

**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

**DUNCAN HUGH DRUMMOND,
Solicitor, Messrs Lyons Laing &
Co. Solicitors, 25 Newton Place,
Glasgow and DAVID RICHARD
BLAIR LYONS, Solicitor, Messrs
Lyons Laing & Co. Solicitors, 5
George Square, Greenock**

1. A Complaint dated 8 April 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Duncan Hugh Drummond, Solicitor, Messrs Lyons Laing & Co. Solicitors, 25 Newton Place, Glasgow (hereinafter referred to as "the First Respondent") and David Richard Blair Lyons, Solicitor, Messrs Lyons Laing & Co. Solicitors, 5 George Square, Greenock (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 both Respondents. Answers were lodged for both Respondents.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard for a procedural hearing on 26 August 2008. When the Complaint called

on 26 August 2008, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The First Respondent was represented by James McCann, Solicitor, Clydebank. The Second Respondent was represented by Ms McCracken, Solicitor, Glasgow. The matter was adjourned to a further procedural hearing on 15 October 2008.

4. A Complaint dated 22 September 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that the First and Second 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.
5. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged by the Respondents.
6. Both Complaints called for a procedural hearing on 15 October 2008. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The First Respondent was present and represented himself. The Second Respondent was present and represented by Mr Macreath, Solicitor, Glasgow. The matter was adjourned to a substantive hearing on 19 November 2008.
7. When the Complaints called on 19 November 2008, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The First Respondent was present and represented by Mr McCann, Solicitor, Clydebank. The Second Respondent was present and represented by Mr Macreath, Solicitor, Glasgow.
8. Amended Complaints were lodged with the Tribunal and Joint Minutes were also lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the amended Complaints. No evidence was led.

9. The Tribunal found the following facts established:

9.1 The Respondents are Duncan Hugh Drummond and David Richard Blair Lyons. Duncan Hugh Drummond was born on 29th May 1955. He was admitted as a solicitor on 2nd December 1980 and enrolled on 24th December 1980. David Richard Blair Lyons was born on 6th April 1951. He was admitted as a solicitor on 18th and enrolled on 28th both days of November 1975. Both Respondents are partners in the firm of Messrs. Lyons Laing & Co., Solicitors, Glasgow and Greenock. Mr. Drummond practices from the office at 25 Newton Place, Glasgow and Mr. Lyons from the office at 5 George Square, Greenock. Since about September 2001, the Respondents have been the only partners of the firm of Messrs Lyons Laing. At all material times (including the period before September 2001) Mr Lyons was the designated cash room partner.

HISTORY OF INSPECTIONS

9.2 In June 2001 Guarantee Fund Committee Inspectors employed by the Complainers carried out an inspection of the books and records of the Respondents. They found a number of areas of concern and breaches of the accounts rules. The firm was not able at that time to produce a trial balance which showed the true financial position of the firm. As a result of the concerns of the complainers further inspections were carried out in June 2002, February 2003, February 2004 and July 2004. As a result of concerns from the inspection of July 2004, it was resolved that the books and records of the respondents' practice be re-examined in December 2004.

INSPECTION OF 13TH – 15TH DECEMBER 2004

9.3 Guarantee Fund Inspectors employed by the Complainers carried out an inspection of the books and records of the Respondents' practice between 13th and 15th December 2004. They found the following:-

Backdated Postings on client account.

It was noted that the client accounts contained postings which had been made which were not in date order. The following are examples:-

Greenock

	<u>Transaction Narrative</u>	<u>Amount</u>
30.11.04	82826 by misc fees and outlays	£10.82
03.12.04	82930 transfer officebank	£404.40dr
03.12.04	82931 transfer Greenock Bank	£10,001.01dr
30.11.04	82934 reversal transfer journal	£404.80
30.11.04	82935 reversal transfer journal	£10,001.01

Glasgow

29.11.04	82587 Northern Rock loan funds	£72,500.00
03.11.04	82619 by funds held on deposit	£43,185.64
03.11.04	82620 funds held on deposit	£43,185.64dr
30.11.04	82673 by Client A per cash	£117.50
30.11.04	82821 by misc fees	£37.39
03.12.04	82932 transfer Glasgow account	£42,869.13dr
03.12.04	82936 reversal transfer journal	£42,869.13

The explanation given by cashroom staff was of a computer problem.

SHORTAGE ON CLIENT ACCOUNT (RULE 4)

9.4 On 30th November 2004 a payment was made into the Greenock Client account in the sum of £44,035 from Northern Rock as loan funds. The sum of £43,000 was transferred to the Glasgow client account. These transactions were recorded on the client ledger for Company 1, purchase of Property 1. The Respondent Mr. Lyons is a director of that company. The transfer of £43,000 between banks on 30th November 2004 was apparently to rectify a shortage on the client account of £43,000 from 4th October 2004. The shortage arose when a cheque for £43,000 from Mr. Lyons personal account was paid into a client ledger, Company 2, but was subsequently returned unpaid by the bank. The £43,000 paid in by Mr. Lyons was split into two payments. One payment was to the Greenock Client Bank and the balance was invested in the account held under Company 2. This was a tax reserve account. In addition the sum of £19,358.72 was paid to Customs and Excise on 31st August 2004 from the Company 2 Ledger. The funds required to settle this were not received into the client bank from the invested funds account until 1st September 2004. This caused a shortage in the client account for one day. The receipt for the payment of the vat appeared to be 28th July 2004 suggesting that a shortage might have existed for a longer period.

PROPERLY KEPT BOOKS (RULE 8(4))

9.5 Information regarding the current financial position of the firm was with the Respondents' accountants and was not available during the inspection. The firm account for Greenock for the month of November 2004 contained six

dishonoured items. The firms' trial balance still held various historic balances which should have been removed to show the firms' true financial position. The client control figure shown on the firm's trial balance was not agreed with the client credit and debit balances at 30th November 2004. The firm was still not able to produce a trial balance which showed the true financial position of the firm nor had it been able to do so at anytime since June 2001.

Additionally:-

a) K R

A sum of applied interest due to 30th November 2004 had been paid at 58p whereas it had been posted at 68p.

b) Y L

A sum of interest received on 29th September 2004 was posted to Bank of Scotland whereas should have been posted to Royal Bank of Scotland.

c) C P

A payment of £5,000 was noted to have been made from the above ledger to Lyons Laing Asset Management. No information was noted in the file in relation to this transfer. Lyons Laing Asset Management was not listed as a business interest of any of the partners of the firm.

UNRECORDED DEEDS

9.6 a) S D purchase of Property 2

There was a balance of £198 on this client's ledger retained for recording dues of a disposition and standard security. The deeds remained unrecorded from 3rd November 2004 until 18th February 2005.

b) AO & G G

These clients' transaction was completed in September 2004. Two Halifax loans were redeemed. As at the date of the inspection the discharges had not been sent for recording in breach of the CML Handbook requirements.

GUARANTEE FUND COMMITTEE

- 9.7 The Complainers Guarantee Fund Committee met to discuss the report of the inspection condensed upon on 3rd March 2005. They were concerned in view of the fact that no accurate trial balance in respect of the firm had been produced for some four years. They resolved that they would invite the Respondents for interview.
- 9.8 The Respondent Mr. Lyons was interviewed by the Complainers Guarantee Fund Committee on 21st April 2005. The letter inviting the Respondent to the meeting was sent out on 8th March 2005. The letter indicated that because the firm was unable to demonstrate the true financial position and had been unable to do so for some time consideration was being given to whether the practising certificates of both Respondents should be suspended. The letter had requested that the most up to date trial balance disclosing the true financial position of the practice be delivered to the Complainer by 13th April 2005 to allow it to be considered by the interview panel in advance of the

meeting. No up to date trial balance had been received by the Complainers in advance of the interview of 21st April 2005. The Respondent Mr Lyons brought with him a trial balance as at 4th April 2005. This was copied for the interview panel. After discussion it became apparent that the trial balance produced did not include payments made in relation to tax. Mr. Lyons was not able to quantify the firm's indebtedness. It was agreed that consideration of the case be continued for a production of a report from the Respondents by 6th May 2005 and in particular for the production of an up to date set of accounts and profit and loss and balance sheet. The Respondents sent a trial balance and a six month profit and loss account to the Complainers by fax dated 5th May 2005. In the light of the documents produced the committee decided to reinspect the firm at the firm's expense within three months.

INSPECTION OF 15-17TH AUGUST 2005

9.9 Guarantee Fund Inspectors employed by the Complainers carried out an inspection of the Respondents' books and accounts on 15th, 16th and 17th August 2005. The following matters were noted:-

Rule 8(4) Trial Balance:-

As yet the trial balance did not reflect the firm's position accurately. In particular,

a) A Bank of Scotland loan account was shown in the firm's trial balance with a credit of £19,760.52 as at 31st July 2005 whereas the balance on the bank statement was £57,580.21. The figure of the trial balance had been unchanged since the cessation of the old partnership in 2001.

b) The HP Creditor account showed only accountant's journals and did not indicate what the credit balance of £26,905 represented. The HP and Leasing accounts should have been shown separately with separate accounts for each agreement.

c) An account in respect of finance agreements showed a balance of £41,351.77 (credits) made up by accountant's journals. The Respondent had advised his cash room staff that the agreements were held jointly and severally by the partners and not by the firm.

d) Dummy office bank (dummy 1) showed a credit balance of £15,729.88 as at 31st July 2005 whereas the nominal ledger print at the same date showed a credit balance of £27,212.08. Account dummy 2 showed a July balance of £46,384.52 credit but no record of this appeared on the firm trial balance. Netting the two dummy account balances gave rise to a credit of £73,596.60. It was not apparent what these accounts represented, why they were used, or why they did not agree with the figure shown in the firm trial balance.

e) The firm trial balance included a debit balance of £55,362.33 made up by accountant's journals. The inspectors were led to believe that this balance awaited removal from the trial balance by the accountants. It was not clear what this figure represented.

f) A debit balance of £10,770.60 in the partners' capital account was understood by cash room staff to represent lease payments but the entries in the account did not make that clear.

g) There were entries on accountant's vat adjustments of £118,005.82 credit and PAYE and NIC Creditors showed a credit of £272,672.69. As at 18th March 2005 it was confirmed that there were arrears of PAYE and NIC amounting to £96,582.00. Correspondence between the Respondents and the Complainers and the discussions with cash room staff all indicated that the arrears in respect of VAT, PAYE, and NIC had been cleared by the accountants utilising income tax refunds but no ledger entries had been made to show this. The accountants' adjustments were not capable of being tested in the absence of an audit trail.

h) Ledger BH1004 (sums invested for clients) showed a debit balance of £1260.18 while BH1005 (client balances) showed a vat reg account of £1,208.15 in credit; BH1003 vat registration account was in debit to the extent of £1,208.15 and the differences account showed a figure of £296.03. Accountant's journal entries accounted for all of the above balances, with the difference balance dating back to August 2001. The inspectors were advised that these balances awaited adjusting entries from the Respondent's accountants.

i) Numerous dishonoured items were noted in the firm's Glasgow and Greenock Bank accounts. The cashier explained that the bank required that the firm reduced its overdraft by £5,000.00 per month. On a set day each month the cashier would call the bank at the beginning of the working day. If that target had not been met, the direct debits for that day would be dishonoured.

j) The postings narratives on the firm's accounts were not clear. The accountant's journals were totally inadequate and gave no detail whatsoever about the entries so it was impossible to understand what they meant.

k) Nominal account description EH2401 was described as bank overdraft interest but showed a credit balance. The account included interest earned on the client bank and various bank charges as well as overdraft interest. The ledger title did not reflect that.

9.10 Unrecorded deeds

From a sample of client credit balances reviewed, it was noted that deeds were unrecorded as follows:

a) GA bought and sold residential property with settlement taking place on 21st May 2004. The disposition, standard security and discharge appeared still be unrecorded and £22 still appeared on the ledger.

b) NC purchased property with settlement on 15th March 2005. £35,000 was received on 28th February 2005 but it was not clear whether this was a loan and if so from whom. The disposition remained unrecorded as at the date of the inspection

9.11 Sums due to clients

The following examples appeared in the firm's records apparently due to clients:

- a) KB - £33.00 held since June 2004.
- b) F & J - £110 held since September 2004.
- c) KG - £66.00 held since April 2005.
- d) JG-K- £44.00 held since October 2004 (cheque issued October 2004 and cancelled May 2005).

- e) I & M M £44.00 refund from registers since Sept 2004.
- f) FB – £2083.43 held since 17th June 2005 (uninvested).
- g) YFC - £22.00 held since September 2004.

After investigation it was apparent that these sums represented over provision for recording dues.

9.12 Rule 8(1) Properly Kept Client Records

The following items were noted:-

- a) D Ltd, the entry posted on 11th May 2005 to the Bank of Scotland (with a sort code and account number given) did not include the name of the account to which the funds were to be credited.
- b) R & F made a visa payment on 4th July 2005 which was taken and posted on 4th July 2005. The funds did not reach the bank account until 6th July 2005 and should not therefore have been posted until then.
- c) DMcP executry, funds were uplifted of £297.53 from the bank of Scotland and posted on 12th July 2005 but the posting itself was dated 5th July 2005.
- d) J B a payment of £795.00 was posted on 27th July 2005 but dated 19th July 2005.
- e) MR £2500 received from the client was posted on 15th July 2005 but the posting was dated 11th July 2005. This backdating of entries destroys the audit trail. If the entries were posted late for whatever reason they should be dated as the date on which the actual posting of the entry took place

and the date of the transaction should be noted in the narrative.

f) Client ledgers did not always contain full details of the transactions. On the ledger of NC and CM, the matter was opened as a purchase and sale but neither address was shown.

g) AHME (client MA) had £35,105.00 at credit held uninvested in general client accounts of 22nd July 2005 – 8th August 2005.

h) It was noted that the Respondent's bank was not always processing instructions in relation to invested funds on the day of the request. This could have given rise to a deficit (although it did not) and meant that at the month end there was a discrepancy between the invested funds list and the bank position (transfer of funds requested 30th June 2005 not actioned until 1st July 2005 client MCFA12/1).

i) Several cheques issued by the Glasgow office to banks and building societies were not properly designated as required by Rule 6(2).

9.13 Money laundering – on several files reviewed the source of funds provided by or for clients was not adequately evidenced:

a) Client INNE-8 paid over £60,842.63 on 1st June 2003 by bank draft. Although a copy of the draft was taken and held on file there was no further evidence of the source of these funds either by way of a letter from the bank or from a copy of the client's bank statement showing withdrawal.

- b) Client GHAN1/1 cash sums of £6000 and £3600 were received from this client on 14th July 2005 and 15th July 2005 respectively. There was no evidence of the source of these funds other than a memorandum disclosing the fact that several family members had contributed towards the sums received.
- c) WR and WF paid £1909.41 by bank draft on 28th June 2005. No further clarification of the source of funds was available.
- d) A & CD tendered a bank draft for £5574.66 on 6th May 2005. No further evidence of the source of funds were available.
- e) Client JH(HARR74/1) had identification of his father on file but none relating to the client himself.

9.14 Accounts certificate – the following accounts were noted on the firm trial balance but not included in the last accounts certificate:

- a) BH0405 Finance Agreements £78,000.86cr.
- b) BH1009 HP £43,345cr.
- c) BH1006 receivable from former partner £397,386.76dr.

9.15 Solicitors Scotland Practice Rules 1986 Rule 5(2) conflict of interest

It was noted that the firm's letter regarding possible conflict of interest was not strict accordance with the rules. The letter stated that the firm was entitled to withdraw from acting for one or both parties should a conflict arise. The rule stipulates

that in the event of a dispute arising one or both parties will require to consult an independent solicitor or solicitors.

INSPECTION OF 19TH – 21ST SEPTEMBER 2006

9.16 Guarantee Fund Inspectors by the Complainers carried out a further inspection of the Respondents books and records between 19th and 21st September 2006. Although a general improvement was noted, the following matters came to the attention of the inspectors:-

(a) The firm's trial balance showed an HP Creditor with a balance of £19,522.64. The only posting on this account was an adjusting entry by the Respondent's accountants in March 2006 in respect of the year to 31st March 2005, no payments in respect of hire purchase were noted, and on the face of it the balance was inaccurate.

(b) Repayments to the Bank of Scotland were posted to an account namely "Finance Lease Payments" along with various other items. The final payment to the Bank of Scotland was made in September 2006. A loan account should have been set up at the start and the repayments posted to it. The outstanding balance at each quarter should have been included in the accounts certificate. Where accountant's journals were posted the only information given by way of narrative was "explanation in Client B correspondence". The journal narrative itself did not contain sufficient indication to what the adjustment was and why it was being made. The journals included matters related to the previous four years and dealing with matters raised in previous inspection correspondence. Without descriptive details it was not possible to understand the transactions or movements.

(c) On a number of occasions, discharges were recorded late and not at the time of settlement of the sale transactions resulting in increased registration costs becoming payable to the Keeper.

(d) Narratives in the client ledger were frequently insufficient to understand the transaction. For example payments to the keeper did not always itemise the deeds being registered. A payment of £20,000 to RF per a mandate in the account KAMA0001/1 did not include the reason for the payment. In the same ledger the narrative did not show funds coming via a firm of solicitors but did not record that they came from Company 3.

(e) In the case of M & SD the clients introduced funds via a Lloyds TSB bank draft. A copy of the draft was noted on the file but no supporting evidence in respect of the source of the funds. Evidence was subsequently produced.

(f) In the case of VB funds were introduced by both the client and her mother. Identity verification was obtained in respect of the client but not in respect of her mother. The source of funds totaling £7750 by two bank drafts was not noted.

(g) A payment of £46,437.67 was made to Mrs. CH on 4th July 2006 from the ledger of Mr. R H. No authority for the payment was noted on the file.

(h) In the cases of RH and SC, the ledgers were opened in the names of these clients alone whereas they should have been opened in joint names with their partners.

RULE 11 (Client funds to be invested)

- 9.17 On ledger HEWI0004/1 £648.17 had remained uninvested from 01/06/05 until 20th September 2006

Inter account transfer: no written authority.

- 9.18 Company 5 were clients from whose ledger a payment of £25,000 was made to Company 4 on 5th July 2006 without any written authority. (Rule 6.)

Failure to deal with correspondence

- 9.19 Following upon the inspection last condescended upon, a letter was sent to the respondents' Greenock Office detailing the outcome of the inspection. That was followed up with a request for further information dated 20th November 2006. In particular, information was requested in relation to Rule 8(4)- Firms Trial Balance – PAYE/NIC, outstanding cheques, client debit and credit balances, Rule 6(1) – Payment from Client Account; Rule 6(1)(d) rendering of fees; Rule 8(1)- Record Keeping and Rule 11- Balances over £500. The director of the Guarantee Fund requested a response within 21 days. No response was received from the Respondents. A subsequent reminder was sent on 25th January 2007 to which there was no response. A further reminder was sent on 6th March 2007 to which there was no response. A further letter was sent dated 3rd April 2007 to which there was no response. Yet a further letter was sent on 16th May 2007 to the Respondent requesting the outstanding information. The Respondents did not reply.

INSPECTION OF 8TH, 9TH AND 10TH OCTOBER 2007

9.20 On the foregoing dates Guarantee Fund Inspectors employed by the Complainers inspected the books and accounts of the Respondents.

They found the following:-

Rule 8(4) (firm's monthly trial balance).

1. The firm's monthly trial balance still did not show the true financial position of the firm. Adjustments were awaited from Accountants in relation to accounts such as hire purchase. The balance due to or by the firm in respect of Company 1 had still not been provided in relation to the financial years ending 30th September 2004, 2005, 2006 and 2007. When the year ending 30th September 2006 was closed off the system did not cancel entries in relation to furniture and fittings, office equipment, leasehold property costs, office bank account, Dummy account number 1 and Dummy account number 2 which resulted in a difference of £32,068.58 credit showing in the trial balance which was eventually corrected in September 2007. A balance of £19,522.64cr was carried forward in respect of hire purchase account from the previous year and remained unmoved until an accountant's adjustment was posted on 29th April 2007 reducing the balance to zero. The value of outstanding bridging loans arranged by the firm should have been manually noted on the trial balance at each month end. This had been done for some months but not for all.

Recording and Stamping of Deeds

9.21 From a test check of the client ledger accounts the following were noted:-

1. J & EM: Sale of property 1 and purchase of property 2

Loan funds were received from TSB on 5th April 2007. The loan in relation to property 1 was redeemed on 10th May 2007. The disposition and standard security in relation to property 2 were not sent for recording until 2nd October 2007, and the disposition sent for stamping on 3rd October 2007. A balance of £150 was still held to cover recording dues.

2. PP: Purchase of property 3

This matter involved the assistance of a loan from Royal Bank of Scotland. The transaction settled on 25th June 2007 but the stamp duty was not paid until 13th September 2007 and the deeds were not sent for recording until 28th September 2007.

3. AS: Purchase of properties 4 and 5

Two sets of loan funds were received on 1st May 2007 but the disposition and standard security were not sent for recording until 14th September 2007.

4. LH: Purchase of property 6

This transaction settled on 20th April 2007 but the disposition and standard security were not sent for recording until 3rd August 2007.

5. W & P: Purchase of property 7

This transaction settled on 15th December 2006 but the disposition and standard security were not sent for recording until 12th June 2007.

6. CM & SA: Purchase of property 8

Loan funds in this case were received on 3rd May 2007 but the disposition and standard security were not sent for recording until 3rd October 2007.

7. GB & MA

In this case loan funds were received on 22nd May 2007 and settlement took place on 1st June 2007. The disposition and standard security were not sent for recording until 3rd October 2007.

8. BF: Purchase of property 9

Mortgage funds were received from Halifax on 6th October 2006 and settlement was effected that day. The disposition and standard security were not sent for recording until 17th July 2007.

9. GA: Purchase of property 10

This transaction settled on 2nd March 2007 but the disposition and standard security were not sent for recording until 5th October 2007.

10. MB & LC: Purchase of property 11

This transaction settled on 9th July 2007 but the disposition and standard security were not sent for recording until 25th September 2007.

11. IM: Purchase of property 12

This transaction settled on 10th July 2007 but the disposition was not sent for recording until 1st October 2007.

10. SB: Purchase of property 13

This transaction settled on 10th July 2007 but the disposition and standard security were not sent for recording until 5th October 2007.

11. AM: Purchase of property 14

This transaction settled on 10th July 2007 but the disposition and standard security were not sent for recording until 26th September 2007.

10. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the First and Second Respondents guilty of Professional Misconduct in respect of:

10.1 their breach of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 by;

- (a) their backdating postings on their client account, in breach of Rule 8
- (b) their having a shortage on the client account in breach of Rule 4

- (c) their failure to keep proper books and accounts of their practice in breach of Rule 8
- (d) their failure to comply with the Money Laundering Rules, in breach of Rule 24
- (e) their failure to invest sums so as to obtain interest for the client in breach of Rule 11
- (f) their failure to produce an accurate Accountants Certificate in breach of Rule 14
- (g) their failure to obtain written authority for an inter account transfer, in breach of Rule 6

10.2 their failure to timeously have deeds stamped and recorded;

10.3 their failure to issue conflict of interest letters in the correct form;

10.4 their persistent failure to respond to correspondence from the Complainers.

11. Having heard the Solicitors for the First and Second Respondents in mitigation and having noted a previous finding of professional misconduct against the Second Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 November 2008. The Tribunal having considered the amended Complaints both dated 17 November 2008 at the instance of the Council of the Law Society of Scotland against Duncan Hugh Drummond, Solicitor, Messrs Lyons Laing & Co. Solicitors, 25 Newton Place, Glasgow (the First Respondent) and David Richard Blair Lyons, Solicitor, Messrs Lyons Laing & Co. Solicitors, 5 George Square, Greenock (the Second Respondent); Find the First and Second Respondent guilty of Professional Misconduct in respect of their breach of Rules 4, 6, 8, 11, 14 and 24 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee

Fund Rules 2001, their failure to timeously stamp and record deeds, their failure to issue conflict of interest letters in the correct form and their persistent failure to respond to correspondence from the Law Society; Censure the First Respondent and Fine him the sum of £10,000 to be forfeit to her Majesty; Censure the Second Respondent and Fine him in the sum of £10,000 to be forfeit to her Majesty; 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 an agent 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 First and Second Respondents.

(signed)
Chairman

12. 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 Tribunal was dealing with two Complaints dated 28 April 2008 and 22 September 2008. On the day of the Tribunal, amended Complaints were lodged in respect of each case dated 17 November 2008. Joint Minutes were lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the amended Complaints. No evidence accordingly was led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch explained that new Complaints had been lodged in substitution of the earlier Complaints. The new Complaints had deleted certain matters which had been in the original Complaints. Mr Lynch stated that there had been a number of inspections because of the concerns which in particular related to the lack of a trial balance to show the true financial position of the firm. Mr Lynch confirmed that the Second Respondent was the Cashroom partner and Client Relations partner. At the December 2004 inspection, the problem related to backdating postings and a shortage on the client account. Mr Lynch stated that the Law Society accepted the explanation given that the partners of Lyons Laing kept money belonging to them in the client account and that although there was a shortage there was no risk to clients money. Mr Lynch stated that there were also errors in the bookkeeping and unrecorded deeds which were disclosed at this inspection. This led to a Guarantee Fund interview in April 2005. The trial balance did not include some payments and the firm's indebtedness could not be confirmed.

At the inspection in August 2005, the trial balance still did not reflect the true financial position of the firm. There were numerous dishonoured items and a number of unrecorded deeds. Mr Lynch referred the Tribunal to page 11 of Complaint 08/34 and pointed out to the Tribunal that a significant sum uninvested was the £2083. Mr Lynch indicated that there was evidence of a breach of money laundering provisions and the Accounts Rules and the Accounts Certificate was inaccurate. The September 2006 inspection again showed that the trial balance did not give the proper financial position of the firm. There were also insufficient narratives and breach of money

laundering provisions. The post inspection correspondence was not responded to by the First and Second Respondents, particularly by the Second Respondent. In connection with Complaint 08/64, and an inspection in October 2007, Mr Lynch stated that the firm's trial balance still did not disclose the financial position of the firm. There were also eleven examples of late recording of deeds.

Mr Lynch expressed his gratitude to the First and Second Respondents and their Agents for co-operating and entering into the terms of the Joint Minute. Mr Lynch lodged previous findings for the Second Respondent with the Tribunal.

SUBMISSIONS FOR THE FIRST RESPONDENT

Mr McCann explained that the First Respondent operated the Glasgow office of the firm. The Second Respondent was the money laundering and cashroom partner and operated out of the Greenock office. Mr McCann explained that the Glasgow office consisted of the Respondent, a solicitor and three support staff. Mr McCann stated that it was accepted in respect of Complaint 08/64 that the unrecorded deeds mainly related to the Glasgow office. It was explained that the First Respondent had an assistant who was ill and was not coping. When the First Respondent realised this, he did sort matters out. Mr McCann stated that the clients and lenders were not affected in any of the cases. Mr McCann stated that the First Respondent accepted joint responsibility but pointed out the geographical distance between the offices. Mr McCann outlined the First Respondent's personal circumstances and indicated that Mr Macreath would go into more detail with regard to the problems that the firm had been facing.

SUBMISSIONS FOR THE SECOND RESPONDENT

Mr Macreath thanked the Fiscal for his co-operation in presenting the Complaints in a coherent form. Mr Macreath pointed out to the Tribunal that the Second Respondent had been in practice for thirty three years and had established a successful practice in Glasgow and Greenock. Mr Macreath explained that the Second Respondent did the court work and the First Respondent did the chamber work. The Second Respondent had had a number of high profile cases in which he had been successful. The Second

Respondent had also been a Council member for eight years. Mr Macreath explained the history of difficulties faced by the Second Respondent. The Second Respondent had had health difficulties and when he was off work in 1999 one of partners overdrew the client capital account by half a million pounds. Another of the Respondent's partners caused difficulties for the firm in respect of conveyancing transactions. Mr Macreath explained that there were discussions between the Second Respondent and the partner who had overdrawn the account. It had been necessary to raise court proceedings and obtain a Decree against the partner. The partner then sought protection via sequestration. As a result of this, the Second Respondent only received a quarter of what he thought he would recover. This matter was not concluded until 2006/2007. Mr Macreath explained that the Second Respondent had had problems in his personal life to deal with and also had had health difficulties.

Mr Macreath emphasised that the Second Respondent had a legitimate expectation that the money would be repaid. He explained that the Greenock office was staffed by the Second Respondent, two qualified assistants, a part time qualified assistant, a paralegal and cash room staff. The records were maintained by two senior members of staff who had been with the firm for twenty years but were incapable of dealing with the problems that arose. Mr Macreath explained that Client B had attempted to sort matters out. The Second Respondent had been in a very difficult situation for four years. There was an impasse with regard to a partner not repaying what had been taken. This had an impact on the trial balance because the balance sheet suggested that there was an indebtedness of £250,000 by a partner and this was not recovered. Mr Macreath explained that the firm had now employed a financial manager who had installed a new computer system. This manager now supervises the two existing cashroom staff. Mr Macreath referred the Tribunal to references lodged from other solicitors and the firm of accountants. Mr Macreath invited the Tribunal to dispose of the case as leniently as possible. He pointed out that at present the profession was in turmoil and firms in small towns played an important role. Mr Macreath stated that the Second Respondent took his professional responsibilities seriously and asked the Tribunal to allow him to continue as a principal.

In response to a query from the Tribunal, it was confirmed that there was another inspection in September 2008. Mr Macreath explained that correspondence was ongoing in connection with this inspection but he was not involved.

DECISION

The Accounts Rules are in place in order to protect the public. Solicitors who fail to comply with the provisions of the Accounts Rules undermine public confidence in the profession. In this case the Respondents breached a considerable number of the Accounts Rules at a number of different inspections. In addition to this there were delays in recording deeds, failure to issue conflict of interest letters and failure to respond to correspondence from the Law Society. The Tribunal accordingly considered that the Respondents' actions clearly amounted to professional misconduct and called in to question the Respondents' ability to properly manage a legal firm. The Tribunal considered the individual responsibility of each Respondent. It was noted that the Second Respondent was the cashroom partner and money laundering partner. It was also noted that the First Respondent was located at the Glasgow office, some geographical distance from the Greenock office. However the First Respondent indicated that he accepted joint responsibility and it was also clear from the evidence that the Second Respondent was off work due to ill health from time to time when the First Respondent would have been the only partner in charge. The Tribunal also noted that at the later inspection in October 2007, a substantial number of the issues identified related to delay in recording deeds in respect of transactions for which the First Respondent had responsibility. The Tribunal accordingly decided that the First and Respondents were equally culpable. The Tribunal was concerned that despite a number of inspections and interviews, there were still problems at the October 2007 inspection. The Tribunal was also not provided with any evidence to show that all matters had now been sorted out to the Law Society's satisfaction. The Tribunal however noted that the Respondents had employed a new financial manager and had a new software system in place. The Tribunal also noted the difficulties caused by the indebtedness of a previous partner and the time this took to be resolved and noted the references lodged. In the circumstances, the Tribunal stopped short of restricting the Respondents' practising certificates but imposed the maximum fine on each Respondent to show the Tribunal's severe disapproval of the repeated breaches

of the Accounts Rules and delay in recording deeds. The Tribunal also wish to make it clear to the Respondents that if further difficulties of a similar nature are highlighted at further inspections by the Law Society, the Tribunal will take a very serious view of this. The Tribunal made the usual order with regard to expenses and publicity.

Chairman