

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

FINDINGS

in Complaint

by

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

against

**JAMES JOSEPH McGINLEY,
Solicitor, Unit 10, 355 Byres Road
GLASGOW (First Respondent)**

and

**ANNE-MARIE McGINLEY,
Solicitor, Unit 10, 355 Byres Road,
GLASGOW (Second Respondent)**

1. A Complaint dated 21 December 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that James Joseph McGinley, Solicitor, Unit 10, 355 Byres Road, Glasgow (hereinafter referred to as "the First Respondent") and Anne-Marie McGinley, Solicitor, Unit 10, 355 Byres Road, Glasgow (hereinafter referred to as "the Second 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 Respondents. No Answers were lodged by either Respondent.

3. A Complaint dated 9 April 2008 against both Respondents was lodged with the Scottish Solicitors Discipline Tribunal by the Complainers requesting that the Respondents 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.
4. The Tribunal caused a copy of this Complaint to be lodged as served upon the Respondents. No Answers were lodged by either Respondent.
5. In terms of its Rules the Tribunal appointed the Complaints to be heard on 16 April 2008 and notice thereof was duly served on the Respondents.
6. The hearing on 16 April 2008 was converted to a procedural hearing. A further procedural hearing took place on 29 May 2008 when the matters were adjourned until 26 June 2008 for a full hearing.
7. When the Complaints called on 26 June 2008, the Complainers were represented by their Fiscal Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondents were not present. The First Respondent was represented by Mr Macreath, Solicitor, Glasgow. Mr Macreath also appeared on behalf of Mr McCann, Solicitor, Clydebank for the Second Respondent.
8. Joint Minutes of Admission were lodged on behalf of both the Respondents in relation to each of the Complaints admitting most of averments of fact, duty and professional misconduct. Mrs Motion moved to amend the remaining averments with the consent of Mr Macreath to reflect the fact that certain sums of money had now been paid by the Respondents. The Tribunal agreed to amend the Complaints accordingly. In terms of the Joint Minutes and the amendments all the remaining averments of fact, duty and professional misconduct were admitted by both Respondents and there was therefore no need to lead evidence in relation to either Complaint.

9. The Tribunal found the following facts established

9.1 The First Respondent was born on 3 November 1961. He was admitted as a Solicitor on 21 November 1984 and enrolled in the Register of Solicitors on 7 December 1984. He was a Partner in the firm of McManus, Reilly, Campbell & Company from 1 November 1987 to 24 February 1995 and thereafter in the firm of Reilly McGinley from 1st March 1995 to 10 March 2006. His name was removed from the Register of Solicitors on 1 September 2007.

9.2 The Second Respondent is a Solicitor enrolled in Scotland. She was born on 25 December 1966. She was admitted as a Solicitor on 16 August 1989 and enrolled in the Register of Solicitors on 28 August 1989. She was an employee then a Partner in the firm of MacDonald McCormick and Giusti Martin between 3 October 1989 and 30 April 1997, a Partner in the firm of Sinclair & Company between 1 July 1992 and 31 May 1996, said firms amalgamated in 1996. She was first an Associate between May 1997 and 16 July 1998 in the firm of Reilly McGinley Conroy McInnes and then a Partner in the firm of Reilly McGinley between 17 July 1998 and 10 March 2006.

COMPANY 1

9.3 By letter dated 23 March 2005, Company 1, invoked the aid of the Complainers in relation to debt due to them from the estate of the late Mr A. The First Respondent was the Solicitor instructed in respect of the executry. Messrs Semple Fraser, Solicitors, 130 St Vincent Street, Glasgow acted on behalf of Company 1. Mr A had incurred a debt of £6,943.22 to the Company by late 2002. He was in the process of selling the

business and the property. A Mandate existed to settle the debt from the proceeds of sale. Mr A died on 24 November 2002.

9.4 On behalf of Company 1, Messrs Semple Fraser, Solicitors, wrote to the First Respondent in December 2002 intimating a claim and enclosing copies of the relevant invoices. They received no reply. They wrote again on 26 May 2003 asking when there would be funds to settle the debt. They did not receive a reply. They were told in September 2003 that confirmation was expected in October 2003. They sent a fax on 16 February 2004 seeking information about that. There was no reply. They sent a further fax on 26 July 2004 expressing disappointment at the failure to respond and referring to a number of telephone calls which had also been made. The First Respondent replied on 2 August 2004 stating that he was having a meeting with the client in the week commencing 9 August 2004 and would reply thereafter. He did not do so. Messrs Semple Fraser again sent a fax on 26 September 2004 indicating that as they had heard nothing, their clients were contemplating a complaint to The Law Society. On 8 November, the First Respondent replied indicating that the estate was becoming complex and outlining the nature of the complexity and seeking details of the debt. On 10 November 2004, Semple Fraser wrote pointing out that invoices had already been sent and asking if there were other funds for meeting the debt. The First Respondent did not reply.

9.5 On 18 January 2005, Semple Fraser pointed out that the only substantive response in over 2 years had been the holding letter of 8 November 2004 and that matters were now being referred to The Law Society. The First Respondent replied indicating that there was still no confirmation of the Executor but it was hoped to obtain that within the following 4-5 weeks. On 28 January 2005, Semple Fraser indicated that they would allow

until 28 February for settlement of the debt. The Respondents' firm replied on 1 February 2005 stating that the First Respondent was back from a week's holiday and would keep them advised. He did not do so and did not respond any further.

THE LAW SOCIETY OF SCOTLAND – Company 1

- 9.6 On receipt of the letter from Company 1, the Complainers sent a copy to Ms Anne-Marie McGinley the Respondent's Partner for her information and suggested that attempts be made to resolve the situation. This did not occur and a formal letter of complaint was sent to the First Respondent on 1 June 2005 intimating the complaint and requiring him to provide his written response, any background information he may wish and his business file and files relating to the matter in 21 days. He faxed a reply on 23 June 2005 with general comments on the problems in the executry but no reference to the complaint of failure to communicate with the creditor's Agents. He was written to again on 29 July 2005 and asked to provide the relevant files within the next 7 days. He did not do so. A follow up letter for the files was sent on 7 September 2005 and formal notice under Section 42C requiring their production within 21 days sent on 23 September 2005. He did not reply and a Notice under Section 15(2)(i) of the Solicitors (Scotland) Act 1980 was sent to him on 15 November 2005.
- 9.7 On reviewing the Complainer's files, the Director of the Complainers' Client Relations Department phoned the First Respondent on 21 November 2005 seeking an explanation as to why the files had not been sent. The First Respondent appeared surprised that they had not been sent and indicated that he would take immediate steps to check the position and would arrange to send the files forthwith. He did not do so. On 9

December 2005, he contacted the Complainers by telephone and indicated that he would have the files sent on the following Monday after a meeting with his client. He did not send them. The Director of Client Relations phoned him again on 15 December leaving a message for the First Respondent to call him back. He did not do so. The Director called again on 16 December 2005 leaving a message on the answering machine for the First Respondent to provide the files. The files were sent by letter dated 16 December and received on 19 December 2005. In view of the First Respondent's failures to reply and send files, a complaint that this may amount to professional misconduct by failure to respond to the Society was intimated to him on 7 February 2006 with 21 days for him to reply. By 7 March 2006, he had not replied.

Mr B AND OTHERS

- 9.8 By letter dated 29 March 2005, Mr B wrote to the Complainers regarding the conduct of the First Respondent. The terms of the complaint were intimated to the Second Respondent and acknowledged by her. On 28 April 2005 there was a promise of a reply. As no reply had been received by 17 May 2005, a formal letter was sent to the First Respondent on that date for his written response, any background information he may wish and his business files to be sent within 21 days. On 10 June 2005, the Second Respondent phoned indicating that a reply had been drafted but required to be checked with the First Respondent. A lengthy reply was received on 14 June 2005. Receipt of this was acknowledged by the Complainers on 28 June 2005 and the relevant business files requested within 14 days.
- 9.9 On 14 July 2005, an extension of time was sought by the First Respondent who required to copy the file. The Solicitors

acting on behalf of Mr A and family had written on 11 July 2005 advising that the letter from the First Respondent did not address their complaint and explaining why. By 12 September 2005, the First Respondent had still not produced the documentation relating to the transaction or his files. The Complainers' Representative phoned his office on 15 September 2005 and left a message for him to call back. He did not call back. A further phone call was placed to him on 21 September 2005 which he indicated that he would look out the files the following day and send them. He did not do so. On 27 October 2005, a formal notice was served on him under Section 15(2)(i) of the 1980 Act as he had not complied with a Section 42C Notice and he was given 21 days to comply. On 21 November in relation to this and the preceding matter, the Director of the Complainers' Client Relations Department phoned the First Respondent who advised that he was winding up the practice, thought that the files had been sent and would ensure that it was done. He did not do so. In a further phone call on 9 December 2005, the First Respondent stated that he would have the files sent over on the following Monday. He did not do so. On 15 December, a message was left for him to call back but he did not reply. On 16 December, a message was left on the answering machine and not responded to.

- 9.10 On 19 December, phone calls were placed to the First Respondent who indicated he had sent the files with the others which had been received by the Complainers. This was not the case and he indicated that he would check and call back. On 21 December as he had not, a further phone call was placed to his firm but he was busy and although asked to call back urgently, did not do so. As the files had still not been received by 10 January, the First Respondent was called again and messages left twice on his answering machine. He did respond and indicated that his Secretary would be in the following day and

19 Nov 2001 Ms I -v- Company 11

Faculty Services Limited wrote, phoned and e-mailed the firm over the years to arrange payment. The Faculty had sanctioned the firm in 2003 in terms of the scheme for accounting for and recovery of Counsel's fees. As at 13 April 2006, a sum of £26,758 remained due in fees. As at 1 June 2007, the sum of £17,260.76 in the cases of:- Company 2 -v- Company 3 and Mr C, Company 4, Company 7 -v- Company 8, Company 12, Ms H -v- Secretary of State, J-v-J, Ms K (Legal Aid) and Ms L (Legal Aid) remained outstanding. The amount remaining outstanding to the Faculty of Advocates as at 26 June 2008 is £10,034.51.

9.12 The Complainers considered the complaint and in May 2006, contacted the First Respondent to obtain his postal address. By fax dated 23 June 2006, the First Respondent advised that he had closed his offices in July 2005 and provided a contact address. He advised his Legal Post box would remain active as would his e-mail address from his former firm and he provided an alternative e-mail address. The Faculty of Advocates confirmed by letter dated 21 August 2006 the wording of the issue to be investigated. The Complainers wrote to the First Respondent on 25th August 2006 formally intimating the complaint and requiring him to give his written response, any background information and his business file or files relating to the matter within 21 days. The correspondence was sent out by post and by e-mail. He did not reply. On 22 September 2006, the Complainers wrote to the First Respondent again sending formal Notices under Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 and Section 42C of the said Act. The correspondence was sent out by Royal Mail and by e-mail. He did not respond. On 18 October 2006, the Complainers wrote to the First Respondent again regarding

his failure to reply intimating an additional head of complaint relating to failure to respond to the Complainers. The second Notice under Section 15 of the 1980 Act was also served. The letters were sent by mail and also by e-mail.

9.13 On 20 October 2006, the First Respondent replied pointing out that there had been an error in one of the e-mails, he said he would reply and undertook to provide the information requested at the earliest opportunity. He sought 14 days within which to recover the documentation and reply. By letter and e-mails dated 26 October 2006, the Complainers advised him that an extension was granted and a response was required by 8 November 2006. He replied on 8 November 2006 advising that some accounts appeared to have been paid, Court proceedings had been initiated in relation to another Counsel and one very large account was currently subject to taxation in the Court of Session. He advised that with regard to the remainder of the accounts, they had established that these had not been paid and would ensure that they would be paid over the following 14-21 days. He did not do so.

9.14 Due to an administrative error the terms of the complaint had not been intimated to the Second Respondent. She was notified by letter dated 9 November 2006 by way of a formal intimation of the complaint requiring her written response, any background information and the business file or files relating to the matter within 21 days. She did not reply. On 5 December 2006, the Complainers wrote to her again sending formal Notices under Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 and Section 42C of the said Act. The correspondence was sent out to her occupational address at the Children's Reporter's Administration. She wrote on 13 December 2006 complaining about that, acknowledging that accounts due to Faculty had not been paid and raising issues about clients

failing to pay, the firm ceasing to trade, disputes ongoing about the fees and advising that this was due to oversight by partners who were too busy. She sought further time to address the matters complained about.

Mr M

- 9.15 In May 2006, Mr M, Director of the Company 13, made a complaint against the First Respondent in connection with business undertaken on his behalf. The Complainers wrote to the Second Respondent on 14 June 2006 advising that this was a new complaint by Mr M. The First Respondent replied on 16 June 2006 advising that correspondence should be sent to Property 2. A formal letter intimating the complaint was sent to both Respondents at that address on 5 July 2006 requiring them to provide their written response, any background information they may wish, their business file or files relating to the matter within 21 days. Neither Respondent replied.
- 9.16 On 11 August 2006, formal Notices were served on both Respondents in terms of Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 addressed to the First Respondent at the address given and the Second Respondent, c/o Property 3. On the same date, formal Notice was given to each under Section 42C requiring the production within 21 days for all books, accounts, Deeds, securities, papers and other documents in their possession or control relating to the instructions given in relation to the renewal of the late licence of the Company 13. The Second Respondent replied on 14 August advising that correspondence should not be sent to her new place of employment but to Property 2. She did not address the complaint by Mr M.
- 9.17 The First Respondent wrote on 16 August regarding the letter

of 11 August and stating that he did not have a copy of the specific complaint. A copy of the letter of 5 July 2006 was sent to him on 18 August 2006. On 24 August 2006, the Second Respondent was advised that all future correspondence would be sent to the Property 2 address and given an apology for letters going to her place of employment. She was advised of the outstanding complaints and invited to respond. She did not respond. On 19 September 2006, the second part of the Section 15 Notice was issued to both Respondents.

9.18 A Reporter was appointed and both Respondents were notified of this on 30 October 2006. On 3 January 2007, both Respondents were written to and advised that in view of the fact that they had failed to respond to the merits of the complaint by Mr M, the Society was considering if that failure in itself may amount to professional misconduct. They were invited to provide their written response, any background information that they may wish to provide and their business file or files relating to the matter within 21 days. They did not respond. On 10 January 2007, the Report in relation to the original complaint was sent to each Respondent and they were invited to respond by 22 January 2007. The Complainers were advised by letter dated 8 January 2007 that the First Respondent was out of the country until 15 January 2007 but the letter would be brought to his attention on his return. No response was received from him.

9.19 As neither had responded to the complaint about their failure to reply to the Complainer's correspondence, a supplementary Report was sought and they were advised of this on 1 February 2007. The supplementary Report was sent to each Respondent on 13 February 2007 and they were asked to provide any comments by 19 February 2007. Additional time was afforded due to the serious illness of a member of the Second

Respondent's family. The First Respondent provided an explanation of his position in relation to the original complaint by Mr M by letter dated 5 February 2007 received by the Complainers on 20 February 2007.

MS. N

- 9.20 By Help Form dated 18 September 2006, Ms N invoked the aid of the Complainers in relation to concerns about the service provided in the Executry of her late father. The Complainers wrote to the Second Respondent on 10 October 2006 in her capacity as Complaints Partner seeking to have her resolve the issue direct with Ms N within 21 days. A copy was sent to the First Respondent. Neither Respondent got in touch with Ms N and the Complainers then proceeded with a formal investigation, notifying the Respondents of that intention on 24 November 2006.
- 9.21 On 4 January 2007, the complaint was intimated with a list of issues to each Respondent. They were required to provide their written response, any background information they may wish, their business file and files relating to the matter, details of any fees charged or to be charged plus an indication of whether they had or had not been paid within 21 days. A letter dated 8 January 2007 on the headed notepaper of the former firm, advised that the First Respondent was out of the country until 15 January and the letter would be given to him on his return. Neither he nor the Second Respondent replied. They were served with Notices under Section 15(2)(ii) and Section 42C of the Solicitors (Scotland) Act 1980 on 26 January 2007. The First Respondent wrote on 1 February 2007 confirming his status out with the profession and the recent bereavement suffered by the Second Respondent. He did not address the issues raised in connection with Ms N. The Second

Respondent did not reply. On 16 February 2007, each was issued with the second part of the Section 15 Notice. Follow up letter was sent on 26 March noting that as they had failed to reply, consideration was now being given to a possible misconduct complaint relating to the failure to reply and they were given 21 days to comment. The First Respondent's Secretary phoned on 29 March 2007 and advised that he was off ill. Neither Respondent replied. The matter then proceeded to a Report which was produced, copied to the Respondents on 26 April 2007 and dealt with by the Client Relations Committee on 22 May 2007.

MS. N - IPS DETERMINATION

- 9.22 On 22 May 2007, the Complainers determined that the Respondents' firm had provided an inadequate professional service in relation to the executry administration on the estate of the late Mr O, directed that they pay £700 by way of compensation to the Estate, that the fees plus VAT which the firm had already received be reduced by 50% to £440.50 the remainder to be refunded, that there should be an entire waiver any further fees or outlays and that they must produce the executry file to the Complainers within 21 days.
- 9.23 The determination was intimated to each Respondent by letters dated 6 June 2007 with details of their right of appeal and requesting that they provide an explanation of the steps taken to implement the determination within 21 days. They did not reply. On 5 July 2007, a formal letter was issued to each of them by the Complainers calling upon them to confirm the steps taken to implement the determination within 21 days. The Respondents failed to reply. As at 26 June 2008 the amount outstanding in terms of the Complainers' Determination of 22 May 2007 was £300.

THE LAW SOCIETY OF SCOTLAND – MR. P

- 9.24 Mr Q died in July 2003. Mr P was his second cousin and acted as executor dative. Reilly McGinley was the firm instructed as agents. In 2005 Mr P complained about the Firm's delay in dealing with the executry. The First Respondent accepted the criticism and agreed to conclude the winding up of the estate with no fee. This did not occur by May 2007 and Mr P again complained by letter dated 10 May 2007. A copy was sent to both Respondents on 22 May, with follow up letters for their information on 31 May and 19 June 2007. A formal letter of complaint was sent to the Respondents on 29 June 2007 intimating the complaint and requiring them to provide their written response, any background information they may wish and the business file relating to the matter within 21 days. They did not reply.
- 9.25 Formal notices under Section 15(2)(i) of the Solicitors (Scotland) Act 1980 and Section 42C requiring the production of their file and associated papers within 21 days and were sent to them on 31 July 2007. The second part of the Section 15(2) Notice was sent to both on 27 August 2007. They did not respond. In view of their failure to reply and send files, a complaint that this may amount to professional misconduct by failure to respond to the Society was intimated to them on 27 August 2007 with 14 days for them to reply. On 3 September 2007 the First Respondent wrote advising that the file had been missed when they closed their office in Balfron some time previously. He was meeting the new agents to attempt to progress matters. A Reporter was appointed and the Report was intimated to both Respondents on 22 November 2007. They were advised to comment before 6 December 2007 as the

matter would be considered on 18 December 2007. Neither responded.

THE LAW SOCIETY OF SCOTLAND –MS R

- 9.26 By Help Form dated 17 January 2007 Ms R complained about the service provided to her by the Second Respondent in respect of a pension provision on divorce. A copy was sent to both Respondents on 2 February 2007. A formal letter intimating the complaint was sent to them on 27 February 2007 requiring them to provide their written response, any background information they may wish, their business file or files relating to the matter within 21 days. Neither Respondent replied.
- 9.27 On 22 March 2007, formal Notices were served on both Respondents in terms of Section 15(2)(ii) of the Solicitors (Scotland) Act 1980 and Section 42C requiring the production within 21 days for all relative books, accounts, Deeds, securities, papers and other documents in their possession or control. The Second Respondent replied on 3 April 2007 advising of her personal difficulties and seeking a further four weeks to reply. The time limit was extended to 9 May 2007. She did not reply or address the complaint.
- 9.28 On 23 May 2007, both Respondents were written to and advised that in view of the fact that they had failed to respond to the merits of the complaint by Ms R, the Society was considering if that failure in itself may amount to professional misconduct. They were invited to provide their written response, any background information that they may wish to provide and their business file or files relating to the matter within 21 days. They did not respond. A follow up letter was sent on 12 June 2007. The Second Respondent faxed a copy

letter dated 1 May 2007 with a brief explanation and seeking a further six weeks to obtain the file from storage and consider a response. She was advised that three weeks would be allowed on 3 July 2007.

- 9.29 As she did not respond to the original complaint or to the complaint about the failure to reply to the Complainer's correspondence, a Reporter was appointed and a Report was sent to each Respondent on 26 October 2007. They were asked to provide any comments by 9 November 2007. On 2 November 2007 the Second Respondent wrote advising that she was overwhelmed by the volume of replies sought and due to the serious illness of a member of her family. She did not address the original complaint.
10. Having considered the foregoing circumstances and having heard submissions on behalf of the Complainers and the Respondents, the Tribunal found the First Respondent guilty of Professional Misconduct *in cumulo* in respect of
- 10.1. his repeated failure to respond to correspondence from his fellow Solicitors;
 - 10.2 his delay and at times his complete failure to respond to the reasonable enquiries of the Complainers in the investigation of complaints against him;
 - 10.3 his failure to comply with statutory notices served by the Complainers and to deliver files required of him;
 - 10.4 his failure to make timeous and at some times, his failure to make any payment in respect of Counsel's fees instructed by him or through his firm and his failure to comply with the scheme of accounting and recovery of Counsel's fees.

And find the Second Respondent guilty of Professional Misconduct *in cumulo* in respect of

- 10.5 her repeated failure to make timeous and in some cases, any payment in respect of Counsel's fees instructed by her or through her firm and her failure to comply with the scheme of accounting and recovery of Counsel's fees;
 - 10.6 her failure to respond to the reasonable enquiries of the Complainers and their investigation of complaints made by clients;
 - 10.7 her failure to comply with statutory notices served by the Complainers and to send files required of her to the Complainers.
11. Having considered the foregoing circumstances, the Tribunal found that both the First and Second Respondent had failed to comply fully with the Determination and Direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Ms N within the period specified; and the Tribunal resolved to make an Order in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980.
12. Having heard the Solicitor for both Respondents in mitigation and having noted the previous finding of professional misconduct against the First Respondent, the Tribunal pronounced an Interlocutor in the following terms:

Edinburgh 26 June 2008. The Tribunal having considered the Complaints dated 21 December 2007 and 9 April 2008 at the instance of the Council of the Law Society of Scotland against James Joseph McGinley, Solicitor, Unit 10, 355 Byres Road, Glasgow ("the First Respondent") and Anne-Marie McGinley, Solicitor, Unit 10, 355 Byres Road, Glasgow ("the Second Respondent"); Find the First

Respondent guilty of professional misconduct *in cumulo* in respect of his repeated failure to respond to correspondence from his fellow Solicitors; his delay and at times failure to respond to the reasonable enquiries of the Complainers in the course of their investigation and to complaints made against him; his repeated failure to make timeous and in some cases any payment in respect of Counsel's fees instructed by him or through his firm and his failure to comply with the scheme of accounting and recovery of Counsel's fees; his failure to comply with statutory notices served by the Complainers and to deliver files as required of him; Find the Second Respondent guilty of professional misconduct *in cumulo* in respect of her repeated failure to make timeous and in some cases any payment in respect of Counsel's fees instructed by her or through her firm and her failure to comply with the scheme of accounting and recovery of Counsel's fees; her delay and at times failure to respond to the reasonable enquiries of the Complainers in relation to the investigation of complaints against her; her failure to comply with statutory notices issued by the Complainers and to deliver files as required of her; Censure the First Respondent; Censure the Second Respondent; Find that both Respondents have failed to comply fully with the Determination and Direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified; Direct that an Order be issued under Section 53C of the said Act; Find the Respondents jointly and severally liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a Solicitor and client indemnity 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 names of the Respondents.

(signed)

A. Cockburn

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

The Respondents were not present at the hearing but were represented by Mr Macreath, Solicitor, Glasgow. Mr Macreath was acting in his own right for the First Respondent and on behalf of Mr McCann, Solicitor, Clydebank for the Second Respondent. Joint Minutes of Admission were lodged on behalf of both of the Respondents in relation to each of the Complaints admitting most of the averments of fact, duty and Professional Misconduct. Mrs Motion moved to amend the remaining averments with the consent of Mr Macreath to reflect the fact that certain sums of money have now been paid by the Respondents. Accordingly there was no need for evidence to be led in relation to either of these Complaints.

Mrs Motion moved to amend the numbering of Article 7 of the Complaint of 9 April 2008. She advised that in relation to the Complaint of 21 December 2007 that she still required an Order in relation to Article 12.2 of that Complaint but only in relation to the sum of £300 as the balance had been paid. Mrs Motion stated that this was agreed by Mr Macreath. She advised that the other part of the Determination can be deleted as it had been complied with.

Mrs Motion advised that in relation to the same Complaint, at averment 5, that the Respondents had been making efforts to reduce the amount outstanding to the Faculty of Advocates and the current amount outstanding was now £10,034.51.

Mrs Motion advised that in relation to Article 8 of the Complaint dated 9 April 2008 that the sum referred to in Article 8.2 has now been paid and therefore the Determination and Direction of the Law Society dated 18 December 2007 can now be quashed of consent and that no Order under Section 53C is now required.

Mrs Motion advised that Mr McGinley was no longer on the Roll of Solicitors, his name having been removed on 1 September 2007. She advised that Miss McGinley remains on the Roll.

SUBMISSIONS FOR THE RESPONDENTS

Mr Macreath advised that both Respondents had made efforts to have these matters resolved. He stated that the firm of Reilly McGinley closed sometime ago. He advised that Mr McGinley came to see him with his sister in July 2005. A meeting was arranged with the Law Society regarding accounts issues and to put in place a mechanism for the winding up of the firm over a time period to allow the clients' interests to be protected. Mr Macreath advised that the firm grew too quickly and by the time the Respondents came to see him they recognised that the firm was out of administrative control. The firm was finally wound up in March 2006. The Law Society was kept advised during the period that the practice was being wound up. Mr Macreath stated that great efforts have been made by the Respondents to sort out their difficulties and that as at April 2008 there were only three or four outstanding matters which concerned the guarantee fund.

Mr Macreath stated that the Respondents had not taken on an irresponsible attitude to their business affairs. They had met with the Law Society at an early stage and are still in contact with them to resolve the final few matters. Mr McGinley removed his name from the Roll in good faith and not as a device to avoid prosecution. Mr Macreath stated that this willingness to resolve matters is borne out by the fact that the Respondents have reduced the debt due to the Faculty of Advocates to just over £10,000. In relation to that debt they are attempting to recover some of this from their former clients. Some of the clients are no longer in business and others are refusing to pay. It is hoped to reduce that sum further in the near future.

Mr Macreath stated that both of the Respondents had had family illnesses to cope with over this very difficult period.

Mr Macreath advised that the First Respondent was now working outwith the profession and had no intention of returning to the profession. The Second Respondent was working with the Children's Reporters Agency and no longer held a Practising Certificate. She had no wish to return to practice either. Both Respondents had spent 20 years in the profession with an unblemished record until 2005. Mr

Macreath stated that the winding up of the business and these Complaints have had a huge impact on both Respondents. Mr Macreath stated that these cases had arisen not out of the operation of the business but out of the winding up of the business. He asked the Tribunal to consider that Censure and publicity would be sufficient to mark the failures in this case. He stated that the outstanding sums due will be paid by the Respondents.

In response to a question from the Tribunal, Mr Macreath stated that the Respondents' business had been affected as early as 2001 by a flood in their premises which they were not fully insured for. He stated that the flood had a huge impact on the business.

FURTHER SUBMISSIONS BY THE COMPLAINERS

Mrs Motion drew the Tribunal's attention to a previous Finding dated 6 January 2005 against the First Respondent when he was Censured and fined £1,000 and ordered to pay expenses.

DECISION

The Tribunal had regard to the submissions made by both parties and to the documentation which had been lodged. The Tribunal took into account that the Respondents had acknowledged that their failures amounted to Professional Misconduct and had entered into Joint Minutes in relation to both Complaints which meant that no evidence required to be led.

The Tribunal noted that the Respondents' failures had arisen not in the course of running their practice but in the course of the winding up of their practice after they had accepted that they had overstretched themselves financially and administratively. The Tribunal noted that the Respondents acknowledged this fact and had contacted the Law Society for advice on the closure of their business as early as July 2005. The Tribunal took into account that the Respondents have not adopted an irresponsible attitude to their business affairs and have made significant payments towards the monies outstanding to the Faculty of Advocates and to their former clients and are still working with the Law Society towards resolving all outstanding issues. The

Tribunal also noted that both Respondents are pursuing careers outwith the legal profession and have no desire to return to practice. For these reasons the Tribunal considers that fines would not be appropriate in the circumstances. The Tribunal Censured both the Respondents and ordered them to be jointly and severally liable for the expenses of both Complaints and made the usual order with regard to publicity.

Chairman