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

F I N D I N G S

in Complaint

by

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

against

ALASTAIR GORDON MACRAE, formerly of A and J C Allan & Co, Solicitors, North Bank Chambers, 36 Newmarket Street, Falkirk

1. Two Complaints (Tribunal reference numbers DT/11/27 dated 3 November 2011 and DT/16/09 dated 1 March 2016) were lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Alastair Gordon MacRae, formerly of A and J C Allan & Co, Solicitors, North Bank Chambers, 36 Newmarket Street, Falkirk (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 Complaint DT/11/27 as lodged to be served upon the Respondent. Answers were lodged for the Respondent.

4. In terms of its Rules the Tribunal appointed Complaint DT/11/27 to be heard on 24 January 2012 and notice thereof was duly served on the Respondent.

5. On 24 January 2012, Complaint DT/11/27 called for a procedural hearing. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was not present but was represented by James McCann, Solicitor, Clydebank. Of consent and on the Respondent's motion the procedural hearing was continued to 19 March 2012.

6. On 19 March 2012, Complaint DT/11/27 called for a continued procedural hearing. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was not present but was represented by James McCann, Solicitor, Clydebank. Mr McCann advised that further complaints against the Respondent had been made to the SLCC. He moved the Tribunal to sist the case or continue to procedural hearing. Mr Lynch opposed the motion to sist. Of consent and on the Respondent's motion, the procedural hearing was continued to 24 May 2012.

7. On 24 May 2012, Complaint DT/11/27 called for a continued procedural hearing. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was not present but was represented by James McCann, Solicitor, Clydebank. Mr McCann again advised that further complaints against the Respondent had been made to the SLCC. He moved the Tribunal to sist the case or continue to procedural hearing. Mr Lynch opposed the motion to sist. On the Respondent's motion, the procedural hearing was continued to 27 September 2012.

8. On 27 September 2012, Complaint DT/11/27 called for a continued procedural hearing. No parties were present, matters having been previously canvassed by email. Other matters were due to come before the Tribunal and a Judicial Factor had been appointed to the Respondent's firm. Of consent and on the Complainers' motion, the Tribunal sisted the case.

9. On 11 June 2013, Complaint DT/11/27 was set down for a procedural hearing. The Complainers were represented by their Fiscal Grant Knight, Solicitor, Edinburgh on behalf of Sean Lynch, Solicitor, Kilmarnock. The Respondent was neither present nor represented. Mr Knight indicated that he wished the sist to remain in place. The Tribunal did not recall the sist.

10. The Tribunal caused a copy of Complaint DT/16/09 as lodged to be served upon the Respondent. Answers were lodged for the Respondent.

11. In terms of its Rules, the Tribunal appointed Complaints DT/11/27 and DT/16/09 to be heard on 6 June 2016 and notice thereof was duly served upon the Respondent.

12. On 6 June 2016, Complaints DT/11/27 and DT/16/09 called for procedural hearings. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The

Respondent was present and represented himself. Of consent and on the Complainers' motion, the Tribunal recalled the sist in Complaint DT/11/27. Of consent and on the Complainers' motion, the Tribunal exercised its power under Rule 17 of the Scottish Solicitors' Discipline Tribunal Rules 2008 (hereinafter referred to as "The Rules") to direct that Complaints DT/11/27 and DT/16/09 be conjoined and heard together. The Respondent confirmed that he insisted on his preliminary pleas. The Fiscal asked the Tribunal to fix a Debate. The Tribunal fixed a preliminary hearing for the Debate for 25 July 2016. The Tribunal ordered that the Complainers make documents available to the Respondent.

13. On 25 July 2016, conjoined Complaints DT/11/27 and DT/16/09 called for a preliminary hearing to deal with the Debate. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was present and represented himself. Prior to the hearing both parties provided written notes of argument and Mr Lynch had provided the Tribunal with a conjoined Record. Of consent, the Tribunal allowed the Respondent to lodge productions on the day of the debate. The Tribunal heard submissions from both parties. After careful consideration, the Tribunal repelled the Respondent's preliminary pleas and appointed a full hearing to be held on 2 December 2016. The Tribunal ordained that the documents held by the Law Society and referred to during the Debate should be lodged with the Tribunal Office within three weeks of 25 July 2016 and copied to the Respondent at the same time.

14. On 2 December 2016, conjoined Complaints DT/11/27 and DT/16/09 called for a hearing. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was present and represented himself. Of consent, the Tribunal allowed the late lodging of an Auditor's certificate as a production for the Complainers. The Respondent sought to amend the signed Record to incorporate the terms of certain documents. The Fiscal objected. The Tribunal refused the motion. The Complainers led the evidence of one witness, Sharon Brownlee, who was cross-examined by the Respondent and re-examined by the Fiscal. The hearing was adjourned part-heard to 24 and 25 January 2017.

15. On 24 and 25 January 2017, conjoined Complaints DT/11/27 and DT/16/09 called for a continued hearing. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was present and represented himself. Of consent, the Tribunal granted the Respondent's motion to amend the Record in case DT/16/09. Of consent, the Fiscal lodged an annotated copy of the joint minute previously tendered. The Fiscal led his final witness, Morna Grandison on 24 and 25 January 2017 and closed the

Complainers' case. The Respondent began giving evidence on 25 January 2017. The case was adjourned part heard to 28 April 2017 and 22 May 2017. The Tribunal Clerk provided to the Respondent certified copy Complaints and Answers and a certificate in terms of paragraph 12 of Schedule 4 to the 1980 Act.

16. On 27 April 2017, the Chairman, exercising the functions of the Tribunal under Rule 56, adjourned the hearing fixed for 28 April 2017 due to the ill health of a Tribunal member to the second date already fixed for the hearing, 22 May 2017.

17. On 22 May 2017, conjoined Complaints DT/11/27 and DT/16/09 called for a continued hearing. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was present and represented himself. The Respondent completed his evidence-in-chief. Before commencing cross-examination, the Fiscal made a motion to lodge another Inventory of Productions on behalf of the Complainers. This was opposed by the Respondent. The Tribunal refused the motion. The Fiscal commenced cross examination of the Respondent. The case was continued to 4 August 2017 at 1000 hours.

18. On 27 July 2017, the Chairman, exercising the functions of the Tribunal under Rule 56, adjourned the hearing fixed for 4 August 2017 due to a Tribunal member's bereavement to 26 September 2017.

19. On 26 September 2017, conjoined Complaints DT/11/27 and DT/16/09 called for a continued hearing. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was present and represented himself. The Fiscal continued cross-examination of the Respondent. The Fiscal made a motion to use documents which had not previously been lodged for the limited purpose of testing the Respondent's credibility regarding answers he had given during cross-examination. The Respondent opposed the motion. The Tribunal refused the motion. Cross-examination of the Respondent concluded. The Respondent re-examined. The Respondent closed his case. Both parties made submissions. The Tribunal continued the case to 19 January 2018.

20. On 17 January 2018, the Chairman, exercising the functions of the Tribunal under Rule 56, adjourned the hearing fixed for 19 January 2018 due to bad weather. The continued hearing was fixed for 16 March 2018.

21. On 16 March 2018, conjoined Complaints DT/11/27 and DT/16/09 called for a continued hearing. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Glasgow. The Respondent was present and represented himself.

22. Joint Minutes were lodged for both Complaints.

23. The Tribunal found the following facts established:-

23.1 The Respondent's date of birth is 5 June 1962. He was enrolled as a solicitor on 21 May 1986. Between 1 July 1991 and 22 June 2012, the Respondent was first a partner and latterly (from 1 June 2011) sole principal in the firm of A & JC Allan & Co, Solicitors, North Bank Chambers, 36 Newmarket Street, Falkirk. The Respondent resided at 2 Old Sheriffmuir Road, Bridge of Allan. The Respondent is not currently employed by any legal firm.

DT/11/27 Complaint

23.2 Mrs. A (hereinafter "the deceased") died on 9th October 2006. The Respondent's firm had been instructed by the deceased in respect of a power of attorney. David Rattray, the senior partner of the Respondent's firm, was appointed as attorney to the deceased by deed dated 1st September 2006. After the date of the deceased's death the Respondent wrote to Messrs Tho. & J. W. Barty (hereinafter "Bartys") solicitors enquiring as to whether those solicitors held any will on behalf of the deceased. The Respondent wrote on similar terms to an English Firm of solicitors, Messrs Coles Miller of Bournemouth. The Respondent also made enquiry with another English firm, Insley and Partners. By letter dated 17 July 2007 Messrs Tho. & J. W. Bartys responded to the effect that they had in their possession a will executed by the deceased on or about 23 January 2006. That letter was received in the Respondent's office during the Respondent's absence on holiday. On 16 March 2007 the Respondent wrote to Insley and Partners in terms which indicated that he had a copy of the 2006 will. Coles Miller indicated that they had a draft will which had been prepared on the instructions of the deceased but had never been executed by her.

23.3 On 14 December 2007 the Respondent spoke by telephone with a solicitor

from Bartys, Mrs. Hamilton. The attendance notes which refer to the conversation prepared by the Respondent and by Ms Hamilton differ in their terms but on any view are indicative of the knowledge of the Respondent that Mrs A had died leaving a will. The deceased had made previous wills in or about October 1996 and January 2006.

23.4 On or about 12 June 2009, in the knowledge of the existence of the will of January 2006, the Respondent framed on behalf of his client Mr B an initial writ which averred that the deceased had died intestate, that she was pre-deceased by her husband and that she was survived by a sister who had right to her intestate estate. It was averred that the sister of the deceased suffered from cognitive impairment and the writ craved the appointment of Mr B as executor dative. The averments in the writ about intestacy were misleading.

23.5 The executors appointed by the deceased in her January 2006 will were Ronald Alexander who declined on 19 August 2008 to accept office and Mr I who predeceased the deceased. In those circumstances the residuary beneficiaries of the will were entitled to be appointed as executors of the deceased: Executors (Scotland) Act 1900 Section 3. The residuary beneficiaries (The International Fund for Animal Welfare, World Horse Welfare (formerly known as International League for The Protection of Horses), The Vegan Society and Cats Protection) instructed Turcan Connell Solicitors. The residuary beneficiaries signed mandates requiring the Respondent to hand over the papers in respect of the deceased's affairs and her estate. Turcan Connell forwarded the mandates to the Respondent on 28th August 2009 with a request that they be implemented.

DT/16/09 Complaint

23.6 The Respondent along with Mr David Rattray, Solicitor was a partner in the firm of A & JC Allan & Co in Falkirk. The Respondent had been the designated Cash Room Partner of the firm since 1st September 1992. In June 2007 the firm was the subject of a Guarantee Fund inspection which identified various matters of concern. On the basis of assurances by Mr Rattray that the breaches identified would be addressed, no further action was

taken at that time. The Respondent, Mr Rattray and the firm were sequestrated on 9th March 2011 in petitions at the instance of Her Majesty's Revenue & Customs. The sequestrations were recalled on 18th May 2011. On 31st May 2011 Mr Rattray resigned from the partnership. Thereafter the Respondent was a sole practitioner. In September 2011 the firm was inspected by staff from the complainers' Financial Compliance Department and as a result of the findings of that inspection a "follow up" inspection took place on 10th February 2012. As a result of further investigations carried out by the complainers arising in turn from that further inspection a petition was presented to the Court of Session by the complainers in respect of which an interim Judicial Factor was appointed to the Respondent's estate on 22nd June 2012. The appointment of the Judicial Factor, Mrs Morna Grandison, was made permanent on 31st July 2012.

2012 Inspections

23.7 The inspection commenced on 10th February 2012. No books and records such as would comply with the Practice Rules were being maintained by the Respondent. The cashier employed by the Respondent had no understanding of the procedures or requirements of the Practice Rules. She explained that the previous cashier had left suddenly during the previous year and the Respondent had asked her to work in the cash room temporarily. She explained that she had a list of reports which she had been told by GB Systems, who supplied the Respondent's accounting software, to run at each month end but she stated that she had no knowledge of what information was contained in them as she had had no training. As a result, it was not possible to obtain an accurate picture of the Respondent's financial position nor that of his client account. The Respondent's firm trial balance did not reflect the true financial position particularly in relation to a series of five loans all of which were in arrears, and the Respondent's drawings account. As a result of the findings of this inspection the complainers Guarantee Fund Committee interviewed the Respondent on 26th April 2012 at which time the complainers decided that further investigations would be carried out in relation to the Respondent's practice. The further inspection of the Respondent's practice commenced on 22nd May 2012. As a result of the findings of that investigation the complainers determined that the Respondent's

practising certificate should be suspended in terms of Section 40 of the Solicitors (Scotland) Act 1980, and that an application for the appointment of the Judicial Factor should be pursued.

Mrs F's Executry

23.8 Mrs F died on 21st October 2003. Her husband Mr D, was her executor. By 8th October 2007 the work done to wind up her estate had been completed. As at that date the Auditor of Court had assessed the fees properly due to the Respondent in respect of the executry at £10,770.05 inclusive of VAT. As at that date the Respondent had taken fees amounting to £14,100 plus VAT in relation to the executry. He continued to hold funds, in the amount of £120,000 or thereby, in relation to the estate.

23.9 The Respondent took the following additional fees in relation to the executry after October 2007, namely £2,300, taken on 28 September 2009, as an "*interim fee re general business affairs)*"; £1,175 taken on 23 June 2010; £587.50, taken on 17 September 2010, as a "*further interim fee re winding up Executry*"; £600, taken on 3 June 2011, as an "*interim fee re tax planning and dealing with accountants*"; £1,200, taken on 4 August 2011, as a further "*interim fee [for] winding up executry*"; and £1,200 taken on 4 October 2011, as a "*further interim fee*". No work was done which would have justified the taking of these fees, and no fee notes were issued to the executor.

Mrs A's Executry

23.10 Mrs A was a client of the Respondent who had instructed the Respondent or his firm in relation to the preparation of a will and power of attorney. Mr C was a neighbour of Mrs A. In 1998 Mrs A granted in favour of Mr C an option to purchase her property, known as Property 1. At that stage the Respondent represented Mr C and Mrs A was represented by Bartys, Solicitors. The option lapsed. Over a number of years there were negotiations which culminated in the property being sold by Mrs A to Mr C with the date of entry specified as being 14th September 2005. At that stage the Respondent continued to represent Mr C and Mrs A represented herself.

Payments had been made towards the agreed purchase price. There was a balance outstanding as at 21st September 2005 of price of £104,000 or thereby.

23.11 Mrs A delivered the disposition to the Respondent in September 2005. Mrs A died on 9th October 2006. The disposition was sent by the Respondent for recording on 9th April 2008. Between 2005 and 2008 the Respondent made file entries which reflected discussions with Mr C as to the amount outstanding.

23.12 The Respondent transferred £104,000 from ledger STE010.16, held in the name of Mr. C, to Mrs. A's executry ledger MCC045.2 on 29 August 2008. These funds were the proceeds of the sale of a property at Property 2.

23.13 The Respondent transferred £19,637.50 to Mr. C's said ledger STE010.16 from Mrs. A's executry ledger MCC045.2 on 16 December 2011.

23.14 The Respondent uplifted £30,000 from a bank account held in the name of Mrs. A's executry on 29 January 2010, which was immediately "*transferred to STE010.16 re Interim Fee*".

23.15 The Respondent transferred two amounts from ledger MCC045.2 to ledger MCC045.3, namely: £1,255, on 10 December 2010; and £640, on 25 May 2011. This ledger related to the defence of the action for removal of the executor whose appointment had been obtained by the Respondent and which is the subject of complaint number DT13/12 (World Horse Welfare), DT13/12 (Cats Protection), DT13/11 (The International Fund for Animal Welfare).

23.16 The Respondent took the following fees in relation to Mrs. A's executry, namely: £3,525, on 29 August 2008; £1,175, on 12 September 2008; £1,175, on 19 September 2008; £1,175, on 26 November 2008; £2,350, on 28 November 2008; £2,300, on 29 December 2008; £575, on 25 February 2009; £2,300, on 30 April 2009; £2,300, on 29 May 2009; £2,300, on 26 June 2009; £1,725, on 16 July 2009; £2,300, on 28 August 2009; £575, on 27 November 2009; £1,175, on 23

June 2010; £587.50, on 19 July 2010; and £1,175, on 29 October 2010, amounting in all to £26,712.50;

23.17 During the period 15 December 2011 to 20 December 2011 the Respondent transferred funds between Mrs. A's executry ledger MCC045.2 and Mr. C's ledger STE010-16, namely: fourteen 'recoveries' which "*should have been posted to STE010 (N.S.)*", as recorded in the executry ledger on 15 December 2011; the funds amounting to £19,637.50 transferred from ledger MCC045.2, in respect of "*fees wrongly attributed to Mrs A and subsequently cancelled*", (See Article 23.13) in relation to thirteen fee notes, on 16 December 2011; and the balance of £11,844.98 "*transferred to Mr C. STE010 (MAT16) re repayment of overpayment in respect of sale of [subjects at] Property 1*" from Mrs. A's ledger, on 20 December 2011. He had no authority from Mrs A's executors to do so.

Mr. C

23.18 The Respondent acted for Mr C in relation to *inter alia* the purchase of Property 1. The Respondent also acted on behalf of Mr C in relation to other property matters. At the behest of the Judicial Factor the Respondent's files in relation to his actings on behalf of Mr C were taxed by the Auditor of Court. Some of the files went as far back as 2002. The Respondent overcharged Mr. C. The Auditor found that the total appropriate fee, based on the evidence he had examined, was £38,651.05, exclusive of VAT, whereas the Respondent had taken a total of £104,237.70, exclusive of VAT, in respect of his firm's fees. In the period between July 2008 and December 2011 alone, the Respondent has taken fees from Mr C amounting to £52,500 plus VAT.

23.19 The Respondent took money in respect of fees from Mr. C's funds without having rendered fee notes and without proper authority.

23.20 On 6th June 2012 Mr C and his son Mr G met staff of the complainers Financial Compliance team. Mr C confirmed that he had not received copies of any of the fee notes condescended upon nor had he issued any authority to

the Respondent to take these fees. Mr C was unaware that the Respondent held a sum in excess of £16,000 to his credit.

HMRC/VAT

23.21 After the recall of his sequestration of the Respondent did not inform HMRC that he had begun trading as a sole practitioner. He did not register for VAT. He charged VAT on the fees which his firm rendered or took. He used the pre-sequestration firm's VAT reference number. He did not submit any returns for VAT to HMRC, nor did he remit to HMRC any of the VAT which he had taken on the fees of his firm.

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

DT/11/27 Complaint

He framed an initial writ which averred that the deceased had died intestate and said averments were misleading because he had knowledge of the existence of a will.

DT/16/09 Complaint

(a) He charged for work not done by him;
(b) He charged grossly excessive fees in respect of executry and other matters;
(c) He repeatedly took fees without rendering fee notes or otherwise obtaining authority from clients to do so;
(d) He made significant inter client transfers of funds without proper basis or written authority;
(e) His financial records did not contain correct firm balances or no ledger reflecting the financial position of the firm, or correct client bank accounts or client balances, all in breach of Rules B6.7 of the Practice Rules;
(f) Since his resumption of practice in September 2011, he failed to make any payment or otherwise account to HMRC for liabilities in respect of VAT, despite having deducted the sums thereby payable from clients, in breach of Rule B1.2 of the Practice Rules.

25. The Tribunal found the Respondent not guilty of Professional Misconduct in respect of:

DT/11/27 Complaint

His failure to implement mandates.

26. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

> Edinburgh 16 March 2018. The Tribunal having considered the Complaints at the instance of the Council of the Law Society of Scotland against Alastair Gordon MacRae, formerly of A and J C Allan & Co, Solicitors, North Bank Chambers, 36 Newmarket Street, Falkirk; Find the Respondent guilty of professional misconduct in respect that he framed an initial writ which averred that the deceased had died intestate and said averments were misleading because he had knowledge of the existence of a will; he charged for work not done by him; he charged grossly excessive fees in respect of executry and other matters; he repeatedly took fees without rendering fee notes or otherwise obtaining authority from clients to do so; he made significant inter client transfers of funds without proper basis or written authority; his financial records did not contain correct firm balances or no ledger reflecting the financial position of the firm, or correct client bank accounts or client balances, all in breach of Rules B6.7 of the Practice Rules; since his resumption of practice in September 2011, he failed to make any payment or otherwise account to HMRC for liabilities in respect of VAT, despite having deducted the sums thereby payable from clients, in breach of Rule B1.2 of the Practice Rules; Find the Respondent not guilty of professional misconduct in respect of his failure to implement mandates; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the

name of the Respondent but such publicity will be deferred until the conclusion of any associated proceedings or intimation that none are to be brought.

(signed)
Colin Bell
Vice Chairman

27. 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 10 MAY 2018 .

IN THE NAME OF THE TRIBUNAL

[redacted]

Colin Bell

Vice Chairman

NOTE

25 July 2016

On 25 July 2016, a debate was held at a preliminary hearing. The written note of argument produced by the Respondent indicated that his plea in law rested on procedural unfairness. In support of this he relied on a) article 6 of the ECHR b) the principles of natural justice as expressed in the maxim *audi alteram partem* and c) his legitimate expectations with regard to the actions of the Council of the Law Society of Scotland. In his note the Respondent also relied upon delay as a separate head of argument. The Respondent invited the Tribunal to uphold his pleas in bar of trial and dismiss the Complaint.

The written note of argument produced by the Complainers claimed that the Article 6 case law and the common law position with regard to delay were against the Respondent and that he could not succeed on this ground. The Complainers' position was that any alleged procedural irregularities, even if they existed, could not be determined by the Tribunal and could only be challenged by judicial review.

Authorities were lodged by both parties. The Respondent sought to lodge productions on the day of the debate. The Respondent indicated that his purpose in lodging the productions was to assist the Tribunal in understanding the timeline of events. He did not intend to refer to the content of the productions. The first production was the Law Society report relating to the Respondent dated 27 October 2014. The second production comprised of copies of email correspondence between the Respondent and Thomas Davidson, the author of the Law Society report. Of consent, the Tribunal allowed the Respondent to lodge the productions.

In oral submissions the Respondent indicated that the gist of his case was predicated upon procedural unfairness. He wanted the Tribunal to dismiss the case on that basis. The Chairman clarified whether the Respondent still intended to proceed upon the basis of delay. The Respondent submitted that his argument related to procedural unfairness and that what he had to say about delay was incorporated under that head.

The Respondent described to the Tribunal a timeline of events. He complained that he was not given an opportunity to consider or comment on the evidence put before the Law Society Sub Committee. Although he was given two weeks to provide comments, there was no guarantee that they would be considered and it was difficult to do so without knowing the case against him. This was unfair. The Respondent made reference to the case of Mr MacR [2013] CSOH 28 and R-v-The Secretary of State for the Home Department *ex parte* Doody [1993] UKHL 8. Commenting on the MacR case, he said that

the way the Law Society had proceeded was a breach of the principle of *audi alteram partem*. He argued that there ought to be fairness in the procedure before a case reached the Tribunal.

The Respondent clarified that he did not criticise the delay of the procedural aspects of the case other than with regard to the report. His issue was the delay in producing documentation. It was provided too late to allow him to make significant comment. He said that it was not possible for him to receive a fair hearing. One witness had died and the delay in proceedings meant that he would encounter difficulties obtaining further evidence to support his case due to the passage of time.

The Fiscal noted that the Respondent had been invited in February 2014 to make an appointment at the Law Society's offices to peruse any documents relevant to the Complaint. The Respondent was not deprived of the opportunity to investigate but even if he had, this would not prevent him investigating now.

The Fiscal referred to various authorities contained within his note of authorities, including Eckle-v-Germany (Application No. 8130/78) and Council of the Law Society of Scotland-v- Hall 2002 SC 620. He noted that if the Tribunal accepted that the calculation of time was subject to the Hall decision, then he did not require to say much more. The starting point for calculating delay was the date the Complaint was presented to the Tribunal.

With reference to case law, the Fiscal reminded the Tribunal that unreasonable delay does not prevent a trial from happening. The right to be tried in a reasonable time is not a right not to be tried. If the Tribunal was to use its common law power to bring an action to an end, the test would be whether the Tribunal could infer that a fair trial was impossible (Petition of James Gerard Moore for judicial review of a decision of the Scottish Solicitors Discipline Tribunal [2015] CSOH 182). The Fiscal noted that if the Tribunal was to repel the current plea in bar of trial that would not prevent the Tribunal giving weight to any issue of fairness which the Respondent wanted to raise at the full hearing.

The Fiscal submitted that judicial review is the only way to properly challenge the Law Society's decision to prosecute (West-v-The Secretary of State for Scotland 1992 SC 385). He noted that the Tribunal had been asked to entertain this question before and had refused. In this regard, he referred to the Tribunal's decisions against Alexander Ritchie Robertson (23/08/2007) and Thomas H Murray (19/08/2014).

The Tribunal noted that the principal motion of the Respondent was that the Tribunal should dismiss the Complaint due to the procedural unfairness experienced during the Law Society's investigation which led to the decision to prosecute the Respondent. As part of that procedural unfairness, the Respondent relied on the delay in the disclosure of documents pertaining to the Complainer's case against him. He accepted that the Hall case was binding on the Tribunal with regard to the consideration of unreasonable delay in general terms.

The Tribunal had some sympathy for the Respondent. The Tribunal was concerned about the Law Society's actions in this case if they were as the Respondent alleged. However, following its own decisions in Robertson and Murray and the authorities referred to by both parties, the Tribunal was of the view that the appropriate way to challenge the alleged unfairness of the procedure would have been for the Respondent to have applied for a judicial review of the Law Society's decision. The Respondent had chosen not to do so. It was noted that MacR was a judicial review case and that Barrs referred to how tribunals and quasi-judicial bodies should operate.

The Tribunal was of the view that there was not enough information available at this stage to support the proposition that there was sufficient prejudice to make a fair trial impossible. The Tribunal would in due course make its own findings in fact. It would not be in the public interest to dismiss the Complaint. However, it would still be open to the Respondent to raise issues of fairness during the substantive hearing as they applied to the facts of the case, following the reasoning in Moore.

The Tribunal repelled the Respondent's pleas in bar of trial. The Tribunal reserved all questions of expenses until the conclusion of the substantive hearing of the Complaint. It ordained that the documents held by the Law Society and referred to during the debate should be lodged with the Tribunal Office within three weeks of the date of the Debate and copied to the Respondent at that time. The Tribunal produced an interlocutor containing its decision on the preliminary pleas.

2 December 2016

On 2 December 2016, of consent the Tribunal allowed the late lodging of a production for the Complainers. This was an Auditor's certificate. The Respondent sought to amend the signed Record to incorporate the terms of documents he said were lodged at the debate. The Fiscal objected. The Tribunal refused the motion. The productions had been lodged at the debate for the limited purpose of establishing a timeline. It was not fair to the Complainers to amend the Record on the morning evidence was due to begin.

24 January 2017

On 24 January 2017, of consent the Tribunal granted the Respondent's motion to amend the Record in case DT/16/09 by adding in Answer 6 between the words "council." and "It", the following sentence:

"The Report dated 27/10/14, the Answers thereto dated 12/11/14, the Supplementary Report dated 20/03/15 and the Answers to said Supplementary Report dated 14/04/15 are produced and referred to for their terms brevitatis causa."

The Fiscal lodged an annotated copy of the Joint Minute previously tendered. Said annotations cross referred the facts agreed to the relevant ledgers as spoken to by witness Sharon Brownlee on 2 December 2016. The Respondent had no objection to the Fiscal lodging this document.

25 January 2017

On 25 January 2017, at the conclusion of the Complainers' case and in view of the evidence of Morna Grandison, the Tribunal asked the Fiscal some questions regarding the basis of his case. The allegations of professional misconduct in Complaint DT/11/27 were not separately averred and the Tribunal also wished to have it confirmed whether dishonesty was part of the Complainers' case. The Fiscal said that he intended to deal with this in submissions. However, the Tribunal was of the view that in the interests of fairness, it was important that the Respondent knew the charge against him and this was also important for the Tribunal.

The Fiscal indicated that dishonesty was alleged with regard to Complaint DT/11/27. The Fiscal explained that the Complaint conformed to Rule 6 and Form 1 of the 2008 Rules which refers to a statement of facts to be prepared by the Fiscal. For a time, Fiscals lodged Complaints without averments of duty and professional misconduct until the Tribunal indicated that these should be included. The Fiscal said that *"the Complaint is the Complaint"* and the Tribunal must determine whether the facts amounted to professional misconduct. The Tribunal continued to have a concern that the Respondent should know the charges against him and whether dishonesty was alleged. It asked the Fiscal for an indication as to why he said the facts amounted to professional misconduct on the grounds of dishonesty. The Fiscal answered that the averments of professional misconduct were contained in the last sentences of paragraphs (c) and (d) namely:

(c) the averments in the writ about intestacy were known by the Respondent to be untrue and
(d) the Respondent has persistently and unconscionably failed to implement the mandates.

The Tribunal considered that this clarification, along with confirmation that the Complainers averred dishonesty was sufficient to give the Respondent notice of the allegation against him. The Tribunal noted that the Respondent was aware that dishonesty was a live issue as he had raised it in cross examination with the second witness. On balance, the Tribunal considered that the Complaint was sufficiently clear as to the substance and seriousness of the matters alleged even although the word "dishonesty" was not explicitly employed.

22 May 2017

On 22 May 2017, before commencing cross examination of the Respondent, the Fiscal made a motion to lodge another Inventory of Productions on behalf of the Complainers. He relied upon Tribunal Rules 26, 27 or 47. The Respondent opposed the motion on the grounds of fairness. He noted that the Law Society had these Productions for five years. He said it was unfair to produce them at this late stage. The case was only calling for another hearing due to lack of time to complete it. The prosecution evidence in the case was finished. No witnesses could speak to the Productions or corroborate them. The Tribunal noted that Rules 26 and 27 referred to the procedure to be followed when considering Appeals. The relevant rules for Complaints were contained within Rules 11 and 12 which were in substantially the same terms as Rule 26 and 27. However, the Tribunal did not consider that the fourteen-day time limit contained in those rules applied to continued hearings. The Tribunal also did not consider that it would be just to allow the documents to be lodged late under Rule 47 in these circumstances, particularly when the prosecution case was closed. The Tribunal refused the Fiscal's motion.

26 September 2017

On 26 September 2017, during cross examination of the Respondent, the Fiscal indicated that he wanted to put something to the Respondent with the leave of the Tribunal. He indicated that on the last occasion he had sought to lodge Productions late under Rules 11 and 12 of the 2008 Tribunal Rules. However, the Tribunal had not allowed his motion. The Fiscal said he did not seek to revisit that ruling. However, he wished to use these Productions for the purposes of challenging the Respondent's credibility. The Fiscal referred to court practice in this area as described at paragraph 16.25 of MacPhail's "Sheriff Court Practice". He also noted the case of the Law Society of Scotland-v-McLean (04/06/2015) in which the Tribunal had allowed this practice. The Respondent objected to the Fiscal's motion. The Respondent said that he assumed that whatever documents were being produced they were purely for testing his credibility. However, he was not sure what area of evidence was being tested. He had said in answer to the most recent questions that he could not remember. The Fiscal indicated that he wished to test the Respondent's answers in relation to the sum which should be in the VAT account and his lack of recollection as to what happened to that money. The Respondent noted that there had been no suggestion

in evidence as to what had happened to this money. The Productions should and could have been lodged at the beginning of the case. It was not fair to him to introduce Productions at this stage.

The Tribunal accepted the principles laid out in MacPhail and noted the use of those principles in McLean. However, it considered that the balance of fairness and the interests of justice in the particular circumstances of this case lay with the Respondent. The Fiscal had indicated that he wished to challenge what the Respondent had said regarding the sum which should have been in the VAT account, and his lack of recollection as to what had happened with that money. The Tribunal noted that this issue was not one which was libelled in the Complaint. The Tribunal recognised that in evidence the Respondent had indicated that he could not remember how much money he set aside for VAT or what had happened to that money. The Tribunal therefore doubted whether there was a proper basis for challenging his credibility on this issue. The Tribunal did not believe that it would be fair to the Respondent to allow the documents to be used in this way particularly since it had previously refused to allow these Productions to be lodged. While recognising that the Complainers wished to use them for a different purpose, the balance of fairness was not such as to justify allowing the motion when its effect would be to go behind the Tribunal's previous decision. The Tribunal did not consider that the issue materially affected its ability to assess the Respondent's credibility.

Two Joint Minutes were lodged in this case. Some of the facts in the Complaints as amended were admitted. A Record was provided by the Fiscal. The Fiscal led two witnesses and the Respondent gave evidence. Both parties made submissions.

The judgement in the Supreme Court case, Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67 was published after the parties' submissions but before the Tribunal met for deliberations. In view of the comments on the law of dishonesty contained in that case, the Tribunal invited parties to make written submissions if they wished to do so. The Fiscal provided a letter dated 28 February 2018 in which he submitted that the Tribunal should approach the matter by the process set out in paragraph 74 of that judgement. He indicated that this was essentially the basis upon which he had invited the Tribunal to deal with the matter when he addressed it on 26 September 2017. Mr MacRae provided no written submissions on dishonesty.

WITNESS 1 – SHARON BROWNLEE

Sharon Brownlee is a financial compliance manager for the Law Society of Scotland based at their offices at Atria One, Morrison Street, Edinburgh. She oversees a small team which carries out

inspections. She is SOLAS qualified and has a residential conveyancing paralegal qualification. She has never worked in private practice.

The witness gave evidence that A & JC Allan was inspected in September 2011 by her team. She was not present. The witness's team were notified that the firm had "commenced trading" following sequestration and so they carried out a routine inspection. This was to check the firm's compliance with the rules.

The team decided to do a follow-up inspection in 2012 due to concerns that the bookkeeping was not compliant with the Accounts Rules. The trial balance did not show the true financial position of the firm. The reconciliations of the firm and client ledgers were incorrect. There was evidence of backdated postings. A member of the team discussed these issues with Mr MacRae and the cashier. The witness was aware that the firm's cashier was not very experienced. The longstanding cashier had left when the Respondent was sequestrated. The person doing the job was not aware of the record keeping requirements of the rules. The team spent lots of time explaining to her the reports which were required and the rules which she needed to follow.

Mr Lynch asked the witness to look at Production 4 in the First Inventory of Productions for the Complainers which starts on page four. The witness agreed that the first page contained the firm's details. It also showed the inspection dates. With reference to the report the witness explained that following sequestration, client funds had been transferred to another local firm. The Respondent had explained to the team that the accounts still had year-end adjustments to make but wanted to wait until after the Law Society inspection took place. At the summing up meeting, the Respondent advised that he thought he still owed about £112,000 in VAT. He had no formal agreement with HMRC. Many of his finance agreements had been misplaced. The report noted that the team had spent a lot of time at the inspection explaining what cashroom procedures needed to be in place to ensure compliance. This part of the report had been agreed by the witness on 31 October 2011.

With reference to page 5 of the report, the witness described the follow-up visit on 10 February 2012. The cashier had explained that she had no knowledge of the accounts rules or cashroom procedures. The Respondent had completed the schedules but a number of issues were still outstanding and these were summarised in the report.

The witness agreed with Mr Lynch that between September and February no qualified cashier was in post and record keeping was still a problem. The firm's records had not been maintained during this

period. Postings had been done. However, the bank reconciliations had not been properly prepared. There were errors and discrepancies. The firm was being sued. The firm also owed £143,000 in VAT and PAYE. The witness noted that Mr MacRae had told the team that no payments had been made in the interim. No attempts had been made by Mr MacRae to contact HMRC to arrange a repayment plan. This had been discussed during the follow up visit and Mr MacRae advised that he had not contacted them on the advice of his accountants.

With reference to page 6 of the report, the witness explained that she went to a meeting with the Respondent on 2 March 2012. The Respondent advised that he was considering outsourcing the cashroom because neither the cashroom manager (the Respondent) nor the cashier were sufficiently aware of the Accounts Rules. The Respondent advised that he had not contacted HMRC to make arrangements for repayment of the debt. This was because he thought HMRC might not be prepared to accept any installment arrangement and insist that the firm settle the debt due in full. He said no payments had been made to HMRC at all in respect of VAT, PAYE, national insurance or personal tax. The firm was charging VAT using the number for the old firm. The Respondent said that he understood why the team suggested that because no payments had been made, HMRC might not even be aware that the firm was trading. The witness confirmed that the note was accurate.

Mr MacRae was interviewed on 26 April 2012 by the Guarantee Fund Committee. Following that interview the witness had a meeting with him at Falkirk on 23 May 2012 under section 40 (Solicitors (Scotland) Act 1980). Morna Grandison was also present. The HMRC debt was discussed. The Respondent's accountant seemed surprised that the Respondent had not contacted HMRC. The witness indicated that she asked the Respondent specifically about the Mr C transactions. There appeared to be about 30 fees taken but her team could not see them rendered. The team did not see the files. They looked at client ledgers only.

The witness said that they also looked at Mrs A's executry. It was apparent that there was a connection between Mr C, Property 1 and Mrs A. There were transfers between the client ledgers but the team could not understand the connection. There were various postings, cancellations and entries. The team asked to see the fees rendered and the evidence of the client's authority to take the fees. Mr MacRae informed them that all files were with the Law Society.

The team looked at files relating to Mr D and Ms E. These also involved transfers between ledgers. The inspectors also saw the Ms F executry files.

The witness indicated that her team always reviews client ledgers. There particular ledgers showed various transfers and corrections. The team wanted to check that there was authorisation to transfer from one ledger to another because clients should always give authority in writing for this. They could see no written authority. One of her follow-up requirements was that Mr MacRae ask for written acknowledgment from clients that they had given authority for these inter-ledger transfers.

Mr Lynch asked the witness to move on to page 45 of the report. She confirmed this was a report relating to visits in February 2012 and responses gathered in March, April and May 2012. Mr Lynch asked the witness to refer to page 73. She indicated that the team found that fees which appear to be significantly in excess of the norm had been taken in this case. The team saw nothing to justify taking these fees.

The witness indicated that she was not present on 22 May but that her team fed back to her the true position on 22 May and she decided to attend on 23 May. She indicated that she delivered a letter telling Mr MacRae about the investigation. She confirmed that the letter she was referring to is contained at page 83 of the bundle of productions. She contacted Mr C and spoke to him. She also met Ms E at the Law Society for a meeting.

The witness agreed that the Judicial Factor was appointed. This happened after the section 40 procedure was implemented on 6 June 2012. Her team did not attend the Committee meetings. The Committee reviews the important information and makes the decision to suspend. Once section 40 takes place this witness's involvement is at an end.

The Fiscal asked the witness to look at some specific ledgers. She referred to specific entries. She said that she had seen no authority for these entries. It was a very confusing audit trail to follow. She noted that fees of over £14,000 were taken from Ms A's executry after the executry was complete. In relation to Ms F's executry she noted that tax planning and accounts are not generally items she would find on an executry ledger.

The witness indicated that she met Mr C and his son, Mr G. She asked Mr C and his son to confirm if they had been given any fee notes and whether they had given their authority for fees to be taken. Mr C indicated that no fee notes had been rendered. The Fiscal asked the witness to refer to Folder 3, page 70 which was also labelled M181. She confirmed that this was a note of the meeting she had described with herself, Mr C and Mr G. The last page (M183) had been signed by a number of people. These were Mr C, Mr G, Tina Heywood, Ms H and Sharon Brownlee. She recognised her own signature. The witness

read out pages M181 onwards. This was to the effect that the transaction in question was a purchase by Mr C from Mrs A of a property for £250,000. The transaction had taken place several years before.

During cross-examination the witness agreed that she could not confirm anything other than what the inspectors told her about the inspections in September and February as she was not present when they were carried out. The witness indicated that it was standard procedure to carry out an inspection following a "new firm" commencing business. She told the Respondent that his firm was classed as a "new firm" as it was beginning post-sequestration. The witness was aware that there were a number of occasions on which the Respondent had responded to inspections. He was given an opportunity to respond and all responses were included within the papers given to the Committee.

The Respondent asked her whether she remembered saying to him that she would afford an opportunity for responses within 14 days before making the recommendation. The witness indicated that she did not remember this. The witness indicated that her team did not make decisions. They merely made recommendations to the Committee. The witness indicated that the recommendation to invite the Respondent to interview was made on 23 February 2012.

The Respondent indicated that he wanted to ask the witness some questions about the meeting on 23 May 2012. He asked the witness whether she remembered a heated conversation regarding advice he had received from his accountant. The witness corrected the Respondent and said he was actually referring to a meeting on 2 March 2012. She said that the Respondent had advised that he had not contacted HMRC on the advice of his accountant whose advice was to "sit tight" and wait on the HMRC to contact him. She had asked about the status with the HMRC bill. The accountant said he had advised the Respondent to contact HMRC so the witness had queried then the Respondent's earlier statement. The accountant appeared to be quite surprised and said he had not given the Respondent this advice.

The Respondent said that the witness had said in examination in chief that he had not contacted HMRC but this was incorrect and he had. The witness clarified that the Respondent had contacted the debt recovery section of HMRC. They did not know that he had been trading. They told him to contact the VAT department and the Respondent told her that he had not contacted HMRC regarding payments. The Respondent put to the witness that he had said he had contacted HMRC and asked what balance was outstanding and how to go about paying it. The witness indicated that she could not remember this. The Respondent asked her whether she remembered him talking about HMRC and she said that she only remembered him talking about debt recovery. The Respondent indicated that his position was that the

record was not accurate. The witness said that her purpose was to try to establish whether any payments had been made and the answer to that was no.

The Respondent put it to the witness that the concerns regarding the accounting issues had been resolved. The witness conceded that a number of record keeping issues had been resolved, for example, client bank reconciliations, posting dates and the independent cashier. The Respondent put it to the witness that visible efforts had been made to rectify her criticisms. The witness said that the record keeping was more enhanced. The Respondent asked the witness what were her concerns before 6 June 2012 and she responded that they were the firm's financial position; the VAT/PAYE arrears increase; the fact that the Respondent had not contacted HMRC; the fact that no payments had been made to HMRC; and the matter of the client's fees in the Mr C, Mrs A and Mr D cases.

The witness said on three different occasions the Respondent had said he had sent fee notes in the Mr C case and authority was awaited. However, when she met with Mr C he said he had never received anything. This was a concern. The Respondent asked the witness what she asked Mr C at their meeting. The witness said she gave copies of 30 fee notes to him that she had received from the Respondent. The Respondent had indicated that these were evidence that he had rendered the fees. However, Mr C said he had never received these.

During re-examination the Fiscal clarified that the recommendation made by the witness' team on 23 February 2012 was not ratified until 8 March 2012.

WITNESS 2 – MORNA GRANDISON

The witness confirmed her full name was Morna June Grandison and that she was 55 years old. Her business address was Atria One, 144 Morrison Street, Edinburgh. She has been employed by the Law Society since 1995 to take on appointments in terms of the Solicitors (Scotland) Act 1980, most often as a Judicial Factor in terms of Section 41 of the Solicitors (Scotland) Act 1980. She is employed by the Law Society but is also an independent Officer of Court accountable to the Accountant of Court.

The witness was appointed as Judicial Factor on 31 July 2012 to the firm and personal estate of Alastair MacRae. She did not visit the Respondent's business premises in Falkirk. By the time she was appointed, the business had been sold to Marshall Wilson. Most files were transferred to Marshall Wilson for the current work. The witness' staff arranged for storage of the remaining files.

The witness confirmed that the document contained at page 93 of the First Inventory of Productions for the Complainers was the petition by the Law Society for appointment of the Judicial Factor. There were a number of paragraphs setting out the basis for that appointment. The witness was referred to paragraph 6 on page 95. She agreed that paragraph contained an averment that in March 2011 two solicitors, one of whom was the Respondent, was sequestrated by HMRC. The witness agreed that paragraph 7 set out that the sequestration had been recalled after partial payment of the debt. The witness indicated that paragraph 8 detailed a Law Society inspection which had taken place in September 2011. This had uncovered concerns regarding finances and bookkeeping. There was a follow up visit in 2012 as is detailed in paragraph 9. The witness agreed that it was fair to say that the Petitioner's concerns were not alleviated. The witness agreed that paragraph 10 detailed the interview by the Guarantee Fund Committee with the Respondent which took place on 26 April 2012. The witness advised that she never saw a copy of the interview note following that meeting. She did her own investigation. She agreed that paragraph 10 details the petitioners' concerns that fees had been taken from client's money without justification, that client's money was not distinguished from the firm's and that the ledgers were not properly kept. She said that there was a particular concern regarding inter- account transfers. The witness was referred to paragraph 13 on p97 of the First Inventory of Productions for the Complainers and agreed that this related to concerns of significant indebtedness to HMRC. The firm had charged VAT without accounting to HMRC. She confirmed that following her investigation this suspicion was borne out.

The witness reviewed Mr C's files. Fees had been taken without fee notes. She prepared accountings from the ledger cards. She said these were at best, difficult to read. The witness was referred to paragraph 15 on p97 of the First Inventory of Productions for the Complainers and agreed that it referred to the Mrs A executry. There were transfers from the Mr C ledger which purported to be part of a purchase price of a property. The witness indicated that she investigated all of these transfers. The catalyst for the investigation had been contact by Turcan Connell. In summary she was concerned in particular about three cases: the Mrs A executry; the Mr C files; and the Mr D files.

The witness interviewed the Respondent shortly after her appointment at the Law Society offices at Drumsheugh Gardens, Edinburgh. A solicitor employed by the Law Society who works directly for her was also present. The witness discussed the partnership with the Respondent. The partnership agreement made provision for what would happen on resignation of one of the partners but this had not been followed. According to the witness there was *"a bit of a muddle and a mess"* as to just who was responsible for everything up to dissolution, if indeed there had been dissolution. It was confusing and difficult to understand where the liabilities lay because there was no cessation in the books of the firm to draw a clean line.

About one year following the sequestration, the witness and the Respondent discussed VAT. She knew that recall had come about because a payment had been made to HMRC. However, the Respondent had not regularised his position regarding VAT. The Judicial Factor's concern was that all fee notes made out while he was trading since 1 June 2011 had a charging to VAT but no VAT returns were lodged with HMRC and no payments made during that time. The fee notes quoted the old VAT number for the firm but this caused difficulties. Was this a new firm or a continuation? It was not clear.

The witness said that the Respondent told her that the accountant had said he should contact the Revenue and sort out matters. However, he was anxious that they would ask him to make payment for the partnership HMRC debt and so he was reluctant to do this. He was trying to raise finance himself to settle the liabilities but he had not yet managed to do so. He told her that he had accounted for the VAT in the records. He indicated that he had money set aside. The witness confirmed that this was the case but it was cleared down to the firm after her appointment.

The witness agreed that she was anxious to speak to the Respondent about the Mr C and Mrs A cases too. She had concerns because Turcan Connell had raised an action or at that stage were contemplating an action against Mr C because they believed that he had not paid for Mrs A's property. This was going to have consequences for A&JC Allan.

The witness was asked what she knew about Mrs A's testamentary situation. The witness said she had reviewed the files and papers but there was confusion over whether there was a will for Mrs A. There was a suggestion that she had completed a will in favour of four charities including Animal Welfare. These four charities were represented by Turcan Connell. Turcan Connell petitioned the court and got themselves appointed as executors. However, before that the Respondent had acted for Mr B's family. The Respondent had applied for Mr B to be executor dative on behalf of his mother. Turcan Connell said they had a valid will yet the Respondent had secured someone else as executor dative.

The Fiscal asked the witness about the relationship between Mr C and Mrs A. The witness said Mr C's solicitor told her that Mr C and Mrs A had known each other for many years. He had made an offer to buy a property from her. The Respondent acted for Mr C in the purchase. Although the Respondent had previously acted for Mrs A (and went on later to deal with her Power of Attorney), in this matter she was not represented.

The Fiscal went on to quote paragraphs 9 and 10 on page 7 of the Record for DT/16/09. The witness

agreed with the Fiscal that the money for the purchase of "Property 1" had not passed through the client account initially. Mrs A had delivered the disposition in September 2005 and died in October 2006. The disposition was sent for recording on 9 April 2008. The witness agreed that it was accepted that as at the date of death the amount outstanding was £104,000.

The witness agreed that on 29 August 2008 the Respondent's firm transferred money from Mr C's ledger to Mrs A's ledger in what appeared to be settlement of the outstanding balance (£104,000). On the 16 December 2011 the Respondent transferred £19,637.50 to Mr C's ledger from the executry. The witness agreed that on 29 January 2010 the Respondent uplifted £30,000 from a bank account in the name of Mrs A's executry and transferred it to the Mr C ledger in relation to an interim fee. The witness agreed that the Respondent had transferred £1255 on 10 December 2010 and £640 on 25 May 2011 and that these transfers related to defence of the action by Turcan Connell.

The witness agreed that the Respondent took a number of fees in relation to Mrs A's executry amounting to £26,712.50 between 29 August 2008 and 29 October 2010. To her, it appeared that fee notes were purported to have been rendered but were not ever sent out from the firm. She said that the Respondent had also advised her that although he called them "rendered", they were not sent out. There was no evidence that they had ever been sent out to Mr B and his family.

The Fiscal asked whether Mr B and his family would have been able to consent to this. The witness said it was not clear when the Respondent became aware of the dispute over the will. However, in her assessment she believed the files revealed that he knew or ought to have known in 2007 that there was a will and that he was in some danger of dealing with the case as if there was no will without the executors' instructions. However, by 2009 he was fully aware that there was another will and he was not entitled to be charging an executry where there was a dispute over who the executors were and whether indeed he had a client. The witness agreed with the Fiscal that Mr B was appointed as executor dative on 22 June 2009.

The Fiscal referred the witness to fourteen "recoveries" amounting to £19,637.50 which the Respondent transferred from Mrs A's ledger to Mr C's ledger. The witness indicated that there were *"a load of debits and credits"* which suggested reimbursement of the Mrs A ledger for fees charged and then transfers over to the Mr C ledger.

The Fiscal indicated that the Respondent had transferred funds between Mrs A's executry ledger and Mr C's ledger in respect of "fees wrongly attributed to Mrs A and subsequently cancelled". He indicated

that the balance of £11,844.98 was transferred to Mr C as an overpayment in respect of the sale of the subjects at Property 1. The witness said that the money left on the Mrs A executry in another funds account was uplifted and put into the ledger card. It was adjusted and transferred to the Mr C ledger card and then put on deposit in his name. This was about £12,000. It was her understanding that Mr C had no knowledge of this.

The witness confirmed that no fee notes had been rendered in respect of these fees and the Respondent had confirmed this to her. There was no authority and no discussion with the clients regarding the inter account transfers. The Respondent explained to her that fees had been due by Mr C and there were title problems and still things to be sorted out. However, the witness was unclear as to why all fees were applicable or authorised by the clients.

The Fiscal asked the witness whether she had ever asked the Respondent for explanation of the fees. She said that in the Mrs A executry the Respondent advised that work was done for the administration of the executry estate. However, it was unclear that he had a client and if the bill was not rendered whether justified or not, removal of fees would be unauthorised. The witness was concerned that Turcan Connell would cite her as the Judicial Factor. She tried to establish if the firm had any defence. She could find no verification of the fees and the instructions to take them. Her point to the Respondent was that even if they were justified, in the absence of instruction she was not going to be able to defend a civil action in court.

The witness said that the Respondent gave an accounting to Turcan Connell to the effect that he had received around £45,000-£50,000 for the Mrs A executry. This reflected the £104,000 less the transfers back. That net sum was used to meet the executry expenses. There was no mention of the £104,000. There were substantial fees charged against this ledger. For example, she was particularly concerned about one of the larger transfers, the re-crediting of fees and crediting into the Mr C ledger and debiting of lots of fees between 15 and 20 December. There was also money that came into the Mrs A case and put in another account.

Mr C's lawyers contacted her because Turcan Connell were threatening court action against Mr C for £250,000 for failing to pay for "Property 1". Mr C's lawyers were trying to get information from the Judicial Factor because in their view it was all fully paid for and they wanted to be able to show that to Turcan Connell. During her investigations it became apparent that Mr C was entirely unaware of the transactions which had occurred in December. He did not know about anything regarding the £30,000. The Judicial Factor could not articulate to Mr C's solicitor why any of the fees debited from his ledger

were appropriate at all. He had no knowledge of anything occurring after the £104,000 payment (fees or transfers). The only way ahead was to get all the fees taxed and go over the accounting.

The taxation took place and the report of the taxation was received. The witness confirmed that the taxation report began at page 105 of the First Inventory of Productions for the Complainers. She confirmed that page 105 is a letter dated 28 April 2014 from R D Sinclair, the auditor of court. The witness agreed that page 106 was the auditor's certificate dated 24 April 2014. The witness clarified that Messrs Warners were Mr C's solicitors. The Respondent and his former partner Mr Rattray were present at the taxation. She was not there. She indicated that the auditor's conclusion was contained on page 116. The total disputed fees amounted to £104,237.70 exclusive of VAT but that the finding of the total appropriate fee on the evidence before the auditor was £38,651.05. The witness explained that on that basis she had to go back and agree a claim with Mr C's lawyers. They restated various accountings. They reversed payments from the Mrs A ledger card because there was no reason for them and substituted the audited fees. The Judicial Factor considered the report in great detail and on a couple of occasions disagreed with the auditor's assessment. In particular, the witness referred to Appendix 4 on page 124 of the First Inventory of Productions for the Complainers. The auditor taxed the fee note as less than what was on the statement of account. However, there was an acceptance by Mr C that he had received that accounting and had not queried the bill. This related to a transaction from 2002. There was one other marginal difference between the fee charged and the auditor's assessment and the witness considered that Mr C had agreed to that fee. The difference was about £1,000.

The Mr C files were intermixed and also mixed up with Mrs A's files. It was difficult to see which files should be sent for taxation and so the Judicial Factor sent as many as she could. The witness said that she thought she had put all files forward but there were a number of matters already agreed between the parties and so they were not part of the accounting or the certificate.

The Fiscal asked how the witness dealt with Mr C's position in the round. The witness said that following the auditor's report they produced new accounts. They debited off the fee notes agreed by the taxation. They referred the balance to the client protection fund. Some money was held in Mr C's name and part of those funds were paid to him. The claim ultimately paid to Mr C was about £27,000. The Judicial Factor had about £16,000 within her control and the balance was met by the Guarantee Fund.

With regard to the Mrs A case, the witness explained that Turcan Connell, on behalf of the executors of Mrs A, raised an action against Mr C and requested payment of £250,000 (which was the price of "Property 1"). Mr C was able to authenticate payments made up until Mrs A's death and vouch for these.

The Judicial Factor accounted to Turcan Connell in respect of £104,000 transferred. Turcan Connell contested completely all fee notes because they had not been authorised by any executor. There was no client to authorise the transfers. A claim ultimately went to the Guarantee Fund for about £70,000. This represented a compromise based on the information available.

With regard to Mrs F's executry, the witness confirmed that Mrs F died in October 2003 and her husband was her executor. By 8 October 2007 the work to wind up her estate had been completed. The Auditor of Court assessed the fees properly due as £10,770.05 inclusive of VAT. The Respondent had taken £14,100 plus VAT. The Respondent continued to hold funds of about £120,000 in relation to the estate. This should have been transferred to the ledger in the name of Mr D senior. There was further debiting of fee notes. Already by 8 October 2007 there had been an overcharge of £5,000 plus VAT. However, the Respondent made use of some of the remaining £120,000. The Fiscal referred the witness to a number of fees taken after the executry was complete between 28 September 2009 and 4 October 2011. The witness said that no work was done which would have justified the taking of these fees and no fee notes were issued to the executors.

The witness indicated that there was a claim by the Mr D and his family. She untangled the inter-accounting transfers because there was no evidence that any had been authorised by the family. The witness looked at the fees and reinstated these. She asked an auditor to fix a fee. The outcome was that substantial claims were paid out. £60,000 was paid out to Mr D junior and £50,000 to Mr D senior. The Fiscal asked whether the witness had seen any authority for the taking of the fees after the executry had been wound up. The witness said that she did not think that she saw any. The Respondent had asked the family to verify the transfers and accountings. However, she had spoken to them and they had said they were not clear what the Respondent had been asking them to sign.

The Fiscal asked what the Respondent had said about fee notes. The witness said the Respondent had told her that the firm would take interim fees but would not render them to the client even though it was noted on the ledger card that they had been rendered. The Respondent told her that this was covered in the terms of business letter.

During cross-examination the witness confirmed that she could not see any reason for money being retained in the Mr D case. The witness agreed that the money left on the ledger card was Mr D's entitlement to the estate.

The witness agreed that Production 24 of the First Inventory of Productions for the Complainers is a statement dated 2 May 2012 by Mr D Senior confirming that all fees taken were of consent and the balance was received. The witness noted that Mr D has signed this on 2 May 2012. She said that when she had met with the family they were very unclear about what the Respondent was asking them to sign. The Respondent had prepared the documents for their signatures. The witness asked if they would verify if they had accountings that went along with these fee notes. The daughter went back through her father's records and could not find them.

The Respondent asked the witness to refer to Productions 25 and 26 in the First Inventory of Productions for the Complainers. The witness confirmed that number 25 was a letter of authority signed by Mr D. Production 26 was a signed letter by Ms E. The Respondent put to the witness that she had said that she disregarded their statements and admitted a claim on the basis of their "confusion". The witness invited the Respondent and Tribunal to look firstly at Ms E's position. Ms E said that her father had offered to pay for her fees for her divorce. She did not see any fee notes because her father was paying the fees. Whatever was paid to Ms E's ledger came from Mr D's ledger. The question was who authorised the fees and who saw the fee notes? As far as the witness could see no one in the family saw these. Mr D thought his daughter had seen the fee notes and that is where their confusion arises. The witness was of the view that the family had signed documents because the Respondent asked them to do so but they had not seen the fee notes and did not understand the documents they were being asked to sign. At the time they fully trusted that everything was in order.

The Respondent said that the implication of that was that the witness believed there was a lack of trust when they signed these documents. The witness said that Mr D and his family came to her and asked her to produce a proper accounting. They were not anxious about the transfers but they wanted to know what had happened in the executry. The Judicial Factor produced an accounting for them. They said to her that they had not seen the fees.

The Respondent referred the witness to the auditor's certificate for Mr C's account contained on pages 105 and 106 of the First Inventory of Productions for the Complainers. He asked the witness whether she would accept that on page 107 he had said to the auditor that he thought files were missing and that the spreadsheet was not useful. The witness indicated that it was a matter of agreement between herself and Mr Wilson that she would produce an accounting for all ledgers on Mr C's case and asked them to confirm that they were happy with the fees. Mr C's position from 2010 onwards was that he had received no accounting for the Mr C/Mrs A matters. The witness had attempted to match the fees to the files. However, they had to go before the auditor to understand what had been charged.

The Respondent suggested that it became clear to the auditor that Mr C had received some of these fees. The Respondent quoted the last paragraph of the auditor's report on page 112 as follows:

"In fairness to the firm and notwithstanding I have slightly reduced the fees taken, the fees of matter 11 were detailed in the statement for said matter (Appendix 2): transferred to the statement on matter 12 (Appendix 4) and sent to Mr C under cover of the letter dated 17 July 2003 (Appendix 6)."

The Respondent suggested that Mr C said that he had not received any statements but there was evidence within the report that he had received some of them if not all. He said that the witness had also noted this and negotiated a higher fee. The witness reiterated that the confusion related to the manner of the file keeping. All files were intermixed. There were no clean lines to help the auditor. She noted that Mr C was in his late 70's. It is possible he may have seen some things and not remembered that he had full accounting by the time the case came to taxation. Where possible the Respondent had been given the benefit of the doubt.

The Respondent asked the witness whether all files had been sent for taxation. The witness indicated that her team had located as many as they could. She sent a list to the Respondent and Mr Rattray and asked them to identify if any were missing. The Respondent referred the witness to page 107 and noted that it is contained within the report his suggestion that there may have been files missing from the taxation but he could only speculate as to the number. The witness agreed that that suggestion was made but noted that the client can only pay for fees for work which the Respondent can verify that he has done. The Respondent was given time to search for the files. The Respondent put it to the witness that two weeks had been provided to confirm three boxes of files. He noted that there were vast arrays of correspondence files and communication files. He also noted that the audit was instructed without his consent. The witness indicated that she had to account to the client for the fees charged which the client claimed had not been authorised by him.

The Respondent indicated that he was not clear regarding the evidence of the £104,000 outstanding at the date of Mrs A's death. The witness indicated that the ledger showed a £104,000 transfer from Mr C to Mrs A represented as balance of payment due re sale of property. The Respondent asked whether the narrative suggested that the £104,000 was the balance of payment. The witness said everyone eventually decided that that was what it was.

The Respondent asked whether the Mrs A executry was audited and the witness answered in the negative. The Respondent asked on the fees audited for Mr C was there any reason why the ledgers and narrations were not provided to the auditor of court. The witness said she could not think she could comment on that. She understood that the auditor had everything he required. It may have been that it was the Judicial Factor's accountings rather than the ledger cards which were sent off. However, she did lift the accountings from the ledgers. The auditor sent out a draft report to all parties including the Respondent and then the diet of taxation took place so that the Respondent and Mr Rattray could raise issues prior to the taxation.

The Respondent asked whether the witness would have expected a SOLAS qualified law accountant to be aware of any short comings in these matters. The witness indicated that she was aware that the Respondent had a SOLAS cashier until March 2011. However, she noted that many of these transactions occur after that date. The Respondent said that most occurred prior to 2011. The witness said she would expect a SOLAS cashier to know that you must render before debiting. The mechanism within firms might vary however.

The witness agreed that there was a repayment agreement regarding the firm and HMRC to ensure recall of sequestration. All indebtedness was not cleared at the time of recall. The full debt was still to be paid.

The witness said that she remembered the Respondent being anxious about the claims passed to the Guarantee Fund. The witness explained the nature of Section 42 of the 1980 Act which is replicated in her petition for appointment. It says that in paying claims to the clients she must divide the sum left proportionately among them. This is why so many clients ended up with a claim against the Guarantee Fund. All clients must go to the Guarantee Fund for a shortfall even if there is no dishonesty alleged in their particular case.The witness agreed that there must be some dishonesty in order for a claim to be made against the Guarantee Fund. She explained that she expresses an opinion regarding whether the shortfall is caused by dishonesty or maladministration. Because of the circumstances of the Mrs A and Mr C case, and debiting without client knowledge, she was of the view that dishonesty was present in this case. The Respondent had admitted to her that the practice of the firm was to debit fee notes not authorised by the client. Those clients denied receiving fee notes. This led to the conclusion that the debiting had been done without knowledge of the clients and instead to the benefit of the firm.

The Respondent asked whether the witness had ever advised him that she considered his actions to have been dishonest. She indicated that she had asked him to assist her regarding the Mr C and Mrs A cases and that they had gone through the ledgers together. They had discussed the consequence which was

that they were not able to account to the clients for the money owed. She agreed that she had not said to him that she thought he had taken it dishonestly, but she had given him an opportunity to go over it in detail. He knew that the claim on the Guarantee Fund arises from dishonesty. She was seeking an explanation for him to let her know if she could come to an alternative view. She was not satisfied that there was evidence to defend the proposition that the transfers were legitimate and done with the clients' authority. On the basis that the clients had said they had not seen the fee notes or transfers, it was obvious she was looking for the Respondent to say, *"You can evidence this by X and Y"*.

The Respondent asked whether the witness had spoken to Mr B. The witness said she had not spoken to him because the Respondent advised her he had not received any fee notes in relation to the executry. The Respondent said that the Mrs A executry files were not audited and the Judicial Factor did not speak to the executor appointed for a period of time and yet was able to conclude that there was no authority because the Respondent had told her that no fee notes were sent out. The witness said that Mr B was not in a position to authorise the fees notes because at the time the Respondent knew of executors who had instructed Turcan Connell.

During re-examination, the witness confirmed that there was no copy of the charge and discharge or copy fee notes attached to the authority signed by Mr D regarding the fees charged. The document referred to payments made between November 2006 and February 2012 and was dated 2 May 2012. The witness agreed that the authority was signed six years after the first transaction and was very much retrospective authority. The witness agreed that retrospective authority was not sent to Mr C until 17 July 2003 which was six months after the last transaction.

A member of the Tribunal asked a question in relation to the files made available to the Auditor. The witness indicated that she recovered all the files that she could. These included all the files that were referred to in notes. Her team did not take files away from the premises. When they were required they mandated them from the new solicitors.

The witness confirmed that the auditor can only operate on the basis of the files given to him. A solicitor can only ever charge a client on the basis of what can be evidenced. The witness said that she gave the auditor access to everything that she had in her possession. The witness conceded that there is always a danger that files may be missing but unless she knows where they are or if they exist then she cannot provide them. It is always her practice to ask the solicitors to identify what is not there. The Respondent was present at the taxation. He had the opportunity to tell the auditor that he did extra work.

The Tribunal member queried with the witness why she was of the view that this was a dishonesty case rather than maladministration. The witness said that to put something through the ledger card as a fee and take money from the client account and firm account is simply an annotation on a piece of paper. However, fees are much more than that. You have to have a fee note. It must be justified by the work done. It was established through the taxation that there was no such justification and no work done. Fee notes must be sent to the client. The client must have the opportunity to challenge them.

The Tribunal member asked whether the witness had interviewed Mr Rattray. The witness said she had spoken on a number of occasions to Mr Rattray's lawyer but not to Mr Rattray himself. She had not interviewed Mrs Rattray.

The witness clarified that since September 2011 no VAT had been paid. Every client's fee note had a VAT charge on it. The Tribunal member asked whether it was possible that VAT might not have been due if this was a new firm and the witness said that was possible. However, because there was recording of VAT recovery there should be an accounting for that.

The Fiscal referred the witness to page M184 which is at tab 71 of the Tracer 3 of 3 Bundle of Productions for the Complainers. The witness confirmed that this was a letter dated 17 July 2012 to Mrs Davis at the Law Society from Warners (who acted for Mr C). She agreed that it referred to the appointment of the Interim Judicial Factor and also referred to purported fees in Mr C's case of £85,504.65. The Fiscal quoted paragraph 3 to the witness as follows:

"Mr C considers that no such fees were due and furthermore even had they been due they should not have been deducted from his money as no invoices were sent to him."

The Fiscal asked whether Mr C maintained that position throughout and the witness agreed that was the case.

With reference to dishonesty, the witness said her assessment was based on the fact that money had been taken from the client account without authority. She had letters from clients saying they did not authorise the fees and did not get notice of them.

WITNESS 3 – THE RESPONDENT

The Respondent indicated that his name was Alastair Gordon MacRae and his address was 2 Sheriffmuir Road, Bridge of Allan. He qualified in 1985, and from 1986 onwards he was employed at A & JC Allan in Falkirk initially as an assistant but then as a partner from 1989. Latterly his only partner was Mr Rattray until his resignation on 31 May 2011. The Respondent was cashroom partner.

The background to his sequestration was related to non-payment of VAT. For four years before he was sequestrated he had been absent from the office on a fairly regular basis. His child had been critically ill and was hospitalised for periods of time. He was therefore not in attendance at the office. His first realisation that the VAT position was not under control was when he received a telephone call in January 2011 from sheriff officers seeking to serve a writ upon him. Decree was granted in February 2011. Mrs Rattray resigned as cashier. About £70,000 was due in respect of VAT and penalties and interest. The Law Society was obliged to ensure that the firm stopped trading and close all accounts. The Respondent was automatically suspended on the date of sequestration. Mr Rattray and the Respondent very quickly set about borrowing from friends and family to recall the sequestration. Recall was granted in May 2011. The partners decided to go their separate ways. They did not commit this agreement to writing. Mr Rattray resigned on 31 March 2011 and at that stage the Respondent was the sole practitioner for A & JC Allan.

From the date of sequestration all the firm accounts were closed. All monies were moved by agreement of the Law Society to another firm in Falkirk. With the exception of changing bank accounts and losing Mr and Mrs Rattray, everything remained the same from a practical point of view. Files started coming back. There was hiatus period for about two months from the date of recall on 18 May to the point when the two bank accounts were opened. A & JC Allan did work but all money went through Morton Pacitti. The Respondent duplicated all the financial records and put it through their own system at A & JC Allan.

Money was returned to A & JC Allan in one lump sum and they then had to balance it. This took a huge amount of effort. When the inspectors came in there were various concerns. The Respondent's observations are in his Answers and are also expanded in the February follow up visit. The Respondent continued to be absent from the office for periods of time.

The Respondent conceded that there was justified criticism in the February report that the observations and requirements in the September report were not fully addressed. The Respondent accepted responsibility. The Respondent noted that the primary concerns seem to be centred on the Mr C and Mrs

A executries along with the Mr D files and the VAT position. Numerous other requirements were made in respect of the true financial position, the anti-money laundering position etc. However, these are not part of this charge. The Law Society requirements were hugely time-consuming. It was not entirely clear to him the level of seriousness of any particular matter raised in September. It was only clear to him in February.

The Respondent was not able to attend the Law Society meeting in February due to his son's illness. It became apparent that the Law Society was keen to report the matter to the Guarantee Fund and the Respondent was not clear why it had escalated to that point from September. There were still outstanding matters from September and it was agreed that the Respondent would address them and provide written responses by a particular date which was 14 or 21 days after the inspection. The Respondent prepared the responses to everything he could within that period. On the day before the deadline, he received a letter saying that he was required to attend a Committee meeting. He was *"slightly miffed"* that he had done a lot of work to meet the deadline but the decision was made before his response was received.

He consulted Mr McCann with regard to the earlier of the conjoined Complaints (DT/11/27). The Respondent attended the Guarantee Fund Committee meeting on 26 April 2012. A further inspection was proposed for May. He arranged for the cashroom function to be provided by an external company.

The Respondent said that the firm's accounts *"were in such a mess"*. When the year-end accounts had been done the year before, the computer had not been put back to zero. It knocked off the accuracy from one year to another. However, looking at the accounts, there was nothing to show the Respondent that there was anything untoward. The figures reconciled on a month to month basis but the computer did not reflect the true position. When the Law Society looked at them they did not reconcile. Once the problem was identified it was remedied quickly by the accountant inputting the figures and rebooting the system. The Law Society was satisfied that the issue was resolved by May or June.

After the follow-up meeting in May, there was a requirement on the Respondent to produce things while the Law Society continued with the inspection. He was suspended on 6 June. He did not know anything about the meeting. He received no notification and neither did Mr McCann.

The Respondent referred the Tribunal to page 14 of the First Inventory of Productions for the Complainers. He said this was a note of interview of the Guarantee Fund Committee. He referred the Tribunal to page 19 of that report and asked them to look at the second paragraph. He read out the section as follows:

"The Chairman explained that a report would go to the Committee on 3 May 2012 and he would hear about matters shortly thereafter."

The Respondent said that he interpreted that that the "he" referred to was himself, the Respondent.

The Respondent also referred the Tribunal to page 28 of the First Inventory of Productions for the Complainers. He asked them to turn to page 29 of the Guarantee Fund Sub Committee document. He asked them to consider the terms of the last three paragraphs on page 29 where it was anticipated that the Committee would meet again in June. The Respondent said that this was the last formal notice of proceedings that he received. He asked the Tribunal to note that there was no date provided in June. He has no idea if he was entitled to notification. The Respondent's point was when they handed him confirmation of his suspension he had never had the opportunity to see this further report or hear the basis of the report. The Respondent indicated that the first time he realised the Law Society were considering a Judicial Factor was following his telephone call with Ian Messer at the Law Society. The Respondent said that he did not challenge the appointment of the Interim Judicial Factor.

The Respondent said that he became a sole practitioner after Mr Rattray retired but he believed he had no obligation to notify HMRC of that position. At no time did A & JC Allan cease. The only difference was the deletion of Mr Rattray on the headed note paper. The Respondent did not tell HMRC that it was a new entity trading and he did not think that he needed to make any different arrangements for VAT. From a practical point of view, he could not pay any VAT until September when his bank accounts were opened. Generally speaking, he anticipated he had to make a VAT return and pay HMRC and should do this as soon as possible. He was concerned not to end up in the same position with HMRC again. He was concerned enough to open a specific account for VAT.

The Respondent conceded that he thought he was required to make returns but failed to do so. However, he contended that this was not related to ripping off clients and keeping 20% of the fee to himself. He had not got the true position regarding the arrears. In his opinion the wrong figure was sought to get the petition recalled. He was pretty sure he was going to be due a significant corrective balance. Therefore, he wanted the transfer of the business to have occurred and be ready when HMRC came along. He spoke to HMRC in November 2011. He phoned the same department that he had dealt with pre-sequestration and used the same numbers. The Respondent said that he did not think that whatever argument he pursued he could argue that no VAT return was due. He opened a VAT bank account in September. However, none of the money in that account was paid to the HMRC. The Respondent asked the Tribunal

how it could be said that HMRC did not know that A & JC Allan was trading again when they had consented to recall of the sequestration. The Respondent said that the firm's average quarterly VAT payment was in the region of £8,000. He has no doubt that in the first year he would have been in excess of the VAT threshold.

With regard to the Mr D case, the Respondent said that much of his argument was contained in his responses to the Law Society Report and supplementary report. It was not true that fees were taken from Mr D without these being rendered. In support of this he relied upon the retrospective authority obtained from Mr D and his family. The fee for winding up that estate was assessed by the auditor of court. The Respondent said it was clear that they took fees which exceeded that fair fee by over £3,000. The Respondent said that on the face of it that looked like an overcharge. However, after winding up, the firm was involved in detailed financial planning for Mr D who was the sole beneficiary of the estate. This involved meetings with specialist accountants and financial advisors. He claimed there were records confirming meetings and attendances. The Respondent said that up until his involvement ceased on suspension of his practising certificate, as far as he knew there was absolutely no evidence or suggestion that Mr D was mentally incapable of managing his affairs. The Respondent said that having obtained what the Law Society had asked for, for them now to suggest that he tricked or misled Mr D and his family was "exasperating".

With regard to the Mr C/Mrs A cases, the Respondent said that his firm acted for Mr C for many years and the Respondent personally acted for him for over 20 years. Mrs A had never been a client of the firm until very shortly before her death. Mr C and Mrs A were immediate neighbours. Mr C approached her about acquiring a field. The Respondent's job was to seek an option to purchase it in the late 1980s subject to planning permission. Over the next 10 years or so, Mr C renewed the option keeping it live. At this time Mrs A had her own solicitors, Barty's.

Much later the Respondent was approached by a social worker at a local hospital to prepare a power of attorney for Mrs A. This occurred about four or five months before her death in 2006. There was some urgency to the matter because she was being pressurised by solicitors down south to cooperate with the winding up of an estate but she felt unable to confront the situation. She had inherited an estate. She was not able to provide the information required to the solicitors down south. Mrs A was happy to sign the power of attorney to facilitate the receipt of money she had inherited to her benefit. That was the extent of the Respondent's knowledge about this situation. He was content that she had capacity to grant a power of attorney.

Mrs A returned home and died shortly afterwards. Her death was unexpected. Her sister survived her. Her sister lived with her son and his wife. The son held a power of attorney over his mother's affairs. They were the only relatives. The Respondent described the work to be done in the executry and the length of time it took. He regarded Mr B and his family as his clients. The Respondent became fairly sure that there was a will in Bournemouth. The solicitors who were said to have drafted that will were the same ones who were winding up Mr I's estate. However, the solicitor said there was no will.

Mrs A was confirmed to have made a will after Mr I's death with another firm of solicitors not further identified. A copy of that will was made available to the Respondent. It was unsigned. It seemed to be a copy of a valid will. Strangers appeared to be the beneficiaries and executors. The Respondent was under pressure to establish the factual position. The draft will was not signed. The homemade mirror will was not traced. Therefore, the estate reverted back to intestacy.

The Respondent was aware that Mrs A had been a client of Barty's. Therefore, he wrote to the firm. He received no response to his letters. The Respondent telephoned Mrs Hamilton. She said she would check the records. Mrs Hamilton replied by letter saying that she had a will. This letter came in when the Respondent was absent from work. With the letter in the file was a will from 1996 leaving everything to Mr I. This was prepared by Barty's. The Respondent assumed that this was the will that Mrs Hamilton had been referring to. The Respondent considered that he was no better off because there were no substitute beneficiaries. This was a properly prepared will.

The process of appointment of Mr B as executor dative was commenced. A more experienced colleague drafted the petition but it was the Respondent who signed it. The Respondent and his colleague also drafted a form for a bond of caution. The Respondent said he was not aware of a valid will at that time. He said that there was an argument that the 1996 will could be deemed to be a valid will even though the beneficiary had predeceased Mrs A. With hindsight, the Respondent could have pursued the alternative route of getting a substitute executor for that will. However, the effect would have been the same because the beneficiary predeceased Mrs A. The estate would have fallen to the next of kin. However, that was not the reason for the course of action he chose. He said that he was not made aware of the 2006 will until August 2009 when Turcan Connell told him of it.

The Respondent went on to say that the nephew and his wife were unhappy. The Respondent continued to act for them while he ascertained the background to that will. The Respondent said that he spoke to Barty's two and a half years before this will came to light. From the terms of the will it can be seen that it was made within a year of her death. It was unlikely that there would be another will. The Respondent

said that Barty's sent a letter saying a will existed. A will he had never seen before appeared. The Respondent said he had never seen it before and did not know where it came from. He assumed it came from Barty's since it had been prepared by them. It had not been held by his firm. It seemed a coincidence that it came in when he was on holiday.

With hindsight the Respondent conceded that more prudent reading of the terms of the letter from Barty's would have revealed that the dates of the wills did not match and that there was in fact another will. Some considerable time had passed. He would have expected that to come to his attention. It was two years later but he was still not at the stage of processing the executry to the extent of uplifting the estate. He was under pressure to make progress. He said he would not have ignored a will that would have made his life easier.

With regard to the mandates and delivery of files, the Respondent said that he did not know the appropriate way to proceed. He thought that the files belonged to those instructing him. The charities in the "new" will were not clients of his. Normally where there is no action he would have passed them over but this was a different situation. He contacted the Law Society for guidance. He was told not to hand them over because he might face complaints from the clients. Turcan Connell suggested that once the petition removing the executor dative was withdrawn they had a locus to insist on delivery of the files. The Respondent said he was advised by Mr McCann to photocopy any information relating to the estate but keep anything personal to the clients. He did his best to do this.

Mr C denied that he ever received any fee notes from the Respondent. The Respondent did not accept that was correct. However, it was difficult to prove that someone had received and was aware of fee notes. However, on at least three occasions the fee notes he denied had been sent with confirmation of payment of funds. It was clear from the audit report that he had received some of the notes. It was convenient but inaccurate to say he did not receive any.

The Respondent said his firm attempted to repeat the same process with Mr C as it had done with Mr D. Fee notes were presented to him for his approval. However, on this occasion he had a firm of solicitors in Edinburgh. They said they would deal with all matters now. Fee notes were sent to the solicitors and they were acknowledged. Three weeks later it would seem that Mr C had not received them. The Respondent noted the allegation that Mr C did not receive the original fee notes or the re-issued fee notes. The Respondent said his difficulty was that they knew they were sent. He cannot prove that Mr C got them but the solicitor did acknowledge the re-issued fee notes.

Some of the disputed fee notes were very old. Some notes related to cases where fee notes had been sent out and not paid. When the Respondent was in the process of selling Property 1 the Respondent told Mr C about the outstanding accounts. Mr C told the Respondent to pay these from the proceeds. The Respondent said he could not find anything in writing to this effect although he had thought he had it in writing. When Property 1 was sold, there was no outstanding borrowing on it. £250,000 was available from the sale. Mr C advised the Respondent that he still was due £104,000 to Mrs A's estate. This was the balance of the price he had not paid to her in full. Mr C had paid money directly to Mrs A in respect of a price for Property 1. This was not paid through the Respondent's office. Mr C produced receipts and vouching for sums paid to Mrs A which amounted to £146,000.

The Respondent did not know if Mr B and his family knew about the outstanding payment although it turned out that they did and were happy to wait on Mr C to pay it. Mrs A had signed and delivered a disposition to the Respondent that the Respondent had prepared some years before her death. The Respondent had inspected the title deeds and prepared a draft disposition to minimise the conveyancing later. However, Mrs A had it executed before solicitors and returned to the Respondent. The disposition gave the impression that the full £250,000 price had been paid. The Chairman clarified that the Respondent had prepared the disposition for the purchaser. The Respondent said that he was not acting for Mrs A. The Chairman asked the Respondent whether he registered the deed. The Respondent said that he had not because the price had not been paid. The Chairman said that he had understood the Respondent to be saying earlier that he had been unaware that the full price was not paid. The Respondent said that Mr C told him that he paid some money but not the full price. The Respondent might have registered the deed if Mr C had told him that he paid the full amount. The Respondent had no records to show that any amount had been paid. The Chairman asked whether the deed narrated the price and the Respondent said that it did and confirmed that the price had been paid in full. The Respondent said he might have been entitled to go ahead and register on the basis of the ex facie terms of the disposition but having been told that he had not paid the full price, morally the Respondent did not feel that he could register the deed. Therefore, it sat on the file.

The Respondent said that once the balance of £104,000 was paid to Mrs A's estate the deed was registered almost immediately afterwards. The Chairman referred the Respondent to paragraphs 10 and 11 of the Record which had been agreed by Joint Minute. These agreed that the transfer was made on 29 August 2008 but that the deed had been sent for recording on 9 April 2008. The Respondent said that he thought Mr C sold the land in April 2008. The disposition was treated as delivered at that stage and passed to the people who brought the land. He said he thought the reason for delaying the payment of

the money across to the Mrs A ledger was to do with the difficulty recording title. They retained it on Mr C's file until they sorted out that difficulty.

Having received £250,000 for the sale of Property 1 and instructed to pay Mr C's indebtedness to Mrs A's estate, there was a balance due to Mr C. The Respondent agreed with Mr C that he would retain the estimated costs and the outstanding invoices and pay him the balance with full accounting to follow for the work in progress. The Respondent therefore released £100,000 to Mr C with his knowledge and authority. The Respondent suggested that the client must have known this was the arrangement. After all, what client would sell a property for £250,000 and then not raise "merry hell" at only getting a £100,000 cheque back?

Regarding the audit, the Respondent noted that many files were not submitted. The printout system the firm used to tie in with the file reference numbers was not employed. The Judicial Factor's spreadsheet bore limited relation to the work done or the files relating to it. The Respondent described significant work he had done for Mr C which were not presented for auditing. Any fee based on this material was fixed on an incomplete picture.

In cross examination, the Fiscal referred the Respondent to the Production 731 of the electronic Productions entitled "Tracer 134_3 of 3 Allan & Co" (electronic p447). The Respondent agreed that this was the initial writ he prepared in order for Mr B to be appointed as executor dative. The Respondent agreed that the writ contained at averments to the effect that Mrs A died intestate at Falkirk, she was predeceased by her husband and was not a survived by any issue. The Fiscal asked the Respondent to refer to Article 3. The Respondent agreed that Article 3 identified the pursuer as Mr B who held a power of attorney for his mother Ms J. Ms J was the sister of the deceased, Mrs A. The Respondent agreed that there was no mention of any wills made within this document. The Fiscal said the Respondent had said in examination-in-chief that there was a "detailed explanation" of this situation in this document. The Respondent said that he was referring to the family position not the wills. The Respondent agreed that he signed the document and that he presented it to the sheriff court. The Fiscal suggested that he did this in the knowledge that the information contained within it was not true. The Respondent said that he agreed that it was not true insofar as retrospectively it should have narrated that there was a will. The Fiscal asked the Respondent whether he knew that Barty's had a will and the Respondent said "Yes". He said that the will he knew of at that time was the will from 1986.

The Fiscal suggested to the Respondent that he submitted the document on 12 June 2009. The Respondent said if that was stated in the paperwork he would not disagree. The Fiscal referred the

Respondent to Production 8 in the Second Inventory of Productions for the Law Society. This was a letter dated 16 July 2007. Given the terms of this letter, the Fiscal suggested that it was within the Respondent's knowledge that Barty's had previously acted for Mrs A. The Respondent indicated that this was the case. The Respondent agreed that he was actively looking for a will. The Respondent said that he was hoping to hear about an existing will. The Fiscal referred the witness to Production 7 in the same bundle of Productions. This was a letter from Barty's dated 17 July 2007. The Fiscal noted that the letter advised that they had in their possession a will dated 23 January 2006. The Fiscal suggested therefore that the Respondent was aware of that will on the date of 17 July 2007. The Respondent denied that he was aware of the said will. He said that he should have been aware of it. He said that the letter accompanied the first will he had seen from Scotland which he called the 1986 will. It had arrived when the Respondent was on holiday and had been placed with this correspondence. The Respondent said he did not read the letter properly. When he read about the reference to a will he assumed it was a reference to the will which he believed had been enclosed and was dated 1986.

The Fiscal referred the witness to Production 6 in the same bundle which was a letter of 18 July 2007 and the Respondent agreed that this was an acknowledgement sent by his firm when he was on holiday. The Fiscal referred the witness to Production 5 in the same bundle which was a file note created by Mrs Hamilton with reference to a telephone conversation which took place on 14 December 2007. The Fiscal asked the Respondent whether he recalled this conversation. The Respondent said that he remembered the conversation but not the exact details of it. The Respondent agreed that he told Mrs Hamilton that Mrs A was a client of his and that she had died eight months ago. The Fiscal asked about the reference to "the will we hold". The Respondent said that he thought that this was a reference to the 1986 will. He understood that a solicitor of Barty's was the executor along with the deceased's partner. It was clarified that when the Respondent spoke of the 1986 will he actually meant a 1996 will. The Fiscal quoted the section:

"The family are upset about the terms of the will we hold because apparently it is in favour of the partner whom failing to two charities."

The Respondent said that this was a reference to the English will of 1996. He said that the 2006 will left everything to four charities. The Fiscal suggested that the will held by Barty's was in fact the 2006 will. The Respondent said that he did not know that. The will he was talking about referred to leaving everything to two charities. The family would prefer the two charity will. The Fiscal suggested that the references here must be to the 2006 will. The Respondent maintained that the will he was talking about was the will which was not executed which left everything to the partner whom failing two charities.

The Fiscal asked whether the Respondent was asking the Tribunal to believe that he did not have an awareness of a 2006 will at this time. The Respondent said that he had no knowledge of that will at that time. The Fiscal indicated that the Respondent had been told of it. The Respondent said he had learned of it in a letter but had never seen it. The Fiscal said that the Respondent had reported to the court that Mrs A died intestate when he knew that was not the case. The Respondent said the will that he had rendered her intestate. That information should have been included in the writ but the end result was identical. The Respondent said there was no merit in him ignoring the will which existed. The Fiscal asked whether Mrs A's estate was a valuable one. The Respondent said the intrinsic value was in Mr I's estate which was about £750,000.

The Fiscal asked the Respondent to refer to page 714 in the electronic Productions which was contained within the document labelled Tracer 134_3 of 3 Allan & Co (electronic p500). The Respondent agreed that this was the application for confirmation which he had prepared in draft. He agreed that the estate was worth £618,089. The Fiscal suggested that was a valuable estate. The Respondent agreed. The Respondent indicated that he prepared this document between the appointment of the executor dative and Turcan Connell's involvement.

The Fiscal referred the witness to page 2 of the electronic Productions bundle labelled Tracer 134_1 of 3 Allan & Co. The Respondent agreed that this was a letter dated 22 July 2009. The Respondent indicated that it was following this letter that he first became aware of Turcan Connell's involvement. The Respondent agreed that Productions 24, 25, 26 and 27 in the same bundle of Productions were mandates signed on behalf of various charities instructing him to deliver papers. He agreed that Production 28 was the second page of a letter from Turcan Connell enclosing the mandates. Page 29 contained the first page of that letter which was dated 28 August 2009.The Fiscal asked the witness to refer to page 31 in that same bundle. The witness agreed that the first page was a draft of a letter he had sent to Turcan Connell regarding the testamentary capacity of Mrs A. It referred to the influence of Mr I. He agreed that the third paragraph indicated that he could not comply the mandates. It concluded by saying that the only papers which he could pass were Mrs A's papers uplifted from her house. The Respondent clarified that he held very few papers.

The Fiscal asked whether the Respondent held funds for the executry. The Respondent clarified that the only funds he held were those held by Mr C. He did not have confirmation and so did not have the authority to uplift. The funds he held for Mr C amounted to £104,000. He took fees from this amount.

The Fiscal asked him on what basis he was entitled to take the fees. The Respondent said on the basis of work done and the fact the client was the executor.

The Fiscal referred the Respondent to various letters from Turcan Connell to the Respondent regarding a mandate for his files. The Fiscal asked the Respondent why had had not complied with the mandate. The Respondent said it was not clear to him that he should deliver the files against client instructions. He thought the legal position would be that until an executor appointed by the court was removed and new executors were appointed he did not have to comply. He said that he had taken advice from the Law Society because he in a position where if he passed the files over the clients having told him not to do so he would face a complaint from them. However, if did not comply with the mandate he would face a complaint from Turcan Connell. He was advised that all files belonged to the clients. The Fiscal asked the Respondent whether they ever implemented the mandate. The Respondent indicated that he copied what was deemed to be executry information and delivered that to Turcan Connell. The Fiscal clarified that the Respondent received mandates in August 2009 and sent some copies in March 2012.

The Fiscal referred the Respondent to the Record, page 14 and quoted the terms of the Rule reproduced there which was Rule.6.7.1. The Fiscal asked the Respondent whether he was of the view this Rule was being complied with. The Respondent answered "Yes". The Fiscal asked whether inadequacies had been revealed during previous inspections. The Respondent said "Yes."

The Fiscal quoted Rule 6.8.1 which was also reproduced at pages 14 and 15 of the Record. The Fiscal asked whether this Rule was complied with and the Respondent said he did not think it was held to be complied with in September. The Fiscal asked about February. The Respondent said there was still criticism in February that they had not implemented everything to the Law Society's satisfaction.

The Fiscal referred the Respondent to document 4 in the First Inventory of the paper Productions. The Respondent agreed that this was the inspection report summary and recommendation from the September 2011 and February 2012 inspections. The Fiscal referred the witness to various sections of the report. The Respondent agreed that he had told the Law Society at the summing up meeting that he thought he still owed about £112,000 in VAT. He felt that the cashier had knowledge of cashroom procedures even if she did not have knowledge of the Accounts Rules. He accepted "to a degree" that due to a lack of understanding by the cashier, the records of the firm were not being properly maintained. He agreed that she had no experience of year end accounts. He agreed that he was the designated cashroom manager at all material times. He agreed that he had told the Law Society that he had not contacted HMRC to make arrangements for repayment of the debt because they might not be prepared

to accept any instalment arrangements. However, he indicated this had been on the advice of his previous accountant. The Respondent did not accept that HMRC would not know he was trading. This was because they had consented to the recall of sequestration.

The Respondent denied saying at the Guarantee Fund Interview that the firm would be in deficit if each client's money was distinguished separately and debits for fees were shown in all the correct ledgers. He conceded that he was probably not complying with the Accounts Rules.

The Fiscal referred the Respondent to the report he had caused to be incorporated into the Record *brevitatis causa.* The Fiscal referred the Respondent to page 69 of the report where it was noted in a meeting with the Respondent, the Judicial Factor and her solicitor that,

"Mr MacRae described Allan's general practice: "he said it was the practice to say on the top of the fee note it had been rendered but it had not been. He said that the firm took fees at certain stages, usually in executries, but the fee notes were never rendered. This practice went as far as back as he could recall"."

The Respondent said that the section had been taken out of context and this was not how his practice worked. He noted that his firm had been in practice for over 100 years and it was not logical to suggest that he had never rendered fee notes to clients.

The Fiscal went through a series of fees taken in November and December 2008 and February, April and May 2009. He asked the Respondent to whom he had rendered these fees. The Respondent said he had rendered these fees to Mr B and his family in their capacity as instructing clients. The Fiscal noted that Mr B was not the executor until June 2009 and asked the Respondent what authority he had to debit fees. Mrs A was dead and there were no executors. The Fiscal asked the Respondent why he did not bill Mr B. The Respondent answered that was effectively what he was doing. Mrs A was dead. Mr B was the beneficiary. The Fiscal noted that Mr B was not in fact the beneficiary and the Respondent had knowledge of the will. The Respondent said that he did not have knowledge then.

The Fiscal suggested that the Respondent had shown special knowledge when he had told Bethia Hamilton that there would be disappointed beneficiaries. The Respondent said that he was referring to an entirely different will. The Fiscal referred the witness to the Second Inventory of Productions for the Complainers, page 5. This was the note complied by Mrs Hamilton. The Fiscal noted from that note as follows:

"The family are upset about the terms of the will we hold because apparently it is in favour of the partner whom failing to two charities."

The Respondent noted that the 2006 will has four charities and so this was not the will to which he was referring. The Fiscal suggested it was a reflection of the 2006 will but the Respondent said it was the 1996 will.

The Fiscal referred to Article 12 of that Record which noted that the Respondent had transferred £19,637.50 to Mr C's ledger from Mrs A's executry ledger on 16 December 2011. The Respondent agreed that this transfer had taken place. The Respondent noted that during the September inspection an issue arose regarding the duplicity of accounts between Mr C and Mrs A. The Respondent explained the situation. He had to re-credit funds and fees which were now accepted belonged to Mr C and not Mrs A executry. The Fiscal asked about the purpose of the transfer. The Respondent said that it was to repay Mr C funds which ought to have been held in his account and not Mrs A's. The funds were due to Mr C after deduction of fees for the corrective conveyancing. The Fiscal asked who determined these fees were due. The Respondent said it was determined between Mr B and Mr C. A payment he made but not claimed for he was subsequently able to vouch for either £54,000 or £58,000 which was either paid to Mrs A or Mr I two or three years previously. The Fiscal asked who authorised the repayment and the Respondent said they were authorised about a year before by Mr B and his family. The Fiscal asked why they were not made a year before. The Fiscal asked on what capacity these individuals were able to instruct the Respondent and he said in their capacity as clients and beneficiaries. The Fiscal asked whether Mr B had been recalled by then and the Respondent indicated that by the time the transfers were made Mr B had been recalled. The Fiscal asked again what basis therefore the Respondent had to make these transfers and the Respondent said they had been vouched by Mr C and Mr B and his family. Mr C had paid more than he thought Mrs A. The Fiscal asked whether he obtained written authority for this and the Respondent answered in the affirmative. He said that it would be on the file. The Fiscal asked whether it existed. The Respondent said that he was reasonably sure that it did exist. If it was not in hard mail it would be in email. The Fiscal asked why the Respondent had not told the Tribunal in his answers about this vouching. His response had been not known and not admitted. The Respondent said that that was not a denial. He had not seen any productions.

The Fiscal referred the Respondent to paragraph 13 of the Record which noted that the Respondent uplifted £30,000 from a bank account held in the name of Mrs A's executry on 29 January 2010 which was transferred to Mr C's ledger "re interim fee". The Fiscal asked why this transfer had been made and

the Respondent indicated that was due to an overpayment to Mr C. The Respondent said that the authority should be on the file. However, it was not an issue as Mr B and his family were fully aware.

The Fiscal referred to other transfers which were narrated at Article 14 of the record. These were for defence of an action for the removal of the executor. The Fiscal asked what authority the Respondent had to make these transfers and he indicated that Mr B and his family had instructed him to do it.

The Fiscal asked whether the Respondent was telling the Tribunal that he thought he could make transfers on Mr B's authority after an action was raised to remove him. The Respondent said that if the timing was after the removal then he could not say that he had authority. However, authority was provided in advance. Correcting the accounting too late was a possibility. He said perhaps it had been done too late.

The Fiscal noted that in June 2009 the Respondent continued to take fees. He referred the witness to Article 15 of the record. The total amount of fees taken was £26,712.50. At that stage the Respondent had not even applied for confirmation. The Respondent noted he had done a vast amount of work in this case from the date of death to the last fee. He had to identify numerous assets, and there was property both sides of the border. Much of the fees were incurred before they were taken.

The Respondent confirmed that he had not read Barty's letter properly and had been labouring under the misapprehension that they had both been talking about the 1996 will. The Fiscal referred the Tribunal to the electronic Productions for the Complainers entitled "Tracer – 134 – 1 of 3 Allan & Co." He asked the Tribunal to turn to page 203 which could be found at electronic page 201. In answer to the Fiscal's question, the Respondent agreed that the letter bore his reference. The Respondent agreed that it was a letter to Endsleigh and Partners in Bournemouth. He agreed that the heading indicated that the letter was about Mrs A and Mr I. He agreed that the letter was dated 16 March 2007. The Respondent agreed that he had written to Barty's in July. The Respondent also agreed that his telephone call with Bethia Hamilton had occurred towards the end of 2007. He therefore agreed that this letter of 16 March 2007 had been written before his letter to Barty's or his telephone conversation with Bethia Hamilton.

The Fiscal quoted the following section from the letter:-

"We would confirm that we have now received much paperwork pertaining to Mrs A's estate, included in which is a copy of her recent will which appears to have been executed by Mrs A early last year."

The Fiscal suggested that this must be a reference to the 23 January 2006 will. However, the Respondent disagreed. The Fiscal pointed out that the letter provides an accurate description of the 2006 will in that the letter says that that will appointed two local solicitors as executors and that the deceased's estate had been left to charity. The Respondent disagreed and said that this paragraph referred to the Bournemouth will where the deceased had appointed Mr and Mrs K as executors. The Fiscal asked whether these individuals were local solicitors and the Respondent said that they were solicitors in Bournemouth. The Fiscal pointed out therefore that they were not "local". The Respondent said that the solicitors were local to Endsleigh and Partners. The Respondent also pointed out that the 2006 will does not appoint two local solicitors, only one.

The Fiscal referred to the Guarantee Fund Note of Interview which started on page 14 of the Complainers' First Inventory of Productions. The Respondent agreed that the trial balances did not reflect the true financial position.

The Fiscal referred the Respondent to Article 17 of the 16/09 Complaint. In response to the Fiscal's questioning the Respondent said that he accepted that he took £104,237.70 in fees but that the auditor said he was entitled to only £38,651.05. The Respondent said that he did not accept that he took fees without authority and without fee notes.

In re-examination, the Respondent noted that the Fiscal had made reference to the executive summary report and he wished the Tribunal to take cognisance of pages 55 to 68 of that report and in particular points 2.4, 2.5, 2.6, 2.7, 3.8, 4.9, 5.10, 5.11, 6.12 and 7.13. He noted that these were all weighted two or three and had all been marked as concluded. The inspection team was therefore satisfied that no other procedure or action was required. Most issues had therefore been addressed.

The Respondent indicated that he wished to address the question of the inexperience of his cashier. He said it was important to note that all the disputed fees had been rendered or taken when an experienced cashier had been in place. All fees pre-date her ceasing her employment. She had been with the firm for many years and was SOLAS qualified. She would have known the correct procedures to follow regarding the rendering of fees and would follow them. There was no suggestion during any previous inspection of the firm that there were any problems in the cashroom. There was no suggestion that the firm was not issuing terms of business letters. The terms of business would reserve the right to render the fees in the way which had been done and also provided for the firm to take interim fees.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated that there were two elements to Complaint DT/11/27. Firstly, making a representation in a writ lodged at court which the Respondent knew to be false, and secondly, failure to implement a mandate.

The Fiscal said that the Tribunal could be satisfied regarding the false representation if it relied upon three matters.

The first of these was the letter of 6 March 2007 from Endsleigh and Partners. The Fiscal alleged that this letter showed that the Respondent was aware of the will of January 2006 made by Mrs A. He knew that the will left the estate to charities. He identified that two local solicitors were appointed as executors. Although the January 2006 will actually appoints one local solicitor, the Fiscal submitted that it was unlikely the Respondent would refer to a Bournemouth solicitor as a "local solicitor".

The second item which the Fiscal wished the Tribunal to consider was the letter from Barty's dated 17 July 2007. The Fiscal noted that the Respondent had seen this letter after his return from holiday. It clearly refers to the will of January 2006.

Thirdly, the Fiscal wished the Tribunal to note that the telephone call of 14 December 2007 between Bethia Hamilton and the Respondent. The Respondent accepts that this conversation took place and the conversation is recorded in Bethia Hamilton's note. The Fiscal submitted that if the family was to be disappointed, then the Respondent must have been talking about the 2006 will.

Therefore, the Fiscal said that there was sufficient evidence for the Tribunal to be satisfied that the Respondent had knowledge of the 2006 will when he lodged the application for appointment of the executor dative. He submitted that this was sufficient for the Tribunal to make a finding of professional misconduct.

With reference to the failure with mandates, the Fiscal noted that it was accepted by the Respondent that between August 2009 and March 2012 he failed to obtemper the mandates. The Fiscal submitted that in the circumstances this constituted professional misconduct.

With reference to Complaint DT/16/09 the Fiscal noted that there was a Joint Minute of Admissions to assist the Tribunal with its findings in fact. He noted that Articles 3 and 5 were completely covered by the Joint Minute. Article 6 was covered by a partial admission. Article 7 is covered by the Joint Minute. Article 8 was covered by the Joint Minute except for the last sentence which read *"No work was done which would have justified the taking of these fees, and no fee notes were issued to the executors."* However, the Fiscal invited the Tribunal to find that sentence also proved. Articles 9 to 15 were covered by the Joint Minute. Article 16 was also covered by the Joint Minute except for the sentence which reads *"He had no authority from Mrs FM's executors to do so."* Article 17 was agreed by the Joint Minute. Articles 18, 19 and 20 were not agreed but the Fiscal submitted that the Tribunal had heard sufficient evidence for it to find them proved.

With reference to Article 6, the Fiscal asked the Tribunal to consider the evidence of Sharon Brownlee, Morna Grandison and the Respondent. Sharon Brownlee was the Compliance Manager responsible for the inspections of the firm. She spoke to the fact that the firm's trial balances did not show the true financial position of the firm. The Fiscal also noted that the Respondent had accepted that in evidence on 26 September 2017. Sharon Brownlee spoke to the fact that the client trial balances were incorrect. There were arrears of postings. The cashier did not understand how to do her job. After the second inspection there were still year-end adjustments to be made. Sharon Brownlee spoke to a meeting with the Respondent which took place on 2 March 2012. She referred to her note. In this note she had recorded that the Respondent was considering outsourcing the cashroom functions. She noted that the Respondent was not sufficiently aware of the Accounts Rules. The Respondent told her that he had been advised not to contact HMRC. The Respondent was worried about being asked to make a repayment to HMRC in full. She also spoke to the fact that the Respondent had accepted that HMRC might not be aware that he was trading as a "new firm".

Morna Grandison spoke to the fact that the accounts and records of the firm were "a mess". The Fiscal said that the Respondent had made concessions both in evidence and in his written responses to the Law Society of Scotland. The Fiscal said it was clear that the Accounts Rules had not been complied with and the averments in Article 6 were proved.

The Fiscal said that at some stage the Tribunal had been concerned regarding fairness to Mr MacRae during the investigations process. However, he noted that the Respondent's concerns were included in the process and he was given an opportunity to respond. He did so and these responses amount to an admission regarding the ineffectiveness of his record keeping.

The Fiscal said that there was a difference in the way dishonesty was interpreted in Scotland and England. He noted that there was a suggestion in recent English authorities that honesty and integrity are different concepts. He submitted that the proper approach in Scotland is to be found in the Inner House case of Fyfe-v-The Law Society of Scotland. In that case the Tribunal found Cameron Fyfe guilty of professional misconduct and struck him off. With reference to paragraphs 3, 11, 12, 22, 34, 35 and 36 of the Fyfe Court of Session judgement, the Fiscal described the circumstances of that case and the Court's approach to dishonesty.

The Fiscal indicated that the lack of an averment of dishonesty did not preclude him from relying upon dishonesty. He suggested that the Fyfe case demonstrates that the pleading requirements are different in Scotland and England. He referred to page 16 of the Record for Complaint DT/16/09. This page includes an averment of duty under the 2011 Practice Rules not to act dishonestly. He also referred to paragraph 27 on page 17 of that Record. This notes that the Respondent charged for work not done by him. The factual averments disclosed actings which were dishonest. The Fiscal submitted that this was proper notice that the Complainers were averring dishonesty. The Fiscal said that he did not differentiate between a want of integrity and dishonesty and that he did this on the basis of Fyfe.

The Fiscal referred to the Mr C and Ms F files. He said that there were common factors in these cases. The first was that the fees were shown after taxation to have been grossly excessive and secondly, both Mr C and his son and Mr D and his family complained that they did not receive fee notes from the Respondent. The Fiscal submitted that the similarity of complaint from these individuals was "mutually corroborative" similar to a "Moorov" situation in criminal law.

In the Ms F case there was no evidence that any work was done after 2007 but the Respondent continued to take fees. Sharon Brownlee noted that the Guarantee Fund had questioned that the fees taken. She did not see on the ledger any of the usual activity on an executry in justification of the fees.

In relation to the Mrs A executry, the Fiscal submitted that the Respondent had no entitlement to take any fee at all as he had no client. This was acknowledged by Morna Grandison who did not send the files for taxation because there was no client.

The Fiscal said that if the Tribunal accepted what he said about Complaint DT/11/27, then the Respondent knew he was not entitled to proceed and so everything flowing from that was tainted. The Fiscal referred the Tribunal to the "mutually corroborative" evidence of Mr D and Mr C. He also pointed to the evidence of the Judicial Factor. She gave evidence that the Respondent had told her about the

firm's practice of not rendering fees. The Fiscal noted that Mr C and his son and Mr D and his family had told the Law Society representatives that they had not given authority to The Respondent to take fees. In the case of Mrs A, no authority could exist.

The Fiscal said it was accepted by the Respondent that he had taken VAT and fees, that he had failed to make returns. The Respondent did not suggest that the money had ever found its way to the HMRC. The Fiscal said he accepted that there could be a shortfall of VAT without dishonesty. However, failure to communicate with the HMRC, making no return, failing to account to HMRC and taking VAT from clients in the round amounted to professional misconduct in a common law sense.

The Tribunal referred the Fiscal to the Fyfe judgement at paragraph 36, in particular the sentence which said:

"Effectively, the Tribunal concluded that the actions of the petitioner whilst not dishonest, lacked integrity."

The Tribunal suggested therefore that the Court of Session did consider these to be separate concepts. Mr Lynch responded that he considered the judgement to have been framed in this way because of the Fiscal's concession at the start of the case. The Tribunal asked the Fiscal whether he rested solely on dishonesty or whether he said it was open to the Tribunal to find a lack of integrity. The Fiscal noted the Fiscal's approach in the Fyfe case as reported in paragraph 34:

"That submission was whilst it was not averred he had acted dishonestly, the Fiscal was content to leave the assessment of his conduct to the Tribunal."

The Fiscal in the present case clarified that he was content for the Tribunal to make the judgement regarding where on the spectrum this case fell between a lack of integrity and dishonesty.

The Tribunal asked the Fiscal to respond to the Respondent's suggestion that as there was an executor nominate in existence, it was not proper for him to obtemper the mandate. The Fiscal said that the executor dative existed by the Respondent's orchestrations which he committed knowing that what he was doing was wrong. The appointment of the executor dative could not be relied upon. The Fiscal recognised the tension between the residuary beneficiaries' rights and the court order appointing the executor dative. However, he said there were various ways of resolving the situation. The Respondent

could have taken instruction from Mr B to resolved matters then or he could have withdrawn from acting. However, in knowledge of his own wrongdoing he retained the papers.

In response to a question from the Tribunal the Fiscal conceded that he would not say the Respondent's failure to re-register for VAT after sequestration was professional misconduct of itself. He could understand how that situation arose. However, in conjunction with his continuing to take VAT, his failure to make returns and his failure to account for VAT to HMRC, this did constitute professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

The Respondent wished the Tribunal to note that the obligation to prove a case always lies with the Complainers. He understood that proof was required beyond reasonable doubt. The Respondent noted that the Tribunal had not heard any independent evidence from the Complainers. The Tribunal had heard from two of its employees. He submitted that there was doubt about which parts of their evidence could corroborate each other. There was evidence which could have clearly been proved if the Complainers' case was to be believed. That would have come from Mr C, Mr D and his family, Mrs Hamilton at Barty's and Mr Davidson who reported the matters in the first place.

In relation to Complaint DT/11/27, the Respondent noted that the Tribunal had heard his evidence regarding the mandate and his position regarding the wills. He noted that the Law Society Reporter had found that Bethia Hamilton herself had not parted with the will to anyone until two years after the death. She confirmed to the Law Society that the Respondent had never seen it. The Respondent understood the implication was that he ought to have known of its existence. The Respondent said that whether the Tribunal believed him or not, when trying to wind up the estate the case must be correlated to him having a client. He had instructions from Mr B. He was carrying out investigations on his behalf. Work was done. There can be technical arguments regarding the appointment of the executor dative. However, the Tribunal must bear in mind that the Respondent was trying to wind up an estate on behalf of the family.

With regard to Complaint DT/16/09, and the Accounts Rules breaches, the Respondent submitted there were reasons why the accounts were not in a good state and explanations were given. An unforeseen set of circumstances had occurred. He was attempting to remedy the situation. The Respondent said he never suggested that the accounts breaches did not occur (with the exception of the Mr C, Ms F and Mrs A scenarios). However, he had remedied these and he had understood the Law Society to have accepted his explanation prior to the decision to suspend his practising certificate.

With regard to Ms F's case, the Respondent noted that Mr D had signed statements confirming the fee notes were in order. However, the Tribunal then heard evidence from Morna Grandison saying that this was no longer the position. He submitted that it was impossible for anyone to surmise without evidence from Mr D and his family themselves what was the true position. In the absence of their evidence the Tribunal should look at what they did do and that was acknowledged that they had received the fee notes and they were in order.

With regard to Mrs A's case, the Respondent acknowledged that he was instructed by Mr B and his family on behalf of the incapacitated sister. Fee notes were issued. He considered them to be his clients. He noted that Morna Grandison said that they were not clients. She did not seek to confirm the position regarding fees with Mr and Mrs B.

With regard to Mr C, the Respondent noted that there was a suggestion that he did not agree to fees or receive any fee notes. The Respondent invited the Tribunal to look at the quality of the evidence. The evidence regarding the fees is hearsay. Only Mr C could have spoken to this.

The Respondent's position was that when the fees were audited the remit was 12 years. However, the remit was hopelessly inadequate regarding missing files and information provided. The auditor accepted in his report that he was limited in terms of what he received. The auditor was in no doubt that Mr C did receive a number of these fee notes without being able to say that he did receive them all.

The Respondent had offered the Law Society in the course of their investigations to have any disputed fees audited. He still did not understand why that could not have taken place. However, he was suspended and removed from practice. The Respondent objected to the fairness of the whole process from start to finish.

The Respondent noted that although it was not subsequently included in the Complaints, the Committee took into account allegations that payments were made from the client account for the Respondent's personal affairs. He noted it was not before the Tribunal because it was not true. However, he brought it up as an indication of what can come before the Tribunal and the basis of decisions and what follows.

With regard to VAT, the Respondent noted that the Reporter had come up with a completely different conclusion or at least summation of the law which applied. He said that if he was wrong then no one from the Law Society or his professional advisors suggested that he should have been doing anything

differently. Obviously, he was suggesting that there was no intent on his part to avoid paying VAT particularly since he had the experience of sequestration. He had no desire revisit that.

The Respondent noted that the Judicial Factor had suggested that he had confessed to never rendering fees as a practice. The Respondent hoped that the Tribunal had noticed that he took exception to that because it was not true. This practice did not exist. It never did. On careful examination this assertion does not bear scrutiny. The firm had been in existence for 120 years. The Respondent practised for 25 years. His colleague and his wife had been there for over 35 years. No business could exist without submitting fee notes to clients. It was beyond explanation. It was inconsistent with his position throughout the inspections and the responses to the reports. In his submission it was not possible to run a business by not submitting invoices.

The Respondent invited the Tribunal to look at the strength of the evidence if his admission was removed. He submitted there was no investigation into what was true or not true. He said that the Complainers had taken the view that every single fee note was not rendered and every Guarantee Fund claim would be entertained. The Complainers had pre-judged everything that the Tribunal was supposed to deal with. Knowing that the Guarantee Fund had paid out, the Tribunal must know that the Complainers had made a finding of fraud and dishonesty against him. That allegation had already been determined without them having heard the facts. This hearing was the only opportunity that the Respondent has been given to explain his position. Numerous findings of dishonesty had been made by others presumably on the advice of Morna Grandison. He found it very frustrating that he had been denied input into that process.

DECISION

The Tribunal had regard to the Complaint and Answers, oral evidence, productions spoken to by the witnesses and the Joint Minutes of Admissions. The Tribunal was of the view that the witnesses called by the Complainers were credible and reliable. However, the Tribunal considered that oral evidence from Mrs Hamilton and some of the clients on essential matters of fact would have aided its decision-making considerably. The Tribunal found it extremely difficult to navigate the Complainers' productions in this case which were poorly set out and indexed. The Tribunal found the Respondent to be credible and reliable on some matters but on others he was vague and incredible.

Following the preliminary hearing in this case, the Tribunal highlighted that it was open to the Respondent to raise issues of fairness during the substantive hearing as they applied to the facts of the

case, following the reasoning in Moore. During evidence and submissions, the Respondent again alleged that there had been procedural unfairness. He said that he had been unable to participate effectively in the Law Society's investigation process. The Tribunal remained of the view that an application for judicial review is the appropriate mechanism to challenge the Law Society's decision-making process. However, the decision to refer a solicitor to the Tribunal does not invoke Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as it is not a determination of a person's civil rights or obligations. The Tribunal noted that the Respondent was invited to comment during the investigation and made submissions to the Law Society. The Tribunal was of the view that the proceedings were fair.

The Tribunal considered the evidence carefully bearing in mind the standard of proof to be applied which was of that beyond reasonable doubt. The Tribunal noted that there was no requirement for evidence to be corroborated in proceedings before the Tribunal. The Tribunal was also entitled to take hearsay evidence into account while keeping in mind the limitations of such evidence. The Tribunal considered whether the evidence supported the averments of fact and went on to decide whether those facts supported findings of professional misconduct. Professional misconduct is a matter for the Tribunal to determine.

With regard to Complaint DT/11/07, the Tribunal was satisfied beyond reasonable doubt that on or about 12 June 2009, in the knowledge of the existence of the will of January 2006, the Respondent framed an initial writ which averred that the deceased had died intestate. The averments in the writ which were presented to the court were therefore misleading. In coming to this conclusion, the Tribunal relied upon the letter of 16 March 2007 from the Respondent to Insley and Partners spoken to by the Respondent which refers to "a copy of her recent Will which appears to have been executed by Mrs A early last year". This letter also noted that the deceased's entire estate had been left to charity and that the immediate family members were "not over-enamoured." The implication drawn is that the Respondent had knowledge of the 2006 will and its terms. The Respondent admitted in evidence that he had a telephone conversation with Bethia Hamilton on 14 December 2007 about a will that Mrs A had made. He admitted that the file note referred to that conversation (although he took issue with the content of the file note). The Respondent admitted by Joint Minute that he saw a copy of the letter of 17 July 2007 from Thomas & JW Barty to A & J C Allan & Co. Solicitors prior to him making an application for the appointment of the executive dative to the deceased. Said letter indicated that "we have in our possession a Will dated 23rd January 2006".

The Tribunal was satisfied on the evidence of the Respondent referring to the relevant productions that the residuary beneficiaries had signed mandates requiring the Respondent to hand over the files in respect of Mrs A's affairs and estate. These were forwarded to the Respondent on 28 August 2009. The Respondent did not implement these.

With regard to Complaint DT/16/09, the Tribunal was satisfied beyond reasonable doubt on the evidence of Sharon Brownlee and Morna Grandison that the Respondent charged for work not done by him, charged grossly excessive fees, repeatedly took fees without rendering fee notes or otherwise obtaining authority from clients to do so. The Respondent's financial records did not contain correct firm balances or a ledger reflecting the financial position of the firm, or correct client bank accounts or client balances. In addition, since his resumption of practice in September 2011, he failed to make any payment or otherwise account to HMRC for liabilities in respect of VAT, despite having deducted the sums payable from clients.

The test for professional misconduct in terms of Sharp v The Council of the Law Society of Scotland 1984 SC 129 is that the conduct proved must represent a departure from the standards to be expected of a competent and reputable solicitor that would be regarded as serious and reprehensible. The Tribunal considered the admitted facts and the parole evidence and found the Respondent guilty of professional misconduct individually and *in cumulo* in respect of the first averment of professional misconduct in Complaint DT/11/07 and in respect of all averments of professional misconduct in Complaint DT/16/09.

The Respondent knowingly misled the court as to the existence of the 2006 will. The Respondent knew or ought reasonably to have known that he was misleading the court in the way he set out the initial writ. He had information that there was another will. His actions therefore lacked integrity. The Tribunal had regard to its previous finding in the case of the Law Society of Scotland v Robert Young DTD 1089/02. In that case the solicitor had averred in separate petitions that deceased persons had died intestate. The solicitor knew this to be untrue. In spite of this, the petitions were signed by the solicitor and presented to the Sheriff. The Tribunal held that this was professional misconduct. In making a finding with regard to lack of integrity, the Tribunal had regard to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366. In that case it was established that integrity refers to adherence to the ethical standards of one's own profession. An example given in that case was a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse. The case is also authority for the fact that dishonesty and lack of integrity are separate concepts.

A solicitor must comply with the Accounts Rules. It is essential that books and records are kept properly and that the Law Society can ascertain the true financial position of the firm at any time. It is important that the public can have confidence that the profession can be trusted to comply with the Accounts Rules. The Respondent's financial records were such that the true financial position of the firm and client balances could not be ascertained. The totality of the breaches of the accounts rules amounted to a complete failure to comply with the basic requirements of a solicitor's practice.

The essential qualities of a solicitor are honesty, truthfulness and integrity. The client account is sacrosanct. The Respondent acted dishonestly by charging fees for work which he did not do, charging grossly excessive fees, and repeatedly taking fees without rendering fee notes. The Respondent took fees after executries had been wound up, there were insufficient narratives on the ledgers, there was insufficient documentary evidence on files to justify the fees. The overcharging was of gross order. His failure to make payment or otherwise account to HMRC for liabilities in respect of VAT, having taken that money from clients was also dishonest. The money belonged to HMRC and the Respondent by his own admission, deliberately withheld it. In making findings of dishonesty, the Tribunal had regard to the judgement in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67. The Tribunal considered the actual state of the Respondent's knowledge or belief as to the facts and then applied the objective standards of ordinary decent people. The Tribunal made its own assessment of dishonesty and took care not to be influenced by any recommendation the Judicial Factor made to the Guarantee Fund.

The Tribunal found the Respondent not guilty of the averment of professional misconduct contained in Complaint DT/11/07 which referred to a persistent and unconscionable failure to implement mandates. While the situation was entirely of his own making, complying with the mandates would have been to act against the instructions of the court appointed executor dative. The solution to this dilemma was not obvious and while a competent and reputable solicitor might have attempted to resolve things differently, the Tribunal did not consider that failure to obtemper the mandates in these circumstances was a serious and reprehensible departure from the standards of competent and reputable solicitors.

MITIGATION

In mitigation the Respondent noted that he had been sequestrated since June 2012. All his assets were sold by the Judicial Factor. He can no longer work in the legal profession. He has done some agency work but not as a solicitor. He has no income or resources at present. He has never been before the Tribunal before. He has never had any professional complaints upheld against him. If he was allowed

to practise he does not intend to be a sole practitioner or a partner of a firm again as this does not appeal to him under any circumstances. The Respondent noted that due to family health issues, he was unable to spend the right amount of time at work to oversee the practice and workload efficiently. His absence inevitably had an impact whether he acknowledged it at the time or not. It was unwise of him to accept the position as cashroom partner when he was not taking responsibility for the day-to-day running of the cashroom. He failed to supervise staff adequately.

DECISION ON PENALTY

This case involved very serious misconduct. Dishonest conduct is very damaging to the reputation of the profession. Significant issues were also raised with regard to the protection of the public. The Tribunal was mindful of previous authorities on this issue. For example, in Bolton v The Law Society [1993] EWCA Civ 32, it was noted that proven dishonesty will almost invariably lead to strike off. The Scottish Courts have taken a similar view. In McMahon v Council of the Law Society of Scotland 2002 SC 475, it was noted that a solicitor who has been guilty of dishonesty with clients' money has forfeited the respect and trust of the public and of his colleagues and has disgraced his profession. It was also noted in that case that solicitors have a duty to conduct their clients' affairs to their utmost ability and with complete honesty and integrity. When solicitors fail in these duties the Tribunal should have regard to the reputation of the profession and public protection against the risk of repetition.

Aggravating factors present in this case were the ongoing course of conduct, the presence of dishonesty, the danger to the public, the serious reputational damage to the profession, and the Respondent's limited insight and lack of remorse. The Tribunal also took into account mitigating factors such as the absence of any previous findings of misconduct against the Respondent, the Respondent's cooperation with the Tribunal and his attendance in person, the Respondent's cooperation with the Fiscal including the joint minutes entered into, and the strain the Respondent had been under due to the ill health of a family member. The Tribunal also took into account the Respondent's long career, the stress and complication of the breakdown in the partnership and the time it took to bring the case to a conclusion.

The Tribunal considered that the variety of conduct, the length of time the course of conduct lasted, and the presence of dishonesty meant that strike off was the only suitable sanction. The Respondent's conduct showed that he was not a fit person to be a solicitor. Any lesser sanction would not adequately protect the public or maintain the reputation of the profession. The Tribunal directed that in terms of section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent.

Named publicity shall be given to the decision but shall not contain the names of the clients or otherwise identify them. Publication of names and personal information would be likely to damage the interests of persons other than those named in paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. Publicity will be deferred until the conclusion of any associated proceedings or intimation that none are to be brought.

The Tribunal found the Respondent liable in the expenses of the Complainers and the Tribunal.

Colin Bell

Vice Chairman