

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

FINDINGS

in Complaints

by

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

against

**MICHAEL CHAPMAN, Solicitor,
19 Caulfield Terrace, Inverness**

1. A Complaint dated 3 April 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Michael Chapman, 19 Caulfield Terrace, Inverness (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers in the form of a letter were lodged by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be set down for a procedural hearing on 17 July 2013 and notice thereof was duly served on the Respondent.
4. When the case called on 17 July 2013, on the Joint Motion of both parties, the Tribunal agreed to sist the Complaint because there were other matters due to come to the Tribunal against the Respondent.

5. Another Complaint dated 8 January 2015 was lodged with the Tribunal by the Complainers averring that the Respondent was a practitioner who may have been guilty of professional misconduct.
6. In respect of the second Complaint, there were three Secondary Complainers being (1) John Marshall on behalf of Incinalysis Ltd, F1 - F3 Menstrie Business Centre, Elmbank Mill, The Charrier, Menstrie, Clackmannanshire, who was not looking for compensation; (2) Richard Andrew Potter, Stenkyrka Stenstugu, 436 624 42, Tingstade, Isle of Gotland, Sweden, who was looking for compensation; and (3) Eamonn Holden, 11 Elm Lawn, Portlaoise, County Laois, Ireland, who was also looking for compensation.
7. The Tribunal caused a copy of the second Complaint as lodged to be served upon the Respondent. Answers in the form of a letter were lodged by the Respondent.
8. In terms of its Rules, the Tribunal appointed both Complaints to be set down for a procedural hearing on 1 May 2015 and notice thereof was duly served on the Respondent.
9. When the Complaints called before the Tribunal on 1 May 2015, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. A full hearing was fixed in respect of both Complaints for 26 June 2015.
10. The Respondent then instructed Mr Burnside to act on his behalf. As Mr Burnside was not available on 26 June 2015, the hearing was adjourned to 27 August 2015.
11. When the Complaints called on 27 August 2015 the agent acting on behalf of the Respondent was unwell and accordingly the matters were adjourned to 12 November 2015.

12. The Complaints called for hearing on 12 November 2015. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by David Burnside, Solicitor, Aberdeen. Both Secondary Complainers who were looking for compensation, being Mr Potter and Mr Holden, were in attendance.
13. Joint Minutes were lodged admitting the facts, averments of duty and averments of professional misconduct in both Complaints. The Joint Minute however did not admit the compensation claims of Mr Potter and Mr Holden.
14. The Tribunal insofar as the averments of fact in the Complaints were admitted, found the following facts established:-

14.1 The Respondent's date of birth is 19 May 1958. From 1 November 1993 he practised as Chapman & Co, Solicitors, latterly from an address at 19 Caulfield Terrace, Inverness IV2 5GG. He was sequestered in August 2012 but remains on the Roll of Solicitors.

Practising Certificates

14.2 The Respondent's Application and cheque for renewed Practising Certificates for Mrs A and himself in respect of the Practice Year beginning 1 November 2011 was received by the Complainers' Registrars' Department on 30 November 2011.

The Application was processed and the cheque was banked. Practising Certificates dated 1 November 2011 were issued to the Respondent and to Mrs A.

14.3 The Respondent's cheque was presented on 8 December 2011. It was dishonoured and was re-presented by the Complainers'

bank. The cheque was again dishonoured on 13 December 2011, returned to the Complainers and passed to the Registrars' Department on 20 December 2011.

- 14.4 The Complainers wrote to the Respondent on 20 December 2011 noting that the cheque had been returned by the bank and requesting fresh payment immediately.

The Registrars' Department spoke by phone on the same date to the Respondent who undertook to make immediate payment to rectify the position.

- 14.5 On 5 January 2012 the Complainers emailed the Respondent referring to the telephone conversation on 20 December, to the Respondent's undertaking to make immediate payment and noting that payment had not been made.

- 14.6 On 6 January 2012 the Complainers received a further cheque from the Respondent. The cheque was presented for payment on 13 January 2012, was initially dishonoured but was immediately re-presented and then honoured on the same date.

Professional Indemnity Insurance

- 14.7 In settlement of the firm's professional indemnity premium, the Respondent sent a cheque to the Brokers, Marsh, which was received by Marsh on 24 November 2011. The cheque was presented for payment by Marsh and then returned to them unpaid on or about 9 December 2011. The matter was referred to the Marsh Master Policy Professional Indemnity team on 23 January 2012.

- 14.8 Marsh requested payment from the Respondent by direct funds transfer and the transfer was effected by the Respondent on 26 January 2012.

SLCC Annual Levy

- 14.9 On 20 May 2010 the Complainers' Registrars' Department wrote to Chapman & Co with a Remittance Advice in respect of the annual levy payable to the Scottish Legal Complaints Commission in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 and due as at 30 June 2010.
- 14.10 The Remittance Advice included the names of the Solicitors within the firm who held Practising Certificates and who were therefore liable to pay the levy. The Solicitors were the Respondent and Mrs A who was an employee of the firm. Both Solicitors were obliged to pay £235 each.
- 14.11 In the absence of any payment a letter was issued to the Respondent on 12 July 2010 reminding him of his duty to pay the levy. An "overdue reminder" was sent to the Respondent on 18 August 2010. The letter noted that the Complainers reserved their right to recover the debt in terms of the 2007 Act, Section 27(4) and to treat any failure to make payment as misconduct in terms of Section 27(5).
- 14.12 On 27 May 2011 the Complainers wrote to Chapman & Co with a Remittance Advice in respect of the levy due as at 30 June 2011. The Advice again stated the Solicitors holding Practising Certificates and liable to pay the levy as the Respondent and Mrs A. Both were due to pay £209 each.
- 14.13 In the absence of any payment, a letter was issued to the Respondent on 21 July 2011 reminding him of his duty to pay

the levy. A “final reminder” was sent to the Respondent on 31 August 2011. The letter noted that the Complainers reserved their right to recover the debt in terms of the 2007 Act Section 27(4) and to treat any failure to make payment as misconduct in terms of Section 27(5).

The Respondent was invited to make payment by 31 October 2011 to avoid further action.

14.14 In the continuing absence of any payment, a further letter was issued to the Respondent on 7 February 2012 noting that £444 remained outstanding and payable. The said sum represented the levies due by the Respondent for 2010 and 2011. The letter again made reference to the 2007 Act, Section 27(4) and Section 27(5).

14.15 The Complainers submitted a Complaint to the Scottish Legal Complaints Commission who referred the matter back to the Complainers for investigation.

14.16 The Complainers wrote to the Respondent on 20 July 2012 advising him of their statutory obligation to investigate complaints in terms of the Legal Profession and Legal Aid (Scotland) Act 2007, Section 47(1). The letter enclosed a “Summary of Complaint” which inter alia complained that the Respondent:-

1. Sought to obtain a Practising Certificate from the Society and Master Policy Insurance Cover from Marsh on more than one occasion by means which he knew or ought reasonably to have known would be dishonoured.
2. He failed to make payment of the SLCC general levies due on 30 June 2010 and 30 June 2011 in contravention

of the Legal Profession and Legal Aid (Scotland) Act 2007, Section 27.

- 14.17 The Complainers instructed a Reporter whose report was provided to the Respondent by the Complainers in a letter dated 19 November 2012 together with intimation that the Complaint would be considered by a Professional Conduct Sub Committee. By letter dated 6 December 2012 the Complainers advised the Respondent that the Complaint would be considered by the Professional Conduct Sub Committee on 10 January 2013.
- 14.18 On 10 January 2013 the Complainers' Professional Conduct Sub Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor and appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct. The Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980, Section 51, to prosecute the Respondent.
- 14.19 On 25 January 2013 the Complainers wrote to the Respondent enclosing a copy of the Sub Committee determination.

JOHN MARSHALL ON BEHALF OF INCINALYSIS LIMITED

- 14.20 Mr John Marshall (hereinafter referred to as Secondary Complainer 1) is the chairman and managing director of Incinalysis Limited. Secondary Complainer 1 was instructed by the Respondent on 6 September 2010 to prepare a report on behalf of a client of the respondent's firm, Chapman & Co.

14.21 The work was undertaken by Secondary Complainer 1 between September 2010 and February 2011. An invoice dated 28 February 2011 was issued to Chapman & Co by the Secondary Complainer for the sum of £1,099.31 on 25 May 2011.

No acknowledgment or other response was received by the Secondary Complainer from the Respondent.

14.22 In respect of the matter on which Secondary Complainer 1 was instructed, the Respondent submitted his account to SLAB on 6 June 2011. It included an expert fee dated 25 May 2011 for the sum of £1,099.31.

14.23 On 12 August 2011 staff at Incinalysis Limited contacted the Respondent about the outstanding invoice. The Respondent advised he was aware of the situation but would look into the matter.

14.24 On 22 August 2011 staff at Incinalysis Limited left a telephone message for the Respondent. On 23 August 2011 the Respondent replied by email to advise that fee would be settled in “the next couple of weeks” following a delay in submitting the account to SLAB. This was duly acknowledged by Secondary Complainer 1 who accepted he had been late in issuing an invoice to the Respondent.

14.25 On 7 October 2011 the outstanding invoice was “chased up” by Incinalysis Limited in an email to the Respondent. The Respondent replied the same day to advise that his client’s account had been paid by the Scottish Legal Aid Board and that he (the Respondent) intended to hand the cheque to Secondary Complainer 1 at Court on 18 October 2011, which failing he would send it in the post.

- 14.26 On 28 November 2011 Incinalysis limited issued a reminder statement by post to the Respondent as the fee was still outstanding. The statement referred to the payment as being 6 months overdue and that it required immediate attention. The statement was addressed to Chapman & Co.
- 14.27 On 5 December 2011 Secondary Complainer 1 left a telephone message for the Respondent in relation to the outstanding invoice. The Respondent returned the call on 7 December 2011 advising that he was away on business but a cheque would be issued upon his return.
- 14.28 The Respondent issued a cheque for £1,099.31 to Incinalysis Limited under a cover letter dated 27 December 2011. Secondary Complainer 1 duly acknowledged the same to the Respondent in a letter dated 4 January 2012. On 5 January 2012 the Secondary Complainer 1's bank wrote to Incinalysis Limited to advise that the cheque had been returned unpaid and that it would be re-presented. A further letter from the bank dated 10 January 2012 confirmed that the cheque has been returned unpaid for the second time.
- 14.29 By letter dated 9 January 2012 Secondary Complainer 1 sent a copy of the bank's initial letter to the Respondent. On 10 January 2012 the Respondent contacted Secondary Complainer 1 apologising for the confusion and stating that a further cheque would be sent. No cheque was sent.
- 14.30 Secondary Complainer 1 took steps to resolve the matter informally with the assistance of a solicitor known to both parties. It was agreed that the Respondent would be given until 23 March 2012 to make payment.

- 14.31 Secondary Complainer 1 checked with SLAB and was advised that the Respondent's Account had been paid in July 2011. A final demand together with a cover letter were then issued to Chapman & Co on 4 April 2012. The letter confirmed the information provided by SLAB, advised that Secondary Complainer 1 had referred the matter to the Scottish Legal Complaints Commission (SLCC) and that Court Action would be instigated to recover the outstanding sum if it was not received within 7 days of the letter.
- 14.32 Secondary Complainer 1 made a complaint to the SLCC on 17 April 2012 and the SLCC subsequently referred the matter to the Complainers.

The summary of the Complaint was:-

“I, John Marshall wish to complain in my capacity as a Chairman and Managing Director of Incinalysis Ltd and on behalf of Incinalysis Ltd about the inaction of Mr Michael Chapman of Chapman & Co who instructed Incinalysis Ltd on 6 September [sic] 210 to provide an opinion in respect of the case PF (Dingwall) v John Pirie at Dingwall Sheriff Court, as evidenced by:

1. To date, Mr Chapman has failed and/or delayed to make the payment of professional fees for £1,099.31, despite the fact that the firm of Chapman & Co have been paid for this case by the Scottish Legal Aid Board in June 2011.”

- 14.33 The Complainers wrote to the Respondent intimating the initial complaint on 21 June 2012 at his office at Union Street, Inverness. Due to a lack of response, the Complainers by recorded delivery issued statutory notices in terms of Section

15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007.

Both Statutory notices were returned on 23 July 2012 to the Complainers marked 'addressee gone away.'

14.34 On 24 July 2012 the Complainers by recorded delivery letter wrote to the Respondent at his home address re-intimating the Complaint. No response was received to this letter.

14.35 Ultimately Secondary Complainer 1 instructed a firm of solicitors to raise a Small Claims Court action at Inverness Sheriff Court for the outstanding fees. By letter dated 19 July 2012 the Secondary Complainer confirmed to the Complainers that decree had been granted against the Respondent.

14.36 On 24 August 2012 the Complainers issued statutory notices to the Respondent in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007.

No response was received from the Respondent.

14.37 On 19 September 2012, a statutory notice in terms of section 15(2)(i)(ii) of the Solicitors (Scotland) Act 1980 was issued by the Complainers on the Respondent. This notice was a result of the Respondent's failure to respond to the Complainers.

An additional complaint was also intimated to the Respondent in respect of his failure to respond to the Complainers.

No response was received from the Respondent.

14.38 On 14 November 2012 Secondary Complainer 1 wrote to the Complainers to confirm he had recovered payment of the outstanding fee of £1,099.31 plus interest of £70.

14.39 The Complainers issued letters to the Respondent on 28 March 2013 and 17 April 2013 seeking further information.

By letter dated 23 April 2013 the Respondent replied to the Complainers. He confirmed he had instructed Secondary Complainer 1 to prepare a report. He also explained because of “acute financial difficulties” the initial cheque in settlement was dishonoured. The Respondent also apologised for his delay in sending the client file to the Complainers.

By letter dated 29 May 2013 the Respondent sent the client file to the Complainers.

14.40 The Complainers prepared a Report in respect of the complaint. A copy of the Report was issued to the Respondent by letter dated 8 July 2013. The Respondent was advised the matter would go before the Complainers’ Professional Conduct Sub Committee for consideration.

14.41 The complaint was considered by the Complainers’ Professional Conduct Sub Committee on 29th August 2013.

The Sub Committee determined that the Respondent in relation to:

1. his failure and/or delay in making payment of professional fees to Secondary Complainer 1 despite being paid for the case by the Scottish Legal Aid Board in June 2011, and

2. his failure to respond to correspondence from the Complainers appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; it had appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

The Sub Committee determined that the complaint should be prosecuted in terms of the Solicitors (Scotland) Act 1980, section 51.

By letter dated 11 September 2013 the Complainers wrote to the Respondent enclosing a copy of the Sub Committee's determination.

RICHARD ANDREW POTTER

- 14.42 Richard Potter, Secondary Complainer 2 appeared as a Defence witness in the case of Procurator Fiscal v Mr C which called at Inverness Sheriff Court in July 2011. The Respondent was conducting the accused's defence.

Secondary Complainer 2 was required to travel from his residence in Sweden to attend the trial.

- 14.43 In September 2011 Secondary Complainer 2 submitted a request to the Respondent for payment of his expenses for attending as a witness. Despite subsequent repeated requests for payment, the Respondent failed to make payment to Secondary Complainer 2.

- 14.44 Secondary Complainer 2 attended the Respondent's office in Inverness during April 2012. He met the Respondent who

issued him with a cheque dated 9th April 2012 in the sum of £834.37 and drawn on an account in the name of the Respondent, Mr Michael Chapman.

14.45 Secondary Complainer 2 presented the cheque to his bank. The cheque was dishonoured and returned to Secondary Complainer 2 on 20th April 2012 with the words “Refer to Drawer” stamped on the cheque.

14.46 On 12th May 2012 Secondary Complainer 2 wrote to the Respondent expressing his concerns about the dishonoured cheque and invited the Respondent to reissue a further cheque in his favour. No response was received from the Respondent.

14.47 On 27th September 2012 Secondary Complainer 2 contacted the Scottish Legal Aid Board (SLAB) by telephone requesting information as to whether the Respondent had received payment from SLAB in relation to his claimed expenses.

By email dated 27 September 2012, Mr B, an employee of SLAB emailed Secondary Complainer 2 confirming the Respondent had been paid in full on 23 September 2011 for the work done in conducting the defence of Mr C, including provision for witness expenses, and in particular the £834.17 sought by Secondary Complainer 2.

14.48 On 20th August 2012 Secondary Complainer 2 made a complaint to the Scottish Legal Complaints Commission (SLCC) and on 13 December 2012 the SLCC referred the matter to the Complainers.

The summary of complaint was:-

“I, Mr Richard Potter wish to complain about the action/inaction of Mr Michael Chapman of the former firm of Chapman & Co, regarding the expenses I submitted for my attendance as a witness in relation to the Trial of his client, Mr C, at Inverness Sheriff Court in Spring-Summer 2011, as evidenced by:

1. Mr Chapman has failed to pay my expenses as a result of attending Court as a Witness for his client. This I have confirmed with the Scottish Legal Aid Board who said that they paid £834 to Chapman & Co on 23 September 2011, specifically for Richard Potter’s expenses. Despite me submitting my request during August 2011.
2. Mr Chapman inappropriately gave me a personal cheque to cover my expenses on 9 April 2012 which was subsequently dishonoured.”

14.49 By letter dated 16 January 2013 the Complainers wrote to the Respondent enclosing a summary of the complaint and confirmed a Report would be prepared in respect of the complaint. The Complainers requested a response within twenty-one days setting out the Respondent’s position and requiring him to provide the relevant business file.

14.50 The Respondent wrote to the Complainers by letter dated 24th April 2013 in response to the complaint, stating *inter alia*:

“I can confirm that Mr Potter gave evidence as a defence witness in the case of P.F.(Inverness) -v- Mr C and that, because of acute financial difficulties at the time, my initial cheque in settlement of his expenses was dishonoured. I can also advise that I thereafter offered to pay Mr Potter by bank transfer (he was living in Sweden at the time) but that he said

that he would prefer another cheque and I sent one to him at his address in Sweden. This cheque was never presented for payment. I can also confirm that this matter came to the attention of Ms. D and was referred to the Guarantee Fund Sub-Committee who, I understand, decided to take no further action against me. I appreciate, however, that Mr Potter is still “out of pocket” and I am more than happy to make payment to him if you can advise me of his current address.”

- 14.51 The Complainers wrote to Secondary Complainer 2 by letter dated 3 May 2013 enclosing a copy of the Respondent’s letter and asked whether Secondary Complainer 2 was happy that the Respondent to forward a cheque to the Complainers to settle the expenses.

Secondary Complainer 2 responded by email dated 4 May 2013 indicating this was the first indication he had had that the reissued cheque had purportedly been sent to his Swedish address. Secondary Complainer 2 confirmed he would be happy to receive the outstanding payment by the Respondent transferring funds to the Complainers for forwarding to him.

- 14.52 The Complainers by letter of 16 May 2013 invited the Respondent to make payment in respect of Secondary Complainer 2’s expenses in the manner suggested. The Respondent confirmed by letter dated 29th May 2013 he was happy to do so, stating:

“I refer to your letter dated 16th May 2013, relative to the above, and apologise for the delay in my relying thereto. I am perfectly happy to proceed in the manner suggested by Mr Potter and should be grateful if you would provide me with the appropriate bank details. On receipt of these the sum due to Mr Potter will be transferred without further delay.”

By letter dated 14 June 2013 the Complainers provided the Respondent with their full Bank details.

No payment was received from the Respondent.

- 14.53 In absence of payment, the Complainers prepared a Report which was provided to the Respondent by letter dated 27 August 2013, together with intimation that the Complaint would be considered by a Professional Conduct Sub Committee.
- 14.54 On 10 October 2013 the Complainers' Professional Conduct Sub Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor and appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct. The Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980, Section 51, to prosecute the Respondent.
- 14.55 On 23 October 2013 the Complainers wrote to the Respondent enclosing a copy of the Sub Committee determination.
- 14.56 The Respondent contacted the Complainers by email on 25 June 2014 to seek clarification of the amount due to be paid to Secondary Complainer 2. The Complainers responded to confirm the outstanding expenses due were £834.37.

On 28 July 2014 the Complainers received a cheque from the Respondent in the amount of £834.37. Following clearance, the

Complainers forwarded the payment to Secondary Complainer 2 in or about September 2014.

By email of 28 November 2014 Secondary Complainer 2 confirmed he had received payment from the Complainers.

EAMONN HOLDEN

14.57 Eamonn Holden, Secondary Complainer 3 appeared as a Defence witness on behalf of his brother Mr C in the case of Procurator Fiscal v Mr C which called at Inverness Sheriff Court in July 2011. The Respondent was conducting the accused's defence. Secondary Complainer 3 was required to travel from his residence in Republic of Ireland to attend the trial.

14.58 As a result of his attendance in Inverness Sheriff Court on 8th and 9th July 2011, Secondary Complainer 3 incurred various expenses, including arranging emergency cover at his business, travelling to and from Dublin Airport by taxi, train and bus costs.

In or about November 2011 after the attendance at the Court, Secondary Complainer 3 submitted an expenses claim to the Respondent in respect of his attendance. Despite repeated requests for payment, the Respondent failed to make payment to Secondary Complainer 3.

14.59 By letter dated 8th December 2011, the Respondent wrote to Secondary Complainer 3 advising that the Respondent had forwarded the details of the expenses to the Scottish Legal Aid Board (SLAB) and stated:

“I should anticipate that they may well request receipts for your employment cover and the train, bus and taxi fares claimed by you. They may also request clarification as to why you took a taxi to and from Dublin Airport, rather than using public transport or your own car”.

- 14.60 By letter dated 8th December 2011, the Respondent wrote to SLAB referring to his Legal Aid account which had been “settled by you on 27th September 2011” and enclosed a claim for witness expenses on behalf of Secondary Complainer 3. The Respondent confirmed Secondary complainer 3 attended the Court on 8th and 9th July 2011 and gave evidence on the second day. He also confirmed he had requested receipts which he would forward once received.

On the respondent’s letter to SLAB someone had written: “pay transport just now £256.09”.

- 14.61 By email dated 24th February 2012, Secondary Complainer 3 wrote to the Respondent explaining there was no public transport between his home and Dublin Airport, which was sixty miles away and that he hired a taxi “at a reduced rate from the norm”. Secondary Complainer 3 also stated he “had to arrange 24 hour cover while [he] was away” as his son, who helped him in the business was on holiday.

The Respondent replied advising he had forwarded Secondary Complainer 3’s email to SLAB and stated:

“If I receive confirmation [...] that they are prepared to meet your claims for your taxi fare and work cover I shall of course pass payment on to you without delay”.

14.62 In the absence of any payment for expenses, Secondary Complainer 3 submitted “Helpform” dated 5th April 2012 to the Scottish Legal Complaints Commission (SLCC).

14.63 By letter dated 16th May 2012, the SLCC advised the Respondent that a complaint had been received (which was attached) and asked the Respondent to clarify when his firm’s service to Mr C (Secondary Complainer 3’s brother) had begun and ended. The Respondent was also asked if his firm had any previous knowledge of the complaint and whether he had an opportunity to resolve the issue.

There was no response from the Respondent.

14.64 On 22nd May 2012, Secondary Complainer 3 made an official complaint to the SLCC and advised them that he had emailed the Respondent some time before to let him know that he intended to lodge a complaint.

The summary of the Complaint was:-

“ I, Mr. Eamonn Holden, wish to complain about the action/inaction of Mr. Michael Chapman of Chapman & Co Solicitors, Inverness, who was instructed in respect of a criminal matter in connection with the case of P.F. v Mr C, as evidenced by:

1. Mr Chapman has failed to reimburse me with my expenses in connection with my attendance at court on 7th and 8th July 2011”.

14.65 By letter dated 28th May 2012, the SLCC wrote to Mr Chapman enclosing a copy of its previous letter, Secondary Complainer

3's Statement of Complaint and stating they required a response from the Respondent within seven days.

There was no response.

- 14.66 By letter dated 14th May 2013, the SLCC advised the Respondent that the matter was being treated as a 'third party' complaint and as such they required further Information in order to prepare an investigation report. The letter explained the SLCC's statutory powers in terms of Section 17 of the Legal Profession and Legal Aid (Scotland) Act 2007 and called upon the Respondent to respond within 14 days.

There was no response.

- 14.67 By letter dated 5th June 2013, the SLCC wrote to the Respondent noting that they had not received a response to their letter dated 14th May 2013. They called upon the Respondent to reply within 14 days.

There was no response.

- 14.68 By letter dated 24th June 2013, the SLCC wrote to the Respondent by recorded delivery, referring to their letters of 14th May and 5th June 2013 and noting they had not received a reply or received the firm's business files. The letter attached a statutory notice under Section 17 which required the Respondent:

"to produce to deliver [his] firm's business file(s), and provide [his] explanation regarding matters to which this complaint relates, to the SLCC by 15th July 2013".

The Respondent was warned that if the SLCC did not hear back from him by the date in question, they may apply to the Court of Session for an order requiring him to “produce or deliver the information or cause it to be produced or delivered”. The letter also stated they might inform the Complainers of the delay which could result in a conduct complaint being made against the respondent. SLCC also advised that alternatively, SLCC may “proceed with its determination of the complaint without reference to the file(s)”.

There was no response.

- 14.69 By letter dated 15th July 2013, the SLCC wrote to the Respondent referring to its ‘Section 17’ letter and to his obligation to deal with the service complaint against his former firm and called upon him to respond within the next seven days. They warned the Respondent that if he failed to reply, SLCC would “give consideration to referring the failure to the Law Society as per the Notice dated 24th June 2013.

There was no response.

- 14.70 By letter dated 23rd July 2013, the SLCC wrote to the Complainers advising that it had not heard from Mr Chapman and enclosed an amended Statement of Complaint, which libelled a failure and/or delay to respond to the Commission.

- 14.71 By letter dated 14th August 2013, SLCC wrote to the Respondent enclosing copies of SLCC’s previous correspondence and noted the Respondent as having “failed to acknowledge or respond to any of these letters” and that they had decided to libel an additional issue: “relating to [his] non-cooperation in responding to the SLCC, which will be referred

to the Law Society of Scotland”. The Respondent was urged to respond to SLCC.

There was no response.

- 14.72 By letter dated 29th August 2013, the Complainers wrote to the Respondent enclosing a Summary of Complaint and confirming they had a statutory obligation to investigate. The Complainers requested a response within twenty-one days setting out the Respondent’s position and requiring him to provide the relevant business files.

In the absence of any reply the Complainers wrote to the Respondent on 2nd October 2013 issuing Notices in terms of the Solicitors (Scotland) Act 1980, Section 15(2) and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007, Section 48.

No response was received.

The Complainers wrote to the Respondent on 23rd October 2013 issuing a Notice in terms of the Solicitors (Scotland) Act 1980, Section 15(2) requiring him to give six weeks’ notice of his intention to apply to take out a Practising Certificate.

- 14.73 By letter dated 13th November 2013, the Complainers wrote to the Respondent intimating a further issue libelled, namely that he:

“has failed and/or delayed in responding to correspondence sent to him by the Society in connection with a complaint raised by [...] the said Mr Eamonn Holden”.

There was no response.

- 14.74 By letter dated 28th March 2014, the Respondent wrote to the Complainers advising that after Mr C had been sentenced, the client had instructed another firm. The Respondent confirmed he had sent the papers to that firm on 12th September 2012 and received an expenses claim from Secondary Complainer 3 thereafter.
- 14.75 By letter dated 19th May 2014, the Respondent wrote to the Complainers confirmed (*inter alia*) that SLAB had made a partial refund amounting to £256.09 and noted that: “this money should have been passed on by me to Mr. Holden”.
- 14.76 The complaint was investigated and ultimately considered by the Complainers’ Professional Conduct Sub Committee on 11th September 2014.

The Sub Committee determined that the Respondent’s conduct in respect of:-

1. His failure to reimburse the complainer with his expenses in connection with his attendance at court on 7 & 8 July 2011;
2. His failure to respond to correspondence from the Scottish Legal Complaints Commission; and
3. His failure to response to correspondence from the Law Society of Scotland.

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

beyond reasonable doubt and could therefore amount to professional misconduct.

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

14.77 By letter dated 25th September 2014 the Complainers sent the Respondent a copy of the Professional Conduct Sub Committee Determination.

15. Having considered the foregoing circumstances and having heard submissions from the Complainers and on behalf of the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of:

15.1 His issuing cheques as averred which he knew or ought to have known would not be met by his bank;

15.2 His failure to make payment of the annual levy due for both 2010 and 2011 under the Legal Profession and Legal Aid (Scotland) Act 2007, Section 27;

15.3 His failure and/or delay in making payment of professional fees of £1,099.31, despite the firm of Chapman & Co having been paid for this case by the Scottish Legal Aid Board in June 2011, the Board payment including the said professional fees;

15.4 His failure to respond to the Complainers, notwithstanding the service of the various Notices as averred;

- 15.5 His failure to pay Secondary Complainer 2 (Richard Potter's) expenses timeously despite repeated requests and despite payment of these expenses to the Respondent by SLAB;
 - 15.6 His issuing a cheque as averred which was dishonoured and which he knew or ought to have known would not be met by his bank;
 - 15.7 His failure and/or delay in paying the Secondary Complainer 3 (Eamonn Holden's) expenses for attending as a witness;
 - 15.8 His failure to respond to correspondence from the Scottish Legal Complaints Commission; and
 - 15.9 His failure to respond to correspondence from the Complainers.
16. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 12 November 2015. The Tribunal having considered the Complaints dated 3 April 2013 and 8 January 2015 at the instance of the Council of the Law Society of Scotland against Michael Chapman, 19 Caulfield Terrace, Inverness; Find the Respondent guilty of professional misconduct in cumulo in respect of his issuing cheques which he knew or ought to have known would not be met by his bank, his failure to make payment of the annual levy due for both 2010 and 2011 in terms of the Legal Profession and Legal Aid (Scotland) Act 2007, his failure and/or delay in making payment of professional fees of £1099.31 despite his firm having been paid for the case by the Scottish Legal Aid Board in June 2011, his failure to pay the Secondary Complainer, Richard Potter's expenses timeously despite repeated requests and despite payment of these expenses to the Respondent by the Scottish Legal Aid Board, his issuing a cheque which was dishonoured and

which he knew or ought to have known would not be met by his bank, his failure and/or delay in paying the Secondary Complainer, Eamonn Holden's expenses for attending as a witness, his failure to correspond to correspondence from the Scottish Legal Complaints Commission and his failure to respond to the Law Society notwithstanding the service of various notices; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of two and a half years any Practising Certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal, including expenses of the Clerk, up to and including the finding and sentence in respect of professional misconduct but excluding the Tribunal time taken to deal with the Secondary Complainers' claims for compensation, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Dorothy Boyd
Vice Chairman

17. The Tribunal then went on to consider the Secondary Complainers' claims for compensation. It was clarified that offers had already been made by the Respondent in settlement of the Secondary Complainers' compensation claims but these had been refused. The Tribunal heard evidence from the Secondary Complainers, Richard Potter and Eamonn Holden, and heard submissions from Mr Potter and Mr Holden and also on behalf of the Respondent. The

Tribunal found that the Secondary Complainers had been directly affected by the misconduct.

18. The Tribunal then pronounced Interlocutors in respect of the Secondary Complainers' claims for compensation:-

Edinburgh 12 November 2015. The Tribunal having considered the Complaint dated 8 January 2015 at the instance of the Council of the Law Society of Scotland against Michael Chapman, 19 Caulfield Terrace, Inverness and having determined that the Respondent was guilty of professional misconduct considered that it was appropriate to award compensation to Secondary Complainer 2; Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Richard Andrew Potter, Stenkyrka Stenstugu, 436 624 42, Tingstade, Isle of Gotland, Sweden the sum of £850 by way of compensation in respect of loss, inconvenience and distress resulting from the misconduct within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

(signed)

Dorothy Boyd
Vice Chairman

Edinburgh 12 November 2015. The Tribunal having considered the Complaint dated 8 January 2015 at the instance of the Council of the Law Society of Scotland against Michael Chapman, 19 Caulfield Terrace, Inverness and having determined that the Respondent was guilty of professional misconduct considered that it was appropriate to award compensation to Secondary Complainer 3; Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Eamonn Holden, 11 Elm Lawn, Portlaoise, County Laois, Ireland the sum of £821.09 by way of compensation in respect of loss, inconvenience and distress resulting from the misconduct within 28 days of the date on which

this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

(signed)

Dorothy Boyd
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Dorothy Boyd
Vice Chairman

NOTE

The Tribunal originally received a Complaint against Mr Chapman in 2013 but the matter was sisted to await a further Complaint which was to be sent to the Tribunal. It was agreed that both Complaints be dealt with together. There were three Secondary Complainers in respect of the second Complaint received by the Tribunal. Two of the Secondary Complainers were looking for compensation.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised that Joint Minutes had been lodged in respect of both Complaints admitting the averments of fact, averments of duty and averments of professional misconduct in both Complaints. The two Secondary Complainers' claims for compensation however were not admitted.

In respect of the first Complaint, Mr Reid stated that the Respondent sent cheques which bounced three times in connection with his practising certificate. The cheque was eventually honoured on 13 January 2012. In connection with the cheque sent by the Respondent to pay his professional indemnity insurance, the cheque was returned unpaid but the Respondent effected payment by a direct funds transfer on 26 January 2012. In connection with the Scottish Legal Complaints Commission's annual levy, the Respondent did not make payment of fees for 2010 and 2011. Mr Reid submitted that these matters were sufficient to amount to professional misconduct.

In connection with the second Complaint, there were three Secondary Complainers. Mr Marshall was not seeking compensation but Mr Potter and Mr Holden were. The Respondent had failed to pay an expert's fee in the sum of £1099.31. He had then issued a cheque which had bounced twice. There had been contact and he had made an apology and promised a further cheque. There was mediation and an agreement to pay by 23 March 2012. The Respondent had received the money from the Scottish Legal Aid Board in July 2011. Secondary Complainer 1, Mr Marshall, eventually obtained a decree against the Respondent for the sum due. Mr Marshall confirmed that he had received payment plus interest on 14 November 2012. The Respondent also failed to respond to the Law Society in respect of the matter.

In respect of Secondary Complainer 2, Mr Potter, Mr Potter had appeared as a defence witness in a trial where the Respondent represented a Mr C in Inverness in July 2011. In September 2011, Mr Potter submitted a request to the Respondent for the payment of expenses for attending as a witness. In April 2012 Secondary Complainer 2, Mr Potter, was given a cheque by the Respondent in the sum of £834.37 to meet his expenses but the cheque bounced. In May 2012 Mr Potter wrote to the Respondent expressing his concerns about this. On 27 September 2012 Mr Potter contacted the Scottish Legal Aid Board who confirmed that the Respondent had been paid the money by the Legal Aid Board on 23 September 2011. The Respondent advised the Law Society that he had sent a cheque to Mr Potter in Sweden but it had not been presented for payment. Mr Potter indicated that he had not received this and confirmed that he was happy to receive payment by way of a transfer of funds via the Law Society. On 14 June 2013 the Law Society gave the Respondent Mr Potter's bank details but no payment was received. On 28 July 2014 the Law Society received a cheque from the Respondent for £834.37 and following clearance of this the Law Society forwarded payment to Mr Potter in September 2014. Mr Reid asserted that a solicitor has an obligation to meet a witness' expenses within a reasonable time. Mr Reid advised that Mr Potter was looking for compensation.

In connection with Secondary Complainer 3, Mr Holden, Mr Reid advised that Mr Holden was a witness in the same trial and that he had travelled from Ireland to attend the trial. He sent an expenses claim to the Respondent in November 2011 but did not receive payment. In December 2011 the Respondent advised Mr Holden that the Scottish Legal Aid Board may ask questions about his expenses. Someone had written on the Respondent's letter to SLAB "*pay transport just now £256.09*". Mr Holden advised that there was no public transport between his home and Dublin airport and that he had to arrange 24 hour cover while away from his business. Mr Holden did not receive any payment for expenses and he made a complaint to the Scottish Legal Complaints Commission ("the SLCC"). The SLCC did not receive any cooperation from the Respondent and accordingly sent the matter on to the Law Society. The Law Society sent notices to the Respondent and he did not respond. The Respondent confirmed that the Scottish Legal Aid Board had paid the expenses of £256.09 and that he should have passed this on to Mr Holden. Mr Reid submitted that the conduct

amounted to professional misconduct because the Respondent had an obligation to pay witness expenses and to respond to the SLCC and the Law Society. Mr Holden had a claim for compensation.

SUBMISSIONS FOR THE RESPONDENT

Mr Burnside stated that there was no issue with the facts and the Respondent accepted that *in cumulo* the circumstances amounted to professional misconduct. Mr Burnside indicated that he would wish to make a statement on the Respondent's behalf in mitigation.

In response to a question from the Tribunal, it was confirmed that the SLCC levy had now been paid.

DECISION IN RESPECT OF PROFESSIONAL MISCONDUCT

Although the Respondent pled guilty to professional misconduct, the Tribunal still had to consider whether or not the Respondent's conduct was sufficiently serious and reprehensible so as to amount to professional misconduct.

Taking the two Complaints together, the Respondent's conduct showed a pattern of behaviour. There were a number of cheques which bounced, a number of delays in making payment of witnesses' expenses, practising certificate fees, indemnity insurance premiums and the SLCC levy. The Respondent also failed to respond to the Law Society and the SLCC which the Tribunal has held on a number of occasions can be sufficient to amount to professional misconduct. Solicitors have an obligation not to issue cheques that they know or should reasonably know will not be honoured. Solicitors should also make payment of witnesses' expenses timeously.

In the whole circumstances, given the pattern of behaviour, the Tribunal made a finding of professional misconduct *in cumulo* in respect of the two Complaints.

MITIGATION ON BEHALF OF THE RESPONDENT

Mr Burnside advised that the Respondent was married with three children presently at university. He had qualified as a solicitor in 1988 and became a solicitor advocate in 2004. Mr Burnside emphasised that the Respondent considered the matters very regrettable and they dated back to 2008 when he was a sole practitioner. The Respondent and his wife decided to relocate to the Highlands and bought land on which to build a house. They put their house in Dollar on the market but then the financial crisis hit in 2008 and they could not sell the house. The Respondent and his family had relocated business and school to Inverness. They had to sell the house for £120,000 less than valuation and then had to pay rent on another house in Inverness and a mortgage for the land that they had purchased. All this led to considerable financial problems.

The Respondent was on the weekend criminal duty roster but in Inverness the Public Defender system was put into operation which had an adverse affect on the amount of business he obtained. He lost some of his solicitor advocate work due to working so far away from Edinburgh and Glasgow. There were cash flow problems and the bank set a limit and then would decide not to honour cheques and he would be caught out by this. This resulted in cheques bouncing unexpectedly. The Respondent was not running a client account. The Respondent fully accepted that he was not entitled to retain witness expenses in his account but Mr Burnside pointed out that he never put them in his own pocket.

The Respondent was sequestered on 15 August 2012. The Respondent broke his back in November 2012 after a fall. The only option was for his wife to become a sole practitioner. Things had been piling up and the worst thing to do was to let it get on top of him. Despite his wife nagging, he did not go to the doctors. Mr Burnside advised that the Respondent's wife's business was successful and that she had now taken over all the financial reins. The Respondent would have nothing to do with any payments in or out of the firm. The Respondent did not manage to work anywhere else given the criminal legal aid market but the Law Society had eventually agreed to give him a restricted practising certificate from March 2015 so that he could work for his wife's firm.

Mr Burnside submitted that there was no risk of a repeat of the Respondent's conduct because he had no input into the financial arrangements and no financial authority. The Respondent accepted that it was inappropriate to issue cheques for his practising certificate and indemnity insurance when there were not sufficient funds to cover this.

Mr Marshall had been paid in full. Efforts had been made to settle the compensation claims of Mr Potter and Mr Holden. Mr Burnside emphasised that the Respondent was extremely regretful at having found himself in this position but he had been out of his depth due to difficult circumstances at the time.

Mr Chapman then gave evidence confirming that he had been out of his depth and lost control of the finances and that it was never his intention to avoid paying money to anyone. He was trying to pay his bills. His wife was not working at the time and he was very ashamed and embarrassed. He accepted that he should have dealt with matters differently. He explained that he had no desire to be involved in running a business. He enjoyed appearing in court but he did not want to run a firm. He indicated that he would give an undertaking not to run a firm again. He explained he was unable to earn between August 2012 and March 2015.

Mrs A also gave evidence confirming that she was the principal of Chapmans Solicitors in Inverness and was a sole practitioner and that her husband worked for her. She confirmed that she was responsible for all the financial and administrative aspects of the firm. The Respondent only went to court and spoke to clients. Mr Burnside referred Mrs A to the business documentation lodged and she confirmed that she dealt with all these matters. She further confirmed that the firm was meeting its financial commitments and that the firm did have money to make payment of the offers which had been made to the Secondary Complainers.

DECISION ON PENALTY

The Tribunal considered that the Respondent had got himself into an unfortunate situation due to his financial issues. The Tribunal did not consider that the Respondent had been in any way deliberately dishonest. The Respondent however should not have

continued in business on his own if he was unable to meet his financial obligations. His failure to respond to the Law Society and the SLCC compounded his situation and is inexcusable. The Respondent however showed insight into his behaviour and had fully cooperated with the Law Society and entered into Joint Minutes. The Tribunal did not consider that there would be any purpose in fining the Respondent and decided that the best way to ensure protection of the public was to ensure that the Respondent worked under supervision at a firm approved by the Law Society of Scotland. The Tribunal noted the evidence given by the Respondent and his wife and accepted the assurances given by them. In the circumstances the Tribunal was satisfied that the public would be sufficiently protected if the Respondent was to work under supervision in his wife's firm for a period of two and a half years. The Tribunal considered that the Respondent had learned a salutary lesson from what had happened. At the end of the two and a half year period it will be for the Respondent to show that he has gained the necessary maturity, experience and capability to be able to deal with having a full practising certificate.

SECONDARY COMPLAINERS' CLAIMS FOR COMPENSATION

Mr Burnside advised that Mr Potter had already been offered the sum of £2,500 by the Respondent in advance of today's hearing and Mr Holden had been offered the sum of £871.09. These offers had not been accepted by the Secondary Complainers.

EVIDENCE AND SUBMISSIONS BY MR POTTER

Mr Potter stated that he had come from Sweden to put forward his claim for compensation. He referred to a set of documents which he had lodged. It was confirmed that Mr Burnside had had an opportunity to look at the documents. There was only one copy of the documents available for the Tribunal.

Mr Potter stated that he wished to obtain compensation for his opportunity cost which was the loss of potential gain from other alternatives if an alternative route had been chosen and his claim was not restricted to monetary loss. Mr Potter stated that he had lost time and pleasure and had lost opportunities by spending time on the matter over the last four and a half years. The Respondent had caused this.

Mr Potter stated that he was here for closure. He suffered inconvenience, upset and loss of interest. He indicated that he had spent hundreds of hours of his time on the process.

In response to questions from the Tribunal, it was clarified that Mr Potter's expenses were £834.57 and there had been a delay by the Respondent in paying these expenses for the period between 23 September 2011 and September 2014. Mr Potter stated that he was looking for a loss of interest for a three year period on this sum. He also indicated that he was looking for the costs of his attendance at the Tribunal today being £62.50 plus £158.00. He lodged receipts with the Tribunal.

Mr Burnside pointed out that an offer of £2,500 had been made to Mr Potter on 12 October 2015 to avoid him having to incur the extra expense of coming to the Tribunal. Mr Potter stated that the reason he had not accepted this offer was as set out in his email of 16 October. He indicated that his rate of pay was not close to compensate him for his loss of time and that he could not know that the offer would be honoured.

In response to a question from the Chairman as to why the matter had caused him so much stress, Mr Potter indicated that he was in tears when he found out that the Scottish Legal Aid Board had paid the money to the Respondent and he felt that the Respondent had stolen the money and this affected him because the Respondent had also lied to him and caused him general anxiety. He also stated that he had to raise the matter as a complaint with the SLCC.

In response to a number of questions by the Chairman and other Tribunal members to try and clarify exactly how much time Mr Potter had spent on dealing with the matter, he indicated that he had spent 90 days at seven hours a day on the case. At this stage the Chairman enquired of Mr Burnside and the Respondent and the fiscal as to approximately how long they had spent on dealing with emails in respect of the matter. Mr Burnside indicated around an hour, the Respondent indicated around an hour and Mr Reid indicated it could have been 15 to 20 hours as he had to spend a lot of time corresponding with the Secondary Complainer, Mr Potter.

In response to another question from the Tribunal, Mr Potter confirmed that he was used to dealing with emails in his business. He then indicated that he had probably spent 60 working hours dealing with the actual emails themselves if you did not include all the thinking time and sleepless nights etc.

CROSS EXAMINATION OF MR POTTER BY MR BURNSIDE

Mr Potter indicated that he could not really say how much time he had spent. Mr Burnside put it to him that he had read Mr Potter's bundle of documents in 20 minutes. Mr Burnside also put to Mr Potter that his request for £10,000 of compensation was absurd. Mr Potter stated that what had happened had caused him so much stress it was difficult to quantify.

The Chairman enquired of Mr Potter whether or not he had read and understood the Tribunal's guidance for Secondary Complainers. Mr Potter indicated that he had. The Chairman indicated that it was difficult for the Tribunal to understand why Mr Potter had found the matters so distressing. The Chairman pointed out to Mr Potter that the offer made by the Respondent was three times the amount of the travelling expenses which had been incurred in the case and asked Mr Potter to demonstrate why he thought he was due so much money.

Another Tribunal member pointed out to Mr Potter that even with interest at 8% for three years on the travelling expenses this would amount to no more than £200. His travel here was around £300, 60 hours on emails at £10 per hour would be £600 and he said he had lost rental income which would be no more than £300. The Tribunal member enquired of Mr Potter whether the remaining £8,600 he was looking for was in respect of stress and enquired of Mr Potter as to whether or not he had consulted a medical practitioner in respect of his stress. Mr Potter stated that he had been ill during the last few weeks because of this matter but he did not have a medical report.

In response to a question from another Tribunal member as to why the debt had caused him so much stress, Mr Potter stated that he was moving to Sweden at the time and he needed the £800 because money was tight.

EVIDENCE AND SUBMISSIONS FROM MR HOLDEN

Mr Holden referred the Tribunal to his written submissions which he read out to the Tribunal:-

On returning from holiday on the Sunday I was told by my brother Mr C that I would be required to appear at Inverness Sherriffs Court on the following Thursday morning at 9:00am. This date did not suit me to go but I was told by Mr C that if I did not turn up that I could be charged with Contempt of Court and whatever consequences went with it.

This was the first I had heard of the date of the trial as no written communication (citation) had been received from Mr C's solicitor in Inverness.

The reason this did not suit me was because my son and his family had already left for their holiday that weekend. He had taken care of my transport business while I was on holidays myself. This meant that I had nobody to cove the work while I went to Inverness and therefore had to pay (out of my own pocket) cover drivers to cover the work while I was in Inverness which would be a minimum of 96 hours. My business was a small telecommunications breakdown company.

Because of the service I provided in my business this meant that I had to leave Portlaoise as late as possible and get back as quickly as possible as I had to pay for every hours of time I was away in order to provide the 24/7 cover.

The only contact between Mr Chapman and myself was the word "Hello" when I was introduced to him after the court. The only contact prior to the trial was the morning of the trial by a lady from Mr Chapman's office who advised me I would be called soon and had a statement in her hands which she said I would be questioned on. She did not actually show me the statement.

When I got back to Ireland Mr C told me that I could claim expenses for the trip. I did this and supplied as much paperwork as I had as backup. The cover drivers were paid from my own pocket and therefore no receipts would have been available. My taxi to Dublin Airport and back were in cash at the cheapest possible fare to could get. I could not get a receipt for this as this was an agreed cash deal. At the time had I known I could claim expenses I would have gone through the normal (therefore more expensive) route for the taxi. Cover drivers would have been taken on by an outside company and the cost would have been through the roof.

My expenses claim is what I paid out. Nothing was claim for loss of earning for myself or for the accommodation while in Inverness.

After submitting the claim I was contact by Mr Chapman and told that SLAB would not pay my un-receipted expenses and he asked for my claim sheet to be stamped by the company. I did this and resubmitted the claim. I explained to him the circumstances of my expenses amount on a number of occasions and the fact that this was paid out of my own pocket. After a number of phone calls, and no progress being made, I asked Mr Chapman for the telephone number and contact in SLAB for me to explain my position. Mr Chapman informed me that this was a closed line and only solicitors etc could contact SLAB and not members of the public.

After that phone call I never heard from Mr Chapman again even though I tried to contact him.

As I am not computer literate, the majority of my communications were made by telephone. I had to have help with emails/letters.

When no further communication was taking place I contacted the SLCC in 2012 with a view to making a complaint. I had to contact Mr Chapman before I could do this informing him of my intention. No reply was forthcoming from Mr Chapman and therefore I submitted my complaint.

On 3 October 2012 it was confirmed by an email from SLAB that part of my travel expenses had been paid to Mr Chapman. Mr Chapman however did not inform me at any time of receiving any part of my expenses nor did he offer to pay over what he had received.

The complaint was then passed on to the Law Society of Scotland. My complaints investigator was Mr E. Mr E interviewed me over the phone and he was satisfied that he had all the details he said he would contact Mr Chapman. No response was received from Mr Chapman until just before the hearing. During this period it became very evident that the lack of citations played a major part in all of this. None of the 5 defense witnesses received a citation. Mr E was advised that he could not pursue the matter of citations. During his investigations he contacted SLAB to get the file relating to me and he was informed by SLAB that Mr Chapman did not make an expenses claim or receive any expenses payment in my name. Once again I refer to the mail from SLAB which I sent to Mr E as proof that a claim and some payment was made. Mr E was told he would be given the file on condition that it was not made privy to me.

After the findings of the Law Society hearing the case was referred on to Mr Jim Reid who informed that Mr Chapman's brief D C Burnside would be in touch with me to try and reach an agreement. D C Burnside contacted me with an offer of £256.09 for my expenses plus £500 for inconvenience (total of £756.09). I did not accept this and consequently a further offer was made to me of £871.09. I did not accept this offer.

This case has been going on for four and a half years and has had an adverse effect on me and my family. This whole experience has caused major inconvenience, upset and distress in my life. I have been treated for high blood pressure during this period and have had many sleepless nights. There has been a number of telephone charges etc in relation to this claim not to mention the amount of hours put into this.

I feel that I am fighting an uphill battle as the system seems to be there to protect Mr Chapman and not to help people like myself. SLAB were not helpful in firstly

denying that an expenses claim was made in my name and the Law Society for preventing investigation into non issue of citations.

Mr Holden added that he had not received a citation and that if he had it would have included details of the expenses and he would have known how to claim. He stated that he was looking for expenses of £1,486 plus his expenses for travelling to the Tribunal today and he produced receipts.

CROSS EXAMINATION OF MR HOLDEN BY MR BURNSIDE AND EVIDENCE FROM THE RESPONDENT

The Respondent explained the witness citation had been given to Mr C because the witness was needed at short notice. The Respondent stated that he explained to Mr Holden that he needed vouching for the other expenses claimed by Mr Holden. The Respondent further explained that he had checked and there was a bus service between Mr Holden's address and the airport. The Respondent accepted that he should have sent on the £256.09 expenses that he received from the Legal Aid Board but the Respondent confirmed that there had been no claim to the Legal Aid Board for the rest because the Legal Aid Board would not pay expenses without receipts. The Respondent indicated that Mr Holden was demanding compensation of £15,000.

Mr Holden stated that he had never seen a citation and that if he had he would have known how to claim expenses. He indicated that he did not know that there was a bus to the airport. He explained that he did a deal in respect of the taxi and that if you do this you do not get a receipt. Mr Holden stated that at the time he did not know that he would be able to get his expenses back. It was his brother that told him he was expected to attend the court.

DECISION IN RESPECT OF THE SECONDARY COMPLAINERS' COMPENSATION CLAIMS

In respect of Mr Potter, the Respondent delayed in paying his expenses of £834.37 for a period of three years. The Tribunal accept that this had a direct effect on Mr Potter and that Mr Potter is entitled to interest in respect of the delay in payment. This would however not be judicial interest of 8%, it would be interest that he would have received if he had had the money in the bank. The Tribunal consider that a reasonable estimate of this would be £50. The Tribunal found Mr Potter's claim to have been so adversely affected by the delay in payment of a debt to be quite bizarre. His initial evidence was to the effect that he had spent 90 days at seven hours a day thinking about the issues arising in this case. What happened here was a delay in payment of expenses for a period of three years. Mr Potter did not explain to the Tribunal why this would have caused him sleepless nights or illness in any way. The Tribunal did not consider the distress that Mr Potter described to be a normal reaction to a delay in payment of expenses. The Tribunal however do accept that Mr Potter clearly spent some time dealing with emails, firstly with the Respondent, then with the SLCC and the Law Society and also with Mr Reid, the Fiscal and Mr Burnside. The Tribunal accordingly accepted that Mr Potter spent 60 hours dealing with the matter and considered it reasonable to use a figure of £10 per hour in quantifying this. The Tribunal also awarded an additional £200 in respect of the stress and inconvenience caused to Mr Potter. This made a total of £850. The Tribunal considered it extremely unfortunate that Mr Potter did not accept the generous offer made by the Respondent of £2,500. The Tribunal did not consider it at all appropriate to award any compensation for the expenses of Mr Potter attending the Tribunal hearing as this was completely unnecessary given the offer made prior to the hearing.

In connection with Mr Holden, the Tribunal do not consider it appropriate to award compensation in respect of an expenses claim where there are no receipts and where the Scottish Legal Aid Board would not have made payment of expenses. The Tribunal accept that the sum of £256.09 where Mr Holden had receipts and where the Legal Aid Board made payment of expenses is correctly due to Mr Holden. The Respondent delayed in making this payment for an unacceptable period. The Tribunal considered it appropriate to award interest on this sum on the basis of the interest that

Mr Holden would have received on the money if he had had it in the bank. This would be approximately £15. The Tribunal also consider it appropriate to award £350 in respect of Mr Holden's time in dealing with emails in respect of the matter. He does not appear to have spent as much time dealing with emails as Mr Potter. The Tribunal also considered it appropriate to award an extra £200 in respect of the stress and inconvenience to Mr Holden. The Tribunal also note that the £256.09 has not yet been paid to Mr Holden and accordingly awarded compensation of £821.09. The Tribunal did not make any award in respect of Mr Holden's travelling expenses to attend the Tribunal hearing because the offer made to Mr Holden by the Respondent prior to the Tribunal hearing was in excess of the amount of compensation awarded by the Tribunal and it was accordingly unnecessary for Mr Holden to attend the Tribunal.

The Tribunal noted that there was a considerable amount of extra Tribunal time taken up in dealing with the Secondary Complainers' compensation claims and did not consider it appropriate for the Respondent (who had made offers in excess of what the Tribunal has awarded to the Secondary Complainers) should make any payment of expenses in respect of the Tribunal time taken to deal with the Secondary Complainers' compensation claims. The Tribunal seriously considered awarding expenses against the Secondary Complainers in respect of the Tribunal time taken to deal with the issue. However on balance the Tribunal considered that the best way forward was to make an award of no expenses due to or by any party in respect of the Tribunal time between 3:10pm and 6pm taken up with dealing with the Secondary Complainers' claims for compensation.

There were no submissions with regard to publicity and the Tribunal made the usual order with regard to publicity.

Dorothy Boyd
Vice Chairman