

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

Complainers

against

**GERARD TIERNEY, formerly of G
Tierney & Co, Boswell Legal Chambers,
189 Main Street, Auchinleck and presently
residing at 13 Park Avenue, Prestwick**

Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Gerard Tierney, formerly of G Tierney & Co, Boswell Legal Chambers, 189 Main Street, Auchinleck and presently residing at 13 Park Avenue, Prestwick (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 16 December 2015 and notice thereof was duly served upon the Respondent.
5. At the hearing on 16 December 2015, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was

present and unrepresented. The Tribunal received an amended Complaint, together with a Joint Minute for the parties agreeing all of the averments of fact, duty, professional misconduct and agreeing the documents lodged by the Complainers as Productions. Given the extent of the agreement between the parties, no evidence required to be led. The Tribunal heard submissions from both parties.

6. The Tribunal found the following facts established:-

6.1 The Respondent is a solicitor enrolled in the Registers of Solicitors in Scotland. He was enrolled as a solicitor on 21 December 1983. At various periods between 1 March 1989 and 2 October 2014 he has been a Principal in private practice. From 1 November 2001 to 31 August 2012 he was a Partner of G. Tierney & Co, holding the position of Cashroom Partner between 6 May 2004 and 31 August 2012 in that firm. From 1 September 2012 until 10 May 2013 he was employed as a Consultant by Mr A with 1st Legal Limited. Thereafter he was a sole practitioner from 19 September 2013 until 2 October 2014. On 2 October 2014 his Practising Certificate was suspended. On 4 June 2015 the practising certificate Sub Committee of the Law Society approved a request to grant the Respondent a Restricted Practising Certificate.

Scottish Legal Aid Board (SLAB)-Criminal Legal Aid

6.2 As indicated above the Respondent was employed as a Partner of G. Tierney & Co from 1 November 2001 to 31 August 2012. During this period he was registered for both Criminal and Civil Legal Aid and was an experienced practitioner in both areas, familiar with the obligations and regulations that applied to such a registered practitioner. Having such registration allowed the Respondent to complete forms and submit accounts for payment to the SLAB as the nominated solicitor.

- 6.3 On 24 May 2012 the Respondent was de-registered from the Register of Criminal Legal Aid Practitioners as a result of the matters detailed in the Complaint.
- 6.4 The Respondent acted for a number of individuals who came before the Criminal Courts and who were entitled to Criminal Legal Aid. He submitted and was granted Legal Aid for said individuals and rendered Legal Aid Accounts to SLAB in relation to the alleged work carried out.
- 6.5 In or around April 2012 SLAB became concerned about the accuracy of accounts submitted by or on behalf of the Respondent and they commenced an investigation. As a result of that investigation the Respondent was de-registered from the Register as detailed above and a report was compiled dated 27 February 2014. Said report was produced as Production 1.
- 6.6 The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations Part V, Chapter 1, provides that the fees which apply to Criminal Legal Assistance provide for a single payment (being the core fixed fee) in summary criminal cases to reflect the single summary criminal process. In addition, Part V, Chapter 3 of the same regulations provide, in relation to further fixed payments, that where the case is chargeable on a fixed payment basis there is always provision, according to the circumstances, for paying further fixed payments, including for deferred sentences (other than the First or Second Diets which are included within the fixed payment). The Respondent would or at least ought to have been familiar with these provisions and was obliged to comply with them on submitting accounts.
- 6.7 Shortly put 24 accounts were identified where the Respondent detailed fictitious outcomes, stating cases had been concluded when they had not been. This was for the purpose of eliciting a payment of the “core” fixed fees prematurely and additional charges when in fact the cases had not concluded.

- 6.8 Of the 24 accounts analysed and contained within the report, 8 of the cases had subsequently been transferred to another firm. As that transfer had taken place before the cases concluded, when such a transfer takes place, for whatever reason, the original Solicitor (the Respondent) is only entitled to claim half the core fixed fee. If more transfers take place then the original Solicitor (the Respondent) is only entitled to claim one equal share of the core fees. The Respondent received £10,574.11 comprising early/premature payment of accounts.
- 6.9 Schedule 1 of said report set out the details of premature payments in relation to each Legal Aid case and confirmed all said accounts were submitted online by the Respondent.
- 6.10 In addition in submitting said accounts the Respondent claimed and received £1,725 to which he was not entitled in relation to said 8 cases where legal aid was subsequently transferred.
- 6.11 Schedule 2 of said report set out the details of those payments in relation to each Legal Aid case and again confirmed all said accounts were submitted online by the Respondent.
- 6.12 Schedule 3 of the report identified 7 inappropriate claims for 5 cases for fabricated or inaccurately described diets as first and/or second deferred sentences, creating an opportunity to be paid additional fees of £50 plus VAT for each and every third and subsequent deferred sentence. The Respondent received payment for each of these to bring a total payment of £350 plus VAT to which he was not entitled.
- 6.13 SLAB has confirmed that there has been no actual “loss” to the Legal Aid fund as SLAB had offset payments due to the Solicitor from his outstanding accounts.

1st Legal Limited - SLAB

- 6.14 As indicated above the Respondent was employed as a Consultant by Mr A, of 1st Legal Limited commencing 1 September 2012 until 10 May 2013. He had been so employed as he had been sequestrated on 24 August 2012. He was employed to undertake Civil Legal Aid or children's Legal Aid matters. He was permitted to submit Legal Aid Accounts for said work to SLAB on-line under the appropriate facility.
- 6.15 Despite having been de-registered from the Register of Criminal Legal Aid Practitioners on 24 May 2012 he remained on the register for Civil Legal Aid. As detailed above at the material times the Respondent was an experienced Civil Legal Aid practitioner. As a result of the matters detailed in this part of the Complaint (with the exception of case 12) on 22 September 2014 SLAB excluded the Respondent from all legal aid work under s 31 of the Legal Aid (Scotland) Act 1996.
- 6.16 Whilst employed by Mr A, Mr A became concerned about the number of "self certified" Civil Advice and Assistance Accounts being lodged on-line by the Respondent. The Respondent's access to the Legal Aid on-line account was suspended, initially in late March and again on or around 2 May, both 2013. On the latter date the Respondent was suspended from his employment and this was ultimately terminated on 17 May 2013 as a result of the matters contained in this part of the Complaint. Mr A reported his concerns. A copy of a list of the relevant files was produced as Production 2 for the Complainers. It initially comprised 28 matters.
- 6.17 The Scottish Legal Aid Board (SLAB) then carried out an investigation at the request of the present Complainers in relation to 21 files to confirm:-
- (a) The nominated Solicitor for each file;
 - (b) Details of accounts and papers received on each file and the dates received;
 - (c) Sums paid out in each file; and

(d) Any abatement made on each file.

6.18 SLAB then responded with a document marked "Appendix A" which was produced as Production 3 for the Complainers. Said "Appendix A" corresponded with files held by SLAB and it is the files contained in this list that comprise the basis of this complaint.

6.19 SLAB also produced a spreadsheet answering each of the queries raised above in 6.17. In doing so it confirmed that the Respondent was the nominated Solicitor on each of the files under consideration. It also detailed the date the account was received; the total of fees claimed; the total of fees paid, details of abatements and the date the account was paid as well as the content of each file. The spreadsheet was Production 4 for the Complainers.

6.20 All said accounts for the 21 files were submitted by the Respondent to SLAB for payment.

6.21 In all of said files the entries on the case file did not correspond with the related Advice and Assistance Account to support and justify the account as submitted. A detailed analysis of the contents of each of said files has been prepared by the Complainers. It is attached hereto as Appendix 1 and its terms are incorporated herein *brevitatis causa*.

6.22 In addition there were no signed client mandates held on file for cases 1, 2, 13, 17 and 20. In addition there were incomplete client mandates held on the files for cases 3, 5 to 12, 14 to 16, 19 and 21.

7. Having given careful consideration to the established facts and the parties' submissions in relation to the question of professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct having:

7.1 submitted criminal legal aid accounts to SLAB and accepted payment from SLAB in relation to these accounts when he knew or at the very least

ought to have known that some of the contents were fictitious or at the very least inaccurate and overstated;

7.2 submitted civil advice and assistance or civil legal aid accounts to SLAB and received remuneration from another inter alia based on payment of said fees in relation to those accounts when he knew or ought to have known they were inaccurate, overstated and not supported or supportable;

7.3 failed to obtain signed client mandates in relation to five cases; and

7.4 failed to ensure properly completed mandates were held on the files in relation to seven cases.

8. The Tribunal heard further submissions from both parties in relation to disposal. Having given careful consideration to these submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 December 2015. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against Gerard Tierney, formerly of G Tierney & Co, Boswell Legal Chambers, 189 Main Street, Auchinleck and presently residing at 13 Park Avenue, Prestwick; Find the Respondent guilty of professional misconduct in relation to his (a) submitting criminal legal aid accounts to SLAB and accepting payment from SLAB in relation to these accounts when he knew or at the very least ought to have known that some of the contents were fictitious or at the very least inaccurate and overstated; (b) submitting civil advice and assistance or civil legal aid accounts to SLAB and receiving remuneration from another inter alia based on payment of said fees in relation to those accounts when he knew or ought to have known they were inaccurate, overstated and not supported or supportable; (c) failure to obtain signed client mandates in relation to five cases; and (d) failure to ensure properly completed mandates were held on the files in relation to seven cases; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the

Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

C Bell

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

IN THE NAME OF THE TRIBUNAL

Colin Bell
Vice Chairman

NOTE

At the hearing on 16 December 2015 the Fiscal lodged an amended Complaint together with a Joint Minute between the parties agreeing all of the averments of fact, duties and professional misconduct and agreeing the five documents lodged as Productions on behalf of the Complainers. No evidence required to be led.

The Tribunal heard submissions from both parties initially in relation to the question of misconduct only.

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion confirmed to the Tribunal that the amended Complaint only contained one slight amendment. That amendment was to clarify that in relation to the civil legal aid accounts the payments from the Legal Aid Board were made to Mr A who took a deduction of 20% from those fees before then paying the balance to the Respondent.

The Respondent confirmed to the Tribunal that was indeed the case.

The Chairman drew the Fiscal's attention to Article 3.24 of the Complaint and she confirmed that at line 3 the word "her" was a typographical error and should be amended to "his".

Ms Motion indicated that she did not intend to spend a huge amount of time on the content of the Complaint. She submitted that the averments in relation to criminal matters spoke for themselves. Although the Legal Aid Board report was lengthy, the Complaint clearly summarised it.

The central issue in that part of the Complaint was that in 24 accounts the Respondent had received early or premature payment of £10,574.11. The averments relating to the transfer of some of the certificates were really a side matter as the transfers occurred after the payments had been made.

No actual loss was sustained by the Legal Aid Board as the sums wrongly claimed had been recouped. Ms Motion submitted that an actual loss was not a precedent to pursuing this matter.

With regard to the civil cases, there had been a number of files where advice and assistance accounts were prepared where the files did not substantiate them. Her Production 5 was an analysis which had been carried out showing what was on the files and what was on the accounts. She referred to case 1 on that analysis as demonstrating the structure. The account in case 1 had contained two meetings, two telephone calls and four letters. There was very little on that file to support any of the claim. She submitted that one had to question whether the person preparing the accounts had actually had the file before them. She submitted that it was accepted that the Respondent himself had prepared and submitted these accounts.

Case 2 on that analysis showed that the account had contained nine entries where there were only four matters recorded on the file itself. Ironically, one of the attendance notes on the file was not actually on the account.

On any view the accounts did not reflect the contents of the files and overstated what the Respondent was entitled to claim.

She sought to draw out a number of matters from the Complaint for the Tribunal's attention:

- (1) The Respondent had many years of experience of legal aid.
- (2) These acts of inflating or creating entries for payments occurred in both civil and criminal.
- (3) The Respondent's acts had occurred in relation to his working in two different firms.
- (4) The Respondent himself was directly involved in creating and submitting these accounts and ultimately in collecting the payments.
- (5) The Respondent had gained financially from these acts.
- (6) The acts were deliberate.
- (7) This was a course of conduct over a number of years of the gravest severity.

She invited the Tribunal to convict the Respondent of professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated that he did not seek to argue that his conduct was anything other than misconduct. He admitted and accepted that his conduct fell below the standard to be expected of a solicitor.

DECISION

The Tribunal required to consider whether the conduct admitted by the Respondent met the test of professional misconduct.

In the averments of duty in the Complaint the Complainers had referred to Rule 1 of the Solicitors (Scotland) (Standard of Conduct) Practice Rules 2008 and Rule B1.2 of the Law Society Practice Rules 2011 which were both identical in their terms. They state 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.”

It is a basic and underpinning principle of the profession that a solicitor must act honestly at all times and must be trustworthy.

The conduct of the Respondent described here has at its core a clear element of dishonesty. The Respondent admitted that in 24 criminal legal aid accounts fictitious outcomes were created allowing accounts to be submitted. Additionally, on seven occasions the Respondent made claims for payment for fabricated or inaccurately described diets.

In relation to the civil accounts, on 21 files the Respondent had submitted accounts to SLAB which were not in the least supported by the content of the files themselves.

Such conduct clearly falls well below the standard to be expected of a competent and reputable solicitor and is clearly of the most serious and reprehensible character.

Separately, the failures in relation to the requirements for client mandates in connection with online applications are themselves serious matters.

The Tribunal unanimously found the Respondent guilty of professional misconduct.

SANCTION

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion asked the Tribunal to consider that many of her earlier submissions were relevant to the question of sanction. She submitted that this conduct was serious and at the highest end of the scale. It was her position that there were aggravating factors. The course of conduct had gone on for a number of years. The Joint Minute had only been agreed at the end of last week. There had been limited cooperation on the part of the Respondent. The Fiscal submitted that she was not aware of any sign of insight or remorse on the part of the Respondent. She was not aware of any testimonials on his behalf.

The Respondent had been sequestrated in 2012 and had failed to advise the Law Society of that.

The behaviour in the Complaint before the Tribunal involved many transactions. She submitted that his conduct had done serious damage to the reputation of the profession and would continue to do so. Given the course of conduct here she submitted that there was a high risk of repetition of such behaviour and she questioned whether the Respondent was a fit and proper person to continue in practice. She drew the Tribunal's attention to a previous finding of the Tribunal against the Respondent from 2014 where the Respondent had received monies from SLAB for the payment of outlays which he had not met. She submitted that there was a correlation between that case and the current Complaint.

The Fiscal drew the Tribunal's attention to the fact that the Respondent had been suspended from providing legal aid in relation to Section 31 which she submitted was not a common occurrence.

The Tribunal was advised that the Respondent had been granted a restricted practising certificate by the Law Society's Practising Certificate Sub Committee. This allowed the Respondent to work for the firm of Kinloch & Co. The Fiscal had contacted the Registrar of the Committee who confirmed that he would have expected the forms before the Committee to include reference to the matters currently before the Tribunal but he was unable to confirm that that had happened in this case. The Fiscal lodged a copy of a letter from the Law Society to the Respondent dated 6 August in relation to the Practising Certificate Sub Committee's decision.

The Respondent confirmed to the Tribunal that this letter followed an application for a restricted practising certificate being made by Kinloch & Co with the Respondent's help. The Respondent indicated that it was made known to the Committee that this matter was pending and so they would have known about it.

The Fiscal indicated that although the Sub Committee is part of the Law Society processes, it is not part of the disciplinary process. She submitted that all of the detail of this case would not have been available to the Sub Committee. It was confirmed to the Tribunal that the Sub Committee is made up of a mixture of solicitors and non-solicitors.

SUBMISSIONS FOR THE RESPONDENT

The Respondent submitted to the Tribunal that he agreed with Ms Motion that there was a parallel between the last finding of the Tribunal and this case; that there was a link. They related to a similar period of time from 2011 until he was deregistered in April 2012.

The issues which resulted in his deregistration came to a conclusion in April 2012. There were no issues to do with criminal legal aid post-dating 2012.

He had become aware of his difficult financial position in early 2012 and so he had approached a criminal practitioner in Ayr called Mr A with whom he had often transferred conflicts of interest. The Respondent had done some civil legal aid work regarding children's hearings but had mostly dealt with criminal work. He had some little civil experience. In February 2012 he spoke to Mr A about his prospective sequestration with a

view to Mr A taking on his business and taking him on as an employee. The Respondent had been deregistered in April 2012. He gave Mr A a copy of the SLAB findings. Mr A had given him assistance and help. Mr A had opted not to acquire the Respondent's practice at that point. However, in August he had approached the Respondent and asked if the firms could amalgamate. He had suggested that the Respondent could concentrate on civil work and that he would take on any criminal business. He would take on all of the Respondent's client base.

Problems arose from an early stage. Mr A had assumed responsibility for the Respondent's office in Auchinleck. One of the difficulties had been that Mr A had kept on an employee there who had taken the Respondent to an Employment Tribunal and so there was some bad feeling. It was a difficult working environment. Issues arose regarding the responsibilities for the preparation of files and accounts and the state of various files. The Respondent accepted that it was his responsibility to have the files in order but not all of the issues were of his making.

With regard to the preparation of the legal aid mandates, subsequent to their separation, Mr A found himself criticised for improper record keeping. There was a culture of improper record keeping. It was not just the Respondent. However, the Respondent accepted that he ought to have kept the files in a better state.

The Chairman asked if that was why the Respondent was dismissed and he agreed that it was.

There had been several issues between the Respondent and Mr A. The Respondent explained that in some instances Mr A had asked him to attend to criminal legal aid cases. The Respondent had drawn to his attention that he had been deregistered but nonetheless Mr A had asked him to attend to some deferred sentences, intermediate diets and even a trial. There was acrimony between the two of them by October 2012 to the point of the Respondent's dismissal.

By the time of his sequestration in August 2012, the Respondent had begun working as an employee. He had told Mr A about his sequestration and relied upon him to advise the Law Society.

At times Mr A had not paid the Respondent his salary. On two occasions Mr A had deregistered his online Legal Aid Board access. It all came to a head in 2013. The Respondent had indicated that he wanted the two to separate and for him to resume the obligations for his old office. During the period of time to arrange this separation the Respondent was not to come into the office. Between May and August Mr A had asked the Respondent to attend to an adoption hearing and an Employment Tribunal. The Respondent believed that the two had maintained cordial relations. The Respondent had not known that Mr A had taken advice and had submitted a Complaint to the SLCC. Subsequently information had been given anonymously to the Respondent's trustee in bankruptcy regarding payments made to the Respondent's wife's bank account. This was information only available to Mr A, although Mr A had denied passing this information on. Mr A even complained to the police about the Respondent's wife's stealing a sign from the business.

The Respondent submitted that Mr A had not acted in a gentlemanly manner. The Sunday Mail had carried out an investigation into the Respondent, sending a reporter under cover to him to instruct him for legal aid work.

The Respondent had been undertaking work as a safeguarder since April 2013. They too had received an anonymous letter about him.

The Respondent submitted that he had to concede that his behaviour had fallen far short of what would be expected of someone who had been a solicitor since 1984. He knew that in the last three year period he had let himself and the profession and his family down. The consequences for him had been severe. He was unable to do legal aid work.

His wife's health is poor as she suffers from depression. His mortgage had been called up. This had been a difficult time for him.

He is now working as a paralegal assistant for a long time friend. His friend would have wished the Respondent to work as an assistant. The friend had approached the Respondent and asked to employ him on a restricted basis on condition that no legal aid work would be done in his name. The Respondent has been working as a paralegal assistant. Ironically,

he is permitted by SLAB to see clients, interview them, complete and draft legal aid applications on their behalf, although they are submitted by Mr B. The Legal Aid Board are aware that the Respondent sees clients and attends certain Tribunals as a paralegal. This is acceptable so long as he does not give any advice. The Respondent's income is affected as a consequence.

The Respondent accepts that he has a duty to the public and that the public require to be protected. In relation to the criminal matters, there was no loss to the Board. All sums were recouped.

The Respondent wanted to express his thanks to Mr C of the Legal Aid Board as he had personally been of assistance with regard to the payment to him of all outstanding accounts.

The Respondent indicated he would be content to continue as he currently works i.e. as a paralegal. Auchinleck is not economically well blessed. There are only two other firms there – one does no legal aid work and the other only does criminal legal aid work. Mr B uses the Respondent's office from time to time. The Respondent submitted that he aided access to justice. If Mr B was not able to do that then there would be serious consequences to people in the area.

The Respondent accepted that his deregistration from the provision of legal aid was permanent. He submitted that if he was allowed to stay on the Roll of Solicitors he would be content with the same restriction as his current one.

He indicated that his own health has been poor for the last year. He did not have any money to take advice in connection with this Complaint and had only been able to take informal advice from friends. Ms Motion had been very helpful to him. No witnesses were present today and he asked the Tribunal to take that into account.

He submitted that he liked helping people and that was the basis of his career. He did not have any testimonials but if he had thought that the Tribunal had wanted them he could have obtained some. Helping people was why he had become a lawyer.

At the conclusion of the Respondent's submissions, the Fiscal raised further issues. She confirmed that the Respondent had been suspended by the Law Society on 2 October 2014 in relation to Section 40 of the Solicitors (Scotland) Act 1980. Section 47 of that Act suggested that a solicitor shall not employ or remunerate a person who is suspended unless he has written permission from the Council of the Law Society. The Respondent answered that he was employed as an administrative assistant basically an unqualified assistant. His contract of employment describes him as an administrative assistant. It was his understanding that Mr B had spoken to David Cullen of the Law Society.

In response to a question from a member of the Tribunal, the Respondent confirmed that he saw clients in the capacity of an administrative assistant. He explained that he worked for Mr B in Mr B's office seeing clients and if necessary completing legal aid applications which were then passed on to Mr B.

In response to a further question from a member of the Tribunal, the Respondent confirmed that he had signed an undertaking on 4 March 2015 undertaking not to hold himself out as a solicitor. This had been as a result of him signing a form in a small claims action. Ms Motion explained that she had been asked to get such an undertaking from the Respondent in her capacity as an advisor to the Registrar's Department of the Law Society.

The Respondent explained that he had not been trying to confuse the Tribunal by the use of the term of paralegal. He was simply employed as an unqualified member of staff working in an office. The use of the word paralegal by him had been clumsy. His role was simply as an administrative assistant.

DECISION

The Tribunal took the view that this conduct was at the very highest end of the scale of misconduct. It had been a course of conduct engaged in over a number of years. The conduct was clearly deliberate and designed to result in a financial gain to the Respondent. The Respondent had acted improperly whilst practising on his own account and then later also when working as an employee. There was a clear element of dishonesty involved.

The Respondent's conduct was so serious and reprehensible as to be extremely damaging to the reputation of the profession.

There had been little indication in his submissions of any sign of remorse or insight into the serious nature of his conduct. Much of what he had said to the Tribunal appeared to be designed to elude responsibility by criticism of another.

The Tribunal does not know what information was before the Practising Sub Committee of the Law Society at the time it agreed to a restricted practising certificate for the Respondent. Ultimately, the Sub Committee's decision is irrelevant to the Tribunal process.

Whether or not the Respondent's sequestration was or was not reported to the Law Society is not a matter before this present Tribunal and is a matter to be raised elsewhere. Likewise, whether or not the Respondent is working within the limits of his restricted practising certificate or not is not a matter for the present Tribunal.

The present Tribunal can only have regard to the conduct described in the Complaint and admitted by the Respondent. The conduct admitted by the Respondent in this case is of such a nature that it indicates that the Respondent is not a fit person to be a solicitor. Accordingly, the Tribunal concluded unanimously that the appropriate disposal was to strike the name of the Respondent from the Roll of Solicitors in Scotland.

The Fiscal for the Complainers moved the Tribunal for an award of expenses in her favour and for the usual order in relation to publicity. The Respondent indicated that he had no argument against either motion but asked the Tribunal to take into account that his means were restricted. The Tribunal granted the Fiscal's motion for expenses and made the usual order for publicity.

Colin Bell
Vice Chairman

APPENDICES INDEX

Appendix 1 Summary of analysis of 21 files – Civil Advice & Assistance.

U1

PRODUCTION 5
CIVIL ADVICE & ASSISTANCE CLAIMS

Case 1 — DA- LARN: 2760940512

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form does not detail the instruction date.

The A&A Account Information submitted online details 8 entries (2 meetings, 2 telephone calls & 4 letters) from 18 — 25 September 2012.

The only copy correspondence relating to the subject matter of the A&A is a letter to DA dated 9 October 2012, which does not correspond with the A&A Account.

There is no signed A&A mandate on the file.

A remittance advice for £95 plus VAT dated 7 November 2012, naming the Respondent as the nominated solicitor is held on file.

Case 2 — JB- LARN: 2762112812

The documents held on the file are as listed in Production 4. There is no "Receipt of Instruction & New Matter Opening" form. The A&A Account Information submitted online details 9 entries (1 precognition, 1 meeting, 3 telephone calls & 4 letters) from 19 — 26 September 2012.

The only correspondence relating to the subject matter of the A&A is:

- (i) a letter to JB dated 25 September 2012, the terms of which do not correspond with the A&A Account,
- (ii) a letter to Scottish Children's Reporter's Administration dated 25 September 2012 (which does not appear in the Account), but no note of the telephone call listed as having been made on that date,
- (iii) an attendance note dated 18 September 2012, which appears to correlate with the meeting of 19 September 2012 narrated on the Account, and finally
- (iv) there is an attendance note relating to a 10 minute phone call on 18 September 2012 to a third party, which does not appear on the Account.

There is no signed A&A mandate on the file.

There is a remittance advice for £95 plus VAT dated 2 November 2012, naming the Respondent as the nominated solicitor.

Case 3 — CB- LARN: 3840100613

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" is dated 17 January 2013.

The A&A Account Information submitted online details 9 entries (2 meetings, 3 telephone calls & 4 letters) from 17 January — 12 February 2013.

The only correspondence relating to the subject matter of the A&A is:

- (i) a letter to CB from Jobcentre Plus, dated 18 January 2013, confirming her income support,
- (ii) A handwritten file attendance note dated 7 February 2013, detailing 2 telephone calls and a meeting with CB, which are mentioned on the Account,
- (iii) Letter to the DWP, dated 30 January 2013, querying the deductions made on her income support. This is mentioned on the Account
- (iv) A letter to CB dated 25 January 2013 on an entirely separate matter,
- (v) Unsigned mandate authorising release of information to the firm. This is detailed in the Account under heading letter and
- (vi) A file note of a meeting with CB on 17 January 2013. No time is given, but there is entry on the Account which states meeting took 20 minutes.

There is a signed A&A mandate on the file, although the quality of the copy is poor and apart from CB's name, the subject matter and signature the rest of the mandate is blank.

There is a remittance advice for £95 plus VAT dated 16 April 2013, naming the Respondent as the nominated solicitor.

Case 4 — SB- LARN: 3829790013

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" is dated 8 January 2013.

The A&A Account Information submitted online details 10 entries (3 meetings, 3 telephone calls, 3 letters & 1 retrospective abatement generated to cover £3.55 in excess over authorised expenditure) from 8

January— 23 April 2013. These correspond directly with the Account, under exception that:

- (i) the file note of the meeting of 8 January 2013 is briefer than the statement on the Account and does not detail the time spent with the SB,
- (ii) the letter to the complainer is dated 15 January 2013 and not 11 January as stated on the account. It does provide detailed advice as stated in the Account and
- (iii) the letter to SB of 5 March 2013 does not specifically say closing file as detailed within the Account.

There is a signed A&A mandate on the file dated 8 January 2013.

There is a remittance advice for £95 plus VAT dated 26 April 2013, naming the Respondent as the nominated solicitor.

Case 5 — PB- LARN: 3866849013

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form does not detail the instruction date. The A&A Account Information submitted online details 8 entries (2 meetings, telephone call, 4 letters & 1 entry of perusing documents) from 8 March— 24 April 2013.

The only correspondence relating to the subject matter of the A&A is:

- (i) a copy of the Confirmation, which has been perused,
- (ii) a letter to PB dated 10 April 2013,
- (iii) a letter to the Sheriff Clerk dated 10 April 2013,
- (iv) a further letter to PB dated 23 April 2013, which on the Account is detailed as dated 19 April 2013 and
- (v) an undated file note with illegible hand writing.

Whilst there is a signed A&A mandate on the file, this is undated and the signature is the box for solicitor rather than applicant.

There is no remittance advice held on the file.

Case 6 — PB- LARN: 3866843213

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form does not detail the instruction date.

The A&A Account Information submitted online details 6 entries (2 meetings, 2 telephone calls, 1 letter & 1 entry of perusing documents) from 8 March — 3 April 2013. These correspond directly with the Account, under exception that:

- (i) the file note of the meeting of 8 March 2013 does not detail the time spent with the PB and
- (ii) there are 2 extra letters, which do not relate to the file.

Whilst there is a signed A&A mandate on the file, this is undated.

There is no remittance advice held on the file.

In addition Ayr Sheriff Court had no trace or recollection of correspondence from the Respondent nor of searching records and answering a telephone enquiry.

Case 7 — SG- LARN: 3843589913

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form is dated 30 January 2013.

The A&A Account Information submitted online details 9 entries (1 meeting, 5 telephone calls, 1 precognition & 2 letters) from 30 January—19 February 2013. The only copy correspondence relating to the subject matter of the A&A is:

- (i) a file note of a meeting with SG on 30 January 2013,
- (ii) a letter to SG dated 5 February 2013, which does not correspond exactly with the narrative in the Account,
- (iii) the file note of 8 February 2013 relates to 3 telephone calls made on that date, which are detailed on the Account and
- (iv) the file note of 13 February 2013 details 2 telephone calls shown on the Account.

Whilst there is a signed A&A mandate on the file, this is undated and apart from SG's name, the subject matter and signature the rest of the mandate is blank.

There is a remittance advice for £95 plus VAT dated 16 April 2013, naming the Respondent as the nominated solicitor.

Case 8 — KH- LARN: 3845847913

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form is dated 1 February 2013.

The A&A Account Information submitted online details 18 entries (9 meetings, 1 precognition & 8 letters) from 1 February — 23 April 2013. The only copy correspondence relating to the subject matter of the A&A is:

- (i) a precognition stated to have been taken on 25 January 2013, but dated on the Account as at 1 February 2013,
- (ii) the file notes of 1 & 4 February 2013 correspond with the entries on the Account,
- (iii) file note for meeting on 25 January 2013 discusses issues and framing precognition, this is not mentioned on the account,
- (iv) the letters to Frazer Coogan and the client dated 7 February 2013 are as shown on the Account,
- (v) the file note of 25 February 2013 corresponds with the entry on the Account,
- (vi) the letter to Frazer Coogans dated 27 February 2013 corresponds with the entry on the Account,
- (vii) there are actually 2 letters to KH on 27 February 2013, one more fuller than the other, the fuller one corresponding with the entry on the Account,
- (viii) there are actually 2 file notes dated 4 March 2013 relating to a meeting with KH neither one corresponding completely with the entry on the Account, (ix) the file note of the meeting with KH on 25 February 2013 corresponds with the entry on the Account,
- (x) the letters to Frazer Coogans and KH dated 22 March 2013 correspond with the entries on the Account, indeed there is faxed transmission sheet for the letter to Frazer Coogans,
- (xi) the file note of 2 April 2013 corresponds with the entry on the Account, although slightly briefer,
- (xii) the letters to Frazer Coogans and KH dated 2 April 2013 correspond with the entries on the Account, although the letter to KH is detailed as being detailed terms to advise options and action taken, whereas in actual fact it simply copied the letter sent to the solicitor and asked her to let them know if there was any difficulty at the weekend,
- (xiii) correspondence relating to "CSA" appears on the file, but is not related to the Account and
- (xiv) there are file notes for 2 meetings on 11 February & 8 April 2013, which purport to relate to "contact", but which do not appear on the Account.

Whilst there is a signed A&A mandate on the file, this is undated and apart from KH's name, the subject matter and signature the rest of the mandate is blank.

There is no remittance advice held on the file.

Case 9 — AH- LARN: 3848586013

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form is dated 5 February 2013.

The A&A Account Information submitted online details 6 entries (3 meetings, 1 telephone call & 2 letters) from 5 February — 5 March 2013.

The only copy correspondence relating to the subject matter of the A&A is:

- (i) a file note of a meeting with AH on 5 February 2013, which corresponds with the entry on the Account and
- (ii) a letter to AH dated 12 February 2013, which is noted on the Account although the detail differs as the letter briefly mentions the tenancy and then goes on to discuss difficulties with Scottish Power.

Whilst there is a signed A&A mandate on the file, this is undated and apart from AH's name, the subject matter and signature the rest of the mandate is blank.

There is a remittance advice for £95 plus VAT dated 3 May 2013, naming the Respondent as the nominated solicitor.

Case 10 — AH- LARN: 3848592713

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form is dated 5 February 2013.

The A&A Account Information submitted online details 9 entries (2 meetings, 5 telephone calls & 2 letters) from 5 February — 7 March 2013. The only copy correspondence relating to the subject matter of the A&A is:

- (i) a file note of a meeting with AH on 5 February 2013, which corresponds with the entry on the Account, this also details a subsequent telephone call to Scottish Power and then one to AH and
- (ii) a letter to AH dated 12 February 2013, which is noted on the Account and is an exact duplicate of the one mentioned in Case 9 above.

Whilst there is a signed A&A mandate on the file, this is undated and apart from AH's name, the subject matter and signature the rest of the mandate is blank.

There is a remittance advice for £95 plus VAT dated 8 May 2013, naming the Respondent as the nominated solicitor.

Case 11 — CM- LARN: 2784938212

The documents held on the file are as listed in Production 4. There is no "Receipt of Instruction & New Matter Opening" form.

The A&A Account Information submitted online details 9 entries (2 meetings, 3 telephone calls & 4 letters) from 26 October — 19 November 2012. The only copy correspondence relating to the subject matter of the A&A is:

- (i) a file note of a meeting on 26 October 2012 corresponds with the entry on the Account and also mentions taking the precognition at that time,
- (ii) a file note of a telephone call dated 30 October 2012, which does not correspond with the Account and
- (iii) there are letters to CM and Scottish Children Reporter Administration both dated 9 November 2012, which do not correspond with the Account, although the letter to CM is similar to an entry on the Account dated 6 November 2012.

Whilst there is a signed A&A mandate on the file, this is undated.

There is a remittance advice for £95 plus VAT dated 27 December 2012, naming the Respondent as the nominated solicitor.

Case 12 — IM- LARN: 3889816213

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form does not detail the instruction date.

The A&A Account Information submitted online details 3 entries (1 meeting & 2 letters) from 16 — 18 April 2013. There is a meeting note and two letters on the file which correspond with the Account, although the letter to IM is not in detailed terms as stated on the Account but rather states that the solicitor has written to the court and asked them to look into matters. There are also 3 file note entries for 12 February 2013.

Whilst there are 2 signed A&A mandates on the file, these are undated.

There is a remittance advice for £35 plus VAT dated 11 June 2013, naming the Respondent as the nominated solicitor.

Case 13 — RM- LARN: 2775862412

The documents held on the file are as listed in Production 4, with the exception of the client mandate. There is no "Receipt of Instruction & New Matter Opening" form.

The A&A Account Information submitted online details 8 entries (2 meetings, 1 telephone call & 5 letters) from 3 — 24 October 2012. The only copy correspondence relating to the subject matter of the A&A is:

- (i) a file note of a meeting with RM on 3 October 2012, which corresponds with the Account and
- (ii) there is a letter to RM dated 18 October 2012, which does not appear to correspond with any entry on the Account, although it could perhaps relate to a letter detailed on the Account as having been sent on 5 October 2012.

There is no signed A&A mandate on the file.

There is a remittance advice for £94.50 plus VAT dated 27 December 2012, naming the Respondent as the nominated solicitor.

[By email of 24 June 2014 SLAB confirmed that there was no client mandate within this file and that this was an error within Production 4.]

Case 14 — RM- LARN: 2775860812

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form does not detail the instruction date.

The A&A Account Information submitted online details 8 entries (2 meetings, 2 telephone calls & 4 letters) from 3 October — 12 December 2012. The only copy correspondence relating to the subject matter of the A&A is:

- (i) a file note of a meeting with RM on 3 October 2012, which corresponds with the Account and
- (ii) there is a letter to RM dated 18 October 2012, which does not appear to correspond with any entry on the Account, although it could perhaps relate to a letter detailed on the Account as having been sent on 5 October 2012.

Whilst there is a signed A&A mandate on the file, this is undated and apart from RM's signature the rest of the mandate is blank.

There is a remittance advice for £95 plus VAT dated 27 December 2012, naming the Respondent as the nominated solicitor.

Case 15 — FM- LARN: 3866903413

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form is dated 8 March 2013. The A&A Account Information submitted online details 6 entries (3 meetings, 2 letters & 1 entry for perusing correspondence) from 8 March — 15 April 2013. The only copy correspondence relating to the subject matter of the A&A is:

- (i) there is a quantity of correspondence held on file from 3rd parties relating to FM's finances this would appear to relate to the correspondence noted on the Account as having been perused on 21 March 2013,
- (ii) there is a letter to FM dated 4 April 2013 stating "A" had handed in a lot of documents and asking that she make an appointment to discuss, which does not correspond with the A&A Account and
- (iii) the letter from McClure Naismith dated 1 March 2013 refers to a letter from the solicitor dated 5 February 2013, although no copy of this letter is held on file.

Whilst there is a signed A&A mandate on the file, this is undated and apart from FM's name and signature the rest of the mandate is blank.

There is no remittance advice held on file.

Case 16 — JM- LARN: 3867246713

The documents held on the file are as listed in Production 4. There is no "Receipt of Instruction & New Matter Opening" form.

The A&A Account Information submitted online details 9 entries (2 meetings, 3 telephone calls & 4 letters) from 1 — 19 March 2013. The only copy correspondence relating to the subject matter of the A&A is:

- (i) a file note of a meeting with JM on 1 March 2013 corresponds with the Account,
- (ii) the letters to East Ayrshire Council and JM on 5 March 2013, correspond with entries on the Account, although the letter to JM

simply says that the solicitor has written to the Council and he will let her know when they hear anything and it is not written in detailed terms to advise action being taken and going over options as stated within the Account,

- (iii) the letters to East Ayrshire Council and JM on 19 March 2013 both correspond with entries on the Account and
- (iv) the file note of 14 March details a meeting with JM and a subsequent telephone call with East Ayrshire Council, both of which correspond with the Account.

Whilst there is a signed A&A mandate on the file, this is undated and refers to interdict rather than Debts, apart from subject matter and signature the rest of the mandate is blank.

There is no remittance advice held on file.

In addition East Ayrshire Council advised JM did not have a tenancy with it nor did it have a record of any letters relating to the address in question from the Respondent. It also did not recall any conversation in relation to repairs given JM did not hold a tenancy.

Case 17 — LN- LARN: 2775893912

The documents held on the file are as listed in Production 4. There is no "Receipt of Instruction & New Matter Opening" form.

The A&A Account Information submitted online details 8 entries (2 meetings, 2 telephone calls & 4 letters) from 12 October — 1 November 2012. The only copy correspondence relating to the subject matter of the A&A is:

- (i) a file note of a meeting with LN of 12 October 2012, which corresponds with the Account and
- (ii) the letters to East Ayrshire Council and LN on 18 October 2012, correspond with entries on the Account, although the letter to LN on the account is dated 16 October 2012 simply says that the solicitor has written to the Council and he will let him know when they hear anything and it is not written in detailed terms to advise action being taken and going over options as stated within the Account.

There is no signed A&A mandate on the file.

There is a remittance advice for £94.50 plus VAT dated 27 December 2012, naming the Respondent as the nominated solicitor.

In addition East Ayrshire Council advised it had received a letter in October 2012 but nothing after that. The property listed was not one of their tenancies and it had not entered into any discussions with the Respondent in October 2012.

Case 18 — TN- LARN: 3890618913

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form is dated 16 April 2013. The A&A Account Information submitted online details 3 entries (1 meetings & 2 letters) from 16 — 18 April 2013. There are 3 letters relating to the subject matter of the A&A one is to TN and the 2 remaining ones are to Kilmarnock Sheriff Court and are in similar terms, all are dated 19 April 2013. The 2 letters, to TN and the Sheriff Court, correspond with the terms of the file copies, but are dated 18 April 2013.

There is a signed A&A mandate on the file.

There is no remittance advice held on file.

Case 19 — JR- LARN: 2775848412

The documents held on the file are as listed in Production 4. The "Receipt of Instruction & New Matter Opening" form is dated 2 October 2013. The A&A Account Information submitted online details 10 entries (2 meetings, 2 telephone calls, 5 letters & 1 retrospective abatement generated to cover £6.75 in excess over authorised expenditure) from 18 — 25 September 2012. The only copy correspondence relating to the subject matter of the A&A is a file note of a meeting with JR on 2 October 2012, which corresponds with the A&A Account. In relation to the precognition held on the file it is not clear when this was taken and there is no specific entry relating to this on the Account.

Whilst there is a signed A&A mandate on the file, this is undated and apart from the signature the rest of the mandate is blank.

There is a remittance advice for £95 plus VAT dated 27 December 2012, naming the Respondent as the nominated solicitor.

Case 20 — KS- LARN: 2775742812

The documents held on the file are as listed in Production 4. There is no "Receipt of Instruction & New Matter Opening" form. The A&A Account Information submitted online details 9 entries (2 meetings, 5 letters, 1 entry for perusing correspondence & 1 retrospective abatement generated to cover £5.00 in excess over authorised expenditure) from 12 October — 12

December 2012. The only copy correspondence relating to the subject matter of the A&A is:

- (i) whilst the file note of a meeting with KS dated 12 October 2012 corresponds with the A&A Account there are 2 further file notes with this date, one of which relates to a completely separate matter and the second of which appears to duplicate the file note relating to the account entry,
- (ii) the letters to East Ayrshire Council and KS on 17 October 2012, correspond with entries on the Account, although the letters on the account are dated 15 October 2012 and the letter to KS simply says that the solicitor has written to the Council and he will let her know when they hear anything and it is not written in detailed terms to advise action being taken and going over options as stated within the Account,
- (iii) a file note dated 23 October 2012 corresponds with the perusing entry on the Account,
- (iv) the second file note of 23 October 2013 relates to a separate matter,
- (v) the file note of the meeting with KS dated 30 October 2012 corresponds with the entry on the Account and
- (vi) the file note of 31 October 2013 relates to a separate matter.

There is no signed A&A mandate on the file.

There is a remittance advice for £95 plus VAT dated 27 December 2012, naming the Respondent as the nominated solicitor.

In addition East Ayrshire Council advised it had received the letter of 17 October 2012 but did not correspond further with the Respondent by letter or telephone.

Case 21 — SW- LARN: 3877088113

The documents held on the file are as listed in Production 4. There is no "Receipt of Instruction & New Matter Opening" form.

The A&A Account Information submitted online details 8 entries (2 meetings, 2 telephone calls & 4 letters) from 22 March — 9 April 2013. The only copy correspondence relating to the subject matter of the A&A is:

- (i) the file note of a meeting with SW dated 22 March 2013 corresponds with the A&A Account,
- (ii) the letters to East Ayrshire Council and SW on 26 March 2013 correspond with entries on the Account, although the letter to SW simply says that the solicitor has written to the Council and he will

let her know when they hear anything and it is not written in detailed terms to advise action being taken and going over options as stated within the Account,

- (iii) the file note of 28 March 2013 details two telephone calls and corresponds with the two telephone call entries on the Account,
- (iv) the file note of a meeting with SW dated 4 April 2013 corresponds with the A&A Account and
- (v) the letter to East Ayrshire Council dated 9 April 2013 corresponds with the entry on the Account.

Whilst there is a signed A&A mandate on the file, this is undated and apart from SW's name and signature the rest of the mandate is blank.

There is a remittance advice for £94.50 plus VAT dated 11 June 2013, naming the Respondent as the nominated solicitor.

In addition East Ayrshire Council advised it had no record of any correspondence by letter or telephone from/with the Respondent regarding SW and the address. It also advised SW never held the tenancy at the address and that SW had an advocacy worker at the time not a solicitor.