

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

**FINDINGS**

**in Complaint**

**by**

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

**against**

**PAUL GERARD KIRK, of 748a  
Old Edinburgh Road, Viewpark,  
Uddingston, Glasgow**

1. A Complaint dated 2<sup>nd</sup> May 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Paul Gerard Kirk, of 748a Old Edinburgh Road, Viewpark, Uddingston, 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 Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 26<sup>th</sup> July 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 26<sup>th</sup> July 2007. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented.

5. After hearing evidence from the Depute Clerk with regard to the service of the Notice of Hearing, the Tribunal proceeded to deal the matter in Respondent's absence.
6. The Complainers led the evidence of two witnesses and affidavit evidence from one witness and referred the Tribunal to numerous Productions lodged.
7. The Tribunal found the following facts established
  - 7.1 The Respondent resides at 748a Old Edinburgh Road, Viewpark, Uddingston, Glasgow. He was born 4<sup>th</sup> April 1959. He was admitted as a solicitor on 11<sup>th</sup> November 1981. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 2<sup>nd</sup> December 1981. The Respondent was formerly a partner in the firm of Messrs Guarino & Kirk, Solicitors, Glasgow.
  - 7.2 The Scottish Legal Aid Board (hereinafter referred to as "SLAB") was formed in 1987 to manage the administration of legal aid within the Scottish jurisdiction. They have a place of business at 44 Drumsheugh Gardens, Edinburgh. They are a non-departmental public body responsible to the Scottish Executive. Ministers in the Scottish Executive decide legal aid policy. Ministers propose laws to set the rules and criteria for the use of Legal Aid together with the fees to be paid to the legal profession. The Scottish Parliament makes and changes legislation including the tests for the granting of legal aid. The budget for legal aid is different from other public services. It is not a set amount. If someone was granted legal aid, the Scottish Executive will provide the funds to meet the cost of their case. Legal Aid is help towards the costs of legal advice and representation, for those who qualify, paid for out of public funds. It is designed to help individuals on low and modest incomes gain access to the legal system. Legal Aid may be

free, or someone may have to pay towards the costs of their case. Legal Aid is accessed through a solicitor.

7.3 There are two main types of Legal Aid help:-

(a) Advice and Assistance. This covers a wide range of matters so long as they are matters of Scots law. It pays for advice from a solicitor, but apart from a few exceptions, it will not cover representation, that is putting a case forward in court.

(b) Legal Aid. This provides funding for the solicitor to put a case forward in court and at certain tribunals. It covers the preparation work, as well as the hearing itself and can provide funding for Advocates, Experts and other associated costs. Cases often begin with advice and assistance in respect of the preparatory work required with legal aid being the next step if necessary where a case is to be presented in court.

In respect of criminal legal aid, the form of legal aid available depends upon the nature of the prosecution. If a complaint is brought against an accused under summary procedure, for the work carried out by a solicitor he is in the majority of cases entitled only to a fixed fee. If a case is brought against an individual under solemn procedure, the legal aid available to the solicitor is on a time and line basis. Therefore any work carried out by the solicitor in respect of a solemn appearance is charged on an exact basis being the time spent by him dealing with the matter whereas in relation to summary matters, time is of no significance as the solicitor receives the fixed payment regardless of the work involved.

7.4 The principal statute responsible for the administration of legal aid within the Scottish jurisdiction is the Legal Aid (Scotland) Act 1986. In 1997 a number of amendments were made to this legislation. These amendments provided SLAB with amongst

other things, increased powers in respect of the investigation of fraud or abuse in respect of the provision of criminal legal assistance. In particular:-

(a) Amendments to Section 25 of the said 1986 Act created a criminal legal assistance register in which every solicitor or firm wishing to provide criminal legal assistance must be entered.

(b) A Compliance Audit Regime was commenced, based upon a Code of Practice in relation to the provision of criminal legal assistance. Every solicitor and firm of solicitors wishing to provide criminal legal assistance must be entered on the Criminal Legal Assistance Register established and maintained by SLAB in terms of Section 25A of the said 1986 Act. To be entered on the register, firms and solicitors must conform to the terms of the Code of Practice. This Code of Practice sets out the standards required by SLAB in relation to the provision of criminal legal assistance. *Inter alia* it sets forth standards of professional conduct which solicitors require to act in accordance with and determine systems of management and administration that solicitors require to have in place if they were to provide criminal legal assistance.

(c) Further amendments to Section 25 set up a statutory frame work for seeking to remove the name of a solicitor or firm from the criminal legal assistance register in the event of serious or continued failure to comply with the code of practice.

(d) The Compliance Regime instigated, involved the monitoring of each registered firms continuing compliance with the Code of Practice. This duty is exercised through a rolling programme of compliance audits carried out by members of the

SLAB staff undertaken in terms of Section 25(C), 35(A) and 35(B) of the said 1986 Act as amended.

7.5 The Respondent was formerly a partner in the firm of Messrs Guarino & Kirk, Solicitors. The Respondent resigned as a partner with that firm and assumed the role as sole practitioner trading as the firm Paul Kirk & Company, Solicitors with effect from 1<sup>st</sup> February 2002. In this capacity, the Respondent principally offered advice to clients who were eligible for legal aid. Records are maintained by SLAB to disclose the extent of monies paid to solicitors throughout Scotland from the Legal Aid public funding. In the year 2001/2002 the Respondent was paid the sum of £16,163.68. In the year 2002/2003 the Respondent was paid the sum of £322,080.52. In the year 2003/2004 the Respondent was paid the sum of £311,037.01. The Respondent operated a criminal practice based principally in the jurisdictions of Hamilton and Glasgow Sheriff Courts. SLAB were concerned at the level of earnings paid to the Respondent, the average case costs submitted by the Respondent and a number of serious discrepancies revealed in the time and line accounts submitted by the Respondent. In general their analysis of the accounts submitted by the Respondent revealed a number of methods of charging which were common to the charges intimated by the Respondent. These included standard attendances with clients of in excess of one hour and extensive and excessive preparation and perusal times. All of which methods of charging were designed to enhance the fee claimed.

7.6 In terms of the statutory powers afforded to SLAB, they recovered the timesheets operated by the Respondent for the year 2003. As part of the Code of Practice, any solicitor wishing to remain on the criminal register required to have timesheets in which they detail the work carried out on behalf of an assisted person and the time spent thereon by the

individual solicitor. This timesheet will contain a chronological record of activity undertaken by each solicitor providing criminal legal assistance. The timesheet will show the actual time involved to the nearest five minutes in such activities as attendance in court or with clients or witnesses, travel time, dictating and other activities relating to the provision of criminal legal assistance. This information is provided within a timesheet. Utilising the information contained in the timesheets completed by the Respondent, SLAB were able to compare the times narrated on these sheets against the times charged by the Respondent in the various accounts submitted by him to SLAB for payment. The objective of this analysis was to determine the accuracy of the timesheets against the professional charges made against the fund bearing in mind the considerable sums of money paid to the Respondent from the public purse. Analysis of the time sheets produced by the Respondent showed that a significant proportion of the account entries were not supported by the entries marked thereon.

- 7.7 As a result of this analysis a number of serious discrepancies pointing towards excessive charges being intimated by the Respondent were revealed. Compliance audit findings and the results of the analysis into the firm were reported to the Respondent in March 2005. As a consequence of the scale of the discrepancies SLAB considered whether to de-register the Respondent from the criminal legal assistance register. Representatives of SLAB met with the Respondent and his advisers and obtained an assurance that repetition of excessive charging would not reoccur and an opportunity was afforded to the Respondent to amend his practices. Regrettably the Respondent failed to take this opportunity and as a result of further analysis carried out by SLAB at a subsequent date, it was revealed the Respondent was once again engaged in the

duplication of charging and the submission of accounts seeking excessive payments.

7.8 The analysis carried out by SLAB was based on a sample of accounts submitted by the Respondent and paid by SLAB compared to the firm's file and timesheet entries. Further enquiries were made of the administrative departments of the various courts to confirm personal attendance there and at a particular time by the Respondent. The sample of accounts analysed by SLAB represented slightly in excess of 15% of the criminal cases dealt with by the Respondent for the period 1<sup>st</sup> February 2002 through to 28<sup>th</sup> February 2004. In general the issues identified in the audit included the Respondent charging for work which appeared unnecessary, inadequate timesheet entries, excessive length of attendances, failure to identify the person attending and a failure to apportion travel charges.

7.9 The analysis carried out by SLAB revealed that on a regular and frequent basis the Respondent sought payment from SLAB more than once in respect of one period of time, resulting in significant overpayments to the Respondent. Whilst individually each account submitted by the Respondent appeared to be in order, detailed comparison of all times disclosed by the Respondent on that account and others submitted by him revealed an overcharge to SLAB. This arose in a variety of ways. For example, the Respondent would regularly charge one visit with a client to two or more separate accounts for that client, the Respondent would undertake work in one matter whilst charging waiting time to another or other account and failed thereafter to apportion his time properly in line with the Criminal Legal Aid (Fees)(Scotland) Regulations 1989, the Legal Aid (Scotland) Act 1986 and the Taxation Guidelines issued by SLAB. The majority of the overcharging perpetrated by the Respondent occurred during periods of waiting time. In simple terms, waiting time is that period spent

by a solicitor waiting for a case to call in court. Waiting time is specifically addressed in the Criminal Legal Aid (Scotland)(Fees) Regulations 1989 at Regulation 7 which in part states:-

7(2)(a) “Time necessarily spent at the court on any day in waiting for the case or the Appeal to be heard, where such time had not been occupied in waiting for or conducting another case.”

A solicitor is therefore only entitled to charge waiting time for the next case calling. This was a principle not followed by the Respondent. The Respondent on a regular basis charged waiting time in more than one case at times which reveal he was engaged in other matters. The analysis carried out by SLAB identified 30 occasions where the Respondent charged SLAB more than once for periods of time spent allegedly waiting by him, resulting in significant overpayments being made to the Respondent. The Respondent engaged in a fraudulent practice in terms of which he sought to enhance the fees which he claimed from SLAB by presenting to them accounts for work which he maintained he had carried out when in actual fact he was engaged in other activity at the material time. The methods employed by the Respondent in pursuit of this fraud amounted to him charging one visit on two or more separate accounts in respect of one individual and the Respondent undertaking work in one matter whilst charging waiting time to another or other accounts. A document was prepared by SLAB as a result of the analysis which identifies the 30 occasions where the Respondent practiced double charging whereby he sought payment for work carried out by him in terms of the Legal Aid Scheme whilst charging for work carried out by him at the same time in respect of a separate account. The amount overpaid to the Respondent as a



consequence of his double charging in respect of these accounts amounted to £3,843.87.

7.10 In respect of fixed payment cases, these relate to prosecutions dealt with by summary complaint. The payment to a defence solicitor here is made at a fixed level regardless of the amount of work carried out. The analysis carried out by SLAB revealed a failure on the part of the Respondent to time record appearances and travel time in respect of fixed payment cases in line with the Code of Practice for Criminal Legal Assistance. The practice adopted by the Respondent included a lack of correct apportionment of times or mileage consequently the Respondent loaded his professional charges onto time and line cases for which separate charges were accepted. In respect of these instances the Respondent in his account for a particular day would charge full waiting, court consultation and travel times on a time and line case. Subsequent enquiries by SLAB with the individual court where the Respondent maintained he appeared, revealed that during the period when the Respondent maintained he was dealing with the client on a time and line case, he was also in addition appearing in respect of other criminal clients who were fixed payment cases. In submitting his account and timesheet the Respondent failed to identify these appearances thereby enhancing the fee claimed from SLAB. The Respondent should have apportioned his time in respect of each of the individual accounts and not load his professional charges to the account being charged on a time and line basis. In particular the analysis carried out by SLAB revealed the following:-

(a) On 15<sup>th</sup> August 2003 the Respondent appeared as an agent on behalf of another firm in respect of a client which they represented. However the timesheet produced by the Respondent showed him to be engaged in travelling, waiting, advocacy etc in connection with a separate client, a Ms A from

7.30am to 12.15pm at Linlithgow Sheriff Court. Further the timesheet submitted shows the entire afternoon of the Respondent being taken up with a series of consultations which have been charged on a time and line basis by the Respondent. Enquiry by SLAB has revealed that another solicitor acted for the client, Ms A on this date and not the Respondent. Not only did the timesheet submitted by the Respondent contain false information regarding him appearing for the client, Ms A, it also does not reflect the fact that he appeared as an agent for another firm of solicitors which would require apportionment of time and travel thereby reducing the amount claimed by the Respondent.

(b) On 27<sup>th</sup> November 2003 the timesheet produced by the Respondent shows him at Glasgow Sheriff Court in the morning and attending a client at HM Prison, Barlinnie in the afternoon. However, separately a summary account submitted by the Respondent in respect of the affairs of the client, Mr B shows the Respondent appearing at Motherwell District Court on this date. Enquiries with the court by SLAB have revealed that in addition to this client, the Respondent appeared on behalf of two other clients, a Mr C and a Mr D on this date at Motherwell District Court. Neither of these appearances is recorded on the timesheet produced by the Respondent. Such appearances would have required the Respondent to apportion his time and charges between each of the individual clients. The information contained on the timesheet submitted by the Respondent for this date is inaccurate making no reference to his appearance at Motherwell District Court.

(c) On 28<sup>th</sup> November 2003, the timesheet produced by the Respondent maintains that he was engaged in court acting on behalf of his own clients. Subsequent enquiries of the Sheriff Clerk at Hamilton Sheriff Court revealed the Respondent also appeared for a Mr E who was represented by a separate firm of

solicitors. There was no reference to the Respondent's appearance on behalf of this client. Such an appearance would have necessitated an apportionment of time and waiting on the account submitted by the Respondent which he failed to do.

(d) On 8<sup>th</sup> February 2002, the Respondent charged SLAB full waiting, court, consultation and travel times on a time and line account for the client, Mr F. His records for this client started at 9.20am and finished at 12.50pm. Subsequent enquiry by SLAB with the Sheriff Clerk at Hamilton Sheriff Court confirmed that during this period the Respondent personally appeared for four other clients, all of whom were fixed payment cases. SLAB made enquiry of the account submitted by the Respondent in respect of three of these clients where it revealed the Respondent had charged expenses of 10 miles in respect of each of the accounts for travelling to court. The Respondent had duplicated his charge for mileage in travelling to court. This failure to apportion the travel time properly resulted in an overcharge to SLAB plus the overcharge in respect of the times actually involved in any aspect of the fixed cases which occurred during a period where the Respondent had charged as waiting time in respect of the time and line case.

(e) On 11<sup>th</sup> February 2002, the Respondent charged full waiting, court, consultation and travel times to the time and line case of the client, Mr F. Again he maintains that this started at 9.20am and finished at 12.50pm. Enquiry of the Sheriff Clerk has revealed that during this period the Respondent appeared on behalf of four fixed payment criminal clients. Analysis of the accounts submitted by the Respondent in respect of these fixed payment clients shows that in respect of two of these accounts the Respondent claimed the full mileage of 10 miles. The Respondent sought payment in duplicate of a charge in respect of mileage and travel time. The Respondent also failed

to apportion times between the time and line case and the fixed fee cases.

7.11 Ms G consulted with the Respondent in connection with a reparation claim. She was unhappy with the manner in which the Respondent dealt with her instructions. She invoked the aid of the Complainers. The existence of the complaint was first intimated to the Respondent by letter dated 12<sup>th</sup> July 2006. Having obtained sufficient information from Ms G the Complainers wrote to the Respondent setting forth the detailed heads of the complaint by letter dated 16<sup>th</sup> August 2006. To assist in the complaint process the Respondent was asked to provide a written response and provide background information. No reply was received from the Respondent. As a consequence by recorded delivery on 12<sup>th</sup> September 2006 a formal notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 was intimated to the Respondent. Separately and also by recorded delivery a statutory notice in terms of Section 42C of the said 1980 Act was intimated to the Respondent on 12<sup>th</sup> September 2006. No reply was forthcoming from the Respondent. As a consequence a further statutory notice in terms of Section 15 of the said 1980 Act was intimated to the Respondent by recorded delivery on 3<sup>rd</sup> October 2006 and was ignored by the Respondent. Thereafter without any contribution from the Respondent the complaint process proceeded. The failure on the part of the Respondent to provide a reply to the correspondence from the Complainers frustrated and disrupted the complaint process.

8. Having considered the foregoing circumstances and heard a submission by the Fiscal, the Tribunal found the Respondent guilty of Professional Misconduct singly and in cumulo in respect of:

8.1 His acting in a dishonest fashion by engaging in accountancy and professional practices which were designed by him to

maximise the amounts of money he recovered from SLAB, in that on numerous occasions, he deliberately loaded his accounts to that of a time and line case ignoring the work carried out by him in respect of fixed fee payment cases thereby enhancing the accounts submitted by him on a time and line basis to recover significant overpayments from SLAB;

- 8.2 His acting in a dishonest fashion by on 30 occasions submitting accounts to SLAB which were designed to double his charges in respect of a particular period thereby enhancing the amounts of money claimed by him from SLAB;
- 8.3 As a consequence of these practices carried out by him his acting (a) in breach of the characteristics expected of a Solicitor namely honesty, openness and integrity, (b) in breach of Article 7 of the Code of Conduct for Solicitors holding Practising Certificates 2002, (c) in breach of Article 3 of the Code of Conduct for Solicitors Practising in Criminal Work 2001 and (d) in breach of the Code of Practice implemented and required by SLAB for those Solicitors providing Criminal Legal Assistance;
- 8.4 His failure to reply timeously, openly and accurately to the reasonable enquiries made of him by the Law Society then acting in terms of their Statutory Duty concerning a Complaint made to them at the instance of his former client.

9. The Tribunal produced an Interlocutor in the following terms:-

Edinburgh 26<sup>th</sup> July 2007. The Tribunal having considered the Complaint dated 2<sup>nd</sup> May 2007 at the instance of the Council of the Law Society of Scotland against Paul Gerard Kirk, of 748a Old Edinburgh Road, Viewpark, Uddingston, Glasgow; Find the

Respondent guilty of Professional Misconduct singly and in cumulo in respect that: a) he acted in a dishonest fashion to obtain significant overpayments from SLAB; b) he acted in an dishonest fashion on 30 occasions submitting accounts to SLAB which were designed to double his charges in respect of a particular period thereby enhancing the amounts of money claimed by him from SLAB; c) as a consequence of his practices he acted in breach of Article 7 of the Code of Conduct for Solicitors and in breach of the Code of Conduct for Solicitors Practising in Criminal Work and in breach of the Code of Practice implemented and required by SLAB for Solicitors providing Criminal Legal Assistance; d) he failed to reply to timeously, openly and accurately to reasonable enquiries made of him by the Law Society in relation to the investigation of a Complaint made against him; Censure the Respondent; Fine the Respondent the sum of £10,000 to be forfeit to Her Majesty; 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 agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business at a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**Alistair M Cockburn**

**Chairman**

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

**IN THE NAME OF THE TRIBUNAL**

**Chairman**

**NOTE**

The Respondent was neither present nor represented at the Hearing. The Tribunal heard evidence from the Depute Clerk that the Notice of Hearing had been served on the Respondent by recorded delivery on 11<sup>th</sup> June 2007 and that the Depute Clerk had obtained a printout from the Royal Mail's Track and Trace System indicating that a signature had been obtained for the service of the recorded delivery letter. The Tribunal was satisfied that there was good service of the Notice of Hearing had been effected and accordingly agreed to proceed in the absence of the Respondent.

**EVIDENCE FOR THE COMPLAINERS**

The Tribunal heard the evidence from Ian Middleton who is employed as Director of Audit and Compliance with SLAB. Mr Middleton advised that he is a Fellow of the Institute of Chartered Auditors and a Chartered Accountant. He stated that he is responsible for overseeing audit and compliance within SLAB and has been in this post since May 1987. He advised that SLAB is responsible for administering and managing the Legal Aid fund, making payments to Solicitors and the Public Defender's Solicitors Offices. Mr Middleton stated that there is no budget as such for Legal Aid expenditure and that the Government has to fund satisfactory claims made by Solicitors in terms of the Legal Aid Scheme. Mr Middleton confirmed that before a Solicitor can provide advice on criminal matters, he must be registered with SLAB and agree to comply with their Code of Conduct. Mr Middleton advised that the form of Legal Aid available depends on the type of prosecution. There are fixed fees of £500 available for Sheriff Court proceedings but solemn Legal Aid is available on a time and line basis. If a trial goes beyond 30 minutes the Solicitor is entitled to an additional fee.

Mr Middleton advised that the Legal Aid Act had been amended after it was found that double charging was going on. He advised that accounts come in singly and so it was difficult to check for double charging. He advised that the new measures were brought in to register firms and to put in place a monitoring regime with inspections of charges. He advised that the principal element of the changes was the introduction of a time recording scheme for Solicitors.



The witness was referred to the Code of Practice in relation to Criminal Legal Assistance. Mr Middleton confirmed that this a statutory mandatory Code of Practice which must be followed by all Solicitors.

The witness was referred to the Criminal Legal Aid (Scotland) Fees Regulations 1989. Mr Middleton confirmed that in respect of Regulation 7 (2) a Solicitor cannot charge the same waiting time on two separate accounts.

Mr Middleton confirmed that in relation to the validity of accounts the responsibility is on the nominated Solicitor to sign the undertaking on the back of the form to say that he has properly claimed the amount in the account. Mr Middleton was then referred to paragraph 4.5.6 of the Code of Practice in relation to Criminal Legal Assistance. He confirmed that this stated that a Solicitor can only charge what is appropriate and that charging the same waiting time on two accounts is not permitted and that Solicitors are required to have to regard to due economy in charging, for example in relation to instructing local agents.

Mr Middleton was referred to paragraph 5.2.1 of the said Code of Practice and confirmed that this requires a daily or weekly record sheet, like a diary, to list what the Solicitor has been doing. He stated that this included waiting time, court appearances, travel and consultation. He advised that SLAB sent out mail shots to all practitioners to update them in relation to these changes.

Mr Middleton confirmed that SLAB Auditors carry out audits in relation to Solicitor's accounts. If anything untoward comes to their notice in these audits SLAB send out a series of notices. A Level 1 notice is in respect of small issues to be seen to, Level 2 notices are in relation to more serious issues and a Level 3 notice gives notice of deregistration. Mr Middleton advised that these audits take place for all firms within a period of 1 to 3 years. If there are any concerns then another audit is carried out sooner.

Mr Middleton advised that the Respondent's inspection raised concerns at SLAB. He stated that the Respondent seemed to be busy doing nothing. The audit showed that he was doing a lot of time and line work but not a lot of fixed fee work. There were concerns within SLAB that the time and line work was being padded out. Mr

Middleton confirmed that in the year 2001/2002 the Respondent had just commenced practice and he was paid around £16,000. In the next year he was paid £322,085 and the year after that 2003/2004 he was paid in the region of £311,000. During these periods he was operating as a sole practitioner with no assistants doing 99% criminal practice. Mr Middleton advised that the Respondent was investigated as there were concerns about his charges. It was decided to investigate further and map it out pictorially and the witness referred to the examples of double charging enclosed in the First Inventory of Productions for the Complainers.

Mr Middleton stated that he then prepared a report for SLAB and invoked the deregistration process. He advised that the investigation was carried out by his colleague Fiona MacLean and she found a massive amount of overcharging. Mr Middleton advised that there were details of cases not featured on the time recording records, for example, when the Respondent was acting for other Solicitors. It was also found that the time sheets were not true records there were duplicate charges again and again. It was found that the Respondent had carried out civil work to but did not mention that on his time sheet and he was paid separately for civil work. The witness was asked if the Respondent could have been making mistakes with the accounts, the witness replied he didn't think so as the mistakes were always in the Respondent's favour and appeared to be a consistent practice. Mr Middleton confirmed that the investigation comprised of a sample of 15% of accounts submitted over a particular period of time.

Mr Middleton advised that in relation to deregistration he did a report to SLAB who agreed to invoke the procedure. He wrote to the Respondent to ask him if he wished to make representations as to why he shouldn't be deregistered. Mr Middleton advised that he was approached by Mr McCreath on behalf of the Respondent, who advised that this was a mix up as the Respondent was not good with administration but was a good lawyer. Mr McCreath advised that the Respondent would bring his accounts up to the standard required by the Board. The witness was asked if these changes took place and advised that another audit had shown that the Respondent had not changed his ways and as a result that the matter was referred to the Law Society.

In response to a question from the Tribunal, the witness confirmed that due to the Respondent's level of payment in the second year of his business, an audit was

triggered. Mr Middleton advised that a Level 1 Notice was issued at that stage. The Respondent was then audited again and that showed that the problems had got worse.

In response to a question from the Tribunal, Mr Middleton confirmed that the Respondent had received a Level 2 warning some time in 2003.

The Tribunal then heard the evidence from Fiona MacLean currently employed as a Case Manager with the Scottish Criminal Cases Review Commission and previously Complaints Manager with SLAB. Miss MacLean stated that she has an English law degree and BSc in Criminal Justice.

Miss MacLean stated that the Respondent came to the Board's attention because he came out in a list of the top 5 earners from SLAB for sole practitioners. He was then audited and the audits showed a number of concerns from his time sheets.

Miss MacLean stated that his time sheets and his case files were looked at. It was noted that he was charging regularly for long meetings, mainly hour long meetings and there were some degree of overcharging. She stated that he even charged for a meeting with clients when he was at a meeting with SLAB auditors.

Miss MacLean stated that she thought that the Respondent was first audited in October or November 2004. Miss MacLean stated that she worked from paid accounts and then asked for the corresponding time sheets. She compared these time sheets with the accounts and the audit revealed that a substantial part of the Respondent's work wasn't time recorded. Miss MacLean was asked what conclusions she drew from that and advised that she thought that the accounts were inaccurate because they didn't tie in with the Respondent's time sheets.

The witness was referred to the charts in the First Inventory of Productions for the Complainers. Miss MacLean stated that the spreadsheet covered thirty separate dates. She stated that on 11<sup>th</sup> February 2002, the spreadsheet indicates that the Respondent had double charged in relation to clients Mr F and Mr H for appearances at Hamilton Sheriff Court. The witness stated that she established from Hamilton Sheriff Court that the Respondent also appeared for 5 other accused that day. She advised that accounts should be apportioned between all clients and travel and mileage be

apportioned equally between all 7. She advised that the waiting time in case of Mr H should only be charged before 12 noon. She stated that it was clear that there was double charging for Mr F and Mr H.

Miss MacLean confirmed that she carried out investigations in relation to all of the cases in the Inventory. She stated that duplicate charge for 11<sup>th</sup> February 2002 amounted to a minimum of £148 assuming that the Respondent appeared for the 5 other accused after 3pm.

In relation to day 4 listed on the said spreadsheet i.e. 29<sup>th</sup> April 2002, the witness stated that the Respondent had charged for waiting time when he was dealing with custodies. In relation to day 12, 3<sup>rd</sup> December 2002, the Respondent had charged double for one visit. In relation to day 20, 3<sup>rd</sup> March 2003, the Respondent had charged for being at Hamilton District Court and at Glasgow Sheriff Court at the same time and charged for 3 cases at the same time. In relation to day 30, 3<sup>rd</sup> October 2003, the Respondent charged for consultations for more than one person at the same time.

Miss MacLean confirmed that the overcharging in relation to these 30 dates amounted to £3,843.97. She confirmed that this amounts to a regular practice of duplicate charging. On being asked whether the Respondent could have been making a mistake, the witness replied that she couldn't see how he could have been because the time being shown on his time sheets should be a full record of what is being charged. Miss MacLean confirmed that she had recovered his time sheets for the calendar year 2002/2003 and examined these. The witness was asked if she formed any impression regarding the time sheets and stated that it appeared to be his practice to record one version of his time.

In response to a question from the Tribunal, the witness stated that there was nothing to indicate that a Law Accountant had prepared his accounts. The witness stated that in her experience if accounts were prepared by a Law Accountant it would indicate that on them.

The witness was referred to the Third Inventory of Productions for the Complainers and to Production 1 of that Inventory, a time sheet dated 15<sup>th</sup> August 2003. Miss MacLean stated that she had cause to investigate the accounts in relation to Ms A.

Miss MacLean stated that she discovered from checking with the relevant courts that although the Respondent's time sheet indicated that he was at the High Court, Glasgow Sheriff Court had confirmed that he was appearing there on that date acting for Messrs Sneddon Morrison.

The witness was referred to Production 3 of the Third Inventory of Productions for the Complainers, the Respondent's time sheet for 27<sup>th</sup> November 2003. The witness stated that in her investigations into this time sheet she discovered that he had claimed for being in two Courts at the one time.

The witness was referred to Production 4 of the said Inventory and stated that she had made enquiries with the Sheriff Clerk at Hamilton Sheriff Court who confirmed that he had appeared for a client on an agency basis there that day.

The witness was referred to Production 5 of the said Inventory and accounts submitted in relation to Mr F. The witness stated that the details of these accounts show he appeared for Mr F on 8<sup>th</sup> February 2004 on a time and line basis. She stated that she had made enquiries with the Clerk at Hamilton Sheriff Court and had established from Court sheets that the Respondent also appeared for four other individuals on that day, most of them on a fixed fee basis.

Miss MacLean confirmed that there were other examples of the Respondent padding accounts with time and line fees. Miss MacLean stated that the amount of money paid to the Respondent in 2002/2003 and 2003/2004 included fees, VAT and outlays. She stated that an educated guess of the amount of fees included in the amounts paid would be in the region of £200,000 to £230,000. This estimate was based on the fact that the Respondent did not do a lot of solemn work for which expert reports were needed and therefore his outlays were fairly minimal.

Miss MacLean confirmed that without doubt approximately £3,000 was overcharged by the Respondent in relation to the 30 dates on the spreadsheet. She stated that this was a conservative figure as the benefit of the doubt was always given to the Respondent in relation to all his charges.

The Fiscal lodged an Affidavit by Caroline Robertson, Case Manager with the Client Relations Office of the Law Society. The Tribunal agreed to admit the Affidavit into evidence in terms of rule 9 of the Tribunal's Rules.

Caroline Robertson confirmed by way of Affidavit evidence that she is employed as a Case Manager and was responsible for the Complaint made by his former client, Ms G. Caroline Robertson's Affidavit confirms that on receipt of the Complaint from Ms G, she wrote to the Respondent to advise him that the Complaint had been received. She then identified heads of Complaint and conveyed them to the Respondent in the letter dated 16<sup>th</sup> August 2006. She requested the Respondent to provide a response to that letter within 21 days. No response was received. The witness stated that she then sent him a Statutory Notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 by recorded delivery dated 12<sup>th</sup> September 2006. She also separately intimated by recorded delivery a Notice in terms of Section 42C of the said Act on the same date. The witness advised that both of the Statutory Notices were ignored by the Respondent. The witness stated that as the Respondent had ignored the correspondence sent to him, she again wrote to him by recorded delivery on 3<sup>rd</sup> October 2006 enclosing a Notice concerning the failure to reply to the Notice served on him on 12<sup>th</sup> September 2006.

In her Affidavit, the witness stated that as a result of the failure on the part of the Respondent to respond or contribute to the Complaint process there was delay and disruption. His former client was inconvenienced as a result of the subsequent delay caused by his failure to reply. The witness confirmed that as far as she is aware, the correspondence was delivered to the Respondent and advised that none of the correspondence was returned to her by the Post Office. She confirmed that she was satisfied that the correspondence was received by the Respondent and that he failed to reply to the enquiries made of him.

### **SUBMISSIONS FOR THE COMPLAINERS**

Mr Lothian pointed out to the Tribunal that the letters sent by Caroline Robertson to the Respondent was sent by mistake to 74a Old Edinburgh Road, Viewpark, Uddingston instead of 748a Old Edinburgh Road, Viewpark, Uddingston. However, Mr Lothian submitted that as none of the recorded delivery letters had been returned

by Royal Mail, the Tribunal could be satisfied that the correspondence had been received by the Respondent.

Mr Lothian advised the Tribunal that as at 1<sup>st</sup> March 2006 the name of the Respondent was removed from the roll of solicitors at the request of the Respondent.

Mr Lothian asked the Tribunal to hold on the basis of the evidence heard that the Respondent was guilty of Professional Misconduct as specified in the Complaint both singularly and in cumulo.

## **DECISION**

The Tribunal found both witnesses to be credible and reliable and accepted their evidence together with the Affidavit evidence. On the basis of this evidence and the Productions lodged, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in an dishonest fashion in submitting inaccurate accounts to SLAB which resulted in him receiving extremely large sums of money to which he was not entitled under the Regulations. The Tribunal was of the view that as a consequence of his practices, he has acted in breach of the characteristics expected of a solicitor namely honesty, openness and integrity and in breach of SLAB's Code of Practice in relation to Criminal Legal Assistance. In addition, the Tribunal found that the Respondent had failed to reply timeously to his professional body in relation to an investigation carried out by them concerning a Complaint made against him by a former client. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent was guilty of Professional Misconduct both singly and in cumulo.

The Tribunal noted that the Respondent had his name removed from the Roll of Solicitors at his own request with effect from 1<sup>st</sup> March 2006. The Tribunal again wishes to place on record its concern that, as in another recent case involving a former Solicitor, it lacks the power to impose on the Respondent a penalty which it would regard as appropriate in the circumstances of the case and is placed in the position in this case, of being able to do no more than impose a Censure and financial penalty. The Tribunal considers that the behaviour of the Respondent in relation to his fraudulent claims to SLAB strikes at the very heart of the obligations of honesty and integrity which are incumbent upon every Solicitor. The Tribunal consider that

behaviour such as this seriously damages the reputation of the profession in the eyes of the public. The Tribunal would again urge the Law Society to make representations to the Scottish Executive to amend the relevant legislation to ensure that in appropriate circumstances the Law Society can refuse to permit the name of a Solicitor to be removed from the roll of solicitors when disciplinary action is pending against that Solicitor or give the Tribunal power to disqualify a Respondent from being readmitted to the Roll. In addition, the Tribunal would welcome a change in the law to allow the Law Society to impose a more stringent test when considering applications from solicitors who wish their names restored to the Roll. The Tribunal Censured the Respondent and ordered him to be fined £10,000 to be forfeit to Her Majesty. The Tribunal concluded that having regard to the extent of the false claims made the maximum fine was appropriate. The Tribunal made the usual Order for publicity and expenses.

**Chairman**