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

Complainers

against

JOHN CHRISTOPHER BARTLETT, East Balnaird House, Heights of Inchvannie, Strathpeffer

Respondent

1. A Complaint dated 7 February 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that John Christopher Bartlett, Easter Balnaird House, Heights of Inchvannie, Strathpeffer (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was no Secondary Complainer.

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent at this time.

4. In terms of its Rules, the Tribunal set the matter down for a procedural hearing on 27 May 2019 and notice thereof was duly served on the Respondent.

5. At the procedural hearing on 27 May 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented himself. The Respondent moved the Tribunal to sist the case pending the outcome of his handling complaint against the Law Society of Scotland. The Fiscal opposed the Respondent's motion. The Tribunal considered matters carefully and refused

the motion to sist. The Complaint contained serious allegations in relation to matters raised about three years previously. Although he had not renewed his practising certificate, the Respondent remained on the Roll of Solicitors. In these circumstances, giving due regard to the need to protect the public, it was not appropriate to delay matters further. The Tribunal can consider preliminary matters or questions of fairness raised during its own proceedings. The Tribunal allowed the Respondent 28 days to lodge Answers and fixed a further procedural hearing for 4 September 2019. Answers were lodged for the Respondent following an extension granted to the period previously provided.

6. At the procedural hearing on 4 September 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. She also appeared on behalf of Callum Anderson, Solicitor Advocate, Glasgow for the Respondent. On joint motion, the Tribunal fixed a hearing for 22 November 2019.

7. On 21 November 2019, the Respondent moved to adjourn the hearing fixed for 22 November 2019. The Fiscal having no objection, the Chair exercising the functions of the Tribunal under Rules 44 and 56 adjourned the hearing fixed for 22 November 2019 and fixed a hearing for 19 February 2020.

8. On 19 February 2020, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented by Callum Anderson, Solicitor Advocate, Glasgow. The Tribunal received a signed Joint Minute of Admissions. Of consent, the Tribunal granted the Fiscal's motion to make a number of deletions to the Complaint to reflect the agreed position in the Joint Minute. The Tribunal allowed the Respondent to withdraw his Answers. Parties made submissions.

9. Having given careful consideration to the terms of the Complaint, the Joint Minute and parties' submissions, the Tribunal found the following facts established:-

9.1 The Respondent is John Christopher Bartlett. He was born on 14 June 1966. He was enrolled as a solicitor on 9 June 1993. The Respondent was the sole partner in the firm J. C. Bartlett & Co from 1 November 1997 to 31 October 2018. He was the Cashroom Partner from 1 June 2000 to 31 October 2018, the Anti Money Laundering Partner from 11 February 2002 to 31 October 2018, the Client

Relations Partner from 22 February 1999 to 31 October 2018 and the Risk Management Partner from 11 February 2002 to 31 October 2018 at the said firm. The Respondent does not currently hold a practising certificate but remains on the Roll of Solicitors.

9.2 The Financial Compliance Department of the Law Society of Scotland conducted an inspection of the financial records, books, accounts and documentation of the Respondent's firm on 25 January 2011. This inspection identified a number of concerns highlighted in an Executive Summary produced by the said Department. The matters highlighted included breaches of the Solicitors (Scotland) Account Etc Rules 2001 as follows: i) Rule 24 – Anti-money Laundering Regulations, which revealed that no risk assessment was being carried out for transactions, no verification was being obtained regarding the originating source of funds received towards transactions and there was no client identification in respect of some clients, ii) Rule 8(4) True Financial Position/Firm Trial Balance - the practice unit's trial balance was not in the correct format and did not include all the figures required and the capital figure was a figure entered as a balancing figure iii) Rule 8(1) Record Keeping – five cheques were noted to be out of date as at 31/12/10.

It was noted in the Executive Summary from 2011 that the issue regarding the monthly trial balances had been raised at the previous two inspections of the practice unit.

9.3 A further inspection of the records, books, accounts and documentation of the Respondent's firm was carried out by the Financial Compliance Department on 13 and 14 October 2015. This inspection raised a number of serious concerns highlighted in an Executive Summary produced by the said Department.

9.4 The Financial Compliance Department deemed the findings of the inspection sufficiently serious to refer the matter to the Client Protection Sub-Committee (CPSC) which met on 14 January 2016. The CPSC invited the Respondent for interview on 18 February 2016. The Respondent did not attend at the interview but submitted an email dated 16 February 2016.

9.5 On 18 February 2016 the CPSC recommended that the firm be re-inspected in October 2016 and that a complaint be referred to the SLCC for investigation in connection with breaches of accounts rules: 6.3.1(a) - The client account balance is to exceed the sum of client funds held; 6.4.1 - Duty to rectify breaches; 6.7.1 - Keep properly written up records; 6.7.4 - True financial position; 6.8.1 - Completion of regular reconciliations; 6.9.1 - Invested funds; 6.13 - Cashroom Manager responsibilities; 6.15 - Delivery of accounts certificates; 6.23 - Compliance with the Money Laundering Regulations 2007.

9.6 The findings detailed in the Executive Summary included, amongst other matters, the following:

a) Rule B6.4.1 Duty to rectify breaches

The Inspector noted that during the previous inspection in 2011, breaches had been noted in relation to the Money Laundering Regulations and Rule B6.7.4 (true financial position) in relation to the trial balances of the firm and that it was a concern that the Respondent was still not demonstrating the application of customer due diligence measures and continued to be in arrears with the preparation and completion of the books and records of the firm.

b) Rule B6.7.3 – True financial position

On arrival at the Respondent's firm there were no books and records ready for inspection by Financial Compliance and work was still being carried out to prepare the necessary reports. The reports provided from the accounting system being operated by the Respondent were not sufficient to enable a full review of the records.

The practice unit's cashbook did not always run in chronological order, was not being totalled as required and did not provide a breakdown of expense items.

On the morning of the inspection the Respondent collected firm trial balances from his accountant, but they had only been prepared up to July 2015 and

accordingly the books and records were in arrears. Furthermore, the trial balance reports did not accurately reflect the client bank for any of the months prepared, the drawings were incorrect and a breakdown of each of the nominal ledgers within the trial balance could not be provided.

At the previous inspection in 2011 the matter of the firm trial balance had been raised with the Respondent.

On the drawings ledger, which was stated on the client trial balance, the following inconsistencies were noted:

Drawings per client balance report at 30/09/15 - £807,155.93
Drawings per nominal ledger print provided at 30/09/15 - £44,529.06
Drawings per the trial balance dated 31/07/15 - £10,000

Accordingly, the true position of drawings could not be ascertained.

On review of the firm bank reconciliations it was noted that the reconciliation report for the period ending 30/06/15 was prepared on 14/08/15 and the reconciliation reports for the periods ending 31/07/15 and 31/08/15 (erroneously dated 30/09/15) were prepared on 08/10/15. Accordingly, the records were in arrears and not being prepared timeously.

c) Rule B6.8.2 Statement of Surplus

The surplus stated under the heading of *"total firm funds"* was stated incorrectly. This was due to a *"Lloyds Other"* ledger with a balance of -£963.75 being included in the calculation. A balance adjustment of £1,000 had been posted to the ledger on 31 July 2015 and no clarification could be provided as to what the sum was and why it had been posted.

d) Rule B6.23 Money Laundering Regulations 2007

The Respondent did not design and implement risk sensitive policies and procedures required by Regulation 20. Despite being asked by the Financial

Compliance inspector to provide details of the practice unit's risk sensitive policies and procedures the Respondent had still not provided these by 12 February 2016.

The Respondent did not provide his staff with any training in the law relating to money laundering and terrorist financing.

The Respondent did not retain or exhibit evidence of having applied customer due diligence measures in relation to transactions carried out by the practice unit. The Respondent did not have a risk sensitive assessment tool.

These matters had been raised at the previous inspection in 2011.

During the inspection, on review of the undernoted files, it was noted that there was no evidence, either on a risk assessment or within the file, to show that the Respondent had undertaken customer due diligence measures in respect of the source of wealth in the following transactions where the clients had also obtained loan funding to assist with the purchase:

- E)13 ME purchase of Property 1. The sum of £20,000 was received on 07/07/15.
- L122 HL and YS purchase of Property 2. The sum of £11,564 was received on 22/09/15.
- HO99 MH purchase of Property 3. The sum of £7,719 was received on 01/07/15.

e) Rule B6.15.1 Account Certificates Disclosures

The Respondent submitted 9 accounts certificates to the Law Society for the following accounting periods: to 30 April 2011 (dated 3 June 2011), 31 October 2011 (dated 10 November 2011), 30 April 2012 (dated 29 May 2012), 31 November 2012 (dated 2 December 2012), 30 April 2013 (dated 19 July 2013), 31 October 2013 (dated 13 January 2014), 30 April 2014 (dated 30 May 2014), 31 October 2014 (dated 21 November 2014) and 30 April 2015 (dated 13 July 2015) which did not disclose any breaches of the account rules and accordingly were inaccurate.

f) Rule B6.13 Cashroom Manager Responsibilities

The Executive Summary noted that the Respondent had failed to comply with the following:

- Rule 6.4.1 Duty to rectify breaches – namely failure to comply with Rule B6.23 and B6.7.4
- Rule B6.7.3 True Financial Position – non-compliance with preparation of books and records
- Rule B6.8.2 Surplus calculation – failure to provide accurate statement of surplus
- Rule B6.15.1 Accounts Certificate Disclosures – failure to disclose breaches of the rules
- Rule B6.23 Money Laundering Regulations – non-compliance with four different aspects of the Money Laundering Regulations.

10. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect that:

a) he failed to promptly rectify breaches of Rules B6.23, B6.7.3, B6.7.4 despite being aware that said breaches had occurred, in breach of Rule B6.4.1 of the Law Society of Scotland Practice Rules 2011;

b) he, in the period preceding and at least up to 12 February 2016, failed to keep properly written up accounting records to show all dealings with clients' money and to demonstrate compliance with the Money Laundering Regulations in breach of Rule B6.7.1 of said Practice Rules;

c) he, in the period preceding and at least up to 12 February 2016, failed to keep properly written up accounting records to show the true financial position of the practice unit and failed to balance the practice unit's books monthly and on the last day of each accounting period in breach of Rule B6.7.3 and B6.7.4 of said Practice Rules;

d) the Respondent, in the period preceding and at least up to 12 February 2016, failed to:-

- establish and maintain, or retain and exhibit evidence of having established and maintained, risk sensitive policies and procedures relating to customer due diligence measures and ongoing monitoring, risk assessment etc in order to prevent money laundering or terrorist financing, as required by regulation 20 of the Money Laundering Regulations 2007;
- take appropriate measures to ensure that all relevant employees of the practice unit had received training in the law relating to money laundering and terrorist financing and how to deal with transactions or activities which may be so related, as required by regulation 21 of the said Regulations 2007;
- apply, or retain or exhibit evidence of having applied customer due diligence measures on a risk sensitive basis in respect of the clients of the practice unit as required by regulations 7 and 19 of said Regulations;
- undertake, or retain or exhibit evidence of having applied customer due diligence measures in respect of the source of funds or wealth in at least three transactions identified by the Financial Compliance inspector in 2015;

all said failures being in breach of Rule B6.23 of said Practice Rules;

e) the Respondent failed, in the period preceding and at least up to 12 February 2016, to use reasonable endeavours to acquire and maintain the skills necessary to discharge his responsibilities as the practice unit's Cashroom Manager in respect that the records of the practice unit were not being maintained properly and did not demonstrate compliance with the Practice Rules required, many of said rule breaches having previously been advised during the inspection in 2011, in breach of rule B6.13.2 of said Practice Rules;

f) the Respondent breached Rule B6.15, and in consequence Rule B1.2, in respect that he submitted false and inaccurate accounts certificates to the Council on 3 June 2011, 10 November 2011, 29 May 2012, 2 December 2012, 19 July 2013, 13 January 2014, 30 May 2014, 21 November 2014 and 13 July 2015, none of which disclosed the aforementioned breaches of the said Practice Rules and each of which stated that the Respondent's firm had complied with the requirements of the said

Practice Rules, thereby misleading the Council as to the Respondent's firm's compliance with the said Practice Rules.

The Findings of professional misconduct (a)-(f) were made *in cumulo* and finding (f) was made individually.

11. Following submissions in mitigation and on publicity and expenses, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 February 2020. The Tribunal having considered the Complaint dated 7 February 2019 at the instance of the Council of the Law Society of Scotland against John Christopher Bartlett, Easter Balnaird House, Heights of Inchvannie, Strathpeffer; Find the Respondent guilty of professional misconduct in respect of his breaches of (a) Rule B6.4.1, (b) Rule B6.7.1, (c) Rules B6.7.3 and B6.7.4, (d) Rule B6.23, (e) Rule B6.13.2 and (f) Rules B6.15 and B1.2 all of the Law Society of Scotland Practice Rules 2011, said Findings of professional misconduct (a) – (f) being found *in cumulo* and finding of professional misconduct (f) being found individually; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of two years any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to and to being supervised by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Nicholas Whyte

Chair

12. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 1 JUNE 2020.

IN THE NAME OF THE TRIBUNAL

[redacted]

Nicholas Whyte

Chair

NOTE

At the hearing on 19 February 2020, the Answers lodged by the Respondent were withdrawn. The Tribunal therefore had before it the Complaint as amended, the Joint Minute of Admissions, two Inventories of Productions for the Complainers, a List of Authorities for the Complainers, a List of Authorities for the Respondent and a number of references submitted on behalf of the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal outlined the Respondent's career history. From 1997 to 2018 he was a sole practitioner. His practice was inspected by the Complainers' Financial Compliance Department in January 2011. Issues regarding his accounts were raised during that inspection, particularly with regard to trial balances and anti-money laundering compliance. No action was taken at that time. The next inspection took place in October 2015. Several breaches of the Accounts Rules were detected. These were the subject of the Complaint before the Tribunal. From 2011 to 2015, the Respondent submitted nine Accounts Certificates which did not disclose breaches of the Rules. Accordingly, they were false and inaccurate. The Law Society were misled regarding the Respondent's compliance with the Practice Rules. This brought the Respondent's integrity into question. He was aware in 2011 of the breaches. He knew these were not rectified. He ought to have been aware of the ongoing breaches. This showed a reckless disregard for the Practice Rules. The Fiscal stated that she no longer relied upon breach of Rule B6.12.1 the last averment of misconduct. The Fiscal submitted the Complaint outlined circumstances which were not a "one-off" situation. The Respondent's practice had been inspected twice. Ongoing breaches were not remedied. The anti-money laundering and Accounts Certificates issues were particularly serious.

The Fiscal submitted that the conduct was sufficient to meet the test in Sharp-v-The Council of the Law Society of Scotland 1984 SC 129. She also referred the Tribunal to The Council of the Law Society of Scotland-v-Edward Thornton. In that case, in which misconduct was established, the Respondent failed to rectify earlier established breaches of the practice rules. The Fiscal also referred to The Council of the Law Society of Scotland-v-John Adam. In that case, the Tribunal did not find professional misconduct established and remitted the Complaint to the Law Society for consideration of unsatisfactory professional conduct. She noted that in the Adam case, the Tribunal had considered the breaches of the Accounts Rules to be "administrative, technical and historical". However, in the present case this was not so. The breaches were ongoing for a long time. In Adam, the Respondent's practice had only been inspected once, but in the present case it was twice.

In response to a question from the Chair, the Fiscal clarified that the Complainers said the commencement date for the breaches referred to in the averments of misconduct at paragraph 6.1(c), (d), (g) and (h) of the Complaint was the date of the first inspection in 2011.

SUBMISSIONS FOR THE RESPONDENT

Mr Anderson noted that notwithstanding the Respondent's acceptance of the averments of fact, duty and misconduct in the Complaint, the Tribunal still required to consider whether the gravity of the failures was such as to meet the test for professional misconduct. He referred to the Sharp test. Mr Anderson also referred to Law Society v John Adam, Law Society v Michael Inkster and Law Society v Edward Thornton. In the Adam case, the Tribunal noted the lack of dishonesty and said that the breaches of the rules had been administrative, technical and historical. Mr Anderson noted that breach of the rules is a serious matter but does not always constitute professional misconduct. In the Inkster case the admitted breaches of the Rules were serious but not reprehensible when considered in context. The errors were minor and there had been no financial risk to clients or the firm. There was no dishonesty or lack of integrity although the Respondent had not maintained his professional responsibilities. Mr Anderson invited the Tribunal to consider whether the admitted breaches in the present case fell within similar circumstances to that in Adam and Inkster. In both these cases the Tribunal had not found professional misconduct established but had remitted the matter to the Law Society for consideration of unsatisfactory professional conduct. Mr Anderson submitted that the breaches in the Thornton case were much more serious than those in the present case. The Respondent failed to take action in relation to issues which were raised during four inspections.

Mr Anderson said that the 2011 inspection highlighted a number of issues, many of which were satisfactorily dealt with. For example, other than recording the initial assessment of risk for transactions, all the anti-money laundering issues were resolved. The Respondent considered all his transactions to be low risk. However, he only made notes of risk if they were other than low. Some issues remained outstanding and other matters were highlighted in the 2015 inspection. These had a higher weight attributed to them than the breaches of 2011. It was noted that there was an absence of risk assessments in 2015. There were three files where there was no commentary regarding source of funds. These had been dealt with by his assistant but the Respondent was able to provide a full explanation regarding the source of funds. The Respondent and his assistant had attended CPD courses on money laundering. His secretary had not attended training. He was not aware she had to

do this and it was not raised at the 2011 inspection. In 2015, the Respondent was under significant pressure of work. His assistant left and the Respondent stopped taking any new work.

With regard to the true financial position of the firm, Mr Anderson explained that the trial balances were inaccurate. Neither the Respondent nor his accountant could provide a proper trial balance. The Respondent's accountant attended on the morning of the 2015 inspection. At that point he became aware that the issue was a discrepancy in the client balance. This was due to a human error which went back many years and was not identified for a long period. It took the Respondent about 150-200 hours to find the source of the error and put it right. These efforts took a toll on the Respondent's health. However, there had been no risk to client funds, as the Respondent kept a surplus of £20,000 in the client account and every month the client accounts reconciled.

After the 2011 inspection, the Respondent obtained LawPro accounting software. However, it was not possible even with the supplier's assistance to get a true starting figure. Therefore, he did not use it and reverted to QuickBooks which were not suitable for a legal practice.

Mr Anderson accepted that the accounts certificates submitted by the Respondent were inaccurate. It did not occur to the Respondent to record the issues he was experiencing on the accounts certificates.

The outcome of the 2015 inspection was a referral to the Client Protection Sub Committee which met on 14 January 2016. The Respondent was invited for interview on 18 February 2016. He did not attend because he thought he had provided sufficient detail in writing. He thought the best way to resolve the problem was to spend as much time as possible sorting out the client balance issue. The Respondent had some issues with the way the Law Society had handled matters. Failings were acknowledged by the Law Society and £500 compensation was paid to him.

Mr Anderson noted that a subsequent inspection was "reasonably satisfactory". In 2018 the Respondent contacted the registrar and indemnity insurer and informed them that he intended to shut down his practice on 31 October 2018. Mr Anderson invited the Tribunal to take the issues with the Law Society complaints system into account. He said that had full information been provided to the Sub Committee, it might have made a different decision to prosecute. It provided an explanation of how the Respondent came to be before the Tribunal.

DECISION

The Tribunal decided that it should not take account of the decisions taken by the Law Society Sub Committee before the Complaint came to the Tribunal. It ought to make its decision based on the agreed facts which were before the Tribunal. On the basis of the Joint Minute, the Tribunal was satisfied beyond reasonable doubt that the Respondent had conducted himself in the manner set out in the Complaint as amended.

The Tribunal noted that the Respondent accepted that he had failed to rectify breaches of the Accounts Rules and that some of these had been drawn to his attention following the 2011 inspection. He had failed to comply with proper anti-money laundering practices. His accounting records were not up to date and were not up to standard. He had not chosen to use appropriate accounting methods or software. He had not maintained proper anti-money laundering procedures, policies and provided appropriate staff training. He had not acted properly as cashroom manager. He had submitted false and inaccurate accounts certificates to the Law Society.

Breach of rules may amount to misconduct, but regard has to be had to all the circumstances. The Tribunal had regard to the case law referred to by the parties. Many of these were examples of the Tribunal considering conduct in the light of the Sharp test. These were not binding precedents on the Tribunal. Although the Respondent admitted professional misconduct, it remained for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. There are certain standards of conduct to be expected of competent and reputable solicitors and a departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct.

The Tribunal was satisfied that the Respondent's many failures over a period of five years were a serious and reprehensible departure from the standards of competent and reputable solicitors, particularly when he had failed to address the matters drawn to his attention in 2011. Accordingly, he was guilty of professional misconduct. The Tribunal was satisfied that the conduct *in cumulo* amounted to professional misconduct. However, the submission of nine false and inaccurate accounts certificates was capable of amounting to professional misconduct on its own. Accounts certificates are one of the means by which the Law Society monitors compliance with the rules and risk to client money. The Law Society is entitled to rely on accounts certificates as showing the matters which have been identified and the measures taken to deal with them. Failure to record the breaches on the

accounts certificates called the Respondent's integrity into question. He knew about the issues raised in the 2011 inspection and other problems. His completion of the certificates without comment, knowing he had not resolved all issues, despite his efforts, demonstrated a lack of integrity.

SUBMISSIONS IN MITIGATION, AND ON PUBLICITY AND EXPENSES

The Fiscal produced the Respondent's record card which had no findings of the Tribunal or the Professional Conduct Sub Committee on it. Mr Anderson made submissions in mitigation.

Mr Anderson described the Respondent's career history. He explained that the Respondent had spent money on new accounting software and had tried to tackle the problems highlighted in the inspections. He employed a new accountant and legal bookkeeper. At the time of the breaches, the Respondent's assistant left the practice and the Respondent's health suffered. He had been unfit for work since his practice closed. There was no risk to client funds directly or as a result of capital inadequacy. After much work, the issues were resolved, and the Law Society approved the accounts.

Mr Anderson provided details of the Respondent's current personal and financial circumstances. He told the Tribunal that the Respondent was not currently employed. He retired from the profession in October 2018 and does not intend to return to practice. He would find it difficult to pay a fine. Mr Anderson suggested that the matter could be dealt with by way of a censure or alternatively a restriction on the Respondent's practising certificate. He asked the Tribunal to have regard to the references submitted by the Respondent.

The Fiscal moved for expenses and asked for the usual order regarding publicity. Mr Anderson made no motion with regard to these issues.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal had regard to the references provided by the Respondent which were in positive terms. The Tribunal considered its indicative outcomes guidance when determining the appropriate sanction. It considered that a censure alone was not sufficient to mark the seriousness of the conduct which carried on for many years and involved a lack of integrity with respect to the submission of false and inaccurate accounts certificates. This conduct was mid-range on the scale of misconduct and would normally merit a fine to show the seriousness with which the Tribunal viewed the conduct. However, the Tribunal recognised that the Respondent was not in a financial position to pay a fine. The Tribunal

was concerned that in his financial circumstances, the Respondent might be driven back to the profession out of necessity, and there would be a risk of repetition of these events if he were to work as a sole practitioner immediately, particularly if his health problems were to recur. It therefore imposed a condition on any practising certificate issued to the Respondent that for an aggregate period of two years he should be limited to acting as a qualified assistant to and to being supervised by such employer or successive employers as may be approved by the Law Society of Scotland. This would give the Respondent time to reflect on the finding of misconduct and for him to acquire the skills required to function as manager of a practice unit again while being supervised.

The Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests.

Nicholas Whyte

Chair