

**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, formerly at 26 Drumsheugh
Gardens, Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

Complainers

against

**ALAN DAVID SUSSKIND, The Ca'd'Oro, 45
Gordon Street, Glasgow**

First Respondent

and

**CAMERON STUART FYFE, 65 Bath Street,
Glasgow**

Second Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Alan David Susskind, The Ca'd'Oro, 45 Gordon Street, Glasgow (hereinafter referred to as "the First Respondent") and Cameron Stuart Fyfe, 65 Bath Street, Glasgow (hereinafter referred to as "the Second Respondent") were practitioners who may have been guilty of professional misconduct.
2. The Secondary Complainer is Joan Bell Gumm, 11 Pittmedden Road, Bishopbriggs, Glasgow.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondents. Answers were lodged for the Respondents.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 5 February 2016 and notice thereof was duly served upon the Respondents.

5. A procedural hearing took place on 5 February 2016. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The First Respondent was represented by William Macreath, Solicitor, Glasgow. The Second Respondent was represented by Lauren Sutherland, Advocate. On the Fiscal's motion a further procedural hearing was fixed for 26 April 2016.
6. On 26 April 2016 the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The First Respondent was represented by William Macreath, Solicitor, Glasgow. The Second Respondent was not present nor represented but his Advocate had submitted a letter to the Tribunal on his behalf. On joint motion a further procedural hearing was fixed for 21 June 2016.
7. On 21 June 2016 the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was represented by William Macreath, Solicitor, Glasgow. The Second Respondent was represented by Lauren Sutherland, Advocate. On joint motion a further procedural hearing was fixed for 30 August 2016.
8. On 30 August 2016 the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was represented by William Macreath, Solicitor, Glasgow. The Second Respondent was represented by Lauren Sutherland, Advocate. The case was continued to the first of the dates fixed for the Hearing, namely 9 September 2016.
9. On 9 September 2016 the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was represented by Mr Macreath, Solicitor, Glasgow. The Second Respondent was represented by Lauren Sutherland, Advocate. An amended Complaint was by agreement of the parties lodged and substituted for the original Complaint. A Joint Minute of Admissions signed by the Fiscal and the First Respondent's representative was lodged with the Tribunal. A Joint Minute of Admissions signed by the Fiscal and Second Respondent's representative was lodged with the Tribunal. The Hearing was continued to 12 September 2016. However, on the afternoon of 9 September 2016 the Fiscal and the First Respondent's representative intimated to the

Tribunal that agreement had been reached on the remaining matters which had been in dispute but further time was required to formulate a Joint Minute of Admissions. The case was therefore continued to 13 September 2016.

10. On 13 September 2016 and 14 September 2016 the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh assisted by James Stephenson, Solicitor-Advocate, Edinburgh. The First Respondent was represented by William Macreath, Solicitor, Glasgow. The Second Respondent was represented by Lauren Sutherland, Advocate. A second Joint Minute of Admissions signed by the Fiscal and the First Respondent's representative was lodged with the Tribunal. Said second Joint Minute of Admissions agreed that paragraphs 2.3, 2.4 and 4.1(a) in the amended Complaint lodged on 9 September 2016 should be substituted by those identically numbered paragraphs reproduced in the Joint Minute of Admissions. No evidence was led.
11. The Tribunal found the following facts established:-

11.1 The First Respondent is a solicitor enrolled in the Registers of Scotland. His date of birth is 4 September 1957. He was enrolled as a solicitor on 13 November 1979. Between 1 September 1983 and 22 March 2011 he was a Partner in the firm of Ross Harper. Between 15 October 1999 and 31 March 2010 he was the Cashroom Partner with the said firm. Between April 2001 and February 2010 he was the Managing Partner of the said firm. He was also a member of its Management Committee formed in or around mid-2009. He is presently a solicitor with the firm of Harper Macleod which has a place of business at The Ca'd'Oro, 45 Gordon Street, Glasgow.

11.2 The Second Respondent is a solicitor enrolled in the Registers of Scotland. His date of birth is 27 July 1954. He was enrolled as a solicitor on 1 February 1978. Between 1 September 1982 and 6 May 2011 he was a Partner in the firm of Ross Harper. He is presently a solicitor in the employ of the firm of Drummond Miller which has a place of business at 65 Bath Street, Glasgow.

11.3 The said firm was dissolved on 5 April 2012 following the appointment of an interim Judicial Factor. As at that date the Partners of the firm were Alan Matthew Miller, Joseph Mullen, Paul John McHolland and James Price. Joseph Mullen was

assumed as a Partner on 1 September 1988. James Price was assumed as a Partner on 1 April 2003. Alan Matthew Miller was assumed as a Partner on 1 November 2007 and Paul John McHolland assumed as a Partner on 1 April 2008

- 11.4 There is a Secondary Complainer in relation to the First Respondent namely Joan Bell Gunn, 11 Pittmedden Road, Bishopbriggs, Glasgow (hereinafter referred to as "JG") who may claim to have been directly affected by the First Respondent's misconduct and may thereafter seek compensation for losses resulting from that misconduct.
- 11.5 On 30 October 2003 the First Respondent was consulted by Peter McLaren Gunn (hereinafter referred to as "PG") in relation to issues arising from his separation from his wife, JG. On 20 November 2003 the First Respondent wrote to agents then acting on behalf of JG to advise of his interest and to outline the position of PG in relation to the outstanding financial matters with a view to divorce. JG consulted new agents, the PRG Partnership, who wrote to the First Respondent on 23 December 2003 advising of their interest and confirming that JG had previously raised proceedings which were at that point sisted. On 8 March 2004 the First Respondent met with PG and reviewed the outstanding financial issues and their possible division. On 11 March 2004 the First Respondent wrote to the PRG Partnership outlining PG's position on said outstanding financial issues. On 15 June 2004 the First Respondent received the files for PG from his previous agents, Maxwell McLaurin. Within those files was a copy of the proceedings raised by JG at Glasgow Sheriff Court, reference M195/99C. On 1 July 2004, the First Respondent met with PG to review the position of matters and the pleadings in the action. On 2 July 2004 the First Respondent wrote to the PRG Partnership outlining PG's position on the financial issues outstanding and tendering his settlement proposals. By letter dated 13 July 2004 from the PRG Partnership said proposals were rejected. On 26 January 2005 the First Respondent, following a meeting with PG, agreed to review the file to then tender advice to PG as to how he might conclude matters to allow Decree of Divorce to be granted. A copy of the said extant and sisted proceedings at the instance of JG were held on the file for PG held by the First Respondent. On 27 January 2005 the First Respondent wrote to PG enclosing a simplified divorce application form. He advised PG that JG could oppose that application if it were lodged. On 8 March 2005 the First Respondent

wrote to PG in identical terms as PG had not received the letter dated 27 January. On 21 March 2005 the First Respondent met PG, who had partially completed the simplified divorce application form, a Form SP5, and signed said form on 15 March 2005. In signing said form PG declared that the facts stated in the said application applied to his marriage. In said form PG had designed JG as “not known – Bishopbriggs area”. He had stated that the addresses of his children of the marriage were “not known”. He stated that he was not aware of any court actions which might affect his marriage. At the said meeting on 21 March the First Respondent notarised the Affidavit completed by PG on page ten of the said form. In said Affidavit PG affirmed and swore that to the best of his knowledge and belief the facts stated in the application were true. The First Respondent ought to have known that said facts were not true. The First Respondent knew that JG was represented by solicitors with whom he had been in correspondence. The First Respondent ought to have known that there were extant Court proceedings at the instance of JG that had been sisted, a matter which directly contradicted part 1 Section 11 of the said application form. The First Respondent ought to have known that there were claims for financial provision which JG may have wished to pursue which contradicted part 1 Section 12 of the said application form. In his letters to PG dated 27 January and 8 March both 2005 he advised PG that JG could oppose the application. He, however, notarised an Affidavit of PG affirming and swearing that JG’s address and the addresses of their children were not known. In those circumstances, JG would have no knowledge of the application having been presented and would be unable to oppose it. The First Respondent ought to have been aware of these matters. Further, the First Respondent following his meeting with PG on 26 January 2005 took no steps to correspond with the solicitors acting for JG to advise of PG’s position regarding the financial issues and the possibility of him raising separate proceedings by way of a simplified divorce application.

- 11.6 A solicitor must not tender improper advice to a client. A solicitor must never knowingly give false or misleading information to the Court. In tendering advice to PG, his client, in the letters dated 27 January and 8 March both 2005, and following an attendance with PG on 26 January 2005, the First Respondent ought to have known that said advice was improper and he ought to have foreseen that his client, PG, would act on that advice. Thereafter the First Respondent by not discharging his duties properly as a Notary Public allowed false evidence to be presented to the

Court by his client in that he notarised the simplified procedure divorce application form that contained information that was false. His client could not competently nor in good faith present an application for divorce under that procedure. In notarising the Affidavit in the said application form, the First Respondent facilitated his client, PG, in presenting false information to the Court, which he ought to have known was false. The First Respondent failed to have PG read over the said Form SP5. The First Respondent failed to read over the said Form SP5 himself prior to notarising same. Had he done so he would have been aware of the false statements and information provided by his client and contained within the said form.

11.7 The Financial Compliance Department of the Complainers conducted an inspection of the financial records, books, accounts, and documentation of the firm of Ross Harper (hereinafter referred to as “the firm”) on 5-8 March, and 2-3 April, both 2012. The said firm had previously been inspected on 20-22 June 2011. These inspections in 2012 identified a number of matters of serious concern including poor and inadequate record keeping, inaccurate recording of the said firm’s financial position, incorrect and inappropriate rendering of accounts, clients funds being held in the firm account, breaches of the money laundering regulations, and clients funds not being adequately invested. Following said inspections the said Financial Compliance Department produced a Special Inspection Report, a Summary of Findings, and an Investigation Report dated 4 April 2012, hereinafter referred to as “Executive Summary”. An invitation was submitted to the then partners of the said firm to attend a meeting of the Complainers’ Guarantee Fund Committee on 4 April 2012. As a result of the said serious concerns regarding the said firm’s financial position, and said concerns not being adequately addressed by the Partners of the said firm, the Complainers presented a Petition at the Court of Session on 5 April 2012 for the appointment of a Judicial Factor. An interim appointment was granted on 5 April and confirmed by the Court on 16 May, both 2012.

11.8 Following further investigations by the Complainers said Department, a number of particular issues were identified. Those issues are as follows:-

Ms Teresa Davidson

The firm was instructed in 2008 in connection with a medical negligence claim. The Second Respondent was the partner responsible for the file. The client was legally aided and the Second Respondent was the nominated solicitor.

The firm's ledger commences with a payment of £300 for a Report on 30/04/2009 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
16/10/2009	Report	£300 Dr
16/02/2010	Cancel cheque 003053 paying Professor T H Pennington – to be reissued.	-£300 Dr
16/02/2010	Paid Professor T H Pennington – Earlier entry cancelled and now reissued.	£300 Dr
30/09/2010	Cancel entry to Professor T H Pennington – uncashed and out of date.	-£300 Dr
15/09/2011	Professor Pennington re payment of report.	£300 Dr

A solicitor assisting the Second Respondent instructed Professor Pennington's report on 17 October 2008. The report from Professor Pennington was received on 5 March 2009 and acknowledged by the Second Respondent on 11 March 2009. The expert issued his fee note on 23 April 2009. The Second Respondent submitted an application for reimbursement of outlays to SLAB on 12 August 2009 which was paid by SLAB on 16 October 2009. The Second Respondent failed to settle the expert's fees timeously.

On 18 August 2011 an email sent to a James Wilson advised that "Alan" had asked that the cheque for £300 to Professor Pennington be reissued because the original one was out of date. The question was asked – "Do you need another NYP?" In the firm's ledger the entry "Cancel entry to Prof Pennington – uncashed and out of date" is circled.

A letter to Professor Pennington dated 14 September 2011 states that a cheque for £300 in settlement of the account is enclosed.

Carlin Meghan

The firm was instructed in 2007 in relation to a medical negligence case. The Second Respondent was the Partner and the fee earner responsible for the file. The client was legally aided and the second Respondent was the nominated solicitor. The ledger shows

a cheque being issued to South Glasgow University Hospital for medical records on 4 October 2007 and being cancelled on 24 April 2008 and reissued. The ledger shows a cheque being paid to Dr Beattie for a medical report and then being cancelled and reissued 8 months later and then being cancelled and reissued a further 6 months later.

The ledger shows a payment of £1100 to Dr J O Beattie for a Medical Report on 28/05/2009 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
30/08/2009	Pay Dr J O Beattie –Medical Report	£1100 Dr
31/03/2010	Cancel cheque 002744 payable to Dr J O Beattie dated 31.09.2009	-£1100 Dr
31/03/2010	Dr J O Beattie re earlier cancellation 002744	£1100 Dr
15/07/2010	Cancel entry 31.03.10 as done incorrect	-£1100 Dr
15/07/2010	Cancel entry 31.03.10 as done incorrect	-£1100 Dr
30/09/2010	Cancel cheque 004209 paying Dr J O Beattie- to be reissued	-£1100 Dr
30/09/2010	Dr J O Beattie – earlier entry cancelled and now reissued	£1100 Dr

Similar entries occur on 31 March 2011 and 29 November 2011. A reimbursement of outlays was received from SLAB on 31 August 2009. The Second Respondent failed to settle Dr Beattie's fee note timeously.

Matthew Findlay

The firm was instructed in 2006 in connection with a medical negligence case and the Second Respondent was the partner and the fee earner on the file. The client was legally aided and the Second Respondent was the nominated solicitor. The firm's ledger card discloses the following entries.

Date	Narrative	Amount
28/01/2009	Report Rowan W Parks Manual FIN386/3	£400 Dr
28/01/2009	SLAB Payment received 28.01.09 SLAB for WRS Transfer	£400 Cr
28/01/2009	SLAB fees allocated.	£400 Cr
05/08/2009	Cancel cheque dated 28/1/2009 00168	-£400 Dr
05/08/2009	Paid Rowan Parks	£400 Dr
31/12/2009	Pay Mr Rowan Parks teleconference 16.11.09	£200 Dr

12/05/2010	Cancel chq 003570 paying Rowan Parks – to be reissued.	-£200 Dr
12/05/2010	Paid Rowan Parks – earlier entry cancelled and now re-issued.	£200 Dr

Date	Narrative	Amount
16/02/2010	Pay John Pollock- Medical Report 003812	£600 Dr
07/04/2010	Cancel chq 003812 paying John G Pollock – to be reissued.	-£600 Dr
07/04/2010	Paid John G Pollock – Earlier entry cancelled and now reissued.	£600 Dr

Date	Narrative	Amount
30/09/2010	Pay Ian G Finlay – causation report MED0012- Medical Practitioners Civil.	£650 Dr
31/03/2011	Cancel chq 005521 paying Ian G Finlay- to be reissued.	£650 Dr
31/03/2011	To correct above entry.	-£650 Dr
31/03/2011	To correct above entry.	-£650 Dr
31/03/2011	Ian G Finlay – earlier entry cancelled and now reissued.	£650 Dr

Date	Narrative	Amount
31/12/2009	Pay Nicolson O'Brien- fee for uplifting process – NIC0303	£11.50Dr
31/12/2009	Pay Nicolson O'Brien Solicitors – Agency fee on 16.09.09	£34.50 Dr
30/06/2010	Cancel chq 003569 paying Nicolson O'Brien – to be reissued.	-£46 Dr
30/06/2010	Nicolson O'Brien – Earlier entry cancelled and now reissued.	£46 Dr
15/12/2010	Cancel chq 004883 paying Nicolson O'Brien – to be reissued.	-£46 Dr
15/12/2010	Paid Nicolson O'Brien –Earlier entry now cancelled and reissued.	£46 Dr
31/08/2011	Cancel chq 000086 paying Nicolson O'Brien- to be reissued.	-£46 Dr
31/08/2011	Nicolson O'Brien - Earlier entry cancelled and now reissued.	£46 Dr
29/02/2012	Cancel cheque 006049 paying Nicolson O'Brien re uncashed and out of date to be reissued.	-£46 Dr
29/02/2012	Paid Nicolson O'Brien earlier cheque cancelled	£46 Dr

The firm's ledger shows a series of payments being made by cheque to Rowan Parks, Ian G Finlay, Nicolson O'Brien and John G Pollock and then being cancelled and reissued. The cancellations date from August 2009 onwards with the ledgers showing the amendments from that date.

Professor Rowan Parks was instructed by the Second Respondent to prepare a report and sent his report with a Fee Note for £400 on 15 December 2008. A reimbursement was received from SLAB on 28 January 2009. Dr Parks sent a reminder on 8 July 2009 for the fee of £400 which remained unsettled. It was eventually settled on 5 August 2009. A second report was instructed by the Second Respondent on 4 November 2009. Dr Parks rendered a fee note for £200 on 17 November 2009. A reimbursement was received from SLAB on 24 December 2009. The Second Respondent failed to settle Dr Park's fee timeously. On 12 May 2010 a memo was sent by the Second Respondent's secretary requesting payment of that fee from "the drawer".

Linda Barr

The firm was instructed in 2008 in connection with a medical negligence case and Second Respondent was the partner responsible for the file with Louise Bain being the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor. The firm's ledger discloses the following

Date	Narrative	Amount
04/04/2008	Paid Barbara Bain re copy records 011654	£24.75 Dr
27/10/2008	Cancel chq 011654 paying Barbara Bain – uncashed and out of date	-£24.75
17/11/2008	Paid Miss B Bain re records	£24.75 Dr
30/10/2009	Cancel chq 001425 paying Miss B Bain – uncashed and out of date.	-£24.75

The ledger indicates that in 2008 and 2009 cheques were noted as being issued on two occasions and then cancelled and reissued.

Valerie Breen

The firm was instructed in 2009 in connection with a medical negligence case and the Second Respondent was the partner responsible for the file and the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor. The firm's ledger card discloses that a payment of £766.85 was received from SLAB on 23 October 2009.

The firm ledger also discloses a payment of £500 to Mr James D Watson for a Medical Report on 19 May 2009 instructed by the Second Respondent and this has then been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
23/10/2009	Pay Mr James D Watson Medical Report 003131	£500 Dr
30/04/2010	Cancel chq 003131 paying Mrs J D Watson 003132	-£500 Dr
30/04/2010	Mr J Watson – earlier entry cancelled and now reissued	£500 Dr

There are further similar entries dated 29 October 2010, 31 May 2011 and 29 November 2011. The Second Respondent failed to settle said report fee timeously. The ledger also discloses a payment of £50 to Mrs E Mackay for secretarial services on 19 May 2009 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
23/10/2009	Pay Mrs E MacKay – Secretarial Services 003132	£50 Cr
30/04/2010	Cancel chq paying Mrs E MacKay to be reissued	-£50 Dr
30/04/2010	Mrs E MacKay – earlier entry cancelled and now reissued	£50 Dr

The ledger shows further similar entries on 29 October 2010, 31 May 2011 and 29 November 2011.

Ms Keylaine Burke

The firm was instructed in 2009 in connection with a medical negligence case and the Second Respondent was the partner responsible for the file and also the fee earner. The client was legally aided and the Second Respondent was nominated solicitor. The firm ledger discloses a payment of £930.05 was received from SLAB on 16 December 2009.

The ledger commences with an entry narrating a payment of £650 to Rowan Parks on 06/11/2009 and this has been scored through to show that the entry is deleted. The Second Respondent instructed Dr Parks to prepare a report which he issued along with his fee note for £650 on 20 August 2009. The following entries then appear in the ledger.

Date	Narrative	Amount
16/12/2009	Pay Rowan Parks – fee for professional services	£650 Dr
30/06/2010	Cancel chq 003508 paying Rowan Parks – to be reissued.	-£650 Dr
30/06/2010	Rowan W Parks – earlier entry cancelled and now reissued.	£650 Dr
31/12/2010	Cancel chq 004889 paying Rowan Parks – to be reissued	-£650 Dr

31/12/2010	Paid Rowan Parks – earlier entry cancelled and now reissued	£650 Dr
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The ledger continues to show cheques being issued to Rowan Parks and then cancelled and reissued on 31 August 2011 and 29 February 2012.

Reminder letters had been issued by Professor Rowan Parks addressed to the Second Respondent requesting payment of his £650 fee on 3 February 2010, 2 August 2010, 5 November 2010, 3 February 2011, 6 May 2011, and 5 August 2011. The Second Respondent failed to respond to said reminders and failed to settle said fee note timeously.

Ms Mary Graham

The firm was instructed in 2005 in connection with a medical negligence case and the Second Respondent was the partner responsible for the file. The client was legally aided and the Second Respondent was the nominated solicitor. The firm ledger discloses a payment from SLAB for £1970.25 was received on 19 December 2009.

The following entries appear in the ledger.

Date	Narrative	Amount
18/12/2009	Paid Breast Research Fund for Medical Report	£350 Dr
30/06/2010	Cancel chq 003526 paying Breast Research Fund – to be reissued.	-£350 Dr
30/06/2010	Breast Research Fund – Earlier entry cancelled and now reissued.	£350 Dr
31/12/2010	Cancel chq 004895 paying Breast Research Fund – Earlier entry cancelled to be reissued.	-£350 Dr
31/12/2010	Paid Breast Research Fund – Earlier entry cancelled and now reissued.	£350 Dr
31/08/2011	Cancel chq 000383 paying Breast	-£350 Dr
31/08/2011	Breast Research Fund – Earlier entry cancelled and now reissued.	£350 Dr

Date	Narrative	Amount
18/12/2009	Paid Breast Research Fund for Medical Report	£500 Dr
30/06/2010	Cancel chq 003529 paying Breast Research Fund – to be reissued.	-£500 Dr

30/06/2010	Breast Research Fund – Earlier entry cancelled and now reissued.	£500 Dr
31/12/2010	Cancel chq 004896 paying Breast Research Fund – Earlier entry cancelled to be reissued.	-£500 Dr
31/12/2010	Paid Breast Research Fund – Earlier entry cancelled and now reissued.	£500 Dr
31/08/2011	Cancel chq 000384 paying Breast Research Fund	-£500 Dr
31/08/2011	Breast Research Fund – Earlier entry cancelled and now reissued.	£500 Dr

Date	Narrative	Amount
18/12/2009	Paid Professor I O Ellis – Professional Fee	£770 Dr
30/06/2010	Cancel chq 003527 paying Professor I O Ellis – to be reissued.	-£770 Dr
30/06/2010	Professor I O Ellis – Earlier entry cancelled and now reissued.	£770 Dr
15/12/2010	Cancel chq 004892 paying Professor I O Ellis - to be reissued.	-£770 Dr
15/12/2010	Paid Professor I O Ellis – Earlier entry cancelled and now reissued.	£770 Dr
31/08/2011	Cancel chq 000103 paying Professor I O Ellis – to be reissued	-£770 Dr
31/08/2011	Professor I O Ellis – Earlier entry cancelled and now reissued.	£770 Dr

Date	Narrative	Amount
18/12/2009	Pay Professor I O Ellis _ Review of file and assessment	£165 Dr
30/06/2010	Cancel chq 003530 paying Professor I O Ellis – to be reissued.	-£165 Dr
30/06/2010	Professor I O Ellis – Earlier entry cancelled and now reissued.	£165 Dr
15/12/2010	Cancel chq 004893 paying Professor I O Ellis - to be reissued.	-£165 Dr
15/12/2010	Paid Professor I O Ellis – Earlier entry cancelled and now reissued.	£165 Dr
31/08/2011	Cancel chq 000094 paying Professor I O Ellis – to be reissued	£165 Dr
31/08/2011	Correct above entry	-£165 Dr
31/08/2011	Professor I O Ellis earlier entry cancelled and now reissued.	£165
29/02/2012	Cancel cheque 006060 paying Professor I O Ellis	-£165 Dr
29/02/2012	Paid Professor I O Ellis re earlier cheque cancelled	£165

Date	Narrative	Amount
18/12/2009	Paid Mrs A Wheatley – Secretarial Fee	£115.50 Dr
30/06/2010	Cancel chq 003528 paying Mrs A Wheatley – to be reissued.	-£115.50 Dr
30/06/2010	Mrs A Wheatley – Earlier entry cancelled and now reissued.	£115.50 Dr
15/12/2010	Cancel chq 004894 paying Mrs A Wheatley – to be reissued.	-£115.50 Dr
15/12/2010	Paid Mrs A Wheatley – Earlier entry cancelled and now reissued.	£115.50 Dr
31/08/2011	Cancel chq 000095 paying Mrs A Wheatley – to be reissued	-£115.50 Dr
31/08/2011	Mrs A Wheatley – Earlier entry cancelled and now reissued.	£115.50 Dr

Date	Narrative	Amount
18/12/2009	Pay Mrs P M Islip– Secretarial Fee	£24.75 Dr
30/06/2010	Cancel chq 003531 paying Mrs P M Islip – to be reissued.	-£24.75 Dr
30/06/2010	Mrs P M Islip – Earlier entry cancelled and now reissued.	£24.75 Dr
15/12/2010	Cancel chq 004891 paying Mrs P M Islip - to be reissued.	-£24.75 Dr
15/12/2010	Paid Mrs P M Islip – Earlier entry cancelled and now reissued.	£24.75 Dr
31/08/2011	Cancel chq 000093 paying Mrs P M Islip – to be reissued	-£24.75 Dr
31/08/2011	Cancel chq 000093 to Mrs P M Islip	-£24.75 Dr
31/08/2011	Paid Mrs P M Islip – Earlier entry cancelled and now reissued.	£24.75 Dr

There are further similar entries dated 29 February 2012. Despite having received payment from SLAB in respect of these outlays the Second Respondent failed to settle said fees and outlays timeously.

Martin Mulheron

The firm was instructed in 2006 in connection with a medical negligence case and the Second Respondent was the partner responsible for the file. The client was legally aided

and the Second Respondent the nominated solicitor. The firm ledger card discloses a payment of £972 was received from SLAB on 9 September 2009.

The ledger narrates a payment of £528.75 to Peter Scott for a Medical Report on 8 May 2008 which the Second Respondent had instructed. This has been scored through to show that the entry is deleted. This is followed by a further entry to show that a payment of £528.75 is paid to Peter Scott on 17/09/2008 and this has been scored through to show that the entry is deleted. This followed by an entry to show that a payment of £40.25 is paid to Peter Scott on 09/03/2009 and this has been scored through to show that the entry is deleted. On 7 May 2009 a memo from the Second Respondent's secretary requests payment of the fee be made as Peter Scott was "screaming" for payment. The following entries then appear in the ledger.

Date	Narrative	Amount
11/09/2009	Medical Report	£528.75 Dr
11/09/2009	Further Advices	£40.25 Dr
30/09/2010	Cancel chq 004224 paying Peter Scott– to be reissued	-£569 Dr
30/09/2010	Peter Scott - Earlier entry cancelled and now reissued.	£569 Dr
31/03/2011	Cancel chq 005551 paying Peter Scott – to be reissued	-£569 Dr
31/03/2011	Peter Scott – earlier entry cancelled and now reissued	£569 Dr
29/11/2011	Cancel cheque 005941 to be reissued.	-£569 Dr
29/11/2011	Paid Peter Scott re earlier cheque cancelled	£569 Dr

The Second Respondent failed to settle the said fee timeously.

Rekash Kumar Kaunth

The firm was instructed in 2008 in connection with contact and parental rights. The First Respondent was the partner responsible for the file. The client was legally aided and the First Respondent was the nominated solicitor. The firm ledger card discloses a payment of £3275.24 was received from SLAB on 12 February 2009 and also discloses the following entries:-

Date	Narrative	Amount
12/02/2009	Pay Messrs O'Donnell & co Bar Report fee cheque 001951	£3245.24 Dr
02/04/2009	Cancel chq 001951 paying Messrs O'Donnell & co	-£3245.24 Dr
02/04/2009	Pay Messrs O'Donnell & co Bar Report fee 012129	£3245.24 Dr

The First Respondent despite having received reimbursement from SLAB failed to settle the said Bar report fee timeously.

Robert Bell or McNeil

The firm was instructed in 2009 in connection with a family matter relating to contact. The client was legally aided. The firm ledger discloses payments were received from SLAB as follows: £2071.01 on 10/03/2010, £1050 on 19/04/2010, £1415 on 23/09/2010 and £1155 on 28/04/2011.

The firm's ledger discloses a payment of £2057.01 to Gair & Gibson on 09/02/2010 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
10/03/2010	Pay Gair & Gibson Report prepared by Paula Giaconelli 003983	£2057.01Dr
02/04/2010	Cancel Cheque 003983 paying Gair & Gibson	-£2057.01Dr
02/04/2010	Paid Gair & Gibson – Earlier entry cancelled and now reissued Cheque 013453	£2057.01 Dr

The ledger also discloses payments for a total sum of £1415 to Family Mediation Central Scotland on 10/08/2010 and these have been scored through to show that the entries are deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
23/09/2010	SLAB payment received(22/9/2010)	£1415.00 Dr
23/09/2010	Pay Family Mediation central Scotland – Supervising Contact MED0012 – Medical Practitioners Civil 005452	£1415.00 Dr
22/11/2010	Cancel cheque 005452 paying Family Mediation to be reissued	-£1415.00 Dr

22/11/2010	Paid Family Mediation Services – Earlier entry cancelled and now reissued 000023	£1415.00 Dr
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The ledger shows a series of payments being made by cheque to Gair and Gibson and Family Mediation Central Scotland and then being cancelled and reissued. The cancellations date from April 2010 until November 2010. Despite having received payment from SLAB in respect of said outlays, payment of these outlays was not made timeously.

John George Graham

The firm was instructed in 2010 in connection with a family matter relating to contact. The First Respondent was the partner responsible for the file and the fee earner. The client was legally aided and the First Respondent was the nominated solicitor. The firm's ledger discloses a payment of £2123.81 was received from SLAB on 30/06/2010.

The ledger also discloses a payment of £2123.81 to Barclay & Co on 30/06/2010 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
30/06/2010	Pay Barclay and Co – Account of expenses FAM0002 – Family Anticipated Outlays cheque 004874	£2123.81 Cr
31/12/2010	Cancel cheque 004874 paying Barclay and Co – To be reissued	-£2123.81 Dr
31/12/2010	Paid Barclay and Co – Earlier entry cancelled and now reissued. Cheque 000365 issued	£2123.81 Dr
31/08/2011	Cancel cheque 000365 paying Barclay and Co – to be reissued	-£2123.81 Dr
31/08/2011	Barclay and Co earlier entry cancelled and now reissued	£2123.81 Dr
13/01/2012	Cancel cheque 006067 paying Barclay and Co - To be reissued	-£2123.81 Dr
13/01/2012	Paid Barclay and Co – earlier entry cancelled and now reissued Cheque 001653	£2123.81 Dr

The ledger shows a series of payments being made by cheque to Barclay and co and then being cancelled and reissued. The cancellations date from December 2010 onwards with the entries being made from that date until January 2012. Despite having received payment from SLAB the First Respondent failed to settle said Bar Report fee timeously.

Melanie Anderson

The firm was instructed in 2007 in connection with a reparation claim following a fire at Mrs Anderson's flat. The Second Respondent was the partner responsible for the file and the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor. The firm's ledger discloses a payment of £290.40 was received from SLAB on 31 December 2009.

The ledger also discloses narrates a payment of £290.40 to Drummond Miller on 24 November 2009 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
31/12/2009	Pay Drummond Miller - Outlays paid to McNeil & Cadzow DRU0137 – Drummond Miller WS cheque 003550	£290.40 Dr
30/06/2010	Cancel cheque 003550 paying Drummond Miller – to be reissued	–£290.40 Dr
30/06/2010	Drummond Miller – earlier entry cancelled and now reissued 004888	£290.40 Dr
15/12/2010	Cancel cheque 004888 paying Drummond Miller to be reissued	–£290.40 Dr
15/12/2010	Paid Drummond Miller – earlier entry cancelled and now reissued 000091	£290.40 Dr
31/08/2011	Cancel cheque to Drummond Miller – to be reissued	–£290.40 Dr
31/08/2011	Drummond Miller – earlier entry cancelled and now reissued 006052	£290.40 Dr

The ledger shows a series of payments being made by cheque to Drummond Miller and then being cancelled and reissued. A reminder letter dated 3 August 2010 was sent by Drummond Miller to the Second Respondent. It referred to a previous reminder dated 23 November 2009. On 5 March 2010 the Second Respondent's secretary sent a memo to the firm's cashroom requesting payment and referring to "the drawer". The Second Respondent failed to settle said outlays timeously.

Marion Mullin

The firm was instructed in 2009 in connection with reparation. The Second Respondent was the partner responsible for the file and the fee earner. The client was legally aided

and the Second Respondent was the nominated solicitor. The firm's ledger discloses a payment of £1212.50 was received from SLAB on 31 December 2009.

The ledger also discloses a payment of £350 to Dr Freeman on 27/02/2009 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
31/12/2009	Medical Report 003574	£350 Dr
31/12/2010	Cancel cheque 003574 paying Dr C P L Freeman	-£350 Dr
30/06/2010	Dr C P L Freeman- earlier entry cancelled and now reissued.	£350 Dr
15/12/2010	Cancel chq paying Dr C P L Freeman – Earlier entry cancelled and now reissued.	-£350 Dr
15/12/2010	Paid Dr C P L Freeman- earlier entry cancelled and now reissued.	£350 Dr

The ledger further discloses a payment of £862.50 to Dr Winbow on 08/12/2009 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
31/12/2009	Pay D A J Winbow	£862.50 Dr
30/06/2010	Cancel cheque 003575 paying Dr A J Winbow – to be reissued.	-£862.50 Dr
30/06/2010	Dr A J Winbow- earlier entry cancelled and now reissued.	£862.50 Dr
30/06/2010	Cancel entry dated 30/6/2010	-£862.50 Dr
30/06/2010	Paid A J Winbow- reissued.	£862.50 Dr
30/06/2010	Cancel above entry	-£862.50 Dr
30/06/2010	A J Winbow – reissued.	£862.60 Dr
06/07/2010	Cancel chq 004880 paying Dr A J Winbow – to be reissued.	-£862.50 Dr
06/07/2010	Dr A J Winbow – Earlier entry cancelled and now reissued.	£862.50 Dr
09/07/2010	Cancel entry dated 30/6/2010 – wrong amount	-£862.60 Dr
09/07/2010	Redo entry dated 30/6/2010 should have been £862.50	£862.50 Dr
09/07/2010	Cancel entry dated 30/06/2010 – wrong amount	£862.60
09/07/2010	Cancel above entry	-£862.50

The Second Respondent instructed said expert reports. Despite having received reimbursement from SLAB he failed to settle said expert fees timeously.

Mrs Aileen Nicol

The firm was instructed in 2007 in connection with a divorce. The First Respondent was the partner responsible for the file. The firm's ledger discloses a payment of £1848 was received from SLAB on 18/12/09. The client was legally aided. The firm ledger also discloses the following entries.

Date	Narrative	Amount
17/03/2008	Report – Susan McLaren Family LA outlays	£1560 Dr
18/12/2009	Pay Susan McLaren – Report	£845 Dr
12/03/2010	Cancel cheque 00352 paying Susan McLaren – as to be reissued,	-£845 Dr
12/03/2010	Paid Susan McLaren – Earlier entry cancelled and now reissued.	£845 Dr
18/08/2010	Cancel entry on 17/03/08 to Susan McLaren – to half payment as OLI & CPO	-£1560 Dr
18/08/2010	Re entry on 17/03/08 paying Susan McLaren half to be paid as OLI	£780 Dr
18/08/2010	Re entry on 17/03/08 paying Susan McLaren half to be paid as OLI.	£780 Dr

The First Respondent despite having received reimbursement from SLAB failed to settle said outlays timeously.

Miss Natalie McKendrick

The firm was instructed in 2010 in connection with a family matter relating to an interdict. The First Respondent was the partner responsible for the file. The client was legally aided. The firm ledger discloses payments were received from SLAB as follows: £505.26 on 30/08/2010 and £2657.10 on 15/02/11.

The ledger narrates a payment of £252.63 to Stirling Park on 09/06/2010 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
30/08/2010	Pay Stirling Park – Service or intimation of a document STI0160 – Stirling Park	£252.63 Dr
03/11/2010	Cancel cheque 005323 paying Stirling Park – to be reissued	-£252.63 Dr

The ledger further narrates a payment of £2752.96 to Gillian Baker on 26/01/2011 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
15/02/2011	Paid Gillian Baker Amended invoices – FAM 0002 – Family Anticipated Outlays	£2752.96 Dr
28/03/2011	Cancel chq 013888 paying Gillian Baker – to be reissued.	-£2752.96 Dr
28/03/2011	Paid Gillian Baker Family Law – Earlier entry cancelled and now reissued	£2752.96 Dr

The First Respondent despite having received reimbursement from SLAB failed to settle said outlays timeously.

Mr Michael Meechan

The firm was instructed in 2007 in a family matter relating to child contact. The First Respondent was the partner responsible for the file. The client was legally aided.

The firm ledger narrates a payment of £1798.85 to Angela Cairns on 22/06/2010 and this has been scored through to show that the entry is deleted. Payment of £1798.85 was received from SLAB on 29/07/2010. The following entries then appear in the ledger.

Date	Narrative	Amount
29/07/2010	Pay Angela Cairns – Bar Report Fam 0002 – Family Anticipated outlays.	£1798.85 Dr
31/01/2011	Cancel chq 005140 paying Angela Cairns – to be reissued.	-£1798.85 Dr
31/01/2011	Angela Cairns – Earlier entry cancelled and now reissued.	£1798.85 Dr
31/08/2011	Cancel cheque number 005895 paying Angela Cairns to be reissued.	-£1798.85 Dr
31/08/2011	Angela Cairns- Earlier entry cancelled and now reissued.	£1798.85 Dr

The First Respondent despite having received reimbursement from SLAB failed to settle said Bar Report fee timeously.

Mr Haaris Malik

The firm was instructed in 2010 in a family matter relating to child residence. The First Respondent was the partner responsible for the file. The client was legally aided.

The firm ledger narrates a payment of £2963.13 to the PRG Partnership on 16/06/2010 and this has been scored through to show that the entry is deleted. A payment of £2963.13 was received from SLAB on 09/07/2010. The following entries then appear in the ledger.

Date	Narrative	Amount
09/07/2010	Pay the PRG Partnership – Report prepared by Mr Sullivan THE0032- The PRG Partnership	£2963.13 Dr
31/01/2011	Cancel chq 005009 paying the PRG partnership – uncashed and out of date.	-£2963.13 Dr
31/01/2011	The PRG Partnership – earlier entry cancelled and now reissued.	£2963.13 Dr
31/08/2011	Cancel cheque 005879 paying the PRG Partnership – to be reissued.	-£2963.13 Dr
31/08/2011	The PRG Partnership – earlier entry cancelled and now reissued	£2963.13 Dr
29/02/2012	Cancel cheque 006103 paying the PRG Partnership re uncashed & out of date to be reissued.	-£2963.13 Dr
29/02/2012	Paid the PRG Partnership re earlier cheque cancelled.	£2963.13 Dr

A reminder letter was sent by PRG Partnership on 27 August 2010 to which no reply was sent. The First Respondent despite having received reimbursement from SLAB failed to settle the said Bar report fee timeously.

Mrs Shamshad Bashir

The firm was instructed in 2010 in relation to medical negligence. The Second Respondent was the partner responsible for the file and was also the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor.

The firm ledger commences with a payment of £750 to Professor R H MacDougall on 23/07/2010 and this has been scored through to show that the entry is deleted. Payment of £750 was received from SLAB on 13/08/2010. The following entries then appear in the ledger.

Date	Narrative	Amount
13/08/2010	Pay Professor R H MacDougall – Medical Report MED0012 – Medical Practitioners Civil	£750 Dr
28/02/2011	Cancel chq 005245 paying Professor R H MacDougall – to be reissued	-£750 Dr
28/02/2011	Professor R H MacDougall – Earlier entry cancelled and now reissued.	£750 Dr
31/08/2011	Cancel cheque number 005935 paying Professor R H MacDougall to be reissued.	-£750 Dr
31/08/2011	Professor R H MacDougall – Earlier entry cancelled and now reissued.	£750 Dr
29/02/2012	Cancel cheque 006169 paying Professor R H MacDougall re uncashed and out of date to be reissued.	-£750 Dr
29/02/2012	Paid Professor R H MacDougall re earlier cheque cancelled.	£750 Cr
29/02/2012	Correct above entry	-£750 Cr
29/02/2012	Paid Professor R H MacDougall re earlier cheque cancelled.	£750 Dr

The Second Respondent instructed Professor McDougall in March 2009 and he provided his report and fee note on 7 July 2010, and then submitted an application for reimbursement to SLAB. Despite receiving payment in that respect on 13 August 2010, and also receiving a reminder from Professor McDougall on 22 March 2011, the Second Respondent failed to settle his fee timeously.

The firm ledger discloses a payment of £1000 to Mr Mander on 30/07/2010 and this has been scored through to show that the entry is deleted. Payment of £750 was received from SLAB on 13/08/2010. The following entries then appear in the ledger.

Date	Narrative	Amount
14/09/2010	Pay Mr B James Mander – Medical Report	£1000 Dr
31/03/2011	Cancel chq 005408 paying Mr James Mander – to be reissued	-£1000 Dr
31/03/2011	Mr James Mander – Earlier entry cancelled and now reissued.	£1000 Dr

29/11/2011	Cancel cheque 005972 to be reissued.	-£1000 Dr
29/11/2011	Paid Mr Mander re earlier cheque cancelled.	£1000 Dr

The Second Respondent instructed Mr Mander on 10 March 2010 and he provided his report and fee note on 19 July 2010. The Second Respondent submitted an application for reimbursement to SLAB on 20 August 2010 which was paid on 14 September 2010. Despite having received payment he failed to settle said fee timeously.

Elizabeth Nulty

The firm was instructed in 2004 in relation to reparation. The Second Respondent was the partner responsible for the file and he was also the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor.

The firm ledger narrates a payment of £2445.45 from SLAB on 10 March 2010. There is an entry on 11 March 2010 showing a payment of £2554.45 to Mendip Media Group and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
11/03/2010	Pay Mendip Media Group Ltd – Transcription of proceedings LIT0132 –Litigation Anticipated Outlays	£2554.45 Dr
19/05/2010	Cancel chq 003994 paying Mendip Media Group – to be reissued.	-£2554.45 Dr
19/05/2010	Paid Mendip Media Group Ltd – Earlier entry cancelled and now reissued.	£2554.45 Dr

The ledger also discloses the following entries

Date	Narrative	Amount
14/05/2010	Pay Sidney Miller – carrying out enquiries	£300 Dr
14/06/2010	Cancel entry to Sidney Miller – as amount abated by SLAB to £258.28	-£300 Dr
14/06/2010	Cancel above entry – Sidney Miller	£300 Dr

The ledger further discloses a payment of £156.33 to Drummond Miller on 16/09/2010 and this has been scored through to show that the entry is deleted. Payment was received from SLAB on 30/09/2010. The following entries then appear in the ledger.

Date	Narrative	Amount
30/09/2010	Pay Drummond Miller re Stirling Park Inv	£156.33Dr
16/12/2010	Cancel chq 005525 paying Drummond Miller – to be reissued	-£156.33 Dr
16/12/2010	Paid Drummond Miller – Earlier entry cancelled and now reissued.	£156.33 Dr

The ledger also discloses a payment of £1428.80 to Peter Davies on 24/11/2010 and this has been scored through to show that the entry is deleted. Payment of £1428.80 was received from SLAB on 13/01/2011. The following entries then appear in the ledger.

Date	Narrative	Amount
14/01/2011	Pay Peter Davies - Report	£1428.80 Dr
31/08/2011	Cancel chq 013848 paying Peter Davies – to be reissued.	-£1428.80 Dr
31/08/2011	Peter Davies – Earlier entry cancelled and now reissued.	£1428.80 Dr
29/02/2012	Cancel cheque 006076 paying Peter Davies re uncashed and out of date to be reissued.	-£1428.80 Dr
29/02/2012	Paid Peter Davies re earlier cheque cancelled	£1428.80 Dr

The Second Respondent instructed these reports and outlays and despite receiving reimbursement, failed to settle the fee notes timeously.

Leila Sami

The firm was instructed in 2009 in relation to a medical negligence claim. The Second Respondent was the partner responsible for the file and he was also the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor.

The firm ledger narrates a payment of £600 to Mr Neil Nichol on 11/05/2010 and this has been scored through to show that the entry is deleted. Payment of £885.05 was received from SLAB on 26/08/2010. The following entries then appear in the ledger.

Date	Narrative	Amount
26/08/2010	Pay Mr Neil Nichol –Medical Report	£600 Dr
28/02/2010	Cancel chq 005290 paying Mr Neil Nichol – to be reissued.	-£600 Dr
28/02/2011	Mr Neil Nichol – earlier entry cancelled and now reissued.	£600 Dr

31/08/2011	Cancel cheque number 005927 paying Mr Nichol to be reissued.	-£600 Dr
31/08/2011	Mr Neil Nichol – earlier entry cancelled and now reissued.	£600 Dr

The Second Respondent instructed said report and despite having received reimbursement failed to settle said fee timeously.

Melissa McDermott

The firm was instructed in 2008 in relation to medical negligence. The Second Respondent was the partner responsible for the file and he was also the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor.

The firm ledger narrates a payment of £1,050 to Dr C P L Freeman on 31/03/2010 and this has been scored through to show that the entry is deleted. Payment of £1346.30 was received from SLAB on 02/07/2010. The following entries then appear in the ledger.

Date	Narrative	Amount
07/07/2010	Pay Dr C P L Freeman	£1050 Dr
31/01/2011	Cancel chq 004968 paying Dr C P L Freeman- uncashed and out of date	-£1050 Dr
31/01/2011	Dr C P L Freeman – earlier entry cancelled and now reissued	£1050 Dr
31/08/2011	Cancel cheque 005880 paying Dr C P L Freeman – to be reissued.	-£1050 Dr
31/08/2011	Dr C P L Freeman – earlier entry cancelled and now reissued.	£1050 Dr
29/02/2012	Cancel cheque 006102 paying CPL Freeman re uncashed and out of date to be reissued.	-£1051 Dr
29/02/2012	Correct above entry	£1050 Dr
29/02/2012	Cancel cheque 006102 paying Dr C P L Freeman re uncashed and out of date to be reissued.	-£1050 Dr
29/02/2012	Paid Dr C P L Freeman re earlier cheque cancelled.	£1050 Dr

The Second Respondent instructed said report and despite having received reimbursement failed to settle said fee timeously.

Sarah Jappy

The firm was instructed in 2007 in connection with a reparation action. The Second Respondent was the partner responsible for the file and he was also the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor.

The firm ledger narrates that a payment for £590 was made to a Mr Kelly on 30/6/2010 but this entry is marked as having been deleted. Payment of £590 was received from SLAB on 21/07/2010. The following entries then appear in the ledger.

Date	Narrative	Amount
23/07/2010	Pay Mr Sean M Kelly – Medical Report	£590 Dr
31/01/2011	Cancel chq 005102 paying Sean Kelly – Uncashed and out of date – to be reissued	-£590 Dr
31/01/2011	Mr Sean Kelly – Earlier entry cancelled and now reissued	£590 Dr
31/08/2011	Cancel Cheque 005887 paying Sean Kelly – to be reissued	-£590 Dr
31/08/2011	Mr Sean Kelly – Earlier entry cancelled and now reissued	£590 Dr
29/02/2012	Cancel cheque 006097 paying Sean Kelly re uncashed & out of date to be reissued	-£590 Dr
29/02/2012	Paid Sean Kelly re earlier cheque cancelled	£590 Dr

The firm ledger also discloses a payment from SLAB of £238.10 on 11/08/2010. There is an entry on 11/08/2010 showing that £238.10 is paid to Drummond Miller but this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
11/08/2010	SLAB payment received 10/08/2010	£238.10 Cr
11/08/2010	Pay Drummond Miller – Funds due to DM	£238.10 Dr
30/08/2010	Cancel chq 005237 paying Drummond Miller – to be reissued	-£238.10 Dr
30/08/2010	Drummond Miller – Earlier entry cancelled and now reissued	£238.10 Dr
Also		
28/02/2011	SLAB payment received 25/02/2011	£9415.87 Cr
28/02/2011	Pay Drummond Miller – Outlays Dues to DM	£9415.87 Dr
01/04/2011	Cancel chq 000589 paying Drummond Miller – to be reissued	-£9415.87 Dr
01/04/2011	Paid Drummond Miller – Earlier entry cancelled and now reissued	£9415.87 Dr
15/03/2011	SLAB payment received 11/03/2011	-£2191.10 Dr
15/03/2011	Paid Drummond Miller	£2191.10 Dr

15/04/2011	Cancel chq 013913 paying Drummond Miller – to be reissued	-£2191.10 Dr
15/04/2011	Paid Drummond Miller – Earlier entry cancelled and now reissued	£2191.10 Dr
13/05/2011	SLAB payment received 10/05/2011	-£652.95 Dr
13/05/2011	Paid Drummond Miller re shorthand writers fee and attending commission	£652.95 Dr
08/07/2011	Cancel chq 013255 paying Drummond Miller – to be reissued	-£652.95 Dr
08/07/2011	Paid Drummond Miller – Earlier entry cancelled and now reissued	£652.95 Dr

The same pattern is followed in respect of other payments owed to Drummond Miller received by the firm from SLAB on 13 May 2011 and 25 May 2011; with a payment of £4,558.40 which was owed to ARM Architects which was received from SLAB on 13 May 2011; with a payment of £2,368.80 owed to Peter Davies which was received by the firm from SLAB on 29 October 2010; and with a payment of £4,169.30 made to Jacqueline Webb & Co on 18 October 2010 (the amount was later corrected to £3,671.29). The Second Respondent instructed said reports and despite having received reimbursement failed to respond to reminders and failed to settle said outlays timeously.

Craig Bell

The firm was instructed in 2009 in relation to a claim against the Scottish Prison Service. The Second Respondent was the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor. The firm ledger discloses a payment of £1470.18 was received from SLAB on 20 April 2010.

The ledger narrates a payment for £375 was made to Ian B Stephen on 10 March 2009 but this entry is marked as having been deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
22/04/2010	Craig Bell Report	£375 Dr
29/07/2010	Cancel chq 004386 paying Ian B Stephen	-£375 Dr
29/07/2010	Ian B Stephen – earlier entry cancelled and now reissued.	£375 Dr

The ledger also discloses that a cheque for £1070 was paid to Angus Stuart on 31 March 2010 but this entry is marked as having been deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
22/04/2010	Pay Angus Stuart Report	£1070 Dr
29/10/2010	Cancel chq 004387 paying Angus Stuart – to be reissued.	-£1070 Dr
29/10/2010	Angus Stuart– earlier entry cancelled and now reissued.	£1070 Dr
31/05/2011	Cancel chq 005751 paying Angus Stuart – to be reissued.	-£1050 Dr
31/05/2011	Angus Stuart – earlier entry cancelled and now reissued.	£1070
29/11/2011	Cancel cheque 006022 to be reissued.	-£1070
29/11/2011	Paid Angus Stuart re earlier cheque cancelled.	£1070

The Second Respondent instructed said reports and despite having received reimbursement failed to settle said fees timeously.

Robert Reid

The firm was instructed in 2010 in relation to a medical negligence case. The Second Respondent was the partner responsible for the file and he was the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor.

The ledger narrates a payment of £300 to Professor T H Pennington on 15/02/2010 and this has been scored through to show that the entry is deleted. Payment of £300 was received from SLAB on 10 March 2010. The following entries then appear in the ledger.

Date	Narrative	Amount
10/03/2010	Pay Professor T H Pennington	£300 Dr
30/09/2010	Cancel chq 003984 paying Professor T H Pennington – to be reissued.	-£300 Dr
30/09/2010	Professor T H Pennington – earlier entry cancelled and now reissued.	£300 Dr
31/03/2011	Cancel chq 005541 paying Professor T H Pennington – to be reissued.	-£300 Dr
31/03/2011	Professor T H Pennington – earlier entry cancelled and now reissued.	£300 Dr
29/11/2011	Cancel cheque 005974 to be reissued.	-£300 Dr
29/11/2011	Paid Professor T H Pennington re earlier cheque cancelled.	£300 Dr

The ledger indicates that when the Judicial Factor was appointed in 2012 the sum of £300 had still not been paid to Professor Pennington. The Second Respondent instructed said report and despite having received reimbursement failed to settle said fee timeously.

Joseph Greene

The firm was instructed in 2009 in relation to a criminal petition. The client was legally aided. Payment of £2435.40 was received from SLAB on 30/04/2010

The ledger narrates a payment of £532.68 to Nationwide Expert Witness Service on 24/03/2010 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
30/04/2010	Pay Nationwide Expert Witness Service	£532.68 Dr
04/06/2010	Cancel chq 004514 paying Nationwide Expert – to be reissued.	-£532.68 Dr
04/06/2010	Nationwide Expert Witness Service – earlier entry cancelled and now reissued.	£532.68 Dr

The firm ledger also narrates a payment of £55.34 to Stirling Park on 24/03/2010 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

30/04/2010	Pay Stirling Park – Service or intimation of a document	£55.34 Dr
29/10/2010	Cancel chq 004515 paying Stirling Park – to be reissued	-£55.34 Dr
29/10/2010	Stirling Park – earlier entry cancelled and now reissued.	£55.34 Dr
03/11/2010	Cancel chq paying Stirling Park – to be reissued.	-£55.34 Dr
03/11/2010	Stirling Park – earlier entry cancelled and now reissued.	£55.34 Dr

Despite having received reimbursement of said outlays the said outlays were not settled timeously.

Kieran Quinn

The firm was instructed in 2010 in relation to a criminal matter. The client was legally aided. The firm ledger narrates the following entries:

Date	Narrative	Amount
28/06/2010	Nationwide Expert Witness Service	£192.70 Dr
13/07/2010	Cancel chq 004861 paying Nationwide Expert	-£192.70 Dr
13/07/2010	Nationwide Expert Witness Service	£192.70 Dr

The ledger also narrates a payment from SLAB of £385.40. This is followed by an entry showing payment of £385.40 to Nationwide Expert Witness on 28/07/2010 and this has been scored through to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
30/06/2010	Pay Nationwide Expert Witness Service	£385.40 Dr
13/07/2010	Cancel entry to Nationwide Expert – to go into outlays paid	-£385.40 Dr

Despite having received reimbursement of said outlays they were not settled timeously.

James Keegans

The firm was instructed in 2008 in relation to a litigation matter. The Second Respondent was the partner responsible for the file. The client was legally aided and the Second Respondent was the nominated Solicitor. The firm ledger discloses a payment of £1248.73 was received from SLAB on 11/02/2010.

The ledger also discloses that a payment was paid to T H Pennington on 29 July 2009 for £300 but this entry is marked as having been deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
11/03/10	Pay T H Pennington –preparation of report – PRO0092 – 003992	£300 Dr
30/09/10	Cancel chq 003992 paying Prof T H Pennington – to be reissued	-£300 Dr
30/09/10	Prof Pennington earlier entry cancelled and now reissued – 005544	£300 Dr
31/03/11	Cancel chq 005544 paying Prof Pennington to be reissued	-£300 Dr

31/03/11	Prof Pennington - earlier entry cancelled and now reissued – 005962	£300 Dr
29/11/11	Cancel cheque 005962 – to be reissued	-£300 Dr
29/11/11	Paid Prof Pennington re earlier cheque cancelled 012815	£300 Dr
05/04/12	Cancel chq 012815 paying Prof Pennington – as per Judicial Factor’s ad interim	-£300 Dr
05/04/12	Pay Prof Pennington – earlier entry cancelled – as per Judicial Factor ad interim	£300 Dr

The ledger also discloses a payment to Legal Medicine Services Ltd on 27 November 2009 of £575 which has been deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
11/03/10	Pay Legal Medicine Services Ltd – Medical report – 003993	£575 Dr
30/09/10	Cancel chq 003993 paying Legal Medicine Services – to be reissued	-£575 Dr
30/09/10	Legal Medicine Services Ltd – earlier entry cancelled and reissued 005543	£575 Dr
31/03/11	Cancel chq paying Legal Medicine Services – to be reissued 005543	-£575 Dr
31/03/11	Legal Medicine Services – earlier entry cancelled and reissued 005961	£575 Dr
29/11/11	Cancel cheque 005961 to be reissued	-£575 Dr
29/11/11	Paid Legal Medicine Services re earlier cheque cancelled 012816	£575 Dr
05/04/12	Cancel entry 012816 as per JF as interim	-£575 Dr
05/04/12	Paid Legal Medicine Services re earlier entry cancelled by JF as d interim	£575 Dr

The Second Respondent instructed said reports and despite having received reimbursement failed to settle said fees timeously.

Rosaleen Donnelly

The firm was instructed in 2009 in connection with a medical negligence case and The Second Respondent was the partner responsible for the file. The client was legally aided and the Second Respondent was the nominated solicitor. The firm ledger discloses a payment of £732.70 was received from SLAB on 29/04/2010 and the following entries:

Date	Narrative	Amount
29/04/2010	Pay Professor A Busuttil	£575 Dr
29/04/2010	Cancel chq 004452 paying Professor A Busuttil – to be	-£575 Dr

	reissued.	
29/10/2010	Professor A Busutill – earlier entry cancelled and now reissued.	£575 Dr
31/05/2011	Cancel chq 005754 paying Professor A Busutill – to be reissued.	-£575 Dr
31/05/2011	Professor A Busutill – earlier entry cancelled and now reissued.	£575 Dr
29/11/2011	Cancel chq 006020 to be reissued.	-£575 Dr
29/11/2011	Paid Professor A Busutill re earlier cheque cancelled	£575 Dr

The Second Respondent instructed said report and despite having received reimbursement failed to settle said fee timeously.

Rose McBride

The firm was instructed in 2008 in relation to a medical negligence case. The Second Respondent was the partner responsible for the file. The client was legally aided and the Second Respondent was the nominated solicitor. The firm ledger narrates that a cheque was paid to T H Pennington on 11 May 2010 for £300 but this entry is marked as having been deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
11/08/10	SLAB payment received 10/08/10	£604.67 Cr
11/08/10	Pay Prof Pennington Medical report 005235	£300 Dr
28/02/11	Cancel chq 005235 paying Prof Pennington to be reissued	-£300 Dr
28/02/11	Prof Pennington – earlier entry cancelled and reissued 005936	£300 Dr
31/08/11	Cancel chq 005936 paying Prof Pennington to be reissued	-£300 Dr
31/08/11	Prof Pennington earlier entry cancelled and reissued 006170	£300 Dr
29/02/12	Cancel chq 006170 paying Prof Pennington re uncashed and out of date to be reissued	-£300 Dr
29/02/12	Paid Prof Pennington re earlier chq cancelled 013956	£300 Dr
05/04/12	Cancel entry 013956 as per Judicial Factor ad interim	-£300 Dr
05/04/12	Pay Prof Pennington as earlier entry cancelled	£300 Dr
18/04/12	To correct entry 013956 to Pennington	-£300 Dr

The Second Respondent instructed said report and despite having received reimbursement failed to settle said fee timeously.

Amanda Chisholm

The firm was instructed in 2008 in connection with a family matter. The First Respondent was the partner responsible for the file. The client was legally aided.

The firm ledger narrates payments to Tricho-Tech on 25/6/2009 but these entries are marked as having been deleted. A payment of £1332.25 was received from SLAB on 29/07/2009. The following entries then appear in the ledger.

Date	Narrative	Amount
29/07/2009	Hair collection	£138 Dr
29/07/2009	Pay Tricho-Tech Limited Liver Function Test	£138 Dr
29/07/2009	Pay Tricho-Tech Limited – Hair collection	£109.25 Dr
29/07/2009	Hair collection pay Tricho-Tech Limited	£897 Dr
25/08/2009	Cancel cheque dated 29.07.09	-£1282.25 Dr
25/08/2009	Paid Tricho-Tech Ltd	£1282.25 Dr

The ledger also discloses a payment to Drs Foster and Lifson on 25/06/2009 and but this has been marked to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
29/07/2009	Pay Drs Foster & Lifson re blood test	£50 Dr
31/03/2010	Cancel cheque 002589 dated 29/7/09 paying Drs Foster & Lifson	-£50 Dr
31/03/2010	Drs Foster & Lifson	£50 Dr
27/07/2010	Cancel chq 004255 paying Drs Foster & Lifson – to be reissued.	-£50 Dr
27/07/2010	Drs Foster & Lifson – earlier entry cancelled and now reissued	£50 Dr

The firm ledger further discloses a payment to Dr Anne Morgan on 31/03/2010 and this has been marked to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Amount
30/04/2010	Pay Dr Anne Morgan – Medical Report	£80 Dr
29/10/2010	Cancel chq 004521 paying Dr Anne Morgan	-£80 Dr
29/10/2010	Dr Anne Morgan earlier entry cancelled and now reissued	£80 Dr

31/05/2011	Cancel chq 005774 paying Dr Anne Morgan	-£80 Dr
31/05/2011	Dr Anne Morgan – earlier entry cancelled and now reissued	£80 Dr
29/11/2011	Paid Dr Morgan re earlier cheque cancelled	-£80 Dr
29/11/2011	Cancel cheque 0060014 to be reissued	£80 Dr

The firm ledger also discloses a payment to Rafferty Wood & Co on 31/03/2010 and this has been marked to show that the entry is deleted. A payment from SLAB of £2,065.77 was received on 30 April 2010. The following entries then appear in the ledger.

Date	Narrative	Amount
30/04/2010	Pay Rafferty Wood – Bar Report prepared by Derek Wood	£1985.77 Dr
01/11/2010	Cancel chq 004520 paying Rafferty Wood	-£1985.77 Dr
01/11/2010	Paid Rafferty Wood & Co – earlier entry cancelled and now reissued	£1985.77 Dr

The First Respondent instructed said reports and despite having received reimbursement failed to settle said fees timeously.

Mrs Kathleen Brown or Foster k/a Brown

The firm was instructed in 2007 in connection with a divorce. The First Respondent was the partner responsible for the file. The client was legally aided.

The ledger narrates a payment to Maxwell McLaurin on 15/01/2009 and this has been scored through to show that the entry is deleted. A payment of £8750.01 was received from SLAB on 30/04/2009. The following entries then appear in the ledger.

Date	Narrative	Event
30/04/2009	Bar Report Maxwell McLaurin	£8581.73 Dr
05/11/2009	Cancel chq 012210 paying Maxwell Maclaurin as being resissued.	-£8581.73 Dr
05/11/2009	Paid Maxwell McLaurin –earlier entry cancelled and now reissued.	£8581.73 Dr

The ledger also discloses a payment to William Hodge & Pollock on 23/02/2010 and this has been marked to show that the entry is deleted. The following entries then appear in the ledger.

Date	Narrative	Event
19/04/2010	Pay Wm Hodge & Pollock - attendance	£122.49 Dr
29/10/2010	Cancel chq 004369 paying Wm Hodge & Pollock – to be reissued.	-£122.49 Dr
29/10/2010	Wm Hodge & Pollock – earlier entry cancelled and now reissued.	£122.49 Dr
10/11/2010	Cancel chq 005743 paying Wm Hodge & Pollock – to be reissued.	-£122.49 Dr
10/11/2010	Wm Hodge & Pollock – earlier entry cancelled and now reissued	£122.49 Dr

The ledger further discloses a payment of £3116.10 to Jack Boyle on 29/03/2010 and this has been scored through to show that the entry is deleted. Payment of £3116.10 was received from SLAB on 30/04/2010. The following entries then appear in the ledger.

Date	Narrative	Event
30/04/2010	Pay Dr Jack Boyle – preparation of Report	£3116.10 Dr
29/10/2010	Cancel chq 004518 paying Dr Jack Boyle– to be reissued.	-£3116.10 Dr
29/10/2010	Dr Jack Boyle – earlier entry cancelled and now reissued.	£3116.10 Dr
29/11/2011	Cancel cheque 006015 to be reissued	-£3116.10 Dr
29/11/2011	Paid Jack Boyle re earlier cheque cancelled	£3116.10 Dr

The ledger further discloses a payment of £526.40 to Jack Boyle on 22/11//2010 and this has been scored through to show that the entry is deleted. There is an entry on the ledger showing that payment of £526.40 was received from SLAB on 20/12/2010. The following entries then appear in the ledger.

Date	Narrative	Event
20/12/2010	Pay Dr Jack Boyle – meetings	£526.40 Dr
31/08/2011	Cancel chq 005865 paying Dr Jack Boyle– to be reissued.	-£526.40 Dr
31/08/2011	Dr Jack Boyle – earlier entry cancelled and reissued.	£526.40 Dr
29/02/2012	Cancel cheque 006125 paying Dr Jack Boyle re uncashed and out of date to be reissued.	-£526.40 Dr
29/02/2012	Paid Jack Boyle re earlier cheque cancelled	£526.40 Dr

The ledger additionally discloses a payment of £1146.05 to Jack Boyle on 14/12/2010 and this has been scored through to show that the entry is deleted. An entry shows that a payment of £1296.05 was received from SLAB on 13/01/2011. The following entries then appear in the ledger.

Date	Narrative	Event
14/01/2011	Pay Dr Jack Boyle – attendance at court.	£1146.05 Dr
03/05/2011	Cancel chq 013849 paying Dr Jack Boyle to be reissued	-£1146.05 Dr
03/05/2011	Paid Jack Boyle – earlier entry cancelled and now reissued.	£1146.05 Dr
19/05/2011	To correct entry re cheque 013849 posted to wrong bank.	-£1146.05 Dr
19/05/2011	To correct entry re cheque 013849	£1146.05 Dr
19/05/2011	To correct entry re chq 013849	£1146.05 Dr
19/05/2011	To correct entry re chq 013849	-£1146.05 Dr

The First Respondent instructed said reports and outlays and despite having received reimbursement failed to settle said fees timeously.

Andrew Smith

The firm was instructed in 2009 in connection with child contact. The First Respondent was the partner responsible for the file. The client was legally aided.

The ledger narrates a payment relating to serving the Writ and Interdict on 9 June 2009 and this has been scored through to show that the entry is deleted. There is an entry to show that payment of £167.56 was received from SLAB on 18/09/2009. The following entries then appear in the ledger.

Date	Narrative	Amount
18/09/2009	Serving Writ and Interdict	£167.56 Dr
02/10/2009	Cancel chq 002846 paying Hannahs - as being reissued on new cheque 01296	-£167.56 Dr
02/10/2009	Paid Hannahs - earlier entry cancelled and now reissued on chq	£167.05 Dr

The ledger discloses a payment of £2591.33 to Barclay & Co for account of expenses on 14/10/2009 and this has been scored through to show that the entry is deleted. There is an entry to show that payment of £2591.33 was received from SLAB on 30/10/2009. The following entries then appear in the ledger.

Date	Narrative	Amount
30/10/2009	Pay Barclay & Co Account of Expenses	£2591.33 Dr
30/04/2010	Cancel chq 003182 paying Barclay & Co – to be reissued	-£2591.33 Dr
30/04/2010	Barclay & Co – earlier entry cancelled and now reissued.	£2591.33 Dr
29/10/2010	Cancel chq 004544 paying Barclay & Co – to be reissued.	-£2591.33 Dr
29/10/2010	Barclay & Co – earlier entry cancelled and now reissued	£2591.33 Dr
31/05/2011	Cancel chq 005767 paying Barclay & Co – to be reissued	-£2591.33 Dr
31/05/2011	Barclay & Co – earlier entry cancelled and now reissued	£2591.33 Dr
29/11/2011	Cancel cheque 006016 re to be reissued.	-£2591.33 Dr
29/11/2011	Paid Barclay & Co re earlier entry cancelled	£2591.33 Dr
13/01/2012	Cancel chq 012793 paying Barclay & Co – to be reissued.	-£2591.33 Dr
13/01/2012	Paid Barclay & Co – earlier entry cancelled and now reissued.	£2591.33 Dr

The First Respondent instructed said report and outlay and despite having received reimbursement failed to settle said fees timeously.

11.9 The said firm operated a policy referred to as “the drawer” in order to improve the firm’s cash flow. This operation existed in legal aided cases. The funds were received from the Scottish Legal Aid Board and paid into the firm account. Cheques were printed in respect of payments due to third parties according to invoices received but then were not signed and sent out until such time as the firm’s cash flow permitted the cheques to be issued.

A number of entries were then created on the client ledgers to show that cheques were issued in payment to third parties in respect of these outlays. These entries were then reversed in the following months to show that the cheques had not been

cashed and the funds were re-credited to the client ledger. New entries were then made to show that fresh cheques had then been issued. These entries were also then reversed in the following months to show that the cheques had not been cashed and funds re-credited to the ledger. New entries were eventually made to show that fresh cheques had been issued in respect of the outlays.

The creation of these entries in the ledgers were made to show that cheques had been issued and funds had left the firm's account when the cheques were being held and had not been issued outside the firm's premises. The client ledgers gave the impression that payments due to third parties had been made by the said firm when the funds remained in the firm's account. This was designed to show that there were sufficient funds in the firm's accounts to meet all its current liabilities to clients. Payments issued by the Scottish Legal Aid Board to the firm are deemed to be client's funds and are to be utilised to pay specific outlays on behalf of specific clients and to specific third parties, including payments due to other solicitors. They were not used for this purpose but were used to improve the financial position and cash flow of the said firm, and to obscure the true level of the said firm's liabilities and overdraft. They created a misleading and inaccurate presentation of the firm's accounting position. The operation of this policy was a wrongful and improper use of client's funds without the knowledge or consent of the clients to allow the said firm to continue to trade and operate within the limit of its banking facilities.

The said transactions whereby outlays were incurred, reimbursed by SLAB, and then not timeously settled by the Respondents to the third parties to whom they were due demonstrate the policy that was in operation. The First and Second Respondents had a duty to ensure the timeous settlement of outlays and expert fees incurred on their instruction. The operation of this policy precluded them from implementing that duty.

The First Respondent was the Cashroom Partner for the said firm from 15 October 1999 to 31 March 2010. The operation of this policy and the entries on the clients ledger as hereinbefore mentioned had previously been put in place by former Partners and employees and continued to be operated by the firm during the period when the First Respondent was the firm's Cashroom Partner, and on particular files where he was the responsible and instructing solicitor.

Further, in or around 27 January 2011, proceedings were raised in Glasgow Sheriff Court against the said firm and its partners including the First and Second Respondents, by Drummond Miller LLP (hereinafter DM). DM were the said firm's Edinburgh agents. In said action they sought payment of a sum of £70,059.87. Interim diligence was executed on the dependence of said action resulting in the said firm's accounts being arrested. Said proceedings narrated inter alia that "the Pursuers and Defenders are firms of solicitors carrying on civil litigation business. The Defenders instruct the Pursuers to act as their Edinburgh agents in cases before the Court of Session. The present action concerns cases where the Defenders' clients are legally aided. When the case resolves, the Pursuers have an Account of Expenses prepared for the work they have carried out for submission to the Scottish Legal Aid Board. The solicitor dealing with the case for the Defenders is the nominated solicitor with SLAB. Therefore when an Account of Expenses is submitted to SLAB, this is submitted by the nominated solicitor and payment of both the Defenders and Pursuers account is made direct to the Defenders. The Defenders have received payment totalling the sum sued for from SLAB. The sum is properly due to the Pursuers for the work they have carried out." The said firm had accordingly delayed in making payment properly due to DM. It is believed that said payments were utilised in support of this policy to ensure the continued trading of the said firm. Said sums fell to be paid to DM during the period when the First and Second Respondents were partners within the said firm, and when the First Respondent was the firm's designated Cashroom Partner. The Second Respondent was the nominated solicitor and partner responsible for the files in respect of the said sums. The First and Second Respondents failed to make timeous payment of said sums due to DM.

11.10 The Second Respondent was a Partner with the said firm from 1 September 1982 to 6 May 2011. The Second Respondent and members of staff under his supervision were aware of the operation of the policy known as "the drawer", and which continued to be operated by cashroom staff during the period when the Second Respondent was a Partner within the firm up until the date he resigned from said firm. The Complainers Financial Compliance Department found nineteen client ledgers in particular where the Second Respondent was either the Partner and/or the fee earner responsible for the management of the file where the entries

were made in accordance with the said policy. He was the instructing solicitor and nominated solicitor in these files. He failed to ensure the timeous payment of outlays and fees incurred, and reimbursed by SLAB. In particular, he failed to ensure the timeous payment of fees and outlays due to his instructed Edinburgh agents, Drummond Miller.

11.11 An Accounts Certificate was sent by the First Respondent to the Complainers on 26 October 2009 covering the period from 1 April 2009 to 30 September 2009.

The said certificate confirmed that the firm had maintained the necessary books of account etc. required by the Solicitors (Scotland) Accounts etc. Rules 2001 (hereinafter “the 2001 Rules”). It certified that the accounting records were up to date and balanced as at the last day of the accounting period being 1 April to 30 September 2009 and that they were to the best of the First Respondent’s knowledge and belief in accordance with the terms of the said 2001 Rules. The said certificate designates the First Respondent as the Cashroom Partner from 15 October 1999 and the certificate is signed by the First Respondent on 26 October 2009 and by another Partner.

A further Accounts Certificate was sent by the First Respondent to the Complainers on 10 May 2010. Said certificate covered the period ending 31 March 2010. The First Respondent advised in a covering letter submitted with said certificate that he had resigned as the Cashroom Partner for the firm on 31 March 2010 and that another Partner, Alan Miller, had been appointed with effect from 1 April 2010. The Accounts Certificate which accompanied said letter is dated 30 April 2010 and confirms that the firm has maintained the necessary books of account etc. required by the said 2001 Rules in the period from 1 October 2009 to 31 March 2010. The said certificate was signed by the First Respondent and the second signatory to said certificate was the Second Respondent.

The said certificate certifies that the firm’s accounting records were up to date and balanced as at the last day of the accounting period referred to and that the accounting records were to the best of their knowledge and belief in accordance with the terms of the said 2001 Rules.

11.12 Rule 12 of the said 2001 Rules provides that the designated Cashroom Partner of any firm is responsible for the supervision of the Cashroom staff and the Cashroom system employed by any firm to carry out the provisions of the said rules. The First Respondent signed the firm's Accounts Certificates, as hereinbefore condescended upon, on 26 October 2009 and 10 May 2010 confirming that the said firm's accounts were accurate during the periods of 1 April 2009 to 30 September 2009 and 1 October 2009 to 31 March 2010. The First Respondent knew or ought to have known that the statements made within said certificates were inaccurate due to the ledger entries as hereinbefore condescended upon in Statements 2.6 and 2.7, and that the firm's accounts and the statements made within said certificates were in breach of the terms of the said 2001 Rules.

11.13 The Second Respondent countersigned the Accounts Certificate on 10 May 2010 in relation to the said firm's accounting period between 1 October 2009 and 31 March 2010. The Second Respondent knew or ought to have known that the said certificate and the statements contained within said certificate were inaccurate and breached the terms of the said 2001 Rules, and in particular Rule 14.

12. The Tribunal found the First Respondent not guilty of Professional Misconduct in respect that he as an experienced court and family law Practitioner and Notary Public, countersigned and notarised an Affidavit of his client that he ought to have known contained statements that were false, which he would have known had he verified each answer to the questions on the Form SP5 prior to placing the Applicant on oath, thereby enabling false information to be given to the Court by his client.

Having considered the foregoing circumstances, the Tribunal did not consider that the First Respondent's conduct was sufficiently serious and reprehensible in relation to the first averment of professional misconduct against him so as to meet the test for professional misconduct but considered that the Respondent's actions may amount to unsatisfactory professional conduct and accordingly remitted the matter under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Council of the Law Society.

13. The Tribunal found the First Respondent guilty of Professional Misconduct in respect of:

- 13.1 The First Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper and in particular during the period of 4th April 2008 to 31st March 2010 managed a policy whereby the business of the former firm was improperly funded by payments due to third parties and that by virtue of his status as a Partner or principal of the firm and in his capacity as Designated Cashroom Partner and Managing Partner, he knowingly contributed to the operation of that policy of funding and, in particular, sums received from the Scottish Legal Aid Board were deposited in the firm bank account and cheques were thereafter drawn on those accounts and the purported payment of third parties' outlays made which had been incurred on behalf of the former firm's clients. Said policy resulted in the sums validly due to third parties not being timeously paid. Corresponding entries were reflected in individual client ledgers but the cheques drawn on the firm's account were not issued to the appropriate parties at the relevant time with the funds thereby remaining in the firm account all in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, and the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008.
- 13.2 The First Respondent submitted to the Law Society of Scotland Accounts Certificates on two occasions, namely 26 October 2009 and 10 May 2010, which he knew or ought to have known were inaccurate thereby the true financial position of the firm was not evident to the Law Society of Scotland.
14. Having considered the foregoing circumstances the Tribunal found the Second Respondent guilty of Professional Misconduct in respect of:
- 14.1 The Second Respondent during his tenure as a Partner and principal in the said former firm of Ross Harper and, in particular, during the period from 4th April 2008 to 6th May 2011 permitted to be operated or acquiesced in a policy whereby the business of the former firm was improperly funded by payments due to third parties, and that by virtue of his status as a Partner or principal of the former firm, he by his acquiescence contributed to the operation of that policy of funding and, in particular, sums received from the Scottish Legal Aid Board were deposited in the firm's bank accounts, and cheques were thereafter drawn on those accounts and the purported payment of third parties outlays made which had been incurred on behalf of the former firm's clients. Said policy resulted in sums validly due to third parties

not being timeously paid. Corresponding entries were reflected in individual client ledgers but the cheques drawn on the firm's account were not issued to the appropriate parties at the relevant time with the funds thereby remaining in the firm account all in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, and the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008.

14.2 The Second Respondent submitted to the Law Society of Scotland an Accounts Certificate, dated 10 May 2010, which he knew or ought to have known was inaccurate, thereby the true financial position of the firm was not evident to the Law Society of Scotland.

15. Having heard the representatives for the Respondents in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Perth 27 September 2016. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against Alan David Susskind, The Ca'd'Oro, 45 Gordon Street, Glasgow and Cameron Stuart Fyfe, 65 Bath Street, Glasgow; Find the First Respondent not guilty of professional misconduct in respect that he as an experienced court and family law Practitioner and Notary Public, countersigned and notarised an Affidavit of his client, that he ought to have known contained statements that were false, which he would have known had he verified each answer to the questions on the Form SP5 prior to placing the Applicant on oath, thereby enabling false information to be given to the Court by his client and Remit this matter to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Find the First Respondent guilty of Professional Misconduct in respect of him during his tenure as a Partner and principal in the former firm of Ross Harper and in particular during the period of 4th April 2008 to 31 March 2010 managing a policy whereby the business of the former firm was improperly funded by payments due to third parties and that by virtue of his status as a Partner or principal of the firm and in his capacity as Designated Cashroom Partner and Managing Partner, he knowingly contributed to the operation of that policy of funding and, in particular sums received from the Scottish Legal Aid Board were deposited in the firm bank account and cheques were thereafter drawn on those accounts and the purported payment of third parties' outlays made which

had been incurred on the former firm's clients, said policy resulting in the sums validly due to third parties not being timeously paid. Corresponding entries were reflected in individual client ledgers but the cheques drawn on the firm's account were not issued to the appropriate parties at the relevant time with the funds thereby remaining in the firm account all in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, and the Solicitors (Scotland)(Standards of Conduct) Practice Rules 2008; Find the First Respondent guilty of Professional Misconduct in respect of his submission to the Law Society of Scotland Accounts Certificates on two occasions, namely 26 October 2009 and 10 May 2010 which he knew or ought to have known were inaccurate thereby the true financial position of the firm was not evident to the Law Society of Scotland; Find the Second Respondent guilty of professional misconduct in respect that he during his tenure as a Partner and principal in the said former firm of Ross Harper and, in particular, during the period from 4th April 2008 to 6 May 2011 permitted to be operated or acquiesced in a policy whereby the business of the former firm was improperly funded by payments due to third parties, and that by virtue of his status as a Partner or principal of the former firm, he by his acquiescence contributed to the operation of that policy of funding and, in particular, sums received from the Scottish Legal Aid Board were deposited in the firm's bank accounts and cheques were thereafter drawn on those accounts and the purported payment of third parties' outlays made which had been incurred on behalf of the former firm's clients. Said policy resulted in sums validly due to third parties not being timeously paid. Corresponding entries were reflected in individual client ledgers but the cheques drawn on the firm's account were not issued to the appropriate parties at the relevant time with the funds thereby remaining in the firm account all in breach of the Solicitors (Scotland) Accounts etc. Rules 2001, the Code of Conduct for Scottish Solicitors, and the Solicitors (Scotland)(Standards of Conduct) Practice Rules 2008; Find the Second Respondent guilty of Professional Misconduct in respect of his submission to the Law Society of Scotland an Accounts Certificate, dated 10 May 2010, which he knew or ought to have known was inaccurate, thereby the true financial position of the firm was not evident to the Law Society of Scotland. Order that the name of the First Respondent be Struck Off the Roll of Solicitors in Scotland; Order that the name of the Second Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are

intimated to the Respondents; Find the Respondents jointly and severally 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 excluding expenses incurred solely in relation to the matter which has been remitted to the Council of the Law Society of Scotland under section 53ZA of the Solicitors (Scotland) Act 1980; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondents but that such publicity should be deferred until the conclusion of proceedings in the related complaint against four of the Respondents' former partners.

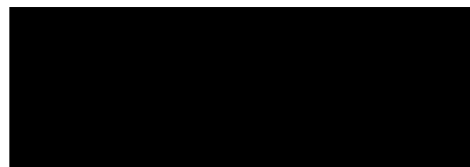
(signed)

Alistair Cockburn

Vice Chairman

16. 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 Respondents by recorded delivery service on 8 NOVEMBER 2016 .

IN THE NAME OF THE TRIBUNAL



Alistair Cockburn
Vice Chairman

NOTE

When the Complaint called on 9 September 2016 an amended Complaint was by agreement of the parties substituted for the original Complaint. A Joint Minute of Admissions was lodged on behalf of the Complainers and the First Respondent admitting some of the facts, all of the averments of duty and some of the averments of misconduct relating to the First Respondent. A Joint Minute was lodged on behalf of the Complainers and the Second Respondent admitting all the facts, all the averments of duty and all the averments of professional misconduct in the Complaint relating to the Second Respondent. When the Complaint called on 13 September 2016, a Joint Minute of Admissions was lodged on behalf of the Complainers and the First Respondent agreeing that paragraphs 2.3, 2.4 and 4.1(a) in the amended Complaint lodged on 9 September 2016 should be substituted by those identically numbered paragraphs reproduced in the Joint Minute of Admissions. It was agreed that by entering into the two Joint Minutes of Admissions, the First Respondent now admitted all of the facts, all of the averments of duty and all of the averments of misconduct. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS (FIRST RESPONDENT)

Submissions for the Complainers in relation to the First Respondent were made on 13 September 2016. Mr Knight read out the written submissions he had lodged with the Tribunal in advance of the hearing. These were as follows:

Written Submissions

The First Respondent is 59 years of age and was enrolled as a solicitor on 13 November 1979. Between 1 September 1983 and 22 March 2011 he was a Partner in the now former firm of Ross Harper. Between 15 October 1999 and 31 March 2010 he was the Designated Cashroom Partner. In addition to that role between April 2001 and February 2010 he was the Managing Partner of the firm and he was also a member of its Management Committee which was formed in mid 2009. His record card is produced and is item no. 1 in the First Inventory of Productions for the Complainers. On 21 September 2010 he intimated his intention to resign as a Partner and he left the firm on 22 March the following year.

The firm continued to trade after the First Respondent's resignation but was then dissolved on 5 April 2012 following the appointment of an interim Judicial Factor. As at that date the Partners of the firm were Alan Miller, Joseph Mullen, Paul McHolland and James Price all of whom had been assumed as

Partners in 2007, 1988, 2008 and 2003 respectively. It is understood that after the First Respondent ceased being the Designated Cashroom Partner on 31 March 2010 that role was taken on by Mr Miller and that change of status is what is noted in the records held by the Complainers and submitted to the Complainers by the firm.

The Complaint against the First Respondent, and the Complaint he is now admitting, sets out essentially two issues. Firstly what has been termed the "Gunn" matter and secondly breaches of the Accounts Rules.

As far as the Gunn matter is concerned, this is now set out in Statements 2.2, 2.3 and 2.4 of the Complaint and the averments of professional misconduct are set out in Statement 4.1 (a).

The Complainers have lodged a report from Jennifer Gallagher, Solicitor, which is no. 66 in the Fifth Inventory for the Complainers and it is proposed to make some reference to this. The First Respondent takes no issue with the terms of that report, nor its conclusions.

Statement 2.2 narrates that there is a Secondary Complainer, Joan Gunn. Her solicitor has confirmed that in the event of a formal finding of professional misconduct, she wishes to proceed with a claim for compensation.

Statement 2.3 narrates the First Respondent's actings for his client, Peter Gunn. He commenced acting for him on 30 October 2003. The principal file is lodged and is no. 1 in the Second Inventory of Productions for the Complainers.

There is no real issue taken with any of his actings until around the end of 2004. It appears that the client was desperate to get divorced. There were ongoing but sisted proceedings in Glasgow Sheriff Court. The First Respondent had recovered the previous agent's files and included within those files was a copy of those proceedings. Mrs Gunn's solicitor had also referred to those proceedings in correspondence. At page 40 of the file is a file note where the First Respondent reviews the file. He then writes to the wife's agents at page 38 and gets a response which is at page 36. The issue for the First Respondent is that following an attendance with his client on 26 January 2005, he agreed to review the file. That meeting is recorded at page 16 in the file.

Following that he then sends a letter to his client on 27 January with a Simplified Divorce Application form. That letter is page 15 in the file. That advice was, as the First Respondent now accepts, improper. His client could not competently present such an application given the pre-existing but sisted ordinary divorce proceedings. A copy of those proceedings was held on his file. In the file lodged as a production those copy proceedings are held on the top of the pile of documents on the left hand side of the file. The First Respondent apparently does not recall that the copy of the proceedings were held on his file in that location but that is the location in which they were found when the file was submitted to the Complainers in this matter at the outset of the investigation. That said, whether the proceedings were held exactly in that location in the file or not the First Respondent knew that the client's wife was represented and he was aware that she might wish to make a financial claim based on the correspondence which had been exchanged.

Why he gave that advice to his client is still unclear and it may be a matter addressed in mitigation. Was that advice an aberration, was it incompetent, or was it negligent in trying to facilitate the client's ultimate outcome? The Complainers are not in a position to comment upon that other than to suggest that the First Respondent, being an experienced Court and Family Law Practitioner, may be in some difficulty in persuading this Tribunal that what he did was a mere oversight.

The First Respondent then compounds matters by meeting his client on 21 March and notarising the Simplified Divorce form, Form SP5 without checking it. That meeting is recorded at page 11 of the file and the form itself is item 13 in the Third Inventory of Productions for the Complainers.

The First Respondent did not go over the form with his client. If he had he would have realised that some of the crucial answers on that form were false. The client stated that his wife and children's addresses were not known. That was not true. The client also declared that there were no other Court proceedings. That was also not true. Had the First Respondent gone through these questions with his client and noted the answers, he would have known that these answers were false and untrue.

The client then lodged the Simplified Divorce Application himself at Hamilton Sheriff Court as opposed to Glasgow where the other proceedings were sisted. Decree of Divorce was granted on 22 August 2005 and a copy of that Decree is item 14 in the Third Inventory of Productions for the Complainers.

The Complainers understand that it was some time before the wife, Joan Gunn, found out about these events and she eventually commenced an action of reduction in relation to the Decree. The Complainers are not aware of the outcome of that but she has instructed agents to deal with that matter being the same agents who intend to advance her claim for compensation. Mr Gunn has also apparently instructed new agents in relation to that matter.

Ms Gallagher in her report highlights these same issues. The First Respondent should never have recommended a Simplified Divorce to his client in these circumstances and what he should have done was to recall the sist in the extant proceedings and see what reaction that generated from the wife and her solicitor. Secondly, faced with the circumstances he was, the First Respondent should have checked the form, checked the answers, and put his client on oath, and crucially he should not have notarised the Affidavit on the final page. That unfortunately for him is exactly what he did.

The First Respondent has therefore not only tendered improper advice but by failing to properly discharge his duties as a Notary Public, and as an experience Court Family Practitioner, he enabled false information being given to the Court at Hamilton by his client which ultimately resulted in Decree of Divorce being granted without the opponent having any knowledge of that.

The consequences of his failures were grave to the wife in those proceedings and the Complainers maintain were a gross failure in his duties as a Notary Public.

The guidelines for Notary Publics which applied in March 2005 appear to the Complainers to come from an article in the Journal of the Law Society of Scotland in February 1997. There are Practice Notes from the Sheriffdom of Glasgow & Strathkelvin and Guidance Notes from the Complainers which slightly post-date that date and are items 15 through to 18 of the Third Inventory of Productions. The First Respondent has admitted these documents in the First Joint Minute of Admissions tendered to the Tribunal.

It seems clear what the duties of a Notary are and the Complainers would suggest that it is within judicial knowledge and therefore the knowledge of this Tribunal what those guidelines are.

Quite simply, the First Respondent has not acted in accordance with these guidelines and such were the consequences of his actions, the Tribunal should consider them to be a serious instance of professional misconduct.

Turning to the Accounts Rules matters, the firm had been the subject of an inspection by the Financial Compliance Department of the Complainers in June 2011 and concerns had been raised at that point, but perhaps not major concerns, regarding the operation of the firm and in particular the number of un-presented cheques contained in the bank reconciliations. The firm was therefore re-inspected in March and April 2012 and those inspections identified a number of matters which were of serious concern including poor and inadequate record keeping, the inaccurate recording of the firm's financial position, incorrect and inappropriate rendering of accounts to clients, clients funds being held in the firm account, breaches of the Money Laundering Regulations and clients funds not being adequately invested. The Financial Compliance Department of the Complainers produced documents which are termed as a Specialist Inspection Report, Summary of Findings and an Investigation Report and these documents are contained as nos. 2, 3 and 4 in the Fourth Inventory of Productions for the Complainers. An invitation was then submitted to the then four Partners of the firm to attend a meeting of the Complainers Guarantee Fund Committee and that meeting took place on 4 April 2012 and was attended by one of the Partners, Mr Miller. The outcome of that meeting was that the Complainers presented a Petition to the Court of Session on 5 April for appointment of a Judicial Factor and the interim appointment was granted on 5 April.

That background information is given to the Tribunal to provide a fuller picture but is done so on the basis that this Respondent was by that date no longer a Partner in the firm having left some twelve months prior. That said his own now accepted conduct contributed to the findings made by the Financial Compliance Department.

The Department's investigation highlighted the issues referred to but in doing so it looked back at the firm's records and files over a number of years and in particular dating back to early 2008 at which time the First Respondent was both the Managing Partner and the Designated Cashroom Partner of the firm.

The Complainers Compliance Department and their investigation uncovered thirty two particular files and ledger cards which gave rise to concerns and these are narrated in Statement 2.6 of the

Complaint. The corresponding ledger cards showing the entries which are extracted and then placed into that Statement of Fact are contained in the Fourth Inventory of Productions for the Complainers and are nos. 6 through to 37 within that Inventory.

Of those thirty two matters there are nineteen when the inaccurate and misleading entries were carried out during the period when the First Respondent was Designated Cashroom Partner. On the other thirteen files the entries were carried out after he had ceased to be Designated Cashroom Partner but he continued to be a Partner within the firm, and in four of those thirteen files the First Respondent was the Partner responsible for the file itself.

For completeness, the complaint at Statement 2.6 also narrates certain entries on some of the ledger cards which post-date the First Respondent's resignation as a Partner and him leaving the firm. These are not relied upon by the Complainers in relation to his conduct but nevertheless they are provided to show that the practices which the First Respondent managed and was complicit in continued after his resignation in relation to the files which were under his control whilst he was Designated Cashroom Partner and in certain files where he was the Partner responsible for the file.

In addition in relation to those entries which post-date March 2010 through to March 2011 the position is that as the outlays which were due to be paid to Third Parties had not been paid timeously it allowed the First Respondent's successor as designated Cashroom Partner to continue the practice and continue the delay in settling sums validly due to Third Parties and also the resultant use of those client funds for the firm's benefit.

All thirty two matters are relied upon by the Complainers in demonstrating the level of the First Respondent's culpability. All thirty two of these matters are agreed by the First Respondent by way of the Joint Minute of Admissions. Rather than narrate all thirty two matters to the Tribunal at length it might be helpful to highlight some particular examples.

Firstly, Matthew Findlay which is referred to on page 8 of the Complaint and the ledger card is number 8 in the Fourth Inventory of Productions. The ledger card entries which are relevant here commence on page two on the ledger card dating from 28 January 2009 onwards. The Complaint narrates the various entries, cross-entries with cheques being issued then cancelled then reissued when the funds had clearly been received from the Legal Aid Board to settle these outlays. In this

particular example there is also recovered from the file an internal memo which is sent by the Second Respondent's secretary to the cashroom requesting payment of one of these outlays from "the drawer" and that memo can be found in number 18 of the Fifth Inventory of Productions for the Complainers.

The second example is in the matter of Linda Barr which is narrated at page 10 of the Complaint and the ledger card is number 9 in the Fourth Inventory. Although the amounts there are relatively small the significance of that example is that it dates back to 4 April 2008 being the period which in particular the Complainers found upon in the Complaint and which is now accepted by the First Respondent.

The third example is for a client Rekash Kainth which is highlighted at page 16 of the Complaint and the relevant ledger card is number 14 in the Fourth Inventory. Again it is fairly short narration but it discloses that a sum in excess of £3,000 was utilised for a period of two months and that particular file was one under the control of the First Respondent.

The fourth example is for a John Graham which is narrated at page 17 of the Complaint and the ledger card is number 16 in the Fourth Inventory. Again this is a matter which is the responsibility of the First Respondent and the sums involved relate to a Bar Report and that is an example whereby a sum in excess of £2,000 is retained and not made over to the Third Party for a period of nineteen months although it is recognised and accepted that the eventual final payment is made after the First Respondent has left the firm.

The fifth example is for a Melanie Anderson which is narrated at page 18 of the Complaint and the ledger card is number 17 in the Fourth Inventory. It is again a fairly small amount of money but nevertheless it is retained by the firm for twenty months. There is also an internal memo from the Second Respondent which refers to the sum and the payment being held in "the drawer" and that memo can be found as item 41 in the Fifth Inventory of Productions.

The last example is a file for an Aileen Nicol is which is narrated at page 20 of the Complaint and that is a file where the First Respondent was the responsible Partner and the ledger card can be found at number 19 in the Fourth Inventory. It again highlights examples of monies being received from the

Legal Aid Board retained by the firm and not being remitted timeously to the Third Party to whom they should have been paid.

The system or policy which the firm operated came to be known as, and is referred to in the Complaint as, "the drawer". The Complainers recognise and accept that the First Respondent did not instigate this system. It was in operation for a number of years although it has not been possible to establish exactly when it was instituted but it is important for the First Respondent to stress that it was not he who instigated this practice but he was, as Designated Cashroom Partner and Managing Partner, responsible for its continued management and operation.

It may be suggested that much of the day to day operation of this system was at the behest of the Cashroom staff and particularly the Head Cashier who subsequently retired from the firm. Whilst that might have been the position, the Complainers and indeed the First Respondent both agree and accept that the responsibility for that lies with the First Respondent and indeed the authority for that position is the case of *McCull –v- The Law Society of Scotland* 1987 SLT 524.

Statement 2.7 of the Complaint, on page 42 and down to the first paragraph on page 43, narrates the process by which the system or policy operated and the paragraphs of that Statement of Fact narrate the circumstances in which it operated and also its consequences.

In essence what the firm was doing under the management of the First Respondent and with him being Designated Cashroom Partner was to pay all sums received from the Scottish Legal Aid Board into their firm account. There is no issue with that. That is not contrary to the Accounts Rules. Then they were transferring the fees and VAT over to the client ledger from the firm account in respect of these payments which is also not contrary to the Accounts Rules. What was however contrary to the Accounts Rules was retaining the funds within the firm account which are in respect of outlays or sums due to Third Parties without transferring those funds into the client ledger. Those are client's funds and the Accounts Rules as will be narrated shortly provide that they should be transferred without delay and remitted to whom they are due.

Ledger entries were created and cheques prepared for those entries but the cheques were not signed, nor issued and were held back in what became known as "the drawer". This created an inaccurate representation of the firm's accounts, as if you looked at the client ledger you would think

the cheque had been issued to the payee when it had not. The issue of the cheque to the payee, if it had occurred, would impact on the firm account as it would increase the overdraft balance. By holding the cheque back the firm's accounts looked at face value in order but in reality the cheque was held back so the firm account balance, or overdraft, was not increased. It also meant the client account was in deficit.

Instead, therefore, what was taking place was that those funds were remaining within the firm account and being utilised to finance the operation of the firm and its continued trading. Those funds were client's funds and therefore there was a wrongful and improper use of clients funds, without those clients' knowledge or consent, to allow the firm to continue to trade and operate within the limit of its banking facility. The First Respondent accepts this occurred over the particular period of time of two years when he was Designated Cashroom Partner.

It will be noted from the Affidavits which have been lodged from two of the other Partners, Gerard Devaney and Paul McHolland, which are items nos. 1 and 2 in the Fifth Inventory of Productions that the firm fell into financial difficulty in around 2008. The use of "the drawer" became more prevalent from that date onwards. Both of those Affidavits have documents attached to them showing that the First Respondent was acting as Managing Partner and was therefore tendering advice to the remaining Partners as to how their firm should be run.

The Affidavits from the two former partners, however, narrate clear difficulties ongoing within the firm not only of a financial nature but clashes of personalities. There is also mention of interdict proceedings raised against two former Partners. The First Respondent was a party to that action and the operation of "the drawer" was raised as an issue in those proceedings. Nevertheless the First Respondent was the Managing Partner and the Designated Cashroom Partner and by his position being accepted in those respects to this Tribunal he takes full responsibility for his role in the firm's administration.

The Complainers recognise that the use of "the drawer" appears to have become more prevalent after the First Respondent's resignation from the firm in 2011 and may have therefore spiralled somewhat out of control in the twelve months after that resignation, resulting in the dissolution of the firm, but it continued to operate in the 12 months he remained a Partner before leaving, and he has contributed over a period of some 3 years, by his now accepted conduct and actions, to the

downfall and ultimate demise of one of Scotland's foremost and well-known legal firms. The Judicial Factor appointed in 2012 now estimates that claims in the region of £400,000 will require to be settled by the Complainers Guarantee Fund.

There is a copy Affidavit from the former Head Cashier, Reina Gardiner, which is no. 41 in the Second Inventory of Productions, and is an Affidavit which was obtained from this lady by those acting for the First Respondent during the course of the Complaint process which led to this prosecution before the Tribunal. She provides a narrative as to how the firm operated up and until the First Respondent's resignation and it also provides some further insight into what took place within the firm after that resignation resulting in her leaving the firm and then thereafter its dissolution. It does not paint a very pretty picture but it makes clear the First Respondent's role in the administration of the firm's cashroom.

One further example of the circumstances in which the firm found itself under the management of the First Respondent is narrated in the latter part of Statement 2.7. The firm instructed Drummond Miller LLP in Edinburgh to act their Edinburgh correspondents in Court of Session matters. Due to the failure of the firm to pay Drummond Miller the sums that were due to them they were forced to raise proceedings against the firm in January 2011, shortly before the First Respondent left the firm. A copy of the proceedings is number 4 in the Fifth Inventory of Productions for the Complainers. In those proceedings they sought a sum in excess of £70,000 and it was averred in those proceedings that all of those sums had been received by the firm from the Scottish Legal Aid Board but they had not accounted to Drummond Miller for the sums due to them. Those sums will have been paid by the Scottish Legal Aid Board to the firm, lodged in the firm account but then not transferred into the client ledger and not remitted to Drummond Miller. The consequences of that were that Drummond Miller were seeking the sum mentioned and they took steps to execute diligence against the firm in relation to the operation of their firm and client accounts. Not surprisingly it resulted in payment being made. Whilst it is accepted that this action was raised after the First Respondent ceased being Managing and Designated Cashroom Partner it was raised prior to him formally leaving the firm and he would therefore be aware that the proceedings had been raised and the consequences to the firm at that point. This does however highlight that significant sums of those client's monies were being retained to finance the operation of the firm and the previous examples narrated and discovered were perhaps only a proportion of this system or policy.

A further aspect to the operation of this system or policy is that sums which were validly due to Third Parties namely expert witnesses, Sheriff Officers, Bar Reporters and other agents were not being paid timeously. Instead the funds were being used for the firm's own purposes. This Tribunal has already held on many occasions that the failure to pay timeously sums due to Third Parties such as these individuals is of itself professional misconduct particularly where those funds have been received by the firm and held on to for one reason or another. In this case they were held on to fund the operation of the firm.

As a direct and further consequence of the manner in which the firm and its cashroom was being operated by the firm and managed by the First Respondent, accounts certificates which require to be submitted to the Complainers on a six monthly basis were submitted by this firm and signed by the First Respondent in his capacity as Designated Cashroom Partner. There are two certificates in particular which are at nos. 8 and 9 of the First Inventory of Productions for the Complainers and they cover the periods 1 April 2009 to 30 September 2009 and 1 October 2009 to 31 March 2010, a twelve month period.

Both of those certificates are inaccurate. Both the Head of the Complainers' Financial Compliance Department and also the Judicial Factor appointed to the firm, Ian Mitchell, have expressed a view that the certificates were false. They were both false and they were inaccurate. They were inaccurate because due to the manner in which the entries were posted on the client ledgers, and those entries in fact being false, the figures within both certificates were accordingly inaccurate and as a result they did not disclose the true financial position of the firm to the Complainers who are of course the regulatory body for these matters and require a full and proper disclosure of a financial position of any firm of solicitors in Scotland.

The First Respondent in signing off the two accounts certificates made statements within those certificates which were inaccurate. It is now accepted between the Complainers and the First Respondents that at the date that he signed both certificates he was perhaps not fully aware of the level of the inaccuracy within the certificates but he should have known that level and verified the information. He does unequivocally accept that they were inaccurate.

Statement 2.10 is a narration of the Rule 12 of the 2001 Accounts Rules providing that the First Respondent and Designated Cashroom Partner is responsible for the supervision of the cashroom staff within the firm and any cashroom system employed by the firm to comply with the Rules. The First Respondent accepts his responsibility in this respect irrespective of what actions any member of his staff may have carried out.

Statements 3.0, 3.1, 3.2, 3.3, 3.4 and 3.5 all narrate the averments of duties and the Accounts Rules which apply in this particular matter. They are self-explanatory and no issue is taken with the narrative within the Statements by the First Respondent.

As the Tribunal will also be aware it has held on many occasions and in particular in the case of *McMahon –v- Law Society of Scotland 2002 SLT 363* that the client account of a firm is sacrosanct. Any firm or solicitor utilising clients funds for anything other than the benefit of the clients is a matter of serious concern and have to be viewed by this Tribunal at the very top end of any scale of professional misconduct. Reference in particular to paragraphs 20 and 21 of that case. Those passages also refer to the English case of *Bolton –v- The Law Society 1993 EWCA Civ 32 at paras. 9, 14 and 15*.

These cases refer to whether the actings of the solicitor amount to dishonesty. The Complainers do not aver in this Complaint that the First Respondent was acting dishonestly but are content to leave the assessment and level of the First Respondent's conduct to the Tribunal to determine taking into account the whole circumstances and the authorities. In light of the authorities and the facts of this case the Tribunal could undoubtedly and reasonably form a view of the First Respondents propriety.

Although all of the relevant Rules are narrated within the Complaint, some further comment on particular Rules is necessary. Rules 4(1)(a) and (b) and 4(3)(b) all specifically apply in this matter as the operation of "the drawer" or policy would mean that the Client Account was truly in deficit although the cashroom entries sought to obscure that.

Rule 8 has been breached as it is accepted that the books were not properly written up, and that the books did not accurately reflect the true financial position of the firm.

In relation to Statements 3.4 and 3.5 narrating Rules 12 and 14, Rule 12; as previously referred to, covers the position that has been advanced here namely that the First Respondent in his role as Designated Cashroom Partner is wholly responsible for the supervision of all the staff and the systems employed by the firm. He accepts that he is primarily responsible therefore for the entire operation of the cashroom of the firm during the period when he was Designated Cashroom Partner and, therefore, the management of "the drawer" during that period.

Rule 14 is the rule which covers the Accounts Certificates and the provisions applicable to those. The First Respondent has accepted that two Certificates signed by him as Designated Cashroom Partner and submitted to the Complainers were inaccurate and that by reason of the operation of the firm's policy which has been referred to as "the drawer".

The Tribunal has on many occasions stated that the Accounts Rules set down by the Complainers are in place to protect the public, and solicitors who breach them undermine public confidence in the profession. That is exacerbated when solicitors attempt to obscure the breaches of the Accounts Rules from the Complainers and that is the position here insofar as the Accounts Certificates are concerned.

The Complainers have issued guidelines to the profession, and further guidance is also available to the profession in the textbook by Paterson & Ritchie being Law, Practice and Conduct for Solicitors.

For the relevant dates here the Complainers had produced a guide to the Accounts Rules which was formerly within the Parliament House Book at Section F1238-F1240, a copy of which is produced. There is also a passage within the textbook referred to at pages 291-293, paragraphs 9.18-9.20, and copies of those are produced.

These guidelines and guidance make it clear that the production of an Accounts Certificate is the responsibility of the Designated Cashroom Partner and that the signatories to the Certificate on behalf of the firm have a direct responsibility for its accuracy and the information contained within it. The position here is that the First Respondent knew or at least had sufficient knowledge and ought to have known that the statements within the Accounts Certificates were inaccurate and therefore obscured the true financial position of the firm from the Complainers. That is obviously a matter of

serious concern, and given the ultimate consequences to this firm in 2012, must be viewed by this Tribunal again at the top end of any scale of professional misconduct.

In conclusion therefore the Complainers aver that this Respondent has been guilty of acts or omissions which singularly or *in cumulo* constitute professional misconduct and in particular at the now amended Statements 4.1 (a), (b) and (c). The First Respondent accepts these averments and they are agreed by him as a plea to this Complaint.

Finally, the Complainers seek the usual orders for expenses and publicity.

Oral Submissions

During his submissions regarding the alleged misconduct in relation to the signing of the affidavit, the Fiscal indicated that the Tribunal members could find the “Form F2 Form of Intimation to Alleged Adulterer in Action of Divorce or Separation” on the left hand side of the inside cover of the copy file which was Production Number 1 in the Second Inventory of Productions for the Complainers. However, the Fiscal made it clear that it was not being advanced on the Complainers’ behalf that this was exactly where the form had been kept in the file when it was in the First Respondent’s possession, although the First Respondent accepted that the form was somewhere within the file. Whether or not it was attached to the inside of the front cover or was somewhere else on the file, the Complainers were of the view that the First Respondent ought to have known that JG was represented by other agents and that there was a financial claim.

In response to a question from the Chairman about the use of the words “inaccurate” and “misleading” in the Complaint the Fiscal clarified that he meant the cheques had been recorded as being sent out but they had not left the firm.

The Chairman asked what the parties’ positions were regarding the affidavits which had been lodged as productions. Mr Macreath asked the Tribunal to bear in mind that one of the affidavits had been provided by a person who had until recently been a Respondent in these proceedings and another by a person who was a party to the second complaint involving the partners of Ross Harper. All parties accepted that the affidavits could be used as evidence in present proceedings, including those of Reina Gardiner. The Chair said it was likely that the Tribunal might have some difficulty reconciling the two affidavits of Reina Gardiner. It was clear that she was saying she had been put under some degree of duress in signing the first affidavit. However, it was not clear in the second affidavit which parts of

the first affidavit she wished to withdraw. The Fiscal indicated that for his purposes the relevance of Reina Gardiner's affidavits were that they showed that "the drawer" policy was operated by the firm with the full knowledge of the First Respondent.

During the course of his submissions the Fiscal referred to the case of McMahon v Council of the Law Society of Scotland 2002 S.L.T. 363. He noted that in that case at paragraphs 20 and 21 of the judgement, the Lord Justice Clerk said that,

"In many cases, the tribunal may be justified in taking a lenient view of an isolated act of misconduct where it is venial in itself, or is explicable, if not excusable, on account of some misfortune or mitigating circumstance. More serious acts of misconduct give less scope for leniency. But where dishonesty with clients' money is involved, there can be few instances, if any, where leniency can be shown. A solicitor who has been guilty of such dishonesty has forfeited the respect and trust of the public and of his colleagues, and has disgraced his profession.

The Accounts Rules reinforce the duty of honesty in the handling of clients' money by requiring solicitors to keep clients' funds in a separate account (Solicitors (Scotland) Accounts Rules 1997, rule 6). It is a fundamental principle of professional life that the client account is sacrosanct (Docherty v Law Society of Scotland, at 1968 SLT 133, p136; Bolton v Law Society, at p517). There can be no situation in which that account can justifiably be in deficit. Isolated instances may occur where, through no fault of the solicitor, for example by some honest bookkeeping error or perhaps a computing mishap, the rules are breached. In such a case, the respondents no doubt deal with the matter with discretion and common sense. But where the client account is persistently and repeatedly in deficit, we find it difficult to see how the penalty can be anything less than suspension (cf Docherty v Law Society of Scotland; Bolton v Law Society, at p518A); and where money is taken from the client account dishonestly, we find it difficult to see how the penalty can be anything other than striking off."

The Fiscal submitted that the First Respondent's conduct was not an honest bookkeeping error or a computing mishap and was at the more serious end of the scale of misconduct. However, the Complainers did not aver that the First Respondent was acting dishonestly. The Fiscal was content to leave the level of conduct to the Tribunal in the whole circumstances of the case and the authorities to which he referred in the course of his submissions.

The Fiscal also referred to the case of Bolton v The Law Society [1993] EWCA Civ 32 at paragraph 9 where the Master of the Rolls agreed that the client account of a solicitor should be "sacrosanct". He

noted that the Bolton case involved a case where a solicitor had utilised the monies in the client account. The case turned not so much on the degree of dishonesty involved as the integrity of the solicitor and public perception. The Master of the Rolls noted at paragraph 16 that,

“Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic...All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is a part of the price.”

SUBMISSIONS FOR THE FIRST RESPONDENT

Submissions for the First Respondent took place on 13 and 14 September 2016. Mr Macreath for the First Respondent recorded his thanks to the Complainers’ Fiscal for his help and cooperation in arranging the plea in this case.

Mr Macreath said it was important that the Tribunal realised that the pleas tendered indicated no averments of dishonesty. There was nothing in the narrative to state or imply dishonesty. This was a matter for the Tribunal to determine. Mr Macreath drew the Tribunal’s attention to the terms of the admitted averments of professional misconduct. In relation to the affidavit matter it is admitted that the First Respondent “ought to have known” and “would have known had he verified each answer” that the statements were false. In relation to the Accounts Rules matters it was admitted that the Respondent “managed a policy” whereby the business of the former firm was improperly funded by payments due to third parties and that “by virtue of his status as a Partner or principal of the firm and in his capacity as Designated Cashroom Partner and Managing Partner, he knowingly contributed to the operation of that policy of funding.” In relation to the Accounts Certificate averment it was

admitted that the First Respondent “knew or ought to have known they were inaccurate”. The Chairman queried with Mr Macreath whether it was accepted by the First Respondent that there was any element of dishonesty in his conduct. Mr Macreath indicated that he would come to that in his submissions and once the Tribunal had heard the plea in mitigation, they would know how this state of affairs had come about. He said that in circumstances as grave and reprehensible as this, it was important to hear from him first regarding the First Respondent and his involvement with the firm of Ross Harper.

The First Respondent was educated at Hutcheson’s Grammar School in Glasgow and the University of Strathclyde. He served his apprenticeship with the firm of William Armour and Son. At twenty three years old, the First Respondent moved to the Crown Office and Procurator Fiscal Service and worked as a depute in their Glasgow, Dumbarton and Kilmarnock offices. He met Professor Ross Harper during a trial and was offered a job at Ross Harper Murphy in 1984 when he was about 27. He worked from Ross Harper’s Shawlands office doing general legal aid work in the fields of criminal, family and employment law. Professor Ross Harper encouraged the First respondent into a management role early in his career. It was he who suggested that the First Respondent move to the central office and appointed him as managing partner when he was thirty four years old. He was managing partner for two years and worked closely with Professor Ross Harper who was the senior partner. During this time Reina Gardiner worked in the cashroom and would eventually become head cashier. When the First Respondent was made managing partner, Reina Gardiner worked with a qualified accountant and an external accountant supervising the accounts. There were twenty three offices operating under the mantle Ross Harper Murphy. The firm was undertaking 17-18% of all advice and assistance work in Scotland. Mr Macreath submitted that this was significant given the cashroom functions which were operating until 2008. The cashroom had to be a very large operation with lots of staff, processing advice and assistance, and civil and criminal legal aid. At one stage there were more than twelve people working in the cashroom. It was an enormous undertaking.

When the First Respondent was thirty seven he felt the firm could not continue to expand in the way it had been in previous years. In addition, he wanted to stop being a manager and return to family law work. He was interested in mediation. In the 1990s Ross Harper changed focus. Legal Aid was still a major source of business but the firm began to look at commercial and corporate work. The different parts of the business were branded differently, Harpers and then Harper Macleod for the commercial arm and Ross Harper for the legal aid section. Towards the end of the 1990s, the legal aid work, particularly the criminal legal aid work was not as profitable as it once was. Legal Aid was not keeping pace with inflation. The corporate and commercial work was far more profitable.

The employed full time qualified accountant felt that there had to be a change to the accounting system in Ross Harper. Scottish Legal Aid Board fees had always been paid into the firm account. Ross Harper Murphy had one account for all clients because of the sheer volume of cases they dealt with at any one time. The new accountant wanted to have separate accounts for each client but this proved to be impossible to achieve for IT reasons. There were difficulties with the accounts, particularly the provision of appropriate information to management. The balance sheets showed mixed information. The partners in the commercial arm of the business were dissatisfied with progress. In 2001 the firm split into two distinct firms, Harper Macleod and Ross Harper. The accountant employed by the old firm split the balance sheets between the new firms.

There was a lengthy disaggregation process. The First Respondent recognised that costs had to be addressed for the firm to be viable. There was substantial rationalisation of the premises. The branch offices were centralised. There were redundancies at all levels including the cashroom. In 2002, the roles of managing partner and designated cashroom partner were thrust on the First Respondent because no one else wished to fulfil them. In retrospect he accepts he was not the right person to be appointed. He was good at managing, marketing and human relations but his skills were not in managing the cashroom. Looking back, the First Respondent recognises that he was at court doing a lot of family work. The cashroom partner role should really have been filled by someone with a private client focus who could be present more often at the office. Many firms and professionals within firms did not appreciate what the role of cashroom partner entailed before the 2011 Rules. The introduction of the mandatory cashroom partner represented a sea change regarding what is required for cashroom management. It was no longer sufficient to have experienced cashiers or external accountants. Against this background it should also be noted that any practice or policy regarding “the drawer” had gone on for a long time. It had been instigated by previous partners and continued by others. The First Respondent was left managing the firm, its resources, managing, supervising and organising the cashroom functions, and running the family law team. The family law team was the busiest team in the firm and consisted of five solicitors, two paralegals and two processors in addition to the First Respondent. The majority of his time was taken up running his team.

Even after disaggregation there were concerns that the firm was not viable. The Ross Harper balance sheet contained debts due by the Scottish Legal Aid Board which were either irrecoverable or significantly abated. This had a huge effect on cash flow and the balance sheet. Ross Harper traded reasonably well after disaggregation. The criminal, family, conveyancing and reparation teams were successful. However, hidden in the balance sheet was a historic problem. It contained figures due and

many of the accounts although ostensibly recoverable, would not be paid leading to significant write-offs. During the process of disaggregation the possibility had been raised that the accountant previously employed by the old firm would stay with Ross Harper. However, in the end he moved with Harper Macleod. Ross Harper decided to promote Reina Gardner. She had a detailed knowledge of the cashroom and the Accounts Rules and the Scottish Legal Aid Board system. By 2005 the firm decided that it could not afford a full time accountant. It became fully reliant on an external accountant. The cashroom staff were depleted. Reina Gardner had her strengths but it was the First Respondent's responsibility to oversee the cashroom functions, train staff, and be able to reconcile the accounts.

The firm was involved in very complex legal cases including the tobacco cases and files involving allegations of abuse which ran for many years. The firm dealt with thousands of transactions a year. Many cases needed their own independent expert reports and individual sanction from the Legal Aid Board. There was confusion within the cashroom regarding which outlays related to which cases. The First Respondent left much of the cashroom management to Reina Gardner. She was working without the appropriate support. The cashroom was constantly behind and serious difficulties were encountered.

Mr Macreath said that it was accepted that the First Respondent did not carry out the cashroom functions properly. He did speak to Reina Gardner every day. He did identify that there was a surplus on the client account. However, he accepts that he never asked to see the ledger posts and he never asked to see any sample files. The First Respondent had complete trust in Reina Gardner and a complete lack of insight into what his role was. The First Respondent now accepts that the outlays are clients' funds. However, he did not appreciate this at the time. The practice in Ross Harper uniquely was for the Scottish Legal Aid Board money to go into the firm account. Traditionally there had been difficulties making outlays. However, they had always been paid in the past although sometimes there was a delay. The First Respondent was aware of those delays. He had inherited a system which had spiralled out of control. It is of note that no recommendations were made by the first external accountant regarding paying the Scottish Legal Aid Board money into the firm funds.

The financial year ending 2008 was successful but that changed for the legal profession as it did for many others. Ross Harper historically operated with a significant overdraft (£1.5 million). In the firm's diminished form the overdraft was restricted with some flexibility beyond £600,000. However, in 2008 the banks were viewing solicitors' firms differently and strict limits were imposed on overdrafts. Certain departments were underperforming, for example the property team and the employment team. At the end of 2008 there was a partners' meeting. It was necessary to make

changes. Throughout this period external accountants were advising the First Respondent. In 2008 the external accountant thought that the firm was viable despite friction between the partners. That accountant was replaced by another but that firm still advised that Ross Harper was a viable firm in 2009. Throughout the period from 2008-2010 there would have been external examination of records, outstanding cheques and the impact of these on the overdraft.

In late 2009 it was clear that the First Respondent did not enjoy the support of the majority of the partners. His influence was on the wane. A management committee was formed. Matters were deteriorating and there was a poisonous atmosphere. The First Respondent's control over the firm had diminished. In January-February 2010 he decided to resign and his resignation as cashroom partner took effect from 31 March 2010. Following his resignation others took over the business. The First Respondent concentrated on his own department. The First Respondent, through misplaced loyalty to the firm, took the summer of 2010 to consider his position before he decided to resign. This was a huge decision for him. He had been involved with the firm since he was a young solicitor. He had worked very hard for the firm. However, he had been subject to significant interference from other partners. He had serious concerns regarding their ability to run the firm financially. However, he kept his head down and continued to work. He was required to work his full period of notice. He reached a tentative agreement with them regarding the retention of files but by the end of his period of notice they determined that they would not permit any files to be removed. The First Respondent accepted this. He was offered and took a job at Harper Macleod.

Turning to the "*Gunn case*", Mr Macreath took no issue with the report provided by Jennifer Gallagher to the Complainers. Mr Macreath said he found it helpful due to its balanced approach. The author is an accredited specialist and collaboratively trained family lawyer. She is a Dundee University tutor. She recognised that the file follows standard practice. She noted that it was clear from the file that the client had other solicitors. The order of the papers within the file was an issue during the discussions between Mr Macreath and the Law Society Fiscal. Mr Macreath noted that the file was not immediately available to the First Respondent when he first met with PG and his partner. It is clear from the file that when he took first instructions on 30 October 2003 that he still did not have the file. It took a considerable time for the papers to be received. Mr Macreath noted that there is a letter on page 66 of the file which refers to the action of divorce presenting sisted which still required to be dealt with. Mr Macreath highlighted that this letter had been copied to Mr Gunn and that copy letter was contained at page 65 of the file. On 11 March 2004 the First Respondent had sent proposals for financial settlement to the wife's solicitors even though he did not yet have the file. On 7 May 2004 it is clear that the First Respondent, an experienced family lawyer, had identified the extent of the family

assets and makes an assessment regarding reasonable divisions. On 2 July 2004 the First Respondent wrote to PRG setting out a proposal regarding division on a fair basis and this was copied to the client. There is a letter on the file contained at page 36 from PRG indicating that they are not content with the financial offer. Turning to page 33 of the file the First Respondent writes to PRG again regarding "*your client's grant of legal aid*". PRG write back to the First Respondent indicating that legal aid had been terminated before they got fresh instructions. PRG informed the First Respondent of the wife's intention to reapply for legal aid.

There is a note on the file by the First Respondent which says "*I looked back through the file*". The First Respondent noted the letter of 27 August 2004 regarding legal aid and misdirected himself. Mr Macreath admitted that there was negligence in the First Respondent not going back to the original correspondence and file note regarding the live sisted divorce action. However, he noted that it was highly unusual for a family action to be sisted for five years. It was admitted that the First Respondent had advised the client that the divorce action was open to him and that he had notarised the relevant document.

Mr Macreath said that he took no issue with Jennifer Gallagher's report other than the question of where the action was located within the file. Mr Macreath said that in this case the First Respondent had already acted for the client. It was common practice to provide the forms. The process itself takes no more than 5 to 10 minutes. The First Respondent had explained to the client that he was on oath. The client lodged his own papers with the court. It was the client who confirmed that there were no live proceedings. The client had completed the form and indicated that the address of his wife and children was not known. The First Respondent knew that the wife was represented. To be courteous he should have written to the PRG Partnership and explained what he was doing. It would have been appropriate in these circumstances to write to PRG and ask them to accept service. Any reasonable examination of the file would have put him on notice that an action existed.

Mr Macreath said that he did not think the Law Society Fiscal was alleging dishonesty. The issue here was the breach of the Notary's responsibilities. However, this case was not about complicity or collusion. PG did not remarry for another five years. There was no claim until 2011. In Mr Macreath's view the court was highly unlikely now to deal with this by way of reduction. Mr Macreath indicated that the First Respondent was contrite.

The Chairman noted that the First Respondent was diligent enough to have had a meeting with Reina Gardner regularly. The First Respondent knew that the drawer existed. The Chairman asked whether

the First Respondent had ever asked how much was in the drawer. In answer, Mr Macreath asked the Tribunal to look at Reina Gardiner's affidavits contained at number 40 and 41 of the Complainers' Fourth Inventory of Productions. He noted that these had been prepared for the action by Ross Harper against Harvey Diamond and Richard Freeman. He quoted large sections of the affidavit contained at number 40 to the effect that "the drawer" system had existed for many years and that the system had been described in the affidavit which had been put before an Outer House judge without adverse comment. He noted that if the funds had been left in the firm account, the client account would have remained sacrosanct but payments would still have been delayed. He invited the Tribunal to compare this affidavit with the second one sworn before Robert Vaughan. He noted that paragraph 3 indicated that Reina Gardiner had felt pressure to provide the first affidavit, that the system had been in place for over 40 years, that SLAB fees were paid into the firm account and that they had never reconciled fees coming in with outlays. This was due to the sheer volume of material coming through the system. If the First Respondent had looked to see how it could be reconciled this would have been impossible to do. This system had endured from before 1975. It lacked propriety. The First Respondent had failed to appreciate the problem. He was concentrating on cash flow. He appreciates that public funds have to be properly used. He wholly lacked appreciation that this was clients' money. He does not accept, however, that there was any dishonest intent.

The Chairman asked what regard the Tribunal should have to the first affidavit. It was clear that Ms Gardiner was saying she had provided it under duress but it is not clear which parts she is recanting. Mr Macreath indicated that due to the circumstances he had made sure that the statement had been taken independently. The Chairman said that the problem was that the second affidavit did not specify in what respects the paragraphs in the first affidavit were incorrect. Mr Macreath said that he could not see Reina Gardiner due to her bad health and that of her husband. She did not want any further involvement in the case. Mr Macreath said part of his role was to find out when the system had started and what kind of oversight there had been of the cashroom by those in the firm and the external accountants. The external accountants will look at work in progress, debtors and whether these are realistic, if you have an overdraft, whether it is being paid, is PAYE being paid and crucially, check for outstanding cheques. One would anticipate that if you are giving the impression that these are being paid but none are being encashed, questions should be raised regarding the balance sheet and the overdraft. Mr Macreath had concerns that the external advisors were advising on the viability of the firm without addressing this question.

The Chairman asked Mr Macreath whether the external accountants were ever told about "the drawer". Mr Macreath said that if they were confirming the firm was viable they should have picked up the

outstanding cheques. The Chairman noted that if you cancel and reissue cheques, they won't be caught in a six monthly examination. Mr Macreath noted that when money was good, Ross Harper would pay outlays before receiving SLAB cash. If business had remained that way, everything would have been fine. At one time two accountants were working out of the West Regent Street office. 5,000 files a year were billed. They were recorded on an Excel spreadsheet. The firm was presenting 60-70 accounts to SLAB twice a week. There was little interface between the law accountant and fee earner. The First Respondent was more concerned with the targets he had to meet. The First Respondent did go to the cashroom. He maintained a presence there but he was not running it or supervising it. He did not check the spreadsheets or ledgers, just the figures. Scottish Legal Aid Board funds would stay in the firm account. Outlays were marked as paid. The client account was reduced but the firm account increased. The First Respondent was not checking the reconciliations. He was merely overseeing a process. The First Respondent resigned as cashroom manager and another partner was appointed. By 2012 staff were so alarmed regarding the accounting practices that they went to the Law Society.

The Chairman asked whether the First Respondent was aware that cheques were being cancelled and re-written. Mr Macreath said the First Respondent was unaware of the ledger entries. He was pleading guilty on the basis that he "ought to have known".

The Chair asked what would happen if reminders were sent to the First Respondent. Mr Macreath indicated that they would be paid when the reminders came in. Mr Macreath said that by 2008 no allowance was being given by Lloyd's TSB regarding the overdraft. Reina Gardiner approached the First Respondent and said that something needed to be done to manage the finances. The First Respondent thought that things were under control. The firm was getting a short term financial boost from the clients' money. The First Respondent now accepted that it would have been better to call in the Judicial Factor at that stage. Many firms at this time did experience severe financial difficulty and some big names did go. In Ross Harper four of the nine partners were not pulling their weight. Taxes and VAT were outstanding. Payments to staff were delayed. There was extraordinary pressure on the firm. The firm was trying to trade out of the difficult position. The First Respondent was being excluded from the cashroom and the management committee.

The First Respondent has had to repay his professional practice loans himself. Seven out of the nine former partners have been sequestered. Only he and one other have avoided sequestration. He is still jointly and severally liable for all of the debts. Due to the continuing liability of partners, he is still making payments to the SLCC among others but he is still afloat.

Following a question from the Chairman regarding the value of the cheques in the drawer, Mr Macreath indicated that the First Respondent had thought there was £30,000-£40,000 but by March 2012 the figure outstanding was £250,000 and the final debt might be upwards of £400,000. Mr Macreath indicated he had no locus to obtain more detailed information on this for the Tribunal. However, he noted that there was a gross deterioration after the First Respondent left.

The Chairman asked why the First Respondent left it to an employee to blow the whistle. Mr Macreath indicated that the First Respondent did not know the extent of what was going on. Dealing with the debt of the firm was fire-fighting. There was £600,000 of joint and several debt to Lloyd's. This was bank debt alone. £400,000 of clients' money had been spent. In addition there was debt to landlords etc. The First Respondent had to resign from the firm he loved. Financially he was almost ruined. Matters were more complex than he ever realised but he is not malicious or dishonest. He was not responsible for the downfall of a once great firm.

The Chairman asked why the First Respondent continued to sign the accounts certificates. Mr Macreath said that any reasonable examination as designated cashroom partner would have revealed that he could not have signed the certificates. He ought to have known that.

The Chairman clarified that the First Respondent was saying that he knew payments were being deferred but did not understand the extent of the problem. However, he was still content to sign the declaration on the accounts certificate. Mr Macreath said that the First Respondent was not carrying out the reconciliations. He failed to appreciate that the outlays were clients' money.

The Chairman said that it would be helpful to clarify exactly the extent of the First Respondent's plea. Was he pleading guilty on the basis that he knew or that he ought to have known the accounting situation within the firm? Mr Macreath indicated that the Tribunal had a discretion on these matters and it was not necessary for the First Respondent to admit to one or the other. These were not civil proceedings. They were disciplinary proceedings. It was open to the Tribunal to decide. The Chairman asked to be addressed on this matter the following day.

When the Tribunal reconvened on 14 September 2016, Mr Macreath referred the Tribunal members to White v White and Another [2001] 1 W.L.R. 481. This case provided a discussion of the term "knew or ought to have known". In this case the plaintiff brought an action against his brother and the Motor Insurer's bureau. The judge found that the plaintiff ought to have known his brother was uninsured.

The Court of Appeal allowed an appeal by the Bureau. However, the House of Lords decision was that the plaintiff could make a claim against the Bureau. In this context “knew” meant primarily possession of information leading to the conclusion that the driver was uninsured and that it included the situation where the passenger possessed information leading to the conclusion that the driver might well not be insured but deliberately refrained from asking but did not extend to the situation where the passenger did not think about insurance although an ordinary prudent passenger in his position and with his knowledge would have inquired about it. In this particular case “knew or ought to have known” in the clause 6(1)(e) of the Motor Insurer’s Bureau (Compensation of Victims of Uninsured Drivers) Agreement 1988 bore the same meaning as “knew” in article 14 of the Council Directive 84/5/EEC and that it was not apt to include mere carelessness or negligence in the definition of “knew”. A mere failure to act with reasonable prudence is not enough.

Mr Macreath’s submission was that there was no dishonesty on the part of the First Respondent. The standard which the Tribunal must apply is the Sharp test regarding actual knowledge. In saying that the Respondent “ought to have known” the First Respondent is not arguing that he was careless or negligent. He accepted that his behaviour was more serious than that. The Complainers’ Fiscal agreed that it was open to the Tribunal to make the finding that the First Respondent knew the accounting policy and the financial situation.

The Chairman indicated that the difficulty was that when assessing professional misconduct, there can be an enormous difference between having actual knowledge and proceeding on the basis that the Respondent could have acquired knowledge. It is the difference between an act of omission rather than commission. “Knew” and “ought to have known” in these circumstances can be different.

Mr Macreath said that the White case contained the proposition that those principles are co-extensive (although he also referred to the dissenting judgement on this matter). In Mr Macreath’s submission “knowledge” comprised of a number of issues. The Chairman asked whether it could be an irrelevance that the First Respondent knew or ought to have known. Mr Macreath said it was a subtle point. As cashroom manager he ought to have known. However, it is a question which relies on the mechanics of the system known as the drawer which much be set against the background of the volume of cases and the lack of appreciation that the money being utilised to fund the firm was clients’ funds.

The Chair asked whether Mr Macreath was saying that where he used “knew or ought to have known” there was an acceptance on the First Respondent’s behalf that you can subsume either definition into the other. Mr Macreath said that “ought to have known” encompasses the situation where the

Respondent was obviously blind to what was going on. It is expressed in the alternative and Mr Macreath was inviting the Tribunal to accept the lesser position. According to Sharp, an omission can be as culpable as commission. The First Respondent accepts his professional culpability as designated cashroom manager.

The Fiscal was asked for submissions on this issue. He said that he had noted during Mr Macreath's submissions that the First Respondent knew something was wrong but not the full extent of it and did not make inquiries. From the Complainers' perspective the level of knowledge was not as important as the admission that he did know. He drew the Tribunal's attention to the positive averments in the Complaint at paragraphs 2.7 and 2.10. He also referred to the use of the word "obscure" in paragraph 3.5 of the Complaint. He said this word had been chosen carefully and agreed by both parties. It was acceptable to the Complainers because in order to obscure something you must have knowledge of the thing you are trying to hide.

The Chairman said that the extent of the knowledge is relevant. When assessing professional misconduct, there is a difference between acting with full knowledge and failing to make proper inquiries. Both parties agreed that it is for the Tribunal to decide whether there was direct or imputed knowledge. Mr Macreath said that the case goes beyond carelessness but actual knowledge is not admitted. He only accepts that the First Respondent "ought to have known" and actual knowledge is denied.

Mr Macreath made reference to the McMahon case which involved shortages on a client account. The Master of the Rolls said that the Tribunal can take a lenient view where the conduct is "pardonable in itself", however dishonesty is a serious matter. Mr Macreath also referred to the Bolton decision. He felt this was a very important decision because the case was about dishonesty and the misuse of clients' funds. A very strict view is taken with regard to dishonesty. Mr Macreath noted that the present case is not pleaded on that basis.

Mr Macreath took the Tribunal through various references which were provided on the First Respondent's behalf. He said that the most important of these was the one from the First Respondent's current employers. They supported the First Respondent and were willing for him to remain their employee.

Mr Macreath noted that the Fiscal alleged that the First Respondent had made a contribution to the downfall of Ross Harper. He said that if there was then it was a minor contribution by the First Respondent.

The Fiscal was asked if he had anything else to say in relation to the First Respondent. He indicated that it had been suggested in the submissions on behalf of the First Respondent that if reminders had been received they had been paid but he disputed this. He pointed out that nine of the cases detailed in the Complaint fell within the First Respondent's remit. He could find no examples of reminders being received and then the bill being paid. The Fiscal noted that the First Respondent asserted that he thought there was about £30,000-£40,000 outstanding in the drawer. However, the Fiscal also noted that before the First Respondent left the firm, Drummond Miller were suing them for £70,000. The Chairman asked whether there had ever been a cheque for Drummond Miller. The Fiscal said that it was now impossible to answer this question. You cannot now take a snapshot of the firm at any one time and see what was in the drawer. The spreadsheet which might have shed some light on this has never been recovered.

The Fiscal noted that it was clear from some of the First Respondent's references that the referees had not had the full information regarding the terms of the plea before they gave the reference. Mr Macreath confirmed that this was correct and that this was due to the final plea being arranged shortly before the case called. The Fiscal asked the Tribunal to take into account the references in Bolton to "glowing tributes" and the overriding consideration which must be the reputation of the profession.

Mr Macreath said that there were important pressures on solicitors when they leave firms when misconduct is afoot. Even though these were highly experienced solicitors they did not understand their partnership situation. The business was very much Professor Ross Harper's business. There was a lack of understanding of their role. When they sought legal advice regarding leaving a partnership they did so thinking they were doing the right thing. It is a very difficult thing to leave and say "*I am going straight to the Law Society*".

SUBMISSIONS FOR THE COMPLAINERS (SECOND RESPONDENT)

The Complainers' submissions on behalf of the Second Respondent were made on 14 September 2016. Mr Stephenson read out the written submissions he had lodged with the Tribunal in advance of the hearing. These were as follows:

Written Submissions

The Second Respondent is 62 years of age and is presently a solicitor in the employ of the firm of Drummond Miller which has a place of business at 65 Bath Street, Glasgow, G2 2DD. He was enrolled as a solicitor on 1 February 1978. Between 1 September 1982 and 6 May 2011 he was a Partner in the firm of Ross Harper. His record card is produced and is item no 2 in the First Inventory of Productions for the Complainers.

The firm continued to trade after the Second Respondent's resignation but was then dissolved on 5 April 2012 following the appointment of an interim Judicial Factor. As at that date the Partners of the firm were Alan Miller, Joseph Mullen, Paul McHolland and James Price all of whom had been assumed as Partners in 2007, 1988, 2008 and 2003 respectively.

The firm had been the subject of an inspection by the Financial Compliance Department of the Complainers in June 2011 and concerns had been raised at that point, but perhaps not major concerns, regarding the operation of the firm and the number of un-presented cheques contained in the bank reconciliations. The firm was therefore re-inspected in March and April 2012 and those inspections identified a number of matters which were of serious concern including poor inadequate record keeping, the inaccurate recording of the firm's financial position, incorrect and inappropriate rendering of accounts to clients, clients funds being held in the firm account, breaches of the Money Laundering Regulations and clients funds not being adequately invested. The Financial Compliance Department of the Complainers produced documents which are termed as a Specialist Inspection Report, Summary of Findings and an Investigation Report and these documents are contained as nos. 2, 3 and 4 in the Fourth Inventory of Productions for the Complainers. An invitation was then submitted to then then four Partners of the firm to attend a meeting of the Complainers Guarantee Fund Committee and that meeting took place on 4 April 2012 and was attended by one of the Partners, Mr Miller. The outcome of that meeting was that the Complainers presented a Petition to the Court of Session on 5 April for appointment of a Judicial Factor and the interim appointment was granted on 5 April.

That background information is given to the Tribunal to provide a fuller picture but is done so on the basis that this Respondent was by that date no longer a Partner in the firm having left eleven months prior. That said his own now agreed conduct contributed to the findings made by the Financial Compliance Department.

The Department's investigation highlighted the issues referred to but in doing so it looked back at the firm's records files over a number of years and in particular dating back to early 2008 at which time the Second Respondent was a Partner of the firm.

The Department and investigation uncovered thirty two particular files and ledger cards which gave rise to concerns nineteen of these being files under the control of the Second Respondent. These are narrated in Statement 2.6 beginning at page 6 of the Complaint. The corresponding ledger cards showing the entries which are extracted and then placed into that Statement of Fact are contained in the Fourth Inventory of Productions for the Complainers and are nos. 6 through to 37 within that Inventory.

For completeness, the complaint at Statement 2.6 also narrates certain entries on some of the ledger cards which post-date the Second Respondent's resignation as a Partner and him leaving the firm. Whilst no reliance is placed on those entries by the Complainers in regard to the Second Respondents conduct they are nevertheless provided to show that the practices continued after his resignation in relation to the files where he was the Partner responsible for the file.

All nineteen files under the control of the Second Respondent are relied upon by the Complainers in demonstrating the level of the Respondent's culpability. All nineteen of these matters are agreed by the Second Respondent by way of the Joint Minute of Admissions. Rather than narrate all nineteen matters to the Tribunal at length it might be helpful to highlight some particular examples.

Firstly, Matthew Findlay which is referred to on page eight of the Complaint and the ledger card is number 8 in the Fourth Inventory of Productions. The ledger card entries which are relevant here commence on page two on the ledger card dating from 28 January 2009 onwards. The Complaint narrates the various entries, cross-entries with cheques being issued then cancelled then reissued when the funds had clearly been received from the Legal Aid Board to settle these outlays. In this particular example there is also recovered from the file an internal memo which is sent by the Second Respondent's secretary to the cashroom requesting payment of one of these outlays from "the drawer" dated 12th of May 2010 and that memo can be found in number 18 of the Fifth Inventory of Productions for the Complainers and the ledger shows a payment going out that day.

The second example is in the matter of Linda Barr which is narrated at page ten of the Complaint and the ledger card is number 9 in the Fourth Inventory. Although the amounts there are relatively small the significance of that example is that it dates back to 4 April 2008 being the period which in particular the Complainers found upon in the Complaint and which is now accepted by the Second Respondent who was the partner responsible for the file.

The third example is in the matter of Ms Keylaine Burke which is narrated at page eleven of the Complaint and the ledger card is number 11 in the Fourth Inventory. The firm was instructed in 2009 in connection with a medical negligence case and the Second Respondent was the partner responsible for the file and also the fee earner. The client was legally aided and the Second Respondent was nominated solicitor. The firm ledger discloses a payment of £930.05 was received from SLAB on 16 December 2009. The ledger commences with an entry narrating a payment of £650 to Rowan Parks on 06/11/2009 and this has been scored through to show that the entry is deleted. The Second Respondent instructed Dr Parks to prepare a report which he issued along with his fee note for £650 on 20 August 2009. Reminder letters had been issued by Professor Rowan Parks addressed to the Second Respondent requesting payment of his £650 fee on 3 February 2010, 2 August 2010, 5 November 2010, 3 February 2011 and 6 May 2011. The Second Respondent failed to respond to said reminders and failed to settle said fee note timeously.

The Fourth example is the matter of Martin Mulheron, which is referred to on page fifteen of the Complaint and the ledger card is number 13 in the Fourth Inventory of Productions. The firm was instructed in 2006 in connection with a medical negligence case and the Second Respondent was the partner responsible for the file. The client was legally aided and the Second Respondent the nominated solicitor. The firm ledger card discloses a payment of £972 was received from SLAB on 9 September 2009. The ledger narrates a payment of £528.75 to Peter Scott for a Medical Report on 8 May 2008 which the Second Respondent had instructed. This has been scored through to show that the entry is deleted. This is followed by a further entry to show that a payment of £528.75 is paid to Peter Scott on 17/09/2008 and this has been scored through to show that the entry is deleted. This followed by an entry to show that a payment of £40.25 is paid to Peter Scott on 09/03/2009 and this has been scored through to show that the entry is deleted. On 7 May 2009 a memo from the Second Respondent's secretary requests payment of the fee be made as Peter Scott was "screaming" for payment. The Second Respondent failed to settle the said fee timeously.

The fifth example is for a Melanie Anderson which is narrated at page eighteen of the Complaint and the ledger card is number 17 in the Fourth Inventory. It is again a fairly small amount of money but nevertheless it is retained by the firm for twenty months. There is also an internal memo from the Second Respondent which refers to the sum and the payment being held in "the drawer" and that memo, dated the 5th of March 2010, can be found as item 41 in the Fifth Inventory of Productions.

The last example is for a Shamshad Bashir which is narrated at page twenty three of the Complaint and the ledger card is number 23 in the Fourth Inventory. The firm was instructed in 2010 in relation to medical negligence. The Second Respondent was the partner responsible for the file and was also the fee earner. The client was legally aided and the Second Respondent was the nominated solicitor. The firm ledger commences with a payment of £750 to Professor R H MacDougall on 23/07/2010 and this has been scored through to show that the entry is deleted. Payment of £750 was received from SLAB on 13/08/2010. The Second Respondent instructed Professor McDougall in March 2009 and he provided his report and fee note on 7 July 2010, and then submitted an application for reimbursement to SLAB. Despite receiving payment in that respect on 13 August 2010, and also receiving a reminder from Professor McDougall on 22 March 2011, the Second Respondent failed to settle his fee timeously. The firm ledger discloses a payment of £1000 to Mr Mander on 30/07/2010 and this has been scored through to show that the entry is deleted. Payment of £750 was received from SLAB on 13/08/2010. The Second Respondent instructed Mr Mander on 10 March 2010 and he provided his report and fee note on 19 July 2010. The Second Respondent submitted an application for reimbursement to SLAB on 20 August 2010 which was paid on 14 September 2010. Despite having received payment he failed to settle said fee timeously.

The policy which the firm operated came to be known as is referred to in the Complaint as "the drawer". The Complainers recognise and accept that the Second Respondent did not instigate this system. It was in operation for a number of years although it has not been possible to establish exactly when it was instituted but it is important for the Second Respondent to stress that it was not he who instigated this practice but was aware of the operation. It is not suggested that the Second Respondent signed any of the cheques from "the drawer" or that he saw the ledger cards.

Statement 2.7 of the Complaint, at pages 42 to 44 of the Complaint narrate the process by which the policy operated and Statement 2.8 on pages 44 and 45 narrate circumstances in which the Second Respondent was aware of the operation of the policy and also its consequences.

In essence what the firm was doing whilst the Second Respondent was a Partner was to pay all sums received from the Scottish Legal Aid Board into their firm account. There is no issue with that. That is not contrary to the Accounts Rules. Transferring the fees and VAT over to the client ledger from the firm account in respect of these payments is also not contrary to the Accounts Rules. What is however contrary to the Accounts Rules is retaining the funds within the firm account which are in respect of outlays or sums due to Third Parties without transferring those funds into the client ledger. Those are client's funds and the Accounts Rules as will be narrated shortly provide that they should be transferred without delay, and remitted to who they are due.

Instead of doing that what was taking place was that those funds were remaining within the firm account and being utilised to finance the operation of the firm and its continued trading. These funds are client's funds and therefore there was a wrongful and improper use of client's funds without their knowledge or consent to allow the firm to continue to trade and operate within the limit of its banking facility.

It will be noted from the Affidavits which have been lodged from two of the other Partners, Gerrard Devaney and Paul McHolland which are items nos. 1 and 2 in the Fifth Inventory of Productions that the firm fell into financial difficulty in around 2008 and the use of "the drawer" became more prevalent from that date onwards.

The Complainers recognise that the use of "the drawer" appears to have become more prevalent after the Second Respondent's resignation from the firm on the 6th of May 2011 and may have therefore spiralled somewhat out of control in the eleven months after his resignation, resulting in the dissolution of the firm, but he has contributed, by his now accepted conduct and acting between the period 4th April 2008 and 6th May 2011, to the downfall and ultimate demise of one of Scotland's foremost and well-known legal firms. The Judicial Factor now estimates that claims in the region of £400,000 will be settled by the Complainers Guarantee Fund.

The Affidavits from the two former partners, however, narrate clear difficulties ongoing within the firm not only of a financial nature but clashes of personalities. There is also mention of interdict proceedings raised against two former Partners. The Second Respondent was a party to that action and the operation of "the drawer" was raised in those proceedings. Nevertheless the Second

Respondent was a Partner and by his position being accepted in that respect to this Tribunal takes responsibility for his role in the firm's administration.

One particular example of the consequences of the circumstances in which the firm found itself during the period the Second Respondent was a Partner is narrated in the latter part of Statement 2.7 the firm instructed Drummond Miller LLP in Edinburgh to act their Edinburgh correspondents in Court of Session matters. Due to the failure of the firm to pay Drummond Miller the sums that were due to them they were forced to raise proceedings against the firm in January 2011. A copy of the proceedings at number 4 in the Fifth Inventory of Productions for the Complainers. In those proceedings they sought a sum in excess of £70,000 and it was averred in those proceedings that all of those sums had been received by the firm from the Scottish Legal Aid Board but they had not accounted to Drummond Miller for the sums due to them. Those sums will have been paid by the Scottish Legal Aid Board to the firm, lodged in the firm account but then not transferred into the client ledger and not remitted to Drummond Miller. The consequences of that were that Drummond Miller were seeking the sum mentioned and they took steps to execute diligence against the firm in relation to the operation of their firm and client accounts. It resultant in payment being made. The Second Respondent would be aware that the proceedings had been raised and the consequences to the firm at that point. This does highlight that significant sums of client's monies were being retained to finance the operation of the firm and the examples narrated and discovered were perhaps only a proportion of this system or policy.

A further aspect to the operation of this system or policy is that sums which were validly due to Third Parties namely expert witnesses, Sheriff Officers, Bar Reporters and other agents were not being paid timeously. Instead the funds were being used for the firm's own purposes. This Tribunal has already held on many occasions that the failure to pay timeously sums due to Third Parties such as these individuals is of itself professional misconduct particularly where those funds have been received by the firm and held on to for one reason or another. In this case they were held on to fund the operation of the firm.

The effect of client funds being retained in the Firm Account was that there was a failure to comply specifically with Rules 4(1)(a) and (b) and with Rule 4(3)(b) and Rules 8 of the 2001 Accounts Rules. That means that throughout the relevant period, the Client Account was in deficit. *McMahon v The*

Law Society of Scotland 2002 SLT page 363 specifically states in reference at paras. 20 and 21 that "The Client Account must never be in deficit."

As a direct and further consequence of the manner in which the firm and its cashroom was being operated by the firm, accounts certificates which require to be submitted to the Complainers on a six monthly basis were submitted by this firm and on the 10th May 2010 a certificate signed by the Second Respondent in his capacity as a Partner which is at nos. 9 of the First Inventory of Productions for the Complainers and it covers the periods 1 October 2009 to 31 March 2010.

The certificate was inaccurate. It was inaccurate because due to the manner in which the entries were posted on the client ledgers and those entries in fact being false the figures within the certificate was accordingly inaccurate and as a result it did not disclose the true financial position of the firm to the Complainers who are of course the regulatory body for these matters and require a full and proper disclosure of a financial position of any firm of solicitors in Scotland.

Statements 3.0, 3.1, 3.2, 3.3, 3.4 and 3.5 of the Complaint at pages 46 to 53 all narrate the averments of duties and the Accounts Rules which apply in this particular matter. They are self-explanatory and no issue is taken with the narrative within the Statements by the Second Respondent

The Second Respondent knew that the said certificate and the statements contained within said certificate were inaccurate and breached the terms of the said 2001 Rules, and in particular Rule 14 of the 2001 Accounts Rules.

Rule 14 is the rule which covers the Accounts Certificates and the provisions applicable to those. The Second Respondent has accepted that Certificate signed by him as a Partner and submitted to the Complainers were inaccurate and that by reason of the operation of the firm's policy which has been referred to as "the drawer".

The Tribunal has on many occasions stated that the Accounts Rules set down by the Complainers are in place to protect the public, and solicitors who breach them undermine public confidence in the profession. That is exacerbated when solicitors attempt to conceal the breaches of the Accounts

Rules from the Complainers and that is the position here insofar as the Accounts Certificates are concerned.

The Complainers have issued guidelines to the profession, and further guidance is also available to the profession in the textbook by Paterson & Ritchie being Law, Practice and Conduct for Solicitors.

For the relevant dates here the Complainers had produced a guide to the Accounts Rules which was formerly within the Parliament House Book at Section F1238-F1240, a copy of which is produced. There is also a passage within the textbook referred to at pages 291-293, paragraphs 9.18-9.20, and copies of those are produced.

These guidelines and guidance make it clear that the production of an Accounts Certificate is the responsibility of the Designated Cashroom Partner and that the signatories to the Certificate on behalf of the firm have a direct responsibility for its accuracy and the information contained within it. The position here is that the Second Respondent knew or at least had sufficient knowledge and ought to have known that the Statements within the Accounts Certificate was inaccurate and therefore concealed the true financial position of the firm from the Complainers. That is obviously a matter of serious concern, and given the ultimate consequences to this firm a year later, must be viewed by this Tribunal again at the top end of any scale of professional misconduct.

In conclusion therefore the Complainers aver that this Respondent has been guilty of acts or omissions which singularly or in cumulo constitute professional misconduct and in particular at Statements 4.2 (a) and (b). The Second Respondent accepts these averments and they are agreed by him as a plea to this Complaint

Oral Submissions

Mr Stephenson referred the Tribunal to various ledger entries during the course of his submissions in support of the Complainers averments.

During the course of his submissions, Mr Stephenson referred the Tribunal to the Fifth Inventory of Productions for the Complainers, number 18 titled "*Copy Memo*" dated 12 May 2010. This purported to be an memo from Allison Hewitt to James Wilson. The memo says "*Rowan Parks has written re his*

OS fee of £200 which I note is in the drawer". Mr Stephenson noted that it can be seen from the ledger entries that Rowan Parks was then paid on 12 May 2010.

Mr Stephenson referred to the Linda Barr case. He said that the importance of this case was that there are entries dating from 4 April 2008. This is the earliest entry that the Complainers could find of the operation of the drawer during their investigations.

Mr Stephenson referred to seven cases and ledgers. He noted that the system of deletions continued after the Second Respondent had left the firm. The Chairman asked Mr Stephenson what he wanted the Tribunal to infer from the ledgers. Mr Stephenson said he wanted the Tribunal to take from these that the Second Respondent had the files and the reminder letters even if he did not have access to the ledger and cheques. There were bills still unpaid by the time he left the firm. With regard to a different file, Mr Stephenson referred the Tribunal to the Fifth Inventory of Productions for the Complainers, number 37 headed Copy Memo dated 7 May 2009. This purported to be another email memo from the Second Respondent's secretary to a member of the cashroom staff. It refers to the Martin Mulherron case. In this email the Second Respondent's secretary notes that this is "*Yet another one when Peter Scott is screaming for his fee of £528.75 sent on 07.04.08. CSF wishes this paid ASAP.*" Mr Stephenson submitted that this correspondence shows that the Second Respondent was in charge of the file and the payment requested.

Mr Stephenson referred the Tribunal to the Melanie Anderson case and asked them to note that money had been retained in this case for 20 months. He referred the Tribunal to the Fifth Inventory of Productions for the Complainers and asked them to look at number 41, copy memo dated 5 March 2010. This purports to be an email memo from the Second Respondent's secretary to a member of the cashroom staff regarding the Melanie Anderson file. This memo it is noted that "*Drummonds have written in requesting payment of their SLA/Rol submitted in November for £290.00. I note that this was paid by slab on 24.11.09 and that it is marked as being paid to Drummonds on 31.12.09. Can you check to see if this in the drawer and if so, can it go. If it has been sent and cashed, can you let me know in order that I can respond to Drummonds.*" This was not paid until 31 August 2011.

Mr Stephenson said with regards to publicity that it would be appropriate that the other four partners who were due to have their Complaint heard early next year did not appear in the Findings in relation to these two Respondents. The Chairman indicated that the Tribunal intended to defer publicity on the present case until a determination was reached in the second Complaint.

SUBMISSIONS FOR THE SECOND RESPONDENT

Ms Sutherland for the Second Respondent referred to her written submissions which were as follows:

1. Introduction

The Second Respondent was enrolled as a Solicitor on 1 February 1978. He joined the firm of Ross Harper in 1980 and was made a partner in 1982. Between 1st September 1982 and 6 May 2011 he was a partner in the firm. He is presently practicing as a Solicitor in the employment of Drummond Miller, in their Glasgow office.

The firm of Ross Harper was dissolved on 5 April 2012 following the appointment of an interim Judicial Factor. Para 2.5 of the Amended Complaint narrates the events leading to the appointment of the Judicial Factor, although it is important to note this occurred a year after the Second Respondent formally resigned from the partnership.

The Second Respondent has accepted that in the period from 4 April 2008 to 6th May 2011 he permitted to be operated, or acquiesced, in a policy where the business of the firm of Ross Harper was improperly funded by payments due to third parties, principally the Scottish Legal Aid Board. (ref para 4.2 p54 (a)) He has accepted that as a result of the policy, instituted by others, third parties were not timeously paid.

He has also accepted that he counter-signed one Accounts Certificate dated 10 May 2010 and that this certificate was inaccurate and thereby the true financial position of the firm was not evident to the Law Society. (ref para 4.2. (b)). He accepts he ought to have considered the Certificate was inaccurate and conducted further investigation of the position prior to signing it.

The Second Respondent has accepted full responsibility for his breaches and is deeply contrite and embarrassed that the firm of Ross Harper has discredited the profession. He is horrified by what he has learned happened after he left the firm with the consequent demise of what was one of Scotland's foremost legal firms.

2. Summary of the Second Respondents position in mitigation

- The Second Respondent's involvement relates to a period between 4 April 2008 to 6th May 2011. He had resigned 11 months before the firm was dissolved and the Judicial Factor appointed.
- The firm of Ross Harper was dissolved on 5 April 2012 and in the period after the Second Respondent left the policy of holding back cheques had considerably worsened. In the Fiscal's narration he specifically states it "*may have spiraled somewhat out of control in the eleven months after his resignation*". Whilst the Second Respondent accepts his acquiescence in the policy has made a contribution it is submitted caution must be exercised in looking at what was found in April 2012 and attributing all of that to the omissions of the Second Respondent.
- It is accepted the Second Respondent did not institute the system whereby monies were retained in the firms account and not paid, nor did he operate it. This system was longstanding. It will be submitted this is an important when considering the penalty to be imposed.
- He has fully accepted his duty to make payments timeously and he has accepted his own failure to do so. He has accepted his own responsibility in the policy that operated. It is important to note that he did however request the payments be made. The Second Respondent has produced in an Inventory of Productions containing chase up memos to James Wilson in the cashroom . In Appendix 2 there are attached hereto a number of memos extracted from the files where he was chasing payments. These extracts were copied with the permission of the Fiscal. I do not understand that is disputed he made attempts to have payments made. He also chased up payments when they were not made and again I do not understand that is disputed. His position is he had no power to force the cashroom to make the payments. He now fully recognises that he should not allowed this situation to continue.
- From 11 November 2010 he was even more severely limited in his ability to make any payments, or chase payments by those in control of the firm at that time. As I will submit later he had formally tendered his resignation to the firm on 11/11/2010 and was then required to work out his notice in the firms branch office in Shawlands where he had limited access to his files and correspondence and had no secretary.
- It is not suggested that the Second Respondent wrote any cheques, made any entries in the ledgers or knew of the system described in para 2.7 of the Amended Complaint where entries were created in client ledgers to show cheques were issued in payment and reversed. I understand it is accepted by the Fiscal that it cannot be shown he knew anything of the system.

- In the period between April 2008 to 6 May 2011 relevant to the Second Respondent what is being considered by the Tribunal is the delay in making payments and the effect of retaining the monies within the firms account.
- The Second Respondent accepts he counter-signed one Accounts certificate on 10 May 2010. He also accepts that this is inaccurate. This had been signed by the cashroom partner. At that time he considered the cashroom was well run by Reina Gardner who had been there for many years and there was a designated cashroom partner. The firm also had accountants to oversee matters and he understood the Law Society had not raised any issues on inspection. He was not on the Management Board. I deal with this later in my submission and this is a point to be considered in mitigation only, but at the time he signed it he did not think it was inaccurate. He has accepted now considering the matter in the round that had he given this more detailed thought he should have questioned it. Whether questioning or examination would have at that time revealed anything is a separate matter to be dealt with later.

3. Background to the Second Respondent's resignation

The Second Respondent was a partner in the firm of Ross Harper and he fully accepts that this brings with it duties and responsibilities. From around 1999 the Second Respondent concentrated exclusively on fee earning work and bringing new business into the firm. This had been agreed with the partnership.

He had a large caseload of files many of which were extremely complex. It was in this period he was heavily involved in much of the work referred to in the testimonials produced. Most of his work was Legal Aid or pro bono work. He did not sit on the Management Board of Ross Harper, nor did he hold the role of Cashroom partner. Other than attending partners meetings as required he was not involved to any degree in the active management of the firm. He formally resigned in May 2011 but had intimated his intention to do so in November 2010 and indeed had been looking for opportunities prior to this date.

4. Circumstances leading to resignation

The Second Respondent was with Ross Harper for around 30 years and in that period the firm was financially successful. There were periods throughout that time when cash flow was problematic (often due to the erratic nature of legal aid payments and fluctuations in the

property market which impacted on conveyancing). However in or about 2009 two of the partners conspired to attain power within the partnership namely Jim Price and Alan Miller. They won over the support of three of the other partners (Joe Mullen, Gerry Devanney and Paul McHolland) which gave them a 5/4 majority within the partnership. The other partners at the time were the Second Respondent, Alan Susskind, Harvey Diamond, Richard Freeman. This led to control of the firm being with the majority. The effect of this was that the majority decision ruled and that included control of the cashroom and when monies were paid. They also had control of his access to his own capital account.

The Second Respondent instructed many experts in his work. He had a large volume of Legal Aid cases with numbers of fees to be paid, and in that situation his caseload was vulnerable to the system that was operating in the cashroom at that time. When he received reports and invoices the Second Respondent wished to pay those experts for the work done when the money had been received from the Scottish Legal Aid Board. It was not in his interest to delay payment of his experts as he required the assistance of the experts to progress the cases he was involved in and many of the experts were regularly instructed in other cases. If experts were not paid they would be reluctant to take new instructions in cases and this would affect the Second Respondent's ability to run his caseload.

A situation existed within the partnership whereby the Second Respondent had no ability to force payment of expert fees. He could ask the cashroom staff to make payment of fees but all payments required to be approved. He has accepted that the firm operated a policy as referred to in para 2.7 of the Amended Complaint under explanation he knew nothing at that time about the entries in the ledgers. He has accepted he was aware there was a delay in properly . At that time he has no knowledge of cashroom practices or accounting and he felt that had been appropriately delegated to trained individuals.

On review of all the files he has responsibility for it is clear that when invoices came in he did dictate a letter to the expert and instruct that the fee be paid. It is accepted that he was aware that they would not always be paid immediately but when the cashroom partner considered it appropriate. It is also clear on analysis of the files that he chased up payments when experts sent in a reminder. Eventually experts were paid but there was a delay in payment and it is accepted by the Second Respondent that the delays that occurred should not have occurred.

The Second Respondent was absent from work and absent from the partnership from the beginning of November 2009 to the end of January 2010 following a serious heart operation. At that time his work was being covered by others. When he returned to work the position was no better than previously in terms of his ability to have a say in what occurred and he sought legal advice from at least 4 separate firms of solicitors on what we could do about the situation. He was advised that there was no solution in terms of the partnership.

In or about August 2010 Alan Suskind intimated his resignation from the firm. The Second Respondent had been looking to move from the firm and eventually managed to secure a place for himself with Drummond Miller, Solicitors. He intimated his resignation on 11th November 2010 and Ross Harper insisted on 6 months intimation of resignation. He was then moved to the Shawlands office to serve out his period of notice. His caseload was removed and he was given 50 cases to deal with. The remaining partners refused to provide him with a Secretary. From the date of his resignation onwards he was given no information about the firm and no information about its financial performance. He did not have access to the cashroom , cash cards and he had no means to make payment of bills other than trying to send memos requesting payment. Some of these memos are attached hereto. He joined Drummond Miller on 11th May 2011.

The Executive Summary produced by the Complainers Financial Compliance Department has been produced and is referred to in para 2.6 of the Amended Complaint. Within that summary are ledgers relating to a number of cases for which the Second Respondent was responsible as partner and fee earner. The full ledgers continuing after the Second Respondent resigned on 6 May 2011 have been produced in full to demonstrate that the payments were made and that the practice continued after he resigned. What is important in considering the conduct of the Second Respondent is that the extracts are seen in context. There are 19 cases for which he is responsible. This is in the context of his caseload at the time which was some 400 cases. It is also important when looking at the ledgers to be clear that anything occurring after May 2011 does not relate to the Second Respondent. He has accepted the ledgers are accurate.

Specific cases have been referred to by the Fiscal in the narration. The Second Respondent has agreed the accuracy of the ledger and he accepts the ledgers do disclose delays in payment of

monies as suggested. Examination of those files did however reveal attempts by the Second Respondent to make payment. An example is the Finlay case. A fee note was issued by Professor Parks on 15/12/2008 and on 30/12/2008 the Second Respondent wrote to Professor Parks saying he had asked the cashroom to make payment of it. A reminder was sent on 08/07/2009 and in the file on 15/07/2009 there is a file note from MJM stating that he had asked for this to be paid immediately. The cheque was then paid and Professor Parks acknowledged receipt of the cheque on 06/08/2009. This does demonstrate the delay in payment but does also demonstrate he was trying to pay it .

In the second example given of Linda Barr the Second Respondent is unable to provide any information as when the file was examined it only contained medical records and the correspondence file was missing.

In the third example given of Keyline Burke on checking the file of papers it appears that Mr Fyfe was mandated and this file was transferred to another firm of Solicitors on 17/09/2010.

In the fourth example of Martin Mulheron there are letters on file from the Second Respondent again seeking payment. Again he accepts there was a delay.

5. Personal and Financial Consequences

The Second Respondent has suffered significant personal and financial consequences as a result of the failure of Ross Harper. Ross Harper ceased to trade in April 2012. He took advice from a Solicitor and was advised he should go into voluntary sequestration in September 2013. As a result he was left with no capital and for 3 years he paid money to creditors. He was repaid all sums.

He had significant funds within the capital account. The collapse of Ross Harper wiped out his capital account (which was approximately £150,000).

The Second Respondent is grateful that he has been able to practice in the past 4 years but he has required to work as an employee and is supervised. He has suffered in that for nearly 5 years the Complaint has been hanging over him which has had a significant psychological effect.

He has devoted his life to helping clients over the last 40 years and this is not something he would have ever thought could have occurred.

6. Personal Circumstances

The Second Respondent is married with four children who are financially dependent upon him. Two of the children are aged 13 and 12 and still at school. His 13 year old daughter is autistic and attends a specialist school. His older son is due to start University in October 2016. He has a daughter aged 20 and she is about to start her third year at University. All children currently reside at home with the Second Respondent and are dependent. His wife does not work and therefore his is the only earner within the home.

7. History of work conducted throughout the Second Respondent's career

Throughout his career the Second Respondent has provided a service primarily directed towards members of the public (and the most disadvantaged) often working pro bono. It is well known he would take on cases others refused either because there was difficulty, no funding or because Legal Aid rates were poor.

The Second Respondent has been involved in some of the most ground breaking legal work in the course of his career. The focus of his work has been the ordinary man/woman on the street. I have detailed below some of the important cases he has been involved in in recent years.

Alfred McTear –v- Imperial Tobacco

Alfred McTear contracted lung cancer and asked the Second Respondent to proceed with an action for damages against Imperial Tobacco on the grounds that he began smoking before warnings were put on cigarette packets and was unaware at that time of the dangers of cigarettes. He also wanted to use the court action as an advert to young people not to smoke. The Second Respondent took on the case pro bono. He was aware that this case would involve a huge amount of work and also that it was extremely difficult because he felt that it was the kind of case that was important to society generally and to many members of the public. The case was unsuccessful but the client felt his aim of bringing the dangers of smoking to the attention of members of the public had been achieved.

Child Abuse Cases

In 1997 the Second Respondent was approached by some clients who, when children, had been abused in an orphanage. On first review the cases seemed to be time barred and this was not an area any person had previously sought to litigate. The Second Respondent felt this was an issue that did require to be investigated and he advised the clients he would do so. Within a year or so he was acting for a large number of clients who had been abused. He prepared and took 2 test cases to the House of Lords on the time bar argument because he felt that it was genuinely wrong to bar these claimants from access to the courts simply because some had been so damaged they had been unable to consult a Solicitor until well into adulthood. The arguments were unsuccessful after many years of hard work. The Second Respondent did not feel that this should be an end of the matter and he campaigned tirelessly to have the time bar rule changed. He was not paid for any of the campaigning work he has done in this area. He was involved in discussions with the Scottish Government and they have now confirmed they will change the law by statute on time bar for such cases. The new law should be on the statute book by the end of 2017. The Government have also said that cases that the cases dismissed on time bar can be re-raised. He has over 600 cases to re raise once the legislation is in force. The Second Respondent has worked with these victims of abuse for nearly 20 years to achieve this result and did not give up when many would have done so. Much of this work was done pro bono.

Child Abuse Inquiry

An Inquiry into child abuse in Scotland is likely to commence the beginning of 2017. The Second Respondent has been asked to represent many of the abuse victims in their negotiation with the Inquiry Team. This is due to the significant confidence they have in his ability to handle their cases properly and understand the issue they require to deal with. These cases are technically difficult but also emotionally difficult. The Second respondent has already attended several meetings with the Scottish Government and the Abuse Inquiry Team. The victims he represents have been granted core participant status in the Inquiry and wish him to represent their position.

The 1979 Rule

There is a CICA rule which says that if someone is sexually abused by a member of their own family in their own house before 1979 they cannot claim compensation. The Second

Respondent has campaigned tirelessly to have this rule changed and again it is hoped that the Westminster Government may shortly do something about it. He has met with MP's and also considered a Judicial Review under the Equalities Act. Most of this work was pro bono and again this is work many Solicitors would not have taken on but it is work that could significantly benefit members of the public.

Arranged Marriages

In 1989 the Second Respondent was approached by a client who had been forced to marry her cousin at the age of 15 through an arranged marriage. She sought to have it annulled. This was one of the first cases where the practice of forced arranged marriages was challenged. The action for annulment was successful. In 1989 many Solicitors would not have undertaken this challenge particularly on low rates given the amount of work required to run the case. This led to many more woman coming forward for help and the Second Respondent. The Second Respondent acted for at least 30 other individuals who were locked in arranged marriages. Such actions are now not uncommon, the principal having been established.

MRSA Cases

In or about the year 2000 the Second Respondent was approached by several clients who had contracted MRSA in hospital. At that time infection was prevalent in hospitals with many members of the public suffering severe complications and even death. This pre dated the major public inquiries into hospital acquired infection. The Second Respondent raised several court actions. These actions are technically extremely difficult with a huge amount of paperwork and many are proceeding on legal aid rates which are extremely low or pro bono. One action is due to proceed to Proof in January 2017. Since 2000 and all the publicity surrounding MRSA and legal actions there has been a significant decreased in the occurrence of MRSA.

Mesh Cases

About 3 years ago the Second Respondent was approached by a client who had mesh inserted into her body to combat a bladder problem. The mesh was deficient and caused all sorts of other health difficulties. The Second Respondent started to investigate this case and it quickly became apparent that many woman had suffered serious consequences as a result of the use of mesh or Trans Vaginal tape. At that time there were no actions in Scotland and no person appeared to be aware of the major issues. The Second Respondent is now acting for over 200

clients in the same position. Actions are raised in the Court of Session against Johnston and Johnston and other manufacturers on the basis the product was defective. There are also cases against Health Boards based on a failure to advise members of the public of the significant risk of these products. The litigation has led to a Scottish Government Inquiry into mesh and the Second Respondent has campaigned in the hope the future use of mesh will be banned or at least significantly improved to save hundreds of others having to suffer.

Organ Removal

The Second Respondent acted for 50 parents whose children had died and the organs removed without their consent for research purposes. Again this was a difficult and sensitive litigation. The Second Respondent managed to obtain compensation and the cost of funerals for most of them.

8. Previous Good Conduct

The Second Respondent has been a practicing Solicitor since 1978. He has a lengthy career in law with no previous complaints. His record card is produced to the Tribunal

9. Book

The Second Respondent wrote a book called "A Laymans Guide to Scotland's Law". It sold well and he arranged for all the royalties to be sent to leukaemia research. The total royalties were in the region of £12,000.

10. References

The Second Respondent has obtained character references and these have been produced to the Tribunal and copies can be found in Appendix 1. They have all been made aware of the charges and the plea that has been entered.

Colin McEachran QC has produced a reference based on his experience of the Second Respondent over a long period of working with the Second Respondent. During his period of practice Mr McEachran QC was recognised as one of the foremost practitioners in the area of Personal Injury and Medical Negligence at the Scottish Bar. Prior to preparing the letter he was given full information on the nature of the charge and the plea that had been entered. He has indicated he always found the Second Respondent to be entirely trustworthy and honest. He

describes the Second Respondent as follows: *“He was a pioneering solicitor who went the extra mile to help the least privileged in Scottish Society”*.

Colin MacAulay QC has also prepared a reference and he has worked with Mr Fyfe over many years. Mr MacAulay QC held a temporary judges commission prior to his entry to the Vale of Leven Public Inquiry as Counsel to the Inquiry. He is current lead Senior Counsel to the Abuse Inquiry and is recognised as one of the foremost practitioners at the Scottish Bar. He was also given full detail of the charge and plea entered. He states *“I firmly believe that the hallmark of Cameron Fyfe’s career has been his integrity”* He describes him as someone who *“has made a real difference to the Scottish legal landscape” “a crusader and a highly positive advertisement for the Solicitor’s side of the profession.”* .

Sheriff Alison Stirling has provided a reference and she has worked closely with the Second Respondent for many years and she also recognises the significant contribution he has made.

11. Future work Prospects

The Second Respondent is currently employed with Drummond Miller, Solicitors. A letter has been provided by Fiona Moore, Solicitor for the Tribunal. She was Chairman of Drummond Miller when the Second Respondent was appointed to the firm in 2011. She also had a long standing professional relationship with him prior to that point in time. She is fully aware of the charges against him and the plea he has entered and was aware of this when she provided the reference to the Tribunal.

She has confirmed to the Tribunal that the partnership have never had a cause to question his honesty or integrity during the time he has worked with them. Importantly she sets out clearly in her letter the Second Respondent’s role within the firm at present and that the firm would continue to employ him should he retain his practicing certificate.

12. Principles to apply

Certain principles it is submitted can be derived from the case law:

- The question for the Tribunal is what is necessary to protect the public interest? Or alternatively how can the public interest be met?

- The Tribunal as the disciplinary decision maker does have a wide degree of latitude.
- Orders should not primarily be directed to punishment but to the maintenance of a well-founded public confidence in the trustworthiness of all members of the profession.
- The conditions imposed by the Tribunal in respect of the entitlement to practice should be such as meet the circumstances of the particular case.
- The failure is considered but also the part played or role of the individual Solicitor in the failure.
- The disposal should go no further than is necessary.

It is submitted the following authorities may be of assistance to the Tribunal in relation to the facts in this Complaint.

Sharp v The Law Society of Scotland 1984 SC 129 involved the senior and junior partners of a firm failing to follow the solicitors accounts rules. I accept in this case the distinction was made between senior and junior partners and the junior partners had been excluded from partnership meetings or anything to do with accounts and this unable to prevent the breaches. There are however in my submission relevant points in respect of the situation of the Second Respondent in its emphasis on the degree of culpability of the individual Solicitor.

Whether conduct should be treated as professional misconduct depended on whether it would be regarded as serious and reprehensible by competent and reputable solicitors. In the case of *Sharp*, the court emphasised at pages 134 and 135 that whether a failure to comply with a relevant rule should be treated as professional misconduct must depend upon the gravity of the failure and a consideration of the whole circumstances in which the failure occurred, including the part played by the individual solicitor in question.

Although the court's reference at page 135 to a departure from expected standards which "would be regarded by competent and reputable solicitors as serious and reprehensible" is not to be treated as if it were a statutory definition, it draws attention to the importance of the gravity of the misconduct and the degree of culpability of the solicitor in question, as they would be regarded by competent and reputable solicitors.

It follows that the misconduct of one member of the firm is looked at independently of other Solicitors in the firm or the firm itself, even if the partners have had a partnership meeting to agree the course of conduct.

Michael Gordon Robson v The Council of the Law Society and Another 1 May 2002

The proper approach was that indicated in *Ghosh v. General Medical Council* [2001] 1 W.L.R. 1915. Reference was also made to *Bijl v. General Medical Council* (Privy Council, 2 October 2001, unreported). In the circumstances of this case the court was as able as the Tribunal to form a view as to how any concern about the public interest could appropriately be met. Ghosh illustrated that care should be taken to ensure that any conditions imposed in respect of entitlement to practise were such as would meet the circumstances of the particular case. The disposal should not be one which went further than was necessary. The issue is what is necessary to protect the public interest.

Bolton v The Law Society 1994 1WLR 512

This case is an appeal by the Law Society against a decision of the Queen's Bench Divisional Court. The Divisional Court had quashed an order of the Solicitors Disciplinary Tribunal that Mr Bolton be suspended from practice for 2 years and substituted an order he be fined. The main questions related to whether there could be an interference with the Tribunal's decision although there are some helpful remarks relevant to this situation.

It was held that the Solicitors Disciplinary Tribunal's orders were not primarily directed to punishment but to the maintenance of a well-founded public confidence in the trustworthiness of all members of the profession.

McMahon v The Law Society 2002 SLT 363

13. The Accounts Certificate

The Second Respondent accepts the certificate was inaccurate. He did not normally sign the certificates. On the day he signed this there was no other partner available and he was asked to counter-sign it which he did. He accepts he should have thought more carefully and investigated it given he knew about the delay in settlement of outlays. At that time he thought those who had delegated authority to deal with cashroom matters had it all in hand and he

accepts he should not have been so trusting, particularly given his own knowledge. He would never sign such a certificate in the future and indeed he would not be in a position to do so. In mitigation had he gone and looked at the ledger cards they would have looked to his untrained eye as if everything was in order and had he asked the cashroom staff he would clearly have been told all was in order.

14. Concluding submissions to the Tribunal

- It has been accepted that the conduct in relation to the operation of 'the drawer' was one he acquiesced in. He did not institute it nor did he operate it. It has been accepted that he did not write any cheques, make any entries in the cash ledgers and was not aware of the cashroom practice. It is accepted he counter-signed the Accounts certificate. His practice is principally litigation work. The conduct of the Second Respondent does not demonstrate any failure or adequacy in his practice of law or in relation to the clients he was working for on individual cases. The conduct he has accepted is however serious and he recognises that.
- The failures in relation to timeous payment have not recurred in his practice with Drummond Miller and will not recur. He continues to work with many of the experts including Professor Parks who was involved in a number of cases where his fee was delayed.
- He has to date an unblemished career as a lawyer for nearly 40 years.
- The testimonials all refer to his honesty and integrity and these are from high ranking people who have worked with him extensively and who all know the detail of the complaint and the plea he has entered. I understand the Fiscal does not suggest dishonesty.
- Throughout his career he has been a pioneering litigation Solicitor working often on a pro bono basis to assist ordinary members of the public to gain access to the courts, when they may not otherwise have done. He has been a great asset to the legal profession and could continue to be so.
- He is nearing the end of that career.
- He fully co-operated with the Law Society investigation and his position on what he knew has never changed from the outset.
- He has admitted the underlying facts and his part in it in respect of the complaint.

- He was sequestered as a result of the debts of the firm and his practicing certificate was suspended. He immediately made Drummond Miller aware of this to allow them to make arrangements for his clients. He fully observed the period of suspension. When he was given a restricted practicing certificate he has demonstrated to the satisfaction of the Professional Practice Committee that he can properly observe restrictions and supervision requirements.
- The reference supplied by Fiona Moore confirms that in the time he has worked with Drummond Miller she has had no reason to question his integrity or honesty.
- He has a position within Drummond Miller should he retain his practicing certificate and they wish to continue their relationship with him in his current role.
- He has a dependant family and serious hardship could be suffered by them if he is unable to practice.
- Existing clients would suffer if he can no longer practice and in particular those involved in the sexual abuse cases. These clients have been supported from the outset to a point when they can now litigate in their complaints.

Oral submissions

The Chairman enquired of Ms Sutherland her position regarding the affidavits. He noted that there was a Joint Minute however no evidence had been led. He asked whether she had any issue with them. Ms Sutherland indicated that the Tribunal can look at the affidavits attach whatever weight to them as they see fit. However, she noted that there were inconsistencies between them. Mr Stephenson clarified that from the Complainers' prospective the importance of the affidavits was that it showed that the firm was in financial difficulty in 2008. The partners knew that the firm was operating with an overdraft of £600,000. The partners had had meetings on 23 October 2008 and 18 November 2008 to discuss the financial difficulties the firm was encountering. The Chairman indicated that the Tribunal would look at these affidavits in their own time.

The Chairman enquired of Ms Sutherland whether the Second Respondent said that he knew or ought to have known the financial situation at Ross Harper. Ms Sutherland said that the Second Respondent admitted that he ought to have known but it was up to the Tribunal to make the relevant Findings.

Ms Sutherland recorded her thanks to Ms Knight for his assistance with this case. She was aware that the Tribunal had listened to lengthy submissions already. She wished to assist to shorten matters. She formally associated herself with Mr Macreath's comments regarding the history of the firm. She also

adhered to the comments that he made that the system had existed since 1975. She clarified that when referring to the system existing in 1975 she was referring the delay in payment. She said that the Second Respondent had come into that system which was already existing. She agreed that the volume of legal aid cases was significant and through put voluminous. She noted that this set a context, particularly for the Second Respondent. His work was largely legal aid funded. He had no private client base.

The Second Respondent's whole working life was with Ross Harper. He was a partner up until 6 May 2011. He formally resigned but was required to work out a period of notice. Ross Harper was dissolved on 5 April 2012 when a Judicial Factor was appointed. The Second Respondent did not initiate, manage or operate the drawer policy. He accepts that the accounts certificate is inaccurate. Ms Sutherland noted that the Second Respondent now works for Drummond Miller as an employee.

The Chairman asked when the Second Respondent had given his notice and when he left. Ms Sutherland said that he had resigned in November 2010 but had required to work until May 2011.

Ms Sutherland accepted that the Second Respondent's acquiescence in the system had made a contribution to the downfall of the firm. However she said that the Tribunal could not attribute everything to him. Ms Sutherland said that the real problems had started with issues regarding partnership control. She noted that there was no averment of dishonesty. She accepted that this was for the Tribunal to determine. However, she noted that the Complainers made no averment of dishonesty.

Ms Sutherland informed the Tribunal that Allison was the Second Respondent's secretary. The memos which the Tribunal had been referred to by Mr Stephenson bearing Allison's name were emails where she was trying to chase up money. There was a problem with making the cashroom pay. It was accepted that the Second Respondent should not have allowed this to continue. However, the system had operated in the cashroom independent of him.

The Chairman asked Ms Sutherland whether any examination of a ledger card would have revealed a problem. Ms Sutherland said that it would have shown a cheque had been issued and cancelled. However, the Second Respondent did not see any of the ledgers. He did know that there was a delay in making payment. However, he did not know about the system which was operating regarding the drawer and ledgers. The Second Respondent was not in a management role. He had no cashroom responsibilities. His legal aid work was voluminous. It involved lengthy and time consuming work. He was working on the MRSA and sex abuse cases among many others. He undertook pro bono work. He

went to partnership meetings as required. He held on through difficult circumstances through loyalty to a firm he had worked for almost since he had qualified. From his perspective the firm was doing well but was experiencing cash flow problems. He had little power to stop the decisions of the majority of the partners. They even kept control of his capital account. The legal aid cases were particularly vulnerable to the manipulation in the cashroom.

The Chairman asked whether the Second Respondent signed cheques. Ms Sutherland indicated that the Second Respondent did not sign cheques at all. She asked the Tribunal to note that there is an approximate relationship between the SLAB money coming in and the cheque being issued. The Second Respondent did react when the SLAB money came in. The Chairman asked Ms Sutherland to explain how cheques were dealt with within the firm. She said that the Second Respondent would obtain a fee estimate from an expert. He would apply for sanction from the Scottish Legal Aid Board. If he got sanction he would instruct an expert. The report would come with an invoice or fee note. He might write letters to the expert regarding any issues on which he required clarification. Frequently in these letters he would say that he would ask the cashroom to make payment of the fee. Ms Sutherland vouched for the fact that she had seen letters to this effect in the files. The Second Respondent would ask his secretary, Allison, to say to the cashroom that the fee would need to be paid. The cashroom would deal with matters from then on. Reina Gardner would print off the cheques. There would be a reference on the cheque to tally up with the file. The Chairman asked Ms Sutherland whether the cashroom got anything from a partner. Ms Sutherland said the secretary would complete a legal aid form and give it to the cashroom. Ms Sutherland said that the cashroom would take the details from the Scottish Legal Aid Board form. There was a separation of functions between the partners and the cashroom. Ms Sutherland indicated that Reina Gardner had authority to sign cheques up to a certain value. This was an automatic process. Ms Sutherland noted that money was not withheld with every case. Some money was held back for cash flow management purposes. The Chairman indicated that an expert might issue a reminder if he/she had not been paid. If the Second Respondent thought it had been paid why wouldn't he check the ledger card. Ms Sutherland said that there were only a few cases where there had been reminders.

Ms Sutherland said that the change for the Second Respondent occurred in 2009. At this time to him the firm was still viable. However, power over the firm had been seized by Mr Miller and Mr Price. It was difficult for the Second Respondent to manage his work in the way he wanted. However, when it was brought to his attention that third parties had not yet received payment, he chased those up.

The Second Respondent sought legal advice regarding majority control of the partnership. He was told that there was no solution. In August 2010 Alan Susskind resigned. The Second Respondent secured his position at Drummond Miller and he resigned in November 2010. He was moved immediately to Shawlands. He was given 50 cases. He was not provided with a secretary. He was given no access to the cashroom or cash cards. The only method by which he could influence the system was to send memos. Ms Sutherland accepted that the memos and letters do demonstrate a knowledge of the system. However they also show that the Second Respondent was trying to make payment.

Ms Sutherland asked the Tribunal to treat the Second Respondent as an individual. He accepted he played a contribution but others played a greater part. His culpability is that of omission and acquiescence. The Second Respondent will cooperate regarding any other further matters within his knowledge. There is no dishonesty alleged on the part of the Second Respondent. The Second Respondent has repaid significant sums. He paid £14,000 to creditors. The money in his capital account was used to pay creditors. This amounted to £150,000. The Second Respondent did not leave because he became aware of the cashroom problems. He left because he could not practise as a solicitor under the control of the other partners.

The Chairman clarified with Ms Sutherland whether the Second Respondent accepted knowledge of the drawer. She indicated that he did. The Chairman clarified with her whether the Second Respondent knew in consequence therefore that third parties were not being paid timeously. She indicated that this was the case. The Chairman clarified that the Second Respondent knew or ought to have known that in consequence there was utilisation of funds by the partnership to help the overdraft position. Ms Sutherland said that was factually correct. However the Second Respondent did not “know” that. The Chairman asked Ms Sutherland why when the Second Respondent was moved to Shawlands he did not leave the partnership. She said that he had taken Counsel’s advice on what he could do. He was advised to serve his six months. His partnership agreement required him to serve six months’ notice. It was suggested that without the information in the ledgers he could not operate properly as a solicitor. Ms Sutherland said that the Second Respondent had tried to send memos to the cashroom. He was in a very difficult position.

DECISION

The two Respondents faced a Complaint alleging misconduct in relation to the financial management of the former firm of Ross Harper that was dissolved in April 2012 and the issuing of inaccurate accounts certificates. The First Respondent had ceased to be a partner in March 2011 and the Second

Respondent in May 2011. Both had been partners for just short of 30 years. The First Respondent had been a managing partner. For about 10 years he held the posts of managing partner and designated cashroom manager. Each was aware of a practice that had operated for many years, the inception of which they were not party to. That practice involved:

- (a) The depositing into the firm account all sums received from the Scottish Legal Aid Board and prior to that the Law Society when it operated the Legal Aid Scheme through local Legal Aid Committees, and
- (b) The placing into a “drawer” remittances drawn to pay third party accounts until the firm received funds to pay these accounts but latterly until the financial position of the firm and in particular the overdraft arranged with its bankers permitted the cheques to be issued appreciating that if a cheque was issued and dishonoured that would probably cause the firm’s financial position to come to light and potentially lead to disciplinary action.

The practice of paying all Scottish Legal Aid Board funds into the office account in no way contravened the Accounts Rules. What should happen however is that any sums due for payment of outlays should be transferred to the client account and postings made to the relevant client ledgers.

From 2008 the firm’s financial position came increasingly under pressure. Although sums from the Scottish Legal Aid Board were received to pay outlays such as medical reports, the funds would be retained in the firm account. To mask the position an entry would be made to cancel the posting made in the client ledgers. An uncashed cheque is something that is likely to come to the attention of inspectors during any Law Society inspection. Sometimes there would be multiple entries on a client ledger issuing a cheque and cancelling it with funds being retained for anything up to two years no doubt dependent on the pressure from the third party to pay an invoice. Effectively therefore both Respondents were privy to a practice that permitted the firm to use the client funds for that is what the monies received from the Scottish Legal Aid Board to pay third invoices were.

The essential qualities of a solicitor are honesty, truthfulness and integrity. It is imperative if the public is to have confidence in the legal profession that solicitors comply with the Accounts and Professional Practice Rules. In holding funds for clients, a solicitor is in a privileged position of trust. The Accounts Rules are in place in order to provide protection to the public. It is well accepted that the Tribunal will treat breaches of the Accounts Rules as a serious matter. The test to be satisfied in terms of Sharp v The Council of the Law Society of Scotland 1984 SC 129 is that the conduct proved

represents a departure from the standards to be expected of a competent and reputable solicitor that would be regarded as serious and reprehensible.

It would be easy to lay greater blame on the First Respondent because during his period of being managing partner and cashroom manager he allowed the system to operate. However, the Second Respondent also was aware of the system and knew of the benefit to the firm and ought to have known of the breach of the Accounts Rules if indeed he did not have actual knowledge. He certainly knew accounts of third parties were not being paid timeously. The Tribunal therefore found both Respondents guilty of professional misconduct for allowing a practice to continue which involved the unconscionable delay in payment of third party accounts and the intromission with clients' funds to the benefit of their firm. The Sharp test is easily passed.

In respect of the Accounts Certificates, both Respondents did actually know that the certificates were inaccurate if not to the extent to which they were inaccurate. The whole purpose of the system of certificates is to have two partners accepting responsibility for stating to the Law Society that the accounts of the firm are in order. We know not what information was given to their professional accountants but would be surprised in the extreme that any qualified accountant would prepare accounts for a solicitors' business without being aware of the Accounts Rules and therefore prefer to believe that specific mention of the "drawer" was never made. The Respondents at best took no steps to satisfy themselves as to how inaccurate the certificates were and at worst were well aware of the wrongful use of the client funds. They are individually guilty of professional misconduct in this respect. The standard of proof applied to the assessment of the facts was that of beyond reasonable doubt, both for the conduct alleged in relation to the Accounts Rules and the Accounts Certificates.

The First Respondent also faced a charge of misconduct in relation to the countersigning and notarising of an affidavit of a client which he knew or ought to have known contained statements which were false, thereby giving false or misleading information to the Court. As in respect of the accounts matter, a Joint Minute of Admissions was agreed. It was of course acknowledged that it was for the Tribunal to determine whether there had been misconduct.

The conduct in question was the taking of a client deponent's oath to a simplified form of divorce the contents of which were false and which fraud upon any kind of enquiry back to the client's files would have been detected. In the view of the Tribunal there is a conflation of the duties of notary and solicitor when the solicitor takes the client's deposition on a matter in which he acts. Having regard to the admissions against interest freely made and the Tribunal's view that the initial mistake was made when

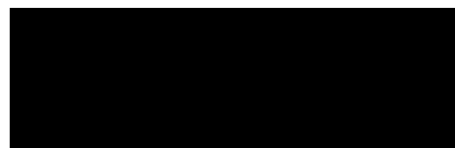
writing to the client commending the use of the simplified form of divorce, the Tribunal was inclined to believe that the First Respondent did not know the declaration was false even if he ought to have known it was false. The Tribunal was not prepared to attach the label of professional misconduct to such a single act of negligence in the execution of his duties as a solicitor notary. However, the Tribunal was of the view that it certainly could be unsatisfactory professional conduct and was accordingly obliged in terms of Section 53ZA remit the matter to the Law Society.

The Tribunal considered carefully what the parties had said in mitigation on the last occasion including the several letters of support from some eminent members of the profession. The Tribunal had discussed the case at length. The Tribunal noted with care the Fiscal's concession that there was no dishonesty averred and none admitted. The Tribunal took that to mean that individually there was no immediate personal financial gain to either of the Respondents. The Tribunal however could not ignore that the Respondents did obtain a benefit through the wrongful use of the client funds which are meant to be sacrosanct. To their knowledge, third parties were denied either timeous payment or payment at all for services the firm had requested. The Tribunal had been advised that the shortfall in funds at the time the Respondents left the firm was approximately £40,000 although the action for payment by their Edinburgh agents was for £70,000. One year after they left the shortfall seems to have increased to £400,000. The Tribunal was also advised that it was left to a member of the cashroom staff to whistle blow and effectively uncover the practice. Had either Respondent brought their wrongful conduct to the attention of the Law Society by refusing to sign the accounts certificate, perhaps the shortfall would not have risen to such an extent. There was a continuing course of deceitful conduct in relation to the firm's cashroom operating practices.

Clearly a Censure would be inappropriate and the Tribunal did not consider that a restriction on the practising certificates would affect either of the Respondents given their present positions, maintain the reputation of the profession or sustain public confidence in its integrity. The choice was therefore between suspension or removal from the Roll. Having regard in particular to the length of time the procedure prevailed and the submission of inaccurate certificates to the Law Society, the Tribunal were of the view that they could not avoid the ultimate sanction and accordingly struck the names of both Respondents from the Roll. The Tribunal reached this decision with regret but were of the view that there was no alternative in the circumstances. In terms of Section 53(6) of the Solicitors (Scotland) Act 1980 the Tribunal directed that the order shall take effect on the date on which the written findings are intimated to the Respondent.

No objections having been received from any party,⁴ the Chairman indicated that the Respondents would be jointly and severally liable regarding the expenses of the case, excluding expenses incurred solely in relation to the matter which has been remitted to the Council of the Law Society of Scotland under section 53ZA of the Solicitors (Scotland) Act 1980.

The Tribunal will publish its decision but publicity will be deferred until the conclusion of proceedings in the related Complaint against four of the Respondents' former partners.



Alistair Cockburn
Vice Chairman