules if it had resulted in the account being overdrawn. He indicated that the writing up of the books in arrears was not relevant to this. The Second Respondent accepted that in

connection with client 1 if he had had a computer system, the error would have been picked up earlier. The Second Respondent accepted that the inspector had told him not to do his books in arrears. He had explained that he was a small business and only had a part time bookkeeper and it was not practical to do the books each day. The Law Society had not had any difficulty with him having manual records. The Second Respondent accepted that his books had not been balanced but this was due to the 25p which was missing. He knew that this had to be resolved by the end of May. He accepted that he was given advice that he had to balance the books and do an audit trail. The Second Respondent accepted that he was paying staff wages in cash and only keeping informal records. He also accepted that he was advised to put records in place and that he did intend to do so. The Second Respondent did not accept that it was not possible to ascertain the true financial position of his firm. The Second Respondent explained that the first stage in his bookkeeping was the cash book and the second stage was the ledgers. He preferred not to take the ledgers too far until he had the bank statements. This was because the Law Society wanted things put in date order but there were some things he would not obtain until the bank statements came in. If he put matters in before this, they would be out of date order. The Second Respondent accepted that he did lose a note he made in connection with £500. The Second Respondent explained that he was concerned that the way he operated doing manual balances monthly meant that it was well into the next month after he had received the bank statements and had time to do it, before he could be sure that he was still in surplus. He however explained that he kept a running total in his head to ensure that he remained in a surplus.

In connection with Article 13.3 and client 7, the Second Respondent explained that the correct figure had been put in the wrong column. In connection with un-invested balances, he indicated that it was not to avoid having to do quarterly reconciliations that he kept the clients' funds in a general account but was because interest paid by the bank on the general account was higher than the interest that was paid to individual client accounts. The Second Respondent, however accepted that it was more difficult to distinguish the money if it was part of a larger account. He confirmed that he did not dispute that the funds were held in a general account but clarified that he paid interest to all his clients.

In connection with Article 13.4 and client 16, he accepted that the cheque had been dishonoured. In connection with client 17, he made a second payment having not realised that he had already made an earlier payment. He did not check the ledger. In connection with written authorities, the Second Respondent stated that this was only required where it related to payments made to another client. When referred to Complainer's Production 2.12 a letter from him to the Law Society saying that he was looking for a letter of authorisation and would forward it, he stated that it was not good to argue with the Law Society and that in any event it was good practice to have authority but it was not required by the rules. The Second Respondent stated that in connection with client 23, he had a mandate. In connection with client 18, he had a power of attorney, in connection with client 22, this was a spouse of a client. He confirmed he did act for clients 25 and 26.

In connection with Article 13.5, the Second Respondent stated that he thought he did have procedures in place with regard to money laundering and that he had a lot of repeat business. He explained that if he had been starting from scratch he would have perhaps had a register but in the circumstances he found himself in, he did not think that it would resolve things. He explained that if he had been acting for a client for years, he did not see the need to record on the file that this was the case. In connection with an audit trail for client's money, he stated that he noted and recorded where the money came from. He thought that there was no need to do this with bank drafts but then things changed and it was required if there was no name on the bank draft. The Second Respondent disputed that there was no identification in respect of clients 29 and 27. In connection with client 10, this was not fully written up and the money was from a third party but it was not a money laundering issue. The Second Respondent explained that he worked from home for a period of five years and that he did sometimes get copies of documentation but he could not rely on clients to send them. He would not always ask for copies. The Second Respondent stated that client 29 was a regular client and client 27 was a friend of his secretary.

In connection with Article 14.1, the Second Respondent stated that he did not accept that there were problems in reading his ledgers or that it would be difficult to tell whether the deeds had been recorded. The Second Respondent stated that he did tell

the Law Society he was to merge with the First Respondent and accepted that he was told that his books would require to be reconciled first.

In connection with Article 14.2, the Second Respondent confirmed that he was still paying his staff in cash. He also accepted that the trial balance was not squared and accepted that he had a suspense account which had not moved since May 2003. The Second Respondent explained that he required the suspense account due to bank errors. The Second Respondent did not agree that the entries were back dated and out of date or that there was insufficient narrative. He stated that the entries would be clear from the context. He indicated that he would not repeat a narrative unless there were concurrent transactions. The Second Respondent explained that the only pencil entries he had were in the third column of his client ledger not in the cash book.

In connection with Article 14.3 and clients 31, 34 and 36 where the loan documentation had a higher price than that paid, the Second Respondent stated that his obligation was to record what passed through his hands. He pointed out that the rule requiring him to put two figures in was not necessary as the old rule 7(g) of the Accounts Rules had been dropped in August 2001 because it was considered ineffective. He however, indicated that the Law Society seemed to still require this. The Second Respondent indicated that he might ask what the circumstances were in these transactions depending on the relationship between the clients. The Second Respondent clarified that if a cheque for a discharge had not been cashed, he would not routinely follow this up but if it was months later he might look at it.

In connection with Article 14.4, the Second Respondent stated that the rule of thumb was that money should be invested if you held £500 for two months. He however accepted that if it was a larger sum it should be invested after a shorter period of time. In connection with client 50, the Second Respondent stated that the postings were incomplete. In connection with client 64, the Second Respondent stated that 24, 65, 66 and 67 were not clients, client 68 may have been a client, client 70 was introduced at a first meeting but then he dealt with client 69, client 71 was not a client, client 72 was a client.

In connection with Article 14.5, he indicated that his procedures had evolved. In connection with client 73, he knew him well, client 74 he had information about, client 75 he was not sure which client this was and client 76 he knew the client. Again the Second Respondent explained that if he knew the client well he was less likely to note this on the file. He indicated that he did check the sources of funds, that client 73 always used the same bank, for client 74 he knew he had a loan facility. Client 75, the money was probably his client's own cheque. The Second Respondent clarified that he was not indicating that the inspectors were wrong to ask about these issues, but he thought there was sufficient information on the file.

In connection with Article 15.1, the Second Respondent accepted that there was no specific reply to the Law Society's letter of 12th November 2003 however he did send a letter on 15th January 2004 (Complainer's Production 2.15 and 2.16) and the Law Society did not reply to this letter.

In connection with Article 15.2, the Second Respondent accepted that the Law Society sent him reminders and there was no reply but he explained that he had become frustrated that he had replied and sent documents but yet more issues were raised.

In connection with Article 16.1, the Second Respondent accepted that he did not produce staff records to the Law Society as these were not as they should have been and he was still paying staff out of his drawings. He accepted that there was a difference in the trial balances. The Second Respondent stated that he did not regard himself as trading independently after October 2003, but he kept his financial records separate. He indicated that he recalled the bank error and accepted that there was a suspense account. The pencil entries were only in the third column in the ledger. The Second Respondent stated that he did not accept that the error with regard to the £99,000 was not picked up because of his lack of bookkeeping.

In connection with Article 16.2, the Second Respondent stated that he did not accept that the client records were inaccurate or incomplete. But he accepted that the facts and the balances relating to the money invested for clients were probably correct.

In connection with Article 16.4, the Second Respondent stated that this was not a fair reflection of the situation. He indicated that there may have been the odd case which was not resolved.

In connection with Article 20.1, clients 85 and 86, he indicated that he did not tell the First Respondent because he thought he was under his own pressures and he thought that it was his (the Second Respondent's) problem. The Second Respondent did not accept that they were not in partnership yet. The Second Respondent clarified that he did not dispute the factual situation as set out in the Article. He clarified that the bank was aware that there was a deferred loan and there was no intent to deceive the bank. The Second Respondent indicated that he had not advised the Bank of Scotland that they were now the Practical Law Partnership. He clarified that he had not notified lenders because he did not expect there to have been such an extended period after 1st November 2003 before everything was in place. The Second Respondent explained that he did not understand at the outset that the First Respondent was making it a precondition of the partnership starting that the accounts be reconciled and certified by an accountant. This became more obvious when the partnership agreements were drafted.

In connection with Article 20.3, the Second Respondent explained that the client was buying to resell and the sale and resale proceeded at the same time. He accepted that he did not deliver a disposition until 8th July. In connection with client 34, there was a bridging loan but he accepted the facts. He accepted that there was a large amount of money. The Second Respondent indicated that he would require to check the papers with regard to this and it was agreed that he could return to this matter later.

In connection with Article 20.5, the Second Respondent indicated that there was a misunderstanding with regard to the old client accounts but he accepted this was factually correct and accepted that he had not produced a trial balance for the Practical Law Partnership. The Second Respondent confirmed that the staff salaries situation had not changed. In connection with money laundering, he advised that there was an instruction to staff with regard to money laundering procedures and client identity was dealt with by himself and the First Respondent. In relation to client 146 the facts were not correct and the money was received from the client by a cheque but this may not

have been clear from the file. For client 148, he had ID and the funding was from the bank by the client's own cheque.

In connection with Article 21.1, the Second Respondent confirmed that by April 2004 both the First and Second Respondent were at the premises at Argyll Arcade, Glasgow. The Second Respondent's staff were manning the office, the separate names of Atuhene and Thorburn were still used after he moved there in February but this led to confusion so after February the Practical Law Partnership was also put on the letterheads. The Second Respondent explained that they had prepared and signed a partnership agreement before Christmas but it was after this that he understood the implications of the First Respondent's position. The Second Respondent initially thought that they were in partnership and that the accounts were a technical matter but he then realised this was a sticking point for the First Respondent. He stated that he was chasing a moving target and the First and Second Respondents required their books to be balanced at the same time so they could be brought together. He stated that he had not thought about the insurance position as he thought that if the partnership was covered then the individuals would be covered too. Ms Johnston referred the Second Respondent to Complainers' Productions 3.11, 3.12 and 3.13 being the draft partnership agreements. Production 3.11 had the date of 1st November 2003 scored out and 1st March 2004 written in. There were also other amendments in the First Respondent's writing and some at the end in the Second Respondent's writing. The Second Respondent stated that he thought this had been done around 1st March 2004 but that they had already signed an agreement before this. Production 3.12 had been amended to indicate that the partnership would commence at a date when the account balances were transferred to the client account. The Second Respondent accepted that this did suggest that they were not yet in partnership and that he wavered from his view that they were in partnership at this stage due to the First Respondent's insistence. Ms Johnston referred the Second Respondent to Production 3.8, page 42 being a letter dated 15th March 2004, where the First Respondent had written a letter indicating that they were not yet in partnership but that there was insurance cover for the old firms. The Second Respondent stated that he felt that they should have been covered and it was a question of the wording in the policy. The Second Respondent indicated that their position was undermined by what the Chief Accountant said to the insurers. He submitted that the Law Society were

responsible for them having no insurance but he accepted that the situation became messy. The Second Respondent stated that his firm was not run badly, but he was under pressure. He had more work and administration than he could cope with. He stated that he thought the Law Society had a conspiracy against him.

In connection with Article 21.2, he indicated that the facts were accurate. He thought he was covered as an individual. There was discussion of the options in mid April with Marsh and at this meeting the First Respondent was prepared to acknowledge that the partnership had started on 1st November 2003. The First and Second Respondents wrote to Marsh putting this forward but the Law Society did not accept it. Ms Johnston put a question with regard to the First Respondent's position up until this time, this was objected to by the First Respondent on the grounds that the Second Respondent would not know what was in the First Respondent's mind. The Second Respondent stated that prior to this meeting he was aware that the First Respondent would not sign the partnership agreement until the accounts had been vetted. His position was that he had hoped he could persuade the First Respondent. The Second Respondent stated that effectively they were in partnership and there was no need to sign a legal agreement for it to commence. They had joint loans and joint staff. The Second Respondent however accepted that he understood that the First Respondent denied that they were in partnership at this time.

In cross-examination, the First Respondent referred the Second Respondent to Article 17. The Second Respondent confirmed that he met the First Respondent at a Law Society meeting in 1995 and thereafter a friendship developed. The Second Respondent confirmed that he was an experienced and competent conveyancer but was always learning. The Second Respondent confirmed that he acted for the First Respondent in a purchase of a property and also dealt with the conveyancing issues and legal work in connection with First Respondent's takeover of Murray and Co. The Second Respondent stated that there was a stipulation in the missives that all relevant client funds be transferred to the First Respondent with the necessary information. The Second Respondent confirmed that after this he did not know how the First Respondent was getting on running the firm although he had heard that a Judicial Factor had been appointed some time after this had happened. The Second Respondent confirmed that he met the First Respondent in August 2003 when the

First Respondent put a proposal to him that the Second Respondent take him on as an assistant to do immigration and criminal cases but the Second Respondent had not been interested in this as it was not his line of business. The Second Respondent confirmed that they discussed what had happened to the First Respondent and that the Second Respondent thought that it was possible to salvage his business. The Second Respondent confirmed that he understood the First Respondent contacted Jim McCann of the Legal Defence Union at this time. The First Respondent asked a question with regard to the Second Respondent's evidence in connection with passing matters to a cashier and the Second Respondent clarified that he meant that when the First Respondent got a list of issues from the Law Society the First Respondent passed them to the cashier to deal with without getting personally involved.

At this stage the Chairman asked the First Respondent to explain the relevance of the evidence that he was obtaining from the Second Respondent. The matter was adjourned to allow the First Respondent to clarify this.

The case was adjourned part heard to 29th February 2008 at 10:30am.

29th FEBRUARY 2008

The Second Respondent clarified that he had nothing further to add in connection with Article 20.3 and the point raised in cross examination where he had indicated that he was to check his papers.

The First Respondent explained that he was dealing with Article 21 and that the questions related to how the partnership arose and were relevant in connection with the Professional Indemnity Insurance. The Second Respondent stated that he was the First Respondent's advisor but it was the First Respondent's decision whether or not to accept the closure of the firm but the Second Respondent thought that there had to be other options available which could be explored. The Second Respondent stated that he felt the choices which had been given to the First Respondent were unfair and did not cover the full range of choices. The Second Respondent clarified that at this time he was looking to join or create a partnership and had potential partners in mind but due to the First Respondent's situation the First Respondent was not on his

shortlist. The Second Respondent stated that he gave the First Respondent advice to the effect that no account had been taken of work in progress in the First Respondent's business. The Second Respondent indicated that he was aware that the First Respondent had put a lot in to taking over Ms Murray's business. The Second Respondent however was adamant that the proposal to go into partnership together was the First Respondent's proposal at this stage rather than his. The Second Respondent confirmed that he told the First Respondent that there was a possibility that his business could be saved. The Second Respondent stated that there was a period of a couple of weeks where the First Respondent pressed him to go into partnership but the Second Respondent was not willing to make a commitment to this. He had concerns with regard to being the First Respondent's advisor and a possible conflict of interest situation. The Second Respondent clarified that it was after they had the meeting with Mr Cumming at the Law Society to discuss on what terms the Interim Judicial Factor could be lifted, that the Second Respondent decided he would go into partnership with the First Respondent. The Second Respondent accepted that he employed Senior Counsel when acting as the First Respondent's agent. He also accepted that he paid the bill. The Second Respondent indicated that he was aware that the First Respondent had consulted Mr McCann. He explained that it was something that the First Respondent said at the meeting with Mr Cumming which led to him (the Second Respondent) agreeing to become committed to a partnership. The Second Respondent indicated that it was not apparent to him that Mr McCann was formally acting for the First Respondent. The Second Respondent stated that he knew that the First Respondent was not happy with the advice that he was getting with regard to signing over to the Judicial Factor. The Second Respondent indicated that he could not recall whether it was he that did all the talking at the meeting with Mr Cumming. He however confirmed that after discussions at the meeting it was agreed in principle that the Judicial Factor would be discharged, the interim Judicial expenses would be a apportioned between the First Respondent and Ms Murray, and the First Respondent would pay £40,000 immediately and the balance over a period of time. The Second Respondent confirmed that the apportionment of expenses was done because a lot of the Judicial Factor's time was spent in examining the accounts of Ms Murray. Ms Johnston stated that there was no dispute about this and that Mr Cumming had accepted this in his evidence. The Second Respondent accepted that Mr Cumming had warned the First Respondent at the meeting to be cautious. The Second

Respondent said that he was probably angry with the First Respondent for mentioning that they would be going into partnership as at this time it was only a proposal. The Second Respondent confirmed that the First and Second Respondents then met at Newton Place to discuss matters further. They considered there was no option but to continue to deal with the First Respondent's bank. The Second Respondent accepted that he came up with the name for the partnership. He confirmed that by this time they had made the decision to go into partnership together. They explained to the bank the proposal to uplift the Judicial Factor and that a partnership was being formed from 1st November 2003. The meeting with the bank took place after the meeting with Mr Cumming. The bank stated that as there was a new partnership, they would be prepared to help and a small business loan was obtained in the name of the new partnership for £20,000. The Second Respondent explained that the Judicial Factor had generated income from the firm of about £20,000 and accordingly there was sufficient money to pay the £40,000 debt to the Judicial Factor. The Second Respondent stated that he thought the bank made the loan funds available towards the end of October but the Judicial Factor was not discharged until 5th November 2003. The Second Respondent confirmed that the First and Second Respondent had meetings after this to discuss the mechanics of putting the two firms together. They also discussed the accounts and it became clear that they both had accounting problems to resolve with the Law Society. The Second Respondent accepted that he remembered that the First Respondent was insistent that the client funds of his firm and of the First Respondent's firm not be put together until all the accountancy problems had been sorted out and until an independent accountant had audited the balances and certified that they both had sufficient funds. The Second Respondent explained that he expected the First Respondent's accounts to be in good shape as they had been in the hands of a Judicial Factor. The Second Respondent stated that he became aware after some time that the First Respondent had continuing accounting issues with the Law Society. He confirmed that the First and Second Respondent did not know the details of the issues that each of them had. In relation to solving the accountancy problems, the Second Respondent accepted that the First Respondent said that he had money to get a competent cashier to correct the accounts. The Second Respondent indicated that until February 2004 he thought the First Respondent was coping with his own accounts. The First and Second Respondents both had inspections at the same time in February 2004. The Second Respondent however

indicated that by the end of this February inspection his accounts were all up to date. The Second Respondent confirmed that he and the First Respondent were having on going discussions with regard to progress with the accounts and trying to get both sets of accounts balanced at the same time. The First Respondent referred the Second Respondent to the First Respondent's First Inventory of Productions page 60 being a letter from Aird Sako Accountants who confirmed that the cut off date would be 4th May 2004. The Second Respondent confirmed that the client balances were in fact transferred to the client account on 14th May 2004. The Second Respondent accepted that the delay in the date may have been due to him getting his accounts to balance exactly.

The First Respondent then referred the Second Respondent to the Complainers' Third Inventory of Productions and the various draft partnership agreements. The Second Respondent accepted that the First Respondent had made revisals to the partnership agreement. The Second Respondent explained that the bank gave them a loan without seeing a signed partnership agreement but they required a signed partnership agreement before they would open up a client account. The Second Respondent indicated that he recalled that the First and Second Respondents signed a partnership agreement with a date of 1st November 2003 in it and sent a copy to the bank, but they did not send the Law Society a copy of this. This signed document could not be found. The Second Respondent confirmed that they then signed another agreement including the First Respondent's revisals about the partnership not commencing until the client balances had been certified and a copy of this was sent to the Law Society. The Second Respondent confirmed that he did sign the partnership agreement with the First Respondent's revisals in it, but he was concerned because he did not think it fully reflected the position. The Second Respondent explained that the First Respondent would concentrate fully on one thing and did not look at the other things going on at the same time. He stated that he realised the terms of the partnership agreement were important to the First Respondent. The Second Respondent clarified that he was aware that there was an inconsistency between the signed agreement with the revisals in it and the indemnity insurance position. The Second Respondent stated that he tried to make the point with regard to this to the First Respondent on a number of occasions as there were a number of matters that arose from the issue of whether the partnership had actually commenced. The Second Respondent indicated that it had

not dawned on him that they might not be covered for professional indemnity insurance as he thought they were also covered as individuals.

The First Respondent referred the Second Respondent to Complainers' Productions 2.30 to 2.32 and the interview with the Guarantee Fund Committee on 22nd April 2004. The Second Respondent confirmed that after this meeting the First and Second Respondents discussed the indemnity insurance position and reinstated the partnership agreement with the start date of 1st November 2003. The Second Respondent confirmed that they contacted Jennifer Scollick of Marsh on 23rd April 2004 and had a meeting with her which suggested three ways forward:- either to accept they were in partnership from 1st November 2003, to accept that they were now in partnership but they required cover to be put in place for the period from 1st November 2003 until then or to defer going into partnership until 1st November 2004 and continue as two firms until then. The Second Respondent explained that the difficulty with the second and third options was that it involved re writing insurance and also involved additional premium costs. The Second Respondent stated that the First and Second Respondents told Ms Scollick how they wished to resolve matters which was to reinstate the start date of the partnership agreement as 1st November 2003 but due to her resistance to this they had to go away and talk about it further. The Second Respondent confirmed that the letter of 23rd April was the First and Second Respondent confirming in writing to the Law Society that they wished that to be the way forward. The Second Respondent confirmed that the First and Second Respondent used separate letterheads for some time because there were no Practical Law Partnership letterheads. He indicated that after a certain point, they started putting on the letters that they were a division of the Practical Law Partnership. The Second Respondent advised that he told his clients shortly after 1st November 2003 about the arrangements for the new partnership but his clients did not all approve and some of them tried to persuade him not to go ahead with it. The Second Respondent confirmed that a notice went up on the main door of the First Respondent's old office but he could not say when this had happened.

The Second Respondent confirmed that when the Judicial Factor left the First Respondent had a trainee, two well qualified secretaries and two office boys that did general duties. These staff all left at different times. This increased the logistical

challenge. The Second Respondent however confirmed that he did not seriously question the partnership at this time as it was already in existence. The Second Respondent clarified that despite the fact that the First and Second Respondent kept separate accounting systems, this did not make him think that they were not in partnership, although he did realise that they had to do additional accounting work to bring their systems together. The Second Respondent confirmed that if there were any liabilities on a client ledger, these would be owed to the individual not to the new partnership as at the commencement of the partnership.

The Second Respondent confirmed that he moved to Argyll Arcade just after the February inspection. He accepted that the First Respondent probably did phone him a number of times to ask when he was coming. The Second Respondent also confirmed that the First and Second Respondent recruited a lady to become the legal cashier of the new firm. He stated that they had decided to use a Soroba system but then found that this was no longer to be supported and they had to look at getting a new system. Due to the capital costs of this it was deferred for a couple of months.

In connection with Article 17.2, the Second Respondent clarified that he expected that the First Respondent would have had access to accounts, ledgers, files, cash book, client balance statements and a detailed list of all the balances when he took over Ms Murray's firm.

In connection with Article 20, the Second Respondent confirmed that the inspectors came on 5th July 2004 and that neither the First or Second Respondent knew they were coming as they had not received the letter of intimation dated 2nd July 2004. The First Respondent referred to Complainers' Productions 2.27 to 2.29 and to various matters raised in the letter of 16th August 2004. The Second Respondent confirmed that in connection with clients 148, 149, 144, 34, 141, 85 and 86 the transactions were done exclusively by the Second Respondent and the First Respondent had no involvement in them. The Second Respondent stated that he believed he did all the correct preparation and dealt with the conveyancing properly. In connection with client 85 the Second Respondent indicated that he accepted that this was a blunder. He stated that he had a close working relationship with Lyons Laing and he was pretty sure that they had not realised when they cashed his cheque that there were no

missives. The Second Respondent stated that he accepted responsibility for his actions. He also indicated that morally these cases were his responsibility but it was up to the Tribunal to consider the legal responsibility. He confirmed that he and the First Respondent were equal partners and not employees of each other. They were both separate principals and responsible for their individual actions and that of the firm.

At this time the case was adjourned part heard to 28th March 2008.

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The First Respondent referred the Second Respondent to Article 21. The Second Respondent confirmed that it was not long after the meeting with Mr Cumming that he agreed arrangements with the First Respondent with regard to the partnership. He explained that it was due to the First Respondent's circumstances that he did not include him in the group that he was thinking of merging with. The Second Respondent stated that it was not rational for him to take on the First Respondent's pressures as well as his own. The Second Respondent did not accept that he said that the only way for the First Respondent to keep his business was for them to go into partnership together. He was adamant that at the first meeting he did not agree to go into partnership with the First Respondent. The Second Respondent confirmed that although the Interim Judicial Factor was uplifted on 5th November 2003, the Second Respondent did not move to 34 Argyll Arcade until February 2004. The Second Respondent stated that he accepted that there was a delay, this was because there was a lot to do and also it was the Christmas and New Year period. The Second Respondent stated when they went into partnership he kept his accounts as part of the Practical Law Partnership.

The First Respondent referred to Complainers' Productions 3-8 and a letter of 15th March 2004. The Second Respondent confirmed that he had no knowledge with regard to this letter, it had not been written by him. The Second Respondent stated that he thought eventually the First Respondent would accept his view on when the partnership started and the First Respondent did in fact do this but it took some time.

In connection with Article 20, the Second Respondent accepted that in connection with clients 148, 144, 34, 141, 85 and 86 it was not until the meeting after the inspection that these transactions were brought to the First Respondent's attention for the first time. The Second Respondent accepted that he apologised to the First Respondent for not having explained the position with regard to client 85 earlier. The Second Respondent confirmed that he did write to Lyons Laing and asked them to repay the money as there had been no legal basis for it to have been paid over.

The Second Respondent confirmed that he had no wish to re-examine himself. He confirmed that he was not leading any witnesses.

EVIDENCE FOR THE FIRST RESPONDENT

The First Respondent then gave evidence on his own account. He explained that he was going to give evidence relating to Articles 2 to 12 of the Record to start with being general evidence. He explained that before he purchased Murray & Co, he had his own firm at 536 Cathcart Road. The premises at Argyll Arcade were one or two miles away. He stated that he arranged for all his mail to be redirected from 536 Cathcart Road to Argyll Arcade during the period from 6th November 2002 until the end of June 2003. He confirmed that during this period all the Law Society letters sent were delivered to Argyll Arcade. He also explained that he arranged for his former firm to be registered for Legal Post and made arrangements after the new firm was in place so that all the letters sent to Atuahene, Sim, Murray & Co were delivered to the Argyll Arcade address. He however stated that he did not accept that letters from the Law Society addressed to Atuahene Sim or Atuahene Sim Murray & Co sent outwith the redirected period were delivered to Argyll Arcade or were received by him. The First Respondent clarified that he did not accept letters sent out outwith this period were delivered to him. He referred to Complainers' Productions 2-11 and a letter of 21st August 2003. He confirmed he did not receive this letter in connection with the complaint by Ms K. He also did not receive the letter of 6th October 2003 or another letter dated 6th October 2003. He also did not receive any of the letters sent on 5th November 2003. He referred to Complainers' Production 2-6 and a letter of 11th August 2003 which was not received by him. He also did not receive letters dated 21st October and 29th October 2003. The letter dated 28th November 2003 was not

delivered. The First Respondent referred to a sample letterhead that he was using which had the Argyll Arcade address at the top and his Cathcart Road address on the bottom. He stated that the letters the Law Society sent to the Cathcart Road address outwith the period of redirection should have been sent to the new office at Argyll Arcade. He explained that after he purchased Murray & Co. he put the old address on letters for a while to suggest to other solicitors that any outstanding transactions could be sent to the new address and that the new firm was no different. He submitted however that it was obvious that the reply should go to the address at the top of the letter being Argyll Arcade. The First Respondent confirmed that he moved to Argyll Arcade on 8th November 2002 and at this time he left the Cathcart Road address and this office was closed. The First Respondent accepted, as was pointed out by the Tribunal members, that he had sent letters on 26th January 2004, in April 2003 and on 12th August 2003 which had the Argyll Arcade address at the top but still had the Cathcart Road address at the bottom of the letterhead. He stated that he thought that some of the old letterheads might have been used and he did not notice. The First Respondent referred to Complainers' Productions 21 to 23 and letter of 21st February 2004. He accepted that this letter had the Cathcart Road address on it. The First Respondent indicated that he made some mistakes and that the Tribunal required to understand the conditions under which he was operating. The First Respondent pointed out that in connection with the matters complained about by clients in a number of the Articles it was only his failure to respond to the Law Society that was at issue not the merits of these cases.

In connection with Article 2, the First Respondent outlined the background to this matter. The Chairman queried how relevant this was as the Tribunal was only looking at the failure to respond. The Fiscal stated that she had no recollection of any evidence being led with regard to the merits of these complaints and there was no need to go into the particular transactions except in connection with Articles 10 and 8 where there were averments with regard to mandates as well as averments in connection with failure to respond.

In connection with Article 3, the First Respondent explained that Ms Murray had acted but that the Judicial Factor gave him access to the files. He stated that he could not have given them the information in any event. In connection with Article 4, the

First Respondent explained that the completion certificate was not available when Ms Murray settled the transaction and a letter of obligation from the seller's solicitors to deliver it was given with the retention of £2,000. Just before he took over Ms Murray had commenced the sale of the property, Ms Murray had tried to get a completion certificate, he took over and also tried to get the certificate. He could not and therefore delivered a letter of obligation to deliver one and there was a retention of £2,000. He stated that he was not always able to answer calls. He indicated that he did all he could but it did take a long time.

In connection with Article 5, the First Respondent confirmed that when he took over the firm of Murray & Co., there were a number of divorce actions which she had sub-contracted to David Caplan. When the First Respondent took over, he started to collect fees and forward them to David Caplan. It became clear that the personal arrangement between Ms Murray and David Caplan was not to continue now that he had taken over the firm. He accordingly told all these clients to seek alternative representation and sent them mandates. Mr D never returned the mandate to him. Mr D instructed Robertson Paul Solicitors and the First Respondent received a mandate from them but he could not trace the files. At this time the First Respondent was not in the office very much. Eventually it was traced and sent. The First Respondent referred to his first Inventory of Productions, Productions 24, 25 and 26.

In connection with Article 6, this related to money held by Murray & Co on behalf of the client. There was no need to go into the circumstances and the First Respondent referred to his said Inventory, productions 27 and 28. In connection with Article 7, the First Respondent referred to production 29 of his said Inventory. In connection with Article 8, the First Respondent referred to his said Inventory, productions 30, 31 and 32. He explained that the mandate was in connection with a will which had been prepared by Ms Murray and was stored in the office. The First Respondent stated that he admitted that he had received letters from Ferguson Dewar but he had told them that he was having difficulty locating the file. The letter of 11th October 2004 sending the will was sent by the Second Respondent not himself. The First Respondent's position was that the phone calls were responded to.

In connection with Article 9, the First Respondent referred to his said Inventory, productions 33 and 34. It was confirmed that the averments of misconduct in Articles 24.13 and 24.14 had been deleted and the only outstanding issue was his failure to register titles. This was admitted by the First Respondent in the Record. The First Respondent referred to his Third Inventory of Productions, production 3 being a ledger. He explained that there was a delay in recording the deeds but this was because it was a new development and there was a deed of conditions which had not been recorded and accordingly his Form 4 bounced and this caused a delay but there was nothing the First Respondent could do about it.

In connection with Article 10, the First Respondent clarified that he now accepted that he was at Argyll Arcade when this transaction started. He had to get the assignation and forward it to R & RS Merrins, but the file was misplaced. The First Respondent stated that he instructed his secretary to phone to explain. The First Respondent explained that he was sequestrated on 5th July 2004 and there was a big article in the newspaper about him in October 2004 which was extremely upsetting. The file in question was found inside another file but the Respondent was not coming into the office and could not register the assignation as he was sequestrated. He did phone R & RS Merrins. and spoke to the secretary and left a message to say the file had been found.

In connection with Article 11, the only outstanding issue was the failure to respond.

In connection with Article 12, the First Respondent explained that he had no authorisation to deal with the divorce as Caplan was not accepting instructions from him. He stated that he could not phone the client as he was not in the office. He however indicated that he did speak to her and confirm the position.

The First Respondent explained that he transferred all the accounts of Atuahene and Sim to the new bank account for Atuahene Sim Murray & Co. He moved offices physically and organised redirection of his mail for six months. When he moved to Argyll Arcade, he found the files all over the place. There was a main office on the 5th floor and another office on the 2nd floor. There was no order in connection with the files. The First Respondent had agreed to retain Ms Murray's secretary and staff as

employees, he also employed a legal assistant full time. He enquired of the employees why the files were in such a mess and it was explained that as Ms Murray had to leave by a certain date to start a new job, she had wanted to collect all the fees prior to this date and this had led to disorganisation with the files. The First Respondent explained that he had inherited problems and these impacted on his ability to do his business and on his health. He explained that he had been diagnosed with high blood pressure and diabetes in 1999. He was able to work so long as this was controlled and he had worked satisfactorily for years. The First Respondent explained that he could not separate mitigation from facts at this stage. The First Respondent explained that the client balances he inherited from Murray & Co were transferred to West Anderson and Co who were holding client funds on her behalf because she no longer had a practising certificate. They however said that they had no obligation to give him any kind of certificates and did not have the evidence that he needed. He therefore had to contact Ms Murray direct. He pointed out that the accounts had been done by Ms O for Ms Murray and had been found to be adequate. Ms O however found it impossible to reconcile the client balances which caused him a great deal of concern. The First Respondent explained that he had paid £20,000 for work in progress and £70,000 for good will and yet Ms Murray still wanted more money from him. This led to the relationship between them deteriorating. The First Respondent stated that he had no list of ongoing files. He said that Ms Murray had indicated that she would advise all her former clients of the change of ownership of the firm but she did not do this and this had resulted in a lot of angry clients. It took him ages to locate the files. He also explained that Ms Murray had been in a hurry to register titles prior to leaving but a lot of these had bounced back from the Register. The clients had already paid fees in respect of this and when the First Respondent had to re-register the clients were not willing to pay. The First Respondent explained that he was sued by Ms Murray and her solicitors arrested his bank accounts. He referred to Production 1 of his First Inventory of Productions. This arrestment led to a reduction in the money available to the firm which meant he was unable to meet his debts which then resulted in his sequestration. It also had a bad effect on his health and he had a lot of headaches, was tired and could not concentrate. He saw his GP who said that the stress was having a negative impact on his condition. He was warned to take time off. He however explained that as a sole signatory he still had to go into the office but would only go in for 30 minutes or so at a time. His legal assistant and paralegal were very helpful.

The First Respondent advised the Tribunal that he realised at this time he had to find a way out and he looked for a bigger firm to take his firm over. He contacted ten firms but he was unsuccessful. He explained that he would have transferred his business free of charge provided they would take him on as a qualified assistant. The First Respondent explained that he had a business loan which was secured over his business premises and his house. His plan was to give the bank his home and office and then try and repay the bank over a number of years. He did have contact from one firm who showed an interest but a week later the Judicial Factor took over and this accordingly did not go anywhere. After the Interim Judicial Factor was in place, Ms O resigned. The First Respondent however stated that he cooperated fully with the Judicial Factor who updated him daily. When the Judicial Factor did the interim report and then the final report, it was clear that there was no deficit caused by him on the client account. The only deficit arose from Murray & Co. The Judicial Factor advised him that it would not be sensible to continue in business as he had too much debt and had paid too much to Murray & Co. when he took over the firm. The First Respondent explained that he was a member of the Legal Defence Union and he consulted Mr McCann. Mr McCann advised him that he had to show that his accounts were not in deficit and that he would be able to meet the expenses of the Judicial Factor. He was advised that his liabilities exceeded his assets and he would probably have to give up the practice. Mr McCann advised him to look for a job. The First Respondent indicated that he accepted this and prepared an authority to pass the immigration files to Drummond Miller and the other files to Anderson Strathern. He then decided to go and see the Second Respondent to see if he would employ him. He was upfront and explained his whole situation. The Second Respondent strongly disagreed that the only way forward was for the First Respondent to abandon his business. The Second Respondent stated that if the First Respondent had better staff, the business could perhaps be salvaged. He indicated that the best way for the First Respondent to keep his business was to go into partnership with the Second Respondent. The First Respondent was adamant that it was clear to him at this time that subject to the discharge of the Judicial Factor, the Second Respondent was prepared to enter into a partnership with him.

At this stage the case was adjourned part-heard until 17th April 2008.

17 APRIL 2008

The First Respondent continued with his evidence and it was confirmed that he was still under oath. The First Respondent repeated a number of points made in his evidence to the Tribunal at the last calling of the case. The First Respondent indicated that he should have received a statement which showed that the clients' funds were sufficient to cover the client credit balances. He however did not get a list so it was not possible for him to check the list against the lump sum which he received. The Chairman asked the First Respondent to direct the Tribunal to where he was in the Record. The First Respondent stated he was at his Answers to Articles 2 – 12. The First Respondent explained that he got letters from solicitors asking for things and his assistant had spent a lot of time dealing with these queries. He stated that by December 2003, all his employees had left. He was alone from December 2003 until February 2004, when he was joined by the Second Respondent. The First Respondent referred to his medical condition and referred the Tribunal to the medical report, the First Respondent's Production No 39 and the letter dated 24th August 2005, from his doctor. He was referred to the hospital. The Fiscal indicated that the First Respondent's health problems were accepted by the Law Society. The First Respondent stated that he recognised that he still had the same responsibility to his clients as he would have had he been in 100% health. He stated that he tried to do the best he could. He reduced the number of new transactions he took on which reduced his firm's income. The First Respondent clarified that he admitted that he did not respond to a quarter of the letters sent to him by the Law Society because due to his poor health he could not respond to all the letters. He emphasised that his failure to respond was not deliberate. The First Respondent said that the Second Respondent indicated that he would try and get the Judicial Factor discharged and the authorities which the First Respondent had signed cancelled. The First Respondent stated that he knew that the Second Respondent was sincere with regard to going into partnership with him because the Second Respondent suggested the name of The Practical Law Partnership and obtained Senior Counsel's Opinion with regard to what was required to proceed and the Second Respondent paid Counsel's fees. When the First Respondent changed his mind about giving up his practice, Mr McCann withdrew from acting as this was contrary to his advice. The Chairman asked the First

Respondent to try and tie his evidence to the averments in the Record. The First Respondent then moved on to Article 17.

Article 17.1 The First Respondent stated that when he got the Soroba System in March 2003, this was a new form of the system which had previously been used by Murray & Co and was a different system from the one he used in his old firm. The First Respondent stated that he bought this system for his legal cashier to use. After a week of posting, all the data disappeared and this led to tension in the office with regard to who was to blame. The First Respondent bought a new computer and kept it in a separate room that was locked and only he and the cashier had a key. There was a password for the accounting system which was kept by the cashier and when she was not available the password was given to the First Respondent but he did not know how to operate the system. When the inspectors came on 22nd April 2003, the cashier was late but she was available on the 22nd and 23rd of April and the auditors accordingly had access to the computer system on these dates. On 24th April the legal cashier did not come in. The First Respondent did not have the password as it was changed each time it was given to him because he wrote it down. The First Respondent was unable to get hold of the cashier and accordingly could not give the auditors access to the system on 24th April. In response to a question from the Chairman, the First Respondent clarified that he accepted that the accounting records were unreliable but explained that he did not know this at the time. He indicated that he did not know whether or not there was an apparent shortage. The First Respondent explained that he knew that the balances from his previous firm of Atuahene Sim were ok and he transferred them to the new firm of Atuahene Sim Murray & Company. He explained that there were a lot of problems with the client credit balances from Murray & Co. It was not known whether these were accurate and accordingly they were not posted. The First Respondent stated that his legal cashier told him that she had spoken to Ms Murray and after this was able to reconcile the accounts. The First Respondent stated that he would have preferred to have his accountant check them. Once the Judicial Factor came in it was clear that the information that the legal cashier had obtained was wrong. The First Respondent confirmed that the postings for any new transactions carried out by him were correct. What made it difficult for the auditors was the problem with the client balances and him not having the documents required to verify that the balances transferred from

Murray & Co were correct. It was this problem that caused the apparent shortage. The First Respondent's legal cashier did not know how to deal with the problems inherited from Murray and Co. The First Respondent indicated that he accepted that there were some delays in recording deeds but he had explanations for this. He confirmed that he had a system in place being a diary system ensuring that deeds were recorded.

In connection with Article 17.2, the First Respondent indicated that he accepted to some extent that the postings were not accurate and that this affected the records and accordingly the true position of the clients' account could not be ascertained. The First Respondent explained that when he took over Murray and Co he had a surplus of £7000. He accepted that initially the ledger card showed entries without a narrative but this was due to the problems with the computer system. In connection with the dispersal of the funds, the First Respondent indicated that this was an error that was corrected. Postings piled up in an attempt to get up to date. The legal cashier made mistakes but this did not mean that cheques were sent out before funds were received. The First Respondent accepted that the client reconciliation of 31st March 2003 was unreliable and did not reconcile to the nominal ledger balance and the list of outstanding cheques was inaccurate and did not reflect the true position. The First Respondent stated that he could not say whether or not the shortage figure of £116,447 was correct but he was not able to challenge this. He stated that the Law Society required him to pay £7000 immediately but they were also stating that there was a shortage of £116,447 so it made no sense for them to ask him for £7000. He indicated that he knew that as far as he was concerned there was not a deficit. The Judicial Factor confirmed that the First Respondent did not in fact have a deficit. The First Respondent referred to his First Inventory of Productions and the Judicial Factor's report, at paragraph 5.2 which confirmed that he had a surplus of £6615. The First Respondent explained that when the Judicial Factor took over it became clear that the postings were wrong. The First Respondent clarified that he accepted that at the inspection date the postings were not up to date. Two thirds of the postings were wrong. He however submitted that he did invest funds except in a few cases and there were good reasons for this. The First Respondent forwarded a reconciliation statement in connection with invested funds to the Law Society. The First Respondent explained that the Law Society gave him time to deal with the

outstanding issues. The legal cashier however was unable to sort matters out within the allowed time. The First Respondent went back to the owner of Soroba Systems who said that it would be possible to do postings without requiring to finish one month before going on to another month and accordingly months were left open and not reconciled as he was still waiting for figures.

In connection with Article 17.3. The First Respondent referred the Tribunal to Complainer's Productions 2.19 – 2.20 and his letter of 4th June 2003. In connection with client 95, a cheque should have been received for £14,000 and the posting that was done in the office was for £14,000 but a cheque for only £1400 was received from Client 96. They had sent a cheque for the wrong amount but this was not identified until the inspection. A cheque for the balance of £12,600 was sent shortly thereafter and the matter was rectified. In connection with client 97, a cheque was sent on 31st January 2003 for a settlement on 3rd February 2003 to be held as undelivered until it was confirmed that funds had been received from the client. The cashier misposted the date. In respect of client 98 the First Respondent referred to the same letter and indicated that this was a systems problem and a reconciliation statement was sent to the Law Society soon after. In connection with client 99 the error was rectified. The position was that some of the cheques had not been posted and accordingly it looked as if there was more than £500 in the account when there should actually have been less. In connection with fees, the system was that when cheques were issued, the office junior recorded monies received and a paralegal did the posting slips which were given to the legal cashier to do the postings. The First Respondent discovered that often when invoices were raised for fees the date of the posting did not tie in with the date the invoices were raised. He accordingly sorted this matter out. He clarified that it was not the case that fees were taken before fee notes were issued.

In connection with Article 17.4. The First Respondent referred the Tribunal to the same letter of 4th June 2003. In connection with client 100 the First Respondent explained that often cheques were sent for recording dues and were not cashed immediately. The auditors had said that there were no recording dues on the ledger but the deeds had been recorded on 10th April 2003 and the First Respondent had produced receipted Form 4s. The posting errors were corrected. In connection with

client 101 the loan was redeemed on 25th March 2003 but the discharge had to be amended and then was lost by the Yorkshire Building Society. The First Respondent clarified that the receipted Form 4 had been sent to the Law Society. In connection with client 102, when a payment was made to Kensington Mortgage Company, there was a delay in them sending the discharge. The receipted Form 4 had been sent to the Law Society and the deeds had been recorded.

In connection with client 103, the First Respondent referred to the same letter. The discharges and the Forms 2 and 4 had been sent to the solicitors. The Land Registrar had not presented the cheques to the bank but the receipted Form 4 had been sent to the Law Society. In connection with client 104, the client gave instructions that he wanted the title put in his son's name, which was the reason for the delay. A receipted Form 4 had been produced. In connection with client 105, at the date of inspection the transaction had settled, there was no stamp duty posted but there was money for this in the ledger. At this time the First Respondent had not received the disposition but once it was received it was recorded and the receipted Form 4 had been sent to the Law Society. In connection with client 106, he explained that the Registers would require the deed either to be stamped or to have a certificate that no stamp duty was due before they would accept it for recording. This deed had been recorded and accordingly it probably did not require stamping. In connection with client 107 the auditor had got the wrong printout from the computer account. The First Respondent submitted that the source was shown and the deeds were recorded. There was however a mistake in paying the money into the firm bank account but this was corrected two days later.

In connection with Article 17.5. The First Respondent explained that as the postings had not been sorted out by the end of the period allowed by the Law Society, this led to the Interim Judicial Factor being appointed. The First Respondent clarified that he accepted the facts in Article 17.5 but explained that the problem came from Murray and Co and that the Interim Judicial Factor had to get a lot of documents from Ms Murray to be able to get reliable client credit balances. The Fiscal clarified that she did not dispute that the actual shortfall was £11,854.

At this point the matter was adjourned part heard until 27 May 2008 at 10.30am. A further date was fixed for 2 June 2008 at 10.30am.

27 MAY 2008

It was clarified that the hearing fixed for 2nd June 2008 had been cancelled and the next hearing of the case will be 24th July 2008 at 10:30am.

Article 17.3 The First Respondent clarified that the bank statements of Atuahene Sim Murray & Co contained cheques which had not been signed by him and also some cheques which had been signed by Ms Murray but had not been presented which caused further complications. The First Respondent also referred the Tribunal to the First Inventory of Productions for the First Respondent Productions 42, 43, 44, 47, 48, 49 and 60. In connection with apportionment of expenses he referred the Tribunal to Production number 46. Re Article 17.4 & Client 102 he referred the Tribunal to the First Respondent's Fourth Inventory of Productions, Production number 1. In connection with the shortfall he referred the Tribunal to his First Inventory of Productions, production numbers 42, 49 and 46.

Article 18 The First Respondent clarified that he admitted the facts in Articles 18.1 to 18.3 with the exception of the paragraph in connection with trying to resolve matters. The First Respondent's position was that matters were resolved. The First Respondent stated that the accountancy records were rectified by Mr M the legal cashier that he obtained. The Chairman questioned whether it was necessary for the First Respondent to give evidence with regard to Articles 18.1 to 18.3 as he had just confirmed that he admitted the facts contained therein. The First Respondent stated that he admitted that there were posting errors but he was then given a chance by the Law Society to rectify matters. He obtained a Law Society trained legal cashier and matters were rectified shortly thereafter. He indicated that he felt it important to lead evidence with regard to this as it related to the facts as well as mitigation.

The First Respondent indicated that he may also wish to make a plea in bar of proceedings as the Law Society had indicated that they would allow him to rectify matters and he had done so and then they still prosecuted him. The Chairman

indicated that it was too late at this stage in the proceedings to raise a plea in bar of the proceedings.

The First Respondent stated that accurate accounting records were prepared by Mr M and forwarded to the Law Society as a matter of urgency. The First Respondent stated that after 31st October 2003 he decided to keep the accounts himself. He spoke to the owner of the Soroba System. He obtained a legal cashier Mr M who deleted all the postings from the 1st November onwards and reposted all the entries and copies were sent to the Law Society. The First Respondent explained that at the end of the inspection on 17th and 18th February 2004 he had a meeting with Mrs Playfair and she made it clear to him that the accounts records were unacceptable and recommended that he obtain a legal cashier. The First Respondent stated that the averments set out in the Complaint were based on the Auditor's report but did not take account of the rectified records produced by him. The First Respondent referred to Complainer's Productions 2.21 – 2.23 and a letter from Morag Newton dated 1st March 2004. This indicated that the inspection report did not take account of the First Respondent's rectification of matters. A member of the Tribunal pointed out to the First Respondent that the letter from the Law Society dated 1st March 2004 indicated that there were still outstanding issues at this time. The First Respondent referred to the First Inventory of Productions for the First Respondent, Production 51 being a letter of 21st February 2004 stating that he was contacting a legal cashier Mr M. Production 52 was a letter of 23rd February 2004 enclosing up to date postings as at November 2003. The First Respondent explained that the accountant Mr M had his own business and could only come in at weekends. The First Respondent confirmed that the Productions referred to in his Answers to Articles 18.1 to 18.3 were the ones he wished the Tribunal to take account of.

Article 18.4 re client 113, the First Respondent referred to his First Inventory of Productions, Production 62 and to his Third Inventory of Productions, Production 1. He explained that some Muslims take the view that you should not make money from money and accordingly when he had a Muslim client he would speak to them before investing funds on their behalf. The First Respondent told the Law Society in his letter being Production 62 that it was on his clients' instructions that he did not invest the money. The ledger from the rectified accounting records in connection with this client

were accurate. The sum of £14,864.51 was not invested on 5th December 2003 but on 3rd March 2004 £13,977 was paid to the client. In connection with Client 114, the First Respondent referred to his Third Inventory of Productions, Production 2. On 12th September 2003 the balance was £26,538 and a fee of £411.25 was rendered on the same date. Recording dues were also paid on the same date which left £25,640.10. On 12th February 2004 £25,000 was paid to Northern Rock. The First Respondent submitted that the funds were paid out within two months and it was accordingly not a breach of the rules.

In connection with client 115, the First Respondent referred to his First Inventory of Productions, Production 62 and to his Third Inventory of Productions, Production 6. This showed that on 10th November 2003 there was a balance of £2,159.92. On 7th January the fees were paid and on 6th February stamp duty was paid. There was an error with regard to the stamp duty and whether this was payable or not. The money in the client account was used to pay this.

Re Client 116, the First Respondent referred to his First Inventory of Productions, Production 62 and Third Inventory of Productions, Production 4. It was clarified by Ms Johnston that it was accepted by the Law Society witness that there was no breach of the Accounts Rules in terms of the rectified records. Re Client 117, the First Respondent referred to his First Inventory of Productions, Production 62 and Third Inventory of Productions, Production 7. The ledger showed that on 15th December 2003 the credit balance was nil. On 31st December the balance was £5,000 and on 24th January there was a payment of £4,500 to the client. The First Respondent accordingly submitted that the money was paid out within the two month period. In connection with Client 118, the First Respondent referred to his Third Inventory of Productions, Production 8 and First Inventory of Productions, Production 60. On 18 November 2003, £15,000 was credited to the client's ledger. The First Respondent explained that the client was sequestrated but was paid £15,000 in respect of a court action but the trustee stated that the money should go to him. This was agreed but there was a condition that was not accepted. A cheque was sent in November 2003 but was not returned until February 2004. Production 62 confirmed that the money was not invested because this was on the client's instructions. Ms Johnston confirmed that the Law Society accepted that the client in this case had not wanted the sum invested.

Re Client 119, Ms Johnston confirmed that the Law Society accepted that once the rectified records had been produced there was no breach.

In connection with Client 120, the First Respondent referred to his Third Inventory of Productions, Production 8. In November 2003 there was a credit balance of £7,172. On 20th April 2004 £1,663 was paid which increased the balance to £8,836. On 20th April 2004 £8,710 was paid out. The First Respondent stated that he had lodged a printout in answer to the Complainer's averment in connection with this client.

Re Client 121, the printout was also produced at Production 9 of the First Respondent's Third Inventory of Productions.

Re Client 122, Production 12 of the said Third Inventory of Productions was the ledger and a printout had been produced. Re Client 123, Production 13 was the printout produced.

In connection with the Q & LTR, the First Respondent referred to his First Inventory of Productions, Productions 43 and 44. The First Respondent explained that he did not have a specified name to pay the money to and he required clarification from Gerber Londa and Gee. In connection with the accounts certificate, the First Respondent accepted that the postings were wrong which led to the accounts certificate not being accurate. He however clarified that once the figures were rectified an accurate accounts certificate was done and forwarded to the Law Society. He referred to his First Inventory of Productions, Numbers 42 and 44. In connection with GLC Bank, there were uncashed cheques from Ms Murray and there was a list of outstanding cheques which had been signed by Ms Murray.

Article 18.5 Re Client 124, there were two different transactions. The First Respondent stated that the averment did not indicate which one it referred to. The First Respondent referred to his Third Inventory of Productions, Productions 3, a and b. Production 3a referred to Property 46 which showed that no stamp duty required to be paid. In connection with Production 3b, this property did require stamp duty to be paid but it was in an exempt area but the value of the property exceeded the amount and so stamp duty did require to be paid. Re Client 125, the First Respondent referred

to his First Inventory of Productions, Productions 60 and 62. The letters confirmed that stamp duty had been paid and a Form 4 had been sent.

For Client 126, the First Respondent referred to his First Inventory of Productions, Production 60 and 62 which indicated that a receipted Form 4 was enclosed. The First Respondent also referred to his Fourth Inventory of Productions, Production 2a, b, c and d in connection with the property at Cathcart Road which showed that the deeds had been recorded.

In connection with Client 126 and Property 15, this matter was dealt with and the deeds were recorded. Complainer's Productions 2.20 to 2.21 and the letter of 1st March 2004 asked for the Form 4's. Production 60 of the First Respondent's Inventory of Productions indicated that stamp duty had been paid but the form had been returned for correction due to errors. Production 62 stated that the Form 4s were enclosed.

Article 19 The First Respondent stated that this inspection in March 2004 repeated some of the queries which had been previously raised and which had already been answered by him. He explained that Ms Playfair had not seen the letters which he had sent.

In October 2003 a small business loan had been obtained by the First and Second Respondent which was not incorporated in the First Respondent's accounts. The First Respondent submitted that Complainer's Productions 2.24 and a letter of 21st April 2004 by the First Respondent to the Chief Accountant showed that the loan issue had been taken onboard and raised with the First Respondent's accountant Mr M. In connection with the VAT, this was also taken onboard and Mr M required to create a suspense account. The First Respondent explained that he referred the matter to his accountant. He could not pay the VAT because he was sequestrated. The First Respondent explained that the Judicial Factor only paid the wages of his staff and did not pay any other outlays and so the matter was not under his control. In connection with PAYE, the First Respondent stated that the postings were sorted out and the records were sent to the Law Society. In response to a question from a Tribunal member with regard to which Production showed this, the First Respondent stated that

suspense accounts were opened in connection with these items and accordingly the matter was not sorted out by the end of April 2004. The First Respondent stated that because he was sequestrated he did not think he had sent anything to the Law Society with regard to this.

Article 19.2 In connection with Client 104, the First Respondent stated that this transaction was completed by him when he was at Atuahene Sim & Co. He signed a cheque for £45,388.25 but the bank did not send him a copy of the cheque. He referred to the Third Inventory of Productions for the First Respondent and a letter dated 18th September 2006 which enclosed a copy of the cheque which was made payable to client 104. Ms Johnston stated that the cheque produced by the First Respondent in August 2006 was dated 8th January 2004. At the time that the inspectors looked at the records, they were so bad that it was difficult to ascertain the position.

At this point the matter was adjourned part-heard until 24th July 2008. The Chairman instructed the First Respondent to prepare properly for the hearing on 24th July and to make an effort to know where he was going and what evidence he was to be leading and what Productions he would be referring to.

A further date of 29th August 2008 was fixed.

24 JULY 2008

The Chairman reminded the First Respondent that he was still under oath. The First Respondent indicated that he wished to point out to the Tribunal that he should be allowed to give what evidence he wished in his defence. The First Respondent stated that at this stage he should be allowed to include evidence which might relate to mitigation. The Chairman indicated that the Respondent should now continue with his evidence. The First Respondent stated that the evidence he was giving in connection with correction of errors was relevant to whether or not his conduct amounted to professional misconduct.

In connection with Articles 18 and 19, the First Respondent stated that his accountant, Mr M corrected the errors from February 2004 until April 2004. This work was done at weekends. Mr M deleted the postings and reconciled bank accounts, clients' funds etc. The First Respondent referred to his First Inventory of Productions, Productions 52, 58, 61, and to the Complainers' Inventory of Productions, Productions 2-24 – 2-26 and in particular a letter of 29th March 2004 to the Law Society and a letter of 15th April 2004 to the First Respondent.

In connection to Article 19.2 and client 104, the First Respondent stated that he did not accept that an error had been made. He had since been able to obtain a copy of the cheque from the bank. In connection with Clients 128, these had been clients for years and he kept information with regard to them in a central file. The First Respondent explained that only the paralegal knew of his money laundering procedures and he accordingly put the procedures up on the wall and sent copies of them to the Law Society. This was in place just before the Judicial Factor was appointed and continued throughout the period. The First Respondent referred to Complainer's Productions 2-24 to 2-26 and a letter by the Law Society dated 7th April 2004 and his reply of 30th April 2004. He also referred to Complainer's Productions 2-19 to 2-20, in respect of money laundering and a letter by him dated 4th June 2003. His First Inventory of Productions, Production 63, was a copy of his money laundering procedures dated June 2003. The First Respondent stated that Mrs Playfair was not aware of this.

In connection with client 129, the First Respondent stated that he did not accept that the narrative was wrong but he accepted that there were a lot of problems with this client, which he inherited when he took over Murray and Co. When Gerber, Londa and Gee were appointed, they had more power to sort matters out and identify all the ledgers. They created a general account to deal with this. In connection with client 130, the First Respondent stated that this matter had already been dealt with at a previous Tribunal hearing. He indicated that he accepted that the ledgers did not state the names of the solicitors but the auditor saw the cheques, which had the necessary information.

In connection with client 131, the First Respondent accepted that mistakes were made but these were corrected by Mr M and copied to the Law Society.

In connection with client 132, the First Respondent did not accept that the property address was not recorded and pointed out that the other mistakes were corrected.

In connection with clients 133 and 134, the First Respondent stated that the mistakes were corrected and copied to the Law Society. This was the same in respect of client 136.

In respect of unpresented cheques, a ledger was created by Gerber, Londa and Gee but this had no details with regard to the identity of the clients and accordingly the First Respondent had no way of dealing with this. He referred to his First Inventory of Productions, Production 48, being a letter by Gerber, Londa and Gee to him dated 2nd June 2004. Production 60 was a list of unpresented cheques. In connection with reconciliation of invested funds, the First Respondent admitted that these were not reconciled quarterly but Mr M rectified this error.

In connection with Article 19.3 and client 120, the First Respondent explained that he sent the search report and Glasgow Housing Association sent a letter but it was sent after the 6 months redirection had expired and was sent to Cathcart Road and so the First Respondent did not get the letter. He phoned regarding the delay and explained that normally he would have invested the funds but there were difficult conditions here and it was not picked up by him. He referred to his First Inventory of Productions. In connection with client 121, the First Respondent explained that until the general fund was created he did not know that he was holding this amount for the client. The client said that he did not want the money invested as he was a Muslim and it was against his religion to obtain interest on money. The First Respondent explained that he asked his client for written confirmation of this but his client then went abroad and he did not receive it.

In connection with client 137, the First Respondent explained that this client was a Muslim who instructed him over the phone and then emigrated to Pakistan. He had specific instructions not to invest the money.

In connection with client 138, the First Respondent submitted that the Tribunal had already made findings in respect of this matter on a previous occasion. In any event the money related to outlays and was required to pay these.

In connection with client 122, the client's son indicated that the cheque should not be sent out and he would come in to collect it. He did not come and it was an oversight on behalf of the First Respondent that the money was not invested. Eventually the son indicated that it was alright to post the money.

In connection with client 139, the funds were invested and the amount left was what was required to pay outlays to Glasgow City Council. The First Respondent referred to his Third Inventory of Productions, Production number 13.

In respect of designation of cheques, the First Respondent stated that on one or two occasions there were perhaps not any designations but there would be a covering letter which would include the necessary information. In connection with stamping and recording of deeds, any delay was a legitimate delay.

In connection with client 112, the First Respondent explained that the client had delayed in providing the balance of the money and accordingly he settled the transaction on the basis of his firm's undertaking to pay the balance. The client eventually paid the balance due.

In connection with client 128, the disposition could not be recorded as the deed of conditions was not ready.

In connection with client 140, there was a parent title and a deed of conditions, both of which led to delays in recording deeds. In connection with the discharge, this was signed without a witness and this had to be sorted out, which led to the delay.

In connection to client 129, there was a delay in receipt of the discharge which was not the fault of the First Respondent.

In connection with Article 19.4 and client 128, this matter had already been dealt with.

In connection with client 130, the details were held in a central file and this was responded to quickly once it was raised.

In connection with Article 20, the First Respondent stated that he wrote to the former Chief Accountant in connection with the decision to employ independent chartered accountants to confirm client credit balances. The Chief Accountant advised the First Respondent that this would be prudent. When the client balances were transferred on 14th May 2004, this was intimated to the Chief Accountant. There was a follow on inspection and the auditors looked at the accounts of the First Respondent's former firm, the Second Respondent's former firm and the Practical Law Partnership. The First Respondent stated that the transactions involving clients 85, 86, 141, 142, 96, 143, 34, 144, 145, 146, 147, 148 and 149, were exclusively dealt with by the Second Respondent and the First Respondent had no involvement. The First Respondent referred to his First Inventory of Production, Production 66, and his letter to the Law Society.

In connection with Article 20.5, the First Respondent admitted that although the credit balances had been audited and confirmed and the funds had been transferred to the client account, there were as at July 2004, no merged accounts in the name of the Practical Law Partnership. When the auditors finished the July inspection, there was a meeting with the First Respondent and the Second Respondent, at which they went through all the queries raised in respect of the previous firms of the First and Second Respondents. It was made clear that the Law Society would require to be satisfied with the accounting records of the First Respondent's previous firm and the Second Respondent's previous firm. In connection with staff wages, the First Respondent explained that he had lost all of his employees by December 2003 and was on his own until February 2004, when the Second Respondent and his staff moved in to 34 Argyle Arcade. The First Respondent had records in respect of his staff wages in his previous firm and no queries have been raised about this. The staff at Practical Law Partnership were the Second Respondent's staff, which he brought with him and he dealt with their salaries.

In connection with Article 21, the First Respondent stated that the issue had arisen because there was an assumption that there was no partnership in place and this was based on the use of letterheads and the keeping of separate accounts. The First Respondent said that the problem arose because of the former Chief Accountant's letter to Marsh of 5th April 2004, expressing concern about there being no indemnity insurance in place. It was clear that there was an intention by the First and Second Respondents to enter into partnership. In August 2003 the Second Respondent stated that if the First Respondent could keep his business going he would enter into partnership with him. Accordingly the Second Respondent cancelled the First Respondent's instructions to transfer business to other firms and the Second Respondent wrote to the Chief Accountant with regard to the discharge of the Judicial Factor from the First Respondent's firm. The First Respondent explained that he was only continuing in business because he was going into partnership with the Second Respondent. The First Respondent submitted that the earliest date from which there was a firm interest to go into partnership was October 2003, when a loan was taken out in joint names of the First and Second Respondents and in the name of the new partnership. The First Respondent stated that the partnership became valid immediately the Judicial Factor was discharged on 5th November 2003. The First Respondent explained that the partnership agreement was drafted by the Second Respondent and given to him to revise. The first draft had a start date of 1st November 2003. The First Respondent explained that he deleted this and wrote in that the agreement would commence when chartered accountants had audited and confirmed the client credit balances of Atuahene Sim Murray & Co and Richard Thorburn. The First Respondent stated that he did not realise the impact that his amendment to the partnership agreement would have. The amendment was made and the partnership agreement was signed by the First and Second Respondents. They then got a letter from the Law Society inviting them separately to attend the Guarantee Fund Committee. Concerns with regard to professional indemnity insurance were pointed out. The First Respondent stated that he did not understand what "run off cover" meant and thought that the transactions for Atuahene Sim Murray & Co would still be covered. When he realised that there was a problem he had a meeting with Marsh the following day. The First Respondent explained that it was his error with regard to the start date in the partnership agreement and they then

removed the paragraph stating that the partnership only commenced when the balances were audited and transferred and put in the former start date of 1st November 2003. There was however an additional clause put in the partnership agreement by the First Respondent saying that the respective client funds would only be transferred to the client account of the Practical Law Partnership once an accountant had confirmed the client credit balances. This new partnership agreement was signed by the First and Second Respondents in March 2004, just after the Guarantee Fund meeting. A copy of this was sent to the Law Society.

In connection with the letterheads, the First Respondent submitted that the partnership came into operation on 5th November 2003 but the First and Second Respondents still had separate letterheads and it took some time to agree on a letterhead for the Practical Law Partnership. Both the First and Second Respondent used old letterheads but often put at the top of the letters that they were part of the Practical Law Partnership, although this was not done consistently. The First Respondent clarified that Second Respondent did not move to his offices until February 2004. It was however known to both the First and Second Respondents' clients that the new partnership was in place. The First Respondent put up a sign at the main entrance to the Argyle Arcade premises shortly after the Judicial Factor was discharged. The First Respondent stated that he also advised all the lenders of the Practical Law Partnership of the link to Atuahene Sim Murray & Co. The First Respondent referred to Complainers' Production 3.8 and stated that the letter was dictated by him but had an error in the first paragraph. This letter was written because the lender asked for sight of the indemnity insurance. The letter should have stated that "the name of the firm is Practical Law Partnership and that partnership entered into shortly". The First Respondent stated that the First and Second Respondents' firms records were kept separate because there were outstanding queries in connection with both of their firms. The First Respondent referred to his First Inventory of Productions, Production numbers 71, 72, 73, 74 and 50 and Complainers' Productions 2-30 to 2-32. He also referred to the partnership agreement and the letter sent by him on 7th January 2004, to the Chief Accountant, the letter on 17th February 2004 by the Law Society to the First and Second Respondents and the letter of 6th April 2004 by the First Respondent, the accountant's letter of 13th April 2004 and the letter by the First Respondent of 23rd April 2004.

In connection with Article 22, the First Respondent referred to Complainers Productions 2-33 and letters of 11th October 2004 and 9th January 2005, written by him. The First Respondent explained that he acted for a client in connection with an asylum claim and she got pregnant and was in detention and transferred to London. He received a phone call from her after he had been sequestrated, she was upset and about to be deported. The First Respondent explained that it was an emergency and he typed the letter of 11th October 2004 on behalf of the Practical Law Partnership and faxed it and posted it. He stated that when he wrote the letter he was not aware that the Practical Law Partnership no longer existed. The First Respondent explained that he felt morally obliged to help this client. This concluded the First Respondent's evidence.

In cross-examination of the First Respondent in connection with Article 1.1, Ms Johnston clarified with him that he accepted the facts as set out in Articles 1.1, 1.2 and 1.3, although his position was that the name of the firm was changed as soon as he took it over.

In connection with Article 2.1, the First Respondent clarified that he had no employees after December 2003 and that most of the letters would have come to him and he opened some of them but not all due to the difficult conditions that he faced. He explained that there were many urgent matters. He stated that he did not think he was able to reply but he did not dispute that the letters were delivered to Argyle Arcade and were not replied to by him. The First Respondent stated that he accepted that some of the letters still had the Cathcart Road address at the bottom but stated that he would expect the reply to be sent to the address at the top of the letter. The First Respondent clarified that he had a call from the records department of the Law Society asking if he was still at the Cathcart Road address and he advised them that he was not. He thought this was a few months after the Interim Judicial Factor was discharged. Ms Johnston referred the First Respondent to Complainer's Productions 2.21 and a letter of 21st February 2004 to the Law Society. The First Respondent accepted that the Cathcart Road address was still at the bottom of this letter. The First Respondent explained that this should have been deleted but he was using old notepaper as he had run out of the current notepaper. The First Respondent however

submitted that it should have been clear to the Law Society that they should respond to the Argyle Arcade address, as this is where the audits had been done.

In connection with Article 3, the First Respondent accepted that correspondence had been received. In a response to a question as to why he did not write to the Law Society and explain that Ms Murray's filing system was in such chaos that he was not able to find the information, the First Respondent stated that he had already explained the problems. The First Respondent clarified that he accepted that he would have received all the letters sent to the Argyle Arcade address and also the ones sent to Cathcart Road during the 6 month period of mail redirection. He stated that he saw the letters when Morna Grandison gave them to him. Ms Johnston clarified that the allegation of professional misconduct in connection with Article 4 had been deleted and that Article 4.2 was also deleted.

In connection with Article 4.3, the First Respondent clarified that he did see the letters and confirmed that the letter of 19th December 2002 had the Cathcart Road address at the bottom of it.

At this time the matter was adjourned part heard until 29th August 2008. A further date of 11th November 2008 was also fixed.

29 AUGUST 2008

It was confirmed that the next date for hearing would be 11th November 2008 with the following date 1st December 2008.

Ms Johnston continued with her cross examination of the First Respondent. In connection with Article 3 she referred the First Respondent to Complainers' Production 2-2. The First Respondent stated that when Mr B contacted him, he could not find the file and he was accordingly unable to send a letter for him. The First Respondent stated that most of the letters sent to Argyll Arcade had not been opened until the Interim Judicial Factor was appointed and after this the letters were opened

by the Judicial Factor and then passed to him. After the Second Respondent came, he opened the ones addressed to the First Respondent and left them in his office. The First Respondent stated that from October 2004 he was not in the office at all. The First Respondent stated that the unopened letters must have come after the Interim Judicial Factor took over and he assumed that she did not open them because she knew they were from the Law Society. The First Respondent stated that he could not reply to Mr B because he could not find the file and Mr B was advised of this on the phone. The First Respondent stated that he did not tell the Law Society this because he was not able to deal with all the matters. This was due to his ill health. The First Respondent explained that it was not easy to walk away from his business. He stated that he had responded to some of the Law Society letters but not all of them. He could not say which letters were unopened. He advised that when the letters were given to him by Morna Grandison in 2005 he dealt with them all.

In connection with Article 4 and the professional misconduct allegation Article 24.9 the position was the same. In connection with Article 5 and professional misconduct allegation Article 24.10, Ms Johnston referred the First Respondent to Complainers' Production 2-3 and reminded the First Respondent of the evidence from John Fraser on 29th January 2007. The First Respondent confirmed that Robertson Paul Solicitors did send a letter asking for the file for Mr D and the First Respondent instructed his junior to get it but he could not find it. The First Respondent stated that he phoned Robertson Paul Solicitors and spoke to a secretary and explained that the file would be sent once it had been found. The First Respondent accepted that there was a delay but pointed out that he did implement the mandate. The file was requested by mandate on 24th October 2003 and the file was sent on 26th January 2004. The First Respondent stated that his secretary took it and hand delivered it to Robertson Paul Solicitors.

In connection with Article 6 the First Respondent stated that his position in connection with the letters was the same. In connection with Article 7, the position was similar. The First Respondent confirmed that the dates of the letters in his Answers 7.1- 7.2 were the ones delivered to him at Argyll Arcade and were handed to him on 26th August 2005 by Morna Grandison. The First Respondent however stated that he did not get the letters in Complainers' Production 2.6 dated 21st October 2003

or 28th November 2003 as these were addressed to the Cathcart Road address. In response to a question from a member of the Tribunal, he clarified that he thought these letters had probably been returned to the Law Society and then sent out again to the Argyll Arcade address.

In connection with Article 8 and the averments of professional misconduct in Article 24.2, 24.3 and 24.4, Ms Johnston referred the First Respondent to Complainers' Production 2-7. The First Respondent explained that he relied on the employees that he took over from Ms Murray and asked the staff to keep the files in order. He explained that it was necessary to identify which files were live. He stated that he never got all the files in order. The First Respondent clarified that he accepted that it was his responsibility but he could not deal with everything himself and had to delegate matters to his staff. The First Respondent accepted that the practice was not managed as he would have wished due to his health and the problems inherited from Ms Murray. He clarified that it was shortly after the telephone call to the Second Respondent that the file was found.

In connection with Article 9 and the averments of professional misconduct in Article 24.14 and 24.15, Ms Johnston referred the First Respondent to Complainers' Production 2-8. The First Respondent stated that it took so long because his paralegal made a mistake although he accepted responsibility. He explained that there was a delay by his client in paying the stamp duty. The First Respondent accepted that he sent a letter on 27th March 2004 to the Registers of Scotland to register the deeds and that accordingly for ten months there were no registered deeds. The First Respondent explained that once he knew of the problem he dealt with it immediately.

In connection with Article 10 and the professional misconduct averments in Article 24.16 and 24.17, Ms Johnston referred the First Respondent to Complainers' Production 2-9. The First Respondent stated that he accepted that the lease was not delivered due to various problems. He explained that he tried to locate it. The First Respondent confirmed that this was one of his transactions and not one inherited from Murray and Co. He explained that one of his assistants was involved and the lease could not be located. He indicated that a phone call was made to RS Mearns advising

them that the lease could not be found. Once the lease was located, the First Respondent was sequestrated and therefore could not register the deed.

In connection with Article 11 and the averment of professional misconduct in Article 24.20, Ms Johnston referred the First Respondent to Complainers' Production 2-10. The First Respondent stated that he accepted that Ms P wrote to the Law Society on 4th June 2004 with a letter of complaint.

In connection with Article 12 and the averment of professional misconduct in Article 24.21, Ms Johnston referred the First Respondent to Complainers' Production 2-11. He confirmed the position was as previously stated. The First Respondent stated that he had no formal system in connection with the letters received from solicitors looking for files. They were kept on an ad hoc basis. He explained that his paralegal had a list of the cases where solicitors were looking for files. The First Respondent stated that when he was off work he had to go in and sign cheques but he relied on his staff and told his paralegal that if a file was found it should be sent straight away to the solicitors who were looking for it and the letter should be signed by her on his behalf. The First Respondent clarified that if it was a transaction started by his firm and he acted for the lender he would have to make sure the relevant documents were in the file before it was sent.

In connection with Article 1.5, the First Respondent stated that he disagreed that the partnership did not commence until 14th May 2004. Ms Johnston moved to amend the Record to change the date from 1st May 2004 to 14th May 2004. There was no objection to this by the First or Second Respondents and this was agreed. Ms Johnston referred the First Respondent to the note of interview with the Guarantee Fund on 22nd April 2004 contained in Complainers' Productions 2-30 to 2-32, Ms Johnston put paragraphs 4, 5, 6 and 7 to the First Respondent who indicated that he did not accept that the minute was accurate in a number of respects. The First Respondent stated that what he said was that on the strength of the partnership agreement, it looked as if they had not been in partnership but he had not realised the implications of this. The First Respondent stated that he wished to have the balances checked but it was an oversight by him to say that the partnership could not commence until this had been done. The First Respondent stated that he accepted that there were problems with the partnership

agreement because it stated that it could not start until the balances were checked. The First Respondent however stated that he did not say that he was not in partnership with the Second Respondent and did not say that he was hopeful that the partnership would take place. Nor did he say that he had not told the Law Society that they were operating in partnership. Ms Johnston then referred the First Respondent to the letter of 17th January 2004 by the First Respondent to the Law Society where he refers to a proposed new partnership. The First Respondent accepted that he wrote the letter but indicated that this did not mean that there was not a partnership at that time. He explained that there was a partnership as there was no need in law for the partnership to be writing. In connection with the minute of agreement, the First Respondent confirmed that this was the first one that was signed by the Second Respondent and himself. It was signed on 19th March 2004 and indicated that the start date was when the client balances were transferred. The First Respondent stated that there was then a final agreement put in place which was copied to the Law Society which stated that the start date was 1st November 2003. The First Respondent agreed that the partnership agreement dated 19th March 2004 reflected his state of mind at the time when it was signed. Ms Johnston referred the First Respondent to Complainers' Production 3-8 and a letter of 15th March 2004 to Preferred Mortgages which indicated that there was a proposed partnership and the papers were not yet completed and there was no client bank account. The First Respondent stated that there were mistakes in the letter and that Atuahene, Sim Murray was operating at that time as a division of the Practical Law Partnership.

At this point the matter was adjourned part heard until 11th November 2008.

11TH NOVEMBER 2008

Ms Johnston referred the First Respondent to Complainer's Productions 2-30 to 2-32 and the interview with the Guarantee Fund Committee. The First Respondent accepted that Mrs Playfair said that there was no partnership in place and that it was pointed out to him that run off cover did not cover the transactions of the firm of Atuahene Sim & Murray. The First Respondent stated that he accepted that he would need to speak to Marsh. The First Respondent confirmed that he remembered the letter from Mr Cullen dated 17th February 2004 but he did not remember whether or

not he had discussed it with the Second Respondent. He accepted that he probably said that he did not respond to it due to an oversight. The First Respondent stated that he was not in a position at that time to realise what his position was. He indicated that he was not well enough to think about the consequences. He however did take matters seriously at the Guarantee Fund meeting on 22nd April 2004 and he then realised that on the basis that the partnership did not commence until the client credit balances were transferred, then there was no insurance cover. The First Respondent clarified that he accepted then, on the basis of the partnership agreement, that there appeared to be no partnership in place. He however explained that once this was pointed out the partnership agreement was changed. The First Respondent's position was that he made it clear to the Guarantee Fund Committee that he was in partnership from 3rd November 2003. He accepted that on the basis of the partnership agreement as drafted, he was not. The First Respondent's position was that the minute did not disclose the context in which the statements were made. When asked why he did not put to Leslie Cumming that the minute did not disclose the whole picture, he indicated that he did put to Mr Cumming that the minute was not accurate.

In connection with Article 22, Ms Johnston referred to Complainer's Production 2-33 and asked the First Respondent if he knew that there was a defence in the legislation available to him. The First Respondent clarified that when he wrote the letter it was not with a view to obtaining a fee.

In connection with Article 17, Ms Johnston referred the First Respondent to Complainer's Productions 2-19 to 2-20, and an inspection in April 2003. The First Respondent clarified that he accepted the terms of Article 17.1, with the exception of the delays in stamping and recording deeds. He clarified that this was only with reference to the last day, when the inspectors required access to the records. The First Respondent stated that there may have been delays in dealing with certain things and that perhaps he should have done things himself instead of leaving it to the paralegal and the assistant. The First Respondent stated that he was responsible for all the files. He explained that he agreed to meet with Ms Murray in connection with the files but she did not meet with him. The First Respondent stated that he could not do it all and that there was no way to know if the credit balances were accurate.

In connection with Article 17.4 and client 100, Ms Johnston referred the First Respondent to a letter of 28th April 2003 and indicated that the Law Society had accepted that the Form 4 was sent for registration on 10th April 2003. She asked the First Respondent why there was a delay and the First Respondent explained that there was a delay because the discharge was not to hand and it was dealt with immediately it was received. The First Respondent stated that he did have a system and that a book was checked on a weekly basis from time to time. The paralegal would bring to his attention if there was a delay and he would do another copy of the discharge. In connection with client 101, the First Respondent stated that this was a posting error and that he did agree with the auditor's query. In connection with client 102, the First Respondent's explanation is contained in the letter of 4th June.

In connection with Article 18.4 Ms Johnston referred the First Respondent to Complainer's Productions 2-21, 2-22 and 2-23 and to the First Respondent's Third Inventory of Productions, Production 3-1, being the ledger card. It was confirmed that the print date for the ledger card was 30th August 2006. This showed that at 5th December 2003 there was a balance of £14,864 and on 3rd March 2004 £13,977 was paid out. It was confirmed that these records were created after the matter had been looked into by the Judicial Factor and that the funds were paid out after the February 2004 inspection. The First Respondent explained that the clients were planning to do something with the money and told him to hold on to it. They did not want it invested because they were Muslim. The First Respondent stated that he had written authority from his clients but could not find a copy of the written mandate. In connection with client 114, £26, 950 was in the account on 12th December 2003 and on 12th February 2004 £25,000 was debited. The First Respondent stated that he accepted that the funds were uninvested from December 2003 to February 2004 but this was because of ongoing outlays. The First Respondent also stated that he was entitled to retain the money because he knew it would be required shortly. Ms Johnston referred the First Respondent to his First Inventory of Productions, Production 62 where the First Respondent indicates in a letter that he would pay interest. The First Respondent explained that when it was pointed out to him that there was a delay in investing funds, he said that he would pay interest in principal and would look into the matter. Ms Johnston pointed out to the First Respondent that the letter was five months after the inspection and the First Respondent stated that there were so many things that

needed to be addressed that it took time and he was not in a position to deal with things effectively and was not in control of matters. In connection with client 114, the First Respondent confirmed that anything after November 2003 was done by Mr M to rectify the record keeping. In connection with client 115, Ms Johnston clarified that it was accepted that there was no breach. The First Respondent clarified that all the entries after 10th November 2003 were done by Mr M and everything up to 10th April 2003 was done by the Judicial Factor. In connection with client 117, there was £5,000 in credit on 31st December 2003 and on 24th January 2004 £4,500 was paid out. The First Respondent confirmed that the date of 10th December 2002 was a posting error and should be 10th December 2003. The First Respondent submitted that there was no breach of the Accounts Rules in respect of this. In connection with client 118, the First Respondent confirmed that the ledger showed the true position. In connection with client 119, Ms Johnston clarified that it was now accepted that there was no breach. In connection with clients 120 to 123, the First Respondent stated that he did not understand why there were no printouts available but he accepted that the printouts did not disclose the true position. The First Respondent stated that he could only go by the printouts from his computer and that he did everything he could to resolve matters.

In connection with client 120, and Article 19.3 and a further inspection in March 2004, on 11th November 2003 there was £7,112 in credit and money was not paid out until 20th April 2004. Ms Johnston referred the First Respondent to his First Inventory of Productions and Production number 5, a letter from Glasgow Housing Association referring to 9 chase up letters to the First Respondent. The First Respondent stated that there had been phone calls and submitted that there was an explanation for the delay, he explained that he did not receive the letters. In connection with client 121, on 24th October 2003 the balance was £4,166 and this money was transferred out on 14th May 2004. The First Respondent stated that he was not aware of the credit balance until the accounts were sorted out. He then contacted his client who told him to hold on to it. He sent his client a mandate but this was not returned. In connection with client 137, (the same as client 123) there was a credit balance of £19, 345 on 6th February 2004 and the money was paid out on 16th February 2004. There was accordingly no breach. In connection with client 130, there was a balance on 27th March 2004 for £1018 and £630 was paid out on 20th

April 2004 and there was accordingly no breach. In connection with client 122, the First Respondent accepted that if he had been himself he would have invested the money when the client had not come in to collect it. There was a balance of £12, 316 on 25th November 2003 and on 14th May 2004 this was transferred to the Practical Law Partnership. In connection with client 123 (also referred to as 139), there was £2,638 in credit on 13th November 2003 and £2,638 was paid to the Halifax on 1st April 2004.

In connection with Article 18.5, Ms Johnston referred the First Respondent to Complainer's Productions 2-21 to 2-23. In connection with client 124, Ms Johnston submitted that there was an inadequate narrative and the First Respondent accepted that the ledger did not mention who the lenders were. The First Respondent however stated that it was clear from the file. In connection with client 126, there was no source for the purchase price. It was put to the First Respondent that from 13th November 2003 to February 2004 the discharge and disposition were on file. The First Respondent referred to his First Inventory of Productions and the letter dated 21st April 2004 which states that the disposition was recently received and forwarded. The First Respondent stated that the stamped disposition was not on the file in February. The First Respondent submitted that the delay was due to the Inland Revenue.

In connection with Article 19.2 and client 104, the First Respondent explained that he could not prove that the money was paid to the client until he got the copy cheque back from the bank. The £45,388 was the proceeds of the sale of Property 34. The First Respondent stated that most of Mrs Playfair's conclusions were as a result of his errors. The First Respondent accepted that he had made mistakes because he did not know how to do the postings and that he had made narrative errors but he got matters resolved.

In connection with Article 19.4, the First Respondent did not accept that he did not comply with the Money Laundering Regulations. He clarified that he put money laundering procedures in writing and up on the wall and that Mrs Playfair should have noticed that this matter had been addressed. When it was pointed out to him that his Answer 19.4 suggested that he only did this in response to the query after that

inspection, he indicated that he meant the query from the April 2003 inspection. The First Respondent stated that he knew all the clients.

In connection with Article 20, in particular clients 85 and 86, the First Respondent confirmed that he was in partnership from 1st November 2003 and he was an equal partner but was not responsible for what the Second Respondent did. The First Respondent stated that he would only be responsible for any irregularities drawn to his attention. He stated that he did not know until 8th July, after the inspection, about difficulties with transactions involving clients 85 and 86. The First Respondent stated that it was clear between him and the Second Respondent that the First Respondent would deal with all his clients and that the Second Respondent would deal with all his until the accounts were confirmed and the balances credited and the accounts were merged. The First Respondent stated that he did not look at the Second Respondent's transactions. The First Respondent indicated that he did not understand what Ms Johnston meant by her question, who was the cashroom partner. The First Respondent stated that he kept his accounts and there was no designated cashroom partner. He also stated that he dealt with his own money laundering procedures and the Second Respondent kept his own accounts and had his own money laundering procedures. The First Respondent clarified that until the Judicial Factor was appointed he accepted that there were problems with his accounts and that after the Judicial Factor left he accepted that there were errors in his accounts but he dealt with them.

The Second Respondent, in cross-examination, referred the First Respondent to Article 20 and put it to him that the Second Respondent was the cashroom partner and money laundering partner. The First Respondent however stated that this was not the case and that the Second Respondent was in charge of his and the First Respondent was in charge of his own. The First Respondent confirmed that on one or two occasions the Second Respondent did things for clients of his but he never got involved in any of the Second Respondent's transactions. The First Respondent stated that once the accounts were confirmed and matters were pulled together, he was then sequestrated so the responsibility then lay with the Second Respondent. He stated that the Second Respondent did not have any experience of the First Respondent's computer system. The First Respondent stated that he had no access to the Second

Respondent's accounts. The First Respondent explained that he helped on a voluntary basis after he had been sequestrated.

The Second Respondent sought to ask the First Respondent questions in connection with Article 12, however the First Respondent stated that he did not think it appropriate to answer these questions as this Article was not relevant to the Second Respondent. The Second Respondent indicated that it was not necessary to have a response to these questions if they were controversial.

The Second Respondent sought to ask the First Respondent questions in connection with Article 21. However, the First Respondent accepted that the Second Respondent had prepared the draft partnership agreement and that the First Respondent had amended the start date from 1st November 2003 and had replaced it with a date when the client credit balances were audited and confirmed. The First Respondent clarified that he thought that the insurance covered the Practical Law Partnership and the individual firms of the First and Second Respondent. The First Respondent indicated that he did remember that there was a query with regard to the insurance and it was discussed and they were satisfied that they were covered and the solicitor who had queried it accepted this. The First Respondent confirmed that there was a meeting with Marsh the day after the Guarantee Fund Committee meeting. The First Respondent confirmed that there were two potential solutions which he could remember were put forward by Marsh, one was to cancel the insurance and take out individual policies of insurance, the other was to confirm that the partnership had commenced on 1st November 2003. There would have been an additional cost if two lots of insurance for each firm had to be taken out and the First and Second Respondents had already paid more than they had previously paid for their individual cover. The First Respondent confirmed that Marsh left it up to them to decide which option to choose and confirmed that they decided on the option that they had been in partnership since 1st November 2003. The First Respondent confirmed that this was reported by the First and Second Respondent to the Law Society and letters were written confirming that they were in partnership from 1st November 2003.

At this point the case was adjourned part heard to 1st December 2008. A further date of 22nd January 2009 was fixed.

1st DECEMBER 2008

The Second Respondent referred the First Respondent to Complainer's Productions 2-30 to 2-32 and a letter of 23rd April 2004 by the First Respondent to Mr Cumming. The First Respondent confirmed that he was not aware of receiving a reply to this letter. The First Respondent confirmed that he thought that the Law Society's failure to reply meant that they were happy with the position. The First Respondent stated that Marsh were waiting for confirmation from the Law Society.

In connection with Article 1.5, the First Respondent stated that he disagreed that the partnership was not constituted until 14th May 2004. The First Respondent stated that the intention was to be in partnership from 1st November 2003 but he recognised that as the Interim Judicial Factor was not discharged until 5th November 2003, technically the partnership could not commence until that date. The First Respondent indicated that he came to see the Second Respondent to get a job and the Second Respondent advised him that his business could be salvaged. The Second Respondent indicated that he would enter into partnership with the First Respondent if the Judicial Factor was discharged. The First Respondent stated that he had no employees by the time he came to see the Second Respondent. He then confirmed that he might still have had one junior office worker. The First Respondent explained that when the Interim Judicial Factor was appointed, his employees left in stages. The First Respondent confirmed that from early on, before the Interim Judicial Factor was discharged, the First and Second Respondents obtained a loan of £20,000 and the firm's bank account was opened in the name of the Practical Law Partnership. The First Respondent stated however that the firm's bank account was not operative until the client credit balances had been audited. He however indicated that a cheque for £20,000 had to be made payable to the Law Society. He also confirmed that the term loan payments were debited from the Practical Law Partnership account. The First Respondent also confirmed that when the bank was offered the draft partnership agreement, they required a signed one before they could open the account. The First Respondent indicated that his condition with regard to client balances having to be audited was a pre-requisite before he would take on the Second Respondent's accounts, and not necessarily a pre-requisite to there being a partnership. The First Respondent

indicated that he was satisfied that his accounts were not in deficit and the independent auditor confirmed that the client balances of Atuahene, Sim Murray & Co. and also Richard Thorburn had sufficient funds and this was intimated to the Chief Accountant before the funds were transferred.

The First Respondent explained that the Practical Law Partnership initially had intended to use the Sobora system but the lady who was providing support for it indicated that she was to discontinue this. The First and Second Respondents found a book-keeper who required training in the Sobora system so they had to think of something else and selected a different system. The First Respondent stated that due to all the problems they did not get around to doing what they wanted to do and the purchase of the computer system was deferred on financial grounds. The First Respondent confirmed that he did not disclose his health problems to the Second Respondent and indicated that he did not see why he should have done. In connection with the opening of the mail, the First Respondent confirmed that it was opened by whichever partner was there whether or not it was marked personal.

In connection with Article 20, the First Respondent stated that on 5th July he had been sequestrated but was at the office on that date when the Auditors arrived. No prior notice had been given and the Second Respondent was not there. The First Respondent explained that he phoned the Second Respondent who confirmed that he had had no notice either. Then the Second Respondent came into the office. The First Respondent firstly indicated that the auditors were not there when the Second Respondent came in but then accepted that the auditors might have gone away and come back the same day and that the auditors were there when the Second Respondent spoke to Mr Cumming. The First Respondent stated that he recalled a heated argument between the Second Respondent and the auditors with regard to whether or not the inspection should go ahead. The auditors felt that they had given notice and produced copy letters which had been sent. The First Respondent confirmed however that the principals of these letters arrived by recorded delivery in the second post and had not been received by the First and Second Respondent prior to the inspectors arriving. The First Respondent confirmed that the Second Respondent tried to put a strong case to Mr Cumming that the inspection should not go ahead and that matters should be deferred for 48 hours. It was reluctantly agreed

that the inspection would go ahead the next day. The First Respondent confirmed that on 5th July although he had been sequestrated he had not yet been notified of his sequestration but he found out within a few days.

In connection with Article 20.5, the First Respondent stated that all the ledgers for Atuahene, Sim Murray & Co were closed and the funds transferred. He indicated that there were a few client credit balances that he had to amend and he passed them to the Judicial Factor. He confirmed that all his ledgers were closed and zeroed. He explained that all the Atuahene, Sim Murray & Co. accounts were left empty, there were one or two deficits but these were not transferred as they were not taken on by the partnership. The First Respondent confirmed that he could not recall any loans except the term loan and that any loans of the previous firms were not taken into the Practical Law Partnership.

In connection with Article 7, the First Respondent re-examined himself and explained that he did not receive the letters referred to. He went to see Norma Grandison and she handed him all the letters, some of which were unopened. The letter of 28th November 2003 was the same letter as that contained in Complainers' Production 2-6 but it had the Argyll Arcade address on it rather than the Cathcart Road address. It was a similar position in connection with the letter of 29th October 2003. Both these letters were sealed. It was a similar position in connection with the letter of 11th August 2003. In connection with Article 8, the First Respondent referred to Complainers' Production 2-7, he confirmed that Norma Grandison gave him the letter of 15th January 2004 which was the same as one of the letters in the Productions, except it had the Argyll Arcade address on it rather than the Cathcart Road address. This letter and the letter of 14th November 2003 were sealed and the 14th November letter also had a different address. It was the same position with the letters of 23rd October 2003 and 26th September 2003.

In connection with Article 12, the First Respondent referred to Complainer's Productions 2-11. The letters of 21st August, 6th October and 5th November 2003 were handed to him by Norma Grandison and were sealed but had the Argyll address on them instead of the Cathcart Road address. The First Respondent stated that the productions lodged to support the averments were not the productions that should

have been lodged as these letters were not received by him. The First Respondent stated that he admitted that he had seen the letters given to him by Norma Grandison but when he got them the Complaint had already been raised.

In connection with Article 20, the First Respondent stated that until 8th July 2004 he did not know anything about the transactions involved. He indicated that the Law Society was holding him jointly liable when in respect of another matter they had taken a Complaint only against him in connection with client 130. The First Respondent indicated that the Tribunal should be aware of these Findings as they were within Judicial knowledge. The Tribunal indicated that this Tribunal was not aware of the Findings but unless the Tribunal were shown the Findings this matter could not be looked at. It was suggested to the First Respondent that it would not necessarily be in his interests for these to be lodged. The First Respondent indicated that he did not wish to make any further comments on this matter.

In connection with Article 21, the First Respondent referred to Complainer's Productions 2-30 to 2-32, and a note of an interview which took place on 22nd April 2004. He stated that many issues were discussed at that meeting and he accepted on the basis of the existing partnership agreement and the fact that the First and Second Respondents were operating two separate accounting systems it did not appear as if they were in partnership at that stage. The First Respondent however was adamant that he told the Law Society that this was an oversight and stated that he did not say that he was not in partnership with the Second Respondent. He stated that in connection with minutes of meetings they could be misleadingly interpreted. The First Respondent then indicated that he had no further re-examination of himself.

The Chairman asked the Second Respondent if he wished to make submissions on his preliminary plea in connection with oppression which was a matter which had been left over from the first procedural hearing. The Second Respondent stated that he would include this in his written submissions. The Tribunal directed that parties should provide written submissions two weeks before the next hearing of the case which was on 22nd January 2009. A further date of 27th February 2009 was fixed.

22 JANUARY 2009

The Second Respondent apologised and indicated that he had been unable to complete his written submissions. It was agreed that he would be given one further week to provide his written submissions and that a copy must be sent to the First Respondent, the Tribunal and the Fiscal. It was noted that the Fiscal had only just finished her supplementary submissions and that the First Respondent's submissions had been lodged but had not been seen by the Second Respondent or the Fiscal.

SUBMISSIONS FOR THE COMPLAINERS

Valerie Johnston referred to her written submissions and supplementary written submissions which are referred to for their terms and held to be incorporated herein brevitatis causa. Ms Johnston stated that in respect of her position on the partnership, she had provided copies of the two cases referred to in the submissions. In connection with the failure to respond, she had produced copies of the relevant section of the 1980 Act in respect of service. Ms Johnston added to her submissions in respect of Articles 13, 14, 15 and 16. She clarified that what was set out in her supplementary submissions in respect of Articles 14, 16, 17, 18 ,19 and 20 superseded what was set out in her original submissions. Ms Johnston stated that the First Respondent had given significant evidence in connection with the takeover by him of Murray & Company but she pointed out that the Chief Accountant Mr Cumming had stated that the cashier had been competent when working for Ms Murray. Ms Johnston submitted that the First Respondent had made astonishing statements in respect of what his responsibilities were and had conceded that all the postings he had done had to be re-done as they were wrong. Ms Johnston stated that the fact that the First Respondent had corrected the postings was irrelevant as between 2003 and 2004 he had repeatedly allowed systems to deteriorate and the situation became so bad that it was almost impossible to work out what was going on. The documentation of the firm was in a complete state of disarray. Ms Johnston submitted that it was clear that the First Respondent was unable to manage and his lack of appreciation of this was relevant in connection with his degree of culpability. Ms Johnston conceded that in respect of stamping of deeds, the standard of evidence from her witnesses was not of the highest and she was disappointed.

In connection with the Second Respondent's plea of oppression, Ms Johnston stated that she would require to see what the Second Respondent's submissions were on this before she could respond more fully. Ms Johnston confirmed that in respect of the averments of professional misconduct, Articles 24.8, 24.13, 24.18 and 24.19 were deleted and some deletions had been made from Article 24.23. Ms Johnston stated that the Tribunal would require to make a decision with regard to the date the partnership had commenced and look at the averments of professional misconduct taking care to consider whether the Respondents were acting as sole practitioners or in partnership. Ms Johnston stated that she had nothing further to add at this stage, but may have further submissions to make once she had seen the Respondents' written submissions.

It was agreed that the Second Respondent would make his submissions first and the Second Respondent indicated that he would only require an hour to an hour and a half. The First Respondent was unable to indicate how long he would require. It was agreed that a further date of 16th April 2009 be fixed in case this was required. The Chairman indicated that each Respondent would have up to a day to make submissions but no more than this.

27 FEBRUARY 2009

SUBMISSIONS FOR THE SECOND RESPONDENT

The Second Respondent explained that when drafting his written submissions, which are referred to for their terms and are held to be repeated herein brevitatis causa, he had asked himself some general questions and the implications of these were wider than he had realised. The Second Respondent said he felt he had to examine these issues but they were not an essential part of his case. He submitted that the submissions in connection with Rule 17 were of particular relevance. The Second Respondent explained that he appreciated that the Tribunal had already made a decision in respect of the ultra vires issue. He indicated that he accepted that this matter could not be re-opened and that it might be an issue which would have to be dealt with elsewhere. In connection with Rule 6 he stated that there was an issue with regard to who was the client. He referred to the word "meeting" in Rule 6.1. and

stated that in practice written authority was required if funds were transferred from one client to another. However, when a solicitor was meeting a payment the Rule only came into play if the payment was by a solicitor to one client on behalf of another client. If payment was made by a client to someone who was not a client, no written authority would be required. However if payment was made by a client to another client, written authority would be required. The Second Respondent submitted that there could be a breach of confidentiality as a result of this Rule for example if the solicitor had to tell client A that B was also a client when client A did not already know this. This could result in a embarrassing situation.

SUBMISSIONS FOR THE FIRST RESPONDENT

The First Respondent referred to his written submissions and lodged supplementary submissions both of which are referred to for their terms and are held to be repeated herein brevitatis causa. The Tribunal adjourned in order to read the supplementary submissions. The First Respondent then referred to his submissions in connection with professional misconduct. He pointed out that this required to be proved beyond reasonable doubt. He stated that evidence did not need to be corroborated but it was preferable if it was. The First Respondent referred the Tribunal to the Court of Session's warning that if evidence was uncorroborated the Tribunal must be careful and must be satisfied that it could justify its findings. In connection with Chapter 2 of his submissions, the First Respondent stated that the Fiscal was referring to Section 64 of the 1980 Act stating that letters sent after the re-direction of mail had expired would be deemed to have been received by the First Respondent. The First Respondent however submitted that this did not apply when the Law Society had his current address.

In connection with the posting errors, the First Respondent submitted that he made mistakes after the Judicial Factor left but all these mistakes were rectified to the Law Society's satisfaction. The First Respondent submitted that on the basis of this evidence the Law Society was personally barred from raising professional misconduct proceedings against him in relation to that issue. It was pointed out by the Chairman that the issue of personal bar had already been raised by the First Respondent and ruled on by the Tribunal.

FURTHER SUBMISSIONS BY THE COMPLAINERS

The Fiscal referred to her supplementary submissions which are written in response to the First and Second Respondents' submissions. The Fiscal clarified that her position was that the evidence was not irregularly obtained. Ms Johnston moved to amend the Complaint in respect of Article 24.27 to delete reference to the Second Respondent being Richard Thorburn and Company. It should read Richard Thorburn. The Second Respondent made no response to this and the Tribunal allowed the amendment.

FURTHER SUBMISSIONS BY THE SECOND RESPONDENT

The Second Respondent referred to Rule 6 and the guidance notes as set out in the Complainer's supplementary submissions. The Second Respondent stated that it must be acknowledged that authority could be oral and it was accordingly not a breach of the Rule if there was no written authority. In connection with the definition of client, the Second Respondent pointed out that some of the incidences occurred before the 2005 Rules came into force. In connection with Rule 7, part of this Rule was no longer in force. He submitted that there was now no Rule that required solicitors to show the full purchase price and accordingly there was no breach of the Rules. In connection with Rule 8, this did not give any specific time frame for work to be done only the guidance note gave this. The Second Respondent referred to solicitors in the past having part time bookkeepers. He stated that it would be much easier if there was a computerised system to balance the books monthly than if there was a manual system and that the Law Society could not expect the same timetable to be adhered to for solicitors who have manual records.

In connection with wages, the Second Respondent pointed out that he was the firm and he paid the wages from his drawings and there was accordingly no debt from his firm due to him as an individual. The Second Respondent pointed out that it was not possible to write up a transaction until after it had occurred and therefore the transactions were always written up in arrears. The question was whether or not there was an unreasonable delay in writing up the transactions. In connection with VAT, the

Second Respondent submitted that it was only input VAT that had not been claimed and accordingly there was no breach of Rule 4.

In connection with oppression, the Second Respondent referred to Lawrie-v-Muir SLT 1950 p 37 1949 and lodged a copy with the Tribunal. He stated that the Law Society's powers depended on the 1980 Act and accordingly the position of the Law Society was similar to the position of the inspectors in Lawrie-v-Muir. He submitted that the evidence was improperly obtained by the Law Society and accordingly was inadmissible. The Second Respondent stated that the rules of fairness must apply here. In connection with the cases lodged by the Fiscal, he stated that the case of Peace-v-General Teaching Council for Scotland SLT 2003 p587 was the most relevant. The Second Respondent's position was that the whole procedure of the inspections carried out in relation to his business was contrary to the regulations.

It was confirmed by all parties that there were no further submissions to be made. The Tribunal advised that the case would adjourned and that the Tribunal was to meet on a number of occasions to consider the case and to come to conclusions.

DECISION

There was no dispute with regard to Articles 1.1 or 1.2. (Findings in Fact paragraph 6.1 and 6.2) In connection with Article 1.3 (Findings in fact paragraph 6.3), this was slightly amended as the Tribunal could not be satisfied on the basis of the evidence exactly when the firm's name was changed. Article 1.4 (Findings in fact paragraph 6.4) was amended in light of the Second Respondent's Answers. In connection with Article 1.5 (Findings in fact paragraph 6.5), the Tribunal's view was that the partnership commenced on 14th May 2004 and accordingly the Article was amended to change the date from 1st May 2004 to 14th May 2004. This is the date on which the client accounts were transferred to the Practical Law Partnership. The Tribunal's reasoning in connection with the start date of the partnership is detailed in the Tribunal's decision in respect of Article 21.

In respect of Articles 2.1 and 2.2 (Findings in Fact paragraph 6.6 and 6.7), the Tribunal was satisfied beyond reasonable doubt on the basis of the evidence from Ian

Ritchie, whom the Tribunal found to be a credible and reliable witness, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.1) that the letters were sent to the First Respondent and he failed to reply. The First Respondent's Answers to Article 2.1 mainly relate to the client's original complaint and are not relevant or are only relevant in respect of mitigation.

In respect of Articles 3.1 and 3.2 (Findings in Fact paragraph 6.8 and 6.9), the Tribunal was satisfied beyond reasonable doubt on the basis of the evidence from Ian Ritchie, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.2) that the letters were sent to the First Respondent and he failed to reply. In this case, all the letters were clearly sent to the Argyll Arcade address. Again the First Respondent's Answers are either irrelevant as they relate to the client's original complaint or are mitigation.

In respect of Article 4.1 (Findings in Fact paragraph 6.10), these facts are mainly admitted by the First Respondent and are clear from the Productions lodged (Complainers' Productions 2.3). However in respect of Article 4.2, the Tribunal did not hear any evidence from Mr and Mrs C and accordingly did not find these facts established.

In respect of Articles 4.3 and 4.4 (Findings in Fact paragraph 6.11 and 6.12), the Tribunal was satisfied beyond reasonable doubt on the basis of the evidence from Ian Ritchie, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.3) that letters had been sent to the First Respondent and he had failed to reply. Again, the First Respondent's Answers in respect of Articles 4.1, 4.3 and 4.4 relate mainly to the client's original complaint and are accordingly irrelevant or are only relevant in respect of mitigation.

In respect of Articles 5.1, 5.2 and 5.3 (Findings in Fact paragraphs 6.13, 6.14 and 6.15), on the basis of the evidence from John Fraser, who the Tribunal found to be a credible and reliable witness, it is clear that the First Respondent did not implement the mandate and also failed to respond to Mr Fraser. Mr Fraser was clear in his evidence that he did not speak to the First Respondent or receive a response from him. The Tribunal **accepted** Mr Fraser's evidence and not that of the First Respondent

whose evidence the Tribunal found to be in places inconsistent and unreliable as will be referred to later in this decision. The Tribunal however accepted the evidence from the First Respondent that the reason for his failure to implement the mandate was due to difficulties locating the file. It may well be that the filing system that he inherited from Murray & Co was in a state of disarray but the First Respondent still had a responsibility to ensure that matters were put in order, that mandates were complied with and correspondence and phone calls were dealt with. The Tribunal also accepted the evidence of Ian Ritchie regarding the failure to respond.

In connection with Articles 6.1 and 6.2 (Findings in Fact paragraphs 6.16 and 6.17), the Tribunal was again satisfied beyond reasonable doubt on the basis of the evidence from Ian Ritchie, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.5) that all the letters in this case were sent to Argyll Arcade and were not responded to by the First Respondent. The First Respondent's Answers again relate mainly to the original complaint and are not relevant or are mitigation.

In connection with Articles 7.1 and 7.2 (Findings in Fact paragraphs 6.18 and 6.19), the Tribunal was again satisfied beyond reasonable doubt on the basis of the evidence from Ian Ritchie, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.6) that the First Respondent failed to reply to the correspondence sent to him by the Law Society. The First Respondent's position appears to be that some of these letters were letters that he received in unopened envelopes from the Judicial Factor and this is commented upon by the Tribunal below.

In connection with Article 8.1 and 8.2 (Findings in Fact paragraphs 6.20 and 6.21), on the basis of the evidence from Ian Ritchie, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.7), the Tribunal found the facts proved beyond reasonable doubt.

In connection with Article 8.3 (Findings in Fact paragraph 6.22), there was credible and reliable evidence from Mr Ross who was adamant that he did not speak to the First Respondent about the matter. Mr Ross' evidence was that he tried to speak to the

First Respondent without success. The Tribunal accepted the evidence of Mr Ross who gave his evidence in a clear straightforward manner, and did not accept that the First Respondent had been in contact with Mr Ross with regard to this matter. The First Respondent's failure to respond to Mr Ross is in keeping with the pattern of failure to respond to issues at this time by the First Respondent. The Tribunal did however note that it was clear from Production 32 of the First Inventory of Productions for the First Respondent that the Will was sent with a letter on 11th October 2004 and this was accordingly added to the findings in fact.

In connection with Article 8.4 (Findings in Fact paragraph 6.23), the Tribunal accepts that letters were sent to the First Respondent and he failed to respond. The First Respondent's Answers mainly relate to the client's original complaint and are not relevant.

In connection with Article 9 (Findings in Fact paragraph 6.24), as the Tribunal did not hear any evidence from Client 124, amendments were made to the facts as averred. The Tribunal however did hear the evidence of Ian Ritchie, and noted the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.8) and also noted that the First Respondent did not appear to dispute the facts in the Article as amended. The First Respondent's position appears to be only mitigation although he states that his delay is not sufficient to amount to professional misconduct. It is clear as is stated in Article 9.2 (Findings in Fact paragraph 6.25), that the application to the Land Register was lodged by 21st April 2004 but there was still a delay of eleven months.

In connection with Article 10 (Findings in Fact paragraph 6.27), the Tribunal was satisfied on the basis of the evidence from Donald Henderson, a solicitor with over twenty five years experience who gave clear evidence with regard to the difficulties he and his client encountered in dealing with the First Respondent, that these facts were proved beyond reasonable doubt. The Tribunal accepted the evidence of Mr Henderson who was found to be credible and reliable, with regard to whether or not Mr Henderson had had any contact from the First Respondent. The Tribunal found the facts proved and was concerned by the inconvenience that Mr Henderson and his client were put to as a result of the First Respondent's actions. The Tribunal considers

most of the First Respondent's Answer Article 10.2 (Findings in Fact paragraph 6.28) to be mitigation.

In respect of Article 10.3 (Findings in Fact paragraph 6.29), the Tribunal was satisfied beyond reasonable doubt on the basis on the evidence from Ian Ritchie, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.9) that the facts were proved. Again, the First Respondent's Answers go to mitigation.

In respect of Article 11, the Tribunal did not consider that there was sufficient evidence to establish the facts in averments Articles 11.1 and 11.2 and accordingly deleted these. Article 11.3 (Findings in Fact paragraph 6.30), was amended in light of the deletion of the previous two paragraphs. The Tribunal found the facts proved beyond reasonable doubt in Articles 11.3 and 11.4 (Findings in Fact paragraphs 6.30 and 6.31) on the basis of the evidence from Mr Ritchie, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.10). The First Respondent did not appear to take issue with the facts as remaining. The Tribunal again considered the First Respondent's Answer to 11.4 to be mitigation.

In respect of Article 12.1 (Findings in Fact paragraph 6.32), it was clear to the Tribunal from the evidence of Ian Ritchie, the Joint Minute of Admissions and the Productions lodged (Complainers' Productions 2.11) that the facts are proved beyond reasonable doubt. The First Respondent's Answer to 12.1 mainly relates to the original client complaint which is not relevant and some of it is mitigation. In connection with Articles 12.2, 12.3 and 12.4 (Findings in Fact paragraphs 6.33, 6.34 and 6.35), the First Respondent's position appears to be that he had no authority to deal with the divorce and that Mr Clapham was not prepared to take the divorce cases from him and he (the First Respondent) told his clients that he could not act. The Tribunal however did not find that the First Respondent had provided satisfactory evidence to the effect that he had told Ms K that he could not act for her. In any event the First Respondent clearly failed to respond to the Law Society and his Answer goes to mitigation.

In connection with Articles 2 to 12, the Tribunal noted the First Respondent's position in respect of his failure to respond to letters sent by the Law Society. The First

Respondent submitted that letters sent to his Cathcart Road address after the redirection of his mail ended in June 2003 would not have been received by him and that as the Law Society knew of his Argyll Arcade address, any letters sent to Cathcart Road after 30th June 2003 could not have been deemed to have been received in terms of Section 64 of the Solicitors (Scotland) Act 1980 because the Law Society did know his new address. The First Respondent however has not provided any satisfactory evidence to the Tribunal that he formally advised the Law Society that he was no longer at the Cathcart Road address. The Tribunal noted that the First Respondent continued to send out letters with this address on them, for example, letter dated 12th August 2003, sent out by the First Respondent with his Cathcart Road address at the bottom of the letter (Complainers' Production 2.7), a letter by the First Respondent dated 26th January 2004 also has the Cathcart Road address at the bottom of the letter (Complainers' Production 2.4) and a letter of 21st February 2004, similarly has the Cathcart Road address at the bottom of the letter (Complainers' Productions 2.21 – 2.23). The First Respondent accordingly clearly sent out letters with both addresses on for some considerable time after he left the Cathcart Road address. In the Tribunal's view the First Respondent accordingly cannot use as an excuse for his failure to respond the fact that some letters were sent to the Cathcart Road address. The Tribunal noted that in terms of the letter from Mrs Mainland of the Law Society (Complainers' Production 2.11) dated 23rd January 2004, the Law Society appeared to have a note of the fact that the First Respondent was no longer at Cathcart Road from October 2003. The Tribunal noted however that few if any letters were sent by the Law Society to Cathcart Road after October 2003 and in any event it was clear from the evidence from Ian Ritchie that no letters sent to Cathcart Road had been returned by the post office. The Tribunal was satisfied beyond reasonable doubt on the basis of the evidence before it that all the letters were sent by the Law Society and should have been received by the First Respondent. If they were not received it was due to the First Respondent's own fault, it was his responsibility to reply. The Tribunal found that the picture with regard to individual letters was confused for a number of reasons. The Tribunal accept that between May 2003 and November 2003 when the Judicial Factor was in place it would have been difficult for the First Respondent to reply to letters. The Tribunal has taken this into account in considering the severity of the First Respondent's failure to respond. The First Respondent's position with regard to some of the letters appears to be that the letters in the

Complainers' Productions were not the same as the letters he received as the letters in the envelopes were addressed to Argyll Arcade. It would accordingly appear that the Law Society was sending two copies of the same letter, one to Argyll Arcade and one to Cathcart Road. The Tribunal did not consider that in these circumstances the First Respondent's failure to reply could be excused. It is quite clear to the Tribunal that the First Respondent's numerous failures to respond to correspondence from the Law Society amount to professional misconduct. The Tribunal amended the dates so as to exclude the period when the Judicial Factor was in place as the Tribunal did not consider that the First Respondent could be criticised for failing to respond during this period. It was of great concern to the Tribunal however that the First Respondent failed to respond both before the Interim Judicial Factor was appointed and after the Judicial Factor was discharged. The First Respondent has shown a persistent course of failing to respond which hampers the Law Society in the performance of their statutory duty and brings the profession into disrepute. The First Respondent also failed to respond to Mandates, failed to register the Assignation and failed to respond to enquiries from other solicitors. The Tribunal finds that this conduct amounts to professional misconduct. If solicitors do not implement Mandates, clients are unable to get their affairs attended to as the new solicitor cannot get access to previous correspondence. The Tribunal does not consider that the First Respondent has provided an adequate explanation with regard to delay in implementing the Mandate in respect of Mrs G

In connection with Article 13.1 (Findings in Fact paragraph 6.36), the Complainers clarified that this was narrative background information. In connection with Article 13.2 (Findings in Fact paragraph 6.37) the Tribunal accept that in connection with client 1, it may have been only a technical deficit due to the fact that the bank made a mistake. However if the Second Respondent's books had been up to date this would have been picked up more quickly. In respect of client 2, the Tribunal could not be satisfied on the basis of the evidence whether or not the Second Respondent had received the money before 10th April and accordingly amended the findings in fact to read that the money was not lodged in the account until 10th April. The Tribunal however considered in the circumstances that this still amounted to a deficit. In connection with the records with regard to staff wages etc, the Tribunal consider that it is necessary to have records of this to show that the practice was solvent. The facts

in Article 13.2 appear to be substantially accepted by the Second Respondent. The Tribunal finds that the facts as established in Article 13.2 amount to professional misconduct with the exception of the technical deficit in connection with client 1 which the Tribunal did not find sufficient to amount to professional misconduct due to the fact that it was a bank error. The Tribunal considered the other deficit to be professional misconduct as the First Respondent's clients were exposed to risk which is unacceptable.

In Article 13.3 (Findings in Fact paragraph 6.38), the facts again were mainly accepted by the Second Respondent as being accurate with the exception of the inter-client transfer between clients 5 and 6 and this averment has been deleted. Although the Tribunal finds the facts established, given the wording of Rule 11 of the Solicitors (Scotland) Accounts etc (Fund) Rules 2001 the Tribunal cannot be satisfied beyond reasonable doubt that the Second Respondent breached the Rule on this occasion in relation to clients 11, 12 and 13 as interest was paid to the clients by the Second Respondent. The Rule states that money should be placed in a separate client account in the client's name and that the solicitor shall account to the client for any interest thereon, failing which the solicitor shall pay the client out of his own money the sum equivalent to the interest which would have accrued. The Tribunal consider that it is not good practice to merely pay interest to the client rather than investing money in an interest bearing account particularly when this done retrospectively. However the Tribunal could not find that it was sufficient to amount to professional misconduct given the terms of Rule 11. In respect of client 8, 9 and 10 as no interest was paid this was a breach of the Rule and the Tribunal was satisfied that in cumulo this amounted to professional misconduct given the sums involved. Article 13.3 also contains more incidences of failure to maintain adequate records and given the pattern of behaviour, the Tribunal finds this sufficient to amount to professional misconduct.

In connection with Article 13.4 (Findings in Fact paragraph 6.39) and client 16, the Second Respondent accepted the facts but the Complainers accept that this is not a breach of the Accounts Rules. In connection with client 17, the Second Respondent accepted the averments as factually correct and the Tribunal find that the records were clearly inaccurate and this is a breach of Rule 8. In connection with the payments made in respect of clients 18 and 21, the Tribunal could not be satisfied on the basis

of the evidence that these payments were payments to or on behalf of another client. In respect of client 18, the Second Respondent's evidence was that there was a power of attorney and 22 was a spouse of a client. In respect of the payment from 23 to 24, there was no satisfactory evidence to show that 24 was a client. The Second Respondent however accepted that 25 and 26 were clients. As Rule 6 states that "so long as money belonging to one client is not withdrawn without his written authority for the purpose of meeting a payment to or on behalf of another client…" the Tribunal's view is that it is only a breach of the Rule if there is no written authority and the payment is made to or on behalf of a client. It may be good practice to always obtain written authority but it cannot be said that it is a breach of the Rule not to do so when the payment is made but not to or on behalf of another client. The Tribunal accordingly made various deletions from the Article.

In connection with the averments in respect of clients 27, 28 and 16, the Tribunal was satisfied beyond reasonable doubt on the basis of the evidence from the inspectors, the inspection report and the Second Respondent's letter of 18th July 2003 that these facts were established.

Given the amendment to the Article, the Tribunal did not consider the findings in fact in respect of clients 27, 28 and 16 on their own sufficient to amount to professional misconduct although it was clear that the Second Respondent did not have proper procedures in place to ensure that deeds were timeously stamped and recorded. In connection with Article 13.4 however, the breaches of Rule 8 and Rule 6 were in cumulo sufficient to make a finding of professional misconduct, given the pattern of behaviour.

In connection with Article 13.5 (Findings in Fact paragraph 6.40) the Tribunal was satisfied beyond reasonable doubt on the basis of the evidence from the inspectors and in particular Ms Heywood that the Second Respondent did not have proper procedures in place for identification. The Second Respondent clearly did not have a central record or follow a practice of noting the reasons in the file for not having evidence of identity. Even if the clients were known to the Second Respondent or if they had been clients for a lengthy period, there is a requirement for a record of this to be held by the Second Respondent and there was no evidence that this had been done. The Tribunal

was also concerned that the Second Respondent indicated in his evidence that there may have been occasions where there was no evidence as to where the payment had come from but he could not stop a settlement due to this. It was also clear from the Second Respondent's evidence that he did not understand the importance of the money laundering regulations. The Tribunal accepted that in respect of client 27 evidence was later produced which satisfied Mr Cumming in respect of client 27. The Tribunal was very concerned by the Second Respondent's lack of money laundering procedures and considered that this was sufficient on its own to amount to professional misconduct.

In respect of Article 14.1 (Findings in Fact paragraph 6.41) the Tribunal accepted the evidence from Sharon Brownlee and found her to be a credible and reliable witness. The Tribunal did not accept the Second Respondent's criticism of the witness who was adamant that the Second Respondent had received a fair inspection. The Tribunal consider that the Law Society is quite entitled to carry out inspections of solicitor's firms. The only expectation of Law Society Inspectors is that they should conduct themselves in a courteous and professional manner towards the solicitors whose firm they are inspecting. It is unfortunate that the Second Respondent was suffering from flu at the time of this inspection but the Tribunal did not consider this to be relevant to the matters found by the inspectors at the inspection. The Tribunal noted the comments made by the Second Respondent in respect of his letter of 18th July 2003 not having been considered by the Guarantee Fund Committee at the interview on 24th July 2003. The Tribunal noted that the interview resulted in a recommendation for a re-inspection in October 2003 and the Law Society had the letter of 18th July 2003 prior to the re-inspection going ahead and there were clearly still issues to be addressed at the October 2003 inspection. The Tribunal also did not consider the Second Respondent's comments with regard to the Chairman of the meeting to be relevant to the matters being considered by the Tribunal which arose from the inspection. The Tribunal accepted the evidence of the Law Society's witnesses Sharon Brownlee, Morag Newton, Morna Grandison and Linda Lyle, found them credible and reliable and found the facts in Article 14.1 proved beyond reasonable doubt.

In connection with Article 14.2 (Findings in Fact paragraph 6.42), the Tribunal was satisfied beyond reasonable doubt on the evidence of the same Law Society witnesses

and the productions lodged being Complainers' Productions 2.15 to 2.16 and 2.17 to 2.18 and 2.34 that these facts were proved. The Second Respondent did not appear to take issue with these facts in his evidence. The Tribunal considered that a failure to keep records in connection with staff wages, tax and PAYE is clearly a breach of Rule 8 which requires solicitors to keep proper records to show the true financial position of the practice. It was clear from the evidence of the Law Society witnesses that it was not possible to ascertain the true financial position of the Second Respondent's practice. His position appeared to be that as he knew so much in his head, he could ascertain the true financial position. This however is not an acceptable way to operate a business.

The Tribunal had severe reservations about the way that the Second Respondent was running his practice. The Second Respondent's records did not conform to the requirements of the Accounts Rules and the Tribunal made a finding of professional misconduct in respect of Articles 14.1 and 14.2. There was clearly insufficient information and numerous discrepancies. If the dealings with client monies are not recorded correctly and kept up to date and if the firm records are not kept up to date, the true financial position of the firm cannot be known. The Tribunal found no merit in the Second Respondent's allegations of racial prejudice in connection with the witness Sharon Brownlee as there was no suggestion of this from the evidence led.

In connection with Article 14.3 (Findings in Fact paragraph 6.43), the Tribunal accepted the Second Respondent's submission that Rule 7 paragraph (g) is no longer in force and accordingly there is nothing in the Rules to state that the full purchase price of the property must be shown. The Complainers' position is that if there are discrepancies with regard to the purchase price and if the full purchase price is not shown this results in breaches of Rule 8 in relation to insufficient information and discrepancies on client ledgers. The Tribunal accept that it would be best practice to show a narrative of exactly what the position was but, given the specific terms of Rule 8, it may not necessarily be a breach of the Accounts Rules not to show the full purchase price. The emphasis in the Accounts Rules is on the money coming through the firm. The Tribunal accordingly found that in the particular circumstances of this case there was not sufficient evidence to find beyond reasonable doubt that there was

a breach of Rule 8 in respect of clients 31, 34 and 36. The Tribunal accordingly did not make a finding of professional misconduct in respect of this.

In connection with the delays in forwarding deeds and the lack of ledger narrative, the Tribunal was satisfied beyond reasonable doubt on the basis of the evidence from the Law Society witnesses and the productions lodged, that the facts in respect of clients 38, 41, 25, 42, 45, 46 and 33 were proved. In connection with client 39, the property at Property 44, client 44 and client 47, the Complainers accepted that the facts had not been proved and these averments were accordingly deleted. In connection with client 38, there was a period of two years four months and the Tribunal found that there was no satisfactory evidence to support the Second Respondent's claim that the client had not wanted the deeds recorded. In connection with client 41, there was no evidence that the deeds had been recorded. In connection with client 25, the Second Respondent accepted that there was a delay in respect of stamp duty and the period was almost seven months. In connection with client 42, the Second Respondent was not able to say exactly what had happened. There was no satisfactory evidence as to when the deeds were recorded. In connection with client 45, the Second Respondent accepted in his letter of 5th May 2004 that this was an oversight. This is a significant period of three years. In connection with client 46, the Second Respondent refers to a ranking agreement, but even if there had been a ranking agreement, a delay of three months is still not acceptable. In connection with client 33, it is not possible to say when the deeds were actually recorded.

The Tribunal considered that the delays involved in respect of these matters were sufficiently serious to amount to professional misconduct.

In connection with Article 14.4 (Findings in Fact paragraph 6.44), the Tribunal deleted the first paragraph of the averment as there was no satisfactory evidence with regard to this and confusion as to which client was actually being referred to. In connection with the client credit balances, the Second Respondent did not say much in his evidence with regard to this matter but addresses it in his letter of 5th May 2004 in Complainers' Productions 2.17 to 2.18. In connection with client 34, the Second Respondent indicates in his letter that the client had agreed to the funds being held to recover fees but he has not provided any evidence of this and there is no reason why

the funds could not have been invested. In connection with client 49, the Second Respondent indicates that the funds were dispersed on 6th October 2003 but has not provided any evidence to show that this is the case and even if the funds had been dispersed on this date, they should still have been invested. In connection with client 50, the Second Respondent indicates that these funds were dispersed on 6th October 2003 but has not provided any evidence to support this and even if the funds had been dispersed on that date, given the significant funds involved, the sums should have been invested. In connection with client 51, the Second Respondent did not provide any evidence with regard to his claim that it related to common charges. In connection with client 53, there is no mention of any interest being paid. In connection with client 55, the Tribunal is not satisfied on the basis of the evidence that any interest had been paid. In connection with client 58, there was no evidence to show that the matter was not outstanding at the date of inspection. In connection with client 59, there is no satisfactory explanation with regard to this. In connection with client 60, the issue of a fee note is not relevant. With regard to client 61, the Second Respondent indicates that the money was paid out on 2nd October 2003 but there was no evidence of this and in any event, the money should have been invested. In connection with client 63, although the Second Respondent indicates that he will credit the interest, there is no evidence that he has done so. In connection with all these clients the Tribunal accordingly finds a breach of the Accounts Rules.

In connection with client 52, the Second Respondent indicates in his letter that he has paid a sum in lieu of interest and accordingly the Tribunal find that this is not a breach of the Accounts Rules for the reasons as mentioned earlier. In connection with client 54, the Second Respondent indicates that interest was paid and accordingly the Tribunal do not find a breach of the Accounts Rules. In connection with client 56, the Second Respondent indicates that the money was held to pay registration dues and charges and in the circumstances the Tribunal do not find that this is a breach of the Accounts Rules. In connection with client 57, as interest was paid by the Second Respondent, the Tribunal do not find a breach of the Accounts Rules. In connection with clients 12 and 13, as interest was paid, the Tribunal do not find a breach of the Accounts Rules. In connection with client 62, the Second Respondent indicates that interest has been credited and accordingly the Tribunal did not find a breach of the

Accounts Rules. In connection with client 30, there was no date and the evidence was somewhat vague and accordingly this matter was deleted.

The Tribunal is satisfied that these breaches of the Accounts Rules taken together amount to professional misconduct.

In connection with client's written authority being provided for payments made to another client, for client 64, the Second Respondent's evidence was that 24, 65, 66 and 67 were not clients and neither was 71. Although the evidence of Mrs Brownlee was that payments were made from one client to another there was no specification given with regard to this and accordingly the Tribunal could not be satisfied beyond reasonable doubt that the payments were actually made from one client to another in respect of these matters. The Tribunal accordingly deleted these averments from the Complaint. The Second Respondent however indicated that in respect of 68, it might be a client, that 70 was introduced at a meeting and that 72 was a client and the Tribunal accordingly found that these averments were proved beyond reasonable doubt. The Tribunal considers that it is very important to preserve the integrity of client balances and if there is no written authority, this results in clients being exposed. The Tribunal accordingly find the Second Respondent guilty of professional misconduct in cumulo in respect of these matters.

In connection with Article 14.5 (Findings in Fact paragraph 6.45), although the Second Respondent indicated that he did provide identification for client 73 and 74 there was no satisfactory evidence available on the file when inspected by the inspectors. The Tribunal was not satisfied that the Second Respondent had either a central register or had details with regard to identification on the files. The Second Respondent indicates that with regard to client 75, it was his secretary and client 77 he had known for some time but there was nothing on the records to show that this was the case. It was clear from the evidence of the Law Society witnesses that there was no evidence available at the time of the inspection with regard to the source of the funds and this is clearly not acceptable and is a breach of the Accounts Rules. The Tribunal finds that this is sufficient to amount to professional misconduct. It is imperative that solicitors have proper money laundering procedures in force to help prevent fraud.

In connection with Article 15.1 (Findings in Fact paragraph 6.46), the Second Respondent accepted that he did not give a specific response to the inspection letter of 12th November 2003 and did not dispute that the letter of 12th November 2003 asked him to provide certain information. In respect of Article 15.2 (Findings in Fact paragraph 6.47), the Tribunal amended the wording slightly to reflect the fact that the Second Respondent did send a letter on 15th January 2004, albeit that it did not address the matters in any detail or in a satisfactory way. The Tribunal considers that the Second Respondent's failure to respond to the Law Society amounts to professional misconduct. The Tribunal has made it clear on numerous occasions that failure to respond to the Law Society hampers the Law Society in the performance of their statutory duty and brings the profession into disrepute. In this case the Second Respondent was sent reminder letters on 28th November, 12th December 2003 and 26th January 2004.

In connection with Article 16.1 (Findings in Fact paragraph 6.48), the Tribunal was satisfied on the basis of the evidence from the Law Society witnesses Fiona McLeary, Leslie Cumming, Morag Newton, Linda Lyall and Norma Grandison who the Tribunal found to be credible and reliable witnesses and the Productions in Complainers' Productions 2.17 to 2.18 that these facts are proved beyond reasonable doubt. A lot of the facts were accepted by the Second Respondent. The Complainers indicated that they were not insisting on the allegation of records not being in a permanent form and this accordingly was deleted from the averment. The Tribunal was concerned to note that there were still these problems despite the previous inspection and considered that the Second Respondent's conduct amounted to professional misconduct especially when taken in cumulo with the previous failings of the Second Respondent in this regard in relation to his failure to maintain adequate and accurate records to show the proper financial position of the firm.

In connection with Article 16.2 (Findings in Fact paragraph 6.49), the Tribunal accepted on the basis of the evidence from the Law Society witnesses and the productions that the sums were held for the periods as specified. The Second Respondent accepts in his evidence that the balances are correct. The Tribunal noted that the Second Respondent in his letter of 5th May 2004 indicates that he would

reduce fees or not charge fees in respect of some of these matters. This however is not the same as paying interest. In respect of clients 80, 13 and 64, the Tribunal accept, as indicated in evidence by the Second Respondent either orally or in his letter of 5th May 2004, that interest was paid by him to the client and accordingly that this was not a breach of the Accounts Rules. However in connection with the remainder of the clients in the Article 16.2, the Tribunal was not satisfied that any interest was paid and accordingly found a breach of the Accounts Rules established. The Tribunal considered that given that there were a number of incidences where the Second Respondent had not accounted to his clients for interest that this taken together with the previous failings by the Second Respondent in this regard, is serious and reprehensible enough to amount to professional misconduct. The Tribunal however did not make a finding of misconduct in respect of the part of Article 16.2 relating to incomplete records as there was no detail provided.

In connection with Article 16.3 (Findings in Fact paragraph 6.50), in respect of client 38, the Tribunal was satisfied on the basis of the evidence of the Law Society witnesses and the productions lodged that the disposition of the flats remained unregistered. This was a period of two years eight months. In connection with client 86, the Second Respondent indicated that he took over the transaction mid-way through but did not provide any satisfactory evidence of this. Ms Newton's evidence was to the effect that the registration of the deeds was still outstanding. The review papers also showed that this matter was still outstanding. The Tribunal found that there was a delay of three months. In connection with client 87, it is noted that this client is the same as client 42 referred to in Article 14.3. The Tribunal amended the wording of this averment to make it clear that at the date of inspection the discharge was still not recorded. In connection with client 33, the evidence from Linda Lyall was that it was registered on 25th August 2004, but this appeared to relate to a standard security rather than the discharge. The First Respondent's evidence is that he is not sure what happened. It is clear from the inspectors review papers that the Form 4 was still outstanding and the Tribunal is accordingly satisfied on the basis of the evidence from the Law Society witnesses and the productions lodged that there was a delay in registering the discharge. In connection with client 88, this appears to be the same matter as is referred to in respect of client 93 and accordingly the Tribunal deleted this averment. In connection with client 92, it is clear from the review papers

that the Form 4 was still awaited. The Complainers however indicated in submissions that they accepted that this matter had not been established and the Tribunal could accordingly not be satisfied beyond reasonable doubt with regard to this matter and deleted the averment. In connection with client 93, the evidence from Linda Lyall was that the deed was registered on 7th April 2004 but it was clearly still outstanding at the time of the inspection in February 2004. The Tribunal accordingly found this averment proved.

In connection with client 91, the First Respondent indicated that there was a family agreement not to register but the Tribunal noted that this was a discharge and should have been registered. In connection with clients 89 and 90, there was no evidence that the deeds had been registered at the time of the inspection and the Tribunal was satisfied on the basis of the evidence from the Law Society witnesses and the productions lodged that the averments were proved beyond reasonable doubt. The Tribunal also found the averments regarding client 94 proved. The Tribunal considered that in cumulo these delays in recording deeds were sufficient to amount to professional misconduct especially when taken together with the Second Respondent's previous failings in this regard. It is imperative that solicitors record deeds as soon as possible in order to preserve the interests of their clients. Failure to do so brings the profession into disrepute.

In connection with Article 16.4 (Findings in Fact paragraph 6.51), the Second Respondent indicates that this is an unfair criticism of him but the Tribunal was satisfied on the basis of the evidence of the Law Society witnesses and the productions lodged that the facts were proved beyond reasonable doubt. The First Respondent did not provide any satisfactory evidence to show that he had addressed the Law Society's concerns. It is clear from the inspection report for the inspection in February 2004 at Complainers' Productions 2.16 to 2.17 that there were matters still outstanding. The Tribunal consider that these ongoing failures amount to professional misconduct.

In making these findings of professional misconduct against the Second Respondent, the Tribunal amended the dates in the averments of professional misconduct in Article 24.23 of the Complaint to relate to the period when the Second Respondent was acting

as a sole practitioner. The Tribunal considered that the actings of the Second Respondent while a partner in the Practical Law Partnership were covered by the averment of professional misconduct in Article 24.26 of the Complaint. The Tribunal also deleted the phrase "in permanent form" from the finding of professional misconduct as the Complainers indicated that they were not insisting on this issue. The Tribunal was extremely concerned that the Second Respondent was subject to three inspections over a period of nine months and despite matters being drawn to his attention he did not sort matters out to the satisfaction of the Law Society and further problems were highlighted at the later inspections. The Tribunal consider that there was a danger to the public by the Second Respondent continuing in this manner.

The First Respondent admitted all the facts in Article 17.1 (Findings in Fact paragraph 6.52) apart from the last sentence. He however appeared to accept that there were some delays. Ms Robertson's evidence, which the Tribunal found credible and reliable, showed that the First Respondent did not have an effective system in place. The Tribunal amended the wording of the last sentence as it was accepted that the First Respondent did have some sort of system but it was clearly not effective. The Tribunal accepted the First Respondent's evidence, which was not challenged by the Complainers, in respect of the problems caused for him by the state of Murray & Co's records when he took the business over. The Tribunal considered that the First Respondent's Answers to averment 17.1 related mainly to mitigation.

The First Respondent admitted the averments in Article 17.2 (Findings in Fact paragraph 6.53) apart from the apparent shortage of £16447.21. The Tribunal was satisfied on the basis of the evidence from the Law Society inspectors and the productions lodged that it appeared to the inspectors that there was a shortfall and a deficit of £16447.21. The Tribunal took account of the First Respondent's extensive Answers, evidence and submissions with regard to this matter but considered that they mainly went to mitigation. The Tribunal was extremely concerned by the poor record keeping and unreliable records kept by the First Respondent. The Tribunal considered that the state of the records made it almost impossible for the Complainers to know what the real position with regard to his firm was. The First Respondent was acting in complete breach of the Accounts Rules and the Tribunal finds that his conduct amounts to professional misconduct.

In connection with Article 17.3 (Findings in Fact paragraph 6.54), in connection with client 95 and 96, the First Respondent submitted that the letter from Client 96 was wrong and blamed his paralegal for the posting error. It was clear from the evidence of Ms Robertson that the First Respondent accepted that the problem was not identified until the inspection. The Tribunal considered these facts proved and any explanation is mitigation. In connection with client 97, the First Respondent indicated that the cashier had mis-posted the date. This accordingly appeared to be a posting error rather than an actual payment made before funds were received and the Tribunal accordingly amended the averment to reflect this. In connection with client 98, the First Respondent accepted the facts but submitted that this was a systems error. The First Respondent however did not provide any satisfactory evidence to show that this was the case despite being asked to by the Complainers. The Tribunal found this averment proved. In connection with client 99, the First Respondent states that the ledger card had been rectified but it is clear from the Law Society correspondence that the Law Society did not know what the situation was. The Tribunal found the evidence with regard to this to be confusing and was not satisfied beyond reasonable doubt that the averment was proved. In respect of the un-invested client credit balances of over £500 held since November 2002, there were no examples provided and the First Respondent's explanation was that cheques were not posted and it accordingly looked as if he held more money than was actually the case. In the circumstances the Tribunal did not find this proved. In connection with the taking of fees prior to fee notes being issued, the First Respondent did not dispute that it looked as if this was the case from the records but submitted that fees were not actually taken before fee notes were rendered. In the circumstances the Tribunal amended the averment to read that it appeared that fees were taken prior to fee notes being rendered. In connection with the compliance with the money laundering regulations, it is clear from the First Respondent's letter of 4th June 2003 (Complainers' Productions 2.18 to 2.19) where the First Respondent states that he has now put procedures in place and will obtain identification evidence, that at this time the First Respondent was not complying with the money laundering regulations and the Tribunal found this averment proved. This Article highlights further problems with the First Respondent's records and the Tribunal found this sufficient to amount to professional misconduct. The Tribunal however did not find misconduct proved in connection with failure to

invest client's funds given the findings in fact made by the Tribunal. The Tribunal also find that the First Respondent's failure to comply with the money laundering regulations especially when taken together with the failure at later inspections is sufficient to amount to professional misconduct. As previously stated, it is essential that solicitors have proper money laundering procedures in place in order to prevent fraud.

In connection with Article 17.4 (Findings in Fact paragraph 6.55), the Tribunal amended the averments in this Article to reflect the evidence led. In connection with client 100, it was accepted by the Complainers and the First Respondent that the discharge was recorded on 10th April 2003, the Tribunal did not consider that there was any satisfactory explanation for the delay. The First Respondent argued in his submissions that the delay should not be calculated on the basis of the time between settlement and registration but should only be from when he received the discharges and when they were sent to the Land Register. The Tribunal however did not accept this as it is the solicitor's responsibility to have the discharge recorded as soon as possible after settlement. In any event the discharge should have come to hand at the time of settlement or very soon thereafter. The Tribunal considered that in this case there was a delay of five months. In connection with client 101, the First Respondent's position was that this was a posting error and the loan was redeemed on 25th March 2003. The Tribunal considers that this was a problem with the inaccuracy of the records but amended the averment to read that it appeared from the records that the loan was redeemed on 19th March and the sale proceeds were not received until 25th March. In connection with client 102, there seemed to be confusion with regard to the actual number in Property 6 and the Tribunal accordingly amended the averment to refer to a property in Property 6. It was clear from the evidence that this matter was still outstanding when the Judicial Factor was appointed. The Tribunal found that there was a delay in this case but accepted on the basis of the evidence that this was partly due to problems caused by Kensington Mortgage Company and accordingly amended the averment to reflect this. The delay in this case may not on its own amount to professional misconduct as it was only a period of two months and the First Respondent was not responsible for the whole of the period of the delay.

In connection with client 103, the Tribunal accepted that this was caused by an error in the accounting system and accordingly amended the averment to reflect this. In connection with client 104, the First Respondent explained the delay by stating that it was because the title had to go in the son's name. The First Respondent also made submissions with regard to it being inappropriate to consider the delay from settlement until registration but as previously stated the Tribunal do not accept the submissions with regard to this and consider that the delay in this case was from 6th February 2003 to 12th May 2003. In connection with client 105, the First Respondent stated in his letter of 4th June 2003 (Complainers' Productions 2.19 – 2.20) that the disposition has now been sent for stamping. The Tribunal accordingly find that he accepts the delay. There is no satisfactory evidence that the deeds were actually recorded. The Tribunal accordingly finds this averment proved. In connection with client 106, the Complainers indicated that they are not to insist on this averment and the Tribunal accordingly deleted it. In connection with client 107, the First Respondent accepts that the source of the opening credit balance of £20,000 was not shown and the Tribunal found this proved. He also accepts the posting error. The First Respondent however indicates that the inspectors used the wrong printout and the Tribunal accordingly cannot be satisfied beyond reasonable doubt that no deeds were recorded and this accordingly was deleted from the averment. The Tribunal was extremely concerned by the number of delays in recording deeds. As previously stated earlier in these findings, it is imperative that solicitors record deeds as soon as possible after settlement in order to protect clients' interests. An important part of a solicitor's job is to protect clients' interests in this way and if this not done properly, it brings the profession into disrepute.

In connection with Article 17.5 (Findings in Fact paragraph 6.56), these facts were accepted by the First Respondent. The Tribunal also accepted the averment in the First Respondent's Answers, which was not challenged by the Complainers, that the costs of the interim Judicial Factory were allocated between the First Respondent and Isabel Murray. The Tribunal accordingly added this into the findings in fact. The Tribunal found the remainder of the First Respondent's Answers to be relevant in mitigation. It was not possible to know the true financial position of the First Respondent's firm as the records were not accurate or adequate and the Tribunal find that this is sufficient to amount to professional misconduct. The Tribunal did not

accept the First Respondent's submission that he took every reasonable step to ensure that the accounts were accurate and that he did not succeed due to circumstances beyond his control. The First Respondent, as a sole practitioner, had the responsibility to ensure that if he continued to trade, his accounts were in a proper state.

In connection with Article 18, the First Respondent accepted the facts in Article 18.1, 18.2 and 18.3 (Findings in Fact paragraphs 6.57, 6.58 and 6.59) with the exception of the sentence stating that he tried to resolve the situation and corresponded with the Complainers. The First Respondent's position is that he did resolve the situation but it is clear to the Tribunal from the evidence that the situation was not resolved and accordingly this averment was left in. The Tribunal accepted the First Respondent's evidence in connection with his employment of a legal cashier and felt this was relevant to add into the findings in fact. The Tribunal was extremely concerned that the First Respondent took over from the Judicial Factor in November 2003 and yet by February 2004 the inspectors again found his records were not accurate or adequate. The Tribunal considers that this reinforces the impression that the First Respondent was incapable of keeping his books properly which resulted in his clients not being protected and is clearly sufficient to amount to professional misconduct.

In connection with Article 18.4 (Findings in Fact paragraph 6.60). The Tribunal deleted the first sentence as this appeared to be a repeat of Article 18.1. It was clear from the undated letter in Complainers' Productions 2.21 to 2.23 from the Law Society that the bank balance still had to be adjusted in respect of outstanding cheques and the Tribunal accordingly found it proved that there were a number of uncleared cheques. This appeared not to be disputed by the First Respondent. In connection with client 113, the First Respondent produced his reconstructed ledger in his Third Inventory of Productions. This shows that the true position was that £14121.02 was held from 31st December 2003 to 3rd March 2004. The First Respondent indicates that this was not invested as the clients were Muslim and did not want interest but he did not provide any satisfactory evidence of this. Rule 11 requires written authority from the client and none was produced. The Tribunal find that this is a breach of the Rules as this large amount of money was held uninvested for over two months. In relation to Client 114, the First Respondent's Third Inventory of Productions has the rectified ledger which shows that £26,950.00 was held from 12th November 2003 to 12th

February 2004. The First Respondent's evidence was that this was for outlays but outlays would not amount to £25,000.00. The Tribunal accordingly found that this was a breach of the Rules. In respect of clients 115, 116 and again 116, the Complainers accepted that on the basis of the ledgers as corrected, there was no breach of the Rules and these averments were accordingly deleted. In connection with client 117, both the Law Society and the First Respondent accepted that the funds had been held from 31st December 2003 until 24th January 2004 as was shown on the First Respondent's rectified ledger. The Tribunal consider that this a breach given the amount of money involved but it is not particularly serious. In connection with client 118, the First Respondent's position is that he had written authority from the clients not to invest. The Complainers accept that there was authority from the clients not to invest and accordingly the Tribunal find that there is no breach of the Rules in respect of this matter. In connection with client 119, the Complainers conceded that there was no breach as it is unclear whether the funds were uninvested. This matter was accordingly deleted. In connection with clients 120, 121, 122 and 123, the First Respondent indicates that there were printouts but accepts that they did not show the true position. The Tribunal accordingly amended the averment to indicate that there was a lack of accurate printouts. The averments in the following paragraph were not really disputed by the First Respondent. He accepted that the entries were wrong but his position is that they were corrected later. The Tribunal was satisfied on the basis of the evidence from the Law Society witnesses that these facts were proved. The Tribunal consider that there were a number of instances where the First Respondent had failed to account to his clients for interest on some quite large sums. The Tribunal considers that these taken together are sufficient to amount to professional misconduct. This Article also shows a continuing state of chaos with the First Respondent's records. The First Respondent's position appears to be that he is not guilty of professional misconduct because the records were reconstructed by his accountant after the inspectors raised the problems with him. It is clear to the Tribunal however that at the time of the inspectors' visit, the position was so chaotic that it was almost impossible to ascertain what the position was. The Tribunal do not consider it a defence for the First Respondent to say that the records were corrected later, especially given the history of previous problems with the First Respondent's books prior to the Judicial Factor's appointment. Although the Tribunal accept that work was done by the First Respondent's accountant to have the records reconstructed, the

evidence with regard to this was somewhat confusing and made matters very complicated. In his submissions the First Respondent indicates that in respect of GLG, the ledger was created by the Interim Judicial Factor and he did not understand what to do with it. The Tribunal considers that this is another example of the First Respondent's inability to operate properly as a sole practitioner.

In connection with Article 18.5 (Findings in Fact paragraph 6.61) and client 124, this is a duplication of Article 9 and accordingly was deleted. In connection with the sum of £265, 211.73, the Tribunal accepted on the basis of the evidence that the ledger did not show where the money came from. The First Respondent advised the Complainers that it came from the Royal Bank and that it was clear from the files. He however did not provide any satisfactory evidence of this. In any event this should have been clear from the ledger. It was clear from the evidence of the Law Society witnesses that at the date of inspection it could not be ascertained whether or not stamp duty was paid or the disposition or standard security had been recorded in respect of client 125. The evidence from Linda Lyall was that the deeds were recorded on 12th April 2004 but this evidence only came to light after the inspection. The First Respondent provided an explanation but has not provided any satisfactory evidence with regard to this and it may well have been that any errors were due to his fault. In connection with client 126, at the time of the inspection there was no evidence to show that the discharges had been recorded but the First Respondent later produced evidence to show that they had been recorded in January 2004. In connection with Property 15, at the time of the inspection there was no evidence that the deeds had been sent for recording but evidence was produced later to show that the deeds were recorded on 21st April 2004. The Tribunal consider that there was a delay from 13th November 2003 until 21st April 2004 and did not accept the time calculations as put forward by the First Respondent. The First Respondent indicated that there were errors on the form but there was no evidence to show that this was not his fault in any event. There were also money laundering problems with this transaction as the source of the income is not disclosed. The Tribunal finds the First Respondent guilty of professional misconduct in respect of his breach of the money laundering regulations and his failure to record deeds timeously.

In connection with Article 19.1 (Findings in Fact paragraph 6.63), the First Respondent did not dispute the facts apart from in respect of the loan which he says was to the Practical Law Partnership. The Tribunal cannot be satisfied on the evidence which loan was being referred to and accordingly deleted this sentence.

In connection with Article 19.2 (Findings in Fact paragraph 6.64), the Complainers indicated that they were not insisting on the averments relating to clients 104 and 127 as the evidence was unclear. The Tribunal accordingly deleted the averments in relation to this. In connection with client 128, the averment relates to lack of narrative whereas the First Respondent's submission mainly relates to the recording of deeds which is irrelevant. It is the same position in respect of client 129. The First Respondent's explanation in respect of these matters goes to mitigation as he is referring to the problems he inherited from Murray & Co, the difficulties with the Sobora system and the fact that the ledgers were reconstructed by Mr M. In connection with client 130, the First Respondent refers to other proceedings but this matter is only averred as a ledger error issue and the Tribunal was satisfied that this was proved. The First Respondent does not appear to dispute the position with regard to clients 131, 132, 133, 134, 136 and 108 as he accepts that the ledgers were inaccurate. The Tribunal was satisfied on the basis of the evidence from the Law Society witnesses that these averments were proved. The Tribunal was extremely concerned to note that by the March inspection matters had still not improved and the First Respondent's records were still not accurate or adequate. This is a breach of the Rules and clearly amounts to professional misconduct especially given the fact that similar problems had been raised at previous inspections with the First Respondent. Despite the matters being raised at the February inspection, there were still problems at the March inspection.

In connection with Article 19.3 (Findings in Fact paragraph 6.65) and client 120, the First Respondent accepts that the money was uninvested but explains the position with regard to the Housing Association. He submits that he did not receive the chase up letters sent by the Housing Association. It is however clear from the evidence that the money was uninvested from 11th November 2003 until 20th April 2004 and it was a large sum of money and is clearly a breach of the Accounts Rules. In connection with client 121, the First Respondent's position was that the client did not want the

money invested but he has not provided any evidence to show that there is written confirmation from the client to this effect. The Tribunal found that the money was uninvested from 5th November 2003 being the date when the Judicial Factor left until 14th May 2004 which is a considerable period and is a breach of the Accounts Rules. In connection with clients 137 and 138, the Complainers accept that on the basis of the ledgers as amended there is no breach and accordingly these matters were deleted. In connection with client 122, the First Respondent accepts that there is a breach and explains that the son did not come in to get the money and it was an oversight by him. The period was 25th November 2003 until 14th May 2004 and the sum was substantial. In connection with client 139, the First Respondent indicates that the money was required to pay outlays but it was clear from the evidence that the sum was uninvested from 13th November 2003 until 1st April 2004 which is a breach of the Accounts Rules and the Tribunal do not consider that the First Respondent's explanation in connection with rates is relevant.

In connection with the cheques paid to banks and building societies not being designated, it was clear from Mrs Playfair's evidence, which the Tribunal found credible and reliable, that this happened on a number of occasions. In connection with client 112, the Tribunal found the evidence confusing as the First Respondent produced a Form 4 dated 9th January 2004 but the discharge appears to have been signed in July 2004 and the Complainer's submissions are that the deeds were recorded on 29th March 2004. The Tribunal however is satisfied on the basis of the evidence that at the date of inspection it appeared that the deeds had not been recorded and the Tribunal does not accept the First Respondent's explanation as no satisfactory evidence was provided. The Tribunal made no finding with regard to the actual dates. In connection with client 128, the Complainers indicated that if the Tribunal accepted the problem with regard to the deed of conditions, the delay may not be unreasonable. The Tribunal however do not accept that this is an acceptable reason for not recording deeds for a period of two months and find that there is a delay in recording deeds between 19th January 2004 and 29th March 2004. In connection with client 140, the First Respondent's position was that the discharge was lost. It is however clear that there was a delay. In connection with client 129, the Complainers accept that the inspectors could not comment on the First Respondent's explanation. The First Respondent refers to a missing discharge and problems with the redemption figure

and in the circumstances the Tribunal do not consider that this delay is significant and this matter was deleted. Again, there were balances uninvested for clients which is a breach of the Rules and the Tribunal finds that taken together with the previous failures is sufficient to amount to professional misconduct. There were again problems with the First Respondent's records which taken together with the previous failures are sufficient to amount to professional misconduct. The Tribunal also finds that the delay in recording deeds is sufficient to amount to professional misconduct.

In connection with Article 19.4 (Findings in Fact paragraph 6.66) the Tribunal accepted the evidence of Mrs Playfair to the effect that there were no proper money laundering procedures in place. The First Respondent indicates in his submissions that after the April 2003 inspection he put written procedures in place and advised his employees of the money laundering procedures. The First Respondent however did not produce satisfactory written procedures in evidence before the Tribunal. The First Respondent indicates that the money laundering procedures were up on the wall but Mrs Playfair did not see these. There are also a number of breaches of the money laundering procedures which suggests that the First Respondent's procedures, if any, were not adequate. The Tribunal accepts that the First Respondent took some steps to improve his money laundering procedures after April 2003, but it is clear that the procedures put in place were not sufficient or consistently applied. The Complainer's letter of 16th August 2004 points out that the First Respondent still needs to put procedures in place in connection with identifying the source of funds; this suggests that even at this time there were still no proper procedures in place with regard to identifying the source of funds. The Tribunal also noted that the First Respondent in his Answer to Article 19.4 stated that in response to the query at the inspection he had introduced procedures in connection with money laundering. However this inspection was in March 2004 which is inconsistent with his submission that he introduced procedures in April 2003. The Tribunal accordingly accepted the evidence of Mrs Playfair with regard to the state of the First Respondent's money laundering procedures at the inspection in March 2004. The Tribunal was concerned to note that the First Respondent still did not have proper money laundering procedures in place despite the matter being raised at previous inspections and especially given the history, this is clearly professional misconduct. The Tribunal amended the dates in the averments of professional misconduct relating to Articles 17, 18 and 19 to exclude the

dates when the Judicial Factor was in place at the First Respondent's firm. The Tribunal also only included the dates when the First Respondent was acting as a sole practitioner as the period when he was acting as part of the Practical Law Partnership is covered in the averment of misconduct Article 24.26.

In connection with Article 20.1 (Findings in Fact paragraph 6.67), it was clear from the evidence that when the inspectors attended at the offices of the First and Second Respondents on 5th July 2004, the notices which had been sent out by the Law Society on 2nd July 2004 had not yet been received. This was accordingly added into the findings in fact. In terms of Rule 19(5) of the Accounts Rules, notices sent out by the Law Society are deemed to be received within 48 hours. The Law Society had accordingly acted in accordance with the Rules on this occasion. It is unfortunate however that the result of this was that the First and Second Respondents had not received the notice prior to the inspection. The inspectors however went away and came back the next day and accordingly the Tribunal do not consider that the Law Society acted unreasonably. The Law Society when carrying out inspections of this nature, especially when there have been previous inspections which have identified problems require quick access to the records and accounts for the solicitor's practice in order to ensure protection of the public.

In connection with Article 20.2 (Findings in Fact paragraph 6.68), the Second Respondent did not dispute the facts but questioned whether or not a deficit had arisen as a result of what had happened. The Tribunal consider that a deficit means not having sufficient money on the client account to meet the obligations. In this case the Second Respondent paid out a cheque in return for something which he did not receive. The Tribunal noted that the Law Society inspectors were of the view that what had happened resulted in a deficit. The Tribunal however was not convinced on the basis of the evidence that a deficit had arisen because there does not appear to be a specific breach of Rule 4(1)(a) of the Accounts Rules. The Tribunal consider that the issue here was not whether or not there was a deficit but the way that the Second Respondent conducted his business. The Tribunal consider that the Second Respondent's actions in respect of this matter are extremely serious. He handed over a cheque and received nothing in return, no letter of obligation and no disposition and there were no concluded missives. The Tribunal consider it surprising that it appears

that no action has been taken against the other firm involved in the transaction. The Second Respondent provided an explanation with regard to what had happened but the Tribunal did not consider that this explanation in any way excuses the Second Respondent's recklessness in just handing over a cheque without even an accompanying letter. The Second Respondent indicated that client 86 impressed him as being "a hard working, respectable and honourable guy". This appeared not to be the case and shows the importance of having proper money laundering procedures in place. The Tribunal was also concerned that the Second Respondent had advised the bank that an equity contribution was in place when it was not. The Tribunal accepted that the First Respondent did not know anything about this transaction until it came to light at the inspection and this was accordingly added to the findings in fact. As the Tribunal did not find that a deficit had occurred and there was no specific breach of Rule 4, the Tribunal could not find the First and Second Respondents guilty of professional misconduct in respect of a deficit on the client account of £321,427.72. The Tribunal however considered the Second Respondent's actings in respect of the transaction involving clients 85 and 86 to be a departure from the standards which would be expected of a competent and reputable solicitor. The Tribunal considered whether it would be possible to amend the averment of professional misconduct to aver that the Second Respondent was guilty of professional misconduct in respect of his payment of the money without having received the disposition or having concluded missives. The Second Respondent's acting in this way clearly put his client at significant risk and in the Tribunal's views it is serious and reprehensible enough to amount to professional misconduct. The Tribunal however considered that in the absence of any motion to amend, the Tribunal was unable to amend the averment of a deficit in breach of the Accounts Rules to a completely different averment as this would be unfair on the Second Respondent because he would not have had fair notice of the charge against him. The Tribunal was accordingly unable to make a finding of professional misconduct against either Respondent in respect of this matter but this causes the Tribunal considerable unease.

In relation to Article 20.3 (Findings in Fact paragraph 6.69) in connection with clients 141, 142, 96 and 143, the Complainers did not make any submissions and these matters appear to have been conceded by them. These matters were accordingly deleted. In connection with client 34, it was clear that the issue of the delay in

recording had not been proved and this was deleted. In connection with the deficit, the Second Respondent appeared to query this and then said he would check his papers but then indicated that he had nothing to add. The Tribunal accordingly found this proved. The Tribunal make a finding of professional misconduct against the First and Second Respondents in respect of this deficit on the client account due to the unacceptable risk to the client caused by this. The Tribunal consider that the First and Second Respondents are jointly and severally liable as they were in partnership when the deficit arose.

In connection with Article 20.4 (Findings in Fact paragraph 6.70) and clients 144 and 145, the evidence of Linda Lyall was that the deeds were recorded on 3rd February 2004. This was not clear at the date of the inspection but came to light later. The Tribunal accordingly find that there was a delay between 12th January 2004 and 3rd February 2004. In connection with Property 45, this was not proved and was deleted. In connection with clients 146, 147, 148 and 149, the evidence was not particularly satisfactory in connection with the recording dates of the various deeds but the Tribunal was satisfied on the basis of the evidence that at the time of the inspection it looked as if the deeds had not been recorded but later evidence became available that they may have been recorded and accordingly the Complainers conceded that there was in fact no delay. The Second Respondent did not appear to dispute the facts in the following paragraph Article 20.5 (Findings in Fact paragraph 6.71). In connection with clients 146 and 148, the Second Respondent indicated that he had acted for them for a long time but this did not relieve him of his obligation to comply with the money laundering regulations and the Tribunal did not consider that there were sufficient systems in place. The Tribunal accepted that the First Respondent was not involved in any of these transactions and this was accordingly added to the findings in fact.

It was clear that there were no proper money laundering systems in place and the Tribunal found this sufficient to amount to professional misconduct especially given the history of non compliance with the money laundering regulations by both the First and Second Respondents. The Tribunal also found the failure to record deeds especially when taken together with the previous failures by both the First and Second Respondents sufficient to amount to professional misconduct. The Tribunal also consider that it is professional misconduct that the records of the firm were not

accurate and adequate. The Tribunal finds it quite astonishing that both the First and Second Respondents had had three previous inspections each which highlighted that their records had not been in a proper state and that again when the books of the partnership between them were inspected they were also found not to be complying with the Accounts Rules. The Tribunal considers that this shows that the First and Second Respondents are totally incapable of properly running a practice and complying with the Rules of their professional organisation. The First Respondent makes a number of references in his submissions with regard to the fact that all the transactions which caused the Law Society concern at this inspection related to the Second Respondent. The First Respondent however was a partner in the firm and had a joint responsibility. It is not good enough for him to say that he did not know what was going on. The First Respondent in cross-examination indicated that he did not understand the question "who was the cashroom partner?" and the Tribunal found this concerning and again indicative of the First Respondent's inability to cope. The Tribunal amended the dates in the averments of professional misconduct relating to the Practical Law Partnership as the Tribunal did not consider that the First and Second Respondents could be found guilty of failures after the last inspection in July 2004.

In connection with Article 21, the Tribunal considered the evidence of Leslie Cumming, Jennifer Scollick and the various Law Society inspectors whose evidence was found to be credible and reliable and the Productions for the Complainers and the First Respondent and found the facts in Article 21.1 (Findings in Fact paragraph 6.72) proved beyond reasonable doubt with the exception of one sentence in connection with dates which the Tribunal deleted due to a lack of satisfactory evidence. The Tribunal also made a further amendment as the Tribunal's view of the evidence was that it was only the First Respondent who advised the Law Society that there was no starting date for the partnership as yet. There was no real dispute about the facts in Articles 21.2 and 21.3 (Findings in Fact paragraphs 6.72 and 6.74), the issue to be decided by the Tribunal was the date on which the partnership of the Practical Law Partnership commenced. The starting point for the Tribunal was the signed partnership agreement at Complainers' Production 2.30. This partnership agreement was signed by the First and Second Respondent on 19th March 2004 and clearly states that the start date of the partnership will be when the client credit balances of the First

and Second Respondent's individual firms are audited as correct and transferred into the new partnership. It was clear to the Tribunal that there was a difference of opinion between the First and Second Respondents in respect of whether or not they were in partnership prior to this. The Second Respondent appears to have thought he was in partnership with the First Respondent from 1st November 2003. It is clear however to the Tribunal from the evidence before it that the First Respondent did not think he was to be in partnership until the client credit balances of the previous two firms had been audited and transferred. The First Respondent wished to ensure that the problems he encountered when he took over Murray and Co were not repeated. The First Respondent told Mrs Playfair at the February and March 2004 inspections that the start of the partnership had been delayed. The First Respondent also clearly said at the guarantee fund interview on 22nd April 2004 that he was not yet in partnership with the Second Respondent. The First Respondent stated in evidence that he did not say this at the guarantee fund meeting but he did not put the alleged inaccuracy of this minute to Mr Cumming in cross-examination. The Tribunal did not accept the First Respondent's oral evidence with regard to this matter and considered that the First Respondent had been inconsistent both with himself and the Second Respondent with regard to this. The Tribunal also noted the First Respondent's letter in Complainers' Production 3.8 to Preferred Mortgages dated 15th March 2004 where he states that he will be entering into partnership shortly and that there is no bank account for the Practical Law Partnership. The Tribunal's view is that this clearly shows that the First Respondent did not consider himself to be in partnership with the Second Respondent at this time. It is clear from the letter from Aird Sakol dated 13th April 2004 and a letter from the Second Respondent dated 25th May 2004 that the client accounts were transferred on 14th May 2004 (Complainers' Productions 2-30 to 2-32). This is the date that the Tribunal take as the start date of the Practical Law Partnership. The First Respondent stated in his re-examination of himself that he accepted on the basis of the existing partnership agreement and the fact that the First and Second Respondents were operating two separate accounting systems, that it did not appear as if they were in partnership. The Second Respondent stated in cross-examination by the Complainers that he initially thought that they were in partnership and that the accounts were a technical matter but he then realised that this was a sticking point for the First Respondent. He indicated that he was a chasing a moving target and that the First and Second Respondents required their books to balance at the same time so they

could be brought together. Mrs McCleary stated in her evidence that the Second Respondent told her it was his intention to start trading as the Practical Law Partnership on 1st May 2004. On the basis of the evidence it is clear that there was no consensus between the partners with regard to a partnership until the client credit balances were transferred on 14th May 2004. The Tribunal noted that a business loan was taken out in November 2003 in the name of the Practical Law Partnership but this loan was to pay off the Judicial Factor. In the Tribunal's view it was only when the difficulty with the indemnity insurance position arose that the First Respondent changed his position about being in partnership with the Second Respondent. The Tribunal is not convinced that the Respondents did not realise what run-off cover was as it is difficult to accept that experienced solicitors would be unaware of what this meant. The Tribunal accordingly consider that it was at best reckless of the First and Second Respondents to have indemnity insurance for a new partnership that did not yet exist and yet continue to operate their separate firms without indemnity insurance in place. The Tribunal's view is that if the First and Second Respondents did not know, they should have done and had an obligation by virtue of being a solicitor to make sure that they knew what the position was. The First and Second Respondents have criticised the Law Society for the action that they took in respect of this matter but the Tribunal considers that the Law Society had an obligation to do something given the risk to the public caused by the First and Second Respondents operating without indemnity insurance cover. The Tribunal took account of the authorities lodged by the Complainers. The case of Keith Spouser Limited-v-Mansell [1970] 1 WLR 333 indicates that in the absence of express agreement a partnership might be implied by conduct. The Tribunal consider that there was no express agreement in this case and there was also no conduct being carried out by the First and Second Respondent in common. The House of Lords case Khan and another-v-Miah and others [2000] WLR 2123 held that the proper approach was that people become partners when they actually embark upon their activity which they have agreed. In this case it is clear to the Tribunal that the First and Second Respondents had not embarked on their partnership. The witness Mrs McCleary stated that from what she saw at the inspection of 17th February 2004 and from what the Second Respondent told her, the only connection between the two firms at that time was that clients were referred between the two firms. The letterheads used by them were a mixture of the Practical Law Partnership and their individual firms. Although the Second

Respondent had moved into the First Respondent's offices by March 2004, it was clear from the evidence that the First and Second Respondents were still operating separately and neither had anything to do with each other's clients. In the whole circumstances the Tribunal found that the partnership commenced on 14th May 2004 and that accordingly the First and Second Respondents were operating their individual firms from November 2003 until May 2004 without professional indemnity insurance cover.

The Tribunal amended the start date in the averment of misconduct to 5th November 2003 as this is the date when the Interim Judicial Factor was discharged. Operating without proper indemnity insurance is clearly professional misconduct as has previously been held by the Tribunal in Currie 1997 JLSS 422. If solicitors continue in practice without professional indemnity insurance there is the risk of exposure to claims which cannot be met from the solicitor's personal resources. Given all the facts found in this case, the Tribunal views this as extremely serious.

In connection with Article 22 (Findings in Fact paragraph 6.75), the Complainers indicated that as the First Respondent did not charge a fee they would not be insisting on the allegations of professional misconduct. The Tribunal accordingly made no finding of professional misconduct in respect of this matter but despite this, the Tribunal had concerns about the First Respondent's behaviour in this regard.

Taking all the evidence together, the Tribunal considered that the First Respondent had failed to manage his clients' affairs, carry out work entrusted to him or respond to enquiries. He was clearly unable to manage his books and accounts as shown on a number of occasions. The First Respondent also clearly failed to have any insight into his problems as he continued in practice even after the Judicial Factor went in the first time. The Tribunal found some of the facts which came out in evidence to be extremely surprising, for example, the First Respondent not even knowing the password for access to his computer records and his continuing to operate a practice when he was not even there. The Tribunal also consider that the First Respondent's presentation of his case was repetitive, showed a total lack of preparation and was unnecessarily prolonged by his forcing evidence on matters which were not in dispute. The Second Respondent was subject to three inspections over a period of nine months

and despite matters being brought to his attention he failed to satisfactorily resolve these. There were then more problems when he went into partnership with the First Respondent. The Second Respondent focused much of his case on his belief that he suffered from oppression by the Law Society. The Tribunal carefully considered the Second Respondent's submissions in this regard but did not find them to have any merit. The Law Society's inspectors undertook inspections and found problems. In order to protect the public it was accordingly necessary for them to go back and re-inspect the Second Respondent's firm. This was not a case where the Law Society were doing inspections when it was not necessary. The Tribunal do not consider that there has been any evidence led before it with regard to any unfair practices by the Law Society. Even if the Tribunal had found any oppression by the Law Society this would not necessarily mean that the findings from the inspections would be illegal as is clear from the case of McNeill-v-McNeill 1929 SLT 251.

The First Respondent made submissions in respect of facts being found proved beyond reasonable doubt. There is no requirement for corroboration before the Discipline Tribunal and the Tribunal is well aware what proof beyond reasonable doubt means. For the avoidance of doubt, where there is a reference in these findings to the Tribunal being satisfied or to the facts being proved, this means that the Tribunal was satisfied beyond reasonable doubt or that the facts were proved beyond reasonable doubt. The Tribunal very carefully weighed all the evidence led before it and where the Tribunal was not satisfied beyond reasonable doubt the facts were found not to be proved.

Thereafter the case called on 9th October 2009. The Tribunal indicated that the Second Respondent's plea of oppression was repelled and the Tribunal issued written findings in fact and findings of professional misconduct to the parties. The Tribunal departed from the usual process of just verbally giving the findings of misconduct due to the long and complex nature of the case. The Tribunal considered it appropriate to give out written findings in fact and findings of misconduct to assist the First and Second Respondent in preparing their mitigation. The Chairman indicated that the findings may be subject to minor amendments when the final Decision of the Tribunal was issued. The Clerk clarified that the findings given out by the Tribunal did not include the Tribunal's reasoning which would be included in the Decision issued by the

Tribunal at the conclusion of the case. Ms Johnston lodged previous findings of professional misconduct against the First Respondent. The First Respondent indicated that the Tribunal had previously said that these findings were not relevant. The Chairman however clarified that the findings were not relevant in deciding the guilt of the First Respondent but were a matter which would be taken into account in considering penalty. The First Respondent pointed out that the matters in the previous findings should have been raised at the same time as the matters in the present case. He indicated however that he accepted that the findings related to him. It was clarified by the Tribunal that the Tribunal will always look at the dates involved when considering any previous findings of misconduct. The First Respondent stated that when the Tribunal made the previous findings all the circumstances with regard to his firm were not available.

The Chairman indicated that the Tribunal would allow the First and Second Respondent time to prepare their mitigation and requested that written pleas in mitigation together with any comments on expenses be lodged by parties with the Tribunal ten days prior to the next calling of the case on 24th November 2009. The Tribunal also requested that parties provide each other with a copy of any submissions. The First Respondent indicated that he had already said a lot in respect of mitigation and may not have much to add.

When the case called on 24th November 2009 the Tribunal heard submissions from the First and Second Respondents with regard to mitigation and heard submissions from all parties with regard to expenses.

SUBMISSIONS FOR THE SECOND RESPONDENT IN RESPECT OF MITIGATION AND EXPENSES

The Tribunal noted the written submissions from the Second Respondent in connection with mitigation and expenses which are referred to for their terms and held to be repeated herein brevitatis causa. The Second Respondent advised that he had nothing further to add as it was difficult to fully understand the Tribunal's Decision without having seen the Tribunal's reasoning. He indicated that he wished to have the door left open for him to return to practice in future. He pointed out however that in

view of his circumstances any application to do this would be subject to the discretion of the Law Society. He explained that he was semi retired but hoped to be able to contribute positively to society in the future. He advised of his financial position and said that given the time and the attention which the Tribunal had already given to its Decision there was no point in rehearsing the facts. He indicated that the issue of expenses was a matter for the discretion of the Tribunal and pointed out that the proceedings had been unusual in their length. He indicated that not all the averments had been upheld and also emphasised the practicality of paying expenses given the history of the Judicial Factor. He suggested that in the circumstances the Tribunal may find reason not to award expenses.

SUBMISSIONS FOR THE FIRST RESPONDENT IN CONNECTION WITH MITIGATION AND EXPENSES

The First Respondent referred to his written submissions on expenses which are referred to for their terms and held to be repeated herein brevitatis causa. The First Respondent stated that he had nothing further to add in respect of mitigation but advised that there had been a slight improvement in his medical condition recently but when he had been in practice damage had been caused to his health which was permanent. He indicated that it was doubtful that he would ever be able to work again and that he was presently receiving sickness benefits. In connection with expenses, he pointed out that he had met the Fiscal on two occasions to try and agree matters to shorten the procedure which had lead to a Joint Minute of Admissions. He indicated that it was not possible for any further issues to be agreed as they were in dispute.

SUBMISSIONS FROM THE COMPLAINERS IN CONNECTION WITH EXPENSES

Ms Johnston stated that she accepted that she had met with the Second Respondent at her offices to try and agree matters. She indicated that she had nothing further to add to her written submissions. These are referred to for their terms and held to be repeated herein brevitatis causa.

DECISION ON PENALTY

The Tribunal has already expressed its view on the Respondents' conduct in its decision on the misconduct. In connection with the First Respondent, the Tribunal noted the plea in mitigation advanced by the First Respondent as part of his original submissions. The Tribunal considered that he had been ill-advised to take over Murray & Co. It was clear from the evidence that after the takeover the situation at the First Respondent's office was one of disarray and confusion. A competent solicitor however would not have got himself into such a mess and would not have continued in practice with matters in such a state of chaos. The Tribunal considered it incredible that the First Respondent operated as a sole practitioner without knowing what a cashroom partner was and without being able to get access to his cash accounts because only his cashier had the password. The Tribunal was extremely concerned by the fact that there were so many matters that were brought to light by repeated inspections of the Law Society over a long period of time. The First Respondent did not seem to learn from his past mistakes. Each subsequent Law Society inspection brought to light offences of a similar nature to those which had been drawn to the First Respondent's attention at the previous inspection. The First Respondent repeatedly breached a number of the Accounts Rules both while as a sole practitioner and again when in partnership with the Second Respondent. He failed to have proper money laundering procedures in place. He also failed to protect the interests of lenders and clients by delay in recording deeds. The First Respondent also engaged in a persistent course of conduct of failing to respond to the Law Society and other firms of solicitors. The Tribunal noted the previous findings of misconduct against the First Respondent and although it was noted that these did not pre-date the matters which were the subject of the present complaint, the previous findings of misconduct against the First Respondent were further examples of his failure to respond and failure to comply with his professional obligations. The Tribunal was particularly concerned by the First Respondent operating from 1 November 2003 until May 2004 without professional indemnity insurance. This placed his clients at a huge risk over a prolonged period.

It appeared to the Tribunal that the First Respondent did not have the knowledge and competence to practice as a solicitor which led to a stream of mistakes. The Tribunal did not consider that the First Respondent was in any way dishonest or manipulative

but considered that the evidence had shown him to be hopelessly incompetent and to lack the core skills required to be a solicitor. It was the scale and repetitive nature of the breaches of the Accounts Rules and his continuing in the same manner despite advice from the Law Society that caused the Tribunal serious concern. The Tribunal also noted that the First Respondent did not seem to be prepared to take responsibility as he blamed his cashier, Mrs Murray and his health for a lot of his problems. The First Respondent did not provide any evidence with regard to his medical problems but the Tribunal noted that these were not disputed by the Complainers and accordingly accepted that the First Respondent did have medical difficulties. The First Respondent, however, as a solicitor had a responsibility not to continue in practice if he was unable to do so properly whether this be for health or other reasons. The Tribunal did not consider it appropriate to fine the First Respondent given his financial situation and did not consider that a restriction would be appropriate given the serious nature of the conduct and also given the danger to the public in allowing the First Respondent to continue as a solicitor. In the whole circumstances the Tribunal consider that the First Respondent is not a fit and proper person to be a solicitor and accordingly that the appropriate sanction in all the circumstances is to order that the First Respondent's name be struck from the Roll of Solicitors in Scotland.

In connection with the Second Respondent, the Tribunal was again concerned by the fact that there were repeated inspections over a long period and the same matters came to light time and time again despite the Second Respondent's failures being brought to his attention. The Tribunal was concerned by the serious, repeated and numerous failures of the Second Respondent who did not seem to learn from his mistakes. The Tribunal noted that the Second Respondent had employed staff but not put them through the books and had paid them in cash. This would result in his staff not having any protected rights. The Second Respondent also appeared to believe that it was acceptable to run his business without maintaining the books and accounts of his firm in such a fashion that the true financial position of the firm was shown and this caused the Tribunal extreme concern. The Second Respondent has shown an unwillingness to comply with the Rules of his professional body and seems to have devoted his attention to challenging the Law Society's interpretation of the Accounts Rules rather than trying to work with the Society to resolve the issues which had

arisen at the various inspections. He also failed to have proper money laundering procedures in place. The Second Respondent had numerous failings in respect of the way he ran his firm when he was a sole practitioner and these failures continued when he was practice with the First Respondent. He also failed to protect the interests of lenders and clients by delay in recording deeds. The transactions which caused the Complainers real concern at the inspection of the Practical Law Partnership were the Second Respondent's transactions. The Tribunal was also extremely concerned with regard the matter of the Second Respondent operating in business without professional indemnity insurance. The Tribunal had difficultly in understanding the Second Respondent's position with regard to this matter. The Tribunal considered that the Second Respondent should have realised the risks to which he was exposing his clients by operating without professional indemnity insurance. Again the Tribunal considered that a fine would not be appropriate and that a restriction would not be sufficient to protect the public as the level of supervision required would not be practical. Taking the findings of professional misconduct in cumulo the Tribunal consider that the Second Respondent was not a fit and proper person to be a solicitor and that in order to protect the public the Tribunal considers that the appropriate sanction in all the circumstances is to order that the Second Respondent's name be struck from the Roll of Solicitors in Scotland.

FINDINGS ON EXPENSES

The Tribunal accepted the submissions from the First and Second Respondents that they had been successful in having a number of matters deleted from the original Complaint. The Tribunal also considered that the Law Society's presentation of the case contributed to the overall length of the proceedings. In the circumstances the Tribunal reduced the First and Second Respondent's liability for expenses by 20%. However as the First and Second Respondent had both been found guilty of numerous findings of professional misconduct the Tribunal considered it appropriate that the Respondents pay 80% of the expenses of the Law Society and the Tribunal. The Tribunal noted that the previously issued Findings in respect of the debate and the day's hearing associated with that pertained only to the Second Respondent. However the Tribunal also considered that the First Respondent's case had taken more time than that of the Second Respondent and in some respects unnecessarily so and

accordingly considered that the First and Second Respondents should each pay half of the total expenses awarded against the Respondents. The Tribunal made the usual order with regard to publicity.

Vice Chairman

THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

LAW SOCIETY-V-JOHN ATUAHENE AND RICHARD THOMAS THORBURN

These are the submissions for the Complainers, the First Respondent and the Second Respondent which are referred to in the foregoing Findings.

Malcolm McPherson
Vice Chairman

SUBMISSIONS FOR THE COMPLAINERS

John Atuahene

Standard of Proof – it correctly stated that this should be beyond reasonable doubt.

Corroboration – As these are civil proceedings determinative of civil rights (The Law Society of Scotland v Hall 2002 SC 620) corroboration is not required.

Byrne v Ross 1992 SC 498 – Lord Hope @ 507 page 9 of document produced.

Peace v GTC for Scotland 2003 SC 299 – Lord Marnoch @ 303 page 6 of document produced.

Personal Bar – This was never pled and is not part of the case for consideration. Mr Atuahene did not insist on proceeding to argue the point after objection. The correction of errors is irrelevant.

The submissions contain elements of evidence which I do not have a recollection of hearing before. An example is the suggestion that the letters, which he initially admitted receiving from her in Answer, he now seems to suggest may have been delivered to the Judicial Factor after she took over.

Richard Thorburn

It is accepted that the reference to Mr Thorburn's business as a solicitor, a sole practitioner, within the averments should be as stated by him and seen on his headed notepaper throughout the productions. It is simply Richard Thorburn.

Practical Law Partnership

Comments re Richard Thorburn's submissions in relation to the Accounts Rules

Rule 6

The purpose of rule 6 is to ensure that unless a client has given his written authority, his money cannot be used for the benefit of another client.

Rule 6(1) then defines the circumstances where written authority is not required. In each case the payment is capable of being evidenced by some form of independent documentation such as an invoice, fee note or receipt. The Guidance to the Accounts Rules provides further clarification.

Rule 6(1)

What monies can be paid from the client bank account with out the clients' specific written authority?
Any sum due to be paid on behalf of the client where an account has been submitted to the solicitor for work instructed on behalf of a client or for a debt due to the solicitor or to transfer money into to a named client bank account to be held for the client or money paid in by the solicitor including sums paid into the account in error.

Rule 6(1)(d)
Does this include payment for fees?
Yes - provided the solicitor has carried out the work and raised note of fees due and sent it to the client will stop the amount of the should be charged to the client ledger and then an equivalent sum of money can be transferred to the firm's account.

The only exception being 6(1)(c), where the client authorises a payment. The Guidance again provides clarification recommending that written confirmation of verbal instructions should be obtained to evidence oral authority.

Rule 6(1)(c)
I see the Rule refers to money drawn on a client's authority. Does this have to be in writing?
Although the authority can be oral, written confirmation should be obtained to vouch that authority has been obtained. If questions are raised by the client at a later date, you will need this written authority to rely on.

There is no definition of "client" within the Solicitors (Scotland) Act 1980 or the Accounts Rules.

The Solicitors (Scotland) Practice Rules 1986 contains a definition of both "client" and "established client".

"client" includes prospective client;
"established client" means a person for whom a solicitor or his firm has acted on at least one previous occasion.

The Solicitors (Scotland)(Client Communication) Practice Rules 2005 contains a definition of "client".

"client" means a person who instructs a solicitor or to whom a solicitor tenders for business.

The Guidance to the Client Communications Rules provides further clarification.

"Client means any person who instructs a solicitor, which includes lenders as well as individual purchasers or borrowers."

A lender becomes a client of the firm as soon as a solicitor accepts its instructions. The use of the loan funds is dependent on the terms of the lending conditions being fulfilled. If the terms are not fulfilled then the solicitor does not have the lender's authority to utilise the funds. The lending conditions require various disclosures including that the full purchase price is not being passed i.e. that the solicitor does not have control over the payment of all of the purchase money. Some disclosures are required by the Council of Mortgage Lenders Handbook in which case written instruction to proceed is required once a report has been made.

Rule 7

Averment 14.3 refers to discrepancies in the purchase price paid. These discrepancies were identified because the full purchase price was not shown through the records. There is no suggestion that the full purchase price must be shown. The Respondent was asked for an explanation as to why the full purchase price was not shown as there may have been a simple reason such as a missing entry on the ledger. The fact that the full purchase price did not pass through the solicitor's hands is a matter that would require disclosure to the lender, as referred to under Rule 6 above.

Mr Thorburn appears to have misunderstood the point.

Rule 8

Rule 8 subsections (1), (2) and (3) refer to the records that must be kept in relation to client monies and payments made on behalf of a client whether paid from the client monies or not. In other words these sections deal mainly with the recording of client matters.

Rule 8(4) refers specifically to the true financial position of the practice. Whilst the overall position includes the records required in terms of Rule 8 subsections (1), (2) and (3), it deals mainly with the need to keep the firm records up to date so that the records show the true financial position.

If the dealings with client monies are not recorded correctly and kept up to date then the solicitor cannot show the true financial position of the firm. Equally if the firm records are not kept up to date, the true financial position cannot be shown.

The Guidance to the Accounts Rules provides further clarification in relation to Rule 8 generally and Rule 8(4) specifically.

> **Rule 8**
> *Do the Rules tell me what type of accounting records should be made and how much detail is needed?*
> Rule 8 is helpful on this point I - it explains the importance of separate records or firm and client business, separate records for each client and the need to keep cashbooks and ledger accounts fully up to date.

Rule 8(4)
How often do I have to write up my accounting records?
The books should be kept up date at all times, so work should be done every day. It is not helpful to write books up in arrears and if for reasons of illness or holidays the records are not written up each day, cover must be arranged.

Rule 8(4)
When do I have to balance my books?
The books must be balanced every month. This requires a trial balance to be prepared from both the firm's and client's day books and ledgers.

Mr Thorburn states that none of the criticisms which are made come within the ambit of Rule 8(4). It appears that he does not understand the rules. It also appears that he has taken no account of the Guidance to the Rules which is there to clarify matters particularly for people who do not understand the terminology.

Averment 24.23 (e) details those matters where reference is made to the firm’s records not being maintained correctly so that the true financial position is shown and to the failure to balance the books. These are breaches of Rule 8(4)(a) and 8(4)(b).

Averment 13.2 refers to writing up of books in arrears and differences on the firm’s trial balances. This means that the books and records were not being kept up to date nor did they show the true financial position of the firm. Both are breaches of Rule 8(4).

Averment 14.1 refers to books and records being in arrears and it not being possible to ascertain the current financial position. If the books are not kept up to date, a trial balance demonstrating the true financial position of the firm cannot be prepared. These are breaches of Rule 8(4).

Averment 14.2 refers to staff wages being paid in cash from personal drawings and no records being kept. If staff wages are not recorded nor the indebtedness of the firm to Mr Thorburn in respect of those wages, then the books and records do not show the true financial position of the firm. It also refers to the absence of any entries in the firm’s books and records for October 2003 meaning that the true financial position cannot be established. There are also references to differences on the Trial balances for three preceding months meaning that not only do the records not show the true financial position but also that the books were not balanced monthly. All are breaches of Rule 8(4).

Averment 16.1 refers to staff wages being paid in cash from personal drawings and no records being kept. If staff wages are not recorded nor the indebtedness of the firm to Mr Thorburn in respect of those wages, then the books and records do not show the true financial position of the firm. This is a

breach of Rule 8(4). It also refers to difference on the trial balance at December 2003 meaning that the books were not balanced at that month end, again a breach of Rule 8(4).

Averment 20.5 also refers to errors on the trial balance, entries for income, salaries and PAYE being omitted, VAT records not being up to date etc. All are breaches of Rule 8(4).

All the above specifically relate to Rule 8(4).

Rule 11

Rule 11 does allow for the solicitor to pay interest from his own money if he fails to place a client's funds in a separate interest bearing account held in the name of the client.

Averment 13.3 refers to balances held un-invested. Two balances have dates on which the funds were disbursed. Had the ledgers for these clients shown a sum in lieu of interest being credited then they would not have been raised in correspondence. In relation to these two matters, there is nothing to show that that a sum had been paid in lieu of interest. Therefore, it appears that there was a clear breach of Rule 11(1) in that the funds had not been placed into separate interest bearing accounts and a sum in lieu of interest had not been paid by the solicitor.

The other sums are balances that continued to be held un-invested. Again there was no indication on the ledgers that any sum had been credited in lieu of interest. Two balances had been held un-invested for a period in excess of a year without any payment of a sum in lieu of interest. All balances had been held un-invested in excess of five months.

Averment 14.4 refers to balances held un-invested. Some pre-date the previous inspection in May 2003. There was no evidence on the ledgers to show that any sums had been credited in lieu of interest. Some balances had been held in excess of a year.

Averment 16.2 refers to balances held un-invested. Two balances have dates on which funds were disbursed. Had the ledgers for these clients shown a sum in lieu of interest being credited then they would not have been raised in correspondence. It is clear that, in relation to these two matters, no attempt was made to place the funds in a separate interest bearing account or to pay a sum in lieu of interest.

The other ledgers showed balances that continued to be held un-invested. Again there was no indication on the ledgers that any sum had been credited in lieu of interest. In one instance that funds had been held un-invested for more than three years predating the two earlier inspections when the issue of interest had been raised.

Rule 19

Mr Thorburn appears to question the service of the notice. Rule 2(2) of the Accounts Rules does refer the Interpretation Act 1978 applying to the interpretation of the Rules.

Mr Thorburn has quoted Section 7 of the Act. This provides an interpretation of serving a document by post and when that service is deemed to be effected. However the interpretation states "…unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

The "contrary intention" Rule 19(5) "…and shall be deemed to have been received by the solicitor within forty-eight hours of the time of posting."

Ultra Vires argument

The Tribunal dealt with the only argument relating to this which was plead at the preliminary stage of the case. The result was that Mr Thorburn's plea was dismissed.

Oppression/admissibility

In relation to civil causes the law in Scotland has been liberal in allowing the admission of evidence irregularly obtained. Almost all evidence was admissible if relevant. This was a policy of the law to admit all evidence that would throw light on the disputed facts and enable justice to be done. This has altered through the years to the stage we are now at where the European Convention on Human Rights requires consideration.

MacNeill v MacNeill 1929 S.L.T. 251 – a Letter intercepted illegally in the mail, where the thief/pursuer served a prison term for the theft, ruled admissible.

Duke of Argyll v Duchess of Argyll 1962 S.L.T. (Notes) 42 – no absolute rule, depends on the circumstances of each case, fairness..and whether its admission will throw light on the disputed facts to permit justice to be done.

Martin v McGuiness 2003 S.L.T. 1136 - Whether the enquiries and surveillance were reasonable and proportionate steps for the defender to take in the course of investigating the case brought against him.

In this case I remain of the view that there has been no conduct by the Complainers which would amount to oppression.

SUBMISSIONS FOR THE COMPLAINERS

Article 14.0

Witness evidence

Sharon Brownlee Inspector – 1.3.07
Morag Newton – 4 and 5 1/3/07
Morna Grandison 19/6/07 and 6/9/07
Linda Lyall 6/9/07
Richard Thorburn 8/10/07 and 4/12/07

Productions
2.15, 2.16, 2.17 – 2.18 and 2.34

This is the inspection which Mr Thorburn states was unfair as it was conducted at a time when he had been ill with flu. He does not say that he did not have proper notice but maintains that there had been a change in attitude to him, that this inspector was hostile and seriously misrepresented the state of his accounting records at the time.

Article 14.1 Misconduct Article 24.23 (e)

Mr Thorburn accepts (Record, Answer 14.1) that at the time of the inspection he was still trying to obtain a balance as at 30.9.03, that everything was written up to the 30th September but he did not have a balance, which was not unusual, and he had deliberately chosen to concentrate on that. In his letter of 3rd December 2003 to Ms Newton (Production 2.15 – 2.16, containing no reference t the PLP) he advised that he had achieved balances for July and September and was very close to balancing the figures for October.

Article 14.2 Misconduct Article 24.23 (a) and (e)

He totally rejected the averment that it was not possible to ascertain the true financial position as in 14.1, which is an averment he has significant issues with. Ms Brownlee gave her evidence on 1.3.07 and stood by her report and her views as an experienced inspector. She did not accept any inappropriate behaviour or unfairness in her approach. She was cross examined in detail on that and did not flinch. She confirmed what he does not actually dispute, namely that there had been no record of entries for October 2003. (Article 14.2). She also stated that it was a substantial amount. Ms Newton was also cross examined on the need for the

Complainers to act fairly. She of course accepted that and pointed out that there is also a duty to look after the clients.

Mr Thorburn has on occasion sought to rely on the level of his surplus as a good indicator of the financial position. It is important to qualify that, as did Ms Newton, by the need to be able to rely on the figures. At this point in time that was not possible. In his cross examination of her Mr Thorburn asked about the writing up of entries. She indicated that the Complainers expected records to be written up on a daily basis. While it was correct that some practices had a cashier come in three times a week in his own case he was three weeks in arrears. She also pointed out that the insufficiency of the terms of his ledger narratives had been a common theme over a number of inspections to the extent that Inspectors could not follow what was happening on a reading of the ledger.

Mr Thorburn accepted (4.12.07 evidence in chief) that his system for dealing with his staff wages was not satisfactory and that he knew that he had to do the PAYE paperwork. He never did which he stated penalised him rather than anyone else and is not a breach of the rules. It is, I submit, an important issue for the true picture of the financial position of the firm. He also accepted that it was probably right that the trial balance had not been fully squared saying that on the whole his systems worked reasonably well but he didn’t manage to pick up errors. The suspense account matter he said was nit picking.

He denied the allegation that many entries were completed out of date and being backdated.He accepted the point about Client (30) but no other criticism of the ledger entries. He accepted the issues about the pencil balances in the cash book but Ms Newton confirmed that was not viewed as the most serious issue. I have notes from my cross examination of Mr Thorburn about the use of one ledger for multiple transactions suggesting he accepted that this was done when an existing client came back and mostly when the first transaction had been completed. He confirmed that he would not repeat himself in a ledger once he had identified a property. I do not see that as a sufficiently compliant system. It is a failure to keep adequate records.

Article 14.3 Misconduct article 24.23 (a) and (f)

In relation to Article 14.3 Mr Thorburn stated that the removal of the requirement under the old rule 7(g) meant that he did not have to record full details if he was not having full balances. This section is included as a breach of rule 8 in relation to insufficient information and discrepancies within purchase prices on clients’ ledgers. As can be seen here with the

clients Client (31), Client (34), and Client (36) that point is irrelevant. Two of the transactions as in the report have loans which pretty much cover the purchase price paid and in one case exceeds it while the loan papers show significantly higher purchase prices declared. In the Client (36) case the price seems to be too low to attract stamp duty. These are not accurate records.

In relation to the following he gave explanations about outstanding recording dues in his letter of 5.5.04 (Production 2.17 – 2.18) and in his oral evidence in chief and cross. There is also the Complainers reply of 27.5.04 in the same production and the Review Papers (Production 2.34)

- Client,(38) purchase of Property 20, 4 Flats, 8th June 2001, showed a credit of £132 on the ledger since 3rd July 2001 with no indication that recording dues had been paid.

- – Accepted in evidence as not recorded he said that the client drifted away having asked that he did not record the title right away. He accepted he should have chased him up. In his letter he did not mention that instruction and this matter was still outstanding at the review in December 2004.

  At this point the period is 8.6.01 to 20.10.03 - 2 years 4 months

- Client,(39) purchase of Property 50 on 24th July 2002, where the purchase price was paid to Client (40) on 24th July 2002 with Stamp Duty being paid on 30th July 2002 but no recording dues paid.-

- - This was a purchase for a person who was acting as an intermediary because the ultimate purchaser could not buy direct. Mr Thorburn says he paid the stamp duty but passed the title on to Client 40 for use as a link in title for the ultimate purchaser. At the review it was noted as outstanding as the Complainers were seeking confirmation that all deeds were recorded. I do not see that this is proved.

- Clients, (41) purchase of Property 21 on 16th January 2003 with a Royal Bank loan of £34,175 where a credit of £110 remained on the ledger with no indication that recording dues had been paid.

  -In evidence he indicated that this was a case where he purchased four properties for the client and sold two or three quickly and this may be one where it was sold without the title being registered in the client's name. In his letter of 5.5.04 (Production 2.17 – 2.18) he

states that the form 4 is attached which it wasn't according to the reply of 27.5.04. It remained outstanding at the review.

This is a property purchased on 16.1.03 with a loan and the amount sitting seems in accordance with the recording dues due to be paid. On that basis I submit that the Tribunal can hold that at the date of this inspection the true position was that the title was due to be registered but it had not been done.

The period is 16.1.03 to 20.10.03 – 9 months.

- Client,(25) purchase of Property 22, Flats 2/1 and 2/2, for £75,000 each on 24th December 2002 where the Stamp Duty for both flats was not thereafter paid until 3rd July 2003 and there was no indication that the recording dues had been paid. In relation to the purchase of Property 51 on 4th July 2003 for the same client, the Stamp Duty was paid on 24th July 2003 with no indication that recording dues had been paid.

  - He advised that this was another link in title matter. He accepted in evidence that he delayed the stamping not noticing the error until in January the purchasers' solicitor called up frantic.
  - The delay in stamping had no justification and I submit is proved.
    The period is 24.12.02 to 3.7.03 – almost 7 months.
  - The Property 52 matter is not proved.

- Client,(42) sale of Property 23 on 15th August 2003 where £41,842.30 was paid to Client (43) on 15th August 2003 to redeem the mortgage outstanding on the property. The ledger disclosed a credit balance of £66 and no indication that the discharge had been recorded.

  - In evidence he said this was a case where he took over agency due to a dispute. The cheque was another agent's and if he did not register the discharge it was because it was the other agent to register. In his letter he said the form 4 was attached which it wasn't.
  - I have it noted on my papers that it was registered 18.4.05.
    The period is 15.8.03 to 18.4.05 – 1 year 8 months.

- Client (44) in the sale of Property 16, on 12th June 2003, where the Bank of Scotland loan was redeemed but there was no indication that the discharge had been recorded. Stamp Duty of £1,310 had been paid where the property was being sold not purchased.

-In his letter he stated that the stamp duty was paid when it was sold on. In his evidence he explained that it was possibly a situation where the registration was only to be in the land register at a time when they did not charge a fee for that. This issue was still outstanding at review. I do not see this has been proved.

- Client (45) purchase of 4 properties, Property 24 on 20th October 2000, Property 25 on 20th October 2000, Property 26 on 1st November 2000 and 3rd Property 27 on 6th November 2000 where the recording dues were not paid until 31st July 2003.

  -In his letter he indicated that this was an oversight and was rectified later when a property was sold on. In his evidence he said he was not going to say it was not an oversight. This was still outstanding at review. Two are from 20.10.00, one from 1.11.00, one from 6.11.00 all to 31.7.03 – nearly 3 years.

- Clients (46) in the re-mortgage of Property 28 on 4th July 2003 with a Natwest loan of £212,470 where the redemption of £69,321.43 was paid to the Yorkshire Building Society on 22nd July 2003 and no evidence was shown that either the Standard Security or the discharge had been recorded.

  - In his letter he says "to follow" which I take to mean the form 4. In evidence he agreed it was not done but for a good reason as it needed a ranking agreement done. This was still outstanding at the review.

    The period is 4.7.03 to 20.10.03 – 3 months.

- Client (33) sale of Property 17 on 18th July 2003 to Client (31), where the loan from the Allied Irish Bank was redeemed on 18th July 2003 but there was no evidence shown that the discharge had been recorded.

  -In his letter he says the form 4 was enclosed but it wasn't. In his evidence he stated that there was nothing untoward here and if it was to be registered it was. This is the other client where he acted in the sale to that client and I have it noted that the discharge was registered on 18.4.05 in the review papers.
  The period is 18.7.03 to 18.4.05 almost 2 years although he was suspended prior to this.

- Client (47) purchase of Property 53 with a Halifax loan on 25th September 2003 where there was a credit of £132 on the client's ledger and no evidence of the registration of the deed or security.

  -In his letter he says the form 4 is enclosed but it wasn't. In evidence he adopted the same position as for (33) and pointed out that the records for October had not been updated at the time of the inspection. He was sure the ledgers would show it going through in October 2003. It was still outstanding at the time of the review. I do not see this has been proved.

Article 14.4 Misconduct 24.23 (a) and (c)

The issue of credit balances had been highlighted to Mr Thorburn before and his evidence is that it was easier to keep the money in one account than do quarterly reconciliations. In his evidence he pointed out that half of these came from the September/Agust 2003 periods and his records had not been written up for October. Again I point out that this is evidence of his failure to keep accurate books. He also stated that some of the funds held were well within the two month period. He seemed to see that as the measure while the complainers view was that the amount had to be considered when looking at reasonableness, (Ms Newton in cross by Mr Thorburn).
His letter of May 2004 referred to above also deals with this section.

A significant number of client credit balances were noted that should have been either disbursed timeously or invested.

- Client (34) £720.96 9th September 2003 to date of inspection

  - In his letter he says Client 34 agreed he could hold the money.

- Client (49) £35,000 24th September 2003 to date of inspection

  - In his letter he says this was paid out in a purchase on 6.10.03.

- Client (50) £209,363.24 24th September 2003 to date of inspection

  - In his letter he says this was paid out in a discharge of a loan on 6.10.03.

- Client (51) £807.38 6th June 2003 to date of inspection

  - In his letter he says this was mostly common charges and fees.

- Client (52) £681.07 11th April 2003 to date of inspection

  - In his letter he says this was an error relating to the need to pay stamp duty and was repaid with interest.

- Client (53) £2,160.50 25th September 2003 to date of inspection

  - In his letter he says this was an error in stamp duty and also some fees. It was paid back to the client on 28.10.03 with interest.

- Clients (54) £985 23rd September 2003 to date of inspection

  - In his letter he says this was held due to a dispute and is still held in May 2004. He undertakes to lodge it in a designated account. Interest has been applied.

- Client (55) £665.36 31st October 2002 to date of inspection

  - In his letter he says this was due to a cheque not being cashed and he will credit interest.

- Client (56) £625 9th August 2003 to date of inspection

  - In his letter he says this was registration dues and charges.

- Client (57) £2,372.43 19th December to date of inspection

  - In his letter he says this client died and the funds were paid out to his estate on 30.10.03. The narrative should make it clear that the December referred to was 2002.

- Client (12) £855 10th September 2002 to date of inspection

  - In his letter he says this was an error relating to stamp duty being payable and has been refunded to the client with interest.

- Client (13) £4,661.01 27th August 2002 to date of inspection

- In his letter he is silent on this which is still a balance at the February 2004 inspection (Production 2.17 – 2.18).

- Client (58) £20,338.77 24th Setepmber 2003 to date of inspection

  - In his letter he says this was remitted on the completion of the purchase on 2.10.03.

- Client (59) £2,734.08 17th September 2003 to date of inspection

  - In his letter he says he encloses copy ledger but gives no explanation.

- Client (60) £978.30 25th July 2003 to date of inspection

  - In his letter he says this related to interim fees and he is issuing an interim fee note.

- Client (61) £70,081.73 26th September 2003 to date of inspection

  - In his letter he says this was paid out after sale to client on 2.10.03.

- Client (62) £1,062.63 8th August 2003 to date of inspection

  - In his letter he says this was held on the client's instructions, less £158.65, and he still held £903 to which he would apply interest.

- (63)R Saeed £1,148.71 9th July 2003 to date of inspection

  - In his letter he says this was partly for some outlays and once those were known he would apply interest.

- Client (30) £2,078 Unknown (no ledger dates) to date of inspection
-
  - In his letter he says this was stamp duty received 5.9.03 and paid out on 5.9.03.

The above issues were not dealt with Mr Thorburn on any reasonable basis. It was mostly done after prompting from the Complainers where the issue was not one of a failure to keep the records up to date.

In relation to the following his position remained as stated previously in connection with Rule 6. He accepted that the matter of Clients (46) and their son Client (72) did fall within the ambit of the rule. He indicated that there was no way that he would have done this without written authority in his evidence. His position in his letter was that the authority was to follow. While he did state that authorities were enclosed on some matters the reply of 27.5.04 makes it clear that there were none. The review papers does not actually refer to the Client 46 & Client 72 issue as it takes the information, according to Linda Lyall, from the correspondence and it looks like this matter has dropped out of that.

Client's written authority was not provided for payments made

Client (64)

- 4th June 2003 Financial Tactics £6,000 (24)
- 4th June 2003 Client 65 £7,900 (65)
- 4th June 2003 Client 66 £4,100 (66)
- 12th June 2003 Client 67 £10,000 (67)
- 17th Sept 2003 Client 67 £12,000

Client (37)

- 3rd July 2003 Client 68 £48,275 (68)

Client (69)

- 17th Sept 2003 Client 70 £3,235.77 (70)
- 17th Sept 2003 Client 71 £300 (71)

Clients (46)

- 9th July 2003 Client 72 £143,078.57 (72)

Article 14.5 Misconduct 24.23 (d)

I submit that this is the same situation as previously identified and does not demonstrate a proper system of compliance. In the letter to him of the 27.5.04 it is explained again, she says reminded, that he requires documentation about identification and why it is important. It is also agreed that if the cheque is drawn on the client's own bank there is no need to check it. This is qualified by the need to record that information to show that he has considered the position.

Of the clients referred to for lack of ID he says in his letter of 5.5.04 that (73) was a longstanding client for whom he had acted in several transactions and for whom he could vouch; (74) which I will call (74a) as he makes it clear there are two separate people of that name in his letter, he had earlier Id supplemented by his own

knowledge; (75) his employee he had known for several years as a friend also and she had introduced (53) as a long standing friend; (76) was obtained at the earliest transaction and copies would be provided. The evidence from the inspector was that there was no detail on the file and this is not compliant with the requirements of Rule 24.

14.5

Inadequate procedures to comply with the Moneylaundering provisions continued to be a cause of concern. There appeared to be either no identification or no reasons noted as to why identification was unnecessary in respect of the clients Client (73), Client (74), Client (53) Client (75) and Client (76). Insufficient details were produced to show the source of funds received for clients or verification of that source. In particular, for the clients

- Client (73) £11,000 received on 15th May 2003
- Client (74) £23,125 received on 11th April 2003
- Client (53) /Client (75) £10,000, £12,000 and £6,760.50 all received on 25thSeptember 2003
- Client (77) £59,320 received on 6th May 2003 and £12,432.50 received on 11th Sept 2003
- Client (78) £56,500 received on 18th July 2003 and £35,000 received on 24th Sept 2003.

In relation to the source of funds all of the above plus some more payments remain at the time of the next inspection in February 2004. His procedures were not there. This is a breach of Rule 24.

Article 16

Witness evidence

Fiona McLeary Inspector – 2.3.07
Leslie Cumming – day 2 and 3 7/11/06
Morag Newton – 4 and 5 1/3/07
Morna Grandison 19/6/07 and 6/9/07
Linda Lyall 6/9/07
Richard Thorburn 8/10/07 and 4/12/07
Productions

2.17 - 2.18, and 2.34

In relation to this inspection Ms McLeary spoke to the terms of her confidential report at page three of the report on the inspection. Within that are recorded details of Mr Thorburn's position on a number of important issues as given to her. He accepts he could not reply to the earlier correspondence of the Complainers. He states that the intended commencement date of the PLP is the 1.3.04 and what the insurance position was. She was clear in evidence in chief that he told her what is recorded there.

His cross examination of Ms McLeary sought to elicit her views on proceeding with an inspection when a solicitor was ill. She stated that it depended on circumstances and whether it was a serious illness or heart attack. This seems to be looking to the issue of fairness/oppression in relation to other inspections. He did not seek to suggest there was any such problem with this one. In his evidence he confirmed that this inspector was helpful to him.

In relation to the application of Rule 11 he put to her that it was his practice to apply interest and asked if she saw instances of that. She had not and thought that would have been seen and noted by the previous inspector if it was the case.

He challenged her in relation to the clarity of his ledgers. She was unshakeable on her position that in many of the cases it was not possible to tell what a transaction was about. She agreed with the proposition that ledgers may have included multiple transactions but stated that you still had to be able to tell what was going on, what the entries were about and that the specifics were in the letter. Mr Thorburn put it to her that with care and if took time what was happening could be worked out. She did not accept that.

Article 16.1 Misconduct 24.23 (e)

The inspectors returned on 17th February 2004. The staff wages continued to be paid in cash from personal drawing and no records were being kept. All records for the firm were squared up to 30th November 2003, the trial balance at 31st December 2003 had a difference in it and only the bank reconciliations had been prepared for 31st January 2004. The inspectors identified the difference in the trial balance and the inspection was carried out using 31st December 2003 as the date. By the last day of the inspection, the month end for January had been squared and postings had been completed up to 12th February 2004. Intimation had been given by the Second Respondent that the firm of Richard Thorburn ceased as at 31st October 2003. The records disclosed that that was not the case and that it continued to trade. A bank

error resulted in an apparent deficit on 31st December 2003 for £27,246.31 on the client account. The suspense account retained the credit balance of £139.34 which had not been dealt with. The entries in the cash book, trial balance, client balances and client ledgers continued to be made in pencil and not in permanent form. Two errors made by the bank were not identified due to poor record keeping procedures, namely the under-debiting of a cheque for £99,000 shown as £990 and a duplicate CHAPS payment made by the bank on 2nd December 2003.

The above statements about the wages position, the records and balances are not in dispute. In his Answer Mr Thorburn confirmed that "The assistance of the inspector in identifying the difference in the Trial Balance for December 2003 was appreciated and allowed me to obtain a balance for the month of January 2004 while the inspection proceeded."
The issue of the cessation of the firm is noted here again as seen by this inspector. It remains in dispute.
The pencil entries are not insisted upon.
The errors are accepted by him but his position is that to hold him responsible is unfair. This is a record keeping issue and he has stated that he received bank statements twice a month.

Article 16.2 Misconduct 24.23 (a) and (c)

The client records for the firm remained incomplete and inaccurate. Various balances were held for periods where it would be considered that they should have been invested to earn interest for the client. For example,

- Client (31) £75,404.19 from 20th November 2003 to 19th December 2003

In evidence he agreed that this was in the account longer than normal but it was only one month. In his letter 5.5.04 he indicated that it had more complicated circumstances because of the outstanding debit balance but undertook to consult with the client and agree a final reconciliation.

- Client (79) £500.00 since 29th October 2003

He made no comment in evidence. In his letter he undertook to reduce fees.

- Client (80) £52,415.00 from 24th November 2003 to 19th January 2004

In evidence he advised that this was a matrimonial case that dragged on and that he paid interest. In his letter he undertook to reduce fees.

- Client (81) £10,810.50 from 6th October 2003 to date of inspection

He made no comment in evidence. In his letter he undertook to reduce fees.

- Client (64) £9,000.00 from 17th December 2003 to date of inspection

He made no comment in evidence. In his letter he said credited interest.

- Client (82) £1,486.00 from 25th November 2003 to date of inspection

He made no comment in evidence. In his letter he undertook to reduce fees.

- Client (83) £4,000.00 from 27th October 2003 to date of inspection

He made no comment in evidence. In his letter he said reduced fees accordingly.

- Client (13) £4,666.01 from 27th August 2000 to date of inspection

This is the same as in the prior inspection Article 14.4. In his letter he said credited interest.

- Client (84) £79,582.08 from 13th January 2004 to date of inspection

He made no comment in evidence. In his letter he undertook to reduce fees.

- Client (85) £16,750.00 from 9th January 2004 to date of inspection

He made no comment in evidence. In his letter he undertook to reduce fees.

Article 16.3 Misconduct 24.23 (f)

A number of instances were noted where the registration of deeds was still outstanding or had been late.

- The Disposition for 4 flats bought at Property 20 for the client (38) in June 2001 remained unregistered,

In evidence he confirmed that this remained the position as at Article 14.3 from October 2003. It was still outstanding at review. It is now a period from 20.10.03 to 17.2.04 – 2 years 8 months.

- he purchase of Property 29 for Client (86) on 11th December 2003 with a mortgage with Preferred Mortgages,

In his letter he said the Form 4 was to follow. In review it was still outstanding. The period is 11.12.03 to 17.2.04 – three months. It would have to be concluded that it was not done as not produced.

- the sale of Property 23 for the Client (87) which settled on 15th August 2003 with a Abbey National Loans being redeemed,

This is the same as itemised at the previous inspection as (42) and the evidence is as in 14.3 where my note is registered on 18.4.05.

- the sale of property for the Client (33) in July 2003 with a discharge of a loan from the Allied Irish Bank,

The evidence is as in 14.3 where my note is registered on 18.4.05.

the purchase of a property for the client Client (88) in September 2003 with the assistance of a loan from the Halifax plc and

In his letter he says the form 4 is to follow and notes this is a duplication with (93) further on in this Article which is correct. It was outstanding at the review.

- the sale of Property 30 for the Client (89) which settled in November 2003 with a redemption of a Preferred Mortgages loan had no evidence of the registration of the relevant deeds.

In his letter he says enclosed but it wasn't and was outstanding at the review.

- The discharge of the Royal Bank of Scotland loan redeemed on 12th December 2003 for the Client (90),

In his letter he said enclosed with the ledger but neither were there. Still outstanding at the review.

- the discharge for the Northern Rock Building Society loan redeemed on 12th December 2003 for the Client (91) and

In evidence he said that this lady worked for him briefly and her father was a client. She sold to her father when she was short of cash and the

property was being done up. That was why the discharge was not recorded for some time. In his letter he said that there had been a family agreement not to register. This was still outstanding at review. The period is 12.12.03 to 17.2.04 – 3 months.

- the discharge for the loan from the Abbey National redeemed on 7th November 2003 for the Client (92) were unregistered.

In his letter he said enclosed with the ledger but neither were there. Still outstanding at the review.

- The Disposition and Standard Security in favour of the Halifax plc for the purchase of Property 31 on 5th September 2003 for the Client (93) was unregistered and

I accept this was a duplication.

- the Disposition and Standard Security for the purchase of the first floor flat at Property 32 which settled in October 2003 for the Client (94) were unregistered.

In his letter he said the form 4 was enclosed which it was not. In his evidence he gave an explanation about his client buying two properties at the same address and reselling them. He thought this was the second one and said there was no need to register as the security and the discharge were available at the same time. This appears to have left the lender unsecured. I have it noted on the review papers that it was registered on 1.9.06 which was long after his suspension.

Article 16.4 Misconduct 24.23 (a) and (d)

The previously raised issued regarding outstanding recording dues and delay in sending deeds for recording as above condescended upon had not been resolved and the position appeared to be the same. The remaining issues regarding the money laundering regulations as above condescended upon remained outstanding. No steps had been taken to amend the insufficient narrative in the clients' ledgers above condescended upon. Identification of properties on the ledgers remained difficult and in some cases, impossible.

This was spoken to by the inspector who had the outstanding paperwork from the prior inspection and incorporated that into her report.

Article 17.0 John Atuahene

I have made additional notes on this Article from my Submissions first lodged. Mr Atuahene referred to his letter of 4.6.03 which was produced within my Production 2.19 - 2.20. This also has the response from the Complainers.

Article 17.3 Misconduct 24.25 (a), (b) and (e)

Specific matters were drawn to the First Respondent's attention.

> Mr Atuahene agreed that these matters were brought to his attention. He gave evidence on 17/4/08 that the system for cheques was that he had a junior keep a book.
>
> This book contained the details of cheques written and received.

A payment of £16,000 was made to the Client (95) on 1st January 2003 but the sale proceeds received for him from Client (96) on that date amounted to only £1,400 and a further payment of £12,600 was not received until 9th January 2003 with the balance on 13th January 2003.

> Admitted by Mr Atuahene.
> His explanation in evidence was that the letter which came from Client 96 was wrong. The paralegal put the figure of £14,000 on the posting slip which was what the letter said and he confirmed that the error was not identified until the inspection when it was immediately rectified.
> In his letter of 4.6.03 he advised that this was an error and he assumed that the figure and the written amount were different.

The property at Property 33 was paid for on 31st January 2003 on behalf of the Client (97) while funds were not received until 16th February 2003.

> A posting error.
> In his evidence Mr Atuahene said that the funds were in fact received on the 3rd of February 2003, the entry saying 16th was a posting error. He had issued the cheque to be held as undelivered. This corresponds with his written explanation at the time. It remains an error nevertheless.

A client account with the Royal Bank of Scotland was closed on 6th January 2003 but was shown in the trial balance records as overdrawn. The funds control was £106,912.12 but the invested funds print out stated £70,171.16,

the balance for the Client (98) being understated by £36,760.36. Funds were held for periods without reason such as for the Client (99) in the purchase of Property 49 on 27th February 2003 and there were many uninvested client credit balances of over £500 held since November 2002. Two instances were noted where fees had been taken prior to the fee notes being rendered.

Admitted by Mr Atuahene.
In relation to the RBS account he accepted the position in his letter and advised that it had been amended.
The issue for Client (98) was, he said, a system error with Soroba which the interim Judicial Factor and the new cashier were able to resolve. In his letter he stated this position and advised that the further details would be sent on. He was asked to produce confirmation of the error from the software advisor and also forward a copy of the invested funds report.
In relation to Client (99) this was an error but it was rectified. This was his position in his letter with which he copied the print out from the computer. The complainers replied to the effect that they still could not tell what the true position was. It was not possible to say if the original error had been that no funds were received or if in fact the funds had been returned to the client.
It is stated that there were many uninvested balances but they are not specified here as a breach of the rule. It is evidence that he was alerted to the issue at an early stage.
He agreed that there were instances where the fee notes were not dealt with properly. This is not included in any allegation of misconduct.

In many cases, it was noted that identification was not seen to comply with the money laundering regulations and the source of incoming funds was not adequately recorded.

In his letter Mr Atuahene advised the complainers that this issue had now been addressed and he had "now" provided a written procedure to be followed. He enclosed a copy and the enclosure is acknowledged by the Complainers. It seems clear that at this point he had no written procedures.

Article 17.4 **Misconduct 24.25 (d)**

In relation to the allegations of late payment of Stamp duty, late or no recording of deeds Mr Atuahene advised the Tribunal that he had a procedure. He said there were some delays which were

justifiable. The system he had in place was that the paralegal had a diary and he had a mirror diary of that. He had days for settlements and days for registering.

Article 17.4

Property 8 was sold on behalf Client (100) with 2 Bank of Scotland loans redeemed on 13th November and 19th November 2002,

In his letter Mr Atuahene advised that the discharge was registered on 10.4.03 and encloses the Form 4. This is acknowledged by the Complainers as received.
The delay is not further explained.
It is 13.11.02 and 19.11.02 to the 10.4.03 a period of about 5 months.

a property in Property 34 was sold on behalf of the client Client (101) and the Yorkshire Building Society loan redeemed on 19th March 2003 although the sale proceeds were not received until 25th March 2003,

In his letter he gives a lengthy explanation about the discharge and says there has been a posting error. I have the delay noted as one month. Not unreasonable.

repayment of a mortgage in respect of the property at Property 6 on behalf of Client (102) was made to the Kensington Mortgage Company on 27th January 2003,

Mr Atuahene produced at his Fourth Inventory 4/1 a-c details of this transaction. In evidence he said that the lender must have lost the cheque. That would of course mean that he still held the balance in his records. In his letter he accepts that payment was made on that date and explains that the lender did not forward the discharge. He contacted them on 2.4.03 at which time they claimed not to have received the cheque and were looking for further interest. He enclosed the form 4 which the complainers acknowledged. It was dated 13.5.03.
The period is 27.1.03 to 13.5.03 over three months and it was over two months before he checked the position.

a loan in respect of Property 7 was redeemed on behalf of the Client (103) in about November 2002 it appeared that the deeds in these transactions had not been registered.

This is an error in his accounting system and I am not seeking to argue delay.

The purchase of Property 10 on 6th February 2003 on behalf of the Client (104) showed a long delay in the stamping and recording of the Disposition as the client instructed the firm to transfer the title to his son. All relevant deeds were available to do that but no action had been taken.

In his evidence and in his letter he accepted delay with this transaction. He explained that the registration had been suspended because the client wanted title taken in his son's name. He was asked by Mr MacKinnon if it was only done because it had been brought to his attention. He initially said no but then said that it had been done when brought to his attention. He enclosed with his letter a form 4 dated 12.5.03 which was acknowledged by the complainers.
The period is 6.2.03 to 12.5.03 just over three months.

In relation to the purchase of Property 12 on 10th February 2003 for the Client (105), the Disposition and Standard Security for the Clydesdale Bank loan were not recorded and the Disposition had not been stamped.

Again Mr Atuahene accepted delay here. In his letter he advised that the Disposition had "now" been sent for stamping. In his evidence he maintained that the first disposition had not been received by him but that was never mentioned to the complainers.
The period involved is 10.2.03 to June 2003
This effectively left the purchaser with no title and the lender unsecured for over four months.

In relation to the purchase of Property 54 on 15th November 2002 for the Client (106), no Stamp Duty appeared to have been paid although the deeds were recorded.

As mentioned by Mr Atuahene in evidence I cannot se this covered in his letter. I have looked at the documentation and evidence as I have it noted and do not insist on this.

In relation to the purchase of Property 13 on 8th January 2003 for the Client (107), the source of the opening credit balance of £20,000 was not shown, no deeds were recorded and the £30,000 received on 6th January 2003 was erroneously lodged into the firm bank account and not corrected until 8th January 2003.

In his evidence he said he did not accept this averment. He did accept that it was a posting error and that funds were mistakenly paid into the firm account. In his letter no form 4 was enclosed. I can find no evidence other than that this supports the allegation of misconduct at Article 24.25 (a).

Article 18.0

Witness evidence

Margaret Playfair Inspector – 2.3.07
Morag Newton – 4 and 5 1/3/07
Morna Grandison 19/6/07 and 6/9/07
Linda Lyall 6/9/07
John Atuahene 27.5.08

Productions
2.21 – 2.23, 2.24 - 2.26 and 2.34
Ist Respondent's First Inventory
Ist Respondent's Third Inventory
Ist Respondent's Fourth Inventory
This was the special Inspection arranged to ascertain the actual position as stated by Mrs Playfair in her Report. The Complainers had been aware there was no longer a Judicial Factor and had been told that the firm was ceasing. The evidence given by Mr Atuahene in this and the following section was at times clearer in that he addressed the elements of the Complaint which he was referring to. At other stages it was confused and contradictory. I again ask the Tribunal to be cautious about his evidence. It will be remembered that he agreed he had made the errors then contradicted that and the end position seemed to be that he accepted they were made but the Complainers were barred from pleading them as evidence of misconduct as he rectified them. Even there he was unreliable, at first they were rectified within days, this stretched out to much longer when it was put to him by Mr Irvine that the Compliners were saying they had not been. He was referred to the bits in bold in the letter dated 1.3.04. At that Mr Atuahene said the resolution was an ongoing process. Mr Mackinnon pointed out that two hours earlier he had said within a few short days but now it was ongoing.

Article 18.1 Misconduct 24.25 (c)

The interim judicial factor had maintained the firm and client records up to 31st October 2003, the financial year end. The First Respondent then took over, keeping his records from that date. On 17th February 2004 the inspectors returned. The records produced were stated as reconciled to 30th November 2003. They had not been reconciled to 31st December 2003. No postings had been made in 2004. The November reconciliations had been carried out only a few days before 17th February 2004 and the December postings throughout the night over a 13 hour period from 16th to 17th February 2004. It was impossible to ascertain the true financial position of the Firm. There appeared to be a £200,000 shortage as at 31st December 2003 but the postings could not be relied upon as the First Respondent still did not know how to use the computer system. A check on larger balances by the inspectors reduced the discrepancy. At the end of the inspection, while summing up with the First Respondent, he became distressed, broke down and was unable to continue with the meeting.

> Mr Atuahene accepted this in cross examination.

Article 18.2 Misconduct 24.25 (a)

After the inspection, the First Respondent tried to resolve the situation and corresponded with the Complainers. His Client balances were inaccurate showing the balance for the Client (108) at £47,010.19 to credit instead of £70 to credit from 15th December 2003, the balance for Client (109) at £46,940.19 credit when it should have been nil from 12th December 2003, the balance for the Client (110) at £20,083.51 in credit when it should have been £258.79 in credit from 15th December 2003 and the balance for the Client (111) at £1,678.04 in credit when it should have been nil from 18th December 2003. Debit entries were in some cases posted as credit entries. A cheque issued on 8th December 2003 on the account of the Client (112) was omitted leaving an apparent credit balance of £93,000 which should have been nil from 8th December.

> Apart from the first line which has to have been a misunderstanding Mr Atuahene accepted this in cross examination.

Article 18.3 Misconduct 24.25 (c)

The firm trial balance as at 30th November 2003 did not show the true financial position of the firm. A Murray & Co client account appeared to have a deficit of £123.30. A firm loan account at £238,319.55 had not been reconciled and payments towards this loan had not been deducted due to insufficient funds in the firm bank account. The true figure as at 30th November 2003 should have been in the region of £248,300. The VAT return for 31st October 2003 was still held and unpaid showing a remittance due of £2,589.53. The trial balance showed negative income during the month of November 2003 but the fee note file and fee note book showed that some fees were received in the region of £1,560 net of VAT. The firm's liabilities

appeared to be in excess of £385,000 and the bank had stopped honouring most firm account payments.

Mr Atuahene accepted this in cross examination.

The following have to be viewed against a background of his inaccurate records. There are some rectified records available for reference. The lack of reconciliation is not in dispute. The invested balance issues are. I will note what is accepted. His practice as given in evidence was that if he had money to invest and the clients were Moslems he would very likely phone them up and ask them about investing. He had agreed with Mrs Playfair at the time that he would credit interest but for various reasons his view had changed.

Article 18.4 Misconduct 24.25 (a) and (b)

The client bank account had not been reconciled for December 2003 or January 2004. There were a number of uncleared cheques. There were a number of credit balances in excess of £500 which were held uninvested,

- Clients (113) £14,829.52 from about 5th December 2003 to date of inspection

  In evidence he said that these clients were Muslim and did not want interest. The detail can be seen in the rectified record of the ledger Ist Resp 3/1. The true position was that £14,121.02 was held from 18.2.04 to 3.3.04. The period is 12 days.

- Client (114) £2,695.00 from 12th November 2003 to date of inspection

The rectified ledger is Ist Resp 3/2 which shows the true position to be £26,950 held from 12.11.03 to 17.2.04.

- Client (115) £1,050.00 from 10th November 2003 to date of inspection

No breach.

- Client (116) £1,022.25 from 3rd November 2003 to date of inspection

No breach.

- Client (116) £108.22 b/f 8th November 2002 to date of inspection

No breach.

- Client (117) £5,000.00 from 10th December 2002 to date of inspection

This was amended to read 2003 to the date of the inspection 17.2.04. In hisevidence he maintained that as he had immediate outlays to pay and it was paid out within two months it was not a breach. In Ist Resp Inventory 3/5 the rectified record shows the time held to be from 31.12.03 to 24.1.04 a period of 24 days.

- Client (118) £15,000.00 from 18th November 2003 to date of inspection

Here the rectified record is Ist Resp Inventory 3/6. I have a note that says not disputed VJ 27.5.08. In his letter of 21.4.04 he indicated that the cheque had not been cashed and was returned by the payee and then the funds were invested.

- Client (119) £825.00 from 24th November 2003 to date of inspection

No breach.

Others could not be verified due to lack of printouts

- Client (120) r £7,172.17 Print out required
- Client (121) £4,166.22 Print out required
- Client (122) £12,316.46 Print out required
- Client (123) £2,638.00 Print out required

This was narrative to be followed on in the next inspection. Mr Atuahene said that he could not understand it as the computer was there and the print outs were easy to get.

Three cheques paid to banks or building societies had not been designated and two others were designated at the bottom of the cheque. A payment due to the Q& LTR remained unpaid since the previous inspection. The account certificate produced to 30th November 2003 showed the wrong figure for client balances. If it had been recorded correctly, it would have produced a deficit. The due to firm section did not include a GLG bank account of £1,090. The due by the firm section showed the same bank overdraft figure at both dates which was incorrect.

In relation to the accuracy Mr Atuahene in his evidence accepted that some balances were accurate and some weren't. He could only go by what was on his computer. He accepted that he probably couldn't ascertain the true credit balances but said there was no danger as due to his position he was dealing with very few transactions. He was giving work away not taking on business. He said not all his records were wrong but a considerable number of his postings were so he admitted the error in the Accounts certificate.
This next section was one of controversy for Mr Atuahene. He sent a letter to the Complainers dated 21.4.04 (Production 2.24 – 2.26) with some detail. In that letter page 2 paragraph one it can be seen that he is still indicating that the partnership hasn't started. This next section covers delay in stamping, recording or registering deeds and also Moneylaundering issues.

Article 18.5 Misconduct 24.25 (d) and (e)

Stamp Duty was due to be paid on a transaction for the client Iftikhar Iqbal (124) in April 2003 but only appeared to have been paid on 6th February 2004.

This client and the issue of delay can also be noted in the earlier averments at Article 9.0 onwards and production 2.8 and misconduct Article 24.14. I have asked the Tribunal to find that proven. It cannot be both.

Funds of £265,211.73 had been received by the Firm on 2nd April 2003 but no detail of where they came from was recorded and the deeds did not appear to have been recorded.

This relates to breach of Rule 24 the moneylaundering regulations. He confirmed the situation regarding the source of the funds in his letter of 21.4.04 but this still required clarification as can be seen in the Complainer's reply dated 30.4.04. This is a breach and a further indicator that he had not set up adequate systems and did not apply a system to verify the source of funds.

A property at Property 14 was purchased for the Client (125) on 14th November 2003 with a loan from Scottish Widows. It could not be ascertained if the Stamp Duty was paid or that the Disposition and Standard Security had been recorded.

Mr Atuahene referred to his Ist Inventory 1/60 and 1/62. In his letter of 21.4.04 he states that the stamp duty had been paid and the

deeds sent to the land register adding that the form 4 would be sent on. The Complainers in their reply note that from the ledger he sent the Stamp duty was paid on 8.3.04 and the deeds sent to be registered on 6.4.04. That is nearly five months after the purchase settled.
The period is 14.11.03 to 8.3.04 for the Stamp Duty and 6.4.04 for registration – about 4 months.

In relation to the sale of Property 9 for the Client (126) on 14th November 2003, no evidence that the Discharges of the 2 loans had been recorded could be seen.

In this matter he produced fourth inventory 4/2 a – d. I have difficulty with these.

The purchase for the client of Property 15 on 13th November 2003, disclosed receipt of a sum of £13,607.15 on 7th November 2003 but not the source of that income. The Disposition had not been sent for recording nor the Discharge from the seller's agent which was still held on file with their cheque.

This related to the same client (126) and it is clear from the inspector that she saw the Disposition and the Discharge on the file. Mr Atuahene's explanation was that the Inland Revenue had returned the deed due to errors. His letter of 21.4.04 indicated that it had recently been returned and sent to the Land register. He was to forward the form 4. There seems to have been a delay of about six months.
He also addressed the query about the source of the funds in that letter and was advised by the Complainers in reply that for his own protection he should retain a copy of his client's cheque in the cashroom or the file to enable him to demonstrate that he could verify the source. This is another example of the lack of Moneylaundering checks.
The period is 13.11.03 to 21.4.04 – 5 months.

The First Respondent was written to on 1st March 2004 with details of the action that he required to take in relation to the findings.

Article 19.0

Witness evidence

Margaret Playfair Inspector – 2.3.07
Morag Newton – 4 and 5 1/3/07

Morna Grandison 19/6/07 and 6/9/07
Linda Lyall 6/9/07
John Atuahene 27.5.08

Productions
2.24 – 2.26 and 2.34

Article 19.1 Misconduct 24.25 (c))

The Complainers' inspectors returned on 29th and 30th March 2004 to ascertain if the First Respondent had addressed the issues raised in their letter of 1st March 2004. They established that the records for the firm were still not up-to-date for January, February and March 2004 and postings at least one month in arrears. Records for the manager's account, GLG bank account and the loan due to the bank were still incorrect. The First Respondent and his wife had made payments on behalf of the firm but those had not been recorded through the firm's books. There was no VAT paid since 1st November 2002. The Pay as You Earn account had not been updated since October 2003. The firm's liabilities stood at £387,076 with fee income from 1st November 2003 to 29th February 2004 of £18,500.

> There does not seem to be any dispute about this narrative which goes to the issue of the true financial position of the firm being disclosed in accurate books. His letter of 21.4.04 goes a long way to confirming the position as seen by Mrs Playfair and in his evidence he confirmed most of it. As for the GLG loan he maintained as stated in his letter that this was not a loan for this firm but part of the PLP accounts.

Article 19.2 Misconduct 24.25 (a)

The client ledger narratives were insufficient to fully explain the individual transactions and contained inaccuracies. On the ledger for the Client **(104), the entry 7th January 2004 read "Paid you £45,388.25" but should have read as Client (127) for the purchase of Property 34.** For the Client (128), there were 2 entries recorded as "From you" on 14th January 2004 for £14,000 and £37,219. The narrative should have stated that these sums were paid by 3 bank drafts and provided details of the banks and the sums involved. These details should have been included that Property 35 was being purchased. Neither account showed the address of the clients. The entry for Client (129) of 12th February 2004 read "Purchase £71,506.03" but should have read as a Royal Bank of Scotland redemption. The account for Client (130) showed 13.02.04 purchase £107,000 but did not identify that Harper McLeod were the other Solicitors involved. No addresses were recorded for the Clients (131) or Client (132) nor details of the properties

being sold. Account headings showed inaccurate details of clients such as Client (133) and Client (134) where the account should have been in the sole name of Client (133) and Client (135) and Client (136) where the account should have been in the name of Client (136) only. Client balances still required attention. The ledger account Client 131) showed a credit balance of £48,248.04 at 27th March 2004 when it should have been nil. There remained an account for "Murray & Co unpresented cheques" with a credit balance of £6,130.80 which required to be allocated to the correct client ledger account. Many small credit balances were noted as held which appeared to resemble recording dues and a number of old credit balances remained which had not been dealt with. Client bank reconciliations contained old outstanding cheques which had not cancelled or written back to the client ledger. There were no quarterly reconciliations for invested funds. Interest had not been posted on invested funds up-to-date and a balance of £46,711.80 was still showing for Client (108) although it had been uplifted on 12th December 2003.

This very detailed article was referred to by him in the letter of 21.4.04 as a matter to be brought to the attention of the legal cashier. He stated that he expected the narratives to be more accurate and self explanatory in the future. In answer to Mr Irvine Mr Atuahene in evidence said he did dispute this and made reference to the issue of Client (104). He referred to the Ist Resp Inventory 3/19 a letter from Ms Grandison dated 9.10.06 attaching a copy of his letter to the bank dated 18.9.06 and a copy of a returned cheque. He said he knew that he paid the cheque to the client and indeed this item has the client as payee. I suspect that as the date on it is in fact 8.1.04 not 7.1.04 the narrative should have been showing that those funds were received on the 7th from Moore & Macdonald. It is unclear and the Tribunal may feel that this should be deleted. I have highlighted it in bold above.

At the end of this day of evidence Mr Atuahene was asked to attend on the 24.7.08 with proper preparation and his productions marked up in advance. He did so and started by clarifying his position on the posting problems he had. He explained that Mr M had to delete all his postings, repost them from accurately maintained posting slips, post interest on invested funds and do reconciliations of the Clients' bank, the Firm Bank and the Invested funds. As these were produced there were sent to the complainers.
He clarified his objection to the Client (104) matter.
Client (128) - no comment I can see at this point.

Client (129) - he said he did not accept narrative error but there were many problems as he had taken over this client from Ms Murray and relied heavily on the paralegal to deal with it. Gerbers created a general account and the interim judicial factor sorted it for the client.
Client (130) he claimed was a duplication from other proceedings. I emphasise this relates to the ledger narrative.
Client (131) he accepts the mistakes were made but they were sorted.
Client (132) he only disputes that the address was wrong.
Clients (133) and (134) he accepts the mistakes were made but they were sorted.
Client (136) he accepts the mistakes were made but they were sorted.

I ask the Tribunal to accept the evidence of the inspector where it conflicts with that of Mr Atuahene with the one exception noted. He gives an explanation regarding the Murray & Co unpresented cheques.

He admitted in evidence that he had not reconciled his invested funds which he states was put right by Mr M.
The complaint returns to the issue of invested funds which seemed to have been held too long.

Article 19.3 Misconduct 24.25 (b) and (d)

Many Client balances in excess of £500 had not been invested,

- Client (120) £7,172

This particular matter has appeared earlier in the Complaint at Article 2.0 onwards. Mr Atuahene gives a detailed explanation of the original complaint there and also produced at his inventory 3/8 the rectified client ledger for the transaction. He agreed in cross examination that he held these funds from 11.11.03 to 20.4.04. I submit that he forgot all about this transaction and there is a breach of Rule 11.

- Client (121) £4,166

This ledger as rectified is produced by him at 3/9. It disloses a sum of £4,136.22 held from 24.10.03 to 14.5.04. His evidence in cross was that he could not remember if he was sequestrated, this was

created by the interim Judicial factor and he was not aware of the credit balance. In evidence Mr Atuahene said that he had no way of knowing he had a credit until Gerbers told him. The client was Muslim and he told him he was bound to invest it but the client said no. he asked for written confirmation but the client went to Mecca and onwards and he never heard from him.

- Client (137) £17,000+ from 19th January 2004 to 16th December 2004

Not a breach.

- Client (138) £654 from 12th December 2004 to date of inspection

Not a breach.

- Client (122) £12,316

The ledger as rectified is produced at 3/12 and discloses £12,316.46 held at 25.11.03 with a further credit of £23.75 at 25.4.04 before a payment out of the credit balance of £12,340.21 on 14.5.04 which is to the PLP. A This was a period of 25.11.03 to 14.5.04 at least. In cross he agreed that is he had been himself and competent he would have invested the money. In evidence he said this was a 95 year old woman whose son gave him instructions as the lady was throwing letters unopened into the bin. The son was going to pick up the money but didn't and due to his ongoing problems Mr Atuahene says he did not pick it up. He acknowledged he should have invested it.

- Clients (139) £2,638

The ledger as rectified was produced at 3/13 and disclosed £2,638 held from 13.11.03 until invested in the Halifax on 1.4.04. In evidence he said this client was not a Muslim but the funds were due for outstanding rates and pointed to his sequestration 7.7.04. The period is nearly six months and the sequestration seems to be irrelevant on the dates seen.

The above are a result of his poor records, substantial errors and are breaches of Rule 11.

Cheques paid to banks and building societies on a number of occasions had not been designated and in other cases, client details were recorded on cheques after payment. Instances were noted of late or non-stamping or recording of deeds. The purchase for Client (112) of Property 36 and sale of Property 37 on 6th December 2003 showed a Disposition and Standard Security not yet sent for recording nor the Discharge. The Disposition in relation to the purchase of Property 35 on 19th January 2004 for Client (128) had not been sent for recording. The sale of Property 38 on 19th January 2004 and purchase of Property 39 on 6th February 2004 for the Client (140) showed the Discharge, Disposition and Standard Security not yet sent for recording. In the sale of Property 48 for the Client (129) on 19th January 2004, the Discharge had not been sent for recording.

He accepted in evidence that there may be one or two cheques that were not designated. In the absence of names he could comment no further which is understandable.

The recording of deeds and stamping came next in his evidence.

He accepted there was a delay with Client (112). He gave a detailed explanation to the effect that the funds from the sale partially covered the purchase. The purchaser's solicitor required planning permission which Client (112) could not provide. At settlement £300 was retained from the purchase price by the purchaser's agent. The funds from the sale were not enough to fund the purchase. The loan was not enough she needed the sale proceeds to cover the balance and when asked she delayed and told him to use his own money. There were concluded missives so he negotiated part payment of the purchase price with the seller and sent 96% which resulted in him having a disposition which he had to hold as undelivered pending payment of the balance. He had intromitted with the loan funds, eventually the client paid the balance and the deeds could be sent off to be registered. This appears to be a three month period where the lender was unsecured. 6.12.03 to 29.3.04.

For Client (128) in evidence he said the problem was the Deed of Conditions without which the keeper would not accept registration. The client ledger was sent by Mr Atuahene to the complainers on 21.4.04 at which time he made no mention of the deed of conditions having caused a problem and they replied noting that the cheque for the recording dues was raised on the 29th March.
The period is 19.1.04 to 29.3.04 – over 2 months.

For Client (140) he advised in evidence that it was the same problem with the deed of conditions for the purchase, and for the discharge the delay was due to the lack of a witness on the original document. In his letter of 21.4.04 he advised that the discharge had been received that day and sent to Carr & Co with the cheque and forms for registration. He also makes reference to the problem being that the original discharge was lost. He makes no mention of the lack of a witness.
The period is 19.1.04 to 21.4.04 – over 3 months.

For Client (129) the explanation in evidence was that the discharge had gone missing when sent for signature and the paralegal had made numerous calls before it was received which was just at the time of the inspection. In his letter he says received and sent then goes on to give an explanation about the bank's requirements for redemption.
The period in the sale is 19.1.04 to 29.3.04 – over 2 months.

Article 19.4 Misconduct 24.25 (e)

No proper money laundering procedures were in place for the firm. No fact sheets were prepared and no proof of identity seen on files viewed. No reasons were recorded on these files to explain why proof of identity was not required. Funds received by banker's draft did not appear to have been verified back to source to confirm who the income was received from. Three bank drafts for Client (128) received on 14th January 2004 appeared to have come from various family members but were not checked. A bank draft of £69,500 for Client (130) received on 12th February 2004 had not been verified.

Mr Atuahene gave an explanation of his position in evidence on the 24.7.08. He disputed the contention that he had no procedures in place. This was the view of the inspector and the letter from the Complainers dated 30.4.04 is looking for confirmation that a proper system "now exists". It would seem that his written procedures from the 2003 Inspection were not being applied.

In his evidence he indicated that Client (128) and family had been clients for years. He kept and guarded details of the bankers darfts in a central moneylaundering file. A previous inspection as early perhaps as just before the interim judicial factor was appointed raised the question of procedures. It was discovered that only the paralegal knew the procedures, none of the staff did. He indicated he had put the procedures in writing, put those on his office walls

and intimated to the complainers. This is correct from the 2003 inspection records. He said if this issue regarding Client (128) had been raised directly with him at the time of the inspection it would have been resolved. He only got to know of it when he got the letter. When he eventually located the central file the details were sent to the Complainers.

I can't find a note of his position in relation to Client (130) as far as the bankers draft is concerned. In relation to both he says in his letter of 21.4.04 that the information would be sent in due course. This was still outstanding at the July inspection (production 2.27 - 2.29) as can be seen in the letter of 16th August 2004 from the complainers. The same letter acknowledges the copy standard letter for conveyancing clients but the indication is that there has been nothing seen to establish the procedures for recording sources of funds.
At the end of his Answers for this section Mr Athuahene says that prior to the merger with Richard Thorburn all the outstanding issues from Atuahene Sim Murray & Co had been dealt with to the satisfaction of the complainers. This was not and is not accepted. The Review papers show what was outstanding even at December 2004. When exactly does he mean? He says prior to the merger but is that meant to be 1.11.03 or 1.5.04? The former cannot be the case as the inspections kept happening on a separate basis after that.

Article 20.0 Misconduct 24.26

Witness evidence

Christina Heywood Inspector – day 1
Leslie Cumming – day 2 and 3 7/11/06
Morag Newton – 4 and 5 1/3/07
Morna Grandison 19/6/07 and 6/9/07
Linda Lyall 6/9/07
Richard Thorburn 8/10/07 and 4/12/07
John Atuahene

Productions
2.27, 2.28 and 2.29

In looking at this article in detail I have considered further the issue of the commencement of the partnership.

This is the Special Inspection which was approved at short notice and the validity of which Mr Thorburn disputes. There is no real dispute about the factual position. This Inspection went ahead on the 6th to the 8th July 2004 and the Inspectors found matters of serious concern. Mr Atuahene maintains that he had been in partnership with Mr Thorburn since the 5th November 2003 but adopts a clear position to the effect that he had nothing to do with the clients or accounting records of Mr Thorburn. If he is correct, by this time, the accounting records of both firms should have been up to date. He would have had, from 5th November 2003, a responsibility for both sets of accounting records. The lack of proper amalgamation of the records on 30/4/04 is something he has to answer for. The serious issues which arose from this Inspection are his to answer for. The question of his degree of culpability has to be considered against the stated fact that he took no steps to consider the other firm's records. This was a deliberate decision based on a misunderstanding of his responsibility.

If he was not in partnership until either the 30/4/04, 1/5/04 or the 14/5/04 then his responsibility for accounting problems can be viewed in a different light. What occurred prior to the commencement date was the responsibility of Mr Thorburn and it is only the amalgamation where he has accepted the problems into the new firm and taken inadequate steps over the integration of the accounts which fall to him to explain. What he tried so very hard to avoid, namely the repetition of the problem he had with Murray & Cos client funds, he has acquired due to the actions of Mr Thorburn. The Tribunal will consider the level of responsibility in the knowledge that Mr Thorburn consciously did not tell Mr Atuahene about Client (85).

I have adopted the position that the completion of the verification of the client balances and their transfer from the individual Firms to the PLP is the date of commencement of the partnership. There is evidence in the Aird Sarkol letter (production 2.32 dated 13.4.04), in the evidence of the two Respondents and in the Answer of Mr Atuahene that the 30th April 2004 was the date they aimed to complete the transfer. On reflection it is open to the Tribunal to conclude that this is the correct interpretation. In cross examination by Mr Atuahene Mr Thorburn accepted that the new Firm balance was dated 30/4/04 (29/2/08 cross). He was referred to the Aird Sarkol letter which also features in the First Respondent's First Inventory of Productions at item 60. He agreed that the weekend was a

Bank holiday and that it took a few days to sort out as he had to complete his balance to the 30th April 2004.

The article of misconduct relating to this section is 24.26 covers a period which is stated in an alternative. I also amended to include reference to the period being while sole practitioners or partners. The prior Articles of misconduct overlap this time period and caution is needed to avoid duplication. The Complaint was drafted prior to July 2005. Since that time we have all heard evidence which has allowed us to see information obtained after that date. We have also developed an intimate picture of the progression of the Respondents through the period in question by virtue of their own explanations.

Article 20.1

As far as Article 20.1 is concerned there does not appear to be any dispute about the facts. In Answer Mr Atuahene gives a reasonably concise indication of his position. It seems to have remained constant. Mr Thorburn indicates that he considered that there was oppressive conduct which I have dealt with in my main submissions. He does not disagree with the facts stated other than to say that there was no urgency and that they were content to carry out a routine inspection. This was not so there were grave concerns due to the lengthy history of problems and what was found confirmed those concerns.

Article 20.2 Misconduct 24.26 (b)

The most serious issue related to Client (85) and Client (86). Again the factual position as stated in Article 20.2 seems to be undisputed. There is a dispute about whether or not there is a deficit in terms of rule 4. In cross examination by Mr Thorburn Morag Newton was pressed on this point. She stated "We took the view that the sum of £320,000 plus should have been held in your client account and not disbursed." This was based on the money being paid out and nothing received for it. The money was due by Richard Thorburn Solicitor to the Bank of Scotland. The hole was in his accounts and it was for him to get it back. She accepted that the other solicitor if he knew it was wrong should not have encashed it. That is not the situation here. Mr Thorburn himself stated that the other solicitor probably didn't realise the true position either.
Christina Heywood on day one advised that this was a special inspection and they were going back because of concerns.

One of the only points put to her by Mr Thorburn in cross related to her view on whether his client having gone into liquidation she regarded the Rice N Spice (85) issue as a deficit. She did expressing her perspective as being from the basis of the Accounts Rules. In cross Mr Atuahene asked her to confirm that at this inspection in July 2004 the records of the two firms had still not been merged. She confirmed that and that the errors which caused serious concern were in Richard Thorburn's accounts and that the loan funds had gone into a Richard Thorburn client account and that the transaction had settled in January 2004. She also agreed that all the other matters related to named clients of Richard Thorburn and that she was happy with the Atuahene Sim Murray & Co accounts although there were still outstanding matters from previous inspections.

Morna Grandison gave detailed evidence about the transaction on 19/6/07. This was the purchase of a warehouse in Irvine owned by a Mr R a client of Lyons Laing Solicitors. Mr Thorburn operated from the same premises as that firm. Client (86) was a director of the company Client (85). The sale was due to take place in the December of 2003. Mr Thorburn drew down loan funds from the Bank of Scotland on 8/1/04 subject to the balance of the purchase price being paid with no further loan and there being a floating charge. On 9/1/04 he sent the money to Lyons Laing. There were no concluded missives, no signed disposition or letter of obligation were received in return. All the paperwork was on Richard Thorburn Solicitor notepaper. Client (86) had disappeared. It appeared to be a long firm fraud.

She indicated that although Mr Thorburn had sent off a floating charge there were no recorded deeds or standard security so the bank was fully exposed. A claim had been intimated to the insurers who had refused to indemnify. On the file there was a letter from Mr Thorburn to the bank saying that Client (86) had paid the balance from his own funds when it was clear from the file that he had not and that the balance had been covered by a loan from Mr R. As a result the bank had sued her as Judicial Factor on the firm of Richard Thorburn for a sum of £370,000. Although the liquidator of Client (85) had eventually obtained a disposition the property was not worth anything like the value given and the Guarantee Fund is likely to have to pay out.

In cross examination Mr Thorburn did not dispute any of this. He put it to her that the vendor was regularly pressing him in his office to see if the transaction was proceeding and he forgot to conclude missives. He raised the issue of insurance and she was able to say that there are still claims

coming in from clients and the insurers are not accepting claims prior to May 2004 for the PLP.

Mr Atuahene asked her about his position. She confirmed that she had made enquiries to see if he was the innocent partner. It had not been clear at all on the 15/11/04 what was going on with all the entities but it was clearer as at the date of her giving evidence. She stated that there were the files of all three firms in the office which was in a state of chaos.

Mr Thorburn gave evidence on the 4/12/07. He made reference to the "purported inspection". He accepted that he had a problem with Client (85) and that he had not told Mr Atuahene who "had enough problems of his own". He accepted the facts of the situation and amplified on those. Client (86) was a new client to him and came through Lyons Laing. He maintained that he had checked out Client (86) who impressed him as a "hardworking, respectable, honourable guy". He had come from Lebanon and been in the Uk for years although the business had only been run for one year. He was a very busy man and clearly hard to get a hold of as when Mr Thorburn phoned the business premises he was not there. He had a mobile phone number for him. He was never hassled by him but the seller did.

He provided his explanation for his mistake and his opinion that the seller's solicitor also hadn't realised that they had not concluded missives. He lost the SDLT form then a supplier to the company called as he couldn't trace the company. It was at that point that Mr Thorburn says a little alarm bell rang. The company then went into liquidation and his first thought was that the money was repayable as there were no missives and it was the bank's money not the client's. He accepted he may have been out of his depth and he shilly shallied.

Mr Cunningham asked if the cheque was handed over with a letter and the answer was no. Mr Thorburn just handed the cheque over which was not an unusual occurrence. Indeed the word he used was that there was invariably no letter, they were in the same building. He also clarified that he did not act for the bank who dealt with the matter themselves and used Golds Solicitors for the security documents. He accepted that he had obligations to the bank nevertheless.

It is on that basis that it is pled in Article 24.26 (b) as a deficit. It occurred within the records of Richard Thorburn Solicitor and was, in the May of 2004, incorporated into the PLP accounts on amalgamation.

Article 20.3 Misconduct 24.26 (b) and (d)

Article 20.3 also includes a deficit position albeit in a more concrete fashion. The client was Client (34) who purchased Property 42 on 23.6.04 for £310,000. Mr Thorburn accepted that this was "technically" a deficit the explanation being that he issued a cheque as he believed the funds from a bridging loan with the same bank as he banked with would be transferred that day (Production 2.28 letter 30/7/04 RT). There was therefore a deficit of up to £294,621.60 for the two days as at Article 24.26 (b).

This Article also features in relation to the Article 24.26 (d) issue of stamping, recording or registering deeds.

In respect of Client (141) Mr Thorburn accepts the factual position which is that he sold a property for a client before she owned it and used the money from that sale to fund the purchase four days later. He then had to get the disposition from the original vendor and needed the SDLT before the disposition was sent on 8/7/04. This I cannot pretend to fully understand. The complainers seem to have required him to produce evidence of recording of the disposition but I do not have full notes of examination in chief of the Inspector to refer to for clarification. If the disposition referred to is that delivered on sale then although he delayed delivering it once he did so the recording was out of his hands.

For the Client (34) the reference to Property 55 is not proved to be a recording issue The inspector accepted that her concern was the misleading nature of the figures.

The Property 42 transaction does also relate to late recording with the settlement date 23/6/04 and no SDLT paid or Disposition and Standard Security recorded as at the date of the inspection 6/7/04.

Article 20.4 Misconduct 24.26 (d)

The first is for clients (144) and (145) is not there as a rule 11 breach but one where discharges had not been recorded since a sale on 12/1/04 as at the date of the inspection 6/7/04. Mr Thorburn accepts the factual position and in his letter of 30/7/04 says he "shall" forward the form 4's. In evidence he referred to the credit balance which he said was not

needed for a security. I understood that to be the balance after redemption of the lending. He cross examined on the basis that if the debt was unsecured and the funds were held due to an inhibition there would be no need to record. This is inconsistent with his letter. It is open to the Tribunal to consider that it had not been done.
The period 12.1.04 to 6.7.04 – 6 months.

Client (144) alone in the purchase of Property 56, has not been established as a failure to record in the evidence.
For Client (146) the purchase of Property 57 is a delay in recording the Disposition and standard security where funds were received from the building society on 7/5/04, part paid over on 14/5/04 and the balance 2/6/04. At the date of the inspection they had not been recorded a period of four weeks. Mr Thorburn accepts that it is possible he was reminded to do so at the inspection as they were certainly recorded in the July.

In relation to Client (147) while Mr Thorburn accepts that the deed was perhaps not recorded the dates have not been established so the tribunal cannot asses the issue of delay.

Similarly with Client (148).

For Client (149) the purchase of Property 58 on 17/6/04 demonstrated no recording of the deed at the date of the inspection. In that instance Mr Thorburn gave an immediate explanation to the inspector. He did not intend to record it as it was to be used as a link in title as the purchase was for a third party. He has consistently maintained that position and added in evidence that the Land register accepted these intervening deeds without SDLT as a link in title.

While the individual transactions alluded to may all not amount to breaches of the accounts rules or the need to timeously stamp and record deeds they provide a detailed view of the ongoing practices and poor systems within which the breaches did occur. That enables the Tribunal to consider overall the degree of severity with which the breaches should be regarded.

Article 20.5 Misconduct 24.26 (a) and (e)

The records were incomplete. They could not be complete as the records for the two previous firms had not been brought up to date as required by the Complainers. A trial balance for the PLP as at 30/4/04 did exist but was incomplete for the reasons stated. The client bank for Richard

Thorburn solicitor had not been reconciled since 30/4/04. There were the two errors in the list of client balances as at 31.5.04 leaving the total £1,683.33 out. That this state of affairs did exist was not disputed. Mr Thorburn said that even after the merger he kept his own manual records opening new sheets for PLP cases using the balance from his firm. He said it was a challenge to put together.

In relation to the statement that income for the two firms had not been included in the 30/4/04 I would suggest that this is further evidence that the partnership had not been operating prior to that time.

I have not included any misconduct allegation in Article 24.26 in respect of the uninvested funds from the prior inspections.

As at the date of the inspection the ongoing issues regarding the lack of PAYE and VAT records and the loans of the partners added to the impossibility of anyone adequately assessing the true financial position of the PLP. The reference in the Article of Misconduct 24.26 (c) to the accounts not being kept in a permanent form should be deleted. Reference in that to Article 21.1 seems to be a mistake.

As for the moneylaundering requirements two further instances are given which seem to clearly demonstrate that no matter how often he was told Mr Thorburn disregarded what are strict requirements. It is again set against the haphazard way in which transactions were undertaken. As partners they had no Moneylaudering procedure for the PLP. Mr Atuahene did not know what a cashroom partner was and dealt with his own files. Mr Thorburn said that it was probably he who was the Moneylaundering reporting officer and he thought Mr Atuahene would agree with that.

For Client (146) Mr Thorburn said in evidence that he had acted for him for a number of years and the ID would be on an old file. Not good enough. In his letter of 30/7/04 he says the money came in Mr S's personal cheque. He had not in the circumstances properly considered the issue. It is a similar position in relation to Client (148).

OPPRESSION – Original submissions

SUBMISSIONS FOR THE COMPLAINERS

In preparing these submissions I have adopted an approach which takes the Complainer's averments out of the Record and deals with each section by section. There has been a significant amount of evidence over the years and I will allude to that but I will not do so in minute detail on each and every point. To do so would make the written document unmanageable. I will amplify on the factual evidence in oral submissions.

1.0 PREAMBLE

Complainers' Averment

1.1

The First Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 18th February 1957. He was admitted on 31st May 1988 and enrolled on 14th June 1988.

> This averment was not disputed other than that Mr Atuahene thought it was the 4th June. In cross examination (24/7/08) he accepted that he could be wrong and did not dispute that it may have been the 14th.

Complainers' Averment

1.2

The Second Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 12th August 1947. He was admitted on 24th September 1971 and enrolled on 6th October 1971.

> These facts were admitted.

1.3

The First Respondent formerly worked for Cumnock & Doon Valley District Council between 3rd April 1989 and 14th February 1995. He then became a Partner in the firm of Atuahene, Sim & Co, 536 Cathcart Road, Govanhill, Glasgow, on 1st June 1995. On 8th November 2002, the First Respondent acquired the practice of Murray & Co, Solicitors, 34 Argyll Arcade, Glasgow, and changed the firm name to Atuahene, Sim, Murray & Co, on or about 1st December 2002.

While not expressly admitting the last sentence of this in his Answer he did not dispute the averment and in cross examination (24/7/08) he confirmed this. He amplified on it to state that he changed the letterhead immediately to Atuahene Sim Murray & Co but went on to qualify that statement saying that he sometimes used Atuahene Sim & Co letterheads with amendments. This is a point which I consider significant in later stages when looking at the actions taken by him around the use of letterheads in the establishment of the PLP.

Complainers' Averment

1.4
The Second Respondent formerly practised as **R T** Thorburn & Co, Solicitors, 26 Ettrick Walk, Cumbernauld from 12th June 1980 to 31st October **1989**. Thereafter, he practised **AS A QUALIFIED ASSISTANT** with the firm of Peacock Johnstone, Solicitors, Rosemount Buildings, Glasgow, from **ABOUT MARCH** 1990 to 29th September 1995. He operated as the Partner in the firm of Richard Thorburn, Solicitor, **from 1st April 1995** at **HIS HOME ADDRESS THEN AT** 25 Newton Place, Glasgow **IN JANUARY 2000**.

Mr Thorburn admitted the facts stated with clarification which I have added in bold type. The Tribunal could adopt this as the correct factual position.

Complainers' Averment

1.5
The Respondents agreed to amalgamate their practices and create the firm of the Practical Law Partnership with effect from 1st November 2003. In August 2003, a judicial factor *ad interim* had been appointed to the First Respondent. That appointment remained interim until it was discharged on 5th November 2003. The Respondents continued to trade under their respective individual firms and did not effectively constitute the practice of the Practical Law Partnership until **14th** May 2004. They continued to practice as Partners until the First Respondent was sequestrated on 23rd August 2004. The Second Respondent continued to practice as a sole practitioner until 7th October 2004

when he was suspended from practice in terms of Section 40 of the Solicitors (Scotland) Act 1980.

The first three sentences of this averment and the last two are accepted by both Respondents. The part which is underlined is hotly disputed and underpins a significant element of the prosecution. The amendment of the date which is in bold brings the factual averment into line with the evidence. This is the date when the client credit balances of both firms were transferred into the new partnership. This was a key requirement for the constitution of the new partnership as far as Mr Atuahene was concerned and it is hardly surprising that it was so. The disastrous take over of the firm of Murray & Co dictated his approach and I ask you to look at the plain words used by him in the Partnership Agreement (Complainers production 2.32) at clause two. This production is the signed copy, dated 19th March 2004 and clause two is clear about when the partnership is to commence. Mr Thorburn's letter produced by Mr Atuahene (Ist Respondent's Ist Inventory No 74) adds to that view.

Mr Atuahene's letters of 17/1/04 and 6/4/04 (Production 2.31) are plain to see and in no way ambiguous. The formation of the partnership was conditional on a specific occurance and as at 6/4/04 the first step towards that had been taken on the preceding day. The chartered accountant had been called in then. Added to that is the Aird Sarkol letter of 13/4/04 in the same production. It commences with a reference to discussions about the tidiest way to determine the closing firm's positions "prior to merger". Any possible ambiguity being corrected in the plan of action proposed

for 30/4/04. It is made clear that this was the closing date for the two original Firms. This is not a letter about coordinating separately kept records of firms trading as one entity.

The Respondents position is that the partnership commenced as of the 1st November 2003 or the 5th at the latest. The Interim Judicial Factor was not discharged until the fifth. They have both averred that they continued to operate from different business premises until sometime in February 2004. They accept that they continued to operate separate accounting records until the verification of the client balances but maintain that they were an effective partnership.

PARTNERSHIP

In considering the existence of a partnership in this case I suggest that it is important to look at the hard evidence and to afford it greater weight than the representations and oral evidence of the Respondents. I also suggest that the earlier oral representations of the Respondents should be given significantly greater weight than their later assertions. The reason is simple as there has been a substantial shift in the position of Mr Atuahene in relation to relevant matters after certain issues and difficulties were raised with him and after he had the opportunity of discussing these with Mr Thorburn. I submit that the Respondents are lacking in credibility and reliability in the later claims which in some respects are diametrically opposed to information provided at an earlier stage before they were able to discuss the situation.

It seems correct that they entered into discussions about a partnership before September 2003 when they opened a bank account in the name of the new firm the Practical Law Partnership. This was in anticipation of partnership. Their wish was to commence at 1st November 2003 which they maintain was when they commenced. Mr Atuahene completed the proposal forms for the Indemnity Insurance and seems to have adapted an Atuahene Sim Murray form badly. The firm name is wrong, the number of partners is given as "1" while Mr Thorburn is given as a principal. The date of commencement was 1/11/03. The address was 34 Argyll Arcade. There were to be no branch offices and the practice was not to be conducted under any other business names. The principals were not to be partners in any other firms and the other personnel were to include one qualified and four unqualified fee earners. Some boxes were not completed.

The declaration that the partnership was to commence on 1/11/03 is of limited evidential value itself when set within the whole circumstances. The intention seems to have been to trade from one office but Mr Thorburn did not move until February 2004. it is difficult to see how the partnership could have started until then.

In the November they took out a loan in the name of the new firm and it is only then that there is any action on the firm bank account. It received the loan of £20,000 on the 4th and was debited with the arrangement fee. The evidence is that this money was to account of the expense of the Judicial Factory which was discharged. The account showed little activity after that and I suggest that it shows that there was no active firm in existence. They may have intended

to enter into partnership shortly after the payment but from the evidence given by both Respondents it seems that the only reason the account was opened in this way was due to the bank insisting on it.

With the proposal form, Production 3/10, which is itself dated 13/11/03 by Jennifer Scollick, are the first pages of the Respondents' individual applications for a practicing certificate. While it is not clear when they were submitted that of Mr Thorburn refers to a section 15(2)(i)(i) notice dated 26/11/03 which he says has been replied to and also advises that the firm is a new partnership which is currently being formed. Similarly, Mr Atuahene, whose form has for some reason a received stamp of 18/3/04, states that the partnership with Mr Thorburn is currently being formed.

As to the drafting of the Minute of Agreement Mr Thorburn stated that this was done in order to satisfy the bank so that the client account could be opened which was done on the 30/4/04. Both he and Mr Atuahene are vague about when it was drafted and re-drafted. They are at odds about whether there was one signed and sent to the bank. The documents produced show the various amendments by Mr Atuahene and the signed agreement dated 19/3/04. All of this in line with his original position at interview to the effect that they were not yet in partnership.

Mr Thorburn seemed to concede in his evidence that his position that the partnership was formed from the date in early November was undermined by the fact that Mr Atuahene had the clear view

that he was not in partnership with him. I submit that the most accurate account of the situation was as indicated by Mr Atuahene at the interview on 22/4/04. His account was reasonably coherent and intrinsically more likely. He indicated that Mr Thorburn had moved into the same office and that they intended to enter into a partnership. When specifically asked about the practicing certificates and insurance in the name of the PLP he was absolutely clear that he "had been hoping to have the partnership in place for some time now". He was awaiting further information before he was prepared to enter into the partnership arrangement. He was hopeful that it would take place but was keeping an open mind and reference was made to him not "keeping his eggs in one basket".

When questioned about the insurance position and the certificates he was plainly inaccurate but this was a lack of understanding or appreciation of the situation. I believe he put it to Mr Thorbun that when he had an idea in his head he pursued that blind to anything else by way of consequences. Mr Thorburn agreed that was the case. He also clarified that Mr Thorburn had not appraised him of the potential difficulty caused in the insurance by his making the amendments he did. This is another situation where blame is shifted by Mr Atuahene to someone else. A common them throughout the case. The Insurance aspect was a revelation to him at the meeting and he lacks credibility when he seeks to challenge the pertinent section of the Minute of the interview in evidence. This is particularly so when he failed to cross examine the chief accountant to the effect that the minute was wrong.

It is the next day when he has spoken to Mr Thorburn that the letter is sent contradicting the position given at interview. Mr Thorburn appears to have had considerable input into the letter of 23rd April written by Mr Atuahene. I ask the Tribunal to reject the terms of this letter and the evidence from Mr Atuahene about the interview.

By the time of Mr Thorburn's interview of 6/5/04 he is clearly alive to the issues at stake and he attempted to support the position of Mr Atuahene in his letter of 23/4/04. He states his position as being that they were in partnership from the early days of November 2003 and the paperwork for the practicing certificates was done on that basis. The problem arose as the bank would not open a client account for the new firm without a partnership agreement. He continued on the assumption that the partnership would shortly be set up. He suggested they began to prepare one in November and December 2003. He stated that it emerged that Mr Atuahene had a specific view as to what would trigger the merger. Due to his previous experiences he wanted the client accounts audited. This was discussed in late November early December 2003. He stated that the agreement was signed on 19th March 2004 but said that the issue of the profit share had not been finally sorted and he was to seek advice from an accountant.

When asked about the terms of Mr Atuahene's interview he stated that he did not think Mr Atuahene had considered all the implications. It almost seems as if they were trying to tailor their account to suit what the brokers were saying might be to their advantage. They had seen Jennifer Scollick by that time. It is also unsatisfactory in his account to say they were taking advice about

how the income of the two constituent firms should be dealt with in the anomalous period between November 2003 and May 2004 and how expense should be shared. If it was correct that the partnership had been formed in November 2003 no such problem should arise. His recognition of a problem is I suggest an indicator that he was well aware that the partnership had not come into existence. This supports Mr Atuahene's position at interview that there was an informal relationship where expenses were shared on an *ad hoc* basis.

CONTRA-INDICATORS

1. Production 2.30 – 2.32, the interview of 22.4.04.
2. Production 2.31 Mr Atuahene's letters of 17/1/04 and 6/4/04..
3. Production 2.32 the signed Minute of Agreement of 19/3/04, clause 2.
4. Production 2.31 Aird Sarkol letter of 13/4/04.
5. Mr Atuahene's Ist Inventory Production 74 letter of Mr Thorburn dated 21/5/04 stating the transfer of the client funds was effected 14/5/04.
6. Production 3/8 page 42 the letter of 15/3/04 to Preferred Mortgages regarding Client 131 by Mr Atuahene.
7. Production 3/11 the Minute of Agreement as revised by Mr Atuahene where the commencement date of 1/11/03 is deleted by him and 1/3/04 is substituted by him.
8. Production 3/12 the Minute of Agreement revised by Mr Atuahene where the 1/3/04 date is removed and no date is now in place of it

9. Production 3/12 the clean draft of the document which is signed at item 3 above.
10. Production 2.17 – 2.18 interview of Mr Thorburn 6/5/04.
11. The lack of transactions on the PLP firm account and the lack of a client account until April 2004.
12. Production 3/10 the proposal form and practicing certificates.
13. In cross examining Mr Thorburn (29/2/08) Mr Atuahene was adamant that it was to start after the balances were verified, and it was in the first Agreement see page 26 "I anxious to start new partnership…"
14. In cross examination (29/2/08) Mr Thorburn stated that he believed that the partnership had commenced on 1/11/03 and yet he accepted that he had signed an inconsistent document believing that Mr Atuahene would change his mind. He was clearly aware of the true situation with Mr Atuahene at that time.
15. The continued use of the individual letterheads. The addition of typed words at a later stage that the respective firms were a division of the PLP which was inconsistently done. They did not open new business in files under the PLP.
16. The total failure of either to take any interest at all in the accounts, ledgers and other records of the other's practice throughout the period up to the 14th of May 2004 or query the difficulties each knew the other had with the Law Society (evidence R Thorburn 8/10/07).
17. The lack of any allocated Moneylaundering partner and the lack of any cashroom partner. Indeed the position adopted by Mr Atuahene about the cashroom partner was that he had no idea what I was talking about.

The true position is as stated in that one sentence on record. While there was an intention to enter into partnership it was conditional and that condition was not met until 12th May 2004 when the independent chartered accountant had audited and confirmed the client credit balances of both firms. The transfer was then effected on the 14th May 2004.

The whole management of the establishment of the new practice was chaotic, it was not properly organised and that in itself is indicative of it being preparatory stage work. The consequences of individual actions were not thought through, there was no coordination of effort and significant mistakes came to be made.

In considering the evidence given by Mr Atuahene on this issue I ask you to take extreme care as to both reliability and credibility. Over the time this case has been progressing it has become clear that he is willing to shift his position to fit what he wants you to believe. I make particular reference to his position on the terms of his interview of 22/4/04.

Mr Thorburn may well have the view that they had gone further than mere preparatory work but in all the circumstances he was wrong, he accepted in evidence that he had a different view to that held by Mr Atuahene and it was clearly in his mind when he signed the Minute of Agreement on 19/3/04.

Whether a partnership is in existence is a mixed question of fact and law (Keith v Spicer Limited [1970] 1 All ER 462 @ 463). In the absence of express agreement it may be implied by conduct. Even looking at the statutory definition of partnership “the relation which subsists between

persons carrying on business in common with a view to profit", it is rather difficult to see what was being conducted after 1/11/03 as a business. Everything points to the situation being that there were two businesses. The House of Lords in Khan & Anr v Miah & Others [2000] 1 WLR 2123 held that the proper approach was that people become partners when they actually embark upon the activity which they have agreed. The test is "whether actually embarked upon the venture on which they have agreed".

Mr Atuahene and Mr Thorburn had set up accounts in contemplation of a future partnership but no such relationship was created by the opening of the Firm bank account. The preponderance of the evidence is that they were operating separately pending resolution of certain issues. Even if there is some evidence that the PLP name was used by receptionists or the Respondents before
14/5/04 the overwhelming evidence is against them.

The following sections relate to the management of clients and responses to the Complainer's correspondence by Mr Atuahene only. I submit that these facts are proved and will go on to consider how on those facts the allegations of misconduct are also proved.

The main thrust of Mr Atuahene's pleadings and his evidence is to the effect that he accepted that the letters and notices were delivered and were not responded to but that was because he was unable to respond.

His approach has been inconsistent in that he had to amend his Answers at an early stage and had initially admitted receipt of items which came after the date his redirection had ended. I am not certain of his final position. He seemed to accept that he had collected letters from the Judicial Factor which he had opened, leading him to accept delivery had been made.

It is correct that some went to the old office address in Cathcart Road, Glasgow. However, he accepted that he had not notified the Complainers of his change of address (evidence in chief 28/3/08 where he thought all including the Law Society would know by the end of six months) and regard has to be paid to the following section.

The Solicitors (Scotland) Act 1980 section 64 states:

"Any notice or other document which is required or authorised under this Act to be given to, or served on, any person shall be taken to be duly given or served if it is delivered to him or left at, or sent by post to, his last-known place of business or residence [[F1]or, in the case of an incorporated practice, it is left at, or delivered or sent by post to, its registered office]."

Added to this was the misleading nature of his letterheads. As late as 21/2/04 (Production 2.21 – 2.23) he was using a letterhead which contained "Also at 536 Cathcart Road". Mr Ritchie who was the case manager for all of these client complaints stated (Day 4) that he got the odd reply or telephone call from Mr Atuahene, but nothing between June 2003 and January 2005, then some after January 2005.

His position in response to allegations of misconduct for failure to reply is it was due to ill health and yet on 28th March 2008 he stated in evidence

"I accept irrespective of the medical position if a solicitor you have a responsibility to yours clients.". The correspondence from the Complainers followed upon clients complaints, clients to whom he had a responsibility which he was failing to discharge with distressing and potentially serious consequences. His position when cross examined (24/7/08) was that if he felt OK he would open all the letters that day and although he maybe would not act on them then he would if they were agents letters.

2.0 **MS A for Cient 120**

Complainers' Averment

2.1
By Help Form received 29th April 2004, Ms A invoked the aid of the Complainers in relation to concerns about the service provided to her mother, Client 120, by the First Respondent. The First Respondent was advised of the complaint and provided with a copy of the Help Form by letter dated 5th May 2004. At that time, he was advised that a written investigation would be proceeding and he need not respond immediately. By formal letter dated 17th May 2004, the complaint was intimated with a list of the issues. The First Respondent was required to provide his written response, any background information he may wish, his business file and files relating to the matter and details of any fees charged or to be charged plus an indication if they had or had not been paid.

2.2
The First Respondent did not reply. He was served Notice under Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 on 10th June 2004 requiring him to send a response and an explanation for the delay in replying within 14 days of the date of the Notice. He did not reply. On 30th June 2004, he was issued with a letter advising him that a report was now going to be obtained and a further Notice under Section 15(2)(ii) was issued to him. He did not respond. The Complainers then commissioned a Report and submitted the terms of that to him by letter dated 30th August 2004. As at the date of this Complaint, the First Respondent has not replied to any correspondence or provided his file or files.

In this case (Production 2.1, Joint Minute Article 1, witness Ian Ritchie) the letters were produced and all went to Argyll Arcade.

These facts are proved. The bulk of Mr Atuahene's Answer relates to comment about the client's original complaint. That was not part of the issue before the Tribunal.

Misconduct 24.6

Complainers' Averment

3.0 **Mr B**

3.1
By letter dated 5th May 2004, Mr B, invoked the aid of the Complainers in relation to concerns about the service provided to him by the First Respondent. A copy of the correspondence was sent to the First Respondent by letter dated 12th May advising him that a complaint had been received and would be formally intimated to him in due course. On 28th May 2004, he was advised of further correspondence and that the matter would be dealt with by written investigations.

3.2
By letter dated 9th June 2004, the complaint was intimated to him formally requiring his written response to each of the issues, any background information he wished to provide, his business file or files and confirmation of the details of fees charged or to be charged and whether or not they had been paid within 21 days. He failed to reply. A formal notice under Section 15(2)(ii) of the 1980 Act was issued to him on 1st July 2004 and the second part of the notice under the said Section on 28th July 2004 together with a letter advising that a Report was being instructed. The Report was intimated to him by letter dated 1st September 2004. As at the date of this Complaint, the First Respondent has failed to provide any information to the Complainers or any files.

In this case (Production 2.2, Joint Minute Article 2, witness Ian Ritchie) the letters were produced and all went to Argyll Arcade. These facts are proved. The bulk of Mr Atuahene's Answer relates to comment about the client's original complaint. That was not part of the issue before the Tribunal.

Misconduct Article 24.7

4.0 **Mr & Mrs C**

Complainers' Averment

4.1
Mr & Mrs C, instructed the First Respondent in connection with their purchase of Property 1 with a date of entry being 16th December 2002. He was also instructed in connection with the sale of their previous home at Property 2. Said property had been purchased for them by his predecessor, Mrs Murray, and was a newly built property.

This Article should have remained albeit the averments in 4.2 are irrelevant and withdrawn in line with Misconduct 24.8. However, to make sense of the following the fact of the instruction and their sub mission of a complaint by Helpform is relevant and necessary. Mr Atuahene admitted this article in full.

Complainers' Averment

4.3
On receipt of the Help Form, the Complainers wrote to the First Respondent on 19th April 2004 with a copy of the Form and advising that the matter would proceed by written investigation. He was advised there was no need to respond at that time. On 18th May 2004, a formal letter intimating the complaint was sent to him requiring his written response to the issues, any background information he wished, his business file or files and details of any fees charged or to be charged and whether or not they had been within 21 days of the date of the letter. He did not reply.

4.4
On 9th June 2004, a formal notice under Section 15(2)(ii) of the 1980 Act was issued to him. He did not reply. On 30th June 2004, a second notice under Section 15(2)(I) of the 1980 Act was issued. On 30th June 2004, he was advised that a Report was now going to be obtained. He was provided with a copy of the Report and opinion by letter dated 10th September 2004 and the matter then proceeded to consideration in relation to the allegations of misconduct. At no time did he respond or make any observations nor did he provide his file or files.

In this case (Production 2.3, Joint Minute Article 3, witness Ian Ritchie) the letters were produced and all went to Argyll Arcade. These facts are proved. The bulk of Mr Atuahene's Answer relates to comment about the client's original complaint. That is no longer part of the issue before the Tribunal.

Misconduct Article 24.9

5.0 **Mr D**

Complainers' Averment

5.1
Mr D of Texas, formally instructed the First Respondent in connection with a divorce. On 24th October 2003, he signed a Mandate authorising the forwarding of his files to John Fraser of Messrs Robertson Paul, Solicitors, 95 Bothwell Street, Glasgow, G2 7JH. On 4th November 2003, Messrs Robertson Paul submitted the Mandate to the First Respondent and asked for the file. They did not receive a response and wrote again by fax dated 13th November 2003 requesting the file. They did not receive a reply and faxed again on 1st December 2003 advising that in spite of their letters of 4th and 13th November and various telephone calls to the firm, they had still not received the file of papers and indicating that they required this within the next 7 days or they would write to The Law Society. The First Respondent did not reply.

The evidence of the witness John Fraser a solicitor enrolled in 1982 was given on 29/1/07. It was clear and credible evidence supported by the documents produced in Production 2.4. What is complained of is failure to implement a mandate or reply to the letters or telephone calls about that from the new firm. It is clear in Mr Atuahene's Answers that he accepted instruction from Mr D and £500.00 to account. The issue of David Caplan (probably David Clapham) is of little relevance to the complaint. Mr Atuahene claimed to have spoken to the Secretary at Robertson Paul. This was not accepted by Mr Fraser who had checked with his secretary. He stated there was

no file note either to support this. He never spoke with Mr Atuahene, nor did he receive a response or he would not have followed up in the way he did. He had checked his file

Misconduct Article 24.10

Complainers' Averment

5.2
By letter dated 9th December, Messrs Robertson Paul invoked the aid of the Complainers to obtain the relevant file. By letter dated 12th December 2003, the Complainers wrote to the First Respondent with a copy of the Complaint documentation asking for confirmation that he had implemented the Mandate within 14 days or the reason why he had not. He did not reply. A follow up letter was sent to him on 8th January 2004 advising that as no response had been received, consideration was being given to a formal complaint. He did not respond.

5.3
On 22nd January 2004, the Complainers wrote to the First Respondent advising that they were now dealing with the matter by written investigation in view of the lack of response. They would be in touch with him further once the full details of the complaint had been identified. The First Respondent implemented the Mandate on 26th January 2004. On 23rd March 2004, a formal letter intimating the Complaint was sent to the First Respondent requiring his written response, any background information, his business file or files if he still held and details of any fees charged or to be charged and whether or not they had been paid within 21 days. He did not reply. A formal notice under Section 15(2)(ii) was issued to him on 30th April 2004. He did not reply. A further formal notice under Section 15(2)(ii) was issued to him on 26th May 2004. He did not respond. By letter dated 22nd June 2004, he was advised that a Report was now being obtained. On 20th July 2004, he was sent the Report and opinion. He did not respond. On 17th September 2004, he was provided with details of the Client Relations Committee Finding and a Schedule. He did not respond.

In this case (Production 2.4, Joint Minute Article 4, witness Ian Ritchie and John Fraser) the letters were produced and all went to Argyll Arcade. These facts are proved.

Misconduct Article 24.11

6.0 **Mr & Mrs E**

Complainers' Averment

6.1
By letter dated 28th January 2004, Messrs MacTaggart & Company, Solicitors, Largs, acting on behalf of Mr & Mrs E, invoked the aid of the Complainers in connection with obtaining the free proceeds of the sale of a property in Millport and an accounting in relation thereto from the First Respondent. By letter dated 2nd February 2004, the Complainers wrote to the First Respondent requiring him to produce a response to MacTaggart & Company with a full accounting and the free proceeds of sale within 7 days. He did not reply. A follow up letter was sent on 12th February advising him that the matter was now going to be dealt with by written investigation and that he would be contacted in due course.

Complainers' Averment

6.2
On 26th March 2004, a formal Complaint was intimated to him requiring his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid within 21 days. He did not reply. A formal notice was sent to him on 4th May 2004 under Section 15(2)(ii) of the 1980 Act. He did not reply. A further notice under Section 15(2)(i)(X) was sent to him on 20th May 2004. He was advised by letter dated 19th May 2004 that a Report was now being obtained. On 27th May 2004, he was issued with a copy of the Report and opinion. He did not respond. On 12th July 2004, he was issued with the Schedule from the Client Relations Committee. He did not respond.

In this case (Production 2.5, Joint Minute Article 5, witness Ian Ritchie) the letters were produced and all went to Argyll Arcade. These facts are proved. The bulk of Mr Atuahene's Answer relates to comment about the client's original complaint. That was not part of the issue before the Tribunal.

Misconduct Article 24.12

7.0 MR F

Complainers' Averment

7.1
By letter dated 11th April 2003, Mr F invoked the aid of the Complainers in relation to concerns about the service provided to him by the First Respondent. A formal letter with the Heads of Complaint identified was submitted to the Respondent on 30th May 2003 requiring his written response within 14 days. He did not reply and a follow up letter was sent with copies of Sections 15 and 42C on 16th July 2003.

7.2
As he continued to ignore correspondence, a Recorded Delivery Notice under Section 15(2)(i)(i) was served on him on 11th August 2003 and the second Notice under the said Section on 21st October 2003. He failed to reply. By letter dated 29th October 2003, he was advised that the Complainers were proceeding to instruct a Report to be prepared in relation to his conduct. A Report was received by the Complainers in November 2003 and copied to the First Respondent on 28th November 2003. He made no representations.

This is the first case where there were problems with the addresses. case (Production 2.6, Joint Minute Article 6, witness Ian Ritchie) The letters were produced and went to Argyll Arcade, 535 Cathcart Road, Mr Atuahene's LP 8 address on the same date. Receipt of all was admitted on record on the basis uplifted from the Judicial Factor's office. The items which went to Cathcart Road were dated 21/10/03, 29/10/03 and 28/11/03. Only the first was a Notice the other two were for information relating to the Report. Mr Atuahene has admitted on record that the notice of 21/10/03 and the letter with the Report dated 28/11/03 were delivered to his office at Argyll Arcade, although qualified by the statement that they were addressed there. In evidence he stated this was on the basis that he prepared the Answers having seen these items amongst those released to him on 26th August 2005. If that is so then he must have had these two which had a different address.

Mr Ritchie was by this time the case manager for all of the complaints and indicated that at the relevant time the letters were

sent out normally by LP. Formal letters also went by recorded delivery. In relation to the letters addressed by recorded delivery to 535 Cathcart Road and in particular the Notice dated 21/10/03 he was unaware of it being returned and if it had been he would have reissued it. I would also draw attention to the fact that albeit it ought to have been 536 the full address was there with the correct post code. While there is evidence that the Law Society had some information that he had ceased to practice there on 31/10/03 he had not made any formal notification and he continued to use letterheads which stated he did have an office there.

Taking this all into account these facts are proved.

The bulk of Mr Atuahene's Answer relates to comment about the client's original complaint. That was not part of the issue before the Tribunal.

Misconduct Article 24.12

8.0 MRS G

Complainers' Averment

8.1

By letter dated 22nd September 2003, Mrs G, on behalf of her father, Mr H, aged 89, a client of the Respondent, invoked the aid of the Complainers in relation to concerns about a service provided to her father by the First Respondent. This letter was copied to the First Respondent on 26th September 2003 to establish if conciliation was possible. Mrs G was not willing to engage in conciliation in view of the circumstances of her complaint. By letter dated 23rd October 2003, the First Respondent was formally required to provide a written response to the Heads of Complaint within 14 days. He failed to reply.

8.2

On 23rd October 2003, a formal Recorded Delivery Letter in terms of Section 15(2)(i)(i) was sent to the Respondent. He did not reply. On 14th November 2003, the second letter in terms of Section 15(2)(i)(x) was served. He did not reply. On 15th January 2004, he was advised that a Report was to be instructed. On 28th January 2004, the Report was copied to the First Respondent and representations invited from him. He did not reply.

In this case (Production 2.7, Joint Minute Article 7, witness Ian Ritchie) the letters were produced and all went to 536 Cathcart Road except that of 28/1/04 which went to Argyll Arcade. Mr Atuahene admits that these letters were delivered on the same basis as before within his Answers albeit making no mention of that of 14/11/03. Thereafter he seeks to exclude those addressed to Cathcart Road after his redirection instruction ceased. The letters were addressed to his place of business which he continued to use on his letters. In the production on his letter to Mrs G with the fee note, dated 12/8/03, it states "Also at 536 Cathcart Road". These facts are proved.

The bulk of Mr Atuahene's Answer relates to comment about the client's original complaint. That was not part of the issue before the Tribunal in relation to this client at this stage.

8.3

In view of her dissatisfaction with the conduct of the First Respondent, Mrs G instructed the firm of Ferguson Dewar, Solicitors, 20 Renfield Street, Glasgow, to act on her behalf and a Mandate was issued to him by the said firm on 19th December 2003. He did not reply. Follow up letters were sent on 21st January 2004 and 9th and 17th February 2004 seeking the Will and other papers relating to Mrs G's late father. Telephone calls were also made to the firm of the First Respondent but were never replied to.

The evidence in relation to this came from Mr Ross who gave his evidence on the 29/1/07, Ian Ritchie and the Joint Minute Article 7. This was the second stage of the complaint by Ms Scotland. Mr

Atuahene adopted the position in his Answers and evidence that the Mr Ross's firm were told in phone calls that there were problems locating the will. He stated that he himself spoke to them. Mr Ross a solicitor since 1978 did not accept this. He spoke to the terms of his letter of 3/3/04 following on the unanswered correspondence and several calls having been made to speak to Mr Atuahene without success or response. He had spoken to Mr Thorburn briefly to no avail at the end of February 2004. He confirmed that he spoke again to Mr Thorburn months later and received the will within days. Mr Atuahene relies here on the problems caused by Isobel Murray, a recurrent theme in his defence. Mr Ross was of the view that the speed of retrieval would depend on storage to a very limited extent and pointed out that he would have expected Mr Atuahene to go through the Wills safe and checked the index on taking over the Firm. Mr Ross gave evidence of the distress caused to Mrs G who was not in a good state of health and whose father had died.

8.4

The assistance of the Complainers was invoked on 21st February 2004 and the Complainers wrote to the First Respondent by letter dated 25th February 2004 advising that the complaint was being made and that they would provide further details in due course. He was then advised by letter dated 18th March 2004 that the matter would proceed by way of written investigation and he would be contacted in due course for his comments. On 26th March 2004, a formal intimation of the complaint was made to him requiring his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid within 21 days of the letter. He did not respond. A formal notice was served on him on 21st April 2004 under Section 15(2)(ii) of the 1980 Act. He was advised of this on the same date that a formal report was being obtained. The Report was copied to him on 1st June 2004. On 19th August 2004, a copy of the Schedule from the Client Relations Committee was submitted to him. He did not respond.

In this case (Production 2.7, Joint Minute Article 7, witness Ian Ritchie) the letters were produced and all went to Argyll Arcade. These facts are proved.

The bulk of Mr Atuahene's Answer relates to comment about the client's original complaint. That was not part of the issue before the Tribunal.

9.0 **Client 124**

Complainers' Averment

9.1
By letter dated 30th January 2004, Client 124, invoked the aid of the Complainers in connection with the First Respondent's representation of him in the purchase of Property 3. The purchase was originally completed in May 2003 and at that time, no provision had been made for Stamp Duty as it was believed the property was in an exempt area. The Deeds were returned by the Keeper as Stamp Duty was payable. When **eventually** Client 124 was advised of this, the Stamp Duty was paid in November 2003. Thereafter, the First Respondent failed to return the Deeds and the application for registration was cancelled. **Client 124 made numerous attempts to contact the First Respondent but received no reply.** He had purchased the property with the assistance of a loan from The Royal Bank of Scotland whose security had therefore not been registered.

The allegation of misconduct at Article 24.13 which relates to failure to reply to this client has been removed as the client failed to attend as a witness. I consider that the words highlighted in bold type have not been proved and should not form part of any finding in fact.

The remainder of the article relating to the transaction itself is not in dispute. The paperwork was produced in Production 2.8 and evidence of the correspondence from Client 124 was

spoken to by Ian Ritchie. The facts of the transaction are admitted in the Answer on record and it is accepted that the delay in the registration of the title and the security was due in substantial part to errors in Mr Atuahene's office. In evidence he accepted that he was responsible. He said that he could not possibly deal with all the transactions and that 90% were dealt with by his paralegal. It was the paralegal who had made the error about the property being in an exempt area. He accepts that the client paid the stamp duty in November 2003 and he received the stamped deed and the security in January 2004.

Campbell Joss in a letter dated 26th April 2004 confirm that the application was lodged with the Land Register as at 21/4/04. This letter forms part of production 2.8.
Mr Atuahene has produced at 17(b) of his third Inventory the Form 4 which relates to this transaction and is dated 1/5/04.

The factual averment about the date of lodging the application is in article 9.2 and is not disputed in answer. Accordingly the period during which registration had been outstanding and the lender unsecured is 11 months.

Misconduct Article 24.14

Complainers' Averment

9.2
The Complainers intimated the letter to the First Respondent on 5th February 2004 advising that they would now proceed with a written investigation and be in touch with him in due course. On 2nd April 2004, the Complainers sent a copy Help Form in relation to the matter to the First Respondent for his information advising that the matter was now again under enquiry. It was

confirmed on 26th April 2004 that the application to the Land Register had been lodged on 21st April 2004.

9.3
By letter dated 21st May 2004, the formal complaint was intimated to the First Respondent and he was required to provide his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid within 21 days. He did not reply. On 14th June, he was served with a Notice under Section 15(2)(ii) of the 1980 Act. He did not respond. The second part of the Notice was served on him on 1st July 2004. He did not respond. On 1st July 2004, he was advised that the Complainers were instructing a Report. On 28th September 2004, he was sent a copy of the Report and opinion. On 17th November 2004, he was issued with a copy of the Schedule from the Client Relations Committee. He did not respond.

> In this case (Production 2.8, Joint Minute Article 8, witness Ian Ritchie) the letters were produced and all went to Argyll Arcade. These facts are proved.

Misconduct Article 24.15

10.0 **MESSRS R & R S MERRINS, SOLICITORS – MR I**

Complainers' Averment

10.1
By letter dated 21st June 2004, Messrs R & R S Mearns, Solicitors, 2 Carment Drive, Glasgow, made a formal complaint on behalf of their client Mr I against the First Respondent. Mr I sold his business and leasehold interest in the shop at Property 4 to Mr J, for whom the First Respondent acted. At settlement on 15th August 2003 the signed Assignation was sent to the First Respondent on an undertaking that he would register the Assignation and deliver an extract for onward transmission to the landlord's Agents. Consent of the landlord was given on the basis that an extract of the Assignation would be delivered.

Complainers' Averment

10.2
The First Respondent failed to register the Assignation and failed thereafter, to respond to letters from R & R S Mearns for the extract. They wrote to him on 10th December 2003, on 19th December 2003, on 16th December 2003, on 19th February 2004 and 17th May 2004. Repeated telephone calls were made to the First Respondent but not replied to. In the interim period, rental

was not paid and the landlords eventually required to take action for recovery against Mr I.

Donald Henderson as solicitor for over 25 years gave evidence on the 29/1/07. He gave clear and unshakeable evidence of the serious difficulties which he and his client encountered in dealing with Mr Atuahene. The factual position as averred is substantially accepted by Mr Atuahene in record and in evidence. This was a transaction he dealt with himself at Argyll Arcade although he repeatedly sought to elicit from the witness that it started at Cathcart Road which would support his contention that the file was mislaid, in spite of great care, during the move to the new premises. Mr Henderson was able to say that the first letter on his file was in June 2003 and to Argyll Arcade. He had his file with him and showed it to Mr Atuahene who has I believe departed from the original position he took. Mr Henderson did not accept that there had been messages left for him. He had only one telephonist who took the messages, the secretaries did not. He did not accept that his calls or letters were responded to. Mr Atuahene in fact put to him that he did not deny that he did not reply.

The factual position is clear.

Mr Henderson obtained the file from the office of the Judicial Factor, got the lease delivered on 11/7/05 and registered in the Books of Council and Session on 5/8/05. He spoke to the letters produced, to 3 or 4 phone calls, to getting no reply, to speaking to Richard Thorburn to have a quiet word with Mr Atuahene, to speaking direct to Mr J whom he knew and obtaining rent to reduce the arrears. He confirmed that his client's bank account was

arrested for arrears as a consequence of the serious problems caused by Mr Atuahene. I ask the Tribunal to prefer his evidence and find the facts proved.

Misconduct Article 24.16

Complainers' Averment

10.3
By letter dated 9th July 2004, the Complainers intimated a formal complaint in connection with this matter to the First Respondent requiring his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid within 21 days of the letter. He did not reply. On 11th August 2004, the Complainers served a Notice under Section 15(2)(ii) of the 1980 Act on the First Respondent. He did not reply. The second part of the Notice under Section 15(2)(ii) was served on him on 14th September and a letter on the same date advising that a report was now going to be obtained. On 11th October 2004, he was provided with a copy of the Report and opinion but not did not respond. On 17th November 2004, he was provided with a copy of the Schedule from the Client Relations Committee. He did not respond.

In this case (Production 2.9, Joint Minute Article 9, witness Ian Ritchie) the letters were produced and all went to Argyll Arcade. These facts are proved.

Misconduct Article 24.17

11.0 **CAMPBELL BOATH, SOLICITORS**

Complainers' Averment

11.1
Helen Cowie, Solicitor, acted on behalf of Mr T in the purchase of Property 5, with the assistance of a loan from the Halifax plc. The First Respondent acted on behalf of the seller. The transaction settled on 18th December 2002. The First Respondent issued a letter of obligation providing for delivery of the Discharge together with Forms 2 and 4 within 10 days of the settlement. On

4th April 2003, the Land Certificate was returned to Ms Cowie still burdened with the security. She wrote to the First Respondent explaining the situation by letter dated 14th April 2003 requiring him to provide her with the Discharge, Forms 2 and 4 and the registration dues by return. The First Respondent delivered what was required in May 2003 and the relevant documentation was forwarded to the Keeper.

11.2
In January 2004, Ms Cowie contacted the Keeper regarding the Land Certificate and was advised that the document had been dispatched to the firm of Atuahene, Murray & Company as the presenting agent of the Discharge on 5th November 2003. She wrote to the First Respondent on 8th January 2004 asking that he forward the Land and Charge Certificates. He did not. She wrote again on 28th January 2004 and 13th April 2004 but he did not reply or forward the documentation.

The Articles of Misconduct at 24.18 and 24.19 to which these averments relate were not proceeded with as the witness had retired to Canada.

11.3
Ms Cowie, now a Partner in the firm of Campbell Boath, Solicitors invoked the aid of the Complainers in obtaining the documentation by letter dated 4th June 2004. **In the interim period, the borrower had defaulted on the loan and the Building Society wished to take recovery proceedings**. The Complainers submitted the letter of complaint to the First Respondent on 9th June 2004 advising him that the matter would be dealt with by written investigation and he would be contacted again.

The facts in Article 3 with the exception of those highlighted in bold were admitted by Mr Atuahene in his evidence and remain relevant to the failure to reply to the Law Society.

Complainers' Averment

11.4
A formal letter of complaint was intimated to him on 22nd June 2004 requiring his written response, any background information, his business file or files and details of any fees charged or to be charged and whether or not they had been paid within 21 days of the date of that letter. He did not reply. On 28th July 2004, he was served with a notice in terms of Section 15(2)(ii) of the 1980 Act. He did not respond. On 31st August 2004, he was served with the

second notice under Section 15(2)(ii) of the 1980 Act. He was also advised that a Report was now going to be obtained. He did not respond. On 15th October 2004, he was provided with a copy of the Report. He did not respond. On 17th November 2004, he was provided with a copy of the Schedule from the Client Relations Committee. He did not respond.

In this case (Production 2.10, Joint Minute Article 10, witness Ian Ritchie) the letters were produced and all went to Argyll Arcade. These facts in 11.3 and 11.4 are proved.

Misconduct Article 24.20

12.0 **Ms K**

Complainers' Averment

12.1
In November 2002, Ms K invoked the aid of the Complainers in relation to her instruction of Messrs Murray & Co, Solicitors, which had become Messrs Atuahene & Murray. The Complainers wrote to the First Respondent on 13th December 2002 to alert him to the situation and ask him to correspond with Mr Purves of Messrs Grant & Wylie, Solicitors, in connection with the transaction. Ms K wrote further about her concerns regarding the failures of the First Respondent. Said letter was copied to the First Respondent on 21st January 2003 for his comments. He did not reply.

Complainers' Averment

12.2
A follow up letter was sent on 12th February 2003 asking him to respond within the next 14 days. He did not respond. A further follow up letter was sent on 28th February 2003. He replied by letter dated 21st March 2003 saying that he was looking into matters and would revert as soon as possible. He did not do so. A follow up letter was written on 3rd April 2003, requiring confirmation of the position within 7 days. He wrote on 11th April advising that he had written to Ms K suggesting a meeting to resolve matters. Ms K then indicated that she wished to proceed with a formal complaint.

12.3
A formal complaint letter was issued to the First Respondent on 21st August 2003 requiring his written response, any background information, his business file and details of any fees charged or to be charged and whether or not they had been paid within 14 days. He did not reply. A notice under Section

15(2)(i)(i) of the 1980 Act was served on him on 6th October 2003. He was also served with a notice under Section 42C of the 1980 Act calling upon him to produce the business files relating to Mrs K. He did not respond and a second notice was served under Section 15(2)(i)(X) of the 1980 Act on 5th November at which time, a further formal notice was served on him for his written response, background information, his business file or files and the details of any fees charged or to be charged and whether or not they had been paid within 21 days. He was provided with a further opportunity to respond on 23rd January 2004 with a deadline of 7 days. He did not reply and further notices under Section 15(2)(i)(i) and 42C were issued on 9th February 2004. A second notice under Section 15(2)(i)(ii) of the 1980 Act was issued on 9th March 2004.

12.4
The First Respondent wrote by letter dated 7th March 2004 and 10th March 2004 with his position in relation to Ms K and his previous failures to reply to The Law Society. He was written to on 22nd March 2004 and asked to confirm that Ms K's file had been mandated away from him and that he had no file to send. He did not reply and a follow up letter was sent on 1st April. Another follow up letter regarding the file was sent on 27th April 2004 and as he had not replied, he was advised on 19th May 2004 that a Report was being obtained. The report and opinion was intimated to him on 2nd August 2004 but he did not respond. On 21st September 2004, he was provided with a copy of the schedule from the Client Relations Committee and advised that the Conduct Committee would consider this and any representation should be with the Complainers by Wednesday 20th October 2004. He did not respond.

> This is a significant matter as it demonstrates that as far back as 2002 Mr Atuahene was unable to manage the business he had taken on for the clients. In this case (Production 2.11, Joint Minute Article 11, witness Ian Ritchie) the letters were produced and he admitted receipt of all letters to Cathcart Road prior to June 2003. In Answer 12.2 – 12.4 he admits that the formal letter of 21/8/03 was within those uplifted from the Judicial Factor's office. The two section 15 Notices dated 6/10/03 and 5/11/03 are not admitted. The first pre-dates the letter of 23/1/04 from Miss Mainland at the Law Society which states that the records show he ceased to operate from Cathcart Road at 31/10/03 and she sends out fresh intimation of the complaint to Mr Atuahene.

The responses which were received earlier in 2003 did not amount to proper responses.

These facts are proved subject to recognition that the Law Society had information about the closure of the Cathcart Road office at 31/10/03.

Misconduct Article 24.1

It is not disputed that Mr Atuahene was suffering stress and the terms of the Report by his doctor at item 39 of his First Inventory were agreed in the Joint Minute Article 51. This goes to mitigation. The actions of Mrs Murray have been emphasised repeatedly as a cause of his problems both with clients and the accounts. This is an element which presented him with a situation he was significantly unqualified to deal with. Again it is mitigation. The actions of Mr Atuahene are what are the subject of the misconduct allegations. The evidence and the averments have painted a picture which must raise serious concerns about his competence and his ability to understand his own limitations. Never have I seen a situation where a solicitor has so comprehensively failed to conduct his practice in a responsible way. He failed to manage his client's affairs, carry out the work entrusted to him or respond to reasonable enquiries. He failed to manage his business affairs and continued to lack any insight into his fundamental inability to manage his books and accounts even

after it was sorted for him, at great expense, and after his inability was drawn to his attention.

The takeover of Murray & Co was ill advised and inadequately managed. Even given Ms Murray's actions he was manifestly incapable of addressing the requirements of the transfer or recognising his limitations. The Society's inspectors knew him already and gave him advice to assist him. He tried to resolve the problems but the desire to maintain the practice seems to have overridden all efforts to assist him.

A number of astonishing facts have emerged. He accepted that he did not have a list of files. The paralegal did and he relied heavily on the paralegal. He does not seem to have had any proper system for opening mail or considering it personally, assessing it for urgency. He says all letters were opened, he also says that he opened letters if he felt ok that day but didn't always act on them then, he says that at one point Mr Thorburn opened his letters and put them in his room and he also says that most of the letters he was handed by the Judicial Factor were unopened. He says in his answers and in evidence that he accepts that the Law Society's letters listed by him were handed to him by the Judicial Factor and that he prepared his Answers on the basis that they were seen by him. This is qualified in the Answers by the sentence that they were addressed to Argyll Arcade and yet the dates used by him also include letters which were addressed to Cathcart Road. In relation to his accounting system he has no qualms about admitting that he did not know the password for access to the computer records. His

cashier kept changing it to stop him messing up the accounts. He did not know what a cashroom partner was.

Of even more concern is the evidence from him that he continued to operate the practice when he was unable to be there. He was going into the office to sign cheques when phoned by staff. He told his staff if a matter was urgent they should write him a note and he would sort it. He handwrote letters and signed typed letters most of which had mistakes. This was his own evidence. His position was that the problems were not his own doing, which is a theme throughout. It was Ms Murray's fault, or the cashier's fault, or the paralegal's fault. On 17/4/08 he stated that the problem of the accounts was not his responsibility due to the actions of Ms Murray. He stated that he recognised that if you could not manage you had to take steps to protect client business. He accepted that he had tried to do that but had failed. The picture is of an office in a chaotic state with files everywhere, no systems in place to resolve that, and of a solicitor with little clue as to management. The position did not improve and from what followed it seems he needed to be told what to do to assist.

The interim judicial factor told Mr Atuahene that it was not sensible for him to continue in practice, he was told the same by Mr McCann and by Mr Cohen his own accountant and yet he did so, on the advice of Mr Thorburn. A significant dispute arose in the evidence between the Respondents about how this agreement was reached and in this Mr Atuahene was adamant that he was the one who was correct.

The next section of these submissions relates to the Inspections and the accounts rules. It is important to remember that the allegations of misconduct following on the averments are on an *in cumulo* basis. It is not my position that the individual instances are each on their own sufficient to amount to misconduct or necessarily that the total of the problems identified in any individual inspection would be. They are cumulative through the sequence of the inspections. The articles of misconduct are drafted in that way.

For each Respondent I will look at the first inspection of their individual firms and note my view on the factual issues which then form the basis for the position in the following inspections. I intend to address the tribunal in more detail on those orally and on the link with each allegation of misconduct.

13.0 RICHARD THORBURN, SOLICITOR - INSPECTION: 19/20 MAY 2003

Production 2.12 - 2.14
Inspector Christina Heywood

In relation to this Inspection Mr Thorburn denied the allegations in answer but in evidence said that he had no complaints about the inspection. He knew that he had not struck a balance for several months and had been on holiday and was not comfortable with it. His position in response is given in his reply dated 18/7/03.

Complainers' Averment

13.1
The Complainers' inspectors attended to inspect the books and records of the practice of Richard Thorburn, Solicitors, 25 Newton Place, Glasgow on 19th and 20th May 2003. A prior inspection had highlighted inaccurate and insufficient record keeping, client ledgers not showing enough information, full purchase prices not being recorded and the books and records being kept in arrears. He had been advised as to the proper records to be kept. On this inspection, the position remained the same. Information required from him after his previous inspection had not been produced.

Complainers' Averment

13.2
There were two deficits on the client account. £111,601.09 was debited twice from the client bank account on 4th December 2002 for the client Noreen Mohammed. (1) The bank re-credited the sum on both 18th and 20th December 2002. Payments amounting to £64,348 were made for the client (2) on 8th April 2002 but the funds of £65,000 to cover this were not received until 10th April 2002. The Second Respondent was advised that the writing up of his books of arrears contributed to this situation and that the practice must cease. At the date of the inspection no entries for the firm had been posted to the cash book or ledgers for the month of May and the previous month end procedures had not produced balanced books with there being differences in the firm trial balances in respect of

- November 2002 25p
- December 2002 £469.21
- January 2003 £10.25
- February 2003 £4.25
- March 2003 £388.69
- April 2003 £5,501.79.

The Second Respondent was advised to make corrections to balance the books at each month end and to retain corrections fully noted to provide a full audit trail. He was paying staff wages in cash and keeping no formal records to show the position with regard to Income Tax and Pay as You Earn. He was advised that he must put records in place to show the true financial position with entries to a firm salaries ledger reflecting the payments made.

The facts averred here were accepted as accurate by Mr Thorburn. He advised the Tribunal of the system he operated to keep his records which included relying on notes and his memory. The first

deficit for client (1) was a problem caused by the Bank saying they did not have his instructions then paying twice. This was not picked up for some time due to his poor systems and in particular the writing up of his books in arrears. Ms Heywood was of the view that if regular entries had been made in client ledgers there would have been no mistake, it would certainly have been picked up earlier. Mr Cumming accepted that this was a bank error. The Tribunal may be of the view that this was a bookkeeping issue rather than a deficit. Mr Thorburn accepted in evidence on 8/10/7 that there was substance in the second for client (2).

He did not see the relevance of the lack of formal records for his staff but surely that is important as necessary to ascertain the true financial position of the firm.

Complainers' Averment

13.3
A transaction in relation to the client (3) was recorded under the ledger of client (4). **An inter client transaction which took place on 25th July 2001 between client (5) and client (6) was not included in the inter client transfer record.** The client balances were incorrectly shown as at 31st March 2003 in respect that £438.92 for client (7) was shown as a debit balance instead of a credit balance and a £500 unidentified debit from the client bank account in February was shown as a debit ledger balance while no ledger was opened to record the payment and it was not included in the March client listing. Several over £500 balances were held uninvested, namely

- Client (8) £1,475.52 December 2001 to April 2002
- Client (9) £5,058.20 29th November 2002 to date of inspection
- Client (10) £3,500 12th December 2001 to 29th January 2003
- Client (11) £2,307.43 9th December 2002 to date of inspection
- Client (12) £820 10th September 2002 to date of inspection
- Client (13) £4,716.01 27th August 2002 to date of inspection

The facts are again substantially accepted by Mr Thorburn. The section highlighted in bold I accept is an error by the Inspector and should be deleted. His position in relation to the uninvested balances is that the rule does not require him to invest provided he applies interest. He says he has except with client (10) where the interest was waived in return for a waiver of fees due. His interpretation of the rule is incorrect.

Complainers' Averment

13.4
Due to the practice of writing up the books in arrears, further errors existed. In relation to the client (16), a cheque for £10,000 was received from the client on 18th December 2002 but the bank did not honour it. Settlement took place leaving a debit balance of £9,991.98. In relation to the client (17), £4,924.50 was paid to the client on 19th November 2002. The cash statement showed that sum as being due but did not show that £5,000 had already been paid to the client on 4th November 2002. A debit balance of £4,896.70 was left. There were a number of instances where client's written authority for payments was not exhibited, namely

Client (18)

- 15th January 2003 Client (19) £20,000
- 15th January 2003 Client (20) £9,500

Client (21)

- 28th August 2002 Client (22) £1,641
- 9th September 2002 Northern Rock Account 055507-21453 £400

Client (23)

- 8th May 2002 Financial Tactics (24) £1,300
- 8th May 2002 Client (25) £3,000
- 8th May 2002 Caledonia Properties (26) £5,200

Procedures for ensuring that deeds were timeously stamped and recorded with evidence of that on file were inadequate. The documentation to evidence the recording of a discharge for the clients (27) and (28) from Glasgow City Council and the client (16) from the Cheltenham & Gloucester was not exhibited although the deeds had been recorded.

He accepts that the averments are factually correct. In relation to clients (16) and (17) he regards the matters as neither a problem nor a rule breach. This is correct in relation to client (16) but incorrect for client (17) as it is inaccurate. In this section the question is one of accuracy and relates to Rule 8. In relation to Rule 6 if those to whom the payments were made were not clients there is no breach.

Complainers' Averment

13.5

The Second Respondent did not have in place procedures to comply with the money laundering regulations. For example, the files of Clients (4), (29) and (27) did not contain evidence regarding the client's identity or any reasons why identification was not considered necessary. Sums were provided by clients towards their transactions but evidence was not seen to show that the source was verified. Examples were Client (29) for whom £32,477 was received on 27th January 2003 and Client (27) and Clients (28) for whom £4,983 was received on 12th March 2003. A credit entry on 12th December 2001 for Client (10) did not identify full details of the source of the funds.

Ms Heywood stated that there were no specific procedures for identification. This is what she found and I do not understand there is dispute about that. What is in dispute is the adequacy of what was done and whether it complied with the rigorous requirements in relation to moneylaudering procedures. He clearly had no central record and did not follow a practice of noting the reasons in the file for not having ID. He later produced some documentary evidence in his letter of 18/7/03 for example and gave explanations for others. Ms Heywood did not accept his position on the adequacy of evidence of ID from trusted members of staff and pointed out that a passport photo such as he had produced for client 27 was not enough. Two forms of Identification were needed.

In his evidence of 4/2/07 he gave a detailed explanation of how he approached things which I submit demonstrated a lack of a proper system consistently used.

14.0 RICHARD THORBURN, SOLICITOR - INSPECTION: 20/21 OCTOBER 2003

Complainers' Averment

14.1
The Complainers' inspectors attended on 20th and 21st October 2003 and continued to identify the same matters as noted at previous inspections, namely insufficient and inadequate records, client ledgers not showing enough information, full purchase prices not being recorded, and the books and records being kept in arrears. It was not possible to ascertain the current financial position at the time of the inspection as the books had only been written up to September 2003. In some instances, it was noted that properties were being bought and sold again on the same day or multiple properties were bought within days of each other making the ledgers difficult to read to establish the correct position. In particular, it was difficult to establish whether or not deeds had been sent for registration. Due to insufficient ledger narrative, it was not clear which properties were being registered or on which properties, Stamp Duty was paid. At that time, the Second Respondent advised that he intended to merge his firm with that of the First Respondent in November 2003. He was advised that all of his books and records would require to be up-to-date and reconciled and the true position ascertained prior to client balances being transferred.

Complainers' Averment

14.2
There were no records of staff wages, tax and Pay as You Earn and the Second Respondent continued to pay staff salaries in cash from his personal drawings. In relation to the firm's books and records, no entries had been posted for October 2003 and it was therefore not possible to determine the true financial position at the time of the inspection. The firm's trial balance had still not been fully squared and there were differences noted

- July 2003 £179
- August 2003 £181
- September 2003 £266.38.

The trial balance contained a suspense account with £139.34 which had not moved since 10th May 2003. Many entries were completed throughout the books and records out of date order and being backdated. The ledger

narrative was insufficient and extremely limited on almost all of the ledgers viewed during the inspection. Many entries simply stated received from client. The ledger for Client (30) showed entries but no dates. On many the conveyancing transactions had taken place with ledgers showing multiple purchases at the same time but not identifying which property a particular entry related to. The cash books contained entries that were completed in pencil and were not a permanent record.

Complainers' Averment

14.3
It was noted that there were discrepancies within purchase prices paid. The full purchase price of a property was not shown through the records. The Second Respondent was asked to explain this and provide written confirmation from the Bank or Building Society for whom he acted as agent in the transaction confirming that they were aware that the full purchase price was not being passed on. This related to various clients where the Second Respondent acted for both parties

- Client (31) in the purchase of Property 16 from Client (32) which was an inter client transaction
- Client (31), purchase of Property 17 from Client (33) which was an inter client transaction
- Client (34), purchase of Property 18 from Client (35) which was an inter client transaction
- Client (36) purchase of Property 19 from Client (37) which was an inter client transaction.

There were delays in forwarding deeds to the Keeper for registration or no evidence that deeds had been registered. It some cases due to the lack of ledger narrative, it was not possible to identify what property was being registered. In particular

- Client (38) purchase of Property 20, 4 Flats, 8th June 2001, showed a credit of £132 on the ledger since 3rd July 2001 with no indication that recording dues had been paid.
- Client (39) purchase of Property 50 on 24th July 2002, where the purchase price was paid to Client (40) on 24th July 2002 with Stamp Duty being paid on 30th July 2002 but no recording dues paid.
- Clients (41) purchase of Property 21 on 16th January 2003 with a Royal Bank loan of £34,175 where a credit of £110 remained on the ledger with no indication that recording dues had been paid.
- Client (25) purchase of Property 22, Flats 2/1 and 2/2, for £75,000 each on 24th December 2002 where the Stamp Duty for both flats was not thereafter paid until 3rd July 2003 and there was no indication that the recording dues had been paid. In relation to the purchase of Property 51 on 4th July 2003 for the same client, the Stamp Duty was paid on 24th July 2003 with no indication that recording dues had been paid.

- Client 42) sale of Property 23 on 15th August 2003 where £41,842.30 was paid to Client (43) on 15th August 2003 to redeem the mortgage outstanding on the property. The ledger disclosed a credit balance of £66 and no indication that the discharge had been recorded.
- Client (44) in the sale of Property 16, on 12th June 2003, where the Bank of Scotland loan was redeemed but there was no indication that the discharge had been recorded. Stamp Duty of £1,310 had been paid where the property was being sold not purchased.
- Client (45) purchase of 4 properties, Properties 24 on 20th October 2000, Property 25 on 20th October 2000, Property 26 on 1st November 2000 and 3rd, property 27 on 6th November 2000 where the recording dues were not paid until 31st July 2003.
- Clients (46) in the re-mortgage of Property 28 on 4th July 2003 with a Natwest loan of £212,470 where the redemption of £69,321.43 was paid to the Yorkshire Building Society on 22nd July 2003 and no evidence was shown that either the Standard Security or the discharge had been recorded.
- Client (33), sale of Property 17 on 18th July 2003 to Client (31), where the loan from the Allied Irish Bank was redeemed on 18th July 2003 but there was no evidence shown that the discharge had been recorded.
- Client (47) purchase of Property 53 with a Halifax loan on 25th September 2003 where there was a credit of £132 on the client's ledger and no evidence of the registration of the deed or security.

Complainers' Averment

14.4
The list of client balances to September 2003 was incorrect, for example, the list of balances stated a credit balance of £179 when it should have been nil and Client (48) showed a credit balance of £411.65 which should have been £411.73. A significant number of client credit balances were noted that should have been either disbursed timeously or invested.

- Client (34) £720.96 9th September 2003 to date of inspection
- Client (49) £35,000 24th September 2003 to date of inspection
- Client (50) £209,363.24 24th September 2003 to date of inspection
- Client (51) £807.38 6th June 2003 to date of inspection
- Client (52) £681.07 11th April 2003 to date of inspection
- Client (53) £2,160.50 25th September 2003 to date of inspection
- Clients (54) £985 23rd September 2003 to date of inspection
- Client (55) £665.36 31st October 2002 to date of inspection
- Client (56) £625 9th August 2003 to date of inspection
- Client (57) £2,372.43 19th December to date of inspection
- Client (12) £855 10th September 2002 to date of inspection
- Client (13) £4,661.01 27th August 2002 to date of inspection
- Client (58) £20,338.77 24th Setepmber 2003 to date of inspection
- Client (59) £2,734.08 17th September 2003 to date of inspection

- Client (60) £978.30 25th July 2003 to date of inspection
- Client (61) £70,081.73 26th September 2003 to date of inspection
- Client (62) £1,062.63 8th August 2003 to date of inspection
- Client (63) £1,148.71 9th July 2003 to date of inspection
- Client (30) £2,078 Unknown (no ledger dates) to date of inspection

Client's written authority was not provided for payments made

Client (64)
- 4th June 2003 Client (24) £6,000
- 4th June 2003 Client (65) £7,900
- 4th June 2003 Client (66) £4,100
- 12th June 2003 Client (67) £10,000
- 17th Sept 2003 Client (67) £12,000

Client (37)
- 3rd July 2003 Client (68) £48,275

Client (69)
- 17th Sept 2003 Client (70) £3,235.77
- 17th Sept 2003 Client (71) £300

Clients (46)
- 9th July 2003 Client (72) £143,078.57

Complainers' Averment

14.5
Inadequate procedures to comply with the Moneylaundering provisions continued to be a cause of concern. There appeared to be either no identification or no reasons noted as to why identification was unnecessary in respect of the clients (73), (74), (53)/ (75) and (76). Insufficient details were produced to show the source of funds received for clients or verification of that source. In particular, for the clients

- Client (73) £11,000 received on 15th May 2003
- Client (74) £23,125 received on 11th April 2003
- Clients (53) /(75) £10,000, £12,000 and £6,760.50 all received on 25thSeptember 2003
- Client (77) £59,320 received on 6th May 2003 and £12,432.50 received on 11th Sept 2003
- Client (78) £56,500 received on 18th July 2003 and £35,000 received on 24th Sept 2003.

In relation to the above I will address the Tribunal orally.

15.0 CORRESPONDENCE FROM INSPECTION OF OCTOBER 2003

Complainers' Averment

15.1
After the inspection in October 2003, the Second Respondent was written to on 12th November 2003 with full details as above condescended upon regarding the matters brought to his attention at the conclusion of the inspection and those outstanding from the previous inspection. He was asked to provide explanations regarding the records, forward copies of documentation as specified, forward client's agreements, produce original Form 4 documentation regarding transactions, confirm that his books had been fully brought up-to-date with posting done timeously, to correct and identify corrections in relation to the trial balances, to amend ledger narratives, to keep cash book entries in date order, to resolve uninvested balances and explain the action he intended to take about them, to identify the source of funds and to provide identification of clients *inter alia*. He did not reply.

Complainers' Averment

15.2
Follow up letters were sent to him on 28th November 2003, 12th December 2003 and 26th January 2004. Other than an acknowledgement that he would reply, no substantive responses were received in relation to these letters. At the next inspection in February 2004, the Second Respondent accepted he had not replied and that he was unable to formulate a reply.

In evidence on 4/12/07 Mr Thorburn accepted that he did not give a specific response to the inspection letter of 12/11/03 maintaining that his letter of 15/1/04 (Production 215 – 2.16) covered a lot of the ground. The factual position seems to be accepted subject to that judgement as to whether the letter does form a substantive response. I submit that it does not.

16.0 RICHARD THORBURN, SOLICITOR - INSPECTION: 17th-19th FEBRUARY 2004

Complainers' Averment

16.1
The inspectors returned on 17th February 2004. The staff wages continued to be paid in cash from personal drawing and no records were being kept. All records for the firm were squared up to 30th November 2003, the trial balance at 31st December 2003 had a difference in it and only the bank reconciliations had been prepared for 31st January 2004. The inspectors identified the difference in the trial balance and the inspection was carried out using 31st December 2003 as the date. By the last day of the inspection, the month end for January had been squared and postings had been completed up to 12th February 2004. Intimation had been given by the Second Respondent that the firm of Richard Thorburn ceased as at 31st October 2003. The records disclosed that that was not the case and that it continued to trade. A bank error resulted in an apparent deficit on 31st December 2003 for £27,246.31 on the client account. The suspense account retained the credit balance of £139.34 which had not been dealt with. The entries in the cash book, trial balance, client balances and client ledgers continued to be made in pencil and not in permanent form. Two errors made by the bank were not identified due to poor record keeping procedures, namely the under-debiting of a cheque for £99,000 shown as £990 and a duplicate CHAPS payment made by the bank on 2nd December 2003.

Complainers' Averment

16.2
The client records for the firm remained incomplete and inaccurate. Various balances were held for periods where it would be considered that they should have been invested to earn interest for the client. For example,

- Client (31) £75,404.19 from 20th November 2003 to 19th December 2003
- Client (79) £500.00 since 29th October 2003
- Client (80) £52,415.00 from 24th November 2003 to 19th January 2004
- Client (81) £10,810.50 from 6th October 2003 to date of inspection
- Client (64) £9,000.00 from 17th December 2003 to date of inspection
- Client (82) £1,486.00 from 25th November 2003 to date of inspection
- Client (83) £4,000.00 from 27th October 2003 to date of inspection
- Client (13) £4,666.01 from 27th August 2000 to date of inspection
- Client (84) £79,582.08 from 13th January 2004 to date of inspection
- Client (85) £16,750.00 from 9th January 2004 to date of inspection

Complainers' Averment

16.3
A number of instances were noted where the registration of deeds was still outstanding or had been late. The Disposition for 4 flats bought at Property 20 for the client (38) in June 2001 remained unregistered, the purchase of Property 29 for client (86) on 11th December 2003 with a mortgage with Preferred Mortgages, the sale of Property 23 for the client (87) which settled on 15th August 2003 with a Abbey National Loans being redeemed, the sale of property for the client (33) in July 2003 with a discharge of a loan from the Allied Irish Bank, the purchase of a property for the client (88) in September 2003 with the assistance of a loan from the Halifax plc and the sale of Property 30 for the client (89) which settled in November 2003 with a redemption of a Preferred Mortgages loan had no evidence of the registration of the relevant deeds. The discharge of the Royal Bank of Scotland loan redeemed on 12th December 2003 for the client (90), the discharge for the Northern Rock Building Society loan redeemed on 12th December 2003 for the client (91) and the discharge for the loan from the Abbey National redeemed on 7th November 2003 for the client (92) were unregistered. The Disposition and Standard Security in favour of the Halifax plc for the purchase Property 31 on 5th September 2003 for the client (93) was unregistered and the Disposition and Standard Security for the purchase of the first floor flat at Property 32 which settled in October 2003 for the client (94) were unregistered.

Complainers' Averment

16.4
The previously raised issued regarding outstanding recording dues and delay in sending deeds for recording as above condescended upon had not been resolved and the position appeared to be the same. The remaining issues regarding the money laundering regulations as above condescended upon remained outstanding. No steps had been taken to amend the insufficient narrative in the clients' ledgers above condescended upon. Identification of properties on the ledgers remained difficult and in some cases, impossible.

In relation to the above I will address the Tribunal orally.

17.0 ATUAHENE, SIM, MURRAY & CO - INSPECTION: 22nd-24th APRIL 2003

Production 2.19 – 2.20
Witness to inspection Gail Robertson

Complainers' Averment

17.1
Due to previous concerns regarding the First Respondent's failure to adhere to the accounts rules, the Complainers' inspectors attended at the firm of Atuahene, Sim, Murray & Company for an inspection on 22nd-24th April 2003. The inspection was difficult due to the prolonged absence of the cashier, the inability of the First Respondent to access the accounting system and his unwillingness to allow direct access to any client correspondence files. The accounting records were found to be extremely unreliable and an apparent shortage was identified. There were numerous delays in stamping and recording deeds and there was no system in place to ensure that this was done timeously.

> In his evidence Mr Atuahene admitted all of this except the last sentence. There is evidence of the lack of systems as already alluded to above, from Gail Robertson in evidence and in her report, and I submit that there is ample for the Tribunal to reject Mr Atuahene's contention that he did have proper systems and find this fact in relation to this inspection established. He accepted he had no list of files, he relied on the paralegal and has repeatedly emphasized that files could not be found. He accepted he could not access his accounting system and that there were some delays in recording and stamping a few deeds which he maintains were satisfactorily dealt with by him.

Complainers' Averment

17.2
The record keeping was so poor that it was not possible to ascertain the true position of the client accounts. There were balances and records from the previous firm Atuahene, Sim & Company which had not been transferred over. Ledger cards for clients showed entries without any narrative and showed disbursement of funds on a number of occasions days before receipt of funds to cover payment. The client bank reconciliation of 31st March 2003 was unreliable, it did not reconcile to the nominal ledger balance, the list of outstanding cheques was inaccurate and the list of outstanding lodgments bore no resemblance to the true position. There appeared to be a shortage of £116,447.21 as at 31st March 2003. The First Respondent was required to lodge £7,000 immediately into the client bank account, transfer all balances in the name of Atuahene, Sim & Co to the current firm, bring all postings up-to-date, post all adjustments from the previous bank reconciliation and provide a full list of all client balances, invested funds, firm's trial balance, client bank

reconciliation and a statement of surplus/deficit to disclose the true financial position.

> Mr Atuahene accepted this was true. His only quibble was to say maybe as far as the statement that there was an apparent shortage of £116,447.21 was concerned. I submit that this was the factual position and these facts are proved.

Complainers' Averment

17.3
Specific matters were drawn to the First Respondent's attention.

> Mr Atuahene agreed that these matters were brought to his attention. He gave evidence on 17/4/08 that the system for cheques was that he had a junior keep a book.

A payment of £16,000 was made to the client (95) on 1st January 2003 but the sale proceeds received for him from Client (96) on that date amounted to only £1,400 and a further payment of £12,600 was not received until 9th January 2003 with the balance on 13th January 2003.

> Admitted by Mr Atuahene.

The property at Property 33 was paid for on 31st January 2003 on behalf of the client (97) while funds were not received until 16th February 2003.

> A posting error.

A client account with the Royal Bank of Scotland was closed on 6th January 2003 but was shown in the trial balance records as overdrawn. The funds control was £106,912.12 but the invested funds print out stated £70,171.16, the balance for the client (98) being understated by £36,760.36. Funds were held for periods without reason such as for the client (99) in the purchase of Property 49 on 27th February 2003 and there were many uninvested client credit balances of over £500 held since November 2002. Two instances were noted where fees had been taken prior to the fee notes being rendered.

> Admitted by Mr Atuahene.

In many cases, it was noted that identification was not seen to comply with the money laundering regulations and the source of incoming funds was not adequately recorded.

17.4
Property 8 was sold on behalf client (100) with 2 Bank of Scotland loans redeemed on 13th November and 19th November 2002, Property 34 was sold on behalf of the client (101) and the Yorkshire Building Society loan redeemed on 19th March 2003 although the sale proceeds were not received until 25th March 2003, repayment of a mortgage in respect of the Property 47 on behalf of client (102) was made to the Kensington Mortgage Company on 27th January 2003, a loan in respect of Property 7 was redeemed on behalf of the client (103) in about November 2002 it appeared that the deeds in these transactions had not been registered. The purchase of Property 10 on 6th February 2003 on behalf of the client (104) showed a long delay in the stamping and recording of the Disposition as the client instructed the firm to transfer the title to his son. All relevant deeds were available to do that but no action had been taken. In relation to the purchase of Property 12 on 10th February 2003 for the client (105), the Disposition and Standard Security for the Clydesdale Bank loan were not recorded and the Disposition had not been stamped. In relation to the purchase of Property 54 on 15th November 2002 for the client (106), no Stamp Duty appeared to have been paid although the deeds were recorded. In relation to the purchase of Property 13 on 8th January 2003 for the client (107), the source of the opening credit balance of £20,000 was not shown, no deeds were recorded and the £30,000 received on 6th January 2003 was erroneously lodged into the firm bank account and not corrected until 8th January 2003.

In relation to the recording issues and other matters raised here I will address the tribunal orally.

Complainers' Averment

17.5
The Chief Accountant wrote to the First Respondent on 28th April outlining the concerns and requiring remedial action and explanations in relation to the matters above condescended upon. The First Respondent replied on 4th June 2003 but the Complainers were unable to ascertain whether the firm's assets exceeded its liabilities and continued to be concerned about a potential shortfall on the client account in the sum of £116,000. An interim judicial factor was appointed on 22nd June 2003. After investigation, it was confirmed that there was no shortage on the client account and that any apparent shortfall was as a result of poor book keeping. The interim judicial factor was discharged on the basis of a payment of £40,000 by the First Respondent towards the cost of the judicial factory with agreement being reached that the remaining balance would be the subject of a moratorium for 12-18 months from the date of the first payment. The appointment was recalled on 5th

November 2003 and the First Respondent recommenced practice on his own account in his existing firm.

Admitted by him subject to the inclusion of the cost of the Judicial Factory being apportioned between himself and Ms Murray.

18.0 ATUAHENE, SIM, MURRAY & COMPANY - INSPECTION: 17th and 18th FEBRUARY 2004

Production 2.21 to 2.23
Witness to inspection Margaret Playfair

Complainers' Averment

18.1
The interim judicial factor had maintained the firm and client records up to 31st October 2003, the financial year end. The First Respondent then took over, keeping his records from that date. On 17th February 2004 the inspectors returned. The records produced were stated as reconciled to 30th November 2003. They had not been reconciled to 31st December 2003. No postings had been made in 2004. The November reconciliations had been carried out only a few days before 17th February 2004 and the December postings throughout the night over a 13 hour period from 16th to 17th February 2004. It was impossible to ascertain the true financial position of the Firm. There appeared to be a £200,000 shortage as at 31st December 2003 but the postings could not be relied upon as the First Respondent still did not know how to use the computer system. A check on larger balances by the inspectors reduced the discrepancy. At the end of the inspection, while summing up with the First Respondent, he became distressed, broke down and was unable to continue with the meeting.

Admitted

18.2
After the inspection, the First Respondent tried to resolve the situation and corresponded with the Complainers.

Mr Atuahene did not admit this in his evidence.

His Client balances were inaccurate showing the balance for the client (108) at £47,010.19 to credit instead of £70 to credit from 15th December 2003, the balance for client (109) at £46,940.19 credit when it should have been nil from 12th December 2003, the balance for the client (110) at £20,083.51 in credit when it should have been £258.79 in credit from 15th December 2003 and the balance for the client (111) at £1,678.04 in credit when it should have been nil from 18th December 2003. Debit entries were in some cases posted as credit entries. A cheque issued on 8th December 2003 on the account of the client

(112) was omitted leaving an apparent credit balance of £93,000 which should have been nil from 8th December.

Admitted

The firm trial balance as at 30th November 2003 did not show the true financial position of the firm. A Murray & Co client account appeared to have a deficit of £123.30. A firm loan account at £238,319.55 had not been reconciled and payments towards this loan had not been deducted due to insufficient funds in the firm bank account. The true figure as at 30th November 2003 should have been in the region of £248,300. The VAT return for 31st October 2003 was still held and unpaid showing a remittance due of £2,589.53. The trial balance showed negative income during the month of November 2003 but the fee note file and fee note book showed that some fees were received in the region of £1,560 net of VAT. The firm's liabilities appeared to be in excess of £385,000 and the bank had stopped honouring most firm account payments.

Admitted

Complainers' Averment

18.4
The client bank account had not been reconciled for December 2003 or January 2004. There were a number of uncleared cheques. There were a number of credit balances in excess of £500 which were held uninvested,

- Client (113) £14,829.52 from about 5th December 2003 to date of inspection

  Mr Atuahene's Third Inventory item 1 clarifies the true position here which was that there was a balance of £14,121.02 on 18/2/02 to 3/3/04.

- Client (114) £2,695.00 from 12th November 2003 to date of inspection

  Mr Atuahene's Third Inventory item 2 clarifies the true position here which was that there was a balance of £26,950.10 held uninvested.

- **Client (115) £1,050.00 from 10th November 2003 to date of inspection**
- **Client (116) £1,022.25 from 3rd November 2003 to date of inspection**
- **Client (116) £108.22 b/f 8th November 2002 to date of inspection**

No breach as posting error for the two above.

- Client (117) £5,000.00 from 10th December 2002 to date of inspection

Mr Atuahene's Third Inventory item 5 clarifies the true position here which was that the balance was held from 31/12/03 to 24/1/04.

- **Client (118) £15,000.00 from 18th November 2003 to date of inspection**
- **Client (119) £825.00 from 24th November 2003 to date of inspection**

No breach as posting errors.

Others could not be verified due to lack of printouts

- Client (120) £7,172.17 Print out required
- Client (121) £4,166.22 Print out required
- Client (122) £12,316.46 Print out required
- Client (123) £2,638.00 Print out required

In relation to these matters the facts are averred here to show the position as seen by the inspector at this date. They become relevant later in relation to Article 19.3. Mr Atuahene said in evidence that he was unable to understand the contention that there were unavailable printouts as they were easy to get as the computer was there. We have Ms Robertson's evidence about how difficult he was with her and I ask the Tribunal to accept her as truthful. He agreed that some of the ledgers were accurate on balances and

some were not. He stated that he could only go by what he had on his own computer and accepted that he probably could not ascertain the true client balances. He contended that there was no danger as due to his position he had few transactions and was giving away business not taking it on.

Article 18.4 continued

Three cheques paid to banks or building societies had not been designated and two others were designated at the bottom of the cheque. A payment due to the Q& LTR remained unpaid since the previous inspection. The account certificate produced to 30th November 2003 showed the wrong figure for client balances. If it had been recorded correctly, it would have produced a deficit. The due to firm section did not include a GLG bank account of £1,090. The due by the firm section showed the same bank overdraft figure at both dates which was incorrect.

I do not understand him to have contested this. He specifically accepted in evidence that the account certificate was wrong.

Complainers' Averment

18.5
Stamp Duty was due to be paid on a transaction for the client (124) in April 2003 but only appeared to have been paid on 6th February 2004. Funds of £265,211.73 had been received by the Firm on 2nd April 2003 but no detail of where they came from was recorded and the deeds did not appear to have been recorded. Property 14 was purchased for the client (125) on 14th November 2003 with a loan from Scottish Widows. It could not be ascertained if the Stamp Duty was paid or that the Disposition and Standard Security had been recorded. In relation to the sale of Property 9 for the client (126) on 14th November 2003, no evidence that the Discharges of the 2 loans had been recorded could be seen. The purchase for the client of Property 15 on 13th November 2003, disclosed receipt of a sum of £13,607.15 on 7th November 2003 but not the source of that income. The Disposition had not been sent for recording nor the Discharge from the seller's agent which was still held on file with their cheque. The First Respondent was written to on 1st March 2004 with details of the action that he required to take in relation to the findings.

In relation to the recording issues and other matters raised here I will address the tribunal orally.

19.0 ATUAHENE, SIM, MURRAY & CO, SOLICITORS - INSPECTION: 29th and 30th MARCH 2004

Production 2.24 to 2.26
Witness to inspection Margaret Playfair

Complainers' Averment

19.1
The Complainers' inspectors returned on 29th and 30th March 2004 to ascertain if the First Respondent had addressed the issues raised in their letter of 1st March 2004. They established that the records for the firm were still not up-to-date for January, February and March 2004 and postings at least one month in arrears. Records for the manager's account, GLG bank account and the loan due to the bank were still incorrect. The First Respondent and his wife had made payments on behalf of the firm but those had not been recorded through the firm's books. There was no VAT paid since 1st November 2002. The Pay as You Earn account had not been updated since October 2003. The firm's liabilities stood at £387,076 with fee income from 1st November 2003 to 29th February 2004 of £18,500.

In relation to the above I do not understand Mr Atuahene to have disputed the factual position. He accepted the fact of the firm's liabilities.

19.2
The client ledger narratives were insufficient to fully explain the individual transactions and contained inaccuracies. On the ledger for the client (104), the entry 7th January 2004 read "Paid you £45,388.25" but should have read as Clients (127) for the purchase of Property 34. For the client (128), there were 2 entries recorded as "From you" on 14th January 2004 for £14,000 and £37,219. The narrative should have stated that these sums were paid by 3 bank drafts and provided details of the banks and the sums involved. These details should have been included that Property 35 was being purchased. Neither account showed the address of the clients. The entry for client (129) of 12th February 2004 read "Purchase £71,506.03" but should have read as a Royal Bank of Scotland redemption. The account for client (130) showed 13.02.04 purchase £107,000 but did not identify that Harper McLeod were the other Solicitors involved. No addresses were recorded for the clients (131) or (132) nor details of the properties being sold. Account headings showed inaccurate details of clients such as client (133) and client (134) where the account should have been in the sole name of client (133) and client (135) and client (136) where the account should have been in the name of client (136) only. Client balances still required attention. The ledger account client 131) showed a credit balance of £48,248.04 at 27th March 2004 when it

should have been nil. There remained an account for "Murray & Co unpresented cheques" with a credit balance of £6,130.80 which required to be allocated to the correct client ledger account. Many small credit balances were noted as held which appeared to resemble recording dues and a number of old credit balances remained which had not been dealt with. Client bank reconciliations contained old outstanding cheques which had not cancelled or written back to the client ledger. There were no quarterly reconciliations for invested funds. Interest had not been posted on invested funds up-to-date and a balance of £46,711.80 was still showing for client (108) although it had been uplifted on 12th December 2003.

In relation to the above Mr Atuahene gave detailed evidence about the disputed the factual position on 24/7/08 in what was a relatively clear and precise manner. I will address the Tribunal orally on this matter.

19.3
Many Client balances in excess of £500 had not been invested,

- Client (120) £7,172
- Client (121) £4,166

- **Client (137) £17,000+ from 19th January 2004 to 16th December 2004**
- **Client (138) £654 from 12th December 2004 to date of inspection**

No breach for the above two.

- Client (122) £12,316
- Client (139) £2,638

Cheques paid to banks and building societies on a number of occasions had not been designated and in other cases, client details were recorded on cheques after payment. Instances were noted of late or non-stamping or recording of deeds. The purchase for client (112) of Property 36 and sale of Property 37 on 6th December 2003 showed a Disposition and Standard Security not yet sent for recording nor the Discharge. The Disposition in relation to the purchase of Property 35 on 19th January 2004 for client(128) had not been sent for recording. The sale of Property 38 on 19th January 2004 and purchase of Property 39 on 6th February 2004 for the client (140) showed the Discharge, Disposition and Standard Security not yet sent for recording. In the sale of Property 48 for the client (129) on 19th January 2004, the Discharge had not been sent for recording.

In relation to the above Mr Atuahene gave detailed evidence about the disputed the factual position on 24/7/08 in what was a relatively clear and precise manner. I will address the Tribunal orally on this matter.

Complainers' Averment

19.4
No proper money laundering procedures were in place for the firm. No fact sheets were prepared and no proof of identity seen on files viewed. No reasons were recorded on these files to explain why proof of identity was not required. Funds received by banker's draft did not appear to have been verified back to source to confirm who the income was received from. Three bank drafts for client (128) received on 14th January 2004 appeared to have come from various family members but were not checked. A bank draft of £69,500 for client (130) received on 12th February 2004 had not been verified.

Mr Atuahene does not accept this. I ask the Tribunal to accept the evidence of the inspector.

20.0 THE PRACTICAL LAW PARTNERSHIP - INSPECTION: 5th-8th JULY 2004

This inspection brought matters to a head and is unique in that it covers the time when the Respondents were in fact acting in partnership and a period when my main submission is that they were not. If the Tribunal accept that the partnership did not commence until 14/5/04 then any issue of fact relating to accounting issues prior to that date is a matter for each Respondent alone within his own original practice. This is of huge significance to Mr Atuahene. If he was in partnership from 1 or 5/11/03 then he has all the responsibilities that entails in relation to the partnership

matters. If he was not then he is correct that the bulk of the following relates to Mr Thorburn's clients and actions. If he was, as he strenuously maintains, then he shares responsibility and it becomes a matter of the degree of culpability which should attach to him as in the Sharp test. He has made it quite clear that he took nothing to do with Mr Thorburn's clients or accounts. It was a conscious decision not to. If it was not, as I say, because he was not in partnership then he showed a clear disregard for his responsibilities.

Complainers' Averment

20.1
Due to the Complainers' findings in relation to the firms Richard Thorburn and Atuahene, Sim, Murray & Company, the inspectors returned to undertake an inspection of The Practical Law Partnership in which both Respondents were Partners from 5th to 8th July 2004. A special inspection had been authorised by the Guarantee Fund Committee on 1st July 2004. On arrival on 5th July, the inspectors were not permitted to carry out the inspection and it was agreed that they would return on 6th July when the records would be made available.

20.2
Serious concerns were noted during the inspection. The purchase of Property 40 for client (85), client (86) for whom the second Respondent acted was highlighted. A Bank of Scotland loan of £337,500 had been obtained on 8th January 2004 in connection with the purchase and on 9th January 2004, £320,750 was paid to Lyons Laing, Solicitors, being the price less the balance of £199,000 secured by a bond. No Disposition had been received and no missives concluded. The Second Respondent had written to the Bank of Scotland on 24th December 2003 advising that Client (86) equity contribution of £137,500 was in place without recourse to borrowing and was now in the hands of the vendors. This was not the case. client (85) then went into the hands of liquidators and the Bank of Scotland had intimated that they were holding the Second Respondent's firm, Richard Thorburn liable for any losses. As the clients' funds had been paid without concluding missives or a Disposition, a deficit had arisen on the client bank account which at 31st May 2004 appeared to amount to £321,427.72.

20.3
Other issues of concern included the purchase and sale transaction of Property 59 for client (141) for whom the Second Respondent acted. Lyons

Laing, Solicitors, were acting for client (142) in the purchase and paid £145,000 on 18th June 2004 on her behalf. At that time, the property had not yet been purchased for re-sale. The purchase price of £94,000 was sent to Client (96) for the clients (143) on 22nd June 2004 using the sale proceeds to cover the purchase. The Second Respondent did not deliver a Disposition of the property to Lyons Laing until 8th July 2004. In relation to the client (34), the Second Respondent purchased Property 41 on 25th June 2004 with a bridging loan from the Bank of Scotland pending the receipt of loan funds from Birmingham Midshires. The Second Respondent advised the Bank of Scotland that the price was £75,000 but the price shown on the Disposition was £65,000. In relation to the purchase of Property 42, the transaction settled on 23rd June 2004 at a price of £310,000. A bridging loan from the Bank of Scotland was requested, it did not materialise and a large deficit arose on the client bank until the loan funds from GNAC were received on 25th June 2004. The paperwork to the Bank of Scotland and the offer of loan showed the price as £365,000. The SDLT had not been paid and the Disposition and Standard Security not recorded. Due to this there was a deficit on the client bank between 23rd June 2004 and 25th June 2004 of up to £294,621.60.

20.4
The inspectors saw transactions in respect of which deeds had not been recorded timeously. It was noted that in relation to the clients (144) and client (145), a credit balance of £2,502.01 had been held since 12th January 2004 following the sale of Property 43 and the discharge of the loans in respect of the property had not been recorded. A further purchase of Property 45 for client (144) on 4th September 2003 showed a discrepancy between the purchase price and the information provided to the Royal Bank of Scotland. The purchase of Property 57, for client (146), showed £152,549 received from Birmingham Midshires on 7th May 2004, part price paid on 14th May 2004 and the balance on 2nd June 2004, the Disposition and Standard Security had not been recorded. The sale of Property 60 for client (147) which had settled showed a balance of £29,576.79 at credit of the client ledger and the Discharge had not been recorded. The purchase of Property 61 for client (148) with the assistance of a loan, showed no recording of the Disposition and Standard Security. The purchase and sale of Property 58 on 17th June 2004 for client (149) at £175,000 showed no SDLT paid and no recording of the deeds.

20.5
At the time of the inspection, the firms of Atuahene, Sim, Murray & Company and Richard Thorburn had been merged to form The Practical Law Partnership. The records for the 2 firms had not been attended to in terms of the previous requirements of the Complainers and were incomplete. The client banks for Richard Thorburn and Atuahene, Sim, Murray & Co had not been included in the firm trial balance for The Practical Law Partnership prepared at 30th April 2004. The client bank of Richard Thorburn had not been reconciled since 30th April 2004. Several loans of the new firm had not been included in the firm trial balance at 30th April 2004 and the invested funds balances were not included in the firm trial balance as at 30th April 2004. Income received

for the year had not been included in the firm trial balance as at 30th April 2004 and the list of balances held by both Partners at 31st May 2004 was incorrect in that 2 errors resulted in the list being £1,683.33 understated. There were still no records in place regarding staff salaries and the Second Respondent advised that he had never paid Pay as You Earn. The VAT records were not up-to-date. Previously uninvested balances on the ledgers of Richard Thorburn, Solicitor, had still not been attended. There had been no improvement in relation to compliance with the money laundering regulations. There was no evidence of identification of the client (146) nor information regarding the source of £20,017 paid into the client bank on 2nd June 2004. There was no evidence of identification for client (148) nor was the source of £45,525 received from the client on 14th June 2004 evidenced.

In relation to the above I will address the Tribunal orally.

OPPRESSION

Mr Thorburn alleges that this Inspection should be disregarded as it was unlawful.

I have some difficulty in understanding the precise nature of the complaint by the respondent but believe it to be as follows. In the past the respondent has complained of lack of notice for inspections. For instance, notice of the proposed inspection was given by letter dated 28th August 2000 which was not received until 1st September 2000. It was received one day after the deeming provisions contained in the 2001 Rules. The inspection was scheduled to commence at 9.30am on 11th September 2000. This allowed only 5 working days to prepare for the inspection. 5 working days notice is grossly inadequate for any practice to prepare properly for the inspection within the time available, particularly when he operates a manual accounting system.

On 5th July 2004 inspectors on behalf of the Society arrived unannounced, bearing copy recorded delivery letters dated 2nd July 2004 giving notice in terms of Rule 19 of the 2001 Rules. However at the time of their arrival, these letters had not been received by the Respondents. The inspectors were not allowed entry but did obtain entry (under duress) the following day, ie on Tuesday 6th July, 2004. It is argued that this was a failure to comply with the notice provisions contained in the 2001 Rules, rendering the inspection unlawful. Any evidence obtained was illegally obtained and should not be admissible.

I think this is wholly devoid of merit. Rule 19 of the 2001 Rules provides that:-

"19(1) To enable the Council to ascertain …….(whether the rules are being complied with and whether the practice is being conducted in a manner as may put the public at risk)……..the Council may, by written notice, require any solicitor to produce at a time to be fixed by the Council and at a place to be fixed by the Council, or in the option of the solicitor at his place of business documents records and other information concerning the conduct of his practice."

………………..
(5) A written notice given by the Council to a solicitor under paragraph (1)….shall be sent by recorded delivery post to the solicitor at his place of business ……..and shall be deemed to have been received by the solicitor within 48 hours of the time of posting. "

The requirement on the council is to give "written notice". No minimum time is specified. It is deemed to have been received at latest 48 hours

after the time of posting. In other words if written notice is sent, the council can require production of the books 48 hours later. In this case however, the inspection did not take place until the Tuesday. It does not appear to be disputed that by that time, the letters from the Society had been received. Therefore, not only had the required notice been deemed to have been received; it had been received. The rules were therefore observed and the Society was therefore entitled to production.

The respondent complains that the society had a duty to act fairly when carrying out their functions. I do not believe that this means that they are obliged to give notice beyond the limits set out in the 2001 Rules. The purpose of the inspection is not to suit the convenience of the solicitors involved but rather to ensure, in the interests of the solicitors profession and in the public interest, that the important accounts rules which are there to see that legal practices are properly run, are being complied with. Indeed short notice inspections may from time to time be desirable so that solicitors who are failing to keep their books properly do not have time to cover their failure so to do. Any points to be made about the shortness of the notice and the effect this had upon what was found on inspection, are those more properly directed towards mitigation rather than towards the inherent lawfulness of the inspection.

21.0 <u>INDEMNITY INSURANCE</u>

Production 2.30 – 2.32
Jennifer Scollick
Lesley Cumming
The Inspectors

<u>Complainers' Averment</u>

21.1

By 5th April 2004, both firms, Atuahene, Sim, Murray & Company and Richard Thorburn were operating from the same premises at Argyll Arcade, Glasgow. The staff from the firm of Richard Thorburn manned the office and both firms continued to trade individually under their old firm names although they had been reported to have ceased on 31st October 2003. The First Respondent, on occasions, added to his headed notepaper the words "incorporating The Practical Law Partnership". The receptionist answered the telephone identifying the firm as The Practical Law Partnership. The Respondents had advised the Complainers that a Partnership Agreement had been prepared and signed but that no starting date had been decided. They were hopeful that it would be 1st April 2004 but believed it would actually be around about 5th or 7th April 2004. No client bank account had been opened for the new partnership although there was an overdrawn firm current bank account at limit of overdraft and a £20,000 loan in the name of the partnership. No separate partnership records were in place.

Complainers' Averment

21.2
The Professional Indemnity Insurers issued proposal forms to Richard Thorburn, Solicitor, and Atuahene, Sim, Murray & Company on 26th September 2003. They received a fax from the First Respondent on behalf of himself and the Second Respondent dated 22nd October 2003 advising that they were forming a partnership between them. The insurers wrote to both Respondents on 27th October presenting the options open to them and issued a proposal form on 4th November 2003 in the name of The Practical Law Partnership. On 13th November 2003, they issued a premium request letter plus a letter noting that the previous practices were now under run off cover.

21.3
The Respondents paid the master policy premium for the new practice on 28th November 2003. On 7th April, the Chief Accountant wrote to the insurers advising that the Complainers could not confirm the position regarding the operation of the 3 firms at that date. The insurers wrote to the Respondents individually seeking clarification and a meeting took place in Edinburgh between the Respondents and J Scollick of the insurers on 28th April 2004. No insurance cover was in force for the two previous firms from 1st November 2003 to 23rd April 2004 and they were advised of the cost of reinstating their individual master policy cover. They completed proposal forms. They advised that they would revert to the insurers with their decision on proceeding by 28th April 2004. As nothing was heard from them, the insurers faxed both Respondents asking for instructions on 29th April 2004. No cover for the previous firms was arranged by the Respondents.

I have already considered in detail the position in relation to the existence of the partnership. On a factual basis there has been clear

evidence on the chronology of events. The sequence relating to the contact with Marsh is detailed in the schedule at Production 2.30 spoken to by Ms Scollick. It is acknowledged by both respondents that if there was not a partnership there was no insurance cover for the original firms which were in run off cover.

In his evidence in chief (24/7/08) Mr Atuahene said that it was his obsession which led him to put in the amendment to the draft agreement without realising the implications. Once he did realise, which was only after the interview and the meeting with Ms Scollick, he amended the agreement to put back in the commencement date of 1/11/03. I submit that this was attempting to make the facts fit what was needed to achieve the cover. It was a pretence and the reasons for saying that have been highlighted in detail.

Mr Thorburn's position is equally unstateable. He also blames the Law Society for adopting the position they did and notifying Marsh of their concerns. He said (8/10/07) that it was a shock when it was suggested there was a difficulty, that he thought he was covered as an individual, that he had not read the policy in any detail. He is a solicitor of long standing who has practiced as a sole practitioner. Even a cursory glance at the proposal form shows that the insurance is for the pratctice. He must have completed many over the years. Both he and Mr Atuahene were written to long before the interview of 22/4/04 by Mr Cullen (production 2.31 letters dated 17/2/04) about the insurance position. They took no action then and even after the matter came to a head they did not take steps to try to

resolve the problem. They rested on the spurious claim that they had in fact been partners.

A contract of insurance is one of the utmost good faith. The Law Society acted in an entirely appropriate manner. It was not for them to collude in what would be a deception to obtain the advantage of insurance cover. Mr Thorburn of course knew well before the issue began to unravel that there was the Client 85 claim brewing.

The great concern in any situation where solicitors practice without insurance is the exposure to claims which cannot be met out of their personal resources. Even if there is a reduced risk of loss to the client the Tribunal has regarded lack of insurance as misconduct (Currie 1997 JLSS 422). In this case with the appalling bookkeeping of the Respondents it is clear that it was very serious indeed. The outcome of the various claims has yet to be determined.

Subject to the date of commencement being 14/5/04 if the Tribunal find in fact that the partnership did not exist prior to that date this article is proved.

Misconduct Article 24.27

22.0 IMMIGRATION SERVICE

Production 2.33

The factual position here was accepted by Mr Atuahene from the start. He does not and never has accepted that he was holding himself out as a solicitor. In evidence he said he felt he had a moral obligation to help the client. And that he was unaware that the PLP had ceased to exist. In this particular matter his position has been consistent. The statutory provision is as follows.

Section 23— (1) Any person who practises as a solicitor or in any way holds himself out as entitled by law to practise as a solicitor without having in force a practising certificate shall be guilty of an offence under this Act unless he proves that he acted without receiving or without expectation of any fee, gain or reward, directly or indirectly.

(2) Without prejudice to any proceedings under subsection (1), failure on the part of a solicitor in practice to have in force a practising certificate may be treated as professional misconduct for the purposes of Part IV.

The Tribunal may feel that this Article of misconduct 24.28 a) and b) cannot be held as established.

Complainers' Averment

On 28th October 2004 the Office of the Solicitor to the Advocate General for Scotland wrote to the Complainers with a copy of a letter received from the First Respondent dated 11th October 2004. The letter was written by the First Repondent on behalf of a client, on headed notepaper of the Practical Law Partnership and signed by him on behalf of that practice. At that time the First Respondent did not hold a practising certificate and was suspended from practice due to his sequestration on 23rd August 2004. The First Respondent by his actions represented that he was a solicitor while he was not and while he was uninsured. In addition the Second Respondent's practising certificate was suspended on 7th October 2004 at which time the Firm of the Practical Law Partnership had ceased to trade.

Misconduct Article 24.28 (a) and (b)

MISCONDUCT

Both Respondents face allegations of misconduct in relation to the Bookkeeping requirements and their professional obligations relating to their financial dealings for clients under the Accounts Rules (Rules 4, 6, 8, 9 and 24). They also face allegations relating to the conduct of their clients' business, such as stamping and recording deeds and, principally Mr Atuahene, in replying to the Law Society correspondence. The Inspections adduced in evidence took place against a background of repeated problems found with both Respondents in assuring compliance. The evidence given by both Respondents in substantial part supports the original complaint. It could surely have been possible to resolve the factual averments without the necessity of rehearsing the detail of what was found in every inspection.

That said, what has happened is that over the years this Tribunal has obtained a clear view of the perceptions of both Respondents in relation to their responsibilities, their individual abilities and their management of their businesses on a day to day basis. That unprecedented knowledge provides an excellent basis for assessing the degree of culpability which should attach to the Respondents in relation to the facts held as proved. There is a significant difference in the positions of the two. Mr Thorburn has a full understanding of the requirements, he may seek to apply an alternative interpretation of certain rules, but he understands them. Mr Atuahene's comprehension is less clear. I submit that there has been professional misconduct on an *in cumulo* basis in relation to both Respondents.

SUBMISSION BY JOHN ATUAHENE

in causa

Complaint by the Council of the Law Society of Scotland

Against

John Atuahene **First Respondent**

And

Richard Thomas Thorburn **Second Respondent**

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CHAPTER 1
Professional Misconduct

1.01 It is well established that a professional misconduct is a departure from standards of conduct required from competent solicitors of the highest integrity and honesty. The conduct of a solicitor in his profession is judged by rules of and standards set up by his profession. However a departure from the requisite standards of conduct does not necessarily result in a finding of professional misconduct. In every case the Tribunal is under obligation to consider the conduct together with the whole circumstances relating to it and the relative blameworthiness reasonably and fairly attributable to the individual against whom the complaint is made having regard to his/her contribution to the misconduct before finding the individual guilty of professional misconduct'.

1.02 The standard of proof of professional misconduct is beyond reasonable doubt which is the same standard of proof in criminal cases2. The proof beyond reasonable doubt incumbent on the Fiscal does not mean proof to a mathematical or scientific certainty. Reasonable doubt is established if after assessment of the evidence and your finding of facts a doubt causes you to hesitate before finding me guilty of professional misconduct; such a doubt will be based on some sound logical reason which justifies a reasonable doubt about the matter3. Where there is such a doubt you must give me the benefit of doubt by finding me not guilty of professional misconduct.

1.03 The high standard of proof placed on the Fiscal means that she has to establish the alleged professional misconduct by corroborated evidence; corroborated evidence is evidence from another witness or an independent source confirming the evidence of a witness. The Tribunal may however proceed on uncorroborated facts if it thinks it is appropriate to do so or take on board hearsay evidence but this can only be done in circumstances where the Tribunal is absolutely satisfied that there are sound and justifiable grounds for doing so. The evidence adduced by me in support of my defence need not be corroborated. The standard of proof I am required to discharge is on a balance of probability4. Where there are discrepancies in the evidence adduced by the Fiscal you must weigh these carefully in order to determine whether or not the discrepancies have significant negative impact on the crucial facts required to be proved by the Fiscal to establish factual basis for finding me guilty of professional misconduct. Where the discrepancies go to the roots of the crucial facts there is a reasonable doubt and you are under obligation to return a verdict of not guilty for professional misconduct.

1.04 The law requires you even where admissions have been made by me to keep an open mind and proceed to assess all the evidence in order to ensure that you are satisfied that a professional misconduct has been committed. This therefore means that regardless of the extent of any admissions that may have been made the Fiscal must still establish the alleged professional misconduct by corroborated evidence to your satisfaction failing which you will be entitled to find me not guilty of professional misconduct5. The Tribunal has a duty to ensure that a finding of professional misconduct is based on facts proved having regard to the whole circumstances6.

1.05 I respectfully suggest that the correct approach is to consider all the evidence

before you with a view to determining first and foremost whether or not a professional misconduct has been proved. Thereafter if there are facts which are insufficient to constitute a factual basis for a finding that I am not guilty of professional misconduct you have a duty to consider whether or not these facts constitute reasonable mitigation. If you accept that the facts do constitute reasonable mitigation you must reflect this in the sentence you impose. Depending on the gravity of the misconduct taking into consideration the whole circumstances where the misconduct is not serious or understandable if not pardonable you may take a lenient view where you deem this to be appropriate and dispose of the matter accordingly7.

1. (a) In Sharp V Council of the Law Society of Scotland 1984 SLT I where following a finding of guilty of professional misconduct there was an appeal to Court of Session the court held among other things that a solicitor's failure to comply with a relevant rule may and not must be treated as professional misconduct, it being essential in every case to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made.."
(b) Gordon Coutts Thomson and Maria V Council of the Law Society of Scotland 1999 SCLR page 828.
© Paragraph 6.02 of Procedures and Decisions of the Scottish Solicitors Discipline Tribunal by Ian S. Smith & John M Barton.
2. Paragraph 4.07 of Procedures and Decisions of the Scottish Solicitors Discipline Tribunal by Ian S. Smith & John M Barton.
3. (a) http://www.scolcourts.gov.uk. Adams V Her Majesty Advocate [2005 HCJAC 601 at page 4 per Lord
McFadyen "...Now, what does reasonable doubt mean? Well, ladies and gentlemen proof beyond reasonable doubt does not mean proof to a mathematical or scientific certainty. A trivial, hypothetical or far-fetched doubt would not prevent you from finding accused guilty. A reasonable doubt is a doubt for which you can identify some sound, logical reason. It is often said that it is the sort of doubt which if it affected a matter of importance in your own life, would cause you to pause and reconsider. So if having heard the whole evidence you are left a reasonable doubt as to whether the crown has proved the guilt of an accused you must acquit him."
(b) h1tpj//www.scgurts.gy.uk
Gordon Armstrong and William Kirkpatrick V Her Majesty Advocate [2005 HCJA 1391 per Lord Nimmo Smith ".. It is a traditional formula that a reasonable doubt is a doubt which would cause the jury in the conduct of their own lives to hesitate or pause before taking a decision."
4. See note 2 relative hereto.
5. Paragraph 4.11 of Procedures and Decisions of the Scottish Solicitors' Discipline Tribunal by Ian S Smith and John M Barton.
6. lp:iAvww.scotcourts.gov.uk.
Gordon Coutts Thomson and Answers for The Council of The Law Society for Scotland per Lord Prosser at page 7 "...While a tribunal will have a duty to ensure that a guilty plea has a sufficient basis in the facts which are proved or admitted, that function had been fulfilled by the original tribunal.."
7. http://www . scotcourts.gov.uk
Petitions of(l) Gerald John Robert McMahon (2) Cohn Harvey McFadyen and (3) Lawrence Strachan Rew against A decision of the Scottish Solicitors Discipline Tribunal in a complaint by the Council of the Law Society of Scotland at page 8 per Lord Justice Clerk: " In many cases, the Tribunal may be justified in taking a lenient view of an isolated act of misconduct where it is venial in itself, or is explicable, if not excusable on account of some misfortune or mitigating circumstance. More serious acts of misconduct give less scope for leniency isolated circumstances may occur where through no fault of the solicitor for example by some honest book-keeping error or perhaps a computing mishap, the Rules are breached. In such a case the respondents (i.e Scottish Solicitors' Discipline Tribunal) will deal with the matter with discretion and common sense."

CHAPTER 2
Allegations of failing to reply to complainer's letters
Article 2-12

2.01 I do not intend to rehearse my answers to Articles 2 to 12 relating to complainer's letters allegedly sent to me in detail unless it is absolutely necessary for me to do so in dealing with any factual issue. Accordingly for circumstances surrounding these letters please refer to my answers to the Articles in the record.

2.02 The letters dated 9th March 2004 and 9th February 2004 contained in complainer's productions 2-11 are duplicated. The letters dated 5 May 2004 and 26th May 2004 respectively contained in the complainer's productions 2-5 and 2-4 are duplicated. Complainer's production 2-7 also contain duplicate of the letter dated 2l January 2004.

2.03 The correct address of my former office at Cathcart Road was 536 Cathcart Road Glasgow. Before I moved from Cathcart road I arranged a redirection for all letters addressed and sent to me at Cathcart road to be delivered to 34 Argyll Arcade Glasgow from 6th November 2002 to end of June 2003. Therefore all letters addressed and sent by the Law Society to me at my former office 536 Cathcart road, Glasgow would have been delivered to my former office at 34 Argyll Arcade Glasgow. After 30th June 2003 all letters addressed and sent to me at Cathcart road, Glasgow were not delivered to my former office at 34 Argyll Arcade, Glasgow. The distance between 536 Cathcart road and 34 Argyll Arcade is approximately two miles. It is therefore most unlikely for any letters addressed to me at Cathcart road to be delivered to me at 34 Argyll arcade by anybody at Cathcart road. Some of the letters meant to be sent to my former office at 536 Cathcart road were not even correctly addressed; if you refer to complainer's productions 2-6 you will find four letters addressed to me at 535 Cathcart road, Glasgow and sent to that address. The fact that letters similar to the letters sent to Cathcart road with the same dates, references and contents but addressed and sent to my former office 34 Argyll Arcade confirms that at least some of the letters sent to Cathcart road must have been returned to the Law Society and that is the only justification for sending similar letters to me at 34 Argyll Arcade; the Law Society must have known at this point that letters sent to Cathcart road were not being delivered to me and that I had in fact moved from Cathcart road to 34 Argyll arcade.

2.04 It may be argued that the letters were sent to Cathcart road because I appeared to have given the impression on some of my letterheads used to correspond with the Law Society that I still had an office at 536 Cathcart road, Glasgow. My evidence on this issue made it clear that the Cathcart road address at the bottom of the letterheads used should have been deleted or crossed out and that they were mistakenly left by me. Although I accept that the use of the letterheads with the words "Also at 536 Cathcart road, Glasgow" at the bottom, not crossed out by me appear to suggest that I have a branch office at 536 Cathcart road; this however r does not mean that reply to such a letter and all subsequent letters should be sent to Cathcart road address. For example with reference to the letters dated 2 March 2003 and 11th April 2003 contained in complainer's productions 2-11 sent by me to the Law Society, in accordance with well established procedure that where firms of solicitors have branch offices and a letterhead is used with the name of the firm and one of its addresses to which replies

should be sent boldly printed at the top of the letterhead and remaining addresses of other branch offices printed in small letters either at the bottom or elsewhere on the letterhead all replies to the letter and subsequent correspondence must be sent to the address boldly printed at the top of the letterhead used. Accordingly notwithstanding the fact that said letters sent by me to the Law Society did state at the bottom of the letterheads used that I still had a branch office at Cathcart road this is not a justification for the Law Society to send replies and relative subsequent correspondence to my former address at Cathcart road in a situation where most of my letters I wrote to the Law Society since I left Cathcart road were either on letterheads of the Practical Law Partnership, letterheads of Atuahene Sim Murray and Co without a statement at the bottom stating “Also at 536 Cathcart road”. It was only in very few cases that I used letterheads of Atuahene Sim Murray & Co with a statement at the bottom stating “Also at 536 Cathcart road”. If the position is reversed with Cathcart road’s address boldly printed at the top of the letterhead and Argyll Arcade address in small print at the bottom of the letterhead, the Law Society would have been justified to send replies or subsequent correspondence to my former office at Cathcart road. In Ian Ritchie’ s evidence he stated that Law Society’s correspondence was sometimes sent to 34 Argyll Arcade and sometimes to Cathcart road; this really meant that this was the position of the Law Society since I left Cathcart road. However if you examine all the Law Society’s correspondence mentioned in complainer’s Articles 2 to 12 of the record allegedly sent to me you will note that only about 13% of the letters were sent to Cathcart road after 30th June 2003. In consideration of all letters sent to me by the Law Society after I left Cathcart road, only about 1% of the Law Society letters were sent to Cathcart road. It is significant to note that the Law Society auditors called on me at my former office at 34 Argyll Arcade, Glasgow to carry out inspection on Atuahene Sim Murray & Co from 22’ to 24tFi April 2003 and not at my former office 536 Cathcart road, Glasgow. Although I did not formally inform the records Department of the Law Society about change of address of my former firm I did verbally intimate my new address to the record department during a telephone conversation with a lady sometime within first three months of my departure from 536 Cathcart road. In the circumstances it seems Law Society sent letters to Cathcart road address after 30th June 2003 by mistake; this mistake was subsequently rectified by the Law Society. There is no doubt that the Law Society knew m’ current address at 34 Argyll Arcade and the letters sent to me at Cathcart road after 3O June 2003 was a mistake.

2.05 It may be argued that letters sent to Cathcart road by the Law Society after 30th June 2003 must be deemed to have been received by me in terms of Section 64 of the Solicitors (Scotland) Act 1980 because they were sent to my last known address at that time. The issue which inevitably arises is whether or not this can be interpreted to apply to a scenario where the Law Society knows the current and last known address of the solicitor as well as where the Law Society did not know the current address of the solicitor and the solicitor’s whereabouts except his/her last known address. In terms of Section 1 of the Solicitors (Scotland) Act 19802, the Law Society has a statutory duty to have regard to the interest of the public in relation to the profession of solicitors in Scotland and in fulfilling that duty the Law Society is entitled to make enquiries where necessary, of any solicitor. In conjunction with these statutory provisions a duty is imposed on any solicitor who receives enquiries from the Law Society to respond to them failing which the solicitor faces a possible finding of professional misconduct against him/her. I suggest that the above statutory duty

incumbent on the Law Society together with the duty imposed on a solicitor to respond to enquiries from the Law Society gives rise to an incidental duty on the Law Society to ensure that the enquiries are appropriately addressed and sent to the solicitor in question so as to make it reasonably likely for him/her to receive the enquiries. The application of Section 64 to a scenario where the Law Society knows the current address of the solicitor in question but chooses to send the enquiry to his/her last known address which is a previous address in respect of which the solicitor is unlikely to have any connection or contact with is inconsistent with Section 1 of the 1980 Act and the duty imposed on solicitors to respond to reasonable enquiries from the Law Society. It is therefore hot appropriate in the knowledge of current address of the solicitor in question for the Law Society to send enquiries to the last known address of the solicitor. Section 64 must therefore be interpreted and applied in a way and manner consistent with the said statutory duty of the Law Society and the duty on solicitors to respond to reasonable enquiries from the Law Society. It is therefore correct to interpret Section 64 where reference is made to last known address, as applying only to cases where the Law Society do not have the current address of the solicitor or know his/her whereabouts; Section 64 is designed to remove any impediments in the way of the Law Society to discharge its statutory duty due to the unknown whereabouts of the solicitor in question. As the Law Society was well aware of my new address at 34 Argyll Arcade when I moved from 536 Cathcart Road I respectfully suggest that any argument that the Law Society's correspondence sent to Cathcart road after 30th June 2003 should be deemed to have been received by me because it was sent to my last known address is unsustainable.

2.06 The admissions contained in my answers Articles 7 and 12 were made on the basis of unopened letters from Law Society addressed to me and sent to my former office at 34 Argyll Arcade handed to me by Morna Grandison, the Judicial Factor. Morna Grandison in her evidence confirmed that she did hand to me a lot of correspondence from the Law Society and that most of them were unopened. Some of the unopened letters bore the same date, references and had the same contents as the letters sent to Cathcart road after 30th June 2003 except that they were addressed and sent to me at my former office 34 Argyll Arcade, Glasgow. I have to point out that it was days if not weeks after I lodged my answers on the basis of the unopened letters handed to me by Morna Grandison that the Fiscal lodged her productions and copied same to me. It is most unlikely that the unopened letters handed to me by Morna Grandison were sent at the same time the Law Society sent similar letters to Cathcart road. During the period of operation of Atuahene Sim Murray & Co letters sent to the firm including correspondence from the Law Society were opened. When Mr Richard Thorburn was cross examining me he tried to paint a picture that letters marked for my personal attention and sent to 34 Argyll Arcade were left to be opened by me thus implying that the Law Society correspondence were unopened because I failed to open them. However the true position was that all letters marked for my personal attention were opened by me if I was in the office at the time the letters arrived. In my absence from the office when the letters marked for my personal attention arrived Mr Richard Thorburn opened the letters. It follows therefore that if the unopened letters handed to me by Morna Grandison arrived before she took over the office premises at 34 Argyll Arcade it was highly probable that the letters would have been opened. I went to my former office at Argyll Arcade not on a daily basis but from time to time after I was sequestrated on July 2004. For the avoidance of doubt, although the actual decision to sequestrate me was made on 23rd August 2004 in terms of Bankruptcy

(Scotland) Act 1985 I am deemed to have been sequestrated with effect from 5th July 2003 which was the date the petition was lodged in court. Sometime early or middle October 2004 onwards I never visited my former office at Argyll Arcade. I would therefore expect Mr Richard Thorburn to have opened all letters arriving at the office after I stopped going to the office and before Morna Grandison took over the office premises whether the letters were marked for my personal attention or not. In the circumstances it reasonable to conclude that the unopened letters arrived at my former office at Argyll Arcade after Morna Grandison took over the premises on 15th December 2005; the letters either arrived before complaint was served on me of after the complaint was served on me. It is impossible to determine with any degree of certainty whether the letters did arrive before or after the complaint was served on me. In addition to this it has to be pointed out that the Fiscal has not charged me with professional misconduct on the basis of my alleged failure to respond to the said unopened letters handed to me by Morna Grandison. In fact the Fiscal has charged me for professional misconduct on the basis of my alleged failure to respond to the letters sent to Cathcart road after 30th June 2003. With due respect the Tribunal ex proprio motu cannot legally substitute the Fiscal's productions or indeed averments on behalf of the Law Society with other productions or averments of its choice. There is therefore insufficient factual basis upon which a finding of professional misconduct against me can be upheld in respect of letters sent to Cathcart road after 30th June 2003 . Accordingly I suggest that the Fiscal's averments of professional misconduct 24.5 and 24.21 be dismissed in so far as they refer to the letters sent to Cathcart road after 30th June 2003 because she has failed to prove the alleged professional misconduct beyond reasonable doubt.

In so far as letters addressed to my former firm's legal post address are concerned I confirm that these letters were delivered to my former office 34 Argyll Arcade because the legal post arrangement was made by me after I moved to 34 Argyll Arcade. The Law Society correspondence (excluding the Law Society letters sent to Cathcart road after 30th June 2003) stipulated in complainer's Articles 2 to 12 of the record were delivered to my former office at 34 Argyll Arcade; I will deal with the absence of response from me to these letters later in my submission.

I. Solicitors (Scotland) Accounts Act 1980. Section 64: Any notice or other document which is required or authorized under this Act to be given to, or served on, any person shall be taken to be duly given or served if it is delivered to him or left at or sent by post to, his last-known place of business or residence..
2. Solicitors (Scotland) Act 1980 S1(1) : The Law Society of Scotland (referred to in this Act as "the Society") shall continue to exist and shall exercise the functions conferred upon it by this Act. S(2) The objects of the society shall include the promotion of (a) the interests of the solicitors profession in Scotland; and (b) the interests of the public in relation to that profession.
3. The society may do anything that is incidentally or conducive to the exercise of these functions or the attainment of those objects.

CHAPTER 3
Allegations of failing to implement mandates
Article 8: Jean Scotland

3.01 On December 2003 I received a letter from Messrs Ferguson Dewar together with a mandate requesting delivery of the Will of the late Mr H. Due to poor filing system inherited from my predecessor Mrs Isobel Anne Murray I encountered difficulties in locating the Will. The reasons for the delay were communicated to both Messrs Ferguson Dewar and Mrs G. Following my instructions the two office juniors searched for the Will. The office juniors continued searching for the Will until the 11th October 2004 when they found the Will and in my absence passed it on to the Second Respondent for immediate transmission to Messrs Ferguson Dewar: Please refer to the letter dated 1 1th October 2004 written by the Second Respondent to Messrs Ferguson Dewar; my first inventory of productions No 32. The delay in implementing the mandate was explicable and the mandate was immediately implemented when the Will was located. Accordingly there is insufficient factual basis to support a finding of professional misconduct against me. I therefore suggest that the Fiscal's averment of professional misconduct 24.4 should be dismissed in so far as it refers to the mandate.

Article 5: Mr D

3.02 I did receive a mandate from Messrs Robertson Paul solicitors for the file relating to the divorce action for Mr D to be sent to them. My predecessor Mrs Isobel Anne Murray had an arrangement with Messrs David C Caplan solicitors whereby she instructed them to deal with divorce actions on behalf of her clients. After I took over Murray & Co Messrs David C Caplan solicitors decided to terminate the arrangement. I therefore instructed all clients with ongoing divorce actions to consult other firms of solicitors; Mr D was one of them. The delay in implementing the mandate was due to poor filing system inherited from my predecessor. The difficulties which arose in locating the file were communicated to the secretary of Messrs Robertson Paul solicitors. The file was eventually located and immediately hand delivered by one of my office juniors to Robertson Paul solicitors on 26th January 2004. Please refer to letter of 26 January 2004 sent by me to Messrs Robertson Paul along with the file and my first inventory of productions No 26. The delay in implementing the mandate arose from circumstances beyond my control. I took every reasonable step to locate the file as soon as possible. The delay in implementing the mandate was explicable and as the mandate was eventually implemented the Fiscal's averment 24.10 should be dismissed because there is insufficient factual basis to support it.

CHAPTER 4
Allegations of failing to reply to letters or telephone calls of solicitors or clients
Article 8: Mrs G

4.01 Following a letter dated 19th December 2003 received by me from Messrs Ferguson Dewar telephone calls were received from both Mrs G and Messrs Ferguson Dewar in respect of the delivery of the Will to Messrs Ferguson Dewar. The circumstances relating to the difficulties in locating the Will were explained to both Mrs G and the person from Messrs Ferguson Dewar who telephoned my former office. There were more than one telephone call from Messrs Ferguson Dewar solicitors. Mr Keith Ross said in his evidence that in view of the delay in receiving the Will he himself telephoned my former office 34 Argyll Arcade and spoke with Mr Richard Thorburn; this was during the period the office juniors were still trying to locate the Will. Shortly after conversation between Mr Keith Ross and Mr Richard Thorburn the Will was located by the junior officers who in my absence passed it on to Mr Richard Thorburn for immediate attention. Mr Keith Ross stated in his evidence that he did not know the circumstances under which I was unable to respond to his letters. Obviously the difficulties relating to the location of the Will intimated during telephone conversations with Messrs Ferguson Dewar was not passed on to Mr Keith Ross; this situation is not uncommon in a firm of solicitors especially where the solicitor dealing with the transaction in question is very busy and unable to answer or make all necessary telephone calls himself. Accordingly the fact that Mr Keith Ross states in his evidence that he was unaware of the difficulties I was encountering in locating the Will does not necessarily lead to a conclusion that the telephone conversations with his office during which the difficulties relating to locating the Will were explained did not take place. Having explained the difficulties relating to the location of the Will during telephone conversations with the office of Messrs Ferguson Dewar I did not think it necessary to respond in writing to Messrs Ferguson Dewar's letters but instead I felt it was more sensible to concentrate efforts on locating the Will for earliest onward transmission to Messrs Ferguson Dewar. The Fiscal has failed to prove beyond reasonable doubt that the relative averred professional misconduct was committed. I therefore invite the Tribunal to dismiss the averment of professional misconduct 24.3 in so far as it relates to telephone calls or letters from Messrs Ferguson Dewar.

Article 10: Messrs R & R S Mearns- Mr I

4.02 I did receive about four letters in total from Messrs R & R S Mearns enquiring about the progress being made in locating the assignation. In response to these letters upon my instructions several phone calls were made to the office of Messrs R & R S Mearns by my former qualified assistant and my two secretaries explaining that the file together with the lease had been misplaced by the junior office workers in their desperate attempts to locate files of my predecessor. My former employees during the telephone conversations assured R & R S Mearns that they would confirm the position at the earliest when the file and the assignation were located. I did not reply to Messrs R & R S Mearns in writing because of the several telephone calls made to their office regarding the matter. In the circumstances I request the Tribunal to dismiss the

averment of professional misconduct No 24.16 in respect of the telephone calls or letters.

CHAPTER 5
Allegation of failing to maintain accurate and adequate records between 15th November 2002 and 23 August 2004

(a) Article 17: Accounting records from November 2002 to 22nd May 2003.
5.01 On the recommendations of my predecessor Mrs Isobel Anne Murray I employed all her former employees including her legal cashier Mrs O. As Mrs O had used the old soroba system to keep the records for Murray & Co for at least six years she recommended to me to use the same soroba system for keeping the accounting records of my former firm Atuahene Sim Murray & Co. However the software for the old soroba system could not be purchased by me because the proprietor had died. A new soroba system had been developed as a substitute for the old soroba system. This new soroba system was more complicated than the old soroba system. I purchased the new soroba system. After purchasing the new soroba system I paid the proprietor of the system to train Mrs O in order to enable her use the system competently to keep my accounting records. After Mrs O was trained the proprietor called at my former office at Argyll Arcade to check on how well Mrs O was getting on; she thereafter confirmed to me that Mrs O was using the new soroba system competently in keeping my accounting records. I was not initially trained to use the soroba system. However I did understand the system and was able to competently physically check the postings and balances on client ledgers and obtain printouts of clients' ledgers, other ledgers, reconciliation statements etc once I had access to the system although I could not competently operate the system or post entries into the system.

5.02 The new soroba system was initially installed on the computers at the back office room of my former office 34 Argyll Arcade. Approximately after three weeks the system was installed and thereafter used by Mrs O the system suddenly disappeared from the computer. My former office employees kept blaming each other for what had happened; there was a lot of tension among the employees. I spoke with the proprietor of the new soroba system and she advised me to purchase a new computer for the computerized system. The proprietor of the system gave me a written specification for the computer I was required to purchase. With the assistance of a computer expert I employed I was able to purchase a computer with the requisite specification. When I came back to my former office with the computer I instructed my office junior workers to remove everything in a small room next to the master room which I occupied at Argyll Arcade. I put the new computer in that small room and arranged for a lock to be put on the door to the room. The only persons with keys to the small room we generally referred to as the accounts room were Mrs O and me. I had a system in place for recording entries to be posted in my accounting system; the recording system comprised the preparation of posting slips for all cheques issued and money coming into the firm, the recording of all cheques and monies lodged by one of the office junior workers daily and the recording of all monies directly transferred from other banks to the firm's client bank account. The details of client on whose behalf the monies were received, any necessary cheque numbers and all the relevant details of the transfer were recorded. I also had system in place whereby the password for access to the computerized soroba system was only known by Mrs O. I made this necessary arrangement for security reasons because other employees in the office

from time to time required access to the internet via the computer I bought for the accounting system as it was impossible to gain access to the internet on the other computers because of some technical problems. The pass word to the computerized accounting system was passed to me to use in accessing and checking the accounts every time the legal cashier knew she was not going to be present in the office when I gave prior notice to her I wanted access to the accounts. However once the legal cashier was back in the office for security reasons I allowed her to change the password immediately I have had access to the accounting records.

5.03 Shortly after I took entry to my former office 34 Argyll Arcade, Glasgow the clients' funds were transferred direct into my clients' bank account by West Anderson & Co on behalf of Mrs Isobel Anne Murray. I subsequently received a list of client credit balances from West Anderson & Co on behalf of Mrs Isobel Anne Murray. Mrs O could not reconcile the clients' funds with the list of client credit balances received from West Anderson & Co on behalf of Mrs Murray. I made numerous calls to West Anderson & Co and Mrs Isobel Anne Murray for documentary evidence in order to make it possible for my legal cashier to reconcile the clients' funds with the list of client credit balances without success. Messrs West Anderson & Co repeatedly told me they did not have the requested documents and that they accepted Mrs Murray's instructions merely to pass on clients funds and the list of client credit balances to me; they advised me to contact Mrs Murray herself. Atuahene Sim Murray & Co's clients bank account were showing details of cheque signed by Mrs Murray in respect of transactions dealt with by her. Apparently without my authorization the funds required to cover these cheques by Mrs Murray had been transferred into my clients bank account and as a result Mrs Murray's cheques were presented to my clients bank for payment. The honoured cheques were returned to Mrs Murray. It appears this unauthorized affair was made possible because I unfortunately borrowed from and used the same bank Mrs Murray used for her clients' funds for my clients funds: Please refer to paragraph 2.7 of interim report by Harry Seddon and No 42 of my first inventory of productions.

5.04 When I bought the business of Murray & Co I paid £70,000 for goodwill and work in progress. After the purchase transaction was completed Mrs Murray demanded for more money. I refused to pay her more money and as a result she refused to cooperate with me by releasing the necessary documentary evidence such as honoured cheques, her clients' invoices etc to me in order to enable Mrs O to reconcile the clients' funds with the client credit balances received. It was absolutely necessary for the reconciliation of clients funds with client credit balances to be achieved in order to demonstrate that there was sufficient funds to cover the client credit balances before posting of the balances in the accounting records of Atuahene Sim Murray & Co can commence.

5.05 After unsuccessful numerous attempts to obtain the necessary documentary evidence from Mrs Murray Mrs O told me that she had managed to contact Mrs Murray who had given her the required information to enable her to reconcile the clients' funds with the list of client credit balances. To be fair to Mrs O she worked late on many occasions to post the entries into the computerized accounting system. When my health permitted sometimes I sat with her in the accounts room and assisted her by reading out entries from posting slips to her. I also from time to time checked clients' ledgers, clients reconciliation statement etc. Mrs O had a lot of postings to do;

the postings were not up to date because she had spent a lot of time trying to get the necessary information from Mr Murray. In addition to this some of the reconciliation statements were not accurate because of inaccurate information received from Mrs Murray; Mrs O spent a lot of time trying to find the errors. Before the Law Society arrived at my former office at 34 Argyll Arcade on 22uid April 2002 I knew there were problems with my accounting records. These problems related mainly to the clients' ledgers in respect of which credit balances had been received from Mrs Murray via her agents West Anderson & Co. The accounting records relating to transactions in respect of which there were no credit balances received from Mrs Murray were accurate and I was able independently to physically check these ledgers and satisfy myself about their accuracy. Although Mrs O eventually showed me a reconciliation statement for the client credit balances and clients' funds received from West Anderson & Co I had no way of being able independently to check the reconciliation statement and satisfy myself about its accuracy because I did not have sight of the necessary supporting documents. The fact that the reconciliation statement appeared to balance did not necessarily mean it was accurate. The correct procedure is that the reconciliation statement should have been prepared by Mrs Isobel Anne Murray or her agents West Anderson & co and delivered to me since it related to intromission of clients' monies by Mrs Murray. My biggest worry about the accounts which caused me a lot of sleepless nights was the fact that I did not have the necessary documentary evidence from Mrs Murray in order to enable me independently check and satisfy myself about the accuracy of the client credit balances and also satisfy myself that the clients' funds received adequately cover the client credit balances; this probably was the factor which impacted most negatively on my health.

5.06 When the Law Society auditors arrived on 22' April 2003 they had access to my computerized accounting system on 221 and 23rd April 2003 as Mrs O was present in the office despite the fact that she was late coming to the office on one occasion. It was only on 24th April 2003 that the Law Society auditors did not get access to my accounting records because of the absence of Mrs O contrary to the evidence given by Gail Robinson on the presence of Mrs O in the office during the inspection. Mrs O failed to give me the password for accessing the accounting records prior to her absence from office on 24th April 200 all attempts by me to contact her that day failed and accordingly I explained to the Law Society auditors I did not have the password. When Mrs O appeared at the office the next day and I questioned her about her absence and she explained to me her absence was due to unexpected family problems. Upon completion of the inspection on 24th April 2003 the Law Society auditors left the office without having the usual meeting with me to discuss the outcome of their inspection and they just said to me that I would be hearing from them in due course. For the avoidance of doubt I was not insolent to the Law Society auditors.

5.07 I accept that there were posting errors in my accounts; all the posting errors related to credit balances received from Mrs Murray. However I have reservations about the calculations of the Law Society auditors contained in the first two pages of the inspection report relative to the April 2003 inspection dated 28t1 April 2003 contained in the complainers productions 2-19 and 2-20. In her evidence Gail Robinson said the figure of £7,000 calculated to be the amount to be lodged by me in accordance with their stipulated corrective action was to cover balances which had not been incorporated into Atuahene Sim Murray accounts. The fact was that a surplus on Atuahene Sim & Co clients bank account has already been transferred into the

Atuahene Sim Murray & Co client bank account although this had not yet been posted in the accounting records at the time the inspection took place. The interim judicial factor determined that there was a shortfall of £11854.63 in respect of client funds transferred to me by Mrs Murray. There is therefore no justification whatsoever for the sum of £7,000 to be paid 'by me into the clients bank account: Please refer to paragraph 5.2 of interim report by Harry Seddon which is No 42 of my first inventory of productions. When Leslie Cumming was cross-examined on why the Law Society auditors' calculations showed an apparent deficit of £116,447.21 but they asked me to pay £7,000 into the clients bank account although he said he could not justify the figure of £7,000 he tried to defend the auditors by saying they were trying to be helpful to me. This statement of Leslie Cumming is ridiculous because it is impossible to understand why the Law society which is responsible for protecting the public interest should decide to ask a solicitor whose clients' account had been found to be in deficit to refund only about 6% of the shortfall on the account. It is obvious that the auditors themselves could not rely on their calculations.

5.08 Following receipt of the interim report I had approximately 14 to 20 days to correct all the posting errors before the appointment of the interim judicial factor on 22 May 2003. During that period the legal cashier tried to correct the posting errors and worked late most of the time to do this. I sat with her on many occasions to see how well she was coping with the situation. I contacted the proprietor of the soroba system to find out if I could get any other legal cashier trained in the soroba system to assist me and she explained to me that she only trained legal cashiers already in employment of firms of solicitors which had decided to purchase and use soroba system to keep their accounting records. This therefore meant that all the legal cashiers trained in the use of soroba system were gainfully employed. Mrs O did not seem to be getting anywhere with correcting the posting errors with a view to achieving accuracy of the accounting records. Obviously on hindsight it was impossible to achieve accuracy of the accounting records because the information she received from Mrs Murray was not accurate. I called my accountants Cohen Shepherd & Co, Giffnock, Glasgow for advice. Mr Cohen after studying the terms of the inspection report and interviewing me and Mrs O said he required access to supporting documentary evidence from Mrs Murray before he could reconcile the clients' funds with client credit balances received from West Anderson & Co. Mr Cohen advised Mrs O to rectify all the posting errors before he could come and audit the accounts. Mrs O was unable to correct the posting errors and as a result upon petition by Law Society to Court of Session an interim judicial factor was appointed to take over my former firm Atuahene Sim Murray & Co.

5.09 When the interim judicial factor arrived he asked Mrs O to resolve all the problems with the accounting records as a matter of urgency. Mrs O was unable to cope with the situation and therefore left my former firm: Please refer to paragraphs 1.7 and 1.8 of the interim report by Harry Seddon being No 42 of my first inventory of productions. Shortly after the arrival of interim judicial factor I contacted Mr James McCann who agreed to formerly act as my solicitor under the legal defence union insurance scheme of which my former firm Atuahene Sim Murray & Co was a member. Upon Mr James McCann's advice I fully cooperated with the interim judicial factor: Please refer to paragraph 1.5 of my first inventory of productions No 42. In view of my full cooperation with the interim judicial factor he kept me well informed of the progress of his work. The interim judicial factor had to determine the

accuracy of client balances to be transferred from Atuahene Sim & Co and Murray & Co accounts to Atuahene Sim Murray & Co. Once the accuracy of the client balances had been determined the posting errors in Atuahene sim Murray & Co had to be rectified by incorporating the accurate client balances from Atuahene Sim & Co and Murray & Co into the computerized accounting system of Atuahene Sim Murray & Co. Since the interim judicial factor has access to my computerized accounting record and relative supporting documentary evidence such as returned honoured cheques, bank statements, invoices etc he was able to satisfy himself about the accuracy of client balances from Atuahene Sim & Co in a matter three days or so. You will note from the interim report of Harry Seddon that there are no adverse comments about the client balances of Atuahene Sim & Co. However the determination of the accuracy of the balances from Murray & Co was more complicated and difficult; the first letter dated 16th June 2003 written by the interim judicial factor to Mrs Murray being No 49 of my first inventory of productions is a good indication of the extent of the problem.

5.10 The root cause of the posting errors and the inaccuracies in the accounting records of Atuahene Sim Murray & Co per the interim report by Harry Seddon can be summarized as follows:

• As a result of poor arrangement made by Mrs Murray with her agents West Anderson & Co, the agents were unable to deliver to me the necessary information and documentary evidence I had to see in order to reconcile the client funds with the list of client balances: Please refer to paragraphs 3.1,3.2 and 3.3 of the interim report by Harry Seddon being No 42 of my first inventory of productions;

• West Anderson & Co the agents of Mrs Murray failed to deal with the funds in a proper manner; they transferred a lump sum to Bank of Scotland without obtaining any evidence of various client matters relating to the funds. This meant that when I needed information or documentary evidence from them in order to have list of client balances reconciled with client funds received from them they were not in a position to assist me: Please refer to paragraph 3.4 of the interim report by Harry Seddon being No 42 of my first inventory of productions;

• Part of the client funds transferred to me were funds which covered unpresented cheques signed by Mrs Murray; Mrs Murray refused to return the honoured cheques to me along with the identities of the clients on whose behalf the cheques were issued. Payments represented by these cheques from my clients bank account without my authorization appeared on my bank statements. It was impossible to deal competently with these cheques in the accounting system of Atuahene Sim Murray & Co without sight of Murray & Co honoured cheques, relative identities of clients on whose behalf the cheques were issued, client ledgers, invoices etc: Please refer to paragraphs *3.5* to 3.6 of my first inventory of productions No 42; letters being numbers 44, 46, 47 and 48 of my first inventory of productions; and

• It was not clear to whom Murray & Co issued some of the cheques to. The details of identity of payees required to be clearly stated in the accounting records in accordance with accounting rules and this could not be done: Please refer to paragraph 3.10 of interim report of Harry Seddon being No42 of my first inventory of productions.

It is definitely clear that the improper manner in which the client funds were intromitted with and transferred to me together with Mrs Murray's refusal to deliver the necessary supporting documentary evidence to me made it impossible for accurate and adequate accounting records to be kept by my legal cashier Mrs O. The root cause of the accounting records kept by Mrs O not being up to date was due to the enormous time spent by her in contacting Mrs Murray (who was not always available), trying to

get the necessary information which most of the time was not accurate and posting the entries in the computerized accounting records in respect which Mrs O had to contact Mrs Murray again on numerous occasions for more information when the accounts did not balance or the information given was obviously inaccurate.

5.11 Mrs O was labelled by the interim judicial factor to be incompetent. In all fairness to Mrs O she was able to keep the accounting records of Murray & Co competently without problems for at least six years. Mr Leslie Cumming stated in his evidence that Mrs Murray's accounting records had been inspected on a number of occasions and found to be adequate. Besides as already stated the clients ledgers created by Mrs O for clients where there were no credit balances from Mrs Murray were accurate. The incompetency of Mrs O , if any, must fairly be restricted to dealing with the accounting records in so far as they relate to the client credit balances and clients' funds received from West Anderson & Co. The complexity of the problems posed by the way and manner clients funds were submitted with and transferred to me by West Anderson & Co cannot be underestimated. It required an accountant with access to the relevant documentary evidence from Mrs Murray to competently deal with then with a view to achieving accurate accounting records of Atuahene Sim Murray & Co. On hindsight it is therefore not surprising that Mrs O who is not an accountant but ordinary legal cashier able only to deal with straight forward postings into the soroba accounting system without any problems was unable to deal with inaccuracies in Atuahene Sim Murray & Co caused by inaccurate information received from Mrs Murray. Mr Leslie Cumming in his evidence tried to blame me for the inaccuracies by implying that I failed to supervise Mrs O. I did supervise Mrs O but it was impossible for me to do so effectively without sight of the necessary documentary evidence from Mrs Murray which would have put me in a position to determine and physically check the accuracy of the postings in Atuahene Sim Murray & Co accounting records relative to the client credit balances and clients' funds transferred to me by Mrs Murray. As Mr Leslie Cumming was not in my former office to observe how I supervised my former legal cashier I suggest that very little weight, if any, should be attached to his statement implying that I did not supervise my former legal cashier.

5.12 Mr Leslie Cumming also tried to blame me in his evidence by saying that I failed to seek advice on the purchase of Murray & Co. This is confirmed by paragraph 9.1 of the interim report by Harry Seddon; the report does not specify what kind of advice I should have obtained. Although I accept that probably I should have brought in my accountant before completion of the purchase transaction to audit the accounting records of Murray & Co in order to confirm the accuracy of the credit balances and whether or not the client funds to be transferred were sufficient to cover the client credit balances this was not necessary as I would demonstrate later in my submission that my interests could have been effectively protected if appropriate clause or clauses were included in the concluded missives. I was told about Mrs Murray wanting to sell her business of Murray & Co by somebody. I was interested and in accordance with my request Mr Murray made it possible for me to have sight of two previous inspection reports carried out on Murray & Co by the Law Society auditors; one of the inspection reports related to inspection carried out in October 2002 and the order related to an inspection two years before October 2002. The two inspection reports did not disclose anything serious about Murray & Co accounting records apart from demands for duly receipted form 4s, mandates from clients and identity

documentation of clients. This is the reason why I naively relied on the inspection reports and proceeded with the purchase by instructing the Second Respondent to act for me in the purchase of Murray & Co. I use the word "naively" in the light of what I know now that one cannot rely on Law Society auditors' reports for such a purpose. With reference to the second paragraph of subparagraph *3.5* of interim report by Harry Seddon the proper way the client funds and client credit balances should have been transferred to me by Mrs Murray was for her to have transferred only the funds equating to the total of list of client credit balances on the date of cessation of her business. This would have meant that the funds covering all Murray & Co's unpresented cheques would have been kept in Murray & Co clients bank account for West Anderson & Co to submit with upon appropriate authorization from Mrs Murray. On the basis of this arrangement and upon necessary documentary evidence delivered by Mrs Murray to West Anderson & Co solicitors who obviously are practising solicitors they would have been able to provide me with the required reconciliation statement demonstrating that the client funds received were adequate to cover the client credit balances. Strictly speaking I should not have been involved in perusing the necessary documentary evidence from Mrs Murray in order to ascertain the accuracy of client credit balances and client funds received from her and preparation of relative reconciliation statement because the required reconciliation statement related to Mrs Murray's intromissions with clients funds prior to and up to cessation of her business. Mrs Murray should have been solely responsible for providing the required reconciliation statement to demonstrate that the clients' funds adequately covered the client balances received from her. The interim judicial factor who is a chattered accountant had to create ledgers GLG Bank, Q & LTR and Murray & Co within the accounting system of Atuahene Sim Murray & Co after having used his power to obtain all the necessary documents such as returned honoured cheques, ledgers from Murray & Co accounting records etc before he could adequately deal with the inaccuracies of my accounting records. For more information about the ledgers created by the interim judicial factor please refer to letter dated 4th April 2004 I wrote to the interim judicial factor being No 43 of my first inventory of productions; letter dated 6th April 2004 being No 44 of my first inventory of productions; my letter dated 7th May to 2004 to Harry Seddon being No *45* of my first inventory of productions; letter of 12th May 2004 I received from interim judicial factor being No 46 of my first inventory of productions; my letter of May 2004 being No 47 of my first inventory of productions; and letter dated 2nd June 2004 being No 48 of my first inventory of productions. These ledgers created by the interim judicial factor clearly related to Mrs Murray's intromissions with client monies. The ledgers should not have appeared in the accounting records of my former firm; the interim judicial factor was compelled to create the ledgers because of the way the clients' monies were intromitted with by Mrs Murray agents West Anderson & Co. It is obvious from the terms of the interim report by Harry Seddon that the accounting problems I inherited from Mrs Murray could not have been competently dealt with by an ordinary legal cashier like Mrs O who was not an accountant. Even if my former legal cashier Mrs O could have competently dealt with the problems she was not given access to the necessary documentary evidence which could have made it possible for her to do so by Mrs Murray. The root cause of the problems in the accounting records could not reasonably be attributed to Mrs O although she was blameworthy for telling me she had managed to reconcile the client funds with the client credit balances and obtained accurate information from Mrs Murray whereas this in reality was not the case. It was through no fault of mine that I was not in a position to ascertain accurately the true

position in full details until the interim judicial factor arrived because Mrs Murray refused to cooperate with me.

5.13 The legitimate question to consider is that in terms of the interim report of Harry Seddon could my interests have been effectively and properly protected in the missives concluded by the Second Respondent for the purchase of Murray & Co in the absence of an accountant perusing the accounts of Murray & Co? When the Second Respondent was initially questioned by me about the contents of any clause relating to the transfer of client credit balances and client funds contained in the concluded missives for the purchase of Murray & Co he conveniently said that he could not remember because the missives had not been lodged in production. However when he was further pressed by me on the issue he said in his evidence that in terms of the missives concluded on my behalf he expected me to have access to the information reasonably necessary to confirm that the client funds transferred adequately covered the related list of client credit balance. This therefore meant that in terms of the missives concluded by the Second Respondent I was required to peruse the necessary documents received from Murray & Co in order to prepare the required reconciliation statement and satisfy myself. With due respect to the Second Respondent all that he had to do to effectively protect my interests and prevent the problems which cropped up as a result of the way and manner West Anderson intromitted with client funds and transferred the client credit balances was to ensure that there was a clause in the concluded missives stipulating payment of purchase price upon delivery by Mrs Murray the clients funds, client credit balances and reconciliation statement clearly demonstrating that the clients funds adequately covered the client credit balances in accordance with recommendations contained in paragraph *3.5* of interim report by Harry Seddon. The only way Mrs Murray could have fulfilled this condition in the missives if it had been inserted was to separate funds covering her outstanding cheques from clients' funds she had to transfer to me; the condition would have ensured that the clients' funds equated the client credit balances. Mrs Murray would have had to make separate arrangements with West Anderson & Co and given them sufficient powers to introit with the funds covering outstanding cheques. In the event of such a proposed clause not being accepted by Mrs Murray I would have had the option not to proceed with the purchase and avoided all the problems which I encountered. The fact that the price was paid before I made the request for the necessary documentary evidence put Mrs Murray in a position to walk away with impunity without caring about my request. I am not blaming Mr Richard Thorburn for everything which happened to me after I purchased Murray & Co but what I am saying is that at least the accounting problems Mrs Murray gave me could have been avoided if an appropriate clause had been introduced into the concluded missives by Mr Richard Thorburn; if this had been done it would not have solved all my problems after taking over Murray & Co but it would have at least solved all the accounting problems which arose as a result of improper manner West Anderson & Co intromitted with client funds would have been avoided. If I required any advice as to whether or not to go ahead with the purchase of Murray & Co that advice should have come from the Second Respondent who was my solicitor. Richard Thorburn in his evidence tried to play down the importance of his acting for me in the purchase of Murray & Co by saying that I contacted him informally. This was not correct because I employed him as my solicitor to act and protect my interests in the purchase transaction. For the avoidance of any doubt, as confirmed in the Second Respondent's evidence, I met Richard Thorburn at one of the Law Society's seminars. I subsequently instructed Richard Thorburn to act for me in

the purchase of about three dwellinghouses. I never socialized with the Second Respondent. Richard Thorburn in his evidence tried to blame me for what happened by saying if I had spent more time with him he would have made me aware of how to go about taking over Murray & Co. Little weight if any should be attached to this statement of Richard Thorburn as he was my solicitor and therefore under obligation to advise me on all aspects of the purchase transaction verbally or in writing before or immediately after the completion of the transaction. Mr Thorburn also tried to play down the importance of his work as my solicitor in the purchase transaction by saying that I had other people advising me on the purchase. This was not true as the only expert I had acting for me in the transaction was Mr Richard Thorburn in his capacity as a solicitor. In fairness to the Second Respondent he did not have the benefit of the terms of a report like the interim report by Harry Seddon before concluding missives for the purchase of Murray & Co. However this is totally irrelevant to his responsibility of protecting my interests in the purchase of Murray & Co because if in fact the Second Respondent did not have the required experience relative to the purchase of a solicitors' business in order to protect my interests properly and effectively all that he had to do in his capacity as a solicitor deemed to be practising with the highest integrity and honesty in accordance with the required standards of conduct of the profession was to decline my instructions; if this had been done it would have given me the opportunity to instruct another solicitor who had the skill and experience to act for me. I cannot be lamed for not having instructed a solicitor with the requisite experience to deal with the purchase of Murray & Co because at the time I instructed the Second Respondent I had no reason to disbelieve that he was incapable of effectively protecting my interests in that particular transaction.

5.14 I took every reasonable step to ensure that the accounts were accurate and adequate; I did not succeed due to circumstances beyond my control. In the whole circumstances there is very low culpability on my part, if any, with respect to the inaccuracies in the accounts and accordingly I humbly suggest to the Tribunal not to find me guilty of professional misconduct. The averment of professional misconduct 24.25(a) and (c) should therefore be dismissed in so far as it relates to the period from November 2002 to 22'' May 2003.

(b) Articles 18 and 19

Accounting records from 23 May 2003 to 31 October 2003

5.15 The interim judicial factor Gerber Landa & Gee was appointed on and took over Atuahene Sim Murray & Co on 22' May 2002. He reconstructed and maintained the accounting records of Atuahene Sim Murray & Co up to 31st October 2003 although the interim judicial factory was discharged on **5th** November 2003. It is therefore inappropriate for you to consider any averment of professional, misconduct relative to this period. I therefore humbly request the Tribunal to dismiss averments of professional misconduct *24.25* (a) and (c) in so far as they relate to this period.

(c)Accounting records from 1st November 2003 to 1 May 2004.

5.16 The inspection on 29-30th March 2004 was a follow up inspection after the previous inspection on 17th and l8th February 2004. The two inspections were carried out by Mrs Playfair. The period from November 2003 to 31st May 2002 covers the two inspections.

5.17 Following the departure of the interim judicial factor I tried unsuccessfully to get

a legal cashier trained in the use of the new soroba system to assist me keep the accounting records. The owner of the new soroba system had already made it clear to me during previous discussions that she trained only legal cashiers employed by firms of solicitors who had purchased the new soroba system and that there was nobody available she could recommend to me to employ to keep my accounting records other than my legal cashier whom she had already trained to use the new soroba system competently. The difficulty in getting any suitable cashier was exacerbated by the fact that the interim judicial factory on Atuahene Sim Murray & Co was at least well known by people locally; no legal cashier was interested in working for me. I consulted the owner of the new soroba system who agreed to give me approximately an hour's lesson about how to use the system and post entries to it without charge. Unfortunately I made mistakes in keeping the accounting records; the root cause of the mistakes was that I settled fees in the system in the wrong way: Please refer to letter from me dated 21st February 2004 in complainers productions 2-21, 2-22 and 2-23 I wrote to the Law Society. After the 17/18 February 2004 inspection Mrs Playfair had a meeting with me during which she advised me there were posting errors in my accounting records. Mrs Playfair further advised me that it was not sensible for me to keep the accounting records myself and that I had to get a legal cashier who was Law Society trained and competent in the use of the new soroba system. She further advised me that once a law society trained competent legal cashier had been found I should get him/her to rectify the accounting errors and send printouts to the Law Society to confirm this. On February 2004 I met with Mrs Playfair at the Law Society office, Edinburgh. She verbally gave me the details of the extent of errors in my accounting records. I became extremely disturbed and was at the verge of breaking down mentally. Mrs Playfair advised me to seek help from Lawcare and other agencies: Please refer to my letter of 21st February 2004 to the Law Society and the last but one paragraph from the bottom of the second page of confidential report signed by Morag Newton on 28th February 2004 contained in complainers productions 2-21, 2-22 and 2-23. With the assistance from Lawcare and other agencies I was able to pick myself up. The owner of the new soroba system managed to plead with Mr M who normally did not do work outside his catchment area Livingston to help me. Mr M was Law Society trained legal cashier and was well versed in the use of the new soroba system. The owner of the new soroba system had explained to me that she and Mr M worked together to create the new soroba system .When I first spoke with Mr M on the phone he said he would be prepared, as a one off situation to help me out in view of the serious position I was in with the Law Society. However after agreeing the fees he was going to charge he explained to me that he could not possibly work for me during the week days and that he could only work on Saturdays and Sundays for me from 10a.m to *5p.m.* I had no option but to accept his proposals. Mr M commenced working on my accounts on 21st February 2004. He reconstructed my accounting records for the period from 1st November 2003 to end of April 2003 by deleting all the entries posted by me; posting entries accurately recorded on my posting slips; posting entries in respect of invested funds; posting interests earned on invested funds; preparing monthly reconciliation statement for clients bank account; preparing monthly reconciliation statements of firms bank account; preparing quarterly reconciliation statements of invested funds; and accurate accountants certificate where it was required. Thereafter copies of the printouts from the computerized accounting system comprising reconciliation statements, cashbooks of firm's and clients' bank accounts, client ledgers, accountant certificate to 30/11/03, quarterly reconciliation of invested funds were sent to the Law Society upon

completion of each month’s postings. The Law Society trained and competent legal cashier Mr M spent a total of 20 days in completing the reconstruction of the accounts. The following are some of the letters relative to the reconstructed accounts: my letter to the Law Society dated 21St April 2004 being No 60 of my first inventory of productions; letter dated 1 March 2004 sent by the Law Society to me in the complainers productions 2-21,2-22 and 2-23; letters dated 29th March 2004, 5th April 2004, 6th April 2004, l5tI April 2004, 10th April 2004 all contained in the complainers productions 2-24, 2-25 and 22630th April from me to Law society; and letters dated 23’ February 2004 No 52; 25th February 2004 No 53; 1St March 2004 No 54; 19th March 2004 No 55; 27th March 2004 No 56; 5th April 2004 No 57; 21st April 2002 No 60; and 15th April 2004 No 58 all of my first inventory of productions. You will note from some of the above letters written by the Law Society that they were quite pleased I managed quickly to engage the services of Mr M whom they knew was Law Society trained and competent. When the 29/30th March inspection commenced Mr M was still in the process of reconstructing my accounting records. All the posting errors identified in February and March inspections were rectified upon completion of the reconstruction of the accounts. The accounting records created by Mr M were accurate, adequate and brought up to the required standards: Please refer to second paragraph of letter of 5th April 2004 written to insurers by Law Society contained in the complainers third inventory of productions No3-10 where it is stated, and I quote “. . . .Mr Atuahene’s records have been in very considerable disarray and have only recently been brought up to standard and up to date with outside help.”

5.18 The Law Society gave me the opportunity to rectify all the posting errors identified in the February and March 2004 inspections to their satisfaction. I took this on board and quickly engaged the services of Mr M. In the circumstances I have already mentioned the reconstruction of the accounting records could not be completed in a shorter period than 20 days because it was only possible for Mr M who happened to be the only Law Society trained and competent legal cashier available to do the work for me only on Saturdays and Sundays. In the whole circumstances the reconstruction of my accounting records was completed timeously; the 20 days taken by Mr M was necessary to enable him to deal with all the complexities presented by my accounting records and complete the reconstruction to the required standard. There is nothing else I could possibly and reasonably have done to ensure that the reconstruction of the accounts was completed in a day or fewer of days.

5.19 Notwithstanding the fact that the inaccurate accounting records no longer exists, the Fiscal nonetheless has averred professional misconduct against me on the basis of the posting errors. The Law Society cannot have their cake and eat it at the same time. As the records were kept by me on a daily basis the main issue is whether or not the accounting records now in the possession of the Law Society since the appointment of Judicial Factor Moma Grandison are accurate and adequate. There is no doubt that the accounting records having been reconstructed to the required standard are accurate and adequate. There is no factual basis to support a finding of professional misconduct against me. Accordingly I suggest that averment of professional misconduct *24.25* (a) and (c) should be dismissed in so far as it relates to the period from 1st November 2003 to 12th May 2004.

(d) Article 20 :Accounting records from 13th May 2004 to 23 August 2004
5.20 Following the audit of client credit balances of Atuahene Sim Murray & Co and Richard Thorburn by Aird Sakol Chartered Accountants the clients' funds in Atuahene Sim Murray & Co's and Richard Thorburn's clients' bank accounts were transferred into the Practical Law Partnership clients bank account on 12th May 2004. Thereafter all the ledgers in the computerized accounting system of Atuahene Sim Murray & Co were closed and the final list of client balances the total of which was equal to the client funds transferred from Atuahene Sim Murray & Co clients bank to the Practical Law Partnership client bank account was extracted. As a result of exacerbation of my medical condition culminating in a level of ill-health which significantly impacted negatively on my ability to practice as a solicitor in accordance with the required standard I took a sensible step of drastically reducing the workload; this is in fact the main reason why the income of my former firm was so low notwithstanding the fact that I in fact inherited a very high level of clients and work in progress from my predecessor. After the interim judicial factor to Atuahene Sim Murray & Co was discharged on 5th November 2003 and before Richard Thorburn joined me round about middle of February 2004 at 34 Argyll Arcade I did not take on any new transactions; I just concentrated on manually keeping accounting records, attending to outstanding matters relating to transactions already dealt with, registering deeds and trying to locate files for onward transmission to other solicitors or passing them to clients themselves. After the Second Respondent joined me at 34 Argyll Arcade I carried on doing the same thing. After Richard Thorburn joined me at 34 Argyll Arcade and up to August 2004 I carried on doing the same thing and only completed about two transactions within that period. I thought this was the sensible way forward for me as the arrangements Richard Thorburn and I agreed to put in place, namely employing competent legal cashier, bringing two solicitors to join the Practical Law Partnership and employing more qualified assistants had not materialized. Therefore I had very little work to do in keeping the accounting records manually as there only a small number of entries to attend to and update the final ledger balances extracted from the computerized accounting system of Atuahene Sim Murray & Co. It was the intention of the Second Respondent and I merge the accounts once the manually kept accounting records were up to date. This however did not materialize because the Second Respondent by his own evidence was extremely busy dealing with conveyancing transactions and had a lot of accounting records to write up. Initially I was the only person in my former office at 34 Argyll Arcade when the Law Society auditors arrived for *5/8* July inspection. I immediately telephoned the Second Respondent to inform him of the arrival of the auditors in the office. In anticipation that the Second Respondent would be arriving at the office shortly the auditors left the office with the intention of coming back later. The Second Respondent shortly after the departure of the auditors arrived at the office. The auditors returned to the office when the Second Respondent and I were present in the office. The auditors explained to us that notice in respect of the inspection dated 2 July 2004 was sent under separate covers to me and Mr Richard Thorbum. Mr Richard Thorburn and I. We explained that we had not received the notice and requested that the inspection should be postponed. The auditors indicated that they could not postpone the inspection without prior authorization and advised that we should telephone the then Chief Accountant Mr Leslie Cumming. Mr Richard Thorburn telephoned Mr Leslie Cumming with a view to getting the inspection postponed. Initially Mr Cumming insisted on the inspection going ahead but when he accepted that we did not receive the notice of 2nd July 2004 he agreed for the

inspection to commence on the following day the 6th July 2004. The auditors thereafter left the office and returned the following day. In my view I do not see any harshness, injustice or maltreatment in the way and manner Mr Cumming initially insisted that the inspection should go ahead; Mr Cumming's initial attitude was understandable in the light of the notice of 2' July 2004 which was received by me and Richard Thorburn in the afternoon that day after the auditors left the office to return on 6th July 2004. At the end of the *5/8* July 2004 inspection the auditors had a meeting with me and the Second Respondent. In the presence of the Second Respondent Christina Haywood said she was satisfied with my accounting records. This was confirmed by her in evidence when I asked her whether or not she said at the meeting with me and Richard Thorburn after the *5/8* July 2004 inspection that she was satisfied with my accounting records she answered in the affirmative. All the queries raised by the auditors on *5/8* July 2004 inspection related to transactions exclusively carried out by Richard Thorburn. I had no involvement whatsoever in the alleged breaches of rules etc identified by the auditors at *5/8* July 2004 inspection. I did keep my manual accounting records daily and had no problems with it as there were only a handful of entries to deal with. Sometime after middle of October 2004 after the adverse publication about me in the Sunday mail I never returned to my former office Argyll Arcade. On medical advice I went to London to visit my sister for about three weeks in order to recuperate. When I returned to Glasgow from London I found a letter from Morna Grandison awaiting me. In response to the letter I met with Morna Grandison. Most of the discussion I had with Morna Grandison was centred on the transaction relating to Client 85. Morna Grandison explained to me that there had been fraud in that loan funds were intromitted with by Richard Thorburn without a duly signed security, conclusion of missives and executed disposition in favour of the borrower. I could not help Moma Grandison as I knew nothing about the transaction. I handed to Morna Grandison all the manual accounting records I kept for her attention. Morna Grandison in her evidence said that she had to carry out a lot of adjustments on the accounts because of outstanding cheques signed by me which had not been presented to the bank. She also said she had to merge my accounting records with Richard Thorburn's. Morna Grandison was not able to give details of any specific errors in the manual accounting records I handed to her. The adjustments she spoke about in her evidence did not affect the accuracy of my accounting records. There is no factual basis upon which I can be found guilty of professional misconduct here; the Fiscal has failed to prove professional misconduct beyond reasonable doubt. I humbly suggest that averment of professional misconduct 24.26 (a) and (c) be dismissed.

CHAPTER 6
Allegations of failing or delaying to stamp and record deeds timeously
Article 17.4

Client No 103
6.01 The deeds were registered timeously. Due to posting errors the fact that they had been registered did not show but subsequent rectification of the posting errors confirmed position: Please refer to letter from me to the Law Society dated June 2003 subparagraph headed “Client 103, Property 7” contained in complainers productions 2-19 and 2-20; and subparagraph headed “(9) Client 103, Property 7” of my letter dated 4th June 2003 to the Law Society in the complainers productions 2-19 and 2-20. I request that averment of professional misconduct *24.25(d)* be dismissed in so far as it relates to this.

Client No 1 04
6.02 There was no delay in stamping the disposition in favour of the client. In fact at the date of inspection there was a stamped disposition in favour of the client in the file. However there was some delay in registering the disposition in favour of the client’s son; the client had instructed the firm to transfer the title to the son. The client failed to call at the office to sign the disposition in favour of his son despite several reminders. It was not necessary to register the disposition in favour of the client separately as it was used as a link in title to register the Disposition in favour of his son: Please refer to letter from me to the Law Society dated 4th June 2003 the paragraph headed “ Client 104 purchase of Property 10 contained in complainers productions 1-19 and 2-20; and copy land certificate in favour of client’s son being my third inventory of productions No 18. In the circumstances I suggest that averment of professional misconduct 25.25(d) in so far as it relates to this be dismissed.

Client No 105
6.03 The executed disposition had come to hand within a matter of two days prior to the inspection and was subsequently stamped and registered as soon as possible: Please refer to the subparagraph headed “Client 105 Purchase of Property 12” of my letter of 4th June 2003 sent to the Law Society contained in complainers productions 2-19 and 2-20. In the circumstances averment of professional misconduct 24.25(d) in so far as it relates to this should be dismissed.

Client No 106
6.04 It is not possible for unstamped deed which requires to be stamped to be registered. It is well established procedure of the Land Register to check and make sure that all deeds which required to be stamped are stamped before registration; any unstamped deeds which require to be stamped are returned to the solicitor concerned for attention. In my letter of June 2003 to the Law Society I forgot to respond to this query probably because the deed was stamped and I did not see any basis for the query being raised. I suggest that averment of professional misconduct 25.25(d) in so far as it relates to this should be dismissed.

Client No 107
6.05 The deeds had been recorded but the duly receipted Form 4s were not to hand. Due to posting errors in the accounting records made it impossible for the position to be confirmed. However upon completion of reconstruction of the accounting record

the position became clear and the duly receipted Form 4s were sent to the Law Society:
Please refer to subparagraph headed " **Client 107 purchase of Property 13"** of my letter of **4th** June 2003 contained in complainers productions 2- 19 and 2-20. There being no factual basis to support **a** finding of professional misconduct against me I suggest that averment of professional misconduct *24.5* (d) should be dismissed.
Article **18.5**

<u>Client No 124</u>
6.06 The source of funds came from Royal Bank of Scotland. The deeds were sent to the Land Register for registration. At the time of inspection the duly receipted Form 4 had not come to hand; copy of the duly receipted Form 4 was subsequently sent to the Law Society when it came to hand: Please refer to subparagraph headed "Client 124 in my letter of 21st April 2004 sent to the Law Society contained in complainers productions 2- 24, 2-25 and 2-26; and copy receipted Form 4s for the two conveyancing transactions I completed for Client 124 being No 17 of my third inventory of productions. There is no factual basis for you to find me guilty of professional misconduct and accordingly I request you to dismiss the averment of professional misconduct *24.5(d).*

<u>Client No 125</u>
6.07 The stamp duty had already been paid when the auditor arrived. However due to posting error in the accounts which had not yet been rectified it was not clear that the stamp duty had been paid. The stamped deeds were subsequently sent to the Land Register for registration and the duly receipted Form 4 was sent to the Law Society: Please refer to subparagraph headed **"Client 125"** in my letter of 2l April 2004 to the Law Society contained in complainers productions 2-24,2-25 and 2-26. There is no factual basis upon which I can be found guilty of professional misconduct and accordingly I request you to dismiss averment of professional misconduct 24.5(d) in so far as it relates to this matter.

<u>Client No 126</u>
6.08 The Inland Revenue accepted my firm's cheque for the payment of the required stamp duty. However there was a slight delay in the stamping of the disposition in respect of Property 15 because the accompanying duly completed form was returned to me for correction of typographical errors and return to the Inland Revenue whiles the Inland Revenue retained the disposition. Upon receipt of the form the errors were quickly rectified and the amended form was sent back to Inland Revenue at the earliest for attention. The two discharges and standard security were recorded along with the duly stamped disposition timeously notwithstanding the slight delay. The source of £1367 was from the client's bank account with Clydesdale bank. The duly receipted Form 4 relative to the registrations was subsequently copied to the Law Society: Please refer to subparagraph headed **"Client 126"** in my letter of **21** April 2004 to the Law Society contained in the complainers productions 2-24, 2-25 and 2-26.

<u>Client No 126</u>
6.09 At the time of inspection I was awaiting return of the executed Discharges from the lenders in respect of Property 9. When the discharges were received they were forwarded timeously to the Land Register for registration: Please refer to Nos 60 and

62 of my first inventory of productions; and Nos 2(a),(b) (c) and (d) of my fourth inventory of productions.
All the above deeds having been timeously registered in circumstances which are explicable the averment of professional misconduct 24.25(d) relative to above should be dismissed.

Article **19.2**

Client No 112
6.10 The transaction for the purchase of shalom had virtually been completed round about middle of December 2003 .The client borrowed to fund about 80% of the purchase price for shalom; the remaining 20% of the purchase price was to be funded from net free proceeds from the sale of Property 37. It transpired that the net free proceeds were not enough to fully fund the remaining 20% of the purchase price for shalom; the client had to raise approximately £2,500 from private source. I had partly settled 80% percent of the purchase price for shalom and the disposition had been sent to me to be held as undelivered until the purchase price was paid in full. I had to deal with the transaction this way as the client had to leave Property 37 and needed entry to shalom urgently. The 20% of the purchase price was fully paid to me shortly after the inspection and thereafter the purchase price of shalom was settled in full. The relative executed disposition, standard security, executed discharge which had been received round about 27th March 2004 were all registered together. Upon registration a copy of the ledger card was sent to the Law Society. Thereafter copy duly receipted Form 4 was also sent to the Law Society. Please refer to subparagraph headed **"Client 112"** in my letter to the Law society dated 21st April 2004 contained in complainers productions 2-24,2-25 and 2-26. Please note that when I contacted Morna Grandison I was not able to find copies of all the letters I wrote to the Law Society notwithstanding the fact that she gave me access to the files I requested to see. Accordingly I do not have copies of some of the letters I wrote to Law Society in respect of this matter: Please also refer to copy Form 4, copy registered Disposition and copy discharge relative to this client contained in my third inventory of productions No 16. Any slight delay in registration of the deeds is explicable. In the circumstances there is no factual basis for the finding of professional misconduct. I suggest that averment of professional misconduct 24.5(d) be dismissed in so far as it refers to this matter.

Client No 128
6.11 The transaction related to a purchase of a house within a new development complex. There was a deed of conditions relating to the complex which had to be agreed, signed and registered for the whole complex. This deed of conditions was referred to in the disposition in favour of the client but it was not available for delivery to me along with the executed Disposition. The keeper would not agree to register an executed disposition which referred to deed of conditions unless the deed of conditions accompanied the executed disposition. The keeper would not register a standard security by a new owner to a property unless it was accompanied with an executed disposition in favour of the new owner. At the time the auditors arrive I was awaiting for the deed of conditions that is why the disposition and standard security had not been registered. However upon receipt of the deed of conditions all the deeds were timeously sent to the Land Register for registration. Thereafter copy ledger card together with copy duly receipted Form 4 was sent to the Law Society: Please refer to

subparagraph headed" **Client 128"** of my letter dated **21** April 2004 contained in complainers productions *2-24,2-25* and 2-26. The delay in registering the deeds is explanatory. In the circumstances there is no factual basis in support of a finding of professional misconduct against me in respect of this matter. I suggest the averment of professional misconduct *24.5(d)* should therefore be dismissed.

Client No 140
6.12 There were two transactions namely sale of Property 38 and purchase of Property 39. The client partly funded the purchase of Property 39 with net free proceeds from the sale of Property 38. At the time the auditors arrived although the two transactions had virtually been settled I still awaited receipt of the executed discharge relative to the sale of Property 38. The sale price for Property 38 had been paid to me in exchange for the executed discharge and other things; all the conditions had been fulfilled except delivery of the executed discharge. The reason for the delay in receiving the executed discharge was that the discharge I sent to the lenders at the first instance got lost in the post and I had to send another one. I had used the net free proceeds from the sale of Property 38 to settle the purchase price for Property 39 but the cheque had been sent to the sellers solicitors to be held undelivered until I authorize them to cash it because I was still awaiting the executed discharge relative to Property 38. At the time the auditors arrived I was awaiting receipt of the executed discharge before registering the deeds in respect of the purchase of Property 39. Upon receipt of the executed discharge it was forwarded to the solicitors for the purchaser of Property 38 along with my cheque for registration dues and duly completed Form 4. Thereafter the executed disposition and standard security relative to Property 39 were sent timeously to the Land Register for registration: Please refer to subparagraph headed **"Client 140"** of my letter of 2l April 2004 in complainers productions 2-24,2-25 and 2-26. In the circumstances the delay is explicable. There are therefore no grounds for you to find me guilty of professional misconduct and accordingly I suggest that averment of professional misconduct 24.5(d) should be dismissed in respect of this matter.

Client No 129
6.13 There was a slight delay in sending the executed discharge to the Land Register for registration after the sale of Property 48. The bank had sent the executed discharge to me to held as undelivered until full redemption of the standard security along with a redemption statement. Upon client's instructions I had to negotiate with the bank for a reduced redemption fee. I could not possibly send the discharge for registration without resolving the redemption issue with the bank. When the bank eventually accepted a reduced redemption fee the executed discharge together with duly completed Form 4 and my cheque for registration dues were forwarded to the purchaser's solicitors for onward transmission to the Land Register at the earliest. Please refer to subparagraph headed **"Client 129-sale of Property 48"** of my letter of **21** April 2004 in complainers productions *2-24,2-25* and 2-26. In the circumstances there is no justifiable basis for finding me guilty of professional misconduct as the delay in question is explicable. I therefore suggest that the averment of professional misconduct *24.5(d)* should be dismissed in respect of this matter.

Article 20

6.14 All allegations of failing to stamp and record deeds timeously solely refers to

Richard Thorburn as I had no involvement whatsoever in the relative transactions; I was not aware of anything which would have alerted me about the allegations. Indeed throughout the whole period of the partnership I was never involved in any transactions dealt with by Richard Thorbum on behalf of his clients. The only time I became aware of the allegations was the July 2004 during a meeting in my former office with the auditors after 5/8 July 2004 inspection'. In the circumstances there are no grounds for finding me guilty of professional misconduct and averment of professional misconduct 24.26(d) should be dismissed in so far as it relates to me.

1. Paragraph 19.04 RESPONSIBILITY OF PARTNERS INTER SE of the Scottish Solicitors' Discipline Tribunal by Ian S Smith and John M Barton.

CHAPTER 7
Specifically alleged queries relating to clients ledgers
Article 17.3

Client No *95*
7.01 For the circumstances surrounding the matter please refer to subparagraph headed **“Client 95** (Appendix B) of my letter of **4th** June 2003 in the complainers productions 2-19 and 2-20. The problem which cropped up was quickly dealt with Client No 96 relates to Client No 95 there was no breach of rule 11 .In the circumstances there is no justification for you to find me guilty of professional misconduct. I suggest that averment of professional misconduct *24.5(a)* and (c) should be dismissed in so far as it refers to this matter.

Client No 97
7.02 The confusion was due to posting error which had not yet been rectified at the time the auditors arrived. The error was subsequently rectified. Please refer to subparagraph headed” **Client 97 (Appendix** C)” in my letter of **4th** June 2003 sent to the Law Society contained in complainers productions 2-19 and 2-20. There was no breach of Rule 11 there was no breach of Rule 11. In the circumstances are understandable and the problem was quickly resolved. I therefore suggest that there are no justifiable grounds for finding me guilty of professional misconduct and averment of professional misconduct *24.25(a)* and (c) should be dismissed in so far as it relates to this matter.

Client No 98
7.03 The problem which arose was due to system error which I initially experienced with the use of the new soroba system. However the problem was subsequently quickly resolved. There was no breach of Rule 11. Please refer to subparagraph headed **“Client 98”** of my letter of *4* June 2003 in the complainers productions 2-19 and 2-20. As there no culpability on my part averment of professional misconduct *24.25(a)* and (c) should be dismissed in so far as it refers to this matter.

Client No 99
7.04 The apparent problems stipulated were due to posting errors which were subsequently rectified. The alleged irregularities did not in fact exist as such: Please refer to subparagraph headed **“Client 99, (11) Purchase of Property 49, 27/02/03”** of my letter of **4th** June 2003 in the complainers productions N 2-19 and 2-20. In the circumstances averment of professional misconduct *24.25(a)* and (c) should be dismissed.

CHAPTER 8

Alleations of failing to invest client monies in excess of £500

Articles 19.3 and 18.4

8.01 With regard **to** client funds being invested, some of my clients who were serious practicing Muslims instructed me not to invest their funds for religious reasons; the basis in Islam is that the Prophet Mohammed, peace be upon Him, in his last sermon warned against interest and stated that Muslims should make money out of services rendered not from money lent to others. This therefore means that if a Muslim lends money another person the same amount of money should be paid back to the lender without interest. If a lender wants a return on the money lent he/she can only share in the profit made by the borrower where the money is used to do business. Mr Leslie Cumming in his evidence said that he has never heard of a Muslim not wanting interest on his money in our profession. This is understandable because Mr Cumming is not a Muslim and he is not a practicing solicitor dealing with Muslim clients on a daily basis.

Client 113

8.02 The clients who are Muslims instructed me not to invest the funds. A written authorization from the clients was sent to the Law Society. According to the accurate ledger being No 1 of my third inventory of productions after payment of certain outlays from 31st December 2003 onwards the sum due to the clients which was £14211.02 was not paid out and not invested in accordance with clients' instruction until 3 March 2004 when in accordance with clients' instructions the sum of £13977.02 was paid to them. The balance on the account was used in paying outlays incurred on clients' behalf. Please refer to subparagraph headed" **Client 113"** of my letter of 30 July 2004 sent to the Law Society being No 62 of my first inventory of productions. In the circumstances I request that the averment of professional misconduct 24.25(b) be dismissed in respect of this matter.

Client No 114

8.03 Initially I agreed in principle to pay interest. However upon checking the ledger I realized that the funds were actually required for payment of outlays. It would not have been convenient to invest the funds. Mrs Playfair in her evidence confirmed that where the funds are required for payment of outlays within the period of two months they need not be invested. The outlays were incurred and paid within a period of two Please refer to accurate client ledger No 2 of my third inventory of productions and my letter to the Law Society dated 30th July 2004 being No 62 of my first inventory of productions. I suggest that it is justifiable to dismiss averment of professional misconduct 24.25(b) in respect of this matter.

Client No 115

8.04 I initially decided in principle to pay interest to the client. When I spoke with the client about this he instructed me not to invest the funds. Thereafter upon checking the accurate ledger it was clear to me that the funds were required for payment of outlays. From l November 2003 the credits on client's ledger were not held for more that two months before payment of outlays, Please refer to No 3 of my third inventory of productions and subparagraph headed **"Client 115"** of my letter of **30th** July 2004 sent to the Law Society being No 62 of my first inventory of productions. In the

circumstances there is no breach of Rule 11 and averment of professional misconduct 24.25(b) should be dismissed in relation to this matter.

Client No 116
8.05 The funds in the sum of £1050 were used to pay outlays within a period of two months from 10thi November 2003. The funds were wholly disbursed on 31st December 2003. The sum of £108.22 on different ledger for the client was less than £500. In any event the client instructed me not to invest his funds: Please refer to No 4 of my third inventory of productions and subparagraph headed **"Client 116"** in my letter of 30th July 2004 to the Law Society being No 62 of my first inventory of productions. Accordingly there has been no breach of Rule 112 and the averment of professional misconduct 24.25(b) should be dismissed in relation to this matter.

Client No 117
8.06 It is not correct that funds were held from December 2003. According to the accurate accounting client ledger being No 5 of my third inventory of productions the funds were received on 3l December 2003. Thereafter outlays were paid and on 24th January the credit balance on the ledger was reduced to £500 which was holy disbursed in payment of outlays. Although initially I agreed in principle to pay interest it was really not necessary as the funds were disbursed in accordance with Rule 11. There is therefore no breach of rule 11 and averment of professional misconduct 24.25(b) should be dismissed. Please refer to subparagraph headed **"Client 117"** of my letter of **30** July 2004 being No 62 of my first inventory of productions and accurate client ledger being No 5 of my third inventory of productions.

Client No 118
8.07 At the first instance the £15,000 received was invested; the interest earned was £81.86. Upon client's instructions the funds were uplifted and a cheque for £15000 was sent to client's trustees with conditions attached. The client' s trustees refused to accept the cheque and returned same to me on l8" November 2003. Upon client's instructions the funds were not invested from November 2003 to l5 February 2004. A written mandate of the client was sent to the Law Society: Please refer to subparagraph headed 'Wallace" of my letter dated 30th of July 2004 being No 62 of my first inventory of productions. Upon receipt of the cheque from the client's trustees, upon client's instructions a further cheque for £15,000 was sent to Ms Q; this cheque I believe was not cashed but the matter did not come to my attention until well after my sequestration on 5th July 2004: Please refer to the accurate client ledger No 6 of my third inventory of productions. In the circumstances there is therefore no justification for you to find me guilty of professional misconduct and accordingly averment of professional misconduct 24.25(b) should be dismissed in respect of this matter.

Client No 119
8.08 I agreed in principle to pay interest to the client but on examination of the accurate ledger I realized that the funds had been disbursed within a period of two months from date of receipt in accordance with Rule 11 .The total sum of £2,082.51 was received from to 13th November 2003. The funds were used to pay outlays from 26th November 2003 to 6th December 2003 and thereafter the credit balance was reduced to £82.51. There was therefore no breach of Rule 11 and accordingly

averment of professional misconduct 24.25(b) should be dismissed in respect of this matter: Please refer to accurate client ledger No 7 of my third inventory of productions and subparagraph headed “Client 119” of my letter of 30th July 2004 sent to the Law Society being No 62 of my first inventory of productions.

Client No 120

8.09 Delay in settlement of the transaction was due to innocent circumstances notwithstanding my repeated telephone calls to Glasgow Housing Association to progress matters. It transpired that letters apparently sent by the Housing Association in respect of settlement were sent to my former office 536 Cathcart road after 30th June 2003 and expiry of the 6 months period of redirection of my letters from Cathcart road to 34 Argyll Arcade, Glasgow: Please refer to Nos 2,3,4,5 of my first inventory of productions. I urgently required to settle the transaction and anticipated at that time that the housing Association were going to return to me at the earliest at any time regarding settlement. I therefore thought it unwise in the circumstances to invest the funds as because request to uplift funds took three days to come to hand. In addition to this I required further funds in the sum of £1663.86 to settle the transaction and this did not come to hand until 20th April 2004 when the cheque in full settlement of the purchase price was sent to the Housing Association: Please refer to accurate client ledger being No 8 of my third inventory of productions. In the circumstances the uninvested fund is explicable. I request you to dismiss the averment of professional misconduct 24.25(b) relative to this matter.

Client No 121

8.10 The accurate client ledger being no 9 of my third inventory of productions was created by the interim judicial factor appointed to Atuahene Sim Murray & Co. All the transactions in respect of which the ledger was created were dealt with and completed by Mrs Murray. Mrs Murray had arrangements with the client whereby the client bought properties in his name, names of his wife, cousins, brothers and other relatives. Very often Mrs Murray did not ask for payment of her fees and outlays incurred until the client sold some of his properties when upon clients’ instructions some his outlays were transferred and debited to the client ledger of the sale in question. It therefore meant the considerable outlays incurred on behalf of the client were carried forward for a longtime before payment. I inherited this complex situation relating to this particular client from Mrs Murray. When I took over Murray & Co I decided not to honour the arrangements between the client and Mrs Murray and as a result the client went to another firm of solicitors. When the interim judicial factor took over Atuahene Sim Murray & Co, upon information obtained from Mrs Murray he gathered all the debits and credits of all transactions completed by Mrs Murray and recorded them in a client ledger under the name of client 121 until this ledger was created I was not aware of how much funds were being held on behalf of the client. The client instructed me not to invest the funds for religious reasons but to hold on to them for his further instructions in the near future. Thereafter I tried several times unsuccessfully to obtain the client’s mandate confirming his instructions in writing; the client traveled to Mecca for Haj and thereafter Pakistan; he did not return to Glasgow until months after my sequestration. In the circumstances there no justifiable grounds to find me guilty of professional misconduct and the averment of professional misconduct 24.25(b) should be dismissed in respect of this matter: Please refer to No 8 of my third inventory of productions.

Client No 122
8.11 This was an old lady of about 90 years who lived alone. The lady authorized her son, an accountant to instruct me on her behalf. Nearer completion of the transaction the son explained to me that her mother was increasingly getting weak mentally and sometimes ended up throwing important letters away. He therefore instructed me to telephone him immediately upon completion of the transaction so that he might come and collect the cheque which would be issued in his mother's name. Upon completion of the transaction I telephoned the son several time but he never called at my office to collect the cheque. Eventually the client's son telephoned me to advise that he had moved in with his mother and that I could send the cheque to the mother's address. Thereafter the cheque for the sum due was sent to the mother's address. I accept that when the son failed to call at my office for the cheque I should have invested the funds. I will deal with my failure to invest the funds later in my submission.

Client No 123
8.12 Client funds were invested: Please refer to No 1 of my second inventory of productions. The credit balance in the sum of £1800 was disbursed in respect of rates due by the client within a period of two months from **1st** April 2004: Please refer to client ledger No 13 of my third inventory of productions.

QLTR
This ledger was created by the interim judicial factor. There was no address on the ledger created and I did not know the address to which the cheque had to be sent. After investigation the sum of £998 on the ledger was paid out sometime in April 2004. There was no mention of this in my letter of 21st April when I was replying to the Law Society letter of 7th April 2004 (both letters in complainers productions 2-24,2-25 and 2-26) probably because the matter had been resolved at the time I was writing to the Law Society; Please refer to subparagraph headed **QLTR1 111** of my above letter of **21** April 2004. The circumstances surrounding this are explicable and accordingly I would suggest that averment of professional misconduct 24.25(b) should be dismissed.

Cheques paid to banks or building Societies
All cheques paid to banks and building societies were properly designated except in about two three or four cases where due to oversight either only the mortgage number or the client's name was written on the cheque; apart from this in most cases the client's name as well as the mortgage account number was quoted on the cheques.

GLG
8.13 This was a ledger created by the interim judicial factor. I really did not know the proper way to deal with this ledger. I thought it wise to leave things the way the interim judicial left it because if something had to be done with them in the accounting records the interim judicial factor would have done that. However I did try to find out what to do with this ledger but I really was not sure about the answers I received and still did not understand what to do with this ledger: Please refer to Nos 43 and 44 of my first inventory of productions. I do not think in the circumstances it is appropriate for you to find me guilty of professional misconduct. I request that averment of professional misconduct 24.25(b) in respect of the matter should be dismissed.

Solicitors (Scotland) Accounts etc Rule 11(3): Without prejudice to any other remedy which may be available, any client who feels aggrieved that interest has not been paid under this Rule shall be entitled to require the solicitor to obtain a certificate from the society as to whether or not interest ought to have been earned and, if so, the amount of such interest and upon the issue of such certificate any interest certified to be due shall be payable by the solicitor to the client.
2. Solicitors (Scotland) Accounts etc Rule 11(2): Without prejudice to the generality of paragraph (1) of this rule it shall be deemed reasonable that interest should be earned for a client from date on which a solicitor receives for or on account of client a sum of money not less than £500 which at the time of its receipt is unlikely within two months thereafter to be either wholly disbursed or reduced by payments to a sum less than £500.

CHAPTER 9

Allegation of failing to comply with money laundering Regulations

9.01 When the auditors for April 2003 queried my money laundering procedures I took steps of making sure that all my employees were familiar with the established money laundering procedures I had in place. The steps were absolutely necessary as files were not open by me or legal assistant but always by either one of the secretaries or junior office workers. Besides after files were opened very often the transactions were progressed without my direct involvement until when they were due to settle. The procedures I had were put into writing and copied to each employee when I had a meeting with them shortly after the April 2003 inspection. Subsequently a central file was created for safe custody of all copies of clients' I.Ds and utility bills or other satisfactory documents confirming their addresses, copies of bankers drafts together with details of source of funds noted at the back etc. the documented conveyancing procedures were copied to the Law Society. Please refer to subparagraph headed " **Rule 24 money laundering"** of my letter **4th** June 2003 in complainers productions 2-19 and 2-20 and No 63 of my first inventory of productions. The follow on correspondence relative to the April 2003 inspection was not handled by Mrs Playfair so she did not seem to be aware of what had taken place. At March inspection Mrs Playfair did not ask to see any copies of I.Ds of clients, details of cheques from third parties and bankers drafts given by clients. When she did not see these documents in the file she assumed that there were no money laundering procedures in place whereas all the copies of I.Ds, details of source funds relative third parties and banker's drafts etc were all in one central file specifically opened for that purpose. After 1st November 2003 I still carried on my own money laundering procedures notwithstanding the fact that I was in partnership with the Second Respondent. There were no common money laundering procedures for me and the Second Respondent although I expect that there would not be significant difference between my money laundering procedures and Richard Thorburn's. I had no involvement in any alleged breaches of money laundering procedures which arose from *5/8* July 2004 inspection as all the queries raised in the relative inspection report related to transactions carried out solely by the Second Respondent. All through the period of partnership I was never involved in any of his transactions. Rule 241 puts obligation on each solicitor to comply with the provisions of the Money laundering Regulations. My documented money laundering procedures complied with Rule 24. There are no grounds for finding me guilty of professional misconduct and accordingly I request that averment of professional misconduct 24.25(e) should be dismissed in so far as it refers to me.
1. Solicitors (Scotland) Accounts etc Rules 2001.

Rule 24(1). Every solicitor shall in respect of all other business carried on by the solicitor comply with the provisions of the Money Laundering Regulations as if such business constituted relevant financial business.

CHAPTER 10

Allegation of having deficit on client account

Articles 20.2 and 20.3

Deficit of £321,427.72

10.01 The Second Respondent paid the sum of *£320,750* to Lyons Laing being the purchase price of 18 Kyle road, Irvine less balance of £199,000 secured by bond on January 2004. The client's name was Client 85 (Client 86). At the time the payment was made the Second Respondent occupied the basement of Lyons and Laing's office *25* Newton Place, Glasgow; the Second Respondent did not in fact join me at 34 Argyll Arcade, Glasgow until sometime in the middle of February 2004. The client funds separately held by me and the Second Respondent in our respective clients' bank accounts were not transferred to client bank account of the Practical Law Partnership until 12th May 2004. The two separate client bank accounts were being operated respectively in the names of Atuahene Sim Murray & Co and Richard Thorburn as divisions of the Practical Law Partnership. The payment of £320,750 made by the Second Respondent to Lyons Laing was either made by cheque or banker's draft or other legitimate means on the clients' bank account of the Second Respondent.

10.02 Prior to payment of the sum of money by the Second Respondent missives had not been concluded and the standard security relative to the loan funds given to the client had not been signed. In addition to this there was no executed disposition in favour of the borrower. This meant that the lenders interests were not protected at all. Obviously before the Second Respondent intromitted with the funds he must have requisitioned for the loan funds. The release of the loan funds would have been subjected to the usual conditions including prior confirmation by the Second Respondent to the lenders that he held a duly executed standard security in favour of the lenders, date of conclusion of missives, to say the least. The Second Respondent as a solicitor would have known the consequences of intimating something materially relevant to the protection of the lenders' interests which was not true. In view of this one would have expected the Second Respondent before his confirmation to the lenders to have checked the file for the transaction to make sure that what he was confirming were in fact true. Such untrue confirmation by the Second Respondent would appear in the circumstances to amount to misrepresentation, to say the least. The Second Respondent in his evidence said the payment was made by mistake. Every conveyancer knows that the first thing you do immediately before settlement of a transaction is to check the file to see whether there are any important outstanding matters which require attention before settlement. Assuming that the Second Respondent made the payment by mistake then this could only have occurred if the Second Respondent failed to check the file and as a result forgot that there were outstanding matters to be dealt with before payment of the money. Upon close examination of all the circumstances including the huge sums of money involved it is hard to believe that the Second Respondent forgot to check his file for the transaction.

10.03 Though the complaint is not against Lyons Laing a proper assessment of the Second Respondent's evidence cannot be made without considering what should be expected from Lyons Laing solicitors in their capacity as solicitors deemed to be practicing with the highest integrity and honesty in accordance with the requisite standards of conduct. Solicitors may send cheques in payment of sums due with or

without conditions attached. Where conditions are attached it is obvious that the cheques will not be presented to the bank until the conditions are fulfilled. However where conditions are not attached it does not always necessarily mean that the recipient solicitor can present the cheque to his bank; it all depends upon the circumstances. Where the cheque is sent or the money is paid in exchange of an executed disposition etc even if no conditions are attached to the cheque or payment made to the recipient solicitor in accordance with our standards of conduct the recipient solicitor cannot intromit with the funds until he/she holds executed disposition or the items in exchange of which the payment was made for delivery to the solicitor who made the payment. Indeed I strongly suggest to the Tribunal that it is one of our standards of conduct that in a conveyancing transaction where money is paid in exchange of executed disposition etc the recipient solicitor should not intromit with the funds unless he/she holds an executed disposition etc for delivery to the solicitor who made the payment. If this has not already been done then I strongly suggest that the Tribunal should make a formal recognition that it is part of our standards of conduct that in a conveyancing transaction where a payment is made by a solicitor in exchange of executed disposition etc the recipient solicitor should not intromit with the funds unless he is in a position to deliver the items in exchange of which the payment was made. The Second Respondent obviously did make payment to Lyons Laing in exchange of an executed disposition in favour of his client, to say the least. Giving the benefit of doubt to Lyons Laing solicitors that in the absence of any evidence to the contrary they are practising with highest integrity and honesty in accordance with the required standards of conduct one would expect them upon receipt of the payment to have alerted the Second Respondent that in the light of outstanding matters the payment was premature and accordingly returned the money. If this did happen then one cannot help thinking that the Second Respondent probably did authorize them to intromit with the funds upon assurances that they would be able to deliver the required items to the Second Respondent in the near future. The Second Respondent said in his evidence that Lyons Laing solicitors also made a mistake intromitting with the funds; this necessarily meant that Lyons Laing forgot to check their file on the transaction and notice that the important outstanding matters such as missives not being concluded and absence of executed disposition in favour of Second Respondent's client etc. I know it is difficult without the evidence of Lyons Laing to determine what actually happened but the evidence of the Second Respondent can be looked at objectively and reasonable inferences can be drawn. I respectfully submit that the evidence of the Second Respondent is not believable.

10.04 I was not involved in any way whatsoever in this transaction. However with regard to the liability to the lender the Second Respondent and I are jointly and severally liable because the sum payable is due by the firm Practical Law Partnership of which the Second Respondent and I were partners; the firm along with the partners is liable to the lender notwithstanding the fact that the liability was incurred solely by Richard Thorburn acting in the ordinary course of business'. This is the reason why at the first instance Morna Grandison stepped into my shoes as the innocent partner and attempted to get the insurers to indemnify the firm but they declined to do so. Joint and several liability by me and the Second Respondent to the lenders or for that matter third parties is different from our individual responsibilities for our actions in our capacity as solicitors . The Second Respondent and I as individual solicitors were under duty to practice as solicitors with the highest integrity, honesty and in accordance with the required standards of conduct. No circumstances arose to cause

me to be alerted about the misconduct in question until 8t11 July 2004 meeting with the auditors in my former office at Argyll Arcade by which time it was too late for me to do anything.2 The Second Respondent in his evidence admitted that he was solely responsible for the misconduct and his actions as a solicitor during the period of the partnership. The Second Respondent and I were equal partners of the Practical Law Partnership. The Second Respondent was not my employee and vice versa. I did not have the responsibility to supervise the Second Respondent and vice versa. Accordingly the Second Respondent is solely responsible for the misconduct although if it had come to my attention that the Second Respondent was doing something which was not in compliance with the required standards of conduct I would have had to take steps to get it rectified. There is no culpability at all on my part regarding the deficit caused by the Second Respondent's misconduct. It would therefore be unjustifiable for you to find me guilty of professional misconduct in this matter. I submit that averment of professional misconduct 24.26(b)in so far as it refers to me should be dismissed.

Deficit of £294,621.60

10.05 The transaction relative to Property 42 in respect of which the deficit was created was exclusively carried out by Mr Richard Thorburn; I was not involved in the transaction in anyway whatsoever. Please refer to letter dated July written by Richard Thorburn to the Law Society subparagraph headed "Client 34-Purchase of Property 42" contained in the complainers productions 2-27, 2-28 and 2-29. During the operation of the client bank of the Practical Law Partnership the Second Respondent and I both had cheque books on the account to use at our convenience. I find it extremely difficult to understand how and why a deficit of that magnitude on the client bank was allowed by the Bank of Scotland. The Bank of Scotland had in the past alerted me of anything suspicious about the client bank accounts. However in this particular occasion I was not alerted by the bank for some unknown reason. When I spoke with the Second Respondent after I saw the bank statement he told me that he issued the cheque on the understanding that an unconditional bridging loan which had been approved by Bank of Scotland was going to be transferred into the client accounts; this obviously explains why and how the bank allowed the deficit to arise. I was not involved in creating the deficit or in the transaction in question. Nothing cropped up to bring to my attention what the Second Respondent intended to do3 before the deficit was created. If the deficit had been permanent the firm Practical Law Partnership, Second Respondent along with me would have been jointly and severally liable to the Bank of Scotland. However this kind of liability to third parties is different from a partner's individual responsibility to practise with the highest integrity and honesty in accordance with the requisite standards of conduct. What Richard Thorburn has done is a breach of his individual responsibility to practise in accordance with the required standards of conduct and as I was not involved in any way with the transaction in question I cannot be held blameworthy for what he did. The first time I heard about this deficit was when the *5/8* July 2004 auditors at the end of the inspection met with me and the Second Respondent at 34 Argyll Arcade to discuss problems identified by them. There is no culpability on my part and accordingly I request that the averment of professional misconduct 24.26(b) should be dismissed.

It is **significant to mention with regard to the deficits and other alleged professional misconducts relative transactions exclusively dealt with by Mr Richard Thorburn that in his evidence he accepted that he is solely responsible**

in his capacity as a solicitor for all the realative professional misconducts.

1. (A) Partnership Act 1890 si 0: Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefore to the same extent as the partner so acting or omitting to act(b).
(B) In Hamlyn V Houston & Co where a partner in Houston & Co bribed a clerk in a rival firm to disclose to him confidential information relating to it and the rival firm suffered loss as a result the Court of Appeal held that the action succeeded because Houston & Co were liable for partner's wrongful act as he had been acting in the ordinary course of business of the firm.
© SI 1: In the following cases; namely (a) where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and (b) where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm; the firm is liable to make good the loss.
2. See paragraph 19.04 of Procedures and Decisions of Scottish Solicitor' Discipline Tribunal by Ian S Smith & John M Barton. Also see note I of Chapter 6.
3. See note 2 relative hereto.

CHAPTER 11
Allegation of failing to comply with Professional Indemnity Rules
Article 21

11.01 The professional indemnity insurance was applied for and taken in the names of the Second Respondent and myself as partners of the Practical Law Partnership; the minor error which was made in stating the name of the partnership on the professional indemnity insurance issued to me and the Second Respondent did not detract from this fact. The position of the Law Society is that the Second Respondent and I were not in partnership and therefore we were not covered by the professional indemnity insurance. It therefore seems appropriate to deal with the factual issue of whether or not a partnership did exist between the Second Respondent and me first and second with the issue of whether or not the Second Respondent and I practiced with professional indemnity insurance. It is well established that a factual issue of whether or not a partnership exists is a question of fact to be determined by fair consideration of all the evidence and any inferences reasonably drawn therefrom'.

11.02 The Second Respondent and I borrowed £20,000 from Bank of Scotland in joint names of myself and the Second Respondent sometime in October 2003. The loan funds were released by the bank into a firm bank account in the name of the Practical Law Partnership opened at that time. The Second Respondent with my authorization used the loan funds and fees accumulated by the interim judicial factor to Atuahene Sim Murray & Co to pay the required initial deposit of £40000 before the then Chief Accountant would allow the interim judicial factory to be discharged. It may be argued that the agreement relative to the loan was not binding on me because it was entered into without express consent of the interim judicial factor; this issue however is not of any relevance to the complaint before the Tribunal. Besides even if the loan agreement was not binding on me it was certainly binding on the Second Respondent and in any case the interim judicial factor was aware of the loan agreement. The loan agreement is a clear definitive indication of the intention of the Second Respondent and me to enter into partnership in the near future in the name of the Practical Law Partnership. However the partnership did not legally come into existence at this point until the 5th November 2003 when the interim judicial factory on Atuahene Sim Murray & Co was discharged.

11.03 Shortly after the interim judicial factor was appointed to Atuahene Sim Murray & Co I instructed Mr James McCann to act for me. In accordance with Mr James McCann's advice I cooperated fully with the interim judicial factor. I worked with interim judicial factor who kept me advised on what was going on. Sometime in June 2003 the interim judicial factor advised me that it would be wise for me to give up the business of Atuahene Sim Murray & Co and seek employment with other solicitors. I contacted Mr James McCann for advice on this and after obtaining and studying copy interim report of the interim judicial factor he arranged a meeting between himself, me and my accountant Mr Cohen of Cohen Shepherd & Co accountants in his office at Clydebank sometime towards the end of July 2003. After discussions at the meeting Mr James McCann advised me that considering the financial circumstances of my former firm Atuahene Sim Murray & Co the best way forward was for me to give up the business and seek employment else where. I accepted his advice and upon return to my office I signed a written authorization in favour of the interim judicial factor to pass all my immigration files to Messrs Drummond Miller solicitors and the

remaining files together with relative client funds to Anderson Strathern solicitors. Having agreed for the business to be taken away from me I called on the Second Respondent on 7/8 August 2003 in his former office at 25 Newton Place, Glasgow with a proposal for him to employ me as a legal assistant to deal with only immigration and criminal cases; in order to make it easy for Second Respondent to employ me I proposed to him that my remuneration would be what I earned from the work I did subject to deduction of an agreed percentage of my earnings to cover administration cost. In response to the questions put to me by the Second Respondent I explained to him that upon advice of my solicitor Mr James McCann I had signed a written authorization for my business to be passed on to other firm of solicitors. The Second Respondent expressed strong disagreement with the advice I had received and told me he believed there was a business which could be salvaged. The Second Respondent explained to me that if I agreed for him to act for me in having the interim judicial factory discharged he would enter into partnership with me. He told me that he had two or three sole practitioners who would be interested to join the partnership. In addition to this he told me he would be able to employ at least two qualified assistants and a competent legal cashier to work for the partnership. I knew the Second Respondent had contacts with a number of sole practitioners and believed what he told me was achievable. Before instructing him to act for me to get the interim judicial factory on Atuahene Sim Murray & Co discharged the Second Respondent assured me that he would definitely enter into partnership with me once the interim judicial factory was discharged. It was upon assurances given to me by the Second Respondent that I instructed him to proceed to have the interim judicial factory discharged. Following my acceptance of the Second Respondent's proposals he employed a senior counsel to meet with me and him to discuss in detail how to proceed to have the interim judicial factory discharged. I had no input into the choice of senior counsel but I agreed to meet him and the Second Respondent in my former office at 34 Argyll Arcade, Glasgow. The fee note relative to the work done by the senior counsel was issued to the Second Respondent who settled it without even showing the fee note to me or asking me to pay a share of the fees charged. At the same time the Second Respondent wrote to the interim judicial factor on my behalf to withdraw the written authorization I gave to him, he started corresponding with the then Chief Accountant of the Law Society Mr Leslie Cumming in respect of the discharge of the interim judicial factory. Towards the end of August 2003 or sometime in September 2003 Mr Leslie Cumming had a meeting with me and the Second Respondent. At the meeting the Second Respondent negotiated the terms for the discharge of the interim judicial factory. In his evidence the Second Respondent painted a picture that 1 suggested the merger of his firm and Atuahene Sim Murray & Co and that I called at his office to consult him about the merger. The Second Respondent denied that I explained to him why I gave up my business on the advice of my solicitor Mr James McCann. Then he went on to say that he did not recognize me as within his group of solicitors he would wish to enter into partnership with. The Second Respondent's evidence is inconsistent with the fact that upon Mr James McCann's advice I had already given a written authorization for my business to be passed on to other firms of solicitors by the interim judicial factor. His evidence is also inconsistent with the fact that he solely paid the senior counsel's fee for giving advice and also agreed to be jointly liable with me for the loan of £20,000 from Bank of Scotland which was used as part payment of the deposit required by Mr Leslie Cumming before discharge of the interim judicial factory. You will recall that when the Second Respondent was questioning me about whether or Mr Leslie Cumming

acted oppressively towards him regarding ***5/8*** July 2004 inspection, in one of his questions to me he attempted to retract his evidence by saying that he forgot what happened and that I called at his office initially to seek employment and not to enter into partnership with him. I respectfully submit that my version of how the partnership with the Second Respondent arose is the credible one. Due to the fact that the interim judicial factor took a long time and a great deal of effort to investigate accounts of Mrs Murray in order to reconcile the cheques she issued against client funds which I had been left to reconcile because of the improper way West Anderson & Co intromitted with and transferred the client funds me, Mr Leslie Cumming agreed to instruct the interim judicial factor to allocate expenses incurred for the interim judicial factory between me and Mrs Murray. The interim judicial factory expenses came to £93,840 and was allocated between me and Mrs Murray respectively as £66,090 and £27,750. In accordance with agreement reached with Mr Leslie Cumming interim judicial factory was discharged upon payment of the deposit of £40,000 to the Law Society.

11.04 After interim judicial factory was discharged the Second Respondent paid several visits to my former office at 34 Argyll Arcade to offer assistance. By about middle of December 2003 all my employees had resigned and left my former firm. Every time an employee left my former firm I advised the Second Respondent about it. The Second Respondent in his evidence said he was not happy about my employees leaving the firm and that if he had felt free to back out of the partnership he would have done so. It is understandable that the Second Respondent was not happy about my employees leaving. However it was not a surprise that my employees left my former firm bearing in mind the interim judicial factory appointed to the firm; the employees probably did not feel secure any longer to work for me. The Second Respondent and his staff did not join me at 34 Argyll Arcade until the middle of February 2004. The Second Respondent said in his evidence that the reason for the delay was because of the discharge of my interim judicial factory whereas in fact the interim judicial factory was discharged and the interim judicial factor left my former office permanently on 5th November 2003. The Second Respondent joined me at Argyll Arcade shortly after paying the sum of £320,750 to Lyons Laing on January 2004. The fact that the Second Respondent had reservations about my employees leaving my former firm and did stay at 25 Newton place, Glasgow temporary before he and his staff joined me at Argyll Arcade round about middle of February 2004 did not detract from the factual existence of the partnership between him and me since it is reasonable to expect him to take sometime to prepare to vacate 25 Newton Place and thereafter move to Argyll Arcade. The delay in moving to Argyll Arcade is probably explicable.

11.05 Shortly after my interim judicial factory was discharged I discussed the accounts situation relating to Practical Law Partnership with the Second Respondent. I made it clear to him that in view of what I had suffered taking over Murray & Co I was not prepared to merge my accounts with his until the client accounts of Atuahene Sim Murray & Co and Richard Thorburn had been audited by a nominated accountant and the client credit balances confirmed and intimated to the then Chief Accountant Mr Leslie Cumming. The Second Respondent was understandable and agreed to my proposal. It also transpired that during the discussion it became clear to us that the Second Respondent and I individually had outstanding problems with the Law Society to resolve in respect of our accounting records. We therefore agreed that we would

first resolve the outstanding problems with the Law Society individually before we bring in the nominated accountant to audit the two client accounts and confirm the client credit balances and client funds of both Atuahene Sim Murray & Co and Richard Thorburn. We continued keeping the accounting records and resolving the problems of Atuahene Sim Murray & Co and Richard Thorburn both in their capacities as divisions of the Practical Law Partnership with effect from or **5th** November 2003 as the case may be. I managed to resolve my problems with the accounting records and bring them up to date well before the Second Respondent was able to resolve his as a result there was some delay in calling the nominated accountant to audit the client accounts and confirm client credit balances and client funds. In striking contrast to me the Second Respondent was extremely busy as he was taking on a lot of new transactions and as a result he was always behind with his accounts which he was keeping manually. The reasons behind the Second Respondent and me keeping separate accounts are clearly due to the need to rectify any errors in the accounting records of both Atuahene Sim Murray & Co and Richard Thorburn with a view to getting accurate accounting records and bringing the accounting records of both firms to date and thereafter bringing in a nominated accountant to audit the client accounts and confirm client credit balances and client funds before the transfer of the client funds are transferred into client bank accounts of the Practical Law Partnership. On the basis of the final partnership agreement signed by me and the Second Respondent the commencement date of the partnership from **1st** November 2003 did not depend on the condition relating to the accounts being audited and client funds and client credit balances confirmed by independent accountant before the accounts of Richard Thorburn and I were merged .It is therefore unequivocally clear that the Second Respondent and I kept separate accounts respectively in the names of Richard Thorburn and Atuahene Sim Murray & Co as divisions of the Practical Law Partnership **not** because we did not want to enter into partnership or we did not consider ourselves to be partners of the Practical Law Partnership but because we wanted to achieve accurate accounting records before merging the accounts of the two firms which were divisions of the Practical Law Partnership.

11.06 A draft partnership agreement between me and the Second Respondent was prepared by the Second Respondent; there were more than one draft partnership agreements prepared during negotiations between me and the Second Respondent with a view to agreeing the terms of the agreement. At the meeting with Mr Leslie Cumming I disclosed to him that I was going to enter into partnership with Mr Richard Thorburn when the interim judicial factory was discharged. In response to this he warned me to ensure that the situation I found myself in by taking over Murray & Co did not occur again. I was therefore determined and probably obsessed with making sure that the situation which arose taking over Murray & Co did not arise again when merging Atuahene Sim Murray & Co and Richard Thorburn. In the first agreement signed by me and Richard Thorburn which was copied to the Law Society I introduced a clause along the lines that the partnership would commence on the date a nominated accountant had audited the client accounts of Atuahene Sim Murray & Co and Richard Thorburn and thereafter confirmed the client credit balances and client funds to be transferred to the Practical Law Partnership. On the **22nd** April 2004 when I attended the meeting with Guarantee Fund Committee it was pointed out to me that in terms of the existing partnership agreement between me and the Second Respondent we were not in partnership as the client accounts had not been audited in accordance with the agreement. In view of this the committee explained to me that I

and the Second Respondent appeared to be practising without the professional indemnity insurance which covered me and the Second Respondent in our capacities as partners of the Practical Law Partnership. This came as a shock to me and I explained to the committee that it was an oversight on my part as I had introduced the clause in the agreement without appreciating its implications on the professional indemnity insurance the Second Respondent and I had taken. I accepted at the interview meeting with the Guarantee Fund Committee the problems they explained to me about the Second Respondent and practising without insurance. I offered to have the agreement immediately rectified upon my arrival in Glasgow. Mr Leslie Cumming who was at the meeting told me that it was not enough just to rectify the agreement because I had to contact the insurers. I made it clear at the meeting that the then existing partnership agreement between me and the Second Respondent did not reflect my and Richard Thorbum's intention. I never at any time during the interview meeting with the Guarantee Fund Committee say that I was not in partnership with Mr Richard Thorburn. At the interview meeting when the Committee questioned me about professional indemnity insurance in existence to cover me and Mr Richard Thorburn I explained that we took a professional indemnity insurance in joint names and in the name of the Practical Law Partnership. I also explained that there was a run of cover for Atuahene Sim Murray & Co. The committee at that point asked me whether I understood that the run off cover covered only actings prior to **31st** October and I answered in the negative. Thereafter Mr Leslie Cumming explained fully to me what the run off cover meant. I accepted that in view of the then existing partnership agreement between me and Mr Richard Thorburn there was a problem which required to be sorted out urgently. I agreed to go and see the insurers in addition to rectifying the error in the partnership agreement but I made it clear to the committee that I would reintroduce the clause back in the agreement without making the date of commencement of the partnership depend on it as the accuracy of the accounting records were extremely important to me. On arrival at Glasgow the Second Respondent and quickly deleted the partnership commencement clause No 2 in the partnership agreement and replaced it with "The partnership will commence on **1st** November 2003" and will continue until determined in accordance with the provisions hereof." In addition to this I introduced another clause in the agreement along the lines that the client funds and client credit balances would be audited by an accountant nominated by the partners and thereafter the client credit balances and the client funds would be confirmed by the accountant and intimated to Mr Leslie Cumming before relative funds from the partners are transferred into the client bank account of the Practical Law Partnership. The new and final partnership agreement was signed by me and Richard Thorburn and thereafter copied to the Law Society. Mr Leslie Cumming in his evidence said that he probably received a copy of the final partnership agreement Richard Thorbum and I sent to him. Mr Leslie Cumming also said in his evidence that there was a partnership between me and Mr Richard Thorburn. The Second Respondent and I agreed to transfer only the client credit balances to the firm of Practical Law Partnership. Any deficit or surplus on the client accounts belonged to the partner concerned and was not to be transferred to the Practical Law Partnership.
11.07 My clients were all notified about the merger of Atuahene Sim Murray & Co and Richard Thorbum to form the partnership called the Practical Law Partnership. Mr Richard Thorbum also notified all his clients about the merger of Atuahene Sim Murray & Co and Richard Thorburn. The name Practical Law Partnership was put on the door at the main entrance to my office at 34 Argyll Arcade shortly after the interim judicial factory was discharged. Before the desing of the letterhead for the

Practical Law Partnership was agreed the Second Respondent and I used our respective letterhead of Richard Thorburn and Atuahene Sim Murray & Co with a statement typed at the top of the letterhead stating that the firm was a division of Practical Law Partnership although this was not consistently typed on all letterheads used. Loan funds relative to conveyancing transactions were requisitioned in the name of Atuahene Sim Murray & Co or Richard Thorburn, as the case might be, after lenders had been advised that Atuahene Sim Murray & Co or Richard Thorbum was a division of the Practical Law Partnership; the reason for this was that the client bank of the Practical Law Partnership could not be operated without the prior auditing of the client credit balances of Atuahene Sim Murray & Co and Richard Thorburn by nominated accountant. The client credit balances of Richard Thorburn and I were audited and confirmed by nominated accountant and thereafter the client funds from Richard Thorburn and I were transferred into the client bank of the Practical Law Partnership on 12th May 2004. From 12th May 2004 onwards all loan funds were requisitioned in the name of the Practical Law Partnership. Please refer to letters dated 6 April 2004 written by me to the Law Society; dated 13th April 2004 written by nominated accountant to me; and 14th May 2004 written by Richard Thorburn to the Law Society all of complainers productions 2-30,2-31 and 2-32.

11.08 After the error in the partnership agreement was rectified to reflect the true intentions of Richard Thorburn and I it was copied to the Law Society to supersede the first partnership agreement sent to the Law Society at the first instance. We telephoned the insurers on 22' April 2004 and arranged an urgent meeting between Jennifer Scorlick, Richard Thorburn and I on **23rd** April 2004. At the meeting we were given three options one of which was for Richard Thorburn and I to remain in partnership and continue practising under the existing professional indemnity insurance. Richard Thorburn and I subsequently decided to remain in partnership under the existing professional indemnity insurance. It be came clear at the meeting with Jennifer Scorlick that the concern of the insurers arose as a result of a letter dated **7th** April 2004 written by Mr Leslie Cumming to the insurers to alert them that Richard Thorburn and I were not in partnership. In view of this when Richard Thorburn and I made the decision to remain in partnership under the existing professional indemnity insurance we intimated this to the Law Society. Please refer to Richard Thorburn's and my letter of 23k' April 2004 sent to the Law Society, Richard Thorbum's letter of 25th May 2004 sent to the Law Society and my letter of 26th May 2004 sent to the Law Society all contained in compolainers productions 2-3 0, 2-31 and 2-32; and subparagraph 8 of No 50 of my first inventory of productions being a letter dated 9 July 2004 by me to the Law Society. I cannot recall receiving a response from the Law Society to our decision to remain in partnership under the existing professional indemnity insurance.

11.09 There is reasonable inference from the evidence upon fair assessment that a partnership did exist between me and Richard Thorburn although the date of commencement of the partnership is complicated by the existence of my interim judicial factory which was not discharged until 5th November 2003. Accordingly in the circumstances, notwithstanding stipulation in the final partnership agreement that commencement of the partnership was from November 2003 the partnership legally is deemed to have commenced on November 2003 as my interim judicial factor did not consent to my entering into partnership with Richard Thorburn although he was aware of it. It can be concluded from fair assessment of the evidence that Richard Thorburn

and I did carry on a business in the name of Practical Law Partnership and in the names of Atuahene Sim Murray & Co and Richard Thorbum as divisions of the Practical Law Partnership in common with a view of profit; in terms of the agreement we both had a right to share in the profit. Running expenses of Richard Thorburn and I were shared equally'. On the basis of the existence of the partnership between me and Richard Thorburn the professional indemnity insurance did cover us to practice as solicitors and partners of the Practical Law Partnership.

11.10 I am quite sure the Tribunal will appreciate where I was coming from when I insisted on and was determined to get my and Richard Thorburn's client accounts audited and thereafter client funds and client credit balances confirmed before the client funds were transferred into client bank accounts of the Practical Law Partnership. Please refer to my letter of **17th** January 2004, 6th April 2004 and Aird Sakol Chartered accountants letter of 3 April 2004 contained in the complainers productions 2-30,2-31 and 2-32. The Fiscal has lodged some drafts partnership agreements between me and Richard Thorburn with a view to disproving a partnership did not exist between me and Richard Thorburn. I invite the Tribunal to attach very little weight, if any, to the drafts as they were just draft agreements produced during negotiations between me and Richard Thorburn before we reached final agreement on all the terms of the partnership. The drafts do not necessarily reflect the true details of the terms of the final partnership agreement reached between me and Richard Thorburn. Richard Thorburn and I had agreed a number practical arrangement which would be put in place in running the partnership. These practical arrangements: were having the accounts audited and thereafter merging my and Richard Thorbum's account, appointment of a competent legal cashier, appointment of two qualified assistants and introduction of two sole practitioners as partners of the firm. We decided to concentrate on resolving all problems with the accounts first and thereafter bring an accountant to audit the accounts, confirm client funds and client credit balances before client fund were transferred into client bank of the Practical Law Partnership and thereafter merging the two accounts. Once this was done we would gradually proceed to deal with the remaining practical arrangements. However these outstanding practical arrangements had nothing to do with the existence of the partnership between me arid Richard Thorbum; they merely relate to how we wanted the business of Practical Law Partnership to be run. Obviously because of my sequestration and other problems we were not able to implement all the agreed practical arrangements. Any argument that because we did not manage to put these practical arrangements in place there was no partnership between me and Richard Thorbum is unjustifiable. Please refer to my letter of 23 April 2004 to the Law Society in complainers productions 2-30,2-31 and 2-32.

11.11 Any decision that a partnership between me and Richard Thorburn did not exist is problematic because it has to address the issue of premium paid to the insurers which was not refunded; the claims under the professional indemnity insurance in respect of which the insurers indemnified the Practical Law Partnership; the inconsistency of the decision with the facts and circumstances surrounding the existence of Practical Law Partnership; and the deficit created by Richard Thorburn when he made the payment to Lyons Laing solicitors in relation to Client 85 transaction. On the evidence it seems the only reasonable conclusion is that a partnership existed between me and Richard Thorburn from 1st November 2003 or at latest from November 2003; in view of this Richard Thorburn and I did practise with

professional indemnity insurance in compliance with the Solicitors (Scotland) Professional Indemnity Insurance Rules *1995* and accordingly averment of professional misconduct 24.27 should be dismissed.

1. The Partnership Act, 1890. S(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

CHAPTER 12

Allegation of holding out as a solicitor

12.01 The letter was written to the immigration authorities on behalf of former client in my capacity as voluntary unqualified assistant. The letter was clearly signed by me on behalf of the Practical Law Partnership. The client's pregnancy had complications which were confirmed in a medical report in my possession at that time. Notwithstanding complications in her pregnancy the client was being detained in London awaiting deportation as she had come to the end of the road in her application for asylum in U.K. The letter was written in an emergency in order to forward the medical report to the immigration authorities for attention. The client was not charged any fees and did not pay any fees to me for the work done'. In the circumstances I suggest that there are no grounds for you to find me guilty of professional misconduct; the averment of professional misconduct 24.28 should therefore be dismissed.

Solicitors (Scotland) Act 1980 S23(1). Any person who practices as a solicitor or in anyway holds himself out as entitled by law to practice as a solicitor without having in force a practicing certificate shall be guilty of an offence under this Act unless he proves that he acted without receiving or without expectation of any fee, gain or reward directly or indirectly.

CHAPTER 13
Plea in Mitigation

13.01 This is a plea in relation to outstanding matters of my failure to respond to Law Society letters stipulated in complainer' Articles 2-12 (excluding Law Society letters sent to Cathcart road, Glasgow not delivered to my former office at 34 Argyll Arcade or received by me), the lease which was not registered and thereafter the relative extract sent to Messrs R & R S Meams and my failure to invest the funds of client 122. The problems I inherited from Mrs Isobel Anne Murray were namely: poor filing system which made it difficult for files to be located promptly; the accounting problems 1 accounted due to the improper way and manner Mrs Murray intromitted with client funds and thereafter transferred inaccurate client credit balances to me; my dealing with angry clients who felt that they should have been told about change of ownership of Murray & Co but were not told; and my dealing with ongoing problems which arose on transactions already completed by Mrs Murray in respect of which she had collected her fees. These problems cumulatively caused a lot of stress on me and exacerbated my medical condition of diabetes and high blood pressure. I had been diagnosed to have diabetes and high blood pressure in November 199 but this did not affect my competency and ability to practice as a solicitor in compliance with the required standards as my medical conditions were properly controlled with medication until round about beginning of January 2003. Within the first 8 weeks I took over Murray & Co I kept getting headaches and became increasingly tired easily. I visited my G.P who upon discussions with me confirmed that the headaches and tiredness were due to too much stress I was being subjected to at work. My G.P strongly advised me to take time of work and relax as much as possible. I was advised by my G.P to carry a blood pressure monitor with me to work for the purposes of taking my blood pressure regularly; if my blood pressure reached certain limit I was advised to stop work and relax. My G.P increased my medication. Although I tried to go to work daily in reality I worked on average one to two hours daily. Occasionally depending on my condition I managed to work three hours a day. I had in all a total of 11 sicklines but I still had to go to the office to sign cheques, deal with certain emergencies beyond the scope of employment of my employees. I did not willfully disregard the Law Society letters. Some of the Law Society letters stated in the Articles undoubtedly arrived after 5th July 2004 when I was sequestrated. The Law Society was notified immediately I was sequestrated and they in fact knew about the sequestration proceedings against me. The following letters obviously arrived at my former office after I was sequestrated: letter of 28th July 2004 in respect of Mr B-Article 3; letter dated 10th September 2004 in respect of Mr and Mrs C-Article 4; letters dated 20 July 2004 and 17th September 2004 in respect of Mr D-Article *5;* letters dated 9th July 2004, 1 1thi August 2004, 14th September 2004 and 17 November 2004 in respect of Messrs R & R S Mearns-Mr I. Article 10; letters dated 28th July 2004, 31st August 2004, 15th October 2004, 17th October 2004 in respect of Campbell Boath-Article 11; and letters dated 2 August 2004 and 21 September 2004 in respect of Ms K-Article 12. Although after I was sequestrated due to the moral obligation I felt for my clients I went to the former office 34 Argyll Arcade when my health permitted and tried to locate files for clients or other solicitors I did not go to the office regularly and not on daily basis; sometimes weeks could pass by before I went to the office. The Law Society knew my home address 72 Hawkhead Road, Paisley which became my current address after I was sequestrated because I was no longer a solicitor with a practicing certificate to practice. The Law Society

also knew about my sequestration on 5th July 2004. I am not necessarily saying that if the letters had been sent to my home address I would have replied to them as it depended on my state of health. However not withstanding the fact that I visited my former office 34 Argyll Arcade from time to time the letters were not appropriately addressed in order to make it reasonably likely for me to receive them although I accept that any letters from the Law Society arriving in my absence should have been brought to my attention every time I visited the office; the most effective way of sending the letter was to send them to my home address after my sequestration. As already argued, since failure to respond to Law Society letters puts me in a position where I face charges of professional misconduct it was imperative for the Law Society to have sent the letters to me by the most effective means known and available to the Law Society and that was my home address. The reference to last known address in Section 64 of Solicitors (Scotland) 1980 , as already argued only applies where the whereabouts or current address of the solicitor in question is unknown. I employed a very experienced solicitor, two secretaries one of whom was a paralegal and two office juniors. With the assistance of these employees I would have been able to manage the affairs of my former firm Atuahene Sim Murray & Co effectively if the problems with accounting records forced on me by Mrs Murray had been successfully resolved with her cooperation and the additional problems already mentioned inherited from her had not existed; besides in the absence of all these problems my medical condition would not have been exacerbated and under continuing proper control by medication I would have been able to exercise full control of every thing and ensured that every thing was done in compliance with the required standards of conduct. The Law Society letters I did not reply to (excluding letters not received by me) formed only a small percentage of all the letters received from the Law Society. Notwithstanding my ill health and the problems I inherited from Mrs Murray I did every thing possible to ensure that at worst I replied to most of the letters from the Law Society. The small percentage of letters I could not reply to was due to my exacerbated ill health and problems I inherited from Mrs Murray. The difficult situation which cropped up in my office in locating files resulted in the file relating to Mr I being misplaced by my employees; that was the root cause of why the lease which was in the file was not located and registered promptly and thereafter an extract of the registered lease sent to Messrs R & R S Mearns. It has to be pointed out that the registration dues for the lease which should have been sent along with the lease by Morna Grandison to Messrs R & R 5 Meams were not sent. The funds of Client 122 which was not invested on client's son's instructions because her son was going to call back at the office to collect the cheque from me was an oversight on my part probably due to the difficult circumstances I was in. I recognize and accept my exacerbated ill health is not an excuse for the misconducts. I also recognize and accept that the public confidence must be maintained at all times in our profession. Indeed it is in respect of this that I endeavoured to do what is expected of me as a solicitor in compliance with the required standards of conduct in the most difficult circumstances. For example when I went to see Mrs Playfair in Edinburgh and I virtually mentally broke down, through the help of Law care and other agencies, I picked myself up and got Mr M to reconstruct my accounting records. I recognize that the public interests demand that every solicitor should practice in accordance with the required standards of conduct failing which the solicitor in question should be punished. However the public interest also demand that a solicitor charged with professional misconduct should receive a fair hearing and where a finding of professional misconduct is made against him a proportionate sentence should be imposed having regard to all the

circumstances. I therefore humbly request you to exercise leniency and if this is not appropriate at least you should impose a proportionate sentence.

FIRST SUPPLEMERNTARY SUBMISSIONS OF JOHN ATUAHENE

in causa

Complaint by the Council of the Law Society of Scotland

against

JOHN ATUAHENE and RICHARD THOMAS THORBURN

S1.01 Client No 95- **Article 17.3**
This supplements 7.01 of my principal submissions.
This was an error; the circumstances surrounding the error can be seen in paragraph headed **Client 95 (Appendix B)** of my letter of 4th June 2003 to the Law Society in complainers' productions No 2-19 and 2-20. The error was immediately addressed by my former firm. I would refer you to the equivalent paragraph headed **Client 95** of the Law Society's reply to my said letter dated 12th June 2003 in complainers' productions 2-19 and 2-20.

S1.02 Client No 97- **Article 17.3**
This was a posting error which was quickly rectified when it was detected. Please refer to paragraph headed **Client 97 (Appendix C)** of my letter to the Law Society dated 4th June 2003 and the equivalent paragraph of the Law Society's reply dated 12th June 2003 both letters in complainers productions No 2-19 and 2-20.

S1.03 Client No 99 – **Article 17.3**
This paragraph supplements paragraph 7.04 of my principal submissions. As far as I can remember there was an error in the client's ledger and this was quickly rectified by my former legal cashier when it was discovered. This error might have given the impression that funds were being held for a long period without reason. I could not locate a copy of my response to the Law Society's letter of 12th June 2003 in complainers productions 2-19 and 2-20 when I was given access to files and accounting records etc by Morna Grandison. In my evidence I made it clear that I was unable to locate all the letters I wrote to the Law Society when I was given access to files etc by Morna Grandison. The ledger of the client would have thrown some light on the situation but through oversight I did not get a copy of the client's ledger from Morna Grandison. I still maintain that the error was rectified to the satisfaction of the Law Society. The Law Society has still got all the computerized accounting records of my former firm and if the complainers still maintain their allegation then I call upon them to lodge the client's ledger in support of their allegation as it is not possible for me lodge the client's ledger because I do not have a copy in my possession. The Tribunal will appreciate that I have tried to lodge as many necessary documentary evidence as possible relating to the complaint that I could lay my hands on.

S1.04 Client No 100- **Article 17.4**
The Bank of Scotland loans were redeemed on 13th and 19th November 2002. However the discharges did not come to hand immediately until after some weeks. The discharges were sent to the Land Register within 2 or 3 days they came to hand.

The discharges had already been recorded prior to the date of inspection but the recording dues had not yet been posted. In the Fiscal's supplementary submissions she calculates the period of delay in registering the discharges from the dates of redemption of the loans to 10th April 2003 when the discharges were registered. The Fiscal's calculation is wrong because: firstly the dates of redemption of the loans were not necessarily the dates on which the discharges were executed; secondly, the dates of execution of the deeds were not necessarily the dates the deeds came to hand; thirdly as it is frequently the case, the banks involved did not release the discharges until they received payment of the redemption fees; fourthly in accordance with practice of many banks and building societies, the banks involved had deeds department which dealt with execution of deeds and redemption department which dealt with redemption of loans. The redemption department upon receipt of redemption fees had to notify the deeds department before the executed deed was sent to my former firm. Inevitably there would be delays in the execution of the discharges, notification of deeds department about redemption of loans and the onward transmission of the executed discharges to my former firm. The delay which occurred before the discharges were received by my former firm or me cannot be attributed to my fault or the fault of my former firm. **The delay involved, if any, is accurately calculated from the date/s the discharges came to hand to the date the deeds were sent to the Land Register by me.** The Fiscal's calculation of the period of 5 months as delay in registering the deeds has no justifiable evidential basis and therefore I suggest that no weight should be attached to it. Please refer to paragraph headed **Client 100 -sale Property 8** of my letter of 4th June 2003 and the equivalent paragraph of the Law Society's response dated 12th June 2003 to my said letter both letters in the complainers productions 2-19 and 2-20.

S1.05 Client No 102-, Property 47. **Article 17.4**
In my evidence I referred to the paragraph headed **(8) Client 102, Property 6** of my letter of 4th June 2003 and explained that Kensington Mortgage company initially denied receiving our cheque which was sent to them in redemption of the loan along with the discharge under first class recorded delivery although they acknowledged receipt of the discharge. I explained that it was after I produced documentary evidence from Post Office/Royal Mail to Kensington Mortgage Company that my recorded delivery letter was delivered to Kensington Mortgage Company offices on 29th January 2003 at 12.00 pm that the company decided not to charge the client interest and thereafter the company sent the discharge to my former firm. The Fiscal has partially misrepresented what I said in evidence in her supplementary submissions. It transpired that Kensington Mortgage Company had two separate departments for dealing with the matter. The deeds department which dealt with the execution of the discharge was holding an executed discharge which they were prepared to send to us upon confirmation from the redemption department that the redemption fees had been settled in full. Although my former firm's cheque had arrived at the offices of Kensington Mortgage Company in good time there were some internal delays in passing the cheque to redemption department for attention. The redemption department received the cheque late from one of their departments and assumed that the cheque arrived at their offices on the date it was passed to them and accordingly demanded for interest. There were several telephone conversations between my former firm and various departments of Kensington Mortgage Company prior to 2nd April 2003; during these telephone conversations my former firm received promises that the discharge would be sent as soon as possible but this did not materialize. On

2nd April 2003 when my former firm contacted Kensingtom Mortgage Company it managed this time to speak with the redemption department who then explained that it had not authorized release of the executed discharge as it was waiting for payment of interest from the client because according to them the cheque arrived late in the offices of Kensington Mortgage Company. This prompted me to obtain the documentary evidence confirming when the recorded delivery letter was delivered to the company in good time. Please refer to my said letter of 4th June 2003 and the equivalent paragraph in the Law Society's reply dated 12th June 2003 contained in the complainers' productions 2-19 and 2-20.
The Fiscal calculates a delay of 3 months from 27th January 2003 which is the date of repayment of the mortgage to 13th May 2003 which is the date the Land Register received the Form 4 and the discharge. The Fiscal's calculation is wrong for the following reasons: Firstly the calculation of the alleged delay from the date of repayment of the mortgage is not justifiable because the executed discharge was not received by my former firm on that date; Kensington Mortgage Company still mistakenly retained the executed discharge through no fault of mine until the problem was disclosed to me and was thereafter resolved. When eventually the problem for the delay was resolved, Kensington Mortgage Company sent the executed discharge to my former firm. The executed Discharge was **received** on Friday the 9th May 2003 and on the same day it was sent along with the duly completed Form 4 to the Land Register. The delay which occurred in Kensington Mortgage Company sending the executed discharge to me cannot reasonably be due to my fault or the fault of my former firm. **The correct calculation of any delay in registering the executed discharge is from the date of receipt of the executed discharge by me to the date I sent the discharge to the Land Register.** Accordingly there is no justifiable evidential basis in support of the Fiscal's calculation and I therefore request you not to attach any weight to it.

S1.06 Client No 103- Property 7. **Article 17.4**
What appeared to indicate that the deeds had not been registered was due to error in the accounting system The deeds were in fact registered and you may refer to the facts and circumstances contained in paragraph headed **Client 103, Property 7** in my letter of 4th June 2003 contained in complainers' productions 2-19 and 2-20. In the same complainers productions please refer to the equivalent paragraph of the complainers' letter dated 12th June 2003. The action plan suggested by the complainers was undertaken by my former firm and thereafter a reply was sent to the complainer's letter. However I was unable to locate my letter among the files and papers I was given access to by Morna Grandison.

S1.07 Client No 104- **Article 17.4**
This supplements paragraph 6.02 of my principal submissions. At the date of inspection there was executed disposition in favour of the client in the file. Immediately the transaction settled on 6th February 2003 the client instructed my former firm to transfer the title to the property to his son. The disposition in favour of the client's son was immediately prepared and thereafter the client was contacted to come and sign it. At the date of inspection this unsigned disposition in favour of the client's son was in the file. It is well established practice in conveyancing that where a purchase transaction is completed and a title is taken in the name of A (say) and upon A's instructions the title to the property is to be transferred to B, you do not register the disposition in favour of A separately but you use it as link in title to register the

disposition in favour of B. In addition to this the disposition in favour of A is not stamped because it is being used as a link in title; it is the disposition in favour of B which is stamped if stamp duty is necessary. Therefore because at the date of inspection despite several reminders the client had still not come to sign the disposition in favour of his son the disposition could not be sent for stamping and no registration of the title could take place. The well established practice of using the appropriate disposition as a link in title saves the client money as he/she is required to pay only registration dues for recording the disposition of the person to whom the title is transferred. The deed had not been stamped and /or recorded at the date of 22nd April 2003 inspection because my former firm was waiting on the client coming in to sign the disposition in favour of his son. On the same day the disposition in favour of the client's son was executed it was sent to Inland Revenue for stamping. The duly stamped disposition in favour of the client's son came to hand on 8th or 9th May 2003 and on the same day the deeds were forwarded to the Land Register for recording. Please refer to paragraph headed **(12) Client 104….** Of my letter of 4th June 2003 to the Law Society and an equivalent paragraph in the Law Society's reply of 12th June 2003 both letters in the complainers' productions 2-19 and 2-20.
The Fiscal has mistakenly calculated alleged delay in registering the disposition from 6th February 2003 which was the date of settlement of the transaction to 12th May 2003 the date of receipt of relative Form 4 by the Land Register. The Fiscal's calculation is wrong because the date of settlement was not the date of receipt of the executed disposition in favour of the client; it took some weeks before the executed disposition together with relevant documentation falling to be delivered at settlement came to hand. The Fiscal's calculation is wrong because it has included the period the Inland Revenue took to stamp the disposition in favour of the client's son and thereafter return same to my former firm. The Fiscal's calculation is wrong because it has included the delay which occurred before the client came to sign the disposition in favour of his son despite several contacts made by my former firm with him requesting him to come and sign the disposition in favour of his son. The period calculated by the Fiscal again is wrong because it includes the inevitable 3 or 4 days taken by royal Mail to deliver executed disposition to Inland Revenue and return duly stamped disposition to my former firm; and the calculated period is also wrong because it includes 3 or 4 days taken by Royal Mail to deliver the deeds to Land Register for registration. **Any alleged delay in registration should be calculated from the date the duly stamped disposition in favour of the client's son was received from Inland Revenue to the date the deeds were sent to the Land Register. Any alleged delay in stamping should be calculated from the date the disposition in favour of the client's son was signed to the date the duly signed disposition was sent to Inland Revenue for stamping.** There is no justifiable evidential basis in support of the Fiscal's calculation of alleged three months delay and accordingly I suggest that the calculation should be disregarded.

S1.08 Client No 105-, Property 12 **Article 17.4**
This supplements paragraph 6.03 of my principal submissions. The law society auditors were interested in seeing evidence that the disposition and standard security had been registered rather than the reasons for the delay and that is why the reasons were not mentioned in my letter of 4th June 2003 to the Law Society contained in complainers' productions 2-19 and 2-20. The first disposition which got lost in the post was replaced by another disposition upon my former firm's request. The disposition was received by my former firm on 18th or 21st April 2003 just before the

22nd April 2003 inspection. Thereafter the disposition was sent to Inland Revenue for stamping on 24th April 2003 immediately after the inspection. On the day of receipt of the stamped disposition it was sent along with the standard security and relative duly completed Form 4 to the Land Register. A copy of the duly receipted Form 4 was subsequently sent to the Law Society. Please refer also to the Law Society reply dated 12th June 2003 to my letter of 4th June 2003 in complainers' productions 2-19 and 2-20. The Fiscal has wrongly calculated the alleged period of delay from 10th February 2003 when the transaction settled; this was not the date my former firm received the executed disposition. As already mentioned the first disposition got lost in the post and the replacement disposition came to hand weeks after settlement of the transaction. The alleged period of delay calculated by the fiscal wrongly includes the period of delay which occurred before the disposition was received by my former firm. The Fiscal's calculation of alleged period of delay in registration wrongly includes the period it took the Inland Revenue to stamp the disposition and return same to my former firm. The Fiscal's alleged period of delay also wrongly includes the periods of 3 to 4 days the royal Mail took to deliver the deeds to Inland Revenue, my former firm and the Land Register. Any time taken for the executed disposition to be delivered to my former firm cannot reasonably be attributed to the fault of my former firm or me. Any time taken for the Inland Revenue to stamp and return the executed disposition cannot be attributed to my former firm or me. **Any delay in stamping the disposition can only be correctly calculated from the date of receipt of the disposition to the date it was sent by my former firm to Inland Revenue. Any delay in registration can only be correctly calculated from date of receipt of the duly stamped disposition to date it was sent to the Land Register.** There is no justifiable evidential basis in support of the fiscal's calculation and I accordingly invite the tribunal not to attach any weight to her calculation.

S1.09 Client No 107-, Property 13 **Article 17.4**
This supplements paragraph 6.05 of my principal submissions. The mistake relating to the lodgment of the £30,000 was almost immediately detected and rectified but it took the bank a couple of days to credit the money to the client account. The posting error was rectified at the earliest and a copy of the client ledger card together with copy of the related duly receipted Form 4 was sent to the Law Society. The Fiscal claims in her supplementary submissions that the duly receipted Form 4 was not enclosed in my letter of 4th June 2003 sent to the Law Society. This however is not confirmed in the Law Society's reply of 12th June 2003 to my said letter of 4th June 2003 both letters contained in complainers productions 2-19 and 2-20: Please in both letters refer to the paragraph headed **Client 107…**

S1.10 Client No 108- and client No 109 **Article 18.2**
The inaccurate client balance was due to posting error which was rectified upon reconstruction of the accounts by Law Society trained competent legal cashier Mr M.

S1.11 Client No 110- **Article 18.2**
The inaccurate client balance was due to posting error which was rectified upon reconstruction of the accounts by Law Society trained competent legal cashier Mr M.

S1.12 Client No 111- **Article 18.2**
The inaccurate client balance was due to posting error which was rectified upon reconstruction of the accounts by Law society trained competent legal cashier Mr M.

S1.13 Client No 112- **Article 18.2**
The inaccurate client credit balance was due to posting error which was rectified upon reconstruction of the accounts by Law Society trained competent legal cashier Mr M.

S1.14 Murray & Co account
The error which was made in the balance of this account due to my posting was rectified upon reconstruction of the accounts by Law Society trained competent legal cashier Mr M.

S1.15 Firm Loan account
Entries relative to Firm loan account were posted and thereafter reconciled upon reconstruction of the accounts by said Mr M.

S1.16 VAT returns
VAT returns were well documented and paid. However upon arrestment of funds due to me by the legal aid Board by Mrs Murray thus resulting in my sequestration I was unable to pay any VAT returns.

S1.17 Client No 118- **Article 18.4**
Upon client's instructions the funds were not invested. Please refer to paragraph headed WALLIND-Client 118 of the Law Society's letter dated 16th August 2004 in complainers productions 2-27,2-28 and 2-29. You will note that the Law Society acknowledges receipt of the client's instructions that the funds should not be invested.

S1.18 Client No 114- **Article 18.4**
This supplements paragraph 8.03 of my principal submissions. If you refer to the client's ledger being No 2 of my third inventory of productions you will note that there was a credit balance in the sum of £26,950.10 on 12th December 2003 and on 12th February 2004 the sum of £25,000 was paid to Northern Rock. The balance of £640.10 left was used to cover my fees and outlays.

S1.19 Client No 115- **Article 18.4**
This supplements paragraph 8.04 of my principal submissions. I initially agreed in principle to pay interest to the client. However upon cheking the rectified client ledger being No 3(a) of my third inventory of productions I noticed that this was not necessary. You will note that from the rectified client ledger that there was a credit balance of £2,159.92 on 10th November 2003. On 7th January 2004 my former firm's fees in the sum of £535 was debited to the client ledger. Thereafter on 6th February 2004 the Inland Revenue was paid £1645 leaving a debit balance of £20.16 which was comfortably covered by the float I had on the client account. The funds were disbursed within a period of two months from 1oth November 2003.

S1.20 Client No 125- r **Article 18.5**
This supplements paragraph 6.07 of my principal submissions. The stamp duty had already been paid but the position was not clear at the date of 17/18 February inspection due to posting errors. The position became clear upon reconstruction of the accounts by said Mr M. The property was in a newly developed area and as usual it took sometime before the deed of conditions was sent to my former firm. The title

deeds were not sent to the Land Register after settlement of the transaction until the deed of conditions was received. Despite several contacts with the seller's solicitors the deed of conditions could not be sent to my former firm because it had not been sent to the sellers solicitors. On the day of receipt of the deed of conditions the title deeds were sent to the Land Register for registration. As the disposition in favour of the client referred to the deed of conditions as real burdens on the title of the client, the keeper would not register the disposition in favour of the client without the deed of conditions. The Fiscal has wrongly calculated an alleged delay in stamping the disposition from 14th November 2003 the date of settlement of the transaction to 8th March 2004 which was the date the stamp duty was paid Inland Revenue. The Fiscal has wrongly calculated and alleged delay in registering the disposition from the said date of settlement of the transaction to 6th April 2004 which was the date of receipt of the relative form 4 by the Keeper. The date of settlement was not the date of receipt of the disposition in favour of the client; it took some weeks before the disposition was sent to my former firm. Because the seller was a big company with the Head office in Ireland the execution of the disposition had to go through a lengthy procedure. The executed disposition in favour of our client was received on Friday the 5th March 2004 and on Monday the 8th March 2004 it was sent to Inland Revenue for stamping. The Fiscal's calculation of alleged delay in stamping the disposition includes the time taken by the selling company to execute the disposition and thereafter forward same to my former firm. The fiscal's calculation of alleged period of delay in registering the titles includes the time taken by the selling company to execute and forward the disposition to my former firm and the time taken by the Inland Revenue to stamp the disposition and forward same to me. **The correct calculation of any delay in stamping the disposition is from the date of receipt of the disposition to date the disposition was sent by my former firm to Inland Revenue for stamping. The correct calculation of any delay in registering the title deeds is from the date of receipt of the deeds of conditions (because obviously by the time the deed of conditions came to hand the disposition had already been stamped) to the date the deeds were sent to the Land Register for registration.** There is no justifiable evidential basis in support of the Fiscal's calculation. Please refer to paragraph headed **Client 125** of my letter of 21st April 2004 to the Law Society being production number 60 of my first inventory of productions and paragraph headed **Client 125** of my letter of 30th July 2004 to the Law Society being production number 62 of my first inventory of productions.

S1.21 Client No 126-, Property 15. **Article `18.5**
This supplements paragraph 6.08 of my principal submissions. Once again the Fiscal has calculated the alleged delay in registering the disposition from 13th November 2003 which is the date of settlement of the transaction to 21st April 2004 which is the date the Land Register received the relative Form 4 and deeds for registration. The Fiscal's calculation is wrong because the executed disposition in favour of the client was not received on 13th November 2003 and alleged period of delay includes the time the Inland Revenue took to put adjudication stamp on the deed and return same to my former firm. **The correct calculation of any delay in registration is from the date of receipt of the stamped disposition to date the title deeds were sent to the Land Register.** The Fiscal's calculation is unreliable and cannot be substantiated.

S1.22 Client No 103-

This supplements paragraph 6.01 of my principal submissions. Please also refer to the equivalent paragraph in the Law Society's reply dated 12th June 2003 in complainers' productions 2-19 and 2-20. the recommendations of the Law were taken on board and implemented. A subsequent letter by me to the Law Society confirming the position could not located by me when I was given access to files and papers etc by Morna Grandison.

S1.23 Client No 124-

This supplements paragraph 6.06 of my principal submissions. The property was in an area exempted from stamp duty up to a stipulated price limit. The property was not exempted from stamp duty because the price exceeded the statutory price limit for exemption. I wrote in pencil the stamp duty and other outlays for preparation of invoice to be issued to client in respect for the transaction. However the stamp duty was mistakenly omitted from the initial invoice typed and issued by my former secretary to the client. In my absence due to ill health the unstamped disposition was sent to the Land Register for registration. The keeper refused to register the deeds because the disposition was not stamped and quickly returned the deeds to my former firm. Thereafter after the required stamp duty was paid the deeds were sent to the Land Register for registration on same day the duly stamped disposition was received. I was unable to locate copy of my letter to the Law Society in which the duly receipted Form 4 was enclosed among the files, papers etc to which I was given access by Morna Grandison. Please also refer to equivalent paragraph of the Law Society letter dated 21st April 2004 in complainers' productions 2-24, 2-25 and 2-26.

S1.24 Client No 126-

This supplements paragraph 6.09 of my principal submissions. Please refer also to equivalent paragraph of the Law Society's reply dated 30th April 2004 to my letter of 21st April 2004 in complainers' productions 2-24, 2-25 and 2-26. I was unable to locate copy of my letter to the Law Society in which I enclosed copy identity of client etc when I was given access to files, papers etc by Morna Grandison.

S1.25 Client No 128

This supplements paragraph 6.11 of my principal submissions. Please refer to equivalent paragraph of the Law Society's letter dated 8th June 2004 in complainers' productions 2-24, 2-25 and 2-26. I was unable to locate copy of my letter to the Law Society in which copy receipted Form 4 and details of sources of funds were enclosed among files and papers to which I was given access by Morna Grandison.

S1.26 Client No 129-

This supplements paragraph 6.13 of my principal submissions. Please also refer to equivalent paragraph of the Law Society's letter dated 8th June 2004 in the complainers' productions 2-24, 2-25 and 2-26. I was unable to trace copy of my letter to the Law Society in which copy receipted Form 4 was enclosed among files, papers etc to which I was given access by Morna Grandison.

S1.27 Client No 140-

This supplements paragraph 6.12 of my principal submissions. A copy of the relative duly receipted Form 4 was sent to the Law Society. However I was unable to locate copy of my letter to the Law Society in which copy receipted Form 4 was enclosed among files, papers etc to which I was given access by Morna Grandison.

S1.28 Posting of fee notes
It transpired that during the April 2003 inspection that on 3 or 4 occasions fees had not been posted on the date fee notes were issued but had been debited to the client ledger earlier than the dates the fee notes were issued. For the avoidance of doubt all fees were collected after fee notes were issued to the client. This gave the erroneous impression that fees were being taken before fee notes were issued. I took steps to ensure that all my employees involved in taking and preparing fee notes knew that fees were to be taken only after fee notes were issued and particularly the legal cashier had to ensure that fees were debited to client ledgers on or after the date of issue of fee notes to clients. Please refer to paragraph **(4) Rule 6 fees rendered** of my letter of 4th June 2003 and equivalent paragraph of the Law Society's reply dated 12th June 2003 both letters in complainers productions 2-19 and 2-20.

S1.29 Posting errors
The inadequate narratives which only cropped up very occasionally were due to error in the soroba system. The soroba system occasionally did not retain all the narratives typed into it. For example during the posting of the sum of £265,211.73 received on 2nd April 2003 on behalf of client No 124 Iftikar Iqbal the soroba system did not retain the narrative "loan funds received from Royal Bank of Scotland" typed. The inadequate narrative was therefore not due to the fault of the legal cashier. When I made postings into the soroba system after the interim judicial factor left a number of inadequate narratives due to the soroba systems error arose. For example the system errors gave rise to inadequate narratives for client numbers 104, 128,129,130,131, and 132. Since Mr M was involved in the creation of the soroba system he knew exactly what to do to rectify the system error every time it occurred. Accordingly all the narratives provided during the reconstruction of the accounts by Mr M were adequate. For the avoidance of doubt the errors stipulated in Articles 19.2, 19.1, 19.3, 18.1, 18.2, 18.3 and any other posting errors made by me were removed and substituted with accurate postings in accordance with the requisite standards by Mr M.

S1.30 Money Laudering Regulations
This supplements paragraph 9.01 of my principal submissions. The money laudering procedures I established in my former firm were followed. Shortly after putting the procedures in writing it transpired that it was more convenient to create a central file for the safe custody of all clients' I.Ds, copies of bank drafts together with details of sources of funds, copy utility bills etc. Where during inspection an auditor requests to see client I.D or some other verification obtained by me I referred to the central file and gave him/her the copy documents she/he wanted to see. Occasionally I.Ds etc might not have been put in the central file promptly and it was difficult to locate them. In such situations copies of the I.D or necessary documents were subsequently copied to the Law Society if required. Please refer to paragraph headed **(3) Rule 24-money laundering** of the Law Society's letter of 30th April 2004 in complainers productions 2-24, 2-25 and 2-25. During February and March 2004 inspections although Mrs Playfair selected and perused a number of files she did not ask me for any client I.Ds or necessary verification information etc at the time of inspection in respect of compliance with money Laudering Regulations. It would appear that when she did not see I.Ds or verification information on client files she assumed that I was not following my own established money laudering procedures.

S1.31 My Medical Condition
I was not aware of possible exacerbation of my medical condition due to stress until sometime in January 2003 when I visited my G.P as a result of becoming increasingly tired easily and having headaches frequently at work. Prior to taking over Murray & Co my medical condition was well controlled by medication and I did not become easily tired or have frequent headaches. It was during discussions with my G.P in January 2003 that I first became aware of the link between the stress I was under as a result of taking over Murray & Co and the exacerbation of my medical condition. When the Second Respondent and I decided to enter into partnership I did not tell the Second Respondent about my medical condition because I knew that upon putting all the agreed practical arrangements in place for the effective and efficient running of the Practical Law Partnership there would be no stress on me and I would be able to practice efficiently without exacerbation of my medical condition. In any event the fact that I did not tell the Second Respondent about my medical condition has not at the end of the day been detrimental in any way to the interests of the Second Respondent in so far as allegations of professional misconducts are concerned.
S1.32 Invested Funds
This relates in general to all client monies subject to investment. I had a long list of invested funds for clients. I was in general vigilant for investing client monies where this was necessary except in cases where upon clients' instructions funds were not invested.
S1.33 Deficit of £321,427.72
This supplements paragraphs 10.01 to 10.04 of my principal submissions. Morna Grandison in her evidence said that the lenders did not have a standard security in their favour in place at the time the payment was made to Lyons Laing solicitors, there was no executed disposition in favour of the client on whose behalf the loan funds were released and missives were not concluded. The Second Respondent is trying to paint a picture that the Lyons Laing solicitor/s who received the payment was in the same position as he was. The fact is that the requisition of the loan funds by the Second Respondent was made on fraudulent misrepresentations made to the lenders. The requisition of the loan funds by the Second Respondent was premeditated and completely destroys the credibility of the Second Respondent in this matter. If the evidence of the Second Respondent that the recipient Lyon Laing solicitor/s who received the payment was in the same positions as he was is accepted it inevitably leads to ridiculous conclusion that the Lyons Laing solicitor/s in question did condone and connive with the Second Respondent to defraud the lenders in question.
S1.34 The issue of comparative justice does not competently arise in this case. In the appeal in causa Fiona Mary Graham V a decision of the Professional Conduct Committee of the Nursing and Midwifery Council dated 27th February 2007 the Court of Session in quashing the decision held on the basis of the principle of comparative justice that it was in the interests of natural justice that the disposal of the appellant's case should have taken into account the failure to take any action against someone who was in part similarly responsible for what occurred or did not occur after the incident in question. This case is not in point here for the following reasons:
Firstly the appellant and Nurse A were both responsible for the administration of the afternoon drug round at the prison. In the case at hand the Second Respondent and Lyons Laing solicitor/s were not jointly responsible for acting for the lenders or requisitioning the loan funds. The Second Respondent and Lyons Laing solicitor/s were not jointly responsible for creating the deficit on the clients' bank account of the Practical Law Partnership. All the responsibilities for the loan funds and the deficit

solely rested on the shoulders of the Second Respondent. Secondly the Second Respondent and the recipient Lyons Laing solicitor/s were partners of two separate firms. As partners of two separate firms they were individually and separately under duty to act with the highest integrity and honesty in compliance with the required professional standards of conduct; the duty incumbent on the Second Respondent related to his responsibilities to the lenders he acted for and the firm the Practical Law Partnership to ensure that the deficit was not created in its clients' bank account whereas the Lyons Laing solicitor/s duty was to ensure that they did not intromit with the funds until he was in a position to deliver the item/s in exchange of which the payment was made.

The only way the issue of comparative justice can competently arise here is on the basis of evidence acceptable to the Tribunal that Lyons Laing solicitor/s were aware of all the facts and circumstances relating to what the Second Respondent had done in addition to their knowledge about not having executed disposition and the fact that missives had not been concluded when the payment was received. There is no evidence that Lyons Laing solicitor/s were fully aware of all the circumstances relative to the loan funds obtained by the Second Respondent; the only evidence which appears to suggest that Lyons Laing solicitor/s were fully aware of the Second Respondent's position is the Second Respondent's own evidence which is difficult to believe in the presence of his doubtful credibility in the matter.

S1.35 Under section 9 of the Partnership Act 1890 the Second Respondent, I and the firm were jointly and severally liable to the lenders and any other third party for the deficit in the clients' account due to the wrongful act of the Second Respondent acting in the ordinary course of the business of the firm. There is however a clear distinction between this joint and several liability of me and the Second Respondent to third parties and our individual responsibilities as solicitors. The Fiscal in her submission confuses our joint and several liabilities to third parties with our individual responsibilities as solicitors. As solicitors we are both under duty to act with the highest integrity and honesty in accordance with the required professional standards of conduct. In deed it is an implied term of the partnership agreement which existed between me and the Second Respondent that as solicitors we would individually act with the highest integrity and honesty in accordance with the requisite standards of conduct of our profession; I am entitled to rely on this mutual trust between me and the Second Respondent although if I was alerted about any irregularity or anything contrary to the required professional standards of conduct I would be required to take appropriate action failing which I would be deemed to be culpable. I was never alerted about the deficit and no information about the deficit or any other deficit came to my attention before the deficit/s arose. The deficit/s came to my attention at the time it was too late for me to do anything about it. There is no culpability whatsoever on my part with regard to the deficit/s.

S1.36 The Practical Law Partnership

This supplements my principal submissions relative to the existence of partnership between me and the Second Respondent. The important aspects of the evidence relating to the existence of the Practical Law Partnership may be summarized as follows:

1.At the beginning of August 2003, upon the Second Respondent's assurances that he would enter into partnership with me if the interim judicial factory on Atuahene Sim Murray & Co was discharged I agreed to instruct him to act for me by commencing negotiations with Mr Leslie Cumming with a view to having the interim judicial factory discharged. The Second Respondent secured agreement for the discharge of

the interim judicial factory upon payment of deposit of £40,000 by me to the Law Society towards expenses of the interim judicial factory.

2. The Second Respondent and I borrowed £20,000 from Bank of Scotland in our joint names and the name of Practical Law Partnership sometime in October 2003. We opened a firm bank account in the name of Practical Law Partnership with Bank of Scotland. The loan funds were paid into Practical Law Partnership firm bank account sometime in October 2003. Upon my authorization the Second Respondent issued a cheque for £20,000 made payable to the Law Society on the Practical Law Partnership firm account with Bank of Scotland and together with Atuahene Sim Murray & Co cheque for the sum of £20,000 also made payable to the Law Society the required initial deposit of £40,000 was paid to the Law Society and thereafter the interim judicial factory was discharged on 5th November 2003.

3. From November 2003 onwards the Second Respondent paid sufficient funds monthly into The Practical Law Partnership account with Bank of Scotland to cover monthly repayments of the loan which were being made via a Direct Debit Mandate jointly signed by me and the Second Respondent in favour of Bank of Scotland on the Practical Law Partnership firm account.

4. A client bank account with Bank of Scotland in the name of the Practical Law Partnership was subsequently opened with Bank of Scotland but clients' monies were not paid into this account until the 12th May 2004 after the client credit balances and funds of the Second Respondent and I were audited and confirmed by nominated independent accountant. After 12th May 2004 client funds were paid into the account and cheques on the account were issued on behalf of clients until I was sequestrated and the Second Respondent was suspended from practice by the Law Society.

5. The Second Respondent and I agreed to keep separate bank accounts in respective names of our former firms as divisions of Practical Law Partnership until all outstanding accounting problems were resolved and the client credit balances and funds were audited and confirmed by nominated independent accountant.

6. The Second Respondent and I agreed to maintain separate accounting records in the names of our former firms as divisions of the Practical Law Partnership until all outstanding accounting problems with the Law Society were resolved and thereafter the client credit balances and funds were audited and confirmed.

7. After 12th May 2004, following audit of the client credit balances and funds the two bank accounts in respective names of former firms of the Second Respondent and I were closed and the firm and client bank accounts with Bank of Scotland in the name of the Practical Law Partnership were brought into full operation.

8. The Second Respondent and I began merging the accounting records of our former firms as divisions of the Practical Law Partnership. I had very little work to do because I chose to take on only a handful of transactions until all the agreed practical arrangement of effectively and efficiently running the business were in place. As a result of this I was able to bring my accounting records which were kept manually after audit of the accounts and the closing down of my computerized accounting system up to date very quickly. However the Second Respondent had a lot of accounting records to write up manually and the merging of the two accounting records could not take place until his manual accounting records were up to date. The merging of the two accounting records did not eventually materialize because I was sequestrated and this was followed by suspension of the Second Respondent from practice by the Law Society.

9. After interim judicial factory was discharged the Second Respondent paid several visits to my office at 34 Argyll Arcade to assist with work being carried out by me.

10. The Second Respondent required sometime to prepare to evacuate his former office at 25 Newton Place, Glasgow and join me at 34 Argyll Arcade. The Second Respondent could not join me at 34 Argyll Arcade until sometime in the middle of February 2004.
11. The partnership agreement between the Second Respondent and I were reduced into writing. Through oversight on my part I inserted a clause in the partnership agreement which was copied to the Law Society at the first instance stating that the partnership did not commence until nominated independent accountant had audited and confirmed client credit balances and funds of the former firms of the Second Respondent and me without realizing the impact of this clause on the existing professional indemnity insurance; the effect of this clause on the existing professional indemnity insurance was disclosed to me at the meeting with the Guarantee Fund on 22nd April 2004. Thereafter the partnership agreement was rectified to reflect the true intentions of the Second Respondent and me by deleting the clause and replacing it with a clause along the lines that the partnership commenced on 1st November 2003. A separate paragraph was inserted in the partnership agreement along the lines that the bank accounts of the two former firms of the Second Respondent and I will be merged after audit of client funds and client credit balances by a nominated independent accountant. This was the final partnership agreement which accurately reflected the true intentions of the Second Respondent and I; the final partnership agreement was copied to the Law Society.
12. The existence of the Practical Law Partnership was known to all clients of both the Second Respondent and me. The name the Practical Law Partnership was put on the facing of the front door to my former office 34 Argyll Arcade shortly after the interim judicial factory on Atuahene Sim Murray & Co was discharged.
13. There is clear distinction between the practical arrangements to be put in place in order to run the Practical Law Partnership effectively and efficiently and the factual existence of the partnership.
14. The Second Respondent and I took a professional indemnity insurance in our names as partners of the Practical Law Partnership with effect from 1st November 2003.
15. The use of letterheads of our former firms for sometime after 1st November 2003 by the Second Respondent and me temporary (with a statement sometimes typed at the top of the letterheads stating that Richard Thorburn & Co or Atuahene Sim Murray & Co as the case may be was a division of the Practical Law Partnership) was merely a matter of convenience adopted until the design of the letterhead for the Practical Law Partnership was agreed. The use of separate letterheads temporary was **not** because The Second Respondent and I did not regard ourselves as partners of the Practical Law Partnership.
16. The Second Respondent and I agreed to employ an accountant at the end of the practice year to determine the profit of the Practical Law Partnership and how much money was due to each partner. Both the Second Respondent and I had a right to share in the profit of the firm. From the 1st or at latest 5th November 2003 the Second Respondent and I carried on business as solicitors in common with a view of profit.

In Miah and Others V Khan quoted by the Fiscal the House of Lords decided that there was no partnership because everything that had been done was only preparatory to the commencement of trading. The House of Lords observed that persons who propose to carry on a business activity as a joint venture do not become partners until they embark on the activity. It is obvious that the initial loan of £20,000 jointly

borrowed by me the Second Respondent and the Practical Law Partnership firm and the opening of firm bank account in the name of the Practical Law Partnership in October 2003 were only preparatory to commencement of trading as partners. However matters relating to the partnership progressed beyond the preparatory stage after 5th November 2003 as the Second Respondent and I carried on business in common as solicitors with a view of profit.

THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

SUBMISSIONS of RICHARD THOMAS THORBURN

in the Complaint by the Council of the Law Society of Scotland

against

JOHN ATUAHENE and RICHARD THOMAS THORBURN

It is understood to be well established that, though relating to "civil" rights for some purposes including human rights legislation, proceedings before the Tribunal have the character of a criminal prosecution for other purposes including the requirement for proof beyond reasonable doubt, and it is therefore taken that related matters fall to be dealt with on a similar basis including the exclusion of evidence improperly obtained.

The terms and effect of a number of the provisions of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 (the "Rules") and related legislation require to be considered to be followed by significant events which will be taken in chronological order so far as possible.

The issue of oppression permeates the whole case, and while no doubt this may be found in a single incident it is submitted that a course of conduct can be identified in this case extending over a period commencing earlier than the main events on which the Complainers focus and continuing thereafter, but attention is directed principally to particular events and circumstances of the main period with more limited comment on matters occurring earlier or later.

Rule 6

The clear purpose of Rule 6 is to prevent money which has been deposited in the client account from being withdrawn from that account so that it is no longer available to its rightful owner.

The most commonly encountered situation is regulated by paragraph (1)(a) permitting withdrawal of "money required for payment to or on behalf of a client", a statement in wide and unconditional terms, except however that the statement is qualified by the introductory words of paragraph (1): "So long as money belonging to one client is not withdrawn without his written authority for

the purpose of meeting a payment to or on behalf of another client ..", recognising an obvious opportunity for abuse by the movement of funds between accounts. There is potential overlap between paragraphs (1)(a) and (1)(c), and it may be assumed that the latter was considered necessary "for the avoidance of doubt" such as in cases where the payment is not clearly related to the particular matter in hand. It is significant however that even in the particular case of paragraph (1)(c) where greater protection might have been expected as well as in the more general provision there is no requirement for authority to be in writing except in the cases specified in the introduction.

It would of course be a huge burden on the profession if written authority were to be demanded for every payment made, which is clearly an important reason for the general rule and limited scope of the exception to it, but it is also to be borne in mind that a solicitor does not operate his client account "in a vacuum". The money belongs to his clients, clients who in the great majority of cases are at least as much concerned for the safety and security of their money as the solicitor himself and who may be expected to insist on a full accounting and to object vigorously if money is used for a purpose which has not been authorised. This may be less clear where the distinction between solicitor and client may become blurred, as for instance when acting in trusts or executries or under power of attorney, but these cases can be regulated by particular, supplementary provisions as to a limited extent they are.

There is the further question: "Who is a client?" Simplicity and clarity might suggest that this should include any person who is or at any time has been a client, but even this apparently straightforward proposition requires further definition: a client of whom, of the present practice, or of the present practice or any of its predecessors, or of the solicitor at any time in his professional career? The difficulties for the solicitor and those of enforcement are obvious. An alternative such as "current client of the solicitor in his current practice" seems more practicable, though if it is suggested that "current or recent client" should be preferred the term "recent" would require to be clarified.

With the exception of the transaction for Client 85 the circumstances of which will be considered later nowhere in the Complaint is it alleged that any client has expressed dissatisfaction or raised objection nor is it suggested that any payment has been made contrary to instructions, and it is submitted that in the absence of evidence of a specific payment from one client to another client made without written authority of the former any charges under this Rule must be dismissed.

Rule 7

The allegation of "full purchase prices not being shown" (as in Averment 14.3: "The full purchase price of a property was not shown through the records") harks back to the old sub-paragraph (g) of Rule 7 of the Solicitors (Scotland)

Accounts Rules 1997 which (including the opening words) is in the following terms:

> "Notwithstanding any of the provisions of these Rules, a solicitor shall not be obliged to pay into a client account, but shall be required to record in his books, clients' money held or received by him –
>
> (g) in the form of a cheque, draft or other bill of exchange payable to a third party on behalf of a client which relates to the consideration in relation to a transaction involving heritable property."

However the old Rule 7(g) has not been re-enacted in the corresponding Rule 7 of the 2001 Rules, and in my evidence I quoted the letter dated 27th August 2001 from Heather Gibbings, then convener of the Guarantee Fund Committee, which accompanied the draft of the 2001 Rules circulated to members before the EGM of the Society at which the draft was to be considered and in which she states:

> "Old Rule 7(g) has been removed. This Rule was designed to address mortgage fraud. It has proved ineffective and merely adds to the Cashroom workload. By removing this Rule there will no longer be a requirement to disclose the whole price on the face of the ledger in circumstances where the solicitor will not be in receipt of the balance of the sale/purchase price."

The disappearance of the old Rule 7(g) is a fact, and Ms Gibbing's letter gives a reasonable, readily understood explanation for its removal. It has been repealed, and the particular requirement which it enacted can no longer be enforced, but the evidence in this case shows that at least some, though perhaps not all, of the Complainers' inspectors persist in conducting inspections as if the rule remained in force and that this ignorance and misunderstanding extends to senior levels including those responsible for bringing the present prosecution.

Rule 8

It is submitted that the Complainers misunderstand Rule 8 in that they fail to distinguish between paragraphs (1) and (4) appearing to regard the two parts as dealing with the same subject matter.

While there is a strong similarity between the two paragraphs with the introductory words: "A solicitor shall at all times keep properly written up such books and accounts as are necessary to show" common to both there also are important differences between these in what is to be shown.

Paragraph (1) contains detailed rules which describe the particular items or transactions of which a record must be kept, and provisions supplementary to these are contained in paragraphs (2) and (3).

It is submitted that, in contrast to the earlier paragraphs, both parts of paragraph (4) are expressed in general terms. Sub-paragraph (a) refers to

the "true financial position" of the practice while sub-paragraph (b) specifies the occasions on which a solicitor is required to "balance his books" though in neither case is there a definition of the expressions used. It is submitted that the reason is the same in each case namely that the expressions are commonly used by accountants and men of business and that they are to be understood in their normal meanings as such persons would understand them. The former is thus not a mere re-statement in general terms of the particular terms of paragraph (1) but a stipulation that the books and accounts taken as a whole shall be reliable in as much as they are prepared in accordance with sound accounting principles, they cover the complete range of activities so that, for instance, the undeclared pursuit of "off balance sheet" transactions would breach the rule, they contain proper provision for liabilities, including contingent liabilities, items such as goodwill and work in progress are valued according to recognised standards, and the figures are not inflated nor reduced by artificial means such as prepayments, discounts, refunds or other devices. The focus is on the "big picture" not the detail, and the close relationship between the two parts of the section is also clear.

None of the criticisms which are made in this case come within the ambit of Rule 8(4) as thus understood, and so all charges under that Rule must be rejected.

Rule 11

Rule 11(1) is reproduced at Complainers' Averment 23.8(f), and it is submitted that this Rule offers two options to a solicitor holding funds for a client in the circumstances specified, either to earn interest on the client's behalf by investment or to pay an equivalent sum to the client from his own funds. The proposition is both simple and logical, and the result which is desired by, or for, the client is achieved in either case.

The Complainers contend otherwise, namely that it is sufficient to establish breach if in the circumstances prescribed it is shown that the funds were not invested. Here as at other parts of the Rules it is hard to avoid the conclusion that the wording could be improved, but presumably the conclusion is drawn by the Complainers from the use of the phrases "failing which" and "ought to have placed" as indicating fault if the first-stated alternative is not adopted. On the contrary, such a meaning is not a necessary inference from these words which are commonly used without adverse implication, and the conclusion can be reached only if the second alternative which provides for payment of interest by the solicitor is ignored leaving that part of the sub-paragraph redundant.

Furthermore, it is an established rule of construction that a provision which creates an offence is interpreted restrictively so that conduct should be penalised only if that is the clear intention of the provision, and in particular if more than one construction is possible the least onerous is preferred.

Rule 11 implements the terms of Section 36 of the Solicitors (Scotland) Act 1980 which provides:

"(1) Accounts rules shall make provision for requiring a solicitor …

(a) to keep in a separate deposit or savings account … for the benefit of the client money received for or on account of the client; or

(aa) to keep in - … an account kept by the solicitor in his … own name for a specified client, money so received; or

(b) to make good to the client out of the solicitor's … own money a sum equivalent to the interest which would have accrued if the money so received had been kept as mentioned in paragraph (a) or (aa)."

The delegated provision is to be read so far as possible as consistent with the primary legislation, and the use of the word "shall" expresses a clear intention that the delegated regulations are to give effect to the specific terms of the Act. The form in which these appear there as three alternatives each having equal status removes any doubt that the Rule is to be construed in the same manner and that no breach is committed unless there is a failure both to earn interest by investment and to pay an equivalent sum to the client. Accordingly evidence is required both of a failure to invest and of failure to pay to the client an equivalent sum before a conviction can be recorded.

A further obstacle to a successful prosecution is found in the pre-conditions to be met before the requirement to adopt either course arises. The words "having regard to the amount of such money and the length of time for which it or any part of it is likely to be held" make clear that the assessment is to be made at the time of receipt and not the time of disbursement when of course the temptation to rely on hindsight could come into play. The point is expressly stated in sub-paragraph (2) which uses the words "at the time of its receipt." As it is for the Complainers to make out their case and not for the Respondents to establish innocence, in the absence of evidence that at the time of receipt it was "likely" that the money in question would be held for such a period as would bring the Rule into play, of which evidence it is submitted there was none, there can be no basis for a conviction under this Rule.

Rule 19

As Rule 19 deals with inspections and investigations at the instance of the Complainers rather than the accounting practices or standards required of solicitors consideration is deferred to a later section.

Interviews by Guarantee Fund Committee

No provision can be found in the Rules which either authorises, requires or regulates the holding or conduct of interviews by the Guarantee Fund Committee or any other, but as the power to withdraw (i.e., suspend) a practising certificate contained in Section 40 of the Solicitors (Scotland) Act 1980 may be exercised only after giving the solicitor concerned the opportunity to be heard (and a similar requirement appears in a number of

other provisions) it is likely that the procedures developed to satisfy this requirement may be the origin of the more general practice of inviting to interview a solicitor whose performance has come under question though not under immediate threat of suspension.

While it goes without saying that an interview for the former purpose must be conducted without pre-judgement and with scrupulous attention to fairness and impartiality it could not reasonably be argued that an interview for a different purpose should be conducted with any less care as the invitation to attend is a mark of serious concern on the part of the Law Society in relation to the solicitor or practice in question. Attendance is voluntary, and while the dialogue may not be wholly on equal terms the purpose even under Section 40 being to establish facts it should not be conducted as a form of judicial examination nor as a means to "build a case".

Since the passing of the Human Rights Act 1998 to which the Complainers are subject the conduct of interviews must also meet the standards of that legislation.

Inspection of May 2003

Averments are contained in Chapter 13 of the Record, and unless otherwise stated the relevant productions are to be found in the Complainers' bundle 2-12 to 2-14.

Subject to the general issues in relation to the conduct of inspections which are considered later the proceedings on this occasion were not controversial. A number of matters were raised of which the greatest part were answered, explained and in some instances acknowledged all in substantial detail in my letter of 18th July 2003 and in the course of the interview on 24th July.

Interview on 24th July 2003

I was interviewed by a panel of the Guarantee Fund Committee on 24th July 2003 under the chairmanship of Mr J F Hamilton, and my averments of the conduct of the interview are contained in Answer 14.1 which also narrates the main part of my letter of 15th January 2004. Unless otherwise stated the relevant productions are to be found in the Complainers' bundle 2-12, 2-13 and 2-14.

It is noteworthy that my account of the interview has not been challenged, and on the contrary important details are corroborated in the Complainers' Memorandum of Interview, now a production, but which had not been produced and which I had not seen when preparing Answers. The Memorandum confirms the chairman's belief that I had not replied to the Chief Accountant's letter, my assurance that I had done so as well as the failure to call for the letter to be produced to the committee. The duration of the

interview is not recorded, but it is apparent from the detailed nature of the discussion that it was lengthy.

The tone of the discussion can be assessed only indirectly, but it is recorded that the issue of tax was raised, and the contentious nature of that discussion is also apparent from the account in the third last paragraph.

No less significant is the extent of the detail offered by me to the committee, the frankness of the explanations given and the readiness to admit where things had not gone well from which the Tribunal may, and should, conclude that my attendance reflected a desire to co-operate with the Law Society and, though not accepting all criticisms, a serious intention to address and resolve the issues which had been raised.

Further corroboration of my account can be found in the inspector's report of the Inspection of May 2003 (the contents of which like those of the Memorandum were previously unknown to me) which also explains the origin of the chairman's allegation of tax evasion in her observation:

> "The inspector considered the possibility of cash fees not being shown in the records, but no evidence was seen."

Let it be clear, no criticism is made of the inspector for the remark in her report. The question is proper and legitimate for an inspector to ask, but the answer to the question is no less important and must determine the action which follows. "No evidence was seen" is a clear, simple, unqualified statement and should have been the end of the matter and not the launching point for what would become a sustained attack with no substance at its foundation. It is beyond question that this is the remark by which the chairman was led astray.

The final paragraph of the inspector's report states that:

> "This solicitor has been invited for interview in the past but has declined to attend."

This comment is inappropriate as attendance at interview is voluntary, and while the decision not to accept an invitation may have consequences for the solicitor it is improper as a matter of principle for any conclusions to be drawn from such decision. Furthermore from a practical point of view any conclusions drawn are likely to be wrong or at best conjectural, and in the present case there is little doubt that the inspector was unaware of my reasons for declining an earlier invitation in December 1999 which were touched on briefly in evidence, namely that despite a number of letters sent by me to the Chief Accountant seeking clarification as to which of the matters raised remained of concern I received no clear response and still did not know what was expected of me at the interview. In my submission these were proper reasons for declining from which no adverse comment could be drawn even if comment were appropriate.

The observations in an inspection report are not made idly or casually but reflect what the inspector regards as important and worthy of comment, and as such the remark is evidence of one of the Complainers' most senior

inspectors having regard to circumstances which should not be taken into account.

It may also be observed that the Guarantee Fund Committee itself appeared to take into account previous appearances before the panel when deciding to recommend prosecution on this occasion as the first paragraph of the Schedule to the Complainers' letter of 29th December 2003 records (Productions 2-15 to 2-16) though in this case drawing an adverse conclusion from attendance. The attitude of: "Damned if you do, and damned if you don't" is not easily reconciled with principles of fairness and impartiality.

Reverting to the interview itself, it may have been due to oversight that my letter was not copied to members of the panel before the interview, but it was a serious error of judgement of the chairman once it was brought to his attention that a letter had arrived to allow the interview to continue without the benefit of a document which addressed precisely those matters into which the committee wished to enquire.

Just as one mistake so often leads to another what then followed was worse not better, culminating in the unfounded allegation of tax evasion, and displaying such prejudice and antagonism that there was no question of my case having the fair and reasoned consideration I was entitled to expect. My feelings after the interview and my response to it are expressed in my letter of 15th January 2004 which is considered later.

Inspection of October 2003

My averments of the conduct of the inspection are contained in Answer 14 of the Record, and unless otherwise stated the relevant productions are to be found in the Complainers' bundle 2-15 and 2-16.

My Answers contain criticism of the inspector who conducted the inspection though this was expressed in general terms of hostility in her demeanour and approach and misrepresentation in her findings. When preparing the Answers I did not have access to the documentation which has since been produced and from which it can now be seen that the Answers themselves may fall some way short of truth though only in their restraint and moderation.

The inspector's report opens with the statement:

> "The main concerns from the inspection in May 2003, and in fact from previous inspections of the firm, was the lack of information in the solicitors' records, i.e. full purchase prices not being shown, with the possibility of mortgage fraud being committed."

By any standards that is a most serious and damaging allegation, fraud being the most serious charge that may be levelled against a solicitor, and no one should make such allegation without substantial and credible evidence, least of all an officer of the Law Society of Scotland in the performance of its public functions.

Here it is made boldly, without qualification, doubt or hesitation, but it is a lie, a patent, unashamed lie.

Nowhere in the report of the inspection of May 2003 or the correspondence which follows is any complaint made of "full purchase prices not being shown" nor any suggestion of mortgage fraud, not even in the interview on 24th July. The statement quoted is complete fabrication, the exact opposite of the truth.

The comment of the earlier inspector on the possibility of unrecorded cash fees has been discussed, but the October 2003 report continues:

> "… there was reason to believe that the solicitor may have been avoiding paying tax and vat."

On the contrary there was no "reason to believe", the inspector concerned had considered the possibility, found no evidence and left it at that as it was entirely right and proper that she should. This too is a lie, and no less blatant.

It is asserted boldly that in giving evidence Sharon Brownlee "did not flinch". Indeed not, she lied to the Tribunal without flinching. She has no credibility, and all that is said in the Answers is fully vindicated though one question still intrigues to which there is no clear answer in the evidence: Where were sown the seeds of her false testimony?

The abolition of the old Rule 7(g) has been noted, but this inspector appears to consider that it ought still to be enforced.

Her report makes reference also to the racial origin or religious adherence of clients of the firm, indicating that she regards these as matters of importance. On the contrary such matters are of no relevance and should be of no concern to the Complainers. That the inspector regards these as important demonstrates that she deals with such persons, and no doubt others, not as individuals according to their own particular qualities but as members of a category or class, Asians and/or Muslims, defined by the general, pre-formed judgements which she holds. She may not recognise this as prejudice, but prejudice it is, and it is the responsibility of the Complainers to ensure that it is recognised by them and that appropriate action is taken. The comment is evidence that I too was the victim indirectly of racial prejudice on the part of this lady.

My letter of 15th January 2004 to Mrs Lorna Davies

Answer 14.1 contains my averments concerning the letter which is produced in the Complainers' bundle 2-15 and 2-16.

The letter was my response to the interview on 24th July 2003, the inspection of October 2003 and to a letter from the Complainers dated 29th December 2003 informing me of a proposal to prosecute before this Tribunal including a Schedule annexed to the latter setting out the reasons for the proposal.

My letter explained the errors in the conduct of the interview and the failure, either in preparation for the meeting or at the time, to circulate copies of my earlier letter to members of the panel. It referred to the hostility shown by the inspector and challenged the grounds for the recommendation to prosecute, but although described as "robust" in Mrs Davies' reply of 10th February 2004 (to be found in Complainers' Productions 2-17 and 2-18) it will be seen that the language used was not intemperate or excessive but that serious and specific criticisms are made. Yet the criticism is ignored entirely in the reply except for an oblique reference in the assurance that allegations of fraud or tax evasion were not taken into account, and to this day it remains unanswered.

Silence was not an adequate response. My letter questioned the competence and judgement of the panel chairman John Hamilton who at the time was chairman of the Guarantee Fund Committee calling into question the position of the Complainers and one of their most senior members, but there was no rejoinder, no denial, no explanation, no mitigation nor any attempt to repair damage. Neither the Chief Accountant nor the chairman took effective action, and the former was content to leave the committee chairman, his own man, compromised and unsupported.

An effective chairman would not have allowed the matter to go unresolved but would have insisted on an appropriate response being given either personally or through the Society and its officers, and the incident is thus evidence of the inability of the Guarantee Fund Committee to exercise authority or control over the department which in theory if not in practice is at its disposal and for which it is responsible.

Professional Indemnity Insurance

The principal averments are in Averment 21 and my Answers with further averments directed to issues which may or may not be relevant including the formation of the partnership in Answer 1.5 and elsewhere. Productions include the Complainers' bundle 2-30 to 2-32 along with parts of their Third Inventory.

The allegation in Averment 24.27 is that between 1st November 2003 and 1st May 2004 I "continued to operate the firm Richard Thorburn & Co without professional indemnity insurance in place" which can be answered shortly on the basis that there has never been a firm of that name either before or after 1st November 2003. It is well known that I conducted my former practice as a sole practitioner under my own name of "Richard Thorburn". Furthermore, the word "firm" is defined (for instance, in Chambers Dictionary) as "a business house or partnership, a company", and it is submitted that the conventional, and correct, use of the term does not include a business carried on by an individual. If this is correct then I as an individual whether trading in my own or any other name do not constitute a "firm". A challenge to the Complaint on technical grounds such as these could of course be overcome if the

Complainers so moved and the Tribunal saw fit to permit amendment, but the response is to the Complaint as it stands.

Argument has been focused on whether a partnership was formed between me and Mr Atuahene, the Practical Law Partnership, and if so when was it formed, and it appears to be assumed that if there was no partnership it must follow that the insurance policy issued to Mr Atuahene and me could not cover separate, un-united practices, but this is an assumption and in my submission an assumption which is incorrect.

The following should be noted:

1. An insurance policy is a contract, in this case a contract between the insurers on the one hand and Mr Atuahene and me on the other.
2. The effect of a contract depends on its terms, and construction of a contract is not without difficulty.
3. The insured under the policy which was issued in this case is not the Practical Law Partnership but rather Mr Atuahene and myself, and so it cannot be alleged that if there was no partnership there could be no contract, no policy, as the existence of the policy is not dependent on the existence of a partnership.
4. A partnership is similarly a relationship based in contract, and the terms of the contract are determined by the parties and do not require to conform to a pre-determined or conventional formula but to a large extent may be as unusual or particular as the parties wish.
5. No written document or formal contract of partnership is required, and the arrangement may be entirely oral and informal.
6. It is proper and not unusual for any contract such as partnership or a policy of insurance to be made or amended or amplified retrospectively, and it has been accepted by all concerned that the incorrect naming of the firm in the present policy did not detract from its effect.
7. It is beyond question that a contractual relationship between Mr Atuahene and me existed during the period specified in respect that, irrespective of whatever else we may or may not have done, during that time we conducted a variety of commercial undertakings jointly and in co-operation with each other including bank and loan accounts opened by us in the name of the partnership. Any disagreement therefore relates to the nature of the contract and not to the question of its existence.
8. It is not in the gift of a third party to determine whether or not a partnership exists.
9. As the burden of proof is on the Complainers and given that they do not dispute that a policy of insurance was issued nor can it be argued (for the reasons given) that this was not a valid policy it follows that the onus is on them to establish that cover under the policy could not extend to the practice or practices which we were conducting during the period specified. If doubt remains the charge must be rejected as it has not been established.
10. In the letter dated 5th April 2004 from the Chief Accountant to Jennifer Scollick of Marsh the Complainers intervened into the contractual relationship between Mr Atuahene and me and our insurers, and it is

submitted that the intervention was improper and the result was to damage the relationship, obstruct negotiations between us and the insurers and prevent these from reaching a satisfactory or indeed any conclusion as it was reasonable to expect they might had the intervention not been made. Having thus been denied the opportunity to resolve the questions over our insurance cover it would be a denial of Justice and we would be doubly prejudiced if the present charges were upheld. The intervention is considered later as a separate topic.

Mr Atuahene's perception of the arrangements between us was very different from mine, that is the least that can be said in this case, and although the same charge is made against each of us and, illogical though it may appear, my position and his are not the same and require to be considered separately and on their own merits.

It is alleged that between November 2003 and May 2004 we were not in partnership, firstly as no partnership agreement was signed and thereafter as the condition in the document that the accounts were to be audited had still to be fulfilled, but it is submitted that neither of these facts precludes the existence of a partnership.

I have not tried to disguise the difficulty in which I found myself as Mr Atuahene's position revealed itself to me, and I explained in Answer 21 "the position which I had taken from the outset, and only briefly wavered from, namely that the partnership took effect from the start of the practice year in November 2003". I acted on the basis that we were in partnership because that was my belief. Some difficulties in Mr Atuahene's position following the recall of the judicial factory had been expected though not the dire situation which ensued. Abandoned by every member of his staff, unable to keep his own accounts as he has readily admitted to the Tribunal, the condition of his office, files and filing, all were clear to me. His medical condition was withheld as he has acknowledged, and of course if I had known I would not have contemplated partnership either for his sake or mine, but that was not a factor. (Even now he fails to understand the significance of his poor health as his answers to my cross examination show.) I stayed with him but not through optimism, only through conviction that we were already in partnership and committed.

Professional Indemnity Insurance – Intervention by Complainers

The intervention by the Complainers in relation to the contract between us and our insurers in the letter from the Chief Accountant to Marsh UK Limited dated 5th April 2004 remained undisclosed until the letter was lodged as Complainers' Production 3-9.

The intervention was undertaken without reference to us, either before the letter was written, at the time it was sent or thereafter the first knowledge we had of its very existence being delayed until a copy was produced in these proceedings. We did not authorise the Complainers to intervene, and while

there is no doubt that they are entitled to enquire they are not entitled to do so in a manner which prejudices the party concerned. Such an intervention relating to a real and existing contract, not hypothetical or prospective, without the authority of the party concerned is an infringement of that party's legal rights.

The terms of the letter are confused and contradictory almost beyond belief, and whatever the real purpose of the letter may have been it patently does not do what it purports to do.

The first paragraph contains the apparently simple and unqualified statement that "Atuahene and Thorburn … we now understand are trading as The Practical Law Partnership as per your records", but everything that follows contradicts that initial statement.

Paragraph two explains the view which had been formed of Mr Atuahene's circumstances, the third paragraph contains the corresponding view of my circumstances, while the fourth paragraph sets out the conclusion which the Committee is said to have reached in the light of the foregoing to the effect that "even as I write to you we are not able to confirm that The Practical Law Partnership is trading".

The purported reason for the letter emerges in the fifth paragraph which starts with the statement that "the partnership will emerge at some future date" in direct contradiction of paragraph one and goes on to refer to "questions" which it is said the Committee wanted to have clarified.

However of the four numbered sub-paragraphs which follow only number 3 is couched as a question. Numbers 1 and 2 are statements each making a similar averment though in differing terms. Number 4 refers to "the separate question of the insurer's position in the event of the partnership continuing to not be merged", but does not state the specific question to which the committee seeks an answer. The most obvious would be whether liability would be accepted under the policy for matters occurring before the partnership became "merged", but this is left unclear.

The sentence which follows then refers to the giving of "misleading information to both the insurers and the Law Society as at 1 November", an astonishing charge as it suggests a deliberate intent to deceive on our part. What evidence was there then, or now, for such a serious allegation, and if it was believed to be well founded why is it not repeated in the present Complaint? Not only is it damaging but gratuitously so, its only possible purpose being as a warning to the recipient to treat persons who behaved in this way with the greatest caution. Such clear insinuation against us of deceit, whether or not fully conscious or intended, at its lowest shows such reckless disregard and inattention as is hardly to be believed and invites objection to the letter of a different order to poor language skills, poor reasoning or poor judgement.

It is regrettable that the letter was not lodged as a production before its author gave evidence and that there was therefore no opportunity for his examination on its terms or purpose.

On the other hand the response to the letter of its recipient Jennifer Scollick who gave evidence later is instructive. It would not be unfair to suggest that questions put to her on the grammar and construction of the letter were not fully understood, which is no criticism of the witness but simply a reflection of the limitations of her role and experience. It was apparent that her duties are administrative and procedural, the processing of applications for insurance, the issuing of policy documents to customers and other such matters and that it is not her function to make decisions concerning the subject matter of the cover. Her position is perhaps best described by the now unfashionable term "clerk", and it is not surprising that Ms Scollick appears to have taken the letter rather as a statement of facts than as a request for information. She did not respond to the letter despite the specific request in the final sentence for "your views in advance of that meeting …", and it is no less significant that despite this lack of response the Chief Accountant omitted to follow up the letter to obtain from her the information which it purported to solicit.

If there was a genuine desire on the part of the Committee to seek advice in relation to the four numbered points specified in the letter it should have been recognised that these were hypothetical in character and could have been raised with the insurers anonymously without identifying the particular firm or practice using questions in the form "What if …?" Instead they chose to pass on to the insurers a view which they had already formed without the benefit of explanation or representation on our part and which therefore could not be other than incomplete.

Given the standing of the Complainers and their relationship with the insurers it is not surprising that events thereafter unfolded as they did and that Mr Atuahene and I were prevented from resolving the matter of professional indemnity cover with the insurers.

We travelled to Edinburgh to meet Ms Scollick on 23rd April 2004 and discussed with her a number of options which we considered further on our return to the office. After doing so but still on the same day we each wrote separately to the Chief Accountant setting out the conclusion we had reached. The letter from Mr Atuahene explains our position, in particular the fourth last paragraph which expresses our view that the partnership should be treated as having commenced on 1st November 2003, but in view of the concerns which had been raised we also expressed the proviso that there should be no objection on the part of the Law Society. It ought therefore to have been clear that we wished to proceed in co-operation with the Complainers and had no desire to obstruct. Further letters dated 19th May 2004 were received (which have not been produced) containing questions to which we respectively replied on 25th and 26th May (our replies are produced) answering the points raised, but our letters of 23rd April and the request for approval of our proposals remain unanswered.

Our hands were tied.

Although we were unaware of the Chief Accountant's letter of 5th April 2004 it was clear from our meeting with Ms Scollick that there had been contact between the parties and that she was reluctant to take any steps regarding our insurance without reference to the Law Society. As has already been said, given her role and the standing of the Society it is understandable that she proceeded in this way, and having now seen the letter of 5th April it is also clear that neither she nor any other person who received such a letter would have been prepared to take any initiative in relation to myself, Mr Atuahene or the Practical Law Partnership without the specific approval of the Complainers.

Ms Scollick's account of her telephone conversation with me on 29th April 2004 confirms both that she was aware of our proposal and that its implementation would require to await approval from the Complainers, and there was therefore nothing further which either she or we could do until the Complainers responded and made their position clear. They chose to remain silent.

Beside the circumstances which have just been considered it appears almost too trivial to merit comment that when the Complainers invited me to interview on 6th May 2004 (the Note of Interview is in bundle 2-30 to 2-32) the interviewing panel was again chaired by the same John F Hamilton who had conducted the interview on 24th July 2003 and whose performance was criticised in my letter of 15th January 2004 though neither the earlier encounter nor the letter were mentioned on the later occasion as the report makes clear. But trivial it is not. Bearing in mind that there had been no answer to my critique the decision to involve the same person in the deliberations on my case is a staggering failure of judgement on the part of the individual himself and those advising him. Quite apart from the deficiencies of judgement and lack of restraint which he showed on the earlier occasion, and which there was no reason to believe would not be repeated, it would be no more than human nature for someone who had been impugned as Hamilton was by me to show ill will towards his adversary, and his continued participation on this occasion and others utterly destroys any pretence that the proceedings were conducted with fairness or impartiality.

"Inspection" of July 2004

This incident is dealt with in Averment 20 and relative Answers with the productions to be found in the Complainers' bundle 2-27 to 2-29.

The material facts are not in dispute, that letters of notification were posted by first class recorded delivery on 2nd July but had not been delivered at the time of the inspectors' arrival at around 9.30 am on 5th July and that in consequence neither Mr Atuahene nor I received actual notice of the visit before the inspectors' arrival which was entirely unexpected. It is accepted that no other means of notification were adopted either in addition or as an

alternative to the letters, and the Respondents' evidence that it was not reasonable to expect delivery of the letters to be made at or prior to the time of the inspectors' arrival was not challenged. The position of the Complainers was blunt and uncompromising and has remained so: in their view the letters were to be "deemed to have been received … within forty eight hours of the time of posting" by virtue of the provision in such terms in paragraph (5) and that irrespective of whether or not the letters had in fact been delivered at the relevant time. Sunday was just another day and no different from any other.

My letter of 30th July 2004 addressed to Morag Newton (in Complainers' Productions 2-27, 2-28 and 2-29) expresses strong objection to the manner in which the inspection was conducted and the means by which it was achieved and summarises the exchange which took place between the Chief Accountant and myself on the morning of 5th July albeit in restrained terms. Of the fuller description given in my Answers much was corroborated even by the witnesses for the Complainers.

The letter records that the Complainers' representatives claimed to have the right to conduct an immediate inspection that day without further notification, that a postponement of forty eight hours was requested but refused and that in my view the inspection had not been conducted in accordance with the provisions of the Rules.

The reply to my letter dated 16th August (also produced) is entirely silent on these matters, and nowhere are they addressed by the Complainers who have chosen to ignore them altogether. Just as in the case of my earlier complaint about the conduct of the interview there is neither rebuttal, acceptance nor explanation, again only silence, but on this occasion there is no acknowledgement even of the fact that objection was taken. Was it truly the question they considered unworthy of answer or the questioner from whom it came? Was advice not sought or taken, or was it a step too far even to acknowledge that a mistake might have been made?

Rule 19, and beyond

The first question, arising directly from the circumstances of the case, is whether Saturdays, Sundays and other public holidays are to be included in the period of forty-eight hours mentioned in the Rule, but as these are not normal working or business days either for society at large nor for solicitors in particular it is submitted that the answer must be "no". Indeed it is remarkable that an organisation such as the Complainers are so affected by changing standards that the traditional sanctity of Sunday and its exclusion from everyday affairs have been so easily overlooked.

Rule 2(2) of the 2001 Rules provides that the Interpretation Act, 1978, applies to the interpretation of these Rules, and Section 7 of that Act is in the following terms:

> "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send"

> or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

It is submitted that the reference to the "ordinary course of post" excludes the construction argued for by the Complainers.

It is further submitted that the Complainers misunderstand the nature and effect of a statutory presumption which belongs to the law of evidence its purpose being to relieve one party to proceedings of the need to prove facts which are likely to be routine or uncontroversial. The presumption does not prevent the leading of evidence to the contrary unless it is clearly stated not to be open to rebuttal.

However the difficulties arising from Rule 19 go beyond the issue of what is or is not to be "deemed", and it is submitted that problems are to be found in the wording of paragraph 19(1) (similar issues are also encountered in paragraphs 19(2) and 19(6)) which authorises the Complainers to give "written notice" to a solicitor in the circumstances described but fails to specify the relevant period of notice. The omission is not made good in paragraph (5) which does not stipulate a notice period (as expressly acknowledged in the submissions on their behalf) but does no more than to permit the presumption to be made in regard to the time of receipt. The rule may be compared to a contract which lacks an essential term, and the question therefore arises whether such a rule is enforceable. It is submitted that enforcement is not possible, either in principle or in practice, unless provision for a reasonable period of notice is implied. In the present case, irrespective of what may or may not be "deemed," there was no period of notice, and so the question: "Was the period of notice reasonable?" does not arise.

A further difficulty for the Complainers is that their practice, and the course which they chose to adopt in this case, is not in accordance with the terms of the rule which provides that they should in the first place "require [the] solicitor to produce at a time to be fixed by the Council and at a place to be fixed by the Council" the relevant documents, etc, with the solicitor having the option to satisfy this requirement at his place of business.

While at first sight the normal practice of the Complainers to omit the first stage of requiring production elsewhere than at the solicitor's place of business may seem uncontroversial, and the practice is no doubt considered convenient both to the solicitor and the regulating authority, it appears on closer examination that the true position is less straightforward.

In the first place the practice generally adopted fails to take into account that the Complainers have no right of entry to the private premises of any solicitor, and irrespective of the period of notice given a solicitor receiving notification in the standard terms is entitled to say: "I am prepared to satisfy your requirement, but I am not prepared to allow you entry to my premises," in the

face of which the Complainers' only option would be to do as required by the Rule and specify another place and, if need be, another time.

The Complainers may point to paragraph (3) which imposes a duty on the solicitor to provide "reasonable co-operation" to their representative in the conduct of the inspection or investigation including the production of documents, but that paragraph does not and could not grant to the Complainers a right of entry to private premises which they do not otherwise have and which could only be created by primary legislation. "Co-operation" does not extend to permitting the exercise of a right which does not exist.

Furthermore the "option" given to the solicitor is meaningless unless and until a "notice" has been served on him as until that point he is unaware of what is proposed, and it is significant that the option is expressly given to the solicitor not the Complainers although current practice would suggest otherwise.

It may be observed that the absence of a right of entry would not prevent the Complainers from carrying out their duties as, if the procedure set down in Rule 19(1) is followed and the solicitor exercises the option, by doing so he may be seen to consent to the inspector having entry to his premises.

It is assumed that practice under Rule 19(1) is not replicated in the investigation of allegations of dishonesty under Section 38 of the 1980 Act which authorises the Complainers to "require the production or delivery to any person appointed by the Council at a time and place fixed by the Council of the documents to which this section applies". It is noteworthy that in that case no option is given to the recipient of satisfying the requirement at his own place of business and that the requirement is to be fulfilled immediately as paragraph 5(1) of Schedule 3 conferring supplementary powers expressly confirms (the word "notice" is omitted entirely, but it is clear that the requirement must be "made known" to the person in some way whether formally or otherwise). It is apparent that these provisions are intended to assist rather than to hinder or restrict the Complainers in the conduct of the more pressing enquiries where dishonesty is alleged, but no option is given to them to specify the place of business of the person in receipt in that case.

The absence in the Complainers of a right of entry to the private property of a solicitor goes beyond mere issues of practicality, of how the inspection of the solicitor's books and records can be achieved in practice, as it strikes at the validity of a notice in the conventional terms: without any right of entry to the solicitor's premises the Complainers have no right to demand production of the documents to them at these premises.

A notice issued to a solicitor under Rule 19(1) is not a request but a requirement. A valid notice obliges him to take action which he would not otherwise be obliged to take. The procedure is not consensual, and for the same reason that an unlawful search carried out by a police officer under a defective warrant cannot be cured by the consent of the occupier a defect in the notice is not cured by the consent of the solicitor either express or implied.

But these are all particular questions, not general, and the real and fundamental question has yet to be posed:

> "What rights have been given to the Law Society of Scotland to encroach upon the property of a solicitor in Scotland, not only his premises but also his moveable property and possessions such as his books and records?"

Section 38 of the 1980 Act has already been noticed, but this comes into play only when there is "reasonable cause to believe that a solicitor or an employee … has been guilty of ... dishonesty" and extends only to the particular items detailed in subsection (2) being "books, accounts, deeds, securities, papers and other documents". As has been noted no right of entry to premises is granted even when dishonesty is suspected, and believed.

Section 39 incorporates the powers under Section 38 into the particular case of a complaint of undue delay, and these are again imported by Section 42C for the investigation of certain complaints either "made to them" or "remitted to them by the Tribunal". It is noteworthy that even in these more demanding circumstances the powers granted are the limited powers under Section 38 and not the much wider powers commonly thought to arise under the Rules.

Section 41 refers to the "exercise of any power conferred on [the Council] by the accounts rules" which could confuse if it is read to suggest that there might be further powers under the Rules in addition to those arising under the Act, but of course the only powers which may be conferred by the Rules are such as are authorised in the Act.

The authority for making accounts rules is in Section 35, in particular subsection (1)(d) which (including the introduction) provides:

> "The Council shall, subject to Section 34(2) and (3), make rules (in this Act referred to as "accounts rules") -
>
> (d) as to the action which the Council may take to enable them to ascertain whether or not the rules are being complied with."

Patently there is no provision here for entry to premises or even for production of documents as in Section 38 from which the conclusion must be drawn that only action by other means was envisaged.

Section 1(3) of the 1980 should not be overlooked by which the Society may "do anything that is incidental or conducive to the exercise of these functions or the attainment of those objects" (namely the promotion of the well known objects set out in Section 1(2)), but it is submitted that a provision in so wide and general terms, so lacking in specifics, cannot be authority for such derogation of private rights as the Rules contain.

To summarise, the Council is under obligation to make accounts rules for the purposes described, the rules are to contain provision as to the action which the Council may take to "enable them to ascertain whether or not the rules are being complied with" though the nature of such action is unspecified, and clear though limited authority is given to investigate the affairs of a solicitor including the production or delivery of books, accounts and related documents

but only if there is “reasonable cause to believe” dishonesty in the particular case.

If these observations are well founded it is clear that the rules currently in force purport to grant powers to the Council for which there is no statutory authority and are to that extent *ultra vires*.

The same error is to be found in the earliest version of the rules, namely the Solicitors (Scotland) Accounts Rules 1952, and is no doubt repeated in all subsequent versions.

The Legal Aid and Solicitors (Scotland) Act 1949 by which the Law Society of Scotland was established requires the Society by Section 20(1) to make rules “(b) as to the keeping by solicitors of books and accounts …” and further “(c) subject to the provisions of the Sixth Schedule to this Act, as to the action which the Council may take to enable them to ascertain whether or not the rules are being complied with …”.

The Sixth Schedule deals mainly with arrangements for the Scottish Solicitors Guarantee Fund, but it is apparent that paragraph 5 which has the heading: “Powers of Council of Society to have affairs of solicitors investigated” is the origin of those provisions now contained in Section 38 of the 1980 Act, and like its successor, is subject to the limitation that “the Council have reasonable cause to believe that a solicitor or a servant of his has been guilty of … dishonesty …” The context is significant, and it may be observed that again in the 1980 Act the powers granted to supplement those under Section 38 for the investigation of dishonesty are contained in Schedule 3 the major part of which is concerned with the Guarantee Fund.

The intention is therefore clear. The methods to be adopted by solicitors in keeping their accounts and the standards to be met were to be set out in rules whose content would be well known, and compliance would be ensured by procedures which were already established such as, for instance, the customary (private) audit of the solicitor’s books and accounts, any invasion into the privacy of the solicitor’s affairs being limited to cases of dishonesty.

An examination of reports and records from the time suggests that there was much anxiety on the part of the newly formed Council of the Law Society to respond well to the varied responsibilities placed upon it by the 1949 Act which included the establishment of a legal aid system and the Scottish Solicitors Guarantee Fund as well as the Society itself. There was clearly much to be done, and there was an awareness that new ground was being broken and that precedents were few.

There is a detailed report at page 160 of Scots Law Times, 1952, News Section, of the Special General Meeting of the Society at which the proposed rules were discussed, and it is apparent from this and other items in the same journal that there was intense debate, indeed soul-searching, over the impending change of culture heralded by the new regime of “clients accounts” and related regulation. However, despite the heated discussion of the

substance of the changes the report makes no mention of what was to become Rule 9 dealing with "Investigation of accounts on behalf of Council," the apparent predecessor of Rule 19.

It would not be surprising if there was confusion as Section 20(1)(c) called for rules to provide for "action" but gave no indication of the type of action which might satisfy that requirement, and furthermore it might readily have been assumed that the example given by Parliament in paragraph 5 of the Sixth Schedule to the 1949 Act (the counterpart to the present Section 38) was there to be copied.

A number of points may be stated with some confidence:

1 Paragraph 5 of Schedule 6 formed the model for Rule 9.
2 Although not subject to the "dishonesty" proviso it is clear nevertheless that Rule 9 was not intended to be invoked lightly but only in the three situations prescribed. The mighty structure which has since been built on to such slight foundation would surely have astonished those who cut the first sod.
3 The option for the production of books of account, etc, at the solicitor's own place of business was introduced specifically for the benefit of the solicitor and not for the Council (the Council having repeatedly expressed its anxiety that the burden of the new regime on the profession should not be greater than necessary).
4 Notwithstanding these qualifications the rule does not implement, nor can it derive authority from, paragraph 5 of Schedule 6 as it is not subject to the same limitation to cases of dishonesty.

As has been observed, the leaders of the profession faced a wide ranging agenda, and the attention of members was focused on important issues of substance. It may not be out of turn to suggest that knowledge and experience of "constitutional and administrative law" was less secure among the practitioners of 1952, who in the main were the products of traditional legal apprenticeships, than would be expected of later generations of lawyers having the benefit of wider study and university degrees. Nor is there mention in the reports of intervention or involvement on the part of government from which it would appear that, after the passing of the 1949 Act, the profession was left entirely to its own devices as to the arrangements for implementation at least in the area of professional practice. The position may be compared to the general practitioners of an area being commissioned to establish an acute hospital but then given no further guidance or direction.

What is perhaps most surprising is that the validity of the Rules appears never to have been questioned, but the reason for that is clearly provenance, that the standing of the Society is such that the integrity of the Rules has been accepted without question, and might still be had the Society and its officers but acted more wisely and with greater restraint in this case.

It is my understanding, notwithstanding the determination made earlier in this case, that it is beyond the jurisdiction of the Tribunal to adjudicate on whether or to what extent the Rules may be *ultra vires* and that if a decision on these

points is considered necessary for disposal of the case that decision would require to be referred to the court for determination. On the other hand it may be suggested that if the Rules are taken as they stand albeit subject to the foregoing criticisms of the procedures adopted by the Complainers the Tribunal may still be able to reach a decision on the basis of other issues without having to consider *ultra vires* and so without the need for referral.

In particular, in the case of the inspection of July 2004 consent was expressly withheld and so could not be implied, and indeed it is acknowledged in the Complainers' written submissions that when the inspectors returned to our premises on 6th July 2004 entry was obtained "under duress". There is no question therefore that the inspection on that occasion was improper and any evidence from it improperly obtained and to be disregarded.

And if the earlier submissions are well founded even in part in relation to the way in which a proposed inspection is notified, not only is the inspection of July 2004 unlawful but so also are all other inspections on which reliance is placed. The documentary evidence has been produced and shows in each case that the "normal", defective practice has been followed and the evidence from it therefore improperly obtained and to be disregarded.

Client 85 and the Purported Deficit

This is also dealt with in Averment 20 and relative Answers with the productions in the Complainers' bundle 2-27 to 2-29.

The transaction on behalf of Client 85 is clearly of particular importance, and in her evidence to the Tribunal Morna Grandison, the judicial factor, identified it as the primary reason for the decision to seek the appointment.

I have acknowledged that in this transaction I made a serious blunder, but to make a mistake does not *per se* amount to professional misconduct which may or may not arise depending on the character of the conduct and the circumstances. I have explained the nature of the error, the absence of intent, and that the mistake was caused by oversight under pressure.

The basic facts are not in question, though a shadow has been cast by the unfortunate coincidence that the client in question was discovered to be implicated in a serious fraud. Nothing has been said or alleged in these proceedings, nor to me elsewhere, to suggest involvement on my part in the fraud or knowledge or connivance nor could be as I was as much a victim as any other party. There is not and could not be evidence against me.

I considered whether to call Duncan Drummond who acted for the sellers to give evidence to the Tribunal but decided that there was little he could add to what was already known and not in dispute, and it would serve no purpose to subject him to an experience which was likely to be uncomfortable and perhaps embarrassing if this could be avoided.

Mr Drummond's position as selling solicitor in many respects mirrors mine as the agent for the purchasers. It is acknowledged on all sides that missives were not concluded, and so just as I tendered payment in the absence of a contract so he accepted the payment in the same circumstances. On the other hand I know of no grounds for suggesting that he was conscious of the deficiency when he accepted the payment, and I have no doubt that he acted as I did, that we both made a mistake, that we both made the same mistake, and in each case due to oversight.

No other explanation makes any sense as there could be no benefit to either party in proceeding in the absence of a contract, and if the omission had been noticed by either party it could have been quickly rectified.

I suggested speculatively in my evidence that the sellers' solicitor may have compounded the mistake by intromitting with the funds received and may have used these to repay his clients' secured borrowings perhaps also remitting money to his clients so that he was not in a position to repay when I called on him to do so. In fact there was no need to speculate as the Complainers' letter to me dated 13th July 2004 (in their Productions 2-27, 2-28 and 2-29) states at the end of the third paragraph: "Lyons Laing have paid the funds towards their clients AIB loan" from which it is clear that enquiries were made and the position found to be as stated. This explains why the funds were not returned, but the no less important question remains of why Mr Drummond did not deliver to me the executed disposition in exchange for the money which he received from me.

Clearly Mr Drummond's conduct raises questions similar to those arising from my conduct and no less serious, but the Complainers have withheld all information from the Tribunal concerning his "case" if case there was. In consequence there is no evidence before the Tribunal of disciplinary or other action of any form against Mr Drummond, and the Tribunal must therefore proceed on the basis that no such action was taken.

If after preliminary issues have been considered the present matter still remains before the Tribunal it is the initial mistake and not the consequences on which a decision must be based, and while the financial consequences may be more serious and far reaching than might have been foreseen, if misconduct is to be found it is to be found in the error not the consequences.

Furthermore the principle of comparative justice will apply, and consideration must be given to the lack of any action taken against Duncan Drummond for conduct which is comparable and appears to be no less culpable.

Reference is made to the decision of an extra division of the Inner House of the Court of Session on 22nd July 2008 in the case of Fiona Mary Graham against a decision of the Professional Conduct Committee of the Nursing and Midwifery Council, available on the Scottish Courts website under reference [2008] CSIH 45, in which Lord Wheatley delivering the opinion of the court says at paragraphs 18 and 19:

> "Finally, counsel for the appellant raised the question of comparative justice. When the mistake came to light … Nurse A was, so far as we can judge, in a similar position as the appellant. When she had become aware of what had happened, she also required to consider the questions of reporting the incident and carrying out the appropriate checks and procedures in respect of her patient. The charges against the appellant all relate to her failures to respond appropriately once the mistake had been made. Nurse A seemed therefore to be in a number of respects in the same position as the appellant, (although she was not of course responsible for the initial error). … [There is then reference to the lack of information concerning Nurse A] … In these circumstances we think it reasonable that the disposal in the appellant's case, in the interests of natural justice, should take into account to some extent the failure to take any action against someone who on the face of it appears also to have been in part similarly responsible for what occurred, or did not occur, after the incident."

The Complainers' handling of the Client 85 transaction is closely connected to the inspection of July 2004, and there can be no doubt that the comment on the reason for that visit made in the first paragraph of the inspectors' report that: "Concerns had been raised regarding Mr Thorburn's actions when acting for lenders" refers to this case though not by name.

The transaction is discussed in the letter of 13th July 2004 under the heading "Rule 4 – Deficit", with the conclusion in the second paragraph on the second page that:

> "As the client funds were paid without concluded missives or receipt of a Disposition from Lyons Laing, a deficit has arisen on the client bank account which at 31.5 04 appears to amount to £321,427.72."

The inspectors' report also baldly states: "the deficit … arises from loan funds having been paid over for a property without a disposition having been obtained", but in neither case is an explanation offered for the surprising conclusion.

Rule 4(1) is reproduced by the Complainers at Averment 23.8 and discloses no obvious basis for the conclusion stated.

The Note of Interview by a panel from the Guarantee Fund Committee on 19th August 2004 which Mr Atuahene and I attended (which is in the same bundle of productions) records in the third paragraph of the section "Panel Discussion" a discussion in which the contrived nature of the accusation is revealed though it is apparent from the nature and terms of the discussion that the panel appreciated that what they were considering involved an extension which went beyond the normal understanding of the effect of the particular rule.

It is averred that it was "arguable" that there was a deficit of £320,000, and the reasoning by which that conclusion might be achieved is also set out, namely that because the building society (i.e., bank) may be entitled to demand

immediate repayment the money which would fall to be repaid in that event may be regarded as money, clients' money, which the solicitor is required to hold on client account.

It appears that the panel is here consciously, or semi-consciously, considering whether the definition of "clients' money" can be extended beyond the established meaning to include money which the client is "entitled to demand back immediately". That is the only basis on which the debate could have proceeded in as much as Rule 4(1)(a) regulates the relationship between the "sum at credit of the client account" and the "total of the clients' money held by the solicitor", and as no questions have been raised as to the former it follows that the debate must have focused on the latter.

This would be a significant change, and if the Note is a faithful record of the discussion the brief and shallow treatment accorded by the panel does scant justice to the importance of the developments resulting from the change. The potential consequences pass them by entirely as, if the interpretation proposed is to be "the Rule", then it goes without saying that it must be the rule in all cases and not only in mine.

In the first place "the Rule" is inconsistent with Rule 6(1)(a) which permits to be drawn from a client account "money required for payment to or on behalf of a client". If "the Rule" is to have effect certain payments "to or on behalf of a client" must be excluded, but these would require careful definition.

Secondly, "the Rule" would introduce a large measure of uncertainty into an area of regulation which hitherto had been regarded as settled and well understood.

Thirdly, there is already a statutory definition of "clients' money" in Rule 2(1), but the panel do not appear to have considered at all its effect on the operation of "the Rule".

In fact the interpretation proposed is patently at odds with the wording of Rule 4(1)(a) and reflects a confusion of "money" with "liability to account" for money received and the failure to distinguish one from the other. A "hole in the accounts" there may be, but that is very different from a "hole" or deficit in the client account. In short, it is not the money that was missing but the disposition.

The Tribunal should therefore reject the novel construction of the rules proposed by the Complainers and recognise it for what it is, an attempt to legislate "on the hoof", a contrivance whose sole purpose was to provide the Complainers with the pretext for an allegation that, in my case and mine alone and as a result of the particular transaction on behalf of Client 85, the client account was "in deficit".

The Note of Interview concludes with a "Recommendation" which includes a direction that I "should be given until 1 September …and that [I] should make good the deficit in the sum of approximately £320,000". As has been

observed it was known to the Complainers that the money had already been disbursed by Lyons Laing and that there were therefore no prospects whatsoever of my being able to recover it in the time stipulated, and they were thus imposing a condition which they knew I would be unable to fulfil. This too was no less of a device, a charade and contrivance to secure the apparent justification they required for a course of action on which the decision had already been taken, the suspension of my practising certificate.

Judicial factory

The appointment of a judicial factor to the estates of a solicitor has been described by Lord President Cooper as the most serious action which can be taken by the Complainers against a solicitor, their last resort. The dictum is repeated in a leaflet prepared by the Complainers and given to parties who are made the subject of a judicial factory, but my copy has been lost, and despite searching the reports I have been unable to find reference elsewhere, perhaps the case was unreported, but the correctness of the statement is self evident.

Not all the steps which led to the appointment of the judicial factor in my case are revealed, but the events in Mr Atuahene's case in 2003 are clear. A last resort is hardly justified by an accounting exercise as this was, with no hint of dishonesty the conduct of the practice being left entirely in Mr Atuahene's hands, nor the final cost of £97,000 incurred when the amount at risk was reckoned at the outset to be £116,000 and discovered at length to be only £7,000.

The decision was made by the Complainers on 20th May 2003 and then sanctioned by the court. The Minute of the meeting of Council is produced in the bundle of Productions 2-19 and 2-20. It convened at 12 noon and concluded at 12.05 barely giving time to deal with formalities nine of the participants including the chairman and person making the report (presumably John Hamilton then Convener of the Guarantee Fund Committee) taking part by telephone conference call, far less to go into detail concerning the matter in hand. It may be suggested that this had already been discussed at length by the Committee at its meeting on 1st May, but that is no answer as it was Council not the Committee which was required to decide. It is to be noted that the Minute does not suggest that any discussion took place, and there is no question that the purported "decision" was no more than "rubber stamping" of the real decision, formally only a recommendation, previously been taken elsewhere, showing adherence to form at the expense of substance.

If the Council had acted properly and examined the proposal it is at least possible that a different decision would have been made, avoiding the risk of unquantifiable, undoubtedly substantial and in fact unnecessary costs to the Society and the almost certain financial ruin to Mr Atuahene.

Section 41 of the Solicitors (Scotland) Act 1980 which authorises the appointment of a judicial factor on the estates of a solicitor in Scotland places

in the hands of the Complainers a most vicious weapon, punishment truly cruel and inhumane, to be compared with Guantanamo Bay in the arbitrary nature of the qualifications for admission and the uncertainty of the means for release, a peculiar iniquity to the like of which no other professional person in any part of the world which aspires to civilisation, freedom or democracy may be subjected so far as enquiries have been able to establish. An imposition which as the evidence shows they are ready to use lightly, even casually, and that they have been permitted to do so reflects on our courts who are the only protection left to the beleaguered practitioner and whose role of ensuring that power is used appropriately appears also to have become one more of form than substance. Justice, proverbially blindfold to ensure evenhanded treatment of high and low, in Scotland, sadly, appears to be tempted too easily to "keek out" from the blind and recognising in such as the Complainers a party of power and influence too ready to yield to their position. It is unfortunate in particular that despite the injunction to give the solicitor an opportunity to be heard before an appointment is made they appear to be ready almost invariably to grant an immediate order on hearing one party only for once this horse leaves the stall it can never be put back.

The Tribunal is aware that I too have been subjected to the same treatment, but the process by which this was achieved has not been revealed. It is however clear that the imposition in my case was no less wrong but part and parcel of the same course of conduct details of other parts of which are now apparent.

Oppression

Oppression can occur in many ways, but the common theme is a failure by the authority to conduct its business properly with due regard to the purposes to be achieved, to the statutory limitation of the delegated powers and to the general law including the duty to act fairly. Motivation is the not the primary issue, and the quality of the conduct falls to be assessed objectively. The "offence" may be deliberate, but it may be due to oversight or neglect, to incompetence or poor practice, or to a lack of proper understanding and the pursuit of inappropriate goals. Conduct may still be oppression though it is engaged in for laudable motives, or in layman's terms, the end does not justify the means if the means are wrong. Even if wrong-doing is suspected the response must be within the law since, as taught to every child whose toy is taken by a rival, two "wrongs" do not make a "right".

Oppression does not take place in a vacuum, it is not a "victimless crime" but has consequences, and the consequence in my case was to make it much harder for me to address the many issues needing to be addressed and of concern to me, my clients, my practice and the Complainers. Of course, I cannot say that if this had not happened or that then this or that misfortune would have been avoided though it is not so hard to find instances where such might well be true. But time is not infinite, nor energy, and the more of my resources that had to be directed to fighting fires which ought never to have been kindled the less remained for the proper management of my affairs.

The greatest damage was to morale. The constant, unrelenting, wearing force of the juggernaut which, once put in motion, will not be stopped. The inexorable pressure that condemns to failure every effort to "bounce back". Impervious not just to criticism but to all pleas for understanding, for moderation, for sheer humanity. My letter of 27th September 2004 set out in Answer 1.5 intimating my decision to close the practice concludes: "I am at your mercy", but even that could not be taken for what it was, a simple statement of truth, some other, unstated motive feared, the devious mind perhaps seeing only the reflection of itself in others. So they responded in the only way they knew, the hammer blow, and another and yet another, and if I succumbed eventually to the pressure it was inevitable that I would as even the strongest steel has its breaking point.

Conclusions

There is much more that could be said, some that can be found in the correspondence, some that is in the Answers and some that is not, and there appears even to be some tacit acknowledgement by the Complainers, though not quite fully expressed, that other than the particular charges over Client 85 and insurance the case against me is not of the most serious.

The contents of the Answers reflect what was understood in the aftermath of disaster, what was then seen and felt, and are necessarily incomplete, the view of the outsider who does not see how the hands move and the pack is shuffled, not the inside view which has only now been granted. But the thread running through the events can be discerned. The blundered interview of 24th July 2003, the dishonesty of the inspection of October 2003, the embarrassed silence with which my letter of 15th January 2004 was received, the behind the scenes manoeuvrings over professional indemnity insurance and poisoning of our reputation with our insurers, the utter blindness of believing that affairs could be left in the charge (albeit nominal) of persons whose position was compromised, the attempt to re-write rules to bring a situation which was undoubtedly bad, the Client 85 transaction, into a category from which there could be no escape, the provocation of the inspection of July 2004, executed with cool though misguided deliberation and seen perhaps as a chance to deliver the final *coup de grace* which came at length with the withdrawal of my practising certificate and the appointment of a judicial factor.

Conjecture cannot be the basis of a "case" when something must be proved, but one who stands accused has no such burden of proof and may look wider in stating his defence. The hypothesis which follows has not been explored in evidence and would doubtless be denied if put to any witness but is suggested as a plausible explanation for why at the end matters unfolded as they did.

There was no evidence to implicate me in the fraud surrounding Client 85, and in the absence of evidence there were no grounds for any "belief" that would justify action of any kind being taken against me. But evidence is one thing

and suspicion quite another, and if it was suspected that I might be implicated there would be a strong desire to “get to the truth” which could explain why rules and procedures were so readily abandoned to achieve an “inspection” without prior warning. If suspicion extended to conviction this could also explain the “reconstruction” of the Rules and the lengths taken to contrive a “deficit” on the client account, the determination to suspend my practising certificate despite all pleas and even my decision to close the practice, and finally the appointment of a judicial factor. The slight regard shown for the position of Duncan Drummond whose blunders were no less than mine but who was clearly unconnected with my clients can also be better understood in this light. But that is all conjecture as there is no evidence. Of course all that was done would still be wrong, nothing would be justified, but it would explain why I who am not a thief have been treated worse than if I were.

None would dispute the Complainers’ right to take interest in the conduct or condition of a solicitor’s practice, to enquire and if need be take action, but only action which is reasoned and considered, which is justified and action which is lawful. Consider instead how the gentlemen of 1949 would have handled affairs, in the manner to which they were accustomed as members of a “gentleman’s club”. There would be no “push-over”, no turning of a blind eye, the expected standards would undoubtedly be upheld, but respect would be accorded and dignity maintained. How different from 2004.

How could this situation have occurred in a body such as the Law Society of Scotland, in this organisation of all others? Self deception may have played a part, not all deliberate as by the use of mirrors but with an abundance of smoke causing truth to be obscured. A false statement, if repeated, can come to be accepted as truth. It appears that a myth was created and that even experienced inspectors have not escaped the influence of the mythical “Richard Thorburn” in their observations. “Group think”, the pressure to conform to an accepted view which was identified as the reason for the failure by the security services to understand for what it was evidence which they already held of preparation and planning for the atrocities of 11th September, is a powerful force not easily recognised or avoided. The “view” of the Law Society of Scotland was firmly established, and deviance was not encouraged.

My perception of the Law Society of Scotland was never of a barrel only of bad apples, and on the contrary I have had fair treatment from many. Nor can there be any question that the notion of oppression would be foreign to many who have participated in the events narrated. Some were no doubt simply swept along, though it is also clear that others were willing and active “sweepers”, but the conclusion is hard to escape that the culture of the institution has played a part. Transparency, openness by another name, is the enemy not only of deliberate wrong-doing but of error of all kinds, and an organisation so reluctant to embrace debate which sees any questioning of its practice as a challenge to its authority lacks the natural defences which in another would defeat the virus of oppressive conduct.

However, knowledge or understanding of how events may have occurred is one thing, to condone them quite another, and it is respectfully submitted that anything less than rejection of all charges against me in this case will be a denial of justice. If it is considered that more needs to be said that is for the Tribunal to determine.

THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

SUBMISSIONS on DISPOSAL

by RICHARD THOMAS THORBURN

in the Complaint by the Council of the Law Society of Scotland

against

JOHN ATUAHENE and RICHARD THOMAS THORBURN

Both the Findings in Fact and Findings of Professional Misconduct though they repeat much that is contained in the Complainers' Statement of Facts also omit items of importance from the original allegations the effect of which can only be to reduce the seriousness of the charges. Allegations of deficits are a particular example.

On the other hand as the reasons for the decision have still to be given it is difficult at this stage to offer useful comment while the view taken by the Tribunal on certain matters has not been fully revealed, and it is proposed therefore to make only limited comment on the substance of the charges.

It is submitted as a general observation that evidence which was before the Tribunal but was not considered to establish a defence to the charge may nevertheless be relevant to the question of mitigation and should be taken into account for that purpose, for instance in relation to the allegations under Rule 11.

Furthermore, not all of the evidence given by the witnesses for the Complainers was wholly negative in so far as it related to me.

The two instances of deficits were of short duration and were resolved quickly before the "apparent" deficit in the figures could become a "real" deficit in the funds of the practice.

On the matter of indemnity insurance the Tribunal heard evidence of the efforts made by Mr Atuahene and me to resolve the questions concerning the policy and of the circumstances in which the outcome we sought could not be achieved.

Turning to my personal circumstances, the Tribunal has heard that a judicial factor was appointed to my estates and to what remained of the conjoined practices on 15th December 2004. This remained in place until sequestration under the Bankruptcy (Scotland) Act 1985 was granted with effect from 13th December 2007. The sequestration having commenced before the recent changes in the law the earliest date on which I can expect to be discharged is therefore 13th December 2010.

I have not applied for nor held a practising certificate since 7th October 2004 when the certificate I then held was suspended. While it remains my wish to have the right to re-apply if I should so decide I understand that as matters stand the issue of a certificate in that event would be at the discretion of the Council of the Law Society by virtue of sub-sections 15(2)(c), (f) and (h) of the Solicitors (Scotland) Act 1980.

I have a small income from part-time consultancy work, giving advice, assisting in negotiations, composing letters, etc, but I have been fortunate in the generosity of friends who have provided help and support in various forms during the period since December 2004 and continuing.

It is submitted that any financial penalty would be inappropriate in my case all my assets having been placed under the control of the judicial factor and thereafter having vested in the trustee in the sequestration which still continues.

Similar considerations apply in relation to the expenses of the proceedings as the effect of imposing a burden of expenses should not be ignored. I have received the submissions of the Fiscal while preparing these submissions. Although I was unable to meet Ms Johnston in Edinburgh to discuss the possibility of a Joint Minute I attended a meeting at her office in Dunfermline a short time later, but it was apparent that the nature of the dispute made a Joint Minute covering more than formal or routine matters impracticable and that nothing that might be agreed would make the attendance of any of the proposed witnesses unnecessary. This is also borne out in the time take by the Tribunal in reaching what was clearly a difficult decision. That the Tribunal have not found established the particular matter of complaint which on the evidence of the Complainers' witness Morna Grandison was the primary reason for seeking the appointment of a judicial factor indicates that the balance of success is less one-sided than might appear at first sight. In the circumstances it would be inappropriate to make any award of expenses in my case.

EXPENSES

On behalf of the Law Society of Scotland I move the Tribunal to grant expenses in favour of the Complainers as the successful party in these proceedings. The findings of professional misconduct are such that there has been success in the main and most serious issues which were the subject of complaint and which formed the basis of the original charges.
The duration of these proceedings has been unique. On behalf of the complainers I made efforts at the commencement of proceedings to come to agreement with the respondents on the issues raised in the complaint and in relation to procedure. I wrote to both on 28 October 2005. I sought to agree a factual position on as much as possible leaving the assessment of the degree of culpability to be addressed. As a result Mr Atuahene did contact me and a meeting took place in Glasgow at the offices of Fleming Reid. This resulted in the Joint Minute, which has been part of the proceedings. Unfortunately, due to the approach taken by Mr Atuahene this did not shorten the proceedings to any great extent. Mr Thorburn was unable to attend a meeting that day.
During the proceedings at the suggestion of the Chairman I wrote to both respondents again inviting them to a meeting at the Society's premises on 16 February 2007. The purpose was to discuss matters and seek to come to agreement on issues where there was no dispute with a view to reducing the need for oral evidence. Mr Atuahene attended but I regret to say he had an entirely different view of almost every aspect of the case to mine and was either unable or unwilling to agree evidence. Mr Thorburn had been on his way and, I cannot recall now what happened, but was prevented from arriving in time.
I refer to Lord President Cooper in Howitt v Alexander & Sons, 1948 S.C. 154, at 157-

"*An award of expenses according to our law is a matter for the exercise in each case of judicial discretion, designed to achieve substantive justice, and very rarely disturbed on appeal. I gravely doubt whether all the conditions upon which that discretion should be exercised have ever been, or ever will be, successfully imprisoned within the framework of rigid and unalterable rules, and I do not think that it would be desirable that they should be. In*

MacLaren on Expenses the principle is laid down upon the authority of a number of cases that 'if any party is put to expense in vindicating his rights he is entitled to recover it from the person by whom it was created, unless there is something in his own conduct that gives him the character of an improper litigant in insisting on things which his title does not warrant'."

I submit that there is nothing in the behaviour of the Complainers in raising and pursuing this case that could be regarded as improper, careless or misleading. I accept that I asked to depart from some of the original charges. This was not because they were unjustifiably raised in the first place. There were a number of reasons. Firstly I ask you to accept, having heard the evidence of the situation when the Judicial Factor took occupation, that this was not an easy situation to assess. Information was not only coming to light prior to the Complaint being submitted for consideration but also during the four years of evidence. Secondly, the respondents did not specifically answer the issues at the heart of the complaint in a manner that would have allowed for the restriction of witness evidence. In particular there were denials in the pleadings which meant that proof had to be led on the facts. In the case of Mr Atuahene a definitive position could not even be arrived at when he gave evidence although he did seem to make concessions which would have been capable of agreement at the start. In relation to Mr Thorburn it was only latterly that he reached the view that it would have been better to agree some of the factual evidence. Thirdly, the length of time the prosecution lasted meant that witness evidence in some areas was either not available or less reliable.

This complaint could fairly be considered as having three sections. The first is the conduct complaints against Mr Atuahene. The second is that dealing with the accounts rules issues when each was a sole practitioner. The third is the matter of the partnership, the indemnity insurance and the accounts rules issues arising when they were in partnership.

I refer specifically to the conduct complaints against Mr Atuahene alone. These were reduced in number but not because the inclusion of those departed from was unjustified but because the evidence, due to the passage of time, was unavailable. Mr Thorburn did not feature in these issues and may fairly argue that he did not contribute to that section of the complaint or the

costs involved. That is a matter for the Tribunal to consider should it feel that there should be an apportionment of expenses.
As regards the other sections I submit that it would be appropriate to regard them as jointly liable. The time spent on the evidence of the individual accounts rules issue for the separate partnerships was roughly the same.

DISCIPLINARY RECORD – JOHN ATUAHENE

I note that Mr Atuahene seemed to suggest that his disciplinary record should not be considered by the Tribunal. I submit that it should. This is not the same as the production of previous convictions in criminal procedure. Even there subsequent convictions are brought to the notice of a sentencing sheriff. Disciplinary hearings are civil proceedings and it is important for the Tribunal to see what is noted on his record. What weight should be attached to that is a different matter, particularly where the case was dealt with after these proceedings were raised, as it was. The other complaint was raised on 5 June 2006 and heard on 13 November. It related to matters which had occurred in the period February to July 2004 when he was a sole practitioner. On that basis it could not be argued that he had ignored a previous finding and offended again. What it can show, however, is another aspect of how he conducted himself as a solicitor while in practice. The Tribunal can look at this finding when considering the whole picture of this man and his suitability to be a solicitor.

SUBMISSIONS BY JOHN ATUAHENE RE EXPENSES

The Council of the Law Society of Scotland
against
John Atuahene and Richard Thomas Thorburn

Initially I did not intend to make a lengthy submission in respect of expenses. However having read the Fiscal's submissions I wish to make the following submissions in response to some of the Fiscal's comments.

It is correct I met with the Fiscal and discussed matters with a view to reaching an agreement on the evidence. The result of the meeting was that a Joint Minute which was prepared and signed by me and the Fiscal was lodged in process. We could not reach an agreement on the evidence relating to issues which were in dispute. However in the light of the Joint Minute a large proportion of the evidence led in relation to Articles 2 to 12 by the Fiscal was unnecessary.

The Tribunal will recall that when Morna Grandison was giving evidence she said that certain deeds which were not registered by me were uplifted by her and her staff from rn, former office 34 Argyll Arcade. She further said she arranged for these deeds to he recorded. Upon cross-examination Moma Grandison repeatedly told the Tribunal that these deeds were not registered by me and that she uplifted them from my former office. At that point with your permission I lodged certain documents at the hearing to prove that contrary to what she said I did in fact register the deeds in question. When I put the documents to Morna Grandison she effectively admitted that the deeds in question were in fact registered by me. Quite simply her earlier evidence on the matter was untrue. You will recall that immediately after the cross-examination the Fiscal requested an adjournment for few minutes apparently to make further investigations into the matter. It was after about 40 minutes, at least, that the hearing resumed. When the hearing resumed the Fiscal spent few minutes trying to explain the discrepancy in Morna Grandison's earlier evidence and thereafter proceeded to ask Morna Grandison further questions in order to clarify matters. This situation was unacceptable and did significantly contribute to the length of proceedings.

Following issues raised by the Second Respondent three or four debates occurred between the Fiscal and the Second Respondent. The Tribunal's decisions in respect of the debates were in favour of the complainers. I suggest that the expenses relative to the debates should appropriately be awarded against the Second Respondent- the expenses should not be awarded against me.

Disciplinary Record against me: A
the time the Tribunal made the decision me on **13** November 2006 and awarded relative expenses against me I was still sequestrated. The expenses were awarded against me by the Tribunal in their knowledge of the fact that I was still sequestrated.

The written determination of the Tribunal which contains all the evidence etc is self explanatory. The relative complaint should have come before you for determination along with the other matters but for some unknown reason had to be separately raised for the attention of another tribunal.

The Fiscal maintains “the Tribunal can look at this finding when considering the whole picture of this man and his suitability to be solicitor.” However I have to point out that this is something for which I was found guilty and punished. The Tribunal in looking at my disciplinary record has to avoid allowing this to influence them to impose a severer penalty for the complaint before them than is necessary as this will amount to duplication of punishment for the offence previously determined to have been committed.

I have not been able to work since August 2004 due to illness. I am on sickness benefit.
By John Atuahene