

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

**F I N D I N G S**

**in Complaint**

**by**

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

**against**

**Finlay Park, Solicitor, formerly of  
Messrs Park Hutchison, Solicitors,  
Glasgow, presently residing at Flat  
1/2, 5 Arcan Crescent, Drumchapel,  
Glasgow**

1. A Complaint dated 15 November 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Finlay Park, Solicitor, formerly of Messrs Park Hutchison, Solicitors, Glasgow, presently residing at Flat 1/2, 5 Arcan Crescent, Drumchapel, Glasgow (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
  
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No were lodged for the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 18 April 2006 and notice thereof was duly served on the Respondent.
4. The hearing took place on 18 April 2006. The Complainers were represented by their Fiscal, Mr Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by his solicitor Mr James McCann, Clydebank.
5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint. Accordingly no evidence was led.
6. The Tribunal found the following facts established

6.1 The Respondent is Finlay Park. He was born on 1<sup>st</sup> August 1957. He is a solicitor enrolled in Scotland. He was admitted on 5<sup>th</sup> and enrolled on 13<sup>th</sup>, both days of November, 1986. The Respondent formerly practiced as the sole principal of Park Hutchison, Solicitors, Glasgow. He is not currently employed by any firm of Solicitors in Scotland. He is not currently the holder of a practicing certificate.

6.2 **Mr A**

Mr A was employed as a steel erector until he was made redundant in 1997 and took early retirement. Throughout the course of his employment he used pneumatic equipment. In 1982 he started to notice a difficulty with his hands. At that time vibration white finger, from which Mr A was later

diagnosed as suffering had not yet been recognised. By the time of his retirement in 1997 Mr A's symptoms had become quite pronounced. In February 1998 he instructed the Respondent. He first consulted with the Respondent on 16<sup>th</sup> February 1998. On 20<sup>th</sup> May 1998 the Respondent intimated a claim to Mr A's former employers. Insurers subsequently responded to this letter on 5<sup>th</sup> June 1998. A medical report was obtained dated 14<sup>th</sup> May 1998 which concluded that Mr A suffered from vibration white finger graded at stage three. The medical report was copied to the insurers who, on 26<sup>th</sup> June 1998, repudiated Mr A's claim on the basis that he had been aware of a problem since 1982 and that the case was time barred. In reply, the Respondent wrote to the insurers on 15<sup>th</sup> July 1998 saying that Mr A had not realised the nature of the condition from which he was suffering until February 1998 when he first made contact with the Respondent. On 22<sup>nd</sup> July 1998 the insurers wrote to the Respondent saying that Mr A had been aware of his condition since 1982 and had had ample time to do something about it and they reiterated their view that the case was time barred. This information was conveyed to Mr A by the Respondent on 30<sup>th</sup> July 1998. File notes indicated some further activity ending with a letter on 13<sup>th</sup> November 1998 which sent to Mr A a Terms of Engagement letter. Nothing happened thereafter until 13<sup>th</sup> September 2000 (twenty two months later) when a note in the file advised that the case appeared to have "fallen out of the loop". The next letter in the file was on 19<sup>th</sup> September 2000 addressed to Mr A, explaining that the insurers had refused to settle on the basis of time bar because problems were first noticed in 1982. The letter raised the issue of when it might have been reasonably practicable for Mr A to realise that he was suffering from vibration white finger. There was some further correspondence including letters to Industrial Disease Compensation Limited, who were the insurers who were underwriting Mr A's case;

thereafter, nothing happened until 5<sup>th</sup> January 2003 when Mr A invoked the assistance of the Complainers. After discussions between the complainers and Mr A, heads of complaint were formally intimated to the Respondent on 6<sup>th</sup> August 2003. The intimation of the complaint required a response from the Respondent within fourteen days together with delivery of the files relative to Mr A's case. No reply having been received, a reminder was sent to the Respondent on 3<sup>rd</sup> September 2003. The Respondent failed to reply to this. The first part of a notice issued in terms of Section 15(2) of the Solicitors (Scotland) Act 1980 was sent to the Respondent on 22<sup>nd</sup> September 2003. No response was received. The second part of the notice was sent to the respondent on 8<sup>th</sup> October 2003 by recorded delivery post but was returned to the complainers on 22<sup>nd</sup> October 2003 marked "not called for".

### 6.3 **Mr B**

Mr B suffered from vibration white finger and in this respect consulted the respondent in the spring of 1999. He had not been exposed to vibratory tools since 1976. The Respondent failed to advise Mr B that he was unlikely to have any valid claim for vibration white finger, the same having become time barred long before he was instructed, and continued to lead him to believe for a lengthy period that he did have such a claim; in any event, he failed to recover medical records or obtain a medical report which he had said he would do, and failed to investigate the issue of when Mr B should have known that he had a claim (i.e. the date from which the prescriptive period might run, if later than 1976). After a long period of inactivity, the Respondent wrote on 22<sup>nd</sup> May 2002 to Mr B advising him that a court action should have been raised prior to 18<sup>th</sup> April 2002 and that the matter was now time barred. In this letter, the Respondent advised Mr B to consult other Solicitors. Mr B

consulted new Solicitors and on 14<sup>th</sup> August 2002 they invoked the assistance of the complainers. The complainers wrote to the Respondent on 15<sup>th</sup> October 2002 inviting him to deal with the complaint by way of conciliation. A meeting took place between the Respondent and a case manager employed by the complainers on 12<sup>th</sup> November 2002 at which the Respondent indicated that he was keen to try to have the complaint resolved. On 6<sup>th</sup> January 2003, the case manager wrote again to the Respondent. Discussions took place between the Respondent, a solicitor representing the Respondent, and the complainers about a fund of money being made available to compensate Mr B and other complainers. A new case manager took over dealing with the complaint and on contacting the master policy insurers was advised that there were over four hundred current claims against the respondent for professional negligence of a roughly analogous nature to the complaint of Mr B. On 17<sup>th</sup> July 2003, the heads of complaint were formally intimated to the Respondent. He was required to respond within fourteen days and produce his files. As the Respondent did neither, a reminder was sent to him on 6<sup>th</sup> August 2003. On 22<sup>nd</sup> August 2003 the first part of a notice issued under Section 15(2) of the Solicitors (Scotland) Act 1980 was sent to the Respondent by recorded delivery post. This was returned by the postal authorities on 2<sup>nd</sup> September 2003 marked “not called for”. On 8<sup>th</sup> October 2003 the second part of the Section 15 notice was sent to the Respondent by recorded delivery post and was again returned by the postal authorities on this occasion on 22<sup>nd</sup> October 2003 marked “not called for”.

#### 6.4 Mr C

Mr C consulted the respondent on 21<sup>st</sup> May 1998 concerning vibration white finger. Due to a lack of activity on the part of

the Respondent and Mr C not having heard from him, Mr C consulted other Solicitors. He learned that his action had become time barred. On 28<sup>th</sup> October 2002, he invoked the assistance of the Complainers.

6.5 Heads of Complaint were agreed between the complainers and Mr C and these were formally intimated to the Respondent on 17<sup>th</sup> July 2003. The Respondent was required to answer within fourteen days and deliver up his file. As he failed to do either, a reminder was sent to him on 6<sup>th</sup> August 2003. No response as received and accordingly on 27<sup>th</sup> August 2003 the first part of a notice issued in terms of Section 15(2) of the Solicitors (Scotland) Act 1980 was served upon the Respondent by the complainers by recorded delivery post. The Respondent did not reply. On 22<sup>nd</sup> September 2003, the complainers served upon the Respondent the second part of the Section 15 notice. This was returned by the postal authorities on 2003 marked “not called for”.

6.6 **Mr D**

Mr D was employed as a fabricator until he was made redundant in 1998. Shortly before he became redundant, in early 1998, Mr D consulted the Respondent. During what subsequently took place, he was medically examined and was found to be suffering from vibration white finger at stage three. Correspondence took place between the Respondent and the insurers of Mr D's employers. Liability was repudiated. Eventually Mr D became dissatisfied with the services of the Respondent. He consulted other Solicitors who advised him that as no action had been raised on his behalf during the triennium, his claim had become time barred.

6.7 On 30<sup>th</sup> October 2002, Mr D invoked the assistance of the Complainers. Heads of Complaint were agreed with Mr D and were formerly intimated to the Respondent by letter dated 27<sup>th</sup> August 2003 which called for a response within fourteen days. No response was forthcoming. A reminder was sent to the Respondent on 11<sup>th</sup> September 2003. As no answer was received to that, the complainers served upon the Respondent the first part of a notice under Section 15(2) of the Solicitors (Scotland) 1980 on 25<sup>th</sup> September 2003 by recorded delivery post. No response was made to that. The second part of the notice was served by the complainers on the Respondent by recorded delivery on 8<sup>th</sup> October 2003 and was returned by the postal authorities on 22<sup>nd</sup> October 2003 marked “not called for”.

6.8 **Mrs E**

Mrs E was employed by Company 1. In conjunction with her work, she came into contact with machinery which emitted noise and which, she maintained, had caused her to become deaf. Her employment ceased in 1993. She first consulted the Respondent on 7<sup>th</sup> October 1998. She eventually consulted other Solicitors because she was dissatisfied with the service which she was receiving from the Respondent. Those Solicitors advised her that in their view, her claim had become time barred before she ever consulted the respondent, although it was not clear when she first realised the extent of her deafness or linked it with her employment. Mrs E invoked the assistance of the Complainers on 21<sup>st</sup> February 2003. On 15<sup>th</sup> July 2003 Heads of Complaint which had by this time been agreed between the complainers and Mrs E were formally intimated by recorded delivery post to the Respondent. He was required to respond within fourteen days. The intimation was returned by the post office as the Respondent had changed address. The

Heads of Complaint were re-intimated by recorded delivery letter dated 21<sup>st</sup> July 2003. As no response was received, a reminder was sent to the Respondent on 6<sup>th</sup> August 2003. No response was received to this either. The first part of a notice under Section 15(2) of the Solicitors (Scotland) Act 1980 was sent to the Respondent by recorded delivery post on 3<sup>rd</sup> September 2002. The Respondent failed to reply. The second part of the notice was served by recorded delivery post on the Respondent on 22<sup>nd</sup> September 2003. That was returned by the postal authorities on 7<sup>th</sup> October 2003 marked “not called for”.

6.9 **Mr F**

Mr F was employed in a factory. In October 1997 he consulted the Respondent in connection with a potential claim against his employers in respect of carpal tunnel syndrome. On 14<sup>th</sup> June 2002 the Respondent wrote to Mr F informing him that his claim had become time barred and advising him to contact other solicitors. The new solicitors acting on behalf of Mr F invoked the assistance of the Complainers on 20<sup>th</sup> June 2003. Heads of Complaint were adjusted and agreed and formally intimated to the Respondent on 6<sup>th</sup> August 2003. A response was called for within fourteen days. No response was received. On 3<sup>rd</sup> September 2003 a reminder was sent to the Respondent. As nothing was heard from the Respondent the complainers, by recorded delivery post, on 26<sup>th</sup> September 2003 served upon the Respondent the first part of a notice in terms of Section 15(2) of the Solicitors (Scotland) Act. The Respondent did not reply. On 8<sup>th</sup> October 2003 the second part of the statutory notice was served on the Respondent. This was returned by the postal authorities on 22<sup>nd</sup> October 2003 marked “not called for”.



6.10 **Miss G**

In 1995 Miss G was living in Scotland. In January 1995 she was treated in the Company 2 for a brain haemorrhage. One of the doctors treating Miss G approached her uncle and asked for permission to administer to Miss G a new drug which had been developed by Company 3 known as RO47-0203. Consent was given by Miss G's uncle.

6.11 In September 1995 Miss G moved to London. She was treated at Queen Mary's hospital and was advised that she had a significant kidney problem, which, it was believed, was associated with the use of RO47-0203. Miss G consulted a solicitor in England who arranged for the Respondent to take over the management of Miss G's case in July 1996. Between 1996 and 1998 there was correspondence between the Respondent and the English solicitors. The Respondent consulted counsel, who prepared a summons in draft. Various medical opinions were obtained. On 18<sup>th</sup> November 1998 the Respondent wrote to the English solicitors explaining that counsel had advised that time bar would not operate until the following year. The summons had been drafted against the Company 2 and there was some discussion about whether Company 3, manufacturers of the drug, should be brought into the action. The Respondent did not raise any action, and the claim of Miss G was subject to statutory limitation. That notwithstanding between May 2000 and October 2001, the Respondent represented to the English Solicitors that proceedings had been raised, that counsel had been instructed, that a minute of amendment was going to be lodged, and that the case would be going back to court to introduce a second Defender, the manufacturer of the drug, the truth being as the

Respondent well knew that no proceedings had ever been raised.

6.12 Miss G instructed other solicitors who having investigated the position advised her to settle her claim against the Respondent for a modest amount by way of loss of opportunity to litigate because the case had become time barred, on the view that the claim would not have succeeded in any case.

6.13 On 31<sup>st</sup> May 2003 Miss G invoked the assistance of the complainers. On 17<sup>th</sup> July 2003 the complainers served upon the Respondent a statutory notice to recover from him the relevant papers. No response was received. A reminder was sent on 6<sup>th</sup> August 2003. On 2<sup>nd</sup> August 2003 a further statutory notice was served on the Respondent. On 8<sup>th</sup> October 2003 a further notice was served on the Respondent to which he did not reply. The heads of complaint were adjusted with Miss G and intimated to the Respondent but he failed to reply to those.

6.14 **Mr H**

Mr H instructed the Respondent in April 1999 to deal with a case of vibration white finger. At that time Mr H had a meeting with Mr I who was an employee of the Respondent and it was agreed that the Respondent's firm would pursue a claim against Mr H's former employers and in particular against Company 4. Apart from a letter sent to him in November 1999 Mr H did not receive any communication from the Respondent's firm. From time to time he telephoned them and was always told that someone would get back to him which did not happen. In September 2002 Mr H received a letter from the Respondent asking whether Mr H wished to pursue his claim or whether he had instructed other solicitors. The letter indicated that there might be a claim against the Respondent and for that reason Mr

H consulted other solicitors. On the basis of the information provided to the second solicitor Mr H was advised that any claim which he might have had was probably time barred even before he first consulted the Respondent's firm. Mr H then invoked the assistance of the Complainers.

- 6.15 The Complainers wrote to the Respondent on 13<sup>th</sup> November 2003 concerning the complaint. No reply was received. On 6<sup>th</sup> January 2004 the Complainers forwarded heads of complaint to the Respondent and asked for a formal response within fourteen days. No reply was received to this letter. On 23<sup>rd</sup> January 2004 the Complainers served upon the Respondent a notice issued under Section 15(2) of the Solicitors (Scotland) Act 1980 requiring a response within fourteen days. None was received. On 24<sup>th</sup> February 2004 the Complainers attempted to serve a further notice on the Respondent by recorded delivery post. That letter was returned by the postal service undelivered.
- 6.16 The Complainers carried out an investigation of Mr H's complaint, without any input from the Respondent. The Complainers determined at 3<sup>rd</sup> June 2004 that, in respect of the Respondents failure to communicate adequately with Mr H and in respect of the Respondent's failure to advise Mr H in relation to time bar, the Respondent had provided an inadequate professional service to Mr H within the meaning of Section 42A(1) of the Solicitors (Scotland) Act 1980. The Complainers determined that the Respondent should pay compensation to Mr H in the sum of £400.00. This sum has been settled by the Master Policy Insurers. The determination was intimated to the Respondent on 11<sup>th</sup> June 2004 by recorded delivery post. On 21<sup>st</sup> July 2004 the Respondent, who throughout the period of Mr H's complaint had continued to reside at the same address, wrote to the Complainers a letter in which he said the following: -

“Dear Sirs,

**Findlay Park/Park Hutchison Miscellaneous Complaints**

I refer to the above and my recent correspondence to you.

Until recently, I have been completely unable to deal with the problems caused by my poor running of my former firm. I now wish to make some attempt to correspond with the Society until all outstanding matters are finally resolved.

It may be that I have been suffering from mental ill health for some years and I have only now properly come to terms with this and I will revert to you on this in the near future.

I would be obliged if you could provide me with a full list of matters outstanding against me and I will at the least try to provide some kind of formal response to those where you wish this done.

Please note that it is unlikely that I will be able to provide specific information in many of the cases. There are a number of reasons for my inability to provide much detail. For instance, I have no access to any files and I do not know where they are. Many cases will be with McLeish Carswell but I have no formal knowledge about this.

In fact I do not even know where the firm’s accounts are or office equipment, including the computerised solicitors accounts system...

I look forward to hearing from you in due course.

Yours sincerely,

Finlay Park”

6.17 **Mrs J**

Mrs J's late husband, Mr K consulted the Respondent's firm in February 1998 in connection with a claim for damages arising from organo-phosphate poisoning. The late Mr K met with the Respondent's firm on 13<sup>th</sup> March 1998. The Respondent's firm wrote to Mr K on 6<sup>th</sup> April 1998 indicating that enquiries would be completed in the near future and that they would then advise in relation to his claim. This letter also acknowledged receipt of an undated letter from Mr K which was also on the Respondent's file. This letter from Mr K advised the Respondent of full details of his employment with Company 5 which commenced on 1<sup>st</sup> February 1974 and ended on 31<sup>st</sup> March 1992. The letter fully advised the Respondent in relation to Mr K's employment duties and the type of work carried out by him, and covered in some detail the working practices and procedures carried out by Mr K. Also enclosed was a list of the farms that he had visited on a regular basis. An internal memorandum was prepared addressed to the Respondent dated 6<sup>th</sup> July 1998 which made reference to issues which were identified as being relative to the case. A further internal memorandum was prepared dated 15<sup>th</sup> September 1998 in which there appeared to be recognition that there might be difficulties with the case which would require to be discussed. A further internal memorandum dated 14<sup>th</sup> December 1998 recorded that Mr K had died and that it would be necessary to obtain a copy of his death certificate together with a mandate from Mrs J to enable medical records to be recovered. On 22<sup>nd</sup> December 1998 the Respondent's firm wrote to Mrs J seeking a meeting to discuss the future progress of the case. On 23<sup>rd</sup> December 1998 the Respondent's firm wrote to Mrs J asking for a mandate to obtain medical records which was signed and returned dated 30<sup>th</sup> December 1998. A meeting took place

between the Respondent's firm and Mrs J on 14<sup>th</sup> January 1999 when the death certificate was provided. A file record made at that time records that a number of issues were identified namely the apparent failure of GPs and other Doctors to recognise the condition, the fact that no postmortem examination had been carried out on the Mrs J's late husband, the possibility of obtaining expert medical evidence, the possible link between the poisoning and Mrs J's late husband's bowel cancer, and also an issue relating to the exposure of the late Mr K to sheep dip in previous employment.

- 6.18 Thereafter the file contains a note from the Respondent to "Mr L" suggesting that the latter might wish to look at the file. Thereafter on 19<sup>th</sup> June 1999 there was a reference to a file check. An internal memorandum was addressed from "O2" to the Respondent. Once again various issues were raised and it was suggested that the medical records should be recovered. This did not appear to have been done. On 2<sup>nd</sup> July 1999, Mrs J wrote requesting an update. She did not receive a reply. On 27<sup>th</sup> August 1999, Mrs J wrote to the Respondent's firm again. The Respondent's firm replied on 10<sup>th</sup> September 1999 explaining that the case was now being dealt with a different Solicitor who was in the process of considering the papers. Shortly thereafter there was a telephone conversation between the solicitors and Mrs J. On 3<sup>rd</sup> March 2000 Mrs J wrote seeking an update. She did not receive a reply and accordingly Mrs J wrote a further letter to the Respondent's firm on 18<sup>th</sup> April 2000. She did not receive a reply. Mrs J wrote again the Respondent's firm on 26<sup>th</sup> May 2000 by which time she was expressing concern that the matter was not being properly progressed.
- 6.19 On 30<sup>th</sup> May 2000, the Respondent's firm wrote to Mrs J and explained that information was awaited from the Health and

Safety Executive. They advised that they would contact Mrs J in mid June. They did not do so. On 18<sup>th</sup> August 2000, Mrs J again wrote to the Respondent's firm. She raised a number of concerns about not having heard from the Respondent's firm. She wrote again on 27<sup>th</sup> September 2000 asking whether her case was still ongoing, and if not, why not; whether the case was beyond the expertise of the Respondent's firm; whether any kind of time bar was applicable, and asking whether the Respondent's firm were simply too busy to reply to her letters. On 16<sup>th</sup> October 2000, the Respondent's firm replied making reference to a major test case, the result of which was awaited and indicating that there were a number of complex issues in relation to scientists proving the link between the sheep dip and the medical condition which had affected Mrs J's late husband. They said that they would be in further touch when they had more information. On 13<sup>th</sup> December 2000 they wrote to Mrs J again indicating that they were still awaiting the definitive information in relation to how the organo phosphate litigation was to proceed. On the same day, the Respondent's firm wrote to the Complainers seeking information in relation to other claims in this field and requesting details of any Scottish solicitors pursuing similar claims.

- 6.20 On 14<sup>th</sup> December 2000 the Complainers wrote to the Respondent's firm indicating a number of solicitors who were dealing with similar cases. On 19<sup>th</sup> December 2000 the Respondent's firm wrote to one of these solicitors in Dumfries, requesting information. On 19<sup>th</sup> January 2001 the Dumfries solicitors responded and gave information in relation to steps that they had taken in relation to their clients and suggested an expert neurophysiologist. On 16<sup>th</sup> March 2001 the Respondent's firm acknowledged the correspondence from the Dumfries solicitors and wrote to Mrs J advising that they had been in contact with these other solicitors, advised Mrs J in relation to the difficulties which had been identified by the other solicitors and concluded by

saying that they would reassess Mrs J's position and ascertain whether or not it was possible to take the matter forward. On 17<sup>th</sup> May 2001 the Respondent's firm wrote to Mrs J and stated that further investigations were ongoing. Mrs J, however did not receive this letter. On 17<sup>th</sup> January 2002 Mrs J wrote to the Respondent's firm indicating that she had not heard from them since March 2001. She requested information in relation to the progress of the case. She received no reply. She wrote again to the solicitors on 9<sup>th</sup> March 2002, but received no response. Mrs J then consulted Messrs. Braidwoods, Solicitors, Dumfries who in July 2002, invoked the assistance of the Complainers. In January 2003, the Complainers were contacted by a solicitor in Glasgow who had been consulted by the Respondent and indicated that the Respondent was desirous of making financial compensation to clients including Mrs J who had received an inadequate service. Although made in good faith, the proposals put forward by the Respondent were not realistic and the case of Mrs J proceeded by way of a formal complaint using the Complainers normal procedures. On 18<sup>th</sup> June 2003 the complaint was formally intimated to the Respondent. The heads of complaint were as follows: -

1. Despite all relevant information as to the basis of the claim having been provided to the Respondent by the late Mr K and by Mrs J, no progress whatsoever was made in relation to the investigation of the complaint or in raising proceedings for payment of damages (conduct and service).
2. Mrs J's requests for progress reports were largely ignored by the solicitors (service).

6.21 As no response was received from the Respondent, the Complainers again wrote to him on 17<sup>th</sup> July 2003 reminding him of the terms of Sections 15(2) and 42C of the Solicitors (Scotland) Act 1980 and requiring a response within fourteen days. As there was doubt about whether the original letter had



been properly addressed, and therefore as to whether it had been received by the Respondent, further intimation of the heads of complaint was made on 6<sup>th</sup> August 2003. As no response was received from the Respondent, a further letter was sent to him on 22<sup>nd</sup> August 2003 setting out the terms of Section 15(2) and Section 42C of the 1980 Act. As no response was received, on 26<sup>th</sup> September 2003 a formal notice in terms of Section 15(2) of the Act were served upon the Respondent by recorded delivery post. No response was received.

6.22 On 3<sup>rd</sup> June 2004 the Complainers determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 that the Respondent had provided Mrs J with an inadequate professional service, in terms of the heads of complaint hereinbefore condescended upon.

6.23 **Miss M**

On 11<sup>th</sup> December 1995 the Respondent accepted instructions from Miss M to investigate and pursue a possible reparation claim based on medical negligence. Miss M had been epileptic since childhood and took a number of drugs including Epilin. On 11<sup>th</sup> April 1987 she gave birth to a son. During the course of her pregnancy she continued to take Epilin. Although the child's birth was normal, it soon became apparent that he had health problems including the possibility of Valproate Syndrome, and Miss M believed that the condition might be in some way related to the drug Epilin. On 5<sup>th</sup> April 2001 Miss M sought the assistance of the complainers. Heads of complaint were identified as follows:-

1. Failure to progress the case from June 1996 to November 2001
2. Delay in dealing with the matter generally.

3. Failure to communicate adequately.
4. Failure to instruct an expert report, having indicated that this would be done.

6.24 In due course these complaints were upheld by the complainers. A fifth complaint was rejected. During the complainers investigations it became apparent that although the Respondent attempted to obtain an expert opinion he had failed to do so. Such opinion is an essential aspect of pursuing a claim for medical negligence. In April 2002 the case was taken over by another firm of solicitors who obtained an expert opinion. That opinion did not substantiate Miss M's case and Miss M accepted advice not to take the matter any further.

6.25 The decision of the Complainers was that the Respondent had provided an inadequate professional service to Miss M. He had failed to progress the case over a period of some six years. In the circumstances, they awarded compensation to Miss M in the sum of £1000.00. Payment of that sum has been made by the professional indemnity insurers.

6.26 **Mr N**

Mr N instructed the Respondent on 8<sup>th</sup> October 1998 regarding a potential claim for occupational deafness. According to the attendance note the Respondent explained the potential difficulties with the claim because Mr N had had a number of employers and also that there were potential time bar problems. He advised that he would obtain an employment schedule and then review the situation. The Respondent then wrote on 23<sup>rd</sup> October 1998 to Mr N saying that correspondence had been entered into with Mr N's previous employers' insurers and that in due course he would require to obtain a medical report. He wrote again on 30<sup>th</sup> October 1998 enclosing terms of business.

- 6.27 Nothing happened thereafter until 30<sup>th</sup> September 1999 when the Respondent wrote to Mr N saying that an employment schedule was awaited from the Inland Revenue and that this could take some months. Nothing further happened until 8<sup>th</sup> June 2000 when Industrial Diseases Compensation Ltd who had referred Mr N to the Respondent sent a fax to say that Mr N had been in touch to find out what was happening. After some further correspondence claims were intimated to four former employers on or about 20<sup>th</sup> September 2000. One insurer responded promptly and sought various pieces of information. The others did not. Reminders were sent to them by recorded delivery on 1<sup>st</sup> December 2000. Arrangements were made for Mr N to see a medical specialist. The specialist report was sent to Mr N on 25<sup>th</sup> May 2001. There were difficulties tracking down witnesses. Mr N was unable to provide the information requested by the insurers.
- 6.28 Between 15<sup>th</sup> June 2001 and 14<sup>th</sup> February 2002 nothing happened until on the latter date an internal memorandum enquired what was being done. Incoming correspondence during the period condescended upon had not been replied to. At that time the decision was taken within the Respondent's firm that the case was not sufficiently strong to enable the Respondent's firm to advise insurers to authorise and fund a court action and that Mr N should be told of this. The reasons given were that there were too many previous employers involved over the years when Mr N was exposed to noise, the length of the history of exposure to noise, many of the employers were no longer in existence, their insurers could not easily be identified and there was a potential time bar problem. On 15<sup>th</sup> March 2002 the insurers said that they had closed their file and suggested that the Respondent should do likewise. The Respondent did not write to Mr N. Mr N sought the assistance

of the Complainers in April 2002. In correspondence the Respondent accepted that he had failed to notify Mr N about the decision, and he wrote to Mr N on 14<sup>th</sup> May 2002 apologising for the omission. The Complainers thereafter carried out an investigation in the usual way. The Complainers upheld a complaint of inadequate professional service and awarded compensation to Mr N of £300.00. This was subsequently paid by the Professional Indemnity Insurers.

6.29 **Mrs O**

On 15<sup>th</sup> August 1994 Mrs O, who had seen an advertisement in which the Respondent held himself out as a specialist in medical negligence cases, instructed the Respondent to pursue an allegation of medical negligence against a general practitioner. The gist of her complaint was that the general practitioner had delayed in referring her for specialist examination thus compromising her treatment for cancer. The Respondent set about ingathering the medical records relating to Mrs O. The hospital records were duly supplied but the general practitioner would not make her records available. The Respondent wrote to her on 8<sup>th</sup> February 1995 and again on 14<sup>th</sup> March 1995 indicating that an action was to be raised for recovery of the medical records. The general practitioner then offered to disclose records from 1<sup>st</sup> November 1991 onwards. On 12<sup>th</sup> June the copy records were supplied to Mrs O for her perusal. A file note of that date recorded that the Respondent agreed “to hurry the case along”. On 21<sup>st</sup> June 1995 Mrs O returned the records with her comments. A review of the GP records was commissioned and its contents were summarised in a letter of 27<sup>th</sup> June 1995 from the Respondent to Mrs O. The next entry in the file was a hand written note of a meeting between the Respondent and Mrs O dated 7<sup>th</sup> November 1995. The note indicates that the Respondent had been in contact with an

organisation called Action for Victims of Medical Accidents (AVMA) and that they disagreed with the conclusion of the doctor who had first reviewed the GP records that it would be difficult to sustain a claim of negligence. An expert in cervical cancer was identified and he was instructed on 15<sup>th</sup> December 1995. In a letter of 18<sup>th</sup> December 1995 the expert stated that he would expect to complete the report within eight weeks.

6.30 Nothing was recorded in the file thereafter until a note dated 29<sup>th</sup> March 1996 recorded that there was a telephone discussion on that day in which Mrs O was advised that the report had not arrived. On 10<sup>th</sup> April 1996 the Respondent wrote to Mrs O reiterating his hope that the report would soon come to hand and referring to the issue of time bar and stating that if any danger of time bar appeared while the report was awaited that an action would be raised at court to protect the position.

6.31 On 10<sup>th</sup> July 1996 the expert wrote to say that he had decided temporarily to withdraw from medical negligence work. He returned the records and letter of instruction. On 22<sup>nd</sup> July the Respondent having made enquiry obtained the name of an alternative specialist. He was instructed on 15<sup>th</sup> August 1996. On 9<sup>th</sup> September 1996 he wrote to say that documents and information which he would have expected to find on the general practitioner's file were missing. A letter in this connection was sent by the Respondent to Dr P on 17<sup>th</sup> September 1996. The specialist reported on 28<sup>th</sup> September 1996 and stated that a further specialist opinion would require to be obtained regarding the gynaecological aspects of the claim. On 1<sup>st</sup> October 1996 the Respondent asked AVMA to recommend someone and in his letter mentioned that the time bar element was now entering into this case. Another doctor was instructed on 10<sup>th</sup> October 1996. An application was made for an increase in advice and assistance to cover the cost of the

report. Thereafter nothing was done until a letter was sent to the general practitioner on 3<sup>rd</sup> February 1997 intimating a claim for damages covering the period February to September 1993. In March and April 1997 there was further correspondence with the legal aid board and Mrs O was kept informed.

- 6.32 A letter was sent to Mrs O dated 7<sup>th</sup> August 1997 recording a meeting between Mrs O and Mr Q, a solicitor employed by the Respondent on 28<sup>th</sup> July 1997. The letter indicated that proceedings were to be raised. An initial writ was raised and was served on the general practitioner prior to 12<sup>th</sup> August 1997. A notice of intention to defend the action was lodged and the action was sisted without opposition on 14<sup>th</sup> October 1997. During the remainder of 1997 and the whole of 1998 and the first quarter of 1999 copies of various records pertaining to Mrs O from various hospital trusts were obtained and copied. On 26<sup>th</sup> March 1999 an instruction was given to counsel to draft a summons. A draft summons with a hand written note by counsel dated 13<sup>th</sup> June 1999 was produced. No proceedings other than those which were already raised and sisted in Glasgow Sheriff Court were commenced thereafter.
- 6.33 Between June 1999 and December 1999 there was no activity in relation to the case. A letter of 25<sup>th</sup> January 2000 sent to Mrs O referred to the Respondent having been ill. The Respondent promised to carry out a full review of the file. On 4<sup>th</sup> October 2000 the Respondent wrote to Mrs O referring to the requirements of the law to establish medical negligence. Reference was made in the letter to the need for a discussion between a potential expert witness and counsel. Time bar was not mentioned.
- 6.34 The next correspondence was a letter from the Respondent to Mrs O dated 1<sup>st</sup> February 2001. It referred to the unavailability

of the Respondent because of ill health and outside business commitments. The letter stated that no other solicitors in the firm were familiar with the file. On 7<sup>th</sup> February the Respondents' firm wrote to Mrs O to say that the firm still awaited a report from a Dr R which had been ordered on 18<sup>th</sup> April 2001. The report appears to have arrived on 27<sup>th</sup> April. This document dated 24 April 2001 confirmed Dr R's original view which was not favourable to the Mrs O's prospects of success.

6.35 On 6<sup>th</sup> August 2001 Mrs O met with the Respondent. The meeting was confirmed in a letter dated 14<sup>th</sup> August 2001. On 27<sup>th</sup> August 2001 the Defender's agents requested an indication of the Respondent's intentions with regard to the court action. On 3<sup>rd</sup> September the Respondent wrote to the general practitioner's agents requesting that they refrain from recalling the sist until there had been further discussions with Mrs O. On 10<sup>th</sup> September 2001 Mrs O was advised that counsel would be necessary in light of the report supplied by Dr R. A copy of the report was sent to counsel for his views. On 25<sup>th</sup> September an employee of the Respondent had recorded that counsel had indicated in a discussion that his view was that the chances of success were slim and that the case should be dropped. That notwithstanding, a note on the line of evidence was instructed and prepared. Counsel drew attention to the time bar difficulty and possible solutions. All of the possible solutions proceeded on the assumption that the triennium should run from a date later than September 1993 when the last allegedly negligent act or omission took place. A letter was sent to Mrs O dated 26<sup>th</sup> October suggesting that she meet with the Respondent's employee Mr S. An internal memorandum from Mr S to the Respondent dated 6<sup>th</sup> November 2001 suggested that it should be explained to Mrs O that counsel's view was that the action raised at Glasgow Sheriff Court was time barred from the

outset and that the case should be dropped and that Mrs O be referred to new solicitors.

6.36 Thereafter nothing happened until the general practitioner's solicitors enrolled a motion at the end of March 2002 to recall the sist. At that stage there was telephone contact between Mrs O and Mr S and Mrs O elected to consult other agents. On 1<sup>st</sup> August 2002 Mrs O invoked the assistance of the Complainers.

6.37 After investigation by the Complainers the Complainers concluded that the Respondent had provided an inadequate professional service to Mrs O. They determined that the Respondent pay compensation to Mrs O of £850.00. That sum has been paid to Mrs O by the professional indemnity insurers.

6.38 **Mrs T**

Mrs T instructed the Respondent in connection with a claim for damages arising from alleged medical negligence. She alleged that negligence by a doctor during labour caused an injury to her baby from which the child subsequently died. The Respondent was the second solicitor to be instructed by Mrs T and his instructions were received in 1994 shortly before the expiry of the triennium. Appropriate steps were taken to have Edinburgh agents instructed for the commencement of proceedings in the Court of Session and legal aid was applied for. The proceedings were sisted. There were difficulties with legal aid, and there were ongoing difficulties within the Respondent's firm. On 29<sup>th</sup> May 2002 an employee of the Respondent made arrangements to transfer the case to a firm of Edinburgh Solicitors who would thereafter act as principals.



6.39 After an investigation by the Complainers, they concluded that the Respondent had provided an inadequate professional service to Mrs T in respect of delay from the period between December 1998 and November 2001. The Complainers resolved that the Respondent should pay compensation to Mrs T in the sum of £500.00. The compensation was paid by the professional indemnity insurers.

6.40 **Mr U**

Mr U was employed as a labourer in building works at Company 6. Towards the end of 1998 he sustained serious injuries at work there. In December 1998 Mr U consulted the Respondent. Shortly before the triennium expired in 2001, the agency was transferred to another firm of solicitors, On or about 7<sup>th</sup> November 2002 Mr U invoked the assistance of the complainers concerning the manner in which the Respondent had dealt with his case.

6.41 After investigation the Complainers concluded that there had been significant delays in the manner in which the Respondent had dealt with the case. In particular, between 27<sup>th</sup> April 1999 and 29<sup>th</sup> July 1999 there was no activity on the Respondent's file and between 22<sup>nd</sup> December 1999 and 4<sup>th</sup> February 2000 there was no activity on the Respondent's file. More generally, the Respondent's approach to the case seem to be reactive rather than proactive, and the Respondent appeared to take action on the file only when he was prevailed upon to do so by his client or the insurers. The Complainers concluded that the service provided by the Respondent to Mr U had been inadequate, and made a determination that the Respondent pay to Mr U compensation in the sum of £100. This sum was subsequently met by the insurers.

6.42 **Mr V**

Mr V made a complaint to the Complainers concerning the Respondent through a letter sent by his solicitors Messrs Corries to the complainers on 28<sup>th</sup> June 2002. He complained that he had been referred in 1999 to the Respondents and that he had met with a solicitor employed by the Respondent in April 1999. He wanted to make a claim for vibration white finger. His case was time barred but he was not advised of that. He complained also of delays and failures to respond to a letter and telephone calls. Nothing was done between 26<sup>th</sup> April 2001 and 2<sup>nd</sup> November 2001 when a reminder was sent to claims handlers. On 17<sup>th</sup> December 2001 letters were sent to the firm which originally referred Mr V to the Respondent's firm and also to the claims handlers. Another reminder was sent on 26<sup>th</sup> February 2002 which elicited a response from the claims handlers that further enquiries were being undertaken. There was a letter from Mr V to the Respondent dated 24<sup>th</sup> April 2002 and thereafter no activity until a letter dated 24<sup>th</sup> January 2003 from the insurers repudiating the claim. This letter post dated the complaint and came after the papers had been transferred to another firm.

6.43 On the foregoing basis the Complainers concluded that the Respondent had provided an inadequate service to Mr V. They determined that Mr V should receive compensation from the Respondent in the sum of £250.00. That sum was paid by the insurers.

6.44 **Mr W**

On 3<sup>rd</sup> September 1999 Mr W consulted the Respondent in connection with a claim for vibration white finger associated with his employment and in particular his exposure to vibratory

tools. Mr W met with the Respondent on 15<sup>th</sup> November 1999. The Respondent advised Mr W that he would pursue the matter on his behalf but warned him that he should not expect to hear anything further for a considerable time as the claim would be a slow process. The Respondent did nothing until 29<sup>th</sup> August 2002 when he wrote to Mr W advising that he had found the papers relating to the original meeting but was not clear whether he had formal instructions to pursue the claim. He requested Mr W to sign a mandate confirming that he still wished him to pursue the claim. Mr W signed and returned the mandate. The Respondent then sent on 10<sup>th</sup> September 2002 a questionnaire to Mr W asking for information which ought properly to have been dealt with at the meeting on 15<sup>th</sup> November 1999. Thereafter Mr W consulted new solicitors who drew to his attention the fact that although he might have had a claim against two former employers in respect of vibration white finger, the earlier of the claims had now become time barred as a result of the Respondent having failed to raise a court action within the three year period beginning from the date that Mr W became aware that he had sustained an industrial injury and that he had a right of claim.

6.45 On 7<sup>th</sup> April 2005 the Complainers concluded that the Respondent had provided an inadequate professional service to Mr W. They determined that Mr W should receive compensation from the Respondent in the sum of £750.00. Arrangements are in hand for that sum to be met by the insurers.

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

The quality of service being provided by the Respondent to his clients was so poor and so lacking in care as to be representative of a dereliction of professional duty.

7. Having considered the foregoing circumstances and hearing submissions from the parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His persistent failure to provide timeous responses to correspondence from the Law Society.

7.2 His persistent failure to obtemper statutory notices.

7.3 His misrepresentation of the status of court proceedings to English agents instructing him, between May 2000 and October 2001.

7.4 His persistent failure to provide adequate services to his clients.

8. Having considered the mitigation put forward on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 18 April 2006. The Tribunal having considered the Complaint dated 15 November 2005 at the instance of the Council of the Law Society of Scotland against Finlay Park, Solicitor, formerly of Messrs Park Hutchison, Solicitors, Glasgow, presently residing at Flat 1/2, 5 Arcan Crescent, Drumchapel, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his persistent failure to provide timeous responses to correspondence from the Law Society, his persistent failure to obtemper statutory notices, his misrepresentation of the status of court proceedings to English agents and his persistent failure to provide adequate services to his clients; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to and to being supervised

by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least five years and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**Vice Chairman**

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

**IN THE NAME OF THE TRIBUNAL**

**Vice Chairman**

**NOTE**

As a Joint Minute was lodged accepting the facts, averments of duty and averments of professional misconduct in the Complaint it was not necessary for any evidence to be led.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch pointed out to the Tribunal that there were a substantial number of matters in the Complaint which went back over a long period of time. The Complaint was not lodged with the Tribunal until November 2005 as there were a lot of investigations going on and it was better to bring all matters to the Tribunal at one time. Mr Lynch recorded his appreciation for the help and co-operation from the Respondent and his agent. Mr Lynch referred to the catalogue of failures from the late 1990's to the early 2000's where the Respondent had failed to deal with correspondence and had not complied with notices and also failed to provide an adequate professional service. During this period the Respondent had personal and psychological programs. Mr Lynch stated that the Law Society considered that the quality of the service provided by the Respondent was so poor so as to amount to a dereliction of duty and was sufficiently serious to be professional misconduct. The Respondent had also misled English agents in connection with indicating that a court action had been raised when it had not.

**SUBMISSIONS FOR THE RESPONDENT**

Mr McCann indicated that despite the delay in matters coming to the Tribunal there was no plea of time bar but he asked the Tribunal to take into account the length of time that the matter had been outstanding when considering penalty. Mr McCann indicated that it was not disputed that a finding of inadequate professional service could amount also to professional misconduct. Mr McCann advised the Tribunal that the Respondent specialised in dealing with claims and had a speculative payment regime. There was a problem with the management of client expectations with this kind of work. By the end of 2002 the Respondent did not renew his practising

certificate and during 2001 he delegated cases to a locum who then took over from him. A lot of the Law Society's letters and notices were not reaching him as he was not going into the office. In connection with the misleading of the English agents, the Respondent had arranged for pleadings to be drawn up and revised but they had not actually been lodged in court. He stated that the case had been started when it hadn't but Mr McCann submitted that this was not deliberate. The Respondent genuinely thought that the matter had gone to court. Mr McCann advised the Tribunal that the Respondent had not worked in the law since 2001 and was presently working for a company selling computers to the legal profession. He was still under bankruptcy until August 2006. Mr McCann referred the Tribunal to the medical report. In this case the Respondent had had difficulties in his personal life which led to his depression which then caused problems and meant that he could not cope with his professional life. Mr McCann indicated that the Respondent had no intention of going back into the law at present but asked the Tribunal to deal with the matter in such a way that would allow this to be possible in future. Mr McCann suggested a restriction on the Respondent's practising certificate.

## **DECISION**

The Tribunal considered that the catalogue of instances of poor quality service over a period of time clearly amounted to a dereliction of professional duty and was sufficient to amount to professional misconduct. A substantial number of the Respondent's clients suffered as a result of his failures. A solicitor is under a professional obligation to provide adequate professional services to his clients. They also have a duty to respond to enquiries made of them by the Law Society. Failure to do so brings the profession into disrepute. Although it would appear that the Respondent did not receive a lot of the notices sent in this case because he was not at the office, his failure to reply to those he received from the Law Society hampered the Law Society in the performance of their statutory duty. The Tribunal however took into account that the Respondent was suffering from depression at the time and that this had been caused by problems in his personal life which resulted in him being unable to cope with his professional work. The Tribunal also took account of the fact that the Respondent had co-operated by entering into a Joint Minute and the matter had been outstanding for a long time. The Tribunal accepted that the Respondent's

misleading of the English agents was due to a loss of control and was not wilful. The Tribunal however considered that in order to protect the public it was necessary to impose a Restriction on the Respondent's practising certificate. The Tribunal imposed this for an aggregate period of five years as it was considered that it was necessary for the Respondent to work under supervision for a five year period and at the end of that period he will require to show to the Tribunal that he is fit to practice on an unsupervised basis. The Tribunal will require evidence that his health is satisfactory and that he has been working satisfactorily during the five year period. The Tribunal made the usual order with regard to publicity and expenses.

**Vice Chairman**