

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

**FINDINGS**

**in Complaint**

**by**

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

**against**

**JEREMY JAMES CRAM, a sole practitioner  
formerly carrying on business as Jeremy Cram  
& Co. (formerly AJ Cram & Co.), 7 Castle  
View, Newmains**

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 Jeremy James Cram, a sole practitioner formerly carrying on business as Jeremy Cram & Co. (formerly AJ Cram & Co.), 7 Castle View, Newmains (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A, Advocate.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged by the Respondent. The Complainers lodged an amended Complaint with the Tribunal and intimated this to the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 17 September 2018 and notice thereof was duly sent out for service on the Respondent by recorded delivery letter.
5. At the hearing on 17 September 2018, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was neither present nor represented. 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 the absence of the Respondent.

The Tribunal heard evidence on oath from the Clerk with regard to service of the Notice of Hearing and considered whether it was fair to proceed. Thereafter, it granted the Fiscal's motion to proceed in the Respondent's absence. The Tribunal granted the Fiscal's motion in terms of Rule 14(5) for the Tribunal to receive three Affidavits. The Tribunal also granted the Fiscal's motion to amend the amended Complaint by deleting reference to "3.94" in paragraph 3.99 and substituting "3.95". In addition the Fiscal made a motion to amend the amended Complaint by deleting the word "Respondents" in paragraph 3.192 and substituting the word "Solicitors". The Fiscal made submissions.

6. The Tribunal found the following facts established:-

6.1 The Respondent is a solicitor enrolled on 2 October 2006. He practised as an employee and a partner in various firms until 14 March 2011 when he set up as a sole practitioner under the business name of AJ Cram & Co, latterly named Jeremy Cram & Co, 7 Castle View, Newmains. He was suspended as a solicitor in terms of s40 of the Respondents (Scotland) Act 1980 on 1 October 2015 and a Judicial Factor was appointed to both his and his firm's estates by the Complainers on 24 November 2015.

**FACULTY SERVICES - MR A - FAILURE TO RESPOND/MAKE PAYMENT TO FS**

**Case A- IS v SSHD**

6.2 On 17 and 21 March 2013 the Respondent instructed Mr A, Advocate, in relation to Judicial Review proceedings on an immigration matter for his client Mr IS. In doing so he accepted to abide by the Accounting and recovery of Counsel's Fees Scheme issued in 2008 by the Faculty of Advocates. The work was duly carried out and Mr A rendered four fee notes, through Faculty Services (FS), to the Respondent namely:-

Item	Date of fee note issued to Jeremy Cram & Co	Civil Legal Aid Certificate reference	Date when fee generated	Amount of fee including VAT	FS Reference
1.	20/01/2014	Not known	20/01/2014	£420	C743/SI140011/001
2.	31/03/2014	Not known	28/03/2014	£540	C743/SI140046/001
3.	25/03/2013	C729541113	22/03/2013	£540	C743/SI130040/001
4.	27/05/2013	C729541113	22/05/2013	£372	C743/SI130040/002



6.3 The fee notes state that:

- Item 1 was in relation to drafting an opinion on the prospects of a potential judicial review action;
- Item 2 was in relation to drafting a petition for judicial review of a decision of the Secretary of State for the Home Department;
- Item 3 was in relation to drafting a petition for judicial review of a different decision of the Secretary of State for the Home Department
- Item 4 was in relation to seeking to negotiate a settlement and appearing at the procedural hearing.

6.4 By letter of 19 April 2013 FS sent a letter to the Respondent noting that the fees in the Mr IS case were now covered by legal aid and requested the legal aid reference number and the date of the legal aid certificate. A response was not received.

6.5 On 26 November 2013 a reminder was sent. No response was received.

6.6 By email of 13 January 2014 FS advised the Respondent that no response had been received to the previous correspondence of 26 November 2013.

6.7 On 20 February 2014 a further email was sent stating that despite reminders being sent no relevant information had been provided to allow FS to obtain settlement. The Respondent was advised that a complaint would be lodged with the SLCC. A further chaser was issued on 7 March 2014.

6.8 On 11 March 2014 the Respondent replied to say that the files were sent to SLAB and that as it was a special urgency case it was not time barred and that payment should be received soon. The Respondent asked if the legal aid reference was required. FS confirmed by email on the same day that the legal aid reference was required.

6.9 By email of 27 March 2014 FS advised the Respondent that no response had been received and asking the Respondent to give the matter his immediate attention.

- 6.10 By email of 28 April 2014 FS advised the Respondent that items 3 and 4 in the table above and other items relating to other cases required to be paid and that no response had been received to FS's final reminders. The Respondent replied to this email on 30 April 2014 stating that the accounts still required to be paid by SLAB and that 3 of them were special urgency requests and therefore there was no time bar on them and that they would be settled in due course.
- 6.11 By email of 30 April FS issued a response asking if, and when, the accounts had been submitted to SLAB. As a reply was not received a further email chasing a response was sent on 3 June 2014 and the Respondent was asked to give this matter his immediate attention. A further email was sent on 9 July 2014. No response was received.
- 6.12 By letter of 23 July 2014 FS wrote to the Respondent and asked for an update in respect of the account for Mr IS for items 1, 2 and 3 in the table above. No response was received.
- 6.13 By letter of 8 October 2014 FS sent a further letter to the Respondent seeking an update in respect of the fees due in respect of Mr IS. No response was received.
- 6.14 On 13 October 2014, 27 October 2014, 10 November 2014, 25 November 2014 telephone calls are recorded as having been made to the Respondent by FS but no information was provided by the Respondent.
- 6.15 By email of 5 December 2014 FS asked SLAB if payment had been made to the Respondent in respect of items 1 and 3 in the above table and another unrelated item.
- 6.16 On 5 December 2014 SLAB confirmed that payment was accepted on the basis of judicial expenses recovered and that this was processed at the end of November 2014.
- 6.17 By a further email of 5 December 2014 FS notified the Respondent of SLAB's confirmation that payment had been made to him at the end of the previous



month by way of judicial expenses in respect of items 1 and 3 in the table above and other unrelated items. The Respondent was asked to issue a cheque in respect of Counsel's fees. No response was received.

- 6.18 By email of 8 January 2015 FS chased the Respondent for a response to the email of 5 December 2014.
- 6.19 By email of 27 January 2015 SLAB confirmed to FS that the Respondent's bank account was credited on 2 December 2014 and that payment of £960 including VAT was made to the Respondent.
- 6.20 By letter of 28 January 2015 FS sent a letter to the Respondent with reference to items 1 and 3 in the table above. The letter stated that SLAB had advised FS that payment of Judicial Expenses was made to him in November 2014 and that if full payment was not made within 14 days then he would be pursued for £960 plus the sum of £46.08 under the Late Payment of Commercial Debts (Interest) Act 1998. The letter was also sent by email to the Respondent. No response was received.
- 6.21 Accordingly the Respondent has not responded to the above correspondence (except where indicated) including the requests for payment of the amount received from SLAB for items 1 and 3 in the table above. Nor has he provided any explanation regarding why there was no payment in relation to the other fee notes for items 2 and 4. FS have been unable to obtain information directly from SLAB in relation to item 2 because the legal aid reference number is not known. They therefore do not know in relation to item 2 if a claim was lodged by the Respondent with SLAB. In relation to item 4 a claim was lodged by the Respondent (as a legal aid reference number is available) but there is no evidence that the Respondent was paid by SLAB. No payment for either has been received by FS.

**Case B - SSA v SSHD case**

- 6.22 On 7 February 2013 the Respondent instructed Mr A, Advocate, in relation to Judicial Review proceedings on an immigration matter for his client Mr SSA. In doing so he accepted to abide by the Accounting and recovery of Counsel's Fees

Scheme issued in 2008 by the Faculty of Advocates. The work was duly carried out and Mr A rendered seven fee notes, through FS, to the Respondent namely:

Item	Date of fee note issued to Jeremy Cram & Co	Civil Legal Aid Certificate reference	Date when fee generated	Amount of fee including VAT	FS reference
1.	11/02/2013	C054490213	08/02/2013	£540	C743/AB130007/001
2.	18/02/2013	C054490213	12/02/2013	£2100	C743/AB130007/002
3.	09/09/2013	C054490213	08/09/2013	£420	C743/AB130007/003
4.	25/11/2013	C054490213	22/11/2013	£2400	C743/AB130007/004
5.	05/03/2014	C054490213	13/02/2013	£420	C743/AB130007/005
6.	05/03/2014	C054490213	20/11/2013	£300	C743/AB130007/006
7.	05/03/2014	C054490213	20/11/2013	£300	C743/AB130007/007

6.23 The fee notes state that:-

- Item 1 was in relation to reviewing the case papers and drafting a judicial review of the decision of the Secretary of State to detain and continue to detain Mr SSA and to remove him;
- Item 2 was in relation to the preparation of and acting for Mr SSA at the full day interim liberation hearing;
- Item 3 was in relation to drafting a substantial amendment to the petition and amended version of the petition;
- Item 4 was in relation to the first hearing;
- Item 5 was in relation to the continued interim liberation hearing;
- Item 6 was in relation to drafting the second minute of amendment; and
- Item 7 was in relation to drafting the statement of issues as directed by the Outer House.

6.24 By letter of 19 April 2013 FS asked the Respondent for the legal aid reference number for Mr SSA. No response was received.

6.25 By letter of 21 August 2013 FS asked the Respondent for a form to be completed to confirm the position in relation to the fee being paid by SLAB in respect of item 6 in the table above. No response was received.



- 6.26 By email of 8 October 2013 FS requested an update from the Respondent in respect of payment of Counsel's fees for items 1, 2 and 3 listed in the table above. He was advised that if an update was not received a complaint would be lodged with the SLCC. No response was received.
- 6.27 By letter of 9 October 2013 FS requested further information from the Respondent. No response was received.
- 6.28 By email of 30 October 2013 Faculty Services confirmed that a complaint would be lodged with the SLCC if a response was not received by November 2013. The Respondent replied on the same date with information in relation to other cases and he advised that Mr SSA's case was ongoing. On the following day FS asked, by email, for the legal aid details for the case as they had never been provided. No response was received.
- 6.29 By email of 12 November 2013 FS again asked for the legal aid details as a response had not been received. No response was received.
- 6.30 By email of 22 November 2013 Mr B from Drummond Miller (as the Respondent's Edinburgh agent) sent an email to the Respondent and copied in Mr A/Faculty Services. Mr B confirmed that the final interlocutor was attached and that damages in the sum of £3500 were awarded in Mr SSA's favour as well as the expenses of the petition process. The interlocutor was attached to the email. It was noted that Mr A was re-issuing his fee notes. Mr B asked the Respondent to send his file as soon as possible so that the judicial expenses account could be prepared and lodged.
- 6.31 By a further email of 3 December 2013 FS chased the Respondent for a response.
- 6.32 On 3 December 2013 the Respondent advised FS that the legal aid reference number for the case was C054490213 and that legal aid had been granted with client contribution. That had first been requested by FS in April 2013. The Respondent confirmed that the case concluded two weeks previously with expenses in favour of Mr SSA and that he was awaiting fee notes from Mr A,

that he was sending his file and that payment would be made when this had been dealt with.

- 6.33 On the same date FS sent an email attaching a copy of a fee note and asking if the Respondent was waiting for further fees to be raised. He responded on the same date to ask if these were the amended fees. FS responded to say that they were not aware of any fees having to be amended and that the Respondent may have agreed this with Mr A or his clerk but FS had not been advised if that was the case. FS then contacted the Mr A's clerk on 4 December 2013 to ask if any amendments had been agreed with Mr A directly and was advised by the deputy clerk that no amendments had been agreed. FS then provided this information to the Respondent on the same day.
- 6.34 On 21 July 2014 the Respondent confirmed to FS by email that the account was with the court auditor and that he would speak with the Edinburgh agents the following week to confirm the position. He advised that expenses were awarded in Mr SSA's favour.
- 6.35 On 9 September 2014 FS chased for an update. On 15 October 2014 a further email was sent chasing a response. The email stated 'Despite reminders and telephone calls with you we have received no reply'.
- 6.36 On 1 October 2014 FS called the Respondent when he advised that he was unable to speak as he was in the cells.
- 6.37 On 29 October 2014, 30 October 2014 and 4 November 2014 further calls are recorded as being made by FS to the Respondent but excuses were made and no information was provided by the Respondent.
- 6.38 On 22 January 2015 the Deputy Advocates' Clerk asked FS if SLAB had paid out any monies on the case. A response was issued by FS on the same date confirming that SLAB advised that the agents put in a judicial account in July 2014 and that payment of Mr A's fees was made to the Respondent in the sum of £5820 on 28 July 2014.



- 6.39 As a result Mr A asked his clerk to request that Faculty Services inform the Respondent that if payment was not made within 14 days he would be pursued for the debt and interest thereon. A letter was issued by FS on 26 January 2015 in these terms. It was also sent by email. No response was received.
- 6.40 By email of 28 January 2015 FS chased the Respondent for a response. No response was received.
- 6.41 On or around 7 April 2015 Mr A's clerk telephoned the Respondent and left a message for him to reply. No response was received.
- 6.42 Aside from the limited responses set out above the Respondent not only failed to pay the fees due to Mr A he failed to respond to the reasonable requests made of him by FS.
- 6.43 In addition by email to SLAB of 20 August 2015 Mr A's clerk stated that their records showed that there was a telephone discussion on 22 January 2015 between Mr C of SLAB and Ms D of FS and that Mr C advised that payment of £5280 for Mr A's fees in relation to Mr SSA had been sent to the agents following receipt of the Judicial Claim. The advocate's clerk asked if this could be put in writing.
- 6.44 On 20 August 2015 SLAB confirmed by email that:
- 'in this case the solicitor elected to accept the judicial expenses recovered in lieu of a legal aid claim. A breakdown of the judicial expenses was provided to Drummond Miller by letter 17 July 2014. I assume that Drummond Miller & Co were acting as the Edinburgh for correspondents and were instructed by the nominated solicitors in this case, A J Cram & Co solicitors. The breakdown of those judicial expenses included a direction to pay the fees of counsel in the sum of £5,280 inclusive of VAT. Our records indicate that payment was made to the nominated solicitors on or around 1 August 2014.'*
- 6.45 By letter 18 October 2016 SLAB confirmed the nominated solicitor was the Respondent.

- 6.46 As at the date of this complaint Mr A/FS have not received payment of the fee notes referred to in relation to Mr SSA above.

**MR A-FURTHER OUTSTANDING FEENOTES AND FAILURE TO RESPOND TO FS - SECTION C CASES**

- 6.47 FS, on behalf of Mr A, submitted a further complaint in relation to further failures of the Respondent to pay Counsel's fees amounting to £20,850 plus VAT, having "*instructed Counsel to undertake work in [a large number of] cases under Civil Legal Aid or Advice and Assistance. In each case, Mr. Cram [...] failed to ensure that he had Legal Aid cover to instruct Counsel, or [...] instructed Counsel to undertake work prior to cover being in place or [...] failed following numerous and repeated requests for information to provide details of the Legal Aid reference, despite promising such information would be provided to Faculty Services*". The report prepared by FS for that complaint is provided and for brevity it is produced and held repeated in this complaint.
- 6.48 FS has confirmed affirmed that that they had "*repeatedly requested settlement [and that] Mr. Cram has failed to respond*". Those individual cases are as follows.

**Regarding the individual accounts:**

**(a) Re A.M.:**

- 6.49 A spreadsheet provided by FS indicates that Mr A acted for this client on two occasions: a fee note for £350 was issued on 27 April 2014 and another on 16 June 2014 in the same amount, both under reference MO140090. The reference for The Scottish Legal Aid Board ('SLAB') was understood to be 4174228114.
- 6.50 By e-mail sent to Faculty Services on 10 November 2014, the Respondent advised that "*A.M. has not been submitted yet*" to SLAB.
- 6.51 In her Report, the Judicial Factor stated that SLAB had remitted payment in respect of one of these fees to the Respondent, but that he had not passed it on to FS.



**(b) Re S.W.A.:**

- 6.52 Mr A acted twice for S.W.A., and fee notes were issued on 3 March 2014, in the sum of £350, and on 23 April 2014, in the sum of £50, both under reference AB140006. SLAB's reference was understood to be C206040214.
- 6.53 An FS internal e-mail dated 19 January 2015 indicates that, "*despite various items of correspondence including final reminders and telephone messages having been left for Mr. Cram he is still not responding to us with regards to*" the fees due re this case: the sender remarked that "*a lot of time and effort has been spent by credit control over many months in relation to many cases for this agent [and we are] getting no further forward*".
- 6.54 Deleted.

**(c) Re K.A.:**

- 6.55 The spreadsheet indicates that Mr A acted for K.A. on three occasions, and that fee notes were issued on 3 March, 31 March, 3 May and 14 July all 2014, under references AB140007, AB140016 and AB140036, in the sums of £450, £350, £250 and £250. SLAB's reference re the first fee note is said to be C877290714, but the other Legal Aid reference(s) were evidently unknown.
- 6.56 In his e-mail of 10 November 2014 (3.50), the Respondent advised that "*All of K.A. is still ongoing but concluding soon*".
- 6.57 The Judicial Factor's report confirms that SLAB paid the Respondent re the fee note issued on 14 July 2014, and that he did not pay Faculty Services.

**(d) Re A.A.:**

- 6.58 The spreadsheet indicates that Mr A acted once for A.A., and that a fee note for £350 was issued on 6 April 2014, under reference AD140021, the 'Advice and Assistance' reference being, apparently, AA3960008713.
- 6.59 In his e-mail of 10 November 2014 (3.50) the Respondent affirmed that "*A.A. went to SLAB today*".

**(e) Re H.C.:**

- 6.60 The spreadsheet indicates that Mr A acted for this client once, and that a fee note for £350 was issued on 17 May 2014, under reference CH140054, the 'Advice and Assistance' reference being unknown to Faculty Services.
- 6.61 In his e-mail of 10 November 2014 (3.50), the Respondent said that "*H.C. is my mistake and I will pay this myself and will speak to [Mr A] about it*".

**(f) Re M.F.:**

- 6.62 The spreadsheet indicates that Mr A acted for this client on one occasion, and that a fee note was issued on 20 January 2014 under reference FA140004. SLAB's reference being, evidently, CO15170114.
- 6.63 In his e-mail of 10 November 2014 (3.50), the Respondent remarked that "*M.F. [is] to be sent to SLAB. [It is not] time barred as [I] was waiting to hear from [the] Home Office before [being] able to fee [the] account. Although [the account is] older than four months, SLAB have said [it] will be paid*".

**(g) Re H.H.:**

- 6.64 Mr A acted twice for this client, once in preparing a Petition for Judicial Review, and once in discussing the case with opposing Counsel prior to a Hearing.
- 6.65 The fee notes, both dated 25 May 2014, were for £450 and £110 respectively. FS' reference was HA140147, the spreadsheet does not contain SLAB's reference.
- 6.66 FS e-mailed the Respondent on 15 December 2014, attaching copy fee notes: they noted that they had received no response to previous correspondence, and advised that "*unless we hear from you within the next fourteen days we shall have no alternative but to amend the payment terms for this case to 'Non Legal Aid' and pursue the outstanding fee(s) in accordance with the Scheme for Accounting for and Recovery of Counsel's fees*".



- 6.67 The internal e-mail referred to in paragraph 6.53 above, also relates to this matter.
- (h) Re S.J.:**
- 6.68 Mr A acted for this client in several matters, and fee notes were issued as follows, namely: three on 11 May 2013, all under reference JA130034, for £900, £250 and £300 respectively; one for £325 on 29 July 2013, under reference JA130047; and one on 26 August 2013, under reference JA130055, also for £325.
- 6.69 Whilst FS understood the work to be covered by ‘Advice and Assistance’, the spreadsheet indicates that they had no reference(s).
- 6.70 FS issued a reminder on 5 March 2014: they remarked that their records showed that the fees were covered by Legal Aid, and called upon the Respondent to provide the following details, namely: SLAB’s reference; the date when Legal Aid was granted; whether the account was current or complete; whether it was “*being prepared by solicitors*”; whether it was with the Respondent’s law accountants; and whether it had been lodged with SLAB.
- 6.71 FS issued a further reminder on 15 April 2014: having observed that the Respondent had not replied to their e-mail of 5 March 2014: they called upon him to “*confirm the current position on this account*” and to provide the Legal Aid reference.
- 6.72 FS e-mailed the Respondent again on 23 June 2014, remarking that “*no reply ha[d] been received to [their] e-mail of 15 April 2014*”, and calling upon him to “*confirm [the] current position as a matter of urgency*”.
- 6.73 In his e-mail of 10 November 2014 (3.50), the Respondent said that the matters were covered by ‘Advice and Assistance’, and saying that he would “*fee them shortly as they are due to time bar soon*”.
- 6.74 FS e-mailed the Respondent on 2 December 2014, attaching copies of the various fee notes relating to this client: and called upon him to “*confirm the position with*

*regards to these accounts and also provide the 'Advice and Assistance' details by return as we still await settlement of Counsel's fees".*

**(i) Re Su M.:**

- 6.75 Mr A acted for this client twice: fee notes were issued on 27 August 2011, for £450, under reference MO110150, and on 7 March 2013, for £350, under reference M0130040: whilst the 'Advice and Assistance' reference for the first matter was stated to be 1406873911, FS had no reference for the second matter.
- 6.76 FS wrote to the Respondent on 19 April 2013, under reference M0130040, calling upon him to provide SLAB's reference, and to say when SLAB had granted Legal Aid. Having issued a reminder on 3 October 2013, they wrote to him again on 8 November 2013, calling on him to *"give this matter [his] immediate attention"*.
- 6.77 They wrote to him again on 14 January 2014, re Mr A's fee note of 7 March 2013, noting *"that no reply or payment ha[d] been received"* to their previous correspondence, and calling upon him to reply as a matter of urgency.
- 6.78 FS e-mailed the Respondent on 10 February 2014, asking him to *"confirm by return to enable us to update our records"*.
- 6.79 The Respondent replied forthwith, advising that *"These fees are being sent to SLAB this week"*, whereupon Faculty Services asked him to provide SLAB's reference.
- 6.80 FS issued a further reminder on 24 March 2014, calling upon the Respondent to *"confirm the current position of this account and [to provide SLAB's] Reference Number to enable us to update our records"*.
- 6.81 They wrote again on 3 June 2014, observing that the Respondent had *"advised [...] on 10 February 2014 that this account was being sent to SLAB for payment, and [that Faculty Services had] on numerous occasions [...] requested a note of the Legal Aid Reference Number but unfortunately no reply has been*



*received*”: they called upon him to “*confirm if this account has been submitted to SLAB for payment and if so when payment was made*”.

6.82 When he e-mailed FS on 10 November 2014 (3.50), the Respondent said he would need to check the position: he said he suspected that “*this is another error on my part and if so I will pay it*”.

**(j) Re Sh M.:**

6.83 This matter involved advice given by Mr A relating “*to the possibility of pursuing an action of Judicial Review at the Court of Session in respect of the refusal of the Secretary of State for the Home Department to recognise that Mr. Sh M. ha[d] a right to reside in the United Kingdom in terms of European Union Law*”.

6.84 A fee note for £350 was issued on 9 September 2013, under reference M0130181, the ‘Advice and Assistance’ reference being, apparently, 3938939213.

6.85 A reminder was issued on 5 March 2014 and a further reminder on 15 April 2014.

6.86 FS sent a further reminder on 23 June 2014, calling upon the Respondent to make “*[a]n early reply, [.....] to enable us to update our records*”.

6.87 They e-mailed SLAB on 14 November 2014, remarking that “*[the] agents advised us on 13 October 2014 that they were submitting this account to SLAB for payment*”, and asking whether the account had been received: SLAB responded immediately, saying they had “*yet to receive an account for this reference*”.

6.88 FS then contacted the Respondent, remarking that he had told them “*that this account was being submitted*”, whereas he had failed to lodge it, and calling upon him to clarify the position immediately, which failing they would “*amend [their] records to ‘Non Legally Aided’ and pursue the outstanding fee*”.

6.89 FS e-mailed the Respondent on 5 December 2014, remarking that “*SLAB has confirmed that no account has yet been received for this account*”, and asking him to “*confirm if this account is still ongoing or, if complete, [to] confirm when [he would] be lodging [it] for payment*”.

**(k) Re St M.:**

6.90 Fee notes for Mr A were issued to the Respondent for this client on 24 February 2014, one for £450, the other for £210, each under reference MU140026: FS had no Legal Aid reference.

6.91 A letter was issued on 27 August 2014, in similar terms to that referred to in paragraph 6.69.

6.92 In his e-mail of 10 November 2014 (see para 6.50), the Respondent said he had “*no idea*” as to which client this account related: the following day, FS remarked that “*all the fees were attached to original e-mail – the information was on the fee note*”, and called upon him to “*confirm the position and Legal Aid details by return*”.

6.93 FS e-mailed reminders to the Respondent on 1 December 2014 and again on 15 December 2014.

6.94 The internal e-mail referred to in paragraph 3.53 above, also relates to this matter.

**(l) Re A.N.:**

6.95 Mr A undertook work on behalf of A.N. on several occasions, including acting as Junior re a Petition for Judicial Review on 5 September 2013, in respect of which a fee note for £350 was issued on 9 September 2013, under reference ND130005.

6.96 FS issued a letter on 24 September 2014 in terms similar to that described in paragraph 6.69.



- 6.97 In his e-mail of 10 November 2014 (see para 6.50), the Respondent informed FS that his account would “*be sent off shortly [as it] just finished this week*”.
- 6.98 FS issued a reminder on 28 January 2015.
- 6.99 On 23 November 2015, SLAB advised that Legal Aid had been refused re two applications made by A.N., and that an application had been abandoned in another instance: logically, one of these applications must relate to work set out in paragraph 6.95, from which it follows that no Legal Aid was in place re the matter from which this element of Mr A’s complaint arose.
- (m) Re K.S.:**
- 6.100 Mr A was instructed by the Respondent to review case papers and draft a Petition for judicial review of a decision by the Secretary of State to remove the client to Afghanistan, and a fee note for £450 was issued on 26 August 2013, under reference SH130102. FS did not know the Legal Aid reference.
- 6.101 FS wrote to the Respondent on 5 March 2014, in terms similar to the letter referred to in paragraph 6.69 above.
- 6.102 They e-mailed the Respondent on 7 May 2014, and a further reminder was sent on 18 June 2014, noting that he had not provided SLAB’s reference, and warning that FS intended to lodge a conduct complaint, unless he replied within fourteen days.
- 6.103 On 2 July 2014, FS e-mailed the Respondent once more, demanding that he reply no later than close of business on 4 July 2014, “*to avoid this complaint being issued*”.
- 6.104 The Respondent replied on 21 July 2014, claiming to have submitted an account submitted to SLAB, “*but [it] appears Counsel’s invoice [was] not attached to [the] file. [I] will contact SLAB to have [it] accepted outwith [the] time bar, and [it] should be OK. [I] will e-mail during [next] week to confirm [it] will be paid*”.

- 6.105 FS e-mailed the Respondent on 4 September 2014, remarking that they had heard nothing further from him, and calling upon him to “*confirm the current position, as we still await settlement*”: a further reminder was e-mailed to him on 18 September 2014.
- 6.106 The Respondent’s e-mail of 10 November 2014 (6.50) did not mention this account, and FS e-mailed him the following day, calling upon him to “*confirm the position and the Legal Aid details by return*”: a further reminder was sent on 1 December 2014.
- 6.107 The internal e-mail referred to in paragraph 6.53 above relates to this matter.
- 6.108 Aside from the limited responses set out above the Respondent not only failed to pay the fees due to Mr A he failed to respond to the reasonable requests made of him by FS.
- 6.109 As the date of this complaint Mr A/Faculty Services have not received payment of the fee notes referred to in paragraphs 6.47 to 6.107 above from the Respondent.

**FAILURE TO RESPOND TO THE LAW SOCIETY - Mr A - FACULTY SERVICES-CASES A and B**

- 6.110 The complaint remitted by the SLCC in relation to cases A and B above was intimated by the Complainers to the Respondent on 30 November 2015 and no response was received.
- 6.111. On 5 January 2016 as a response had not been received Notices in terms of S15(2)(i)(i) of the Respondents (Scotland) Act 1980 and S 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 were sent by the Complainers to the Respondent by recorded delivery. The Notices asked for a response to the complaint and the Respondent’s papers. He was advised that a further complaint would be raised against him if he failed to respond. A response to these Notices was not received.



The 'Track and Trace' service report from the Post Office shows that a person under the name of Cram signed for both letters on 7 January 2016.

- 6.112 On 4 February 2016 a Notice under Section 15(2) (i)(i) of the Respondents (Scotland) Act 1980 was sent to the Respondent by recorded delivery confirming that the he would be required to provide 6 weeks' notice of his intention to apply for a practising certificate. A response to this Notice was not received.

The 'Track and Trace' service report from the Post Office shows that a person under the name of Cram signed for the letter on 6 February 2016.

- 6.113 On 14 April 2016 a new issue was intimated to the Respondent in respect of a failure to respond to the Complainers correspondence. No response was received to this letter.

**FAILURE TO RESPOND TO THE LAW SOCIETY - MR A - FACULTY SERVICES - SECTION C CASES**

- 6.114 A Complaints Investigator wrote to the solicitor on 12 October 2016, by Recorded Delivery, intimating this further FS complaint on behalf of Mr A.
- 6.115 She called upon him to write to her within twenty-one days from the date of her letter: setting out his position in respect of the complaint; providing his business files and ledger cards relative to the matter/s from which the complaint arose, or alternatively confirming their current location; and providing any additional information which he consider to be relevant.
- 6.116 The Complaints Investigator warned the solicitor that, if the Society did not receive a response within the twenty-one day period, no reminder would be sent, and that the Society would issue Notices in terms of Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 and Section 15 of the Solicitors (Scotland) Act 1980, and that the Society might also intimate a further conduct complaint, in respect of his "*failure or delay [.....] in responding*".

- 6.117 A 'Track and Trace' Certificate issued by the Post Office, confirm that the Complainer's letter was delivered on 14 October 2016.
- 6.118 The Complainer's file contains no response from the Respondent and, on 15 November 2016, it issued Section 15(1) and Section 48 Notices, both of which were sent to the Respondent at his home address, by Recorded Delivery.
- 6.119 That letter confirmed that, if he failed to respond, the Complainer would "*be invited to submit to the SLCC a further conduct complaint in relation to [his] failure to respond to the Law Society, which failing the Society [itself would] do so ex proprio motu*".
- 6.120 The Complainer's file contains a Recorded Delivery slip, along with a 'Track and Trace' Certificate issued by the Post Office, which confirm that the letters were sent on 15 November 2016 and delivered on 16 November 2016.
- 6.121 The file contains no response from the Respondent and the Society issued a Section 15(2) Notice dated 19 December 2016, which was sent to the Respondent at his home address, by Recorded Delivery.
- 6.122 The Complainer's file contains a Recorded Delivery slip dated 20 December 2016.
- 6.123 However, an internal e-mail dated 17 January 2017 indicates that the Section 15(2) letter had not been delivered and/or collected: "*the Royal Mail website has no delivery information available for [it]*."
- 6.124 Therefore by letter 10 February 2017, the Respondent was sent an extract from the minute of meeting of the Complaints Sub Committee held on 2 February 2017, when the Sub Committee had decided, *inter alia*, that a complaint should be made to the SLCC in respect of his alleged failure to respond to correspondence in connection with Mr A's complaint set out in section C above.
- 6.125 The complaint was sent Recorded Delivery on 2 August 2017: although a slip confirms that the letter was duly sent, and a 'Track and Trace' Notice bears that



it was delivered on 3 August 2017, the letter was returned to the Complainer several weeks later.

- 6.126 The Complaints Investigator also e-mailed the Complainer's intimation letter to the Respondent on 7 August 2017, and the Complainers file contains a delivery receipt in that regard.
- 6.127 The Complaints Investigator re-intimated the complaint on 4 September 2017, by first class post.
- 6.128 On 6 September 2017 the Respondent telephoned the present Complainers, and *"advis[ed] that he does not intend to provide a written response to [Mr. A's] complaint[.], [.....] he is of the view that he just wants it over and done with as quickly as possible and did not consider there to be any merit in responding [.....]. J.C. considered it inevitable that he would be struck off and wanted to know if there was a way to do this without the complaints investigation, etc. [.....] He advised that he had no intention of returning to the profession"*.
- 6.129 In response, the Complaints Investigator *"confirmed that, as an enrolled Respondent, J.C. was still expected to respond to [any] conduct complaints raised against him"*: she advised that the complaint was still at the investigation stage, and that no determination had been made regarding its outcome, whereafter she explained the options available to the Professional Conduct Sub Committee, and remarked that *"it was premature to be discussing the Respondent being struck off as that was a decision which could only be reached by the Scottish Solicitors' Discipline Tribunal"*, in the event that the complaint was referred to the Tribunal.

The Respondent has failed to engage in any meaningful way with the Complainer.

**FACULTY SERVICES - Mr E - FAILURE TO RESPOND/MAKE PAYMENT TO FS**

- 6.130 A spreadsheet prepared on behalf of Mr E indicates that the Respondent instructed Mr. E twice in relation to his client Mr. A.A., namely, to *'compil[e] a*

*Petition for Judicial Review*’ and to ‘*Prepar[e], attend[.....] and conduct [a] Motion of Interim Suspension of Removal*’: fee notes were issued on 8 September 2014, in the sums of £350 and £460 respectively. The spreadsheet is produced and for the sake of brevity repeated within this complaint.

- 6.131 In response to an enquiry from FS, the Respondent sent an e-mail on 10 November 2014 advising that “*Mr. A.A. went to SLAB today*”.
- 6.132 FS then wrote to the Respondent on 2 December 2014, remarking that SLAB had “*advised [.....] that they have not received an account [in relation to the] action*”, and calling upon him to check his records and confirm the position immediately.
- 6.133 FS wrote to the Respondent again on 28 January 2015, requiring him to “*advise [them] of the current position*” in relation to the outstanding accounts. They observed that their records indicated that the fees were covered by Legal Aid, and asked him to provide certain information, namely: whether the accounts were current or complete; whether he was preparing them; whether they were “*with the Law Accountants*”; whether they were with SLAB; the relative Legal Aid Reference Numbers; and the dates when the Legal Aid Certificates had been issued.
- 6.134 Mr. E e-mailed Faculty Services on 16 February 2015, observing that the fees due to him had not been paid as yet: he remarked that the Respondent had “*made no attempt to offer at least something*”.
- 6.135 A FS internal e-mail sent on 8 April 2015 indicates “*that [....] a telephone call [had been made] to Mr Cram and that [...] a reply*” was awaited.
- 6.136 Mr. E’s Clerk e-mailed FS on 30 June 2015, confirming that Mr E had not received the moneys due to him, and requesting that his concerns be included in any complaint to be made to the SLCC.
- 6.137 Deleted.



- 6.138 SLAB wrote to FS on 9 October 2015 indicating that, having assessed one of the accounts relative to Mr. E's work on behalf of Mr. A.A., namely, the invoice for £460, they proposed to make no payment in respect of the larger of the two outstanding fees. Handwritten notes on the relative fee note, evidently made by SLAB's assessor, indicate that, although the relative application had contained the requisite statutory statement, no applicant's statement had been provided.
- 6.139 On 11 November 2015, FS wrote to the Complainer's Client Protection Fund (CPF), observing that a Judicial Factor was to be appointed. On 23 December 2015, the Complainer wrote to FS, attaching a claim form.
- 6.140 At the date of this complaint no payments have been made by the Complainer's CPF to Mr E or FS nor has Mr E received payment from SLAB or the Respondent.

#### **FAILURE TO RESPOND TO THE LAW SOCIETY-MR E**

- 6.141 A Complaints Investigator of the present Complainer wrote to the Respondent on 12 October 2016, by Recorded Delivery, intimating Mr. E's complaint. She enclosed a summary of complaint, along with copies of the other papers which the Complainer had received in connection with the matter and an information leaflet which described the Complainer's duties, and the procedure which it follows, in respect of the investigation of conduct complaints.
- 6.142 She explained that the Complainer was obliged to investigate eligible complaints relating to the conduct of enrolled solicitors, and advised that he was under a professional obligation to respond.
- 6.143 She called upon him to write to her within twenty-one days from the date of her letter: setting out his position in respect of the complaint; providing his business files and ledger cards relative to the matter/s from which the complaint arose, or alternatively confirming their current location; and providing any additional information which he considered to be relevant.

- 6.144 The Complaints Investigator warned the Respondent that, if the present Complainer did not receive a response within the twenty-one day period, no reminder would be sent, and it would issue Notices in terms of Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 and Section 15 of the Solicitors (Scotland) Act 1980, and that it might also intimate a further conduct complaint, in respect of his “*failure or delay [.....] in responding*”.
- 6.145 A Recorded Delivery slip, which confirms that the intimation letter was issued on 12 October 2016, and a ‘Track and Trace’ Certificate issued by the Post Office, confirm that the letter was delivered on 14 October 2016, and signed for by the Respondent.
- 6.146 There was no response from the Respondent and, on 15 November 2016, the present complainer issued Section 15(2)(i)(i) and Section 48 Notices, both of which were sent by Recorded Delivery. It required a response within 21 days.
- 6.147 The Respondent was warned that, if he did not reply within the time given, he might “*require to give at least six weeks' notice to the Council of [his] intention to make application for a Practising Certificate for the year commencing 1 November 2017 and that the Council has a discretion to withhold a Certificate or to grant it on restricted terms*”.
- 6.148 The Respondent was also called upon to deliver the documents to which the complaint related, “*and/or a written explanation of the matters to which the complaint relates*” to the present complainer, within twenty-one days of the date of the Notice.
- 6.149 The present complainer’s file contains a Recorded Delivery slip, along with ‘Track and Trace’ Certificates issued by the Post Office, which confirm that the letters were sent on 15 November 2016 and delivered on 16 November 2016.
- 6.150 Said file contains no response from the Respondent and so he was then issued with a Section 15(2) Notice dated 19 December 2016. It was sent to the Respondent at his home address, by Recorded Delivery.



- 6.151 The present complainer's file contains a Recorded Delivery slip dated 20 December 2016.
- 6.152 However, an internal e-mail dated 17 January 2017 indicated that the Section 15(2) letter had not been delivered and/or collected: "*the Royal Mail website has no delivery information available for [it].*"
- 6.153 It had been made clear to the Respondent in the above correspondence that a further complaint may follow if he failed to respond. A further complaint was then sent by letter dated 7 August 2017 (sent 9 August) by Recorded Delivery . It was also e-mailed to him. Royal Mail was unable to deliver the principal letter, and the Complaints Investigator re-intimated the complaint on 4 September 2017, by first class post.
- 6.154 An attendance note records that the Respondent telephoned the present complainers on 6 September 2017, and that he "*confirmed he has received the correspondence issued by the Complaints Investigator on 4 September 2017 intimating conduct complaint by [Mr E]*".
- 6.155 The Respondent "*advis[ed] that he does not intend to provide a written response to [Mr. E's] complaint[.], [.....] he is of the view that he just wants it over and done with as quickly as possible and did not consider there to be any merit in responding [.....]. J.C. considered it inevitable that he would be struck off and wanted to know if there was a way to do this without the complaints investigation, etc. [.....] He advised that he had no intention of returning to the profession*".
- 6.156 In response, the Complaints Investigator "*confirmed that, as an enrolled Respondent, J.C. was still expected to respond to [any] conduct complaints raised against him*": she advised that the complaint was still at the investigation stage, and that no determination had been made regarding its outcome, explained the options available to the Professional Conduct Sub Committee, and remarked that "*it was premature to be discussing the Respondent being struck off as that was a decision which could only be reached by the Scottish Solicitors' Discipline Tribunal*", in the event that the complaint was referred to the Tribunal.

- 6.157 As at the date of this complaint the Respondent has not provided any meaningful response to the Complainers.

**MS F – FAILURE/DELAY IN PAYMENT OF OUTSTANDING FEES -  
LAW SOCIETY**

- 6.158 The Respondent instructed Ms F to appear at a Procedural First Hearing before Lord X on 25 April 2014, in relation to a case raised by Mr. K.H.A. A fee note in the sum of £60 was then issued under Legal Aid Reference (or supposed reference) CI/C255690214.
- 6.159 FS have produced a timeline which confirms the preceding paragraph and also indicates that Ms F also appeared on Mr. K.H.A.’s behalf at a Hearing which took place on 25 September 2014. A further fee note in the sum of £60 was then issued for this work.
- 6.160 In response to a query made by FS, the Respondent e-mailed their Ms. C.G. on 10 November 2014 , advising, *inter alia*, that all of the work on Mr. K.H.A.’s behalf was “*still ongoing but concluding soon*”.
- 6.161 On 27 January 2015, FS e-mailed the Respondent, enclosing various fee notes, “*along with statements*”, relating *inter alia* to Ms. F’s appearances. He was asked to clarify the current position in relation to each of the outstanding fees, “*and if not already noted please provide the Advice and Assistance details*”.
- 6.162 On 16 February 2015, FS e-mailed Ms. F, remarking that they had received no response from the Respondent, and asking if he had any further information, as FS was “*unable to lodge same with The Scottish Legal Aid Board*” (hereafter, ‘SLAB’). It was observed that, “*despite many Items of correspondence, final reminders and telephone calls to Mr. Cram, we have received no response*” in relation to the outstanding fee notes, and suggested that a complaint be made to the SLCC.
- 6.163 Deleted.



- 6.164 SLAB e-mailed FS again on 9 March 2015, “*advising that the Legal Aid reference CI/C255690214 is a dud*”, but that it could “*deal with fee note 2*”. It could therefore not pay Counsel’s first fee note but after that Ms F’s second fee note was paid.
- 6.165 FS e-mailed Ms F on 15 April 2015, asking whether she wished to abate the outstanding amount, “*or does she want us to pursue a complaint?*”. Ms F requested further information. Thereafter, Mr. A’s Deputy Clerk contacted both FS and Ms. F, “*advising Mr. A has a lot of outstanding fees from Mr. Cram [and] Clerks are trying to deal with it at their end*”, and that although they “*have been in touch with Mr. Cram [they are] not getting very far*”.
- 6.166 The Deputy Clerk e-mailed Ms. F on 1 July 2015, “*advising that [Mr A and Mr E], advocates, now intend to pursue a complaint*”, and asking if she wished to do so.
- 6.167 On 7 July 2015, Ms. F confirmed that she wished to be party to the prospective complaint.
- 6.168 On 31 December 2015, Ms. F confirmed that she wished to raise a conduct complaint with the SLCC. That occurred on 18 January 2016. It alleged that the Respondent had failed to pay fees due to Ms F, including the fee still due to Ms F, in respect of which interest (then standing at £8.10) and compensation of £40 were owed, in terms of the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.169 On 12 December 2016 FS e-mailed the present complainer, advising “*that, through recent communication with the Judicial Factor, we have been able to lodge the above fee with SLAB and they were able to pay this fee today*”.
- 6.170 On 15 December 2016, FS advised that they had decided to withdraw Ms. F’s complaint, because: “*we have multiple complaints against this agent*”; the amount was small in relation to the overall sum allegedly outstanding; and they

had now been able to recover the fee due from SLAB, “*through the assistance of the Judicial Factor*”.

- 6.171 At its meeting of 2 February 2017, the present complainer’s Complaints Sub Committee determined that the Complainers ought to raise a conduct complaint with the SLCC, in relation to the Respondent’s failure and/or delay to pay Ms. F’s fees. By letter of 10 February 2017, the Respondent was sent an extract from the minute of meeting of the Complaints Sub Committee.
- 6.172 An attendance note records that the Complaints Investigator spoke with the Respondent on 6 September 2017, and that he advised her that he did not intend to provide a written response to the Society’s complaint: “*he is of the view that he just wants it over and done with as quickly as possible and did not consider there to be any merit in responding to the complaint[.]. J.C. considered it inevitable that he would be struck off and wanted to know if there was a way to do this without the complaints investigation [proceeding], etc. [.....] He advised that he had no intention of returning to practice*”.
- 6.173 As at the date of this complaint the Respondent has not provided any meaningful response to the Complainers.

#### **COUNSELS FEES – SANCTIONS IMPOSED BY THE FACULTY OF ADVOCATES**

- 6.174 By letter of 1 July 2015 Faculty Services advised the Respondent that if payment was not made sanctions may be imposed by the Faculty of Advocates and a complaint lodged with the SLCC. A spreadsheet relating to funds required and fee notes was enclosed. A copy of the letter was sent by email to the Respondent on the same date. In the email Faculty Services stated:

*‘It is unfortunate after sending various letters/emails advising you that this action may be taken, that the required responses have not been received for each individual case. This has now resulted in the majority of cases outstanding on your account falling in to this category’.*



No response was received to either.

- 6.175 By email of 8 July 2015 from Faculty Services the Respondent was requested to make payment in full or provide a response failing which sanctions would follow. He did neither.
- 6.176 By letter of 17 July 2015 the Dean of the Faculty of Advocates advised the Respondent that unless settlement of outstanding fees was received within one month he would advertise within the practising membership that there had been a default in payment of fees and thereafter members would be permitted to accept instructions only in legal aid cases or if accompanied by payment of the appropriate fee. Statements relating to the cases narrated in this complaint were attached to the letter. No response was received.
- 6.177 By email of 13 August 2015 from Faculty Services to the Respondent reference was made to earlier correspondence and a response was sought in respect of 'critically outstanding fee notes'. No response was received.
- 6.178 On 18 August 2015 the Dean of the Faculty of Advocates advised all practising members of faculty that any instructions which came directly or indirectly from the practice unit or its partners may be accepted only in legal aid cases or if accompanied by payment of an appropriate fee. The Dean of Faculty also advised the Respondent and the professional practice department of the present Complainer that sanctions had been imposed against the practice unit in terms of the Scheme for the Accounting For and Recovery of Counsel's Fees.

**FAILURE TO COOPERATE WITH THE LAW SOCIETY'S  
FINANCIAL COMPLIANCE DEPARTMENT/GUARANTEE FUND  
SUB-COMMITTEE.**

- 6.179 On or around June 2015 the Respondent contacted the Complainer's Registrar's department in connection with the cessation of the firm. The Registrar's department passed the Respondent's query to the Complainer's Financial Compliance department (FCD) on 11 June 2015, asking that he be contacted to

discuss whether he could close the firm, yet maintain a bank account for payments due from the Scottish Legal Aid Board.

- 6.180 On or around 12 June 2015 Ms CB of the Complainer's FCD contacted the Respondent by telephone to discuss his situation. Ms CB's emailed note of the conversation recorded that the Respondent was not in a position to discuss the matter with her then as he was on holiday, and he was busy on "*Monday*" therefore she was unable to collect the firm's books, but he had advised her that he would post his books to the Complainer.
- 6.181 On 22 June 2015 Ms NC of the Complainer's FCD emailed the Respondent. She noted that an inspection of the firm's books and records by the FCD had been due to take place on 8 June 2015, but that his books had still not been received. Ms NC requested that he deliver his books to the Complainer by 25 June 2015 to enable the inspection to take place.
- 6.182 On 1 July 2015 Ms NC emailed Ms CB to advise that she had tried to telephone the Respondent's land line "*last week*" but she had not received a response to her call, nor to her email. Ms NC advised that she had telephoned the Respondent on his mobile telephone on 1 July 2015, leaving a message asking him to call back to discuss the inspection of the firm's books and records.
- 6.183 On 3 July 2015 Ms CB again emailed Ms NC to advise that she had not heard from the Respondent so she had telephoned him once again and left a message on his mobile telephone requesting he call back.
- 6.184 On 7 July 2015 Ms NC emailed Ms TH, the departmental manager, advising that the firm's books had been due to be inspected at the Complainer's offices on 8 June 2015, and notwithstanding subsequent contact with the Respondent he had failed to deliver the firm's books to the Complainers so the inspection had not taken place. It was noted that Ms NC and Ms CB had left 4 messages for him between them and he had been emailed but no response had been received. Ms NC noted that he had contacted the Registrar's department regarding ceasing practice and did not have a client bank account. She enquired as to whether they were to continue to insist for sight of his books.



- 6.185 Later on 7 July 2015 Ms NC emailed the Respondent, noting the various attempts which had been made to contact him and obtain access to the firm's books and records. It was noted that Ms NC telephoned the Respondent's land line on 22 June 2015 but was unable to leave a message. Further she and Ms CB had telephoned the Respondent's mobile number on 1, 3 and 7 July 2015, leaving messages for him. The Respondent was requested to contact Ms NC to discuss and, in the event of his failure to do so, the matter was to be placed before the Complainer's Guarantee Fund Sub Committee (GFSC) in August 2015.
- 6.186 On 16 July 2015 the Respondent emailed the Complainer's Registrar's department in connection with the closure of the firm. He advised that he wished to cease practice on 17 July 2015 and have his name removed from the roll of Solicitors.
- 6.187 Ms LK of the Registrar's department emailed the Respondent on 28 July 2015, informing him that in order to cease practice he had to complete a form "PUI4"; produce an Accounts Certificate within one month of the firm's cessation; complete a letter to Marsh, the Master Policy Brokers, to enable it to deal with routine insurance claims; provide confirmation that arrangements had been put in place to maintain the firm's accounting records in line with the provisions of the Accounts Rules; and complete a form to have his name removed from the roll of solicitors. Ms LK attached the relevant documentation to her email.
- 6.188 In the meantime an internal email dated 21 July 2015 between the FCD's staff moved consideration of the situation from the GFSC's August 2015 agenda to its September meeting.
- 6.189 On 26 August 2015 Ms TH emailed the Respondent, noting that the matter was to be considered at the meeting of the GFSC on 3 September 2016. Ms TH provided the Respondent with a note of the information which was to be provided to the GFSC and sought his comments on its terms by close of business 31 August 2015. The note recommended that the Respondent be invited to attend an interview in terms of Section 40 of the Respondents (Scotland) Act

1980 to permit the discussion of *inter alia* his failure to submit his books and records for inspection by the FCD.

- 6.190 On 3 September 2015 the Complainer's GFSC considered this matter at a meeting. It decided to invite the Respondent for interview on 17 September 2015 so he could explain why his practising certificate ought not to be withdrawn.
- 6.191 On 16 September 2015 the Respondent telephoned the Complainer's Mr GS, solicitor in the Complainer's FCD. Mr GS's attendance note of the telephone conversation recorded that the Respondent did not intend to attend the interview.
- 6.192 The GFSC prepared a note of the interview scheduled for 17 September 2015 at which it was noted that the Respondent was neither present nor represented. Notwithstanding the Solicitor's absence the GFSC's Panel gave consideration to the circumstances of the situation. The Panel was concerned *inter alia* that the Respondent had failed to wind up the firm correctly. The Panel recommended that the Respondent's practising certificate be withdrawn in terms of Section 40 of the Solicitors (Scotland) Act 1980 and that a complaint be referred to the SLCC in respect of his failure to co-operate with the Complainer in breach of Rule B6.18.7 of the 2011 Practice Rules.
- 6.193 On 1 October 2015 further consideration was given to the matter by the GFSC. At this meeting it was agreed that the Respondent's practising certificate was to be withdrawn in terms of Section 40 of the Solicitors (Scotland) Act 1980 and that the appointment of a Judicial Factor over the Respondent and the firm was to be sought in terms of Section 41 of the 1980 Act.
- 6.194 The Respondent's practising certificate was duly suspended in terms of section 40 of the Solicitors (Scotland) Act 1980 and by letter 8 October 2015 the Respondent was formally advised of this.
- 6.195 On 1 December 2015 a complaint form was submitted by the Complainers to the SLCC.



- 6.196 On 1 February 2016 the SLCC returned the complaint to the Complainers for investigation.
- 6.197 On 10 February 2016 the complaint was intimated to the Respondent.
- 6.198 No response to the intimation of the complaint was received from the Respondent. Therefore on 9 March 2016 Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 were intimated to the Respondent. Notices exist to compel a response from solicitors against whom complaints have been intimated in order to ensure that the Complainer is able to progress the investigation of complaints as expeditiously as possible. The Notices were sent by Recorded Delivery post. There was no response to the Notices and both have been returned to the Complainer marked as “not called for”. The Section 15 Notice was returned to the Complainer on 4 May 2016. The Section 48 Notice was returned to the Complainer on 19 May 2016.
- 6.199 On 30 March 2016 the second part of the Notice in terms of Section 15(2)(i)(i) was sent via Recorded Delivery post to the Respondent.
- 6.200 As at the date of this complaint no response has been received from the Respondent.

#### **FAILURE TO RESPOND TO THE LAW SOCIETY RE FCD/GFSC**

- 6.201 On 7 April 2016 the Respondent’s failure to respond to the Complainer’s correspondence in the preceding section was considered by the Complainer’s Complaints Sub Committee. It determined to raise a further complaint in respect of this issue and accordingly the matter was duly referred to the SLCC in order that it might assess the eligibility of the issue.
- 6.202 On 2 June 2016 the SLCC returned the additional issue of complaint to the Complainer.

6.203 On 6 June 2016 the further complaint was intimated to the Respondent in respect of his failure to respond to the Complainer's previous correspondence on this matter. No response has been received from the Respondent and it has not been returned as undelivered.

7. Having given careful consideration to the above facts and the Complainers' submissions, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:-

- (a) From 13 October 2014 to the date of this complaint he failed and/ or delayed unreasonably to respond to and cooperate with the reasonable enquiries of any or all of FS/Mr A/Mr E/Ms F/The Dean of the Faculty of Advocates and the Complainer all as narrated above both by way of returning telephone calls and/or responding to correspondence in relation to payment of outstanding fees;
- (b) From 13 October 2014 to the date of this complaint he has delayed unreasonably and/or failed to procure payment of outstanding fees due to any or all of Mr A; Mr E; Ms F or FS on their behalf as was his professional obligation;
- (c) Between November 2014 and the date of this complaint, having been advised that SLAB had indicated that some of Mr A's fees had been paid to him, he failed to make payment of those fees and has unreasonably delayed and failed to provide information to FS to enable them to clarify the issue of payment by SLAB of two outstanding fees where the position is not known;
- (d) He has failed, or at least delayed unduly, to respond to regulatory correspondence issued to him by the Complainer in connection with the complaints against him by FS on behalf of Mr A, Advocate or in otherwise co-operating with the Complainer's investigation of any or all of the complaints, despite Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 having been issued to him calling upon him to do so;
- (e) He has failed, or at least delayed unduly, to respond to regulatory correspondence issued to him by the Complainer in connection with the complaint against him by FS on behalf of Mr E, Advocate or in otherwise co-operating with the Complainer's



investigation of the complaint, despite Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 having been issued to him calling upon him to do so.

- (f) He has failed, or at least delayed unduly, to respond to regulatory correspondence issued to him by the Complainer in connection with the complaint against him by FS on behalf of Ms F, Advocate or in otherwise co-operating with the Complainer's investigation of the complaint, despite Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 having been issued to him calling upon him to do so;
- (g) Further, the Respondent has failed to respond to the intimation of the further complaints as intimated on 14 April 2016 and/or 6 June 2016 and/or 12 October 2016 and/or 7 August 2017 arising from his failure to respond to the Complainer's correspondence set out above in relation to Mr A; the complainers FCD and Mr E.
- (h) Between June 2015 and October 2015 he failed to cooperate with the Complainer's Financial Compliance department in response to its numerous requests for access to the firm's books and records.

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

Edinburgh 17 September 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Jeremy James Cram, a sole practitioner formerly carrying on business as Jeremy Cram & Co. (formerly AJ Cram & Co.), 7 Castle View, Newmains; Find the Respondent guilty of professional misconduct in respect that (a) From 13 October 2014 to the date of this complaint he failed and/ or delayed unreasonably to respond to and cooperate with the reasonable enquiries of any or all of FS/Mr A/Mr E/Ms F/The Dean of the Faculty of Advocates and the Complainer all as narrated above both by way of returning telephone calls and/or responding to correspondence in relation to payment of outstanding fees; (b) From 13 October 2014 to the date of this complaint he has delayed unreasonably and/or failed to procure payment of outstanding fees due to any or all of Mr A; Mr E; Ms F or FS on their behalf as was his professional

obligation; (c) Between November 2014 and the date of this complaint, having been advised that SLAB had indicated that some of Mr A's fees had been paid to him, he failed to make payment of those fees and has unreasonably delayed and failed to provide information to FS to enable them to clarify the issue of payment by SLAB of two outstanding fees where the position is not known; (d) He has failed, or at least delayed unduly, to respond to regulatory correspondence issued to him by the Complainer in connection with the complaints against him by FS on behalf of Mr A, Advocate or in otherwise co-operating with the Complainer's investigation of any or all of the complaints, despite Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 having been issued to him calling upon him to do so; (e) He has failed, or at least delayed unduly, to respond to regulatory correspondence issued to him by the Complainer in connection with the complaint against him by FS on behalf of Mr E, Advocate or in otherwise co-operating with the Complainer's investigation of the complaint, despite Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 having been issued to him calling upon him to do so; (f) He has failed, or at least delayed unduly, to respond to regulatory correspondence issued to him by the Complainer in connection with the complaint against him by FS on behalf of Ms F, Advocate or in otherwise co-operating with the Complainer's investigation of the complaint, despite Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 having been issued to him calling upon him to do so; (g) He failed to respond to the intimation of the further complaints as intimated on 14 April 2016 and/or 6 June 2016 and/or 12 October 2016 and/or 7 August 2017 arising from his failure to respond to the Complainer's correspondence set out above in relation to Mr A; the complainers FCD and Mr E; (h) Between June 2015 and October 2015 he failed to cooperate with the Complainer's Financial Compliance department in response to its numerous requests for access to the firm's books and record; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session



on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person; and Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office.

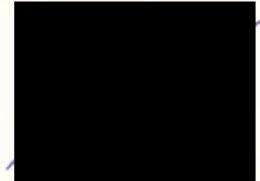
**(signed)**

**Kenneth Paterson**

**Vice Chairman**

9. 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 *3 OCTOBER 2018*.

**IN THE NAME OF THE TRIBUNAL**



**Kenneth Paterson**

**Vice Chairman**



**NOTE**

At the hearing on 17 September 2018, the Tribunal had before it the Complaint as amended, a Schedule of Documents for the Complainers numbered 1-181, a List of Witnesses for the Complainers and three signed Affidavits by the Complainers' witnesses.

At the hearing on 17 September 2018, the Fiscal made a motion in terms of Rule 14(4) of the Tribunal Rules 2008 for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Fiscal provided information that she had attempted to correspond with the Respondent using the email address he had most recently provided to the Complainers. All her emails had been delivered but she had not received any read receipts.

The Tribunal heard evidence on oath from the Clerk regarding service of the Complaint and the Notice of Hearing. Service of the Notice of Hearing had been effected on 23 May 2018 by Royal Mail "Signed For" delivery at the address on the Complaint. The Tribunal considered 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 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 his account of events. However, he had been given ample notice of the date and there was no reason to be confident that he would attend on another occasion if the hearing were adjourned. The Tribunal also had regard to the fact that according to the Productions, the Respondent had telephoned the Complainers in September 2017 advising that he did not intend to provide a written response to the Complaint and that he wanted the matter dealt with as quickly as possible. He considered it inevitable that he would struck off and wanted to know if there was a way to do this without the complaints investigation. He had no intention of returning to the profession. It seemed likely therefore that he had chosen not to attend the Tribunal hearing.

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. It was in the public interest that the matter was adjudicated upon without delay. In these circumstances the balance lay in favour of proceeding in the Respondent's absence. Therefore, the Tribunal granted the Fiscal's motion to proceed.

The Tribunal noted that the Fiscal had lodged an amended Complaint and confirmed with her that the amended Complaint had been intimated to the Respondent. She confirmed that the Complaint as



amended, the List of Witnesses, the Affidavits and the Productions had all been intimated to the Respondent. The Tribunal allowed all Affidavits to be received.

### **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal submitted that the Affidavits spoke for themselves. These Affidavits were based on the Complaint and documents before the Tribunal. There is a professional obligation on a solicitor to meet the fees of Counsel he instructs. This obligation arises whether or not the client is in receipt of legal aid. In support of these assertions, she referred the Tribunal to Production 2, the accounting and recovery of Counsel's fees scheme 2008. The Fiscal noted that the Respondent was the nominated solicitor. Therefore, he was the only one who could lodge accounts and the only one who would be paid by the Scottish Legal Aid Board.

The Fiscal submitted that the Respondent had instructed three different advocates and then failed to pay them. He had provided excuses but had taken no positive action. In each case he either took the funds given to him by the Scottish Legal Aid Board to pay Counsel's fees or he instructed Counsel without legal aid cover in place and then failed to pay the fee himself. The Fiscal noted that the Respondent admitted in the emails contained within the productions that he had made mistakes and would be liable for some of these fees. The Fiscal referred the Tribunal to Production 52 as an example of an email where the Respondent responded to queries regarding the accounts. In that email, the Respondent acknowledged that some cases were still ongoing and some were still with the SLAB. He admitted he had made mistakes. However, he did not say when he would make payment.

The Fiscal noted the huge efforts taken to get the Respondent to engage with Faculty Services and with the Complainers. This had taken a significant amount of time and effort. The Fiscal referred to paragraph 55 of the Complaint which was an email dated 19 January 2015 from the data operations department at Faculty Services Limited. It is clear from this email that Faculty Services had had enough. A lot of time and money had been spent on credit control. Mr A, Advocate, remained out of pocket. The Fiscal took the Tribunal through the terms of the Complaint with regard to the other two Advocates who had not been paid. The Fiscal referred to paragraphs 3.174 and 3.176 of the Complaint which detailed letters from the Dean of Faculty. The Dean wrote to the Respondent indicating that unless settlement of outstanding fees was received within the one month he would advertise within the practising membership that there had been a default in payment of fees and thereafter members would be permitted to accept instructions only in legal aid cases or if accompanied by payment of the appropriate fee. The Respondent



failed to respond to this letter. This, she said, demonstrated the Respondent's complete lack of engagement with other professionals. These letters should have provoked a response.

The Fiscal went on to describe the Respondent's lack of engagement with the Financial Compliance Department and the Guarantee Fund Sub Committee. She referred the Tribunal to paragraphs 3.179 to 3.203 of the Complaint and Productions 158 to 181. She referred to paragraph 3.128 of the Complaint as being indicative of the Respondent's attitude towards his regulator. That paragraph referred to a telephone call between the Respondent and a member of the Complainers' staff which took place on 6 September 2017. In that telephone call the Respondent confirmed the email address to be used for correspondence. This was the email address the Fiscal had used for her correspondence to the Respondent. Also during that telephone call, the Respondent indicated that he did not intend to make a written response to the complaints against him. It was noted that the Respondent considered it inevitable that he would be struck off and wanted to know if there was a way to do this without the complaints investigation. He advised that he had no intention of returning to the profession. He failed to cooperate with the complaints process.

The Fiscal submitted that singly and *in cumulo* the averments of fact amounted to professional misconduct. The Respondent had been asked repeatedly to cooperate and indicated that he did not intend to engage in the process. He provided no reason for his failure to comply with his professional obligations. He had had no regard to the work of Faculty Services and the Complainers. Their investigations will run to many thousands of pounds. He showed a lack of care about the non-payment of professionals he chose to instruct. He failed to cooperate with the Complainers.

The Fiscal noted that the Judicial Factor had approved £7,380 to be paid to the Advocates concerned from the Complainers' Client Protection Fund. SLAB had made payments to the Respondent for advocates' fees but he had failed to use the money for this purpose. She referred to Production 53, page 6 which is the Minute of the Client Protection Sub Committee meeting of 8 December 2016. It was noted that the Judicial Factor had said that she was satisfied that the Respondent received monies from SLAB in respect of outlays due to third parties but failed to settle them. The Judicial Factor said, "*In doing so he has stolen money provided by SLAB for other parties.*"

## **DECISION**

The Tribunal considered carefully the facts contained in the amended Complaint and the three Affidavits. The Tribunal was satisfied beyond reasonable doubt that the Respondent had behaved in the manner set



out in the Complaint. It is long established that upon a solicitor instructing Counsel, that solicitor accepts personal responsibility for that Counsel's fees. This responsibility occurs whether or not the client is legally aided. Solicitors also have a duty to communicate effectively with others and to act honestly. They must cooperate with the Law Society as their regulatory body and in particular, provide access to their books and records.

On many occasions and for a long period, the Respondent neglected his professional duties. He failed to communicate with Faculty Services Limited to enable them to clarify the issue of payment by SLAB. He failed to pay the fees he was responsible for and which, in some cases, had been paid to him by SLAB. He failed to cooperate with his regulator by failing to respond to regulatory correspondence issued to him by the Complainers. He also failed to cooperate with the Complainers' Financial Compliance Department in response to its numerous quests for access to the firm's books and records.

Failure to respond to the Complainers hampers the Law Society in performance of its statutory duty and brings the profession into disrepute. Failure to pay Counsels' fees also brings the profession into disrepute. It was clear that on at least some occasions the SLAB had provided the Respondent with monies for onward transmission to the advocates concerned. The Respondent did not pass this money on. This conduct was in breach of Rule B1.2 of the 2011 Rules which states that "*Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. In particular they must not behave whether in a professional capacity or otherwise in a way which is fraudulent or deceitful.*" The Respondent's conduct in retaining monies paid to him by SLAB which were due to Counsel was dishonest and his refusal to provide his books and records to the Complainers was in breach of his duty to act with integrity.

Having considered the whole circumstances and the Respondent's degree of culpability, the Tribunal was of the view that the Respondent's conduct was a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors. This was sufficient to satisfy the test for professional misconduct as defined in Sharp v The Law Society of Scotland 1984 SLT 313.

The Tribunal noted that the Respondent had a clean record. However, the behaviour detailed in this Complaint was dishonest and lacked integrity. There had been an ongoing course of conduct over a long period of time. If he did not pay Counsel, he could not be trusted to pay others. There was a clear risk that if he was allowed to practice he would repeat the conduct and this put the public at risk. He offered no apology to Counsel or to the Law Society. There was a lack of remorse or insight. He appeared to have taken no steps to remedy matters. A large number of transactions had been involved with three



different Advocates. In failing to keep his records and hand them over to his regulator, he attempted to protect himself thus preventing a proper investigation into his conduct. This demonstrated a lack of integrity. The Respondent's conduct was likely to damage the reputation of the profession. The Respondent's attitude towards his professional obligations and his regulator was not compatible with him remaining on the Roll of Solicitors. The only appropriate sanction in these circumstances was to remove the Respondent from the Roll.

Following submissions from the Fiscal on expenses, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Fiscal made a motion that publicity be given to the decision but that only the Respondent need be named. The Tribunal therefore ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. The Secondary Complainer will have 28 days from the date of intimation of the findings to lodge a written claim for compensation with the Tribunal Office.



**Kenneth Paterson**  
**Vice Chairman**