

**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 DAVID MAIR, formerly of NEG08 Ltd,
5 Whittingehame Drive, Glasgow**

Respondent

1. A Complaint dated 21 July 2023 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that John David Mair, formerly of NEG08 Ltd, 5 Whittingehame Drive, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. On 24 July 2023, the Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged by the Respondent together with an Inventory of Productions and Preliminary Pleas of Res Judicata, time bar and public interest.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard at a virtual Procedural Hearing on 27 September 2023 and notice thereof was duly served on the Respondent.
5. At the virtual Procedural Hearing on 27 September 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented themselves. The Fiscal noted the Answers and Preliminary Pleas lodged by the Respondent and asked the Tribunal to fix a preliminary hearing together with a date by which parties must lodge

written submissions. The Respondent did not object to the Fiscal's motion. They stated that they had not received full disclosure from the Complainers and shared information about their health and personal circumstances. The Tribunal fixed a virtual preliminary hearing for a debate to take place on 18 December 2023. The Tribunal also directed parties to lodge written submissions detailing their legal arguments for debate by 11 December 2023. The Tribunal became concerned about the Respondent's presentation during the hearing, in particular whether they were fit to participate in the case, whether it was fair to proceed and the potential impact of proceedings on the Respondent. It became clear during the hearing that the Respondent was in hospital. They disclosed that they had attended hospital seeking help for their mental and physical health. The Tribunal suggested to the Respondent that it may be appropriate for them to obtain an expert report on his fitness to participate in proceedings before the Tribunal.

6. At the virtual Preliminary Hearing on 18 December 2023, neither party was present. The Fiscal informed the Tribunal Office by email at 0904 hours that he was unable to attend due to sickness and invited the Tribunal to fix another Procedural Hearing. The Respondent was neither present nor represented. They sent an email to the Tribunal Office at 1008 hours stating that they were unable to attend. No details regarding the reason for the Respondent's absence were provided. In the circumstances, the Tribunal continued the matter to a virtual Procedural Hearing on 19 January 2024 and noted that this would provide a final opportunity for the Respondent to obtain a psychiatric report or co-operate with the Fiscal in obtaining one. The Tribunal noted that parties should be ready to address it on the next appropriate step in procedure at the continued hearing.
7. At the Procedural Hearing on 19 January 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was not present. The Depute Clerk advised that the Clerk had telephoned the Respondent following the Preliminary Hearing on 18 December 2023 and explained to them that the case would call again on 19 January 2024. Thereafter, a letter dated 21 December 2023 enclosing a formal Notice of Hearing and Extract Minute was sent to the Respondent by Royal Mail Track and Trace. The tracking system showed that the letter was delivered and signed for on 22 December 2023. On 12 January 2024, an email containing a Zoom link for the Hearing was sent to the Respondent at two separate email addresses. In addition, the Depute Clerk confirmed that she had attempted to telephone the Respondent shortly before calling the case using the number previously used by the Respondent. However, an automated message indicated that the number was unavailable. The Fiscal invited the Tribunal to continue with proceedings in absence of the Respondent. The Tribunal considered that the Respondent had been given notice of the Hearing on 19 January 2024 in terms of the procedural rules and that it was

fair and appropriate to continue in absence of the Respondent. Thereafter the Fiscal invited the Tribunal to fix a Preliminary Hearing to address the Respondent's preliminary pleas. He confirmed that he had identified an independent psychiatrist who was prepared to provide a report on the Respondent's capacity to proceed with a Hearing. This could be provided quickly if arrangements could be made with the Respondent. The Fiscal required to discuss arrangements with the Respondent but did not have a contact telephone number for them. The Tribunal undertook to ask the Respondent's permission to disclose this information to the Fiscal. The Fiscal undertook to make enquiries to ascertain the location of the books and records for the Respondent's firm with a view to providing them to the Respondent. The Tribunal fixed a virtual Procedural Hearing for 13 March 2024 to allow the psychiatric report to be made available to it, if possible. The Tribunal also fixed a virtual Preliminary Hearing for 25 March 2024. Both hearings were later discharged administratively as the appointment for the psychiatric assessment of the Respondent was scheduled to take place on a later date and the Tribunal fixed a further virtual Procedural Hearing for 23 April 2024.

8. At the virtual Procedural Hearing on 23 April 2024 the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Tribunal heard evidence from the Depute Clerk in relation to the notice of Hearing provided to the Respondent. In all the circumstances, the Tribunal considered that it was fair and appropriate to proceed in the absence of the Respondent. The Fiscal invited the Tribunal to fix a preliminary hearing and to order the Respondent to lodge a written note of argument. The Tribunal considered email correspondence received from the Respondent and fixed a virtual preliminary hearing for 18 September 2024. The Tribunal also fixed a virtual procedural hearing for 24 July 2024. The Respondent was directed to lodge a written note of argument prior to the virtual procedural hearing and the Complainers were directed to lodge a written note of argument in response thereafter. Both parties were directed to lodge any Lists of Authorities and Productions to be referred to at the preliminary hearing in advance of the procedural hearing. The Tribunal Office would ask the Respondent to provide (a) a postal address to which it could direct written correspondence (b) a single email address to be used by the Respondent in correspondence with the Tribunal Office, and (c) an up-to-date mobile telephone number. The Fiscal undertook to write to the Respondent to advise them what had happened to the documents in this case and what the Complainers had available to disclose to them by way of evidence.

9. At the virtual Procedural Hearing on 24 July 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Tribunal heard evidence from the Depute Clerk regarding intimation of the Hearing to the Respondent and considered it fair and reasonable to proceed in the absence of the Respondent. It was noted that the Respondent had not lodged written submissions as previously directed. The Fiscal confirmed that he was in a position to disclose documents previously sought by the Respondent and he hoped to do so in a digital format by 2 August 2024. The Fiscal asked the Tribunal to convert the virtual Preliminary Hearing fixed for 18 September 2024 to a full Hearing, reserving the Respondent's preliminary pleas. The Tribunal considered all the information before it and refused the Fiscal's motion to convert the Preliminary Hearing to a full Hearing on the basis that would be counterproductive. The Tribunal continued the Complaint to the Preliminary Hearing on 18 September 2024. The Respondent was directed to lodge written submissions by 23 August 2024 and the Complainers to lodge their response by 30 August 2024.
10. At the virtual Preliminary Hearing on 18 September 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent connected to the hearing using audio on their mobile telephone. During the Hearing, the Respondent confirmed their contact mobile telephone number and an email address. The Tribunal considered submissions from both parties on how to proceed with the case and in relation to preliminary issues raised by the Respondent. The Tribunal identified three preliminary issues which could be addressed at the Hearing, namely time bar, Res Judicata and public interest. After full consideration, the Tribunal repelled those preliminary pleas and reserved further preliminary issues (namely relevancy and specification of the Complaint) to a full Hearing. During proceedings, the Respondent's telephone connection broke down and could not be reconnected. In those circumstances, the Tribunal fixed a virtual Procedural Hearing to take place on 24 October 2024 for parties to make submissions on the length and format of the full Hearing. Given the procedural history of the case, the Complainers were directed to lodge any documentary productions they intended to rely upon by 12 October 2024 and the Respondent was directed to provide the Tribunal with a contact postal address. The question of expenses for this Hearing was reserved.
11. At the virtual Procedural Hearing on 24 October 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Fiscal confirmed that a refined List of Productions had been sent to the Respondent electronically. He also stated that he had attempted to contact the Respondent to enter discussions

but had been unable to reach them. The Fiscal said that the Respondent had been in touch by email but that correspondence from them was unclear and no progress had been made. In addition, the Fiscal had made three separate appointments for the Respondent to attend a psychiatric assessment but the Respondent had failed to attend these. The Tribunal noted that the Respondent had alluded to numerous physical and mental health difficulties during proceedings and in correspondence, however, no formal medical evidence had been produced. The Tribunal observed that it must consider fairness to all parties and the need to progress matters without undue delay. It considered all the circumstances and fixed a virtual Procedural Hearing for 21 November 2024 and also a substantive Hearing for one day on 4 December 2024. The Fiscal noted that a further half day may be required for the substantive Hearing so the Tribunal decided to part hear the case on 4 December 2024 and continue to another date for conclusion if required. The Respondent was directed to lodge any medical evidence being founded upon by 21 November 2024.

12. At the virtual Procedural Hearing on 21 November 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and unrepresented. Parties were allowed time prior to the case being called to discuss matters. When the Tribunal convened thereafter, the Fiscal confirmed a willingness on the part of both parties to discuss matters in more detail with a view to agreement of certain issues. The Fiscal noted the procedural history of the case and made reference to the voluminous correspondence received by email from the Respondent. He explained that the Respondent had indicated prior to this Hearing that their position was as outlined in their email dated 14 November 2024. The Fiscal invited the Tribunal to adjourn the Hearing set for 4 December 2024 for a short period with no requirement for a further Procedural Hearing in the interim. The Tribunal asked the Respondent how they would like to be addressed. The Respondent stated that they identified as a transgender person but were content to deal with these proceedings as John Mair given that the Complaint was raised against him. The Respondent referred to their previous behaviour and apologised to the Tribunal, explaining that they had been on medication at the time. They said that they objected to the allegation of dishonesty in the Complaint. Having spoken to the Fiscal, the Respondent submitted that the Complainers had not seen all the relevant paperwork. They asked the Tribunal to grant a short adjournment of the Hearing on 4 December 2024 to allow the paperwork to be provided to the Fiscal and discussed thereafter. The Fiscal confirmed that he was content to meet the Respondent in person to go over the relevant information in detail. The Tribunal noted that this matter had been ongoing for a considerable period and, therefore, was reluctant to delay proceedings further. However, having considered all the circumstances, the Tribunal converted

the Hearing on 4 December 2024 to a virtual Procedural Hearing at 12 noon (this time was assigned at the request of the Respondent). Parties were directed to update the Tribunal on progress made at that Hearing. The Tribunal also fixed an in-person Hearing for 28 February 2025.

13. At the virtual Procedural Hearing on 4 December 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh who appeared for both parties of consent. The Respondent was not present or represented. The Fiscal stated that parties had agreed to meet on 24 January 2025 with a view to going over the paperwork and narrowing the issues in dispute. Thereafter, parties hoped to lodge a Joint Minute. The Fiscal made a joint motion to continue the matter to the full hearing fixed for 28 February 2025. The Tribunal considered all the circumstances, including the procedural history of the case, and decided to fix a further Procedural Hearing for 6 February 2024, thereafter to be continued to the full Hearing previously fixed for 28 February 2024.
14. At the virtual Procedural Hearing on 6 February 2025, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented themselves. After full consideration of all the circumstances, the Tribunal continued the case to the substantive hearing in person on 28 February 2025. Parties were directed to lodge and intimate any Lists of Witnesses or Productions by 14 February 2025. In addition, the Fiscal agreed to produce an outline Note of Evidence to the Respondent by the same date.
15. At the Hearing on 28 February 2025, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Respondent contacted the Tribunal office by email at 22.06 hours on 27 February 2025. Reiterating the Respondent's plea of Not Guilty and repeating points previously made, the email stated, *inter alia*;

"For attention of the Chairperson SSDT Law Society of Scotland against John Mair. Further to my final written submissions and productions sent to Mr Whyte and SSDT last weekend and my confirmation that I am content for the Tribunal to decide the matter and bring to conclusion without further delay or expense of an in person trial. There is zero benefit to either prosecution or myself for a trial.....I am not fit and am not able on medical advice to attend hearing. There is no point in face to face.....I commit myself to the sane rational deliberations of the Tribunal: read my pleas, answers and written submissions lodged since 2023 and take into

account the published findings of the 2019 Committee – suspension, no dishonesty.....CANCEL THE COURT AS THIS WILL SAVE COSTS AND AVOID FURTHER WASTED TIME.”

No medical evidence was provided by the Respondent. The Fiscal made a motion for the Tribunal to hear the case in absence of the Respondent in terms of Rule 14(4) of the Scottish Solicitor's Discipline Tribunal Rules 2008 (“the 2008 Rules”). He observed that the Tribunal must carry out a balancing act. The Fiscal referred to the lengthy procedural history of the case and highlighted that the Complaint was raised in 2023. He submitted that the Respondent had multiple opportunities to engage with proceedings and highlighted that two professional witnesses were present and ready to give evidence. The Fiscal acknowledged that the potential consequences of these proceedings for the Respondent were serious and that this was the first substantive hearing. If the Tribunal was not content to proceed in absence of the Respondent, the Fiscal requested *esto* that he lead evidence from the witnesses present before asking the Tribunal to adjourn the hearing to allow the Respondent a further opportunity to make representations. The Tribunal considered all the information before it very carefully and was mindful of fairness to all parties. Overall, and having regard to all the correspondence presented to it, the Tribunal concluded that it was in the best interests of the public and the Respondent to proceed with the hearing in absence of the latter. Evidence was led and concluded.

16. Having given careful consideration to the terms of the Complaint, The Tribunal found the following facts established:-

- 16.1 The Respondent is John David Mair (hereinafter referred to as the ‘Respondent’) who was the sole principal Solicitor of the firm Nego8 Ltd, based at 20-23 Woodside Place, Glasgow (hereinafter referred to as ‘the firm’). The Respondent's date of birth is 15 May 1968. He was enrolled as a Solicitor on 30 March 2004. He was a director and cash room manager for the firm from 26 March 2012 until 24 August 2018.

- 16.2 The Respondent's firm, NEG08 Limited was subject to a number of inspections from the Law Society of Scotland's compliance department between October 2012 and May 2018.

Inspection of 26 October 2012

- 16.3 The records provided to the inspection team by the Respondent were incomplete. The inspector concluded that the firm's true financial position could not be established because accurate balances were not displayed within the firm's ledgers and incomplete trial balances were present within the paperwork provided. The Respondent was required by the financial compliance department of the Law Society of Scotland to rectify these defects.

Inspection of 7 September and 14 September 2016

- 16.4 The inspection concluded that the records provided by the Respondent were insufficient to demonstrate compliance. The records displayed incorrect record-keeping procedures which rendered it impossible to ascertain the true financial position of the firm. The Respondent was requested by the financial compliance department of the Law Society of Scotland to ensure that corrected records were provided.
- 16.5 The inspection team identified several nominal ledger balances and wrote to the Respondent on 21 November 2016 requiring a full breakdown of each of the suspense and mis-posting balances identified during the inspection.
- 16.6 The inspection also identified that client funds may be held in the firm account. Entries relating to an individual client were posted to a firm nominal balance ledger rather than the client ledger. The Respondent was required to provide an amended client ledger in the name of the client which displayed a running balance and clearly detailed all entries.
- 16.7 The Respondent was required to provide updated nominal ledger prints which should show running balances and reflect the up to date / corrected financial position. The Respondent was also required to produce copies of the firm trial balances as of 30 September 2016 and 31 October 2016.
- 16.8 The inspection team also identified that no formal surplus statement could be seen within the month end reports. The Respondent was required to attach a surplus statement as of 30 September 2016 together with a client list of balances as of 30 September 2016 and for month end October 2016. No documentation was ever received from the Respondent in relation to this request.

- 16.9 The inspector was unable to verify the client bank reconciliation as of 30 August 2016 as no bank ledger had been received by the Respondent. He was requested to provide this.

Inspection of 20 March 2017

- 16.10 The balance of 28 February 2017 did not appear to reflect the correct financial position of the firm. The income ledger held more than the expense ledger indicating some unpaid client outlays may remain held in the firm account. The Respondent was requested to obtain adjusting entries to correct these matters. He was also requested to provide proof that the adjustments had been made and that no client funds were held within the firm accounts.
- 16.11 The inspection concluded that the surplus statements were still not being prepared by the practice unit, despite the matter being brought to the Respondent's attention in 2012 and 2016 as well as style surplus statements being provided.
- 16.12 The Respondent did not address any of the points in the three schedules of the inspection report which was annexed to the Complaint. As a result, an interview was held on 21 September 2017. After which it was decided that a further inspection was to take place in May 2018.

Inspection May 2018

- 16.13 The inspection determined that, it was not possible to ascertain the firm's true financial position. In addition to incorrect record keeping procedures and incomplete records being provided by the Respondent, a number of reconciliation discrepancies were identified as well as deficits on the client bank account. Furthermore, multiple record-keeping breaches were identified as well as incorrect figures disclosed on the firm's accounts certificate were detected.
- 16.14 The Respondent was required to attend an interview on 19 July 2018, however he did not attend.

- 16.15 On 24 August 2018 the client protection subcommittee decided to suspend the Respondent's practising certificate. A petition was lodged with the Court of Session for the appointment of a Judicial Factor, it was determined a complaint would be referred to the Scottish Legal Complaints Commission.
- 16.16 The Inner House appointed a Judicial Factor ad interim on 29 August 2018, the appointment being made permanent on 17 January 2019.
- 16.17 The Judicial Factor concluded that it was impossible to ascertain what the accurate position was in respect of individual client transactions. The Judicial Factor also concluded that it was impossible to establish during the period of 31 August 2017 to 29 August 2018 that the accounts rules were being complied with.
17. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct *singly* and *in cumulo* in respect that:-
- 17.1 They failed to ensure that at all times the sum at the credit of the practice unit's client account was not less than the total of the clients' money held by the practice unit; and without prejudice to that generality, failed to do so on different occasions in the period between September 2017 and 30 April 2018, as illustrated by deficits between the two sums in the practice unit's trial balance of: £2,684.92 on 30 September 2017; £241,155.15 on 28 February 2018; £53,842.15 on 31 March 2018; and £70,621.93 on 30 April 2018.
- 17.2 They failed to keep properly written up at all times such accounting records as were necessary to show the true financial position of the practice unit; and without prejudice to that generality, they failed to do so in respect that:
- a) Between September 2017 and April 2018, they failed to maintain, or retain or exhibit evidence of having maintained, client bank reconciliations or statements of surplus/deficit as required by Rules B6.8.1 and B6.8.2 of the Practice Rules.

- b) The statement of surplus/deficit declared on the practice unit's Accounts Certificates dated 31 December 2017 and 31 March 2018 (each declared to be £0) were contradicted by the calculations of surplus/deficit disclosed on each date by the practice unit's trial balance (respectively £18,926.85 surplus, and £53,842.15 deficit).
- c) Between September 2017 and April 2018, the practice unit's books and accounts included a nominal ledger entitled "Reconciliation Discrepancies", which recorded balances at each month end of between £32,173.74 and £32,303.08, without specifying or otherwise reconciling how those balances were consisted, or whether or not they related to clients' money or the practice unit's money.

all in breach of their duty to do so in terms of Rule B6.7.3(a) of the Practice Rules, and in breach of their duty in terms of Rule B6.2.3 of the Practice Rules not to cause or knowingly permit the practice unit not to comply with Rule B6.

- 17.3 They failed to use reasonable endeavours to acquire and maintain the skills necessary to discharge their responsibilities as the practice unit's Cash Room Manager throughout the period during which they were so designated, in breach of their duty to do so in terms of Rule B6.13.2 of the Practice Rules, and in breach of their duty in terms of Rule B6.2.3 of the Practice Rules not to cause or knowingly permit the practice unit not to comply with Rule B6.
- 17.4 They failed or at least delayed unduly after the publication to them of the Law Society's Financial Compliance inspection report on 7 June 2018 in taking steps to remedy the breaches of Rules B6.3.1, B6.7.3 (a) and B6.13 identified therein, in breach of their duty to do so promptly in terms of Rule B6.4.1 of the Practice Rules, and in breach of their duty in terms of Rule B6.2.3 of the Practice Rules not to cause or knowingly permit the practice unit not to comply with Rule B6.'
- 17.5 They failed to provide reasonable co-operation to the Law Society's Financial Compliance personnel in the conduct of their inspection of the practice unit on 5 June 2018 and thereafter, in breach of their duty to do so in terms of Rule B6.18.7 of the Practice Rules; and without prejudice to that generality, failed to do so in particular in

respect that they failed to provide to the inspection personnel a completed pre-inspection questionnaire, firm bank reconciliations, client bank reconciliations, surplus/deficit calculations, client trial balance, all of which were requested from them, and in breach of their duty in terms of Rule B6.2.3 of the Practice Rules not to cause or knowingly permit the practice unit not to comply with Rule B6.

17.6 They submitted to the Law Society an Accounts Certificate dated 31 March 2018 which declared without qualification the practice unit's compliance with the provisions of Rule B6 of the Practice Rules during the relevant period, in circumstances where breaches of Rules B6.3.1, B6.7.3 (a) and B6.13 were identified as having occurred during that period, their declaration thereby serving to mislead the Law Society as to their and the practice unit's compliance with Rule B6 of the Practice Rules.'

17.7 They by submitting a false declaration contained within an account certificate dated 31 March 2018 to the Law Society of Scotland did thereby mislead the Law Society of Scotland as to their and the practice unit's compliance with Rule B6 of the Practice Rules and consequently the Respondent did Breach Practice Rule B1.2 in that they failed to act with trust and personal integrity.

18. Having considered all information before it, including carefully noting the submissions and representations lodged in writing by the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 28 February 2025. The Tribunal having considered the Complaint dated 21 July 2023, thereafter amended on 28 February 2025 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against John David Mair, formerly of NEGO8 Ltd, 5 Whittingehame Drive, Glasgow; Finds the Respondent guilty of Professional Misconduct *singly* and *in cumulo* in respect of their breaches of Rules B1.2, B6.2.3, B6.4.1, B6.7.3(a), B6.8.1, B6.8.2, B6.13.2 and B6.18.7 of the Practice Rules 2011; Order that the name of the Respondent be Struck Off the Roll of Solicitors in 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

on £14.00; and Direct that publicity will be given to this decision and that this publicity shall include the name of the Respondent together with details of all interlocutors and notes issued by the Tribunal during the course of proceedings.

(signed)

Benjamin Kemp

Vice Chair

19. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 13 AUGUST 2025.

IN THE NAME OF THE TRIBUNAL



Benjamin Kemp
Vice Chair

NOTE

At the Hearing on 28 February 2025, the Tribunal had before it the Complaint as amended, Answers (incorporating preliminary pleas) and an Inventory of Productions for the Respondent, two inventories of Productions and a List of Witnesses for the Complainers and a written outline of prosecution provided by the Fiscal.

The Fiscal made a motion for the Tribunal to hear the case in absence of the Respondent in terms of Rule 14(4) of the 2008 Rules. He referred to the lengthy procedural history of the case and highlighted that the Complaint was raised in 2023. The Fiscal submitted that the Respondent had multiple opportunities to engage with proceedings and highlighted that two professional witnesses were present and ready to give evidence. He acknowledged that the potential consequences of these proceedings for the Respondent were serious and that this was the first substantive hearing. If the Tribunal was not content to proceed in absence of the Respondent, the Fiscal requested *esto* that he lead evidence from the witnesses present before asking the Tribunal to adjourn the hearing to allow the Respondent a further opportunity to make representations.

The Tribunal noted numerous references to the Respondent's state of health within the papers lodged together with previous attempts to obtain medical evidence. However, no medical evidence had been lodged by the Respondent. The Fiscal confirmed that he had not seen medical evidence from the Respondent. He reiterated that appointments for the Respondent to attend psychiatric assessment were made but they did not attend. In addition, the Fiscal had arranged appointments to meet with the Respondent at the Complainer's offices but they did not attend. The Fiscal had tried to contact the Respondent by telephone as recently as the previous week but they did not engage. When asked, the Fiscal confirmed that the Respondent was suspended from practice and not currently practising as a solicitor.

The Tribunal considered all the information before it and whether it was fair to proceed in the Respondent's absence. The Tribunal had regard to R-v- Jones [2002] UKHL 5 and the need to exercise its discretion in this matter "*with great caution and close regard to the overall fairness of the proceedings*". The Tribunal was mindful of fairness to all parties.

It was clear from the Respondent's correspondence that they were aware of the hearing date and time so the Tribunal did not require to hear evidence in relation to service of the Notice of Hearing. Reflecting

on the detailed and lengthy procedural history of the case (together with the significant concerns about the mental and physical health of the Respondent throughout), the Tribunal were satisfied that the Respondent had been given every opportunity to engage with these proceedings and lodge any evidence in support of their position. The Tribunal took account of the lengthy, dense and often repetitive correspondence and productions lodged. Whilst the Tribunal was mindful of the Respondent's position, it could only consider information provided to it. The Tribunal was mindful of the email dated 27 February 2025 from the Respondent and the distress expressed therein about these proceedings. It noted that the Respondent had expressly accepted that the Tribunal may proceed with the Hearing and decide the matter in their absence in said email.

The Tribunal considered that, if it heard the case in the Respondent's absence, there would be a disadvantage to the Respondent in being unable to give their account of events. However, there was no reason to be confident the Respondent would attend on another occasion if the Hearing were adjourned. The Respondent had failed to attend a number of procedural and preliminary hearings since the Complaint was raised and this had prolonged proceedings considerably. It is in the public interest that regulatory proceedings take place within a reasonable time. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. In these circumstances, the balance lay in favour of proceeding in the Respondent's absence. Therefore, the Tribunal granted the Fiscal's motion in terms of Rule 14(4).

EVIDENCE FOR THE COMPLAINERS

Witness 1: Natalie Cooke

Ms Cooke gave evidence on oath. She confirmed that she worked as a Financial Compliance Manager with the Law Society of Scotland and had worked there, in different financial compliance roles, for just under 20 years. She narrated her qualifications and experience. Ms Cooke stated that she managed a team of 5 people and was heavily involved with financial inspections conducted by the Complainer.

Referring to the Complaint, the witness agreed that the majority of the averments related to the Inspection Report dated 5 June 2018 (Production 26 for the Complainer). She confirmed that this report was compiled by her department. The witness had an 'overseeing role' in this particular inspection. She also confirmed that there were a number of other inspections of the Respondent's practice unit which took

place on 26 October 2012, 7 and 14 September 2016 and 20 March 2017. The Fiscal stated that reports of those inspections had been lodged as productions.

The witness stated that the purpose of carrying out financial inspections and reports was to ensure that solicitors comply with the Accounts Rules and to protect the legal profession and the public. The usual process was to allocate an inspector to carry out an inspection of a practice unit's records, prepare a report, then discuss that with their manager. If the report is to go to a Sub-Committee for consideration, another manager casts an eye over it. The report is issued to the solicitor and, if the matter is serious, it is passed to the relevant Sub-Committee for consideration. The witness confirmed that the Client Protection Sub-Committee (CPSC) is different from the Professional Conduct Sub-Committee (PCSC).

The witness confirmed that there were numerous inspections of the Respondent's practice unit because there were many breaches of the Accounts Rules. She was involved in the inspection processes and explained that the 2017 Inspection Report was passed to a Sub-Committee. A further inspection of the practice unit was authorised due to concerns raised about the practice unit. That inspection took place on 5 June 2018 and various matters of concern were thereafter passed to the PCSC.

The Fiscal asked the witness what impression she had formed of the Respondent. She replied that she only met them face-to-face on one occasion but added that they "bombarded" the financial compliance team with emails and said that some of those were "not very nice". The witness explained that her colleague had overseen the 2017 inspection. This colleague had received some unpleasant messages from the Respondent so the witness was appointed to take over inspections of his practice unit thereafter. The witness added that a decision was taken to have a male colleague present at the "summing up meeting" following the inspection on 5 June 2018.

Following the inspection on 5 June 2018, the witness confirmed that the Respondent was invited to a 'section 40 interview' but did not attend. Thereafter, a decision to suspend the Respondent's practising certificate was taken. This meant that, as they were a sole practitioner, the firm could no longer operate. The witness was not aware of any other action being taken against the Respondent at that time.

The witness explained that it was usual practice to discuss any concerns raised by the solicitor with them at a "summing up meeting" following the inspection report. The witness said that the Respondent was invited to a meeting but did not attend. She recalled that the Respondent may have had some health issues and described their behaviour as "erratic". The witness said she had met all sorts of solicitors over the

years and commented that the Respondent's behaviour "seemed quite threatening" and, therefore, the police were contacted.

The witness briefly described the inspection process. She noted that the inspection of the Respondent's practice unit in June 2018 took one day and confirmed that to be a typical timescale given the size of the firm. However, the length of time required to carry out an inspection varied based on individual circumstances. The witness observed that this particular inspection may have been shorter as the financial compliance team had not received all the information required from the Respondent and requested in advance of the inspection.

The witness was referred to schedules 1-5 of the 2018 Report (Production 26, First Inventory of Productions for the Complainer); in particular the detailed information which was requested from the Respondent. The witness said that the number of schedules included in an inspection report may vary but confirmed that every report contains a financial summary. She said that the figures in Schedule 4 of this Report were extracted from the firm records, in particular the firm trial balance. A deficit of £70,621.93 was noted. The witness explained that this figure came from the Respondent's client account bank information; the client balances were deducted from the client account to calculate the deficit in this case.

The Fiscal noted the following contained in the Executive Summary at page 2 of the 2018 report which stated:-

"We have concluded that the risks and findings included in this report are of a serious nature, and will merit the submission of this report to the Client Protection Sub-Committee".

The witness confirmed that matters of serious concern arising from an inspection would be reported to the PCSC. Solicitors are given an opportunity to respond to the report and the PCSC have sight of that.

The Fiscal noted that each schedule in the report referred to a 'weight' or "weighting" and asked the witness what this meant. The witness explained that the weighting categories between 1 and 4 are defined on the final page of the report and described a weighting of 4 as "serious concern". Where there is a weighting of 3, some concerns may be highlighted but those matters are not always referred to the PCSC. Schedules 1 to 4 of the 2018 Report recorded a weighing of 4 and schedule 5 recorded a weighting of 3.

The Fiscal referred to Production 2 on the Second Inventory of Productions for the Complainer, listed as “Law Society of Scotland email bundle”. The witness confirmed item 2 within that production to be an email from her former colleague (Jenna Scrimgeour, Senior Financial Compliance Inspector) to the Respondent dated 30 May 2018, advising him that they had received emails and various attachments but, unfortunately, the records provided by him were not correct and were not what was required. The email asked the Respondent to provide all books and records from 1 August 2017 to 20 April 2018, together with a completed pre-inspection questionnaire, by Friday 1 June 2018. The witness confirmed that the other people copied into the email were administrative staff who were responsible for saving all items to a ‘master file’.

The witness then described email responses from the Respondent dated 30 May 2018 and which were included as part of Production 2 of the Second Inventory of Productions for the Complainer. Production 2 contained a chain of emails between the Respondent and the financial compliance team. One of the responses stated that the Respondent had delivered a box of files to the Complainers’ office. Ms Scrimgeour replied to the Respondent by email explaining that some of the necessary records were missing from the papers which had been delivered. She specified the missing information and asked the Respondent again to provide it.

The witness confirmed that the request for information issued to the Respondent in advance of the inspection was standard. She added that some practice units do not operate a client account but, aside from those, the request for information is standard. The witness stated that the Respondent’s practice unit did operate a client account. From memory, she said that the financial compliance team did receive some information from the Respondent but he did not produce everything.

The witness was asked to describe Schedule 3 of the 2018 Report (Production 26 for the Complainer). She said there are the duties which Cashroom Managers must adhere to and explained that this schedule narrated those. In the case of the Respondent, appropriate records were not kept. The witness said it was apparent from the records provided that the breaches of rules identified in the 2016 and 2017 inspection reports had not been remedied. The schedule also referred to Rule B6.4, namely the duty to rectify breaches. The witness said that breaches should not have arisen again in the 2018 inspection and referred to the action points detailed at the bottom of the schedule, namely:-

“Please explain why, following your inspection in September 2016 and March 2017, sufficient procedures have not been implemented to ensure compliance.

Please confirm who is currently maintaining the books and records of the practice unit and which system is currently in operation.

Adequate systems and record keeping procedures must be implemented without delay in order to fully comply with the requirements of the Accounts Rules in the future and to ensure that your obligations and responsibilities as Cashroom Manager are fulfilled.

Please record full details of the action taken and also detail how procedures have been enhanced, in particular, with regard to specific matters contained within this report.”

The witness could not recall receiving any response from the Respondent.

Referring to Schedule 3 of the 2018 Report (same production), the witness was asked to explain what a trial balance was. She stated that each practice unit must produce a firm trial balance at the end of each month showing the assets and liabilities for a financial year. She confirmed that this was received from the Respondent.

The Fiscal referred again to Production 2 of the Second Inventory of Productions for the Complainer and noted an email from the Financial Compliance Department to the Respondent dated 1 June 2018. The message acknowledged receipt of the firm trial balance and added:-

“In order to complete your inspection, I would also be obliged to receive your client and firm bank reconciliations from 01/09/17 to 30/04/18 as well.”

The witness was asked to explain what a “reconciliation ledger” was. She stated that this would normally appear within a firm trial balance. She explained that one of the issues highlighted in the 2018 report for the Respondent’s practice unit was a reconciliation discrepancy. As a reconciliation ledger was not provided, financial compliance could not identify whether the amounts were firm or client money.

The Fiscal referred to Production 1 on the Second Inventory of Productions for the Complainer which was labelled “Trial balance sheet bundle September 30 2017 – April 30 2018” and noted the heading “NEGO8 Ltd” at the top of each page. The witness repeated that, in terms of the Accounts Rules, firm trial balances must be produced monthly and would normally include debit and credit columns. Furthermore, the rules require that the total in both credit and debit columns should be the same or “square”. The witness noted an entry for “Reconciliation Discrepancies” at the bottom of each of the trial

balances sheets contained in Production 1. This figure recorded under this heading for each period was as follows:-

- £32,303.08 as of 30 September 2017
- £32,224.91 as of 31 October 2017
- £32,173.74 as of 30 November 2017
- £32,173.74 as of 31 December 2017
- £32,173.74 as of 31 January 2018
- £32,173.74 as of 28 February 2018
- £32,173.74 as of 31 March 2018
- £32,173.74 as of 30 April 2018

The witness confirmed that the documents contained in Production 1 were all the trial balances received by the financial compliance team from the Respondent. She also confirmed that the observations in Schedule 3 of the 2018 inspection report (Production 26 of the First Inventory of Productions for the Complainers) reflect the above “Reconciliation Discrepancies”. The witness added that the financial compliance team never received the additional information requested from the Respondent or an explanation for his failure to do so. Nor did they receive any undertaking or assurances to rectify the highlighted breaches, or any evidence of enhanced procedures to be implemented to avoid future breaches from the Respondent.

Moving to Schedule 4 of the 2018 inspection Report (also contained in Production 26 of the First Inventory of Productions for the Complainer), the witness explained that this shows that the Respondent’s books and records were not in a condition to allow the financial compliance team to ascertain the true financial position of the practice unit. The witness explained that the deficit figures listed in Schedule 4 were calculated using the information contained within the firm trial balances which form Production 1 of the Second Inventory of Productions; the client balance figure was deducted from the RBS account balance to reach the deficit figures.

The Fiscal pointed to a reference to “Accounts Certificate Disclosures” in Schedule 5 of the 2018 inspection report and asked the witness what this represented. The witness explained that solicitors are required to submit annual accounts certificates in terms of the Accounts Rules. Her colleague Jenna Scrimgeour extracted details from the accounts certificate submitted by the Respondent and presented that information in Schedule 4. Schedules 4 and 5 cross-refer to “Accounts Certificate Disclosures”.

Reference was then made to Production 9 of the First Inventory of Productions for the Complainer, listed as “Account certificate bundle dated 31 March 2018”. The witness confirmed that this was the Accounts Certificate submitted by the Respondent to the financial compliance team in respect of NEGO8. She also explained that the certificate asks questions about the practice unit’s compliance with the accounts rules for the relevant period. The witness confirmed that the Respondent had completed all responses in the affirmative. For example, question 1.1 asks for confirmation that:-

“At all times during the period the total of client’s money held in client bank accounts has been equal to (or exceeded) the total sum at the credit of the client ledgers.”

The Respondent ticked “yes” in response to that, however, the witness said that was an incorrect answer.

A member of the Tribunal noted the date stamp of 14 May 2018 on Production 9. The witness confirmed that this represented the date the accounts certificate would have been received by the Complainer.

It was noted that Production 9 contained some handwritten information. The witness said she thought that the Respondent must have added those notes as he was the person who submitted the Accounts Certificate. The handwriting referred to section 2.2 of the Accounts Certificate which asked for information on the systems employed by the practice unit to ensure compliance with the Accounts Rules and any changes thereto. The witness explained that the Respondent suggested that he would implement the Law Ware accounting system following the inspection. She added that Law Ware was an accounts package used by many solicitors to manage their practice unit systems. Law Ware users can input data to the system and it produces reports thereafter.

The Fiscal referred to numbered paragraph 4 (and sub paragraphs) of Production 9 of the First Inventory of Productions for the Complainers. The witness was directed to a handwritten section appearing on the same page, numbered 4.2.1, which stated “*no bank loans – no overdraft. Never overdrawn.*” In addition, the handwriting read “*Surplus at 31-3-2018 NIL. Surplus at 31-12-2012 NIL.*” The witness said that those statements appear to be false as they did not tally with the information provided on the corresponding Accounts Certificate. She said she did not know why the Respondent would have provided false information.

Referring again to Production 26 of the First Inventory of Productions for the Complainer, the witness stated that Schedule 4 of the 2018 inspection report asked the Respondent to provide explanations as to

why the firm trial balance figures did not tally with the relevant Accounts Certificate. The report also asked the Respondent to provide further records for review and noted that more information may be required. In addition, the report asked for confirmation that the highlighted discrepancies had been rectified together with assurances that accurate record keeping would be implemented to ensure compliance with the Accounts Rules going forward. The witness said that the Respondent did not reply to those requests.

When asked, the witness stated that she was also involved in the 2018 inspection report of the Respondent's Practice Unit as the overseeing manager. She confirmed that the same matters raised in the 2018 report were raised in the earlier reports of 2012 and 2017. The witness could not comment on the lack of response from the Respondent but said that, from the report, it was obvious that he had not complied with the rules.

The Fiscal referred to Production 4 of the Second Inventory of Productions for the Complainer. The witness confirmed this to be a redacted Solicitor Record Card in respect of the Respondent. The witness said she was familiar with these documents and noted that the "current status" of the Respondent recorded on this particular record card was "suspended". She also noted the career history of the Respondent listed; in particular that the Respondent was the Cashroom Partner and Director of NEGO8 for the period 26 March 2012 to 24 August 2018. In addition, the Respondent was listed as the Money Laundering Reporting Officer and Risk Management Partner of the practice unit for the period 1 November 2012 to 24 August 2018.

The witness said it was clear to her that the Respondent had not complied with the requirements of these roles during the relevant periods and that she was in no doubt that the Respondent had breached the applicable Accounts Rules. When asked to comment on the processes which were applied by the Complainers when inspecting the Respondent's practice unit, the witness said that they were the same as any other inspection process. She commented that the Respondent was given opportunity to respond but did not do so.

Tribunal Questions

A Tribunal member asked the witness how common it was for a solicitor's practising certificate to be suspended. The witness replied that it was uncommon. She expanded by saying that it did not happen regularly but would occur in very serious cases.

Another Tribunal member noted that a Judicial Factor had been appointed in respect of the Respondent's Practice Unit and asked how significant that was. The witness stated that it was "quite significant", adding that it was not a step which was taken lightly.

Following on from the previous question, the witness was asked to indicate how many times Judicial Factors were appointed, in her experience. The witness said that Judicial Factors can be appointed in other circumstances, such as cases where a sole practitioner dies.

A Tribunal member noted the experience of the witness and asked her how common it was for a weighting of 4 to be applied to issues raised by inspections. The witness said that the internal processes of the financial compliance team had changed and not all cases had that weighting.

The witness was asked if she had formed an impression of the Respondent's knowledge of the Accounts Rules. She said it was hard to recall but, from the terms of the 2018 report and her memory, she commented that the Respondent could have been more knowledgeable.

A Tribunal member referred to the firm trial balance entries highlighted in evidence and labelled "reconciliation discrepancies", then asked the witness if the Tribunal could assume that those are accounting errors, due to use of the word "discrepancy". The witness replied that it was not usual practice to label an item on a nominal ledger as a "discrepancy". She added that any matters which require to be shown on a bank reconciliation would usually be shown on a report (for example if items were mis-posted). She described it as "very unusual" to label items as "reconciliation discrepancy". When asked, the witness confirmed that the financial compliance team would expect to see that any mis-postings had been rectified. She explained that the whole point of a bank reconciliation is to show all items posted and which have gone out. They would not expect a bank reconciliation to increase.

Another Tribunal member clarified with the witness that the June 2018 inspection report was emailed to the Respondent 2 days after the actual inspection. He also asked the witness to clarify what a "summing up meeting" was. She explained that it was a meeting held with the solicitor with the aim of going through matters covered in the report. It was not standard practice to take notes of the meeting, however, it depends on the nature of the discussion at the meeting. If notes are taken at the meeting, they are added to the master file.

If more serious concerns arise, the inspection manager and inspector would meet the Cashroom Manager to go over issues arising. The witness had stated in her evidence that a male colleague was to attend a meeting with the Respondent. She confirmed that this colleague did not attend the actual inspection of the Respondent's practice unit in 2018. Although the witness could not recall the date of the summing up meeting following the inspection, she confirmed that the Respondent had attended the meeting at the Complainer's office.

The same Tribunal member had noted the witness as saying that there was no response from the Respondent and he asked the witness about this. The witness said that, when an inspection report is issued, there is no request for a response from the solicitor. The report covers any rule breaches and asks for any clarification. The Cashroom Manager is then advised what the next steps will be taken before, for example, the case is passed to the PCSC. If a summing up meeting is taking place, an email is sent to the solicitor along with the report, suggesting dates. The witness was asked again when the summing up meeting with the Respondent was held and she repeated that she could not recall. The Tribunal member said that he was unclear on when any meetings with the Respondent took place. The witness said that she could recall having a meeting with the Respondent as she was present along with a male colleague. The Respondent was also present.

The Tribunal member asked the witness why a male colleague was present at the summing up meeting with the Respondent. The witness said that the Respondent had sent many emails to the financial compliance team during the 2017 inspection. He sent many more emails during the 2018 inspection also. The witness said that, given the history and nature of correspondence, it did appear that the Respondent was some sort of threat (she commented that she was unsure if that was the correct word to use) and a decision was taken for a male colleague to be present with the witness and Jenna Scrimgeour at the summing up meeting.

Another Tribunal member asked the witness to describe how concerns about the Respondent had arisen; for example, was there a pattern, did anything unusual occur and what did the witness recall in terms of escalation of the matter and the response of the Complainer?

The witness replied that concerns about the Respondent arose following the 2016 report. She said it was very unusual for a practice unit to be inspected annually and that, at that time, a 'risk-based approach' was applied. The aim was to inspect all practice units every 3 years. The witness said that matters of concern may have been noted in 2015, leading to a further inspection in 2016. The witness could not

recall whether or not the 2018 inspection was authorised by the PCSC. She observed that it may have been authorised due to continual breaches of the Accounts Rules arising with the Respondent's firm.

A Tribunal member pointed out that the Respondent was not present at the hearing and suggested that, if present, may argue that the response of the Complainer was disproportionate. The witness was asked how she would respond to that in terms of her experience. The witness said that the Complainer's response was typical. She had come across a number of firms which are reviewed following identified breaches and she considered the approach taken in this case to be proportionate.

Another Tribunal member asked the witness what she had meant by the comment that the Respondent behaved erratically. The witness explained that her department was "bombarded" by emails from the Respondent who made personal comments about members of staff and not just the processes which were being followed in terms of the applicable rules. For example, one email from the Respondent stated "I know where you work". That was considered to be a threat so the police were contacted and an incident number was issued by them.

The witness said she was not aware of any matters which would prevent the Respondent replying to the financial compliance team. When asked, the witness said she had concerns that the Respondent's practice unit had insufficient funds to cover its liabilities, client transactions, etc, although she conceded that she could not be sure of that as the Respondent had not provided all the necessary information and documents requested. The witness felt there was a risk to the public in this case and was conscious of a potential impact on the Professional Indemnity Guarantee Fund.

There was no cross or re-examination of this witness. The evidence of this witness was concluded.

Witness 2: Ian Ritchie

Mr Ritchie gave evidence on oath. He confirmed that he worked as Clerk to the PCSC and another Sub-Committee with the Law Society of Scotland. He had been employed by the Complainer in a number of roles, including Complaints Investigator, since 2003. His current role involved clerking the PCSC, writing and amending minutes after review, taking further action in cases involving possible unsatisfactory professional conduct of solicitors (including enforcement of decisions) and discussing prosecution with Fiscals in cases of possible professional misconduct.

The witness said he had seen the papers in this case and confirmed that he had instructed prosecution of this matter before the Tribunal. He was not involved in the financial investigations of the Respondent's practice unit prior to the prosecution but was aware that the matter involved alleged breach of Accounts Rules.

The Fiscal referred to Production 10 of the First Inventory of Productions for the Complainer, namely Client Protection Sub-Committee Minute dated 8 December 2016 and asked the witness to explain the difference between that committee (CPSC) and the PCSC. He replied that the CPSC deals with matters such as breaches of relevant rules and Proceeds of Crime for example.

The witness stated that the decision of the CPSC in this case was to carry out a further inspection of the Respondent's Practice Unit. He was not involved in that inspection in any way. The witness confirmed that the other Sub-Committee appointed a Judicial Factor in this case. He explained that such an appointment can be made in certain circumstances but particularly where client funds are at risk. He added that, if a Judicial Factor is appointed, that indicates that there were problems with the "state of the books and getting answers from the solicitor about what was going on".

The Fiscal referred to Production 15 of the First Inventory of Productions for the Complainer, namely Client Protection Sub-Committee Minute dated 7 September 2018. The witness confirmed that this document "post-dated the appointment of a Judicial Factor" and the decision was to "suspend" the Respondent's practising certificate under section 40 of the Solicitors (Scotland) Act 1980

The Fiscal then referred to Production 2 of the Second Inventory of Productions for the Complainers, listed as "Law Society email bundle"; in particular (i) an email from the financial compliance team to the Respondent dated 29 May 2018 and (ii) an email from Elaine Crawford, Professional Conduct Operations Manager, Regulation Department, Law Society of Scotland to the Fiscal dated 29 September 2023. The latter contained a forwarded message from "John Mair mairveritas@icloud.com" to the Registrars Department of the Law Society of Scotland dated 27 September 2023. The witness said he became aware of the message as he had been looking at the Respondent's record and was surprised to see a request for a solicitor to be employed by the firm "Mair Veritas". The witness observed that the people named in the email from the Respondent, namely "Ms Mair and John Mair" were the same person. He also observed that John Mair was suspended from practice and subject to proceedings before the Tribunal. The witness said that, as far as he could determine, the intention of the Respondent's email dated 27 September 2023 was to allow him to start practising as a solicitor again.

The witness subsequently carried out a search for Mair Veritas on Companies House. A print out of the search results were lodged as “Meritas Limited Officer Structure” (Production 3 of the Second Inventory of Productions for the Complainers). This provided an outline history of the company “Mairveritas Limited”. It showed an initial address in Bristol and, thereafter, Scotland. The Respondent was listed as a Director of the company.

The witness said he had not dealt with the Respondent directly. However, from what he had seen and heard from colleagues, he described the Respondent’s interactions with the Complainer as “difficult”. He was asked to expand and explained that the Respondent had made all sorts of assertions of dishonesty about Law Society staff and, in relation to hearings and appointments, claimed medical reasons for non-attendance. He followed up by saying that the description of interactions with the Respondent as difficult was “an understatement”.

Tribunal Questions

A Tribunal member noted that Production 3 of the Secondary Inventory of Productions contained three separate references to the same person and that person appeared to be the Respondent. The witness looked at the document again and said his impression was that the three names listed referred to the same person.

There was no cross or re-examination of this witness. The evidence of this witness was concluded.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal moved to make three amendments to the Complaint, namely, to change the word ‘May’ to ‘June’ where it appeared in paragraphs 4.1, 4.11 and in the heading of paragraph 4.12 also.

Thereafter, the Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct. Firstly, he submitted that Natalie Cooke was a credible and reliable witness who did not seek to embellish her evidence; rather, if she was unable to recall details (which did not happen often), she was honest in stating so. The Fiscal said that Ian Ritchie’s evidence provided some context and insight into the Subcommittee process. He was also a credible and reliable witness. Although conceding that Mr Ritchie’s evidence was not particularly relevant to these proceedings, the Fiscal submitted that it was relevant to the overall context of this case.

The Fiscal then referred to a number of documents lodged by the Complainers in support of the prosecution. Rather than go into each of those in detail, the Fiscal referred to the written outline of prosecution which he had lodged in advance of the Hearing. He added that it referred to particular schedules of the inspection reports as spoken to by Natalie Cooke in her evidence. The evidence from the Complainers demonstrated numerous and repeated breaches of Rules by the Respondent together with a failure to rectify those over a number of years. Although the Respondent denied the averments of misconduct in his Answers, they had led no evidence or provided any information in support of his position.

Citing the case of Bolton v Law Society [1994] 1 WLR 512, the Fiscal reiterated the importance of maintaining the reputation of the legal profession and sustaining public confidence in its integrity and the need to ensure that the Respondent did not have the opportunity to repeat any breaches. He also referred to the “Scottish equivalent” case of McMahon v Council of the Law Society 2002 S.L.T 363 which made it clear that misuse of client or other funds was at the ‘top end’ in terms of seriousness of offences.

The Fiscal also referred to the lengthy Tribunal decision in Council of Law Society of Scotland v Alan David Susskind and Cameron Stuart Fyfe dated 27 September 2016, pointing to the consideration of financial and accounts matters arising therein. There was also a parallel with the Respondent’s case in that a judicial factor had been appointed; the Fiscal submitted that this was a significant step in terms of seriousness of the Respondent’s conduct and the Tribunal were entitled to take that into account.

Referring to the case of Sharp v Council of Law Society of Scotland 1984 S.C. 129, the Fiscal stated that there are certain standards of conduct to be expected of competent and reputable solicitors; and that 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.

In relation to the averments of professional misconduct against the Respondent, the Fiscal said that, although the conduct fell below the required standard expected of solicitors, there was no averment of dishonesty in this case. In relation to averments 6.8 and 6.9 of the amended Complaint, there were no averments of dishonesty *per se*; the Fiscal said this was “in fairness to the Respondent”. However, the Complaint did allege a breach of Rule B1.2, namely,

"You must be trustworthy and act honestly at all time so that your personal integrity is beyond question. In particular, you must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful"

The Fiscal submitted that there was no doubt, from the evidence led, that the Respondent had misled the Complainer in relation to the Accounts Certificate in particular. However, it was for the Tribunal to determine whether or not that amounted to dishonesty in terms of the Rules.

A Tribunal member asked the Fiscal to clarify that the Complainers were not alleging dishonesty in this case and he did so. He also confirmed, when asked, that the Complainers position was that each averment in this case could, on its own, be deemed as amounting to professional misconduct.

A Tribunal member referred to averment 6.4 and the allegation that the Respondent *"failed to use reasonable endeavours to acquire and maintain the skills necessary to discharge his responsibilities as the practice unit's Cash Room Manager throughout the period during which he was so designated"*.

Noting that the Respondent was not present at the Hearing, the Fiscal was asked if that alleged failure was implied. The Fiscal said it was implied and referred to the inspection history disclosed in productions and during evidence together with the persistent failure to comply with the applicable rules and repetition of breaches which had been demonstrated to the Tribunal.

DECISION

The Tribunal allowed the Complaint to be amended as detailed in the submissions for the Complainer above. In addition, a Tribunal member pointed out an apparent error in paragraph 4.11 of the Complaint which referred to "21 September 2018" and sought clarification from the Fiscal. The Fiscal agreed that the correct year was, in fact, 2017, and that the Complaint should be amended. The Tribunal were content to amend the Complaint to reflect the correct time period accordingly.

In terms of evidence, the Tribunal had regard to the parole evidence led by the Fiscal and also the documentary productions lodged in process.

The Tribunal considered witness Natalie Cooke to be a credible and reliable witness whose evidence confirmed information contained within the productions, in particular the content of the various

inspection reports relating to the Respondent's practice unit. Ms Cooke gave her evidence in a clear manner and was candid where she was unsure of details, although this did not occur in relation to any key matter. Her evidence confirmed the facts averred in the Complaint.

In relation to the second witness, Ian Ritchie, the Tribunal concluded that his evidence was not relevant to the substance of the Complaint and, therefore, put it aside.

In order to prove its case against the Respondent, the Complainer had to meet the standard of proof which was beyond a reasonable doubt. The onus of proof was on the Complainer and there was no obligation on the Respondent to prove any matter. The Tribunal had regard to all the information, evidence and productions before it and detailed above.

The Tribunal considered each of the averments of professional misconduct in detail. The Fiscal had conceded that there were no specific averments of dishonesty in terms of Rule B1.2 of the Practice Rules 2011 but asked the Tribunal to consider whether the conduct of the Respondent might nonetheless amount to dishonesty. The Tribunal noted that only one averment of misconduct, that at paragraph 6.7, referred to a breach of Rule B1.2 and there it is specifically pled "*failed to act with trust and personal integrity*". The Tribunal did not consider it appropriate to infer an allegation of dishonesty where this was not expressly pled.

In relation to averments 6.2 and 6.3, the documents produced by the Complainers, together with the parole evidence of Natalie Cooke, supported the financial discrepancies narrated. The Tribunal noted that she had been involved in leading the inspection in June 2018. Prior to leading that inspection, she had been involved in other inspections and worked closely with and supervised colleagues who were dealing directly with the Respondent. In contrast, the Respondent had produced no evidence to challenge Ms Cooke's account of events or the documentary productions. The Respondent had produced some bank statements. However, the Tribunal formed the view that little weight could be attributed to that information as it was not provided in the context of the trial balances for the practice unit.

In contrast, although the Respondent's Answers repeatedly stated that they had provided responses and records to the Complainers, no documentary evidence to support that was produced. Similarly, no evidence to support the Respondent's position in relation to the practice unit's financial records was produced. The Answers stated that "independent Chartered Accountants" and "book-keepers" were instructed by the Respondent following the inspections in 2012 and 2018. However, no productions to

support that were produced. The Respondent repeatedly denied any allegations of dishonesty and the Tribunal noted that dishonesty was not averred, as clarified by the Fiscal.

Although the Tribunal had to consider the overriding principle of fairness, its remit was not to investigate matters anew. Rather its task was to consider and weigh the information before it and form a view based on that. Based on the information presented to the Tribunal, and in the absence of any evidence from the Respondent to support their position, the Tribunal concluded that the Complainers had discharged the burden of proof, to the applicable standard and that the conduct alleged by the Complainers had occurred. Thereafter, the Tribunal had to consider whether or not the conduct established amounted to professional misconduct.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

“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 principles of honesty and integrity are fundamental to the profession. Members of the profession are in a privileged position and members of the public must be able to trust that a solicitor will carry out their duties and obligations in an honest and trustworthy manner. The importance of this principle and the seriousness of the breach of that principle has repeatedly been emphasised in a number of cases before this Tribunal.

The Tribunal noted that there were no averments of dishonesty in relation to averments 6.7 and 6.8. However, the Tribunal did conclude that the Respondent had acted in a way which was misleading and reckless, and which brought their integrity into question in terms of Rule B1.2. In particular the Respondent failed to complete the Accounts Certificate accurately; the Tribunal unanimously agreed that this demonstrated a lack of integrity on the part of the Respondent. The conduct demonstrated a lack of integrity as defined in Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366. According to

that case integrity is a broader concept than dishonesty. In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one’s own profession and involves more than mere honesty.

A solicitor must retain responsibility for the books and records of their firm. It is essential that books and records are properly kept and that the Law Society of Scotland can ascertain the true financial position of the firm at any time. The public must have confidence that the profession will comply with the Accounts Rules and can be trusted with their money. Solicitors must also render all fees to clients. Failure to do so demeans the trust the public places in the profession.

Cashroom managers and money laundering and risk management partners must retain responsibility for the books and records and compliance with anti-money laundering procedures including documenting compliance. It is essential that the public can have confidence that the profession can be relied upon to comply with the Accounts Rules. The Money Laundering Regulations exist to protect society against criminal acts. Documentation of anti-money laundering procedures allows the solicitor to demonstrate compliance with the Rules.

The Tribunal had regard to previous decisions of the Tribunal where it was held that in holding funds for clients, a solicitor is in a privileged position of trust. In order to fully protect clients, a solicitor must comply with the Accounts Rules. If solicitors are to continue to enjoy the public trust in regard to their financial affairs, they must have careful regard to all the requirements and obligations encumbered on them as contained in the Accounts Rules.

A solicitor should always be able to account to every client and this requires the solicitor to maintain full and accurate records. The detailed provisions of the Accounts Rules ensure that the funds of each client are separately safeguarded but also enable the solicitor and the Complainers to satisfy themselves at any time that clients’ funds are securely held and accounted for.

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 breaches on the Accounts Certificates called the Respondent’s integrity into question. Accounts Certificates are

not just an administrative formality. They must be completed properly so that the Society can use the information to monitor compliance and assess risk.

The Tribunal considered that the prolonged and repeated conduct of the Respondent was serious. It caused significant risk to clients and the profession as a whole. Considering the Susskind and Fyfe case cited by the Fiscal, the Tribunal decided that the conduct of the Respondent was more serious as it “struck at the heart” of the purpose of the Accounts Rules.

If the Respondent was unclear as to their professional responsibilities, they were under an obligation to seek out and undertake appropriate training. The effect of the Respondent’s conduct was exacerbated by their failure to engage with the Complainer and rectify issues which had been identified. All the correspondence before the Tribunal from the Respondent showed a clear lack of accountability or insight; that was an additional concern for the Tribunal and added to the seriousness of the conduct overall. In all the circumstances, the Tribunal unanimously decided that the Respondent was guilty of professional misconduct in this case, both *singly* and *in cumulo*.

SUBMISSIONS ON SANCTION, EXPENSES AND PUBLICITY

The Fiscal moved for expenses. In terms of publicity, he asked for the Respondent and both witnesses to be named.

In terms of sanction, there was one previous finding of unsatisfactory professional conduct against the Respondent, in 2019. That related to a related sequence of conduct.

There were no further specific submissions for the Respondent on sanction, expenses and publicity although they had previously stated in correspondence that they were impecunious.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

When considering the correct sanction to apply the Tribunal was mindful of the serious nature of the Respondent’s conduct over a number of years and the need to protect the public. In addition, the Respondent had displayed a fundamental lack of insight during these proceedings, together with an unwillingness to acknowledge any breaches. These were significant aggravating factors.

Although the Respondent had made many references to ill health since the Complaint had been raised, and the Tribunal had concerns about their presentation at some of the virtual procedural hearings, the Respondent had not produced any medical evidence.

The Tribunal was aware that the Respondent had been suspended from practice as detailed in the evidence presented on behalf of the Complainer and, in light of the above factors, there were few options available to the Tribunal. It formed the view that a restriction to the Respondent's practising certificate would be of little utility and would still present a risk to the public as the Respondent may still be able to practise. Although the immediate risk to the public was low due to the ongoing suspension of the Respondent, the Tribunal formed the view that, in light of all the circumstances, the Tribunal could not be reassured that the Respondent would address the significant and serious issues identified in this case in the event that they were allowed to return to practice. In all of the circumstances, given the seriousness of this case, the risk to the public as well as to the reputation of the profession and the lack of any demonstrable insight on the part of the Respondent, the Tribunal concluded that it had no realistic choice but to strike off the Respondent from the roll of solicitors.

Following submissions on expenses and publicity, 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 to include previous interlocutors and that publicity should include the name of the Respondent and both witnesses.



Benjamin Kemp
Vice Chair