

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND**

against

**Paul Francis Belton, Solicitor, 430
Victoria Road, Glasgow (First
Respondent) and Shahid Sattar
Pervez, Solicitor, 430 Victoria
Road, Glasgow (Second
Respondent) and Celine Bell,
Solicitor, 430 Victoria Road,
Glasgow (Third Respondent)**

1. A Complaint dated 23rd August 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Paul Francis Belton, Solicitor, 430 Victoria Road, Glasgow (hereinafter referred to as the "First Respondent") and Shahid Sattar Pervez, Solicitor, 430 Victoria Road, Glasgow (hereinafter referred to as the "Second Respondent") and Celine Bell, Solicitor, 430 Victoria Road, Glasgow (hereinafter referred to as the "Third 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 Respondents. No answers were lodged for the Respondents.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 14th December 2005 and notice thereof was duly served on the Respondents.
4. The hearing took place on 14th December 2005. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The First and Third Respondents were present and represented by Mr Edment, Solicitor, Glasgow. The Second Respondent was present and represented by Mr Burns, Solicitor, Glasgow.
5. A Joint Minute was lodged in which the Respondents admitted the facts, averments of duty and averments of professional misconduct contained therein insofar as relating to them. No evidence was led.
6. After hearing submissions the Tribunal found the following facts established
 - 6.1 Paul Francis Belton, the First Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born on 29th July 1960. He was admitted as a Solicitor on 9th September 1997 and enrolled as a Solicitor on 11th September 1997.

- 6.2 Shahid Sattar Pervez, the Second Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. He was born on 3rd June 1968. He was admitted as a Solicitor on 12th December 1997 and enrolled as a Solicitor on 15th December 1997.
- 6.3 Mrs Celine Bell, the Third Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. She was born on 24th October 1969. She was admitted as a Solicitor on 20th November 1992 and enrolled as a Solicitor on 2nd December 1992.
- 6.4 The First and Second Respondents commenced practice in partnership together on 9th April 2001 in the name of Belton Pervez. The firm of Belton Pervez operates from premises at 430 Victoria Road, Glasgow. The Third Respondent commenced employment with the said firm on 21st May 2001.
- 6.5 **Inspections by the Complainers of the firm of Belton Pervez on 11th and 18th July 2002, 17th, 18th and 19th March 2003, 30th September 2003 and 1st and 3rd October 2003**
 On 11th and 18th July 2002 the Complainers carried out an inspection of the firm of Belton Pervez. During the course of this inspection, the Complainers' Inspector identified twelve conveyancing transactions where there appeared to be a delay in recording deeds on behalf of clients of the firm. By way of example, the firm acted for A in the purchase of the subjects shown in the ledger as A1. The client provided funds amounting to £80,000 on 6th November 2001 for the purchase of these subjects. The transaction settled on 20th November 2001. The Inspector noted that the

recording dues were not paid until 24th June 2002. By way of further example, the firm acted for B in the purchase of subjects shown in the ledger as B1. The client provided funds amounting to £37,000 on 11th September 2001 to fund the purchase of these subjects. The transaction settled on 19th September 2001. The Inspector noted that, albeit that the ledger showed that it was the client who provided this sum, the file showed that it was truly a loan from Bank of Scotland. The Inspector noted that the payment of recording dues was not recorded in the client ledger until 11th July 2002. By way of further example, the firm acted for C in the purchase of subjects shown in the ledger as C1. Loan funds amounting to £144,085 were received by the firm and encashed on 3rd May 2002. The ledger showed that the purchase price was paid over on that date. The Inspector noted that the Stamp Duty exigible on the Disposition was not paid until 8th July 2002. In the remainder of these twelve transactions, the Inspector noted that the delay in stamping/recording deeds ranged from two to ten months from the date of settlement of these transactions. At this inspection, the Complainers' Inspector identified a number of breaches of the Solicitors (Scotland) Accounts etc Fund Rules 2001 ("the 2001 Rules"). These are summarised as follows:-

- (a) A fee of £352.50 was received by the firm from a client, D without a Fee Note having been rendered to this client.
- (b) The Inspector noted ten instances of cheques to lenders from the firm without the cheques having been designated with the name or

account number of the person whose account was to be credited with the payment.

- (c) The Inspector noted inadequate narrative on several client ledgers with the consequence that he was unable to obtain a full and accurate picture of transactions from these ledgers.
- (d) The Inspector noted an inter-client transfer took place on 5th December 2001 for £22,009 between clients E and F. The Inspector noted that there was no separate record of this transfer and he saw no evidence of any authority from the client, E for the transfer.
- (e) The Inspector noted that the firm's bank statements showed monthly repayments in respect of a term loan. It was not clear whether or not this was the firm's liability or a liability of the individual partners. If the former then it was not shown on the firm's trial balance and not shown on the certificates provided by the firm as a sum due by it.
- (f) There was a failure to balance the books of the firm monthly and on the last day of the accounting period.
- (g) The client ledger sheets recorded debit and credit entries but there was no running balance column which would simplify the task of extracting client's balances on a monthly basis
- (h) There was a failure to extract on a monthly basis from clients' ledgers a list of balances due to clients and a failure to prepare a statement comparing the total of these balances with a reconciled balance in the client bank account. There was also a failure to retain such lists of balances and statements for

a period of three years from the dates that they were respectively carried out.

- (i) There was a failure to maintain a separate record of clients' funds invested in specified accounts and a failure to prepare a statement at three monthly intervals comparing the total of the balances shown in the records with the bank statements or building society passbooks showing any discrepancies between the two.
- (j) The Inspector noted that the sum of £2,220.38 was received from a client (G) on 11th June 2002 and that this sum remained uninvested at this inspection.
- (k) The Inspector noted that there was inadequate compliance with the Money Laundering Regulations. He noted in seven files that there was no evidence of any identification of the client or the source of funding having been identified and recorded.

6.6 Following this inspection, the Complainers' Chief Accountant, Mr L.H. Cumming, wrote to the First Respondent who was then the firm's Designated Cashroom Partner saying that he considered that the matters that the Inspector had identified at this inspection were of concern to him. Mr Cumming was aware that the firm was operating its book-keeping function with the services of a totally inexperienced Cashier whose attendance at the firm's office was irregular. In this letter he made it plain to the First Respondent that it was his responsibility to obtain the requisite assistance which the firm needed in order to comply fully with the Accounts Rules.

6.7 On 17th, 18th and 19th March 2003, the Complainers carried out a further inspection of the firm of Belton Pervez. At this inspection, the Inspector identified two transactions where there appeared to be a delay in recording deeds. The firm acted for H in the purchase of subjects shown in the ledger as H1. Settlement of this transaction took place on 1st November 2002. Abbey National were lending £33,495. At the date of this inspection, the client's ledger card showed a credit balance of £132 which appeared to represent recording dues. The Inspector saw no evidence that the deeds had been sent for recording. The firm also acted for I in the purchase of I1. This transaction settled on 18th December 2002. Chaps mortgages were lending £29,507.47. The Inspector did not see from inspection of the file that the deeds had been sent for recording. The Complainers' Inspector identified a number of breaches of the 2001 Rules. These are summarised as follows:-

- (a) The Inspector did not see any written authority from a ledger card for J in connection with the transfer of £24,478.73 on 29th July 2002 to K in connection with the purchase of J1/K1.
- (b) A ledger card for a client, L, was not headed.
- (c) The firm took fees of £411.25 on 28th January 2003 from a client, M. The Inspector did not see any evidence that a Fee Note had been rendered to the client prior to this payment.
- (d) The books had not been balanced from 31st March 2003.
- (e) There were three out of date cheques which remained uncashed viz on 20th August 2002 for £62, 18th September 2002 for £319 and 26th September 2002 for £36.43.

- (f) There was no control figure to ensure that the surplus on the client bank account was correct.
- (g) There were no quarterly statements from Halifax plc certifying the balances held by the firm with them on behalf of clients
- (h) There was a failure to invest the sum of £1,391 on behalf of a client, N, from 31st January 2003.

6.8 Arising from this last mentioned inspection, Mr Cumming wrote to the Second Respondent, who was then the firm's Designated Cashroom Partner, drawing his attention to the aforementioned failures to timeously record deeds and also breaches of the 2001 Rules. In this letter, Mr Cumming requested the Second Respondent to provide information or documentation to show that deeds had been recorded and the steps that the Second Respondent had taken to prevent recurrence of these failures and breaches and to ensure future compliance with the 2001 Rules.

6.9 On 30th September, 1st and 3rd October 2003, the Complainers carried out an inspection of the firm of Belton Pervez. The Inspector noted that the overall standard of the book-keeping did not then appear to have improved from the position at the inspections in July 2002 and March 2003. He concluded that the system then in place was inadequate. Trial balances were not being produced and there were no firm's ledgers. Client ledgers were only opened once a debit or credit was made and then filed in a monthly system. The day books and pay-ins had no record of the client or the source of income thereby providing no link to the client ledgers. The Complainers'

Inspector identified a number of breaches of the 2001 Rules. These are summarised as follows:-

- (a) There was a deficit on the client bank account from 3rd June 2003 until 11th June 2003 when a cheque for £62,500 from PRG was returned unpaid due to words and figures not matching. There was also a deficit of £210,000 from 29th April 2003 until 1st May 2003 when this sum was credited to the firm's bank in error.
- (b) The records were fragmented and did not show a clear audit trail. It was not easy to follow entries from the cashbook onto the client ledgers. There was inadequate narrative on some client ledgers and in one case no ledger had been open in the name of a client which should have happened.
- (c) There was no listing of funds invested on behalf of the clients on a quarterly basis and no quarterly reconciliations of client funds invested were then being produced.
- (d) The Inspector noted at least five instances of credit balances which had remained uninvested for a considerable period.
- (e) The Inspector noted that not all client cheques had been returned and that many for July 2003 were missing.

6.10 Arising from this last mentioned inspection, the Second Respondent was invited to and attended at an interview with a panel of the Complainers' Guarantee Fund Committee on 20th November 2003. At this meeting, the Second Respondent acknowledged that insufficient time was being spent on the accounts. Until then the firm had operated a manual system of

book-keeping. They were then moving to a computerised system. The Second Respondent advised the panel that he believed that the computerised system would solve many of the accounting problems which had emerged at previous inspections. He acknowledged that he did not have sufficient knowledge of accounts and cashroom procedures. He advised the panel that he intended to become more involved with the cashroom. He advised the panel that he intended to ensure that postings were completed on a daily basis and that he would personally check that monthly reconciliations were carried out. At this meeting there was discussion about compliance with the Money Laundering Regulations. The Second Respondent accepted that, although many clients have come from his previous firm, it was not sufficient to record them as existing clients pre 1994 as he had been doing and as had been noted by the Inspector at the last mentioned inspection.

6.11 **Inspections of the firm of Belton Pervez on 4th May, 26th and 27th July, 28th and 29th September all in 2004 and 28th February, 1st and 3rd March 2005.**

On 4th May 2004, the Complainers' Inspector attended at the firm's premises with a view to carrying out a further inspection of the firm's books and accounts. When she arrived, the Second Respondent explained to her that he had been feeling extremely stressed and overwhelmed due to the lack of support received from the First Respondent and due also to ongoing problems with the firm's book-keeping systems. He explained to her that he had decided to dissolve the partnership as he could no longer work under this

pressure. He advised the Inspector that he had not advised the First Respondent of this decision and he asked that the information be kept confidential. The Inspector explained to the Second Respondent that, although he had decided to dissolve the partnership, the outstanding matters arising from previous inspections still had to be resolved and that the books and records required to be amended to show the true financial position of the firm. The Second Respondent agreed with this and he advised the Inspector that he would make sure that the necessary corrections were carried out. The Inspector suggested to the Second Respondent that the firm employ the services of an experienced Cashier in view of the fact that the Cashier employed by the firm had no legal experience and was not at all sure what was required with a view to complying with the Accounts Rules. In the event, the Inspector could not carry out the inspection in view of the fact that no matters had been addressed since the previous inspection in September 2003. Moreover, the Inspector encountered difficulty obtaining the records from the Cashier. She noted, however, that the firm was still not completing a firm's trial balance at the end of each month despite being told to do so at the three previous inspections. The Inspector also noted that the last client trial balance was to 30th August 2003 and that this contained many errors which had not been rectified since the last inspection. She also noted that client ledgers were only opened once a debit or credit was made and then were filed on a monthly system thereby making it difficult for her to check the list of balances. She could not obtain both the invested funds reconciliations and the firm's bank

reconciliations and she noted that the last client bank reconciliation which appeared to have been completed was to 31st December 2003. Faced with all of this, the Inspector contacted Mr Cumming who thereupon attended at the firm's premises. Mr Cumming discussed the many problems with the records of the firm and asked the Second Respondent if these problems had in fact become worse since the last inspection. The Second Respondent confirmed to him that they had in fact become worse since then. Mr Cumming asked the Second Respondent to confirm that there was a surplus on the client bank account. The Second Respondent replied by saying that this should be the case but he agreed that due to the state of the records, he was unable to ascertain the true financial position of the firm. Mr Cumming pointed out to the Second Respondent that the firm had had many chances to rectify the problems which had been identified at the previous inspections and that the situation must be sorted out there and then. He explained to the Second Respondent that he regarded the position as being so serious that the appointment of a Judicial Factor might have to take place but that he would prefer not to go down that road if it could be avoided. Both the First and Second Respondents advised Mr Cumming that they had sufficient funds to cover the cost of employing an experienced book-keeper and that they would endeavour to have someone of experience in place the following day with a view to resolving all outstanding matters of concern as soon as possible. The First and Second Respondents acknowledged to Mr Cumming the seriousness of the situation and they told him that they were going to work together to try and resolve these

matters of concern. Given this reassurance, the Complainers decided not to proceed with a Petition to the Court for the appointment of a Judicial Factor to the firm.

6.12 On 26th and 27th July 2004, the Complainers carried out an inspection of the firm of Belton Pervez. Following the visit on 4th May 2004, the firm had employed Messrs. Gilmour & Hamilton, Chartered Accountants and had engaged a self-employed book-keeper to ensure that discrepancies in the firm's and clients' records since the commencement of the firm were corrected and that these records were kept fully up-to-date and reconciled in accordance with the Accounts Rules. The Inspector noted that due to the volume of problems encountered by Gilmour & Hamilton, it had not been possible for these discrepancies to have been scrutinized and corrected at the time of this latest inspection. The Inspector was led to understand that the accountants would be able to complete this work by 31st August 2004. The Inspector further noted that since the introduction of the computerised accounting system, further discrepancies had emerged in transactions that had taken place in April and May 2004. Many of these discrepancies involved significant sums of money. By way of example, a cheque to Registers of Scotland for a client, O, in respect of recording dues which truly should have been for £44 was posted as £3,666 thereby creating an error of £3,622. By way of further example, a cheque to Registers of Scotland for a client, P, which truly should have been for £231 was incorrectly posted as £23 thereby creating an error of £208. Both of these posting errors affected the

position of the client ledger accounts, client balances, deficit and client bank balance. By way of further example, a bank draft received on 11th May 2004 for £24,000 for a client, Q, was incorrectly posted as £2,400. This created a debit balance of £21,440 instead of a credit balance of £160. By way of further example, a cheque paid on 7th May 2004 to Turner MacFarlane & Green for £54,985.75 was incorrectly posted as £3,710. This created a credit balance of £51,753.03 instead of a credit balance of £477.28 at 31st May 2004. The Inspector further noted eight transactions where there was a delay in paying Stamp Duty. By way of example, the firm acted for R in connection with R1. This transaction settled on 25th May 2004. The purchase price was £170,232. On that date the firm received loan funds amounting to £146,182 from Halifax plc. The Stamp Duty exigible on the Disposition was not paid until 5th July 2004. In the remaining eight transactions, the delay in paying the Stamp Duty ranged from between two and five months from the date of settlement of the relevant transaction. The Complainers' Inspector identified a number of breaches of the 2001 Rules. These are summarised as follows:-

- (a) There was a deficit on the client bank account amounting to £37,370 from 4th June 2004 until 7th June 2004 arising from this sum having been erroneously lodged in the firm's bank account on 4th June 2004 instead of the client bank account.
- (b) From a small sample of cheques to banks and building societies, it was noted that these cheques had not been correctly designated.

- (c) The sum of £17,410 had been held un-invested for a client, S from 26th April 2004 until 4th June 2004.

6.13 On 28th and 29th September 2004, the Complainers carried out an inspection of the firm of Belton Pervez. By the time of this inspection, the firm had still not fully corrected and kept up-to-date it's books and records despite having been given extensions of time on several occasions by the Complainers' Guarantee Fund Committee for the purpose of making sure that these books and records were put into proper order. By the time of this latest inspection, the firm had still not satisfied the Complainers by exhibiting the appropriate documentation that the deeds relating to the transactions where the Inspector had identified late stamping at the July 2004 inspection had in fact been sent for recording. At this latest inspection, the Inspector noted eleven transactions where there appeared to be a delay in the recording of deeds following settlement. By way of example, the firm acted for T in the purchase of subjects shown in the client ledger as T1. The transaction settled on 4th June 2004. The firm received loans funds amounting to £64,000 from Mortgage Express on 3rd June 2004. The Inspector did not see any documentary evidence showing that the Disposition and relative Standard Security had been recorded. In all of the remaining cases, the delay in recording was in the range of two to three months from the date of settlement. The Complainers' Inspector identified a number of breaches of the 2001 Rules. These are summarised as follows:-

- (a) The transfer of £21,029.34, £19,000 and £186.50 from U to V, both clients of the firm, was done without the written authority of the remitting client.
- (b) Cheques dated 20th June 2004 and 30th June 2004 to Bank of Scotland and to The Royal Bank of Scotland for £60,516.78 and £26,543.33 for clients, W and X respectively, were not designated with the client's name and the appropriate account number.
- (c) There was a failure to obtain the appropriate documentary evidence of identity and to complete client fact sheets for a number of clients. There was also a failure to identify the source of sums amounting to £3,442.21 (Y received on 11th August 2004), £24,500 (Z received on 20th August 2004) and £10,000 and £6,000 A(a) received respectively on 18th August 2004 and 9th September 2004.

6.14 On 28th February, 1st and 3rd March 2005, the Complainers carried out an inspection of the firm of Belton Pervez. At this inspection, the Inspector noted seven transactions where there had been a delay in recording deeds from the date of settlement. By way of example, the firm acted for B(b) and C(c) in the purchase of heritable property. The price was settled on 15th December 2004. The purchasers received a loan from Birmingham Midshires Building Society. At the date of inspection, the Stamp Duty exigible in the Disposition had not been paid. The Inspector noted that in the remaining transactions the delay in recording ranged from between two and nine months. The Inspector also noted that, albeit that a

considerable effort had been made to bring the firms records up-to-date and to post all of the entries correctly, this work had still not been fully completed. The Complainers' Guarantee Fund Committee had expected that it would be completed by this time, given the somewhat lenient and sympathetic view that it had taken to the problems which the firm had encountered with regard to inadequate book-keeping. Moreover, the firm had still not satisfied the Complainers that it had satisfied all matters of concern outstanding from the previous inspection in September 2004. Many of these matters remained unresolved and, in particular, the firm had failed to provide reassurance by means of appropriate documentary evidence that, for example, the deeds had been recorded in the transactions where delay in recording had previously been identified and that the appropriate documentation was provided in respect of undesignated cheques.

6.15 **Mr D(d)**

By letter dated 17th September 2004, Mr D(d) wrote to the Complainers invoking their aid. In this letter, he had advised the Complainers that the Third Respondent had failed to progress his divorce action and that, due to her inability to see him when appointments had been made for this purpose on several occasions, he had transferred the agency to new solicitors, Ross Harper. Mr D(d) went on to say in this letter that Ross Harper wrote to the Third Respondent requesting the file on a number of occasions and that, despite several letters and telephone calls to her, the file had not been passed over to Ross Harper. On 27th July 2004, Ross Harper

wrote to the Third Respondent enclosing a mandate signed by Mr D(d) requesting that his file be passed to them. The Third Respondent did not reply to this letter. On 11th and 19th August 2004, Ross Harper wrote to the Third Respondent requesting that the mandate be implemented. On 25th August 2004, Shona Spence, the Assistant employed by Ross Harper dealing with Mr D(d)'s case, phoned Belton Pervez and left a message requesting that the Third Respondent call her regarding this mandate. On 25th August 2004, Shona Spence spoke to the Third Respondent on the telephone. The Third Respondent then advised her that she believed that the file had been sent to Ross Harper but that she would check the position and that, if this was not the case, the file would be sent immediately. On 3rd September 2004, Ross Harper wrote to Belton Pervez referring to the aforementioned conversation between Shona Spence and the Third Respondent and requested that the file be sent within seven days. On 9th September 2004, Ross Harper again wrote to Belton Pervez saying that if the file was not received in seven days, they would recommend Mr D(d) to involve the Complainers. On 6th October 2004, Shona Spence called Belton Pervez on the telephone and left a message for the Third Respondent to call her. The Third Respondent did not do so. As at 23rd August 2005, Ross Harper had still not received the file from Belton Pervez or any explanation for their failure to send it in terms of the aforementioned mandate.

6.16

McVey & Murrricane on behalf of Abbey National plc

By letter dated 7th May 2004, McVey & Murrricane wrote to the Complainers invoking their aid. In this letter, they advised that they were acting on behalf of Abbey National plc in a re-mortgage transaction involving F(f)1. The proprietor of this property, Mrs F(f), intended transferring her mortgage from Alliance & Leicester plc to Abbey National plc. Alliance & Leicester plc advised McVey & Murrricane that Belton Pervez held the title deeds to this property. In this letter, McVey & Murrricane advised the Complainers that they had written to Belton Pervez on 5th and 13th April 2004. They spoke to them on 16th April, 21st April, 22nd April and 23rd April all in 2004 and wrote to them finally demanding the Titles on 29th April 2004. Belton Pervez had failed to send the titles to them by 7th May 2004. It was the Third Respondent who was immediately responsible for dealing with these requests for the titles. She failed to respond to these requests.

6.17 **The Law Society of Scotland**

Following receipt of Mr D(d)'s letter of complaint, the Complainers wrote to the First Respondent on 29th September 2004 enclosing a copy of Mr D(d)'s letter of complaint and enquiring whether or not his file had been sent to Ross Harper. The First Respondent was requested to reply within fourteen days. He failed to do so. On 26th October 2004, the Complainers wrote to the First and Third Respondents intimating a claim of alleged professional misconduct to each of them and requesting, within twenty one days, *inter alia*, a written response to the issues complained of. Both the First and Third Respondents failed to respond to this letter. As a result of this, the Complainers wrote

to the First and Third Respondents on 19th November 2004 giving both of them notice in terms of Section 42C of the Solicitors (Scotland) Act 1980 calling upon them to produce all books, papers and other documents in their possession or control relating to Mr D(d) within twenty one days of that date. On that date too, the Complainers gave notice to the First and Third Respondents in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 requiring each of them to send a response as requested previously together with an explanation for the delay in replying within fourteen days from that date. Both the First and Third Respondents failed to respond to the aforementioned notices. By letter dated 30th December 2004, the Complainers wrote to the First and Third Respondents giving each of them notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 requiring them to give six weeks notice to the Complainers of their intention to make application to take out a Practising Certificate for the year commencing 1st November 2005. They both failed to respond to this notice. On 30th December 2004, the Complainers also wrote to the First and Third Respondents giving notice in terms of Section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 requesting, *inter alia*, their written response to the issues of alleged professional misconduct which had been identified to them. They both failed to respond to this notice too. It was by letter dated 11th March 2005 that West Anderson & Co, on behalf of the First, Second and Third Respondents wrote to the Complainers following intimation to the First and Third Respondents of the Reporter's report and opinion in relation to Mr D(d)'s

complaint and also to the complaint by the Complainers arising from the failure of the First and Third Respondents to reply to the aforementioned correspondence from the Complainers to them.

6.18 Following receipt of the letter of complaint from McVey & Murrricane, the Complainers wrote to the Second Respondent seeking his response to the complaint. On 16th July 2004, the Second Respondent advised the Complainers that it was in fact the Third Respondent who was responsible for the failure to send the said titles to McVey & Murrricane. The Complainers acknowledged that, on the basis of this information, the complaint of professional misconduct which had been intimated to the Second Respondent should not in fact have been intimated to him at all. On 20th July 2004, the Complainers wrote to the Third Respondent intimating a complaint of alleged professional misconduct to her and asking her, in terms of Section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, for, *inter alia*, her written response to the issues of complaint identified within twenty one days. The Third Respondent failed to reply to this letter. By the beginning of September 2004, McVey & Murrricane had still not received the said titles from Belton Pervez. On 8th September 2004, the Complainers wrote to the Third Respondent giving her notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 and requiring her to send a response as requested previously together with an explanation for the delay in replying within fourteen days of the date of that notice. On 8th September 2004, the Complainers wrote to the Third Respondent

giving her notice in terms of Section 42C of the Solicitors (Scotland) Act 1980 requiring her to produce all books, documents, etc in her possession or control relating to Mrs F(f), F(f)1 within twenty one days of the date of that notice. The Third Respondent failed to reply to either of these last mentioned notices. By the beginning of October 2004, McVey & Murrricane had still not received these titles from Belton Pervez. By letter dated 28th October 2004, the Complainers again gave the Third Respondent notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 requiring her to provide a response as requested previously together with an explanation for the delay in replying within fourteen days of the date of that notice. The Third Respondent failed to respond to this notice too. On 28th October 2004, the Complainers wrote to the First Respondent providing him with a copy of the aforementioned notice of even date which they had sent to the Third Respondent. In so doing, the Complainers were seeking his assistance in resolving McVey & Murrricane's complaint regarding non-delivery of these Titles. In the event that assistance was not forthcoming.

6.19 At all material times when Ross Harper, McVey & Murrricane and the Complainers were making the aforementioned enquiries of the Third Respondent, she was then an employee of Belton Pervez. As such, she was or ought to have been under the immediate supervision and control of the First and Second Respondents. They failed to ensure that the firm responded timeously to the reasonable requests being made of it by Ross Harper, McVey & Murrricane and

the Complainers for delivery of documents and titles and for co-operation with the Complainers in their investigation into the complaints by Mr D(d) and McVey & Murrice so that the failings of the Third Respondent could be cured with the consequent avoidance of inconvenience to all parties affected by the Third Respondent's aforementioned failures.

7. Having considered the foregoing circumstances the Tribunal found the First and Second Respondents guilty of Professional Misconduct in respect of:

7.1 Their breaches of the Solicitors (Scotland) Accounts etc Fund Rules 2001 by:

7.1a their breach of Rule 4(1)(a) in respect of the shortage of funds in the client bank account from 29th April 2003 until 1st May 2003 and from 3rd June 2003 to 11th June 2003 and from 4th June 2004 until 7th June 2004.

7.1b their breach of Rule 6(1)(c) by their failure to obtain written authority to transfer funds from one client of the firm to another.

7.1c their breach of Rule 6(1)(d) by their failure to render an account to their client prior to taking a fee from that client.

7.1d their breach of Rule 6(2) by their continuing and persistent failure to designate cheques payable to a client's account with a bank or building society.

- 7.1e their breach of Rule 8(1)(a) & (b) by their failure to ensure adequate narrative in their books, ledgers and other records.
- 7.1f their breach of Rule 8(3)(b) by their failure to keep a record of an inter-client transfer on 5th December 2001.
- 7.1g their breach of Rule 8(4)(a) by their failure to clarify who is liable for the repayment of a term loan.
- 7.1h their breach of Rule 8(4)(b) by their failure to balance the firm's books on a monthly basis.
- 7.1i their breach of Rule 8(5) by their failure to include a running balance column to facilitate monthly extraction of client balances.
- 7.1j their breach of Rule 9(1) by their failure to properly carry out a reconciliation of the client bank account.
- 7.1k their breach of Rule 9(2) by their failure to extract from the client ledger a list of balances due to clients and to prepare a statement comparing the total of these balances with a reconciled balance in the client bank account.
- 7.1l their breach of Rule 10(1) by their failure to properly carry out a reconciliation of funds invested on behalf of clients.
- 7.1m their breach of Rule 10(2) by their failure to maintain a separate record of client's funds invested in specified accounts.

- 7.1n their breach of Rule 11(1) by their persistent failure to invest funds held on behalf of clients in a separate interest bearing client account.
 - 7.1o their breach of Rule 19(1) by their failure to ensure that all client cheques have been returned to the firm.
 - 7.1p their breach of Rule 24 by their persistent failure to comply with the Money Laundering Regulations.
 - 7.2 their persistent failure to stamp and record Dispositions and relative Standard Securities timeously.
 - 7.3 their failure to adequately supervise the Third Respondent.
8. The Tribunal found the Third Respondent guilty of professional misconduct in respect of:
- 8.1 Her failure to respond to the reasonable enquiries made of her by fellow agents.
 - 8.2 Her failure to timeously implement a mandate.
 - 8.3 Her failure to respond at all to the reasonable requests of the Law Society for information and to statutory notices in consequence of which the Law Society were unable to respond in any meaningful way to Mr D(d) and to McVey & Murrricane who had invoked their aid.
9. The Tribunal also found the First Respondent guilty of professional misconduct in respect of

9.1 His failure to respond to the reasonable requests of the Law Society for information and failure to respond to statutory notices.

10. Having heard the Solicitors for the Respondents in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14th December 2005. The Tribunal having considered the Complaint dated 23rd August 2005 at the instance of the Council of the Law Society of Scotland against Paul Francis Belton, Solicitor, 430 Victoria Road, Glasgow (First Respondent), Shahid Sattar Pervez, Solicitor, 430 Victoria Road, Glasgow (Second Respondent) and Celine Bell, Solicitor, 430 Victoria Road, Glasgow (Third Respondent); Find the First and Second Respondents guilty of Professional Misconduct in respect of their breach of Rules 4, 6, 8, 9, 10, 11, 19 and 24 of the Solicitors (Scotland) Accounts etc Fund Rules 2001, their persistent failure to stamp and record dispositions and relative standard securities timeously and their failure to adequately supervise the Third Respondent; Find the Third Respondent guilty of professional misconduct in respect of her failure to respond to the reasonable enquiries made of her by fellow agents and the Law Society and failure to respond to statutory notices from the Law Society and her failure to timeously implement a mandate; Find the First Respondent guilty of professional misconduct in respect of his failure to respond to the reasonable requests of the Law Society for information and failure to respond to statutory notices; Censure the First Respondent, Fine him in the sum of £5000 to be forfeit to her Majesty and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of ten years with effect from 6 March 2006 any practising certificate held or issued to the First Respondent shall be subject to such Restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland; Censure the Second Respondent, Fine

him in the sum of £7500 to be forfeit to her Majesty and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of ten years any practising certificate held or issued to the Second Respondent shall be subject to such Restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland; and Censure the Third Respondent; Find the First and Second Respondents jointly and severally liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a solicitor 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; Find no expenses due to or by the Third Respondent; and Direct that publicity will be given to this decision and that this publicity should include the name of all three Respondents.

(signed)

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

As a Joint Minute was lodged in which the Respondents admitted the facts, averments of duty and averments of professional misconduct contained therein insofar as relating to them. There was no requirement for evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir expressed his appreciation to the Respondents for their co-operation in entering into a Joint Minute. Mr Muir said that in connection with the First and Second Respondents there were two recurring themes which ran throughout the Complaint being the continuing non-compliance with the Accounts Rules and the continuing failure to record deeds timeously. The Law Society carried out five inspections between July 2002 and March 2005. The First Respondent was the cashroom partner as at the July 2002 inspection but at all the other inspections the Second Respondent was the cashroom partner. The Second Respondent was interviewed on 20th November 2003 by the Guarantee Fund Panel and acknowledged that he had insufficient knowledge with regard to the Accounts Rules and cashroom procedures. In May 2004 the Law Society's chief accountant was called in and the appointment of a Judicial Factor was considered. This led to Gilmour Hamilton Accountants being brought in to try and bring order to the cashroom. Mr Muir however submitted that the failures were so wide and deep that it was a very onerous task and even by the last inspection there was still not a full picture. Mr Muir submitted that although the Second Respondent was the cashroom partner for most of the time, the First Respondent also had to take responsibility. In connection with the failure to record deeds, although the Second Respondent was the conveyancing partner, the First Respondent was also responsible. Mr Muir confirmed that there was no suggestion by the Law Society of any dishonesty. Mr Muir submitted that the First and Second Respondents were not fit to be principals in private practice. They had also failed to supervise their assistant, the Third Respondent. Mr Muir advised that the firm of Belton and Pervez had ceased on 31st October 2005 and now was being run by another solicitor but the First and Third Respondents were employed by that solicitor. The Second Respondent did not presently hold a practising certificate. In connection with the Third Respondent, Mr Muir submitted that it was symptomatic of

a firm that had no sense of order that this would happen but that her conduct was discourteous.

SUBMISSIONS FOR THE FIRST RESPONDENT

Mr Edment outlined the First Respondent's background. He explained that the First Respondent was cashroom partner when the firm of Belton & Pervez started up but it became clear that the Second Respondent was more suited to this role and he took over as cashroom partner. It became apparent that the bookkeeping was inadequate and by 2004 it was necessary to get expert professional help. When the firm of Belton & Pervez started up there was a large volume of business and the partners struggled to keep up with the firm's administration. Mr Edment accepted on behalf of the First Respondent that he placed too much reliance on the Second Respondent in connection with ensuring conveyancing formalities were undertaken and that the Accounts Rules were complied with. The First Respondent did not realise how incompetent the cashier was. When it became clear that professional help was needed Gilmour Hamilton were brought in and then Accountancy Services for Scottish Solicitors. Mr Edment referred the Tribunal to the statement from Marjory O'Hara of Accountancy Services for Scottish Solicitors and the statement from Mr Hamilton of Gilmour Hamilton and Company. The First and Second Respondents had had to pay approximately £30,000 to these accountants to get matters resolved. Mr Edment explained that the difficulty was that when they set up in business they were inexperienced and were overwhelmed with the volume of work. The First Respondent also had health difficulties and family commitments. Mr Edment asked the Tribunal to accept that there was no dishonest or wilful neglect but continuing errors of judgement and incompetence.

SUBMISSIONS FOR THE SECOND RESPONDENT

Mr Burns stated that the case involved two young gifted solicitors who had set up in business to give good service but it had been a disaster from the start. The firm had good but demanding clients who had a tendency to drop in and expect to be seen. The firm did very well and was a fast growing business. The firm started with a manual accounting system and the Second Respondent had little awareness of the Accounts

Rules. After the first inspection the partners were confronted by what had been found. The Second Respondent's response was to instruct a cashier who turned out to be wholly inadequate for the purpose. She had no background in solicitors accounting and had not been on the appropriate courses. The cashier also had difficulties of her own. The firm had a bad start in accounting terms and this together with the successful growth of the firm led to disasters. Mr Burns stated that it was accepted that the Second Respondent had approached matters in a naive and inept manner. He did not understand the importance of having to comply with the Account Rules. The appointment of a cashier made things worse and the Second Respondent unburdened himself to the Law Society inspector. The Second Respondent accepted that he had not looked to see whether things were being done properly. After 2004 however significant steps were taken and Gilmour Hamilton Accountants were involved. They had a significant task to undertake and the inadequacies of the previous cashier were identified. At considerable cost Marjory O'Hara, Accountancy Services for Scottish Solicitors took over the cashroom function. There were still some loose ends but most matters had been resolved and the situation was under control. In connection with the delay in recording deeds, Mr Burns accepted that this was fundamental to conveyancing. He explained that the Second Respondent was overwhelmed and had every intention of recording deeds but just did not get around to it. Mr Burns submitted that all matters had now been attended to as far as he knew. Mr Burns asked that the Tribunal deal with the matter in such a way as to ensure that the Second Respondent's talents were still able to be used. Mr Burns confirmed that the Second Respondent had no desire to be a principal and was not presently working.

SUBMISSIONS FOR THE THIRD RESPONDENT

Mr Edment explained that the Third Respondent lived with the First Respondent and helped look after his three children. She also came into the firm to help out and ended up working long hours. She had a very busy home and office life and became overwhelmed. Mr Edment explained that she had poor time management and also suffered from health problems at the time. She was always trying to do her best for everyone and found it all too much. In connection with Mr D(d) there had been a determination that no fees be due and Mr D(d) had been paid £550 by way of compensation. In connection with the McVey transaction she was unsure how to deal

with matters and they had drifted. Mr Edment asked the Tribunal to deal with matters as leniently as possible.

DECISION

The Tribunal was extremely concerned by the First and Second Respondents persistent course of conduct in the face of warnings from the Law Society at various inspections. The Tribunal however was satisfied that this was not the result of wilful recklessness but of incompetence. It was clear from the start that the First and Second named Respondents were ill equipped to deal with the management of the firm and were unable to properly comply with the Accounts Rules. Compliance with the Accounts Rules is imperative in order to ensure that the public are protected. A solicitor acting in a conveyancing transaction has a duty to register deeds within a reasonable time. Until that is done the client is not infert in property and lenders remain unsecured which poses an unacceptable risk for clients. When the First and Second Respondents employed the cashier they should have ensured that the cashier was capable of the task and had been on the appropriate courses. The First and Second Respondents seemed more concerned with increasing the amount of business coming into the firm than ensuring that the firm was running properly. The Tribunal has made it clear on a number of occasions that this is not acceptable. The Tribunal however took account of the fact that the First and Second Respondents had got Gilmour Hamilton and Marjory O'Hara, Accountancy Services for Scottish Solicitors involved in August 2004 and steps were being taken to clear up the mess. The Tribunal also took account of the fact that there was no suggestion of dishonesty and no evidence that any clients had suffered loss despite there having been potential for loss. The Tribunal considered that in order to protect the public the First and Second named Respondents should only work under supervision. The Tribunal accordingly Censured the First and Second Respondents and Ordered a Restriction on their practising certificates for a period of ten years. In respect of the First named Respondent the Tribunal Ordered the Restriction to run from 6 March 2006 to allow the First Respondent time to have his employer firm approved by the Law Society if appropriate. In order to emphasise the seriousness with which the Tribunal views this continuing course of conduct the Tribunal also imposed a fine in respect of the First Respondent of £5000. In respect of the Second Respondent the Tribunal imposed a

fine of £7500 to take account of the fact that the Second Respondent was the cashroom partner for the majority of the period in question and was also directly responsible for the delay in the recording of deeds. In connection with the Third Respondent, the Tribunal found the Third Respondent's conduct discourteous. The Tribunal has made it clear on a number of occasions that failure to reply to fellow solicitors and the Law Society amounts to professional misconduct. The Tribunal however noted that she had dealt with around 900 files and only received two complaints. The Tribunal also noted that compensation had been paid to clients in respect of the determination and direction made. The Tribunal felt that the Third Respondent had been left to deal with too much and considered that a Censure would be sufficient penalty.

Mr Muir moved for expenses and asked for an uplift of 25% due to the complex subject matter of the Complaint. The Tribunal was not persuaded that there was any reason to depart from awarding the usual unit rate of £11.85 and did not consider it appropriate to give a percentage uplift.

The Tribunal considered it appropriate that the First and Second Respondents bear the expenses of the proceedings jointly and severally as the Third Respondent only had a very small part to play in the proceedings. The Tribunal made the usual order with regard to publicity.

Chairman