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, Atria One, 144 Morrison Street, Edinburgh

Complainers

against

GRAHAM R BRYSON, formerly of MMFW Partnership, Solicitors, Glasgow and now of Bryson's Legal Services, 13 Killermont Road, Bearsden, Glasgow

Respondent

1. By letter dated 25 May 2016, a Complaint DT/16/19 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Graham R Bryson, formerly of MMFW Partnership, Solicitors, Glasgow and now of Bryson's Legal Services, 13 Killermont Road, Bearsden, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was a Secondary Complainer.

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

4. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a hearing on 9 August 2016 and notice thereof was duly served upon the Respondent. Answers for the Respondent were lodged with the Tribunal by letter dated 5 July 2016, together with a Motion that the Tribunal allow these to be received late.

5. On 9 August 2016, at the hearing, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented by Stuart Munro, Solicitor, Glasgow. An amended Complaint was lodged together with a Joint Minute. The Tribunal was invited to allow the amended Complaint, the Joint Minute and the Answers for the Respondent to be received. On joint motion, the Tribunal adjourned the hearing to 26 October 2016.

6. Prior to the hearing on 26 October 2016, the Tribunal received a Motion from the Complainers to adjourn the hearing having regard to other matters outstanding before the Court of Session. In terms of Rule 56 of the Tribunal Rules 2008, the Chairman granted that Motion and a procedural hearing was set down for 24 November 2016. Formal Notices were served upon both parties.

7. As the matters before the Court of Session had still not been resolved prior to the procedural hearing, a further Motion to Adjourn was submitted to the Tribunal. The Chairman, in terms of Rule 56 of the Tribunal Rules 2008, further adjourned the matter to a procedural hearing on 16 December 2016.

8. At the hearing on 16 December 2016 the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh who also appeared of consent for the Respondent. On joint motion the Tribunal sisted the case for the outcome of the Court of Session proceedings.

9. By letter dated 15 June 2017, Complaint DT/17/13 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers averring that the Respondent may have been guilty of professional misconduct. In that Complaint there was no Secondary Complainer.

10. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers for the Respondent were lodged with the Tribunal.

11. In terms of its Rules, the Tribunal appointed Complaint DT/17/13 to be set down for a procedural and preliminary hearing on 27 October 2017. A Motion to recall the sist in Complaint DT/16/19 was submitted by the Complainers on 8 August 2017. The Tribunal appointed that Complaint also to be set down for a procedural hearing on the same date. Formal Notices were intimated to both parties.

12. At the hearings on 27 October 2017, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was absent but was represented by Stuart Munro, Solicitor, Glasgow. The Fiscal for the Complainers moved the Tribunal to recall the sist in Complaint DT/16/19. This Motion, not being opposed, was granted. Thereafter, on joint motion in terms of Rule 17 of the Tribunal Rules 2008, the Tribunal conjoined the Complaints. The Respondent had, prior to the hearing, withdrawn his preliminary issues in relation to Complaint DT/17/13. Both parties advised that further investigations were required and, on joint motion, the Tribunal adjourned the conjoined Complaints to a procedural hearing on 8 December 2017, with a period of adjustment until 6 December 2017.

13. Prior to the 6 December hearing, of consent and on the Complainers' motion, the Chairman of the Tribunal in terms of Rule 56 of the Tribunal Rules 2008 adjourned the procedural hearing to 14 December 2017. Formal Notices were intimated to both parties.

14. On the joint application by both parties, investigations not yet being complete, in terms of Rule 56 of the Tribunal Rules 2008, the Chairman adjourned the case to a further procedural hearing on 22 January 2018 and allowed the parties further time to adjust.

15. At the hearing on 22 January 2018, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh who also appeared on behalf of the Respondent. On joint motion, a hearing was fixed for 16 April 2018 with an adjusted Record to be lodged with the Tribunal Office by 4 April 2018.

16. At the hearing on 16 April 2018, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented by Stuart Munro, Solicitor, Glasgow. An amended Record and a Joint Minute agreeing the averments of fact and duties within the amended Complaint and Productions 1 – 8 for the Complainers were lodged with the Tribunal. The Fiscal confirmed that the Complainers were not leading any parole evidence. The Respondent and one witness gave evidence. Submissions were made on behalf of both parties.

17. The Tribunal found the following facts established:-

    17.1 The Respondent is a solicitor enrolled in the Registers of Scotland on 16 November 1982. Between 1 November 1984 and 31 December 2015, he

practised as a partner in the firm of MMFW Partnership, Solicitors, Glasgow. Presently he is a sole practitioner under the business name of Bryson's Legal Services, Bearsden, Glasgow. He was the client relations partner of MMFW between 24 August 2005 and 4 June 2015 and from 12 June 2015 to 31 December 2015.

COMPLAINT BY MS A

17.2 a) The Respondent whilst at MMFW acted for Ms A in relation to the defence of a civil litigation commenced in the Sheriff Court by way of a Summary Cause Action. He first took instructions on 8 March 2013.

b) Ms A appeared to be financially eligible for Civil Legal Aid and the Respondent provided her with a Legal Aid Application for said court action at that first meeting. By letter 11 March 2013 the Respondent indicated he was accepting instructions to act and confirmed he proposed to apply for legal aid. He enclosed a form for that purpose.

c) A signed original financial information form headed Civil Legal Aid Financial Eligibility form is held on the file dated 18 March 2013. There is no evidence on the file that this or indeed any of the other forms and statements required when seeking civil legal had been prepared or lodged with the Legal Aid Board. There is a handwritten note of 8 March 2013 which appears to be an initial statement of Ms A. There is no evidence on file that said note was typed up for lodging with the Civil Legal Aid application. There is no Civil Legal Aid correspondence nor reference. There is no communication on the file to indicate the Respondent advised Ms A that he had not obtained public funding of any type. Nor is there any communication on file to show at any stage he had been seeking instructions from Ms A, with reference to paragraphs 17.2 h) and 17.2 i) below.

d) The Respondent attended at Court on 3 April 2013 and the case was continued until 1 May 2013. He wrote to Ms A on that date indicating that he would take certain steps with regard to her defence. The letter made it clear that Ms A did not need to attend the next hearing.

e) The file contains correspondence between Brodies, the solicitors acting for the Pursuers, and the Respondent and other Court related documents, but there is no regular correspondence to Ms A after 3 April 2013 save the letters of 16 and 17 May below.

f) On 1 May 2013 Brodies wrote to Ms A to advise that the case had called and that a proof had been set for 2 July 2013.

g) By letter of 15 May 2013 Brodies, on behalf of the Pursuers put forward a proposal, whereby decree would pass for the sum sued for with expenses of £219.55.

h) By letter 16 May 2013 Steven Murray, the Respondent's partner, wrote to Ms A referring to a telephone conversation between them which had taken place earlier that week asking for delivery of a letter she had received from Brodies and seeking return of the Legal Aid papers. The letter makes it clear that it was necessary for the Legal Aid papers to be returned so that the firm could continue to represent her in connection with the ongoing Court action.

i) On 17 May 2013 another letter was sent to Ms A by the Respondent's partner asking the client to return her Legal Aid papers as a matter of urgency. The letter indicated that 'we ourselves have now been contacted by the solicitors acting on behalf of BMI Healthcare Ltd. In summary, their position is that they are still seeking payment of all sums due by you'. The file does not disclose any evidence that Ms A was advised of the specific terms of the proposal as regards expenses. The letter also seeks payment of £100 for "work not covered by you in the award to you of Civil Legal Aid".

j) By letter of 28 June 2013 Brodies refer to a proposal to allow decree to pass against Ms A if extract was superceded by two months. There is nothing on file to show that the Respondent or anyone on his behalf took any instructions from Ms A in relation to Brodies' letter.

k) A hearing took place on 2 July 2013. That had been the proof diet. The only evidence on the file of that is a letter from Brodies to the Respondent dated

5 July 2013 thanking him for agreeing to appear for both parties at that proof hearing. There is no evidence of any communication between the Respondent and Ms A in relation to that hearing, either before or immediately afterwards.

l) Brodies wrote to the firm using the Respondent's reference on 9 August 2013 referring to a pre-proof hearing on 7 August 2013 and noting that this was continued to a proof on 13 September 2013. There is no communication between the Respondent and Ms A on the file about this.

m) On 11 September 2013 the Respondent wrote to the Sheriff Clerk at Glasgow Sheriff Court advising that the firm was withdrawing from acting due to "absence of instruction". This letter was then copied to Brodies with apologies for the short notice given. There is nothing on file to support the basis of withdrawing from acting some two days prior to the Proof diet. There is nothing on file to indicate advice was sought from the Professional Practice department of the present complainers as to the appropriateness of withdrawing at such a late stage.

n) There is nothing on the file to show any correspondence, telephone call or e-mail to Ms A to advise that the Respondent and his firm had withdrawn from acting for her. There is no information on the file about what happened at the hearing on 13 September 2013. No guidance or information of any nature was provided by the Respondent to Ms A at this time or indeed at any time thereafter.

o) On 14 October 2013 Brodies wrote to Ms A enclosing their Account of Expenses in advance of the Diet of Assessment and the letter in its heading stated Diet of Assessment 31 October 2013. In the Account of Expenses the hearing on 13 September 2013 was described as a proof diet. There was no explanation in the letter for Ms A of what that was or any other information.

p) On 1 November 2013 Ms A received a letter from Glasgow Sheriff Court which referred to a diet of assessment of expenses which had called on 31 October 2013 and noted that there had been "no appearance by or on behalf of the defender". The letter advised that there was to be a further hearing on 13 November 2013.

It concludes *"Parties should note this calling and arrange representation if necessary"*. There is no explanation for Ms A of what this meant.

q) Ms A contacted MMFW Partnership on 5 November 2013 and was told after the second call to call back on the 7 November 2013, which she did, only to be told that the Respondent was at Court all day and to call the following day 8 November 2013. She did so and was again told that the Respondent was in Court and she should call back the next Tuesday. Ms A called again on 11 and twice on 12 November 2013. She was told at the end of the day on 12 November 2013 by a secretary that the Respondent had withdrawn his services and that therefore she would have no representation for the hearing the following day. Accordingly the first notice Ms A received that the Respondent had withdrawn from acting for her was by telephone on 12 November 2013.

r) Ms A attended Court herself on 13 November 2013. Decree was awarded against her for £3309.20 plus expenses of £2067.

s) The file contains a handwritten file note of a telephone call between Ms A and an individual in MMFW on 13 November 2013 indicating that she had a conversation with a member of staff on that date but the note does not identify whom she spoke to. It notes that she had attended court that day and decree had been awarded against her.

COMPLAINT 2

17.3 a) At the material times MacIntosh McLaughlin then MMFW had two partners of which from 1 July 2010 until 31 August 2013 the Respondent was the designated Cashroom Manager and was therefore responsible for the staff and systems employed by both firms during this period of time. From 30 August 2013 to 31 December 2015, the Respondent was MMFW's Money Laundering Reporting Officer. MMFW is an amalgamation of the former practice unit of McIntosh & MacLachlan (itself an amalgamation of the former practice units of Marshall & MacLachlan and McKay & McIntosh) and the former practice unit of Finlayson Wise. The amalgamation took place on 1 March 2012.

b) MMFW was inspected by a team of inspectors from the Complainers Financial Compliance Department (FCD) between 4 and 6 June 2013 (June 2013 report). The inspectors reported various matters of concern which over the ensuing weeks, were not addressed by MMFW, leading to the Complainers Guarantee Fund Subcommittee (GFSC) at its meeting on 8 August 2013 inviting the Respondent and his fellow partner to an interview in terms of Section 40 of the Solicitors (Scotland) Act 1980 (the Act). The Respondent's interview took place on 19 September 2013. At its further meeting on 3 October 2013, the GFSC was concerned that issues had still not been addressed. It continued consideration of the withdrawal of the Respondent's practising certificate for one month and ordered an Investigation to be carried out on MMFW in terms of Rule B6.18.4 of the Practice Rules 2011.

c) The Investigation was carried out between 15 and 25 October 2013 (Investigation report). The GFSC met on 7 November 2013 and decided to invite the Respondent and his partner to a further interview in terms of Section 40 of the Act. The Interview took place on 21 November 2013. On 9 January 2014, the GFSC decided that the Section 40 procedure no longer required to be continued, but that due to the length of time during which MMFW's failures had been outstanding, further consideration should be given as to whether these failures may warrant a complaint. This resulted in the GFSC deciding at its meeting on 6 February 2014 that referral for a complaint to the SLCC was justified with regard to the Respondent's actings in relation to the breaches narrated and evidenced below.

EXECUTRY 1

17.4 a) In the June 2013 report it was noted that this executry was originally dealt with by Marshall & McLachlan and dated back to 1965. The FCD Inspector identified that £6,645.10 was brought forward and invested on 30 September 2008. The Respondent was the partner and fee earner at the relevant times.

b) By email of 16 August 2013 the Respondent explained as follows:- "that the holdings related to matters that were current about thirty years ago. The partners of the former firm of Marshall & MacLachlan originally dealt with this. On the

amalgamation of Marshall & MacLachlan and McKay & McIntosh in the 1980s the partner who dealt with these trusts was Mr William Wright who retired from practice around 1993. The file then was dealt with by Mr Leonard Camrass formerly a partner and latterly a consultant. Mr Wright became incapax after his retiral. Mr Camrass also suffered ill health. Both Mr Wright and Mr Camrass have since died. (It is understood that Mr Wright had been a Trustee and Mr Camrass was assumed as a Trustee on Mr Wright's retirement)".

c) With reference to the following fees identified at the inspection:

- 11 June 2009 Fee & Vat Uplifted £575.00 — appears to have been rendered to Mr Camrass;
- 31 January 2011 Fee & Vat Uplifted £60.00 — not seen to be rendered/no copy fee note on file
- 31 January 2011 Fee & Vat Uplifted £60.00 — not seen to be rendered/no copy fee note on file and
- 27 March 2013 Fee & Vat Uplifted £600.00 — query if it had been rendered to Mr Camrass.

By email of 1 October 2013 the Respondent advised that the fees represented the work done since Mr Camrass' retiral in attempting to finalise the matter. The Respondent also stated in his email that it was accepted that MMFW was unable to send a fee-note to any individual as all potential recipients had died or were incapax. Mr Camrass died on or about 12 April 2013.

d) In his response of 1 October 2013 to the executive summary of June 2013 the Respondent indicated that he would propose to send the fee taken on 27 March 2013 to the Auditor of the Royal Faculty of Procurators to have a fee set. If the auditor set a fee lower than the fee taken then the balance would be re-credited to the account.

e) On 5 December 2013 the FCD Inspector noted that fee notes of 31 January 2011 both for £60.00 had been re-credited to the client ledger on 25 November 2013.

f) On 6 January 2014, the FCD Inspector advised MMFW that no evidence had been provided to show that the Fee and Vat of £600 debited on 27 March 2013

was correctly due to the firm and rendered to the executor. Accordingly, in the absence of evidence that the fee was correctly due and correctly rendered the sum must be re-credited.

g) On 8 January 2014, the FCD Inspector noted that £600.00 was re-credited on 23 December 2013.

h) Accordingly, as a partner, fee earner and cash room partner, the Respondent on three occasions, twice on 31 January 2011 and once on 27 March 2013, took client funds to fees where there was no evidence that these had been rendered and/or were properly due to MMFW all in breach of Rule B6.5.1 of the Practice Rules 2011 more fully narrated below.

EXECUTRY 2

17.5 a) The Respondent was the partner and fee earner in relation to the executry of Mrs 2 until December 2013.

b) In relation to fees the Investigation report detailed that the following fees had been taken:

- 31 December 2012 -Fee 510123- £360.00 incl VAT. Not seen as rendered to client. Copy fee note seen;
- 01 July 2013 Fee 52040 £360.00 incl VAT. Not seen as rendered. No copy fee note seen.

c) It was noted that the funds for these fees and Vat totalling £720 were transferred from another client ledger for Trust 3. It was further noted that the deceased, Mrs 2 was a beneficiary of this trust. The Trust file was also reviewed. No written authority was seen by the FCD Inspector for these transfers.

d) Following the Investigation of 15-25 October 2013, MMFW was asked to provide both a full explanation regarding the matter and written authority in relation to the funds transferred from the Trust. Despite the Respondent advising on 6 November 2013 that MMFW would respond shortly after examining the

file and the FCD Inspector re-iterating the same request on 13 November 2013, the Respondent failed to deliver evidence of same.

e) On 5 December 2013 the FCD Inspector noted that both the fee notes of 31 December 2012 and 01 July 2013 each for £360.00 had been re-credited to the client ledger on 25 November 2013.

f) At the time of the June inspection and the investigation, no evidence had been provided to show that MMFW was entitled to take said fees. It was only following a further inspection in 2014 that the executor of the deceased provided confirmation which ultimately satisfied the FCD that the fee notes had been rendered.

Accounts Rules

Practice Rule B6.5.2: Cheque designation

17.6 a) In the June 2013 report (and indeed from an Inspection in October 2012), the FCD Inspector noted examples of the following incorrectly designated cheques:-

- On 28 March 2013 a cheque (No000166) for £37,956.80 was made payable to The Woolwich and recorded against the ledger for a client. Said cheque did not contain the client's name as required.

- On 15 April 2013 a cheque (No000182) for £37,275.49 was made payable to Santander UK Plc and recorded against the ledger for a client. Said cheque did not contain the client's name as required.

- On 15 April 2013 a cheque (No000184) for £97,454.85 was made payable to Mortgages plc and recorded against the ledger for client. Said cheque did not contain the clients' names as required.

b) On reviewing a sample of cheques as part of the Investigation of 15-25 October 2013, a further example of an incorrectly designated cheque was noted as follows:

- On 15 August 2013 a cheque for £24,557.19 was made payable to Clydesdale Bank 990877649 (signed by the Respondent). Said cheque did not contain the client's name as required.

c) Accordingly on or around 28 March 2013, 15 April 2013 and 15 August 2013 the firm allowed four cheques to be inaccurately drawn, at which time the respondent was the cashroom manager, namely cheques to be paid to a person's account with a financial institution, which did not include the name of the person whose account was to be credited with the payment all in breach of B6.5.2 of the Practice Rules 2011 as more fully narrated below.

Rules B6.7: Accounts required to be kept in books of practice unit

17.7 a) At the commencement of the Investigation on 15 October 2013, the FCD Inspector noted that on occasions in July 2013 and August 2013 the Respondent as the appointed Cashroom Manager until 30 August 2013, failed to keep proper written up accounting records as necessary to show the true financial position of MMFW this being required under Rule 6.7.4 of the Practice Rules 2011.

b) In reviewing the daybooks the FCD Inspector noted many examples of delays in postings as follows:

- July 2013

26 July 2013 posted on 30 July 2013
29 July 2013 and 30 July 2013 posted on 07 August 2013
31 July 2013 posted on 08 August 2013
(03 July 2013 was seen to be posted on 17 July 2013 however, it was noted that the cashier was on annual leave during this time)

- August 2013

26 August 2013 posted on 29 August 2013
27 August 2013 posted on 30 August 2013
30 August 2013 posted on 10 September 2013

c) The Respondent has not disputed these delays. Whilst he stated that there was usually a delay of one or two working days at the end of each month and that the cashier and he as Cashroom manager (or his successor after 30 August 2013)

kept a rough manual record of all cash transactions so that no payments were made unless verified that there were funds available, nonetheless, the absence of properly written up accounting records made it impossible to ascertain the true financial position of MMFW in breach of Rule 6.7.4 more fully narrated below.

TRUST 3

17.8 a) As Cashroom manager the Respondent required to ensure that a reconciliation was carried out at each quarter end date, as per MMFW's accounting certificate periods, comparing the balances recorded in the records of MMFW with the independent verifications obtained (i.e. the passbooks or other documents).

b) At the Investigation of 15-25 October 2013, the FCD Inspector noted that, whilst it was seen that a reconciliation had been carried out as at 30 September 2013, no verification was seen for the following:

Trust 3 - £25,983.38

- No statement seen at 30 September 2013.
- The last verification of balance was £27,176.14 dated 07 June 2013.

c) Accordingly between 31 May 2013 and 30 September 2013, in relation to Trust 3, the Respondent, as appointed Cashroom Manager failed or delayed to cause the balance on MMFW's client invested funds ledger account to be reconciled with special deposit accounts statements and/or did not retain such reconciliation statements showing this agreement for the required retention period all in breach of Rule 6.9.1 of the Practice Rules 2011.

Rule B6.13 — responsibilities of designated Cashroom Manager

17.9 a) At a previous inspection in around October 2012, the Respondent's failure to comply with his responsibilities as Cashroom Manager were identified and drawn to his attention. They were again drawn to his attention at the Inspection of 4-6 June 2013, when the FCD Inspector observed that the records of MMFW were insufficient and did not demonstrate compliance with the Accounts Rules

requirements. The Respondent was required to ensure that adequate systems were implemented without delay in order to fully comply with the requirements of the Accounts Rules in future and to ensure that the Respondent's obligations and responsibilities as Cashroom Manager were fulfilled.

b) Accordingly until his cessation as Cashroom Manager he failed to secure compliance by MMFW with various provisions as required in terms of Rule 6.13.1 including Rules 6.5.1, 6.5.2, 6.7.34 and 6.9.1 all more fully narrated below.

Rule B6.18.7 production of practice information

17.10 Following from the June 2013 Inspection it was noted that between June 2013 and January 2014 the Respondent had failed or delayed to provide sufficient information to allow inspectors of the FCD, to ascertain whether the Account Rules had been complied with in relation to the following files:-

a) Executry 4

i) Mrs 4 died on 10 May 2000. The Respondent was the partner and fee-earner in relation to this matter. After the Inspection of 4-6 June 2013, the FCD Inspector requested MMFW to confirm if the following fee notes had been rendered to the clients, providing documentation to evidence the position and a full explanation of the work carried out to justify the fee taken namely:-

(i) 23 January 2009 Fee & VAT uplifted £575.00,
(ii) 24 September 2009 Fee & VAT uplifted £414.00,
(iii) 12 October 2011 Fee & VAT uplifted £600.00,
(iv) 20 January 2012 Fee & VAT uplifted £600.00 and
(v) 28 March 2013 Fee & VAT uplifted £600.00

ii) The Respondent indicated that there had been a systems crash but that he would offer a fuller explanation "shortly". None was received.

iii) The FCD Inspector stated that the matter had been highlighted at the previous inspection of MMFW and that it was a concern to note that this has not been addressed.

iv) In addition, the FCD Inspector requested details as to why the executry funds were held for such a considerable time and confirmation that all fee notes were rendered to the client before allocating to the firm bank.

v) During the Investigation of 15-25 October 2013, the FCD Inspector again requested a full explanation in relation to the delays in dealing with this executry detailing exactly what work was still to be done and for clarification as to how the Respondent knew what fees were taken for the period when records were not seen between 09 May 2001 and 30 September 2008. There was very little paperwork on file from 2002 to 2013.

vi) The Respondent provided a reply of 5 November 2013 but, in a reply dated 13 November 2013, the FCD Inspector advised that his comments had been noted however these did not fully address the questions raised. The FCD Inspector re-iterated the request.

vii) On 6 January 2014 the FCD Inspector again advised the Respondent that a full clear response to this matter had been awaited since the Inspection of 4-6 June 2013 and that he had not provided details of what fees were taken for the period when records were not seen between 09 May 2001 and 30 September 2008 nor details of a timescale for completion of the work. No further response was received. It is accepted that the Respondent was in hospital as at 6 January 2014. However, he did return to work and no explanation was provided after doing so.

viii) On 8 January 2014 the FCD Inspector noted that £575 was re-credited to the client ledger on 24 December 2013. No evidence has been produced to show that any of the above fee notes were rendered.

b) Executry 5:

i) Mr 5 died in 2003. The Respondent was the partner and fee-earner in relation to this matter. After the inspection of 4-6 June 2013, the FCD Inspector requested MMFW to confirm if the following fee notes had been rendered to the clients, providing documentation to evidence the position and a full explanation of the work carried out to justify the fee taken for all of the fees listed below, namely:-

(i) 23 January 2009 Fee & VAT uplifted £575.00,

(ii) 23 October 2009 Fee & VAT uplifted £690.00,

(iii) 12 October 2011 Fee & VAT uplifted £600.00,

(iv) 25 May 2012 Fee & VAT uplifted £288.00,

(v) 28 December 2012 Fee & VAT uplifted £356.91and 28/03/13 Fee & VAT uplifted £600.00.

ii) In addition, the FCD Inspector requested details as to why the executry funds were held for such a considerable time and confirmation that all fee notes were rendered to the client before allocating to the firm bank. The FCD Inspector stated that the matter was highlighted at the previous inspection of MMFW and it was a concern to note that this had not been addressed.

iii) No explanation at that time was provided by the Respondent.

iv) During the Investigation of 15-25 October 2013, the FCD Inspector noted that £3,397.96 was brought forward, invested 30 September 2008 and total fees of £3,113.00 had been taken since 2008.

v) The FCD Inspector asked the Respondent to provide full details of the work carried out to justify the fees taken and explain why, although a sum of £2,100.00 was detailed in a letter to the executor on 11 October 2011 as being an estimate of the total fees for the executry, yet £3,113.00 had been taken to fees.

vi) The Respondent replied on 5 November 2013. In a response dated 13 November 2013, the FCD Inspector advised that his comments had been

noted however these did not fully address the questions raised. The FCD Inspector repeated the request.

vii) On 5 December 2013 the FCD Inspector noted that £1,013.00 had been re-credited to the client ledger on 25 November 2013. No further information was provided.

c) Ms 6:

i) The Respondent was the partner and fee-earner in relation to this matter. After the inspection of 4-6 June 2013, the FCD Inspector requested MMFW to confirm if the following fee notes had been rendered to the clients, providing documentation to evidence the position, and a full explanation of the work carried out to justify the fee taken for all of the fees listed namely:-

(i) 23 January 2009 Fee & VAT uplifted £34.50,

(i) 25 May 2012 Fee & VAT uplifted £288.00,

(ii) 27 March 2013 Fee & VAT uplifted £300.00,

In addition, the FCD Inspector requested details as to why the executry funds were held for such a considerable time and confirmation that all fee notes were rendered to the client before allocating to the firm bank.

The FCD Inspector stated that matter was highlighted at the previous inspection of the practice unit and it was a concern to note that this has not been addressed.

ii) During the Investigation of 15-25 October 2013, the FCD Inspector requested this file to be forwarded to the Society without delay. The request was reiterated on 13 November 2013. On 5 December 2013, the FCD Inspector was advised by the Respondent that the file could not be located. Accordingly, he was advised that in the absence of evidence to justify the fees being taken, the following fee notes should be re-credited to the client ledger: namely

i. 23 January 2009 Paid Fee and VAT £34.50,

ii. 25 May 2012 Paid Fee and VAT £288.00

iii. 27 March 2003 Paid Fee and VAT £300.00.

iii) On 6 January 2014, the FCD Inspector noted that a full clear response to this matter had been awaited since the inspection of 4 - 6 June 2013 and re-iterated the request. It is accepted that the Respondent was in hospital as at 6 January 2014. However, he did return to work thereafter and no explanation was provided on doing so.

iv) On 8 January 2014 the FCD Inspector noted that these three fee notes (for £34.50, £288.00 and £300.00) had been re-credited on 23 December 2013. No further explanation was provided.

d) Executry 7:

i) At the material time the Respondent was the Cashroom manager and/or was required to respond to issues raised by the FCD. After the inspection of 4-6 June 2013, the FCD Inspector requested MMFW unit to confirm if the following fee note had been rendered to the clients, providing documentation to evidence the position, and a full explanation of the work carried out to justify the fee taken, namely

(i) 14 February 2013 Fee & VAT £72.00

ii) During its Investigation of 15-25 October 2013, the FCD Inspector requested this file to be forwarded to the Complainer without delay.

iii) On 5 December 2013 the FCD Inspector noted that this file could not be found and requested the fee note be re credited to the client ledger.

iv) On 6 January 2014, the FCD Inspector noted that a full clear response to this matter had been awaited since the inspection of 4 - 6 June 2013 and re-iterated the request. it is accepted that the Respondent was in hospital as at 6 January 2014. However, he did return to work thereafter and no explanation was provided on doing so.

v) On 8 January 2014 the FCD Inspector noted that £72.00 was re-credited on 23 December 2013. No further explanation was provided.

e) Trust 8

i) At the material time the Respondent was the Cashroom manager and/or was required to respond to issues raised by the FCD. After the inspection of 4-6 June 2013, the FCD Inspector requested MMFW to confirm if the following fee notes had been rendered to the clients, providing documentation to evidence the position, and a full explanation of the work carried out to justify the fee taken for all of the fees listed above, namely:

(i) 30 March 2011 Fee & VAT £600.00,

(ii) 21 June 2011 Fee & VAT uplifted £216.00,

(iii) 04 January 2012 Fee & VAT uplifted £360.00 and

(iv) 21 January 2013 Fee & VAT uplifted £360.00.

In addition, the FCD Inspector requested details as to why the executry funds were held for such a considerable time and confirmation that all fee notes are rendered to the client before allocating to the firm bank. The FCD Inspector stated that matter was highlighted at the previous inspection of MMFW and it was a concern to note that this had not been addressed.

ii) During the Investigation of 15-25 October 2013, the FCD Inspector requested this file to be forwarded to the Complainers without delay.

iii) In his reply of 5 November 2013 the Respondent asked the inspector to identify exactly what periods and subjects they wished to see.

iv) By letter dated 13 November 2013 the FCD Inspector requested the Respondent to forward all files relating to Ms 8 as previously requested.

v) On 5 December 2013, the FCD Inspector noted that this file had now been returned to the Respondent and he was requested to both review the file and provide full details of the work carried out to justify the fees taken and confirm if the fee notes have been rendered to the clients, providing documentation to evidence the position.

vi) On 6 January 2014, the FCD Inspector noted that a full clear response to this matter has been awaited since the inspection of 4-6 June 2013 and re-iterated the request. It is accepted that the Respondent was in hospital as at 6 January 2014. However, he did return to work thereafter and no explanation was provided on doing so.

vii) On 8 January 2014 the FCD Inspector noted that £240.00 was re-credited on 24 December 2013. No further explanation was provided.

f) Ms 9

i) This file related to the transfer of title of a property. At the material time the Respondent was the Cashroom manager and/or was required to respond to issues raised by the FCD.

ii) During the Investigation of 15-25 October 2013, the FCD Inspector selected and reviewed this file as part of the investigation. It noted that the following fee note was not seen to have been rendered to the client, namely:-

(i) 26 August 2013 Paid Fee and VAT, 08-13-234 £240.00

iii) The FCD Inspector requested confirmation of whether the fee note had been rendered to the client and for documentation to be provided evidencing the position.

iv) On 5 November 2013 the Respondent advised that a similar practice in this file had been adopted to that of the file of Mr 10 that the fee was agreed by him at the start of the work and was being paid by instalments. The Respondent stated that he did not understand until he had examined the file in detail why the fee was not rendered all at once.

v) On 5 December 2013 the FCD Inspector noted that the above fee note was not rendered to the client before being allocated to the firm bank. No further response was received from the Respondent.

g) Mr 10:

i) This file related to a matrimonial separation. At the material time the Respondent was the Cashroom manager and/or was required to respond to issues raised by the FCD.

ii) During the Investigation of 15-25 October 2013, the FCD Inspector selected and reviewed this file as part of the investigation. It was noted that the following fee notes were not seen to have been rendered to the client, namely:-

(i) 24 September 2012 Paid Fee and VAT, 510045 £420.00,
(ii) 20 December 2012 Paid Fee and VAT, 510103 £300.00,
(iii) 21 March 2013 Paid Fee and VAT, 510167 £240.00,
(iv) 28 June 2013 Part Paid Fee and VAT, 52031 £360.00,
(v) 08 July 2013 Part Paid Fee and VAT, 52031 £96.00,
(vi) 09 August 2013 Part Paid Fee and VAT, 52031 £24.00,
(vii) 28 August 2013 Part Fee and VAT, 520561 £80.00 and
(viii) 06 September 2013 Part Fee and VAT, 520561 £100.00.

The FCD Inspector requested confirmation of whether the above fee notes had been rendered to the client, and for documentation to be provided evidencing the position.

iii) On 5 November 2013 the Respondent advised that Mr 10 was the client of someone else in the firm and the Respondent had only recently taken over the file. He stated that he believed that the fee was agreed at the start of the work and that Mr 10 was paying it by instalments. He also stated that he did not understand until he has examined the file in detail why the fee was not rendered all at once.

iv) On 13 November 2013 the FCD Inspector responded by stating that it appeared from the response received that the above fee notes had not been rendered to the client before being allocating to the firm bank. The Respondent was requested to confirm that.

v) On 5 December 2013 the FCD Inspector noted that the above fee notes had not been rendered to the client before being allocated to the firm bank and requested the Respondent to advise if he considered all fees taken to be justified and the work to be carried out. No further response was received from the Respondent.

h) Mr 11:

i) These files related to the sale of a property and an Executry. At the material time the Respondent was the Cashroom manager and/or was required to respond to issues raised by the FCD.

ii) During the Investigation of 15-25 October 2013, the FCD Inspector also selected and reviewed these files as part of the investigation. It noted that the following fee notes were not seen to have been rendered to the client:-

(i) CARP3/1-15 August 2013 Paid Fee and VAT 08-13-230 £594.00,

(ii) CARP3/1-15 August 2013 Paid Fee and VAT, 08-13-228 £1,860.00;

(iii) CARP1/1-15 August 2013 Paid Fee and VAT, 08-13-229 £480.00 and

(iv) CARP1/1-30 August 2013 Paid Fee and VAT, 08-13-237 £216.00;

(v) CARP/2/1— Executry- 18 March 2013 Paid Fee and VAT, 03-13-163 £120.00 and

(vi) CARP/2/1- 19 July 2013 Paid Fee and VAT, 07-13-210 £60.00.

iii) The FCD Inspector requested confirmation of whether the above fee notes had been rendered to the client, and for documentation to be provided evidencing the position.

iv) In a reply dated 13 November 2013, to a response from MMFW on 5 November 2013, the FCD Inspector stated: - "It appears from the response received that various fee notes were not rendered to the client before being allocating to the firm bank. Please confirm this was the case." The Respondent was asked to provide full details of the work.

v) A response was received from the Respondent on 18 November 2013 stating that the rendering of fees was discussed with the client and 'A letter was issued to him on 15th August 2013', which was noted by the FCD Inspector on 5 December 2013. No documentation to vouch that position has been produced.

i) Executry 12

i) This file related to an Executry. At the material time the Respondent was the partner. He was also the Cashroom manager and/or was required to respond to issues raised by the FCD.

ii) During the Investigation of 15-25 October 2013, the FCD Inspector selected and reviewed this file as part of the investigation issues arose in relation to the following fee notes.:-

(i) 26 July 2013 Paid Fee and VAT, 52044 £1,200.00 and

(ii) 23 August 2013 Paid Fee and VAT, 52046 £480.00

iii) The FCD Inspector requested confirmation of whether the above fee notes had been rendered to the client, and for documentation to be provided evidencing the position.

iv) In a reply dated 13 November 2013, to a response from the Respondent on 5 November 2013, the FCD Inspector stated that the explanation provided (namely a letter issued to the Executor on 23rd July, 2013) would be reviewed and a response issued in due course.

v) The FCD Inspector also requested confirmation of whether the above fee note of 26 July 2013 for £1,200.00 had been rendered to the client, and for documentation to be provided evidencing the position. The request was re-iterated on 5 December 2013. No response was received.

vi) Accordingly the above facts disclose numerous failures and/or delays by the Respondent to respond to numerous requests to provide information required by the Complainers.

Money Laundering and due diligence B23.1

17.11 a) From 30 August 2013, the Respondent took on the duties of Money Laundering Reporting Officer.

b) The Respondent was also the partner and fee earner in relation to all of the files set out in paragraph 3.82. The Respondent, as a solicitor and partner, was under a very clear obligation on to ensure that he and MMFW "knew" their client. In addition as the Money Laundering Reporting Officer of MMFW from the end of August 2013 during the course of these transactions and should have been fully aware of his regulatory requirements.

c) Previously in the June 2013 inspection various Money Laundering breaches were identified and the Respondent and MMFW were informed that its procedures would be fully reviewed for compliance in the next inspection. In particular it was made clear that any files opened prior to 2007 still required compliance.

d) In particular in the June 2013 inspection in each of the cases in the paragraph, excluding Executry 13, the inspectors asked specifically why a risk assessment had not been carried out. The inspectors also asked why an assessment had not subsequently been carried out on the post 2007 files after the current money laundering regulations came in to force. The Respondent failed to provide an adequate explanation.

e) The inspectors confirmed that this would be revisited at the next inspection in October.

f) At the investigation in October 2013 the Respondent had still failed to carry out risk assessments on the following files:

(i) Executry 1 (opened pre 2007);

(ii) Executry 13 (opened post 2007);

(iii) Executry 4 (opened post 2007);

(iv) Executry 12 (opened pre 2007) and

(v) Trust 3 (opened post 2007).

g) No identification was found on the files for the Executry 13 and for Executry 1.

h) The Respondent continued to fail to provide an adequate explanation to the FCD Inspectors why risk assessments had not been carried out for every transaction and also why files had not been revisited to ensure that an adequate risk assessment had been completed.

i) Accordingly, despite being advised and given the opportunity to remedy earlier failures, the Respondent failed to address these and so demonstrate that he had complied with the law relating to Money Laundering as set out in Part 7 of the Proceeds of Crime Act 2002 and Part 3 of the Terrorism Act 2000 more fully narrated below. Given the wide variety of work carried out by the Respondent the onus was on him to so comply because of the potential for him to become involved in the movement of proceeds of crime because of the very nature of his work. The Respondent regularly received money through his client account on a wide variety of business matters.

j) As the MLRO the Respondent should have been fully aware of his obligations to demonstrate to his regulator, the Complainer, that MMFW was complying with the money laundering regulations specifically because of the nature of his business.

k) Accordingly he also failed to demonstrate to the Complainers as his supervisory authority that the extent of the customer due diligence measures applied to transactions stated at paragraph 17.11 i) were appropriate given the risks and his obligations in terms of Rule B6.23.1 and B6.23.2 of the Practice Rules 2011.

18. Having given careful consideration to the parole evidence, submissions of both parties, documentary productions and the facts as found above, the Tribunal found the Respondent guilty of Professional Misconduct as follows.

19. The Respondent was found guilty of professional misconduct singly and *in cumulo* in respect that:-

(a) He failed to carry out his obligations as cashroom partner as set out in Findings in Fact 17.4(a) to 17.9(b).

(b) He failed to provide the relevant information and cooperation and to produce practice information as set out in Findings in Fact 17.10(a) to 17.10(i).

(c) He failed to comply with the Money Laundering Regulations as well as his duties as set out in Practice Rule B6.23 as a solicitor, partner and the official money laundering reporting officer all in terms of the Money Laundering Regulations 2007 and Practice Rules B6.23 as set out in Findings in Fact 17.11(a) to 17.11(k).

(d) He failed to communicate in an effective manner with his client, specifically in failing to:-

i. Seek legal aid or communicate problems in progressing that and its implications for Ms A.

ii. Update on progress of the court action.

iii. Advising of proposals to resolve the action and to seek or obtain instructions in relation to the two proposals contained on a file.

iv. Notify her of his withdrawal from acting.

v. Provide any information to protect her interests given he had withdrawn from acting for her.

20. Having heard further submissions from both parties, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 April 2018. The Tribunal having considered the conjoined Complaints at the instance of the Council of the Law Society of Scotland against Graham R Bryson, formerly of MMFW Partnership, Solicitors, Glasgow and now of Bryson's Legal Services, 13 Killermont Road, Bearsden, Glasgow; Find the Respondent guilty singly and *in cumulo* of professional misconduct in respect that he (a) failed to carry out his obligations as cashroom partner in contravention of Rule B6.13 of the Law Society of Scotland Practice Rules 2011, (b) failed to provide the relevant information, cooperation and to produce practice information in breach of Rule B6.18.7 of the Practice Rules 2011, (c) as a solicitor, partner and the official money laundering reporting officer, failed to comply with the Money Laundering Regulations 2007 and Rule B6.23 of the Practice

Rules 2011 and (d) failed to communicate in an effective manner with his client; Censure the Respondent; Fine him in the sum of £1,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and any party referred to within Paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980; and Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office.

(signed)

Kenneth Paterson

Vice Chairman

21. 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 4 JUNE 2018.

IN THE NAME OF THE TRIBUNAL

[redacted]

Kenneth Paterson

Vice Chairman

NOTE

At the hearing on 16 April 2018, the Tribunal had before it two conjoined Complaints. In the older of the two Complaints, a Joint Minute had been lodged with the Tribunal which agreed the averments of fact and duty as set out in the Complaint. Additionally, the Joint Minute agreed that documentary productions for the Complainers numbers 1-18 could be taken as complete, and accepted as evidence without the necessity of being spoken to. With regard to the newer of the two Complaints, parties lodged an amended Record together with a Joint Minute agreeing the amended averments of fact and duty. That Joint Minute additionally agreed that documentary productions number 1-8 for the Complainers could be accepted as evidence without the necessity of being spoken to in evidence. The effect of these Joint Minutes was that the Respondent admitted the conduct but not that it amounted to professional misconduct.

The Fiscal for the Complainers invited the Tribunal to allow the amended Record and Joint Minute for the newer Complaint to be received. This was granted. Thereafter she indicated that she was not leading any evidence. She explained that in normal circumstances, given the terms of the Joint Minutes, a Respondent would withdraw his Answers. In this particular case, she understood that the Respondent intended to lead evidence.

Mr Munro confirmed that he intended to lead evidence from the Respondent and one witness. He suggested that it would be appropriate to hear submissions following the conclusion of the evidence for the Respondent. He thereafter sought leave from the Tribunal to call the witness to give evidence before the Respondent due to the availability of that witness as a result of other commitments. That motion was granted.

EVIDENCE OF YVONNE BRYSON

This witness confirmed that she was the Respondent's wife, that they lived at the address given on the Complaint and that they had three children aged 11, 9 and 7. This witness confirmed that the Respondent himself had no health issues in 2013. However, she described the impact upon the family's daily and nightly routine as a result of illness suffered by very close family relatives. This had impacted upon both her family life and working life.

The witness was asked about the Respondent's work in around 2013 and responded that she did not know of any of the details but she was aware that the Respondent was working long hours and seemed

always to be exasperated. She explained that since around 2011 finances had not been good. The Respondent was able financially to contribute to household expenses for most of 2013 but problems arose towards the end of that year. She was paying the mortgage on the family home and money gifted to her by a close relative was used by her for that purpose. Her husband was working very long hours, leaving home at around 7:30am or 8am and not returning until 7:30pm or 8pm. This meant that the weight of family life fell upon her and relations between her and the Respondent were strained.

On 1 January 2014 the Respondent suffered heart failure and was taken to hospital in an ambulance. He was kept in hospital for three weeks. He was transferred to the Golden Jubilee Hospital in Clydebank for an internal defibrillator to be fitted. On 3 January 2014, two of their children had to be admitted to Yorkhill Hospital for six days.

When the Respondent was discharged from hospital he was advised to take time off work. The plan was that he would return to work gradually. She believed that this was around Easter 2014. The Respondent was not working as long hours as he had done and she thought that perhaps his business partner had taken more of the responsibilities of the firm. She believed that by Summer 2014 the Respondent was back at work full time. Her husband left the firm at the end of December 2015 because he had gone back to working long hours for what seemed to be no profit. She discussed the situation with her husband on several occasions and they both had meetings with his accountant. For all of 2014 and 2015, the Respondent contributed very little towards the household expenses. The accountant advised him that he needed to make significant changes and, on that basis, she encouraged the Respondent to do something else.

Now the Respondent works on his own account as Bryson's Legal Services. His working hours are far more manageable. He works from home and is able to interact far more with his family. Additionally, his financial circumstances have improved and he is able to contribute to household expenses. She considered her husband to be a proud but sometimes stubborn man who meant well for everyone. She thought he cared about his clients.

On cross-examination, the witness confirmed that the Respondent did not like to bring work home when he was working for MMFW. She explained that he would often go into the office at the weekend and on holidays. The time it took to travel from home to his office on a good day would be about half an hour.

EVIDENCE FOR THE RESPONDENT

The Respondent confirmed that he is 62, lives at the address on the Complaint with his family, and that he has been a solicitor for over 30 years. He had a number of partners in the firm MacIntosh McLaughlin. These partners all retired leaving him as the sole partner. In 2010 he assumed Steven Murray as an equity partner. The Respondent was approached by the sole partner of the firm of Finlayson Wise who invited him to merge the two firms. The Respondent knew him as he did agency work for him. The man was in some financial difficulty due to some personal matters not connected with the legal practice. He had confirmed to the Respondent that it would be in their mutual interest to combine the firms and have economies of scale. This man had previously had a partner and it was not until later that the Respondent discovered that the split had been extremely acrimonious.

The two firms combined on 1 March 2012. The firm then had two offices – one in Shettleston Road which originally had been Finlayson Wise, and one in Shawlands which had been MacIntosh McLaughlin. On the merger, the Respondent was cashroom partner and remained so until September 2013. Mr Murray was a partner in the new merged firm and the sole partner from Finlayson Wise became a consultant. The new merged firm took on the staff of Finlayson Wise which included a conveyancing assistant, a paralegal and an estate agency branch.

The previous sole partner of Finlayson Wise remained a consultant in the new firm until he was sequestrated in January 2013. It had been anticipated that he might be sequestrated but he had agreed that he would apply for a restricted practising certificate should that happen and then he would be taken on as an assistant. In fact, he did not apply for a restricted practising certificate. Additionally, the Respondent discovered that the size of the business was not what he had previously thought. The Respondent discovered that the former partner of Finlayson Wise had been touting for business from clients of his former partner. Gradually all of the members of staff left.

Originally the plan had been that the Respondent would be responsible for civil court work, the partner from Finlayson Wise would be responsible for criminal work, and Mr Murray would be in charge of chamber work and adults with incapacity. In fact, the Respondent had ended up responsible for all court work and the office administration. He was spending four out of five days in court. His partner, Mr Murray, was supposed to supervise the Shettleston office and the Respondent was supposed to supervise the Shawlands office. Sometimes they would swap offices depending what clients required to be seen. Sometimes the Respondent was in both offices in the course of one day. He spent a lot of time travelling between the two offices, court and home.

All of this had an impact on the quality of the job the Respondent did. He had little time to spend on considering and planning cases or doing such things as file checks. Even getting mail from one office, which included cash records and cheques, became difficult.

The Respondent had been the cashroom partner prior to the merger and effectively was cashier. The firm of MacIntosh McLaughlin had had a simple accounting package with which he was very familiar. He would go in early in the morning to do any postings and he had a complete overview of all that was going on. After the merger, this all changed. The Finlayson Wise cashier was based in Shettleston, worked part time and was not happy to travel to the other office. The cashroom system was on a laptop which could plug into the net in Shettleston but not in Shawlands. The laptop had to stay with her and it had the time recording system on it. The Respondent said that she did not like him working on the cashroom system. The Finlayson Wise system had been cobbled together and could not be integrated with the MacIntosh McLaughlin system.

It was the Respondent's preferred option to be responsible for his own files including checks etc. Sometimes however Mr Murray would take a file and carry on work with it. This was something that happened that caused conflict. Mr Murray was supposed to be a chamber practitioner and the Respondent was to be responsible for court.

He believed that the firm was inspected twice in 2013 and accepted in retrospect that he had not dealt with matters appropriately. He believed he had been distracted by other business, legal and family issues. He explained that the firm was not doing well financially, and the inspections brought up numerous other matters. He accepted that he had not prioritised matters correctly and he had not addressed matters he needed to or applied himself to the issue. Things were exceedingly difficult at home because of the ill-health of close relatives. There were times in 2013 when he could not contribute financially to the household because there were not enough funds within the business. The Respondent felt inadequate.

The firm had difficulty with a number of banks who would not provide bank statements to allow the necessary reconciliations to take place. The inspectors from the Law Society had been advised of this fact. VAT and PAYE fell into arrears but were subsequently paid.

After his heart failure in January 2014, the Respondent could not drive for six months. He returned to work in April 2014 on a gradual basis on medical advice. On his return to work he undertook non-contentious court matters and took no role in the management of the firm. A new cashroom system had

been installed and he did not have access to that. He did not work full time until August. He left the firm in December 2015. This was because his had again begun to suffer from stress and he discovered that his defibrillator had fired. Additionally, his relationship with Steven Murray was extremely strained and the Respondent could not see how to turn things around. Following discussions, it was agreed that Mr Murray would continue with MMFW and that the Respondent leave.

The Respondent now works on his own account as Bryson's Legal Services. Some 90-95% of his work is freelance, working on instructions from other solicitors. 90% of that work is criminal, with only a little civil. He does not operate a client account. He has only a few clients of his own who are criminal clients. He never intends to work in a way that requires him to have a client account or hold client funds again. He has a reasonable income.

His income in 2013 was nil. At that time, he was in the process of cashing in an endowment policy in order to meet his and the firm's liabilities. In late 2015, he sold a flat. The proceeds of the endowment policy had kept him going whilst he was off work. Then following his departure from MMFW, he used his own funds to settle outstanding PAYE for MMFW so that creditors were not put at risk.

The Respondent stated that he was embarrassed to be before the Tribunal. He had good regard for himself as a solicitor. He had previously held a high rank in the Territorial Army. He had always felt that he was trying to do things for others. He was used to other people coming to him for advice and now it was the other way round. He accepted that he let a number of people down. He explained that MMFW had been re-inspected by the Law Society in 2015 and that they Guarantee Fund Committee had confirmed that there was to be no further action and no further recommendations. He confirmed that he had learned from his experience. He expressed the view that he was a good court lawyer but not a good businessman or cashroom manager. He confirmed that he would avoid doing either of these things in future as he knew he was not able to perform the tasks to the standards expected.

CROSS-EXAMINATION

The Respondent was asked if he thought that he had operated to the standards expected of a competent solicitor during 2012 and 2013. He responded that he considered he had done so in most areas but accepted that he had fallen short in the supervision of the cashroom and his cashroom duties.

He believed he had worked to the appropriate standard when it came to Ms A. He explained that he did not think the firm provided her with adequate service. He had felt sorry for her. He had taken a complete

account from her and lodged defences on her behalf. Whilst this might not have been a full defence, he had noted that there might be a right of relief. He accepted that full information was not obtained and that funding had not been put in place but explained that latterly the matter was taken over by his partner.

The Respondent admitted that in 2013 he had knowledge of the Codes of Practice although he accepted that his application of these was not always good. He accepted that he was responsible for his own practice.

The Respondent admitted that the merger between the firms was his choice and that he had known that the cashroom systems were different. He explained that he had been provided with accounts for Finlayson Wise and had taken advice from his own accountant. He had not instructed any other experts to look at the firm's records. He accepted that in hindsight this was a mistake. He had spent a great deal of time in 2012 transferring information manually from Finlayson Wise to the new firm.

The Respondent admitted indicating to the Law Society in a letter of November 2013 that Mr Murray's responsibility was less than his and that the cashier could not be held to blame in any way, although he explained this excepted the matter of a few cheques. He accepted that the cashier made an error but that he was responsible.

With regard to the Complaint by Ms A, he accepted that a member of the public would think that how the firm had handled the matter was not good. He insisted that Ms A had not provided evidence or funding and that he had already managed to avoid the matter going to a proof on one occasion giving her the opportunity to produce vouching for the Legal Aid Board and information from her employers. He considered that if he had gone to court unfunded and had attempted to put the case off again, he would have been guilty of abuse of process on her behalf and decree would have passed against her. He had considered that the sensible course of action was to withdraw as the practice in Glasgow Sheriff Court at that time, although it was not mandatory under the Rules, was to fix a peremptory diet. He accepted that he had not apologised to Ms A but explained that he had had no direct contact with her since. He accepted that it was him who had seen her initially.

The Respondent was asked if at any time in 2012 or 2013 he had approached the Law Society for help having regard to these matters. He responded that he had thought that was what he and his partner were saying when they attended the interview with the Guarantee Fund Committee. After his return to work following illness Mr Murray had told him that procedures had been brought to an end. When the old

cashier left, the Respondent had contacted the Law Society to advise that they were without a cashier and required advice. The only response given was for a further inspection to be arranged.

The Fiscal asked the Respondent if his earnings in 2014 were really nil. He responded that in practical terms that was the case. He agreed that he had been taking drawings on a monthly basis. He was asked if he drew £2,600 per month and responded not every month, but regularly.

RE-EXAMINATION

The Respondent confirmed that it transpired when the accounts were completed that there was little income in the firm. The money the Respondent had put in latterly balanced that out. He had overdrawn his capital account. When the accounts were done towards to the end of 2013, it had become apparent there was no profit to cover drawings. The actual profit in 2013 was a few thousand pounds per partner. It was certainly less than his drawings and tax liability. Things were not much better in 2014. He did not draw funds out for a considerable period in 2014. The Respondent had put in an additional £60,000 in capital. He had paid VAT in two tranches and the redundancy payments for members of staff. These were largely paid in 2016.

With regard to the Complaint of Ms A, the Respondent explained that in the Ordinary Cause Rules for the Sheriff Court there is provision for the Court fixing a peremptory diet if an agent withdraws. He explained that although there had been such a provision in the Summary Cause Rules, there was now no equivalent provision. He explained however that most Glasgow Sheriffs were reluctant to grant decrees where a party was absent and a solicitor had withdrawn. In this particular case he believed that the pursuers had argued strenuously for decree.

With regard to the acquisitions of Finlayson Wise, the Respondent accepted that this had been a bad bargain. The accounts had indicated a wide client base, a reasonable turnover and a healthy-looking profit. The remaining partner of Finlayson Wise had anticipated personal financial difficulties. He had visited the firm and spoken to employees. It took about a year to realise that the client base that had been expected was not there. The first year's income had been as expected. As problems arose they had looked at the possibility of closing an office. Unfortunately, both offices were rented and there were lease commitments. He had not considered it appropriate to lay-off the staff that had been taken on by the new firm. It did not feel right to him to put someone who had worked for some 25 years for the firm out of work because of the financial state of the firm itself. He accepted that in retrospect he was not thinking clearly about how to get out of the situation.

The Respondent accepted that he and Mr Murray did not have regular partners' meetings. Mr Murray joined the firm as a trainee around 1985 or 1986. He became a partner with effect from 1 July 2010. The Respondent had been made a partner around 1982 or 1983.

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion indicated that she intended to begin with the Complaint of Ms A. She drew the Tribunal's attention to the file which was one of her Productions. The Respondent was the client relations partner of the firm at the time of these issues. From the outset, he was the one that acted for Ms A. There was a complete lack of updates regarding progress of the case. There was nothing on the file to suggest any change of responsibility. There was no completed legal aid application form from the first meeting. His first letter to the client gave no indication of what he was going to do. A legal aid certificate gives a party significant protection against an award of costs. It has a tactical and practical significance. The client returned the legal aid form to the Respondent on 18 March. There was nothing on the file to suggest any action was taken. The case called in court following which there was no report to the client indicating any problems with her legal aid application. The Respondent had pointed out in his evidence that there was the possibility of bringing in a third party. There is nothing on the file in connection with that. The last letter to the client was 16 or 17 May where it was clear that the Respondent was still acting for her. There was nothing said at any stage regarding the possibility of him withdrawing from acting or any difficulties with preparation. It could also be seen from the file that the Respondent put forward a proposal for resolution and yet there was no sign on the file of any instructions having been received from the client. She submitted that the client was left utterly exposed.

The Respondent denied professional misconduct but it seemed that he had done nothing to protect the interests of his client. At the end of the day he did not even have the courtesy to return her calls. The Respondent had withdrawn just before the proof date. In evidence, he accepted that a proof date was a peremptory diet. There were numerous failures during the nine months. She argued that this was a course of conduct. The file displayed complete silence and lack of any advice. Ultimately the client was left to act for herself in a completely foreign environment. She posed the question of what a member of the public would consider of this set of circumstances. She submitted that the profession's reputation would be tarnished.

Ms Motion referred the Tribunal to Paterson & Ritchie "Law, Practice & Conduct for Solicitors" at page 359 and made reference to the Tribunal case of the Law Society of Scotland-v-Corrigan DTD 636/84(b).

She indicated that in order to withdraw an agent required good cause and required to give relevant notice. To withdraw two days before a proof without even seeking any advice from the Law Society, she suggested, was extremely serious. The Respondent had not even appeared at the proof to explain that he was withdrawing from acting. She also referred to Green's Civil Practice, issue 129 and stated that a solicitor has a duty to the court. The Respondent withdrew shortly before the proof without telling his client. She suggested that the Respondent had had a complete disregard for his client and his client's interests. The Respondent had not passed on the details of any offers that were made and had himself made a proposal without instructions. Eventually he withdrew from acting leaving her "high and dry".

The Fiscal moved on to the second of the Complaints and referred the Tribunal to the investigation reports and Guarantee Fund interviews which formed part of her Productions. She emphasised that only the parts of the reports and interviews relating to the averments before the Tribunal should be considered. She explained that the issues before the Tribunal arose from an investigation in 2013 but followed from an inspection in 2012 and were issues which remained unresolved. Some issues arose afresh.

In the case of Executry 1, she suggested that although the Respondent had given some answers to the inspection team, he had not provided the essential information. The executry dated back to 1965. No evidence was provided until the Respondent's partner, Mr Murray, recredited the fee. It took many months of liaison to resolve the matter.

With regard to Executry 2, she directed the Tribunal's attention to the investigation report which was her Production 2 at page 74. She indicated to the Tribunal that this case was one being handled by the Respondent and showed a complete lack of cooperation and failure to provide information that he was entitled to take the fee. It was not until December that his partner, Mr Murray, recredited the fee. At that stage the Law Society drew a line under the matter. The issue was unresolved for some time.

With regard to paragraph 3.19 of the Complaint, she drew the Tribunal's attention to her Production 1 at page 62 and Production 2 at pages 110 to 112. These problems had been raised with the Respondent in June 2013. They were significant and serious matters and were weighted 3 in the inspection report. Not to take immediate action and resolve the issues was more than just unfortunate.

With regard to paragraph 3.22 of the complaint and the delay in postings, the Fiscal referred the Tribunal to the investigation report and in particular page 13 where the Respondent's explanation was given. The compliance team were still making requests for information in December. The delays and the failure to provide relevant information is a serious matter.

Paragraph 3.25 of the Complaint refers to a problem with a reconciliation in Trust 3. This was taking place at the same time as money was being transferred from this trust without authority being seen.

Paragraph 3.28 of the Complaint related to the Respondent's responsibilities as cashroom manager. The Fiscal referred to the report from the inspection team from June which was Production 1, in particular pages 14 and 15. Following that inspection, the Respondent was warned of his responsibilities and there was a suggestion that these responsibilities should perhaps be handed over to his partner. She drew the Tribunal's attention to pages 5 to 9 of Production 2, the report of the investigation in October. The same issues were being raised and the Respondent's partner, Mr Murray, was indicating that changes would take place in November.

Averment 3.30 on the Complaint related to the lack of response by the Respondent to the Law Society following the inspection and investigation. Explanations were offered but were never forthcoming. Significant matters remained outstanding including issues relating to Trust 3. The Respondent had accepted that he did not check outstanding matters when he returned to work following his illness.

Averment 3.77 related to money laundering issues. She drew the Tribunal's attention to the inspection report which was Production 1 at page 49 and her Production 2 at page 102 onwards, in particular page 106. The Respondent had allowed the situation to run over many months. There was a pattern of many failures as a partner in charge of files himself and in his official roles. She submitted that a solicitor is the gatekeeper when it comes to money laundering issues and it is a crucial role requiring to be applied.

She invited the Tribunal to bear in mind that these matters were arising where issues had been flagged up at an earlier inspection. She submitted that these failures clearly fell within the Sharp test and suggested that it was striking that it was only when the Respondent's partner, Mr Murray, took over that the Society began to see information and clarification provided.

In answer to a question from the Tribunal, she confirmed that she was arguing that these matters amounted to professional misconduct both individually and *in cumulo*.

SUBMISSIONS FOR THE RESPONDENT

Mr Munro lodged written submissions with the Tribunal. He explained that the Respondent had experienced various difficulties from 2012. He described the sensitive health and family issues which had placed him under significant stress and strain.

By 2012, the firm of MacIntosh McLaughin had two equity partners, the Respondent and Steven Murray. The firm traded from one office in Shawlands. The firm had agreed to acquire the firm of Finlayson Wise which had an office in Shettleston. The acquisition took place in March 2012 and placed intolerable strain on the firm and its partners. The systems of the two firms proved very hard to integrate. Key members of staff departed including the former sole partner of Finlayson Wise and the cashier. Mr Murray had had to relocate to the Shettleston office. The Respondent was left the sole solicitor in the Shawlands office. He also covered all of the court work for the enlarged firm. Client enquiries and incoming mail would be dealt with by whichever solicitor happened to be in the office. The Respondent found himself working ever longer hours, while the firm's profitability fell sharply. By 2013, he was unable to contribute to mortgage payments. On 1 January 2014 the Respondent collapsed while playing hockey. He was taken to hospital by ambulance. For a time, he was kept in an induced coma. He remained in hospital as an inpatient for between three to four weeks. A long convalescence followed. By April 2014 he was fit enough for limited part time work. He returned to work on a full-time basis in August 2014.

The Respondent left MMFW at the end of December 2015 and now practises on his own account as Bryson's Legal Services. He is largely instructed as a freelance agent by other solicitors in criminal cases, holds no client funds and does not require to have a client account.

The remainder of the written submissions were as follows:-

"2016 complaint

1. The respondent was instructed by Ms A to defend proceedings that had been raised against her. There was a certain measure of urgency, in that court papers had to be lodged by a specific deadline. The respondent took details of the case (as noted in the handwritten draft of the client precognition). There was some uncertainty over whether the client would qualify for civil legal aid as she was in employment. She did not qualify for Legal Advice and Assistance. The respondent provided her with civil legal papers,

including the Form 2 (a lengthy financial declaration form), and asked her to complete these as quickly as possible.

2. Although the respondent was the solicitor who initially met the client, at a practical level the case was dealt with by both him and his partner, Steven Murray.
3. Dealing with the specific averments of professional misconduct at para 3.22 of the amended complaint, the respondent's position is as follows:
   (a) The clear intention was to apply for civil legal aid, subject to financial eligibility being determined. The file contains a signed Form 2, dated 18 March 2013, but it is clear that the full application was not on file by 16 May 2013, given the terms of Steven Murray's letter to the client of that date (page 18 of the file).
   (b) Some letters were sent to the client during the course of the case. The respondent understood that Steven Murray would deal with correspondence and general preparation of the case.
   (c) The first proposal to resolve the action, in May 2013, was passed on by Steven Murray (letter of 17 May 2013, page 17). The respondent accepts that letter was not as detailed as it could have been. At the time of the second proposal, the respondent passed the file back to Steven Murray. It appears the proposal was not communicated to the client. Ms A did not acknowledge or respond meaningfully to any correspondence from MMFW.
   (d) The respondent accepts that the client was not told of the withdrawal. This was an error which should not have occurred.
   (e) The respondent assumed, wrongly as it turned out, that the consequence of withdrawal would have been for the court to assign a peremptory diet. This was the normal practice at Glasgow Sheriff Court at the time.
   (f) The respondent was unaware of the client leaving any messages for him to call her back. He cannot comment on what contact she had with the office. The file suggests that at least on some occasions, notes were directed to Steven Murray; he was the last solicitor to have any contact with the client.
4. The SLCC dealt with this matter as a hybrid complaint. The client was awarded compensation of £800, which was paid.
5. There is no doubt that the service received by the client left a lot to be desired. Per the Lord President (Emslie) in *Sharp v. LSS* 1984 SC 129, at p.134:

'Section 20 (3) means precisely what it says. A failure on the part of a solicitor to comply with a relevant rule may be treated as professional misconduct. The subsection introduces nothing new to the law. Such a failure might have been so treated before it was enacted, and it may well be that the true purpose of the subsection is to draw the attention of practitioners to the importance attached to compliance with the rules. However that may be, whether such a failure should be treated as professional misconduct must depend upon the gravity of the failure and a consideration of the whole circumstances in which the failure occurred including the part played by the individual solicitor in question...

There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made.'

6. The client received an unsatisfactory service from MMFW. This was acknowledged both to and by SLCC who imposed a penalty on the firm (which the firm settled). The respondent clearly contributed to that, though he was not the only solicitor involved. It is respectfully submitted that the conduct complained of does not meet the 'serious and reprehensible' threshold. The tribunal should accordingly decline to make a finding of professional misconduct.

2017 complaint

7. The firm of MMFW was inspected by the Society's Financial Complaint Department (FCD) in June and October 2013. On 7 November 2013, the GFSC met and decided to invite the respondent and his partner for a section 40 interview. That interview took place on 21 November 2013. On 9 January 2014, the GFSC decided it was not necessary to continue with the s.40 procedure; on 6 February 2014, it decided to make a complaint to the SLCC. It took until 2017 for the complaint to come before the tribunal. That delay was through no fault of the respondent.
8. Following the October 2013 inspection, the FCD inspectors retained a number of files. The respondent asked for these to be returned so that certain of the issues identified in

the investigation could be reviewed and addressed. The files were not returned until December 2013. While the respondent accepts he should have attended to this immediately, at the time he did not know he was about to be incapacitated.

9. In any event, Steven Murray dealt with all responses on the firm's behalf from that point onwards.

10. The respondent offers the following comments on the specific matters identified in the complaint:

    (a) Executry 1. There were three related trusts for various members of the family. The trusts were connected to a property company and a firm of factors. The trustees were Leonard Camrass, and William Wright, both former partners in and latterly consultants to McIntosh & MacLachlan, and a chartered accountant David Patrick, who held information about the beneficiaries, but who had died suddenly. The respondent had to engage in considerable work to identify who was entitled to the funds held.

    (b) Executry 2. All invoices were properly rendered to the client. The executor later provided a letter confirming this to be the case.

    (c) Cheques (3.19). Cheques were drawn by the firm's cashier, who was SOLAS trained. The cashier was aware of the relevant rule. The cheques were issued from the Shettleston office. The respondent was generally based at the firm's Shawlands office. The partner at Shettleston was Steven Murray. The majority of the cheques from Shettleston were signed by Steven Murray. Remedial action was taken after the October inspection.

    (d) Delayed postings (3.23). When the cashier was on holiday, the respondent was left to enter postings on the cashroom system. Other commitments meant that a backlog developed.

    (e) Trust 3. It was noticed at the time that a posting was missing, but due to oversight this was not corrected immediately.

    (f) Executry 4. The executry was complex. The executrix was incapax, with an appointed attorney. Other assets were discovered. The file was removed by inspectors in 2013. There was a delay in it being returned, due to it being mislaid in the Society's office. It was returned in December 2013, shortly before the

respondent's cardiac arrest and infirmity. On his return to work, he was informed the matter had been resolved.

(g) Executry 5. The file contained evidence that fee notes had been sent to the client, in the form of copy letters. The respondent accepts that copy invoices were not attached to the copy letters. The file also demonstrated work that had been done on the case during the relevant periods.

(h) Trust 8. On 19 August 2013 the respondent advised the FCD Inspector as follows: 'This trust is on the point of finally being would up. The balances held are sums retained from proceeds of sale of a number of flats. There is an ongoing dispute regarding repairs to these tenements prior to sale. The surviving Trustee has been communicated with regarding this dispute, where we are also acting for other proprietors. The trustee was advised as fees were raised and prior to them being taken. As the trust was registered and had been paying income tax we have also had to prepare income tax returns. The fees cover this work and also part of the work involved in the dispute regarding repairs.'

(i) Mr 10. The allocated partner in that case was Steven Murray, who communicated with the FCD inspector.

(j) Mr 11. The allocated partner in that case was Steven Murray, who communicated with the FCD inspector.

(k) Executry 12. The file contained evidence that fee notes had been sent to the client, in the form of copy letters. The respondent accepts that copy invoices were not attached to the copy letters. The file also demonstrated work that had been done on the case during the relevant periods.

(l) Money laundering (3.77 et seq). In respect of Executry 1, Executry 13 and Executry 4, there were no identifiable clients, hence evidence of identity could not be collected.

11. Dealing with the specific averments of professional misconduct at para 3.89:

(a) Rule B6.5.1 - the respondent maintains that fees were not taken from the client account without invoices being rendered to clients. The circumstances relating to the Knox executry were exceptional (see para 3.7); on being made aware of the FCD inspectors' view of the matter, a fee note was recredited. The files reviewed by the

inspectors generally contained evidence of fee notes being rendered (usually in the form of copy letters).

(b) Rule B6.52 – The respondent accepts that a small number of cheques were issued in this way. This was an oversight. On the matter being brought to the respondent's attention, remedial action was taken.

(c) Rule B6.7 - the delays in postings arose due to staff absences and other professional commitments.

(d) Rule B6.9 – it is accepted this occurred in connection with one file. This was an oversight.

(e) Rule B6.13 – it is accepted that, insofar as the foregoing events occurred, there were infrequent failures to comply with the rules, and that as the cashroom manager, the respondent was responsible for these. However, he did what he could to ensure the books of the firm were kept in good order. The firm ran a computerised cashroom system. This was very difficult, standing the takeover of Finalyson Wise, the poor systems in place at that firm, and the departure of key staff including ultimately the cashier after he had handed over responsibility as cashroom partner to Steven Murray. He in no way disregarded his obligations.

(f) Rule B6.18.7 – the respondent accepts that he did not engage as fully as he could and should have done with the inspection process. He has since done so (as more fully described below). He profoundly regrets that the 2013 inspections were not responded to more comprehensively.

(g) AML – the respondent accepts the failures identified, which occurred through oversight. In none of the cases were there any circumstances which would have justified a suspicious activity report. However, the respondent is fully aware of the need to fully comply with the relevant legislation and guidance.

12. It is respectfully submitted that the primary issue of concern relates to the lack of full cooperation with the inspection process. While that is clearly unsatisfactory, it has to be seen in proper context. The second inspection took place in October 2013. By 1 January 2014, the respondent was completely incapacitated.

13. There is no suggestion of dishonesty on the part of the respondent.

14. It also has to be seen in the context of the respondent's personal and professional circumstances at the time. He and Steven Murray had taken on far too much; they had

failed to appreciate the complexity of merging two very different firms, and had not anticipated they would lose key staff so quickly. They were trying desperately to keep control of a business that was failing.

Events since the time of the complaints

15. Two particular aspects of subsequent events are relevant to the matters before the tribunal.

16. Firstly, MMFW was the subject of a further inspection on 8 and 9 January 2015. The GFSC decided to refer the matter for a complaint to be made. The complainer appointed an investigator. The investigation examined issues similar to those set out in the present complaint, including whether the practice unit maintained books and records sufficient to allow the true financial position to be ascertained, whether fees had been charged in breach of Rule B6.5.1(d), and whether there had been a failure to respond or cooperate with the Society's inspection and investigation. The investigation looked at several files that were also the subject of the 2013 inspection (and one of the present complaints), including Executry 1; Executry 2; Trust 3 and Executry 5. The investigator recommended that that Professional Conduct Sub Committee should take no further action in relation to any part of the complaint. She concluded[1] that, in relation to the issue of fee notes, 'In an investigation such as this the solicitor's positive actions and corrective measures are indicative of his willingness to comply and put matters right.' She notes that 'on the evidence, the solicitor's usual practice was, overwhelmingly, one of full compliance over a protracted period of 18 months.' In relation to the alleged failure to respond or cooperate, the investigator noted: 'In conclusion, there is in the view of the Complaints Investigator no evidence of the solicitor not providing reasonable cooperation during the inspection and ensuing investigation and no evidence of the solicitor failing to make every effort to provide information as was reasonably required. The evidence records why the pertinent delays occurred and shows that there were cogent reasons as to why some aspects of the investigation took more time to resolve. The solicitor showed a consistent willingness to put matters right and cooperated reasonably which can be seen from the findings in fact specified for Issue 4. The Complaint Investigator is of the view that no further action is required.'

[1] Emphasis added

The Professional Conduct Sub Committee later met to consider the investigator's report. It accepted her findings. No further action was taken in relation to any part of the complaint.

17. The circumstances of the respondent's case are similar to those in *John Adam*, a decision of the SSDT on 23 August 2017. Reference is made to the note, on p.31 of the findings:

> *'The remaining admitted breaches of the rules were serious but not so grave that they could be described as reprehensible particularly when considered in the context of all the circumstances of the case. There was no dishonest aspect to the Respondent's conduct. The breaches were administrative, technical and historical. It was noted that a particular issue arose due to the Respondent's failure to provide information five times regarding historic misbalances. The misbalances should have been promptly investigated and remedied. However, the Respondent's inability to provide an explanation for these a significant period after they occurred was not reprehensible. He demonstrated that despite investigation by himself and his accountants, he could not provide the information required by the Complainers. It was notable that the Respondent engaged with the Law Society and its Financial Compliance Department. He provided written responses and attended meetings. There was a significant improvement in his books and records and at the time of the Tribunal hearing, there were no issues outstanding. The breaches of the rules had been effectively tackled by the Complainers' inspection process and the Respondent's cooperation. Therefore, having regard to all the circumstances and the degree of the Respondent's culpability, the Tribunal found him not guilty of professional misconduct.'*

18. Standing the conclusions of the Society's investigator following the 2015 inspection, these observations are apposite to the respondent.

19. Secondly, the respondent left MMFW in December 2015. He has since had little or no access to the files which are the subject of the present cashroom complaint. This has impacted upon his ability to fully respond to some of the averments. In any event, he is now trading on his own account. He no longer holds client funds. His business is well run and is fully compliant with all professional obligations. His working hours are less than they were in 2013, and his income is considerably greater. His personal circumstances are much improved. The respondent considers he has come through a very difficult period in his personal and professional life, and has no intention of returning to it."

Mr Munro agreed that in respect of the Ms A case, communication was not as good as it could be. He emphasised however that it was apparent from the file that not all of the legal documents had been returned by Ms A. It was wrong to suggest that there was a fully completed legal aid form on file. He indicated that it was not disputed that the correspondence in this case was not as lucid as it could have been.

The Fiscal had suggested that the Respondent could have applied to sist the case pending the legal aid application. Mr Munro suggested that this was not quite correct. In this case, it might have been considered more appropriate to await the actual lodging of the fully completed legal aid application before making a motion to sist. Any Sheriff hearing such a motion would want to know the exact circumstances and what steps had been taken by the party seeking the sist. Decree was granted on 13 September in this case. From first instructions on 8 March, this represented six months. He stressed that the Respondent could only submit the legal aid application when full information had been supplied by the client. The observations that the absence of information from the client could be due to a lack of explanation by the solicitor maybe correct but it was incorrect to suggest there was a completed legal aid application sitting on the file. At the first calling of the case, the court fixed a proof some distance away and the Respondent thought that he had enough time to have the information in place. He accepted that the letter sent by Mr Murray dated 17 May 2013 which referred to the offer made by the pursuer made no reference to the expenses of the proceedings and so did not set out the full picture. With regard to the second proposal for settlement, he suggested this was an open-ended discussion and accepted this was not communicated back to the client. His client's position was that the file had been given back to Mr Murray. He emphasised that Ms A did not reply to any correspondence.

Mr Munro accepted that the Respondent's withdrawal from acting was the area of greatest criticism. He submitted that the authorities simply state what is in the Practice Rules and that is that an agent must have just cause to withdraw from acting and do so in a proper way. No funding being in place could be just cause. He accepted that this had to be seen against the scant correspondence on the file and the lack of intimation to the client. The Respondent had thought the effect of his withdrawal from acting would be to force the fixing of a peremptory diet. He had made an error in this respect. Mr Munro did not doubt that there were circumstances where withdrawing from acting could amount to professional misconduct. He submitted that here much of the communication to the client was done by Mr Murray. He did however accept that the decision to withdraw from acting was that of the Respondent and it was open to him to communicate to the client. He accepted that this amounted to unsatisfactory conduct.

Mr Munro entirely accepted that it was for the Tribunal to take a view on the seriousness of the matters before it. He asked the Tribunal to take account of the matters he had raised including the difficulties and events before, during and after the period of the conduct contained with the Complaints.

RESPONSE FROM THE COMPLAINERS

Ms Motion invited the Tribunal to distinguish this case from the case of The Law Society of Scotland-v-Adam. She indicated that the Adam case involved one inspection. She emphasised that this was not the case here. Many of the issues were historical issues relating to an inspection prior to the inspection in 2013. She submitted that this was key to the issue of professional misconduct. She accepted that there were further investigations in the period after this Complaint and that the Committee decided not to take any action but that was in relation to subsequent events.

With regard to the case of Ms A, she emphasised that the client was never in the position of knowing when her proof was or that she was not going to be represented. The Respondent was involved at the start of the case and at the finish. All it would have taken for matters to be different would have been for him to appear at the proof to withdraw personally.

Mr Munro responded that it was clear that both the Respondent and Mr Murray had dealt with the case at times. He accepted that the conduct was clearly unsatisfactory but that had been dealt with by the SLCC.

DECISION

The Tribunal accepted that the test against which the admitted conduct required to be assessed was that as set down in the case of The Law Society of Scotland-v-Sharp and quoted within Mr Munro's outline submissions. The facts averred within the Complaint had been agreed and evidence had been led on behalf of the Respondent which largely set out the background against which the facts occurred.

The Tribunal accepted in its entirety the evidence of Mrs Bryson, finding her to be a reliable and credible witness. Regarding the evidence of the Respondent, on the whole, the Tribunal found him to be a credible witness but had some difficulties with parts of his evidence.

The Respondent and his wife had given evidence setting out difficulties experienced by the Respondent in relation to family and business issues. The Tribunal did not doubt that these issues placed the

Respondent under pressure. However, the Tribunal concluded that these matters were mitigatory and not exculpatory.

Looking at the Complaint by Ms A, the Complainers had set out that the Respondent was guilty of professional misconduct, singly and *in cumulo* in that he had failed to communicate in an effective manner with his client. This was said to relate to specifically his failure to (i) seek legal aid or communicate problems in progressing that and its implications for Ms A (ii) update on progress of the court action (iii) advise of proposals to resolve the action and to seek or obtain instructions in relation to the two proposals contained on file (iv) notify Ms A of his withdrawal from acting (v) provide any information to protect her interests given he had withdrawn from acting and (vi) return numerous phone calls to Ms A.

In considering the conduct in this case, the Tribunal, in particular, had before it the parole evidence of the Respondent and the copy file lodged as a Production. Looking at the copy telephone notes on the file, the Tribunal was not satisfied that these were sufficient to uphold a failure on the part of the Respondent to return telephone calls from Ms A.

From his evidence it was clear that the Respondent accepted taking instructions from Ms A, taking the decision to withdraw from acting and not reporting this decision to her. Beyond that, it appeared that the suggestion being put forward by the Respondent was that the firm/Mr Murray were otherwise responsible. Looking at the file, it was clear that it was the Respondent who took initial instructions from Ms A. The initial letter to Ms A on 11 March 2013 was sent by the Respondent. This letter contains no information regarding the significance of legal aid or the steps that the Respondent intended to take. There was a letter dated 3 April 2013 from the Respondent advising that he had attended at court that day when the case was continued to 1 May 2013. Within that letter he refers to bringing in a third party. He made no reference to the legal aid application. There is on the file a completed form 2 (financial eligibility form for civil legal aid) signed by the client on 18 March 2013. There is correspondence from the agents for the pursuers advising of the outcome of the hearing on 1 May 2013, addressed to the MMFW Partnership and bearing the Respondent's reference. There is correspondence from the pursuer's agents on 28 June 2013, 5 July 2013 and 9 August 2013 also bearing the Respondent's reference. This refers to the Respondent having appeared for both parties at the hearing on 2 July 2013 and the matter being continued to a proof on 13 September 2013. There are two telephone notes on the file from the pursuer's agents, one for 27 June 2013 the other for 2 August 2013, both bearing the reference for the Respondent.

The first offer to settle was made by the pursuer's agents by letter dated 15 May 2013 addressed to the MMFW Partnership with the Respondent's reference. There is a letter from Mr Murray to Ms A dated 16 May 2013 and referring to a telephone conversation with her and asking for her to return a completed "let of legal aid papers" (sic). It does not explain in detail what was required. There is a letter from Mr Murray dated 17 May 2013 again asking for the return of the legal aid papers as a matter of some urgency, seeking payment of the fee and briefly referring to the pursuers still seeking payment of all some dues by her. This letter makes no reference to the expenses of the action or the consequences of the legal aid papers not being returned, or the fee not being paid. The letter from the pursuer's agents dated 28 June 2013, and bearing the reference for the Respondent, makes reference to "Your proposal to allow decree to pass against your client".

In his evidence, the Respondent indicated that he was the court practitioner. From the correspondence on the file, the Respondent appeared on behalf of both parties at the proof on 2 July 2013. He was the one who made the proposal for settlement. The letter from Ms A to the client relations partner dated 5 December 2013 suggests that she believes she is the Respondent's client. The response to her dated 13 December 2013 from Mr Murray refers to him discussing the case with the Respondent to obtain answers to her comments. Additionally, the file contains a letter from Mr Murray to the SLCC dated 4 March 2014 indicating that copy correspondence for the file maybe on the Respondent's laptop. In other words, the preponderance of correspondence and telephone notes bear the reference of the Respondent, with only two letters bearing the reference of Mr Murray.

There were a number of opportunities for the Respondent to review the file. He appeared for both parties at the proof in July and it was he who made the counter-offer of settlement. The pursuer's agents wrote to him asking for a report of the outcome of court and also for an update on the offer of settlement. The pursuer's agents telephoned him in August.

In all of these circumstances, the Tribunal were satisfied that the facts established that the Respondent had failed to communicate with his client in an effective manner in respect of items (i) to (v).

The averment of misconduct is that these matters singly and *in cumulo* constitute professional misconduct. The Tribunal were most concerned at the Respondent's failure to notify the client of his withdrawal from acting for her. It appeared that the client had not had any notice of the proof diet whatsoever. Prior to this decision being taken, it must have been apparent to the Respondent from the file that little information had been given to the client. He was the one to take this decision and could only have taken this decision having full knowledge of the file. He failed to provide her with any

information to protect her interests. In his submissions, Mr Munro had accepted that this amounted to unsatisfactory conduct. The Tribunal, however, determined that these two matters alone fell well below the standard to be expected of a competent and reputable solicitor. The consequences of acting in this way must or ought to have been understood by the Respondent. The Tribunal considered this conduct to be serious and reprehensible and these two elements on their own to amount to professional misconduct.

Whilst items i), ii) and iii) in themselves might not have amounted to professional misconduct, individually, taken together with each other and together with the failures in relation to v) and vi), they did amount to professional misconduct.

Looking at the averments of misconduct in the later Complaint, the Tribunal was not satisfied that averment 3.89 a) regarding the taking of fees had been established.

With regard to averments 3.89 b), c) and d), the Tribunal took the view that this conduct was appropriately considered under 3.89 e), the averment that the Respondent had failed to carry out his obligations as cashroom partner.

The Tribunal noted that the Respondent had, in the Joint Minute, admitted that the records of MMFW were insufficient and did not demonstrate compliance with the Accounts Rules requirements and that he failed to secure compliance by the firm with various provisions. The Complainers' Production 1 at pages 14 and 15 refers to this issue and referred to the same matters being highlighted at the previous inspection, which the Tribunal was told was in 2012. The Respondent in evidence outlined the problems he experienced with the cashroom system following the merger with Finlayson Wise on 1 March 2012. He explained the difficulties in working a system, where the only computer with access to the cashroom system was held by a cashier who refused to give him appropriate access. He had explained in evidence that the firm could not afford a second terminal/laptop. He admitted that he had fallen short as cashroom manager.

The role of cashroom partner in any firm is extremely important. Solicitors are in a privileged position in having access to client funds. It is important that at any given time it can be established that these funds are being appropriately held and dealt with. These responsibilities cannot be abdicated by the cashroom manager to a cashier. He/she must ultimately remain in charge and responsible. The problems in merging the two account systems were allowed to continue from the date of merger in 2012 until the Respondent's cessation as cashroom manager at the end of August 2013. Given all of the above, the

Tribunal concluded that this conduct met the Sharp Test and amounted in itself to professional misconduct.

Averment f) of misconduct related to a lack of cooperation by the Respondent with the Law Society acting as the regulator of the profession. The Law Society can only operate effectively in this role if solicitors provide full cooperation with any investigation/inspection. Information was sought by the Law Society through its Financial Compliance Department for some time. The Respondent's lack of response, or appropriate response, was in the Tribunal's view significant. The Respondent had suggested he had not given certain areas of investigation the appropriate attention as he had concentrated on other issues. It cannot be for any solicitor to determine what information is important. The delays were significant. In these circumstances, the Tribunal was satisfied that the conduct admitted met the Sharp test and amounted to professional misconduct.

The final averment of misconduct related to a failure to comply with the Money Laundering Regulations. A lack of risk assessments in the cases referred to ran on for a considerable period of time. These Regulations are extremely important for the protection of the public and the protection of the reputation of the profession as a whole. The Tribunal concluded that paragraph g) of the averments of misconduct had been established and met the Sharp test.

SANCTION

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal submitted to the Tribunal that Ms A had been deprived of a real possibility of defending this action. She suggested that the Respondent had shown no remorse or insight. She submitted there was a risk of repetition as the Respondent was still appearing in court. She confirmed that the Secondary Complainer had received £800 in connection with the IPS element of the matter before the SLCC.

With regard to the later Complaint, she again emphasised that the Respondent had shown little remorse or insight. She accepted there was a period when the Respondent was unwell but suggested that the majority of the conduct predated that time.

She moved the Tribunal to make an award of expenses in favour of the Complainers and asked the Tribunal to consider when making an order for publicity that the names of the clients involved should not be included.

SUBMISSIONS FOR THE RESPONDENT

Mr Munro disputed the suggestion that the Respondent had no insight or remorse. He emphasised that the Respondent had recognised that the quality of service was unsatisfactory.

Mr Munro explained that he had drawn the Tribunal's attention to the precise circumstances to do with the legal aid certificate and the involvement of Mr Murray to ensure that the Tribunal had full information. He accepted that it was clear that some mistakes were made in the case of Ms A. He accepted that there should have been comprehensive correspondence at the outset and that communication in advance of the proof regarding the funding issue would have put the Respondent in a better position. He submitted that the Respondent was acutely aware of what was missing, had a good grasp of his professional obligations and the fact that he had made mistakes. However, this should not detract from him being considered a solicitor of good standing held in high regard.

With regard to the accounting issues, Mr Munro emphasised there was no question of dishonesty in this case. The money laundering breaches were not to any substantive effect. The Respondent had made profound changes since the time of these breaches. He submitted that the cashroom matters were of a more technical nature than some that come before the Tribunal.

He assured the Tribunal that the whole matter had been a profoundly significant one that was not easy for the Respondent to face. The Respondent had changed his working practices and no longer had the same responsibilities. These events had all occurred at a difficult time for the Respondent involving the merger of businesses and the stressful family issues.

Mr Munro expressed apologies on behalf of the Respondent for the conduct and submitted to the Tribunal that the Respondent recognised that he had let the profession down. He hoped that the Tribunal would accept that the conduct occurred in the particular context of this case where they were not likely to reoccur. He submitted that the conduct was at the lower end of the scale and invited the Tribunal to consider dealing with the matter by way of Censure and Fine.

With regard to the expenses of proceedings, he accepted that this was a matter for the Tribunal but asked the Tribunal to bear in mind that to some extent there was mixed success/failure for both parties.

DECISION ON SANCTION

With regard to the Accounts Rules issues, the Respondent showed insight and remorse. The Respondent recognised his limitations as a cashroom manager and had described the changes in how he worked resulting in the absence of necessity for a client account. The conduct had no element of dishonesty and there was no suggestion that the clients account had gone into deficit at any stage. There was no risk to the public.

The Tribunal was however concerned with regard to the Complaint by Ms A. The lack of effective communication with Ms A had serious consequences for her. In his evidence, the Respondent had not fully recognised his responsibility for this. The Tribunal considered that his failures with respect to his representation of Ms A were likely to have a damaging effect on the reputation of the profession. The Tribunal considered it important to underline the seriousness of this conduct and considered it appropriate to impose a Censure and a financial penalty. The appropriate level of fine was considered to be £1,000.

In all the circumstances the Tribunal considered that it was fair and appropriate to make an award of expenses in favour of the Complainers.

The Tribunal ordered that publicity of this decision should be made in the usual way but that this publicity should only include the names of individuals referred to within paragraph 14A of Schedule 4 of the Solicitors (Scotland) Act 1980.

Additionally, the Tribunal allowed the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office.

Kenneth Paterson

Vice Chairman