

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh
Complainers**

against

**MASSIMO D'ALVITO, 1 Winton
Grove, Edinburgh
Respondent**

1. A Complaint dated 11 August 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Massimo D'Alvito, 1 Winton Grove, Edinburgh (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. There was no Secondary Complainer.
3. In accordance with the Rules of the Tribunal, the Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Formal Answers were not lodged on behalf of the Respondent.
4. In terms of its Rules the Tribunal fixed a hearing to be heard on 15 December 2014 and notice thereof was duly served on the Respondent.

5. At the hearing on 15 December 2014, the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and was represented by Matthew Berlow, Solicitor, Glasgow.

6. A Joint Minute was lodged with the Tribunal agreeing the averments of fact, duties and professional misconduct together with three schedules produced by the Complainers. The Tribunal, in response to questions from both parties, heard further information from a representative of the Scottish Legal Aid Board (SLAB). Of consent, the Fiscal for the Complainers amended the Complaint and schedule three. Both parties made submissions to the Tribunal.

7. The Tribunal found the following facts established
 - 7.1 The Respondent was born on 30th November 1972. He was admitted as a solicitor and enrolled as a solicitor on the Register of Solicitors practising in Scotland on 15 February 2002. From 21st February 2002 until 14th February 2003 he was employed with the firm T Duncan & Co, Montrose. From 3rd March 2003 through to 16th June 2003 he was employed with the firm Nigel Beaumont & Co., Solicitors, Edinburgh. From 1st November 2003 through to 16th July 2004 he was employed with the firm Franks McAdam Brown, Solicitors, Edinburgh. From 1st November 2005 until June 2012 he was a partner in the firm D'Alvito Defence Lawyers. Following the allegations contained in this complaint, this firm was de-registered by the Scottish Legal Aid Board. The Respondent thereafter set up the firm Road Traffic Legal Practice. The Respondent is presently not employed within the legal profession. His name remains on the roll of solicitors practising in Scotland.

The Scottish Legal Aid Board

7.2 The Scottish Legal Aid Board (hereinafter referred to as SLAB) was formed in 1987 to manage the administration of Legal Aid within the Scottish jurisdiction. They have a place of business at 44 Drumsheugh Gardens, Edinburgh. They are a non-departmental public body responsible to the Scottish Executive. Ministers in the Scottish Executive decide Legal Aid policy. Ministers propose laws to set the rules and criteria for the use of Legal Aid together with the fees to be paid to the legal profession. The Scottish Parliament makes and changes legislation including the test for granting of Legal Aid. The budget for Legal Aid is different from other public services. It is not a set amount. If someone is granted Legal Aid the Scottish Executive will provide the funds to meet the cost of their case. Legal Aid is help towards the cost of legal advice and representation, for those who qualify, paid for out of public funds. It is designed to help individuals on low and modest incomes gain access to the legal system. Legal Aid may be free, or someone may have to pay towards the cost of their case. Legal Aid is accessed through a solicitor.

7.3 There are two main types of Legal Aid assistance.

(a) Advice and Assistance. This covers a wide range of matters so long as they are matters of Scots Law. It pays for advice from a solicitor, but apart from a few exemptions it will not cover representation, that is putting a case forward in court.

(b) Legal Aid. This provides funding for the solicitor to put a case forward in court or at a certain Tribunal. It covers the preparation work as well as the hearing itself and can provide funding for advocates, experts and other associated costs. Cases often begin with Advice and Assistance in respect of the

preparatory work required with Legal Aid being the next step if necessary where a case has to be presented in court.

7.4 In respect of Criminal Legal Aid the form of Legal Aid available depends upon the nature of the prosecution. If a complaint is brought against an accused at summary level, for the work carried out by a solicitor he is in the majority of cases entitled only to a fixed set fee. This fee applies in respect of the work carried out by the solicitor until the conclusion of the case. Where, as a consequence of the disposal, for example, there is a deferred sentence, there is the possibility of a modest fee being claimed in addition to the fixed set fee. If a complaint is brought against an individual at solemn level the Legal Aid available to the solicitor is on a time and line basis. Therefore any work carried out by the solicitor in respect of a solemn appearance is charged on an exact basis being the time spent by him dealing with the matter whereas in relation to summary prosecution time is of no significance as a solicitor receives a fixed payment regardless of the time involved.

7.5 The principal statute responsible for the administration of Legal Aid within the Scottish jurisdiction is the Legal Aid Scotland Act 1986. In 1997 a number of amendments were made to this legislation. These amendments provided SLAB with amongst other things increased powers in respect of the investigation of fraud or abuse in respect of the provision of criminal legal assistance. In particular:-

(a) Amendments to Section 25 of the said 1986 Act created a criminal legal assistance register in which every solicitor or firm wishing to provide criminal legal assistance must be entered.

(b) A compliance audit regime was commenced based upon a Code of Practice in relation to the provision of criminal legal assistance. Every solicitor and firm of solicitors wishing to provide criminal legal assistance must be entered on the Criminal Legal Assistance Register established and maintained by SLAB in terms of Section 25A of the said 1986 Act. To be entered on the Register firms and solicitors must conform to the terms of the Code of Practice. This Code of Practice sets out the standards required by SLAB in relation to the provision of criminal legal assistance. Inter alia it sets forth standards of professional conduct which solicitors require to act in accordance with and determine systems of management and administration that solicitors are required to have in place if they were to provide criminal legal assistance.

(c) Amendments to Section 25 set up a statutory framework for seeking to remove the name of a solicitor or firm from the Criminal Legal Assistance Register in the event of serious or continued failure to comply with the Code of Practice.

(d) The complaints regime instigated, involved a monitoring of each registered firm's continuing compliance with the Code of Practice. This duty is exercised through a rolling programme of compliance audits carried out by members of the SLAB staff undertaken in terms of Section 25C, 35A and 35B of the said 1986 Act as amended.

7.6 The Respondent was formerly a partner in the firm D'Alvito Defence Lawyers. In this capacity the Respondent principally offered advice to clients who were eligible for Legal Aid. SLAB maintains a Criminal Legal Assistance Register and only those solicitors whose names appear on the Register may provide criminal legal assistance. As a consequence of conduct on the part of the Respondent SLAB took the decision to de-

register the Respondent and the firm D'Alvito Defence Lawyers in June 2012. As a consequence the Respondent can no longer carry out criminal legal assistance work. The applications process is such that a solicitor, acting on behalf of a client, will submit an application for Legal Aid to SLAB in such a form as SLAB may then require. Since 1st April 2011 all applications require to be submitted online. This system allows solicitors and administrative staff to send Legal Aid applications and accounts to SLAB electronically through a secure website and receive responses electronically rather than using paper documentation. Each firm nominates a firm administrator and in the case of the Respondent's firm he was identified as firm administrator. SLAB create a unique login for the firm administrator. The firm administrator is responsible for creating and maintaining unique login details for each member of staff they wish to access Legal Aid online. Unique login details are allocated to each user whether this is a solicitor or an authorised member of staff but no two individuals will be allocated the same login details. SLAB are able to identify the user's login details which are employed to submit an online account for payment. Each user when their login is created or before they submit anything via the online system must agree to the SLAB online terms and conditions. The user details for the Respondent were created on 23rd May 2008 and he submitted his first account to SLAB on 29th May 2008. The Respondent agreed to the Legal Aid online terms and conditions in between or on one of these dates.

7.7 The manner in which a solicitor is to be paid for work carried out in terms of the Criminal Legal Aid Scheme is regulated by the Criminal Legal Aid (Fixed Payments) Practice (Scotland) Regulations 1999 Part V. These regulations provide:-

(i) Regulation 1.2 states “that these and information regulations apply to criminal legal assistance provide for a single payment in summary criminal cases reflected in the single summary criminal process.”

(ii) Regulation 3.15 relates to further fixed payments and provides that “where the case is chargeable on a fixed payment basis, whether ABWOR or criminal legal aid, there is always further provision according to the circumstances for paying further fixed payments including deferred sentences (other than the first or second diets which are included within the fixed payment).”

(iii) Regulation 6.9 states “the conclusion of the proceedings is a matter of fact. It is not always possible to gauge at any given times whether proceedings had indeed concluded and we may well pay an account – perhaps in a situation where a warrant has been granted – only to find out further procedure takes place.”

7.8 The accounts process is such that a solicitor may submit a main account and where appropriate a supplementary account either in paper format or online. The core fixed fee must be claimed within a main account and must record the case outcome or date a Warrant was issued or date for a long deferred sentence set. The main account may also include charges for further fixed payments in respect of for example third and subsequent deferred sentences. A supplementary account may be submitted for payment of further fixed payments not previously claimed within the main account e.g. £50 per third and subsequent deferred sentences. When a solicitor submits a main account or a supplementary account for an ABWOR matter, whether by paper or on online, they attest to the following statement:-

“I certify that to the best of my knowledge and belief the information given is correct and items charged in the account are accurate and represent a true and complete record of all the work done”.

- 7.9 When a solicitor submits a main account for summary matters whether this is paper or online they attest the following statement:-

“To the best of my knowledge and belief the items charged on the claim are accurate and represent a true and complete record of all work done”.

Accounts for summary matters submitted in paper form also contain this declaration.

- 7.10 The online account system maintained by SLAB contains a set of mandatory questions with each question determined by the answer entered to the preceding question. In order for a solicitor to submit a main account for payment of the core fixed fee one of three scenarios must have arisen; either the case is concluded or a Warrant has been issued or a long deferred sentence has been set.

- 7.11 A review of the accounts submitted by the Respondent by SLAB identified that he had submitted accounts containing invented outcomes. This meant that the Respondent received monies from SLAB which he was not entitled to at that stage. In order for these accounts to proceed through the online system the Respondent deliberately input false information with the intent of receiving payment of the core fixed fee early. In particular a review identified by SLAB revealed that the Respondent had submitted at least 81 accounts between 1st October 2009 and 28th October 2011 which contained an

invented outcome prompting SLAB to make payment of the core fixed fee before payment was due. A schedule is produced identifying the 81 accounts containing fictitious outcomes made up by the Respondent which states that these cases had concluded when in actual fact they had not. It was a fraudulent misrepresentation advanced by the Respondent to elicit payment from SLAB for the core fixed fees when the accounts were not due to be paid. A Schedule is produced headed “Schedule 1: Early Submission of Accounts with Invented Outcome”. This schedule is attached as Appendix 1 to these Findings. Its terms are held to be repeated herein *brevitatis causa*. The various columns are identified as follows:-

- (i) Column A – Confirmation they are Legal Aid Cases.
- (ii) Column B – The name of the Client.
- (iii) Column C – The subject matter.
- (iv) Column D - The Unique Procurator Fiscal’s Reference Number.
- (v) Column E – Dates when Accounts received by Scottish Legal Aid Board.
- (vi) Column F – Format of Account and who was responsible for submitting it.
- (vii) Column G – Recording of certain outcomes.
- (viii) Column H – Date of outcome.
- (ix) Column I – Sums claimed for by Respondent.
- (x) Column J – Sums paid by the Scottish Legal Aid Board.
- (xi) Column K – Dates when payments were made by the Scottish Legal Aid Board.
- (xii) Column L – Confirmation that cases did not conclude until a later date as evidenced by the narrative.

7.12 Separately, following audit by SLAB they identified that of the 81 accounts containing an invented outcome, 27 of these accounts had been transferred to another firm. When such a

transfer occurs the original solicitor is only entitled to half the core fee. A Schedule is produced headed “Schedule 2: Early Submission of Accounts now Transferred”. This Schedule is attached as Appendix 2 to these Findings. Its terms are held to be repeated herein *brevitatis causa*. The format of the Schedule can be clarified as follows:

- (i) Column A – Identifies these accounts are for Legal Aid Cases.
- (ii) Column B – Identifies the name of the clients.
- (iii) Column C – Identifies the subject matter.
- (iv) Column D – Identifies the Unique Procurator Fiscal’s Reference Number.
- (v) Column E – Identifies the date when the Account was received by Scottish Legal Aid Board.
- (vi) Column F – Identifies the manner in which the account was submitted and by whom.
- (vii) Column G – Identifies the outcome specified on the account.
- (viii) Column H – Identifies the date of this outcome.
- (ix) Column I – Identifies the amount claimed by the Respondent.
- (x) Column J – Identifies the sum paid by the Scottish Legal Aid Board.
- (xi) Column K – Identifies the date it was paid by the Scottish Legal Aid Board.
- (xii) Column L – Identifies the date when the cases did in fact conclude on a later date.
- (xiii) Column M – Identifies when the cases were transferred to another solicitor.
- (xiv) Column N – Identifies the sums which were paid to the Respondent as a result of his deceit.

In each case the Respondent submitted his account prior to the change of agency. A change of agency after the submission of an account is not unusual and in normal course the new agent is paid by SLAB, with the original agent being requested to refund any overpayment. The Respondent has repaid all overpayments referred to in schedule 2.

7.13 The audit also revealed that the Respondent engaged in a practice whereby he made inappropriate charges in respect of deferred sentences. In particular the audit revealed that on six occasions the Respondent had fabricated and/or inaccurately described certain Diets as being the first and second deferred sentences which created an opportunity for him to claim an add on fixed fee only available for third and subsequent deferred sentences. A Schedule headed "Schedule 3: Inappropriate Charges for Deferred Sentences" listing these occasions is produced as Appendix 3 to these Findings. Its terms are held to be repeated herein *brevitatis causa*. The format of the Schedule can be clarified as follows:

- (i) Column A – Identifies these are Legal Aid Cases.
- (ii) Column B – Identifies the name of the clients.
- (iii) Column C – Identifies the Unique Procurator Fiscal's Reference Number.
- (iv) Column D – Identifies the date when the Account was received by Scottish Legal Aid Board.
- (v) Column E – Identifies the manner in which the Account was submitted.
- (vi) Column F – Identifies the dates of the false charges claimed by the Respondent.
- (vii) Column G – Identifies the additional fixed fees claimed by the Respondent.
- (viii) Column H – Identifies the sum paid

(ix) Column I – Identifies the dates when payments were made to the Respondent's bank Account.

7.14 The Respondent has repaid all overpayments referred to in Schedule 3.

8. After giving careful consideration to the Joint Minute, further information from the Scottish Legal Aid and the submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in that the Respondent acted in a dishonest and deceitful fashion by engaging repeatedly in a scheme designed by him to recover money from the Scottish Legal Aid Board to which he was not entitled.

9. The Tribunal heard further submissions from both parties in respect of publicity and expenses.

10. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 December 2014. The Tribunal having considered the Complaint dated 11 August 2014 at the instance of the Council of the Law Society of Scotland against Massimo D'Alvito, 1 Winton Grove, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect that he acted in a dishonest and deceitful fashion by engaging repeatedly in a scheme designed by him to recover money from the Scottish Legal Aid Board to which he was not entitled; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this

publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Alistair Cockburn

Chairman

11. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Alistair Cockburn
Chairman

NOTE

Prior to the hearing on 15 December 2014, the Complainers had lodged two Inventories of Productions and a Joint Minute between the parties agreeing the facts, averments of duty and professional misconduct had also been lodged. At the hearing, the Fiscal confirmed to the Tribunal that a representative of the Scottish Legal Aid Board (SLAB) was present and he invited the Tribunal to hear evidence from the SLAB representative, in order to explain the background to the Complaint. The Tribunal indicated that calling the member of SLAB as a witness to give evidence under oath could present difficulties should that evidence conflict to any degree with the Joint Minute. Accordingly, it was agreed with the consent of all parties that the SLAB representative would provide information to the Tribunal, in response to questions from both the Fiscal and the Respondent's agent.

SUBMISSIONS FOR THE COMPLAINERS

Mr A confirmed that he was employed by the Scottish Legal Aid Board as the Compliance and Audits Manager. He explained that the Respondent had come to his attention as the result of an inspection of the Respondent's firm in February 2012.

At the date of the Respondent's conduct in the Complaint, the fixed fee for a summary criminal case was £515. This fee was for work done from the pleading diet up to and including two deferred sentences. An additional fee could be claimed for any further deferred sentences or for any trial that took place. The fee was due when the case was finally concluded, a warrant was issued or a long term deferred sentence had been fixed. If the fee had been claimed prior to final conclusion of the case then it was possible to submit a supplementary account, for instance, for any third or fourth deferred sentence.

Many of the fixed fees were introduced in 1999. A Code of Practice for Criminal Practitioners was introduced in 1998 together with a compliance regime. Compliance audits involve Legal Aid Board employees assessing each firm's compliance with this Code. They will look at a series of things including whether the accounts submitted marry up with solicitor's time sheets and files. This compliance audit was separate to

the quality assurance process which was introduced some five or six years ago. In April 2011 legal aid online was introduced meaning that applications for legal aid and claims for payment required to be submitted online.

He confirmed that Production 4 for the Complainers was the copy of an accounts synopsis. Page 6 of this synopsis lists how a case is concluded. This is the information that would trigger payment of any account. If the information was in any way inaccurate then the Board could be prompted to make payment before it was due. Section S is a declaration of certification that the information given is accurate. This was a guarantee that the information on the form was correct and honest.

Submitting an account online was not as simple as clicking a button, there is a series of electronic pages to go through. Production 6 is a flowchart indicating the questions that require to be answered. Additionally there are drop down boxes where options require to be chosen, for instance the sentence that is imposed. The system provides a number of safeguards to prevent mistakes making it difficult to make a series of mistakes.

In this case he said there were three areas of concern:

- 1) Schedule 1 indicating 81 cases where information was submitted that was in a number of respects wrong that resulted in the Respondent receiving payment ahead of time.
- 2) Schedule 2 which outlined cases where legal aid had been transferred to another solicitor after the Respondent had already submitted an account giving false information justifying payment. The witness confirmed that it was not uncommon for clients to transfer agency while cases were still ongoing. Sometimes solicitors submit accounts, the Board pays the full fixed fee and then a transfer takes place. In these cases the Board pays the second solicitor the fee due to him and reclaims that from the first solicitor. Schedule 2 contains 27 cases where there had been a transfer of agency after payment of fees to the Respondent. The figure of £6266.25 had effectively been overpaid to the Respondent but that had been paid back to the Board in full.

3) Schedule 3 contained cases where information was given on the claim for payment justifying an additional fee to the fixed fee, where the information was wrong. For instance, in some cases the Respondent had badged the intermediate and trial diets as first and second deferred sentences, thereby justifying an additional fee for further deferred sentences where they were in fact not appropriate. Sometimes the Board were told a diet had taken place where there had been no calling of the case on that date. In these cases there was a series of events of mis-description leading to additional fees.

Mr A referred to Production 5 for the Complainers and confirmed that this was a copy of an account for a Ms B. At page 11 of that account the Respondent had claimed for a deferred sentence that did not exist.

At this juncture, inconsistencies were noted between the information being provided, the schedules produced and the content of the Complaint. After various submissions, the Fiscal moved to amend the Complaint and schedule 3. This was not opposed by the Respondent and therefore was granted.

In response to questions from the Respondent's agent, Mr A confirmed that the cases listed in schedule 1 were claims for payment of a fee early where if the Respondent had simply waited he would have been entitled to the fees. Mr A conceded, that it was possible that in some of these cases submitting the claims for payment early meant that the Respondent might have been paid less than he would have been entitled to for instance if a trial had taken place and there was an additional fee due. Mr A was not able to comment whether or not any of these cases were actually in that position. Mr A also confirmed that the cases listed in schedule 2 involved the Respondent submitting inaccurate accounts before the transfers of agency had taken place and that the Respondent would not have known of the transfers at the time he submitted the claims for payment. Mr A confirmed that all monies had been repaid in full.

Following the further information from Mr A, the Fiscal made his submissions to the Tribunal inviting the Tribunal to find that professional misconduct had been established. The Joint Minute between the parties agreed that the facts and averments

of duty and professional misconduct were accepted. Mr Reid accepted that it was for the Tribunal to find that the conduct admitted amounted to professional misconduct.

He said that there were three aspects to the Complaint. The first was 81 cases where the Respondent had submitted false information to obtain monies that he was not then entitled to. He had signed declarations in connection with these cases. The claims were not accidental and there was clear evidence of dishonesty. The second part of the Complaint involved the cases where there had been a transfer of agency after payment of the accounts and the third was a straightforward case of theft where the Respondent had claimed £300 excluding VAT that he was not entitled to. Mr Reid stated that this was a clear course of conduct aimed towards personal gain.

SUBMISSIONS FOR THE RESPONDENT

Mr Berlow submitted that although there had been dishonesty in the conduct of the Respondent, this had not resulted in any large part in a substantial fraud, in that the Respondent would have been entitled to the monies claimed if the information given had been accurate. He suggested that the picture created was one of chaos and disorganisation. The Respondent had repaid all sums involved in the cases where there had been a subsequent transfer of agency. The incidents of actual fraud amounted to a sum of £360, including VAT, over a long period of time.

This conduct was set against the background where the Respondent was suffering from cash flow problems having employed a solicitor to whom he was paying a substantial amount, and who himself had his own difficulties. The Respondent was a young man at an early stage of his career.

The Tribunal was dealing with a very small amount of money.

He hesitated to refer to comparative justice but submitted that he was aware of solicitors who had been de-registered by SLAB who had been allowed to continue to practise on a restricted practising certificate. One such solicitor had engaged in an actual legal aid fraud involving claims for travelling from Paisley to Peterhead prison

amounting to £80-90,000. That individual had been de-registered but was continuing to practise.

The Respondent was claiming money early to which he would have been entitled in the long run, apart from the £360 of actual fraud. The catalyst for this conduct was the huge cash flow problem that he had suffered as a result of being unable to obtain an overdraft. As the Respondent had only started his own firm recently it had been difficult for him to secure an overdraft. Having to employ an assistant had caused cash flow problems.

He invited the Tribunal to consider punishing the Respondent by either restricting his practising certificate so as to prevent him from undertaking legal aid work or by allowing the Respondent to come back to the profession in a number of years' time.

DECISION

The Respondent had admitted engaging in a deliberate and dishonest course of conduct extending over a period of two years. On 81 occasions the Respondent had submitted the claims for payment which contained deliberate false entries and in each of these cases the Respondent had completed a certificate indicating their truth and accuracy. On a further six occasions, the Respondent had submitted claims for payment where the diets had been completely mis-described in order to claim further additional fees which were not payable.

This conduct was very clearly a case of sufficient gravity and culpability that would be capable of bringing the profession into disrepute and was conduct which would be regarded by any competent and reputable solicitor as serious and reprehensible. Accordingly the Tribunal had no hesitation in finding the Respondent guilty of professional misconduct.

The Tribunal considered this case to be at the highest end of the scale of professional misconduct. Although the Tribunal accepted that in all of the cases in schedule 1 the Respondent would eventually have been entitled to submit these claims for payment, nonetheless, they represented a systematic abuse of the legal aid system. Whilst the

cases where the Respondent had claimed additional fees on an entirely false basis, as explained in schedule 3, amounted to a fairly small monetary value, nonetheless the conduct involved deliberate dishonesty.

The Tribunal did not accept that the case as described to it presented a picture of chaos and disorganisation. Rather the picture painted by the Respondent's agent was one of a system devised by the Respondent to deal with cash flow problems.

Clearly the Respondent had cooperated with the Complainers in the course of this prosecution. The Respondent had repaid to SLAB all monies over claimed by him. However, the Tribunal considered this to be an extremely serious matter. The Respondent had been involved in dishonest, and indeed, criminal conduct. The conduct had persisted over a period of two years. This systematic abuse of public funds will inevitably seriously damage the reputation of the profession. Whilst his repayment of the funds claimed and his cooperation with the Tribunal proceedings were an indication of remorse, the information given to the Tribunal suggested that the Respondent had no insight into the seriousness of a solicitor completing 81 separate certifications of the veracity of information given to a public body, where he knew the representations to be false. This conduct clearly demonstrated that the Respondent was not a fit person to be a solicitor and accordingly the Tribunal had no choice but to strike his name from the Roll of Solicitors.

The Tribunal invited both parties to make submissions with regard to expenses and publicity. The Fiscal moved for expenses and this was not opposed by the Respondent. Accordingly an award of expenses was made in favour of the Complainers.

The Respondent invited the Tribunal to refrain from making an order for publicity. He submitted to the Tribunal that the Respondent in this case had not been dealing with any private funds and it was not the case of Mr D'Alvito enriching himself. He explained that the Respondent was now in business in the restaurant trade and that publicity of this decision could be damaging to that trade. Mr Berlow believed this to be a family business. The Tribunal drew Mr Berlow's attention to paragraphs 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. In response, Mr Berlow

indicated that the business employed staff who were not family members of the Respondent. The Tribunal considered that this was not sufficient reason to justify withholding publicity of the decision and made the usual order for publicity.

Alistair Cockburn
Chairman

APPENDICES INDEX

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APPENDIX 2 - SCHEDULE 2

APPENDIX 3 - SCHEDULE 3