

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

FINDINGS

in Complaint

by

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

Complainers

against

**CAMERON HUNTER MACKENZIE, Smith &
Grant, Rathellan, High Street, Leven**

Respondent

1. A Complaint dated 1 September 2022 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 Cameron Hunter Mackenzie, Smith & Grant, Rathellan, High Street, Leven (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were two Secondary Complainers, [REDACTED] and [REDACTED]
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent at the address in the Complaint. No Answers were lodged for the Respondent.
4. A second Complaint dated 19 October 2022 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers averring that the Respondent was a practitioner who may have been guilty of professional misconduct in respect of additional matters. There were no Secondary Complainers in relation to this Complaint.
5. The Tribunal caused a copy of the second Complaint as lodged to be served upon the Respondent at the address in the Complaint. No Answers were lodged for the Respondent.

6. In terms of its Rules, the Tribunal appointed both Complaints to be heard at a virtual procedural hearing on 17 February 2023 and notice thereof was served on the parties.
7. At the virtual procedural hearing on 17 February 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Both Complaints were set down for a virtual hearing on 26 April 2023 and notice thereof was served on the parties.
8. At the virtual hearing on 26 April 2023, the Complainers were represented by their Fiscal, Gavin Whyte Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. A Joint Minute between the parties agreeing all of the averments of fact and misconduct in both Complaints had been lodged with the Tribunal. On Joint Motion, in terms of Rule 17 of the Tribunal Rules 2008, the Tribunal directed that both Complaints be conjoined and heard together. The Tribunal heard submissions from both parties.
9. The Tribunal found the following facts established:-
 - 9.1 The Respondent is Cameron Hunter MacKenzie of Smith & Grant Solicitors and Estate Agents, Rathellan, High Street, Leven. He was employed with Smith & Grant Solicitors firstly as a trainee, then as an assistant before becoming a Partner of the firm.
 - 9.2 [REDACTED], the father of the Secondary Complainers, died on 16 July 2014. The Respondent and another party, Neil Paterson (a chartered accountant), were appointed as executors in terms of [REDACTED]'s will. As per the terms of [REDACTED]'s will, [REDACTED] was not a beneficiary however her sister, [REDACTED], was the residual beneficiary. The Respondent and the other executor formally instructed the Respondent's firm to act in the administration of the estate.
 - 9.3 On 13 November 2014, Harper Macleod Solicitors acting on behalf of [REDACTED] [REDACTED] sent a letter to the Respondent's firm. The letter requested a calculation

of [REDACTED]'s Legal Rights entitlement and copies of the will and trust which was believed to have been set up by [REDACTED]

- 9.4 On 17 November 2014 the Respondent's firm replied to Harper MacLeod advising that they awaited instructions from the executors. On the same date the Respondent's firm wrote to the Respondent and Neil Paterson to advise of the letter received from the Harper Macleod Solicitors and that the firm awaited instructions.
- 9.5 On 10 December 2014 Harper Macleod wrote to the Respondent's firm requesting an update on the Executry. On 15 December 2014, the Respondent's firm replied by advising that the executors were due to meet shortly and full instructions would be provided thereafter. A copy of this letter was forwarded to the Respondent and Neil Paterson on 15 December 2014 by the Respondent's firm.
- 9.6 On 21 January 2015 Harper MacLeod wrote to the Respondent's firm seeking confirmation that the executors had met. The Respondent's firm replied on 23 January 2015. The reply advised that the executors had not met but planned to do so in February 2015. A copy of the letter dated 21 January 2015 from Harper MacLeod was forwarded to the Respondent by his firm.
- 9.7 On 16 March 2015 the Respondent wrote to Harper Macleod. He apologised for the delay in reverting to them, a delay which he attributed to the complexities of dealing with the particulars of [REDACTED]'s estate. He advised that the investigation of the estate was continuing and that he would endeavour to revert with a calculation of [REDACTED]'s legal rights as soon as possible.
- 9.8 On 3 April 2015 the Respondent's firm wrote to Harper MacLeod in respect of concluding missives for the sale of property and arranging for clearance of its contents.
- 9.9 On 13 April 2015 Harper Macleod wrote to the Respondent's firm in respect of personal items contained within [REDACTED]'s property. On 20 April 2015 the Respondent's firm replied by letter confirming that none of the items sought were contained within the property.

- 9.10 On 14 August 2015 Harper Macleod wrote to the Respondent's firm. They requested a full calculation of their client's legal rights entitlement within 7 days or an explanation as to why the calculation would not be forthcoming. Failing which they advised an action against the executors for account reckoning and payment would be instigated.
- 9.11 The Respondent's firm replied on 21 August 2015 advising that they were almost in a position to take final instructions from the executors and would revert in early course. Harper Macleod acknowledged that letter by their own letter of 24 August 2015. On 26 August 2015 the Respondent's firm sent a further letter to Harper Macleod advising they would revert as quickly as possible.
- 9.12 On 27 September 2015 Harper Macleod wrote to the Respondent's firm requesting an update. No reply was received.
- 9.13 On 23 October 2015 Harper Macleod wrote to the Respondent's firm noting that they had not received a response to their letter of 27 September 2015 and requested an update. The Respondent's firm sent an email on 26 October 2015 advising that the executors were due to meet that week and that the firm would be in further contact in order to progress matter afterwards.
- 9.14 On 7 December 2015 Harper Macleod wrote to the Respondent's firm seeking an update.
- 9.15 On 8 January 2016 Harper Macleod wrote to the Respondent's firm. They noted their letter of 7 December 2015 had not been responded to. They requested an update. On 11 January 2016 the Respondent's firm replied explaining the executors had been unable to meet in December 2015 due to work commitments and that they would be in contact after the executors met. The firm advised that the executors were due to have a meeting shortly.
- 9.16 On 22 March 2016 Harper Macleod wrote to the Respondent's firm requesting an update. The Respondent's firm acknowledged receipt on 23 March 2016 and advised that the correspondence would be placed before a member of staff dealing with the executry.

- 9.17 On 13 April 2016 Harper Macleod wrote to the Respondent's firm requesting an update. The Respondent's firm replied by letter of 19 April 2016 which stated that the executors were due to meet shortly after which a full update would be provided. No update was ever provided to Harper MacLeod.
- 9.18 From 13 November 2014 to 19 April 2016 the Respondent failed to adequately respond to Harper MacLeod instructed by [REDACTED] with the documents and information first requested on 13 November 2014. The delay was caused by the Respondent as he failed to provide his firm with instructions.
- 9.19 The Respondent, as executor and the executor's legal agent during his administration of the estate, failed to advise the Secondary Complainers of their legal rights entitlement as beneficiaries to [REDACTED]'s estate.
- 9.20 On 6 July 2018 [REDACTED] sent a letter of complaint to the Respondent. The Respondent did not reply to that letter. At the time of the complaint the Respondent was the Client Relations Partner for Smith & Grant Solicitors.
- 9.21 On 4 November 2019 the Law Society of Scotland intimated a complaint to the Respondent. The Respondent did not reply within 21 days as stipulated in the letter.
- 9.22 On 26 November 2019 the Law Society of Scotland wrote to the Respondent again seeking a response. The Respondent replied that day. He explained he had been unwell but would respond as soon as possible. On 16 December 2019 the Respondent sent an email to the Society. He apologised for delay in responding. He stated that he intended to look at the complaint that day and revert to the Society.
- 9.23 The Society sent emails on 6 January 2020, 17 January 2020 and 5 February 2020 seeking a response. The Respondent replied on 6 February 2020. He stated that he hoped to be able to provide a comprehensive response in the early part of the coming week. No substantive response was received.

- 9.24 Formal Notices in terms of section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007 and section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 were issued to the Respondent on 15 June 2020.
- 9.25 On 16 July 2020 the Respondent wrote to the Society. He stated that he would endeavour to provide a full response as soon as possible.
- 9.26 The Respondent sent further emails to the Society on 4 August 2020 and 7 August 2020. In the latter email he stated that he would revert with a comprehensive response by the beginning of the week. No response was received.
- 9.27 A new issue of failing to respond to the Society was intimated by the SLCC on 2 December 2020. The Respondent did not engage with this process and no response was received.
- 9.28 In April 2021 the Society wrote to the Respondent seeking an update on the administration of the estate. The Respondent did not reply.
- 9.29 Mrs Elizabeth Anne Hyslop ("the complainer") instructed the firm of Smith & Grant ("the firm") on 18 August 2016 to act in relation to the administration of her late son's estate. Mr X, the executry manager of the firm, was involved in the administration of the estate under the supervision of the Respondent who was also involved in certain elements of the same. A number of issues arose during the period in which the firm was instructed to act eventually leading to a complaint to the SLCC from the complainer on 21 January 2019. Three matters were eventually remitted to the Law Society of Scotland for investigation. A complaint in relation to these matters was intimated to the Respondent on 14 July 2020. No response was received. A reminder was sent to the Respondent on 2 October 2020 and again no response was received.
- 9.30 Due to his failure to respond, on 29 July 2021 the Law Society served Notices on the Respondent in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 ("1980 Act") and Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007 ("2007 Act"). There was no response from the Respondent following the issue of the Notices and on 25 August 2021 a

further Notice was sent to the solicitor advising he would have to give six weeks' notice to Council of his intention to take out a Practising Certificate for the year commencing 1 November 2021 in terms of said Section 15(2)(i)(i) of the 1980 Act.

9.31 The complainer subsequently submitted an Additional Issues Form to the SLCC regarding the solicitor's failure to co-operate with the Law Society's investigation. This additional issue was categorised by the SLCC as a conduct complaint, and it was remitted it to the Law Society for investigation. The complaint was intimated to the Respondent on 16 November 2021. No response was received from the Respondent.

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

- a) he failed to comply with his responsibilities as a Client Relations Manager of the firm by failing to send a response to the Secondary Complainer, ██████████ in relation to her letter of complaint dated 6 July 2018;
- b) he failed to provide the agents acting for the Secondary Complainer, ██████████ with information concerning her late father's estate between 13 November 2014 and 19 April 2016 despite numerous requests to do so throughout this period;
- c) he failed to advise the Secondary Complainers of their legal rights entitlement to the estate as beneficiaries; and
- d) he failed or unduly delayed to respond promptly and efficiently to correspondence and statutory notices received from the Council in respect of its regulatory function in relation to both Complaints.

11. Having heard further submissions from both parties, and considered two documentary Productions on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 26 April 2023. The Tribunal, having considered the Complaints dated 1 September 2022 and 19 October 2022 at the instance of the Council of the Law Society of Scotland against Cameron Hunter Mackenzie, Smith & Grant, Rathellan, High Street, Leven; Find the Respondent guilty of professional misconduct *in cumulo*

in respect that he; (a) failed to comply with his responsibilities as a Client Relations Manager of the firm by failing to send a response to the Secondary Complainer, [REDACTED] [REDACTED] in relation to her letter of complaint dated 6 July 2018; (b) failed to provide the agents acting for the Secondary Complainer, [REDACTED], with information concerning her late father's estate between 13 November 2014 and 19 April 2016 despite numerous requests to do so throughout this period; (c) failed to advise the Secondary Complainers of their legal rights entitlement to the estate as beneficiaries; and (d) failed or unduly delayed to respond promptly and efficiently to correspondence and statutory notices received from the Council in respect of its regulatory function in relation to both Complaints; Censure the Respondent; Fine him in the sum of £5,000 to be Forfeit to His Majesty; 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; Direct that publicity will be given to this decision; and Allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office.

(signed)

Kenneth Paterson

Vice 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 16 JUNE 2023.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

At the Hearing on 26 April 2023, the Tribunal had before it two Complaints and a Joint Minute agreeing all of the averments of fact and misconduct contained in both Complaints. On Joint Motion, in terms of Rule 17 of the Tribunal Rules 2008, the Tribunal conjoined both Complaints. Given the extensive nature of the Joint Minute, no evidence required to be led and the Tribunal proceeded to hear submissions from both parties.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal drew the Tribunal's attention to the detailed statement of facts within the Complaint dated 1 September 2022 which were all agreed by way of Joint Minute.

He then drew the Tribunal's attention to the averments of misconduct within that Complaint. The first averment of misconduct in paragraph 6.1(a) related to the Respondent's failure to respond to a letter of complaint by the Secondary Complainer, [REDACTED]. It was accepted by the Respondent that at that time he was the Client Relations Manager. The Respondent had been corresponding with this Secondary Complainer since the death of her father. No response was given to her letter of complaint of 6 July 2018. He submitted that this conduct breached Rules B1.9.1 (failure to communicate effectively) and Rule B5 (the responsibility for dealing with complaints) of the Law Society of Scotland Solicitors Practice Rules 2011.

Paragraph 6.1(b) related to the Respondent's failure to provide information to the agents acting on behalf of the Secondary Complainer, [REDACTED], in relation to information concerning her late father's estate between 13 November 2014 and 19 April 2016. The Respondent's firm contacted [REDACTED] in October 2014 advising her of her right to claim legal rights in her father's estate. As a consequence, the Secondary Complainer instructed Harper Macleod. At no point did the Respondent give his firm the necessary information in order to respond to the queries of Harper Macleod. He submitted that this was a breach of Rule B1.9 (duty to communicate effectively) and Rule B1.14.1 (the Respondent's duty to act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other).

Paragraph 6.1(c) related to the Respondent's failure to advise the Secondary Complainers of their legal rights entitlement. The Fiscal submitted that it was well established that there was a duty on solicitors acting as executors to inform potential legal rights claimants of their rights to claim on an estate. It was

accepted that [REDACTED] had a legal rights claim on this estate. It was accepted that the Respondent did not provide her with this information. He submitted that this was a further breach of Rule B1.9 but also a breach of Rule B1.10 which states that a solicitor must only act in matters where he is competent to do so. The Rule states that a solicitor must only accept instructions where the matter can be carried out adequately or within a reasonable time.

Paragraph 6.1(d) related to the Respondent's failure to respond to the Law Society in relation to the complaint made against him. At no stage was any substantive response ever provided to the Law Society by the Respondent. The Fiscal submitted that this was in breach of Rule B1.16 which imposes a duty upon the Respondent to deal with the Society in an open, timely and cooperative manner.

The Fiscal explained that the second Complaint, that dated 16 October 2022, involved a further failure by the Respondent to respond adequately to the Law Society in relation to a complaint remitted to it by the Scottish Legal Complaints Commission ("SLCC") in relation to the Respondent administering an estate.

He invited the Tribunal to hold that the conduct described met the test for professional misconduct set out within the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313. He drew the Tribunal's attention to what he described were aggravating features of the conduct namely, (1) the period of time where no effective communication was made by the Respondent and (2) that the Respondent's failures related to his interaction with third parties, professional colleagues and the Law Society as his regulatory body. The Fiscal submitted that the Respondent's failures, *in cumulo*, met the test of serious and reprehensible conduct as set out within the case of Sharp.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath explained that the Respondent admitted that his failures amounted to misconduct but understood that the question of professional misconduct was a matter for the Tribunal.

He explained that the Respondent had given him instructions to resolve matters quickly.

With regard to the first Complaint, Mr Macreath explained that the executry had been complicated by difficulties in relation to a discretionary trust set up by the deceased prior to his death. HMRC had objected to the status of the trust and this had resulted in a substantial tax liability on the estate. Effectively the tax liability and penalties had exhausted the moveable estate. The Respondent had been

wary of communicating with the potential legal rights claimants for fear of breaching any duty of confidentiality. It was however accepted that at the very least the Respondent should have advised Harper Macleod of the difficulties in calculating any legal rights claim.

With regard to the second Complaint, the administration of the estate had been moved to another firm and was now concluded. In relation to the complaints made against the Respondent, the firm's fees were abated and compensation was awarded to the Secondary Complainer by the SLCC. Additionally, the Law Society had made a finding of unsatisfactory professional conduct against the Respondent and had imposed a fine of £1,500 and an order of compensation of £1,500.

Mr Macreath confirmed that it was conceded by the Respondent that the test of professional misconduct set out in Sharp was clearly met.

DECISION ON PROFESSIONAL MISCONDUCT

All of the averments of fact were admitted in the Joint Minute. Accordingly, the Tribunal found all of these averments to be established. Whilst the Respondent admitted that his conduct amounted to professional misconduct, in terms of Section 53(1)(a) of the Solicitors (Scotland) Act 1980 ("the 1980 Act"), the Tribunal itself required to be satisfied that the Respondent had been guilty of professional misconduct.

The test for professional misconduct is contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313 which states:

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

The Fiscal invited the Tribunal to consider the averments of misconduct on an *in cumulo* basis. The conduct founded upon extends over a lengthy period of time – November 2014 to July 2021. The Respondent failed in his obligations to third parties, professional colleagues and the Law Society acting

in its role as regulator of the profession. He failed in his duties in his capacity as solicitor and as the Client Relations Partner of the firm.

The Tribunal was satisfied that the established conduct fell below the requisite standard to the degree that could only be described as serious and reprehensible.

The Tribunal invited further submissions from both parties.

SUBMISSIONS FOR THE COMPLAINER RE DISPOSAL

The Fiscal confirmed that the Respondent had only one matter on his record card, the finding of unsatisfactory professional conduct previously referred to by Mr Macreath which had resulted in a fine of £1,500 and an award of compensation of £1,500. The Fiscal moved for expenses and indicated that he had no submissions with regard to publicity.

SUBMISSIONS FOR THE RESPONDENT RE DISPOSAL

Mr Macreath confirmed that the Respondent had given him instructions at an early stage of his involvement to resolve matters.

He advised the Tribunal that the Respondent was the first member of his family to go to university. Both of his parents had been immensely proud when he graduated. The Respondent did not immediately apply for a traineeship but, for a time, helped his mother care for his terminally ill father. Subsequently, the Respondent had been advised of the possibility of a traineeship with the firm of Smith & Grant. The Respondent's application was successful. Unfortunately, the firm of Smith & Grant had a chequered past. In 2009, the Respondent was put in the position of having to take over the running of the firm following the prosecution and striking off of the then senior partner. As a young man, the Respondent had been thrown into the deep end. The Respondent became a workaholic, working seven days a week, starting as early as 6:30am and working 14-hour days. He had never been married. In fact, it could be said that the Respondent was married to the firm.

Mr Macreath explained that the firm now has 10 employees, one salaried partner and a consultant. The Respondent carries out all of the managing roles within the firm himself. Mr Macreath referred the Tribunal to a letter from the firm's accountant that described the nature of the firm's business and day-to-day running.

He confirmed that he had advised the Respondent of the need to have professional staff in order to share the burden.

In the course of their discussions, the Respondent shared with Mr Macreath information regarding his mental health. He explained that in the last two to three years, the Respondent had recognised that he had a problem with an acute recurring depressive disorder. The Respondent has sought professional assistance. Unfortunately, Mr Macreath had been unable to obtain a written report from the psychiatrist in time for the hearing but he had been able to discuss matters on the telephone. The psychiatrist was aware that Mr Macreath intended to repeat the psychiatrist's comments to the Tribunal. The psychiatrist confirmed that the Respondent had sought treatment and that treatment was likely to continue. He had confirmed that the Respondent has insight into his mental health problems and now understands when to seek help.

The circumstances surrounding the [REDACTED] executry were complicated. The deceased had set up a discretionary trust before the execution of his will and then his death. The residuary beneficiary of the will was the Secondary Complainer, [REDACTED]. No provision was made for the other Secondary Complainer. HMRC had taken issue with the discretionary trust and this had resulted in a tax liability which, including penalties, had exhausted the estate of the deceased in the will. The deceased had taken advice from a well respect Senior Counsel regarding the set up of the trust but it had fallen foul of the rules applying to any trust where the settler retains a beneficial interest in the property. When the Respondent was contacted by Harper Macleod he had been wary about providing information that might have breached his duties of confidentiality. What he should have done was advised Harper Macleod that there were ongoing difficulties that prevented him from calculating any potential legal rights claim.

Mr Macreath advised that there are still substantial funds within the trust. He explained that it would be open to the discretionary trustees, if it was considered appropriate, to make payments to the two Secondary Complainers to an equivalent amount of their legal rights claims.

With regard to the complaint made to the SLCC in the [REDACTED] executry, three conduct matters were referred to the Law Society, all of which are now before the Tribunal. The SLCC had dismissed any service issue.

With regard to the Hislop executry, the SLCC had ordered a restriction of the firm's fees and ordered the sum of £1,500 to be paid to the Complainer in compensation. Additionally, the Law Society had

made a finding of unsatisfactory professional conduct and fined the Respondent in the sum of £1,500 and ordered compensation of £1,500 to be paid.

Mr Macreath referred the Tribunal to a letter of testimonial for the Respondent from Craig Bennett, a professional colleague of the Respondent's in Dunfermline. He confirmed that Mr Bennett had seen both Complaints against the Respondent and was fully aware of the allegations against him. Mr Macreath described the testimonial as a heart-felt letter and submitted that Mr Bennett would not have risked his own reputation by offering the testimonial.

Mr Macreath invited the Tribunal to accept that the Respondent did not present a danger to the public. The Respondent had recognised the root cause of his difficulties and now understood he could look to a number of sources for assistance. Mr Macreath recognised that not cooperating with the Society was a serious issue affecting the reputation of the profession but invited the Tribunal to have regard to the two letters produced demonstrating that the Respondent's firm was highly regarded and only exists due to the Respondent's dedication to his clients. He submitted that it would be tragic for the Respondent to lose his hard worked for career where there was no question of dishonesty or a lack of integrity on his part. He invited the Tribunal to allow the Respondent to continue in practice unrestricted. The seriousness of the misconduct was understood but the root cause of these issues was the Respondent's depression. The Respondent had demonstrated insight into this, sought treatment and this had shown him how to deal with these issues on an ongoing basis. He submitted that, as a consequence, there is no risk of repetition.

Mr Macreath submitted that the Respondent could expect an award of expenses against him and the Tribunal had the power to both censure and fine him.

Mr Macreath accepted that the Tribunal would in due course fix a compensation hearing to deal with the Secondary Complainers' compensation claims. He confirmed he would be advising the discretionary trustees to deal with both claims for legal rights on the estate from the funds in the trust.

DECISION ON DISPOSAL, PUBLICITY AND EXPENSES

The Tribunal required to consider the seriousness of the misconduct. Uppermost in its mind were the protection of the public and the reputation of the profession. A failure to cooperate with the investigatory process following a complaint brings the profession into disrepute. The Tribunal did not, however, consider that the circumstances in this case merited either a striking off or suspension. Given the

mitigation put forward on behalf of the Respondent, the Tribunal considered that no restriction was necessary to protect the public.

However, the Tribunal considered it important to reflect the seriousness of the misconduct. In all of the circumstances, the Tribunal concluded that the appropriate disposal was to censure the Respondent and fine him in the sum of £5,000.

With regard to the expenses of proceedings, the Tribunal considered the fair and appropriate order was an award in favour of the Complainers, on the usual basis.

Neither party made any submission in relation to publicity. The Tribunal had regard to its obligations under Paragraph 14 and 14A of Schedule 4 to the 1980 Act. There was no information before the Tribunal to suggest that the interests of any individual might be prejudiced by publicity of this decision. Accordingly, the Tribunal directed that there should be publicity of the findings in full.



Kenneth Paterson
Vice Chair