

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

**FINDINGS**

**in Complaint**

**by**

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

**Complainers**

**against**

**JOHN KEVIN QUINN, 4 Staneholm Road,  
Strathaven**

**Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that John Kevin Quinn, 4 Staneholm Road, Strathaven (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a procedural hearing on 4 May 2018 and notice thereof was duly served upon the Respondent.
5. By email dated 23 February 2018, the solicitor instructed by the Respondent requested an extension of time for lodging Answers. That motion was granted and Answers were lodged with the Tribunal Office by letter dated 13 March 2018.
6. By email dated 15 March 2018, the Respondent lodged a motion to discharge the procedural hearing and fix a new substantive hearing. It being confirmed that the

Complainers had no objection to that motion, the Tribunal granted same administratively in terms of Rules 56 and 44. A hearing date for 22 August 2018 was fixed and notices thereof were duly served upon the parties.

7. By email dated 2 August 2018, the Respondent submitted a motion to adjourn the hearing date previously fixed. It being confirmed that the Complainers had no objection to the motion, it was granted administratively in terms of Rules 56 and 44. A new hearing for 21 November 2018 was fixed and notices thereof were duly served upon the parties.
8. At the hearing on 21 November 2018, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by his solicitor, Ian Ferguson, Glasgow. The Fiscal lodged an amended Complaint. The Respondent having no objection, the Tribunal allowed this to be received. A Joint Minute between the parties agreeing the averments of fact, subject to some deletions, the averments of duty and professional misconduct in the original Complaint was lodged. Both parties confirmed that the amended Complaint reflected this agreement. No evidence was led. Submissions were made on behalf of both parties.
9. The Tribunal found the following facts established:-
  - 9.1 The Respondent is a solicitor enrolled in the Registers of Scotland. His date of birth is 25 September 1950 and he was enrolled on 24 September 1976. Between 17 February 2011 and 31 October 2015 he was the sole partner in the firm of J Quinn & Co., 4 Staneholm Road, Strathaven. He was also the anti money laundering partner, the cash room partner, the client relations partner, and the risk management partner. The Respondent's Practising Certificate was suspended by the Complainers between 2 July and 1 October, both 2015. The Respondent's Practising Certificate thereafter expired on 31 October 2015 and he has made no further application for its renewal. The Respondent's firm ceased to practise on said date.
  - 9.2 The Financial Compliance Department of the Complainers conducted an inspection of the financial records, books, accounts and documentation of the Respondent's firm on 23 and 24 April 2015. This inspection identified a number of serious concerns including that the practice unit was in deficit and had been in



deficit since at least May 2012, that client funds had been held in the firm account, that the Respondent had failed or delayed in paying outlays, that the Respondent had failed to rectify breaches of the Practice Rules, and the Respondent had submitted false and inaccurate accounts certificates to the Complainers. Following the inspection, an executive summary was produced setting out the findings of the inspection and an exchange of correspondence between the Financial Compliance Department and the Respondent. The Respondent was invited to respond to the said matters raised in the said Executive Summary. He was invited to attend an interview before the Complainers' Guarantee Fund Panel on 21 May 2015. He duly attended along with his solicitor. At said interview the Respondent proposed to resolve matters and the Panel recommended that the Guarantee Fund Sub Committee should consider suspending the Respondent's Practising Certificate in the event he took no action to address the matters of concern. At a meeting of the Guarantee Fund Sub-Committee held on 4 June 2015 it decided to continue its deliberations until its meeting of 2 July 2015. The Complainer, and in particular the Financial Compliance Department and the Guarantee Fund Sub-Committee, despite responses from the Respondent, continued to have concerns and at a meeting of the said Guarantee Fund Sub-Committee held on 2 July 2015, they resolved to withdraw the Respondent's Practising Certificate in terms of Section 40 of the Solicitors (Scotland) Act 1984 and that in respect of his breaches of the Law Society of Scotland Practice Rules 2011. It further resolved to refer a formal complaint to the Scottish Legal Complaints Commission. Following further representations made by the Respondent and him taking steps to address the deficit in the said firm in September 2015, and clearing said deficit, the said Guarantee Fund Sub-Committee determined on 1 October 2015 to restore the Respondent's practising certificate subject to the Respondent providing an undertaking that he would be willing and able to comply with the said 2011 Practice Rules.

- 9.3 The said Executive Summary produced by the Complainers' Financial Compliance Department, concluded that the risks and findings as identified were of a serious nature. The detailed findings of the said Department included *inter alia* the following:-

- (a) as at the date of the said inspection, the Respondent's firm was in deficit and had been in deficit since at least in or around May 2012. As at 31 March 2015, the deficit amounted to £14,384.78. Said sum was made up of the amount of £14,385.86 having been held in respect of sums received from the Scottish Legal Aid Board in reimbursement of outlays incurred by the Respondent on behalf of clients under deduction of the surplus held on the Respondent's firm's account amounting to £1.08.
- (b) Although the Respondent's firm had received sums from the Scottish Legal Aid Board in respect of reimbursement of outlays between May 2012 and April 2015, said outlays had not been paid to those third parties to whom they were due and as at 31 March 2015, the sum of £14,385.86 was still owed to said third parties.
- (c) The amount of unpaid client outlays, and of the consequential deficit, had varied from month to month throughout the period from May 2012 to 31 March 2015. Said deficit had peaked at £22,556.40 as at 31 August 2014.
- (d) The first identified date when the Respondent's firm was in deficit occurred on 2 May 2012 when an outlay in the sum of £1,166.20 had not been paid.
- (e) The Respondent's cash room records included a "creditor's listing" which indicated that the Respondent had delayed in making payment of sums received from the Scottish Legal Aid Board in respect of reimbursement of outlays and that in relation to certain outlays they had not been paid for a period in excess of three years.
- (f) Thirty three instances had been ascertained when it was not evident when payments were received from the Scottish Legal Aid Board and which had not been made over to the third parties in respect of outlays due.
- (g) The Scottish Legal Aid Board made payment to the Respondent of a sum of £1,680 in respect of a bond of caution. The insurers returned these funds to the Respondent as the client in respect of whom the bond of



caution had been applied for had died. The Respondent failed to return the funds to the Scottish Legal Aid Board despite a reminder from them date 6 March 2015. Said funds were returned in May 2015.

- (h) Although the Respondent's firm had been in deficit since at least May 2012, the Respondent had taken no action to rectify the position.
- (i) The book-keeper employed by the Respondent had prepared a list of all outstanding client outlays received from the Scottish Legal Aid Board on a monthly basis and that from March 2014 onwards this was provided to the Respondent with totals of all amounts which remained unpaid but not paid to third parties.
- (j) The Respondent had submitted five accounts certificates to the Complainers which were inaccurate; and
- (k) An accounts certificate submitted by the Respondent dated 20 February 2015 disclosed that he owed HM Revenue & Customs a sum of £4,600 in respect of VAT and £70 in respect of national insurance contributions.

10. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct *singly* in respect that the Respondent breached Rule B6.3.1(a) of the Law Society of Scotland Practice Rules 2011 in respect that the books and records of his firm exhibited deficits on the client account during the period between May 2012 and April 2015; and *in cumulo* in respect that: (a) the Respondent breached Rule B6.3.1(b) of the Law Society of Scotland Practice Rules 2011 in respect that he failed to credit to his firm's client account sums received from the Scottish Legal Aid Board in respect of outlays incurred on behalf of clients, failed to settle said outlays with third parties timeously, and did not utilise the funds remitted to him by the Scottish Legal Aid Board for a specific client and for a specific purpose, in the period between May 2012 and April 2015; (b) the Respondent breached Rules B6.4.1 of the Law Society of Scotland Practice Rules 2011 in respect that he failed to rectify breaches of Rules B6.3.1(a) and (b) promptly despite being aware that said breaches had occurred; and (c) the Respondent breached Rule B6.15, and in consequence Rules B1.2 and B6.12.1 of the Law Society of Scotland Practice Rules 2011 in respect that he submitted false and

inaccurate accounts certificates to the Complainers on 22 February 2013, 11 September 2013, 4 February 2014, 15 October 2014 and 20 February 2015, none of which disclosed the breaches of Rules B6.3.1(a) and (b) and each of which stated that the Respondent's firm had complied with the requirements of the said Practice Rules thereby misleading the Complainers as to the Respondent's firm's compliance with the said Practice Rules.

11. Having heard the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 21 November 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against John Kevin Quinn, 4 Stanholm Road, Strathaven; Find the Respondent guilty of professional misconduct *singly* in respect of his breach of Rule B6.13.1(a) of the Law Society of Scotland Practice Rules 2011 and *in cumulo* in respect of his breach of Rules B6.4.1, B6.1.5, B1.2 and B6.12.1 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any Practising Certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer or successive employers as may be approved by the Council or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least two years; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

  
(signed)

**Eric Lumsden**  
**Vice Chairman**



12. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 21 JANUARY 2019 .

**IN THE NAME OF THE TRIBUNAL**



**Eric Lumsden  
Vice Chairman**

**NOTE**

At the hearing on 21 November 2018, the Tribunal had before it the Complaint, Answers, a List of Productions for the Complainers and two Lists of Productions for the Respondent. The Fiscal lodged an amended Complaint and asked that this be admitted in place of the original Complaint. There was no objection on behalf of the Respondent. The motion was granted. A Joint Minute between the parties agreeing the averments of fact, with some amendments, and the averments of duty and misconduct with the original Complaint was lodged. Both parties confirmed that the amended Complaint reflected what was agreed by the parties.

In response to a question from the Tribunal, the Fiscal confirmed that there was no allegation of lack of integrity or dishonesty made against the Respondent.

The Respondent made a motion to withdraw his Answers.

Given the extent of agreement between the parties, no evidence required to be led and the Tribunal proceeded to hear submissions.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal referred to the Respondent's professional background as referred to in finding in fact 9.1. The Respondent's record card had been produced by the Complainers and the Fiscal confirmed that the Respondent had no previous disciplinary matters of any nature on his record.

The Fiscal proceeded to take the Tribunal through the averments of fact within the Complaint and drew the Tribunal's attention to the executive summary which was his Production 2. The Fiscal explained that the executive summary contained the outcome of the inspection together with exchanges between the Law Society and the Respondent. The main thrust of his submission was to highlight the deficit found upon the client account.

The investigators' concerns and the deficit were not addressed timeously and ultimately the Law Society withdrew the Respondent's Practising Certificate in July 2015. After further representations were made by the Respondent, his Practising Certificate was restored to him on 1 October. His Practising Certificate expired on 31 October 2015 and was not renewed by him.



Averment 2.3 on the Complaint had been lifted from the content of the executive summary and focussed on the client account deficit which the Fiscal submitted was the most serious matter before the Tribunal. The issue for the Respondent was that monies were retained by him in the firm account which were client monies and ought to have been paid timeously to third parties. The Fiscal believed that the Respondent had cashflow difficulties as a result of problems he had experienced with the Legal Aid Board in the processing of his accounts. The Fiscal explained that from his own experience dealings with the Legal Aid Board can be difficult, however, he emphasised that a solicitor still required to operate the firm within the framework.

With regard to the submission of the five listed accounts certificates, the Fiscal explained that these were submitted to the Law Society whilst the client account was in deficit. The Rules require that if a firm client account falls into deficit, then this requires to be declared within the accounts certificate together with a description of what action had been taken to remedy that. Here, the Respondent continued on in deficit and failed to declare that on the accounts certificates or resolve the problem.

The Complaint made reference to a sum due to HMRC. The significance of this was that the sum due was disclosed in only one of the certificates and not in others.

Mr Knight drew the Tribunal's attention to the averments of misconduct within the Complaint and invited the Tribunal to find the Respondent guilty of professional misconduct in respect of all four categories there. The Respondent had operated with his client account in deficit for just under three years. The Respondent had not settled outlays with third parties timeously and had failed to credit them to his firm's client account. Being aware of these breaches, the Respondent had failed to rectify them promptly. Accounts certificates were required by the Law Society so that it can properly assess levels of risk to client monies. In this case, the Respondent had submitted five inaccurate accounts certificates in that they did not disclose his breaches of Rules B6.3.1(a) and (b).

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Ferguson submitted that the facts and law in the matter were not in doubt. The Respondent was admitting his guilt of professional misconduct although he recognised that this was a question ultimately for the Tribunal to decide. It was his intention to reserve any further comment to a plea in mitigation.

The Tribunal sought clarification from the Fiscal with regard to the issues of the five accounts certificates and the different wording used within the averments of fact, duties and misconduct. The Fiscal emphasised that he was not insisting on any averment of lack of honesty or integrity. He explained he was not asking the Tribunal to make any finding based on the wording of averments of duty and where the word “false” was used in the averment of professional misconduct, this was tautologous to the use of the word “inaccurate”.

## DECISION

In considering the question of professional misconduct, the Tribunal required to assess the admitted conduct against the test set out in Sharp v The Law Society of Scotland 1984 SC 129. At page 134, it was said:-

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

Members of the profession are in the very privileged position of handling client monies. It is extremely important that members of the public are able to trust the profession in the exercise of this privilege. The Accounts Rules are there to safeguard client monies.

In the case of McMahon and Others-v-Council of the Law Society of Scotland 2002 SLT 363, the court stated that:-

*“It is a fundamental principle of professional life that the client account is sacrosanct”.*

The Fiscal had four averments of misconduct which he had invited the Tribunal to hold individually amounted to professional misconduct. The Tribunal required to consider whether each averment in itself amounted to a finding of professional misconduct.



The first averment was that the Respondent had operated the firm with deficits on the client account during the period between May 2012 and April 2015. The deficits described were of significant figures. The Tribunal had no hesitation in finding that this conduct in itself fell well below the standard to be expected of a competent and reputable solicitor and that it was clearly serious and reprehensible. Accordingly, the Tribunal found the Respondent guilty of professional misconduct in respect of this issue.

The second averment of misconduct namely that the Respondent had failed to settle outlays with third parties timeously, the third averment that the Respondent had failed to rectify the breaches promptly despite being aware of them and the fourth averment relating to the submissions of the inaccurate accounts certificates, the Tribunal considered to be aspects of the principal averment of misconduct which it determined were more appropriately considered *in cumulo*. The Tribunal concluded that *in cumulo* this conduct met the appropriate standard and amounted to professional misconduct.

In relation to the inaccurate accounts certificates, the Tribunal made its decision based on the position of the Fiscal that the Complainers raised no issue of lack of integrity or dishonesty.

Having intimated the decision to the parties, the Tribunal invited further submissions with regard to mitigation.

### **SUBMISSIONS FOR THE RESPONDENT IN MITIGATION**

Mr Ferguson indicated that he had completed a written plea in mitigation which he would go through before the Tribunal and thereafter lodge in hard copy.

This written plea in mitigation was as referred to, was as follows:-

#### **“Introduction**

My client has admitted all of the facts of this Complaint.

My client has admitted the averments of duty and law set out in this Complaint.

My client has admitted breach of the rules specified in the Complaint.

My client has admitted professional misconduct subject to your approval.

My client has not wasted the time of this Tribunal.

My client has co-operated with the Fiscal in giving me instructions to agree the Joint Minute of Admissions now before you.

My client therefore has belatedly had insight into the conduct that has led to the Complaint and regrets this conduct.

However my client wishes the full facts and circumstances to be made known to the Tribunal and taken into account to assist the Tribunal in its consideration of this case.

This is a simple Plea in Mitigation.

### **Career History**

In my clients own words he has set out his career, history and given details of his personal circumstance as follows:-

"I am 68 years old. I have been married for 37 years, and have 2 surviving children, a 36 year old son who lives with his wife and son in England, and a daughter age 25 who stays with us and is taking a teacher training course at West of Scotland University. My wife is retired. We have lived in Strathaven since 1981

After an apprenticeship with R Gibson & Co in Glasgow from 1974-1976, I qualified as a solicitor, and worked from 1976-1991 for Strathclyde Regional Council carrying out local authority legal work; from 1991 to 2009 I was an assistant/ associate with Freeland's, Solicitors, Wishaw carrying out general private client work. During this time I became accredited as a specialist by the Law Society in the field of Adult Incapacity law

In 2009 I was asked to join McSparran McCormick, solicitors, Glasgow as assistant, and then associate. Partly because more of my work was focussed on adult incapacity work, I decided to set up my own firm in Hamilton, in 2011 to specialise in this area. This lasted until October 2015.

I did no conveyancing, criminal or commercial work. I have not worked since then. Essentially I was forced to retire because the Legal Aid Board, upon whom I relied for 80-90% of my income, cut back my fees so much I could not afford the £8000.00 to renew my practising certificate in October 2015. I have no intention of working as a solicitor again due to my age, and the fact that the law of adult incapacity is due to change radically soon, and I am no longer willing to carry out legal aid work, due to the bizarre behaviour of the legal aid board - which has resulted in the SSDT proceedings.

I previously had an active social life - I cycled weekly, golfed and swam 3 or 4 times a week. I was a member of 2 charities. Due to the crushing and gradually increasing demands of the legal aid board over the years, I have had to give up nearly all of this.

The only one I have left is trustee of a charity I helped set up in 2001, and which continues today. I wrote the constitution and obtained charity registration with the Inland Revenue. It has sent over £140,000.00 to assist in maintaining a school for Santal children in Chennai, India. This work is voluntary."

### **What went wrong and why did it go wrong?**

In my client's own words:-

"The issues arising are the demoralising effect the behaviour of SLAB had on me from 2012 onwards e.g. their belittling of my work -



e.g. saying I did not need a 2 page letter to tell a client what was going on in a case, I could have told them in a 1 page letter, or

e.g. I did not need an hour to prepare for a court hearing, I could have prepared in 5 minutes (all this from an accounts clerk who has never been in a court).

I could go on and on but I was getting nowhere for years, until I got court decisions adverse to the Board, and they paid me thousands of pounds they had unfairly withheld from me in 2015.

I could not trust any sums the Board sent me from 2012 onwards, in fees or outlays, and figures had to be laboriously checked, before I either got back to the Board, or sent money elsewhere.

I estimate they still owe me £14,000.00 in fees, for which I cannot afford to take them to court. All experts were paid years ago. For many weekends I had set aside to try and work out what the Board were doing to me, I could not bear to open a finished file, and work out what the Board had decided to pay out, because I knew the Board would act unreasonably, (as the Law Society report of February 2017 confirmed) so I was wasting my time in making representations to them. It was difficult to comply with Law Society of Scotland (LSS) rules in these circumstances.

It was even more difficult when the LSS breach their own service standards, and their own code of conduct in their direct dealings with me, when I, at an early stage, tried to avert the proceedings that have resulted in these disciplinary measures."

**Medical position** –I refer to Doctors Report and quote from it.

**Psychiatric Report** - There is none and the reason in my client's own words:-

"Re the psychiatric issue, I am unable to afford the fees quoted. I was unable to afford a practising certificate in 2015, and the LDU only assist solicitors with a practising certificate, and the disciplinary proceedings arose after I ceased practising."

To attempt to make up for the assistance and guidance that such a Report would have been I have sought to refer you to helpful information on Depression from reliable sources including those recently added in October 2018 to the LSS website. They are listed in the First Inventory of Productions for the Respondent.

#### The Effect of Depression upon the Respondent

My client cannot afford to instruct a Psychiatrist Report in view of the high costs quoted. He is reliant upon his Medical Report from the GP item 1 of the First Inventory of Productions before you.

(Quote from it)

It is clear that my client has been suffering depression for some time.

I mentioned earlier that to make up for not having a Psychiatrist's Report I have produced the above documents which explain the position about depression.

Having read the NHS website information and Priory Group Booklets at numbers 4 and 5 of the First Inventory I would invite the Tribunal to apply that knowledge and information to the present case.

From these documents I believe it is quite clear that my client is suffering from many of the symptoms identified and they confirm what his GP has identified in his Report namely that he is suffering from depression and that it has had severe effects upon him.



I would refer you to the Productions 1 to 47 from the Second Inventory of Productions which demonstrate my client's state of mind between 9<sup>th</sup> April 2015 and September/October 2017.

It is quite clear that my client believed that the LSS were his "Trade Union body" and representing him. His initial correspondence on 9<sup>th</sup> April 2015 was with regard to the changes to Civil Legal Aid and the effect this was having on the profession and particular Legal Aid practitioners like himself. My client genuinely seemed to feel that the actions of SLAB were reprehensible and needed firm action by LSS. The correspondence then moved to dealings with the Financial Compliance Department and correspondence with Ian Messer, Hugh Sanders and Sandra Brownlee.

It is clear that my client was facing intolerable pressure from SLAB in constantly trying to reduce sums to which he was legally entitled going over the minutiae of every letter and action he took. This was happening all the time on a day by day basis and was both exhausting and depressing. It was wearing down my client. It is clear that my client was becoming disorganised as a result of all of this.

There were 3 appeals that he won against SLAB but they still continued to thwart him at every turn. Some might say that was deliberate for having challenged them successfully and I cannot say they are wrong. My client's self esteem, professionalism was being knocked daily and his efficiency was being degraded.

By the letter of 4<sup>th</sup> July 2015 to the Law Society my client felt that the responsibility lay mainly with LSS itself. My client said that the LSS were doing nothing, didn't tell him that they could do nothing until the end of April 2015 and didn't sent written acknowledgment of letters sent to them.

I believe my client was confused as to the representative and regulatory roles of the LSS and he seemed to think that that any communications on the representational side were known to the regulatory side, which of course was not the case.

I believe that the correspondence reads like a "cry for help" and while I believe that people both on the representative side and on the regulatory side of the profession did attempt to help him ultimately all of this help did not identify the underlying problem of my client being the depression that my client was suffering. It also did not identify its cause.

- Bullying and Harrassment

In my opinion the root cause was the bullying and harassment of my client by the Scottish Legal Aid Board. Quoting from the Article "Bullying and Harassment in the Legal Profession" on the LSS website, their definition is that bullying is often described as "the process whereby an employee is intimidated, mistreated or humiliated. It can be characterised by offensive, malicious or insulting behaviour which is designed to undermine the confidence and capability of the victim."

"Harassment can be described as unwanted behaviour which affects the dignity of people at work. It may be persistent or an isolated incident. Either way, the key is that the actions or comments are seen as demeaning or humiliating and are unacceptable to the recipient. Some examples of bullying harassing behaviour include:-

1. Ridiculing or demeaning someone in person or online.
2. Victimisation.
3. Overbearing supervision.
4. Deliberately undermining an employee by overloading and constant criticism.



5. Abusing a position of superiority to unreasonably cast doubt on ability."

The Article indicates that it can be carried out by a 3rd Party such as a customer, client, supplier etc.

It asks "What is the impact of bullying and harassment?" It makes the victim anxious and humiliated. The individual may suffer stress, loss of confidence and self esteem leading to illness, absence from work and resignation. It may leave people to leave the profession altogether and the Society says it is keen to ensure that this does not occur." I suggest that the LSS did not do enough to ensure bullying and harassment did not occur.

- Burnout

I refer you in particular to the Priory Group Booklet on Taking the Strain out of Stress starting on page 1 which refers to "burn out".

Burnout is a condition that develops when an individual works too hard for too long in a high pressure environment. The burn out "victim" is exhausted on all levels – physical, emotional and attitudinal. Work suffers. The family suffers. At its most severe, the individual simply can't go on.

The leaflet identifies on page 4 "the fatigue zone" i.e. performance is beginning to decline sharply as stress continues to increase. Short lived bouts of irritation are common.... Alcohol is frequently used for medicinal purposes to soothe jangled nerves and to overcome sleep problems. Without rest, fatigue will lead to exhaustion". "The exhaustion zone" is where performance continues to decline. There is increasing anger and resentment lasting for longer periods. Alcohol may be heavily abused to combat chronic insomnia. Page 5 has a description of the state of mind of a burn out victim. (Quote this Last para on page 5)

From my discussions with my client and examination of the correspondence including those in the Productions I do feel that my client was suffering from burnout. He was highly confused. As a sole practitioner he did not have the benefit of another work colleague there to assist him when things were going wrong.

It confirms that burnout can be avoided but that we need to take stock of all aspects of the situation and need to change attitudes and behaviour. On that theme it is good that the LSS now have a "Wellbeing" programme, a very recent development, that might have been of some assistance to my client and those dealing with him at the LSS if the development had been in place at the time.

### Financial position

My client retired in 2015 and has not worked since.

My client's financial position is poor. The Fiscal and the LSS have seen the books. He made very little money for a number of years. He has retired with a small pension from the Local Government of £520 per month, Private Pension of £239 and the Government pension. He has settled all his debts except for a business loan due to BOS which he is still repaying at £390 per month (about £4,700 outstanding).

- He cannot afford a Psychiatrist Report.
- He cannot afford me.
- He certainly has no capital with which to pay any penalty or awards of costs against him.

He believed that he was acting correctly and took a long time to understand that he was in non compliance and what he had been doing was not in order.

No "client" was inconvenienced, just SLAB, whom my client feels with some justification, were responsible for constant knocks to his self esteem and his sense of professionalism by questioning every letter and its length when he was only writing letters of a length that was necessary. These unjustified, capricious and incessant demands on him lead to a decline in his performance and judgement. My client did sort matters albeit lately.

I would urge you to treat this case sympathetically and would remind you that my client has no previous Complaints upheld against him.

The question of disposal

I would urge you to treat my client fairly and with compassion. He has been retired since 2015.

John no longer has a PC to take away, suspend or restrict though I remind you that my client did have his PC restored during the process, showing a respect for my client by those who knew all the background of the Complaint. My client let it go only because he could not afford to renew. He has few assets and little income to pay a fine or awards of costs.

My client knows that he has breached the Rules and that that will usually be sufficient for you to hold it amounts to Professional Misconduct but I think my client is deserving of the lowest sanction taking account of the circumstances of this case."

Mr Ferguson referred the Tribunal to Productions he had lodged in relation to the issue of depression. The Tribunal confirmed to him that the members had read the papers and had a working knowledge of depression and alcohol misuse, although it did not want to limit his plea in mitigation. Mr Ferguson indicated that he was content simply to draw the Tribunal's attention to the Productions lodged. He confirmed that the Respondent's anxious thoughts had now ceased.

He drew the Tribunal's attention to two references and emphasised that the Respondent had been an accredited specialist and was a man of some standing.

In response to a question from the Tribunal, Mr Ferguson confirmed that most of the correspondence that he had lodged to demonstrate the Respondent's state of mind had dated from the beginning of 2015. He clarified however that Production 48 was a letter from the Respondent explaining his difficulties with the Legal Aid Board and was dated 9 February 2014.

Mr Ferguson confirmed that most of the third parties to whom payment was due were specialists regularly used by the Respondent. No third party had raised any complaint.



He emphasised that this conduct was not intentional on the part of the Respondent but rather had snuck up upon him. The Respondent had slipped into this conduct by mistake and error thinking he was the one that was done down here. He emphasised that the Respondent now understands that his conduct was unacceptable and amounted to professional misconduct.

The Tribunal asked if the Respondent now regretted setting up practice on his own account. Mr Ferguson confirmed that practising on his own account had been new to the Respondent and represented the changing face of things where he was no longer an asset to another firm even as an accredited specialist. This had not just been a matter of choice. If the Respondent had wanted to continue to work then he required to set up on his own.

Mr Ferguson confirmed that there had been appeals against the Legal Aid Board abatements with the processes starting in February 2014 and concluding in March 2015. These were successful which perhaps showed that although the Respondent was suffering from depression, he was nonetheless a good lawyer and able to take on the Legal Aid Board and beat them.

#### **DECISION ON PENALTY**

The Tribunal gave very careful consideration to the submissions made by Mr Ferguson, including all of his documentary productions.

This was a case where it was accepted that there was no lack of integrity or question of dishonesty. The Tribunal had regard to the two references produced and accepted there was no criticism of the Respondent's standard of work as a solicitor. The Respondent had been in practice for in excess of 34 years before setting up business on his own account during which time no disciplinary issues had arisen. The current issues arose due to difficulties regarding the management of his firm as principal.

A medical report had been produced from his GP. This referred to the Respondent attending with regard to issues of stress in 2011. In 2012, reference is made to the Respondent exhibiting low mood and possibly suffering from a problem with misuse of alcohol. The report states that it was suggested that he cut down his alcohol intake at that time but that he was not keen regarding that. The report makes further reference to issues of alcohol consumption in 2013 when the Respondent declined help regarding withdrawal from alcohol. In July 2015, he attended the GP with depression and had engaged with a counsellor. The report indicates that the Respondent did not attend for follow-up. The report makes no reference to any of the conditions referred to having a direct connection with the conduct

complained of. It appeared to the Tribunal that the Respondent clearly was not coping because of the pressures of running his own business. Whilst the Tribunal had some sympathy for the health problems suffered by the Respondent, the medical report did not confirm the Respondent's current state of health and the likely effect that might have on his ability to practise.

Much of the plea in mitigation had been directed towards the difficulties experienced by the Respondent in his dealings with the Legal Aid Board. Whilst the Tribunal may have some sympathy in relation to that, it could not excuse running the client account at a deficit for a period of just short of three years and to a significant figure. Mr Ferguson had drawn the Tribunal's attention to Production 48, a letter from the Respondent to the Law Society dated 9 February 2014, which suggested that any difficulties with the Legal Aid Board occurred some time after September 2013.

Mr Ferguson had submitted that, although perhaps late in the day, the Respondent now understood where he had gone wrong and had insight into his conduct. The Tribunal accepted that no party was out of pocket and no third party had complained.

However, the Tribunal required to balance all of this with protection of the public and the reputation of the profession. In all of the circumstances, the Tribunal determined that the appropriate disposal was to Censure the Respondent and to Restrict his practising certificate so that he could not practise on his own account for a cumulative period of at least two years.

Parties were invited to make submissions with regard to expenses and publicity. The Fiscal moved for expenses and indicated that publicity should be ordered in the usual course. Mr Ferguson indicated that the Respondent had few resources and that any award of expenses might require to be paid over a period of time.

The Tribunal concluded that nothing had been said to divert from the principle that expenses follow success and awarded expenses to the Complainers. It ordered that publicity should include the name of the Respondent but need not name any other person



**Eric Lumsden**  
**Vice Chairman**