

THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

FINDINGS

in Complaint

by

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

against

**GRAEME STARK HERALD
formerly of Herald & Co, 85 High
Street, Arbroath and now of 27/10
Hawthornbank Lane, Edinburgh**

1. A Complaint dated 3 November 2009 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Graeme Stark Herald formerly of Herald & Co, 85 High Street, Arbroath, and now of 27/10 Hawthorn Bank Lane, 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. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent. A Record was prepared and lodged with the Tribunal.
3. In terms of its Rules the Tribunal fixed a procedural hearing to be heard on 25 January 2010 and notice thereof was duly served on the Respondent. The matter was then adjourned to a further procedural hearing on 31 March 2010. The Law Society was represented by their Fiscal, Paul Reid, Solicitor-Advocate, Glasgow. The Respondent was not

present or represented. He had been present earlier but had left. The matter was then adjourned to a substantive hearing on 1 June 2010 at 10:30am.

4. When the case called on 1 June 2010, the Law Society was represented by their Fiscal, Paul Reid, Solicitor-Advocate, Glasgow. The Respondent was not present or represented. Although it was understood that the Respondent did not intend to attend the hearing, as there was no proof that the Respondent was aware of the hearing, the matter was further adjourned to 25 June 2010.
5. When the case called on 25 June 2010, the Law Society was represented by their Fiscal, Paul Reid, Solicitor-Advocate, Glasgow. The Respondent was not present or represented.
6. The Tribunal heard evidence from one witness and found the following facts established

6.1 The Respondent was born 16th April 1957. He was admitted as a solicitor on 17th September 1980. He was enrolled in the Register of Solicitors for Scotland on the 7th October 1980. During the currency of his employment in the legal profession he was associated with Messrs Maclean & Lowson of 123 Castle Street, Forfar, the Procurator Fiscal's Service, Meadow Street, Falkirk, FK1 1RU, Messrs Watt & Company, 26 Viewfield Terrace, Dunfermline, KY12 7LB. From 14th April 1986 he was a Partner with the firm Herald & Company of 85 High Street, Arbroath. At present the Respondent is not employed in the profession.

Judicial Factor

6.2 As a consequence of the repeated breaches of the Accounts Rules identified as a result of previous inspections of the firm

of Herald & Company, Morna Grandison was appointed Judicial Factor on the estates of Messrs Herald & Company, Solicitors, 85 High Street, Arbroath and on the estates of the Respondent initially by Interlocutor pronounced by the Court of Session on 6th October 2006. Her appointment was made permanent on 7th November 2006. Following her appointment, the Judicial Factor carried out initial enquiries which identified a number of serious shortages on the client account maintained by the Respondent. Such was the concern on the part of the Judicial Factor regarding the theft of client funds that a formal report was intimated to Crown Office in November 2006. Following the presentation of this report, a warrant was granted for police officers to search the office premises and the residential dwelling of the Respondent. As a consequence of the search, certain accounting records were recovered. These were delivered to the Judicial Factor for her investigation. A complete set of accounting records for the Respondent has never been recovered. As a result the Judicial Factor required to correspond with third party institutions to obtain from them bank statements and pay-in material together with copy cashed cheques. Although a lengthy process, these enquiries were necessary to allow the Judicial Factor to proceed to reconstruct the accounting records of Herald & Company.

6.3 The information recovered by the Judicial Factor included details of credits and debits which had been created by the Respondent. There was no primary source of documentation available to allow the Judicial Factor to reconstruct the accounting records of Herald & Company from its inception. The information recovered showed a considerable difference from the information which had been presented by the Respondent to the Complainers during the series of inspections previously referred to. As a result the Judicial Factor decided to identify balances which had been extracted by the inspectors

during the course of their inspections. The balances employed were those as at 1st April 2003. These were the balances made available to the inspectors by the Respondent. Subsequently, it was identified that even these figures had been significantly manipulated by the Respondent to disguise a considerable shortfall in his client account at that time. The process revealed that the accounting records of the Respondent were wholly inaccurate and manipulated deliberately to disguise the systematic removal of client monies from the Herald & Company Clydesdale Bank plc Account. This was the client account maintained by the Respondent (hereinafter referred to as “the Client Bank Account”). The Respondent falsified accounting records in an attempt to disguise his repeated theft of client monies. In simple terms, when clients of the Respondent were seeking funds to settle their individual transactions, the Respondent held insufficient funds to do so. Consequently he engaged in a scheme which is termed “teaming and lading”. This scheme involves funds received from one client for a particular purpose being paid out immediately to fund a transaction for another client whose funds had been stolen by the Respondent earlier. During the course of the thefts perpetrated by the Respondent, a review of the accounting records by the Judicial Factor, revealed that on occasion the Respondent would borrow money on his own behalf and pay these sums immediately into his client bank account to repay certain of the monies previously stolen by him. For example the following thefts were identified:-

- 6,4 The Respondent acted for a Mrs A. On 12th October 2001, a separate firm of solicitors sent a cheque for the sum of £15,000 in settlement of a claim to the Respondent. This was lodged with the client bank account on 15th October 2001. The ledger for Mrs A operated by the Respondent was credited with a payment of £6,000 on 19th October 2001 and with a further

£4,000 on 7th November 2001. On 16th November 2001 the Respondent paid to the client the sum of £10,000. There remained a balance of monies due to the client. The Respondent failed to account to the client in respect of this balance until 15th August 2003 when she was sent a further £2,500. There remained a balance due to Mrs A as at the date of the appointment of the Judicial Factor. In addition, the Scottish Legal Aid Board sought to recover fees paid to the Respondent on behalf of Mrs A in terms of the Advice and Assistance Scheme. These fees should have been repaid to the Scottish Legal Aid Board when the monies recovered from the separate solicitors were paid. The Scottish Legal Aid Board had paid fees to the Respondent of £228.01 on 19th December 2003, £705.00 on 20th November 2001 and £831.31 on 24th July 2003.

6.5 The Respondent acted on behalf of the Executor to the estate of the late Mrs B. The majority of the estate funds emanated from the sale of a property owned by Mrs B in the London area. The proceeds of the sale of that property amounted to £152,414.78. These were received and paid into the client bank account of the Respondent on 30th January 2003. A payment of £100,000 was made by the Respondent to a beneficiary, Mrs C on 5th February 2003. Thereafter the Respondent carried out various transactions for other clients utilising the sums held at credit by him relating to this estate. The balance of the funds produced by the Respondent and intimated to Mrs C showed a sum due of £38,976.47 which should have been paid to Mrs C at the end of June 2003. This sum was not paid until 18th August 2004. Enquiries by the Judicial Factor revealed that the sum was debited against the ledger of another client, Mr D.

6.6 The Respondent acted in connection with the administration and management of the estate of the late Mrs E. On 28th

March 2003 the balance according to the papers prepared by the Respondent due to the estate was £25,998.38. Enquiries by the Judicial Factor revealed that at this time there should have been a further £51,219.10 due to the estate of Mrs B. However, at this date the sum held in the client bank account was only £37,602.64. A review of the records operated by the Respondent revealed that the ledger for Mrs E disclosed a debit of £6,672.31 being paid to a Client F on 2nd April 2003. This entry bore no relation whatsoever to the estate of the late Mrs E. Further the beneficiaries of the estate of the late Mrs E were paid sums of money in November 2003 from funds received on behalf of another client of the Respondent, a Mr G. Having reconstructed the accounting records of the Respondent as best she could, the Judicial Factor identified there should have been a balance held for the estate of the late Mrs E at this time of £18,015.26. During the months of January, February and March 2003, the income from the Scottish Legal Aid Board received by the Respondent amounted to £38,113.72. Over the same period the transfers made by the Respondent from the client bank account to the Clydesdale Bank plc firm account totalled £75,605. This showed why there was insufficient funds available in the client bank account of the Respondent to pay out the beneficiaries of the late Mrs E's estate. At this time the difference between the sums held in the bank by the Respondent and the sums due in respect of Mrs B and Mrs E executry amounted to approximately £40,000. This shortfall did not take account of any sums that were due to other clients on whose behalf the Respondent were acting. Consequently any sums falling due to other clients at this stage would have significantly increased the shortfall.

6.7 The Respondent acted for a Mrs H. On 14 January 2003, the sum of £27,272.72 was credited to the client bank account. The ledgers of the Respondent indicated that this sum was made up

of £2,215.72 being funds received from the Prudential in respect of the estate of the late Mrs E, £57 national savings premium bonds for the estate of the late Mrs B and £25,000 described as “capital introduced”. This sum was not in fact capital introduced by the Respondent but was a deposit for the purchase of a house for the client, Mrs H. Further review of the records revealed that the lender to Mrs H deposited £55,550 into the client bank account on 6 February 2003. Thereafter, the Respondent was able to purchase the property on behalf of the client, Mrs H for £74,250 on 11 February 2003.

6.8 The Respondent acted on behalf of an Mr I who, along with his mother, was purchasing Property 1. This was a council house purchase. The purchase price to be paid was £14,800 due to the substantial discount afforded to the prospective purchasers in terms of the right to buy legislation. The date of entry to the property was fixed for 26 January 2005. On 25 January 2005, loan funds were received from the Northern Rock plc amounting to £21,000. These were paid into the client bank account maintained by the Respondent. On 25 January 2005, the Respondent submitted a cheque for the sum of £14,800 to the solicitors for the seller being the purchase price of the property. A review of the file maintained by the Respondent revealed a letter from him to the client on 2 February 2005 advising that the Respondent was in the process of preparing a state for settlement, and that in due course this along with a cheque in respect of the balance of monies held on their behalf would be sent to them. On 25 February 2005, the Respondent wrote to Mr I enclosing a state for settlement which brought out a balance due to him of £5,583.55. The letter stated that a cheque for this amount was enclosed. A review of the file revealed a file note dated 2 March 2005 explaining that a Mr J who had been in touch on behalf of Mr I complained that the cheque was not enclosed. On 22 March 2005, there is a further

file note by the Respondent stating “resolving matter re outstanding account”. A review of the client bank account operated by the Respondent revealed on 25 February 2005, there was only £10,394.72 within the account. The correspondence on the file indicated that on 25 February 2005 a cheque for £5,583.55 was issued to Mr I. Even if this had indeed been correct, by 1 March 2005, there was only £5,034.72 within the account. Therefore, any cheque presented to the bank at this time would not have been honoured by the bank. The client Mr I was dissatisfied at not having received his money. Contact was made with the Respondent. On 22 March 2005, a cheque was issued to him for the sum of £5,583.55. A review of the records maintained by the Respondent by the judicial factor revealed that from 1 March 2005 to 22 March 2005 there were insufficient funds within the client bank account to allow the payment to be made to Mr I. Consequently, on 23 March 2005, a transfer of £4,000 from the Clydesdale firm bank account number 283928 into the client bank account required to be made in order that the cheque to Mr I could be encashed.

- 6.9 The Respondent acted on behalf of a Ms K. On 3 June 2005, a firm of solicitors paid to the Respondent a cheque for the sum of £9,348.98. This was a cheque in respect of arrears of aliment and the net free proceeds of sale of a dwellinghouse. The cheque was part of a deposit paid into the client bank account of £9,666.23 on 3 June 2005. After deduction of fees and sums due by the client to the Respondent, the client was due to receive the sum of £6,434.09. A review of the client bank account showed that on 10 June 2005 there was only £4,236.54 held in this account. This balance was insufficient to pay the sum due to Ms K. This continued until 1 July 2005 when bridging finance was received from the Clydesdale Bank plc on behalf of the Respondent concerning his purchase of

Property 2. The bridging funds received were in excess of the sum due in respect of the purchase of the property. The balance of the bridging of approximately £11,000 was introduced by the Respondent to his client bank account and used by him to repay clients whose money he had already stolen. In spite of these monies being introduced to the client bank account in July 2005, Ms K did not get paid until 29 September 2005 at which time she was paid £6,456.14. A portion of the funds used to pay this cheque came from funds held on behalf of another client, a Mr G.

6.10 The Respondent acted on behalf of the client Mr G. A review of the accounting records revealed a number of entries on his ledger card which did not coincide with the position in relation to the transaction on his behalf. A brief review of the ledger revealed a number of credits had been allocated to the ledger in order to compensate for money already paid out to other clients. These payments had nothing to do with his transactions or his affairs. In September 2003, the client Mr G sold a property for the sum of £45,000. A mortgage of £6,000 was to be repaid. The balance of £39,000 less fees and outlays was to be paid to Mr G. A review of the records revealed that this sum was not paid to Mr G but various payments were made out to beneficiaries of an estate concerning a Ms L. At or about this time, beneficiaries of the estate were demanding payment from the Respondent. Therefore, the Respondent issued the following cheques from the client account:-

(a) 2 December 2003 a cheque for the sum of £5,726.99 payable to an Ms M.

(b) 2 December 2003, a cheque for the sum of £5,726.98 payable to a Ms N.

(c) 8 December 2003, a cheque for the sum of £5,726.98 payable to an Ms O.

(d) 16 December 2003, a cheque for £5,726.99 payable to a Mr P.

These sums were debited by the Respondent against the ledger for Mr G thus creating a considerable shortfall on his ledger card. The shortfall was increased when the Respondent paid out a cheque on 21 November 2003 for the sum of £5,082.35 made payable to a Ms Q. This had nothing to do with the affairs of Mr G.

Further examination of the ledger maintained by the Respondent in respect of the affairs of Mr G revealed a number of credits marked on the ledger but not relating to transactions involving Mr G. These included:-

- (1) 7 January 2004, credit received from R, £105.75
- (2) 7 January 2004, credit received from S, £12.25
- (3) 23 January 2004, credit received from T, £528.75
- (4) 9 February 2004, credit received from U, £282.00
- (5) 20 February 2004, credit received from V, £834.40

On 22 September 2004, a sum of £24,024 was credited to the ledger card maintained by the Respondent in respect of Mr G. This was to allow a payment to be made to Company W on behalf of Mr G. The sum credited was not part of the money belonging to Mr G but required to be credited to the ledger to allow a payment to be made out on behalf of Mr G. Enquiries

by the Judicial Factor revealed that this money was likely to have been part of money received by the Respondent in respect of an Executry concerning the late Ms X on 22 September 2004 and was made up of a lodgement due to Ms X's Executry of £28,158 and a further unidentified lodgement of £81.60.

- 6.11 On 22 September 2005, Mr G sold Property 3 and the proceeds were paid into the client bank account. After deduction of costs and outlays the net free proceeds of sale should have been remitted to Mr G. This was delayed. Analysis of the client bank account showed the money was used to pay Ms K the sum of £6,456.14. Separately, the money belonging to Mr G was used to pay a Ms Y the sum of £12,124.75 on 5 October 2005.

There were insufficient funds held in the client bank account to pay Mr G until briefly on 20 October 2005 when funds were received for Mr Z (an entirely separate client) to settle his house purchase. This transaction settled on 26 October 2005. Thereafter, there were insufficient funds in the client bank account until funds were received from a Mr and Mrs AA on 15 and 20 December 2005. On 25 January 2006, a cheque was issued to Mr G for the sum of £25,000.

- 6.12 The Respondent acted for a Mr and Mrs AA in connection with the sale of their heritable property, Property 4. The proceeds of sale were received into the client bank account on 16 December 2005. The Respondent should at that time have repaid the Halifax plc mortgage of approximately £90,000. He failed to do so. By the end of December 2005, the review of the financial records available revealed that there were insufficient funds in the client bank account to write such a cheque. Thereafter the Respondent purchased a new property for Mr and Mrs AA in late December 2005. The purchase price comprised loan funds received on behalf of the client and funds

credited from the sale of their house, Property 4. Various other outlays were not paid until March 2006. At that time the client bank account had been credited with the sale proceeds of Mr and Mrs AB's hotel. The Respondent used some of these funds to redeem Mr and Mrs AA's loan with the Halifax plc on 8 March 2006 when cheque cleared the client bank account in the sum of £90,496.54.

6.13 The Respondent acted on behalf of Mrs AB. Due to the Respondent misleading the lenders with regard to repayment of her mortgage and due to a cheque not reaching First National who held the mortgage over Mrs AB's property, Mrs AB almost had her house repossessed. Due to insufficient funds the Respondent could not pay First National.

6.14 The Respondent acted for a Mr and Mrs AB in a number of matters mainly to do with debt issues. By 18th April 2006, the free proceeds of the sale of the AB's hotel had been used by the Respondent and a number of the debts due by Mr and Mrs AB remained unpaid. Mr and Mrs AB were also looking for the balance of the funds due to them and as a result instructed their new solicitors, Thorntons, to raise a court action against the Respondent. Thorntons lodged an arrestment on the bank accounts of the Respondent, which attached funds in the Client Bank account on 26th April 2006. This arrestment was uplifted after negotiation and the cheque for £32,570.41, which had been returned as unpaid to Mr and Mrs AB, was paid from the Client Bank account on 5th May 2006. It is not clear whether Mr and Mrs AB or their lawyers were aware at that time that a number of their creditors had still not been paid by the Respondent. The sums still due to be paid on their behalf were as follows:-

- (a) Angus Council in respect of rates £36,581.33 – eventually paid by cheque and cleared through the Client Bank account on 15th May 2006;
- (b) Hydro Electric £9,080.13 – eventually paid by cheque and cleared through the Client Bank account on 19th May 2006;
- (c) Inland Revenue £64,633.75 – eventually paid by cheque and cleared through the Client Bank account on 9th August 2006;
- (d) Inland Revenue £10,807.34 – eventually paid by cheque and cleared through the Client Bank account on 9th August 2006.

6.15 These payments were able to be made following a loan advanced to the Respondent and paid into the Client Bank Account on 10th May 2006. The loan was paid into Margaret Katrina Lucas's Halifax/Bank of Scotland account in a CHAPS deposit for £174,988. A payment is made from this account on 9th May 2006 for £160,025 (including the CHAPS fee) to the Client Bank Account. This loan was made in anticipation of the sale proceeds from the sale of the Respondent's Property 5 being sufficient to repay his borrowings. It is now clear that this was not the case and as a result, when the proceeds of the sale of Property 5 were lodged into the Client Bank Account on 31st May 2006, the money then held in the account was utilised in repaying the sum borrowed from a Mr AE by cheque issued to Warners, Solicitors and cleared through the Client Bank account on 7th June 2006. The funds were also used to repay bridging finance to the Clydesdale Bank and debited against the Client Bank Account on 2nd June 2006, for £334,570.59. The Respondent failed to repay the secured borrowings due to the Abbey National plc of £300,000. Despite this failure to repay

the secured borrowings, in October 2006, the Respondent sent to the Land Register for recording a completed Discharge of the Standard Security which should have been held as undelivered until such time as the borrowings in full were repaid in respect of the Standard Security held by the Abbey National plc against the property belonging to the Respondent and his wife, Property 6. The funds received from the sale of this property were used by the Respondent to settle other debts outstanding or to make payments to or on behalf of other clients and were therefore not available to be sent to the Abbey National plc in respect of the outstanding loan.

6.16 The Respondent carried out his scheme of teaming and lading in respect of a number of other clients being Mr D, Mrs AC, Ms AF, the Estate of the late Mr AG, Ms AH, Mrs AI, Ms AJ and Ms AK.

6.17 Overall, the essence of the thefts perpetrated by the Respondent was to use the monies lodged with the client bank account as a source of finance for funding his practice and in meeting his general living expenses. It is clear over a period of time the fee income of the Respondent was insufficient to meet the expenses of the firm and the drawings required for the Respondent. The general picture of the practice is one of falling turnover and corresponding falling profitability. In order to meet liabilities in respect of tax and personal drawings, the Respondent needed to introduce capital into his business by way of increasing his loans or by introducing a separate source of funds. From a review of the accounting records, loans were increased but laterally funds were stolen from clients. A significant number of clients suffered loss as a result of the theft of client funds from the client bank account of the Respondent. There will require to be a claim on the Scottish Solicitors Guarantee Fund of approximately £490,000.

7. Having considered the evidence led and submissions made on behalf of the Complainers, the Tribunal found the Respondent guilty of professional misconduct in respect of:

7.1 his breach of the Solicitors (Scotland) Accounts etc Fund Rules 2001: Rule 4 (paragraphs 6.2 – 6.17).

7.2 his over a lengthy period of time on a repeated basis, stealing and embezzling funds belonging to his clients in order to fund his personal lifestyle and professional practice. (paragraphs 6.2 – 6.17)

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

Edinburgh 25 June 2010. The Tribunal having considered the Complaint dated 3 November 2009 at the instance of the Council of the Law Society of Scotland against Graeme Stark Herald formerly of Herald & Company, 85 High Street, Arbroath, and now of 27/10 Hawthornbank Lane, Edinburgh; Find the Respondent guilty of professional misconduct in respect of his breach of Rule 4 of the Solicitors (Scotland) Accounts etc Fund Rules 2001 and his over a lengthy period of time on a repeated basis stealing and embezzling funds belonging to his clients in order to fund his personal lifestyle and professional practice; Order that the name of the Respondent, Graeme Stark Herald be Struck off the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including the 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 except in respect of the hearing on 1 June 2010 in respect of which there will be no expenses found due to or by any party; Order that publicity will be given to this Decision and

that this publicity should include the name of the Respondent but any publicity shall be deferred until after the conclusion of any criminal proceedings against the Respondent.

(signed)

Alistair Cockburn

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

The Tribunal heard evidence from the Clerk to the effect that the Notice of Hearing had been served on the Respondent by Sheriff Officer on 3 June 2010 personally. The letter accompanying the Notice of Hearing indicated that if the Respondent did not attend the hearing would proceed in his absence. Mr Reid indicated that so far as he understood it the Respondent did not intend to attend. Mr Reid indicated that he was not proceeding with Articles 2.1 to 2.11 of the Complaint and moved to delete the averments of professional misconduct in Articles 5.1(a) (b, c, d, e, f & g) and 5.1(b). This was agreed.

EVIDENCE FOR THE COMPLAINERS

Mr Reid led the evidence of Morna Grandison, Judicial Factor for the Law Society. Ms Grandison confirmed that there had been previous inspections of Herald & Company which had then led to her appointment as Judicial Factor on 6 October 2006 which was made permanent on 7 November 2006. Ms Grandison explained that there had been concerns with regard to theft of client's funds and that this matter had been reported to the Crown Office. Ms Grandison further explained that when she took over and examined the paperwork, there was a lot of paperwork missing. A warrant was granted by the Court for the Respondent's house to be searched and a number of additional records were recovered from the house. Despite this there were still records missing and it was very difficult to reconstruct the records. Ms Grandison confirmed that Mrs Herald was the Cashroom Partner at the time. Ms Grandison stated that Mr and Mrs Herald had instructed a law accountant prior to the Judicial Factor being appointed and he gave her some ledgers however it was discovered that these ledgers were made up from information provided by the Respondent and there was no independent source to confirm that these were correct. There were a number of anomalies with the ledgers and further investigation revealed that these records could not be relied on. Ms Grandison confirmed that all this information was provided by the Respondent. Ms Grandison explained that they took the cashbook and posted this on to ledgers and compared it with the law accountant's ledgers and investigated the differences. There were still inaccuracies and accordingly they had to go to the bank

and obtain bank statements and copies of cheques. Ms Grandison referred the Tribunal to the Schedules prepared by her.

Ms Grandison explained that the firm had been profitable at an earlier stage but due to falling income and increased drawings a problem arose. Ms Grandison further explained that Mrs Herald had become ill during the later years and had been unable to work which had resulted in a reduction in income. This caused the bank to have concerns with regard to the size of the overdraft and lending levels. Ms Grandison explained that in 1995 the turnover of the firm was £300,000 but in 2006 it was only £120,000. The profit in 1995 was £160,000, in 2003 it was £120,000 and by 2004 it was only £40,000. She confirmed that the drawings in 1994 were £150,000, in 2005 were £100,000 and in 2006 were £105,000. It was apparent from the files that it was only the Respondent that was doing the work in the later years. Ms Grandison explained that they picked a date of 1 April 2003 to start doing the reconciliations from as this was the date of the last inspection by the Law Society but even these balances could not be relied on. Ms Grandison explained that the Respondent had been operating a scheme of teaming and lading where he stole a client's money and then when they were looking for it, he stole from another client to pay them. The money was going into the bank account but the narrative was not correct. She advised that the cumulo effect of all the transactions was that the Guarantee Fund had to pay out £140,000 and there was a legitimate claim on the Guarantee Fund by Abbey National in respect of £350,000 of borrowings on Mr & Mrs Herald's property. She accordingly confirmed that the Respondent and his wife had stolen approximately £500,000. Ms Grandison also pointed out that a lot of the Respondent's clients were from a poor community and that small sums had a big impact on them.

Ms Grandison was then referred to the Productions lodged. Complainers Production 1, page 4 in connection with Article 3.3 contained a cheque payable to Herald & Company for £15,000 which was lodged in the bank account in October 2001 but only £6,000 of this was paid out to the client. Another £4,000 was narrated as having gone in on 7 November 2001 but this was a manipulation and the client was paid £10,000 on 12 November 2001 but this still left a balance due to the client. The Respondent paid £2,500 on 15 August 2003. There was still a balance of £2,500 owed to the client.

Ms Grandison stated that she suspected that the Respondent was running two sets of accounts and had a correct set of records somewhere. There were a number of evidential matters which had led her to form this opinion. She explained that the Respondent gave clients interest to make up for the delay in payment but she was not sure how he calculated this. The Legal Aid Board was also not sent the monies due to them. Ms Grandison referred to pages 18, 19 and 20 of Complainers Production 1 and confirmed that page 21 was her scheme of accounting.

In connection with Article 3.4, Mrs B's executry, Ms Grandison confirmed that page 28 of Complainers' Production 2 was her scheme of accounting. On 6 January 2003 a house in London was sold and on 30 January 2003 funds of £152,414.78 were paid in. £100,000 was paid to a beneficiary on 5 February 2003. However the total receipts into the Executry were £161,629. There was accordingly still £51,219.10 due to the ledger of the Executry. Pages 33 to 35 were the Respondent's accounting records which showed that he owed the Executry £38,976.47. This was shown as being paid on 18 August 2004 but because he manipulated the accounts, the sum was debited to Mr D.

Ms Grandison was then referred to Complainers Production 3 in connection with Article 3.5 and Mrs E's executry. She stated that the ledgers were manipulated and the beneficiary does not appear to have been paid. She then looked at the B and E Executries and worked out what should have been on those ledgers and compared them with the bank accounts as at 28 March 2003 and it was clear that there were insufficient funds in the bank account at this time to meet the payments due to the beneficiaries. The sum at credit of the client account was insufficient to meet the payments due. Ms Grandison referred to pages 46 and 47 being the Respondent's accounting records. He did not do it at the appropriate time, he did it later and waited for the money for Mr G to come in before he could pay the beneficiaries.

In respect of Article 3.6 and Mrs H, there was an entry which stated that £25,000 was capital introduced but this was incorrect. Page 54 showed that the money came from AL and AM.

In connection with Article 3.7 Mr I, Ms Grandison referred to Complainers Production 5 page 58 was the Respondent's state for settlement. Ms Grandison pointed out that his states for settlement did not show dates so that the client was unaware of the delays involved. £21,000 was paid into the bank account. The Respondent prepared an accounting to the client showing a balance due of £5,583.55. He sent a letter to the client on 25 February 2005 saying a cheque was enclosed but the file note showed that the cheque had not been enclosed. The Respondent would not have had the money to be able to send a cheque at this time. This happened in a number of cases. Ms Grandison referred to page 68 showing that at the end of February there was only £5,000 in the client account. Ms Grandison pointed out that despite this the Respondent still transferred money from the client account to the firm account on 2 March 2005 in the sum of £2,800. Ms Grandison explained that in order to be able to pay Mr I, the Respondent would have had to transfer money back from the firm account.

In connection with Article 3.8, Mrs K, Ms Grandison referred to pages 73, 74 and 75 of the Complainers Productions. On 3 June 2005, £9,666.23 was paid into the client bank account. The Respondent's state for settlement showed the balance due to the client as £6456.14 including interest. Page 79 showed that he did not have enough money in his client account to pay this. Ms Grandison referred to page 80 being a bank statement which showed that Mrs Herald arranged bridging funds from the Clydesdale Bank of £325,000.

In connection with Article 3.9, Mr G, Ms Grandison referred to pages 92 to 96 being the Respondent's records. In September 2003 Mr G sold a property for £45,000. The Bradford and Bingley mortgage was repaid but the balance due to Mr G was not paid to him but was made payable to beneficiaries in respect of the Mrs E Executry. Certain payments went into Mr G's ledger such as payments from SLAB. On 22 September Mr G wished to make payment to Company W but the money that came in was not from Mr G but was money received in respect of the Executry concerning Ms X.

In connection with Article 3.10, Ms Grandison stated that Mr G should have received in the region of £31,000 but the money was used to pay Ms K and Ms Y. There were

insufficient funds in the client account to pay the money due at this time to Mr G. Ms Grandison confirmed that the cheques produced were believed to be signed by the Respondent. She stated that the letters sent out with the states for settlement had the Respondent's reference on them and accompanied the cheques. There was no evidence of any work at this time being performed by Mrs Herald. Mr Reid also lodged a letter handwritten by the Respondent on 10 December 2005 containing the Respondent's signature. Ms Grandison confirmed that she found this letter when she first went into the Respondent's office. Ms Grandison confirmed that her enquiries revealed a similar scheme in respect of all the clients listed in the Complaint from Articles 3.11 to 3.23. She stated that the pattern was similar to those clients that she had already gone through in detail in her evidence. In response to a question from the Chairman, Ms Grandison confirmed that individual clients were due sums by the Respondent and the sums were paid from funds which were not their money at that time and came from another client. Ms Grandison confirmed that at the end of the day the shortfall was around £490,000.

In connection with Article 3.23, Ms Grandison confirmed that the money in respect of Mr and Mrs AB was used to repay others and the AB' transaction was settled from personal money introduced by the Respondent. She indicated that in respect of Article 3.14, the Respondent misled the lenders with regard to repayment and that Mrs C nearly had her home repossessed as a result of what the Respondent had done. The mortgage was not paid and the Respondent misled the lender. Ms Grandison stated that it was the transaction relating to Mr and Mrs AB that led to the scheme collapsing and matters coming to light. An arrestment was lodged on the Respondent's accounts and everything began to unravel. The Respondent and his wife raised more borrowings on their house but they were then unable to pay off their lender, Abbey National. Ms Grandison confirmed that Complainers Productions Volume 2 were her working papers and statements of account.

Mr Reid asked the Tribunal to make a finding of misconduct.

DECISION

The Tribunal found Morna Grandison to be a credible and reliable witness and accepted her evidence. The Tribunal noted that the Respondent had not attended the Tribunal to challenge the evidence given. It was quite clear to the Tribunal from Morna Grandison's evidence together with the Productions lodged that the Respondent had been engaged in a scheme employed over an extended period of time where having utilised client funds for his own benefit, other client funds were used to repay sums embezzled with an increasing balance being due on his client account which he was ultimately unable to cover through realisation of property owned by himself and his wife. It was further clear from the evidence that there was a shortfall of almost £500,000. The Tribunal considers that this type of behaviour is totally contrary to the standards expected of a competent and reputable solicitor and seriously undermines the public's confidence in the profession. The Tribunal had absolutely no hesitation in Striking the Respondent's name from the Roll of Solicitors in Scotland. The Tribunal made the usual order with regard to expenses but excluded the hearing on 1 June 2010 as there had been some confusion with regard to whether the Respondent was aware of the hearing. The Tribunal also made the usual order with regard to publicity but deferred publicity in order to avoid prejudice to any future criminal proceedings.

Chairman