

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

**F I N D I N G S**

**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**

**against**

**STEVEN LILLY, Bruce McCormack Limited,  
2<sup>nd</sup> Floor, 1 Merry Street, Motherwell**

1. A Complaint dated 29 October 2015 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Steven Lilly, Bruce McCormack Limited, 2<sup>nd</sup> Floor, 1 Merry Street, Motherwell (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were two Secondary Complainers: Alison Crozier, 3 Broomhill Court, Larkhall and Joseph McEwan, 3 Bay Willow Court, Hallside, Cambuslang, Glasgow.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 11 March 2016 and notice thereof was duly served on the Respondent.
5. The hearing took place on 11 March 2016. The Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented by James McCann, Solicitor, Clydebank.
6. A Joint Minute of Admissions was lodged and accordingly no evidence was required.

7. The Tribunal found the following facts established:-

7.1 The Respondent was born on 7 June 1980. He was enrolled as a solicitor on 17 October 2005.

**Complaint by Joseph McEwan**

7.2 During the period 31 October 2005 to 21 October 2011 he was an Assistant in the legal firm of Watters, Steven & Co of 291/293 Brandon Street, Motherwell.

7.3 The company 'Company 1' was incorporated on 20 February 2001. Its registered office was Property 1. Mr A was appointed director at the company's incorporation. Ms B was appointed as company secretary on 10 March 2006. The company's last accounts date was 31 March 2005. The London Gazette dated 23 February 2007 confirms the company was to be dissolved.

7.4 The company 'Company 2' was incorporated on 1 September 2006. Its registered office is Property 2. Joseph McEwan was appointed director at the company's incorporation. Ms C was appointed company secretary at the company's incorporation.

7.5 On or around March 2010 the Respondent was instructed by Joseph McEwan to recover payment from Mr and Mrs D, Property 3 in connection with a contract for building works. At that time Mr McEwan provided the Respondent with a copy of the contract which detailed the works to be undertaken and the price of works dated 29 July 2009. The contract was signed by Mr McEwan as "accepted for and on behalf of Company 1". At that time Mr McEwan also provided the Respondent with a letter dated 22 June 2009 which he had sent to Mr and Mrs D in connection with the works. The letter was headed "Company 1". The letter heading bore the registered address and company number of Company 2. The Respondent did not at that time carry out any customer due diligence measures in respect of his client.

7.6 The Respondent proceeded to raise an action for payment in Paisley Sheriff Court against Mr and Mrs D. He drafted an initial writ in which the pursuer was stated

to be “Company 1, a company incorporated under the Companies Acts in Scotland and having their registered office at Property 2”. The initial writ referred to a contract entered into between Company 1 and Mr and Mrs D. Warrant for citation was granted on 17 June 2010 and on 18 June 2010 the Respondent instructed messengers at arms to effect personal service on Mr and Mrs D.

7.7 Following service of the action the agent for the Defenders wrote to the Respondent on 24 June 2010. In said letter he observed that “You should be aware that the pursuer is a dissolved company and the purported contract to which you refer in your pleadings is void as it designates the contractor as Company 1.” The agent for the Defenders enclosed a printout from Companies House which showed that Company 1 had been wound up and observed that “We would have thought that simple money laundering checks on your client would have alerted you to this difficulty.”

7.8 The Respondent instructed Brian Heaney, Advocate, in connection with this action. On 15 July 2010 the Respondent sent Mr Heaney a fax advising inter alia “By way of background the action was raised on the basis of the contact [sic] which was provided by my client Mr Joe McEwan the Director of Company 1. You will note from his headed paper in terms of the contact [sic] he does not designate himself properly. The other side have picked up on this and are now saying there is no valid contact [sic] between the Pursuers to the action as it currently stands. Clearly I would be in a position to amend the Instance to reflect the fact that my clients are Company 2.” On 13 December 2010 the Respondent instructed Mr Heaney to prepare a Minute of Amendment to be lodged with the Court. On 21 December 2012 a Minute of Amendment was lodged with Paisley Sheriff Court which included the following amendments:-

1. In the Instance by amending the name of the Pursuer by inserting the word “Joinery” after the initials “JTM”;
2. An insertion that “The Pursuer is Company 2. It is a private company. The company’s registered office is Property 2”;
3. An insertion that “As a result of error, this action was commenced in the name of Company 1. On 6<sup>th</sup> March 2007, Company 1 was dissolved. It could not have raised this action...”

- 7.9 The action called for a hearing at Paisley Sheriff Court on 14 February 2011. At that time the Respondent moved the Court to allow the Minute of Amendment which *inter alia* sought to change the name of the pursuer from “Company 1” to “Company 2”. The Minute of Amendment was refused and the action was dismissed by Sheriff Pender. An award of expenses was made against the Respondent’s firm.
- 7.10 On 24 February 2011 the Respondent met with Mr McEwan and received instructions to appeal Sheriff Pender’s decision to the Sheriff Principal. Sheriff Pender produced a note of his decision dated 9 March 2011. Sheriff Pender explained his decision to find the Respondent’s firm liable for the expenses of the action by referring to the submission of Mr and Mrs D agent that the Respondent’s firm “had been in breach of the Money Laundering Regulations by not carrying out the appropriate checks before the action was raised.”
- 7.11 The matter was scheduled to proceed to an appeal before the Sheriff Principal at Paisley Sheriff Court on 26 May 2011. On 25 May 2011 the Respondent confirmed to the Court that his clients were no longer insisting on the appeal. On 26 May 2011 the Sheriff Principal pronounced an interlocutor adhering to Sheriff Pender’s interlocutor of 26 May 2011 and finding the Respondent’s firm liable for the expenses of the appeal.
- 7.12 On 13 September 2012 Mr McEwan’s then agents Harper Macleod wrote to the Law Society Complaints Investigator to advise that the Respondent had previously raised an action on Mr McEwan’s instructions against a Mr and Mrs E on or around November 2009. Harper Macleod advised that that action had also been raised “with the pursuer wrongly designated”. In that case the action was raised on behalf of “Company 1”. In that case the Sheriff had allowed the initial writ to be amended by deleting the words “Company 1” and inserting “Joe McEwan t/a Company 3”.
- 7.13 The Respondent knew Mr McEwan having acted for him at his previous place of employment at Ballantyne & Copland.(ii)The Respondent made an error in that he failed to detect that Mr McEwan was continuing to use on note heading and

contractual documents the designation of his previous firm Company 1, where in fact Mr McEwan had wound up that company by February 2007, but was continuing to use historical note paper that was not accurate or valid for that company, and (iii). His new company was called Company 2 and the Respondent erred in not realising that whereby a Court Action was raised in the wrong name and difficulties ensued when the Sheriff declined to grant a Minute of Amendment.

- 7.14 On 17 July 2013 the Law Society's Regulation Liaison Assistant wrote to the Respondent advising him that a complaint made by Joseph McEwan had been remitted by the Scottish Legal Complaint Commission ('the Commission'). The complaint was formally intimated by the Law Society's Complaints Investigator to the Respondent on 29 July 2013. In that letter the Complaints Investigator advised that the Law Society had a statutory obligation to investigate the matter and that he had a professional obligation to respond. At that time the Respondent was called upon to reply to the Law Society within 21 days with his response to the allegations in the complaint and to produce his client file. The Respondent failed to respond.
- 7.15 On 20 August 2013 the Complaints Investigator intimated a notice in terms of section 15 of the Solicitors (Scotland) Act 1980 noting that the Respondent had failed to comply with the request of 29 July 2013 and requiring the Respondent to provide the information requested within 14 days of 20 August 2013. In said notice the Complaints Investigator advised that if the Respondent failed to respond within 14 days the Law Society would intimate a conduct complaint in respect of his failure to respond and advised that the Tribunal had previously upheld such complaints as professional misconduct.
- 7.16 On 20 August 2013 the Complaints Investigator also intimated a notice in terms of section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 calling on the Respondent to deliver within 21 days of 20 August 2013 all books, accounts, deeds, securities, papers and other documents in his possession or control relating to the affairs of Joseph McEwan and/or any business conducted by him. In said notice the Complaints Investigator advised that if the Respondent failed to respond within 21 days the Law Society would intimate a conduct

complaint. On 21 August 2013 the Respondent telephoned the Law Society and advised that he would be responding that evening from his personal e-mail address. The Complaints Investigator advised that if the Respondent did respond timeously there was be no need to issue any subsequent notice. No response was received from the Respondent following that telephone discussion.

- 7.17 On 10 September 2013 the Law Society intimated the second part of the Section 15 Notice on the Respondent noting that as the Respondent had failed to respond to the notice previously served on him that he was now required to give six weeks' notice of an application to take a practising certificate for the year commencing 1 November 2014. No response was received from the Respondent. On 18 September 2013 the Complaints Investigator also intimated a further complaint on the Respondent in respect of his failure to respond to the Law Society. The Complaints Investigator advised that the Law Society had a statutory obligation to investigate this matter and the Respondent had a professional obligation to respond. The Complaints Investigator requested a response within 14 days of 18 September. The Respondent failed to respond.
- 7.18 The Complaints Investigator sent further correspondence to the Respondent on 7 October 2013, 1 November 2013, 13 November 2013, 3 December 2013, 17 December 2013, 6 January 2014, and 4 February 2014 prior to the matter proceeding to the Professional Conduct Sub Committee for consideration. No response was received from the Respondent.

**Complaint by Alison Crozier**

- 7.19 During the period 23 January 2012 to 21 November 2012 the Respondent was a sole practitioner in the legal firm of Steven Lilly & Co of 114 Windmillhill Street, Motherwell, North Lanarkshire, ML1 1TA. During the period 23 January 2012 to 21 November 2012 he was the designated Client Relations Partner, the designated Cashroom Partner, the designated Anti-Money Laundering Partner and the designated Risk Management Partner for the firm of Steven Lilly & Co.
- 7.20 On 30 April 2012 Ms Crozier raised a complaint with the Commission against Steven Lilly & Co. That complaint concerned the service provided by Steven

Lilly & Co in connection with a faulty mattress purchased by Ms Crozier from a business called "Company 4" in April 2011.

7.21 On 8 June 2012 the Commission's Mediation Manager Ms F made an offer to the Respondent and to Ms Crozier to mediate the complaint in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 8(4). On 22 June 2012 the Respondent confirmed his agreement to attempt to resolve the complaint by mediation. On 28 June 2012 the Mediation Manager confirmed to the Respondent that Ms Crozier was also agreeable to the mediation.

7.22 Ms Crozier and the Respondent attended a mediation meeting at the Holiday Inn Express, Hamilton Road, Motherwell on 13 August 2012. At that meeting a settlement agreement was reached between Ms Crozier and Steven Lilly & Co. The settlement agreement stated:-

*"The parties agree as follows:*

*That the firm will continue to pursue Miss Crozier's case through Hamilton Sheriff Court at no cost to Miss Crozier. The firm will cover the cost of litigation and all associated outlays in Court.*

*It is expected that this process will be completed by 31 March 2013. Assuming completion by this date or such earlier date as appropriate, Miss Crozier will request that SLCC [the Commission] withdraw the complaint.*

*Should there be no completion of the Court case by 31 March 2013 for reasons outwith the control of the firm, the complaint will remain active until the process is completed."*

7.23 At that meeting the Respondent made a verbal agreement with Ms Crozier to update her on progress with her case on a monthly basis.

7.24 On 22 February 2013 Ms Crozier telephoned the Mediation Manager. Ms Crozier advised that she had heard nothing from the Respondent since September 2012. She advised that she had been unable to find any notification in the Rolls of Court

about her case. On same date the Mediation Manager contacted the Respondent by e-mail to advise of her call with Ms Crozier and seek an update on progress with the matter. On same date the Respondent replied to the Mediation Manager advising:

*“I will contact Alison asap. My firm has went out of business. I will be honouring our agreement although in a slightly different way. I will reimburse Alison for all of the money she lost to Company 4. I will contact you when the payment has been made.”*

7.25 On 28 February 2013 Ms Crozier telephoned the Mediation Manager. Ms Crozier advised that she still had not heard from the Respondent. On same date the Mediation Manager contacted the Respondent to advise of her call with Ms Crozier and to seek an update on his intention to reimburse her. She referred to the cost of the bed £699.99 and other costs incurred by Ms Crozier. The Respondent replied on the same date advising:-

*“I will contact Alison tomorrow afternoon without fail and arrange to visit her and explain fully the situation. I will reimburse her for the money that she would have recovered from Company 4 which is the sum you refer to. I will also discuss whether any other sum is appropriate.”*

7.26 On 4 March 2013 Ms Crozier telephoned the Mediation Manager. Ms Crozier advised that she still had not heard from the Respondent. On same date the Mediation Manager contacted the Respondent by e-mail to advise of her call with Ms Crozier and asked that the Respondent advise her whether or not he was going to get in touch with Ms Crozier. The Respondent did not respond to that e-mail.

7.27 On 11 March 2013 the Mediation Manager contacted the Respondent noting that she had not heard from him since her e-mail of 4 March. She repeated her request that the Respondent advise her whether or not he was going to get in touch with Ms Crozier. The Respondent did not respond to that e-mail.

7.28 On 2 April 2013 the Mediation Manager sent a letter to the Respondent referring to the Settlement Agreement reached at mediation on 13 August 2012. She stated



that the terms required to be fulfilled by 31 March 2013. She noted that Ms Crozier had advised her that the Respondent had failed to honour the agreement and that he had failed to respond to e-mails and calls from Ms Crozier. The Mediation Manager referred to the Respondent's e-mail of 22 February 2013 in which he stated he would contact Ms Crozier as soon as possible and reimburse her for all of the money she had lost to Company 4. The Mediation Manager noted that this commitment was not fulfilled. She advised that Ms Crozier considered that the settlement agreement had been breached. On same date the Respondent replied to the Mediation Manager by e-mail stating:-

*"I have viewed the letter and understand that the agreement has been breached, although going out of business is a fairly major factor in this. Through having obtained a new job and working extremely hard I had managed to save to the point where I could have reimbursed Alison fully and offered compensation for the delay. I assume, given the terms of the letter, that no extension to the agreement is competent to allow me to resolve the matter. In the unlikely event that I am mistaken I would be obliged to hear from you."*

7.29 On the same date the Mediation Manager responded to the Respondent's e-mail stating that if he was now prepared to make a payment to Ms Crozier that he should do so at the earliest opportunity. She advised that the complaint process would proceed in the interim.

7.30 On the same date the Respondent replied to the Mediation Manager stating:-

*"Given the terms of our communication today it would appear competent for me to call and then visit Alison if agreement is reached and I will now undertake to do so."*

7.31 On 18 April 2013 the Commission's Complaints Investigator Mr G telephoned the Respondent. The Respondent returned Mr G's call and advised that his firm had gone out of business and he was unable to comply with the mediation agreement. He advised that he would write to Ms Crozier and offer to pay her the full sum craved for together with an amount in compensation. He advised that he would draft this proposal over the weekend and send to Ms Crozier by e-mail the

following week, copying the Commission into that e-mail. The Respondent failed to make further contact with Ms Crozier or the Commission thereafter.

- 7.32 On 28 May 2013 the Law Society's Complaints Investigator Ms H formally intimated a complaint by Ms Crozier on the Respondent in connection with his failure to pursue recovery from Company 4 and his breach of the Settlement Agreement reached on 13 August 2012. In that letter Ms H advised that the Law Society had a statutory obligation to investigate the matter and that he had a professional obligation to respond. At that time the Respondent was called upon to reply to the Law Society within 21 days with his response to the allegations in the complaint and to produce his client file. The Respondent failed to respond.
- 7.33 On 28 June 2013 the Law Society's Complaints Investigator intimated a notice in terms of section 15 of the Solicitors (Scotland) Act 1980 noting that the Respondent had failed to comply and requiring the Respondent to provide the information previously requested within 14 days of 28 June 2013. In said notice the Complaints Investigator advised that if the Respondent failed to respond within 14 days the Law Society would intimate a conduct complaint in respect of his failure to respond and advised that the Tribunal had previously upheld such complaints as professional misconduct.
- 7.34 On 28 June 2013 the Law Society's Complaints Investigator also intimated a notice in terms of section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 calling on the Respondent to deliver within 21 days of 28 June 2013 all books, accounts, deeds, securities, papers and other documents in his possession or control relating to the court action against Company 4 and subsequent mediation correspondence. In said notice the Complaints Investigator advised that if the Respondent failed to respond within 21 days the Law Society would intimate a conduct complaint.
- 7.35 On 3 July 2013 the Complaints Investigator received a letter from the Respondent's then firm, Bruce McCormack Ltd, advising that the two notices dated 28 June 2013 had been received. Said letter advised that the Respondent was on his honeymoon having got married on 28 June 2013, that he returned to work on 18 July 2013, and that "immediately on his return we will apprise him of

these letters”. The Law Society received no response from the Respondent to the two notices dated 28 June 2013.

- 7.36 On 21 August 2013 the Law Society’s Complaints Investigator issued a new notice to the Respondent under section 15 of the Solicitors (Scotland) Act 1980 in the same terms as the 28 June 2013 notice, and requiring a reply within 14 days of that notice. The Respondent failed to respond to that notice.
- 7.37 On same date the Law Society’s Complaints Investigator issued a new notice to the Respondent under section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 in the same terms as the 28 June 2013 notice, and requiring a response within 21 days of that notice. The Respondent failed to respond to that notice.
- 7.38 On 17 September 2013 the Law Society’s Complaints Investigator formally intimated a further complaint on the Respondent in connection with his failure to respond to Law Society correspondence dated 28 May 2013, 28 June 2013 and 21 August 2013. The Complaints Investigator advised that the Law Society had a statutory obligation to investigate this matter and the respondent had a professional obligation to respond. The Complaints Investigator requested a response within 14 days of 17 September 2013. The Respondent failed to respond.
- 7.39 On 1 November 2013 the Commission’s Investigator sent a letter to the Respondent in connection with their investigation of the service complaint made by Ms Crozier. The letter requested that the Respondent forward his file in connection with the service provided to Ms Crozier. The letter also requested that the Respondent provide a full and detailed response to the Summary of Complaint. The Commission received no response to that letter.
- 7.40 On 22 November 2013 the Commission’s Investigator sent a further letter to the Respondent enclosing a copy of the letter dated 1 November 2013 and requesting a response within the next seven days. The Commission received no response to that letter.

- 7.41 On 29 November 2013 the Commission's Head of Investigations issued a statutory notice to the Respondent under section 17 of the Legal Profession and Legal Aid (Scotland) Act 2007 requiring the solicitor to produce his business file and provide his explanation regarding the complaint by 20 December 2013. The Commission received no response to that statutory notice.
- 7.42 On 8 January 2014 the Commission's Investigator had a telephone conversation with the Respondent. During that telephone conversation the Respondent undertook to provide the information requested by the following Monday, 13 January 2014. The Respondent advised the Commission's Investigator that he intended to make an offer to Ms Crozier with a view to resolving the complaint. The Respondent has not provided the information requested by the Commission in the correspondence and statutory notices dated 1 November 2013, 22 November 2013 and 29 November 2013.
- 7.43 Ms Crozier complained about the Respondent's failures to respond to the Commission's correspondence and statutory notice. This complaint was subsequently referred to the Law Society as a conduct issue. On 26 March 2014 the Law Society's Complaints Investigator Ms I sent a letter to the solicitor intimating the complaint. The intimation of complaint noted Ms Crozier's complaint as follows:-
- “Mr Lilly has failed to provide a file and a response to my complaint to the SLCC [the Commission] as requested by them in their letters of 1 November 2013, 22 November 2013 and 29 November 2013 in order to assist with the investigation of my complaint”.
- 7.44 In the letter of 26 March 2014 the Law Society Complaints Investigator stated that the Society had a statutory obligation to investigate the matter and that the Respondent had a professional obligation to respond. The Respondent was requested to respond within 21 days of the date of the letter setting out his position in respect of the complaint; providing his business files which related to the complaint; and providing any additional information which he considered relevant. The letter advised that if he did not respond within 21 days the Law Society would proceed to serve statutory notices on him and may also intimate a

further conduct complaint in respect of his failure or delay to respond. The Respondent did not respond to that letter.

- 7.45 As a result, on 23 April 2014 the Complaints Investigator served a Notice on the Respondent in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 that the Council considered the Respondent had “failed to reply in such a way that would enable the Council to complete its investigation of the matter”. The Notice required the Respondent to send to the Complaints Investigator a response and explanation for the delay within 14 days. The letter advised the Respondent that “You should also be aware that if you fail to respond to this Notice within the specified timescale, the Society will intimate to you a conduct complaint in relation to your failure to respond to the Law Society. The Scottish Solicitors Discipline Tribunal has previously upheld such complaints as professional misconduct.” The Respondent did not reply to this Notice.
- 7.46 On 23 April 2014 the Complaints Investigator also served a Notice on the Respondent requiring him to produce specified documents in accordance with section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007. The Notice required the Respondent to deliver the specified documents to the Complaints Investigator at the Council’s offices within 21 days of the date of the Notice. The Notice advised the Respondent that “If you fail to respond to this Notice within the specified timescale, the Society:- 1. Will intimate a conduct complaint to you in relation to your failure to provide the relevant documentation and/or your failure to respond to the Law Society and, 2. May apply to the court for an order requiring you to deliver the documents.” The specified documents were “All books, accounts, deeds, securities, papers and other documents in your possession or control relating to the complaint by Alison Crozier.” The Respondent did not reply to this Notice.
- 7.47 On 21 May 2014 the Complaints Investigator wrote to the Respondent noting that there had been no response to the two statutory notices served on 23 April 2014. The letter intimated a complaint on the Respondent in respect of his failure to respond to the Law Society’s correspondence and statutory notices. The letter requested a response within 14 days.

- 7.48 On 6 June 2014 the Complaints Investigator telephoned the Respondent in connection with the requested files. The Respondent apologised for failing to respond and advised he would retrieve the requested files from storage and forward them to the Law Society on Monday, 9 June 2014. No further response was received from the Respondent.

**Complaint by the Council of the Law Society**

- 7.49 During the period 23 January 2012 to 21 November 2012 the Respondent was a sole practitioner in the legal firm of Steven Lilly & Co. During that period he was the designated Cashroom Partner, the designated Anti-Money Laundering Partner and the designated Risk Management Partner for the firm.
- 7.50 On 3 May 2012, the Law Society sent a letter to the Respondent, informing him that an inspection by the Financial Compliance Department (“the FCD”) would take place shortly to ensure compliance with the Practice Rules. In the absence of a response from the Respondent, further copies of the 3 May 2012 letter were sent to him on 21 June and 16 August 2012. On 10 October 2012 the FCD contacted the Respondent to propose several dates in October 2012 for an inspection. The Respondent advised that the proposed dates were unsuitable due to court commitments. The FCD asked the Respondent to arrange for the books and records of his firm to be delivered to the Law Society for inspection by close of business on 17 October 2012 to allow them to be inspected on 18 October.
- 7.51 On 23 October 2012, the FCD sent an email to the Respondent, noting that the Respondent had failed to present his books and records as requested. The FCD confirmed the date of 1 November 2012 for an inspection. The Respondent was given the option of providing the Law Society with the firm’s books and records, failing which a member of the FCD team would attend the firm’s offices. No records were delivered to the Society by 1 November 2012. On same date the FCD attended the firm’s offices at 2.00pm. The office was closed. A message was left on the Respondent’s mobile and a note providing contact details posted through his office letter-box, asking him to contact the FCD.
- 7.52 The Respondent contacted the FCD on 19 November 2012 and apologised for the lack of contact. He agreed that an inspection would take place at his offices on 21

November 2012. On 21 November the FCD carried out an inspection at the Respondent's offices. On that date the Respondent advised that the firm had ceased trading as at that date. On 22 November 2012 the Respondent sent an email to the FCD to confirm that he had made arrangements to cease his practice. The Respondent advised that he had been offered a position as an assistant at Bruce McCormack Ltd, Solicitors, Motherwell to start as soon as possible. He advised that he had attended the bank the previous day and signed all the papers closing the firm's client account which had never been used. He confirmed that the account would be formally closed by the bank that day.

- 7.53 On 3 December 2012, the FCD sent a copy of their inspection report to the Respondent. Having highlighted concerns identified at the inspection, the Respondent was asked to complete the action log at the bottom of each schedule, attach any supporting documentation and revert to the FCD.
- 7.54 On 21 January 2013, the FCD wrote to the Respondent and asked him to provide details of all the actions he had taken in implementation of the instructions and requests contained in the inspection report, together with supporting documentation within 14 days. No response was received and reminders were sent to the Respondent at the firm's address on 14 February 2013 and 14 March 2013.
- 7.55 On 11 April 2013 the FCD sent a letter to the Respondent at the address of his new employer Bruce McCormack Limited attaching a copy of their inspection report and seeking a response. The FCD received no response and subsequent letters were sent on 16 May 2013 and 24 July 2013. The Respondent did not reply to any of these letters. The FCD referred the matter to a meeting of the Guarantee Fund Sub Committee (GFSC) scheduled for 5 September 2013.
- 7.56 At its meeting of 5 September 2013, the GFSC decided to invite the Respondent to interview to give him an opportunity to explain why his practising certificate should not be withdrawn in terms of section 40 of the Solicitors (Scotland) Act 1980. On 17 October 2013 the Respondent appeared with his representative, Mr James McCann at a GFSC interview. The Respondent acknowledged the seriousness of the situation and undertook to deliver the documentation required

to alleviate the FCD and GFSC's concerns. The Respondent assured the GFSC that his intention was to address matters within six to eight weeks.

- 7.57 The matter was referred to the GFSC meeting of 7 November 2013. At that meeting the GFSC continued matters again to allow the Respondent to resolve all outstanding matters from the FCD Inspection Report. The GFSC met on 5 December 2013 and noted that the Respondent had failed to provide the information necessary to resolve the outstanding concerns. The Respondent's representative, Mr McCann, had provided the GFSC with an update on the position and produced a letter from the Respondent's new firm of accountants. Accordingly, the GFSC agreed to continue matters to its meeting on 6 February 2014, noting that should matters not be completely resolved by then, it would be highly likely that the Respondent's practising certificate would be withdrawn until such time as it was satisfied that he was complying with the Accounts Rules. A letter was sent to the Respondent on 20 December 2013, advising him of the GFSC's decision.
- 7.58 On 4 February 2014, the Law Society received a letter from the Respondent enclosing copies of unaudited financial statements for the firm from his accountants together with his tax return. The Respondent asked for further time to respond to the outstanding request for documentation stating he had "every confidence" that matters would be concluded by the next meeting of the GFSC.
- 7.59 At its meeting on 6 February 2014, the GFSC noted that the Respondent had not complied with the FCD's request to make available for inspection all books and records up to the date of cessation of the firm. Despite his production of a set of accounts, other information remained outstanding. Given the Respondent's assurance at the interview in October 2013 that he would address all matters within six to eight weeks, he had failed to do so.
- 7.60 On 5 March 2014, the Respondent delivered a letter and documents to the Law Society in advance of the GFSC's meeting the following day. At the meeting, the GFSC was satisfied that the Respondent's letter showed that he had made some limited progress. The GFSC noted that the Respondent had instructed his accountants to complete the cash records, they were liaising with HMRC on his



behalf, and that he was awaiting a letter from the bank confirming that the firm and client accounts were no longer active.

- 7.61 On 28 April 2014, a member of the FCD sent an email to the Respondent in which she referred to their conversation, earlier that day. The Respondent confirmed that he would provide evidence that the outstanding matters would be addressed and evidence produced by 2 May 2014.
- 7.62 On 15 May 2014, a further email was sent to the Respondent noting that no documentation and no response had been produced by him. He was advised that the matter would be placed before the GFSC for consideration at its meeting on 5 June 2014.
- 7.63 On 5 June 2014, the Respondent sent an email at 07.56 for consideration by the GFSC at its meeting that day. He expressed regret that all outstanding matters were not fully resolved. He explained the position regarding the outstanding tax liability. He advised that his accountants were corresponding with HMRC in order to ascertain the final figure but this had not been received yet. The Respondent advised that he had managed to secure funds from his father to settle all outstanding tax debts. He advised that his accountant had not completed his book keeping instructions and accordingly he would deal with those matters himself. He requested that the GFSC delay making a decision regarding his practising certificate until 7 August 2014 as he took the view that “none of the issues which remain unresolved would be outstanding at that date”.
- 7.64 At its meeting of 5 June 2014, the GFSC noted the Respondent’s continuing failure to address matters despite repeated assurances to do so.
- 7.65 On 16 June 2014, the Complaints Investigator sent a letter to the Respondent intimating a complaint that he had failed to respond to the Law Society’s reasonable enquiries in relation to the books and records of his firm and an inspection. The Complaints Investigator noted that this may amount to a breach of B6.18.7 of the Law Society of Scotland Practice Rules 2011. The Respondent was asked to produce his files and all relevant documentation together with his

response to the complaint within 21 days. The Respondent failed to respond within 21 days.

- 7.66 In the absence of a response, notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 were sent to the Respondent on 15 July 2014 by recorded delivery, calling upon the Respondent to deliver the relevant documentation within 21 days. The Respondent did not respond.
- 7.67 On 26 August 2014, the Complaints Investigator sent a letter to the Respondent intimating a complaint of failure to comply with the Law Society correspondence and statutory notices of 15 July 2014. On 26 September 2014, a member of the FCD department sent an email to the Respondent referring to the GFSC's decision to make a further complaint to the SLCC. She reminded him that, irrespective of any decisions taken by the GFSC, matters highlighted from compliance inspections were always followed through to completion and correspondence with the FCD would continue until all matters were satisfactorily concluded. She asked for the outstanding information to be forwarded by 6 October 2014.
- 7.68 On 20 October 2014 the Complaints Investigator sent a letter to the Respondent intimating a complaint of failure to provide documentation to the FCD despite undertaking on 28 April 2014 to do so no later than 2 May 2014, and then on 5 June 2014 to do so no later than 7 August 2014.
- 7.69 On 22 October 2014, the FCD wrote to the Respondent and, referring to previous emails sent by the FCD, noted that he had not yet provided a response. The Respondent was advised of the date of the next GFSC meeting on 6 November 2014. A copy of the note explaining the background and the FCD's recommendation to the GFSC was included in the email. The Respondent was asked to provide a response no later than 4 November 2014 in order that it may be taken into account by the GFSC at its meeting.
- 7.70 At its meeting on 6 November 2014, the GFSC was "extremely disappointed" to note that despite reminders, the Respondent was still not responding to his regulator. The GFSC noted that the outstanding matters still to be addressed by

the Respondent appeared to be: Firm Trial Balance, Firm Cashbook and Firm Bank Reconciliation to be brought fully and accurately up to the date when the firm ceased and to be produced to the FCD for review; evidence that all outstanding sums had been paid to HMRC or if sums remained unpaid, details of correspondence with HMRC and any arrangements in place for repayment.

7.71 On 20 November 2014 the Complaints Investigator sent a statutory notice to the Respondent under section 15 of the Solicitors (Scotland) Act 1980 requiring an explanation for the failure or delay in responding to date. The Complaints Investigator received no reply to that letter.

7.72 The GFSC concluded that it had no choice but to refer the Respondent's continuing conduct to the SLCC. The Respondent was made aware of the decision on 27 November 2014.

7.73 The Respondent's Solicitor was regularly in touch with the Law Society thereafter and attended Guarantee Fund Interviews with the Respondent on 17<sup>th</sup> October 2013 and 2<sup>nd</sup> April 2015 when the entire requirements of the Guarantee Fund as to the Respondent's previous practice were accepted to have been resolved.

7.74 The Complaints Investigator sent a letter to the Respondent on 9 January 2015 intimating the failure or undue delay in provision of documentation previously requested by the FCD.

8. Having considered the foregoing circumstances and having heard submissions from the Complainers and on behalf of the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect of:

1. His failure to comply with the customer due diligence measures in connection with the complaint made by Joseph McEwan as required by the Money Laundering Regulations 2007, in particular Regulations 5 and 7;
2. His failure to comply with the terms of a settlement agreement he entered with Alison Crozier, failure to comply with a verbal undertaking given to Ms Crozier

to update her monthly, and subsequently his failure to comply with written undertakings given to the SLCC that he would contact Ms Crozier, all in breach of Rule 1.2 of the Law Society of Scotland Practice Rules 2011;

3. His failure to communicate effectively by providing clear and comprehensive information in response to correspondence and statutory notices sent by the Complainers to him in connection with the complaints made by Joseph McEwan, Alison Crozier and the Law Society as noted above in the statement of facts all in breach of Rule 1.9.1 of the 2011 Practice Rules;
  4. His failure to respond promptly and efficiently to correspondence or statutory notices received from the Complainers in respect of its regulatory function in connection with the complaints made by Joseph McEwan, Alison Crozier and the Law Society as noted above in the Statement of facts;
  5. His failure to communicate effectively by providing clear and comprehensive information in response to correspondence and statutory notices sent by the Commission to him in connection with the complaint made by Alison Crozier as noted above in the statement of facts all in breach of Rule 1.9.1 of the 2011 Practice Rules; and
  6. His failure to respond to the Law Society's reasonable enquiries in relation to the books and records of his firm following an inspection, and failure or undue delay in providing to the Financial Compliance Department of the Law Society the documentation and information requested by them in breach of Rule 6.18.7 of the Practice Rules 2011.
9. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 11 March 2016. The Tribunal having considered the Complaint dated 29 October 2015 at the instance of the Council of the Law Society of Scotland against Steven Lilly, Bruce McCormack Limited, 2<sup>nd</sup> Floor, 1 Merry Street, Motherwell; Find the Respondent guilty of professional misconduct *in cumulo* in respect of his failure to comply with the Money Laundering Regulations 2007 in respect of one client; his failure to comply with the terms of a settlement agreement and failure to comply with a

verbal undertaking given to a client and his failure to comply with written undertakings given to the Scottish Legal Complaints Commission; his failure to respond promptly and efficiently and failure to communicate effectively by providing clear and comprehensive information in response to statutory notices sent to him by the Law Society of Scotland in connection with the complaints made by two clients and by the Law Society; his failure to communicate effectively by providing clear and comprehensive information in response to correspondence and statutory notices sent by the SLCC in respect of a complaint by one client and his failure to respond to the Law Society's reasonable enquiries in relation to books and records of his firm following an inspection and failure or undue delay in providing the Financial Compliance Department of the Law Society with the documentation and information requested by them all in breach of Rules 1.2, 1.9.1 and 6.18.17 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; 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**

10. 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**

A Joint Minute of Admissions had been lodged in advance of the hearing and Mr McCann confirmed that the Respondent pled guilty to misconduct *in cumulo* and admitted the factual averments as set out in the Complaint.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Marshall referred to his written submissions as undernoted:-

**1 Introduction****Respondent admits professional misconduct and Minute of Admissions lodged**

The complaint alleging professional misconduct against the Respondent was lodged with the Tribunal on 29 October 2015. The Respondent admits the facts as averred in section 2 of the Complaint. The Respondent has lodged a Minute of Admissions admitting that he is guilty of professional misconduct as a result of the failures which are set out in the Minute. The failures set out in the Minute correspond with the averments of duty contained in section 3 of the Complaint.

Although the Respondent admits professional misconduct both parties recognise that the question of professional misconduct is a decision for the Tribunal.

The test for professional misconduct is as set out in the decision of Sharp v The Council of the Law Society of Scotland 1984 SC 129 at 134:-

*“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made.”*

I am asking the Tribunal to find the Sharp test satisfied and find the Respondent guilty of professional misconduct. My submission proceeds on the basis that the Respondent is guilty of misconduct on an in cumulo basis – that taking the various acts together these amount to misconduct.

## **2 Summary of facts**

The Respondent has admitted the facts as contained in the Complaint. The facts can be summarised with reference to the Complaint paragraphs as follows:-

### Complaint by Joseph McEwan

- Paragraphs 2.4 and 2.5 explain the existence of Company 1 and the existence of an entirely separate company, Company 2. The secondary complainer Mr McEwan was the sole director of the latter company.
- Para 2.6 narrates Mr McEwan's instruction of the Respondent to raise a claim for damages in connection with building works. He provided the Respondent with a contract referring to "Company 1" and separately a letter headed "Company 1". The Respondent carried out no customer due diligence at that time to identify his client.
- Paras 2.7 narrates the Respondent raising the action in the name of the wrong company i.e. Company 1 as opposed to the correct company, Company 2.
- Para 2.8- 2.12 – the raising of the action in the wrong name was drawn to the Respondent's attention, there was an unsuccessful attempt to amend the action, the Sheriff agreed that there had been a failure to carry out simple money laundering checks.
- Para 2.13 – Mr McEwan's agents Harper Macleod confirm that this was the second time that the Respondent had raised an action wrongly on behalf of Company 1.
- Paras 2.14-2-18 – the Respondent's failures to respond to Law Society correspondence and statutory notices in connection with this investigation dated 29 July 2013, 20 August 2013, 10 September 2013, 18 September 2013, 7 October 2013, 1 November 2013, 3 December 2013, 6 January 2014 and 4 February 2014.

### Complaint by Alison Crozier

- Paras 2.22-2.24 – the SLCC mediation, the settlement agreement of 13 August 2012 to pursue a claim against Company 4 at no cost to Mrs Crozier, the verbal agreement to keep Mrs Crozier updated on a monthly basis.



- Paras 2.25-2.32 – in the period from September 2012 to April 2013 the recurring pattern of Mrs Crozier advising the SLCC that there had been no contact from the Respondent after September 2012, the SLCC pursuing the Respondent, the Respondent sometimes failing to reply and sometimes replying confirming he would contact Mrs Crozier and then failing to do so – all on a number of occasions. This included verbal or written confirmation on 28 February 2013, 2 April 2013 and 18 April 2013 that he would contact Mrs Crozier and subsequent failures to do so.
- Paras 2.33-2.49 – concerns the period from May 2013 to June 2014, the beginning of the Law Society complaint investigation, the Respondent's failure to respond to correspondence and statutory notices leading to an additional complaint for failures to respond being raised in September 2013, the failures to reply to the SLCC correspondence and notices. The correspondence and statutory notices were dated 28 May 2013, 28 June 2013, 21 August 2013, 17 September 2013, 1 November 2013, 22 November 2013, 29 November 2013, 26 March 2014, 23 April 2014, and 21 May 2014. Again this included assurances given to the SLCC in 8 January 2014 that an offer would be made to Mrs Crozier to resolve her complaint and this not happening, and an assurance given to the Law Society on 6 June 2014 that information would be provided by 9 June 2014 and this not happening.

#### Complaint by the Law Society

- Paras 2.52-2.54 – the arrangements to carry out a practice inspection proposed by the Law Society not being suitable to the Respondent, the subsequent request by the Law Society that the books and records of the firm be delivered to the Law Society for inspection, the Respondent's failure to arrange that, the subsequent attendance at the Respondent's offices and no answer, the inspection of 21 November 2012 and advice from the Respondent that arrangements were being made to cease the practice.
- Paras 2.55-2.58 – the Financial Compliance Department ("FCD") inspection report is produced on 3 December 2012 requesting the Respondent provide practice unit information to the Law Society. The subsequent lack of any response from the Respondent to Law Society correspondence dated 11 April 2013, 16 May 2013 and 24 July 2013. The subsequent attendance at a Guarantee Fund Sub Committee ("GFSC") interview with Mr McCann on 17 October 2013. The Respondent's assurance at that meeting that all outstanding information requested by the FCD would be provided within 6-8 weeks.

- Paras 2.59 – the calling of the matter at GFSC meetings on 7 November 2013 and 5 December 2013 and continuing to 6 February 2014 to give the Respondent more time to respond. At the 5 December meeting the GFSC advising that if matters were not completely resolved by 6 February it was highly likely that the Respondent’s practising certificate would be withdrawn. The Respondent was advised of this by letter after the 5 December meeting.
- Para 2.60 – the Respondent provided partial information in advance of 6 February 2014 meeting. He had every confidence that matters would be concluded by the next GFSC meeting.
- Para 2.61 -2.66 – failure to provide all requested information in advance of meetings on 6 February 2014 and 5 June 2014 leading to raising of a complaint for failure to cooperate. This included a verbal assurance given on 28 April 2014 that all outstanding matters would be addressed by 2 May 2014 and that not happening.
- Paras 2.67-2.71 – Law Society correspondences and statutory notices sent and not replied to dated 16 June 2014, 15 July 2014, 26 August 2014, 26 September 2014, and 22 October 2014.
- Para 2.72 – information remained outstanding at GFSC meeting of 6 November 2014 and the outstanding material is noted by the Sub Committee at that time.
- Para 2.73-2.75 – a final Law Society notice sent to the Respondent on 20 November 2014 and not replied to leading to complaint for failure to cooperate being raised in January 2015.

### **3 Duties breached by the Respondent – and admitted in the Minute of Admissions**

The Complaint identifies a number of duties as having been breached by the Respondent. The Respondent’s Minute of Admissions accepts that he is guilty of misconduct as a result of his failures to comply with these duties. In this section I identify the duties as captured in the Complaint and match these to the admissions made by the Respondent in the Minute of Admissions.

- 1 Duty to verify client identity in accordance with the Money Laundering Regulations at paras 3.1-3.4 of the Complaint (McEwan) – the Respondent admits a failure to identify his client at para C of his Minute of Admissions.
- 2 Duty to communicate effectively with the Law Society and respond to the Law Society at paras 3.5-3.7 of the Complaint (McEwan) – the Respondent admits the failure to respond at para A of his Minute of Admissions.
- 3 Duty to be trustworthy at all time at paras 3.9 and 3.10 of the Complaint (Crozier) – the Respondent admits his failure to fulfil the agreement and failure to comply with undertakings given to the SLCC to contact Mrs Crozier at para B of his Minute of Admissions.

- 4 Duty to respond to the Law Society and the Scottish Legal Complaints Commission at paras 3.11-3.14 of the Complaint (Crozier) – the Respondent admits these failures to respond at para B of his Minute of Admissions.
- 5 Duty to cooperate with Law Society practice inspection and respond to Law Society at paras 3.16-3.20 of the Complaint (Law Society complaint) – the Respondent admits these failures at para D of this Minute of Admissions.

#### **4 Breach of duties amounted to professional misconduct**

The Tribunal must be satisfied that the breach of the duties identified amounts to professional misconduct.

##### Failure to identify client – McEwan complaint

The Money Laundering Regulations require a solicitor to identify their client (Regulations 5 and 7 of the 2007 Regulations). The Respondent failed to take steps to correctly identify a company on whose behalf he was instructed to raise a court action. He raised a court action in the name of the wrong company “Company 1” as a result. He failed to correctly identify the client despite the fact that he had previously raised an action wrongly in the name of the “Company 1”. It is of concern that this is the second time the Respondent has failed to carry out appropriate procedures in connection with Mr McEwan and his companies. There is no suggestion that funds were applied inappropriately as a result. I am asking the Tribunal to find that this breach should not be viewed in isolation and instead should be part of an in cumulo finding of misconduct.

##### Failure to be trustworthy at all times – Crozier complaint

Practice Rule 1.2 at B1 of the 2011 Practice Rules requires a solicitor to be trustworthy and act honestly at all times. There is no suggestion that the Respondent acted dishonestly. However it is submitted that the Respondent’s behaviour was such as to bring his trustworthiness into question. The Respondent entered an agreement which required him to pursue a court action. He then failed to pursue that court action. He undertook to provide monthly updates to Mrs Crozier. He failed to do so. He advised the SLCC on a number of occasions that he would contact Mrs Crozier. He repeatedly failed to do so. In my submission this course of conduct damaged the trustworthiness of the Respondent – he repeatedly committed to take action and failed to do so.

### Failure to cooperate with Law Society practice inspection – Law Society complaint

Rule B6 of the 2011 Practice Rules contains the Accounts Rules. Rules 6.18.17 requires solicitors to cooperate with Law Society practice inspections. The Tribunal has previously found that a failure by a solicitor to cooperate with a Law Society practice inspection amounts to professional misconduct. In the case of *Quinn* (3 June 2014) the Tribunal said:-

*“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...an inspection system is essential.”*

In the current matter the solicitor had in the period December 2012 to September 2013 completely failed to cooperate with a Law Society inspection. However even after September 2013 when he had instructed representation and began to engage with the Law Society there were subsequent failures when he did not deliver the material requested by the Law Society. Despite giving assurances that all outstanding matters would be dealt with he failed to deliver material requested by the Guarantee Fund Sub Committee on three occasions – in advance of meetings of 6 February 2014, 5 June 2014 and 6 November 2014.

Mr McCann will provide some of the explanation for the delay in providing the outstanding information, and the explanation for the delay is not in dispute. However the Law Society’s concerns are first that there was a period of no cooperation and secondly that when there was some communication from the Respondent that he did not provide full explanations to the Guarantee Fund Sub Committee for the delays when he was being asked to provide the information. Instead he continued to give assurances that he would deliver material in time for the next meeting and failed to do so.

In my submission the Respondent’s initial failure to respond at all, and his subsequent delay in completion of the exercise, breached Rules 6.18.17 of the Practice Rules and is a course of conduct which amounts to professional misconduct.

### Failure to communicate effectively with Law Society and SLCC and respond to statutory notices – all three complaints

There is a pattern of failing to respond to the Law Society across all three matters which make up this complaint. The Respondent has failed to respond to correspondence and statutory notices which relate to the complaint made by Mr McEwan, the complaint made by Mrs Crozier, and the complaint made by the Law Society which develops out of the failure to cooperate with the FCD inspection and Guarantee Fund requests for information.

In finding solicitors guilty of profession misconduct for delay or failure to respond to the Law Society the Tribunal has repeatedly made clear that the Law Society has statutory duties to promote the interests of the profession and to protect the interests of the public in relation to the profession. The Law Society carries out investigations in pursuance of these duties. The Tribunal has repeatedly found that solicitors who fail to respond to the Law Society or delay in doing so damage the reputation of the profession.

This pattern of failing to respond to the Law Society on repeated occasions is a breach of the duties owed by the Respondent in two respects – a breach of the Practice Rules regarding effective communication (Rule 1.9.1) 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 Tribunal has previously noted on many occasions that a solicitor's failure to cooperate with his professional body can be seriously detrimental to the public trust in solicitors.

#### Summary of why the conduct amounts to professional misconduct

There are two patterns of behaviour which I would submit will be of concern to the Tribunal:-

Firstly, a failure to keep one's word as can be seen by the failure to deliver on the agreement brokered by the SLCC, the failure to contact Mrs Crozier despite repeated assurances that this would be done, and the delay in providing information to Law Society despite repeated assurances that information would be provided by a particular date.

Secondly, the related failure to respond to requests from the Law Society (and the SLCC) which can be seen in the failure to respond to correspondence and statutory notices in respect of each of the three separate matters captured in this complaint.

For all of the reasons set out in this section I submit that these related patterns of behaviour may be regarded as reprehensible even if the individual failures taken separately may not have amounted to individual findings of professional misconduct. On that in cumulo basis it is submitted that the Respondent is guilty of professional misconduct.

**Conclusion: finding**

Parties are agreed that the Respondent is guilty of professional conduct as a result of his failure to comply with the each of duties set out in paragraph 3 of the Complaint and summarised in this submission.

For the reasons that I have given in this submission, I would ask you to find that the Respondent is guilty of professional misconduct in accordance with paragraph 4.1 of the Complaint which states:-

The Council avers that the Respondent has been guilty of acts or omissions which, singularly or in cumulo, constitute professional misconduct on his part within the meaning of the Solicitors (Scotland) Act 1980 (as amended) Section 53. In particular, the Complainer avers that as a consequence of his:-

1. Failure to comply with the customer due diligence measures in connection with the complaint made by Joseph McEwan as required by the Money Laundering Regulations 2007, in particular Regulations 5 and 7;
2. Failure to comply with the terms of a settlement agreement he entered with Alison Crozier, failure to comply with a verbal undertaking given to Ms Crozier to update her monthly, and subsequently his failure to comply with written undertakings given to the SLCC that he would contact Ms Crozier, all in breach of Rule 1.2 of the 2011 Practice Rules;
3. Failure to communicate effectively by providing clear and comprehensive information in response to correspondence and statutory notices sent by the Council to him in connection with the complaints made by Joseph McEwan, Alison Crozier and the Law Society as noted above in the statement of facts all in breach of Rule 1.9.1 of the 2011 Practice Rules;
4. Failure to respond promptly and efficiently to correspondence or statutory notices received from the Council in respect of its regulatory function in connection with the

complaints made by Joseph McEwan, Alison Crozier and the Law Society as noted above in the Statement of facts;

5. Failure to communicate effectively by providing clear and comprehensive information in response to correspondence and statutory notices sent by the Commission to him in connection with the complaint made by Alison Crozier as noted above in the statement of facts all in breach of Rule 1.9.1 of the 2011 Practice Rules; and
6. Failure to respond to the Law Society's reasonable enquiries in relation to the books and records of his firm following an inspection, and failure or undue delay in providing to the Financial Compliance Department of the Law Society the documentation and information requested by them in breach of Rule 6.18.7 of the Law Society of Scotland Practice Rules 2011

...that the Respondent is guilty of professional misconduct.

If you make that decision I would also ask that you make an award of expenses against the Respondent.

Mr Marshall asked the Tribunal to make a Finding of professional misconduct *in cumulo* and pointed out that he was not saying that any single matter within the Complaint on its own amounted to professional misconduct. Mr Marshall indicated that it was the pattern of behaviour that gives rise to an *in cumulo* finding. Mr Marshall pointed out that two years after the Respondent's practice had been wound up, there was still outstanding information. Mr Marshall emphasised that there was no claim of dishonesty but suggested that the Respondent's trust was called into question in respect of his dealings with the Secondary Complainer, Alison Crozier.

Mr Marshall confirmed that he took no issue with the facts as set out in the Minute of Admissions and that he was not inferring any error once the Respondent's agent was instructed and involved. Mr Marshall pointed out that the Tribunal had previously found that a failure to respond to the Law Society was damaging to the reputation of the legal profession. Mr Marshall submitted that when all three matters were taken together there was sufficient for a finding of professional misconduct *in cumulo*.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr McCann referred to his written plea in mitigation as undernoted:-

1. The Respondent qualified on 17<sup>th</sup> October 2005. Between 31<sup>st</sup> October 2005 and 21<sup>st</sup> October 2011 he was an Assistant in the firm of Watters Seven & Co, 291 Brandon Street, Motherwell. Although designed in the complaint as a “partner” he was never a partner, but an Assistant throughout.
2. The Respondent in January 2012 started up his own firm, operating as a sole practitioner between January 20<sup>th</sup> and 21<sup>st</sup> November 2012 when he ceased to operate. He was able to find employment quite quickly thereafter, with Bruce McCormack Limited at 1 Merry Street, Motherwell, where he has worked continuously, up to the present, as a Criminal Legal Aid practitioner.
3. The Respondent’s attempts to set up his own practice were ill-fated and unsuccessful. He was only able in the main to obtain instructions for sub-contracting work for other Solicitors and was struggling financially. He employed a secretary but had no skilled cash-room staff. He decided he could not go on and intimated that at a Law Society Inspection on 21<sup>st</sup> January 2012. He was able to obtain his new employment within a few days thereafter.
4. The Respondent deeply regrets the difficulties set out in the Complaint and the fact that he is now inevitably bound to plead ‘guilty’ to professional misconduct. He was not a member of the LDU and did not take independent legal advice until September 2013. Although facing numerous financial difficulties on the cessation of his firm, including wages arrearments against his salary, he has continued to work and to serve his new employers and his clients and the courts to the best of his ability as a Criminal Legal Aid Practitioner. He has sustained no further cause of complaint since November 2012. His employers have thought sufficiently highly of him to be willing to fund various costs that were necessary in order to obtain, finally, compliance with what the Law Society Guarantee Fund Committee required, namely, employing Accountants to complete the necessary Firm Accounts, and to pay the VAT that had accrued from his year or so in practice.
5. The Respondent has made arrangements to repay to his employers the sums they were kind enough to advance, and had these amounts not been advanced that would have left the Respondent in a continuing situation of non-compliance that would have been difficult or impossible to resolve.
6. The Respondent has apologised to the Secondary Complainers and made them conciliatory offers to meet their losses and inconvenience.



- (a) In regard to the complaint by the Secondary Complainer Alison Crozier, the Respondent fully intended to comply with the Mediation arranged through the agency of the Scottish Legal Complaints Commission (SLCC) when Ms. Crozier invoked their assistance by complaining to them. However, events were overtaken by the collapse of his practice and thereafter in his new employment as a solely Criminal Legal Aid practitioner he was not in a position to raise the civil court action which he had intended to raise, which would have been a Small Claims process to pursue her remedies in respect of defective household goods. Had the Respondent taken independent advice at that time, it would almost certainly have been established that the correct reaction to that unfortunate situation, on the cessation of his practice, was for the SLCC to deem the Mediation as failed. The SLCC normally apply a rule that where the mediation of a complaint has been attempted and has failed, then no part of that process will be founded upon. The SLCC could then have resumed the complaints process within which the complainer Alison Crozier would have been entitled to put all her concerns and worries to the SLCC, and a process followed whereby a financial award may well have been made in her favour. That said, it is accepted on behalf of the Respondent that when it became clear that he would not be able to fulfil the requirements of the mediation agreement his subsequent giving of undertakings that he would respond, and his various failures to respond to the SLCC, Ms Crozier, and ultimately to the Law Society, meant that the matter proceeded into the area of professional misconduct. Ms Crozier has accepted the Respondent's apology and payment of £1500 per copy Compromise Agreement produced herewith.
- (b) In respect of the complaint by the other Secondary Complainer Mr Joseph McEwan, the letter of apology and an offer of £750 was sent to him on 6<sup>th</sup> January 2016 but that offer has been declined. In mitigation of the Respondent's position in regard to Mr McEwan, he was working as an Assistant when he took instructions from Mr McEwan. The Respondent had acted for Mr McEwan and his company previously when he was a Trainee at Ballantyne & Copland and accordingly certified Mr McEwan as a person known to him. As can be seen from the detailed narrative in the complaint, the origin of Mr McEwan's problem was that he was continuing to use on his contractual documents the name of a Limited Company which he had allowed to be removed from the records at Companies House. Within the SLCC's process which followed on from Mr McEwan's complaint, he was awarded sums totalling £6,146.25 but the Committee commented ... "the Committee agreed that while the Solicitors should have checked that they were using the correct

name, Mr McEwan cannot reasonably expect to receive full reimbursement of all losses when he personally contributed to the problem” and separately ... “the Committee was of the view that it should also be taken into account that it was Mr McEwan who used the wrong Company name on his documents, brochures etc. and made no mention of this to the Solicitors”. It is submitted that the error made by his client in using the wrong Company name, and his failure to detect that when the client did not tell him, would not, in the absence of other matters, amount to such an egregious mistake as to raise a conduct issue on its own..

- (c) In regard to the delay in dealing with the Law Society’s compliance requirements, reference is made to the Production R1 lodged for the Respondent which is a Committee Meeting indicating that the Guarantee Fund Committee who interviewed him again on 19<sup>th</sup> March 2015 accepted that a factor in this prolonged case was an absence of funds and that the solution to this long-standing problem was eventually found in a commitment by his employers to lend money so that the Accountants could be funded to complete the compliance matters insisted upon by the Law Society, and also payment of the VAT which had remained a concern for the Law Society. The Law Society’s position on the VAT was that if the Respondent’s gross earnings during the short period of his ill-fated practice, did not amount to the VAT Registration limit, therefore there might be sums repayable. Any such refunds would correctly be posted into Client Account giving the Law Society as supervisor of the Guarantee Fund and of client’s money, a new and continuing concern although it would have related to very modest sums. In fact because virtually all the Respondent’s work had been on a sub-contracted basis for other legal firms, there were no refunds due. In the event, with the assistance of a loan from his employers he paid the entire VAT as being the simplest solution to what might have been a complex but low-value problem of VAT re-credits or rebates. That said it is accepted that the Law Society’s complaint related not only to VAT issue but also to the provision of other financial documentation concerning the wind up of his firm and as referred to in the Minute of Admissions. Although the Respondent accepts entirely that the long period of time in complying with the Law Society’s reasonable requirements is not acceptable, the core problem was his lack of funds. It was only on 16<sup>th</sup> February 2015 that a balance of £1,225.68 was paid to William Duncan & Co, Accountants by his employer and an additional bill of £840 on 18<sup>th</sup> March 2015 which allowed the Accountants’ work to be completed quite quickly so that the matter was able to be over-viewed by the Law Society

as stated in the Respondent's Productions and they were satisfied as stated in their Minute of the meeting of April 2015.

- (d) The Respondent's agent was in touch with the Law Society on approximately 40 occasions between first instructions in September 2013 and the conclusion of the matter in March 2015. The Law Society were given immediate assurance by September 2013 on their two prior concerns *viz* evidence of the client account records, and the possibility of VAT refunds coming back into the client account. These concerns were met by assurances from the Respondent's agents in September 2013 that there had (a) been no activity at all, or funds in, the client account at any stage and (b) there were no VAT refunds likely to be due to ordinary clients because of the nature of the subcontracting work for other solicitors that the Respondent had been restricted to in his year or so of operations. It is accepted that such a long delay would not normally be accepted but the Respondent was genuinely impecunious and had arrearments on his wages as soon as he started work at Bruce McCormack Ltd after closing down his practice. It is accepted that both prior to and after the instruction of the Respondent's agent that the Respondent delayed or failed to provide financial information in connection with the winding up of his firm. Accordingly the picture in this case is clearly not one of complete failure to be in touch with the Law Society's Guarantee fund Committee on the issues that they wanted to see resolved, but rather that there were periods during which the Respondent did not respond as narrated in the Minute of Admissions and that when he did respond the responses did not give the Committee the information they wanted to hear i.e. that the accountants had completed their work on the firm's side of the accounting of the former practice, and that they VAT was fully paid. Those matters could only be solved with the provisions of funds by the Respondent's employer which enabled the VAT to be cleared and the accountants fully paid by the early part of 2015. It is also accepted that the Respondent failed to respond to correspondence and statutory notices during this period as narrated in the Minute of Admissions.
- (e) The Respondent is genuinely remorseful and fully intends to avoid any breaches of professional rules in the future. He undertakes to comply with all the professional rules and in particular to deal reasonably promptly with all incoming client enquiries particularly any communication from the statutory regulators in the form of the SLCC and the Law Society.

Mr McCann emphasised that it was not disputed that there was a pattern of non-response which did amount to professional misconduct *in cumulo*. Mr McCann however pointed out that once the Complaint was served there was a very quick response and the Respondent completely cooperated. Mr Marshall confirmed that this was the case.

Mr McCann stated that it was once the Respondent set up his own firm that it was a disaster as he had no cashroom staff. The Respondent had the desire to sort matters out but did not have the funds to do it. The Law Society were reassured by Mr McCann that there was no risk to clients' money and that the VAT issue would be resolved. Mr McCann explained that the Respondent gave an expression of intent in respect of Alison Crozier but he could not fulfil it due to lack of money. There was no dishonourable behaviour and the Respondent was in desperate circumstances.

In connection with Mr McEwan, Mr McEwan had issued contracts with companies' names on them when the company no longer existed. The client had floated a new English company but had not told the Respondent. Mr McCann however stated that it was accepted that it was important in court matters that solicitors get their clients' name right. This matter however in no way on a standalone basis could be a prosecutable offence. In the previous case before the court, the Sheriff found that the error was a curable one.

Mr McCann emphasised that the Respondent was very remorseful and hoped to work as a criminal legal practitioner. Mr McCann explained that it was very difficult for the Respondent to produce documents when he had no funds to obtain them and accordingly the regulator had had to wait. Mr McCann confirmed that the Respondent had paid £1,500 by way of compensation to Ms Crozier and this had been accepted. The Respondent was now staying out of trouble and was repaying the sums lent to him by his employers.

## **DECISION**

The Tribunal considered this to be an unfortunate case. None of the matters in the Complaint in themselves were particularly serious nor would they amount to professional misconduct. However there was a pattern of behaviour involving failure to respond to clients and the SLCC and the Law Society which when taking all matters together was sufficient for a finding *in cumulo* of professional misconduct.

The Tribunal considered that the conduct was at the lower end of the scale and noted that the Respondent was extremely remorseful and had fully cooperated since the Complaint was raised. The Tribunal also noted the references lodged on behalf of the Respondent and noted that matters had now been resolved to the Guarantee Fund's satisfaction. The Tribunal further noted that the Respondent was working for a supportive employer doing criminal legal aid work. The Tribunal did not consider that there was any risk to the public and saw no point in fining the Respondent, who will in any event have the expenses of the proceedings to pay for. The Tribunal considered that a Censure in this case would be sufficient penalty.

Both parties indicated that they had no submissions to make in connection with the Tribunal making the usual order with regard to expenses and publicity and accordingly the usual orders were made and the Respondent was found liable in the expenses of the Law Society and the Tribunal.

The Tribunal noted that the Respondent had entered into a compromise agreement with the Secondary Complainer, Alison Crozier, and this had been implemented and this compensation claim was accordingly no longer a live matter before the Tribunal.

In connection with Mr McEwan, an offer had been made to him but this had been refused. The Tribunal's view was that if Mr McEwan's case and the following failure to respond to the Law Society in respect of Mr McEwan's case had come to the Tribunal as matters on their own these would not have been sufficient for a finding of professional misconduct. In the Tribunal's view a person should not necessarily become entitled to a payment of compensation because there are other cases in the same Complaint which then lead the matter to cross the threshold and result in a finding of professional misconduct *in cumulo*. The Tribunal accordingly queried with parties whether it was competent to go on to consider compensation for Mr McEwan.

Mr McCann indicated that if there was a finding of professional misconduct as part of a pattern the public might think that some compensation would be appropriate but in Mr McEwan's case he had already been awarded compensation by the SLCC. Mr Marshall indicated that he had not ever submitted that the matters against Mr McEwan on their own amounted to professional misconduct and the *in cumulo* finding would be consistent with the conduct across it all in respect of failure to engage with the regulator. Mr Marshall however indicated that at this stage it was not known the basis for Mr McEwan's compensation claim and whether it was due to the delay in responding to the Law Society or due to the error in respect of the identity of the company.

In these whole circumstances, the Tribunal considered it appropriate to ask all parties, including Mr McEwan, to provide written submissions on the competency of Mr McEwan's compensation claim and also the merits of any claim within one month of the Tribunal Findings being issued. The Tribunal will then decide whether or not it is necessary to reconvene a hearing to deal with the issue of Mr McEwan's compensation claim.

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