

**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

**NICHOLAS GERARD McCORMICK,
Solicitor, 28 Victoria Street, Newton
Stewart**

1. A Complaint dated 4 August 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Nicholas Gerard McCormick, Solicitor, 28 Victoria Street, Newton Stewart (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 11th January 2006 and notice thereof was duly served on the Respondent.
4. The hearing took place on 11th January 2006. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr J McCann, Solicitor, Clydebank.

5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct were admitted. On the day of the hearing a fresh Complaint alleging professional misconduct dated 9th January 2006 was lodged with the Tribunal. Mr McCann, on behalf of the Respondent, accepted service and dispensed with the usual requirement with regard to notice. A Joint Minute was lodged in respect of this fresh Complaint admitting the facts, averments of duty and averments of professional misconduct in the Complaint. Another Complaint under Section 53C was also lodged with the Tribunal on the day of the hearing. Mr McCann, on behalf of the Respondent, accepted service and dispensed with the usual notice required. The facts and averments in this Section 53C Complaint were admitted by the Respondent in terms of a Joint Minute. No evidence was led.

6. The Tribunal found the following facts admitted or proved.

6.1 The Respondent is a Solicitor enrolled in Scotland. He was born on 5th August 1958. He was admitted as a Solicitor on 3rd and enrolled on 23rd both days of November 1988. He practiced on his own account as N G McCormick & Co, at 28 Victoria Street, Newton Stewart.

6.2 **Complaint by A B & A Matthews**

Messrs A B & A Matthews Solicitors, Bank of Scotland Buildings, Newton Stewart, acted on behalf of Mrs A who sold part of her property at Property 1 in August 2003 to Mr B for whom the Respondent acted. Shortly after settlement, Messrs AB & A Matthews delivered to the Respondent the executed discharge in favour of Mrs A together with the accompanying forms 2 and 4 to the Keeper of the Land Register and their cheque in respect of the registration dues. Messrs A B & A Matthews became aware that the cheque in respect of the registration dues had not been encashed. On two occasions they wrote to the Respondent asking for information about the recording of the discharge. The Respondent did not reply. Accordingly Messrs A B & A Matthews wrote to the Keeper of the

Land Register who advised on 10th June 2004 that no application for registration either of the discharge or of the deed in favour of Mr B had been presented to Registers of Scotland. Messrs A B & A Matthews accordingly sought the assistance of the complainers. On 16th July 2004 Messrs A B & A Matthews wrote to the complainers and informed them that on that day they had been advised by Mr McCormick that the reason for the delay in presenting the deeds for registration was due to Mr B instructing him not to present the deeds for recording. By that time the cheque in respect of the recording dues of the discharge was out of date. There was no explanation for the failure to reply to earlier correspondence.

6.3 **Mr & Mrs C**

Mr & Mrs C live in Area 1. Since about 1992 they have been the owners of a flatted dwelling house at Property 2. In or about 1999 they instructed the respondent to deal with the letting of the property. They supplied the respondent with keys to the property and a detailed inventory of the items within the property. The Respondent agreed to remit the net rentals to the complainers on a quarterly basis directly into their bank account. In due course the Respondent let the property. He forwarded a copy of the lease to Mr & Mrs C in Area 1 for their signature. He accounted for the first instalment of rent and his fees. The tenants vacated the premises prior to the expiry of the lease. The Respondent, despite being asked to do so, has never supplied Mr & Mrs C with a final accounting in relation to this letting.

6.4 In view of the above Mr & Mrs C themselves interviewed the next proposed tenant. Only one remittance of rent appeared in Mr & Mrs Cs' bank statement in relation to this tenancy and was supplied without any other details. Despite numerous requests, Mr & Mrs C have not received a final or any accounting in respect of that tenancy, nor did they receive a copy of the tenancy agreement.

6.5 Thereafter, the property was let again by the Respondent, who told Mr & Mrs C that the new tenant was a local nurse. On 13th November 2002 the sum of £1050.00 was deposited in Mr & Mrs C's bank account by the Respondent. The respondent did not provide Mr & Mrs C with any statement of accounting, nor any indication of how this sum was broken down. As at the date of their complaint to the Law Society of Scotland (26th June 2003) Mr & Mrs C were not aware how much the Respondent's fees had been, how much rent had been paid by the tenant and whether there were any arrears, or even whether the tenant was still within the property. No copy of the tenancy agreement in relation to this tenant was forwarded by the Respondent to the Complainers. Communications sent from Mr & Mrs C to the Respondent by facsimile transmission, letter and e-mail dated 29th November 2000, 10th August 2001, 28th January 2002, 20th September 2002, 13th December 2002, 10th April 2003, 30th April 2003 and 8th May 2003 were not responded to by the Respondent.

6.6 **Failure to Reply to Correspondence from Law Society of Scotland**

Upon receipt of the complaint of Mr & Mrs C in June 2003, the Complainers adjusted heads of complaint which were intimated to the Respondent informally. Formal intimation of the complaints was given to the Respondent on 14th November 2003. That letter required the Respondent to provide a response within 21 days. No response was received by the Complainers who again wrote to the Respondent on 19th December 2003, requesting a reply within 14 days. Said letter put the Respondent on notice that he might be made subject to the sanction provided in Section 15(2) of the Solicitors (Scotland) 1980. No such reply was received. On 3rd February 2004 the Complainers wrote to the Respondent to advise him that, in respect that he had failed to reply to the earlier correspondence in such a way which would enable the council to complete its investigation by the dates specified in the previous letter, and to report as required, the Respondent was now subject to a requirement made pursuant to

Section 15(2) of the Solicitors (Scotland) 1980 to give six weeks notice to the council of his intention to make application to renew his practising certificate. The Respondent failed to reply to the letter of 3rd February 2004.

6.7 **Complaint by Messrs AB & A Matthews on Behalf of Dr D**

Messrs AB & A Matthews Solicitors, Newton Stewart were instructed by Dr D. Dr D had previously instructed the Respondent in relation to certain matters including an ongoing purchase of a property in Area 2. On 20th October 2003 Messrs AB & A Matthews delivered a mandate to the Respondent, signed by Dr D, requesting that the Respondent forward Dr D's papers including those relating to the Area 2 property. The mandate was not acknowledged. A reminder was sent on 10th November 2003. The Respondent responded on 18th November 2003 and forwarded a fee note indicating that upon payment thereof the papers would be released. Messrs AB & A Matthews settled the fee note by letter dated 20th November 2003 and requested the files as a matter of urgency. On 26th November and 9th December 2003 they forwarded reminders. On 12th December 2003 the Respondent sent a facsimile transmission to Messrs AB & A Matthews acknowledging the letter of 9th December and bearing to enclose Dr D's papers. These were not however enclosed. On 16th December 2003 Messrs AB & A Matthews still had not received the papers, nor the hard copy of the letter sent by facsimile transmission and they sent a facsimile transmission to the Respondent pointing this out. By 18th December 2003 Messrs AB & A Matthews had received no response and they sent a further reminder. On 24th December 2003 Messrs AB & A Matthews sought the assistance of the Complainers. Via his legal expense insurers, Dr D instructed other agents to commence civil court proceedings against the Respondent. At around the end of 2004 or at the beginning of 2005 the files which were the subject of the mandate in favour of Messrs A B & A Matthews were forwarded by the Respondent to the new agents.

6.8 **Failure to Answer Correspondence from The Law Society of Scotland**

On 9th January 2004 the Complainers wrote to the Respondent requesting that he respond to them within 14 days to explain the steps taken to implement the mandate. The Respondent did not reply. Heads of Complaint were adjusted with Messrs AB & A Matthews and these were intimated formally to the Respondent on 27th January 2004.

6.9 The intimation of the Heads of Complaint required the Respondent to reply within 21 days and to provide a written response in relation to each of the Heads of Complaint, any further background information the Respondent might wish to provide, production of the business files in relation to the matter and details of any fees charged. The Respondent did not reply to that letter.

6.10 On 24th February 2004 the Complainer served upon the Respondent notices in Terms of Section 15(2) and 42 (C) of the Solicitors (Scotland) 1980. In terms of the latter, the Respondent was required to produce within 21 days, all books, accounts, deeds, securities, papers and other documents in his possession or control relating to the complaint intimated to him on 27th January 2004. The Respondent failed to obtemper the notice.

6.11 On 16th April 2004, the Complainers formally intimated to the Respondent the Heads of Complaint in relation to his failure to obtemper the statutory notices which were served on him on 24th April 2004. The Respondent was again required to reply within 21 days. He did not respond.

6.12 **Mrs E Deceased**

Mrs E died on 9th September 1996. Her will, dated 20th June 1996 was prepared by the Respondent. The Respondent was instructed by

the executors to wind up the estate. By letter dated 5th February 2004 Messrs Mathie Morton Black and Buchanan Solicitors, Ayr, invoked the assistance of the complainers on behalf of the their client Mrs F. Mrs F was a beneficiary and was concerned that some seven-and-a-half years after Mrs E's death the estate still had not been wound up. This resulted in a finding of inadequate professional service against the Respondent.

6.13 **Failure to act upon correspondence from the Law Society of Scotland**

Following upon receipt of the complaint, the complainers wrote to the Respondent on 16th February 2004, 10th March 2004, 20th April 2004 and 19th May 2004. The Respondent did not reply to any of these letters. On 21st June 2004 the Complainers served a notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 on the Respondent. On the same day they served upon him a notice under Section 42C of the said Act. In terms of these notices the Respondent was required to respond to the complaint within fourteen days and to explain his previous failure to respond. In addition, he was required by the Section 42C notice to produce within 21 days of 21st June 2004 to the complainer all books, accounts, deeds, securities, papers and other documents in his possession or control relating to the executory of Mrs E deceased. The Respondent did not reply to these notices. On 16th July 2004 there was served on the Respondent the second part of the notice under Section 15(2) above condescended upon which required the Respondent to give six weeks notice of any intention to renew his practising certificate and warning of the consequences of failure to reply. On 21st July 2004 the Respondent met with the complainers director of client relations. It was emphasized to the Respondent the need to respond to the heads of complaint. The Respondent undertook to reply by 9th August 2004. Despite that, he has failed to make contact with the complainers. The complainers again wrote to the Respondent on 20th October 2004 and again on 11th November 2004. The Respondent did not reply.

6.14 **Appearance before Scottish Solicitors' Discipline Tribunal on 30th September 2004**

On 30th September 2004 the Respondent appeared before the Scottish Solicitors' Discipline Tribunal. He admitted charges of professional misconduct in relation to his failure to record deeds, his breaches of Rules 8, 9, 11, 19 and 24 of the Solicitors (Scotland) Accounts Etc. Rules 2001 and his breach of Regulation 16(2) of the Solicitors (Scotland) (Incidental Investment Business) Practice Rules 2001. *Inter alia* the Tribunal ordered that the Respondent's practicing Certificate be subject to a condition that the books and records of his practice be inspected by the Complainers no later than 31st January 2005 and thereafter at six monthly intervals on five occasions, the last of which was to take place no later than 30th September 2007, all such inspections to be at the expense of the Respondent.

6.15 **Inspection of 31st January 2005**

A Guarantee Fund Inspector employed by the Complainers carried out an inspection of the Respondent's books and records on 31st January 2005 and 1st February 2005. The following matters were recorded: -

6.16 **Deficit on Client Bank Account**

Prior to the inspection, the Inspector was aware that a concern had arisen regarding a failure by the Respondent to appear at court in a matter where he stated to his client that he had been successful in obtaining payment and he had paid just short of £1,500.00 to the client. The reality was that the client had been unsuccessful and in terms of a counterclaim £10,000 had been awarded against him. The client was pursued for the amount of £10,000 and was being threatened with sequestration. The client then raised an action against the respondent for payment of £20,000. The Respondent did not defend the action. A position had been agreed whereby the Respondent could pay £10,000 by a date in mid January 2005 and

settle the balance by instalments. The matter has never been brought formally to the attention of the Complainers. At the time of the inspection the file relating to the case was not available, it having been mandated to other agents.

- 6.17 In order to make the payment to his client, Mr G, the Respondent, on 13th January 2005, transferred £10,000 from the client bank to the firm bank. No entries were made in the Respondent's records for this transaction and as a result the client bank balance and the statement of surplus was overstated by £10,000 from 13th January 2005 until the date of the inspection.
- 6.18 The records maintained by the Respondent showed a surplus on the client bank account of £642.13 on 12th January 2005 in line with the level at which it normally operated. On 13th January 2005 the surplus, according to the Respondent's records, was £3,180.13 which had risen by 25th January 2005, the last day for which a day book was available during the first day of the inspection, to £6,611.43. Had the records been adjusted for the £10,000 transfer, a deficit of between £6,819.87 on 13th January 2005 and £3,388.57 on 25th January 2005 would have been disclosed. When asked what the £10,000 payment was, the Respondent was initially evasive. When he did accept the true nature of the payment, he maintained that he did not realise that the account was in deficit. It was noted that the normal practice of the respondent was that as fees were being taken, a sum would be transferred to the firm's bank account on that day or the following day bringing the surplus back to a figure between £200.00 and £600.00. Between 13th January 2005 and 25th January 2005 fees were being taken but contrary to that practice records showed the funds were being left in the client bank account. By 31st January 2005 the Respondent had rendered sufficient fees to bring the client account back into surplus.

6.19 Failure to Record Deeds

A number of instances of failure to record deeds were noted, as follows: -

(a) Mr & Mrs H

Mr and Mrs H purchased Property 3 with the assistance of a loan from Halifax of £25,000. The transaction settled on 29th April 2004. The Standard Security and Disposition were held on file and as at the date of the inspection had not been forwarded for recording.

(b) Mr & Mrs I

Mr and Mrs I purchased Property 4 on 28th May 2004. No lender was involved. The Stamp Duty Land Tax form and Disposition and other deeds were held on file as was a Discharge from the Seller's agents. As at the date of the inspection the deeds remained unrecorded.

(c) Company 1

These clients purchased Property 5 on 29th October 2004. The Stamp Duty Land Tax Return had not been submitted and as at the date of the inspection the deeds remained unrecorded.

(d) Mr J

Mr J purchased a property at Property 6 on 22nd November 2004. According to the ledger the Stamp Duty Land Tax Return had been submitted on 14th January 2005. As at the date of the inspection, the Certificate had not been returned and accordingly the Disposition remained unrecorded.

(e) Mrs K

On 12th September 2003 funds were received in relation to the purchase by Mrs K of a property from a housing association. Mrs K died on 23rd January 2004. The Executrix, a Mrs L, took the title in her name and settlement took place on 2nd July 2004. As at the date of the inspection the Disposition remained unrecorded.

- (f) Company 2
These clients purchased property at Property 7 on 11th July 2002. As at the date of the inspection the deeds remained unrecorded.
- (g) Mr M
This client purchased Property 8 on 13th December 2004. There was a loan of £70,000 from Royal Bank of Scotland plc. As at the date of the inspection the deeds remained unrecorded.
- (h) Mr and Mrs N
Mr and Mrs N purchased a property at Property 9 on 28th May 2004 with the assistance of a loan of £79,000 from Northern Rock plc. The Stamp Duty Land Tax Return was not seen, and no payment of Stamp Duty Land Tax had been made. The Seller's Discharge, and the Disposition and Standard Security were still unrecorded as at the date of the inspection.
- (i) Mr O
Mr O obtained a transfer of title and a re-mortgage in relation to property at Property 10. The new loan from Bank of Scotland was in the amount of £48,590.00. The transaction settled on 14th February 2002 and as the date of the inspection the deeds remained unrecorded.
- (j) Company 2
These clients purchased Property 11 on 8th April 2004 with the assistance of a Loan of £200,000 from Royal Bank of Scotland plc. As the date of the inspection the deeds remained unrecorded.
- (k) Company 1
These clients purchased Property 12 on 18th September 1992. The Disposition remained on file as was another which appeared to relate to separate plots purchased by Company 1, and none of these deeds had been recorded.

(l) Mr M

This client purchased property at Property 13 on 23rd December 2003 at a price of £330,693 with the assistance of a loan of £250,000 from Royal Bank of Scotland plc. As at the date of inspection although Stamp Duty Land Tax had been paid the deeds remained unrecorded.

6.20 **Rule 11 Client Funds Not Invested to Earn Interest**

There were noted eighteen examples of breaches of this Rule, as set forth immediately below. Of these, nine arose as a result of uplifting invested funds, and closing the account but then not disbursing or reinvesting the funds.

<u>CLIENT</u>	<u>£</u>	<u>HELD FROM</u>	<u>HELD UNTIL</u>
P Exy	564.18	03/03/04	To date of inspection
Mr & Mrs Q	287.46	05/04/04	To date of inspection
Mr & Mrs R	5495.69	17/02/04	01/04/04
S Exy	2000.00 approx	22/01/04	12/03/04
T & U	10122.95	18/06/04	23/07/04
Mr V	2194.53	06/01/04	29/07/04
W Exy	49022.94	13/12/04	To date of inspection
X Exy	4170.52	02/12/04	To date of inspection
Y Exy	4500.00	19/03/03	30/01/04
Y Exy	4062.08	08/09/04	To date of inspection
Z Exy	8000-12000	02/03/04	27/07/04
AA Trust	1141.29	20/05/04	To date of inspection
AB Exy	4008.26	22/11/04	To date of inspection
AC & Son	2012.5	14/12/04	To date of inspection
Mr M	650	02/05/03	To date of inspection
Mr M	2445	Dec. 03	To date of inspection
AD Exy	7453.79	17/09/04	To date of inspection
Mr & Mrs AE	767.40	Sept. 04	To date of inspection
AF Exy	1197.33	04/08/04	To date of inspection

6.21 **Rule 9 Client Bank Account**

The client bank reconciliation as at 31st December 2004 included an adjustment of £125.00 which related to a difference between the Respondent's accounting records and the bank records relative to a

lodgment dated 25th September 2003 which had not been investigated and corrected. The reconciliation included old outstanding cheques dating back to November and December 2003 which should have been written back to the client ledger investigated and reissued as appropriate.

6.22 A pay in on 17th December 2004 did not appear in the records until 31st December 2004 and two payments appearing in the bank statement on 14th and 16th December did not appear in the ledger until 31st December 2004.

6.23 **Rule 8: Firm Bank**

The Firm Bank Reconciliation included an adjustment to lodgments dating back to 12th November 2003 for £667.89 and one old outstanding cheque. These should have been investigated and corrective entries made.

6.24 The term loan was understated in the Respondent's records by £690.32 as at 31st December 2004.

6.25 The ledger showed a debit balance due to Lombard of £10,925.77 in respect of the practice loan for professional indemnity insurance and practicing certificates. This was incorrect. There should have been shown a credit balance equal to the amount of the loan less one repayment.

6.26 **Inspection of 16th, 17th and 18th May 2005**

Following upon the inspection of 31st January 2005 and 1st February 2005 the Complainers wrote to the Respondent pointing out the various breaches of the accounts rules and requesting further information and explanations. The Respondent failed to reply to that letter. In light of his failure to respond, the complainers determined that they would carry out the next inspection of the Respondents books earlier than had previously been planned because as things stood there was no way of knowing whether the matters of unrecorded deeds and other breaches were being addressed. Accordingly a guarantee fund inspector employed by the complainers carried out a re-inspection of the books and records of the Respondents on 16th, 17th and 18th May 2005.

The following matters were noted:-

- a) Of the 12 cases of failure to record deeds which were noted at the inspection of 31st January and 1st February 2005 in eight cases namely those of Mr. & Mrs I, Mrs K, Company 2 (x 2), Mr M, Mr O, and Company 1 (x 2), the deeds were still not recorded. In the case of the purchase by Company 2 of Property 11, the lender had advanced £200,000. Settlement had taken place on 8th April 2004. The accounting seen within the file showed that £10,160.00 was required for stamp duty land tax and £522.00 for recording dues, a total of £10,682. Only £9429.16 was at credit of the ledger when settlement took place, and this was reduced by £5228.75 on 25th February 2005 when the Respondent debited a fee from the ledger. The following new cases were noted:-

- b) **Mr & Mrs AG:** these clients purchased Property 14 with the assistance of a loan from Northern Rock PLC. Settlement took place on 3rd March 2005. The disposition and standard

security remained unrecorded as at the date of inspection, as did the discharge in favour of the sellers which was held on file along with a cheque from the sellers agents in respect of the recording dues.

- c) **Mr & Mrs AH :** These clients purchased Property 15 with a loan from Northern Rock PLC. Settlement took place on 24th March 2005. The stamp duty land tax form was returned as being incorrect and was not resubmitted until the first day of the inspection. The disposition and standard security remained unrecorded.
- d) **Ms AI:** This client purchased Property 16 with the assistance of a loan from Halifax PLC. Settlement took place on 4th April 2005. The deeds were not sent for recording until the first day of the inspection.
- e) **Mr AJ:** This client purchased Property 17. Settlement took place on 20th April 2005. The deeds were not sent for recording until the first day of the inspection.
- f) **Mr AK:** The Respondent also acted in relation to the sale of Property 17 on behalf of Mr AK. As hereinbefore condescended upon settlement took place on 20th April 2005. The discharge was not sent for recording until the first day of the inspection.

6.27 **Rule 11**

As at the date of the inspection in May 2005 almost all of the balances which had been noted as being uninvested at 31st December 2004 remained uninvested.

6.28 **Rule 9 Client Bank Account**

The client bank reconciliation still included an adjustment of £125.00 dating back to 25th September 2003. Old outstanding cheques were still included in the reconciliation. These should have been written back to the ledgers and re-issued where necessary. One of the outstanding cheques related to Mr AL, Property 18. The file in relation to the transaction was seen and the cheque for £66.00 (said on the reconciliation statement to be outstanding) and relating to the dues of recording a discharge and a new standard security was contained within the file. Neither the cheque nor the deeds had ever been sent for recording. Entries were being backdated at months ends. Posting dates did not always coincide with dates shown in cheques. Cheques were sometimes written out of date order. Narratives were not always sufficient to describe the transaction. For example in the ledger of Mr & Mrs AG the payment of the purchase price was shown but not the recipient of the funds. Entries to client ledgers and client bank ledgers must never be backdated as this results in an unclear audit trail.

6.29 **Firm Account**

- a) An adjustment of £667.89 dating back to 12th November 2003 was still shown on the firm bank reconciliation. The difference had still not been identified.
- b) The difference noted now in relation to the term loan was £823.93.
- c) The loan with Lombard now showed a balance of £3220.32 still outstanding. This and the term loan balance should have been corrected on the firm's trial balance in order to show the true position.

6.30 **Mr AM Executry**

In this case funds of £82,500 were uplifted on 16th July 2004 but re-invested on 29th July 2004 with no movement on the ledger up until

the date of the previous inspection in January 2005. Fees of £2800 plus vat were taken on 1st March 2004 with a further £300 plus vat on 4th May 2004. Shortly before the previous inspection the file had been assessed at a fee of £2490.00 plus vat. Accordingly a sum of £610.00 plus vat fell to be refunded to the estate. That was noted at the previous inspection and was brought to the attention of the Respondent by the Complainers in their letter to him following upon the inspection. As at the date of the May 2005 inspection nothing had been done to refund the money due to the estate.

6.31 **P Executry**

At the previous inspection, it was noted that the narrative relative to six payments made on 11th March 2004 was “share of residue”. In each case there was no reference to whom the money was paid. This was however vouched by reference to the paid cheques and the file. The balance of £564.18 which had been held uninvested since funds were uplifted on 3rd March 2004 was due to a Mr AN who suffered from Downs Syndrome and whose affairs were dealt with by a social worker. The balance condescended upon appears at paragraph 6.20. According to the file anything relating to Mr AN was to be referred to his sister one of the other beneficiaries. They approved the account of charge and discharge showed the sum being due to Mr AN. At the previous inspection it was made clear to the Respondent that he had to deal with this sum as a matter of urgency, and this was confirmed to him in writing. However as at the date of the May 2005 inspection nothing had been done in relation to this balance.

6.32 **Mrs AO Executry**

On 24th March 2005 an interim fee was taken in this case but no fee note was rendered to the executor.

6.33 **X's Executry**

In December 2004 a cheque for £4944.08 was sent to the bank of Scotland in settlement of a debt. It was returned by the bank because

the cheque had been inadvertently dated December 2003. The cheque was still held on file but was also shown as outstanding on the client bank account reconciliation.

6.34 **Outstanding correspondence**

The Respondent as at the date of the May 2005 inspection still had not answered questions raised in the letter from the Complainers to him following the previous inspection, and in particular explanations were still awaited in respect of the deficit on the client account, AA Trust, X Executry hereinbefore condescended upon, Y executry, AB executry and W executry. All of these matters were raised in the Complainers letter of 2nd February 2005.

6.35 **Complaint by The Law Society of Scotland *ex proprio motu***

In or about April 2002 the Respondent acted on behalf of Mr & Mrs AP in connection with the purchase of Property 19. After the transaction settled a question arose in relation to the power supply to the property which was a private supply coming via a neighbouring farm. Mr & Mrs AP requested information from the Respondent in this connection. The Respondent prevaricated, and Mr & Mrs AP, on 8th April 2004, invoked the assistance of the complainers. On 21st April 2004, the Complainers wrote to the Respondent suggesting that he try to conciliate and resolve the matter. The letter made it clear that it was essential for a response to be provided by the Respondent within 21 days indicating what steps had been taken by the Respondent in that connection. The Respondent did not reply. Accordingly on 23rd June 2004 the Complainers sent to the Respondent a reminder. On 15th July 2004 they wrote to advise him that they were still adjusting a list of issues with Mr & Mrs AP. Mr & Mrs AP stated to the Complainers that they had requested that the Respondent forward their file to them but that he had failed to do so. On 21st July 2004 the Respondent met with the director of the Complainers Client Relations Office and discussed the matter. During the course of that meeting the director requested that the file

be provided to Mr & Mrs AP. On 23rd July 2004 the Complainers wrote to the Respondent formally intimating heads of complaint. The Complainers letter of 23rd July 2004 referred to Section 33 of The Law Reform (Miscellaneous Provisions)(Scotland) Act 1990, and required the Respondent within 21 days of 23rd July 2004 to provide a written response to each of the foregoing heads of complaint, any further background information which the Respondent might wish to provide, his business files, and details of any fees charged or to be charged. The Respondent did not reply to the letter nor did he forward the file. On 31st August 2004 a member of the Complainers' staff telephoned the Respondent to discuss the matter. The Respondent undertook to review his file and call back. He failed to do so. Three telephone calls to the Respondent made by the Complainers staff on 3rd, 10th and 16th September were not returned. On 21st September 2004 the Complainers wrote to the Respondent requiring a response within fourteen days of that date and drawing his attention to Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980. The Respondent did not reply. On 1st November 2004 the Complainers wrote to the Respondent advising him that Section 15 now applied to him and that he was required to give six weeks notice to the Complainers of his intention to make application to take out a practicing certificate for the year commencing 1st November 2005. Also on 1st November 2004 the Complainers served upon the Respondent a notice in Terms of Section 42C of the 1980 Act requiring the Respondent to produce to the Complainers within 21 days of that date, all book, accounts, deeds, securities, papers and other documents in his possession or control relating to Mr & Mrs AP. The Respondent failed to reply. Accordingly the Complainers appointed a reporter and dealt with the complaint without any input from the Respondent. The Complainers subsequently made a finding of inadequate professional service, and pronounced a determination which the Respondent has failed to implement.

6.36 **Mr AQ deceased**

Mr AQ died in the United States on 20th November 2001. The Respondent was instructed by the family of the deceased within two or three weeks of Mr AQ's death to wind up his estate. The family advised *inter alia* MBNA Europe Bank, National Westminster PLC and Friends Provident Life Office on 7th December 2001 of Mr AQ's death and intimated that the Respondent would deal with the estate. National Westminster PLC wrote to the Respondent on 17th December 2001 with details of the accounts held by the deceased. Friends Provident wrote to the Respondent in connection with the policy held by the deceased on 21st December 2001. Nothing was done thereafter until 27th June 2002 when Friends Provident sent a reminder in respect of their earlier unanswered letter. Thereafter on 20th December 2002 the mother of the deceased wrote to say that she would call on the Respondent to take the executry file away. The Respondent persuaded her not to do so. There was some correspondence in connection with the executry between January 2003 and 15th July 2003. As at that date there were a number of letters on the file from various institutions to which the Respondent had not replied. No inventory of the estate had been prepared by the Respondent, and no application was made by the Respondent for confirmation. No further work was done in relation to the executry by the Respondent after 15th July 2003.

6.37 On 19th December 2003 the Complainers were contacted by letter by Messrs Hosack & Sutherland, Solicitors, Oban. They advised that they had since 26th September 2003 been acting on behalf of the deceased's brother. They advised that they had written to the Respondent on a number of occasions since then to try to recover the deceased's papers in order to proceed with administering the estate. They advised that a mandate had been sent on 5th November 2003 which had not been implemented. Mr. Bruce Ritchie of the Complainers spoke to the Respondent on 22nd November 2003. On the basis of that conversation he wrote to Messrs Hosack and

Sutherland on 2nd December 2003 and advised that he had spoken to the Respondent who had indicated that the file would be sent to Messrs. Hosack and Sutherland that night. Despite that the Respondent did not forward the file to Messrs Hosack and Sutherland and despite further letters from the Complainers there was no response from the Respondent. The matter was accordingly referred to the Client Relations Department of the Complainers. On 1st March 2004 they wrote to the Respondent advising that the matter would be investigated. The Respondent did not reply. Heads of Complaint were agreed and were formally intimated to the Respondent by the Complainers by letter dated 14th April 2004. Although this letter clearly required a response, the Respondent did not reply. Accordingly on 17th May 2004 the Complainers wrote to the Respondent and brought to his attention the terms of Section 15(2)(i)(i) of The Solicitors (Scotland) Act 1980. This letter was sent on 17th May 2004. The Respondent did not reply. On 21st June 2004 he was put on notice by the Complainers that in terms of Section 15(2) condescended upon he now required to give six weeks notice to the Complainers of his intention to make application to take out a practicing certificate for the forthcoming practice year. In response to that letter, the Respondent wrote to the Complainers on 30th June 2004 enclosing the file. On 21st July 2004 the Respondent met with the director of the Complainers client relations office. *Inter alia* the Respondent advised at that meeting that he held a small amount of funds for the estate. He was accordingly advised that these should be remitted forthwith to Messrs Hosack and Sutherland. The Complainers confirmed the meeting to the Respondent by letter dated 23rd July 2004. However by 13th August 2004 Messrs Hosack and Sutherland required to write to the Complainers advising that they had not received the funds from the Respondents. A number of telephone discussions took place between staff of the Complainers' client relations department and the Respondent between 25th and 27th August 2004. On 27th August 2004 the Respondent said that he would look into the matter of the funds and have them remitted as

soon as possible. On 6th September 2004 Messrs Hosack and Sutherland wrote to the Complainers advising that they had still not received the funds. On 16th September 2004 the Complainers wrote to the Respondent and asked him to confirm that he had made payment. The Respondent did not reply and on 8th October 2004 a complaint by The Law Society was intimated to Mr McCormick in respect of his failure to reply to correspondence. On 12th October 2004 the Complainers were advised by Messrs Hosack and Sutherland that the funds had now been received. No formal response had ever been made by the Respondent either to the complaint at the instance of Messrs Hosack and Sutherland condescended upon or in relation to the complaint by the Law Society condescended upon. The Complainers carried out an investigation into both matters without the assistance or input of the Respondent. They subsequently made a finding of inadequate professional service in relation to the Respondent's administration of the executry and made certain directions following upon that, which directions have not been obtempered by the Respondent.

6.38 **Mr AR**

In December 2003 Mr AR instructed the Respondent to wind up his late father's estate. Having been dissatisfied with the service which he obtained from the Respondent Mr AR invoked the assistance of the Complainers in January 2005. Heads of complaint were adjusted, and the Complaint was intimated formally by the Complainers to the Respondent by letter dated 21st January 2005. The letter required a written response to the complaint from the Respondent, delivery of his business files and details of fees charged, all within 21 days of 21st January 2005. The Respondent did not reply. On 1st March 2005 the Complainers wrote to the Respondent by recorded delivery post, putting him on notice that the complainers considered that in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 applied to him in as much as he had failed to reply to the previous correspondence. In terms of that letter he was required to respond

within fourteen days, and to explain his previous failure. The Respondent did not reply. On 6th April 2005 the Complainers wrote to the Respondent by Recorded Delivery post and in terms thereof advised him that he required to give six weeks notice to the complainers of his intention to make application to take out a practising certificate for the year commencing 1st November 2005. The Respondent did not reply. The Complainers accordingly investigated the complaint of Mr AR as best they could without the cooperation of the Respondent. They made a finding of inadequate professional service, and issued a determination which has not been implemented.

6.39 **Complaint by Mr AS (Z's executry)**

The Respondent was instructed to wind up the estate of Z who died on 24th September 2000. Being dissatisfied with the services provided by the Respondents, the executor Mr AS invoked the assistance of the Complainers on 7th January 2005. The case manager employed by the Complainers to whom the matter was allocated decided that conciliation was appropriate and she wrote to the Respondent in that connection on 12th January 2005. The Respondent did not reply. She wrote again to the Respondent on 14th February 2005. Again the Respondent did not reply. Heads of complaint were adjusted with the executor and on 25th February 2005 these heads of complaint were intimated formally to the Respondent, with a request that he reply within 21 days. The Respondent did not reply. On 7th April 2005 the Complainers served the first part of a notice in terms of Section 15(2) of the Solicitors (Scotland) Act 1980, which required a reply within fourteen days. The Respondent did not reply. On 26th April 2005, the Complainers again wrote to the Respondent by recorded delivery post, including the second part of a notice in terms of Section 15(2) aforesaid which required that the Respondent give six weeks notice to the Complainers of his intention to make an application to take out a practising certificate for the year commencing 1st November 2005. There was no response from the

Respondent. The Complainers wrote to the Respondent again on 16th May 2005 and on 24th May 2005 and received no response. Accordingly the Complainers investigated the Complaint without the benefit of any assistance from the Respondent. They concluded that the Respondent had provided his client with an inadequate professional service and made a determination which has not been implemented.

6.40 **Mr & Mrs AP**

On 21st June 2005 the Complainers had before them a complaint against the Respondent at the instance of Mr & Mrs AP. The Complainers determined in Section 42A(1) of the Solicitors (Scotland) Act 1980 to uphold the complaint that an inadequate professional service had been provided to Mr & Mrs AP. They determined in terms of Section 42A(a)(i) of the said Act that the entitlement of the Respondent to fees in respect of the services provided to Mr & Mrs AP was nil and they directed in terms of Section 42A(3) that any fees and outlays previously paid by Mr & Mrs AP be refunded to them by the Respondent. The Complainers further determined in terms of Section 42A(2)(c) of the said Act that the solicitors be ordered to transfer the relevant business file to a solicitor of Mr & Mrs AP's choice. They further determined in terms of Section 42A(2)(d) of the Act that compensation of £800 be paid by the Respondent to Mr & Mrs AP.

6.41 On 29th June 2005 the Complainers wrote to the Respondent. They enclosed a copy of the decision and determination condescended upon. They required the Respondent to furnish to them within 21 days of that date confirmation of the steps which had been taken by him to comply with the determination. The Respondent did not reply. Nor did he appeal the determination. On 24th August 2005 the Complainers wrote again to the Respondent. In terms of Section 42B of the Solicitors (Scotland) Act 1980 they again required the Respondent within 21 days of that date to provide confirmation to the

Complainers of the steps which he had taken to implement the determination. The Respondent did not implement the determination. He did not reply to the Complainers.

6.42 **Mr AU & Mrs AT**

On 19th July 2005 the Complainers had before them a complaint by Mr AU and Mrs AT which arose from the administration of an executry by the Respondent. On that date the complainers determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided to Mr AU and Mrs AT. In terms of Section 42A(2)(a)(i) of the Act, the Complainers determined that the amount of fees and outlays to which the Respondent was entitled was nil, and they directed that any fees or outlays previously paid in connection with the services provided in connection with the executry be refunded to the estate. They further determined in terms of Section 42A(2)(b) of the Act that the Respondent be required to return a cheque for \$2000 US to Boston University for endorsement or reissue at the Respondents expense or alternatively that the Respondent forward to Messrs Hosack & Sutherland Solicitors Oban as agents for Mr AU and Mrs AT a cheque for \$2000 US in order that Messrs Hosack and Sutherland might return the cheque to Boston University for endorsement or re-issue, and they directed that the Respondent be liable for any fees or outlays incurred to Messrs Hosack & Sutherland in this connection. The Complainers determined in terms of Section 42A(2)(c) of the Act that the Respondent be required to forward to Messrs Hossack and Sutherland the file of executry papers in accordance with Mr AU and Mrs AT's mandate. They determined in terms of Section 42A(2)(d) of the said Act that compensation in the sum of £1000 be paid by the Respondent to the executry of the Late Mr AQ.

6.43 On 28th July 2005 the Complainers wrote to the Respondent. They enclosed a copy of the decision and the determination condescended upon. They required the Respondent to furnish to them within twenty

one days of that date confirmation of the steps which had been taken by him to comply with the determination and direction. The Respondent did not reply nor did he appeal the determination.

6.44 **Mr AR**

On 4th August 2005 the Complainers had before them a complaint at the instance of AR in relation to the handling by the Respondent of AF's Executry. The Complainers determined in terms of Section 42A(1) aforesaid that the Respondent had provided an inadequate professional service to Mr AR. They determined that the amount of fees and outlays to which the Respondent was entitled should be restricted to nil and that any fees our outlays previously paid in connection with the services be refunded to the executry. They determined that the Respondent be required to forward to a solicitor of Mr AR choosing the file of executry papers to enable the executry to be completed, and that any fees incurred to the new solicitors should be met by the Respondent. They ordered that compensation in the sum of £1000 be paid by the Respondent to the executry.

6.45 The Complainers intimated the determination to the Respondent by letter dated 11th August 2005. They required him within 21 days of that date to notify them of the steps which had been taken to comply with the determination. The Respondent did not reply to that letter. Neither did the Respondent appeal the determination. On 8th September 2005 the Complainers served upon the Respondent by Recorded Delivery post, a notice in terms of Section 42B of the Act requiring the Respondent to notify them within 21 days of that date of the steps which had been taken by the Respondent to implement the determination. The Respondent has neither replied nor has he implemented the determination, save that in the course of November 2005 he made the file available to the new agents. *Quoad ultra* the determination remains outstanding.

6.46 **Mr AS**

On 16th August 2005 the Complainers considered a complaint at the instance of Mr AS relating to the handling by the Respondent of the late Z's executry. The Complainers determined that the Respondent had provided an inadequate professional service in relation to the executry. They further determined in terms of Section 42A of the Act aforesaid that the fees to which the Respondent should be entitled would be reduced by the sum of £400.00 with vat thereon. They directed the Respondent to repay to the executry £400.00 plus vat. They determined that the Respondent should pay compensation to the executry in the sum of £600. On 31st August 2005 the Complainers intimated their determination to the Respondent. They required him to advise them within 21 days of that date the steps which the Respondent had taken to comply with the determination. The Respondent did not reply. Nor did he appeal the determination. On 19th October 2005 the Complainers served upon the Respondent a notice in terms of Section 42B of the said Act requiring him to advise them within 21 days of the steps that which he had taken to comply with the determination. To date the Respondent has neither replied nor has he implemented the determination.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His failure to communicate with Messrs A B & A Matthews in relation to the recording of the discharge of the standard security in favour of Mrs A in breach of paragraph 9 of the Code of Conduct for Scottish Solicitors.

7.2 His failure to communicate with Mr & Mrs C and failure to account to them, in breach of paragraph 5(e) of the Code of Conduct for Scottish Solicitors.

- 7.3 His failure to reply to correspondence from the Law Society of Scotland on a number of occasions.
- 7.4 His failure to obtemper statutory notices on a number of occasions.
- 7.5 His delaying unconscionably in the implementation of a mandate.
- 7.6 His failure timeously to record deeds at settlement of conveyancing transactions
- 7.7 His breach of the terms of Rules 4, 6, 8, 9 and 11 of the Solicitors (Scotland) Accounts etc Fund Rules 2001
- 7.8 His having charged an excessive fee and having had that brought to his attention by the Complainers, failing to refund the amount overcharged to the client.
- 7.9 His using funds from his general client account to settle the claim of his former client
- 7.10 His failure from about November or December 2001 until mid 2003 to carry out his instructions in relation to the late Mr AQ's estate so that the estate remained unadministered.
- 7.11 His failure to communicate with his clients in relation to the administration of the estate and failure to advise his clients that the estate remained unadministered.
- 7.12 His failure to implement the terms of the mandate to deliver the papers for the executry to Messrs Hosack and Sutherland.

- 7.13 His sending of a fax to Messrs Hosack and Sutherland purporting to enclose the executry papers, but failure thereafter to send either the principal letter or the executry papers.
- 7.14 His failure to deal with the cheque from Boston University as part of the administration of the estate, by way of forwarding the cheque to the university of Boston for endorsement or reissue.
- 7.15 His failure to pass the said cheque on to Messrs Hosack and Sutherland.
8. The Tribunal also find that the Respondent has failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Mr & Mrs AP, Mr AU and Mrs AT, Mr AR and Mr AS within the respective periods specified; and the Tribunal resolved to make Orders in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980.
9. Having heard the Solicitor for the Respondent in mitigation and having noted two previous findings of professional misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 11th January 2006. The Tribunal having considered the Complaint dated 4th August 2005 and the two Complaints dated 9th January 2006 at the instance of the Council of the Law Society of Scotland against Nicholas Gerard McCormick, Solicitor, 28 Victoria Street, Newton Stewart; Find the Respondent guilty of Professional Misconduct in respect of his failure to communicate with clients, his failure to reply to correspondence from the Law Society and failure to obtemper statutory notices, his unconscionable delay in implementation of a mandate and failure to implement another mandate, his failure to deal with a cheque from a university in connection with administration of an estate and failure to pass said cheque on to a firm of solicitors, his sending of a fax purporting to enclose executry papers and failure thereafter to send either the principal letter or the executry papers, his

failure in dealing properly with the administration of an estate, his failure to timeously record deeds at the settlement of conveyancing transactions, his breach of Rules 4, 6, 8, 9 and 11 of the Solicitors (Scotland) Accounts etc Fund Rules 2001, his charging an excessive fee and having had that brought to his attention failing to refund the amount overcharged to the client and his using funds from his general client account to settle the claim of his former client; Order that the name of the Respondent Nicholas Gerard McCormick be struck off the Roll of Solicitors in Scotland; Direct that Orders be issued under Section 53C(2) of the Solicitors (Scotland) Act 1980; Find the Respondent 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 £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

**Alistair Cockburn
Chairman**

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

On the morning of the Tribunal two fresh Complaints were tabled and Mr McCann, on behalf of the Respondent, confirmed that the Respondent was happy to dispense with the usual requirements in connection with service and notice. Joint Minutes were lodged in respect of all three Complaints admitting all matters contained therein.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch stated that there had been a pattern of failure to invest client funds, failure to maintain records and books and failure to record deeds long after this had been brought to the Respondent's attention at inspections. The Respondent had also failed to deal with business on behalf of clients and failed to reply to the Law Society or comply with statutory notices. The most serious aspect of the Complaints was the shortage on the Respondent's bank account on 13th January 2005 until the end of January 2005 caused by the fact that he used the money from the client account to pay a sum due to a client. Mr Lynch also moved for Orders under Section 53C of the Solicitors (Scotland) Act 1980 in respect of the compensation due to the Respondent's clients and in respect of Mr AS where there was also a refund of fees due. Mr Lynch lodged two previous findings of professional misconduct against the Respondent with the Tribunal. These were admitted by the Respondent. Mr Lynch expressed his thanks to the Respondent for his substantial co-operation in entering into Joint Minutes in respect of all three Complaints. In response to a question from the Tribunal and after discussion Mr Lynch moved to amend the Complaint dated 4th August 2005 to delete the averment that the Respondent was aware of the deficit in respect of Article 10.4 of the Complaint. This was agreed.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann, on behalf of the Respondent, indicated that he had to accept that there was a very serious pattern of behaviour by the Respondent. Mr McCann stated that the Respondent had not explained the full context of his problems to the Law Society or to the Tribunal when he had appeared before the Tribunal on the last occasion. Mr McCann indicated that he only himself found out the extent of the problems yesterday and advised the Tribunal that the

Respondent had not been coping and had been suffering from depression but had not sought medical help. The Respondent had not taken a proper holiday for 10 years and had been deceiving himself that things were alright. The Respondent was not coping and was in denial and had false hopes of being able to put matters right. He did not take advice until he contacted Mr McCann in August 2005 and thereafter he had fully co-operated and faced up to his duties. Mr McCann advised that the Respondent had stress at work and also had problems in his personal life which caused him emotional strain. The Respondent had been subject to severe financial penalties in respect of inadequate professional service awards. Since 31st October 2005 the Respondent had no longer had a practising certificate and had had to sell his practice. Mr McCann advised that the Respondent had acted thoroughly and quickly in disposing of his firm. Another firm had taken over all the business. The Respondent had not been working as a solicitor since 31st October 2005. Mr McCann advised that the Respondent had equity in his practice and would have funds to meet all the inadequate professional service determinations.

Mr McCann emphasised that there was no loss to client funds and that the Respondent would be able to meet all his financial obligations. Mr McCann suggested that a Restriction would be an appropriate penalty. In connection with the averments in Article 10.4 of the 4th August 2005 Complaint Mr McCann stated that the Respondent required the money as he was being threatened with sequestration and he was due payments in fees that would cover the payment but the Respondent's error was that he took the money before the fees had been identified. Mr McCann emphasised that there was nothing sinister in connection with this transaction.

DECISION

The Tribunal was extremely concerned by the Respondent's conduct. Although the Tribunal accepted that there was no dishonesty involved the Tribunal considered that the Respondent's persistent pattern of behaviour over a number of years despite matters being brought to his attention meant that he was unfit to practice as a solicitor. The public has a right to expect a certain standard of conduct from a solicitor. In this case the Respondent failed to communicate effectively with clients and the Law Society, breached the Accounts Rules, delayed in recording deeds and failed in other professional obligations. He did this over a long period of time and despite various Law Society inspections and previous appearances before the Tribunal. The Tribunal was particularly concerned that on the last occasion when

the Respondent appeared before the Tribunal he indicated that he had introduced systems which would ensure that deeds were recorded on time and that he did not breach the Accounts Rules. Despite this the Respondent thereafter committed further breaches of the Accounts Rules and there were further delays in the recording of deeds. The Respondent also advised the Tribunal on the last occasion that he had been in correspondence with the Law Society and had answered all their queries to their satisfaction. It is clear from the Complaints before the Tribunal today that this was not in fact true. Although the Respondent may have answered the Law Society's queries in respect of the Complaint which the Tribunal was dealing with on the last occasion, it is clear from the Complaints before the Tribunal today that he was still failing to respond to the Law Society in respect of other matters. The Tribunal noted the Respondent's solicitor's submissions that the Respondent was suffering from depression but also noted that no medical evidence of this had been provided to the Tribunal. The Tribunal consider that the public have a right to expect more from a solicitor and consider that the Respondent's persistent conduct over a number of years is regrettably disgraceful and dishonourable and means that the Respondent is no longer a fit and proper person to remain on the Roll of Solicitors in Scotland. The Tribunal was also satisfied that the Respondent had failed to comply with the Determination and Directions made by the Law Society and considered that it was appropriate to make Orders under Section 53C(2) of the Solicitors (Scotland) Act 1980. The Tribunal made the usual order with regard to publicity and expenses.

Chairman