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

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, Atria One, 144 Morrison Street, Edinburgh

Complainers

against

IAIN ALEXANDER LESLIE, Leslie & Co. SSC, Blackrock House, 2/8 Millar Crescent, Edinburgh

Respondent

1. A Complaint dated 9 June 2020 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Iain Alexander Leslie, Leslie & Co. SSC, Blackrock House, 2/8 Millar Crescent, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was no Secondary Complainer.

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent at this stage.

4. In terms of its Rules, the Tribunal set down a virtual procedural hearing on 9 November 2020 and notice thereof was duly served on the Respondent.

5. Answers were lodged for the Respondent and these were allowed to be received late.

6. At the virtual procedural hearing on 9 November 2020, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and

represented by William Macreath, Solicitor, Glasgow. On joint motion, the matter was set down for a full virtual hearing on 20 January 2021. Both parties indicated that they were discussing a Joint Minute.

7. In accordance with Rules 44 and 56 of the Tribunal Rules 2008, on joint motion, the Tribunal administratively adjourned the virtual hearing to 15 March 2021, with a virtual procedural hearing to take place in advance on 23 February 2021.

8. At the virtual procedural hearing on 23 February 2021, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Both parties were content for the matter to be continued to the hearing already fixed, despite the Joint Minute not yet having been completed. Accordingly, the Tribunal continued the matter to the virtual hearing already fixed for 15 March 2021.

9. At the virtual hearing on 15 March 2021, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal allowed a Joint Minute and a Statement for the Respondent together with an addendum to be received. The Fiscal confirmed that he was not leading any evidence. The Respondent gave evidence-in-chief and cross-examination had commenced when the time of day required that the matter be continued to 12 April 2021 and if necessary, to continue on 13 April 2021.

10. At the continued virtual hearing on 12 April 2021, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal heard the conclusion of evidence and submissions for both parties. The virtual hearing was continued to 13 April 2021 and on that date the Tribunal sought further information from both parties. Thereafter, the Tribunal began its deliberations. These not being concluded by the end of the day, the Tribunal continued the virtual hearing to 23 April 2021 to continue its deliberations.

11. On 23 April 2021, the Tribunal met to continue its deliberations. These deliberations not being completed within the available time, the virtual hearing was continued to 27 April 2021 for the deliberations to be completed.

12. At the continued hearing on 27 April 2021, the Tribunal met to continue its deliberations.

13. Having given careful consideration to the oral evidence, Joint Minute, Productions and submissions, the Tribunal found the following facts established:-

13.1 The Respondent is Iain Alexander Leslie who was born on 1st May 1962. He was enrolled as a solicitor on 21st October 1986. He was trained with Russell & Aitken Solicitors, Edinburgh. On qualification in 1986 he was an assistant with Messrs J C & A Steuart in Edinburgh. He became a partner in the firm of Moncrieff & Dove Lockhart, Edinburgh in April 1990. That firm dissolved in December 1990 and he then became a partner with Messrs Sturrock Armstrong, Edinburgh in January 1991 and remained a partner until January 2008. Thereafter he commenced practice on his own account on 1st February 2008. He practises as Leslie & Co SSC, Edinburgh. He is the cashroom partner, client relations partner, money laundering reporting officer and risk management partner of Leslie & Co SSC. The Respondent was also a consultant with the firm MA, London and Hong Kong, albeit this was an informal arrangement.

13.2 The Financial Compliance Department of The Council conducted an inspection of the financial records, books, accounts and documentation of the Respondent's firm on 7 May 2013. The Council's productions numbers 1-10 are the report which was prepared in relation to that inspection and the responses made by the Respondent thereto. The report is a true record of the inspector's findings. The Council did not consider that further action was required as a result of this inspection.

13.3. This inspection identified a number of concerns which were highlighted in the afore mentioned report. The matters highlighted included breaches of The Law Society of Scotland Practice Rules 2011 Rule B6.23 Anti-money Laundering Regulations as follows: -

i. Risk Assessment – although risk assessments were being carried out they were being completed in respect of the client and not for individual transactions. One of the assessments had been completed 4 years prior to the transaction taking place. The Respondent was asked to ensure that a risk assessment was carried out for every transaction undertaken with clear

documentation being held to evidence the level of risk assessed and how the decision was arrived at.

The Respondent was also asked to ensure that a method of ongoing monitoring was put in place and evidenced.

ii. Originating Source of Funds Wealth – the Inspector noted that there was no evidence of originating source of wealth in relation to 3 transactions. The sums in question were £20,000 and a further £20,000 in respect of one client, £20,630 in respect of Chinese clients and £414,500 in respect of a third client.

The Respondent was advised to ensure that verification of the originating source of funding received from clients was obtained as required in future in order to be compliant with the regulation requirements.

13.4 The Financial Compliance Department of The Council carried out a further inspection of the financial records, books, accounts and documentation of the Respondent's firm on 3 April 2017. The Council's productions numbers 11-55 are the report of the inspection and the Respondent's responses thereto both by email and within the body of the Report. The report is a true record of the inspector's findings.

13.5 The Financial Compliance Department deemed the findings of the inspection sufficiently serious to refer the matter to the Client Protection Sub-Committee (CPSC) which met on 7 September 2017.

13.6 The Respondent submitted a detailed response on 30 August 2017 to the Financial Compliance Department in relation to the issues raised. In light of this the CPSC decided that it was necessary to invite the Respondent for interview.

13.7 The CPSC recommended that the firm be re-inspected in January 2018 and that a complaint be referred to the SLCC for investigation in connection with breaches of the accounts rules: B6.13 - Cashroom Manager responsibilities; B6.4 - Duty to rectify breaches; B6.23 - Compliance with the Money Laundering

Regulations 2007; B6.7.1.(c) - Keeping properly written up records; B4.2 - Client communication.

13.8 The findings detailed in the Executive Summary included the following:

i. Schedule 1: Rule B6.13 Cashroom Manager Responsibilities; Rule B6.4 Duty to Rectify Breaches.

The Inspector noted that the records of the practice unit were insufficient and did not demonstrate compliance with the Money Laundering record keeping requirements and that it was imperative that adequate systems were implemented without delay to fully comply with the Regulations.

The Inspector further noted that the Respondent's practice unit was last inspected on 7 May 2013 where instances of insufficient Anti-Money Laundering systems and procedures relating to risk assessment, source of funds and source of wealth were brought to the attention of the Respondent.

The Inspector stated in the Summary that it was of concern that similar instances of non-compliance with the Money Laundering Regulations continued to be noted at the current inspection.

The Respondent was advised that adequate systems and procedures required to be implemented without delay to fully comply with his obligations as Cashroom Manager and Money Laundering Reporting Officer.

ii. Schedule 2: Rule B6.23.1 Money Laundering Regulations 2007 Policies and Procedures (Regulation 20).

The Inspector observed that the procedures provided by the Respondent during the inspection did not contain all of the required information to evidence that the practice unit was fully complying with Regulation 20.

The Inspector advised that the Respondent, as Cashroom Manager, was responsible for ensuring compliance with the Money Laundering Regulations/ record keeping as part of Rule B6.7.I(c).

The Respondent was advised that he must put in place adequate risk sensitive policies and procedures which must be tailored to his practice unit and should also include information regarding customer due diligence and on-going monitoring, reporting, record-keeping, internal control, risk assessment and management and monitoring and communication of such policies. The Respondent was referred to the Law Society's website for guidance.

iii. Schedule 3: Rule B6.23 – Risk Assessment

The Summary detailed four transactions where risk assessments had been carried out but had not been completed on an ongoing basis and did not demonstrate that customer due diligence measures applied to the transactions were appropriate in line with the higher risk transactions.

The transactions in questions were SW; XG; MC; AE Ltd.

The Inspector noted that the Respondent appeared to in breach of Regulation 7(3), 14(1) and 19 of the 2007 Regulations.

It was further noted in the Summary that the Respondent required a documented risk assessment to be carried out clearly detailing why/how he deemed transaction level risks and these must be carried out on an ongoing basis with evidence of this having been done.

iv. Schedule 4: Rule B6.23 Client Identification

In respect of the four transactions referred to in schedule 3 the Inspector observed that the Respondent had not demonstrated compliance with the regulation requirements in terms of client identification as follows:

SW – purchase of property in Edinburgh on 15/11/16 - this client was a referral from MA who confirmed that they would conduct the AML checks. The only client identification on the Respondent's file was an emailed copy of the client's passport. The client was living in Hong Kong.

In respect of this client the Respondent corresponded with MA and not the client directly.

XG – purchase of property in Edinburgh on 1/3/17 – two forms of identification were seen one of which was a copy letter from a job centre confirming the client's national insurance number. The letter was addressed to the client at a different address from the one held on the Respondent's client ledger. The other document was the client's passport but this was only a part of the document and did not contain the passport number. Both documents were emailed copies.

In respect of this client the Inspector also noted from the Respondent's file that all correspondence and instructions were with the client's husband and there was no instruction on the file from the client authorising the Respondent to accept instructions from another party. In addition, there was no identification documentation in respect of the husband.

MC – purchase of property in Edinburgh on 3/3/17 – only one form of identification was seen on the Respondent's file and this was a copy passport which appeared to have been provided by MA.

The Inspector also noted that most of the Respondent's correspondence was with the client's daughter and there were no instructions on the file from the client authorising the Respondent to accept instructions from another party.

AE Ltd – AR002/1 – purchase of property in Edinburgh on 10/3/17 - the identification documentation was in relation to Mr S, a Director of the company. There was no evidence regarding who the beneficial owners were or identification for them.

The Inspector stated that original documentation must be obtained and required to be no more than 3 months old and must confirm the client's address. Photographic identification was also required.

In subsequent correspondence between Financial Compliance and the Respondent various documents were produced by the Respondent. It was noted that in respect of the client MC some documentation was in Chinese and had not been translated by the Respondent.

v. Schedule 5: Rule B6.23 Reliance

Regulation 17 specifies the relevant parties who a Regulated Person may rely on to apply any customer diligence measures on their behalf. The person being relied upon must consent to being relied on and the Regulated Person carrying out the work on behalf of the client remains liable for any failure to apply appropriate customer due diligence measures.

The Inspector noted that identification for some clients had been accepted by the Respondent from MA but there was no evidence of written consent from that firm to rely on the information provided. The Inspector advised that it would be accepted that consent had been given if MA had forwarded the identification documentation to the Respondent with a headed letter or if the documentation had been stamped by them as certified.

vi. Schedule 6: Rule B6.23 Originating Source of Funds/Wealth

The Inspector noted that no evidence of source of wealth was seen in respect of the following:

SW – the client paid the purchase price for the property to MA who then transferred the funds into the Respondent's client account in two instalments of £5,000 on 13 October 2016 and £270,680 on 31 October 2016. No details of how the client was able to fund the purchase were detailed on the Respondent's file either from the client or from MA.

XG – in relation to the purchase of the property two sums of money were received by the Respondent from the client on 27 February 2017, £6,672 and £33,000, but the Respondent had no details of the source of wealth on his file. There was an email on the file from the client's husband stating that the funds would come from his mother-in-law but there was no evidence on the Respondent's file confirming the position or from where the funds were actually received.

MC – in relation to the purchase of the property the Respondent received the sum of £196,972 on 28 February 2017 from the client's daughter. The Respondent had on his file a copy of a TSB bank statement dated 1 February 2017 in the name of the daughter and there was a note on the file that the client and her husband would be transferring funds to their daughter's account but the Respondent had no evidence of this on the file and no verification of source of wealth.

AE Ltd – in relation to the purchase of the property the Respondent received the sum of £605,000 on 28 February 2017 from one of the directors of the company. Copies of two Nationwide online banking statements were on the Respondent's file but the statements did not display the account holder's name and the Respondent had no information regarding source of wealth on his file.

The Respondent responded to the above on 19 May 2017 advising that the purchase price for the AE Ltd transaction was made up as follows: £86,000 from Company 1 (a family company); £175,000 from Company 2 (another family company); £52,000, £45,200 and £25,000 from family share accounts and £216,000 from Mrs S's savings account with Nationwide.

The Financial Compliance Department noted that the information provided by the Respondent evidenced source of funds rather than source of wealth and that there was not a full audit trail linking all funds received towards the transaction from the companies and how the funds originated and were accumulated.

In relation to the client MC the Respondent obtained documentation from the client which then required to be translated from Chinese.

vii. Schedule 7: Rule B6.23 Training (Regulation 21)

The Inspector noted that the Respondent did not have documented evidence to show that all staff had received Money Laundering training.

In his response, on 19 May 2017, the Respondent confirmed that in future all staff would be provided with adequate training and that better paper records would be kept.

13.9 Transaction re SW

On 4 October 2016 SW signed a letter of authorisation confirming instruction of Leslie & Co. On 4 October 2016, MA sent an email to the Respondent stating *"We have completed the AML checks. So you could kick off and send the offer to Morton Fraser."*. The Respondent sent an email to MA enclosing a letter of engagement addressed to SW and dated 11 October 2016. In the email, the Respondent requested copies of "the required identification documentation". SW was the Respondent's client for the purposes of this transaction. The Respondent relied upon the email of 4 October 2016 from MA.

13.10 Transaction re XG

On 31 October 2016, the Respondent issued a letter of engagement to XG. She was his client. With the exception of the letter of engagement, all correspondence noted on the file prior to the inspection taking place was with the client's husband.

13.11 Transaction re MC

The file contained an email from YL dated 28 November 2016 stating that it enclosed a copy of the client's passport and proof of address. On 26 January 2017, the Respondent issued a letter of engagement addressed to MC. She was

his client. All correspondence noted in the file with the exception of the letter of engagement, was addressed to the daughter of his client, WZ.

13.12 Transaction re AE Ltd

The file contained emails dated 12 & 13 February 2017 from Mr S confirming the details for AE Limited and that the funds for the transaction were coming from his own resources. On 14 February 2017, the Respondent sent a letter of engagement addressed to "[Mr S], [AE Limited]" referring to "[AE Limited] proposed purchase". On 15 February 2017, Mr S signed an acknowledgement of the letter of engagement as director, on behalf of AE Limited. AE Limited were the Respondent's client.

13.13 The Law Society of England and Wales Anti Money Laundering Practice Note of October 2013 was adopted by the Law Society of Scotland using delegated powers on 4th December 2014. So far as can be ascertained the first public announcement by the Law Society of Scotland that this had been so adopted was by an article in the Journal of the Law Society of Scotland dated 11 December 2016.

13.14 The Respondent was absent from the office at the time of the inspection as a result of long-standing health issues. He continues to receive treatment for these issues.

14. Having carefully considered the established facts and the submissions previously made by both parties, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect that:-

a) the Respondent, in the period preceding and up to at least 3 April 2017, failed to apply, or retain or exhibit evidence of having applied customer due diligence measures on a risk sensitive basis in respect of the clients of the practice unit as required by Regulations 7, 14 and 19 and in particular failed to:

- retain or exhibit evidence of having undertaken, ongoing monitoring of risk in respect of 4 transactions;

- undertake, or retain or exhibit evidence of having undertaken, enhanced customer due diligence measures and enhanced ongoing monitoring in respect of 3 transactions;
- undertake, or retain or exhibit evidence of having undertaken, an appropriate level of customer due diligence in respect of client identification in respect of 4 transactions;
- undertake, or retain or exhibit evidence of having undertaken, customer due diligence in respect of source of wealth in respect of 4 transactions identified by the Financial Compliance inspector in 2017;

b) the Respondent, in the period preceding and up to at least 3 April 2017, failed to keep properly written up accounting records to demonstrate compliance with the Money Laundering Regulations in breach of Rule B6.7.1(c) of said Practice Rules; and

c) the Respondent, in the period from 7 May 2013 up to at least 3 April 2017, failed to use reasonable endeavours to acquire and maintain the skills necessary to discharge his responsibilities as the practice unit's Cashroom Manager in respect that the records of the practice unit were not being maintained properly and did not demonstrate compliance with the Practice Rules, some of said rule breaches having previously been advised during the inspection of 2013, in breach of Rule B6.13.2 of said Practice Rules.

15. The Tribunal continued the hearing to 10 May 2021 for both parties to be present and given the opportunity to make further submissions.

16. At the continued virtual hearing on 10 May 2021, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal intimated its decision to both parties and invited further submissions in respect of mitigation, expenses and publicity. The Fiscal had no further submissions to make with regard to disposal or publicity and invited the Tribunal to make an award of expenses in favour of the Complainers. The Respondent made further submissions in relation to mitigation and confirmed he had no opposition to the motion for expenses. He made no submissions in relation to publicity.

17. The Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 10 May 2021. The Tribunal having considered the Complaint dated 9 June 2020 at the instance of the Council of the Law Society of Scotland against Iain Alexander Leslie, Leslie & Co. SSC, Blackrock House, 2/8 Millar Crescent, Edinburgh; Find the Respondent guilty of professional misconduct *in cumulo* in respect of his contraventions of Regulations 7, 8, 14 and 19 of the Money Laundering Regulations 2007 and Rules B6.7.1(c), B6.13.2 and B6.23 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Kenneth Paterson

Vice Chair

18. 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

Kenneth Paterson

Vice Chair

NOTE

The hearing of evidence and submissions in this Complaint commenced on 15 March 2021 and continued on to 12 and 13 April 2021. All of the days of hearing proceeded on the virtual platform Zoom. At the commencement of the hearing on 15 March 2021, the Tribunal had before it a Record, five Lists of Productions for the Complainers and two Lists of Productions for the Respondent. A joint motion was made inviting the Tribunal to allow a Joint Minute, a written statement for the Respondent and a document headed "Response to Law Society Inspection Report Update of 14 August 2017" to be received. That motion was granted.

The Fiscal informed the Tribunal that he was withdrawing the averment of professional misconduct at paragraph 5(1)(a). Thereafter, he confirmed that he did not intend to lead any evidence beyond the Productions he had lodged taken together with the Joint Minute.

Mr Macreath indicated that he intended to lead only one witness, namely the Respondent. He intended to take evidence from the Respondent highlighting certain parts of his written statement and commenting on the content of the inspection report and the file extracts lodged by the Complainers.

EVIDENCE FOR THE RESPONDENT

The Respondent had submitted a written statement which was as follows:-

"

1. My full name is Iain Alexander Leslie. I was born on 1st May 1962 and I am now 58 years of age. I was admitted as a solicitor in Scotland on 21st October 1986.

2. I was educated at George Watson's College, Edinburgh. On leaving school in 1980 I went to Aberdeen University where I obtained my Law Degree in 1983 and my Diploma in Legal Practice in 1984. During my time at Aberdeen University I was heavily involved with my rugby club Watsonians and also in student sport at Aberdeen University. In 1983/84 I was elected president of the Aberdeen University Sports Union.

3. I returned to Edinburgh in the summer of 1984 and took up a training contract with Messrs Russel & Aitken there. On qualification in 1986 I was an assistant with Messrs J C & A Steuart in Edinburgh. In 1988 I joined Messrs Scott Moncrieff & Dove Lockhart becoming a partner of that firm in April 1990. That firm dissolved in December 1990 whereupon I became a partner in Messrs Sturrock & Armstrong again in Edinburgh in January 1991 and remained a partner till January 2008. At that point in time I determined to operate on my own account and commenced practice trading as Leslie & Co on 1st February 2008.

4. In around 1990/1991 I stopped playing rugby at any serious level and became involved in sports administration mainly for Watsonians. I was House Convenor of the Watsonians Club for a 10 year period and from 1980 to date I have served Watsonians as player, captain, manager, coach, part-time referee and then President of the Club in 2002/2003. I am currently Club Secretary of Watsonians. I also serve on the Scottish Rugby Union Disciplinary Committee as a Panel Chairman and I have served the Six Nations and the pro-14 rugby tournaments on their discipline panels. I became a Solicitor in the Supreme Court and still retain my membership of that Society.

5. [……..]

6. [……..] Despite the setbacks, I remain determined to carry on in business and to look after my loyal and understanding client base. The vast majority of my clients are personally known to me and many of them are connections through sport and through the Watsonians Club.[…...]

7. Following upon the April 2017 financial compliance inspection, I provided a response to [SB] a senior official within the Society Financial Compliance department on 30th August 2017 which is produced herewith. I offered to be interviewed but was not invited to interview. Such an interview was deemed unnecessary but no explanation why was given. I was given no chance to explain my circumstances and to provide a full explanation about the four transactions under review. If I had been present at the inspection I feel certain I would have been able to explain each file in a satisfactory fashion, especially as no other files other than the four in question were requested for examination. The only discussion I had with one official was about updating my AML systems and procedures due to the coming into force of the new ML regulations of 2017. I was advised by the inspector who attended the office that rather than answer specific questions on files I should await receipt of the executive summary and only then address the issues. I did have discussions with two officials, [SB] and [Mr M] who had only that time been appointed an inspector within the Anti-Money Laundering Committee Team. My firm was re-inspected in January 2018 and that re-inspection disclosed compliance.

8. At the time of the inspection my staff were not asked for any electronic material but only four paper files. No other files were sought. My secretary told me that the inspectors did not ask her any specific questions nor did they raise any questions for me to answer. They did not receive the emails and the electronic files. Full cooperation was provided by my secretary and cashier. I left the inspection in the hands of my experienced cashier at one time a Law Society employee and also my secretary who had been with me for many years. The Four transactions referred to in the complaint were specifically sought by the Inspectors. Due to my admission to hospital I was not able to review files and to complete them in the sense of ensuring that matters held digitally could well have been printed and placed on the files.

9. I explained to the Society that I had been associated with [MA] an established legal practice with offices in Hong Kong, London and Edinburgh and for a time was a consultant to that firm. I therefore relied upon that firm carrying out identification of clients who were established clients of [MA]. The clients referred by [MA] had already been vetted by them. Three out of the four cases were referred by [MA]. [LL] referred a client [Mr S] a Chartered Accountant of substantial means and I acted for him and his company [AE Ltd]. [Mr S] and [AE Ltd] continues to be an established client. Following upon the 2013 inspection my practice comprised a full-time secretary and a part-time bookkeeper and the cashier was [Mrs O] a former Society inspector. At the 2013 inspection I updated my AML compliance with the assistance of [Mrs O]. I also acquired training by way of DVD and attended a seminar where I received a helpful handbook on the 2007 AML Regulations. That handbook, the DVD and seminar notes were distributed to the staff and I undertook in-house training with them. I also obtained a style of a risk assessment form which I completed in respect of every client at the beginning of the transaction. The risk assessment forms were contained in a separate folder in the office. I explained to the Society that I had been a consultant of the firm of [MA] and the AML checks that I carried out for their clients referred were the same as carried out by [MA]. I stressed to the Society that not all information was contained in the paper files. I advised the Society on more than one occasion that I covered more in electronic form which I then sent subsequently to the Society. This comprised papers previously held in electronic form which have accompanied my responses at the time of April 2017 inspection. I offered the same information at the time of March 2013 inspection but it was deemed unnecessary by the Society. I did make concessions and demonstrated insight and contrition. I explained to the Society that the four transactions contained in this complaint were assessed as medium risk but in all four cases there was no question of any concern far less suspicion on my part regarding any dishonesty or attempted money laundering by the clients. In three of the cases, the clients have continued to instruct my firm and [Mr S] of [AE Ltd] is now an established client with whom I have ongoing relationship. I consider that I was bound to issue letters of engagements even in cases of referrals from clients of other firms. I did not consider that I had to carry out a full AML assessment as I believed I was entitled to rely upon regulation 19 and that the firms referring the work being [MA] or [LL] are regulated firms and would have carried out appropriate risk assessments. What I did was carry out such assessments based on the information given. After the inspection I accept that I wrote to the referring solicitors seeking the information requested in terms of the executive summary as that was the correct thing to do. I confirm I wrote to the clients also and spoke to them by telephone to assist the collation of the information sought within the executive summary.

10. In each of the four transactions I considered that I carried out adequate risk assessment on an ongoing basis and could demonstrate that customer due diligence measures applied. My Answers to the complaint confirm that three of the transactions relate to referrals by [MA] and are files in the names of (1) [SW], (2) [XG] and (3) [MC]. The fourth file was referred by [LL] for [AE Ltd] being (4) [AE Ltd]. I have always denied that I breached the 2007 Regulations. I have always argued that I ensured proper compliance of client identification. I have already explained my personal circumstances given that three days per week I undergo dialysis. It used to be in the mornings and is now in the evenings. The Society

needed to take into account the size of my business. I maintained that it was anticipated in terms of the 2007 Regulations that there be a proportionate mechanism for compliance with the 2007 Regulations whereas the Law Society appears to have imposed "best practice" which was never the intention of the 2007 Regulations nor the Guidance which was followed by the Society in particular the Law Society of England and Wales Guidance of 2013 followed by the Law Society of Scotland in December 2014. I understand the intention was to revise to incorporate reference to Scottish circumstances but that did not occur with only changes made to the Law Society Website guidance. An article in the Law Society of Scotland Journal was the first public pronouncement on 12th December 2016.

11. Given that I was a part-time sole trader and sole fee earner with no other professional staff I personally handled every aspect of every transaction that I conducted. I say in terms of the Guidance I was not required to have a comprehensive documented policy in place. I was required in terms of the 2013 Law Society of England and Wales Guidance to have a system outlining the client due diligence measures to be applied to specific clients. What I had in place was sufficient to demonstrate that I was carrying out these measures and they were appropriate. There was a latitude allowed to firms in my position regarding the documentation of procedures, controls, policies and risks. I have narrated within my Answers the Guidance so far as risk assessment is concerned. I submit that at the relevant time of the four transactions covered by the 2007 Regulations there was no requirement to have a formal documented client matter risk assessment. I put together a folder of the AML research on policies and proffered these to the inspectors carrying out the inspection but they did not examine the papers. I did send papers to a Law Society AML auditor but on the basis that it was the [MA] manual and was deemed not appropriate to my firm it was rejected. I proffered the [MA] manual because I was engaged as a consultant by them and part of that consultancy required me to adhere to their procedures, protocols and policies and that is what I did. I have explained this by reference to the 2007 Regulations and the more informal approach given the Guidance of 2013 from the Law Society of England and Wales. The Joint Money Laundering Steering group (JMLG) Guidance Part 1, which the Law Society had adopted previously, imposed more exacting standards but when the Law Society of Scotland adopted the Law Society of England and Wales practice note of 2013 a less rigorous standard was imposed so far as documented procedures, controls and policies were concerned. I was a sole trader with no other professional member of staff. I was Cashroom Partner as well as MLRO and I accepted responsibility for everything in the office including risk assessment. I was not ignorant of the regulations and guidance. I applied that regulation and guidance to those cases which I dealt with but in those cases referred to me by other firms I did rely to a certain extent on the referring firms. I did not wilfully disregard the rules and regulations. I did provide to the Law Society my procedures, controls and policies. It is acknowledged in the executive summaries that assessments had been carried out. I did keep a separate file to comply with the guidance.

12. I now turn to the transactions themselves and comment as follows:

1. [SW] purchased property [in] Edinburgh. The client was [MA] and not [SW]. I accept that any referral to me became my client. However, in this case the original offer was submitted by [MA] together with AML checks which [MA] carried out. I placed a degree of reliance on the AML carried out by [MA]. This was a family transaction with the mother who was living in Hong Kong and was providing the price/deposit. At the time of the inspection I provided a note on the documentation which I required. I accept that post the inspection, I provided further documentation including translations of bank statements. All matters were checked including sources of funds and wealth and the only element of concern was the risk factor being the overseas involvement. The non-identification of source of funds is a proceeds of crime issue and not an anti-money laundering issue. The 2007 Regulations refer to the client which client was [MA] and I was acting as its consultant. The transaction commenced on 11th October 2016 and concluded by 15th November 2016 with the file closed on 27th February 2017. The value of the transaction was £272,000 and the transaction did not require a lender. My fees were £500 exclusive of VAT and disbursements. [DM] a partner of [MA] in Hong Kong directed the transaction with instructions from him and I acted as agent. [MA] was a regulated legal firm at that time with offices in [...] Edinburgh and I visited the offices often. It was a purchase in [...] in Edinburgh with a deposit of £5,000 paid in advance of my instruction. The property was already tenanted and the existing lease would be renewed on completion of the transaction. Savills Hong Kong dealt with matters and agreement was reached between seller and purchaser directly brokered by Savills in Hong Kong. Settlement funds came from [MA] Hong Kong offices directly to my offices on 31st October 2016. The funds came through a regulated firm of solicitors. I maintain that the client was a client of [MA]. I issued a letter of engagement as I considered it necessary under our own Accounts Rules and in terms of the Practice Rules.

2. The second transaction involves [XG] regarding a purchase of property [in] Edinburgh. The matter commenced on 31st October 2016. I had acted for the client and her husband in transactions whilst a consultant at [MA]. I met the couple face to face and this transaction confirmed that I could identify and verify the status of the clients. I submit that no risk assessment form was required conform to the Guidance then in place being the Law Society of England and Wales Practice Note 2013 Section 3.82. The matter settled in March 2017. The value of the transaction was £39,000 and the funding came from [Mr G]. The clients were clients of [MA] whilst I was a consultant at that firm. The clients had purchased other property in Edinburgh and I completed another transaction in October 2016 shortly before [MA] Edinburgh offices closed. Title was taken in the name of the husband and he granted a security over the subjects. Part of the scanned Passport was printed to the paper file which I accept was not printed properly. However I had examined the digital copy of the Passport and the copy passports of the client and her husband were received in May 2017 plus an extract from the risk assessment form from the transaction relating to the purchase of other property which had completed in October 2016. The home address for the parties was an address in Edinburgh and correspondence went to that address with the letter of engagement.

I also held details of a TSB bank account printed at the branch and stamped by the bank in August 2016 and provided by the client in May 2017. The RBS account was also evidence of source of funds in name of the client with the home address shown and provided again in May 2017. Both [XG] and her husband were established clients and had purchased a variety of properties where the lead client (the husband) gave instructions. There was no evidence that the client was a politically exposed person nor were there other high risk indicators available. Only if there had been a red flag circumstance would I have been required to carry out enhanced due diligence and carry out a source of funds check. I met [XG] face to face with the original Passport and Power of Attorney showing her home address in Edinburgh and had acted in other transactions for them. The accumulation of capital came from savings from their employment. The husband is a UK citizen. I advised the Society that I had interviewed [XG] and her husband in a face to face meeting. The flat in question was [...] on the outskirts of Edinburgh. We liaised with [XG and her husband] throughout the transaction. The purchase price being £39,000 and the funds came from [XG] and her husband's account in the UK.

3. In the transaction for [MC] the purchase was of [a property in] Edinburgh. I commenced the matter on 29th November 2016 with a letter of engagement sent to the client via her daughter [WZ] on 26th January 2017. Whilst there was no risk assessment form on file none was required according to the Guidance in force at the relevant date. There was an email exchange regarding funds and the contribution from the mother in November 2016. Contracts were concluded in February 2017 with funds transferred to enable the transaction to settle on 3rd March 2017 and the file closed on 18th May 2017. The value of the transaction was £195,000 with a deposit paid by the husband. The fees charged were £500 exclusive of VAT. There is reference to the client's Passport being on file and evidence of the copied Passport and proof of address and evidence that funds were provided by the client and her husband with copy bank statements although I accept there is no translation. The mother of [WZ] lived in China and she had offered for several properties and her daughter [WZ] lives in Edinburgh and acted as agent and point of contact. The mother and father's funds which came from a bank account in China were transferred to the daughter who in turn transferred the funds to my account to enable settlement. I consider there were no red flag circumstances due to the nature of the transaction. As this was a referral from [MA] they spoke to the family living in China and in this transaction [MC's] daughter lives in the UK. I was a close friend and contact of an assistant solicitor in [MA] Edinburgh. I met [MC's] daughter face to face. Checks were carried out and identification provided. [MA] obtained the bank statements, utility accounts and translations. I accept they were obtained after the request from the Law Society despite the fact that [YL] of [MA] could translate and verify the documents. I understand [YL] is a qualified Judge in Korea. Again this transaction was for relatively modest value being a flat purchased [...] in Edinburgh in which the daughter was to reside.

I became a consultant of [MA] as a result of an introduction by [AL] who was a solicitor with that firm in the Edinburgh Office. [AL] is a civil litigation solicitor with little conveyancing experience. He asked if I could assist the firm to conduct conveyancing on their behalf and after meeting partners of [MA] I agreed to become a consultant. [MA] employed [YL] who had been a circuit judge in South Korea and spoke fluent Chinese. She was based in Edinburgh and therefore could carry out interpretation and translation for myself. [MC's] daughter was a good friend of [YL] and there were face to face meetings although funds were provided from abroad.

4. I now turn to the transaction involving [Mr S] and [AE Limited]. This was a purchase of a portfolio of properties at [...] Port Glasgow. I opened the file on 12th February 2017 with a letter of engagement issued that day. Company information together with Passports and appropriate proof of identity were provided by [Mr S] the director of the company on the 15th of February 2017. The introducing solicitors in London were [LL] a regulated firm. There is a letter from those solicitors dated 18th May 2017 upon which I have relied which included a certified copy of the Passport appropriate POA company information and range of bank statements. The company [AE Ltd] is a UK based private limited company wholly owned by [Mr and Mrs S]. [Mr S] is a well-established chartered accountant in London. [Mr S] sent copies of his own Passport and those of his wife plus further proof of identification and bank statements. No lending was required and the source of funds was evident from the paper trail which is on the file. Whilst this was a referral by [LL], [Mr S] was that firm's chartered accountant. He was a personal friend of [LL's] senior partner with whom I had dealt for several years. I carried out my own background checks on [Mr S] regarding his accountancy background. [Mr S] had already been dealing with a firm in Scotland on the transaction but was very unhappy with unacceptable delays in responding to correspondence and he wished to change agents.

I wish to repeat that the auditor inspecting the books and records only requested the four files produced which are now the subject of the complaint. Three of the files related to clients referred by [MA] the firm of which I was a consultant and the other by [LL] with whom I had had a working relationship and had known the senior partner for several years having done business with him on a regular basis. As far as I was concerned the three [MA] clients had all been checked by [MA]. In one case I was instructed by [MA] for their client who lived in Hong Kong and dealt directly with [DM] at the [MA] offices there. All others had family connections in Edinburgh and I was able to meet families on a face to face basis. In respect of the [LL] client referral [Mr S] [LL] carried out the AML checks. [Mr S] was the accountant dealing with [LL] Law books and records and returns to the English Law Society. [Mr S] was a man of substantial wealth, a senior partner in his own accountancy firm and I had spoken to him on several occasions before being instructed in the purchase of the portfolio property. In addition I also had a face to face call with him on Skype. Other than requesting the four files the Law Society inspector asked for little else and did not request anything by way of AML policies or procedures. Little was asked by way of

electronic information. I have already advised the Law Society that I appreciated my need to keep up to date with the rules particularly the new regulations come into force in June 2017. As a result I reserved a place at a seminar given by [GG] of Kirklands in Perth. [GG] is an acknowledged expert in the field and I purchased the AML system from Kirklands which they recommended with a view to ensure compliance. The seminar took place in May 2017 and the Kirklands system was installed in June 2017. I should make clear that at the time of the inspection the subject of AML was raised and through my staff I was advised of the issue where the inspector indicated that "we like a paper trail". There is no indication that such a trail was mandatory given the significant information held on computer. It was pointed out that the firm did have the information on computer which may not be on the file at the time. When asked about the four files which were taken by the Society I was told to wait for the audit report and then to answer it. I was surprised by this approach as I could have clarified to the inspectors at the time even though I was hospitalised it could have been dealt with by way of correspondence and through my secretary and cashier to avoid unnecessary and protracted correspondence. However I wasn't given any opportunity to do so. I waited and then received the audit report and I provided answers as candidly and transparently as possible together with all documents and vouching.

5. I should explain in connection with my Answers that I only had one member of staff and a part-time cashier [Mrs O] who had been a former Law Society employee and was well experienced in AML. At all times my staff had been trained. I complied with any duties incumbent upon me. I recognise and accept immediately the significance of both the Accounts Rules and ML Regulations. As a result of these events I sought external advice from [GG] of Kirklands a firm well experienced in AML training and accepted [GG's] guidance on the necessity of ensuring compliance. I involve Kirklands in my own AML training and that of my staff to ensure proper compliance. In all of the circumstances I maintain I am not guilty of acts or omissions which singly and in cumulo can constitute professional misconduct. I note that the Law Society have now withdrawn the complaint that I failed promptly to rectify breaches as per Rule B6.23.

6. However I reject in the period preceding and up to at least 3rd April 2017 that I failed to establish and maintain and retain and exhibit evidence of having established and maintained risk sensitive policies and procedures relating to customer due diligence measures and ongoing monitoring reporting recordkeeping internal control risk assessment in order to prevent money laundering or terrorist financing as required by Regulation 20 of the Money Laundering Regulations 2007. I say this for the reasons which I have covered in this statement. In particular I also reject that I failed to apply, retain or exhibit evidence of having applied customer due diligence on a risk sensitive basis in respect of the clients of the practice unit as required in terms of Regulation 7.14 and 19 of the Money Laundering Regulations 2007. These complaints relate specifically to the four transactions to which I have made reference above. I did undertake and carry out ongoing monitoring of the risks in connection with the four transactions. I did undertake and retain and exhibit evidence of carrying out where appropriate customer

due diligence measures on those transactions. There is reference to "at least" four transactions but there is no notice given to me of any other transactions which have been examined which have shown any lack of diligence on my part. I reject the assertion that I failed to undertake or retain or exhibit elements of having undertaken appropriate level of customer due diligence in respect of client identification and in some way failed to undertake, retain or exhibit evidence of having undertaken customer due diligence in respect of source of wealth in respect of the four transactions. Whilst there is mention of other transactions none of the alleged other transactions have been identified nor have I been given notice of them at any stage. In any event in each and every one of the four transactions I have adhered to the Guidance which was in force at the relevant date.

15. I also confirm that my one member of staff had received adequate training in relation to money laundering and terrorist financing and how to deal with transactions or activities but given that I was a sole practitioner at the relevant time I say I complied with all relevant Guidance and carried out those duties which were incumbent upon me. I can also confirm that the handbook was regularly referred to by my cashier as well as my bookkeeper for all the risk assessment forms and both my secretary and I attended the Kirklands Seminar in May 2017.

16. The Law Society having said that I failed to do any of these things, which I deny, claim that I failed to keep properly written up records to demonstrate compliance. The files are the evidence of the compliance and I say the risk assessment forms did not form part of my duties of compliance as at the relevant date given the nature of the guidance. Best practice may have been adopted by the Law Society but it was inconsistent with the Regulations themselves and the guidance in force both in England and Wales and in Scotland at the date of these transactions. I reject the proposition that I failed to use reasonable endeavours to acquire and maintain the skills necessary to discharge my responsibilities as cashroom manager.

17. Nowhere is it said that I had not adhered to the responsibilities in terms of the previous inspection of 2013. The terms of that Inspection Executive Summary are referred to and founded upon."

The Respondent confirmed that he adopted the statement lodged as his evidence.

He described his lengthy medical history and the effects that this had on his practice, the detail of which it is not necessary to repeat here.

The Respondent confirmed that the document headed "Response to Law Society" was sent by him in response to the inspection report. He had been asked to provide a response. He had not had an

opportunity to review the files passed to the Law Society and so was catching up using electronic correspondence.

He explained that he was in hospital at the time of the inspection and was not discharged until 30 April 2017.

He described the nature of his firm. He explained that the vast majority of his clients are known to him, are friends, contacts of friends or contacts of existing clients. He has acted for some of his clients in excess of 20 years. Due to his ill-health, he has reduced the amount of court work he takes on and contracts out any court appearances.

He emphasised that he was not given the opportunity of interview, even though he had asked for one. No one had explained to him what was fundamentally wrong with his systems. No help or advice was forthcoming.

The Respondent stated that he had been a consultant of the firm of MA for some 18 to 24 months. He had become involved with that firm through a friend of his who was becoming a partner of the firm and was going to be running an Edinburgh office. His friend was a litigator and MA needed someone able to conduct conveyancing services in Scotland. Accordingly, his friend had introduced him to two of the partners of MA who he had met in his own office. They had reached a fee-sharing agreement. It was agreed that the initial vetting of the clients would be done by MA, as they were their clients and he would do what was necessary to undertake the conveyancing, relying on Regulation 17 of the AML Regulations. MA was to do the detailed vetting before the clients came to him. He would still require to do some vetting if any of the funds came through him. He stated that money only came through him in two of the cases.

He explained that he had also built up a good working relationship with the firm LL based in London.

Following the 2013 inspection, his cashier, who was a former employee of the Law Society, had provided him with a training DVD where the lecturer was MN, the former chief accountant of the Law Society, and a training manual.

He explained that not every piece of information was on the files. Some information was held electronically, some in his head and some on other files.

He insisted that he did have procedures, controls and policies in the form of a manual at the time of inspection in 2017. He explained he also had a folder relating to training.

He believed that he had appropriate knowledge of the 2007 AML Regulations and had not wilfully disregarded them.

He had not asked MA for extensive copies of their AML documents as he was the MLRO in his firm and he would only end up doing a note to himself.

With regard to the SW transaction, at the commencement of the transaction he had been sent a copy of the client's ID and information regarding the source of funds. He believed that was a copy of the client's Chinese bank account. The money was coming to him from a regulated firm, MA. He did not think he needed to keep copies of these items on the file.

With regard to the XG transaction, the funding of £39,000 was coming partly from XG's mother, or mother in law, and the rest was a loan. He believed he had conducted one previous transaction for XG. He did not consider there was anything unusual about this transaction. In his experience, it is common for Chinese people to go back to the family for financial assistance. In this case, there was also a small loan and so the transaction was only a medium risk.

With regard to the MC transaction, the funds were coming from "her mother's" bank account in China for which he had a statement. The original statement was read out to him by YL. Formal translations only became available after the inspection date.

With regard to the Mr S transaction, the date for settlement was only some four weeks after the Respondent had first spoken to Mr S and agreed to complete the transaction quickly. The funds for the transaction were essentially coming from his pension fund. He had obtained his own company search of AE Ltd which was held by him electronically. Following the inspection he had provided a copy of this search to the Law Society.

Mr Macreath directed the Respondent to the averments of misconduct at paragraph 5 of the Complaint. In relation to 5(1)(b)(i), he conceded that some information was retained in his head but he insisted that he did have an AML manual that he and his secretary both worked to and the firm used risk assessment forms. With regard to 5(1)(b)(ii), he conceded that he did not do full risk assessments as they had already been done. He explained that the highest risk transaction would have been that for SW who was a client

of the firm based in Hong Kong but that had been fully covered as she was an MA client. The Respondent was doing the conveyancing with a fee splitting arrangement with MA.

Mr Macreath asked the Respondent what enhanced due diligence he had done and he responded, "Would that enhanced due diligence not have been carried out by MA?" He believed all due diligence would have been carried out by them.

He accepted that his files were incomplete, not containing full information. He insisted that he had completed the background checks on AE Limited at the time but he was not asked about that because he was in hospital at the time of the inspection. He emphasised that he had face to face meetings in three of the transactions.

With regard to paragraph 5(1)(b)(iii), he explained that he and his secretary had attended a seminar before the inspection in 2017.

With regard to paragraph 5(1)(c), he did not know whether he accepted this averment or not. He thought he had complied with the regulation.

In relation to paragraph 5(1)(d), he explained that the "Response to the Law Society" had been written with the assistance of one of the Kirklands trainers who had encouraged him to show contrition and ask for help. He felt that now, unfortunately, that letter was being used against him as a basis for this part of the Complaint. No help or guidance was ever provided by the Law Society.

Mr Macreath drew the Respondent's attention to the report of the inspection from 2017 and took him through his responses to the issues raised by the auditor. He accepted that following the inspection he had asked MA for a letter confirming their consent for him to rely on them carrying out customer due diligence. He explained he had obtained that letter because it was requested by the Law Society and he had not done so previously because he had not understood it to be necessary.

He liked to think he had answered all the queries raised by the Law Society and, as he was denied an interview, he could only assume he had done so.

Mr Macreath directed the Respondent to the Complainers' Second Inventory of Productions containing extracts from the SW transaction. He agreed that he was a consultant of MA. He explained that this was a referral and he had relied upon them for the AML checks. With regard to the issue of source of wealth,

he understood SW to be a successful professional person in something like accountancy or banking. He believed her to have substantial means and this was confirmed by her instructing Savills to find property for her to buy. He confirmed he had sent out to her, together with a letter of engagement, his client particulars form. He did not believe that this had been sent back to him completed. The funds to complete the transaction had come to him from MA. He conceded that he did not photocopy all of the documentation that he had seen and put it on the file.

The Respondent was directed the Complainers' Third Inventory of Productions which contained extracts from the MC file. He confirmed having sent an email to the daughter of his client on 8 May 2017 asking for documentation. He explained that he already had documents relating to the mother as the AML checks had already been done by MA. He had asked for the information again in order to answer the Law Society's queries although he accepted that he did not have all of the information in advance.

He agreed that there were a number of untranslated banking documents on the file. Reference was made to MM in some of these documents. He explained that this was the partner of his client's daughter. The couple were going to live in the property that was purchased. He confirmed that the email of 28 November 2016 came from YL who he said was an employee of MA. He recalled that by the time of this transaction MA had closed their Edinburgh office but he understood YL was still employed in the London office. He had relied on YL to translate the documents that were in Chinese.

He confirmed that he had in the past had other referrals from MA.

The Respondent was directed to the Complainers' Fourth Inventory of Productions relating to the XG transaction. He confirmed that he had had a face to face meeting with XG and her husband on 8 May 2017 when he had requested confirmation of the source of purchase price. He thought he already had that information electronically. He did not believe that a loan was involved. The couple were already established clients of his. He confirmed that they lived at an Edinburgh address. MA had originally referred the couple to him in connection with the purchase of another property in Edinburgh. They had already been processed for the purposes of AML by MA. He had assessed the current transaction as a medium risk only because of the foreign element. The document from the TSB he believed was obtained at the time of the transaction. He believed that the husband had UK residency. He considered this to be a low value transaction. He understood this to be a case where the couple had sent money to China and then it was coming back for this purchase. The funds to settle the transaction had come to the Respondent through a UK bank. He understood that the husband's mother was transferring money to either him or XG. He could not remember if he had obtained confirmation of ID for the mother.

He was referred to the Complainers' Fifth Inventory of Productions in relation to the transaction for AE Ltd. He explained that he had already carried out the company checks at the beginning of the transaction and he had had a face to face with Mr S where he had ascertained that he was the beneficial owner of the company. He was asked by Mr Macreath why, if he had already held the information, he requested it again in his later emails to Mr S and he explained that he thought that he held some information electronically in particular the company details. He held emailed identification and a copy of a bank statement from where the funds were coming to finance the transaction. He accepted that he did not always print off a copy of the information with which he was provided. Following the inspection, he had written to the clients with a "catch-all", to obtain the information requested. He had copy passports for Mr and Mrs S but they were not certified copies. He did not at the time think this was required because he had had a face to face meeting with Mr S. During this face to face meeting he had confirmed that the source of the funds was Mr S's pension fund. He accepted that he had not documented this information and thought that he probably held it in his head or possibly held it electronically. He insisted that he had risk assessed the transaction from the beginning but conceded that he had not necessarily documented all of the information that he had obtained. He had taken a print out from the internet of the profiles of the partners of the firm of chartered accountants of which Mr S was a partner before the audit took place.

The Respondent considered that he had risk assessed each client and renewed this risk assessment with each transaction although he conceded that this was not always noted. Three of the transactions were referred to him by MA and one by LL.

With regard to the SW transaction, he explained that his client was MA. Despite that, he had thought at the time that he was duty bound to send a letter of engagement to SW.

With regard to the MC transaction, he thought that both MC and her daughter were his clients. In this case, he had not considered that MA was the client because the client was referred to him by YL who was an employee of MA. This transaction had occurred during the hiatus after the Edinburgh office closed.

With regard to the XG transaction, he insisted that he had met both XG and her husband when acting in the first transaction referred to. He had had consideration to the money coming from China but that money had come via their UK bank account.

With regard to the AE Ltd transaction, he explained that he had met Mr S by Skype and had a copy of his passport. He had obtained the company search for AE Ltd from First Scottish at the beginning of the transaction.

CROSS-EXAMINATION OF THE RESPONDENT

The Fiscal asked the Respondent what electronic information he thought he had that would have been helpful. He responded that he supplied the electronic material to the Law Society after the inspection. He stated that the Tribunal did not have the whole file before it. He was asked what he thought was missing that might have been helpful. He responded that he believed there may have been an email or some background information, for instance, in the AE Limited case he did his own search on the company prior to the inspection. He was asked if he thought it was reasonable to assume that the excerpts before the Tribunal are the pieces of information that he held and he responded that was mostly correct.

He explained that MA was a Hong Kong firm with an office in London. They had opened an office in Edinburgh to carry out the work for Scottish clients. He confirmed that the core of the firm's business involved the firm acting mainly for Chinese people. He was asked if the firm held themselves out as specialists in gaming law and he responded that that was not within his knowledge.

He was asked about MA money laundering requirements and stated that the Edinburgh office was regulated by the Scottish Law Society.

He was asked who covered the work for Leslie & Co. when the Respondent was unwell. He explained that his secretary or a locum would cover the work. The locum was a well-known practitioner from a large Edinburgh firm. The locum would have been aware of Leslie & Co. money laundering procedures from the folder the Respondent kept and he would also be aware of his own firm's money laundering procedures.

The Fiscal asked what steps the Respondent had taken following the inspection in 2013 to comply with the money laundering requirements. The Respondent explained that he had taken advice as to what was required. He had learnt how to conduct a risk assessment. He attended a webinar and had obtained the training DVD. He had put a risk assessment policy in place which consisted of a manual.

The Respondent confirmed that he attended a training seminar before the 2013 inspection and then attended one immediately after that inspection.

He was asked what steps he would take in connection with confirming the source of a client's wealth. He explained that the majority of his clients were established and were friends or contacts of friends. If he did not know the client well he would ask for proof but his clients were mostly professional people. He stated that he could not argue with the statement that after the 2013 inspection he had been put on notice of the requirement to enquire about the source of wealth and record the information.

He insisted that he had appropriate systems in place prior to the 2017 inspection. He emphasised that the four transactions looked at were all referral cases. He suggested that the Law Society had not looked at the systems he had in place. He stated that he had sent volumes of correspondence to the Law Society including the procedures he had in place at the time.

The Fiscal drew the Respondent's attention to the Complainers' Production 1, the inspection report from the 2013 inspection. The Respondent stated that he had overhauled all of his procedures after this inspection and that he had the appropriate procedures in place by the time of the 2017 inspection.

The Fiscal directed the Respondent's attention to the SW transaction. The Respondent confirmed that the only document on his file evidencing identification at the time of the inspection was an emailed uncertified copy passport. He accepted that he obtained a letter of consent retrospectively but explained that he considered he already had that consent, albeit not in writing. He had not considered it necessary to have the consent in a written letter when it was from a firm of which he was a consultant. His attention was to drawn to the Practice note of 2013 at paragraph 4.3.4 dealing with "reliance and outsourcing". The Respondent explained that he did not take instructions from SW but took them from MA. He said he had been sent a copy of MA's risk assessment and did not think that he had required to do much else beyond that. He thought he could place reliance on their AML checks. He had only become aware of the Practice note 2013 at the beginning of these proceedings. He was aware of the 2007 guidance. He accepted that he did not have a face to face meeting with SW and that all of his contact was with MA. He stated that in his view the risk was no more than medium. There was perhaps a slight increase in risk because the funds were coming from abroad. It was his view that MA was his client. He had thought he had required to send SW a terms of business letter even though she was not his client. MA did the AML checks and the funds came from MA. He said he saw a copy of what MA had done. He explained that he had source of wealth information but did not document it.

He was directed to the XG transaction. He had assessed that transaction as medium risk because it was not a high value transaction and the funds were coming from a UK bank account. He accepted that the

copy letter from the job centre on his file did not have a complete date and explained that was poor copying. He accepted that the letter was addressed to a London address despite the address on his file for his client being in Edinburgh. He accepted that the copy passport on his file did not disclose the passport number. He said that was due to poor copying. He insisted he had seen the originals of these documents in a face to face meeting. He believed they were photocopies taken by him but he stood to be corrected if they were in fact emailed copies. He thought he had taken steps to ID XG's husband in relation to the previous transaction but may not have documented that. He accepted that he had information that the source of funds for the transaction was XG's mother and could not remember if there was vouching for that on the file or not. He accepted that he had obtained verification of the source of funds retrospectively. His attention was drawn to an email from XG's husband confirming that the transaction was to be funded by his mother in law. He accepted writing to XG's husband confirming that if his mother in law transferred the funds into his own account prior to the transaction then no vouching would be required from the mother in law. He noted that if the funds had come direct to him from XG's mother that he would have required to take steps to verify them. He denied that this was a deliberate attempt on his part to avoid doing anti-money laundering procedures. This was a family purchase.

With regard to the MC transaction, he accepted that the only document in relation to identification on his file at the time of the inspection was a passport emailed to him. He said that MA would have carried out all the original AML procedures. He was asked if he had taken any steps to obtain certification of the document or get confirmation of reliance and responded that he probably had done but probably had not documented that. Documents held on file prior to settlement had been translated by YL who had sat in his office and read the contents out to him. It was not recorded. He had obtained information regarding the source of funds and source of wealth but accepted that he did not document it.

He was directed to the transaction in relation to AE Ltd. He accepted that the copied passport and bank statement on his file were not certified. He said that he had obtained evidence of the beneficial owners of AE Ltd via LL and his own research into the company details. He had been told that the company was a special purpose vehicle for this transaction and that turned out to be correct. The company was set up in January 2017. Family money was being used to fund the company. He had obviously discussed this with Mr S on Skype but accepted he had not documented this. He had asked for a copy bank statement to show where the funds were coming from and he had confirmed the source of wealth by ascertaining the background circumstances of Mr S and LL had carried out the AML requirements. He had consent from LL to rely on their checks but he did not hold this in writing. He was asked if the funds to settle the transaction had come from multiple sources, none of which had been Mr S's pension fund and he responded that he did not recall that. His attention was drawn to the extracts from the file that had been

produced that referred to the companies Company 1 and Company 2. He said he was aware of these companies before the transaction settled and had checked them either electronically or it was in his head.

The Respondent was directed to his statement and was asked if he had kept any record of the training he mentions therein. He confirmed that this was almost certainly produced to the Law Society after the inspection. He was questioned about his firm's risk assessment forms and he confirmed that copies of the four risk assessment forms in this transactions were forwarded to the Law Society.

The Fiscal drew the Respondent's attention to the Complainers' Second Inventory of Productions relating to the SW transaction. He confirmed that he had sent an email in May 2017 to MA asking for a copy of the bank statement showing source of funds and confirmation of the risk assessment carried out by MA. He accepted that the original documents were not on his file. He said he had seen these documents. He did not normally keep copies of MA's risk assessments on his file but he did get a copy. He confirmed that page 32 of the Inventory was a copy of MA's form headed "Anti-Money Laundering Check Form". He confirmed that under the question of proof of address, no box was ticked. He was asked what "Sufficiency" in the section relating to source of funds meant and was unable to explain the entry. He did not know if there had been other documents to go with that form. He confirmed that the comments section of the form referred to "Savings" which he meant were the client's savings which he believed were vouched in bank statements. He was asked where the information was in relation to source of wealth and thought that might be what was included in the Chinese writing. He was aware that she was an established client of MA in Hong Kong. He conceded that that part of the form was not well set out. He did not know where MA's risk assessment was. Their system was different to his. He used a points based system.

He was asked to look at the Complainers' Fourth Inventory of Productions which related to the XG transaction. He accepted that the file note of his meeting with XG and her husband post-dated the settlement of the transaction. He was responding positively to requests made by the Law Society and was retrieving copies of the items. He had already explained to the auditors that he had kept information in his head. He did not accept there was a change in funding arrangements, despite there being reference to XG's mother originally lending the couple money. He said the source of funds had been checked by him at the very beginning when he had obtained copy bank statements. The clients brought in a UK bank statement after the meeting in May but he was sure he had originally seen the Chinese bank statements. He was asked why he had not asked the client about the change in the funding arrangements from money coming from her mother to her funding the transaction herself. He explained that he had not done so

because the money was coming from a UK bank. He thought he had made the appropriate checks. He thought he almost certainly had but had not kept copies.

With regard to source of wealth, he believed that XG's mother was retired and had savings from her work in China. He had met XG face to face and was aware she was in full time employment. She did not earn high wages and that was why the property was inexpensive.

He confirmed that the risk assessment noted at page 8 of the Fourth Inventory of Productions was the risk assessment carried out by MA. He believed the handwriting was that of the Edinburgh partner. The risk assessment noted on this Production related to the first transaction the Respondent had carried out for XG. He believed that the risk assessment referred to therein related to client and transaction risk. He confirmed that the transaction was noted as low risk in the Production. He was asked why there was a difference in MA's risk assessment for the first transaction and his risk assessment for the second. He said there was no difference. He was directed to his statement wherein he stated that the four transactions in the complaint were all medium risk. He explained that the difference probably was that for the second transaction the client was using her own funds. The Respondent's attention was drawn to the content of the inspection report where it was stated that the transactions were assessed as three as high risk and one of medium risk. He was asked to explain why this was and said that he did not know other than it may have been that the clients were using their own money. He insisted that only one of the transactions was not a face to face transaction. He had met Mr S in a face to face meeting by Skype. He had met XG at the 'very inception' of the transaction. He was asked why he had taken instructions from XG's husband and explained that he had considered this "a family thing".

With regard to the MC transaction, he accepted that he dealt with the client's daughter. The daughter was a friend of the legal executive of MA. He did not deal with MC directly. He insisted that he had already received copies of Chinese bank statements prior to this exchange of emails and that the employee of MA had translated them for him. His attention was drawn to five documents headed "Application for funds transfers (overseas)". Two of these documents showed funds being transferred to the client's daughter. Neither of these two payments were made by the client. Three of the documents showed transfers being made to an individual called MM. Only one of these was paid by the client. He stated that he would not have been interested in the payments being transferred to MM as he was his client's daughter's partner. He said he would only have been interested in transfers paid to his client's daughter. His attention was drawn to the payments made to his client's daughter and he confirmed that neither of the names disclosed on the forms as the payer was his client. He was unable to say who the people were making these transfers. From his own experience, he was aware of the Chinese culture in

money being passed between family members. He could not answer why funds were transferred to MM because the daughter and her partner were going to live together in the property, he was not concerned. He did not ask. The forms all referred to the transfers being made in connection with "living expenses". He had not been concerned about that because of the Chinese translation being broad enough to finance the purchase of a house to live in.

He accepted that he emailed LL after the inspection asking them "If you hold any AML documents" could they provide him with copies. He denied this was an indication that he had no idea if LL had any documentation at all. Mr S had been referred to the Respondent over the telephone. The Respondent had had a discussion about the transaction with a partner of LL. Customer due diligence would have been carried out by LL and he may have noted that somewhere. The partner of LL had confirmed the background to the transaction and who Mr S was. He insisted that despite the tones of emails of 9 May 2017 and 27 March 2017, he had been aware of the involvement of Company 1 and Company 2 before the transaction had settled. He explained that what was before the Tribunal was not the whole file. He stated "I would not have simply taken half a million quid from someone without verification of some sort." He was asked why, if that was the case, he wrote asking for the information in March, after the transaction had settled. He responded that by then he was aware that his firm was to be audited and he 'would have asked for more verification because it was fairly sketchy'.

The Respondent was directed to his Production "Response to the Law Society". He did not accept that this was an admission that he did not have adequate training in the Anti-Money Laundering Regulations. This was him asking the Law Society what it was that he was doing wrong. He considered himself to be adequately trained. He did not consider that he was doing anything differently to other solicitors in Scotland. He had a working knowledge of the AML requirements.

RE-EXAMINATION OF THE RESPONDENT

When MA had their office in Edinburgh they were regulated by the Law Society.

The locum that he used to cover his work when he was ill was an experienced practitioner in a large Edinburgh firm.

After the 2013 inspection, he did not get any help from the Law Society. He was told that it was his responsibility to do what was required. He had obtained the necessary information from his cashroom assistant who had previously been employed by the Law Society.

With regard to the element of higher risk, he explained that was because in the SW transaction money was coming from Hong Kong and in the AE Ltd transaction there was no loan.

He explained that he considered that SW was MA's client. They had initiated the offer through Savill's in Hong Kong and he had simply been asked to do the conveyancing. SW was a client of MA and he relied upon them under the relevant section of the AML Regulations. He confirmed that he had cooperated with the Law Society throughout the whole procedure.

In response to a question from a Tribunal member, the Respondent stated that no one had asked since the inspection for any information he held electronically. He had said that he had further electronic records but these were never asked for.

SUBMISSIONS

Both parties had submitted written submissions to the Tribunal in advance of the hearing on 12 April 2021. Additionally, Mr Macreath had lodged a substantial appendix that included a number of authorities.

SUBMISSIONS FOR THE COMPLAINERS

The written submissions for the Complainers were as follows:-

"Introduction

These submissions are presented on the basis that further evidence is yet to be led and they must in that sense be regarded as provisional. It is intended that they will be supplemented by oral argument.

As previously intimated The Council does not seek a conviction in respect of Article 5.1.a of the complaint.

In respect of the remaining Articles 5.1.b-d The Council invites the tribunal to find the respondent, individually and in cumulo, guilty of professional misconduct.

Proposed Findings

The tribunal is invited to make findings in fact mirroring the averments in:
Articles 1, 2 of the joint minute

Article 3.2. i, ii of the complaint
Article 3 of the joint minute
Articles 3.4, 3.5, 3.6, 3.7 of the complaint.
Article 4 of the complaint.
Articles 4, 5 and 6 of the joint minute.
Article 5.1. b-d of the complaint

Basis for findings

The findings proposed above are supported by (a) the terms of the joint minute and (b) the evidence given to the tribunal by the respondent.

The facts averred in the constituent parts of Article 3.7 and Article 5.1 are all established by the admissions made by the respondent in cross examination, both in the generality of that evidence and in relation to the four particular transactions libelled at Article 3.7.iv and vi.

The extracts from the files in relation to those clients make it clear that CDD requirements were only addressed in any meaningful way after the transactions had settled, and in response to the inspector's findings.

Additional Finding

It is submitted that it is appropriate for the tribunal (a) to reject the respondent's contention that [SW] was not his client or that [MA] was his client and (b) to make a finding that [SW] was indeed his client. The tribunal is invited to reject the respondent's evidence and to have regard to the following:

1. The Council's production 2/21-29 is indicative of a solicitor client relationship between [MA] and [SW]. But that is not a counter indication of there being a subsequent solicitor client relationship between the respondent and [SW] once the work was referred on to the respondent. The respondent issued his own terms of business letter to [SW] (production 2/35-43, sent under cover of the email 2/46) which is in its terms consistent only with [SW] having become the respondent's client.

2. In the post inspection correspondence the respondent says (production I/40) that "We did deem it appropriate to rely to a degree on [MA], as English regulated firm, to carry out due diligence measures as the clients involved were originally referred to us by [MA] ... " and at the bottom of the same page "'All of the clients listed, i.e. Mrs ... [SW] ...were referrals by [MA] ..."

3. Nowhere is there seen a terms of business letter issued to the supposed client, [MA]. Neither is there any evidence to suggest that consent to reliance was obtained in terms of Regulation 17 (I) of the 2007 Regulations.

4. It is submitted in any event that once regulated financial business is undertaken the duties under

the 2007 Regulations are non delegable (hence the specific provisions concerning reliance) by the solicitor who undertakes the work and by the same token they cannot be " batted back " to the solicitor who refers or delegates the work.

The Law

I am content, respectfully, to adopt the analysis provided by the Inner House in Hood v LSS beginning at para. 15. This case is, of course, not primarily concerned with the distinction between Inadequate Professional Services and Unsatisfactory Professional Conduct, as was Hood. Rather, it is submitted, it is a clear case of professional misconduct, and the factors to be weighed are those set out in the passage from Sharp v LSS quoted in Hood at the end of para. 16.

So far as SRA v Crewe and Cann is concerned the facts are far removed from the present case.

The differences between the instant case and Crewe & Cann include (a) that those respondents had in place AML policies, procedures and training (para.23); (b) the policies and procedures were described as "... very good...comprehensive and thorough .. ." (para. 30) (c) Mrs N had been known to the first respondent since 2002; there was a long business relationship (para.58 .3) (d) in relation to K, specific measures were taken in the light of the risk associated with not having met the client (para.58.9. I). The case against the second respondent fell largely because of the acquittal of the first respondent but it reads as though the tribunal would have accepted the exercise of judgment by the second respondent.

Attention is drawn to the decision of this tribunal in the case of Michael Alastair Inkster, a copy of which is appended to these submissions. Hood v LSS is referred to in the decision.

In Inkster the tribunal said (at page 15) the following:

"However, in this case, the admitted breaches of the [Accounts] rules were serious but not so grave that they could be described as reprehensible when considered in context ...The failures regarding due diligence arose as a result of an error on the part of the respondent. It was not the case that he had failed to get evidence of identification or source of funds across the board. Rather, he had failed to do [so] in unusual cases or in those where he knew the clients and was perhaps lulled into [a] false sense of security. "

Application of Law to Proposed Findings

The present case is far removed from the situation in Inkster . In the present case all four of the files selected by the inspectors revealed grave shortcomings. The transactions themselves involved significant risk factors. It was clear from the email correspondence on the respondent's file for [XG] that he was prepared to assist a client to circumvent the rules in relation to source of funds /wealth (4 /34-35). The failures were egregious.

It was clear that the respondent had been warned about his shortcomings in 2013. By the time of the subsequent inspection in 2107 he had done nothing about systems, procedure or training.

Of the four transactions identified by the inspector three were not face to face. Instructions were taken from persons other than the client without authority being obtained. Lip service was paid to the 2007 Regulations in the terms of business letters issued by the respondent but incomplete copied ID was relied on without consent being obtained and untranslated Chinese bank statements were similarly used .

The respondent has to date provided no evidence of a written policy or procedures being in existence in the period between 2l03 and 2017 which was in any way tailored or appropriate to his entity. The same is true of training. Indeed it is clear that the respondent himself failed to acquire and maintain the skills necessary to discharge his duties as Cash Room Manager in so far as compliance with the 2007 regulation is concerned.

The respondent seeks to place reliance on the LSEW guidance which is included within his productions.

It is clear from his evidence that he was not in the least familiar with this document but nonetheless this is the standard against which, in his answers, the respondent invites the tribunal to judge him.

The English guidance is produced as item 2 of the respondent's first inventory of productions.

Chapter 3 deals with Systems, Policies and Procedures. It is to be found between pages 21 and 29 of the document.

Paragraphs 3.1, 3.2, 3.4 and 3.6 are particularly referred to.

It is impossible to read paragraph 3.6 in the manner contended for in the respondent's answers. A system *outlining...CDD measures* must surely be in writing. How, otherwise could it be, in context, a system, and where would one find the outline. Moreover, the reference in the next sentence to *consider recording...risk tolerances* is consistent only with there being a record of the overarching system.

Paragraph 3.8 emphasises the need for records. Paragraph 3.8.2 refers to the COD file which is separate from the client file. The implication of the second paragraph is that absent a record it will be difficult to demonstrate compliance.

Paragraph 3.9 again demonstrates the need for training.

Chapter 4 deals with Customer Due Diligence. It runs between pages 31 and 71. Paragraphs 4.3, 4.3.1-5, 4.4, 4.5, 4.6, 4.6.1, 4.6.3, 4.7, 4.71, 4.74, 4.9 and 4.91 are relevant.
Plainly the respondent had no regard to the guidance.

Applying to the failures of this respondent the part of the Sharp test repeated at paragraph 16 of the opinion in Hood and looking at "...the gravity of the failure and a consideration of the whole circumstances ... " it is submitted that the test for professional conduct is readily met.

Disposal

In all of the foregoing circumstances the tribunal is invited to convict the respondent of professional misconduct as set out at the beginning of this note."

The Fiscal took the Tribunal through his written submissions.

He accepted no interview had taken place here despite one having been suggested by the Sub Committee. He emphasised that nothing in the case turned on this given that the Respondent had been given full opportunity to make information available.

He considered it appropriate to offer a summary of what was contained on the files involved in the Complaint.

With regard to the SW transaction, he submitted that the only evidence of identification was an emailed uncertified copy passport. Consent to rely on MA was obtained retrospectively. There was no information regarding source of wealth. The transaction was not a face to face transaction and was assessed as high risk.

With regard to the XG transaction, this had been assessed by the Respondent as medium risk. There was a copy letter from the Job Centre on the file which was addressed to a different address and had an incomplete date. The passport on the file was an emailed copy. Neither copies were certified. The Respondent had taken instructions from the husband and had not obtained ID documents for him. There was no vouching for the source of wealth. There was a letter on the file from the Respondent advising that if funds came to him through his client's UK bank account then checks on the mother in law would not require to take place and on one view, this could be seen as circumventing the Regulations. Efforts were made retrospectively to obtain the necessary information.

In the MC matter, the transaction was assessed by the Respondent as high risk. The only evidence of ID was an emailed copy passport and a copy of a passport for the client's daughter. A utility bill and bank statements had not been translated. There was no information regarding source of wealth. Again, efforts were made by the Respondent retrospectively to obtain the necessary information.

With regard to AE Ltd, there was a copy passport and bank statement for Mr S. There was no evidence of the beneficial ownership of the company. There was no ID in relation to the beneficial owners. There was no evidence on the file of enquiries into the source of wealth. Ultimately the documents produced spoke to the source of funds, not the source of wealth. The Fiscal invited the Tribunal to reject the Respondent's evidence regarding his knowledge of the beneficial interest and control of the companies involved and the source of funds.

The extracts from the files made it clear that customer due diligence was only done in retrospect. Information was obtained by the Respondent only after the inspection and not before the settlement of the transactions.

He was aware that Mr Macreath was to refer to three decisions. He submitted that all three cases could easily be distinguished. In particular, in connection with the case Council of the Law Society-v-John Adam [23 August 2017], the Tribunal noted that substantial concessions had been made by the Complainers in an amended complaint. It was stated that "the breaches were administrative, technical and historical". In the Fiscal's submission, that could not be said in the Respondent's case.

With regard to the issue of information being kept by the Respondent in an electronic format, it was the Fiscal's submission that it was incumbent upon the Respondent to produce evidence of his policies and procedures.

The Fiscal indicated that he wished to comment on the written submissions for the Respondent.

With regard to the issue of electronic information, it was the Fiscal's submission that any such relevant correspondence should have been made available by the Respondent at the latest when these proceedings were being prepared for.

With regard to the English guidance, he argued that it was clear from the Respondent's evidence that he did not personally handle every aspect of his business due to his health issues. He relied on a number of members of office staff including a locum.

The Fiscal did not accept Mr Macreath's proposition that a risk assessment did not require to be documented. With regard to the proposition that most firms did not have documented risk assessments,

no evidence of that had been produced to the Tribunal. He submitted that this might well be contrary to the experience of the legal members of the Tribunal.

He did not accept that the Respondent had been instructed on an execution only basis in relation to the SW transaction. He submitted that it was clear that SW was the Respondent's client and that the procedures that he followed were completely inadequate.

He drew the Tribunal's attention to Mr Macreath's concession that enhanced due diligence was required where the Respondent did not meet clients face to face.

He took the Tribunal through various paragraphs of the English Practice note. In particular, he emphasised in relation to paragraph 4.3.2 headed "What is CDD?" Regulation 7 requires a practitioner to be able to demonstrate to his regulator that he had complied with the regulations. The inevitable conclusion is that a written record is required. Paragraph 4.7.1, in dealing with the issue of companies, explains the necessity for identifying beneficial owners. The Fiscal submitted that it is not open to the Respondent to simply say "it's family". He pointed to the various factors mentioned in paragraph 4.7.4 and emphasised that none of these steps were carried out regarding AE Limited.

He invited the Tribunal to hold that the Respondent's failings were egregious. He invited the Tribunal to find the Respondent guilty of professional misconduct individually and *in cumulo*.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath had submitted written submissions which were as follows:-

"Introduction

1. The purpose of this submission is to address the complaints made against Iain Alexander Leslie ("the Respondent") by the Council of the Law Society of Scotland ("the Council"). The Complaint rests on the averments of professional misconduct contained in article 5 of the complaint by the Council against the Respondent. Complaint 5.1(a) is no longer insisted upon and a plea of not guilty to that complaint is accepted. The complaint proceeds on the basis as set out under Articles 5.1(b)(i,ii,iii), 5.1(c) and 5.1(d). The Council intimated Five inventories of Productions (to which reference will be made in this submission) which include the Council's Executive Summaries prepared after the Financial Compliance Inspections carried out on 7th May 2013 and 3rd April

2017.The Second to Fifth Inventories for the Council contain extracts from the Respondent's files in respect of the four transactions which are the basis of the Council's complaint.

2. This submission should be read alongside the documents listed in the Appendix. In these submissions reference will be made to the statement of the Respondent and the response which the Respondent provided to the Society in August 2017. The statement and response have been adopted by the Respondent in his evidence and are listed at item 1 in the Appendix.

3. The Respondent denies each separate head of complaint and a specific response to each head of complaint is set out below. The Respondent moves the Tribunal to sustain his Answers and his pleas that professional misconduct is not made out and that the Tribunal should repel the pleas for the Council and find the Respondent not guilty.

Factual Background

4. The Respondent was admitted as a solicitor in 1986. In terms of his statement and in terms of the Joint Minute of Admissions (item two in the Appendix), the Respondent has been in practice on his own account since 1st February 2008. The personal circumstances of the Respondent and his professional career to date are set out within his statement. The Respondent has had significant health problems since 1997 and the Respondent's Second Inventory of Productions 2/1 and 2/2 are true records of the medical reports of [Dr SP], Consultant in Transplant Psychiatry dated 18th December 2020 and [Mr N] Consultant Renal Physician at the Renal Medicine Department of Edinburgh Royal Infirmary dated 15th December 2020. The Joint Minute of Admissions para 6 refers.

5. [.....]

6. [.....]

7. [.....]

8. In March 2017 just prior to the April Law Society Financial Compliance Inspection whilst on his way to chair a disciplinary hearing for the Scottish Rugby Union at Murrayfield he suffered a fall from his wheelchair and fractured his left knee. This necessitated readmission to hospital and the Respondent was in hospital until on or around 30th April 2017.

9. The Respondent was not personally present at the time of the 7th April 2017 Financial Compliance Inspection to answer questions, leaving the conduct of the said inspection to his part-time secretary

[EH] and his office cashier, an external consultant [Mrs O], an ex-Law Society Financial Compliance inspector. The Respondent did not postpone the inspection but agreed that it should proceed.

10. [.....]

11. Following the April 2017 Financial Compliance Inspection, the Executive Summary- Council's First Inventor -production 11/55- was issued. The Respondent's responses and the Council comments are contained in the body of the Executive Summary. The report is a true record of the findings. See the Joint Minute of Admissions para 3.

12. The Respondent offered to be interviewed by the Client Protection Sub Committee. The Respondent was not invited for interview on the basis that such an interview was deemed unnecessary. No explanation for not permitting such an interview was given by the Complainer. The Respondent was given no opportunity to explain the circumstances of the four transactions other than by his written responses in the Executive Summary. An interview would have allowed the Respondent to provide his explanation for his compliance with the Money Laundering Regulations 2007 and in particular to provide an explanation about the four transactions under review. The Respondent maintains that the Inspector who carried out the inspection indicated that rather than answer specific questions on files the Respondent should await receipt of the Executive Summary and then address any issues. The Respondent had discussions with two Council officials [SB] a senior inspector within the Financial Compliance Team and [Mr M] an Inspector within the Anti-Money Laundering Department.

13. The Respondent confirmed that his firm was re-inspected in the January of 2018 and that re-inspection disclosed general compliance with the AML Guidance and the Money Laundering Regulations then in force.

14. The Respondent maintains that [EH] and [Mrs O] were not asked for any electronic material but were only asked for the four paper files being the four transactions specifically referred to within the Complaint. No other files were sought according to the Respondent.

15. The Respondent explained to Council that he had been a consultant with MA, an established legal practice with offices in Hong Kong, London and Edinburgh and he was for a time a consultant with that firm. The partners of MA were [DM] and [Mr C]. They were regulated by the Solicitors Regulation Authority in England & Wales and were regulated in Scotland by the Council.

The Respondent respectfully moves the Scottish Solicitors Discipline Tribunal to sustain the Respondent's Answers at Article 5.1 and at Article 5.1 (a), (b), (c), (d) and to repel the pleas in law for

the Council in that the Respondent has complied with his obligations and duties and is not guilty of the acts or omissions which singly and in cumulo could constitute professional misconduct.

In course of this submission I will refer to the case of Jeffrey Crewe and Christopher Cann before the Solicitors Discipline Tribunal 2nd August 2019 which is item 3 in the Appendix and to the Opinion of Court in the Petition of Alistair Kenny Smith Hood for Review of a Decision of the Scottish Solicitors Discipline Tribunal [2017] CSIH 21 item 4 in the Appendix , I will refer to the four transactions and to the Joint Minute of Admissions ,to the ML Regulations 2007 so far as customer due diligence is concerned and to the First Inventory of Productions for the Respondent which contains the Law Society Guidance of 27 November 2007, the Law Society of England and Wales Practice Note of October 2017 (" LSEW Guidance") and finally the Joint Money Laundering Steering Group Guidance (" JMLSG").

The 2013 Accounts Inspection is of now little relevance give the deletion of averment 5.1 (a). Since the Council conceded there was no failure to rectify breaches in terms of Rule B6.23, in my submission it is not open to the Tribunal to make reference to the earlier inspection other than as proof that the Council asked the Respondent to be mindful of the need to observe risk assessment in future.

However the Tribunal should consider the LSEW Guidance at para 3.4. The Respondent is a part time sole practitioner. He was and remains the only fee earner and personally handled every aspect of transactions and in terms of the LSEW Guidance was not required to have comprehensive documented policies in place. Whilst recommended as best practice it is not a requirement. The LSEW guidance is admitted as the Guidance of the Council using delegated powers on 4 December 2014 (see Joint Minute of Admissions para 5) in force at the time of the Financial Compliance Inspection in April 2017. The first public announcement that the LSEW Guidance had been so adopted is in an Article in the Journal of the Council dated 12 December 2016. The LSEW Guidance under para 3.6 of Respondent's First Inventory of Productions 1.2 requires a solicitor to have a system outlining the CDD measures to be applied to specific clients. The LSEW Guidance provides that "you should consider" recording your firm's risk tolerances to be able to demonstrate to your supervisor that your CDD measures are appropriate. We submit that the LSEW Guidance allowed a wide latitude to firms in the extent to which they documented their Policies Controls and Procedures ("PCP'S"). Firms were required to have systems in place and whilst most firms would document these we submit that there was no requirement in terms of the 2007 ML regulations or the LSEW Guidance for them to do so. By way of example of a less formal approach is para 3.8.2 of the LSEW Guidance under the heading "Risk Assessment Notes". The Answers assert there does not need to be significant detail in the record of decisions of risk assessments but merely a note on the CDD file stating the risk level attributed to the file and why you consider that there is sufficient CDD information. An example is given in the LSEW Guidance viz "this is a low risk client with no beneficial owners providing medium risk instructions. Standard CDD material was obtained and medium level ongoing monitoring is to occur". Such an approach may assist firms to

demonstrate they have applied a risk based approach in a reasonable and proportionate manner. Notes taken at the time are better than justifications provided later.

Contrary to the Council's assertion we submit that there was no such requirement that the Respondent, as a part time sole practitioner, have a formal documented client matter risk assessment. We argue that the lack of a client matter based risk assessment form cannot be founded upon as a failure to comply with the requirements of the 2007 ML regulations. The Respondent maintains that he put together an extensive folder of his AML research and PCP's and proffered this to [Mr M], the LSS AML auditor. It was rejected, according to the Respondent, on the basis it was the [MA] AML PCP's and not specifically tailored to how the Respondent operated. The reason that the Respondent offered the [MA] PCP's was he was engaged as a consultant by [MA] and part of the arrangement was that he adopt and adhere to their AML manual/ PCP's.

We submit that when the ML Regulations of 2017 came into force on 26 June 2017 most legal firms in the UK did not have a documented firm wide risk assessment as required by regulation 18 nor fully documented PCPs as required by regulation 19. The reason for this is that until the advent of the 2017 ML Regulations the position was that firms were not required to carry out a formal written client matter risk assessment for each and every transaction. The LSEW Guidance provides the reason. The JMLSG Guidance being production 1.3 for the respondent imposes a more exacting standard than the LSEW Guidance. The same 2007 regulations governed the whole of the UK and in Scotland from 2014 (4 December) until the introduction of the JMLSG guidance in 2017 the Council adopted the LSEW Guidance.

Having set out the respondent's position that he is not guilty of professional misconduct in terms of the complaint itself, we have referred to his responses in the Executive Summary item 5 in the Appendix and in particular the Respondent's email of 14 August 2017 to [SB] of the Council's Financial Compliance Department item 1 in the Appendix.

The Respondent submits that the Inspection by the Council on 7 May 2013 is not relevant to the consideration of this complaint. In terms of the Joint Minute of Admissions para 2, the terms of the 2013 Executive Summary (First inventory of Productions for the Council 1-10) discloses that no further action was required as a result of that inspection.

The Council have accepted a plea of not guilty in respect of averment 5.1(a) in that there was no failure on the part of the respondent to rectify breaches arising from the 2013 inspection under Rule B6.23. The respondent submits it is not open to the Tribunal to do other than consider that 2013 inspection as dealt with.

The Tribunal, we submit, in terms of the Respondent's evidence and in terms of the Joint Minute of Admissions para 5 will hold that the Council is bound by the LSEW Guidance.

At the relevant date of the April 2017 Accounts inspection and as at the date of commencement and completion of the four transactions under consideration the LSEW Guidance applied.

The Money Laundering Regulations 2007 ("ML Regs") permitted a risk based approach to compliance with customer due diligence ("CDD") obligations.

At para 2.3 of the LSEW Guidance much depended upon the size of a firm, the type of its clients and the practice areas conducted.

Within para 2.3 of the LSEW Guidance you will note reference to the client demographic which can affect risk of money laundering and various other factors which may affect risk level assessment.

The Respondent cannot be said to have a high turnover of clients. The Respondent has a stable existing client base. He did not act for politically exposed persons ("PEPs").

On the [SW] transaction he did not meet the client face to face but relied upon a regulated firm [MA]. [MA] were regulated in Hong Kong, in respect of its London offices it was regulated by the Solicitors Regulation Authority and was regulated by the Council in the period that [MA] had its offices in Edinburgh and conducted business there. [SW] was based in Hong Kong and appears to have been a professional person. The Respondent was not acting for a client associated or affiliated to a country with high levels of corruption. Even in the case of [AE Ltd] it cannot be said there was a complex ownership structure. The Respondent determined that [Mr S] and his wife were the beneficial owners.

In paragraph 2.3.2 of the LSEW Guidance by reference to the nature of the [SW], [MC], [XG] and [AE Ltd] transactions there was nothing "complicated" about the transactions. Whilst recognising that payments were received from third parties and some payments in cash in terms of paragraph 2.4 of LSEW Guidance individual client and transaction risks were assessed.

Under Chapter 3 of the LSEW Guidance in dealing with PCPs the respondent was the money laundering reporting officer, the respondent was the cashroom manager, the respondent was the person who conducted all legal work in the practice. His practice employed one part-time secretary. The Respondent had an external outsourced cashier.

Under paragraph 3.4 of the LSEW Guidance the detail and sophistication of the AML systems will depend on the size of the firm and the complexity of the business it undertakes. Much depends upon

the risk profile of the firm as to how risk is to be assessed and reassessed if necessary. Again, what internal controls and what personnel have authority to make risk based decisions depends on the size of the firm and upon how compliance is monitored and its effectiveness of the controls reviewed. All of this was in the hands of the Respondent. The Respondent is the paradigm example of a sole practitioner.

In terms of paragraph 3.4 of the LSEW Guidance firm size is an important factor against which the nature, skill and complex of the practice and its overall risk profile is assessed.

Under para 3.6 of the LSEW Guidance and the heading CDD there has to be a system outlining the CDD for measures to be applied, when CDD was to be undertaken and when more information required to be recorded. This would include verification of identification. The CDD material in terms of paragraph 3.8.1 of LSEW provides "you may keep either a copy of verification of material or references to it. Much depends on the size and sophistication of the record storage procedures".

Under para 3.8.2 of LSEW Guidance under the heading "Risk Assessment" it provides "you should consider keeping the records of decisions on risk assessment processes of what CDD was undertaken". This did not require to be in significant detail.

Supporting evidence records must be kept in particular circumstances of particular transactions.

On CDD Mr Lynch did examine the Respondent on what diligence was required when establishing a business relationship. In the four transactions considered in this Complaint there are no suspicious circumstances pleaded. CDD requires the identification of the client and verifying the identity on the basis of documents, data or information from a reliable and independent source.

The Respondent asserts that occurred in each of the four transactions.

There is a requirement to identify where there is a beneficial owner who is not the client as in the [AE Ltd] transaction. Measures must be taken which are adequate on a risk sensitive basis to identify the beneficial owner. The Respondent submits in the case of [AE Ltd] that occurred.

In terms of para 4.3.2 of the LSEW Guidance the Respondent must determine the required extent of CDD measures on a risk sensitive basis dependent upon the type of client, business relationship or transaction and demonstrate or be able to demonstrate that the Respondent took appropriate measures in view of any risks of money laundering. He asserts he did so.

However the LSEW Guidance confirms you do not avoid conducting CDD but you use a risk based approach to determine the extent and quality of information required.

Under para 4.3.3 of the LSEW Guidance under the heading "Methods of Verification" this demonstrates the ways in which verification of a client's identity can be carried out. It includes (1) obtaining and reviewing the original documents (2) contracting electronic verification; and (3) obtaining information from regulated persons. The Respondent submits that [MA] and [LL] are such regulated persons. The important factors are the independence and reliability of the verification.

Under para 4.3.4 of the LSEW Guidance dealing with reliance and outsourcing and the terms of Regulation 17 of the ML Regs if the Respondent relied upon any other regulated person to conduct CDD for him the Respondent remained liable for any failure and lack of identification. Reliance did not include accepting information on its own from [MA] or [LL]. The Respondent went further in compliance with his own CDD obligations. He required the consent of [MA] and obtained that for example on the [SW] transaction. That transaction shows a letter of engagement issued by [MA] and you will find this in the Council's Second Inventory. [MA] treated [SW] as their client in a transaction brokered by Savills in Hong Kong. The correspondence and letters of engagement from [MA] disclosed that the Respondent was instructed on an execution only basis. [MA] made provision of the CDD material upon request and identified their own supervisor for ML purposes.

[MA] had a base in London as well as Edinburgh at the relevant dates. [MA] were regulated in England and Wales by the SRA and in Scotland by the Council.

Regulation 11 of the ML Regs 2007 provided that you cannot carry out the transaction unless and until that relationship is established. In para 4.4 of the LSEW Guidance you have ongoing monitoring under Regulation 8 which was carried out by the Respondent. It was for the Respondent to make his own assessment as to what evidence was appropriate to identify his clients. A number of examples are given in paragraph 4.6.1 of the LSEW Guidance. A person regulated for AML purposes such as [LL] or [MA] in Hong Hong and in Edinburgh can be relied upon. The Guidance also discloses that where documents are in a foreign language you take appropriate steps to be reasonably satisfied the documents provide evidence of the client's identity.

The Respondent accepts in circumstances where he did not meet clients face to face, (as in the case of the [SW] transaction) EDD was required.

The LSEW Guidance under para 4.6.2 makes reference to private companies such as [AE Ltd]. The Respondent submits he did identify [AE Ltd] through its constitution and its ownership structure. [AE

Ltd] was an unlisted private company and the Respondent identified its directors, the registered address and nature of its business. He obtained a certificate of incorporation and other company filing material.

Para 4.7 of the LSEW Guidance deals with CDD on a beneficial owner and this para is relevant to the transaction involving [AE Ltd]. In [AE Ltd], the identities of [Mr S] and his wife were disclosed. They were disclosed as beneficial owners. Copies of their passports and reliable information was provided by [LL] a regulated firm of solicitors in London with which firm Mr Leslie had done business previously. It is submitted that Mr Leslie assessed the risk in that transaction.

In connection with [AE Ltd] the Respondent assessed the ownership and control structure of [Mr and Mrs S]. He also confirmed that the beneficial owner of the body corporate was an individual whether through direct or indirect ownership who controlled more than 25% of the shares or voting rights in the corporate body and exercised control over its management. Such checks and balances were carried out by the Respondent in the case of [AE Ltd]. [Mr S] was a partner in a firm of Chartered Accountants in Middlesex close to the offices of [LL]. [AE Ltd] was a special purpose vehicle ("SPV") for the purchase of the portfolio of shops in Port Glasgow. The referral by [LL] to Mr Leslie did not give rise to any suspicion or place the Respondent on particular notice re further diligence. It was not an instruction "out of the blue" but an instruction from a regulated firm of solicitors in London with which regulated firm the Respondent had connection.

In terms of para 4.9 of the LSEW Guidance under EDD the Respondent whilst not dealing with [AE Ltd] on a face to face basis still carried out the appropriate EDD and obtained the relevant information as he had done in the [SW] transaction referred by [MA].

Under 4.10 of the LSEW Guidance the [XG's] were existing clients having been represented a short time previously when purchasing a property in Edinburgh.

THE FOUR TRANSACTIONS

FIRST
[SW] purchase of [a property in] Edinburgh.

Second

[XG] and her husband's purchase of [a property in] Edinburgh.

Third

[MC] purchase of [a property in] Edinburgh.

Fourth

[AE Ltd] purchase of [properties in] Port Glasgow.

To assist the Tribunal I make reference to the Inventories of Productions for the Council which are within the general bundle of documents.

FIRST In dealing with the [SW] transaction the relevant Production is the Second Inventory for the Complainers being extracts from the Respondent's file relative to [SW] paginated 1-47. The first matter of significance is the correspondence which post-dates the April 2017 inspection. The Respondent at page 3 corresponds with [AL] a solicitor employed in the [MA] offices in Edinburgh. Mr Leslie sought evidence of risk assessments carried out by [MA]. The extract correspondence discloses a copy passport, copy Hang Seng Bank documentation showing [SW's] substantial savings and this is shown in pages 7, 8, 9, 10 etc of the extracts. On page 21 of this Production there is correspondence from [MA] from their London address dated 3rd October 2016 stating that they thank [SW] for instructing [MA] in connection with the purchase of the property at the [...] development in Edinburgh and they provide their terms of engagement and the scope of engagement.

It also identifies at page 24 the documents required in order that [MA] can comply with their obligations in respect of ML Regulations.

It confirms at page 26 that Mr Leslie will conduct the work. However so far as any concerns regarding Mr Leslie's service (whilst he should be told of such concerns in the first instance) if problems remained unresolved the concerns should be raised with [MA].

That documentation which runs to several pages confirms [MA] hold the instructions. Page 29 contains the letter of authorisation from [SW] that she instructs Leslie & Co to act on her behalf but she authorises both Leslie & Co and/or [MA] to act as her agent to submit the appropriate SDLT forms with HMRC. The correspondence continues at page 30 in respect of a letter of 23rd February 2017 to [SW] from [MA] confirming that their service was completed and that a file closure declaration was required.

At page 32 there is an anti-money laundering check form completed by [MA]. At page 33 [DM] of [MA] emailed Mr Leslie on 4th October 2016 at 11:23 hours confirming the letter of engagement and importantly says "we have completed the AML checks". The [MA] letter of engagement is attached.

This is followed by the Respondent writing on the 11th of October 2016 at page 35 of the file extracts to [SW] confirming the instruction. There is also reference to the requirement to obtain money laundering identification and reference is made to page 2, sub-paragraph 3 of the letter of engagement that can be found at page 41 of the Council's second Inventory.

SECOND In the Third Inventory of Productions for the Council are the extracts from the Respondent's file relative to [MC].

There is correspondence after the April 2017 inspection drawing the daughter's attention to the recent audit and a request for detailed information including authority to act for her parents and requesting information from the bank account of the mother. The file contains a bank statement confirming the source of funds and transfer of the purchase price and a document confirming that the mother does reside at an address in China. That is responded to by [WZ] (the daughter) as per Page 4 and the documentation retrieval continues over the subsequent pages. At Page 40 there is the confirmation from [MC] at an address in China instructing Leslie & Co to deal with her daughter [WZ] who has an address in Midlothian. We then have the bank statement of [WZ] at the address in Midlothian and the payments transferred across from China. There is reference to a [MM]. We have heard from the Respondent that he is the partner of [WZ].

There is reference to [YL] and an email at Page 49 of the Production addressed to Mr Leslie with the client passport and proof of address. [YL] was an employee of [MA].

At Page 54 of the Production there is correspondence from [WZ] to Leslie & Co per [EH] the part-time receptionist/secretary that the funds for the purchase are from her mother and father in China and explaining the issue about the limitation on the amount of foreign currency which can be permitted from China. There is evidence of the offer made for the property [in Edinburgh].

The Respondent did indicate to [WZ] that her parents could send the money to her bank account and in turn that money could then go to the Respondent's client account but he did seek a copy of the mother's passport and a signed letter of engagement. See the email of 26th January 2017 timed at 15:12 hours at page 56 of the extracts from the file. Full information regarding the settlement figure is intimated and there is correspondence to the mother in China accepting instructions on 26th January 2017 and again the letter of engagement is attached.

THIRD The Fourth Inventory of Productions for the Council relates to extracts from the file relative to [XG].

We do know that after the inspection as per Page 1 of the extracts that Mr Leslie met with [XG and her husband] on Monday, 8th May 2017. Full information is requested as to the source of the purchase price of £39,000. No letter of engagement had been signed and that was corrected on the 8th of May 2017. [XG] undertook to obtain bank statements and she returned to Mr Leslie's offices later that day with the account transaction details relating to an RBS savings account.

[XG] and her husband were clients of [MA] and Mr Leslie when consulting for that firm had acted in the purchase [in] Edinburgh and completed the purchase transaction on 14th October 2016.

Page 2 of the extracts discloses the letter to [XG] at her address in Edinburgh asking for her assistance in light of the inspection.

The Respondent submits he was doing all that he could to rectify any failures as identified by the Council following the April 2017 Inspection. What is significant is that there is correspondence of 11th of May 2017 at Page 5 in which Mr Leslie makes reference to a transaction completed in October 2016 relating to property [in], Edinburgh.

There is also a handwritten note at page 8 which discloses on the particular [XG] transaction that it was low risk and there is reference to the purchase of subjects [in Edinburgh]. The passports of both husband and wife were obtained with information regarding their address and confirmation from TSB Bank at page 13 of [XG'S] accounts detail. There is evidence that her husband was employed by [CLSG] and this is shown at pages 20, 21, 22, 23, 24, 25, 26, 27 of the extracts. There is also a significant amount of documentation including the international transaction shown at page 30 from the Royal Bank in the sum of £33,020 and paid to Leslie & Co. Mr Leslie did suggest the mother transfer funds from her bank to the daughter/ client's UK bank. See the letter at page 35 of the Fourth Inventory. The Letter of instruction to [XG] at her address on the 31st of October 2016 is at page 38 of the said Inventory.

FOUR, the Fifth and final Inventory refers to the [AE LTD] transaction. I have covered this in my earlier submission on the matter of referral by [LL] and the obtaining of documents on identification and sources of funds and wealth by [Mr and Mrs S].

Summary on the Four transactions which are the basis of the complaint.

In connection with the four separate transactions the Respondent's submissions as follows:

1. On [SW'S] purchase of [...] Edinburgh the matter was created on 11 October 2016. [MA] referred the client but had issued their own letter of engagement. The client was a [MA] client and the

source of funds was identified by [MA]. We have the Respondent's evidence about his existing consultancy arrangement and that is contained in his own statement. In line with LSEW Guidance approved by HM Treasury we submit that no risk assessment was required given the nature of the Respondent's practice and its size. There is no risk level assessment documented on file. Contracts were concluded by [MA], Hong Kong following the deal being brokered by Savills in Hong Kong. The property was already subject to a tenant being in place. The funds were paid by [MA] on 27 October 2016 and the transaction settled on 15 November 2016 with the last activity on file on 27 February 2017. The funds were identified so far as their source and wealth by [MA]. Mr Leslie was acting as agent. AML applies to the client and not the activity whereas Proceeds of Crime Act (POCA) does apply to the activity. Both [MA] and the Respondent issued letters of engagement and Mr Leslie is described as their consultant and [DM] the partner in Hong Kong directed the transaction. The [MA] Scottish Office whilst open was regulated by the Law Society of Scotland. [DM] on 4 October 2016 confirmed that [SW] had signed his letter of engagement and that Mr Leslie could proceed. There was an existing relationship between the Respondent and [MA] there is a good reason that [MA] would instruct Mr Leslie as their consultant/agent in Scotland. Bearing in mind the relationship and the Referral the Respondent was entitled to rely upon [MA]. The property was rented out with an existing lease to be renewed and the memorandum of sale was dealt with by Savills in Hong Kong directly between seller and purchaser. The deeds were signed at Savills own offices in Hong Kong. In any event the Respondent produced for the Law Society the information they required. Settlement funds came from [MA], Hong Kong office and they are a regulated firm in Hong Kong, in London and in Edinburgh as at the relevant date. We argue there were no red flag indicators so far as [MA] is concerned.

2. On the second transaction for the [XG's] in [...] Edinburgh the Respondent had acted for [XG and her husband] in a previous transaction when a consultant with [MA] and had met them face to face.

We argue that no risk assessment was required in accordance with the LSEW Guidance para 3.8.2. Contracts concluded in 21 November 2016 but the monies transferred to Leslie & Co on 27 February 2017 with the transaction settling on 1 March 2017. The purchase price was £39,000. The Respondent submits that he had acted for [XG and her husband] as a consultant at [MA] when they purchased property at [...], Edinburgh on 14 October 2016. There is a recognition that only part of the scanned passport is on the paper file but it would have come from a complete digital copy which did not print out correctly. This demonstrates the digital [AL] of [MA] on 17 May 2017 plus an extract from a risk assessment for the purchase of the previous subjects. Mr Leslie submits that there were no red flag indicators and this was an existing client buying a property for £39,000. The issue about a source of funds in terms of the LSEW

Guidance arises if there is a red flag indicator identified. On the source of funds at the relevant date all that was required was the details of the bank account the funds came from. The couple used their own funds from their RBS account. They were met face to face they had a home address in Edinburgh they were existing clients and had savings from employment. This was an investment property with an existing tenant for low value. We submit there were no high risk factors pertaining.

3. In the transaction for [MC] we have summarised the extracts from the file. There is reference to the passport on file as mentioned in the correspondence from [YL] of [MA] on 28 November 2016 incorporating a copy passport and proof of address. We accept that signed letter of authority was obtained after settlement. The funds were provided by [MC] and her husband and passed to their daughter. The on boarding information for client due diligence was that [MC] was the mother of [WZ]. [YL] of [MA] knew [WZ] and Mr Leslie relied upon that trusted contact [YL] who was based in Edinburgh at the time. The mother and father's funds came from a bank account in China and the funds were transferred to the daughter who transferred them to Leslie & Co from her UK Account. Residency in China is of itself not a high risk but raises the risk level and it was a cash transaction which would provide a red flag indicator. This was a new client referred by a trusted contact.

4. In the transaction for [AE Ltd] the Respondent identified the company number, the nature of the transaction, the referral from the [LL], trusted contacts of Mr Leslie. Company information, passports, proof of address were provided by [Mr S] the beneficial owner on 15 February 2017. For reasons already described in terms of the LSEW Guidance we submit that no risk assessment form was required. Contracts concluded on the 7th March 2017 with the matter completed three days later and the last activity on file was 18 May 2017. The value was £595,000. Terms of engagement were signed 15 February 2017. [Mr S] is a Chartered Accountant referred by [LL] and at each stage he responded fully to any requests for information including the passports of his wife and himself, proof of identification and banks statements. We accept that that information was obtained after settlement particularly on the issue of funds and source of wealth but there were no red flag indictors. [Mr S] created the SPV for this acquisition. The funds to settle came from two Nationwide online bank accounts which whilst they did not display the account holders names we now have evidence and correspondence from [LL] of 18 May 2017 which would have been sufficient for Regulation 17 Reliance including, a certified copy of valid passport, proof of address, company information, range of bank statements. Mr Leslie had seen the company information prior to settlement. This is a new client referred by a trusted contact.

In connection with the LSEW Guidance, there has been a recent Solicitor's Disciplinary Tribunal ("SDT") decision in the case of Mr Crewe and Mr Cann. I attach a copy of the decision at item 3 of the appendix. In a rare move the SDT acceded to an application by the defendants after the Solicitors Regulation Authority ("SRA") had made its case that there was no case to answer due to the terms of the 2007 Money Laundering Regulations. In summary Mr Crewe was a solicitor at an alternative business structure called Metamorph Law and Christopher Cann was the money laundering reporting officer.

Mr Crewe was qualified in 1967 and was accused of failing to undertake adequate source of funds checks on transactions carried out for five clients. There was one particular transaction being a cash purchase for £1.5m of a flat for "client K" in which it was said Mr Crewe had failed to check source of funds, had failed to complete enhanced due diligence, had not met the client face to face, failed to terminate the relationship with client K after he refused to authorise information from his bank and Mr Crewe had relied on the banks purported due diligence checks when it was not appropriate so to do. Mr Cann qualified in 1982 and was charged with authorising Mr Crewe to proceed with the client K transaction despite this and not ensuring the firm adhered to the money laundering regulations. Mr Crewe accepted that there was no evidence on files of source of funds checks but pointed out that in terms of Regulation 8 (2) of the 2007 ML Regulations which required "ongoing monitoring" in business relationships, each of the clients was known to Mr Crewe and he had acted for them for some years. The SDT accepted there was nothing that would have alerted him to carry out a source of funds check.

The SRA had not charged Mr Crewe with failing to keep proper records and the SDT said he could be criticised for failing to record his decisions on files. The Tribunal ruled that on a strict wording of the allegation and on the requirements in force at the time there was no case to answer. In relation to client K the SDT found evidence that various red flags circumstances were engaged but they were weak on the basis that it was not unreasonable for client K living in Syria and Lebanon after some time in Canada to use an intermediary whom Mr Crewe had known for some years. One of the banks that provided material for the purposes of Money Laundering Regulations was based in Syria and the other was UK registered. In that case the Tribunal found that Mr Crewe had in fact carried out sufficient enhanced due diligence based upon the bank documents, passport and utility bill. Even though in correspondence it was shown that Mr Cann as MLRO was uncomfortable in Mr Crewe's approach to AML in the case, the SRA had already conceded there was not sufficient evidence to make a suspicious activity report (and that is not pleaded in Mr Leslie's case). What is significant about the Crewe and Cann case is that the SDT emphasised that the 2007 Regulations were narrower than later versions and the case was peculiar to its own particular facts and circumstances and the context of the 2007 Regulations.

In that case at its highest the evidence presented by the SRA did not meet the high test for misconduct namely proof beyond reasonable doubt.

Final Submissions on whether or not the Council has proved professional misconduct.

In practice as in life, language is often used without proper definition.

Before this Tribunal we speak of "Professional Misconduct".

However when the Tribunal casts its own eye on the lists of the types of issues prosecuted by the Council before the Tribunal it will find a spectrum of offences from the most serious and egregious conduct including dishonesty to the most technical and even on one view "minor" breaches of a professional code.

Regulators including the Council assert that even technical and on the face of it minor breaches of professional codes and practice rules can amount to "professional misconduct". Matters are not assisted since the advent of the concept of unsatisfactory professional conduct as defined in Section 46 (1) of the Legal Profession and Legal Aid (Scotland) Act 2007. Regulators may assert that even the most technical of breaches can amount to professional misconduct but if that is right intent and motive are irrelevant. The Accounts Rules anticipate that not every breach may amount to professional misconduct.

What has been required is a working definition of professional misconduct that ensures sufficiently that the full weight of the disciplinary process is brought to bear only in my submission on the most serious of cases and that the less serious type of cases can be dealt with in some other way. The purpose of discipline is not punishment of itself but it is to ensure that regulation focuses upon outcome. Membership of the Legal Profession is a privilege. Those who exercise that privilege undertake a duty throughout their professional lives to conduct their clients' affairs to their utmost ability and with complete honesty and integrity. If the public is to give the Profession its respect and trust, it must be assured that when solicitors fail in theses duties, they will be suitably dealt with by the profession's disciplinary system. The public must be protected against the risk of repetition and the Tribunal's decision must be one that vindicates the reputation of the Profession.

In England and Wales in Barrister Disciplinary Cases the Bar Standards Council emphasise outcome focussed regulation and this approach is found in a number of decisions including the unreported decision in Walker -v- The Bar Standards Board 2013 which was an appeal to the Visitors to the Inns of Court in which May LJ adopted and applied the Scottish Test for Professional Misconduct.

In Howd –v- The Bar Standards Board [2017] EWHC 2010 [51] per Lang J being a High Court Appeal under Section 24 of the Crime and Courts Act 2013, the submissions for Mr Howd about the effect of Walker were accepted and adopted. A copy of that Decision is at number 7 of the Appendix. Lang J made reference to Walker –v- BSB and at para 51 when referring to Sir Anthony May's comments (the former Chief Lord Justice of Appeal) sitting as Visitor to the Inns of Court in " Walker" when considered the meaning of professional misconduct, he concluded that on a literal interpretation any breach of professional practice however trivial could constitute professional misconduct and he held this could not be the correct approach saying "consistent authorities (including, it appears, other decisions of the Bar Standards Board Tribunals) have made clear that the stigma and sanctions attached to the concept of professional misconduct across the professions generally are not to be applied for trivial lapses and, on the contrary, only arise if the misconduct is properly regarded as serious".

He went on to say at para 15 "The concept of professional misconduct carries resounding overtones of seriousness, reprehensible conduct which cannot extend to the trivial".

There is a recognition that misconduct is of two principal kinds:

1. It may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to the fitness to practise.

2. It can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself but which brings disgrace upon the solicitor and thereby prejudices the reputation of the profession.

On the basis that the consistent authorities including Sharp make clear that the stigma and sanctions as attached to the concept of professional misconduct are not to be applied to minor lapses and should only arise if the misconduct is properly regarded as serious with the resounding overtones of serious and reprehensible conduct which does not extend to the trivial, vital importance is placed by this Tribunal on a working definition that can apply flexibly. Of significance in the Opinion of Lord President Emslie in Sharp – the Law Society of Scotland (1984) SC129 at 134/135 is the use of the words "serious" and "reprehensible". Lord President Emslie indicated "there are certain standards of conduct to be expected of competent and reputable solicitors. Any departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct". This Tribunal appreciates that the test is a conjunctive one of the conduct being both "serious and reprehensible". That test over the last 37 years has proved capable of rational application by decision makers. The test of "serious and reprehensible" conduct is now applied in other regulatory jurisdictions.

For good reason Lord President Emslie approached the matter by reference to the degree of culpability of the solicitor in question as one of the significant aspects of identifying misconduct when an individual solicitor such as the Respondent is accused of professional misconduct.

If there were no gradations of intention, motive, basic human error and they were deemed irrelevant it would eventually mean that every single of negligence would not only be actionable in damages but in parallel could be and on one view should be prosecuted before this Tribunal. That that does not happen is for good reason in that the Sharp "serious and reprehensible" test requires (a) a mental element (b) deficient performance and (c) practise impact.

Many disciplinary cases such as this occupy a position at the equator of professional discipline. A case that crosses the equator may not have crossed it by any great distance at all. In my submission this is such a case and the failures which have been conceded by the Respondent are not such as to meet the "serious and reprehensible" conjunctive test and as a result we submit on behalf of the Respondent that he is not guilty of professional misconduct. Continuing on this theme I refer to a case known to this Tribunal in which the Opinion of the Court was delivered by Lord Drummond-Young. It is the Opinion of the Court in the Petition of Alistair Kenny Smith Hood for a review of a decision of the Scottish Solicitors Discipline Tribunal [2017] CSIH 21. A copy is found at number 4 of the Appendix. Lord Drummond-Young at para [15] provided his legal analysis and confirmed "unsatisfactory professional conduct" is defined in terms of Section 46 (the Interpretation Section) of the Legal Profession and Legal Aid (Scotland) Act 2007. Lord Drummond-Young proceeded at para [16] "the difference between unsatisfactory professional conduct and inadequate professional services lies primarily in the use of the word "reputable", unsatisfactory professional conduct is measured against the standard of the competent and reputable solicitor whereas inadequate professional services are services not of the quality reasonably to be expected of the competent solicitor". It may well be open to the Tribunal to consider whether or not the conduct amounts to unsatisfactory professional misconduct and therefore should be remitted back to the Council. Lord Drummond-Young continued his Opinion by saying "unsatisfactory professional conduct lies on a spectrum that runs from professional misconduct at the most serious end to inadequate professional services at the lesser end and determining where the conduct complained of lies on that spectrum is a question for the evaluation by the relevant Disciplinary Tribunal either the Council of the Respondents or the Independent Scottish Solicitors Discipline Tribunal." Importantly Lord Drummond-Young explained the process by reference to the question of professional misconduct and using the words of Lord President Emslie in Sharp comments "a failure on the part of a solicitor to comply with the relevant rule may be treated as professional misconduct .. [W]hether such a failure should be treated as professional misconduct must depend upon the gravity of the failure and a consideration of the whole circumstances in which the failure occurred including the part played by the individual solicitor in question"

We submit and emphasise that a breach of the accounts rules incorporating the 2007 Money Laundering Regulations may amount to professional misconduct. It does not do so in every circumstance unless this Tribunal holds that the conduct of the Respondent was both serious and reprehensible in a professional sense."

Mr Macreath also made additional oral submissions.

The English guidance with regard to the Anti-Money Laundering Regulations was adopted by the Law Society of Scotland in 2014 and yet was not announced to the profession for two years. Mr Macreath submitted that it was the obligation of any regulator to tell its members what guidance is in force. He submitted that the inspection of 2017 proceeded without much regard to the guidance in force.

He emphasised that the test for professional misconduct requires the conduct to be serious and reprehensible. If the Complainers failed to reach that threshold, then proof is not made. The test for professional misconduct refers to the degree of culpability and therefore recognises a mental element.

The English guidance is important for perceptive. This is not the case that one size fits all. The Respondent is a sole practitioner, with a part time member of staff with the rest outsourced. The guidance makes it clear that the necessary approach requires to be proportionate to the size of the practice. There was nothing in this case to support a breach of honesty or integrity, apart from perhaps in the XG case where the Respondent had suggested that the client's mother transfer funds into his client's account. Mr Macreath submitted this case may be on the equator in relation to a breach of the rules but it had not crossed it and the test for misconduct has not been met. Nowhere was it suggested that the clients involved were nefarious or were doing anything suspicious. The Respondent had provided full cooperation following the inspection. The onus lay with the Law Society to establish their case. Only four files had been sought in this case.

The English guidance makes it clear that what was required is based on a risk-based approach. It was for the Respondent to determine what customer due diligence measures were necessary. Mr Macreath invited the Tribunal to have regard to the client demographic of the Respondent. The Respondent did not have a high turnover of clients.

He submitted that the cases of The Law Society of Scotland-v-Adam and The Law Society of Scotland-v-Inkster were helpful for the Tribunal assessing where on the equator this case lay. If the conduct of the

Respondent had not crossed the equator then the Tribunal should find him not guilty. If his conduct had crossed the equator, then the Tribunal could make a finding less than professional misconduct.

QUESTIONS FROM THE TRIBUNAL

The Tribunal asked if it was the parties' position that the English Practice note had replaced the Scottish guidance from 2007. Mr Macreath confirmed that that was his submission. The Fiscal argued that it was not as simple as that as the Practice note only became effective when it was notified to the profession in the May 2016 article.

The Tribunal asked Mr Macreath if he accepted that it was appropriate for the Tribunal to make a finding in fact in relation to article 3.7 of the Complaint. He accepted that it was appropriate given that the content of 3.7 was taken directly from the inspection report.

The Tribunal asked for clarification of the nature and timeframe of the Respondent's consultancy for MA. The Respondent explained that this was an informal relationship which had lasted over three years. The Respondent had been asked if he would do the conveyancing business in Scotland. After the office in Scotland closed, he had carried on dealing with the London office. The relationship ended when the firm was taken over by another firm. This had been a "gentleman's agreement".

The Tribunal asked the Fiscal what the significance was of the reference to Rule B1.2 in the averments of duty. The Fiscal confirmed there was no allegation of dishonesty on the part of the Respondent however the breaches averred within the Complaint were, in his submission, a contravention of the requirement of integrity. Mr Macreath argued that there was no averment within the Complaint to justify an allegation of a lack of integrity.

The Fiscal confirmed that he did not accept that the adoption of the English Practice note by the Scottish Law Society was a watering down of their approach. He did not accept the interpretation that the Respondent sought to be placed on it.

The Tribunal enquired whether reference to the Joint Money Laundering Steering Group in paragraph 4 of the Joint Minute should in fact be the Legal Sector Affinity Group. Mr Macreath confirmed that to be correct.

In response to a question from the Tribunal, the Fiscal moved to amend averment 5.1(c) to correct a typographical error. This was not opposed by the Respondent and therefore granted.

DECISION

The first step for the Tribunal was to identify which facts had been established. To do this, the Tribunal had regard to the Joint Minute, admissions made in the Record, the documentary productions and the evidence of the Respondent.

The standard of proof in these proceedings was that of beyond reasonable doubt and the onus of proof lay with the Complainers.

The Tribunal had reservations as to the reliability of the evidence of the Respondent. It had found his evidence to be often confused and confusing. He appeared to conflate the information and documentation he had provided to the inspection team after the date of the inspection with what he had possessed prior to the date of the inspection. His explanation of the "consultancy" with MA was less than clear. Nor was there a consistent pattern within the three transactions said to be "referrals" from MA which could have helped the Tribunal with this issue. Ultimately, it appeared to the Tribunal that this was simply an informal business agreement that saw clients referred on to Leslie & Co. for Scottish conveyancing transactions, where the fee might be shared with MA.

The Fiscal invited the Tribunal to make a number of findings in fact. Only one of these appeared to be controversial, that relating to whether or not SW was the client of the Respondent. The Tribunal was satisfied beyond reasonable doubt that SW was the client of the Respondent. He had issued a terms of business letter to her via an email to MA. This letter enclosed his firm's "Client Particulars" form. Within his responses to the Law Society, he had referred to SW as a "referral" from MA and he did not distinguish her transaction from the other two clients he also said were "referrals". Separately, MA had received a letter of authorisation from SW in which she confirmed "I...have instructed Leslie & Co.".

The Tribunal required to consider each of the averments of misconduct in article 5 of the Complaint separately to assess whether the alleged failures had been factually established before moving on to determine whether the test for misconduct had been met.

Article 5(1)(a) was an allegation that the Respondent had failed to rectify breaches noted in the 2013 inspection. The Fiscal withdrew this averment at the beginning of the first day of the hearing.

Article 5(1)(b) was split into three subcategories.

Article 5(1)(b)(i) averred that the Respondent had failed to "establish and maintain, or retain or exhibit evidence of having established and maintained risk sensitive policies and procedures". The evidence relied upon by the Complainers was the content of the inspection report which simply said:-

"The AML procedures provided during the inspection does not contain all of the required information to evidence that the practice unit is fully complying with the requirement of regulation 20."

No detail was provided as to what was missing. This issue was further confused as the exchange of responses that follow within the inspection report seem to discuss the new procedures being put in place by the Respondent in relation to the 2017 Regulations coming into force. In his evidence, the Respondent stated that he had established and had a manual containing his policies and procedures. Accordingly, the Tribunal concluded that this averment had not been established.

Article 5(1)(b)(ii) averred that the Respondent had failed to "apply, or retain or exhibit evidence of having applied customer due diligence measures on a risk sensitive basis in respect of the clients of the practice unit" and went on to divide the allegation into four subcategories. The Money Laundering Regulations 2007 place emphasis on the appropriate procedures to be followed by any relevant person being determined on a risk sensitive basis. The Tribunal considered it important to approach this averment keeping in mind that the Respondent himself, as stated within the inspection report, had assessed three of the transactions as high risk and one of medium risk.

The first of the subcategories stated that the Respondent failed to "undertake, or retain or exhibit evidence of having undertaken, ongoing monitoring of risk in respect of at least 4 transactions". Accordingly, this averment related only to ongoing monitoring and not to the initial risk assessment which the inspectors accepted had been carried out. In his evidence, the Respondent had stated that he conducted ongoing monitoring because he was the person who carried out the whole transaction. He admitted that he had not made any notes of the ongoing monitoring. It was argued by the Respondent that no record required to be kept according to the English Practice note. The Fiscal had argued that the English Practice note, if read as a whole, could not be interpreted as saying that no records required to be kept. The Tribunal agreed with the Fiscal's submissions. Regulation 7 of the Money Laundering Regulations 2007, when addressing the issue of customer due diligence, states that a relevant person must "be able to demonstrate to his supervisory authority that the extent of the measures is appropriate

in view of the risks of money laundering and terrorist financing". It is difficult to see how that can be done without a record being kept of the assessment of risk which affects the customer due diligence requirements. Rule B6.7.1 of the Practice Rules also makes reference to keeping properly written up records.

The Tribunal was not satisfied beyond reasonable doubt that the Respondent had failed to undertake the ongoing monitoring but it was satisfied beyond reasonable that he failed to retain or exhibit evidence of having undertaken ongoing monitoring of risk. The evidence only related to four transactions and so it was appropriate to delete the words "at least".

The next subcategory was that the Respondent had failed to "undertake, or retain or exhibit evidence of having undertaken, enhanced customer due diligence measures and enhanced ongoing monitoring in respect of at least four transactions".

The Tribunal was satisfied beyond reasonable doubt that in three of the transactions the Respondent was required to undertake enhanced due diligence measures. In his evidence, the Respondent did not appear to appreciate the necessity for enhanced due diligence in these cases. His position in evidence was that only one of the transactions was not face to face, that of SW. In that case, he had argued that she was not his client. In the AE Limited transaction, the company was his client. The Tribunal was satisfied beyond reasonable doubt that he had only identified the beneficial owners of AE Limited after the transaction had concluded. The details of the correspondence that took place after settlement were not consistent with him having obtained the information at an earlier stage.

In the MC transaction, MC was his client and on his own admission he had not met her. In respect of the XG transaction, the Tribunal was not satisfied that it was established that this transaction required enhanced due diligence. It was the Respondent's position that he had met the client face to face at some stage prior to the transaction and the Fiscal appeared to concede that.

Accordingly, the Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to undertake, or retain or exhibit evidence of having undertaken, enhanced customer due diligence measures and enhanced ongoing monitoring in respect of three transactions.

The next subcategory was that the Respondent had failed to "undertake, or retain or exhibit evidence of having undertaken, an appropriate level of customer due diligence in respect of client identification in respect of at least four transactions".

In the SW transaction, the only evidence of identification the Respondent appeared to have was an emailed uncertified copy passport. His explanation for this transaction was that SW was not his client but MA were. No CCD appeared to have been undertaken for MA. He also appeared to place reliance on Regulation 17 of the Money Laundering Regulations 2007. It is difficult to see how he could rely on that regulation at the same time as suggesting that it was MA who was his client and not SW. In any case, what occurred between him and MA appeared to fall well short of what would be required by regulation 17.

In the XG transaction, it appeared from the file that the first contact came from the client's husband. This transaction did not appear to be a referral from MA. The only documentation seen on the file by the inspection team was an uncertified copy Job Centre letter and passport that appeared to have been emailed to the Respondent. The Job Centre letter was addressed to the client at a London address and did not disclose the full date. The copy passport did not disclose the date of issue or passport number. The Respondent appeared to take instructions from his client through her husband. There was no identification information on his file relating to the husband. After the inspection, the Respondent wrote to MA asking for any AML documentation they held in relation to an earlier transaction for the couple that had been referred to the Respondent by MA. The Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to undertake an appropriate level of customer due diligence in respect of the identification of his client in this transaction. This transaction had been assessed by the Respondent himself as medium risk, despite what was suggested by him in his parole evidence.

In relation to the MC file, the inspection report noted only one form of document seen on the file for the client which was an uncertified copy of a passport emailed to the Respondent by YL. There was also a copy passport for his client's daughter along with a copy TSB statement relating to her. This transaction was assessed by the Respondent at the time as high risk. The Respondent in his evidence appeared to be relying on Regulation 17 of the 2007 Regulations. However, it was not clear that this was a referral from MA and even the Respondent had drawn a distinction in this case in his evidence referring to the referral coming from YL. The Tribunal noted that in the original email from her to the Respondent she emphasises that she is no longer using the MA email address and refers to "her share" of the fee. The Tribunal was satisfied beyond a reasonable doubt that the Respondent had failed to undertake an appropriate level of customer due diligence in respect of his client's identification.

With regard to AE Limited, the Tribunal noted above that they were satisfied that the Respondent had not identified who the beneficial owners were nor had he taken appropriate steps with regard to Mr S

having only obtained an uncertified copy passport and copy bank statement. This transaction was assessed by the Respondent at the time as a high risk transaction. The Tribunal was satisfied whatever the arrangement was between the Respondent and LL it was not sufficient to satisfy the requirements of Regulation 17 of the Money Laundering Regulations 2007. In all the circumstances, the Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to undertake the appropriate level of customer due diligence in respect of his client's identification in this transaction.

The final subcategory was that the Respondent had failed to "undertake or retain or exhibit evidence of having undertaken customer due diligence in respect of source of wealth in respect of at least four transactions". Again, the Tribunal was of the view that the words "at least" should be deleted.

In the SW transaction, it appeared that the Respondent had made little or no enquiry with regard to the funding of this transaction. After the inspection, he had obtained a copy of the anti-money laundering check form for MA and even the Respondent in evidence had accepted the content of that form to be inadequate with regard to the source of funding and wealth. This file had been assessed as high risk.

The funding of the MC transaction appeared to be extremely complex. He had been advised that his client and her husband were to be funding this transaction. He took instructions from his client through his client's daughter. From documents apparently obtained after the inspection it could be seen that funds were transferred to both the daughter and the daughter's partner before being placed into a UK TSB account to be transferred to the Respondent. Of these transfers, only two out of five were made by the Respondent's client, neither being to her daughter. Two of the transfers were made to his client's daughter but not by his client. He had made no effort to identify the others who transferred funds. A possible explanation put forward for these complex arrangements was avoiding the Chinese banking limits on transfers of funds abroad. He had not enquired why funds were being channelled through MM. This was a high risk transaction. The Tribunal was satisfied that the Respondent had made no enquiry as to the source of wealth.

In the XG transaction, when first instructed by his client's husband, the Respondent was told that some funds were being provided by his client's mother. On further investigation, it appeared that the funding was provided by the client and her husband themselves. This information was not obtained until after the transaction had settled. It was only then that the Respondent sought confirmation of the couple's income. The Respondent noted in evidence that his client was in low paid employment. This was a medium risk transaction with a change in funding arrangements. Additionally, the exchange of correspondence between the Respondent and his client's husband relating to the transfer of funds from

China into the couple's UK account caused the Tribunal concern. This appeared to the Tribunal to be a device to allow the Respondent to avoid carrying out money laundering checks in relation to his client's mother in China and the source of funds.

The funding arrangement for the AE Limited transaction also appeared to be complex. Funds were transferred from a number of different sources including two other companies and a bank account in the name of one of the directors of AE Limited, who was not the director that the Respondent had had contact with. The Respondent had suggested in his evidence that he had obtained appropriate information to identify the source of funds prior to the settlement of the transaction. The Tribunal did not accept that this was consistent with the terms of correspondence on the Respondent's file that took place after the conclusion of the transaction nor after the inspection. This was a high risk transaction. The Respondent had been instructed to take over the transaction from another firm of solicitors in Glasgow very late in the day.

In all of the circumstances, the Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to undertake customer due diligence in respect of source of wealth in respect of four transactions.

Article 5(1)(b)(iii) averred that the Respondent failed "to take appropriate measures to ensure that all relevant employees of the practice unit had received training in the law relating to money laundering and terrorist financing". The Tribunal was not satisfied that this had been established beyond reasonable doubt. It appeared that the Respondent only had one part time employee who was referred to by him in his evidence as his secretary but in some of the correspondence as his paralegal. He had described training being given to that employee by way of webinar, training DVD and manual. The averment did not suggest he had not kept an appropriate record of training but rather that training had not been undertaken.

Article 5(1)(c) averred that "the Respondent in the period preceding and up to at least 3 April 2017 failed to keep properly written up accounting records to demonstrate compliance with the Money Laundering Regulations and in breach of Rule B6.7.1(c) of said Practice Rules". The Tribunal was satisfied from all the evidence before it, including concessions made by the Respondent in his parole evidence, that this averment had been established beyond reasonable doubt.

The final averment of misconduct was set out in Article 5(1)(d) where it was said "the Respondent in the period from 7 May 2013 up to at least 3 April 2017 failed to use reasonable endeavours to acquire and maintain the skills necessary to discharge his responsibilities as the practice unit's cashroom

manager in respect that the records of the practice unit were not being maintained properly and did not demonstrate compliance with the Practice Rules required, some of said rule breaches having previously been advised during the inspection of 2013, in breach of Rule B6.13.2 of said Practice Rules".

Effectively, the Complainers were averring that the Respondent had failed to acquire the necessary skills to discharge his duties as cashroom manager in ensuring compliance with the Money Laundering Regulations 2007. The Complainers invited the Tribunal to hold that the document "Response to Law Society" was an admission by the Respondent that he had failed to acquire the appropriate skills. The Respondent invited the Tribunal not to interpret his response in that way and gave an explanation for how that could be done. The Tribunal gave very careful regard to the content of the response itself and concluded that the only reasonable interpretation to place upon it was that the Respondent was admitting his failures in this regard. That interpretation was supported, in the Tribunal's assessment, in the failures that had occurred in the course of these transactions. Accordingly, the Tribunal was satisfied beyond reasonable doubt that the factual basis for this averment had been established.

The next step for the Tribunal was to consider whether any of this conduct amounted to misconduct. Both parties had referred to the test for misconduct set out within the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313 where it was stated:-

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

The Fiscal had invited the Tribunal to hold that the conduct established amounted to a breach of Rule B1.2 of the Practice Rules in relation to integrity. None of the averments of misconduct at Article 5 had referred to a breach of Rule B1.2 or made any reference to a lack of integrity. Without a specific averment of misconduct in relation to a lack of integrity, the Tribunal did not consider it appropriate or fair to have regard to Rule B1.2.

Mr Macreath had invited the Tribunal firstly to hold that it had not been established that the Respondent had breached the Rules and secondly, if the Tribunal held that the Rules had been breached, that these

breaches did not amount to misconduct. He referred the Tribunal to three authorities which he said supported this proposition. The first of these was the case of SRA-v-Crewe & Cann June 2019 which had included allegations of misconduct in failures to comply with the Money Laundering Regulations. Part of the reasoning in that case was that the client who was not identified was a client who was well-known to the solicitor dealing with the transaction and had been for some years. The same could not be said about the Respondent's case. He also referred the Tribunal to the case of The Council of the Law Society of Scotland-v-John Henry Adam [23 August 2017] in that case the Tribunal had been dealing with a number of allegations relating to breaches of the Accounts Rules, none of which related to the Money Laundering Regulations. The decision part of the findings is itself brief. The Tribunal has emphasised on many occasions that each case must be taken on the basis of its own detailed facts and circumstances. At best, this case was support for the proposition that not every breach of the Accounts Rules automatically amounts to professional misconduct. In the Adam case, the Tribunal had referred to the breaches as being "administrative, technical and historical". The Tribunal did not consider that the same could be said about the current case.

The third case referred to by Mr Macreath was The Council of the Law Society of Scotland-v-Michael Alastair Inkster [18 June 2018]. That complaint had included averments of misconduct relating to breaches of the Money Laundering Regulations. These breaches were held not to amount to professional misconduct but in that case significance was placed on the submission by the Respondent that the people in relation to these failures were well-known to him.

Mr Macreath had placed emphasis on the Law Society only asking for 4 files, each of which was a 'referral'. The Tribunal, however, considered it significant that each of the four files requested presented significant issues in relation to money laundering procedures. Additionally, it did not appear to the Tribunal that this type of transaction was unusual for the Respondent given his evidence relating to his relationship with both MA and LL.

The Tribunal was particularly concerned by the steps taken by the Respondent in the XG case to apparently avoid having to carry out money laundering checks on funds coming from China. The Money Laundering Regulations exist to protect society against criminal acts. Failure to comply with the Anti-Money Laundering Regulations demeans the trust the public can place in the profession. Having regard to the whole circumstances of this case, the Tribunal was satisfied that the Respondent's conduct was both serious and reprehensible. Given the close connection between each of the averments of misconduct, the Tribunal considered it appropriate that the finding was one made on an *in cumulo* basis.

DISPOSAL

The Fiscal indicated that he had no further submissions in relation to sanction.

Mr Macreath drew the Tribunal's attention to the detailed statement for the Respondent and confirmed that his mitigation was set out therein.

He confirmed that the Respondent's firm had been inspected in 2018 with satisfactory results. He submitted that the main difficulty in this case was that the Respondent had not been present at the time of the inspection. He submitted that if the Respondent had been present he might have been able to provide information to prevent the matter proceeding in this way.

Mr Macreath stated that any finding of professional misconduct would have a significant impact upon the Respondent. The Respondent continued to practise despite his health difficulties. Mr Macreath is aware of several solicitors who speak well of the Respondent. He argued that the Respondent was not a man who is reckless. He suggested that this case was more about a failure to document things rather than anything else.

He invited the Tribunal to consider that a censure would be sufficient to deal with this case having regard to the improvement made in his practice as noted in the last inspection.

DECISION WITH REGARD TO DISPOSAL

The Tribunal gave careful regard to the circumstances as set out within the Respondent's statement, particularly his health issues. It was clear that following the inspection in 2017 the Respondent had taken significant steps to improve his firm's practices and procedures. This appeared to be confirmed by the inspection in 2018. Whilst the Tribunal had some sympathy for the Respondent as a sole practitioner wearing many hats in carrying out his responsibilities, the Tribunal had to mark the importance of even the smallest firm complying with the Anti-Money Laundering Regulations.

Given the remedial steps taken by the Respondent since the inspection of 2017, the Tribunal concluded that the appropriate disposal was to censure the Respondent.

The Fiscal made a motion for expenses and had no submissions with regard to publicity other than the making of the usual order.

Mr Macreath confirmed that he could not oppose the motion for expenses and he confirmed that he was aware of the scale on which the Tribunal normally made its award. He had no comment to make with regard to publicity.

In all of the circumstances, the Tribunal concluded that the appropriate award of expenses was one in favour of the Complainers. With regard to publicity, the Tribunal noted that the findings would include significant personal information about individuals who were not party to the actual proceedings. The identity of the individuals concerned did not add anything to the Tribunal's decision. In all of these circumstances, the Tribunal considered it appropriate to order that publicity should take place including the name of the Respondent but not necessarily identifying any others. The Tribunal also decided to omit some of the medical information contained in the Respondent's statement and his representative's written submissions when reproducing them as part of these findings. It was not necessary for these personal details to be included in this decision.

Kenneth Paterson

Vice Chair