

**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**

**against**

**PHILIP SIMON HOGG, residing at 9  
Crossdykes, Kirkintilloch**

1. A Complaint dated 22 April 2016 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Philip Simon Hogg (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. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 25 August 2016 and notice thereof was duly served on the Respondent.
5. The hearing took place on 25 August 2016. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Ian Ferguson, Solicitor, Glasgow. An amended Complaint dated 25 August 2016 was by agreement of the parties substituted for the original Complaint.

6. A Joint Minute was lodged admitting certain of the averments of fact, all of the averments of duty and both averments of misconduct in the Complaint as amended. No evidence was led.
  
7. The Tribunal found the following facts established:-
  - 7.1 The Respondent's date of birth is 31<sup>st</sup> May 1966. He was enrolled as a solicitor on 12<sup>th</sup> November 1990. Between 10<sup>th</sup> July 2007 and 28<sup>th</sup> September 2012 the Respondent was a partner in the firm of Alder Hogg, Solicitors, 45 Townhead, Kirkintilloch, Glasgow.
  
  - 7.2 Between 12<sup>th</sup> July 2007 and 28<sup>th</sup> September 2012 the Respondent was along with Alison Margaret Greer, Solicitor (his twin sister) a partner in the firm of Alder Hogg, Solicitors, Kirkintilloch. Kenneth Greer, the husband of Alison Margaret Greer, was the firm's office manager and cashier. The Respondent was the firm's Money Laundering Reporting Officer at all material times. In or about 2007 Mrs Greer was made the subject of a complaint before the Scottish Solicitors' Discipline Tribunal. The proceedings against Mrs Greer were abandoned at a late stage when it became apparent that the correspondence to which it was alleged she had not responded had been concealed from her by her husband the said Kenneth Greer. Mr Greer is not a solicitor.
  
  - 7.3 Against that background the Respondent's firm continued to employ Mr Greer as office manager and cashier until the date of the appointment of a Judicial Factor to the firm on 28<sup>th</sup> September 2012. In those circumstances a high degree of supervision of Mr Greer was required.
  
  - 7.4 The Respondent during his tenure as a partner in the former firm of Alder Hogg (hereinafter "the firm") in the exercise of reasonable diligence ought to have known of a system whereby excessive fees were charged in the after mentioned cases in breach of the Solicitors (Scotland) Accounts Rules 2001, Rules 6(1)(d) and Rule 4 or equivalent Law Society of Scotland Practice Rules 2011, Rules 6.5.1(d), 6.3 and 6.4. (The Respondent blames Mr Kenneth Greer in respect of these matters.)

7.5 Between 13 March 2002 and 30 September 2011 the firm took fees including VAT totalling £219,879.14 from ledgers for Mr A executry and Mrs A executry. The fees were taken as follows:-

31.12.2001	Fee Note 1469	£	146.88
13.03.2002	Fee Note 1569	£	3,525.00
26.03.2002	Fee Note 1583	£	1,733.13
03.01.2006	Fee Note 5083	£	3,231.25
21.02.2006	Fee Note 5143	£	3,701.25
21.02.2006	Fee Note 5144	£	3,231.25
02.05.2006	Fee Note 5248	£	41,125.00
30.06.2006	Fee Note 5355	£	2,350.00
07.07.2006	Fee Note 5379	£	5,875.00
07.08.2006	Fee Note 5422	£	3,525.00
05.03.2008	Fee Note 6358	£	6,339.13
31.03.2008	Fee Note 6394	£	2,643.75
24.09.2008	Fee Note 6655	£	9,987.50
10.02.2009	Fee Note 6803	£	1,380.00
20.03.2009	Fee Note 6856	£	1,762.50
20.03.2009	Fee Note 6856A	£	862.50
26.06.2009	Fee Note 6999	£	5,750.00
30.09.2009	Fee Note 7112	£	3,910.00
01.08.2011	Fee Note 8004	£	6,000.00
02.08.2011	Fee Note 8007	£	2,400.00
05.08.2011	Fee Note 8013	£	26,400.00
19.08.2011	Fee Note 8020	£	6,000.00
23.08.2011	Fee Note 8023	£	12,000.00
05.09.2011	Fee Note 8043	£	36,000.00
21.09.2011	Fee Note 8054	£	7,200.00
30.09.2011	Fee Note 8065	£	22,800.00
		<b>£</b>	<b>219,879.14</b>

The relative files have been assessed by the Auditor of the Court of Session and the fee including VAT found to be due amounted to £129,750.63. The allocation of fees for VAT purposes was as follows:-

From 24.07.01 to 30.11.08: £106,296.38 (inc VAT at 17.5%, £15,831.38)

From 01.12.08 to 31.12.09: £4,939.25 (inc VAT at 15%, £644.25)

From 01.01.10 to 03.01.11: £3,431.00 (inc VAT at 17.5%, £511.00)

From 04.01.11 to 30.09.11: £15,084.00 (inv VAT at 20%, £2,514.00)

The firm overcharged its clients by £90,128.51. Since the Auditor's Report was issued on 5 September 2012 the firm has been unable to return to the Client Account the sum of £90,128.51 and the Client Account remains in deficit.

As at the date when the Respondent became a partner in the firm of Alder Hogg (12<sup>th</sup> July 2007) the total of fees and VAT which had been charged to these executries amounted to £68,443.76. As at 30<sup>th</sup> November 2008, the fees to which the firm was entitled amounted, inclusive of VAT to £106,296.38 and the amount actually charged to the executries as at that date was £87,414.14. Accordingly all of the overcharging took place during the period when the Respondent was a partner in the firm of Alder Hogg.

- 7.6 The firm took the following fees amounting to £20,386.25 from ledgers in the name of Ms B executry:-

11 August 2005	£4,112.50
3 August 2006	£6,462.50
28 June 2009	£6,286.25
28 February 2011	£3,525.00

- 7.7 There had not been an Executor appointed and it was therefore not possible to render a fee note against the estate. Fees totalling £16,861.25 were re-credited to the ledger on 30 September 2011.

- 7.8 In relation to the executry of Ms C the files were assessed by the auditor of the Royal Faculty of Procurators in Glasgow who calculated the total fee at £8,959.37. The fee charged by the firm was excessive: it totalled £13,501.38, being an overcharge of £4,542.01. The period of the overcharge is from June 2009 to August 2011.

- 7.9 On 21 October 2009 £2,300.00 was taken as fees from the Miscellaneous ledger for Mr D. The firm was not entitled to these fees which were subsequently re-credited on 18 January 2010.

- 7.10 In relation to the executry of the late Ms E the files were assessed by the auditor of the Royal Faculty of Procurators in Glasgow who calculated the total fee at £1,770 including VAT. The fee charged by the firm was excessive: it totalled £7,717.50, being an overcharge of £6,041.33. The period of overcharge is between November 2009 and September 2011.
- 7.11 On 20 January 2010 £2,232.50 was taken as fees from the Miscellaneous ledger for Mr D. The firm was not entitled to these fees which were subsequently re-credited on 27 August 2010.
- 7.12 The firm took the following fees amounting to £7,101.41 inclusive of VAT from ledgers in the name of Mr F executry (27/1) and Miscellaneous (27/2):-

## 27/1

03 August 2010	£822.50
27 August 2010	£367.19
21 September 2010	£1,468.75
30 November 2010	£881.25
08 July 2011	£330.47

## 27/2

26 February 2010	£1,762.50
11 May 2010	£1,468.75

No fee notes in respect of the fees taken on 26 February and 11 May 2010 and 3 August 2010 were ever rendered to the client and fees totalling £3,231.25 (equal to the sum of the fees taken on the Miscellaneous Ledger) were re-credited to the Client on 8 July 2011. There was no justification for the taking of these fees.

- 7.13 In relation to the executry of Mr G the files were assessed by the auditor of the Royal Faculty of Procurators in Glasgow who calculated the total fee at £10,780.62. The fee charged by the firm was excessive; it totalled £18,790.18, being an overcharge of £8,009.56. The period of the overcharge is from July 2010 until the date of the appointment of the judicial factor.

- 7.14 Between 3 August 2010 and 20 July 2011 the firm took fees totalling £45,938.18 from ledger in the name of Mr H executry. On 5 September 2011 £18,780.07 was re-credited to the Client Account and further fees totalling £8,367.93 taken. Fees of £27,148.00 previously taken by the firm were thereafter re-credited (on 5<sup>th</sup> September 2011) as the firm was not entitled to these sums.
- 7.15 In relation to the executry of Ms I the files were assessed by the auditor of the Royal Faculty of Procurators in Glasgow who calculated the total fee at £5,675. The fee charged by the firm was excessive: it totalled £14,177.50, being an overcharge of £10,189.50. The period of the overcharge is between September 2010 and April 2011.
- 7.16 On 30 June 2011 the firm took fees and VAT amounting to £4,000.00 from a Ledger in the name of Mr K. This ledger was not for a specific matter and was headed "Miscellaneous". The sum of £4,800.00 was transferred from the ledger for Mr L Executry to the Miscellaneous Ledger. This sum was not required to account for payment of the firm's professional account against the executry or Mr K and no fee note had been rendered. The firm was not entitled to the £4,800 and this sum was subsequently re-credited on 5 August 2011 and returned to the ledger for Mr L Executry.
- 7.17 On 21 June 2011 the firm took fees amounting to £720.00 from Client Ledger in the name of Ms M executry that were not required to account for payment of the firm's professional account against the executry and where no fee note had been rendered. This fee was subsequently returned to the client ledger on 5 September 2011.
- 7.18 On 1 July 2011 £8,400.00 was taken from the ledger in the name Ms I. The firm was not entitled to this sum and it was re-credited to the same ledger on 5 September 2011.
- 7.19 In consequence of the taking of the fees condescended upon the firm's client account was continually in deficit from 1<sup>st</sup> October 2008 until the appointment of the judicial factor.

- 7.20 The Respondent continued to draw from the firm while it was being financed by the overcharges to clients.
8. The Tribunal heard submissions from the Complainers to the effect that the facts were sufficient to amount to professional misconduct. The Tribunal heard submissions from the respondent's representative to the effect that the Respondent pleaded guilty to professional misconduct. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of professional misconduct individually and *in cumulo* in respect of:
- 8.1 His failure in his obligation to see that the firm in which he was a partner complied with the accounts rules, his failure in his duty to supervise the firm's office manager and cashier, his failure in his duty to take steps to satisfy himself that fees being charged to executries were properly so charged and his failure to see that at all times the sums at credit of the client account exceeded the sums due to clients.
- 8.2 His continuing to draw from the firm while it was being financed by the overcharges to clients.
9. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 25 August 2016. The Tribunal having considered the Complaint dated 22 April 2016 as substituted by the Complaint dated 25 August 2016 at the instance of the Council of the Law Society of Scotland against Philip Simon Hogg, residing at 9 Crossdykes, Kirkintilloch, as amended; Find the Respondent guilty of professional misconduct in respect of his failure in his obligation to see that the firm in which he was a partner complied with the accounts rules, his failure in his duty to supervise the firm's office manager and cashier, his failure in his duty to take steps to satisfy himself that fees being charged to executries were properly so charged, his failure to see that at all times the sums at credit of the client account exceeded the sums due to the clients and his continuing to draw from the firm while it was being financed by the overcharges to clients; Suspend the Respondent from practice for a period of five years and Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that the suspension shall

take effect on the date on which these 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; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and his firm but need not include any other name which might identify the firm's clients.

**(signed)**

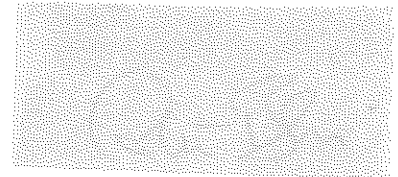
**Colin Bell**

**Vice Chairman**



10. 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 21 SEPTEMBER 2016.

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell**  
**Vice Chairman**

**NOTE**

The Respondent had lodged Answers to the original Complaint. On the morning of the Tribunal the original Complaint was substituted by agreement of the parties with an amended Complaint which was admitted into Process and the Respondent confirmed that he pleaded guilty to the amended Complaint. A signed Joint Minute was produced which substantially admitted the averments of fact, duty and misconduct contained in the amended Complaint. At the hearing the Tribunal also had before it two Inventories of Productions for the Respondent.

The Law Society Fiscal indicated that the Complainers were content to proceed on the basis of the Joint Minute and did not intend to lead any evidence. The Respondent's representative said that his client pleaded guilty to professional misconduct and that the case was calling as a plea in mitigation. The Chairman indicated that the question of professional misconduct is one for the Tribunal to determine. The Fiscal clarified that it was subject to the approval of the Tribunal that the parties were agreed that the behaviour described in the Complaint constituted professional misconduct.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal provided copies of the Respondent's record card which revealed that the Respondent had been employed as a solicitor since 1991 but had experienced some periods out of practice during the time he had been a qualified solicitor. It was noted that he had been a partner in the firm of David Hogg and Company between 6 April 1995 and 30 September 1998 and a partner of Alder Hogg between 10 July 2007 until the Judicial Factor was appointed on 5 October 2012. From 10 July 2007 until the Judicial Factor's appointment, Alder Hogg was a two partner firm consisting of the Respondent and his twin sister, Alison Greer. Mrs Greer's husband, Kenneth Greer, was the office manager and cashier for Alder Hogg. The Respondent had been the money laundering reporting officer for Alder Hogg between 6 November 2007 and 5 October 2012.

The Fiscal provided background information regarding the Complaint against Alison Greer. The Complaint had been lodged in 2007 but subsequently abandoned when it was discovered that correspondence which it was alleged she had not responded to had been hidden from her by her husband. Despite this, the firm continued to employ Kenneth Greer. The Fiscal noted that it was accepted by the Complainers that it was not clear to what extent the Respondent had knowledge of the circumstances of the case against his sister. However, he submitted that whatever the extent of his detailed knowledge, the Tribunal might think that against this background he had reason to take some

care. By his own admission in his Answer to Article 6 of the Complaint, the Respondent knew that *“some things had gotten into a bit of a mess”*. However, the Fiscal accepted that at all material times Alison Greer had been the cashroom partner.

The Fiscal took the Tribunal through the terms of the amended Complaint. Article 8 referred to the executries for Mr and Mrs A. The Firm took fees amounting to £219,879.14 but the Auditor of the Court of Session found the fees due including VAT to be £129,750.63. The Fiscal noted that it was apparent that the overcharge took place entirely within the period when the Respondent was partner. The overcharge in this case was £90,128.51. The Firm was unable to return this to the client account. This has been paid out as a claim from the Guarantee Fund.

The Fiscal drew attention to the second production on the Respondent's Second Inventory of Productions. This was a copy letter from the Law Society of Scotland's Regulation Department dated 17 February 2016 which included a Summary of Complaint Reference 201302179. The Summary of Complaint had been drafted by Mr Robert Fitzpatrick on behalf of the beneficiaries of the Estates of the late Mr and Mrs A. The Fiscal indicated that he had spoken to Mr Fitzpatrick and had an email from him. The Fiscal submitted that whatever other claims, Mr Fitzpatrick, nor any other party intends to enter into this present complaint as a party.

Article 9 of the amended Complaint referred to the executry for Ms B. The firm took fees amounting to £20,386.25. There had not been an executor appointed and it was therefore not possible to render a fee note against the estate. Fees of £16,861.25 were re-credited to the ledger on 30 September 2011.

Article 11 of the amended Complaint referred to the executry of Ms C. These files had been assessed by an auditor and found to have been overcharged by £4,542.01. The period of the overcharge was from June 2009 to August 2011.

Article 12 of the amended Complaint referred to Mr D's case. On 21 October 2009 £2,300 was taken as fees and re-credited on 18 January 2010.

Article 13 of the amended Complaint referred to the Ms E executry. These files were assessed by an auditor. The fees were found to have been overcharged by £6,041.33.

Article 14 of the amended Complaint referred to Ms D's case. On 20 January 2010 £2,232.50 was taken as fees which were then re-credited on 27 August 2010.

Article 15 of the amended Complaint referred to the Mr F executry. The Fiscal indicated that fees of £7,101.41 had been taken without justification.

The Fiscal dealt with Article 16 and 17 of the amended Complaint together. The Fiscal said that the Mr G referred to in Article 16 and the Mr H referred to in Article 17 were the same person. Fees of £27,148.00 which previously been taken by the firm were re-credited on 5 September 2011.

Article 18 of the amended Complaint referred to the Ms I executry. The fees were overcharged by £10,189.50.

Article 19 of the amended Complaint referred to the executry of Mr K. The sum of £4,800.00 had been taken and then re-credited.

Article 20 of the amended Complaint referred to the executry of Ms M. Fees amounting to £720.00 were taken without a fee note and then returned.

Article 21 of the amended Complaint refers to the Ms I files. £8,400.00 was taken from the ledger and then re-credited.

With reference to Article 22 of the amended Complaint, the Fiscal indicated that the Respondent's firm's client account had been continually in deficit from 1 August 2008 until the appointment of the Judicial Factor.

The Fiscal indicated that the overcharges described in Articles 8 to 19 was £175,483.91. The overcharge for the files described in Articles 20 and 21 was £9,120.00. The Fiscal indicated that there was a net figure not credited back which amounted to £118,910.91 and that was the extent of the claim admitted by the Guarantee Fund. The largest claim was that relating to the Mr and Mrs A executry. This amounted on its own to over £90,000.00.

The Fiscal indicated that the plea was being tendered on the basis that the Respondent had no knowledge of what was going on. The Fiscal said this admission revealed a remarkable state of affairs but was not a defence to a charge of professional misconduct. The Fiscal referred the Tribunal to the case of MacColl-v-The Law Society of Scotland [1987] SLT 524. In *MacColl*, a Law Society inspection revealed that over the period from 5 May 1983 to 30 December 1983 fees, in eight separate

fee notes, had been charged by Mr MacColl against one of his clients. The total amount of the fees so charged was £5,798.10 excluding VAT. The client had been an elderly lady living in a nursing home who had granted to Mr MacColl a power of attorney. Mr MacColl had debited the amount of these fees in each of the fee notes to the ledger account of this client and on each occasion had immediately withdrawn from his client account the amount of these fees, being moneys belonging to the lady in question, and had paid these amounts into his office or firm account. The fee notes had not been exhibited to the client, the fees had not been taxed, and the debits and withdrawals had been made without her authority, knowledge or consent. After taxation it was discovered that the fees charged to the client had been overstated by more than 100 per cent. The Court was of the view that the professional misconduct in this case was plainly and rightly regarded by the Tribunal as having been of a grave order.

The Fiscal conceded that the work in the *MacColl* case was the direct responsibility of Mr MacColl. In the present case another partner in the firm was directly responsible for the work. However, it was the Fiscal's submission that a partner's duties regarding the accounting practices of the Firm remain, regardless of who is responsible for the legal work. The Fiscal noted that it was explicitly stated in *MacColl* that partners undoubtedly had a duty to supervise work executed by staff. The Fiscal drew attention to the fact that *MacColl* case involved a power of attorney case and that the present case involved executries. However, he submitted that the facts were sufficiently similar for the Tribunal to be bound by the decision in *MacColl*.

The Fiscal submitted that the Respondent had a duty to supervise staff. He was working in a two partner firm. His partner had significant health issues which were impairing her ability to function. It was acknowledged by the Respondent in his Answers that he knew the firm was "*in a bit of a mess*". It was admitted that the Respondent was not the cashroom partner. However, he had a duty to secure compliance by the firm as a whole with the Accounts Rules. He was the money laundering reporting officer. In this role he would require to make enquiries regarding the finances of his firm. He would have been required to sign six monthly certificates to certify to the Law Society that his firm was complying with the Accounts Rules. The Fiscal asserted that if the Respondent had even looked on a cursory basis at the firm and the clients' bank statements and ledgers he would have seen movements across the ledgers which would have alerted him to the teeming and lading system which was being employed. The sum involved in this case by the time the Judicial Factor had been appointed was almost £120,000.00. The Fiscal said that there could be no doubt that the actings of the Respondent amounted to a gross dereliction of duty. He submitted that this behaviour was at the higher end of the scale of professional misconduct. The Fiscal concluded by saying that the averments of duty were

admitted. The Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct on the basis set out in Article 25.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Ferguson said that the question of professional misconduct was admitted albeit the matter was for the Tribunal to determine. Therefore, he only had limited points to make at this stage. Mr Ferguson indicated that it was not admitted that the Respondent knew of the financial practices described in the Complaint. However it was admitted that he ought to have been aware of what was going on.

Mr Ferguson said that the Respondent did not admit that knew about the Complaints against his sister. Mr Ferguson said the Respondent had no actual knowledge of a complaint against his sister or its abandonment. He did not know that a high degree of supervision of Kenneth Greer was required. Mr Ferguson pointed that if a matter before the Tribunal is dismissed there is no report of any proceedings. There is no public dissemination of information relating to the dismissal. Mr Ferguson suggested this was a flaw in the system. Mr Ferguson said that in the circumstances, the Respondent was relying on others to tell him about the situation with his sister and her husband. He had been told there had been some trouble. He was told it had been dropped. Mr Ferguson said the Respondent admitted that he should have asked more questions. However he accepted this explanation as he was told it by trusted family members. There was no letter from the Law Society saying to him that he should take care.

Mr Ferguson said that he accepted what was said in *MacColl*. He knew that as a First Division case it was binding upon the Tribunal. However, the point he wished to make was about the level of punishment which would be appropriate in the circumstances. Again Mr Ferguson submitted that the Respondent was not admitting to actual knowledge but only that he ought to have known the situation. He submitted that the question for the Tribunal was the degree of culpability of the Respondent and in support of this he mentioned the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313 but said that he would come to that in his plea in mitigation. He said that *Sharp* allowed for the Tribunal to make different disposals depending on the level of culpability of each Respondent.

Finally Mr Ferguson brought the Tribunal's attention to paragraph 26 in the Complaint. He noted again that this paragraph was not admitted. He informed the Tribunal that it appeared that a new Complaint was being followed up by the SLCC. Until recently Mr Ferguson had been unaware of it. He felt unable to admit paragraph 26 because it appeared that there was someone else going through the

Complaints process which could result in compensation which was linked to the matters narrated in this Complaint.

## DECISION

The Tribunal noted the averments of fact in the Complaint which had been admitted. The Tribunal had regard to the test for professional misconduct as defined in Sharp v Council of the Law Society of Scotland 1984 SLT 313. In *Sharp* it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors may be properly categorised as professional misconduct. However, in every case it is essential to consider the whole circumstances and the degree of culpability of the individual against whom the complaint is made. The Tribunal considered all the circumstances put before it and had no hesitation in finding that the Respondent's conduct was sufficiently serious and reprehensible to amount to professional misconduct. The Tribunal considered the present case to be very similar to MacColl-v-The Law Society of Scotland [1987] SLT 524. In that case the Tribunal held that a solicitor who delegates work has a duty of supervision and must accept personal responsibility for improper actions which result from a failure to supervise. The ignorance of the actions of employees was irrelevant.

The Tribunal was satisfied that the Respondent's failure to supervise adequately the accounting practices of his firm was extremely serious. It was not expected that the Respondent should personally carry out all the work in his firm but if he decided to delegate any work there remained a duty of supervision and the Respondent must accept responsibility for the improper actions which resulted from a failure of supervision. The Respondent, as a partner, had a duty to supervise all aspects of the practice including fees rendered. If the Respondent had carried out his duty of supervision in accordance with the standards to be expected of any competent and reputable solicitor then he would have been aware of the accounting irregularities. The Tribunal noted particularly the regularity of these transactions and the long period over which they had occurred. Any partner, but particularly those in small firms, must keep track of the fees rendered. The Respondent was not a new solicitor. If, as the Respondent has suggested, his sister was unwell, the Respondent should have been aware of an even greater responsibility to be supervising the other staff and monitoring the files, fees and accounts. The client account must be kept sacrosanct at all times. The Tribunal therefore proceeded to find the Respondent guilty of professional misconduct on both heads contained within paragraph 25 of the Complaint.

The Law Society Fiscal indicated that the Respondent's record card was unblemished. The Tribunal considered the written plea in mitigation submitted by the Respondent and the testimonials lodged by his agent. The plea in mitigation covered the Respondent's employment history; the basis of the plea which was that the Respondent ought to have known the financial irregularities within the firm rather than him having actual knowledge of the circumstances; and that the overcharging had been concealed from the Respondent. Mr Ferguson asked the Tribunal to recognise that the Respondent did not render excess fees in his own area of work, that there was no actual knowledge of wrongdoing regarding excess fees in some of the executry matters handled by others, and that he was not the perpetrator or a knowing participant in some firm wide scheme or conspiracy to overcharge. Mr Ferguson noted that the Respondent had cooperated fully with the Law Society and others to ensure a smooth transition of files to the Judicial Factor. The consequences for the Respondent were severe. He lost his firm, his career and his livelihood. He now has a very limited income.

In response to a question from a Tribunal member about how often the Respondent saw and reviewed financial accounting information, the Respondent indicated that he thought computerised daily reports would have been available but that these were not distributed to all partners. A Tribunal member enquired of the Respondent whether he had been responsible for signing the six monthly certificate to the Law Society. The Respondent indicated that he had. The Tribunal member asked the Respondent how often he reviewed the accounts in order to be satisfied that he could sign the certificate to the Law Society. The Respondent said that he did not review the accounts and that he would just ask his sister and her husband if everything was in order. They always said "yes" and he trusted them. He went by their word. He had left them to deal with the cash room because he knew nothing about this aspect of the business. The Tribunal member asked the Respondent how he was able to fill in the section of the certificate which had dealt with the client account surplus or deficit without looking at the accounts. The Respondent answered that the only thing he did was to ask his sister and her husband if everything was in order. Another Tribunal member asked the Respondent whether his drawings remained constant during this period and the Respondent replied in the affirmative.

When assessing the appropriate sentence in this case, the Tribunal noted that dishonesty was not alleged. The Tribunal also noted that the Respondent had not come to the attention of the Law Society for any other matters of a similar nature. However, the Tribunal considered that it was reckless to have maintained drawings while taking no responsibility to check the source of those drawings. The Tribunal had to assess the risk to the public if the Respondent was allowed to continue practising. Part of being a solicitor is being financially aware regarding your own drawings and those of your partners. The Tribunal considered that the Respondent had been reckless and naïve. The Tribunal noted that the

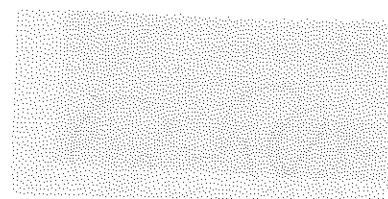


Accounts Rules are there for a purpose. Solicitors should not sign accounts certificates “on trust”. All solicitors have a duty to satisfy themselves as to the accounting position. The Tribunal accepted that there had been no dishonesty on the part of the Respondent. However, they were of the view that he ought to have been aware of the financial irregularities narrated in the Complaint. The Tribunal were of the view that the Respondent had not understood properly the responsibilities of a partner. The business had gone through changing and challenging times of recession. Particularly in those circumstances partners must make themselves aware of the financial position of their firm. The Respondent had been aware that his sister was under pressure. The Respondent knew that he was coming into a situation which he admitted was “*a bit of a mess*”. As partner he had a duty to educate himself regarding cash room practices. The Respondent lacked real insight into the consequences of his conduct. The Tribunal was of the view that the appropriate sentence in this case was to suspend the Respondent from practice for a period of five years to demonstrate the gravity of the misconduct.

Submissions on publicity and expenses were invited. The Law Society Fiscal submitted that the identity of the various clients should be excluded from the Findings. This was due to the fact that there may be further court and complaint proceedings regarding the cases dealt with by the Respondent’s firm. The Fiscal asked for the usual order with regard to expenses. Mr Ferguson made no submissions in either regard.

The Tribunal made the usual order regarding expenses. With regard to publicity, given that the individual clients named in the Complaint might be parties to further court proceedings, the Tribunal agreed that it was appropriate in the circumstances of the case that their identities should be excluded.

When formulating the findings the Tribunal noted that there were two arithmetical errors in paragraphs 13 and 18 of the amended Complaint which are reproduced above as paragraphs 7.10 and 7.15 of these findings, and which were referred to in submissions for the Complainers. The Tribunal was not addressed on these inaccuracies by either party at the Tribunal hearing. The Tribunal is of the view that these are purely arithmetical miscalculations which have no material bearing whatsoever on the outcome of the case.



**Colin Bell**  
**Vice Chairman**