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

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, formerly at 26 Drumsheugh Gardens, Edinburgh and now at Atria One, 144 Morrison Street, Edinburgh

Complainers

against

PATRICK STEPHEN ALEXANDER COPINGER, Kirk House, 33 Miller Avenue, Wick, Caithness

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, Patrick Stephen Alexander Copinger, Kirk House, 33 Miller Avenue, Wick, Caithness (hereinafter referred to as "the Respondent") is 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. After allowing both parties a period of time to adjust, the Tribunal fixed 7 July 2015 as a procedural hearing and 3 September 2015 as a Debate.

5. At the hearing on 7 July 2015, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was absent but was represented by Mr Adam, Advocate, Edinburgh. A Record was lodged incorporating the up to date Complaint and Answers as adjusted. The Fiscal lodged an interim report from an IT

expert and indicated that she had instructed this report given the technical defence that had been raised by the Respondent. As she was not an IT expert she felt that such a report would help the Tribunal. She indicated that she hoped to be in possession of a full report within two months. Mr Adam explained to the Tribunal that the Respondent had the day before been interviewed at length by the Financial Crimes Unit which had then led to his arrest and charge. He believed that this would result in a report to Crown Office. He submitted that he considered that this led to difficulties in dealing with the Tribunal proceedings. He suggested that it was unusual that evidence that would be potentially led in a criminal trial be firstly rehearsed in a Tribunal setting. He submitted that even if there was an order for deferred publicity, the jury might have to be told about the Law Society's prosecution. Mr Adam indicated that he hoped that he would have more information with regard to the prosecution in two or three months. The Tribunal indicated to the parties that an order for deferred publicity would usually be granted if there were criminal proceedings ongoing and expressed concern about further delay in the Tribunal proceedings. The Fiscal indicated that parties were making a joint motion to adjourn the matter to a further procedural hearing in three months. Mr Adam explained that the Answers lodged on behalf of the Respondent had not been drafted by him and neither had the preliminary pleas. He indicated that if he was allowed an adjournment he would take a more pragmatic approach and the Answers would be further adjusted and the preliminary pleas further considered. He confirmed that this further delay would not form part of any Article 6 argument made by the Respondent. Having considered parties submissions carefully, the Tribunal was concerned with regard to the amount of time that had elapsed since the Complaint had been lodged with the Tribunal in November 2014. There had been a number of adjusted pleadings and extensions of time for adjustment granted. The Tribunal was not prepared to allow a further three months for a further procedural hearing. However, the Tribunal was prepared to convert the date of 3 September 2015 to a procedural hearing. A final Record of the adjusted pleadings was to be lodged with the Tribunal at least one week before 3 September 2015. The Tribunal also considered that it was important that the IT forensic report be available at least two weeks before 3 September 2015 so that the Respondent's agent would have a chance to consider its contents prior to the next calling. The Tribunal ordered that all further hearings of the case should be heard in private.

6. At the hearing on 3 September 2015 the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but was

represented by Mr Adam, Advocate, Edinburgh. It was clarified that the case had been continued from 7 July 2015 to obtain an IT report and for the Respondent to obtain further information with regard to criminal charges. Mr Adam confirmed that he had been advised that the police had submitted a report to the Procurator Fiscal. Ms Motion confirmed that the Procurator Fiscal had advised her that matters would be referred to Crown Office. She indicated that the IT report she had instructed was expected to be ready by the end of October. An up to date Record was lodged confirming that there were no longer any preliminary points to be resolved. The Fiscal asked for a full hearing to be fixed. Mr Adam indicated that he had no objection to that but wanted to emphasise that he may require to adjust the pleadings after seeing the Complainers' IT report. He explained that he had other commitments in the High Court commencing in November but hoped that matter would be completed in time for a hearing in December. Accordingly, the Tribunal continued the case to a full hearing on 10 December 2015 at 10:30am.

7. At the hearing on 10 December 2015 the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and was represented by Mr Adam, Advocate, Edinburgh. Mr Adam confirmed that the Respondent pled guilty to professional misconduct in respect of his failure to have a system in place to properly manage his firm's accounts. Mr Adam submitted that the Respondent's position was that this failure was due to errors in the computer system which malfunctioned and the discrepancies arose as a consequence of this. He explained that the Complainers insisted that the conduct was deliberate but that the Respondent did not accept any dishonesty. He asked the Tribunal to adjourn the hearing to allow the Respondent to obtain a forensic expert report in respect of the computer system. Although it had been expected that the Law Society's report from their IT specialist would have been available, it was not available because the original system was in the hands of the Crown. It would not be available until after the criminal case had been dealt with. He submitted that because of the importance of the IT system to the question of dishonesty it would be unfair to proceed without such a report. Mr Adam also submitted to the Tribunal that the late disclosure of documents by the Complainers which they intended to rely upon to prove dishonesty was prejudicial to the Respondent. The Complainers' Production 39 was only received on 7 December 2015 and the Respondent himself had only seen it the day before. Accordingly, the Respondent had had insufficient time to scrutinise and consider its content. The Chairman asked Mr Adam whether the facts in

the Record were agreed. He responded that they might be capable of agreement but not today as he needed to cross-check figures and would require time to do that. Ms Motion indicated that although there had been ongoing discussions, she had not received anything formal confirming that the Respondent was to plead to professional misconduct until now. She submitted that if professional misconduct was admitted then it had to be in relation to the Record and therefore the Record should be admitted apart from the dishonesty averment. The Tribunal agreed to allow the parties time to discuss matters to clarify whether or not the terms of the Record could be agreed. After an adjournment, an amended Record was lodged with the Tribunal and Mr Adam confirmed that the terms of the amended Record were agreed apart from the words "or deliberately" in paragraph 5 on page 32. The Fiscal confirmed that the amended Record had deleted some averments that had been included in the original Record. In answer to the question of how the parties saw matters going forward and whether or not they wished to continue with the hearing on the Complaint in relation to the dishonesty averment, which had not been admitted, or whether they wished to proceed by way of a proof in mitigation, the Fiscal submitted that, as that part of the Complaint had not yet been admitted, evidence would be required. Mr Adam renewed his motion to adjourn the hearing stating that the Productions which the Law Society were intending to rely upon to prove dishonesty had not been lodged in accordance with the Rules and the Respondent required to go to his bank and to his attic to get further papers to investigate matters. Mr Adam confirmed that it was his understanding that the prosecution would not release the computer system for a forensic IT report to be prepared because of the danger that the system could be corrupted. He understood that the Crown would be investigating the computer system and obtaining a report on it for their prosecution. He believed that statements had already been taken from witnesses but he could not say how long the criminal proceedings would take. The motion to adjourn was opposed by the Fiscal. She confirmed that she was unable to obtain an IT expert report for the reasons given by Mr Adam but she was in a position to proceed without an IT report. She indicated that she was content to proceed on the basis of the paper documents supporting her averments. She indicated that the Respondent had had since 2012 to obtain an IT expert report and had not done so. She confirmed there was no time frame on the criminal prosecution. Ms Motion asked the Tribunal not to adjourn the matter until the conclusion of the criminal proceedings as there was no timescale for that. Mr Adam indicated that the forensic IT report might be available sooner than the trial. Having carefully considered the submissions made by both parties, the Tribunal concluded that it was in the interests of fairness that the hearing be

adjourned to give the Respondent time to fully respond to Production 39 for the Complainers. The Tribunal did not consider it appropriate to adjourn the case until after the conclusion of the criminal proceedings as there was no timescale whatsoever in respect of that. The Tribunal ordered parties to identify which Productions would be required, to lodge lists of witnesses with the Tribunal by 31 January 2016 and thereafter adjourned the hearing to 25th and 26th February 2016. The Tribunal noted the admission of professional misconduct to the amended Record with the exception of the words "or deliberately" where they appear in paragraph 5 on page 32.

8. On the afternoon of 23 February 2016, the Tribunal office received a fax from the new agent for the Respondent indicating that the Respondent was ill and would be unable to attend the Tribunal. On 25 February 2016, the Law Society were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was represented by Malcolm Cameron, Solicitor, Glasgow. The hearing of 25 February 2016 had been converted to a procedural hearing, for Mr Cameron to attend to advise the Tribunal of his state of preparation. Mr Cameron tendered a copy soul and conscience medical certificate to the Tribunal which indicated that the Respondent was unfit to attend. The Tribunal allowed Complainers Productions 42, 43 and 44 to be received. Ms Motion intimated an intention to lead evidence from one witness, Morna Grandison, and to otherwise proceed by way of affidavit evidence from two witnesses. Mr Cameron indicated that he required the Respondent's instructions with regard to affidavit evidence and that he anticipated that many of the documentary productions could be agreed prior to the next hearing. He clarified that an IT forensic consultant instructed by the Respondent had been unable to prepare a report for today's hearing but that it might be possible for it to be completed for a future date. He submitted that the single issue in dispute was dishonesty and indicated that he might require to ask the Tribunal to sist proceedings until any criminal prosecution was completed if it proved impossible to have the IT report prepared for the next hearing. The Chairman indicated that this matter had already been raised by the Respondent and dealt with. In response from the Tribunal, Mr Cameron indicated no progress had been made in dealing with Production 39. The Fiscal moved for expenses in relation to the abortive hearing of 25th and 26th February 2016 and this was opposed by Mr Cameron. The matter was continued to a further procedural hearing on 25 May 2016 for the Respondent to lodge the principal copy of the soul and conscience certificate 14 days prior to that hearing, and for parties to advise the Tribunal office no later than 11 May 2016 of the final confirmation of witnesses to be called, Productions to be lodged

and which Productions were to be agreed and confirm that they knew of no reason why a hearing could not proceed. The question of expenses was continued until the outcome of proceedings.

9. On 16 May 2016 the Tribunal office received a letter from the solicitor for the Respondent dated 12 May 2016 intimating his intention to make a motion to sist proceedings, pending the outcome of any criminal enquiry or prosecution, when the case next called on 25 May 2016.

10. On 25 May 2016, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and was represented by Mr Cameron, Solicitor, Glasgow. Ms Motion confirmed that no progress had been made in terms of agreeing any of the documentation. She had reduced her productions to one folder of papers and confirmed that she would be relying on Productions 3, 9, 11, 12, 14, excerpts from 15 – 21, and excerpts from 26 – 28, and then all the documents numbered 30 – 44. It appeared to her that many of these documents were capable of being agreed. Following the last hearing on 25 February, on 26 February she had contacted Mr Cameron offering to meet. She telephoned Mr Cameron on 4 March and Mr Cameron had indicated that no progress could be made until the Respondent was better. On 6 April she had written for an update. On 26 April Mr Cameron had confirmed that the Respondent was now fit and that they were to have a meeting on 29 April. She heard nothing following that meeting and so chased that up on 6 May. She did not hear anything until she received the letter dated 12 May intimating the Motion, which she received on 16 May.

She had been told that a meeting would not benefit parties. She had always understood that there was an obligation on Respondents and their solicitors to cooperate with Tribunal proceedings. It was most unfortunate in her view that no progress had been made to date.

She considered that she might have 3 witnesses to call – Ms Grandison, who would be the main witness speaking to the remaining issue of dishonesty; Natalie Cook, whose evidence related to the preparation of the inspection report; and Ms Coghill, whose affidavit was in the bundle of papers. This had not been agreed and Ms Motion suspected that it would not be. She was considering bringing her as a witness but Ms Coghill lives

in Thurso. Ms Motion wanted to flag up at this stage that there might be a possibility of video evidence. Ms Motion indicated that she would continue efforts to obtain agreement of evidence.

The Chairman asked Ms Motion about Production 39, where there had been issues raised previously. She confirmed that this was one of her main documents and was a summary of evidence gleaned from bank statements and internal office records. She said this was the essence of her argument. She submitted that this document alone would show that the actions of the Respondent had been dishonest.

The Chairman confirmed that if the lack of agreement meant that the hearing took longer then that was simply what would have to happen.

The Chairman asked Mr Cameron if he could produce the principal soul and conscience certificate as had been requested on the last occasion.

Mr Cameron explained that prior to the last hearing he had obtained a medical certificate which the doctor had omitted to certify on soul and conscience. On the morning of the hearing the doctor had faxed a revised certificate. The doctor had not sent him the principal. When contacted by the Tribunal office, his secretary had thought that the doctor had sent the original but unfortunately what was on the file was a retained copy of the fax. Mr Cameron confirmed that he had written to the doctor requesting the principal some week to ten days after the hearing itself. He had written again but had not received the principal.

He submitted that everyone accepted the Respondent's GP had issued the soul and conscience certificate excusing the Respondent from attendance on medical grounds. He was not aware that any of that was in dispute. He submitted that the principal soul and conscience certificate was a formality, albeit a requirement of the Tribunal. He had strived to fulfil this requirement. All he could do was to take reasonable efforts to obtain it. He submitted that it might be possible to ask the Respondent to make an appointment to attend with his GP to obtain the principal.

He submitted that the issues with regard to the agreeing of documents were connected with his Motion to sist proceedings. On the last occasion he had informed the Tribunal

that the Respondent was unwell and needed 2 to 3 months to recover his health. Immediately after the hearing Ms Motion wrote to Mr Cameron regarding agreeing the documents but he was faced with an unwell client who lives at the other end of the country. He was unable to agree anything without instructions.

The general chronology of correspondence put forward by the Fiscal was correct but the interpretation of it was not. He denied the notion that he had not cooperated. He indicated he was bound by his client's instructions. The Respondent had not seen the original accounting records for 2 or 3 years and could not agree their authenticity. This tied into Mr Cameron's Motion to sist.

Looking at the grounds for the Motion to sist, he explained that the difficulty that he had in agreeing the summarised version of documents that the Fiscal had produced would become apparent. His Motion was to sist proceedings until either the conclusion of the investigation of criminal proceedings or until the end of the prosecution.

Mr Cameron had limited knowledge of the Tribunal proceedings. He had requested but not yet received the file of papers from the previous agent acting for the Respondent. He believed the Tribunal had heard a similar motion in the past. He submitted however that the position had materially changed since the making of that original Motion.

The COPFS or the police, who hold the records, are preventing the Respondent or anyone else having access to the original evidential material. This meant that the Respondent had to prepare his defence without any access to the original cash records and software. Ms Motion had confirmed that was the position of the Crown and that in fact they had prevented her own expert from having access to the materials to such an extent that Ms Motion had abandoned her attempts.

He submitted that this, what was effectively an "embargo", prevented him and his client properly investigating the Respondent's defence. These are clearly civil proceedings affecting his civil rights in a significant way and which engage Article 6.

Mr Cameron took no issue that the Tribunal was not Article 6 compliant. His issue was one of unfairness caused by the embargo imposed by the prosecution authorities.

He submitted that Article 6 involved three elements; 1) that the Respondent must have a real opportunity to present his case or challenge the case against him, 2) procedural equality meant that the Respondent had the same right as the prosecution to adduce his own evidence from original evidential materials and 3) equality of arms meant that the Respondent had the same right to examine witnesses as the prosecution. Each of these was undermined by the embargo which resulted in not just theoretical consequences but concrete effects.

Mr Cameron was unable to instruct an IT report from Strathclyde Forensics. He had contacted such an expert but he required access to the cash accounting software and original records. One of the issues in this case was that the software was misreporting which caused or contributed to the shortfall referred to in the Complaint. He believed that this was relevant to the question of dishonesty. The question to be answered was whether these breaches were an error or deliberate dishonesty. The existence or otherwise of a bug within the software system had a potential bearing on that question.

Mr Cameron also intended to instruct a report from a forensic accountant to establish the scale of the shortfall and whether any monies due to the firm for unfeed work would explain the shortfall.

Mr Cameron was unable to prepare either of these without access to the original materials. He understood that Ms Motion wanted to progress these proceedings in as efficient a fashion as possible. Unfortunately, Mr Cameron could not agree documents if his client was unable to identify them. The Respondent was not comfortable in identifying any of these documents. If he had access to the originals then he would be more than willing to consider that.

He argued that the Complainers have had 2 or 3 years access to the originals and to consider what items they wanted to rely on. The defence is entitled to the same process ie the opportunity to examine the original materials. The Respondent was being deprived of that opportunity but being encouraged to agree the Complainer's evidential documents. This was not what the Respondent would choose to do.

The Respondent did not have the opportunity of examining the original evidence to ascertain if it contained anything of an exonerating nature. Mr Cameron had not been

able to instruct two expert reports. This embargo struck at the very heart of the question of fairness. The Complainer had been given a choice of weapons, the Respondent had been given no choice at all. There was no equality of arms.

He submitted that the Complainers had had 2 or 3 years to trawl through the evidence and choose what they wanted. The Respondent had had no opportunity at all. Mr Cameron produced a copy of an excerpt from the case of Georgios Papageorgiou-v-Greece 59506/00 9 May 2003. He suggested that, although this was not an exact parallel to the Respondent's case it highlighted that the defence has a fundamental right to adduce its own evidence. The present case requires access to the original computer software. The Respondent had the same rights to adduce evidence as the Complainer. The prosecution could not have brought this case if it had not had access to all the records. He believed that the Law Society had had access to all of the material including the computer for at least 2 or 3 years. It was his understanding the computer system had in fact languished in the storeroom of the solicitors who inherited the Respondent's business.

Mr Cameron indicated that he was aware that the Tribunal had made some allowance for the outstanding prosecution by making a non-publicity order. That order would prevent any adverse view being formed by potential jurors. This however did not in any way inhibit the actions of the prosecution service who could obtain a transcript of these proceedings or interview the parties who had given evidence in them. The Law Society Financial Compliance Department and the Crown Office have regular quarterly meetings to discuss cases like this and how they are progressing.

Mr Cameron's other concern was that the Crown were using these proceedings as a dress rehearsal which was why they were delaying the criminal proceedings. He submitted that no order this Tribunal could make could inhibit the prosecution authorities. Every material question asked of the Respondent would have to be prefaced by common law cautions. The Respondent would be concerned that he would be cross-examined when he had not had an opportunity to inspect the original documents. If he were to seek advice, any practitioner would tell him that he could not safely answer such questions.

He stated that this raised an obvious point regarding the question of fair trial. These proceedings could not fairly proceed in advance of the prosecution. The position of the prosecuting authorities prevented the preparation of the Respondent's defence. The

prosecution authorities were directly preventing Mr Cameron from instructing two reports.

Mr Cameron stated that it should be noted that the Respondent did not personally manage the cash accounting system, he employed staff to do that. The Respondent had not seen his records for some 2 to 3 years. He could not be asked to agree copies of summaries. Mr Cameron was being prevented from obtaining reports which would have a direct bearing on the remaining question of dishonesty.

He argued that if the case proceeded then the Complainers would be in a position to lead a polished case whilst the Respondent would not be able to produce any exonerating evidence. The defence has the same right to adduce its evidence and here the Respondent had not had that opportunity.

Ms Motion confirmed that she opposed the Motion. Ms Motion insisted that when she had written to the Respondent's solicitor after the last hearing it had not been a request to agree evidence but had been an invitation to meet to go through the productions. Mr Cameron immediately agreed that that was in fact the case but that there was no point in such a meeting because Mr Cameron had no personal knowledge of the documents.

Ms Motion indicated that it was always her intention to proceed with the hard copies that she had. She had only followed the track of obtaining an IT report to see if some clarity could be obtained. That had never been her planned approach.

She argued that the Respondent was aware of these problems from December 2011. He had taken no steps since then to carry out the investigations referred to. As of today's date no actual request had been made to the police in writing to request any formal access. She had telephoned the detective constable in charge of the investigation for the police. She had given Mr Cameron the email address for the police some time ago. She had only been contacted on 13th May by Mr Cameron requesting clarification of that email address.

She explained that this Complaint had been lodged on 26 November 2014 and Answers lodged in January 2015. On 7 July 2015 Mr Adam had sought to sist this action and

included reference to article 6. Ms Motion submitted that there was nothing materially different today compared to 7 July. At that time the Motion had been refused.

She submitted that there was no general proposition that disciplinary proceedings should be halted pending any prosecution. She produced a photocopy excerpt from "Disciplinary and Regulatory Proceedings" the 8th edition and made reference to paragraph 5.71. This she said raised two points; (1) the Respondent does not require to give information or answer any questions; (2) the burden of proof remains on the prosecution throughout.

She submitted that account had to be taken of criminal proceedings that are actually up and running. She referred to paragraph 5.74 of the aforementioned publication which referred to the case of A-v-Tayside Fire Board [2000] SC 232 and argued that this was the position the present Tribunal was in. The police had confirmed to her that matters had not progressed any.

Ms Motion said that she was aware that the criminal charges were not identical to matters before the Tribunal although she conceded there was a crossover.

She was not familiar with the case referred to by Mr Cameron. Each case had to be considered within its own circumstances.

In this case both sides have exactly the same documentation. The Respondent and his representatives have had the opportunity to access the records from day one but have chosen not to take that opportunity. Hard copies had been provided. A choice had been taken not to engage in the process and not to go through the principal documents.

She emphasised that the onus was on her to prove the case and she was content to proceed.

She would repeat that Mr Cameron is welcome to come, and if necessary with Mr Copinger, to see the hard copies.

She submitted that Mr Cameron had put forward the principles in Article 6, but she did not necessarily accept that the principle of equality of arms was a basic principle of Article 6 that had to happen and no authority for that had been produced.

Ms Motion submitted that a forensic accountant's report to see if any money was due to the firm would be irrelevant. If a solicitor took money out of a client's account it was irrelevant that his firm was due money.

Ms Motion invited the Tribunal to refuse the Motion to sist.

In answer to Ms Motion's submissions, Mr Cameron indicated that Ms Motion had informed the Tribunal on the last occasion that the prosecution authorities were not allowing anyone to have access to the computer. He submitted that it was perfectly reasonable for him to rely on that submission. He had understood that that was the reason why the Law Society's IT expert could not prepare a report. He could understand the reason for that as the Crown would not want evidence to be tampered with.

He submitted that the very fact that at one point Ms Motion had instructed an IT report suggested that the possibility of misreporting by the system must have been considered relevant at some stage.

Whilst Mr Cameron accepted that the Respondent could remain silent, this was hardly consistent with him presenting his best defence. If he remained silent then the Tribunal could infer guilt from his silence. This he argued did not sound like a fair hearing.

He accepted that there was no hard and fast rule that disciplinary proceedings should be sisted pending any prosecution. He submitted however that this was something that should be considered and that his main point was the prejudice that would be caused to the Respondent in this case. This question had to be dealt with on a case by case basis. In this case there would be substantial detriment to the Respondent if the Tribunal ordered proceedings to go ahead.

He understood that the criminal charges being investigated were identical to the one remaining disputed matter. The police would not be interested in technical breaches of the Accounts Rules. Both matters involved issues of fraud and dishonesty.

Obviously this was a matter for the Tribunal's discretion.

He submitted that in July 2015 when the first motion was made, it was not known that access would be prevented and that the Law Society would abort their attempt to obtain an IT report. This obstacle is now known about and really only became apparent in November with its significance understood in February.

There were no questions of the public interest being at risk. The Respondent was suspended from practice and therefore there were no ongoing public interest matters. The Respondent had no intention of practising again in the future.

He said that it was not his position that there was anything improper in the channels of communication used here regarding the agreement of evidence. His major concern was that whilst the Tribunal can lock down publication of its judgment, it could not lock down the prosecuting authorities recovering evidence.

He stated, to be candid, that he believed that this was a deliberate strategic postponement of criminal proceedings pending the Tribunal.

Ms Motion took exception to this suggestion and reiterated that the report was with the COPFS but it was her understanding that it had not yet been allocated to any team.

She referred to paragraph 5.78 of the "Disciplinary and Regulatory Proceedings" and submitted that this indicated that there should be expeditious progress of any disciplinary proceedings.

She submitted that Mr Cameron would be able to cross examine all of her witnesses.

Mr Cameron responded that the test to be applied is what is just and convenient but that justice took priority.

A Tribunal member asked the parties whether it was possible to obtain "a ghost" copy of the hard drives which would allow them to be interrogated. Mr Cameron responded that he believed that was what his expert intended to do. Ms Motion indicated that she

believed that was what her expert had done but she was not sure exactly what he had in his possession. She believed that he was unable to interrogate that copy in order to answer any questions. She believed that the only way that matters could be taken forward was to go into the original systems and when Mr Butler, the IT consultant, had brought this to the attention of the police he was prevented further access.

She suggested there was no reason why Mr Cameron could not go down the same road but he had made no request for access at all.

Mr Cameron submitted that this highlighted the very difficulties of instructing an IT report. He had instructed a member of Strathclyde Forensics who was as equally as respected as Mr Butler. He understood the normal procedure was to obtain such copies for the interrogation to take place. He understood from the information given that this was insufficient here to allow the questions to be answered. What was being stated by the Complainers today reinforced his submission that the Crown was not allowing anyone to have access to the computer system sufficient to allow the questions to be answered.

The Tribunal adjourned to consider the issues raised.

There appeared to be two aspects to this motion. One was a simple and straightforward request to sist the proceedings before the Tribunal until the conclusion of the criminal prosecution. The Tribunal had little or no sympathy with such a motion given the apparent early stages of any criminal procedure.

The second aspect was the question of being refused access to the computer system. It was unclear to the Tribunal exactly what access would or would not be granted to the Respondent. On the one hand it appeared that the Fiscal had indicated that access would not be granted and yet on the other hand it appeared that the main objection to this motion today was that the Respondent had not requested access. Whilst the Tribunal did not necessarily agree that it was best practice to rely on what had been said by the Fiscal, nonetheless, Mr Cameron indicated that he had not made a formal request for access to the computer because of what had been stated.

After some consideration the members of the Tribunal felt that they were unable to give the motion full consideration without having before them full information as to what

access would be granted to the Respondent. Additionally, the Tribunal wished further information with regard to the significance of such an examination.

The hearing reconvened. The Chairman indicated to Mr Cameron that it was minded to continue this procedural hearing together with the motion to sist for further information. However, the Tribunal was concerned that such delay could be used in an Article 6 argument against the Tribunal proceedings. The Chairman asked Mr Cameron if he would give an undertaking in similar terms to that given by Mr Adam previously that he would not use the delay in the Tribunal proceedings caused by this motion to found any Article 6 argument. Mr Cameron immediately responded that he was prepared to give such an undertaking and then took specific instructions from the Respondent before the Tribunal to agree that was the case.

The Tribunal continued the procedural hearing and the motion to sist to Friday 8 July 2016 at 10:30am.

Parties were advised that the hearing and motion were continued as the Tribunal was not satisfied that at this time there was sufficient information on the possibility of access to the computer system and the significance of the information that such access might provide to allow them to consider the motion fully.

The Chairman advised Mr Cameron that the onus was being placed on him (1) to make enquiry of the prosecution Services to obtain a determination on whether the Respondent could have access to the IT system held by them or a copy of it and (2) to explain to the Tribunal what such access would add to the defence beyond the hard copy reports that had been obtained.

Additionally the Chairman again indicated to Mr Cameron that the Tribunal required him to produce the original soul and conscience certificate from the Respondent's medical practitioner. The Chairman emphasised that the Tribunal was reserving its position with regard to the motion and that neither party was to draw any inference from the continuation.

11. At the procedural hearing on 8 July 2016, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and

was represented by Mr Cameron, Solicitor, Glasgow. The Respondent lodged a List of Productions for today's hearing. The hearing was heard in private. Mr Cameron clarified that Mrs Copinger was present and that Mr Copinger clearly had no objection to that. The Fiscal confirmed she had no objection to Mrs Copinger being present during the hearing.

The Chairman confirmed that the Tribunal had received the original soul and conscience certificate.

The Chairman clarified to Mr Cameron that the hearing had been continued to allow him to enquire as to the possibility of access to the computer system and for him to indicate to the Tribunal what significance this proposed report would have to the defence beyond the actual paper productions.

Mr Cameron confirmed that he had been in touch with the police officer in charge of the investigation into this case and referred to the productions he had lodged on 8 July 2016. The officer in charge had confirmed that as far she was aware no one could have access to the computer system and software until the end of the criminal investigation. He had provided the Tribunal with copy correspondence between him and the police and between him and the Procurator Fiscal, the latter not having been acknowledged or responded to. He believed that the Fiscal for the Law Society had attempted for some time to get up to date information from the COPFS without success.

Mr Cameron accepted that this was an active investigation and that the computer system was a piece of crucial evidence. He submitted that it was unlikely that anyone would get unfettered access to the system and indeed the Law Society's Fiscal's expert had been told that last year.

Mr Cameron explained that he had had a face to face meeting with his proposed computer expert (Mr Manousis) and had tried to get from him a clear idea of how he would go about investigating the Respondent's defence. Mr Manousis had indicated that he would require to re-establish the software and mini-network in the way it had been set up for the Respondent's firm before he could then take a copy for him to carry out his investigations. He was most reluctant to proceed on the basis of a copy of a hard drive provided by someone else for two reasons; firstly, he could not be sure of the accuracy of the copy, and secondly, he would be expressing an opinion on the basis of the work of

another expert where the copy had been made by an unknown means. The expert required to have access to the system as it had been set up at the time of the conduct objected to. If this could not happen then it was his position that his investigation would be rendered useless.

The proposed enquiry was relevant to the charge of dishonesty, the only remaining matter in dispute. Mr Cameron submitted that an expert report on a potential misreporting by the computer system that could have affected the float calculations went to the core of the case.

He submitted to the Tribunal that the test of dishonesty was twofold, a) whether the solicitor acted dishonestly by the standards of ordinary reasonable people and b) whether the solicitor was aware that by acting by these standards he was acting dishonestly. Effectively this was a subjective test of dishonesty – what did the Respondent believe at the time? The question was whether he and his staff where acting ignorantly of the circumstances, unaware of the misreporting bug in the system. This misreporting of the system confused the level of available funds in the client bank account. The relevance to the defence case was apparent.

He submitted that it was not open to the Tribunal to go beyond whether such a report would have a bearing on the Tribunal's deliberations. It was not for the Tribunal to speculate what the content of the report would be. The key to his submission was that the Respondent's defence would be materially weakened if he had to proceed without the report.

Mr Cameron insisted in the motion to sist proceedings until the criminal investigation and any prosecution were concluded. He was aware that the Fiscal continued to oppose the motion. It was however significant that the Complainers themselves had instructed such a report only to abandon it when they could not get further access to the system. He argued that the Complainers would not have incurred the expense of such a report unless at some stage they had assessed that the misreporting bug was relevant to the question of dishonesty. The report was relevant to the defence and without it there would be prejudice. If the case was continued to a hearing then the Respondent would be presenting his case with one hand tied behind his back. The main line of defence could not be corroborated in a definitive way. The Tribunal could certainly hear the

Respondent's description of the bug and how it came to mislead him but there would be no scientific explanation which may add to his credibility, his defence would be prejudiced. He submitted that it was unfair to proceed without the report. This amounted to excluding potential exonerating evidence.

Mr Cameron accepted that the public interest required to be considered. There was no possible prejudice to the public interest. The Respondent had no intention of practising as a solicitor again and his practising certificate was currently suspended. He submitted that the balance fell in favour of a postponement of these proceedings.

Ms Motion confirmed that she continued to oppose this motion on the same basis as previously. Her opposition lay on the basis of the public interest, the protection of the public and protection of the reputation of the profession.

She argued that, importantly, no decision has been taken to prosecute. The Respondent had written to the Procurator Fiscal in Inverness. Ms Motion believed that it was the Fiscal's office in Wick that had the case. They had confirmed that they had the file but no decision had yet been taken on any criminal prosecution. It was not yet known when or if any prosecution would be taken. She submitted that it was in the interests of the profession and of the Respondent himself to have this case "done and dusted" in a private hearing where she had to persuade the Tribunal on the test of dishonesty. She was satisfied that she could proceed on the basis of the documentary evidence that she had.

She explained that the reason that she had previously instructed a computer expert was to rebut the potential defence case. Unfortunately, her expert could not complete the report. She was quite satisfied with the evidence she had in her possession.

She confirmed that she had had contact with Mr Cameron this week. As a result she had lodged with the Tribunal a revised List of Witnesses, with four witnesses listed. She suggested that she may require to add further witnesses if, for instance, parties could not agree the bank records. Given the issues still outstanding she believed that the hearing might take three days.

The Chairman asked the Fiscal if she was happy to proceed given the indicated line of defence, the test of reasonable doubt and the merit of what Mr Cameron said regarding

the relevance of the evidence to the hearing. Ms Motion confirmed that she was happy to proceed.

Mr Cameron responded that he had given full cooperation with regard to the matter and had provided the Fiscal with a long list of documents that could be agreed. This list included the bank statements and so he did not accept that the Fiscal might require to cite additional witnesses to speak to these. He explained that the Fiscal had drafted a comprehensive Joint Minute that he confirmed he was prepared to sign. He confirmed again that all of the bank statements in the Law Society's bundle were agreed.

Ms Motion confirmed that none of the records of the firm were agreed. Mr Cameron explained that certain of the print outs within the Fiscal's papers could not be agreed. He was not in any doubt that the Fiscal was in a positon to proceed but it was his position that it was the defence that was handicapped not the prosecution. If the Fiscal had considered it necessary to rebut the defence relating to the computer bug then this was an implied admission of the relevance of that defence. He was not suggesting that there was any general bar on professional regulatory proceedings continuing when criminal proceedings were outstanding. It was his position that these proceedings were made unfair by the embargo imposed on the main piece of evidence by the police.

It has been the Respondent's defence since day one that he had been misled as to the true state of affairs and had not understood the true state of affairs because of the misreporting bug in the computer system. The Respondent could give evidence regarding that but it was surely obvious that if a highly respected expert corroborated that position then that added weight to the defence. The report was needed and was essential otherwise he would be presenting the case with one hand tied behind his back. It is not the existence of the criminal proceedings per se that was an issue, it was the lock down on the productions.

Mr Cameron acknowledged all of the public interest matters referred to by the Fiscal but submitted that they were not prejudiced by any delay. The only potential prejudice was to the Respondent.

He accepted that the Law Society were performing their public duty by taking these proceedings to the Tribunal. If there had to be a stay of these proceedings because of

other outstanding proceedings there could be no criticism of the profession but rather this would disclose that the Tribunal were conducting proceedings fairly.

Ms Motion responded that the Respondent had been aware of his position since 2012 and arguably since matters arose in 2008 and yet it had taken until 2016 for these matters to be raised before the Tribunal.

Mr Cameron responded that the Respondent had, rightly or wrongly, depended on the Law Society instructing an expert. This after all had been an independent review of the computer system and not a partial one. If the report had corroborated the Respondent then this could have been used in his defence. The Respondent was only aware in November that the report could not proceed.

Mr Cameron continued that the Respondent had not had access to his financial records since the inspection. It had previously been suggested that the Respondent had been invited to inspect these records. The Respondent denies that. Unfortunately, Mr Cameron still did not have Mr Adam's file but the Respondent himself was not aware of any invitation being directed to him. The Fiscal had invited Mr Cameron to meet with her to go through the documentary productions but these were not the full financial records of the firm. The Respondent had not had access to the full records including other bank statements relating to other bank accounts operated by the firm.

The Tribunal gave careful consideration to submissions made by both parties.

The Respondent had made a motion to sist these proceedings pending the conclusion of an outstanding criminal investigation and any subsequent prosecution. No actual decision had been taken to prosecute the Respondent in the criminal courts. The length of time such a sist would persist was completely open ended. If this motion had simply been made on the basis of the outstanding criminal proceedings then the Tribunal would have had no hesitation in refusing it, in accordance with the authorities.

The motion here however was based on the Respondent being denied access to the computer system of his previous firm. It had been put to the Tribunal that the Respondent wanted to obtain an expert report, which he hoped or believed could corroborate his defence of a bug in the system causing the system to misreport. The Respondent had

argued that this would prevent him from having a fair trial, that a refusal to sist would prejudice the Respondent's defence but that a decision to grant a sist would offer no prejudice to the public interest.

Article 6 applies to proceedings before the Tribunal and the Respondent is entitled to a fair hearing.

The Tribunal noted that a similar motion to sist had previously been made and refused and that the case had previously been set down for a hearing in February 2016 which had been adjourned for other reasons.

After considerable discussion, two of the Tribunal members believed that there was no prejudice to the public interest in the Tribunal sisting these proceedings given that the Respondent was not, and could not due to suspension, practise. The members believed that his defence could be prejudiced if he was deprived of the opportunity of obtaining an expert report which would potentially materially support his defence. Accordingly, these members were in favour of granting the motion to sist.

Two of the members did not accept that the Respondent would be denied a fair hearing if the motion was refused. Mr Cameron accepted that the Respondent could speak to the alleged reporting bug and referred to the potential report as corroboration. There was agreement of everything apart from the question of whether the conduct was deliberate or not. The onus of proof lay with the Complainers to prove the disputed element of their case beyond reasonable doubt. The Respondent would be able to cross examine witnesses and, if he chose to do so, give evidence on his own behalf. These members believed that there was a question of prejudice to the public interest if the motion was granted. The period of time for the sist was completely open ended and likely to prove lengthy. The public interest requires that proceedings such as these be expeditious. Accordingly, these members were not prepared to grant the motion.

Given the casting vote of the Chairman, the Tribunal concluded to refuse the motion to sist and fixed a hearing for two days initially, being 24th and 25th November 2016.

12. At the hearing on 24 November 2016, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and was

represented by Malcolm Cameron, Solicitor, Glasgow. Two Joint Minutes between the parties were lodged. Mr Cameron made a further motion to sist the proceedings pending the criminal investigation of the Respondent. This motion was opposed. After hearing submissions from both parties, the Tribunal refused the motion to sist. The Fiscal began leading her evidence which could not be completed on that date. The hearing was continued to 25 November 2016 when the evidence in chief was concluded. Mr Cameron began his cross-examination, but was interrupted when the Respondent took ill. In the circumstances, the hearing was adjourned to 13 January 2017.

13. On 13 January 2017, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and was represented by Malcolm Cameron, Solicitor, Glasgow. The witness for the Complainers concluded her evidence. Ms Motion closed her case. Mr Cameron confirmed that the Respondent was leading no evidence. The Tribunal heard submissions from both parties.

14. The Tribunal found the following facts established:-

14.1 The Respondent is a solicitor enrolled in the Registers of Scotland on 19 November 1997. He has practised as a partner since 1 April 2002 and under the business name of Highland Law Practice, 99 High Street, Wick (HLP) since 1 April 2004. He has been the Cash Room partner of HLP since 1 April 2004; the Client Relations Partner since 13 May 2004; the Anti Money Laundering Partner since 19 October 2006 and the Risk Management Partner since 1 November 2011. He was suspended as a solicitor on 15 February 2012 when an Interim Judicial Factor was appointed on the business name of Highland Law Practice by the Court of Session. Said Interim Judicial Factor was sought at the instance of the present Complainer and was made permanent on 15 March 2012 without opposition. It related to the matters in this complaint. At the date of this complaint he does not hold a Practising Certificate but remains on the Roll of solicitors.

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

(a) the supervision of the staff and systems employed by HLP;

(b) carrying out the provisions of the Solicitors (Scotland) Accounts etc. Rules 2001 (in particular Rule 12(2)) (the Accounts Rules) and

(c) securing compliance by HLP with the provisions of the Accounts Rules.

Background - Financial Compliance Inspection-2008

14.3 The Society carried out an inspection of HLP's books and records in 2008, and discovered various items which were of concern. These were discussed with Ms MacLennan at the end of the inspection, and a copy of the summary notes was left for the Respondent.

14.4 On 30 July 2008, the Guarantee Fund Department wrote to the Respondent, detailing the inspection's findings, and observed that Ms MacLennan had given assurances "at the *summing up meeting [.....]* that the matters noted, including the underlying systems, will be addressed to prevent any recurrences".

Although the matters identified were not referred to the Guarantee Fund Committee, the Respondent was advised that the position would be checked at the next inspection and that, if it was found that if any of these had not been addressed, *"this will be* viewed as a serious matter".

The letter referred to various concerns, including but not limited to:-

(a) A shortage on the client account. The Respondent was warned that client account deficits were taken very seriously, and that "[t]here needs to be *communication with* the *cashroom* to *obtain* the level of *surplus* before *any transfer is made from the client* account".

(b) A problem with HLP's computer system with claims it would not allow the "month end" to close. The trial balance, daybook and client bank reconciliation as at 30 June 2008 all showed different client bank balances, having been printed off at different times, and took account of different postings. In addition the trial balance showed drawings continued from the previous year and firm income figures continued from several previous years. Financial Compliance noted that they had been

informed that *"a bug in the software does not allow* these to be cleared *but this is being worked on".*

14.5 Financial Compliance sent reminders to the Respondent dated 26 August 2008 and 12 September 2008. He replied on 25 September 2008. He rejected the Society's explanation for the shortfall and he opined that *"compliance with* Rule *4 is almost certainly the most* essential *of the Accounts* Rules", and expressed his concern that *"in certain circumstances our current accounting software 1...4 appears* to have *certain failings which allowed this position to arise".*

14.6 The Respondent said the software developers would no longer support the program he used, and could not supply upgrades; however, he had introduced *"interim* measures", and HLP would "have one *person examine each day book prior to closure and compare this with all posting slips etc used to identify any posting which have not gone through or* of *type with the other known issues to allow* these to be *examined in more detail".* A cashroom manual existed on the Respondent's computer system. The cashroom assistant in 2008 was Morven Coghill, who continued in post until 2011 when she left the firm to work in her partner's business. Robert McGregor was appointed as cashroom assistant in 2011 to take over Ms Coghill's duties. Ms Coghill posted entries on the day book as supervised by the Respondent as the designated cashroom partner. However the Respondent would also post entries on the day book. In terms of month end procedures Ms Coghill's role was to prepare the investment entries/interest as accrued for each client. Otherwise the month end reconciliations were carried out by the Respondent save for one occasion when Ms Coghill required to complete the month end reconciliation by herself but with assistance from the Respondent remotely.

14.7 In relation to the 'month end' position as at 30 June 2008, the Respondent said he had created 'error accounts' as *a work around for the specific problem that* (the *software) would not allow the day* book *to be closed while showing an accurate client account* ledger". He said he had made postings to the error account, *"leaving a nil surplus on client bank (until the error balance was reduced to nil), following which the* account *was* closed". Although he did not

anticipate such an error occurring in the future, he would arrange to have the software upgraded, to *"address this matter also".*

The Respondent also claimed the Society's inspector had not used the final version of the reconciliation but that this was *"an* issue *which we are having upgraded".*

14.8 Financial Compliance replied on 2 October 2008, warning the Respondent that, after he had updated his software, he must continue to monitor the firm's records.

Reference was made to the Respondent's assurances that *"all balances will be printed* out at the *same time as all* of *our 'month end' reports, to ensure a full and* proper *audit trail"* and *"that all* other *issues in respect of 'month end' should be dealt with by the software upgrade".* The Respondent was told that, when the process was complete, he must provide 'month end' reports to show that the problems had been addressed.

14.9 Financial Compliance expressed concern that software problems could have *"had such a widespread* effect, *so much so that the true financial position of the firm may be unclear"* and that whilst the Respondent had a duty to ensure that HLP's records were accurate and properly kept, it was uncertain whether *"this can be guaranteed using software that is no longer supported by the provider".*

14.10 In a letter dated 25 February 2009, the Respondent advised that "Due to *issues previously arising with our existing accounts software, and the supplier ceasing further support for this package, we are in the process* of *completing* a replacement *accounts program designed to be compliant with* the *Solicitors Accounts* Rules". He indicated that after completing work on a product for HLP's own use, he proposed to market it.

14.11 He opined *"that* there *could be* issues *with a firm using its own* software to keep *its* accounts, to the *extent that data could potentially be fraudulently amended without this being easily apparent on third party inspection".*

14.12 In a second letter dated 25 February 2009, the Respondent said the *"upgrade of software"* would involve an entire program to replace the existing system and he would shortly begin a testing phase.

14.13 On 27 March 2009, Financial Compliance wrote to the Respondent, saying he would require to contact them when the new system went live and "at *that point we will request such information as may be required to assess compliance* of the new system".

Financial Compliance-Inspection 25 January 2012

14.14 In December 2011 the Complainers received information that cheques on the HLP firm bank account had been returned unpaid by the bank. As a result an inspection was authorised to review the financial position of **HLP.**

14.15 By letter of 5 January 2012 Financial Compliance wrote to the Respondent and Sylvia Catherine MacLennan (Ms MacLennan), the other partner in HLP and the wife of the Respondent. That letter advised them that an Inspection would take place on 25 January 2012. The letter of 5 January 2012 was sent to the Respondent and Ms MacLennan by first class and separately by recorded delivery mail. Ms MacLennan in her e-mail of 19 January 2012 confirms that she is aware of the inspection due to take place and accordingly, given that this correspondence was the only notification of the inspection, and given the usual rules in relation to postal delivery, said letter *is deemed to have been* received.

14.16 In response on 18 January 2012 Financial Compliance were contacted by HLP to advise that a shortage had been discovered on the client account. On 19 January 2012 an e-mail was received from Ms MacLennan. She notified the Complainers of a problem with the computer system and indicated that a shortage on the client account had been discovered. Ms McLennan's email indicated that it would take approximately 3 weeks to work out the software problem and she questioned whether the inspection should proceed.

14.17 Attached to that e-mail was a letter from the Respondent dated January 2011 *(received January 2012)* providing further details in relation to the software

problems and advising *inter alia* that he had been advised to cease all work by his doctor or at most to carry out the minimum work and to avoid all stress. The Respondent accepted in that letter full responsibility for breach of Accounts Rules; that "the *former Rule 4 is* one *of* the *most fundamental of the* Solicitors' *rules"* and offered to surrender his practising certificate without the need for any formal procedure. In addition he claimed that, while working on the monthly reconciliation, he had *"discovered* that *while* the *computerised accounts* system *(Prophecy SLPM) stated there to* be a sufficient *client float, manual examination showed this was inaccurate to* several *thousand pounds".*

14.18 The Respondent said the deficit was due to the software he used, and that he had encountered "issues *arising with [its] operation";* nonetheless, the program had not appeared to be *"significantly compromising the core functions".* The suppliers had ceased to trade, and he himself had been *"creating a replacement program".*

14.19 In his letter dated January 2011 (received January 2012) the Respondent claimed that, "if *a computer or network error* occurs *during a posting, then that posting may be corrupted in* some *way but* still *inserted into* the *database";* although the suppliers had *"provide[d] a tool that would allow extraction of data".* The Respondent said he was unable to *"tell whether any corrupt* entries *are or are not extracted".* Meantime, he was *"attempt[ing] to* discover exactly *what entries in `Prophecy' are incorrect".*

14.20 The Respondent assured the Society that *"no client is being prejudiced by the position";* he considered it to be in his clients' best interests that HLP should continue to trade, while he sought to resolve the situation: *"Payment of funds* to *clients will not be delayed when required while we establish how much may require* to be *paid into* the *client account".*

14.21 In light of all of the above it was determined that the inspection would proceed to ascertain the true position of HLP.

14.22 The inspection discovered that a credit of over £102,000 had been shown as an adjustment to the client bank reconciliation in November 2011 but that no details

or references on the reconciliation were discovered to show what this sum related to. The financial compliance team carrying out the inspection was unable to ascertain fully how this outstanding credit of over £102,000 had arisen but it appeared to have been accumulating since June/July 2009.

14.23 Client bank account reconciliations were also carried out by the financial compliance team for the period 1 July 2011 to 30 November 2011. In the process of this several transfers from the client account to the firm account had been deducted from the former but had not been posted to the latter accounting records.

14.24 A review was carried out of the "client return" cheques and it was found that HLP had drawn a cheque on the client account for the sum of £19,000 on 24 November 2011 payable to "Marsh" but although this had been cashed on 1 December 2011 it had not been posted to the firm's records.

14.25 As at 30 November 2011 there was an actual deficit of £102,000 whereas in contrast HLP's records showed a surplus of £69.72.

14.26 At this inspection the financial position of the practice unit was noted to be of concern as the firm did not have an overdraft on the firm account and several direct debits were seen to have been returned by the bank due to insufficient funds being held. Several charges were also seen on the firm bank relating to unauthorised borrowing and returned cheques. In addition no evidence was seen that PAYE and VAT had been paid to the date of the inspection. The pre-visit questionnaire stated that December 2011 VAT had not been paid due to the software issues. However no evidence was seen at the Inspection that the September 2011 VAT had been paid.

14.27 On 2 February 2012, Ms MacLennan telephoned the Society, and "[a] discussion then took place [.....] to ascertain what steps were being taken by the firm to identify and correct the issues". Ms MacLennan evidently said that she and the Respondent were "looking into the outstanding entries on the client bank reconciliations", and that the alleged software problem had also "impacted the

firm side in relation to fees etc". She advised that the position was not as bad as they had anticipated, and the deficit appeared to be around £70,000.

14.28 As a result of the concerns the Guarantee Fund Committee of the Complainers determined to invite the Respondent and Ms MacLennan to an interview on 16 February 2012 to explain why they should not have their practising certificates withdrawn in terms of Section 40 of the Solicitors (Scotland) Act 1980. An investigation was also authorised under Rule B6.18.4 of the Law Society Practice Rules 2011.

Investigation 8 — 10 February 2012

14.29 As a result of the above Inspection the Investigation proceeded on 8 to 10 February 2012.

14.30 The investigation concluded that it was not possible to ascertain the true position of the client bank account but it was clear the client account was in deficit and that payments out of that had been made for the expenditure of HLP and partner drawings. The books and records of HLP could not be relied upon as many entries could not be seen as having been posted and many entries that could be seen had been incorrectly posted at the wrong dates. In summary the Investigation identified the breaches below.

14.31 There was a deficit on the client account. The shortage was estimated at approximately £70,000.

14.32 At the end of each month end reconciliation any differences should have been noted by or on behalf of the Respondent when comparing bank statements and bank ledgers at the same time. Any differences should have been investigated and dealt with timeously by the Respondent. As at 31 January 2012 there were outstanding credits of £123,197.62. There was no breakdown on the reconciliation to verify what the sum related to.

14.33 The Inspection discovered that various entries relating to firm expenditure, paid from the Client Account, had not been posted in the Firms books. It appeared

that the outstanding entries had been accumulating since June/July 2009. The Respondent did not ensure correcting entries were made. The books and records therefore had not shown the correct position since June/July 2009. Accordingly HLP had been in a deficit position since June/July 2009.

14.34 Schedule 3 of the Report details some examples of the entries making up this figure. These comprised payments from the Client Account transferring funds to the Firm Account to make payments for expenditure of HLP or to pay drawings of the Respondent and/or his partner as follows:-

- 26/06/09 Cheque: 2400 Paid HM Revenue & Customs £7,504.53 cashed 01/07/09 **(Daybook for 26/06/09 shows a surplus of £2,262.64)**
- 16/07/09 Cheque: 2441 Paid Lombard £4,262.68 cashed 03/08/09 **(Daybook for 16/07/09 shows a surplus of *£1,333.87)***
- 22/06/10 HM Revenue & Customs £4,587.41 cashed 06/07/10 **(Daybook for 22/06/10 shows a surplus of £630.91)**
- 01/07/10 To PSA Copinger & SC (Drawings) £2,000.00
- 02/07/10 Clydesdale Bank £300.00 Cheque 2943 cashed 02/07/10
- 02/07/10 Bank of Scotland £600.00 Cheque 2946 cashed 02/07/10 **(Daybook for 02/07/10 shows a surplus of £64.22)**
- 01/11/10 To PSA Copinger & SC (Drawings) £2,000.00 **(Daybook for 01/11/10 shows a surplus of £205.89)**
- 08/11/10 Cheque: 3083 To Marsh Ltd £22,058.27 cashed 12/11/10
- 08/11/10 Cheque: 3092 To Farquhar & MacGregor £1,100.00 cashed 18/11/10 **(Daybook for 08/11/10 shows a surplus of £580.92)**
- 01/06/11 to PSA Copinger & SC (Drawings) £2,000.00 **(Daybook for 01/06/11 shows a surplus of £111.00)**
- 08/06/11 From client account to firm account £2,000.00 **(Daybook for 08/06/11 shows a surplus of £198.44)**
- 28/06/11 From client account to firm account £4,000.00 **(Daybook for 28/06/11 shows a surplus of £797.20)**
- 01/07/11 To PSA Copinger & SC (Drawings) £2,000.00 **(Daybook for 01/07/11 shows a surplus of £331.88)**
- 25/07/11 From client account to firm account £2,600.00 **(Daybook for 25/07/11 shows a surplus of £644.12)**

- 26/07/11 From client account to firm account £4,600.00 **(Daybook for 26/07/11 shows a surplus of £644.12)**
- 24/11/11 Cheque: 3457 To Marsh Ltd £18,959.66 cashed 01/12/11 **(Daybook for 24/11/11 shows a surplus of £6,519.30)**
- 01/12/11 To PSA Copinger & SC (Drawings) £2,000.00 **(Daybook for 01/12/11 shows a surplus of £144.60)**

14.35 The payments outlined in the preceding paragraph were not posted to the records of the firm and totalled £82,572.55.

14.36 In addition the following transfers totalling £24,000 were seen to be paid out of the client account but had not been posted to the records:

01/08/11 - PSA Copinger & SC £2,000.00
18/08/11-Highland Law Practice £1,000.00
26/08/11 -Highland Law Practice £4,000.00
01/09/11 -PSA Copinger & SC £2,000.00
28/09/11 -Highland Law Practice £4,500.00
03/10/11 -PSA Copinger & SC £2,000.00
07/10/11 -Highland Law Practice £2,000.00
07/10/11 -Highland Law Practice £3,400.00
27/10/11 -Highland Law Practice £4,000.00

14.37 Furthermore the following transfers totalling £6,500 were seen to be posted to the records, although not on the specific dates that sums were deducted from the bank:

11/08/11 Client to Firm £3,000.00
30/09/11 Client to Firm £500.00
11/10/11 Client to Firm £1,000.00
31/10/11 Client to Firm £2,000.00

It was understood that some of the above postings may have related to the transfers detailed that were yet to be posted. However, due to the discrepancies in date and amount, it was not possible to match these. The net result between

this and the preceding paragraph was that at least a further £18,400 had not been posted through the firm's records.

14.38 As a result the financial compliance team concluded that the shortage (ie. deficit) on the client account might be over £100,000-(£82,572.55 + £18,400.00) representing part of the £123,197.62.

14.39 The Respondent was under a duty, at all times to keep properly written up accounting records as were necessary to show all of HLP's dealings with clients' money. He was obliged at all times to keep properly written up such accounting records as were necessary to show the true financial position of HLP. He did not do so.

14.40 After review of the records by the Investigation team it was seen that money was dealt with by HLP without the dealing being in the firms records until, at a later point in time, there were sufficient funds to cover the sum transferred. Reference is made to Schedule 4 of the Report:-

- 01/07/09 To Drawings £2,000.00 — this appears to have been posted 31/07/09
- 08/07/09 To Drawings £500.00 — this appears to have been posted 14/08/09
- 03/08/09 To Drawings £2,000.00 — this appears to have been posted 31/08/09
- 07/07/10 Scottish Hydro £1,631.69 (2941) posted 30/07/ 10, cashed 07/07/10
- 01/07/10 Cheque to cash £500 (2942) posted 30/07/10, cashed 02/07/10
- 22/07/10 BT Payment £758.33 (2964) posted 30/07/10, cashed 28/07/10
- 28/07/10 From client to firm account £4,800.00 — posted 30/07/10
- 09/11/10 From client to firm account £200.00 — posted 30/11/10
- 19/11/10 From client to firm account £1,000.00 — posted 30/11/10
- 03/02/11 Cheque to cash £500.00 (3168) cashed 03/02/11, posted 28/02/11
- 15/02/11 Cheque to cash £600.00 (3180) cashed 15/02/11, posted 28/02/11
- 28/06/11 From client to firm account £1,200.00 — posted 29/06/11
- 23/08/11 Cheque to VWFS (Audi) Motor Lease (3371) £1,333.55 — cashed 31/08/11, posted 09/09/11

- 01/08/11 Cheque to Drawings (3333) £255.00 — cashed 16/08/11, posted 30/09/11
- 28/10/11 Cheque to Atlas UK (3433) £312.00 — cashed 09/11/11, posted 30/11/11
- 28/12/11 From client to firm account £4,000.00 — posted 31/12/11
- 28/12/11 From client to firm account £500.00 — posted 31/12/11

3.41 In addition the following transfers from the client account to the firm bank account were not posted to the appropriate client ledger until several days/weeks later:-

- 03/06/11 From client account to firm account 235217 £500.00 posted 30/06/11
- 04/07/11 From client account to firm account 235217 £500.00 posted 27/07/11
- 05/08/11 From client account to firm account 235217 £500.00 posted 24/08/11
- 26/08/11 From client account to firm account 235217 £280.00 posted 31/08/11
- 07/09/11 From client account to firm account 235217 £500.00 posted 30/09/11
- 03/10/11 From client account to firm account 235217 £300.00 posted 31/10/11

14.42 In addition many other transfers from the client account to the firm bank account or cheque withdrawals were deducted from the bank prior to being posted to the firm records. From a review it was found that many items were not seen to have been posted to the books and records with some entries having been missing for many years. "Old outstanding items" included figures of £5,200, £12,000 and £8,400, all unposted.

14.43 Other instances were seen where incorrect entries were made to HLP's records with the result that the records did not show the true financial position of HLP, namely:-

- £10,000.00 was posted to the records on 28/02/11 as funds being introduced, however these funds were not seen to have been credited to the client bank account at that time.
- £4,000.00 was posted to HLP's records on 28/02/11 as funds being introduced, however these funds were not seen to have been credited to the client bank account.

14.44 Accordingly the postings in the preceding paragraph would have artificially inflated the surplus position shown in the records as:-

- £10,000.00 was transferred from the client bank account to the firm bank account on 02/02/11, but only posted to the records on 28/02/11. This entry was posted to the records the day that funds were apparently introduced to the practice unit (as detailed above).
- £4,400.00 was transferred from the client bank account to the firm bank account on 25/02/11, but only posted to the records on 28/02/11 when funds were apparently introduced to the practice unit (as detailed above).

14.45 The deficit created by transferring the sums in the preceding paragraph would have been masked in the records by the incorrect postings reflecting sums that were not actually received.

- On 06/04/11 £10,000.00 was posted through the Lloyds TSB client bank account nominal ledger as a transfer from the Lloyds TSB clients account to another client account held at the Royal Bank of Scotland. However, this transfer was not seen through the Lloyds TSB client bank statements.
- The entry through the nominal client bank ledger therefore meant that the £10,000.00 outstanding credit from 28 February 2011 which related to funds apparently introduced to the practice unit was able to be reconciled and therefore no longer showed as part of the outstanding credits.
- The £4,000.00 appears to still be part of the outstanding credits as at 31/01/12.

14.46 On further investigation of this matter it was noted that £10,000.00 was credited to the Royal Bank of Scotland client account on 06/04/11 but came from account

number 230142, which was not a firm or client bank account. This was queried and it was confirmed that the sum of £10,000.00 was credited to the Royal Bank of Scotland account from a personal account in the name of P & S Copinger and was from encashing a Standard Life Policy.

14.47 This meant that the entries through the practice unit's records were incorrect and did not show the true financial position of the practice unit. The records showed that £10,000.00 had been introduced into the client bank account on 28/02/11 when it was not received until 06/04/11. Funds were transferred from the client account to the firm account on 02/02/11, two months prior to the *£10,000.00* actually being received. The deficit created would have been masked by these incorrect postings. The £4,000 had not been introduced at the date of the Investigation.

14.48 In addition the Respondent or his staff for whom he had supervisory responsibility failed to make daily postings (which were sometimes as much as two weeks behind) thus, the daybook for 1 December 2011 was opened on 14 December 2011, whilst that for 9 December 2011 was opened on 21 December 2011.

14.49 As a result of the above the investigations team concluded that it was not possible to rely on the books and records of HLP.

14.50 The Respondent's position in relation to all of the above matters was that this had arisen due to a problem with the Computer Software System "Prophecy SLPM" purchased before 2008. The issues had apparently come to light whilst testing a replacement cash room system. The Respondent denied he had been dishonest or negligent. He claimed that the present Complainers had failed to uncover the problem in their 2008 inspection. He had not considered any urgency in following on from the 2008 inspection in relation to replacing the computer system. Furthermore he asserted he had no responsibility for the cash room after the 2012 inspection. Furthermore he indicated that he had no intention of returning to practice as a Solicitor and intended to seek to join the Faculty of Advocates when he was financially and medically in a position to do so.

14.51 As indicated above a permanent Judicial Factor was appointed to HLP on 15 March 2012 without opposition. As detailed above the Respondent's position was that the accounting issues detailed above were as a result of software difficulties.

14.52 Over and above her own investigations detailed in the preceding paragraph the Judicial Factor also noted that at the Complainers Inspection in 2008 the same issue of a computer problem had arisen. Reference is made to the background section above. As a result of the Inspection in 2008 the Respondent had given assurances that matters, including the underlying computer software and systems, would be addressed to prevent any further occurrences. The Respondent ought to have been able to ascertain whether his own firm's systems were fully operational and fully compliant given the knowledge the Respondent had of IT systems and in particular his knowledge which enabled him to develop a product which he considered to be potentially marketable.

14.53 The instances of inaccurate postings deliberately resulted in the firm's accounts being inaccurate and not reflecting the true financial position of HLP.

15. Having given careful consideration to the established facts, the evidence before it and the submissions of the parties, the Tribunal found the Respondent guilty of Professional Misconduct in relation to:

15.1 his breach of Rules 4, 8 and 12 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001;

15.2 his breach of Rule 1 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008; and

15.3 his breach of Rules B1.2, B6.3.1, B6.7.1, B6.7.4, B6.13.1, B6.13.2 and B6.13.3 of the Law Society of Scotland Practice Rules 2011.

16. The Tribunal heard submissions in mitigation and in relation to expenses and publicity. Thereafter, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 13 January 2017. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Patrick Stephen Alexander Copinger, Kirk House, 33 Miller Avenue, Wick, Caithness; Find the Respondent guilty of professional misconduct in relation of his contraventions of Rules 4, 8 and 12 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001; Rule 1 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008; and Rules B1.2, B6.3.1, B6.7.1, B6.7.4, B6.13.1, B6.13.2 and B6.13.3 of the Law Society of Scotland Practice Rules 2011; Order that the name of the Respondent be Struck from 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, but that publicity shall be deferred until the conclusion of the criminal investigation into or any criminal proceedings arising from the Respondent's conduct.

(signed)

Alan McDonald

Vice Chairman

17. 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 2 MARCH 2017.

IN THE NAME OF THE TRIBUNAL

[redacted]

Alan McDonald

Vice Chairman

NOTE

At the hearing on 24 November 2015 the Tribunal had before it a Record, six Lists of Productions for the Complainers, a List of Productions for the Respondent and two Joint Minutes which related to a number of the Productions for the Complainer.

In relation to the Record, the Chairman questioned whether something was omitted from the Record at page 14 where one of the averments for the Complainers had been deleted but the answer for the Respondent remained. Ms Motion confirmed that an averment had been deleted and Mr Cameron agreed that the answer could simply be treated as being deleted.

Parties confirmed that the second Joint Minute agreed two of the affidavits that had been lodged by the Fiscal but did not cover the affidavit for the witness, Coghill. Mr Cameron confirmed that he could not agree that witness's affidavit given the need to cross-examine her.

The Tribunal then asked the parties to confirm what the position would be if any of the evidence led conflicted with the agreed facts on the Record and how the parties intended to ask the Tribunal to proceed. In response Mr Cameron indicated that it was his understanding that the Respondent was admitting breaches of the Solicitors Accounts Rules but that he was not admitting all of the averments of fact. He asked if there was a formal minute. The Clerk read an extract from the informal note of proceedings confirming that this was only an informal record. Mr Cameron argued that if the Respondent had indicated he was agreeing the Record then that was something fairly meaningless unless that included the Respondent's Answers. Mr Cameron argued that if the Respondent had been pleading guilty to the charges and all of the surrounding circumstances then it should have been said specifically that he was not insisting in his defence. Mr Cameron invited the Tribunal to proceed in any case suggesting that might not change matters much given that he would be challenging parts of Ms Grandison's evidence.

Ms Motion confirmed that it was her position that the Respondent had admitted the Complaint in all of its terms apart from the word "or deliberate." She suggested that it was unfortunate that this matter had not been raised until now.

Mr Cameron indicated that no blame attached to him given that he was not acting at the time any admissions were said to have been made. He could only proceed on the basis of information before him. Ms Motion indicated that on at least two previous occasions she had raised before the Tribunal

that misconduct was admitted by the Respondent. Mr Cameron confirmed that there was no doubt that the Respondent had accepted misconduct but Mr Cameron was not aware that the Respondent had admitted the averments of fact.

It was agreed that the Tribunal would take a short adjournment to allow the parties to discuss their position.

The case recalled some 20 minutes later. Mr Cameron confirmed to the Tribunal he had taken his clients instructions.

Mr Cameron submitted that it was his understanding that the Respondent on advice from his then agent agreed to admit the charges of professional misconduct in the form of multiple breaches of the Solicitors Accounts Rules. There had been discussion as to whether the Record could be agreed. It was Mr Cameron's understanding that it was made clear that the Respondent was not admitting to dishonesty. The Respondent advised Mr Cameron that the Clerk at one point had suggested that the hearing could be a Proof in Mitigation in light of the admissions made. It had however been made clear to the Tribunal that would not be the correct way to proceed as the Respondent was not admitting to dishonesty and that remained a live issue for Proof. The charges were admitted save for the issue for dishonesty. Accordingly these proceedings would be limited to whether the Respondent acted dishonestly or not.

Mr Cameron explained to the Tribunal that he was told for the first time today that it was the Complainers' view that the Respondent had admitted all of the averments of fact on Record. This had not been the Respondent's understanding or Mr Cameron's understanding until this morning. He believed that this presented a real difficulty for the Respondent defending the dishonesty charge.

Mr Cameron directed the Tribunal's attention to page 32 at paragraph 5 and the words "or deliberately". He submitted that Mr Copinger had admitted matters save for the dishonesty element. He submitted that the Record as it stood could not have been admitted by Mr Copinger.

The Chairman confirmed to Mr Cameron that it was noted that the Respondent had not agreed the words "or deliberately".

Mr Cameron explained that it was his position that there had not been a blanket agreement to all of the Complainers' averments of fact in the Record and he explained that the areas of disagreement were highlighted in the Record.

The Chairman confirmed that it was the Tribunal's position that the Respondent had admitted the facts, duties and professional misconduct with the exception of the allegation of the conduct being deliberate. He invited parties to proceed on that basis.

Ms Motion confirmed that Mr Cameron had a motion to make. Mr Cameron confirmed that he wanted to make a fresh motion to sist proceedings although he had made the motion previously. He wanted to clarify that this was not a backdoor attempt at an appeal against the Tribunal's earlier decision but the motion was being made as a result of an update in information. On the last occasion Mr Cameron had explained that he was going to attempt to instruct a forensic IT expert to prepare a report on the crucial issue of the possibility that there was a bug affecting the computer system. His IT expert had confirmed that he was not in a position to prepare such a report without access to the system itself. He could now confirm that there is an active police enquiry into the Respondent's business affairs. The change since the last hearing is that the Tribunal were not aware of the status of the police enquiry. The police enquiry appears now to be an active investigation. The Respondent is disadvantaged in this hearing if he cannot lead expert evidence and he cannot access the system himself in order to refresh his own memory. As a consequence of the embargo on the computer system by the police authorities he is prevented from preparing his defence. On that basis Mr Cameron wanted to renew the motion to sist in particular on the basis of this updated information.

Mr Cameron wanted to highlight that the Respondent was unable to give evidence without access to his original material. These events took place some time ago. The advice Mr Cameron had given the Respondent was not to give evidence. The Tribunal had indicated that there would be no publicity until the outcome of the criminal proceedings. This protection only went so far for the Respondent. He believed that the prosecution authorities could be well within their right to apply to a higher court to ask for a copy of a transcript of the proceedings and that the Tribunal would be unable to resist such a request. Therefore on his advice the Respondent would not be able to give evidence in these proceedings.

Ms Motion confirmed that she was opposing the motion to sist on the same basis as before. It was her position that it was not uncommon for such hearings to proceed. The explanations regarding the experts report had been given previously. She submitted that it was in the interests of all parties

including Mr Copinger for this matter to proceed. She submitted that it was in the interests of the profession and the public for these matters to proceed.

Mr Cameron argued that these proceedings had been ongoing for many years. He submitted that in general civil proceedings gave priority to criminal proceedings although he realised that this was somewhat different in regulatory proceedings. He argued that proceeding today was putting the cart before the horse. He argued that there was not a significant public interest at stake given that the Respondent was not in practice and he was not likely to return. He emphasised he was making his motion to sist on the basis of two reasons (a) that the Respondent could not get his hands on material to demonstrate what occurred had occurred accidentally and (b) that the Respondent would be required to give evidence in a situation where his evidence could be relied upon by the prosecuting authorities.

The Chairman asked for clarification as to the change in circumstances with regard to the criminal prosecution and asked if parties could confirm if any date had been indicated.

Ms Motion confirmed that she had spoken to various people within COPFS and it appeared that their enquiries now involved taking precognitions. No date had been given.

The Tribunal adjourned to consider the motion to sist. The information before the Tribunal appeared simply to be that investigations were continuing by the prosecution service. This did not appear to be a significant change to the previous situation. There still was no suggestion that a prosecution would actually take place or any indication of any time frame for that. The issue of the computer had been raised previously. The onus of proof lay on the Complainers and was of the criminal standard. The Respondent had the opportunity to cross-examine the Complainers' witnesses and give evidence himself if so advised. If he was prosecuted in the criminal courts it would be for that court to ensure a fair trial. This hearing was being held in private and publicity would be deferred until any criminal prosecution was concluded. Accordingly the Tribunal agreed unanimously that the motion to sist should be refused.

The hearing was recalled and parties advised that the motion the sist was refused. Mrs Copinger was asked to confirm that her laptop was not live online and she confirmed that she was only taking notes.

The Tribunal confirmed that the hearing was being held in private and that the proof would be on the basis that all that was in dispute were the words "or deliberately" where they appeared in section 5 on page 32 of the Record.

Mr Cameron asked for some time to consider how to proceed given that this was a change in approach for him. He asked if any indication could be given as to how long the evidence would take. Ms Motion indicated that she would be approximately one and a half hours with Mrs Grandison.

The Chairman confirmed to Mr Cameron that the Tribunal had all of today and tomorrow and so he could take the time needed to proceed properly and fairly. The hearing was adjourned to 2pm.

When the hearing recommenced the Fiscal for the Law Society called her first witness.

MORNA JEAN GRANDISON

Ms Grandison confirmed that she was the Director of Interventions at the Law Society of Scotland.

She had been appointed Judicial Factor ad interim to the Highland Law Practice and the personal estates of Stephen Copinger and Sylvia McLennan on 15 February 2012. Her appointment arose as a result of irregularities in bookkeeping discovered by a Law Society inspection. She was asked to go in as Judicial Factor and look at the books and records of the firm and thereafter report to the Inner House.

She has worked for the Law Society for 22 years. Her role is to take the Judicial Factories on behalf of the Law Society. She is the holder of a BSc.

She is SOLAS qualified and a member of the Society of Law Accountants in Scotland. She is a member of STEP, she lectures in fraud to the COPFS, she sits on a number of working parties, she has lectured the police at Tulliallan with regard to solicitor fraud. She believes that she has been appointed as Judicial Factor in some 43 cases but each case can be a multiple appointment for firms and individuals so she has been a Judicial Factor in at least 86 incidences.

She has 22 years' experience working primarily in the area of solicitors fraud. She lectures in fraud to the profession. She sits on a number of working parties and has sat on a working party organised by the National Fraud Authority to look at the enablers for mortgage fraud in the UK. She sits on the Fraud Investigators Group.

In the course of these Judicial Factories she has had to access, download and analyse solicitors' computer records and hard copy records.

She confirmed the only partners in the Highland Law Partnership were the Respondent and Mrs McLennan.

She was appointed interim Judicial Factor on 15 February 2012 unopposed and then as permanent Judicial Factor on 15 March 2012 unopposed. She confirmed that Production 4 was the petition, the basis on which she was appointed. She confirmed that paragraph 14 of the petition indicated that a claim on the Guarantee Fund might arise. She confirmed that she had now almost finished the work and had dealt with all of the client ledger balances. It was anticipated that the likely shortfall on the client account would be £96,000. She was referred to Production 3 the report from the Law Society inspection of 25th January and 8th and 9th February 2012 and confirmed that her appointment followed on this inspection. She explained that she would have referred to the report that was produced to give her an understanding of the allegations being made but it was always her practice to look afresh at the firm's systems and prepare her own investigations. When she was appointed as Interim Judicial Factor the court had charged her with the duty of taking a fresh eye look at the whole situation. It states in the petition for her appointment that there might be a claim on the Guarantee Fund. She is required to take a look at what the Society found in their inspection in what is effectively a snapshot of the firm's position and she requires to take a detailed look and carry out her own investigation and form her own view on whether there is a high likelihood of a claim arising against the Guarantee Fund. Additionally, she has an obligation to find a solution if one can be found. It would not be appropriate for her to continue as Judicial Factor if the firm was in a position to put money back into the client account to solve the problem.

In the early stages she spoke to Mrs McLennan with regard to the prospect of the firm realising the money to put back into the client account to cover the shortfall.

Her first task was to secure all the evidence in such a way that any subsequent prosecution would be able to proceed. She had to preserve the computer system, books and records. These were all packaged up and sent to her offices in Edinburgh. She arranged for the computer server to be secured, packaged, sent off and stored. She and her team did not touch the server at all but had carried out all of their work from the books and records that had been printed off and created by HMP itself. Additionally they had got in touch with the banks involved to get any missing records. She had written to all of the clients to confirm that they were happy with the accounting that had been carried out to calculate their balances.

Ms Chalmers was a part of her team. Ms Grandison had not gone to Wick in the initial days. It was Ms Chalmers who had gone as part of the team. Ms Grandison had travelled there a few days later.

The Respondent had had remote access to the computer system. When the server was taken down and secured it was not clear exactly what the full extent of that remote access had been. They had looked at the books and records. They did not examine the computer itself. The Respondent made himself available and she had interviewed him and Mrs McLennan as well.

The Fiscal asked the witness if she had reached any conclusion and if she had why she had reached that conclusion. Ms Grandison indicated that as far as she was concerned this was a straightforward case. It appeared simply that the client bank account had insufficient funds to pay claims to individual clients. In other words this was a breach of the Accounts Rules. Money had been used from the client account to meet firm expenditure or drawings of partners.

Her colleagues had looked at the records in the office and she was able to agree the figures that the Law Society had established in their inspection report. The complication for her had been whether what had occurred had occurred by inadvertence. What was discovered by Ms Chalmers was that the bank reconciliations had been misstated for a long period of time and that was why the books appeared to be squared off.

It appeared that there was a manipulation of the books and records. The question was whether this was deliberate or a misunderstanding on the part of the individuals involved as to how the records were prepared. It was clear that the question was whether the bank reconciliation had been deliberately or inadvertently misstated.

Ms Grandison went on to indicate what her view of the answer to that question was when Mr Cameron objected. He objected on the basis that he did not believe that it was appropriate for this witness to express such an opinion. He did not believe that her opinion was relevant. He submitted that Ms Grandison was a witness to fact and not an expert witness. The question of whether this was inadvertence or fraud was the matter being adjudicated by the Tribunal and it was well established that an expert's opinion on what was being adjudicated by the Tribunal was inadmissible.

Ms Motion invited the Tribunal to allow the evidence on the basis that the Tribunal could decide what weight to give the evidence of the Judicial Factor's opinion. She reminded the Tribunal that the witness had indicated that she had undertaken 86 Judicial Factories.

Mr Cameron insisted on his objection. He insisted that the Tribunal should not entertain someone else's view on the Respondent's guilt or innocence. He disputed that the witness was to be treated as an expert. He submitted that Ms Grandison was entitled to give evidence regarding her role as a Judicial Factor but that she was crossing over to different category by giving opinion evidence. He referred the Tribunal to the case of Davie-v-Edinburgh Corporation 1953 Session Cases (sic) where he said it was stated that it was not appropriate for a factual witness to express opinion.

The Tribunal adjourned to consider the objection. The members agreed unanimously to uphold the objection. When the case restarted the Fiscal was requested to ask the witness to avoid expressing opinions. Ms Motion made reference to a case of Kennedy from the Supreme Court in 2016 which she indicated had superceded the earlier authority mentioned by Mr Cameron but did not produce a copy. She continued to lead evidence from her witness.

Ms Grandison confirmed that she was classed as an officer of the court and that she was required to examine the facts and form a view to report to the court. She reported to the Accountant of Court. She had prepared a report that established she had discovered dishonesty in this case. Mr Cameron interjected to ask Ms Motion if there was a copy of that report and Ms Motion indicated that one had not been produced as she did not consider it to be relevant. Mr Cameron responded that he believed that should have been made available.

The witness went on to confirm that the computer system being used by the Respondent was the Prophecy system. She was aware from correspondence that the Respondent had had difficulty in closing off month end balances. She was aware that the system would not allow day book balances to be closed where there was a deficit on the client account.

She was referred to Production 1 for the Complainers and indicated that she did not believe she had seen that before. It was an email from Mrs McLennan. She was referred to paragraph 3.

She confirmed that Productions 14, 15, 16, 17 and 19 were records that had been recovered from Highland Law Practice itself. Production 20 was copy bank account statements, 21 was client account statements, 22 was Royal Bank of Scotland account statements for the firm, 23 was Lloyds statements for the firm account, 26 was prints of the day book received from the practice as was 27 and 28. All of these documents were received from the offices of HLP.

The witness confirmed that she had seen financial statements for the firm of HLP. Productions 30 – 36 were the accounting records that she had reviewed. She confirmed that the police had collected substantial documentation regarding their own enquiries.

The first set of accounts that she saw was for the year end March 2005. These accounts showed a turnover of £104,774. The profit share for the partners was just under £5,000 each. There had been capital introduced of £18,860.

Mr Cameron objected to the Fiscal leading the witness in connection with the accounts information. There was an exchange between the parties about this being uncontested evidence but the Fiscal indicated she would only ask open questions from now on.

The witness confirmed that Production 31 was the accounts for the firm for the year end 31 March 2006. This indicated a turnover of £130,792. The partners' profit share for that year was £23,193. Capital introduced was approximately £15,502.

Production 32 was the financial statement for the year end 31 March 2007. This disclosed a turnover of £153,132. Capital introduced was £8,000 and the profit share was £20,012 each.

Production 33 was the financial statement for the year end 31 March 2008. The turnover disclosed there was £159,616. Capital introduced was £61,876. The profit share was £16,688 per partner.

Production 34 is the financial statement for 31 March 2009. This discloses a turnover of £153,411. The profit share each is £11,177. There is no sign of any capital being introduced that year.

Production 35 is the financial statement for the year end 31 March 2010. The turnover is noted as £177,110. Capital introduced was £21,974. The profit share was £22,122 per partner.

Production 36 is the financial statement to the year end 31 March 2011. The turnover is noted as £146,710. Capital introduced was £14,000 and the total profit share to be divided by both partners was £3,621.

Each of these documents is a financial statement. They are not audited. They are prepared from the books and records of the firm. Audited accounts would express an opinion on the content and that they were a true and fair view of the underlying records.

For accounts to be extracted from the books and records there needs to have been a squaring off of the year. That squaring off requires a comparison with the bank accounts and confirmation that matters have been adjusted to take into account entries not in the books and records.

The witness was referred to Production 37 and Mr Cameron objected. He indicated that this document should not be before the Tribunal as it expresses the view of the witness regarding the guilt or innocence of the Respondent. This was an internal Law Society report. This was the equivalent to a report of one of the Law Society's Committees investigations and would not normally be before the Tribunal. It was deeply prejudicial to the Respondent. Ms Motion responded that the Respondent had not raised this issue with her before. This was a report. She argued that in terms of the case of Kennedy-v-Cordia (sic) this was a document that could be before the Tribunal and that it was for the Tribunal to give it such weight as the report required.

Mr Cameron explained that this document had not been agreed and that Ms Motion had been aware of that for some time now. He took the view that it was quite improper for a document of this nature to be put before the Tribunal where it expresses the view of the guilt or innocence of the Respondent.

Ms Motion indicated that she was happy to come back to this issue later and that she would continue with the witness' evidence at this stage.

The witness was asked to explain to the Tribunal the meaning of a reconciliation. The witness confirmed that this was a reconciliation of cheque book and bank account with entries that the firm had recorded. The balances showing in the firm's accounting records and the transactions actually shown in the bank statement can differ. For instance the firm's bank ledger may not reflect direct debits and standing orders that have gone through the bank account. On a monthly basis the firm needs to go through the bank statement and its records to post these missing items. The converse of that is that a cheque may have been written and posted through the firm's accounts but not yet have been processed through the bank account. The bank reconciliation involved the balancing of postings missing, cheques cleared and not cleared etc. Each record is a different snapshot in time and the firm requires to get back to the actual financial position.

The witness confirmed that Production 15 was the bank reconciliation statements for HLP. The first bank reconciliation is dated 31 January 2007 and the last is the 31 Janaury 2012.

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The evidence of Ms Grandison continued. She confirmed that Production 15 for the Complainers was the client bank account reconciliation documents prepared by the firm of HLP. The client's account requires to be reconciled on a monthly basis and compared to the shortfall statement. The reconciliation is required to demonstrate that there is a surplus on the firm's client account. She confirmed that these bank reconciliation statements were recovered from the office of Highland Law Practice in amongst the other documents collected. At any particular date the ledger and the bank statement are snapshots in time. There may be things in the ledger that are not in the statement and conversely things in the statement which have not been put through the ledger. Therefore the firm needs to update the ledger to take into account these matters to work out the true position of the bank balance in the bank statement. In the reconciliation statement there is a column headed outstanding credits. These would be for example cheques brought in by a client and posted but not yet processed by the bank. The statement also refers to outstanding debits and these would be cheques paid out by the firm but not yet cashed by the individual and so not yet shown on the bank statement. The bank reconciliation statement lists the outstanding debits and in particular shows the dates when cheques have been written. There is also a heading "corrections to be posted". You would expect to see listed there items that had not yet been posted or items where there has been a mis-posting.

The witness was referred to page 61 of Production 15 which she confirmed was a reconciliation dated 31 December 2011. That bank reconciliation listed one outstanding credit for a total figure of £123,197.62. This was listed as one single figure and she would normally read that as one single cheque that was going to be going through the bank. At page 60, there is an outstanding credit listed, again a single figure, this time of £102,237.96. When she was looking back at these issues and she and her team were re-performing the reconciliations, it appeared that these outstanding credits were false entries. They did not represent sums that were cheques posted or receipts that had to be put into the system. When they performed their calculations they identified that the sums were made up of a series of sums of money removed from the client account and used in funding the firm's expenditure and drawings for the partners less any adjusting postings to be made at the time.

The witness referred to the bank reconciliation statement dated 31 July 2008. Prior to that date there were no outstanding credits. At page 17 this bank reconciliation statement showed an outstanding credit of £5500. The £150 they had verified as a correct outstanding credit. The £5500 was not an outstanding credit at all but was in fact a transfer on the client bank to the firm account. This

outstanding credit is noted in the following statement for the end 31 August 2008 as £5000. Within that bank reconciliation for the month end 31 August 2008 that outstanding credit is dated 31 July 2008. This represents the £5500 less a posting of £500 which was transferred from the firm account to the clients account. This continues until it is cleared down by page 27 of Production 15 (bank reconciliation end 31 May 2009).

If you look at page 28 (bank reconciliation end 30 June 2009) there is a series of outstanding credits. These are all noted as clearing through the bank in July 2009. In the reconciliation dated 31 July 2009 there is a list of outstanding credits with a figure £8004.53. This is not a correct entry. This is the same with regard to the outstanding credits noted on page 30 for the month end 31 August 2009. On page 31 for the reconciliation of 30 September 2009 the outstanding credit is noted as £18,985.54. There is a figure there of £92 and that is correct. The figure of £18,985.54 is a series of transfers from the client bank account made to the firm account less any adjustments made into the ledger that month.

What her team saw was a growing number of transfers from the client account into the firm account. There were cheques cashed through the client account or transfers to the client account made for the benefit of the partnership. These were adjusted on a month by month basis as they were posted to the firm's ledgers. These are manual bank reconciliations.

She had interviewed the Respondent when she was present in the office in Wick and she had asked him about these outstanding credits and the process of a bank reconciliation. He had explained what he had understood to be outstanding credits and debits and she found him to be knowledgeable and literate regarding these matters.

The witness confirmed that the bank reconciliation statement dated 31 March 2010 disclosed an outstanding credit of £21,974.84.

The witness was referred to Production 35 which she confirmed was the financial statement for Highland Law Practice prepared by Johnston Carmichael Chartered Accountants. The financial statement at page 7 indicates that capital was introduced of £21,974. There is no mention of 84p as accountants do not put in the pence. The witness was asked to explain the significance of this.

Ms Grandison confirmed that what happened was that in preparation of the firm's accounts for the financial statements to be prepared there had been a series of day book entries in the ledgers on 31 March 2010. She indicated that the figure of £21,974.84 was made up of payments made out of the

client account. The witness referred to Production 27, the day book entry headed 31 March 2010. On page 7 with reference in the first column BLC5201 you can see two entries one for £7504.53, the other for £6604.97 totaling £14,109.50. This was paid to HMRC. This entry was listed into the VAT control account and shows the firm (HLP) Vat debt payment. Then there are payments to Lombard for £3197.01 and rent to SC MacIntosh for £1750.00. Then on page 8 you can see two payments to Scottish Hydro totaling £2918.33. Totaling these figures you can see that these make the difference noted as the outstanding credit, making the surplus amount to square off the bank reconciliation and this matches the funds introduced figure.

These postings suggest that the partners invested £21,974 and then used this money to make the above noted payments. In fact the partners did not pay in the money and these payments were not paid out of that money. The payments were made out of the client account on various dates – July for instance for the rent.

The payment of rent was a little problematic because the payment was for £2,800 to SC MacIntosh. Her team prepared a spreadsheet which is Production 42. This was prepared as they worked their way through payments that went through the client account which were for the firm's expenditure. Her team went through the bank statements and saw the effects on the reconciliations and saw how the figures matched up with the credits. When they reconstructed the records of the firm they calculated how, if these matters had been correctly posted at the right time they were made, these would have affected the deficit on a month by month basis.

The payment to HMRC went through the bank on that date and the team treated the payment as taking effect on that date. It was not posted at that time and remained part of the outstanding credits at the end of each month in the reconciliations until the end of 31 March 2010 when it was posted. It was posted on the VAT control account as referred to in page 7 of the day book.

The payment to Lombard for £4262.68 went through the bank statement on 3 August 2009. This was shown as a payment on the day book of 31 March 2010 at page 7 as £3197.01. That is because there was a partial posting of the payment made in the day book dated 22 March 2010 and printed off on 24 March 2010. The actual payment was the full sum due and the initial posting on 22 March was just a partial posting with the balance being posted on 31 March 2010. This appears a positive act. The figures do not reflect the actual payment but are a series of different numbers making up the total, something they would not expect to see.

The witness was directed to the payment to HMRC of £7504.53 which is referred to in averment 2.35 of the Complaint. The witness confirmed that the relevant day book entry was reproduced at Production 26 and was for the daybook end 26/6/09. The actual cheque is reproduced at Production 40. The cheque is dated the 26 June 2009. It should be in the day book but is not. There is still no posting at the month end although the cheque itself cashed through the bank on 1 July 2009. The initials on the day book are PSAC. It was the witness' understanding that those initials referred to the Respondent. The print out was created by PSAC. The operator for the various entries on the day book is noted as MC who was likely to be Morven Coghill. This has the effect of reducing the client account balance within the firm's records by the figure of the cheque to HMRC. The cheque number was 0002400 for the figure £7504.53. If you look at Production 20 at page 139 you can see the cheque going through the client bank account. The only time this cheque is posted to the accounting records of the firm is in the day book of 31 March 2010. The witness believes that the posting was made at that time to alter the accounting statements of the firm produced to the accountant who was going to prepare the financial statement to make it clear that the VAT bill had been paid. If the posting in the day book had not been completed the accountant would have believed that the VAT bill was not paid. This was a way of bringing up to date the nominal ledger to reflect the payments of the firm. The same applies for the payments for rent and the loan to Lombard. Looking at the bank reconciliation for the 30 June 2009 which is Production 15 page 28, there is no note of this cheque in the outstanding cheques list because it has not actually been posted. This posting had not gone through the ledgers. If you look at page 29 of Production 15 which is the reconciliation for the following month, where the cheque has actually gone through the bank, this payment forms part of the outstanding credit of £8004.53. There had also been £500 transferred to the firm from the client account. The cheque to Lombard for £4262.68 is produced at Production 40 and the Tribunal can see it is dated 16 July 2009 and is cheque number 2441. Looking at the day book for 16 July 2009 which is produced at Production 26 there is no entry for this cheque. The print of the day book was taken by PSAC. The early posts have the reference MC with the later posts having the reference PSAC. Production 20, page 146 shows this cheque number 2441 going through the bank on 3 August 2009. The bank reconciliation for 31 August 2009 (Production 15 page 30) shows outstanding credits totaling £11,767.21. This is made up of the figure of £7820 and £3947.21. The payment to HMRC added together with the payment to Lombard of the 16 July 2009 total £11,767.21. Effectively the figure noted at the outstanding credits in the client account bank reconciliation is really an IOU. This discloses that the firm has spent money out of the client bank account.

Ms Motion asked the witness to consider the payment of drawings noted at averment 3.35 as being made on 1 July 2010. The witness drew the Tribunal's attention to the day book for the 1 July 2010

which is reproduced at Production 27. Production 20 (bank statements for the client account of Lloyds TSB) at page 228 it shows a transfer to the Respondent and his wife of £2000. This is referred to in Production 42 as the transfer to the Respondent of £2000. Production 40 includes cheques number 3 and 4. Cheque 3 is made payable to the Clydesdale Bank for £300 and cheque 4 is made payable to the Bank of Scotland for £600. The Clydesdale Bank cheque was drawn on 2 July 2010 and has cheque number 2943. The payee looks as if it could be a credit card bill. Cheque 4 within Production 42 has a cheque number 2946 and was drawn on 2 July 2010. The day book for the 2 July 2010 which is part of Production 27 was printed by PSAC on 6 July 2010 and there are no entries for these cheques within it. The bank statement for this account which is page 228 of Production 20 shows both cheques going through on 2 July 2010. Both of these cheques appear in the day book for the 30 September 2010 which is Production 27. Both cheques are on page 3 of that day book and they are posted as drawings. These are positive entries within the day book. The day book is printed by PSAC. The individual postings have the reference MC.

The witness was asked to look at the day book for 1 November 2010 included in Production 27. She was asked if there was any entry for drawings of £2000 and responded there was not. She also confirmed there was no entries for a payment to Marsh on 8 November 2010 or to Farquhar and MacGregor for the figure of £1100 on the same date. The witness confirmed that the print outs for the relevant day books were printed by PSAC. The postings appeared to be primarily by MC although on 8 November there appear to be some by PSAC. The witness confirmed that there was a cheque to Marsh for the figure of £22,058.27 dated 8 November 2010 with cheque number 3083 reproduced as cheque 6 in Production 40. There was also a cheque made payable to Farquhar and MacGregor for the figure £1100 dated 8 November with cheque number 3092 produced as cheque 7 at Production 40. Production 20 contains bank statements for the client account. Page 252 discloses a transfer to Mr and Mrs Copinger. Page 253 of Production 20 shows a cheque number 3061 going through the account on 5 November. Page 254 of Production 20 shows cheque number 3083 for £22,058.27 going through the account on 12 November 2010. Page 255 of Production 20 shows cheque number 3092 for £1100 going through the account on 18 November 2010. Page 45 of Production 15 is the bank reconciliation for the month end 30 November 2010 and shows an outstanding credit of £48,982.96. The outstanding credit noted in the previous month's reconciliation which is at page 44 of Production 15 shows an outstanding credit of £25,579.69. If you add that figure to the unposted figures previously mentioned then that arrives at the outstanding credit noted at page 45. Production 28 contains the day book for 31 March 2011 which is opened at 1835. The day book was printed by reference PSAC and has the same significance as being the year end. There was previously no entry for the cheque for £1100 but in this day book there is a positive entry on page 4 entering this payment. These postings are all about having

a correct reflection of payments made for the information to go to the accountants. The bank reconciliation for 31 March 2011 is page 51 of Production 15. This discloses outstanding credits of £71,637.96. The top line of the outstanding credits is £57,637.96 which is the top line of outstanding credits at page 48 (5673.96) being the difference of the £1100 increased by £900 (£2000 - £1100)

The witness was then asked to address the issue of a drawings payment of £500 on 8 July 2009 referred to in averment 3.41. She was referred to Production 20 at page 140. This discloses a transfer of £500 from the client account to the firm account on 8 July 2009. The day book for 8 July 2009 is reproduced in Production 26. The day book was opened at 1709 and was printed by PSAC. The bank statement shows two payments of £500 – a transfer and a cheque. The daybook shows only the transfer not the cheque. If you look at Production 26 there is a day book print for 14 August 2009. Therein there is an entry for £500 to drawings. This print out is printed by PSAC and the actual entry the operator is noted as PSAC.

The witness was directed to page 20 of the Record and a payment of Highland Audi for £1323.55. She was asked if there was any reference to this payment in the daybook entry for 31 August 2011 and she confirmed there was not. The copy of the bank statement reproduced at page 317 of Production 20 shows cheque number 3371 for the figure £1333.55 which was cashed on 31 August. The cheque is included in the day book for the 9 September 2011 which is in Production 28. The operator for that entry is said to be PSAC. This appears to be a positive act of entering this item. The day book is printed by PSAC, opened on 23 September 2011 at 1639. This clearly shows that the firm is behind with its postings.

The witness's attention was then drawn to paragraph 3.44 of the Record where mention is made of two figures - £10,000 and £4,000. The witness confirmed that they identified entries in the day book that suggested that funds had been introduced to the firm. There was an entry on 22 February 2011 for a transfer of £10,000. There was also an entry put in that funds were introduced but in actual fact this was in anticipation of funds being introduced. The funds themselves did not go into the account until April 2011. Neither of the payments actually went in in February and yet transfers were made on the basis of these entries so further money was taken wrongly. A cheque came in from the encashment of a Standard Life policy on 6 April and was credited into the client account. The day book for 28 February 2011 which is Production 28 at page 4 suggests £10,000 was paid in then. This was a created and fictitious entry. The money is deposited into the Bank of Scotland on 6 April and that is shown in Production 21 at pages 27 and 28. There appears to be no reason why the entry was put through in February. By putting in the entry in February when the funds were not introduced at that time it

suggests there was money in the client account when there was not. The entry in the day book for 28 February suggesting £4400 was transferred from Lloyds suggests funds were introduced when in fact they were not.

The bank reconciliation for 28 February 2011 at page 48 of Production 15 contains a series of false entries. The bank reconciliation for the 31 March 2011 at page 51 still suggests the £10,400 is there. By the bank reconciliation of 30 April (Page 52 of Production 15) the £10,000 has disappeared because by then the money has actually gone into the account. The £4000 payment is still there in the bank reconciliation statements for 30 April 2011, 31 May 2011, 30 June 2011, 31 July 2011, 31 August 2011 and 30 September 2011. The bank reconciliation for 31 October 2011 which is page 59 of Production 15 the £4000 is amalgamated in the figure of outstanding credits which comes to a total of £102,237.96. Production 42 has a red column which shows the sum owed by the firm to the client account. This was a series of incidents of taking money from the client account that the Respondent should not have taken, which were not posted through the ledgers as they would have shown as a deficit on the client account. The way round the deficit showing was not to post the entry. Then whenever there were sufficient funds within the client account the Respondent would start to make partial or full postings to reduce the firm's indebtness to the client bank account. This is why the witness described the outstanding credits noted on the bank reconciliation statements as an IOU.

The witness submitted that the numbers in the outstanding credits can only be reached by doing what she did. The figures in the bank reconciliation statements cannot be produced unless a list of what was taken and what was paid back or posted was kept. There is a possibility that in fact these bank reconciliation statements are not the original statements done at the time. The witness referred to page 56 of Production 15 the bank reconciliation for 31 July 2011. The statement is headed July but the balance is said to be August. The balance quoted is in fact the balance of 31 August 2011 but then the figures are adjusted. The outstanding cheques include cheques for August 2011. If this bank reconciliation was done on 31 July the author would not have known about outstanding cheques in August. This bank reconciliation statement appears to have been created some time after 31 August 2011. There are marks noted on Production 15, page 56. She did not make any marks but some of the entries may have been picked up by her inspection team.

She and her team did not do anything with the computer system at all. The work was done by her cashier at an early stage and she was satisfied that when she looked at the reconciliations this was simply a matter of not posting entries taken from the client bank account. In order to avoid any doubt about it, rather than restarting the reconciliations, they went through the process of re-posting from

scratch to their own computer system to see if they could reproduce the numbers to see if any evidence existed that there was a flaw in the accounting system that was producing this outstanding credit figure at the month end. The only matters they did not get to agree were these unposted entries, less anything subsequently posted in. The consequence was that no alteration required to be made between the entries and client balances comparing the document and the information they had on their system. The notion that the computer was somehow losing postings was discounted. They went back to January 2008 when there were no recorded problems and there were no notes of outstanding credits. They restated everything from there until July 2008 when the problems were supposed to arise. Throughout that period there were no alterations to the client's individual balances between their system and HLP's system. This led her to believe that the problems only related to money that they were spending and led her to ask why the computer would be so exclusive as to those postings. The simple explanation was that there was a problem in keeping records up to date. This was identified by the Respondent in a letter to the Law Society. His system could not close off the day book if there was a deficit in the client account. If he posted payments taken then this would create an audit trail. This would have affected the surplus on his client account and would have prevented his system from closing the day book.

The Respondent advised her that he had done some accounting in the diploma and that both he and his wife had done some distance learning in SOLAS and a course on bank reconciliations and cashroom reconciliations.

Ms Motion indicated that she had no further questions for the witness. Mr Cameron asked for some time to take instructions from his client with regard to cross-examination.

When the hearing re-started Mr Cameron commenced his cross-examination. He indicated that he would not be asking the witness about the averments on the Record or detailed figures as much of that the Tribunal was treating as admitted.

CROSS-EXAMINATION

He asked the witness to look at Production 2, which was a letter from the Respondent to the Law Society dated January 2012. The witness was given an opportunity to read that letter and confirmed she was not clear she had ever seen it. Mr Cameron asked the witness to confirm that this was the Respondent drawing the Law Society's attention to a problem with the computer system and his database. The witness responded that she was aware that the Respondent had made certain assertions

about the computer system but stated that she was not the Law Society she was the Judicial Factor. She was asked again by Mr Cameron if she accepted that in that letter the Respondent was drawing the Society's attention to problems with his cash accounting system. She accepted that was what the letter stated. She accepted that the letter referred to a lack of technical support. She accepted that the inference to be drawn from the letter was that the shortfall that had appeared was as a result of a glitch in his database and she indicated the Respondent had stated the same to her. She accepted that the letter referred to him accepting breaches of the Accounts Rules and that he accepted full responsibility as cashroom partner. She confirmed that the letter indicated that he was offering to surrender his practising certificate.

She denied that she had instructed a forensic investigator at any stage to investigate the computer.

The hearing was adjourned until 13 January 2017, due to the ill-health of the Respondent.

HEARING - 13 JANUARY 2017

CONTINUED CROSS-EXAMINATION

The witness confirmed that the BSc she had previously referred to was a degree in biological sciences obtained at Heriot Watt University in 1982. The STEP qualification referred to was the Society of Trust and Estate Practitioners. She gained that qualification some 15 years ago and was one of the founder members of the Society in Scotland. It was awarded on the basis of her experience and was not exam based. Some of the original members were assessed for the membership on an assessment of their experience. Her experience had been gained through her employment with the Scottish Courts Service. She had never worked in private legal practice. She is qualified with the Society of Law Accountants in Scotland. She did not train as a chartered accountant but did obtain qualifications in accounting through ACCA. The witness was then asked if the SOLAS qualification referred to was regarded as a paralegal qualification and that only 1/7th of the course related to legal cash accounting. There was an exchange between the witness and Mr Cameron regarding what amounted to legal cash accounting and Mr Cameron rephrased his question to ask if it was the case that only 1/7th of the course related to the maintaining of proper books and records in compliance with the Accounts Rules. The witness responded that at the time she completed the course she thought only 1/6th of the course related to that. The witness did not consider it appropriate for her to comment on the status of that qualification other than to say it was one recognised by the Law Society of Scotland and for people

involved in the administration of cashrooms. She accepted that she did not have a formal qualification in forensic accounting investigations.

The witness was asked whether essentially she was not a specialist and not qualified. The witness responded that although she did not have a degree from a university in the subject she was qualified by experience. She trained members of the Crown Office and Procurator Fiscal Service in mortgage fraud. She had been involved in the training of police at Tulliallan in the Solicitors Accounts Rules and how fraud is perpetrated in a legal environment. She attended these courses as an expert in her own right and not just as a member of the Law Society. She had been working in the field of fraud in the area of legal practice for some 28 years.

It was suggested to her that her experience did not extend to cash accounting in legal firms. She responded that she had in excess of 40 appointments where she was involved in managing her own accounting practices which included postings, reconciliations and complying with the Accounts Rules. She suggested the distinction being put forward was artificial. It was suggested to her that the practices she had described were carried out by experienced staff on her behalf and that her role was a managerial one. She indicated that when she had started in her position she had been the only member of her team and had done such work herself. She confirmed that the Law Society inspectors were nothing to do with her team. She managed her own team and she was responsible to the court that appointed her for that team's work. She compared her position to that of a cashroom partner.

The witness was asked if any chartered accountant had ever audited her teams work. The witness said she was not supervised by a chartered accountant. She was asked if the Accountant of Court's responsibility was for supervising the work of the Judicial Factor's team and not for the conduct of the partners of the firm and she agreed that was the case. She accepted that the Accountant of Court was not concerned with the Respondent's conduct.

When asked about the Highland Law Practice's Prophecy computer system, she indicated that she had no knowledge about the system or its relevance to this case. She knew that the Respondent had told her that he had had a problem with his computer system. He had attempted to provide a number of explanations, none of which made any sense to her. She said that her evidence was that this case was a straightforward matter of money coming out of a client account and being used either for the Respondent's personal use or for the firm use, when the Respondent was not entitled to do that and that was evidenced by false bank reconciliations. The question of a computer bug did not concern her.

It was suggested to her that at one stage she had had such a concern because she had sought advice from a computer expert, Detective Sergeant Wilson of cyber crime, Edinburgh. The witness explained that police officer was present at an initial meeting that she had had at an early stage with the police which she said was quite common. The meeting was necessary to scope out what might be necessary for any police investigation. At that meeting she had outlined that the Respondent advised that he might have been having some computer problem. At that stage the information she received from the police was that if she wanted to obtain a report then she required to specify the nature of the problem. As she did not have any clarity as to what the Respondent was saying the difficulty was, she engaged in the exercise she had described, going back to the bank statements etc. From that exercise, as stated in her earlier evidence, they had ascertained that there were missing entries and these missing entries were identified on the spreadsheet. At that point, Mr Cameron stopped the witness. Ms Motion asked the Tribunal to allow the witness to complete her answer. Mr Cameron indicated that the witness was using his questions to reiterate evidence already given and using his questions to make speeches. The Chairman indicated that the witness should keep her answers directed to the questions.

Mr Cameron then put to the witness that there had been a number of procedural hearings in this case where it was suggested that Mr Wilson, on the Law Society's instructions, had attempted to examine the computer system. The Fiscal interjected at this point and in the course of discussion it became apparent that there had been some confusion over the identity of the computer expert instructed by the Law Society, who had in fact been a Mr Butler.

The witness accepted that the Respondent had told her that there was a misreporting bug in the computer system and that was what he considered to be the position. She accepted that she had had a meeting with DS Wilson but did not accept that he had advised that she should get a specialist report. She explained that what he had told her was that if she had wanted to instruct such a forensic examination she had to be in a position to clarify what it was she was actually looking for and had to be more specific than simply saying there was a bug. Since she did not have a clear understanding of what that bug was, she had carried out a physical examination of the data to be in a position to say that she had found certain things which she could not explain and which could form the basis of such an investigation. She had decided not to instruct an investigation because she was able to explain what she found. The witness explained that she was not involved in instructing the Society's Fiscal in respect of this prosecution and that her role was purely as a witness. She had received a request from Ms Motion for the computer equipment to be made available to someone that the Law Society had engaged. The system was in her custody at that time. She could not say the precise date that the computer equipment was handed to the police as she had been on holiday. She believed that Mr Butler

had been in communication with the police about the matter and that the computer system was passed to the police by Mr Butler.

The witness confirmed that her staff were able to recreate the position by making postings to her own accounting software and did not accept that this did not assist with the assessment of the Highland Law Practice computer system which might have had a bug. She explained that in her view a cash accounting system is a structured record of things that really happened and the things that really happened were things that went through the bank. There are nominal adjustments that also go on that explain movements between client accounts etc these are not part of the actual structured transactions. What she had done was set up a series of results based on reality. Beyond that there might have been a series of outstanding credits that had never reached the bank account but these would have been matched by clients contacting her to say that these were not shown on their records and that they were owed money. She did not agree, that by reproducing matters on her own functioning system, she had not tested the efficacy of the prophecy system at Highland Law Practice. It was suggested to the witness that the month end reconciliation carried out by Highland Law Practice was a largely computerised procedure, screen based, using software and could not be described as manual. The witness responded that any bank reconciliation is by its nature a manual matter. She stated that in the reconciliation process an individual looks at what the computer says and what the bank statement says and looks to see if they agree. If they do not agree then there has to be a form of manual reconciliation. All she had had in this procedure was the documents that had come from Highland Law Practice. The Accounts Rules require a reconciliation. The witness was asked if it was not common sense that if a cash accounting computer system had an automatic float check that was not working properly, that misreported the float in the client account that that could result in a shortfall in client funds. The witness responded that if she was being told that a computer system was misreporting the rule 4 balance, on the basis of that information she would agree with the statement.

The witness agreed that the Highland Law Practice had employed a cashier. The witness was asked if it would have been a reasonable practice to delegate responsibility to that cashier if she had had a two week training course with a chartered accountant on double entry bookkeeping, and attended a number of courses with the Respondent and she indicated that sounded a feasible setup to her. The witness confirmed that it was her understanding that Ms Coghill had made some of the day to day postings. She accepted that the cashier may have written the details on cheques but explained only the Respondent and his wife had the authority to sign a cheque. She agreed that she was aware of there being illness suffered by the Respondent and his wife and she was aware that the Respondent's wife had been off work following the birth of her child. The witness accepted that in a busy practice it was

normal to have someone to do the day to day posting of entries. She was asked about the level of staffing within HLP and indicated that in her experience many firms in Scotland would operate with the same level of staffing.

The witness stated that before the firm ran into difficulty it had a turnover of roughly £150,000 a year although in some years it could be slightly lower. She did not accept that it followed from that when the firm ceased trading there would be substantial working in progress. She explained that the value of work in progress was dependent on the policies of the firm with regard to fee collection. She indicated that the business had been acquired by a local firm of solicitors who had not paid for goodwill but had had to account for the work in progress and deal with the clients. The witness was asked if she had taken any steps to value the business and the witness queried if this meant goodwill. She was asked if someone referring business to you that would bring £150,000 a year was not worth something. She responded that in her 20 years of practice in this field, the disposal of a practice where there is a shortfall on the client account, where there is a whole load of clients missing funds, resulted in any goodwill having a negligible value. It was put to the witness that the Respondent considered that there was £100,000 of work in progress in the firm at the time it was transferred and that the vast majority of that had not been recovered. The witness indicated that that was mis-information. She indicated that she had recovered £65,000 of work in progress fees and debtor balances. If a firm's general annual turnover was £120,000 she questioned why £100,000 would be kept in work in progress as that it would be 80% of the income. She suggested that no business could operate on the basis of not collecting fees as it went along.

RE-EXAMINATION

The witness confirmed that Ms Coghill's initials appeared beside postings but she could not say if these postings were actually done by that individual. A bank reconciliation done for the purpose of the Accounts Rules is a comparison of two sets of records: the bank record which shows actually what went through the bank statement compared to the bank ledger showing what was recorded on the system, done to prove that the integrity of the system, which demonstrates a surplus, is correct and matches reality. To do the reconciliation a solicitor can either sit with the daybooks and manually go through them or some computer systems put the information on screen. The solicitor requires to match these two things - the bank statement and the ledger containing the information put into it by the solicitor. The solicitor "ticks and bashes" until there are any discrepancies - something shown in the bank statement that is not in the ledger or vice versa. The solicitor then lists those things back and makes postings back into the system to show that the surplus that is stated is in fact correct. If this

exercise is not done then the surplus that is produced by the system is a falsified account. A solicitor has to do that himself and make sense of the numbers that are produced.

The Respondent had stated to the witness that the system had a bug but he had not said that the system had made positive entries.

Ms Motion confirmed that this concluded her case. Mr Cameron confirmed that the Respondent was leading no evidence. The Tribunal invited the parties to make submissions.

Mr Cameron indicated he wished to raise a preliminary point. He submitted to the Tribunal that there was a conflict between the evidence of Mrs Grandison with regard to the whereabouts and accessibility of the computer system compared to what had been said at previous procedural hearings. It appeared to him that Mrs Grandison was indicating that the computer and software was in the possession of the Law Society and given to Mr Butler for his examination. She then said that Mr Butler gave the system to the police. At previous procedural hearings, it was his recollection, although he conceded that this could be mistaken, that at the time of Mr Butler's enquiry the system was already with the police. He suggested that both accounts were irreconcilable and raised the possibility that the computer system would have been available to the Respondent's expert Mr Manoussis. He invited Ms Motion to reconcile what the Tribunal had been told by Ms Grandison with what they had been told at earlier procedural hearings. He conceded that Ms Grandison's timeline could be mistaken.

Ms Motion emphasised that Ms Grandison had stated in evidence that she was on holiday at the time of Mr Butler's involvement. She stated that it was her clear understanding that the police had taken the computer system from the Law Society and then had allowed Mr Butler to have access to it to make copies of the system. Mr Butler was not permitted to carry out any testing on the original computer system.

Mr Cameron again conceded that it was possible that Ms Grandison had the timeline wrong.

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion asked the Tribunal to find that the averments of fact, duties and misconduct as already admitted by the Respondent were proved and to go on to find him guilty of professional misconduct.

She submitted that the Respondent's failures individually and cumulatively amounted to professional misconduct.

It was her submission that she had proved beyond reasonable doubt that the acts and omissions of the Respondent were deliberate. She argued that they were intended to hide substantial deficits on the client account over the period from 1 July 2009 until the Judicial Factor was appointed on 15 February 2012. The deficits were due to the withdrawal of client funds for firm expenses, inappropriately. She submitted that, uniquely, they were all for firm expenses, which she said was relevant to the question of there being a problem with the computer system.

At all times during this period the Respondent was the cashroom partner for the firm, as well as the anti-money laundering partner and the client relations partner. He was personally responsible for his own actions and the Tribunal should note that there were positive entries within the records with his initials beside them. Additionally, he was also responsible for acts of the cashroom staff.

The Respondent had signed off the accounts certificates over the relevant period, with the last accounts certificate relating to September 2011.

She suggested that it was fair to say from the pleadings that the Respondent had a degree of computer knowledge.

She invited the Tribunal to take a view of the Respondent's immediate offer to the Law Society to surrender his practising certificate in 2012 and suggested that this was a strange step to take if he had an innocent explanation for what had occurred.

She invited the Tribunal to accept the affidavits of the two witnesses mentioned within the Supplementary Joint Minute as uncontradicted. She invited the Tribunal to accept the evidence of Ms Grandison as credible and reliable and given by a witness with specific expertise in the Solicitors Accounts Rules, processes and practices. Her depth and breadth of expertise was clearly demonstrated. She submitted that the witness had given clear evidence of the approach taken by the Respondent to hide the misuse of client funds, to repay the funds as and when the firm were in a financial position to do so. She submitted that he could only have reached the credit balances referred to in the reconciliations if he knew (a) what payments he had taken and (b) what repayments he had made.

The hole in the system came about as a result of events described in paragraphs 3.3 to 3.13 of the Record. In particular she drew the Tribunal's attention to averment 3.11 which had been admitted by the Respondent.

She invited the Tribunal to keep in mind that the firm's books could not be closed off at the month end unless they were balanced. She drew the Tribunal's attention to Production 15, page 37 which was the bank reconciliation for the year end 31 March 2010. This disclosed an outstanding credit figure of £21,974. Thereafter the financial statement prepared on behalf of Highland Law Practice at Production 35 showed funds introduced of exactly the same figure. She submitted that there was no evidence of any such capital being introduced into the firm and this was a fiction. She suggested that the books required to square off to avoid questions being asked by the firm's accountants when preparing the financial statements.

She stated to the Tribunal that she placed particular emphasis on positive entries made by the Respondent or those under his supervision where it was never suggested that a problem with the computer system resulted in an entry appearing in the records of Highland Law Practice. All the documents referred to have been either agreed or spoken to by Ms Grandison or the witnesses affidavits. There has been no contradiction to those records in cross-examination. She suggested that the truly damning evidence was the credit balances in the month end reconciliations, the part recording of payments, and the mistimed postings. She suggested that this was clear and incontrovertible evidence.

She submitted that it was not open to the Tribunal to hold as a material fact that there was a computer error. She suggested that this was supported by the Respondent's own Answers which were prepared by the Respondent himself. She drew the Tribunal's attention to Answer 3.23 where the Respondent had used the words "believed and averred". She explained that there was a specific imputation to be taken from those words in court pleadings. She referred to MacPhail Sheriff Court Practice 3rd Edition at page 315 and suggested that shortly put an averment of belief which is not supported by any other averments from which it may be reasonably be inferred is irrelevant. The Respondent has produced no material evidence to support that there was a difficulty with the computer system.

Aside from the issue of any possible computer involvement, she suggested that it was not credible that a firm with a turnover and profit figures as disclosed with Production 30 to 36 would not have acted quickly to resolve the ever increasing outstanding credit, particularly where the partners were throughout this time introducing funds to keep the business going. She argued that to fail to chase the

outstanding credits immediately, whether they were deliberate or not, amounted to very serious failures.

Ms Motion went on to refer the Tribunal to the Stair Memorial and Encyclopaedia and the case of MacDonald-v-HM Advocate [2] 1996 SLT 723 in relation to the definition of reasonable doubt. She submitted to the Tribunal that the position put forward for the Respondent was fanciful, far fetched and incredible given the evidence trail that the Tribunal had been taken through which included incontrovertible bank statements and cheques which were admitted by the Respondent. She argued that there could be no hesitation or pause on the part of the Tribunal in holding that these were deliberate acts by or under supervision of the Respondent.

SUBMISSIONS FOR THE RESPONDENT

Mr Cameron referred the Tribunal to the test for dishonesty which he said was set out in the case of R-v-Ghosh [1982]. He submitted that this was a two part test. In determining whether dishonesty has been proved the jury must first of all find that the conduct established was according to the standards of ordinary honest people, dishonest. If the conduct is not dishonest by these standards then the prosecution fails. The second branch of the test was that the jury be satisfied that the defender himself knew by these standards that the conduct was dishonest. He submitted that this test had been slightly amended since that case so that the second part of the test involved the standards of professional people rather than the standards of ordinary people. The first part of the test was objective, the second part subjective.

He submitted that this case rested entirely on the evidence of Ms Grandison who was appearing as an alleged expert witness giving partially factual evidence but also giving opinion evidence on the issue of dishonesty. With no disrespect meant to the witness, he submitted that he did not believe that she had the qualifications in order to give expert evidence on the question of dishonesty. He argued that she was not a solicitor or a chartered accountant. He suggested she had no training in forensic accounting investigations. He accepted that she was a qualified cashier but submitted that she had never practised as such. Her practical experience appeared to be the administration of the 40 or so Judicial Factories that she had been involved in within her employment at the Law Society. There was nothing, he suggested, in her background that suggested that she has any particular expertise in the management of solicitors, books or records. He argued that, in a case like this, one would have expected the Law Society to lead a chartered accountant not a senior administrator who lacked any academic qualification.

He submitted that her evidence was uncorroborated. He argued that given the criminal standard of proof here he would have expected more persuasive evidence and the Tribunal should be slow to treat Ms Grandison as an expert.

He invited the Tribunal not to draw an adverse inference from the Respondent's refusal to give evidence. He submitted that the Respondent had been boxed into a corner by previous rulings of the Tribunal. Firstly, he has been held to have admitted the averments on the Record. There is a dispute about that but the practical effect for the Respondent is that he cannot challenge any of the evidence of Ms Grandison as it relates to the Record. Secondly, it is a mainstay of his defence that these errors occurred as a result of a bug in the computer and he has been prevented from obtaining a report on the computer system. Given these circumstances, and the prevailing threat of criminal proceedings, it had been Mr Cameron's view that the Respondent could not add anything significant to proceedings and had been advised not to give evidence. On that basis, Mr Cameron invited the Tribunal not to draw an adverse inference from the Respondent's failure to give evidence.

He submitted that there was a failure to set out persuasive evidence of dishonesty. He accepted that the Respondent admitted breaches of the Accounts Rules. He accepted that is an area of strict liability and tantamount to professional misconduct.

He invited the Tribunal not to draw any inference from the Respondent offering to surrender his practising certificate. He submitted that this conduct could equally have been offered by a solicitor who, as a point of moral principle, recognised he could not continue as a solicitor because of his failures in his duties.

He argued that there was a deficiency of evidence and that the evidential standard had not been met. He argued that Ms Grandison did not have the requisite background to speak to dishonesty but conceded that she could speak to irregularities. She appeared not to have had any active involvement in this process but rather an overview. She did not carry out the day to day work but rather acted as a manager with overall responsibility.

Mr Cameron submitted to the Tribunal that the issue of dishonesty was somewhat obliquely dealt with within the Complaint. The Complainers had used the word "deliberate" rather than dishonest. He argued that precision here was desirable if not actually necessary. He questioned whether "deliberate" was in fact synonymous with dishonesty and suggested that there was some serious doubt about that.

In conclusion, he stated that the Respondent admitted breaches of the Accounts Rules which themselves, absent of the question of dishonesty, amounted to professional misconduct. He asked the Tribunal to hold that dishonesty had not been proved.

DECISION

The Tribunal had before it the amended Record, six Inventories of Productions for the Complainers, one Inventory of Productions for the Respondent, two Joint Minutes relating to many of the Complainers' documentary productions, including affidavits for two witnesses, and the evidence of Ms Grandison.

At the commencement of the hearing on 24 November, after hearing submissions from both parties, the Tribunal had concluded and intimated to the parties that it had no doubt that the Respondent had admitted the averments of fact, duties and misconduct, with the exception of the words "or deliberately" where they appear in averment 3.55, item 5 on page 32. On 10 December 2015 the Respondent was represented by an Advocate, an experienced court practitioner, Mr Adam. Through his representative he had intimated to the Tribunal that he was admitting professional misconduct. For there to be any form of plea to misconduct, the Tribunal had to understand the basis on which the plea was tendered. The Complaint against the Respondent contained averments of fact, duties and of misconduct. Mr Adam was specifically asked if he was admitting the facts. After an adjournment to allow the parties to discuss their positions, an amended Record was lodged with the Tribunal and Mr Adam indicated to the Tribunal that he was admitting the Record with the exception of the aforementioned words referred to on page 32. It was clearly stated to the Tribunal that the only matter in dispute were the words "or deliberately" (and this had been repeated at a number of procedural hearings since). The purpose of the full hearing was to hear evidence relating to the issue of whether or not conduct had been deliberate or reckless. The Tribunal therefore determined to approach the hearing on the basis that the averments of fact had been admitted.

The question of the integrity of the computer system was an issue which had repeatedly been raised before the Tribunal. In approaching the evidence before it, it was uppermost in the Tribunal's mind that the standard of proof in this case was the criminal standard of "beyond reasonable doubt" and that the onus of proof lay on the Complainers throughout.

The only witness led was Ms Grandison, the Judicial Factor for Highland Law Practice. She gave very clear evidence explaining to the Tribunal how she and her team had used documentation recovered from Highland Law Practice, together with bank statements, to recreate the firm's accounts. Objection was taken early in the witness's evidence to a question aimed at eliciting the witness's opinion as to whether or not the conduct was deliberate. This objection was upheld by the Tribunal on the basis that this would have amounted to the witness usurping the function of the Tribunal which here was clearly to determine the question of whether the conduct was reckless or deliberate. No objection was taken by the Respondent to the evidence of Ms Grandison relating to the details she described within the documentary productions, in particular the bank reconciliation statements. Nor was there any cross-examination of the witness with regard to the bulk of her evidence. The only cross-examination appeared to relate to the lack of qualification of the witness to be treated as an expert witness, and the question of the possibility of there being a "bug" in the computer system. The Tribunal, as stated above, had upheld the Respondent's objection to the witness giving opinion evidence on the question of whether the conduct was deliberate or not. The Tribunal was more than satisfied that the witness was well qualified to give the evidence that she did. Ms Grandison has many years of practical experience in this particular field and works with a team, whose experience was not challenged. Indeed, in his submissions to the Tribunal, Mr Cameron had conceded that the witness was qualified to speak to the irregularities in the accounts. The Tribunal held the witness to be both reliable and credible.

In considering the question of whether or not the conduct complained of was deliberate or not, the Tribunal gave very careful consideration to the significance of the lack of a completed report on the computer system. The witness gave very detailed evidence relating to the documents recovered from the firm and bank statements demonstrating items which were not posted at appropriate times but posted at a later stage, items posted in part and then the balance posted later, and funds being posted as introduced to the client account some weeks or months before they actually were. She demonstrated how these items were significant to the monthly bank reconciliations recovered from the firm. She explained that the reconciliations took into account all of these mispostings. She gave evidence that all of the mispostings related to payments from the client account of firm expenses or drawings. There were items not posted, items part-posted and postings of receipts that had not been made.

The Tribunal was satisfied beyond reasonable doubt that the steps taken by the witness and her team to recreate the firm's accounts had clearly demonstrated what inaccuracies had occurred.

Thereafter, the Tribunal considered whether these inaccuracies were as a result of deliberate conduct, or were due to some other explanation, including the possibility of a bug within the computer system. In the course of this exercise, the Tribunal had at the forefront of its mind that the Respondent was entitled to the benefit of any reasonable doubt.

By its very nature the bank reconciliation process involves a positive manual input. The reconciliations produced here disclosed a knowledge of the inaccurate postings and included steps being taken to cure the effect the inaccurate postings would have had on the client account surplus by creating outstanding credits. The figures appeared to be chosen with great care. The Tribunal took the view that two issues were of particular significance in this regard. The first was the recording of an introduction of capital into the firm several weeks or months before it was actually received and when money was removed from the client account. The second was the reconciliation for the year end 31 March 2010 suggesting an introduction of capital to the firm that did not take place which artificially balanced the books for the firm allowing the firm's accountant to prepare a financial statement without raising any questions. The Tribunal reached the conclusion that there was no other explanation than that this conduct had occurred deliberately.

The Fiscal had asked the Tribunal to draw an inference from the Respondent's offer to give up his practising certificate. The Tribunal concluded that such an inference was not appropriate as the significance of this offer was open to interpretation.

Having concluded that the conduct was deliberate, the Tribunal then required to assess whether or not the conduct met the test of professional misconduct as set out in the case of Sharp. The Fiscal had not in terms invited the Tribunal to hold that the conduct was dishonest. She had obviously however asked the Tribunal to hold that the conduct was deliberate and the averments of duty included a breach of Rule B1.2 of the 2011 Practice Rules. Mr Cameron had addressed the Tribunal on the issue of dishonesty and indicated that the appropriate test was the two part test he described. Considering the whole description of the devices used to disguise the deficit on the client account, and having particular regard to the length of time over which this behaviour had continued, the signing of accounts certificates by the Respondent, the crediting of an introduction of capital many weeks before it actually took place and the reconciliation that took place at the end of the financial year 2010 the Tribunal took the view that the conduct passed both parts of the test.

This was clearly a deliberate and dishonest course of conduct designed to disguise a deficit on the firm's client account. It could only be seen as serious and reprehensible. Solicitors have a duty to act

with complete honesty and integrity. If the public are to have confidence in the profession then they must be able to expect these qualities of every solicitor. The client account is sacrosanct. The Accounts Rules are there to reinforce the solicitor's duty of honesty in dealing with client's money. It has previously been said that there can be no situation in which the client account can justifiably be in deficit. Here, the client account was in deficit for a significant period of time and the Respondent had taken steps to disguise that. The Tribunal had no hesitation in holding that the conduct clearly met the Sharp Test.

Even if the deliberate nature of the conduct had not been established, the Tribunal was satisfied that, given the length of time that these matters had been allowed to continue by the Respondent, and the importance of observing the Accounts Rules, misconduct would have been established.

The Tribunal invited the parties to make submissions with regard to mitigation, expenses and publicity.

Mr Cameron indicated that the Respondent had an unblemished record of 15 years' in practice. He and his wife had suffered health issues during this period. Since the conduct he had endured poor health. He did not intend to return to the profession. He invited the Tribunal to make no publicity until the conclusion of criminal proceedings. He suggested that the question of expenses was moot as the Respondent was effectively bankrupt. He asked the Tribunal to take into account that there had been an early admission of the main charges and that there was no professional interest in the Law Society moving for expenses. The Fiscal invited the Tribunal to make an award of expenses in her favour and argued that whether or not they would be recoverable was irrelevant. She further invited the Tribunal to make an order to defer publicity until the conclusion of any criminal matter.

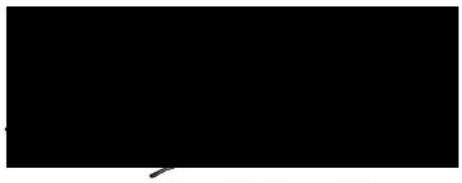
SENTENCE

The Tribunal had to have regard to the very serious nature of the conduct established in this case. This was a protracted course of conduct over a long period of time. Client account money had been used for the benefit of the firm. This conduct was clearly a danger to the public and clearly likely to seriously damage the reputation of the profession. The fact that the conduct had gone on for so long disclosed that the Respondent had neither remorse nor insight. In fact, even if the Tribunal had not held the conduct to have been deliberate, it would have taken the view that the conduct was at the most serious end of misconduct, given the repeated breaches of the Accounts Rules and the repeated submission of inaccurate accounts certificates, leading the Tribunal to reach the same conclusion with regard to the

appropriate sanction. The conduct clearly demonstrated that the Respondent was not a fit person to be a solicitor and therefore the only appropriate disposal was to strike his name from the Roll of Solicitors.

With regard to expenses, the Tribunal concluded that the appropriate finding was an award of expenses in favour of the Complainers.

With regard to publicity, the appropriate order was to defer publicity until after the conclusion of any investigation or criminal proceedings.



Alan McDonald

Vice Chairman