

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(COMPLAINTS UNDER THE 2005 AND 2008 RULES)**

FINDINGS

in Complaints

by

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

against

**PAUL SAUNDERS JARDINE,
Solicitor, Jardine Phillips LLP, 205
Morningside Road, Edinburgh**

1. Two Complaints dated 12 July 2011 and 11 January 2012 were lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Paul Saunders Jardine, Solicitor, Jardine Phillips LLP, 205 Morningside Road, Edinburgh (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused copies of the Complaints as lodged to be served upon the Respondent. No Answers were lodged for the Respondent in respect of either Complaint.
3. In terms of its Rules the Tribunal appointed a procedural hearing in respect of both Complaints to be heard on 6 February 2012.

4. When the Complaints called on 6 February 2012 the Complainers were represented by their Fiscal Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by Mr Burnside, Solicitor, Aberdeen.
5. Joint Minutes were lodged admitting the averments of fact, duty and misconduct in both Complaints and agreeing the amount of compensation. No evidence was led.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 5 March 1970. He was admitted as a Solicitor on 7 May 1997. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 9 May 1997. From 1 September 2001 he was a partner in the firm of Guild and Guild WS. From 31 July 2006 he has been a partner in the firm of Jardine Phillips LLP, 205 Morningside Road, Edinburgh.
 - 6.2 The Respondent was an Executor of the late Ms A, who died on 29 June 2006 and Jardine Phillips LLP acted in the administration of her Estate. The beneficiaries included Company 1.

On 9 November 2006 the Respondent wrote to Company 1 notifying them of the bequest. On 21 November 2007 the Respondent sent Company 1 a copy of the Executory Account.

In the course of further correspondence between the Respondent and Company 1, Company 1 queried the calculation and deduction of Inheritance Tax and in the absence of any response, instructed their Solicitors.
 - 6.3 A firm of solicitors wrote to the Respondent on 5 January 2009 advising that they had been instructed by Company 1 and

requesting revised Inheritance Tax calculations. No response was received.

The firm of solicitors wrote again to the Respondent on 29 April 2009 advising that as Company 1 were a charitable institution, no Inheritance Tax should have been charged on any part of the Estate due to Company 1. No response was received.

A firm of solicitors emailed the Respondent on 30 June 2009 seeking a response, wrote to the Respondent on 10 August 2009 and again on 9 October 2009, all without response.

- 6.4 On 15 December 2009 Mrs D of the firm of solicitors telephoned the Respondent and spoke to him. The Respondent advised Mrs D that he would write to her in the course of that week. No letter was ever received by Mrs D.
- 6.5 On 28 January 2010 the firm of solicitors wrote to the Respondent advising that, if there was no satisfactory response, and the appropriate payment within three weeks, the matter would inter alia be referred to the Scottish Legal Complaints Commission. No response was received.
- 6.6 On 16 March 2010 the firm of solicitors made a complaint to the Scottish Legal Complaints Commission who referred the matter to the Respondents.
- 6.7 On 13 April 2010 the Complainers wrote to the Respondent enclosing a copy of a complaint form and correspondence and asking for a report within twenty-one days.

In the absence of any response, the Complainers wrote to the Respondent on 16 June 2010 intimating an inadequate professional service (IPS) complaint with a list of four issues.

6.8 In the continued absence of any response, the Complainers wrote to the Respondent on 7 July 2010 inter alia intimating two issues of alleged professional misconduct, namely,

1. Failure to respond to the complainer's Solicitors letters and emails of 5 January, 29 April, 30 June, 10 August, 9 October 2009 and 28 January 2010;
2. Failure to write to the complainer's Solicitors having undertaken to do so in a telephone conversation between the Respondent and Mrs D of a firm of solicitors on 15 December 2009.

6.9 On 28 July 2010 by recorded delivery the Complainers issued a Notice to the Respondent in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980.

The Complainers further wrote to the Respondent by recorded delivery on 28 July 2010 in terms of Section 42C of the Solicitors (Scotland) Act 1980 requiring production of documentation as set out in said letter.

6.10 On 11 August 2010 the Complainers wrote to the Respondent issuing a Notice in terms of Section 15(2)(i)(ii) of the Solicitors (Scotland) Act 1980.

6.11 On or about 10 August 2010 the Complainers received a complaint from the Accountant of Court in relation to the Respondent's actings in respect of the Executry of the late Ms B.

In particular, the Accountant of Court complained that despite four telephone assurances from the Respondent that he would

send a cheque in the next week to Mr C, being funds due to Mr C from the Estate of his late mother, the Respondent had failed to forward the funds. In addition, the Respondent had failed to provide the Accountant of Court's Office with a copy of the Executry Account despite being requested to do so.

- 6.12 The Respondent had advised the Accountant of Court in a letter dated 19 November 2008 that he was acting in the Executry of the late Ms B who had died intestate on 20 July 2007. He sought advice in relation to the share of the Estate due to Mr C, a minor. The Accountant of Court replied by letter dated 21 November 2008 providing guidance. Following subsequent correspondence the Accountant of Court wrote to the Respondent on 11 December 2008 with a Direction requiring the property due to Mr C to be transferred to the Accountant of Court for administration.

The Accountant of Court wrote to the Respondent on 15 February 2010 requesting a cheque for the amount due to Mr C and a copy of the Executry Account.

On four occasions the Office of the Accountant of Court phoned the Respondent who promised that a cheque would be with them by the end of the week. These telephone calls took place between 8 March and 11 May 2010.

Separately, despite repeated telephone calls and letters to the Respondent in relation to provision of a copy of the Executry Account, no such Account was provided until 21 December 2010.

- 6.13 On 20 August 2010 the Complainers wrote to the Respondent advising him of the complaint and requesting his reply within twenty-one days inter alia setting out his position in respect of

the complaint and providing his business files in relation to the matter. No response was received and by letter dated 25 September 2010 the Complainers issued a Notice under the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) in respect of his failure to reply.

On 16 September 2010 the Complainers wrote to the Respondent in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 48(1)(a) requiring him in terms of Section 48(2) to provide all documents in his possession or control relating to the affairs of Mr C and to the Executry of his late mother, Ms B.

- 6.14 Following a continued failure by the Respondent to respond, the Complainers issued a Notice to the Respondent on 7 October 2010 in terms of Section 15(2)(i)(i) of the 1980 Act requiring him to give six weeks notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2011.
- 6.15 By letter dated 13 October 2010, the Complainers wrote to the Respondent advising that they had added a further Issue to the complaint in that:-

“The Council of the Law Society of Scotland complains, ex proprio motu, that Mr Paul Saunders Jardine may be guilty of professional misconduct and/or unsatisfactory professional conduct in relation to his failure to reply to intimation of the complaint made to him in the Council’s letter of 20 August 2010, to the Notice served in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 dated 15 September 2010 and to the further Notice served in terms of Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007 dated 16 September 2007.”

- 6.16 By letter dated 22 October 2010 the Respondent wrote to the Complainers apologising for his delay in replying and advising inter alia that he had not been coping with his work for some time, had been ignoring correspondence, particularly from the Law Society, that he had no excuse or rational explanation for allowing matters to get out of hand and was working with his partner to address all outstanding issues.

The Complainers wrote to the Respondent on 29 October 2010 acknowledging his letter and asking inter alia that he forward his file and any other documentation relating to the allegations.

In the absence of any response to the letter of 29 October 2010, the Complainers wrote to the Respondent on 22 December 2010 referring to their earlier letter and advising that they had not received any substantive response to the original complaint or the additional complaint in respect of his failure to respond, nor had they received his file or any other relevant documentation.

- 6.18 On 19 September 2008 the Complainers received a help form in relation to a conveyancing transaction where one of the parties had been represented by Jardine Phillips LLP.

On 11 November 2008 the Complainers wrote to the Client Relations Partner at Jardine Phillips LLP seeking information and received a letter from the Respondent dated 8 January 2009 advising that the transaction had been dealt with by his partner, Gordon Phillips. The letter advised that Mr Phillips was currently off sick but there would be a reply in detail as soon as he returned to work.

- 6.19 In the absence of any further letter, the Complainers again wrote to the Client Relations Partner on 12 February 2009. There was no reply. The Complainers wrote again to the Client Relations

Partner on 2 March 2009 with a copy of a further letter from one of the parties to the conveyancing transaction. The Complainers then wrote to Gordon Phillips at the firm's office on 31 March 2009 with a copy of a further letter from the party to the conveyancing transaction.

- 6.20 On 22 May 2009 the Complainers wrote to Gordon Phillips intimating a complaint of alleged professional misconduct, enclosing a List of Issues and requiring a response within twenty-one days, including Gordon Phillips' written response, any further background he might wish to provide and his business file or files relating to the matter. No response was received from Mr Phillips and on 23 June 2009 a Statutory Notice in terms of the Solicitors (Scotland) Act 1980 Section 42C was intimated to Mr Phillips by recorded delivery. On the same date the Complainers issued a Statutory Notice in terms of the Solicitors (Scotland) Act 1980 Section 15(2)(i)(i) by recorded delivery. On 21 July 2009 the Complainers issued a Notice to Mr Phillips by recorded delivery in terms of the 1980 Act Section 15(2)(i)(ii) requiring him to give six weeks notice of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2009.
- 6.21 On 21 July 2009 the Complainers wrote to Mr Phillips intimating a complaint of alleged professional misconduct and attaching a List of Issues including failures to respond to the complaint set out in the letter of intimation dated 22 May 2009, to reply to the Section 15 Notice and to provide the Solicitor's file for the purposes of the investigation. The letter required a reply within fourteen days. Separately, on 21 July 2009, the Complainers wrote to the Jardine Phillips LLP Client Relations Partner attaching a copy of the Section 15(2)(i)(ii) served on Mr Phillips and asking for the Client Relations Partner's assistance in resolving matters. On 1 September 2009 the Complainers wrote

to Mr Phillips advising that a Reporter had been appointed and on 21 December 2009 the Complainers wrote to Mr Phillips enclosing a copy of the Report and advising that the complaint was scheduled to go before a Client Relations Committee on 26 January 2010.

- 6.22 The complaint was considered by Client Relations Committee C on 26 January 2010, the Committee Schedule and Recommendation was sent to Mr Phillips in a letter dated 2 February 2010 and he was advised that the matter would be referred to the Professional Conduct Committee which was due to meet on 25 March 2010.
- 6.23 On 24 March 2010 the Complainers' Professional Conduct Committee determined that Mr Phillips' conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that it could amount to professional misconduct and a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 53. The Committee Schedule and Decision and were intimated to Mr Phillips in a letter dated 31 March 2010.
- 6.24 The Complainers instructed their Fiscal to consider the papers with a view to submitting a Complaint to the Scottish Solicitors Discipline Tribunal averring professional misconduct. On 15 July 2010 the Fiscal sent a principal Complaint to the Clerk to the Tribunal in terms of the Scottish Solicitors Discipline Tribunal Procedure Rules 2005, Rule 2 (DC/10/17/R).
- 6.25 The Tribunal served the Complaint by recorded delivery addressed to Gordon A Phillips at Jardine Phillips LLP. The recorded delivery "electronic proof of delivery" shows receipt at

Jardine Phillips on 26 July 2010 and the Respondent as having signed for the documentation.

6.26 The Tribunal fixed a Hearing for 12 October 2010 and intimated the date by recorded delivery to Gordon Phillips at Jardine Phillips LLP. The recorded delivery “electronic proof of delivery” shows receipt at Jardine Phillips on 10 August 2010 and the Respondent, as having signed for the documentation.

6.28 The Fiscal, having noted the absence of any Answers to the Complaint, wrote to Gordon Phillips on 30 September 2010 suggesting inter alia that Gordon Phillips contact him. In the absence of any response the Fiscal emailed Gordon Phillips on 7 October 2010.

6.29 Gordon Phillips telephoned the Fiscal in response to the email. It was obvious that Mr Phillips was in a very distressed state. He advised the Fiscal that he had known nothing about the matter until he had received the email. Mr Phillips advised that the Respondent who is his partner had now confessed to him that he had prevented him from seeing any mail in relation to the matter whether that mail had been from the Complainers, the Tribunal or the Fiscal.

Until the procedural position was explained to him by the Fiscal, Mr Phillips was unaware that a Full Hearing before the Tribunal was due to proceed five days later on 12 October 2010.

6.30 At the Hearing on 12 October 2010 a letter was produced dated 11 October and written by the Respondent which stated inter alia that his partner, Mr Phillips, was completely unaware that a complaint had been made against him by the Law Society of Scotland.

It was agreed that the Complaint would be continued to a Procedural Hearing on 16 November 2010.

The Complainers and the Fiscal satisfied themselves that on the available evidence, Gordon Phillips had known nothing of the correspondence from the Complainers, the Tribunal or the Fiscal. On 16 November the Tribunal accordingly allowed the Complaint to be withdrawn on a joint motion and on the basis that no expenses would be due to or by either party.

In the circumstances of the Complaint, the Complainers incurred fees and outlays totalling £2517.40 which they were unable to recover.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct respect of:
 - 7.1 his failure to respond to communications from a beneficiary and their Solicitors;
 - 7.2 his failure to fulfil an undertaking given to the beneficiary's Solicitor;
 - 7.3 his failure to timeously provide his business file and other documents to the Complainers following the service of Statutory Notices requiring him to do so, and his failure to provide any explanation as to why the file and documentation had not been produced timeously;
 - 7.4 his failure to provide a cheque to the Accountant of Court despite his promises to do so and his failure to provide the Accountant of Court's Office with a copy of an Executry Account;

- 7.5 his failure to reply to correspondence from the Complainers regarding a Complaint including Statutory Notices which had been served on him;
- 7.6 his concealment from his business partner of correspondence from the Complainers, his concealment from his business partner of a Scottish Solicitors Discipline Tribunal Complaint and his concealment from his business partner of correspondence from the Fiscal all of which had been sent to the firm's office and were addressed to his business partner.
8. Having considered the averment regarding compensation contained in Paragraph 10 of the Complaint dated 11 January 2012 and the terms of the Joint Minute, the Tribunal made an order that the Respondent make payment to the Complainers in the sum of £2,517.40. This compensation is payable in respect of loss suffered by the Complainers resulting from the unnecessary prosecution of the Respondent's partner following the concealment from him by the Respondent of correspondence from the Complainers, the Tribunal and the Fiscal as detailed in Paragraph 6 of the said Complaint.
9. Having heard the Solicitor for the Respondent in mitigation and having noted a previous Finding of misconduct against the Respondent, the Tribunal pronounced Interlocutors in the following terms:-

Edinburgh 6 February 2012. The Tribunal having considered the Complaints dated 12 July 2011 and 11 January 2012 at the instance of the Council of the Law Society of Scotland against Paul Saunders Jardine, Solicitor, Jardine Phillips LLP, 205 Morningside Road, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond to communications from a beneficiary and their Solicitors; his failure to fulfil an undertaking given to the beneficiary's Solicitor; his failure to timeously provide his business file and other documents to the Law Society; his failure to provide any explanation why the file and

documentation had not been produced timeously following the service of a number of Statutory Notices; his failure to provide a cheque to the Accountant of Court despite his promises to do so; his failure to provide the Accountant of Court's Office with a copy of an Executry Account and his concealment from his business partner of correspondence from the Complainers, the Tribunal and the Fiscal; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to (and to being supervised by) such employer or successive employers as may be approved by the Council of the Law Society or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least three years, and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Kirsteen Keyden

Vice Chairman

Edinburgh 6 February 2012. The Tribunal having considered the Complaint dated 11 January 2012 at the instance of the Council of the Law Society of Scotland against Paul Saunders Jardine, Solicitor, Jardine Phillips LLP, 205 Morningside Road, Edinburgh; Ordain the Respondent to make payment to the Complainers in the sum of £2,517.40 in respect of loss resulting from the misconduct and that within 28 days of the date on

which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

(signed)

Kirsteen Keyden

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

Vice Chairman

NOTE

There were two Complaints before the Tribunal, one under the Scottish Solicitors Discipline Tribunal Procedure Rules 2005 and the other under the Scottish Solicitors Discipline Tribunal Procedure Rules 2008. The only reason that the matters were put into two Complaints was due to the dates when the conduct occurred meaning that one Complaint was governed by the old Rules and the other by the new Rules. The Tribunal however saw no difficulty in dealing with the two Complaints together and issuing one set of Findings in relation to the two Complaints. The matters were set down for a procedural hearing on 6 February 2012 but when they called it was clarified that the Respondent was pleading guilty as libelled to both Complaints and accordingly the matters proceeded to a conclusion.

As the facts were admitted there was no need for any evidence to be led. An Inventory of Productions had been lodged on behalf of the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that there were two Complaints, one under the 2005 Rules and the other under the 2008 Rules and in both cases he was grateful to the Respondent and his representative for agreeing the terms of the two Joint Minutes, the second of which agreed that the Complainers are entitled to compensation. Mr Reid referred the Tribunal to a previous Complaint in relation to the Respondent and provided the Tribunal with a copy of the Findings and the Interlocutor dated 19 December 2008.

In relation to the first Complaint, reference DC/11/23, Mr Reid referred the Tribunal to articles 2.1 to 2.6 of the Complaint. He stated that essentially there had been an initial failure to respond timeously to correspondence with a beneficiary and then a failure to write to solicitors acting on behalf of the beneficiary following an undertaking that he would do so. Mr Reid referred the Tribunal to article 2.7 of the Complaint and advised that as a result of the Respondent's failure to respond to the Complainers regarding the complaint the Complainers wrote again to the Respondent three months later intimating two issues of alleged professional misconduct. In the absence of any response to the second letter, Statutory Notices were sent to the Respondent and the matter was

referred to the Professional Conduct Committee in March 2011. Mr Reid advised that the query from the beneficiaries was eventually dealt with by the Respondent and a payment was made to the beneficiaries which resolved the matter.

In relation to the later Complaint, reference DT/12/01, Mr Reid advised that there were potentially secondary complainers. Mr Reid referred the Tribunal to article 4 of that Complaint and advised that both secondary complainers had been advised of their right to seek compensation and both had declined to make a claim.

Mr Reid advised that this matter involved a complaint by the Accountant of Court. On four occasions the Respondent had promised that a cheque would be sent to the Accountant of Court. Despite these phone calls and assurances no cheque was sent. In this matter a minor was due a share of an estate being dealt with by the Respondent. In addition, the Respondent failed to provide a copy of the Executry Account to the Accountant of Court. There was also a failure to respond to correspondence and Statutory Notices from the Complainers when they investigated this matter. Mr Reid advised that this matter has now been resolved. In response to a question from the Chairman, Mr Reid confirmed that the matter had been resolved in the course of the last year.

Mr Reid advised that the second issue in Complaint reference DT/12/01 is the more serious of the issues. Mr Reid advised that a complaint had been intimated regarding the Respondent's partner, Mr Phillips. The Law Society required to investigate this matter and wrote to the Respondent as Client Relations Partner advising of the complaint and seeking a response. There was an initial response from the Respondent advising that Mr Phillips was currently on sick leave and there would be a detailed reply sent as soon as he returned to work. No further correspondence was received from the Respondent regarding this matter. The Complainers wrote again to the Client Relations Partner and then sent Statutory Notices to Mr Phillips addressed to him at the firm's address. No response was forthcoming and the matter was considered by the Client Relations Committee and then the Professional Conduct Committee. A decision was taken by the Professional Conduct Committee that Mr Phillips' conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor and that it could amount to professional

misconduct and a Fiscal was appointed to refer the matter to the Tribunal. The Committee schedule and decision were intimated to Mr Phillips in March 2010.

Mr Reid advised that he then prepared a Complaint and sent it to the Clerk of the Tribunal. The Tribunal served the Complaint by recorded delivery addressed to Gordon A Phillips at Jardine Phillips LLP. The electronic proof of delivery shows the Complaint being received at Jardine Phillips on 26 July 2010 and the Respondent as having signed for the documentation. A hearing was then fixed for 12 October 2010 and the Tribunal intimated the date by recorded delivery to Gordon Phillips at Jardine Phillips LLP. Again, the proof of delivery shows the Respondent as having signed for the documentation.

Mr Reid advised that he did not receive a response to the service of the Complaint from Mr Phillips and wrote to him on 30 September 2010 suggesting that Mr Phillips contact him. In the absence of any response he emailed Gordon Phillips on 7 October 2010. Mr Reid advised that Mr Phillips telephoned him in response to the email and that it was obvious that Mr Phillips was in a very distressed state. Mr Reid stated that Mr Phillips advised him that he had known nothing about the matter until he received the email. Mr Phillips advised that his partner the Respondent had now confessed to him that he had prevented him from seeing any mail in relation to the matter whether that mail had come from the Complainers, the Tribunal or the Fiscal. Mr Reid advised that at the hearing on 12 October 2010 a letter was produced confirming this.

Mr Reid advised that following that hearing he and the Complainers satisfied themselves that on the available evidence Mr Phillips had known nothing of the correspondence from the Complainers, the Tribunal or the Fiscal and the Tribunal allowed the Complaint to be withdrawn on Joint Motion on the basis that no expenses would be due to or by either party. Mr Reid advised that in the circumstances of the Complaint the Complainers incurred fees and outlays which they were unable to recover. Mr Reid advised that in the circumstances the Complainers were seeking an Order for compensation regarding the costs of the prosecution of Mr Phillips and advised that the amount of compensation sought was £2517.40 as agreed in the Joint Minute. Mr Reid asked the Tribunal to make such an Order for compensation.

SUBMISSIONS FOR THE RESPONDENT

Mr Burnside advised that reference had been made by Mr Reid to prior Findings against the Respondent. Mr Burnside advised that these Findings related to advice given to the firm of Jardine Phillips in 2006 when they were in the process of setting up their own practice. He stated that the advice that the Respondent and Mr Phillips were given was bizarre and led ultimately to the solicitor who provided that advice being struck off. Mr Reid advised that at the time of the previous Complaint the Respondent was not a member of the Legal Defence Union and the matter took almost three years to come before the Tribunal. Mr Burnside advised that following the termination of the partnership, the Respondent's former partner sued the Respondent and Mr Phillips and the matter was extremely stressful involving significant costs and they faced professional ruin.

Mr Burnside advised that he and Mr Reid both dealt with that earlier case which was the most bizarre case he has ever dealt with. Mr Burnside stated that he would have said that the Respondent was the stronger of the two partners. However it now appears that the Respondent had been bottling up his fears regarding their future. Mr Burnside made reference to the report from Professor Chick, a Consultant Psychiatrist, regarding the Respondent which had been lodged with the Tribunal.

Mr Burnside advised that the Court of Session action by the Respondent's former partner was not resolved until the end of 2010 which was four years after the advice had been given. During that time the Respondent and Mr Phillips had tried to continue serving their clients and had claimed on the professional indemnity insurance of the solicitor who had provided the advice. Mr Burnside advised that the Respondent and his partner battled through these difficulties with Mr Phillips making a better job of doing so. Mr Burnside advised that the Respondent was not coping with his workload and an additional factor was that the firm had acquired the wills and titles of another firm which had been poorly managed. This led to a host of problems for the Respondent to deal with alone as Mr Phillips was dealing with the financial issues.

Mr Burnside stated that the Respondent accepts that he lost the place, increased his drinking and became socially withdrawn. He accepted that he put cases to the side and failed to deal with them and some executry files were a prime example of that. Mr Burnside advised that the files were not particularly complex, they simply required attention and the Respondent did not give them that attention as he was not being rational. Mr Burnside advised that all the outstanding matters have now been concluded and accepted they resulted in inconvenience and delay but confirmed that no sums are now outstanding to any party.

Mr Burnside then turned to the more serious matter of the concealment of correspondence. He advised that because of what had happened previously, the sight of any letters from the Law Society had a significant effect on the Respondent. Mr Burnside advised that the Respondent did not open correspondence from the Law Society, which is characteristic of someone who is not well. Mr Burnside advised that the Respondent did not tell his partner anything about the unopened correspondence. In response to a question from the Chairman, Mr Burnside confirmed that the Respondent did not know what was in the letters from the Law Society as he did not open them.

Mr Burnside advised that as a consequence Mr Phillips did not know anything about the Complaint against him and that he had received a call from Mr Phillips after he found out. In relation to the complaint against Mr Phillips, Mr Burnside stated that that was unsubstantiated and it was not taken any further by the Professional Conduct Committee. However, Mr Phillips had been put to some anxiety as a result of the circumstances.

Mr Burnside referred the Tribunal to the letter to him from Mr Phillips dated 18 January 2012 which is Production 1 of the Inventory of Productions which had been lodged on behalf of the Respondent. Mr Burnside advised that this letter states that Mr Phillips considers that his friend and business partner was not acting in a way that he would normally do when these failures occurred. Mr Phillips describes the Respondent as dependable and this was one of the main reasons why he had gone into partnership with him. Mr Phillips' letter states that the Respondent had offered to resign and leave the business.

Mr Burnside advised that the Respondent and Mr Phillips would like to be able to continue in partnership together as partners and stated that they have joint obligations to their bankers in relation to their business property and their own homes. Mr Burnside stated that if the Respondent was no longer a partner, the firm's bankers would be unhappy and would have issues if Mr Phillips was to continue as a sole practitioner.

Mr Burnside stated that the Respondent is aware that it is important to deal appropriately with Law Society correspondence and that the concealment of that correspondence is a very serious departure from professional standards. However, he stated that these failures have occurred against the background of a solicitor who had an unblemished record up to 2006 and that failure in 2006 was due to relying upon someone who claimed to be financially astute. He stated that the failure in 2006 which led to the Respondent's appearance before the Tribunal triggered the events which led to this second appearance before the Tribunal.

Mr Burnside then called the Respondent and Mr Phillips to give evidence.

The Respondent stated that after he appeared before the Tribunal in 2008 he felt broken and unable to cope and was really just going through the motions. He stated that he was anxious all the time in case any other complaints came in from the Law Society. He explained he was unable to speak to anyone about this including his partner and his wife and he became extremely withdrawn and stressed all the time. He stated that during this period he was sleeping only about one or two hours a night and drinking heavily to get to sleep. He stated that each day he was trying to get through his time in the office by looking only as far as the next few hours at a time. He would say to himself "I'll stay till lunchtime, then I'll stay until 4 o'clock" etc.

He stated that he was responsible for opening the mail and when correspondence came in from the Law Society he saw the headings and put it in a drawer. He said that he told himself he would open it and go through it at a later date but he never did. He stated that at that time he did not see any way out. He could not leave the job because his wife had been made redundant. He started to think stupid thoughts such as that everyone would be better off without him. He stated that it was hard to look back to see what he was thinking at the time. He stated that he should have just confessed what was

happening but it was hard to talk to Mr Phillips, to his wife and even to Mr Burnside regarding this matter. He advised that since then he has found that talking does help. He advised that he had offered to resign but stated that he recognised that in some ways Mr Phillips would be in a more difficult position if he did leave.

In response to a question from the Chairman regarding whether he had sought any professional help, the Respondent stated that he had spoken to Professor Chick and said that he has found that speaking to people really helps. He stated that he has taken up running and cut down on drinking and that he now only drinks socially two to three nights a week.

In response to a further question from the Chairman, the Respondent confirmed that Professor Chick's estimate of his drinking was correct. In response to a further question the Respondent stated that he had not gone to AA or to see his GP or anyone else regarding this.

In response to a question from the Chairman, the Respondent advised that previously the routine for opening up the office was that he would open the mail and give it to Mr Phillips. He advised that as his office was at the front of the premises he was there to receive all the mail. The Chairman asked whether he was concerned that any mail would arrive when he was on holiday or not there. In response the Respondent stated that he did not take any time off at all during that period. He stated that he felt trapped but he turned up everyday and was hugely anxious about the mail. He stated that he just got through on an hour to hour basis and that he was not taking a long term view of anything which was why he was not taking any holidays or seeing friends.

The Respondent advised that the position is completely different now and that since it is all out in the open he can now speak to his partner and his wife regarding personal matters. He stated that he no longer has anything to do with the opening of the mail as Mr Phillips organises that. He advised that Mr Phillips has been hugely supportive. He advised that he has started to speak to his friends about his issues and get a different perspective.

In response to a question from the Tribunal as to whether he considers that he has an alcohol problem, the Respondent replied in the negative stating that he thinks it is a symptom rather than a cause. He stated that he has taken up running and it is not possible to drink heavily if you are running. He stated that he is only drinking socially now and has lost weight through running. He stated that he never drank during the day and only drank in the evenings to get to sleep.

Mr Phillips stated that the effect of what had happened in 2006 regarding the break up of their partnership had a very stressful effect on both him and the Respondent. He stated that at times they did not think it was worth going on. He explained that it was a very difficult economic climate and their services were not in nearly as much demand and it was hard to keep going and deal with all the business correspondence. Mr Phillips advised that at the time he thought that the Respondent was coping better than he was. He stated that the Respondent was a strong character, the former captain of a rugby team and someone with a top class law degree. He stated that he was not aware how all the stress was affecting the Respondent. He stated that naively he thought that the Respondent would be fine. He advised that he was not aware of the situation at all because the Respondent was not confiding in him.

Mr Phillips stated that he was shocked to be the subject of a prosecution before the Tribunal and advised that he was initially very angry and then confused because he and the Respondent had been through so much together. He stated that he took advice from other lawyers but that advice was always conflicting and he thought it would be better to try and help the Respondent get better first then make a decision about the future.

Mr Phillips stated that things have changed since the circumstances of the Complaints against the Respondent came to light. He said that things had to change as their business model was not working. He stated that they have now turned down unprofitable work and use more IT within the practice. He stated that things are a lot better now and that the shock of the last Tribunal appearance has faded into the background.

He advised that there has been a big change in the Respondent after all matters came out into the open. He stated that the Respondent has lost two stone, has become chattier, is frequently talking about cases and is much more engaged now at work.

Mr Phillips stated that he and the Respondent had taken steps to ensure that this does not happen again by installing a new case management system and regularly meeting to talk about cases which need work done on them. He stated that they are getting help from their other staff as well.

Mr Phillips advised that in comparison with previously, the Respondent is much better. He advised that he did not know how ill the Respondent had been and feels that he has to take some responsibility for that.

In relation to the future, Mr Phillips stated that he would like to continue in practice with the Respondent as the clients like his work and he gets on well with them. He stated that it was the Christian thing to do to forgive him and give him another chance. He stated that he and the Respondent have had a lot of good times together and that he felt that they can sort it out now and move on together.

In relation to the consequences for Mr Phillips if the Respondent could no longer continue as his partner, he stated that he fears the reaction to this from his bankers. He stated that the bankers are very tough on the practice regarding servicing their debt and he worries about this a lot.

In response to a question from the Chairman, Mr Phillips stated that he had not specifically spoken to his bankers regarding that issue. However he stated that the relationship with his bankers is not as good as it previously was and he gave an example of their business loan being restricted from 25 years to 15 years even though they had always met all the repayments. Mr Phillips advised that they have borrowing secured over both their houses. Mr Phillips stated that they employ a paralegal, two secretaries and a property manager. He advised that all are part time apart from the paralegal.

In response to a question from the Chairman, Mr Phillips confirmed that at the time that the Respondent was ill he had no knowledge of this.

The Chairman asked if another stressful situation arose how Mr Phillips would monitor the Respondent. In response, Mr Phillips advised that when the problems came to light he took work away from the Respondent and tried to de-stress him. He advised that the practice has changed; they have put up their fees and turned down unprofitable work. He advised that he is now fully aware of the nature of the Respondent's illness as he has read about it and done some internet research.

The Chairman asked if Mr Phillips had suggested to the Respondent that he should seek professional help. In response, Mr Phillips stated that he did at times suggest that the Respondent should speak to his GP and his wife.

In relation to the consequences for the firm if the Respondent could no longer be a partner, Mr Phillips stated that he had not actually raised this matter specifically with his bankers. He stated that he had conversations with his bankers regarding the possibility of merging with another firm and that his bankers had made it clear to him that they would want to get their money back. Mr Phillips stated that he did not want to raise the question directly with the bank as he feared the consequences.

Mr Phillips stated that he went to see a number of other firms and was flabbergasted at how badly run they were. He was shocked to learn that if he agreed to his firm being taken over he would receive no financial payment and in future would only be an assistant. He advised that he thought he would soldier on to see if the Respondent could get better and he stated that he now thinks that the Respondent has got better.

In conclusion, Mr Burnside stated that he hoped it was helpful to hear from both the Respondent and Mr Phillips. He asked the Tribunal to take into account what was said by both of them. He stated that the misconduct was committed against a background of illness and stress which has now been relieved. He submitted that if the Tribunal restricted the Respondent's practising certificate the effect of that would be felt by both partners and Mr Phillips is the innocent party who has taken the Christian approach and

forgiven the Respondent. Mr Burnside urged the Tribunal notwithstanding the seriousness of the matter not to restrict the Respondent's practising certificate.

Mr Burnside stated that it is difficult to go to your bankers and have a conversation in advance regarding the possible consequences of the Tribunal hearing and he stated that he hoped that the Tribunal would not think ill of the Respondent and Mr Phillips for not raising this with their bankers in advance. Mr Burnside asked the Tribunal for clemency and stated that he knew these two young men quite well and would hope that any trust which the Tribunal placed on them would not be misplaced.

DECISION

The Tribunal was greatly concerned by the Respondent's conduct in this case. The Tribunal noted that there had been repeated failures to respond to correspondence to a beneficiary, their solicitors, the Accountant of Court and to the Respondent's professional body which had occurred over a prolonged period. In addition, there was the deliberate concealment of correspondence addressed to his partner from the Law Society, the Tribunal and the Fiscal over an extensive period of time. The Tribunal considered the deliberate concealment of correspondence to be the most serious of the Respondent's failures. However, the Tribunal noted that all outstanding matters have now been satisfactorily resolved.

The Tribunal considered the test in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal considered that the repeated failures to respond to correspondence and the deliberate concealment of the correspondence addressed to his partner would be regarded by competent and reputable solicitors as serious and reprehensible departures from the standards expected of those within the profession. Having considered all the circumstances, the Tribunal concluded that the Respondent's failures amounted to professional misconduct.

In considering sanction, the Tribunal considered that in this case there would be damage to the reputation of the profession as a result of the Respondent's professional misconduct in view of the publicity following this case. The Tribunal also took into account the Respondent's previous finding of professional misconduct. However, the

Tribunal noted that apart from the resultant delay and inconvenience, no members of the public suffered financially as a result of the Respondent's failures. The Tribunal also took into account that the Respondent had appeared before the Tribunal, had candidly admitted his failures and shown a keenness to have the matters resolved.

The Tribunal had regard to the productions lodged including the report from the Consultant Psychiatrist. However, the Tribunal noted that this report was prepared for the purposes of this Tribunal hearing and as the Respondent has not consulted his GP regarding his symptoms, the report was not supported by any medical evidence apart from the blood test taken by Professor Chick. In the light of the result of that blood test, the Tribunal was concerned that the Respondent has failed to seek professional help. Accordingly the Tribunal is concerned that the Respondent has not shown full insight into his condition.

The Tribunal noted the evidence that all mail from the Law Society had been unopened over a period of two years. However, the Tribunal also noted that the Respondent and his partner had continued in practice and therefore considered that the appropriate applications to renew their practising certificates must have been attended to during this period.

In considering sanction the Tribunal did not consider a fine sufficient to protect the public and uphold the confidence in the profession. The Tribunal was concerned about the risk of these failures being repeated. Whilst it was noted that a number of changes to the management of the practice had been made the Tribunal was not satisfied that sufficient steps had been taken to prevent further failures should the Respondent experience a further period of stress. Accordingly the Tribunal considered that it was necessary for the protection of clients that the Respondent's practising certificate be restricted and that he be supervised for an aggregate period of three years and then until the Tribunal are satisfied that he is fit to hold a full practising certificate. The Tribunal require the Respondent to come back to the Tribunal after he has worked for an aggregate period of three years and satisfy the Tribunal that he has completed the three years to his employers' satisfaction, that there has been an improvement in his medical condition, that he has shown insight into his failures and that he can be trusted to hold a full practicing certificate again.

The Tribunal did not consider it necessary to impose a fine in addition to the restriction given that the Respondent will have significant expenses to pay in connection with these proceedings and also will be responsible for payment of a large sum of compensation to the Complainers. The Tribunal made the usual order with regard to expenses and publicity.

Vice Chairman