

**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**

against

**RICHARD ALLAN SANDEMAN,
Solicitor, Messrs Sandemans, 34
Union Road, Camelon, Falkirk**

1. A Complaint dated 5 April 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Richard Allan Sandeman, Solicitor, Messrs Sandemans, 34 Union Road, Camelon, Falkirk (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be set down for a procedural hearing on 23 August 2013 and notice thereof was duly served on the Respondent.
5. When the Complaint called on 23 August 2013. Mr Jim Reid, Solicitor, Glasgow appeared on behalf of the Law Society and for Mr McCann for

the Respondent. It was agreed that a further procedural hearing be fixed for 15 October 2013.

6. When the case called on 15 October 2013 the Law Society were represented by their Fiscal Jim Reid, Solicitor, Glasgow. The Respondent was represented by James McCann, Solicitor, Clydebank. It was agreed that a substantive hearing be fixed for 19 December 2013. This substantive hearing was converted to a procedural hearing as there were difficulties in having a witness attend. A further substantive hearing was fixed for 7 March 2014.
7. Due to ongoing difficulties with the witness the hearing on 7 March 2014 was cancelled and the Complaint was sisted.
8. The case then called for a procedural hearing on 1 May 2015 when the sist was recalled and a substantive hearing was fixed for 4 August 2015.
9. When the case called for hearing on 4 August 2015 the Complainers were represented by their Fiscal Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by Iain Ferguson, Solicitor, Glasgow. A Joint Minute was lodged admitting the majority of the averments of fact in the Complaint and the majority of the averments of duty in the Complaint. Evidence was led by the Respondent.
10. After having considered the terms of the Complaint and the Joint Minute, the Productions lodged and the Respondent's evidence, the Tribunal found the following facts established:-
 - 10.1 The Respondent's date of birth is 11 July 1953. From 13 December 1993 he has been a partner with Messrs Sandemans, Solicitors, 34 Union Road, Camelon, Falkirk FK1 4PG.

- 10.2 The Complainers' Financial Compliance Department carried out an inspection of Messrs Sandemans on 17 and 18 August 2009.

Mrs A

- 10.3 The inspection disclosed client ledger entries in respect Company 1 (Director, Mr B) and Mrs A.

The client ledger for Company 1 (NUC001/10), in respect of the sale of the site of Property 1, contained an entry on 11 February 2009 transferring £25,000 to the client ledger for Mrs A with a description, "Funds withdrawn from SSDA to transfer to Mrs A." The corresponding entry on the Mrs A client ledger (YUI001/47) contained an entry on 11 February 2009 with a description "From NUC001/010 as agreed".

There were two further entries on the Mrs A client ledger, both dated 11 February 2009 showing a debit of £5,000 with a description "Funds transferred to Property 2 account" and a debit of £20,000 with a description "Paid Company 2 monies due to them by client".

- 10.4 The payment of £25,000 was a loan by Mr B of Company 1 to Mrs A. At the material time the Respondent did not act for Mrs A.

The Respondent knew Mrs A well and had previously acted for her. The Respondent knew that Mrs A was a local businesswoman who operated three licensed premises in town and had large cash receipts every week. The Respondent was aware that Mrs A was in arrears to her landlord and needed money to stop the lease being terminated. The arrangement was that Mrs A would make regular payments to Mr B to repay the

loan after each weekend's takings. Mr B and Company 1 had been clients of the Respondent for over 30 years.

- 10.5 The client ledger for Mrs A showed six credits, each of £1,500 and noted as cash from Mrs A to repay the loan.

The said ledger also showed two debits of £3,000 on 30 March and 7 April 2009 respectively and two debits of £1,500 on 20 April and 30 April 2009 respectively. The narration showed these payments as being part loan repayments to Company 1.

Mr and Mrs C

- 10.6 The Respondent acted for Mr and Mrs C, the owners of Property 3. The property was subject to two Standard Securities. It was sold to Mr and Mrs D.

- 10.7 When the Respondent accepted instructions to act on behalf of Mr and Mrs C in the sale, he did not carry out any checks to verify the identity of his clients. He had not acted in the original purchase.

The Respondent had known Mr and Mrs C for over 10 years and had previously acted for them. He was unable to procure from his firm's files confirmation ID documentation but obtained formal identification documents after these were requested by the Law Society.

- 10.8 The Respondent received an undated and unsigned letter from Mr and Mrs C authorising payment of £28,000 in cash to Mr C's father, Mr E, in settlement of a debt due by Mr C.

Separately, the Respondent received a signed letter dated 26 March 2009 from Mr and Mrs C instructing payment of any

free proceedings of the property sale to be made to Mr and Mrs C in cash. Said letter followed a telephone conversation between a member of the Respondent's staff and Mr C on 24 March 2009 in which Mr C confirmed he had liabilities of £98,000 and was selling the property for £100,000 because of the state of the housing market. Mr C asked that the free proceeds be paid in cash because he did not have a bank account.

Notwithstanding Mr C advising that he did not have a bank account, the Clydesdale Bank faxed Messrs Sandemans on 17 March 2009 referring to the service of a Writ in December 2008 relating to a debit on a principal current account in the name of Mr and Mrs C. The fax asked if the Clydesdale Bank's unsecured debt would be paid from the sale proceeds.

- 10.9 In Affidavits sworn on 26 March 2009, both Mr C and Mrs C respectively stated "The transfer of ownership was not effected for the purpose of avoiding any of my creditors." The Affidavits also stated that both were solvent and not aware of any circumstances which could result in their bankruptcy.
- 10.10 Free proceeds of sale of £33,000 were given to Mr and Mrs C in cash. They collected the cash from the Respondent's office on 31 March 2009 and the Respondent confirmed the position in a letter to Mr and Mrs C dated 3 April 2009.

Mr and Mrs C, in an undated but signed letter, confirmed receipt of the sum of £33,000 in cash from Messrs Sandemans, as being the free sale proceeds of the property.

The two mortgages on the property were paid off at the appropriate redemption figures and in accordance with normal

conveyancing practice. There were no inhibitions or other charges on the property.

10.11 On 21 January 2010 the Respondent attended an interview with the Complainers' Scottish Solicitors Guarantee Fund Committee at which the Committee questioned the Respondent in respect of his actings in relation to both Mrs A and Mr and Mrs C.

11. Having considered these facts and having heard submissions from both parties, the Tribunal found the Respondent not guilty of Professional Misconduct.

12. The Tribunal however considered that the Respondent's conduct may *in cumulo* amount to unsatisfactory professional conduct and accordingly remitted the Complaint under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Law Society of Scotland.

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

Edinburgh 4 August 2015. The Tribunal having considered the Complaint dated 5 April 2013 at the instance of the Council of the Law Society of Scotland against Richard Allan Sandeman, Solicitor, Messrs Sandeman, Solicitors, 34 Union Road, Camelon, Falkirk; Find the Respondent not guilty of professional misconduct; Remit the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Find no expenses due to or by either party; 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) Kenneth Paterson
Vice Chairman

14. 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

Kenneth Paterson
Vice Chairman

NOTE

The Respondent had lodged Answers to the Complaint but on the morning of the Tribunal, a Joint Minute was lodged admitting the majority of the averments of fact and duty in the Complaint. The Joint Minute also confirmed that the Complainers' Inventory of Productions 1 – 17 and the Respondent's Inventory of Productions 1 – 8 were what they bore to be. The Joint Minute further confirmed that Production 1 for the Complainers was an accurate note of the interview with the Guarantee Fund Committee.

EVIDENCE FOR THE RESPONDENT

The Respondent confirmed that he had acted for Mr B and Company 1 for about 33 years. Mr B was an office holder of Company 1. Mrs A had been a client of the Respondent but was not a client at the time that the loan from Mr B to Mrs A occurred. The Respondent indicated that he now accepted that she was a client but then in cross-examination advised that the client matter card was only created as a matter of convenience and that Mrs A was not a client when the loan was made.

In connection with Mr and Mrs C, the Respondent confirmed that his Productions 3 – 7 were identity documents for Mr and Mrs C. He confirmed that these were not obtained at the time of the transaction but were obtained retrospectively after the Law Society asked for them. The Respondent however explained that he had acted for Mr and Mrs C since the 90's and knew who they were. He also confirmed that although the identification letters were addressed to Mr C, he had correspondence in the file in relation to the title deeds which showed that both Mr and Mrs C lived at that address. He also had a redemption statement and signed discharges which included the address and the property was in joint names. The Respondent's Production 8 was an internet article in respect of Mr C's £800,000 share of a lottery win by his father. The Respondent had acted for Mr C in a court action in connection with this.

Mr Ferguson referred the Respondent to Complainers' Production 10 which was a draft undated unsigned letter directing £28,000 in cash to be made payable to Mr C's father. This was never actioned. The Respondent confirmed that his clients told him

that they did not have a bank account and he believed them. In respect of Complainers' Production 12 being the faxed letter from the Clydesdale Bank dated 17 March 2009 the Respondent confirmed that he was aware of this but so far as he understood it the bank account had been closed because the bank were suing Mr and Mrs C in respect of a debt. Mr Ferguson referred the Respondent to Complainers' Productions 13 and 14 being affidavits by Mr and Mrs C confirming that they were solvent and able to pay their debts. The Respondent confirmed that Mr and Mrs C's debts were in the region of £98,000 but the sale price of the property was £100,000.

In cross-examination, the Respondent confirmed that the loan had been made to Mrs A because she and Mr B knew each other and Mrs A needed funds in respect of arrears of rent to her pub landlord. The Respondent confirmed that there was no loan documentation in respect of the loan by Mr B to Mrs A. Complainers' Production 2 showed the loan repayments being made by Mrs A to Company 1. The Respondent confirmed that he knew the funds were coming from Mrs A's business because he knew she was a local businesswoman who had three pubs in the area and she would regularly pay money in to repay the loan after the weekend's takings.

The Respondent confirmed that he would have had identity documentation for Mr and Mrs C in his files in the past but he had been unable to procure any ID documentation from his files due to a breakdown in the system. He confirmed that Complainers' Production 17 was a letter dated 1 June 2009 which was prepared by someone in his office at the request of Mr and Mrs C but that the Respondent refused to sign it. The Respondent also confirmed that the letter in connection with the £28,000 going to Mr C's father was countermanded and Mr and Mrs C asked him to pay them the sale proceeds of £33,000 in cash. He indicated that Production 17 did not raise any alarm bells with him because it was done well after the settlement.

The Respondent confirmed in re-examination that there was no file for Mrs A and no fee was charged.

In response to a question from the Tribunal, the Respondent confirmed that he accepted that there was a debt due on the Clydesdale Bank account in Mr and Mrs C's name.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that in respect of Mrs A, there was a breach of rule 24 of the Accounts Rules due to the Respondent's failure to check the source of the funds received from Mrs A and in respect of his failure to obtain the necessary identification documents from Mr and Mrs C and the substantial cash payment made to them. Mr Reid submitted that the Respondent's evidence was unclear in respect of what his position was with regard to whether or not Mrs A was a client at the time the loan was made. Mr Reid submitted however that it was clear that £25,000 was credited to a client matter ledger in her name. Mr Reid submitted that this showed that it must have been client's funds. If Mrs A was a client the Respondent had an obligation to check the source of the funds. The Respondent stated that he knew the £1500 a week was coming from pub takings but there was no documentation or identification made in connection with the source of these funds. There was also no loan agreement. Mr Reid submitted that the Respondent was not merely collecting a debt and did have to comply with rule 24 of the Accounts Rules.

In connection with Mr and Mrs C, the identification documentation had been produced after the event. There was none on the file at the time the transaction took place. Mr Reid stated that there were also a number of odd features in respect of this transaction and referred to the dated and signed letter indicating that £28,000 should be paid in cash to Mr C's father which was not implemented and then £33,000 in cash was sent to the clients despite the fax received from the Clydesdale Bank which would suggest that there was a bank account. Then after settlement there was an odd letter dated 1 June 2009 that appeared not to have been sent out to the effect that £28,000 was paid to Mr C's father in respect of the debt. Mr Reid submitted that all these factors together meant that there was a breach of rule 24 and that this was sufficiently serious and reprehensible so as to amount to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Ferguson referred to his written submissions as undernoted:-

You will note from the Answers for the Respondent and now a Joint Minute between the Fiscal and myself as the Respondent's Solicitor, that most of the facts and law are admitted.

MRS A

In the course of this complaint process the Respondent fully vouched the source of the funds used by Mr B to make a loan to Mrs A. The Respondent had no doubt as to the identity of Mrs A as he knew her as a local businesswoman whom he had met personally and my client was aware that she operated three businesses in the town all licensed premises and that she had cash receipts in excess of £20,000.00 weekly. Evidence indicates that she was a client. There was a ledger card for her and he did have ID in his central records and not on the file. He did not open a file for her and did not charge her for any work. She is no longer a client.

The De Minimus Defence

In regard to the various repayments made by Mrs A to the loan these individual payments were not of such a level as required money laundering according to guidance normally given by the complainers to the profession. It is respectfully submitted that it is simply wrong of the complainers to say that in any case where a Solicitor is receiving loan repayments or any other form of repayment to a client amounting to £1,000.00 or £2,000.00, and these payments are from a person operating a cash based business (like a public house or similar) that therefore a level of notifiable suspicion arises in relation to instalment payments at this level nor that any breach of money laundering procedures would ordinarily in these circumstances be seen to exist.

Reference is made to the List of Authorities for Respondent Nos 5-7 which are:-

- (1) the previous Money Laundering Regulations of 1993 specifically Regulation 7 (1) and Case 3 and Case 4 mentioning a de minimus amount of under 15,000.00 ecu or euro and
- (2) the Money Laundering Regulations 2003, Regulation 4(2) which is in similar terms with the same amount.

- (3) the Money Laundering Regulations 2007

It is true that these amounts are not mentioned in the 2007 Regulations but they are treated in practice as de minimus amounts. If the entire loan had been repaid via the ledger then this amount of 15,000.00 euro may have been breached. However not all the payments were sent through the Firm and the amount actually handled was within the limit amount.

The Regulated Sector Defence

Collection of the repayments was effectively debt recovery work and not within the regulated sector for legal services.

Please look at Authority 7 on my List of Authorities for the Respondent you will see that in the Money Laundering Regulations 2007 “Independent Legal Professional” is said to have the meaning given by Regulation 3(9).

Regulation 3 confirms that these Regulations apply to independent legal professionals acting in the course of business carried on by them in the UK and on page 6 of the Regulation at sub clause (3)(9) “Independent Legal Professional” means a Firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning

- (a) the buying and selling of real property or business entities
- (b) the managing of client money, securities or other assets
- (c) the opening or management of bank, savings or securities accounts
- (d) the organisation of contributions necessary for the creation, operation or management of companies or
- (e) the creation, operation or management of trust companies or similar structures.

Debt collection does not appear to fit within the categories of legal services which are in the regulated sector. There was no sale of real property or business entities, no managing of client money, securities or other assets, no opening or management of bank accounts, no organisation of contributions necessary for the creation, operation or management of companies and no creation, operation or management of trust companies or similar structures.

MR AND MRS C ("the C's")

ID

With regard to the specific denial at 7.2 of the Answers see the Productions 3 – 7 from the List of Productions for Respondent. In addition the Respondent knew these clients well over approximately 10 years and had acted for them previously including in family law litigation. A copy the result of a web search No. 8 from the List of Productions of Respondent discloses a Daily Record article in 1999 re the lottery win and the paternity case in which the Respondent was involved.

My client was corresponding with the C's at their address and was receiving instructions from his clients in response. All his letters were addressed to the client at the address he had for them and in themselves were evidence of address ID. In addition he received letters directly from Clydesdale Bank to him in response to his request for the Titles of that property and in respect of a Redemption Statement for that property and he also received a Discharge from Clydesdale Bank. In addition he corresponded with RBS through their solicitors and they sent a redemption statement for this property from RBS and after redemption sent him the Discharge of the Security over this property. He obtained the Titles which confirmed their address. These amount to address ID. All ID is kept in a central location and my client has now provided a copy of the ID that he obtained. My client also met the clients face to face and so was in a position to verify that the C's were who they said they were and the same people he had dealt with previously in the family law litigation.

Cash

The Respondent was entitled to accede to his clients request to be paid in cash the balance of the free proceeds of the sale of their house. Indeed in the absence of any specific provision in a Letter of Engagement to the contrary not acceding to the

clients request may itself result in a complaint of inadequate professional service and perhaps also a professional conduct breach which could have ultimately led also to proceedings before this Tribunal.

The 2 mortgages or loans were paid off per the redemption figures supplied but there were no inhibitions or other charges prohibiting payment to the owners .

The Complainers have wrongly taken the view that because Mr C previously had a bank account with Clydesdale Bank, therefore the clients still had a bank account into which the Respondent was required to pay the cheque for the full proceeds of the sale of the house. That is factually incorrect. The bank account with Clydesdale Bank had been terminated by the Bank for the purposes of a litigation by the Bank through their agents against the Respondent's clients.

It was a matter for creditors to take such steps as they wished in regard to inhibition or arrestment or court action for recovery. In the absence of such any Solicitor is entitled to accede to the clients request to be paid in cash. Cash is the only legal tender and/or legal currency.

Proceeds of Crime Act 2002

The POCA offences are those in Part 7 of the POCA 2002.

Please note that the payment of funds to the C's was not a breach of the POCA 2002.

The Sections forming part of the Complaint are Section 327 and Section 328 but both require that the property that is transferred, converted or acquired, retained, used or controlled is "criminal property". The property here was the clients own house legally owned and the net proceeds were legally due to them. There was no criminal property here. There is no allegation of any predicate offence which is an absolute necessity for Sections 327 and 328 to apply.

Section 330 is not a part of this Complaint nor is argued to apply. Indeed it does not apply for the foregoing reason i.e. that no money laundering was involved as no "criminal property" was involved.

There appears to be an assumption that the payment of cash to a client is in itself suspicious. With respect it was known by the C's and the Respondent that the C's had monetary problems which was why the property was being sold. It is not an offence for owners to sell their own property to pay off debt and indeed it was a perfectly sensible and prudent thing for the C's to do before the debts increased further and exceeded the value of the property rather than the other way round. There was a good reason to pay cash and that is not suspicious in the circumstances.

The clients' option to sell is only denied if the creditor had a security or had taken other enforcement action prohibiting a sale. There were 2 Standard Securities both of which were paid off in full from the proceeds of sale. Thereafter it is not unlawful for a debtor to choose who he intends to pay, in what order and when to pay them and indeed whether they can negotiate a better settlement for less than the full amount owed.

If the clients still had an account that was operative and had paid the money in the Bank would have been entitled to use the principle of "set off" to keep the proceeds towards the unsecured debt to them. That is also treated in banking law as a "cash payment" and so the Bank could have obtained a preference to any other creditors. It is not difficult to see why receiving cash in this way would allow the clients freedom of whom to pay and when to pay and at what settlement amount rather than allowing the Bank a complete preference. It would allow the debtors complete flexibility in settling with their creditors including the Bank.

Summary and Conclusion

My client has admitted the facts of this matter and has admitted the law but I would argue that he has not breached any rule or requirement and so is not guilty of professional misconduct (PM).

I refer to the definition of PM from the Sharp case "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."

If however the Tribunal find that there has been a breach of a rule then I would remind the Tribunal

(1) that whilst a breach may be treated as PM, a single breach of a rule does not necessarily have to be treated as such and

(2) The Legal Profession and Legal Aid (Scotland) Act 2007 (the 2007 Act) introduced the new lower level or category of misconduct called UPC and defined in the 2007 Act as:-

"... with respect to a practitioner who is a conveyancing practitioner, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable conveyancing practitioner, but which does not amount to professional misconduct and which does not comprise merely inadequate professional services".

There is now a need for the SSDT to consider in every case whether the conduct complained of is PM, unsatisfactory professional conduct (UPC) or neither.

The facts and the law have been admitted but they do not amount to a breach of a rule and it is submitted that they do not amount to either PM or UPC.

Mr Ferguson emphasised that there were no offence in this case which would create illegal money. He also stated that if the money had gone into the Clydesdale Bank account the bank would have used it to set off the debt owed by Mr and Mrs C to the bank and this would have meant that the bank would get their money rather than any other debtor. Mr Ferguson stated that giving the clients cash gave them the freedom to decide who they wished to pay. This was not a breach of any rule or law and did not amount to professional misconduct. Mr Ferguson stated that one option could have been to treat it as unsatisfactory professional conduct but there was not any breach of a rule.

In response to a question from the Tribunal, Mr Ferguson stated that there were no aggravating factors and accordingly even if there was a breach of the rule it did not

amount to professional misconduct. Mr Ferguson also accepted in response to a question from the Tribunal, that solicitors should be up to date with good practice and be aware of the up to date terms of the Money Laundering Regulations.

DECISION

The Tribunal noted Mr Ferguson's submissions with regard to the de minimus defence and regulated sector defence. However the averment of misconduct in respect of the Mrs A matter was a breach of rule 24 of the Accounts Rules. This rule states that every solicitor shall, in respect of all other business carried on by the solicitor, comply with the provisions of the Money Laundering Regulations as if such other business constituted relevant business. The current Money Laundering Regulations 2007 do not contain any de minimus amount and the Tribunal do not accept that the Respondent was only involved in debt collection. The Tribunal accordingly found that the Respondent was in breach of rule 24 of the Accounts Rules in respect of his failure to take any steps to check the source of the funds being received from Mrs A.

Given the evidence led, the Tribunal was unable to make a finding as to whether Mrs A was or was not a client at the time of the loan. The evidence was inconclusive in respect of this matter. The Tribunal however do accept on the basis of the evidence led, that Mrs A had previously been a client of the Respondent and was a local businesswoman who the Respondent had known for over 10 years. The Tribunal further accepted that the Respondent was aware of the nature of Mrs A's business. This taken together with the fact that the amounts of the repayments were only in the region of £1500 instalments, the Tribunal could not find that this breach of rule 24 was so serious and reprehensible so as to meet the Sharp Test. Given that there was no written agreement in respect of the loan, the Tribunal however consider that the Respondent's conduct may amount to unsatisfactory professional conduct when taken together with his actings in respect of Mr and Mrs C.

In respect of Mr and Mrs C, the Tribunal consider that once it was established that the Respondent's clients had the right to be paid the money it should not make any difference whether it was a cheque or cash. The Respondent clearly knew the source of the funds in this case having been involved in the sale of Mr and Mrs C's house.

The standard securities over the property had been discharged and there were no inhibitions or other charges on the property. The Tribunal note that there was a failure at the time to carry out formal identification checks but considered that this was a technical failure given that the Respondent had previously acted for Mr and Mrs C and knew the clients. The Tribunal accepted the Respondent's evidence with regard to him refusing to sign the letter at Complainers' Production 17.

The Tribunal however noted that there were a number of unusual circumstances in this case, the signed mandate to pay Mr C's father which was then cancelled, the large cash payment and the lack of formal identification documentation, which may mean that this *in cumulo* with the Respondent's actings in respect of Mrs A could amount to unsatisfactory professional conduct. In the circumstances the Tribunal found the Respondent not guilty of professional misconduct but remitted the Complaint in terms of Section 53ZA to the Law Society of Scotland to consider if the conduct *in cumulo* may amount to unsatisfactory professional conduct.

The Law Society asked for expenses to be awarded given that it was the Respondent's own conduct which brought him before the Tribunal. Mr Ferguson asked the Tribunal not to award any expenses given that more thought should have been given to whether or not a prosecution was merited. Mr Ferguson pointed out that he had provided evidence at an early stage as to why the prosecution was misplaced.

In the whole circumstances of the case the Tribunal considered that no expenses should be awarded to or by any party. Although the Respondent's conduct may amount to unsatisfactory professional conduct, the Tribunal was of the view that it clearly did not amount to professional misconduct.

The Tribunal made the usual order with regard to publicity.

Kenneth Paterson
Vice Chairman