

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

**FINDINGS**

**in Complaint**

**by**

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

**against**

**ANTHONY QUINN, formerly of  
77 Smithstone Crescent, Croy and  
presently 1 Anton Crescent,  
Kilsyth**

**Respondent**

1. A Complaint dated 21 February 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Anthony Quinn, formerly of 77 Smithstone Crescent, Croy and then of 1 Anton Crescent, Kilsyth (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 2 May 2014 and notice thereof was duly served upon the Respondent.

4. At the hearing on 2 May 2014, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was neither present nor represented. After hearing evidence regarding service of the Complaint and Notice of Hearing, the Tribunal being satisfied that Notice of the Hearing had been intimated to the Respondent in terms of Rule 14(4) of the Scottish Solicitors' Discipline Tribunal Rules 2008 ("2008 Rules") proceeded to hear the Complaint in the absence of the Respondent. The Fiscal made submissions with regard to Affidavit evidence and thereafter moved the Tribunal to continue the hearing to a later date. The hearing was continued to 3 June 2014. Notices of the continued hearing and a motion by the Fiscal for the Law Society to amend the Complaint were served upon the Respondent.
  
5. At the continued hearing on 3 June 2014, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Fiscal moved the Tribunal to hear the case in the absence of the Respondent. The Depute Clerk having given evidence to the Tribunal that a Notice of the continued hearing had been served upon the Respondent by Sheriff Officer, the Tribunal agreed to hear the Complaint in the absence of the Respondent in terms of Rule 14(4) of the 2008 Rules. The Fiscal made a motion to amend the Complaint. Having heard evidence that the motion to amend had been served on the Respondent by Sheriff Officer, the Tribunal granted the motion. The Fiscal thereafter in terms of Rule 14(5) of the 2008 Rules requested that the Tribunal proceed and act upon evidence given by Affidavit in relation to parts of the Complaint and parole evidence for the remainder. The Tribunal acceded to this request. Thereafter the Fiscal led evidence from one witness, Ms A; referred the Tribunal to the Affidavit of one witness, Ms B, and to the Productions lodged on his behalf; and made submissions to the Tribunal.
  
6. The Tribunal found the following facts established:-

- 6.1 The Respondent is a solicitor on the Roll for Scotland. Until October 2012, when it was suspended, he held a practising certificate.
- 6.2 On 6 June 2012, Mr C, the Council's Director of Financial Compliance in terms of Rule 6.18.3 of the Law Society of Scotland Practice Rules 2011 ("the Practice Rules") sent a notice of forthcoming inspection ("the Notice") by recorded delivery to the Respondent. The Notice informed the Respondent that it was proposed to carry out an inspection of his firm's accounts, books and records at the Law Society's offices on 22 June 2012 at 9.30am. Enclosed with the Notice was a style letter of authority to the bank, a pre-visit questionnaire and a list of required books and records. The Notice was sent to Flat 7/1, 507 Stobcross Street, Glasgow, G3 8GJ being the home and business address of the Respondent at that time. Production1 is a copy of said Notice. Ms A confirmed delivery of said Notice. No response was received to the notice dated 6 June 2012. The accounts, books and records were not provided to the Law Society by 22 June as requested.
- 6.3 Accordingly, Ms A, the Law Society's Head of Financial Compliance, decided to arrange a visit to the Respondent's premises on 26 June 2012. Two inspectors with the Financial Compliance Team, attended at the Respondent's premises on 26 June. They spoke with a concierge for the building who confirmed that the Respondent still resided at that address, and attempted, unsuccessfully to contact the Respondent. Following the attendance at the Respondent's premises on 26 June 2012 an e-mail was sent by Ms D, the Law Society's Financial Compliance Manager, to the solicitor at 9.58am asking him to contact her "urgently in relation to the inspection of your firm

which was planned to take place today” . Production 2 is a copy of said email. The Law Society received no response to this e-mail.

6.4 On 16 July 2012, Ms A, the Law Society’s Head of Financial Compliance, sent a letter to the Respondent referring to the Notice and noting that the Financial Compliance Inspection Team had received no answer when they called at his premises on 22 June. However the Financial Compliance Team had not attended at the Respondent’s premises on 22 June. In Fact the Financial Compliance Team had attended at his premises on 26 June. In that letter the Head of Financial Compliance advised that despite numerous attempts to contact the Respondent by telephone and e-mail the Financial Compliance Inspection Team had been unable to make arrangements to rearrange the inspection. In that letter the Head of Financial Compliance advised that if no contact was made by the Respondent within the next two weeks then the matter would be referred to the Law Society’s Guarantee Fund Sub-committee to consider further action. Production 3 is a copy of said letter. The Law Society received no response to this letter.

6.5 On 3 August 2012 the Head of Financial Compliance sent a further letter to the Respondent dated 2 August advising that as no response had been received a report was being submitted to the Guarantee Fund sub-committee to consider further action. This letter was also sent by e-mail to the Respondent on 3 August 2012. Copies of the letter dated 2 August 2012 and the email dated 3 August 2012 are Production 4. The Law Society received no response to this correspondence.

- 6.6 On 11 September 2012, Ms E, the solicitor to the Guarantee Fund, sent a letter to the Respondent. In this letter the solicitor advised the Respondent that the Guarantee Fund Sub-committee had made an interim decision on the matters raised by the Financial Compliance Department. The interim decision was that the Guarantee Fund Sub-committee was minded to withdraw the solicitor's Practising Certificate under section 40 of the Solicitors (Scotland) Act 1980. The Respondent was invited to attend an interview meeting with a Panel consisting of members of the Guarantee Fund Sub-committee at the Law Society's offices on 20 September 2012. Production 5 is a copy of the aforesaid letter of the 11 September. The Law Society received no response to this letter.
- 6.7 On 20 September 2012 the Respondent failed to attend the interview meeting. The Panel recommended suspension of the Respondent's Practising Certificate. Production 6 is a note of the interview dated 20 September 2012.
- 6.8 On 27 September 2012 the solicitor to the Guarantee Fund sent a letter to the Respondent by recorded delivery. In this letter the solicitor noted that the Respondent had not attended for interview. He was advised that the recommendation that his Practising Certificate be suspended would be considered by the Guarantee Fund Sub-committee on 4 October 2012. He was advised that if he could produce the books and records of his practice for inspection this may assist his position. Production 7 is a copy of the aforesaid letter dated 27 September. The Law Society received no response to this letter.

- 6.9 On 20 November 2012 the solicitor to the Guarantee Fund sent a letter to the Respondent. In that letter the solicitor advised that at its meeting on 1 November 2012 the Guarantee Fund Sub-committee had continued consideration of whether or not to refer his conduct to the Scottish Legal Complaints Commission for a period of one month. He was advised that any contact or report that the Respondent could produce would assist the Committee greatly in dealing with the situation. Production 8 is a copy of the aforesaid letter dated 20 November. The Law Society received no response to this letter.
- 6.10 On 6 December 2012 the Guarantee Fund Sub Committee held a meeting at which Ms A was present. Production 9/2 is an accurate record of that meeting. On 13 December 2012 the solicitor to the Guarantee Fund sent a letter to the Respondent to advise him of the decision made by the Guarantee Fund Sub-committee on 6 December 2012. In that letter she advised that the Sub-committee had considered the fact that the Respondent had failed to make contact with the inspection team with regard to the proposed inspection of his firm. The Respondent was advised that in light of his failure to respond to correspondence and his failure to comply with the accounting regulations as contained in the 2011 Practice Rules, that his conduct would be referred to the Scottish Legal Complaints Commission. Production 9/1 is a copy of the aforesaid letter dated 13 December. The Law Society received no response to this intimation.
- 6.11 On 17 July 2013 the Law Society intimated to the Respondent a copy of its complaint letter to the Scottish Legal Complaints

Commission. In that letter the Law Society advised that it had a statutory obligation to investigate and that the Respondent had a professional obligation to respond. Production 10 is a copy of the aforesaid letter dated 17 July. The Law Society received no response to the intimation of complaint.

6.12 On 8 August 2013 the Law Society served a Section 15 Notice on the Respondent by recorded delivery post requiring him to send a response to the Law Society within 14 days of the Notice date (“the First Part of the Section 15 Notice”). Production 11 is a copy of the first part of the Section 15 Notice. Ms B, a Complaints Investigator with the Law Society of Scotland, received confirmation that this Notice was successfully delivered. The Law Society received no response to this Notice.

6.13 On 30 August 2013 the Law Society served the second part of a Section 15 Notice on the Respondent by recorded delivery post (“the Second Part of the Section 15 Notice”). The said Ms B received confirmation that this Notice was successfully delivered. On same date the Law Society also sent a letter to the Respondent requiring that he respond to the letters of 17 July and 8 August 2013. Productions 12 and 13 are copies of the aforesaid notice and letter respectively. The Law Society received no response to the Notice or letter.

7. Having given careful consideration to the parole evidence, the Affidavit and Productions lodged on behalf of the Complainers, and the submissions made by their Fiscal, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 7.1 his failure to (a) produce practice information for inspection by the Law Society in contrary to Rule 6.18.3 of the Law Society of Scotland Practice Rules 2011 (“the Practice Rules 2011”); and (b) to provide reasonable cooperation to the persons authorised by the Law Society in the conduct of the said inspection contrary to Rule 6.18.17 of the Practice Rules 2011;
- 7.2 his failure (a) to respond timeously, accurately or fully to or to communicate effectively in response to correspondence or statutory notices sent to him by the Council of the Law Society; and (b) to respond promptly and efficiently to correspondence or statutory notices received from the Council of the Law Society in respect of its regulatory function.

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

Edinburgh 3 June 2014. The Tribunal having considered the Complaint dated 21 February 2014 at the instance of the Council of the Law Society of Scotland against Anthony Quinn, formerly of 77 Smithstone Crescent, Croy and now of 1 Anton Crescent, Kilsyth; Find the Respondent guilty of Professional Misconduct in respect of his failure to (a) produce practice information for inspection by the Law Society contrary to Rule 6.18.3 of the Law Society of Scotland Practice Rules 2011; and (b) to provide reasonable cooperation to the persons authorised by the Law Society in the conduct of the said inspection contrary to Rule 6.18.17 of the Law Society of Scotland Practice Rules 2011 and (2) his failure (a) to respond timeously, accurately or fully to or to communicate effectively in response to correspondence or statutory notices sent to him by the Council of the Law Society; and (b) to respond promptly and efficiently to correspondence or statutory notices received from the Council of the Law Society in respect of its regulatory function; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of five years any



practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

**(signed)**

**Alan McDonald**  
**Vice Chairman**

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

**IN THE NAME OF THE TRIBUNAL**

**Alan McDonald**  
**Vice Chairman**

**NOTE**

On 2 May 2014 the Tribunal had heard evidence from the Depute Clerk that the Complaint in this case had been sent to Sheriff Officers for service on the Respondent. Sheriff Officers ascertained that the Respondent had changed address to 1 Anton Crescent, Kilsyth. The Complaint was served personally upon the Respondent at that address. A Notice of the Hearing of 2 May 2014 had been sent to Sheriff Officers for service. This was served by means of a letterbox at this address, enquiry having been made of a neighbour to confirm that the Respondent still resided there.

No Answers were lodged and no appearance was made by the Respondent on 2 May 2014.

At the continued hearing on 3 June 2014, the Tribunal heard evidence from the Depute Clerk that a Notice of the continued hearing had been served on the Respondent by Sheriff Officers, by means of a letterbox at his address, enquiry having been made of a neighbour to confirm that the Respondent continued to reside there. The Respondent failed to appear at the continued hearing.

The Tribunal was satisfied that Notice of the hearing had been duly intimated to the Respondent in terms of Rule 11(2) of the Tribunal Rules 2008. Given the history of the Respondent not lodging Answers, and failing to appear, the Tribunal concluded that it was appropriate to hear and determine the Complaint in the absence of the Respondent.

Thereafter, the Fiscal made a motion to amend the Complaint in terms of Rule 45(1)(b) of the Tribunal Rules 2008. The Tribunal heard evidence this motion had been served upon the Respondent by Sheriff Officers by letterbox at his current address. Given that the proposed amendment was within the scope of the original Complaint, the Tribunal granted this motion.

The Tribunal agreed to proceed in part on the basis of Affidavit evidence and in part on the basis of parole evidence in terms of Rule 14(5)(b) of the Tribunal Rules 2008.

Productions had been lodged on behalf of the Complainers which included the Affidavit for the witness, Ms B.

## **EVIDENCE**

The Fiscal for the Complainers called one witness.

### **MS A**

Ms A confirmed that she is the Head of Financial Compliance with the Law Society of Scotland. It is her responsibility to decide which cases are reported for consideration by the Guarantee Fund Sub Committee. She has been the Head of Financial Compliance since 2009 but has been with the Law Society since 1994, always in a financial compliance role.

The Law Society had decided to hold a planned inspection in terms of the Accounts Rules of Anthony Quinn's records. The purpose of such an inspection is to confirm that the solicitor's practice has bank records that are correctly held, and that the firm complies with the Accounts Rules. Additionally, the inspection will confirm that client funds are correctly held. The Society inspects all practices over a period of time. If a firm does not hold client funds then such an inspection does not happen often. On this occasion the Society was carrying out a series of inspections of Glasgow solicitors. The Respondent was part of that Glasgow series. The Respondent had reported to the Society in his accounts certificates that he did not hold client funds. The Law Society of Scotland Practice Rules 2011 cover the conduct of such financial inspections.

Rule 6.18.2 provides for two types of inspection – a routine matter which is classed as an inspection, and a non-routine matter which is classed as an investigation. The inspection here was a routine inspection. The Society needed to check what kind of business the Respondent did to confirm whether he held client funds and had had complied with the Money Laundering Provisions. In terms of Rule 6.18.3 of the Practice Rules, the Society will send out a letter intimating that an inspection is to take place, explaining when it will take place, how many inspectors will attend and

how long the inspection will take. Production 1 for the Complainers is a copy of a letter dated 6 June 2012 addressed to the Respondent from Mr C, the Director of Financial Compliance. The Respondent did not produce his records to the Law Society. Ms A tried to contact him to say that the Society would collect his books and records on 26 June. Team members attended at the address in Production 1, a flat in Glasgow. They spoke to a concierge who attempted to contact the Respondent and got no response. Two inspectors attended at the address – Ms F and Ms G. The Law Society had set up a temporary office in Glasgow for the week that these routine inspections were due to take place. The two inspectors returned immediately to that office and explained that they could not get access.

The witness confirmed that it was usual practice to ask the solicitor to deliver his records to the Society where he was practising from his home address. It was not necessarily normal practice to send two inspectors to collect the documents, as had happened here, however the team was in Glasgow for a week doing several inspections. The witness confirmed that she was present when her colleague Ms D sent an email to the Respondent asking him to contact her with regard to the inspection. Production 2 was a copy of that email. No response was received from the Respondent.

The witness then sent a letter to the Respondent dated 16 July 2012 again asking the Respondent to contact the Society and giving him two weeks to respond. That letter had mistakenly referred to a visit taking place on 22 June when in fact the visit had taken place on 26 June. No response was received to that letter. Production 3 was a copy of the aforementioned letter. The witness had written to the Respondent again by letter dated 2 August 2012 intimating to the Respondent that she required to report the matter to the Guarantee Fund Sub Committee. That letter was also sent to the Respondent by email on 3 August 2012. Production 4 included copies of the email and letter. No response was received to the letter or email.

The solicitor to the Guarantee Fund, Ms E, wrote to the Respondent on 11 September 2012 *inter alia* inviting the Respondent to attend at the Society's offices for an interview on 20 September 2012. No response was made by the Respondent. If the Respondent had produced his books and records then the Financial Compliance Team

would have inspected them and advised the Committee of the outcome. If the books and records had been ok then the Financial Compliance Team would have advised the Committee that there was no need to consider the matter further. The witness was present on the 20 September when the meeting took place. The Respondent did not attend. Production 6 is an accurate record of that meeting. The recommendation was that the Respondent's practising certificate be suspended. The meeting indicated that the local council member be asked to ascertain anything of assistance.

On 27 September 2012 the solicitor to the Guarantee Fund wrote to the Respondent explaining the outcome of the meeting on 20 September. Production 7 was a copy of that letter. In that letter the Respondent was advised that if he produced his books and records for inspection this would be reported to the Guarantee Fund Sub Committee and might assist his position. No contact was made by the Respondent. The letter to the Respondent of 27 September 2012 advised that the Respondent's case would be considered at the next meeting of the Guarantee Fund Sub Committee on 4 October 2012.

At the Guarantee Fund Sub Committee meeting on 4 October it was decided to withdraw the Respondent's practising certificate. The Guarantee Fund Committee was also considering whether to make a Complaint to the Scottish Legal Complaints Commission ("the SLCC") regarding the Respondent's failure to cooperate. Production 8 was a copy of a letter to the Respondent dated 20 November 2012 advising the Respondent of the possibility of a Complaint and inviting him to make contact. No contact was received.

The witness was present at a meeting of the Guarantee Fund Sub Committee on 6 December when it was decided to refer the Respondent's conduct in failing to respond to correspondence and failing to adhere to the terms of the Accounting Regulations to the SLCC. Production 9 was a copy of a letter from the solicitor to the Guarantee Fund to the Respondent explaining this. The Complaint was based on two reasons – a failure to respond to correspondence and a failure to adhere to the Accounting Regulations. Production 9.2 was a copy of this decision, and was accurate in its terms.

No contact was received from the Respondent and the witness was aware that the matter was remitted to the SLCC for investigation into misconduct.

Ms A had spoken with the Complaints Investigator allocated to this case, Ms B. She had indicated to the witness that the Respondent made no contact with her. Ms A confirmed that had the Respondent produced his records at any time they would have been inspected and this reported to the Committee.

The witness indicated that the Respondent remained on the Roll of Solicitors, but that no application for a practising certificate had been received from him since his certificate had been suspended.

The witness confirmed that she was aware that one recorded delivery letter had been returned to the Law Society, but she was not aware of the reason why. She was aware that there was a change of address noted within the records at the Law Society.

She confirmed that solicitors require to produce accounts certificates and if no client funds are held a certificate requires to be produced every year.

The witness was asked to explain the change of address at Production 1. She clarified that when the letter was reproduced to be lodged as a Production, the date printed was the date of reproduction and so it was amended to show the original date. She confirmed that this was not the letter that was returned by the post office. The letter that was returned was one much later on in proceedings. She confirmed that she had satisfied herself from her records that there was a recorded delivery receipt for Production 1. Additionally, when inspectors had attended at the address, the concierge there confirmed that the Respondent was residing there.

The witness explained that not all of the emails had been copied as Productions for the Tribunal. There had been no contact from the Respondent at all between June and September. The change of address within the Society's records had been made by another member of the Law Society staff.

The witness was asked how often solicitors failed to produce books by the due date. She confirmed that this occurred approximately four or five times a year out of more than 350 inspections. Follow-ups had occurred more quickly in this case than usual because the Society had had a temporary office in Glasgow for one week. The witness confirmed that there had been no feedback from the local council member regarding the Respondent.

### **AFFIDAVIT EVIDENCE OF MS B**

In her Affidavit, Ms B confirmed that she was a Complaints Investigator with the Law Society of Scotland and had been instructed to investigate a complaint against the Respondent. She confirmed that she sent a letter to the Respondent on 17 July 2013 seeking a response from the Respondent within 21 days. (Production 10 was a copy of that letter). She confirmed that no response was received.

The witness confirmed that she arranged for service of a Section 15 Notice upon the Respondent on 8 August 2013 by recorded delivery post, requiring a response from him within 14 days. She received confirmation that this letter was successfully delivered. (This Notice was Production 11). No response was received to this Notice. Thereafter, on 30 August 2013 she arranged to serve the second part of the Section 15 Notice on the Respondent by recorded delivery post. She received confirmation that this was successfully delivered. (This was Production 12). On the same date the witness wrote to the Respondent seeking a response from him to explain his failure to reply to the letter of 17 July and Notice of 8 August. (The letter was Production 13). No response was received.

Prior to making his submissions, the Fiscal was asked to clarify the procedure regarding service of a notice in terms of Rule 6.18.3. The Fiscal confirmed that the Rules did not set down a formal requirement for the form of the notice. The Solicitors (Scotland) Act 1980 Section 64 indicated that any notice or other document required to be served shall be taken to be duly given or served if sent by post to the last known place of business.



## **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal asked the Tribunal to consider the evidence of Ms A, the Affidavit of Ms B and the documents lodged. He indicated that the Complaint fell into two parts: failure to comply with the financial investigation; and failure to comply with the complaints procedure.

He submitted that it was clear that there had been no response to any of the correspondence, which ultimately led to the suspension of the Respondent's practising certificate. Productions 1 to 9 related to the Respondent's failure to cooperate with the financial compliance inspection. Productions 10 to 13 were all correspondence relating to the misconduct investigation.

Throughout, the Respondent had been given numerous opportunities to respond which he had failed to take. The Fiscal went on to outline the 10 separate pieces of correspondence, lodged with the Tribunal, in relation to the accounts inspection. Thereafter he referred to the two letters and two notices which were lodged in relation to the misconduct investigation.

He submitted that the Respondent had failed in a number of duties owed by him. The Practice Rules on Fundamental Principles and Client Care (Rule 1.9.1) placed a duty upon the Respondent to communicate effectively with clients and others, including providing clear and comprehensive information. The Respondent's failure to respond to the Law Society's various correspondence and statutory notices was a failure of this duty.

The Respondent had a duty to respond promptly and efficiently to correspondence received from the Law Society carrying out its regulatory function. He had failed to comply with that duty and had not responded in any way.

Rule 6.18.13 of the Practice Rules imposed an obligation on solicitors to produce practice information for inspection by the Law Society. The Respondent had failed to comply with that duty.

Rule 6.18.7 of the same Practice Rules imposed an obligation on solicitors to provide any person authorised by the Law Society with reasonable cooperation in the conduct of any inspection including the production of practice information as such person may reasonably require. The Respondent had failed to comply with that obligation.

The Fiscal submitted that the failures to comply with these four duties amounted to professional misconduct.

The Fiscal submitted that these failures satisfied the test of misconduct as set out in the case of Sharp. He referred to paragraph 12.15 of Paterson & Ritchie: Practice and Conduct for Solicitors. There it was said:

“The Tribunal has continually stressed that failure to respond hampers the Society in the performance of its statutory duty and brings the profession into disrepute.”

He further referred to paragraph 16.08 of Smith & Barton: Procedures and Decisions of the Scottish Solicitors Discipline Tribunal, wherein case 776/89 was quoted:

“The statutory objects of the Law Society of Scotland include the promotion of the interests of the solicitors’ profession in Scotland and the interests of the public in relation to that profession; and it is in pursuance of these objects that the Law Society makes enquiries of a solicitor in the event of any letter of complaint being received from a member of the public.”

The Fiscal made reference to three previous Tribunal decisions, Oag [2013], Kay [2013] and Sandilands [2014]. He submitted that the conduct of the Respondent in the current matter should be viewed as professional misconduct for the same reasons as these three cases, namely that it hampers the Law Society in its performance of its role, is likely to damage the reputation of the profession and has a negative impact on the public trust.

The Fiscal concluded by asking the Tribunal to hold that the acts or omissions set out within the Complaint singly or in cumulo amounted to professional misconduct.

## **DECISION**

The Tribunal gave very careful consideration to the evidence of Ms A, the affidavit of Ms B and the documentary productions lodged on behalf of the Complainers. It was satisfied, on the evidence before it, that the facts set out in paragraph 6 above were proved beyond reasonable doubt.

Thereafter the Tribunal considered whether the facts proved met the standard for professional misconduct. It accepted that the test to be applied was that set out in the case of Sharp.

The Respondent had clearly failed to comply with the accounts inspection process. Throughout that process, the Respondent had been given repeated opportunities to produce the information required. The Respondent had clearly failed to do so.

The Accounts Rules are a very important and fundamental provision for the protection of the public. In order to ensure that they are observed appropriately by the profession, then an inspection system is essential. From the outset, the Respondent had failed to engage at all with the process. Whilst it had been said in the course of evidence that the Respondent had submitted accounts certificates indicating that he did not hold client funds, it had been impossible to check this position given his complete failure to either produce records or otherwise cooperate with the inspection.

The Respondent's failures in this case clearly breached Rules 6.18.13 and 6.18.17 of the Practice Rules. This conduct was clearly conduct that fell well below the conduct to be expected of a competent and reputable solicitor. The Respondent's conduct would undoubtedly be regarded by any reputable solicitor as serious and reprehensible.

Additionally, the Respondent had failed to respond to the Law Society on repeated occasions. These failures were a breach of the duties owed by the Respondent in two respects – a breach of the Practice Rules regarding effective communication and a breach of the Respondent's duty to respond to his regulatory body. The Law Society of Scotland clearly has a function to protect the interests of the public. A failure to

cooperate with the Society hampers it in the performance of its statutory duty. The Respondent's complete failure to cooperate with his professional body could be seriously detrimental to the public trust in solicitors.

This too was conduct falling short of the conduct to be expected of a competent and reputable solicitor which would clearly be seen as reprehensible and serious.

Accordingly the Tribunal found the Respondent guilty of professional misconduct.

The Respondent had failed to engage at all with the Tribunal procedure. It was therefore difficult to ascertain any mitigatory factors. There were no previous Tribunal findings. Within the documentary productions there was a hint, but no more than that, of a possible illness. Uppermost in the Tribunal's mind was the protection of the public. It had been impossible to ascertain whether the Respondent was complying with the Accounts Rules. The Tribunal considered that it was incumbent upon it to impose a disposal that took into account all of the features in the case and provided a degree of protection for the public.

Accordingly, the Tribunal ordered that the Respondent's practising certificate be restricted in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 so that the Respondent was limited to acting as a qualified assistant, and not on his own account, for an aggregate period of five years. Additionally, given the lack of explanation for this conduct, it was thought prudent to insist that the Respondent satisfy the Tribunal that it would be appropriate to remove the Restriction, should he wish to practice on his own account in the future.

The Fiscal made a motion for expenses which was granted. The usual order was made with regard to publicity.

**Alan McDonald**  
**Vice Chairman**