**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, formerly at 26 Drumsheugh Gardens, Edinburgh and now at Atria One, 144 Morrison Street, Edinburgh**

**Complainers**

**against**

**IAN JAMES McDOUGALL, formerly a sole practitioner carrying on business under the name of McDougall & Co., 66 Ashgrove Road West, Aberdeen**

**Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Ian James McDougall, a sole practitioner carrying on business under the name of McDougall & Co., 66 Ashgrove Road West, Aberdeen (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was no Secondary Complainer.

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

4. In terms of its Rules, the Tribunal appointed the Complaint to be heard at a procedural hearing on 13 December 2017 and notice thereof was duly served on the Respondent.

5. At the procedural hearing on 13 December 2017, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was neither present nor represented. The Fiscal explained that it appeared that the Complaint had been successfully served at the Respondent's last known address by recorded delivery post and

signed for by "M McDougall". However, investigators instructed by the Complainers had reported that both the Respondent and his wife had moved from these premises in December 2016. The Fiscal invited the Tribunal to sist the proceedings for further investigation. In the circumstances, the Tribunal considered it appropriate to continue the Complaint to a further procedural hearing on 21 March 2018 to allow the Fiscal to make further enquiries.

6. Notice of the further procedural hearing on 21 March 2018 was served upon the Respondent by recorded delivery post.

7. At the procedural hearing on 21 March 2018, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was neither present nor represented. The Fiscal confirmed that it was her motion that the Tribunal should fix a full hearing in this case. She submitted that service of the Complaint had been effected within the Tribunal Rules. She submitted that Section 8 of the Solicitors (Scotland) Act 1980 placed an obligation on any solicitor to inform the Society in writing of any change of address. There was an onus upon a solicitor to keep his regulator up to date. The address on the Complaint was the last known business address for the Respondent. Section 64 of the 1980 Act provides that any notice which is required under the Act shall be taken to be duly given or served on the person if it is delivered to him or left for him or sent by post to his last known place of business or residence. Rule 9 of the 2008 Rules requires that any notice should be sent by either first class delivery post or intimated by sheriff officer to the Respondent at the address given in the Complaint. Paragraph 10 of Schedule 4 to the 1980 Act which requires the Tribunal to serve the Complaint on the Respondent should be read in conjunction with Section 64 of the same Act.

8. The Fiscal submitted that the Complaint had been sent by recorded delivery post to the address on the Complaint and had been signed for by someone giving the name "M McDougall". She submitted that Rule 9 did not require receipt of the Complaint. Attempts had been made to contact the Respondent in Abu Dhabi, where it was thought he was working. Information had been received suggesting that this firm was no longer in existence.

9. The Complainers had a personal email address for the Respondent and an email had been sent to that address. A delivery receipt had been received but not a notice that the

Respondent had read the email. A report from sheriff officers indicated that the Respondent was still listed on the electoral roll at the address on the Complaint. Sheriff officers had however spoken to an individual at that address who had indicated that the Respondent was no longer living there. The Fiscal drew the Tribunal's attention to the recorded delivery receipts that had been signed for by "M McDougall". She confirmed that she had made contact with the Respondent's ex-wife who had advised that she had no forwarding details for the Respondent. She referred the Tribunal to the case of GMC-v-Adeogba [2016] EWCA Civ 162. She submitted that the Complainers carried out all endeavours to trace the Respondent and had in fact, done more than was needed. The Respondent's name remained on the Roll of Solicitors and to delay matters would send the wrong message to the public. The Tribunal gave careful consideration to the submissions of the Fiscal. The Complaint had been competently served. Given the serious nature of the allegations, the Tribunal considered it in the public interest to ensure that matters continued expeditiously and fixed a full hearing for 28 June 2018. A motion to be allowed to proceed by way of affidavit evidence was granted.

10. A notice of hearing was served at the address on the Complaint by way of sheriff officers.

11. At the hearing on 28 June 2018, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was neither present nor represented. The Fiscal invited the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent in terms of Rule 14(4) of the 2008 Rules. Having heard evidence regarding service of the notice of hearing and submission from the Fiscal, the Tribunal granted the motion. The Fiscal proceeded to lead evidence by way of Affidavit.

12. The Tribunal found the following facts established:-

12.1 The Respondent is a solicitor enrolled in the Registers of Scotland on 15 April 1977. He has practised as a partner since 1 May 1985, latterly as a sole practitioner under the business name of McDougall & Co, 66 Ashgrove Road West, Aberdeen since 6 November 1999 (McDougalls). He has been the Cash Room partner of McDougalls since I June 2000; the Client Relations Partner since 18 July 2005; the Anti Money Laundering Partner since 29 October 2010 and the Risk Management Partner since 11 February 2002. He was suspended as a solicitor on 4 June 2015. On 4 August 2015 an Interim Judicial Factor was

appointed on the Respondent and the business name of McDougalls by the Court of Session. Said interim Judicial Factor was sought at the instance of the present Complainer and was made permanent on 24 November 2015 without opposition. The Respondent was sequestrated in September 2015.

12.2 At all the relevant times narrated below the Respondent, as the designated Cash Room Partner was responsible for:-

(a) the completion of a pre-inspection questionnaire prior to an inspection of 30 and 31 March 2015

(b) the supervision of the staff and systems employed by McDougalls;

(c) carrying out the provisions of the Law Society of Scotland Practice Rules 2011, in particular Rule B6 ( the Accounts Rules) and

(d) securing compliance by McDougalls with the provisions of the Accounts Rules.

**Background - Financial Compliance Inspection-31 March 2015**

12.3 The Society's Financial Compliance Department (FCD) carried out an inspection of McDougalls' books and records on 30 and 31 March 2015. Prior to the inspection the Respondent completed a pre-inspection questionnaire. That indicated that the books and records of the firm were in order and complied with the relevant Accounts Rules and Money Laundering Regulations. However, the inspection discovered various items which were of concern. The conclusion the inspection reached was that the risks and findings were of a serious nature and merited the submission of the report to the Guarantee Fund Sub-Committee (GFSC).

12.4 On 13 April 2015, the FCD wrote to the Respondent by email seeking a response to the concerns and issues set out in schedules 1 to 11 of the Report. A deadline of 21 April 2015 was set.

The letter referred to various concerns, including but not limited to concerns relating to potential breaches of the following Law Society of Scotland Practice Rules 2011(the Rules):-

a- Cashroom Manager responsibilities (Rule B6.13)

b- Deficit on the client account (Rule B6.3.1(a))

c- Record Keeping (Rule B6.7.1)

d- Inter-Client transfers. Authority, fees debited but not rendered (Rule B6.5)

e- Delays in posting, very poor narratives on ledger entries, lack of AML records (Rule B6.7)

f- Review of client balances/old client balances held after conclusion of a matter (Rule B6.11) and

g- Anti-money laundering documentation (Rule B6.23)

12.5 No response was received from the Respondent to said letter. A follow-up meeting took place on 14 April 2015 and a further email was sent on 22 April 2015. The Respondent provided a partial response on 30 April 2015.

**Rule B6.13 Cashroom Manager-Responsibilities**

12.6 The records of the firm were found to be insufficient. Many rule breaches were noted in the inspection and those are detailed throughout the report. In the main they relate to:-

(i) The accounting system was set up incorrectly and showed credit entries for debit of client fees instead of debit entries. However, the fee amount was debited from the ledgers and the ledger balances appeared to be correct. This was corrected by the inspectors in discussions during the inspection with Axiom which supplied the Respondent's accounts software.

(ii) The Respondent instructed the bookkeeper not to complete the postings for a particular day if the daybook would show a deficit. She would post each entry left for her but would require further entries from the Respondent, some of which were inter-client transfers.

(iii) There were concerns in relation to 10 transactions regarding client deficits, (B6.3) delay in banking client funds, (B6.5) inter client transfers, authority, and fees debited but not rendered (B6.7) delays in posting, poor narratives on ledgers, lack of money laundering records, (B6.11) client balances held after conclusions of transactions, (B6.23) and money laundering procedures.

12.7 The Respondent was requested to provide a full explanation regarding the posting procedure including action taken when the Respondent's bookkeeper reported a deficit. The Respondent was also requested to provide full details of any revisals to procedures made.

**Rule B6.3.1(a) Deficit**

12.8 The following deficits on the client account were identified:-

- 29/01/15 Pay-in 500118 for £4,726.00 re KINE1/3 (£2,726.00) and KINE1/6 (£2,000.00)– not credited to bank until 06/02/15 and pay-in book stamped by the bank on 06/02/15. In respect of KINE1/3 £2,016.00 was taken to fees on 29/01/15 and a cheque for £710.00 was paid to Moray Council on 05/02/15. In respect of KINE1/6 £2,000.00 was not taken to fees until 20/02/15. A deficit occurred as the firm's surplus fell below £2,726.00 between 29/01/15 and 05/02/15.

- 30/01/15 Pay-in 500120 for £1,048.96 re THOM2/5 – not credited to bank until 13/02/15 and pay-in book stamped by the bank on 13/02/15. Regarding THOM2/5 £1,048.96 was taken to fees on 30/01/15. A deficit occurred on some occasions between 30/01/15 and 12/02/15 as the firm's surplus fell below £1,048.96.

- 10/02/15 Direct credit of £6,415.10 re KGLI1/6 – not credited to bank until 23/02/15. KGLI1/6 – a fee amounting to £6,407.10 was taken on 10/02/15. A deficit occurred between 10/02/15 and 22/02/15 as the firm's surplus was less than £6,407.10.

- 24/02/15 Pay-in 500123 for £4,347.00 re CAME6/1 – not credited to bank until 25/02/15 and pay-in book stamped by bank on 25/02/15. CAME6/1 – a fee amounting to £4,347.00 was taken on 24/02/15. The firm's surplus was less than £4,347.00 on 24/02/15 therefore a deficit occurred.

- 26/02/15 Pay-in 500125 for £1,217.98 re HOLM3/1 – not credited to bank until 02/03/15 and pay-in book stamped by bank on 02/03/15. HOLM3/1

– a fee amounting to £1,217.98 was taken on 26/02/15. The firm's surplus was less than £1,217.98 therefore a deficit occurred.

- 31/10/14 Pay-in 500109 for £4,701.00 re ABER10/1 – not credited to bank until 04/11/14 and pay-in book stamped by bank on 04/11/14. ABER10/1 – a fee for £4,347.00 was taken on 31/10/14. A deficit occurred as the firm's surplus was less than £4,347.00 between 31/10/14 and 03/11/14.

**Rule B6.7.1 Record Keeping**

12.9 The following credits were noted to have been posted prior to being credited to the client bank account:-

- 29/01/15 Pay-in 500118 for £4,726.00 re KINE1/3 and KINE1/6 – not credited to bank until 06/02/15 and pay-in book stamped by the bank on 06/02/15
- 30/01/15 Pay-in 500120 for £1,048.96 re THOM2/5 – not credited to bank until 13/02/15 and pay-in book stamped by the bank on 13/02/15
- 10/02/15 Direct credit of £6,415.10 re KGLI1/6 – not credited to bank until 23/02/15
- 24/02/15 Pay-in 500123 for £4,347.00 re CAME6/1 – not credited to bank until 25/02/15 and pay-in book stamped by bank on 25/02/15
- 26/02/15 Pay-in 500125 for £1,217.98 re HOLM3/1 – not credited to bank until 02/03/15 and pay-in book stamped by bank on 02/03/15
- 25/02/15 Pay-in 500124 for £34.00 re ABER10/1 – not credited to bank until 26/02/15 and pay-in book stamped by bank on 26/02/15
- 27/11/14 Direct credit for £12,088.50 re CANS1/9 – not credited to bank until 02/12/14 – not utilised by the practice unit until 03/12/14
- 31/10/14 Pay-in 500109 for £4,701.00 re ABER10/1 – not credited to bank until 04/11/14 and pay-in book stamped by bank on 04/11/14.

12.10 The issue outlined in the preceding paragraph was discussed with the cashier who confirmed that any cheques received from clients were posted on the day they were received. However, the cheques were not always taken to the bank the day they were received.

**B6.5 Inter-client transfers, authority, and fees debited which do not appear to have been rendered**

**B6.7 delays in posting, very poor narratives on ledger entries, lack of money laundering records,**

12.11 The following files disclosed poor narratives and lack of signed authority for inter client transfers.

- MACD1/3
- COWI1/1
- BELL4/4
- NORT2/3
- FARR1/1
- DEVI1/1
- LESL1/1
- STAR1/5
- CENT4/1
- SMIT6/3

In addition the Respondent's files AMPR2/1; GORD/4/1 and STAR2/1 required a full accounting to be provided as issues in relation to B6.5 and B6.7 arose.

**Rule B6.11 Review of Client Balances/Old Client Balances held after Conclusion of a Matter**

12.12 The Respondent should have disbursed all historic aged client balances by 1 November 2013.

12.13 However, at the inspection the following sample of balances did not appear to have been investigated and disbursed:-

- BACH1/4 £2.40 held since 22/04/14
- BRAD1/1 £25.00 held since 01/12/04
- BREW2/2 £20.02 held since 18/03/14

- CALE2/1 £15.00 held since 19/12/07
- CALL3/2 £20.00 held since 22/04/14
- COLO1/1 £23.50 held since 04/07/14
- DEVE2/3 £102.52 held since 29/04/14
- GOOD1/2 £90.33 held since 26/04/12
- GOOD1/14 £42.07 held since 07/04/14
- GRAN1/1 £11.00 held since 24/07/14
- JMTA1/1 £24.00 held since 19/12/07
- JOHN4/1 £90.00 held since 03/10/14
- KEIT2/1 £89.70 held since 28/06/13
- PTFS1/1 £49.63 held since 20/02/12
- SANG2/7 £143.16 held since 20/05/10
- TAYL2/1 £30.00 held since 19/01/09
- TOMA1/1 £87.13 held since 26/07/13

12.14 The above files were only a sample. Reference is made within the report to there being more such balances.

**Rule B6.23 Anti-Money Laundering Regulations**

**Risk Assessment/Client Identification**

12.15 At the initial inspection no evidence of a risk assessment was seen to have been carried out for 10 transactions. At the summing up meeting on 14 April 2015 a further three files were reviewed that did not contain any evidence of a risk assessment being carried out. The Respondent subsequently confirmed risk assessments had been carried out on nine of these files, and produced a further three risk assessments he had completed retrospectively.

12.16 At the initial inspection, 10 files did not demonstrate compliance with the Anti-Money Laundering Regulations in terms of client identification. At the summing up meeting on 14 April 2015, a further three files were identified with similar issues. Following correspondence with the Respondent, and an inspection of the firm's central record containing copies of identification, 10 files continued to fail to comply with these Regulations.

12.17 Following the Respondent's limited response of 30 April 2015, by email of 1 May 2015, the FCD confirmed to the Respondent that responses were still required to schedules 1, 4, 5, 6, 7, 8, 9 and 10 of the first report and set a deadline of 8 May 2015.

12.18 The GFSC met on 7 May 2015 and determined to invite the Respondent to an interview to allow him to explain why his practising certificate should not be withdrawn. That was set down for 21 May 2015 and he was given the opportunity to provide input up to 18 May 2015.

12.19 On 8 May 2015 another limited response was provided. It was still incomplete. The FCD made a further visit on the 11th and 12th May and by email to the Respondent dated 14 May 2015 required the Respondent to provide a response in relation to schedules 1, 4, 5, 6, 7, 9 and 12.

12.20 At that time the Respondent was made aware that matters would be considered by the GFSC on 21 May 2015 and any further input from him would be required by Monday 18 May 2015.

12.21 The Respondent attended the interview on 21 May 2015 with his representative. It was indicated at this interview on his behalf that the Respondent had "taken his eye off the ball" and that he accepted he was responsible for the firm's lack of compliance with the relevant rules and regulations.

12.22 At this meeting the Respondent was advised that un-rendered fee notes required to be re-credited to the clients to allow the clients to approve them before being taken. The GFSC continued the matter until 4 June 2015 to allow the Respondent to provide a report which his representative indicated would be available by 1 June 2015.

**Investigation Report following visit 01/06/15.**

12.23 A further inspection took place on 1 June 2015 as part of the FCD's investigation. The Respondent was aware this was to occur and the date of it.

12.24 At the time of this inspection the report as promised on behalf of the Respondent at the interview of 21 May 2015 was not available. The Respondent was not present at the office on 1 June 2015. The Respondent's secretary stated that he was away to the doctors and may not be returning to the office. He had left no response in relation to the matters still outstanding from the earlier inspection.

12.25 The second report highlighted continued failures to comply with the accounts rules in terms of Rules B6.5, B6.7, B6.11 and B6.23.

**B6.5 Inter-client transfers, authority, and fees debited which do not appear to have been rendered**

12.26 No fee notes were rendered in relation to the following matters:-

- STAR1/4 – Invoice 2656 for £1,800.00 generated 29/05/14
- STAR1/5 – Invoice 2568 for £3,000.00 generated 30/01/14
- STAR1/5 – Invoice 2579 for £4,800.00 generated 27/02/14
- STAR1/5 – Invoice 2604 for £5,355.00 generated 27/03/14
- STAR1/5 – Invoice 2752 for £6,500.00 generated 26/09/14
- STAR2/1 – Invoice 2845 for £9,450.00 generated 27/03/15 – **re-credited 14/04/15 and then taken again on 14/04/15**
- HEND2/1 – Invoice 2651 for £6,930.00 generated 29/05/14
- HEND2/1 – Invoice 2704 for £3,000.00 generated 15/04/14
- HEND2/1 – Invoice 2771 for £598.51 generated 05/11/14
- CENT4/1 – Invoice 2703 for £3,000.00 generated 08/07/14

The above fees amounting to £44,433.51 were recovered from funds held at credit on the clients' ledgers.

12.27 In addition the following copy invoices did not appear to be held within the fees rendered folder and therefore could not be vouched to have been rendered to the client:

- BRAD1/1 £25.00
- COLO1/1 £23.50
- DEVE2/3 £102.52

- SANG2/7 £143.16

It was further noted on review of the day book that the following balance had also been taken to fees and VAT however, no invoice was seen to have been rendered:

- MACK4/3 £157.20 Invoice 2895 ** not seen

12.28 From documentation seen during the visit the following fee notes were not rendered to the clients until Thursday 28th May 2015 despite the fees being recovered by the practice unit on 23rd April 2015.

- COLO1/1 £23.50
- DEVE2/3 £102.52
- SANG2/7 £143.16
- MACK4/3 £157.20 Invoice 2895 ** not seen

12.29 A memo was seen from a member of staff to the Respondent dated 21 April 2015 regarding the VAT return submitted for the quarter to 31 December 2014 where an error occurred. The VAT paid for quarter to 31 December 2014 was £4,750.50 but this should have been £11,250.21. This meant that the sum of £6,499.71 would require to be included in the VAT return for the quarter to 31 March 2015 making the VAT due of £19,870.11. The memo stated that the VAT return needed to be submitted by the end of the month i.e. 30 April 2015 and would be collected on 10 May 2015. The return had not been submitted as she wondered if there were more credits due to be raised post - 31 March 2015. A further memo was seen from another member of staff to the Respondent dated 30 April 2015 regarding the memo dated 21 April 2015. It stated that she needed to know about the VAT before the Respondent went away. A handwritten note is seen on the memo which stated "*No Return can be submitted just now*". It was signed by the Respondent.

12.30 At the inspection on 1 June 2015 the daybooks were printed up to 26/05/15 (although this daybook was not yet closed off).

12.31 Emails dated 7 May 2015 between a member of staff and the Respondent were seen regarding CANS1/9 – they stated that a fee note (2823) was generated on 27 February 2015 for £1,800.00 in order to allow the daybook to be closed. This left the ledger with a zero balance and the outlays still unpaid. The fee note was never rendered to the client.

12.32 An email was seen from a member of staff to the Respondent on 08/05/15 – it stated "*... is coming in later and the daybook is currently sitting at the 23rd April. She must close it today and move on before the Law Society comes in on Monday, otherwise they are going to see that the daybook has not been closed since 23rd April (contrary to what we have said we would be doing going forward, in our responses to them). So, if you could let me know before she comes in, if there is anything she can use to clear the deficit and move on, please let me know. The other alternative is to close the daybook with a deficit for that day.*"

12.33 The Respondent replied on the same day indicating "*those invoices I have given and asking for number of letters for other balances are to address that – that is why I asked ASAP – the balances will be held against the invoices raised – all need to be dated 23rd.*

12.34 The daybook for 26 May 2015 was also reviewed during the investigation visit and it was noted that this has not yet been closed. The daybook showed a surplus of £704.71 however, from review of the client bank statement, £3,000.00 was transferred from the client account to the firm account on 26 May 2015 but not posted to the records. This meant that the practice unit was currently in deficit.

12.35 No month end reports were seen for May 2015 as these had not yet been completed. An internet bank printout of the client account to 29/05/15 was left for the FCD.

12.36 On 2 June 2015 the Respondent's agent was provided with a copy of the second report and advised the GFSC would consider it on 4 June 2015.

12.37 On 4 June 2015 the GFSC met again. It noted that the report had not been produced by or on behalf of the Respondent. The GFSC observed that the

Respondent had been uncooperative during the majority of the inspection and investigation process and had been unable to resolve all outstanding issues. The GFSC decided to withdraw the Respondent's practising certificate.

12.38 On 2 July 2015 the GFSC met again. It noted at that stage that the investigation report had identified a deficit of £2259.29. It also observed that fee notes amounting to £44,000 had not been rendered to clients but settled by recovering funds held at credit of the clients' ledgers. It determined that a Judicial Factor should be appointed in respect of the firm and the Respondent's private estate.

13. The Tribunal heard submissions from the Fiscal. Having considered all of the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct singly in respect of the following:-

(a) He effected multiple transfers of funds between clients of his firm without obtaining, or retaining, written authority of the clients whose funds were being transferred in breach of Rules B1.4.1, B1.5.1, B1.9.1 and B6.5.1;

(b) He took for or to account of fees multiple sums held on the firm's client account without rendering fee notes to the clients from whom the fees were being taken in breach of Rules B1.2, B1.5.1, B1.9.1 and B6.5.1; and

(c) He failed to record or retain sufficient narrative or documentation required to comply with his duty to keep properly written up such accounting records as a necessary to show all of the firm's dealings with clients' money and money dealt with by the firm through its clients account in breach of Rule B6.7.

And the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in that:-

(a) He posted receipts to the firm's client account and claimed fees before those sums were actually credited to the client bank account causing deficits to occur on the client account in breach of Rule B6.3.1;

(b) He failed or delayed unduly to pay into the firm's client account multiple sums in excess of £50 received from or on behalf of clients in breach of Rule B6.3.1;

(c) He posted onto the client ledgers multiple sums received from or on behalf of clients before the sums had been paid into the client account causing the ledgers to misrepresent the actual position of the client account in breach of Rule B.6.7;

(d) He failed to record or retain sufficient narrative for documentation to demonstrate compliance with the Money Laundering Regulations in breach of those Money Laundering Regulations and Rule B6.7;

(e) He failed or at least delayed unduly in dispersing multiple client balances held by the firm after there was no reason for them to be retained in breach of Rules B1.4.1 and B1.9.1;

(f) He failed to carry out risk assessments for transactions in which his firm was acting; to undertake sufficient client due diligence to establish the identity of the firm's clients or to retain records having done so, such as would comply with the Money Laundering Regulations 2007 and thereby acted in breach of said Money Laundering Regulations and Rule B6.23; and

(g) He continued to fail to address the aforementioned breaches and this failure was a course of conduct amounting to deliberate acts in breach of Rule B1.2.

14. Having heard further submissions from the Fiscal for the Complainers, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 28 June 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Ian James McDougall, a sole practitioner carrying on business under the name of McDougall & Co., 66 Ashgrove Road West, Aberdeen; Find the Respondent guilty of professional misconduct singly in respect that (a) he effected multiple transfers of funds between clients of his firm without obtaining, or retaining, written authority of the clients whose funds were being transferred (b) he took for or to account of fees multiple sums held on the firm's client account without rendering fee notes to the clients from whom the fees were taken (c) he failed to record or retain sufficient narrative or documentation required to comply with his duty to

keep properly written up such accounting records as a necessary to show all of the firm's dealings with clients' money and money dealt with by the firm through its clients account and guilty of professional misconduct *in cumulo* in respect that (a) he posted receipts to the firm's client account and claimed fees before those sums were actually credited to the client bank account causing deficits to occur on the client account (b) he failed or delayed unduly to pay into the firm's client account multiple sums in excess of £50 received from or on behalf of clients (c) he posted onto the client ledgers multiple sums received from or on behalf of clients before the sums had been paid into the client account causing the ledgers to misrepresent the actual position of the client account (d) he failed to record or retain sufficient narrative for documentation to demonstrate compliance with the Money Laundering Regulations (e) he failed or at least delayed unduly in dispersing multiple client balances held by the firm after there was no reason for them to be retained (f) he failed in multiple instances to carry out risk assessments for transactions in which his firm was acting, to undertake sufficient client due diligence to establish the identity of the firm's clients or retain records having done so, which would comply with the Money Laundering Regulations 2007; and (g) he continued to fail to address the aforementioned breaches and thereby displayed a course of conduct amounting to deliberate acts in breach of B1.2; 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 of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and any other individual referred to within Paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980.

**(signed)**

**Colin Bell**

**Vice Chairman**

15. 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 15 AUGUST 2018.

**IN THE NAME OF THE TRIBUNAL**

[redacted]

**Colin Bell**

**Vice Chairman**

**NOTE**

At the hearing on 28 June 2018, the Tribunal had before it the Complaint, four Lists of Productions and a List of Witnesses for the Complainers.

The Respondent was not present at the hearing and the Fiscal made a motion in terms of Rule 14(4) of the 2008 Rules for the Tribunal to proceed to hear and determine the Complaint in his absence. Ms Motion made reference to her submissions to the Tribunal at the procedural hearing on 21 March 2018. She drew the Tribunal's attention to her Third Inventory of Productions, which contained copy email correspondence between the Respondent and the Complainers. She asked the Tribunal to pay no regard to the content of the emails but to consider the dates on which they were sent. In particular, there was an email from the Respondent addressed to the Complainers dated 7 May 2018. She invited the Tribunal to accept that this disclosed that the Respondent had an active email address. She referred the Tribunal to her Productions 30 and 31 which were emails from her to the Respondent in connection with this Complaint and to the Microsoft delivery receipts relating to both of these. It was her position that these Productions supported her motion that he had chosen not to engage in the current process. She confirmed that she intimated her Affidavits and other Productions to that address. The Fiscal accepted that the Tribunal required to take great care in deciding to proceed in the absence of the Respondent. However, she asked the Tribunal to have regard to the evidence previously placed before the Tribunal of attempts to serve documents at the Respondent's address. It was her submission that the Respondent had deliberately absented himself from these proceedings. It was crucial that any regulator should be able to carry out the disciplinary process. As matters currently stood, if a member of the public contacted the Law Society, they would be told that the Respondent is still on the Roll of Solicitors. Accordingly, the Respondent was still entitled to describe himself and hold himself out as a solicitor. It was her submission that it was in the interests of the public to proceed and that the Respondent had been given every opportunity to engage in the process and had chosen not to do so.

The Tribunal heard evidence from the Clerk that the Notice of Hearing for today's proceedings was served by sheriff officers at the address on the Complaint on 28 March 2018 and the relevant execution of service was lodged as a Production.

The Tribunal gave very careful consideration to the submissions made by the Fiscal at this and the previous procedural hearing. It concluded that the Notice of Hearing had been competently served in terms of the Tribunal Rules. Thereafter, the Tribunal had regard to the case R-v-Jones [2003] AC 1 and noted that the Tribunal's discretion to proceed in the absence of the Respondent *"should be exercised*

*with great caution and with close regard to the overall fairness of the proceedings"*. The Complaint was lodged with the Tribunal in September 2017. It was served by recorded delivery post at the address on the Complaint, the last known address for the Respondent. Two Notices of Hearing were served by recorded delivery post at the same address and were signed for by someone giving the name "M McDougall". The Notice of Hearing for today's proceedings had been served at the same address by sheriff officers. No documents, at any time, had been returned to the Tribunal Office. The Fiscal for the Complainers had sent emails regarding today's proceedings to an email address for the Respondent which he appeared to be operating in connection with another matter. The Respondent ought to be aware of outstanding disciplinary proceedings, given his previous contact with the Law Society. The Respondent was under a duty to and had had every opportunity of providing an up to date address. Taking all of these factors together, the Tribunal concluded that the Respondent had waived his right to be present by disengaging with the process. There seemed little to be achieved by delaying proceedings further. The Tribunal required to strike a balance of fairness between the interests of the public and the interests of the Respondent. In all of the circumstances, the Tribunal concluded that it was appropriate to proceed with matters in the absence of the Respondent and granted the Fiscal's motion.

The Fiscal invited the Tribunal to receive Affidavits for three witnesses. These were lodged on 20 June 2018 and intimated to the Respondent at the same time. She submitted that, if they were to be considered as Productions, then technically, within the terms of the Tribunal Rules, they were late. The Fiscal therefore invited the Tribunal to allow them to be received late. The Tribunal granted that motion.

**EVIDENCE FOR THE COMPLAINERS**

**WITNESS ONE: NATALIE COOK**

The Affidavit for this witness confirmed that she is an employee of the Complainers and that she attended the inspection of the Respondent's firm on 30 and 31 March 2015 along with her then fellow inspector, Tina Heywood. Attached to that Affidavit was a detailed report from the inspection, referred to as an executive summary, which the Affidavit confirmed was the report of that inspection. Also attached to the affidavit was an executive summary showing an exchange of correspondence between the inspectors and the Respondent. She confirmed that she also attended the firm on 1 June 2015 and confirmed that the investigation report attached to her Affidavit was the appropriate report. Attached to the Affidavit was a List of Documents for the Complainers which the witness confirmed was a complete set of the correspondence/documentation relating to the matter as set out in the Complaint.

**WITNESS TWO: TINA HEYWOOD**

The Affidavit for this witness confirmed that she was an employee of the Law Society of Scotland and that she attended the inspection of the firm together with her colleague, Ms Cook, and that the executive summary attached was a report of the inspection from the 30 and 31 March 2015. The affidavit also referred to a further executive summary which included correspondence between the Complainers and the Respondent in relation to the issues raised at the inspection.

**WITNESS THREE: CATHERINE DONALDSON**

The Affidavit for this witness confirmed that she is an employee of the Complainers and that she attended the inspection of the Respondent's firm concluding on 1 June 2015. The Affidavit confirms that the report attached to her Affidavit relates to that inspection. This Affidavit also refers to a List of Documents for the Complainers and confirms that insofar as they related to the report of 1 June 2015 were complete, true and accurate.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal asked the Tribunal to accept the three Affidavits and her Productions as sufficient evidence to establish her case. The Tribunal invited the Fiscal to clarify the main facts and link them into the averments of misconduct and the relevant Rules. The Fiscal explained that there was an initial inspection of the firm on 30 and 31 March 2015 as a result of which the Financial Compliance Department of the Law Society (FCD) had written to the Respondent itemising a number of concerns. She submitted that there had been very little substantive response to that. In answer to a question from a member of the Tribunal, she conceded that there was some response on 30 April 2015 but that communications tapered off thereafter. The concerns noted by the FCD were listed in summary in averment 3.4.

The Fiscal invited the Tribunal to place great emphasis upon the pre-inspection questionnaire completed by the Respondent which was her Production 10. It was her submission that this disclosed the mindset of the Respondent. Within that form, the Respondent had indicated that he completed daily reconciliations, that there had been no deficits and no other rule breaches. Nor had he disclosed any difficulties in relation to inter-client transfers. The Respondent, as a sole practitioner, was clearly the one in control. This form was completed by the Respondent. As cashroom manager, he had to be aware that there were deficits in breaches of the Accounts Rules. She submitted that the completion of this form put many of the Respondent's actions into the character of a breach of Rule B1.2 and that they

were deliberate. She invited the Tribunal to accept that the Respondent's conduct involved both issues of integrity and dishonesty. This was the deliberate completion of a form followed by a deliberate course of conduct. He knew that he was in conflict with the Accounts Rules. He stated that he was going to resolve these issues and then he did nothing.

Ms Motion explained that the averments within the Complaint mirrored the actual inspection report which was produced as her Production 11.

At averment 3.9, the Complaint set out deficits arising on the client account. She invited the Tribunal to hold that this conduct was in breach of Rule B1.2, as well as the other Rules noted in the pleadings of misconduct. Whilst on the face of it these could be issues of timing and an indication that the firm's accounting system was not adequate, the Respondent was aware of these deficits arising and had done nothing to resolve them.

The Complaint set out in averment 3.10 problems with record keeping, where credits were posted to the client account before they were credited to the bank account. The Fiscal clarified that she was not submitting that this was a breach of Rule B1.2.

At averment 3.12, the Complaint set out a number of instances where inter-client transfers had taken place without there being signed authority. She was unable to clarify whether the transfers that had taken place were otherwise appropriate or whether the clients were linked. She confirmed she was inviting the Tribunal to hold that this conduct was a breach of Rule B1.2, amongst the others listed.

The Complaint listed a number of historic balances on client ledgers which were in breach of the Accounts Rules. She accepted that these were small balances but nonetheless they were a breach of the relevant Rules.

The inspection had detected a number of concerns relating to compliance with the Money Laundering Regulations, in particular the lack of risk assessments and client identification. The pre-inspection questionnaire made no reference to any of these issues.

The Respondent was invited to attend an interview with the Guarantee Fund Sub Committee on 21 May 2015. The Fiscal drew the Tribunal's attention to the report of the Sub Committee interview which was Production 20. That report indicated that the Respondent's representative had acknowledged that the Respondent had "taken his eye off the ball". The Respondent's agent indicated that a member of his firm

would attend at the Respondent's firm and thereafter prepare a full report for the Guarantee Fund Sub Committee. The Sub Committee gave the Respondent until 1 June 2015 for that to be done. A further inspection took place on 1 June 2015 and Production 21 was the report of that inspection. The Respondent did not attend the inspection. There was no report from the Respondent's agent. An email was sent on 2 June to the Respondent's agent seeking clarification. The Fiscal was unable to say if there had been any response to that email but could confirm that no report was ever produced.

The Fiscal moved to amend the Complaint by deleting reference to "11 May" in averment 3.24 and this was granted.

The inspection on 1 June disclosed continuing issues with regard to daybooks not being closed, month end reports not being completed and fee notes not being rendered to clients. She was unable to confirm whether the fee notes related to work actually done or not. The inspection on 1 June also identified an instruction from the Respondent to a member of his staff not to submit a VAT return. The inspection team also found an email from a member of staff to the Respondent seeking instructions with regard to closing the daybook. The email was dated 8 May 2015 and referred to the daybook sitting at 23 April. It appeared that the Respondent had given instructions to raise fee notes which were to be backdated to 23 April. The Fiscal submitted that she was relying on this conduct not just as poor accounting practice but as confirmation of the attitude of the Respondent to his cashroom manager responsibilities, which had not changed since the first inspection. The report of the inspection from 1 June was considered by the Guarantee Fund Sub Committee at a meeting on 4 June 2015. Subsequently a Judicial Factor was appointed.

The Tribunal asked the Fiscal to clarify the issue of un-rendered fee notes. She confirmed that the appropriate procedure to follow in such circumstances where fees had been taken before fee notes had been rendered was for the solicitor to re-credit the fee, re-issue the fee note and thereafter take payment. The Guarantee Fund Sub Committee meeting on 4 June 2015 was concerned with regard to there being potentially £44,000 of un-rendered fees. The Fiscal could not say whether or not that was what triggered the appointment of the Judicial Factor but could clarify that it was clear that there were various issues with the Accounts Rules breaches which caused concern of there being a risk to clients. The Fiscal was unable to say what the position was with regard to HMRC and the averment relating to there being unpaid VAT.

The Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct and referred the Tribunal to her averments of professional misconduct in the Complaint.

She accepted that the averments of misconduct at 3.4(a), (b) and (c) all related to the same factual narrative but each reflected a different breach of the Rules. She invited the Tribunal to link back the breach of these Rules to the completion of the pre-inspection questionnaire to hold that the conduct also breached Rule B1.2.

The Respondent had not cooperated with the inspections and had not given answers to the various queries raised. He did not remedy his behaviour but in fact, following on from the interview, continued with the same conduct. She invited the Tribunal to hold, that given his instructions to members of staff regarding the closing of daybooks, this conduct was a deliberate disregard of the Accounts Rules.

The Tribunal asked the Fiscal how long she was suggesting the Respondent had failed to address these issues as averred in paragraph 3.41(j). The Fiscal clarified that this course of conduct continued from the first inspection until the last narrative of conduct within the Complaint, 2 July 2015.

The Fiscal requested an opportunity to obtain further information which might assist the Tribunal with some of the questions raised. Thereafter, she confirmed that in relation to the inter-client transfers, the inspectors had had concerns because of the number of them but they were unable to say if the clients were connected and had not checked files.

With regard to the un-rendered fee notes, the inspectors had had concerns because of the number of fee notes, that they were for the same clients and the amount of the fees concerned. She was unable to say whether or not work was done which would have justified the fees raised.

She confirmed that the Law Society inspectors had no knowledge of any steps being taken by HMRC with regard to unpaid VAT.

With regard to the averment of misconduct in paragraph (j), she confirmed that it was her position that the course of conduct of the Respondent following the first inspection amounted to a breach of Rule B1.2. The inspection had raised various issues, the Respondent had made admissions of Accounts Rules breaches and had been asked to provide explanations. The Respondent had provided little clarification to very serious questions. A report offered by the Respondent was not produced. He had failed to cooperate with the procedure. Nothing had been put forward on behalf of the Respondent to explain why he was not cooperating and providing the answers to questions which he understood to be serious.

**DECISION**

The first step for the Tribunal was to consider what conduct had been proved by the Complainers. The onus of proof lay with the Complainers and the conduct required to be established beyond reasonable doubt.

Three Affidavits were produced. They confirmed that the inspection reports, which were before the Tribunal, were accurate reports of the various inspections that had taken place, including an exchange of correspondence with the Respondent.

The Tribunal noted that the Affidavit for Ms Cooke stated that the Productions attached were a complete set of correspondence or documentation relating to the issues. In fact, there appeared to be three emails referred to within the Guarantee Fund Sub Committee Minute of 2 July which were not included in these Productions. The witness's evidence, as outlined in the Affidavit, principally related to the two executive summaries and the report of 1 June 2015 which were detailed summaries of the investigations that took place and included responses from the Respondent and so the Tribunal concluded that this anomaly did not affect the weight to be given to the Affidavit.

Having regard to the Affidavits and the extensive Productions, the Tribunal found the evidence to be reliable and credible and sufficient to establish the above noted averments of fact beyond reasonable doubt.

Thereafter, the Tribunal required to consider whether the conduct established amounted to misconduct.

In the detailed averments of misconduct in paragraph 3.41, the Complaint set out each category of conduct and described the Rules which the Complainers averred that the Respondent had breached by the described conduct. It therefore seemed appropriate for the Tribunal to go through each averment of misconduct to ascertain which, if any, Rules were breached by the factual conduct.

Averment 3.41(a) related to deficits occurring on the client account as a result of the Respondent posting receipt of funds to the client account and claiming the amount to fees before the sums had actually been credited to the client bank account. This conduct was said to be in breach of Rules B1.2, B1.4.1 and B6.3.1. Rule B6.3.1(a) sets out there must not be a deficit on the client account. The facts established clearly show a breach of this Rule.

The averment of misconduct also states that the conduct was in breach of Rule B1.2 which refers to a solicitor acting with honesty and integrity. There was no averment that the work had not been done or that the fees were overstated. The Respondent provided something of an explanation within the executive summary. The Fiscal conceded that this could simply be inefficiency. The Complaint did not contain an averment suggesting that the pre-inspection questionnaire was a deliberate falsehood. In the circumstances, the Tribunal were not satisfied that it had been established that the conduct described breached Rule B1.2. The Complaint also suggested that this conduct was a breach of Rule B1.4.1, acting in the best interests of your client. The Tribunal was not satisfied that it had been established that the conduct described breached this Rule.

The next averment of misconduct in paragraph (b) related to the same set of facts but was directed towards the delay in banking sums of money in excess of £50 into the client account. Clearly the delays breached Rule B6.3.1(b). Averment (b) also suggested that this breached Rule B1.4, acting in the best interests of your client. There were no averments within the Complaint or evidence led to support how this conduct breached that particular Rule.

Averment (c) referred to the same factual conduct but related to the discrepancy between posting funds as received to the client ledger before the actual payment was made to the client bank account which resulted in the ledgers misrepresenting the actual position of the client account. This clearly was in breach of Rule B6.7, one of the Accounts Rules. The averment of misconduct also alleged that this breached conduct rule B1.2, relating to honesty and integrity. For the same reasons as noted above, the Tribunal was not satisfied that this had been established.

Averment (d) related to the Respondent transferring funds between clients without obtaining or retaining written authority. The Respondent had admitted in his response to the inspection team that this had taken place. This clearly was a breach of Rule B6.5.1. The conduct was also said to breach Rule B1.4.1, acting in the best interests of your client, B1.5.1, acting with your client's proper instructions and B1.9.1, communicating effectively with your client. The Tribunal was satisfied given the content of the inspection reports and the responses by the Respondent that these Rules were breached.

However, the Complaint also averred that the conduct breached Rule B1.2, honesty and integrity. The inspection report did not identify whether or not there was any connection between the clients where the transfers took place. It was not averred within the Complaint and not submitted to the Tribunal that the funds were otherwise improperly transferred or whether these were transfers simply took place without

the proper steps being taken. In these circumstances, the Tribunal was not satisfied that the conduct proved breached Rule B1.2.

Averment (e) related to the taking of sums held in the firm's client account to settle fees, without rendering fee notes to the client first. This clearly breached the Account Rule B6.5.1. The Tribunal also accepted that this breached Rule B1.4.1 (not acting in the best interests of your client), B1.5.1 (having the client's authority), B1.9.1 (effective communication) and B1.11.1 (fees charging being fair and reasonable, on the basis not giving advance notice to a client to give him/her the opportunity to challenge any fee was not fair).

It was not averred within the Complaint and the Fiscal did not submit that the fees taken were not justified by work done. There were however a significant number of fee notes involving substantial fees that were not properly rendered to clients. The Tribunal was not satisfied that the conduct amounted to dishonesty but was satisfied that this repeated taking of fees without rendering fee notes did not meet the standard of integrity required. A high standard of conduct is set for the profession, especially with regard to dealing with client monies. The Tribunal had regard to the court's remarks in Wingate and Evans-v-SRA; SRA-v-Mallins [2018] EWCA Civ 366. To this extent the Tribunal was satisfied that Rule B1.2 was breached.

Averment (f) related to a failure to record or retain sufficient narrative or documentation to comply with the Respondent's duty to keep properly written up such accounting records as are necessary to show all of the firm's dealings with client's money or money dealt with by the firm through its client account. The conduct established and described within the investigation reports clearly amounts to a breach of the Accounts Rule B6.7. The Tribunal was not satisfied that the conduct breached Rules B1.2, B1.4.1 and B1.9.1 as suggested within paragraph (f), given the contents of the executive summaries.

Averment (g) related to the Respondent's failure to record or retain sufficient narrative for documentation to demonstrate compliance with the Money Laundering Regulations. The facts established in this case clearly demonstrated that the Respondent was in breach of Rule B6.7 and the Money Laundering Regulations.

Averment (h) was that the Respondent had failed or delayed unduly in dispersing historic client balances. This was said to be in breach of Rule B1.9.1 (communicating effectively with your clients), B1.4.1 (acting in the best interests of your client) and B1.2 (honesty and integrity). The Tribunal was satisfied

that the Respondent's failure to deal with the historic balances clearly breached Rules B1.4.1 and B.9.1. Given the information before it, the Tribunal was not satisfied that a breach of B1.2 had been established.

Averment (i) related to the Respondent's failure to carry out risk assessments for transactions or to undertake sufficient client due diligence in relation to clients' identity. This was said to be in breach of the Money Laundering Regulations 2007 and Rule B6.23. The first inspection had identified 13 transactions with no trace of a risk assessment. The Respondent had produced nine risk assessments. Of the remaining four, the Respondent retrospectively carried out three risk assessments and the fourth remains outstanding. Following various procedures, it appeared that in 10 files the client had failed to comply with client identification procedures. The Tribunal was satisfied that the conduct established breached Rule 6.23 and the 2007 Regulations.

Averment (j) was that the Respondent through his continued and/or deliberate failure to address the various breaches displayed a course of conduct amounting to deliberate acts in breach of Rule B1.2. The Fiscal had clarified in her submissions that this course of conduct dated from the end of March/beginning of April, following the first inspection, up to 2 July 2015. Various matters had been identified by the inspection at the end of March. Responses to some of these issues had been given by the Respondent. Indication of a change of practice or approach was given by the Respondent in his answers to the summary of the inspection. Concessions were made on his behalf at a Guarantee Fund Sub Committee meeting by his representative and an offer to provide a report. The Respondent failed to give further information in advance of the inspection on 1 June and failed to attend that inspection. No report was ever produced on his behalf. Throughout the process, the Respondent had given an indication that he recognised that he had breached the Accounts Rules and that he would take steps to remedy matters. In fact, it would appear that, during the process the Respondent was continuing with the same conduct, in particular with regard to the closing of the daybook. Given the lack of information with regard to the un-rendered fee notes and in the inter-client transfers, the Tribunal was not satisfied that this amounted to dishonest conduct. The Tribunal was however satisfied that this approach to the investigation procedure by the Respondent displayed a lack of integrity and was in breach of Rule B1.2.

The Tribunal then went on to consider whether the conduct and the breach of Rules established amounted to misconduct. The test for misconduct is that as set out in Sharp-v-The Council of the Law Society of Scotland 1984 SLT 313. Conduct that breaches a rule is not automatically misconduct but must be assessed, in the whole circumstances, to determine if it meets the standard required.

This Tribunal has on many occasions in the past emphasised the importance of the Accounts Rules in relation to the protection of clients. The profession is in a very privileged position in holding clients funds. The public must have confidence that the profession can be trusted to act appropriately and transparently.

The Tribunal was satisfied that the Respondent's conduct in relation to inter-client transfers without the appropriate written authority, as referred to in averment of misconduct (d), in itself amounted to misconduct, given the number of transactions involved.

The Tribunal was also satisfied that the repeated failure to render fee notes, as described in averment (e), given the repeated nature and the significant figures involved amounted in its own right to misconduct.

The Tribunal was also satisfied that averment (f) in itself amounted to misconduct. The instruction to a member of staff not to close a daybook on the basis it might disclose a deficit clearly resulted in the firm's records being unreliable and placing clients at risk.

Averments (a), (b) and (c) related to the same factual conduct. Averments (g) and (i), similarly appeared to relate to the same factual conduct. These together with averment (h) clearly demonstrate a repeated breach of the Rules. The Tribunal was not satisfied that each in themselves would have amounted to professional misconduct but was satisfied that *in cumulo* they met the appropriate test.

With regard to averment (j), the Tribunal was satisfied that the conduct breached Rule B1.2 but hesitated to hold that this in itself would have amounted to misconduct. It was however satisfied that taken together with the other matters, it amounted *in cumulo* to misconduct.

**DISPOSAL**

**SUBMISSIONS BY THE COMPLAINERS**

The Fiscal confirmed the Respondent remained suspended and had not appealed his suspension from 4 June 2015. Additionally, he had been sequestrated on 10 September 2015 and as far as she was aware remains sequestrated. He had not previously been before the Tribunal. She confirmed that following the Judicial Factor's appointment, it was established that the deficit was at least £44,000.

The Fiscal submitted that the Respondent had no excuse for his lack of engagement with the process of investigating what was conduct at the serious end of the scale of misconduct. The Respondent had demonstrated no insight, remorse or contrition. He had taken the choice not to engage with the process and not to provide any explanation. She posed the question of whether a member of the public would in these circumstances expect him to remain on the Roll of Solicitors. She asked the Tribunal to make an award of expenses in favour of the Complainers and to make the usual order for publicity including the name of the Respondent and his firm but no one else.

**DECISION**

The Tribunal considered the Respondent's conduct to be extremely serious. Bad practice and breaches of the Rules were identified and discussed with the Respondent following the inspection at the end of March 2015. These concerns related to many breaches extending over a significant period of time. Despite assurances being given by the Respondent, the practice continued. This conduct directly related to the Respondent's handling of client monies and placed his clients at risk. It was impossible to assess from the firm's books and accounts its true financial position. The firm's dealings with client monies were not transparent.

The Respondent's behaviour during the inspection process between the end of March and 2 July 2015 did not demonstrate any sign of insight or remorse.

This whole course of conduct will inevitably cause damage to the reputation of the profession. The public should be able to trust the profession. Solicitors are in a position of trust when handling client monies. The Accounts Rules are there to ensure that the trust is not misplaced The Respondent was the firm's cashroom partner and therefore entrusted with ensuring compliance with these Rules. The Tribunal has often in the past emphasised that the client account should be sacrosanct.

In the circumstances, the Tribunal concluded that the only disposal that would reflect the seriousness of the misconduct and protect the public and reputation of the profession was to strike the name of the Respondent from the Roll of Solicitors in Scotland.

The Tribunal determined that it was appropriate to make an award of expenses in favour of the Complainers. With regard to publicity, the Tribunal concluded that only the identity of the Respondent

and others described in Schedule 4 to the 1980 Act should be included. The details of the Complaint included personal information which was not necessary for the purposes of publication of this decision.

**Colin Bell**

**Vice Chairman**