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

F I N D I N G S

in Complaint

by

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

against

PAUL SAUNDERS JARDINE, Solicitor, of Jardine Philips LLP, 205 Morningside Road, Edinburgh

(First Respondent)

And

GORDON ALEXANDER PHILIPS, Solicitor, of Jardine Philips LLP, 205 Morningside Road, Edinburgh

(Second Respondent)

1. A Complaint dated 15 April 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Paul Saunders Jardine, Solicitor, of Jardine Philips LLP, 205 Morningside Road, Edinburgh (hereinafter referred to as "the First Respondent") and Gordon Alexander Philips, Solicitor, of Jardine Philips LLP, 205 Morningside Road, Edinburgh (hereinafter referred to as "the Second 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 both Respondents. Answers were lodged by both Respondents.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 6 November 2008 and notice thereof was duly served on both Respondents.

4. When the Complaint called on 6 November 2008 the Complainers were represented by their Fiscal James Reid, Solicitor, Glasgow. Both Respondents were present and represented by David Burnside, Solicitor, Aberdeen.

5. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint as amended. No evidence was led in relation to the facts in the Complaint. Mr Burnside requested that a proof in mitigation take place. The Tribunal heard the evidence of one witness on 6 November 2008 and a further two witnesses on 19 December 2008.

6. The Tribunal found the following facts established

6.1 The First Respondent was born on 5 March 1970. He was admitted as a Solicitor on 7 May 1997. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 9 May 1997.

From 28 May 1997 to 31.August 2001 he was employed by Guild & Guild, WS, Solicitors. From 1 September 2001 he was a Partner in the firm of Guild & Guild WS and ceased to be a Partner on 31 July 2006. From 31 July 2006 he became a partner in the firm now called Jardine Phillips, LLP.

6.2 The Second Respondent was born on 4 February 1970. He was admitted as a Solicitor on 19 September 1997. He was enrolled

as a Solicitor in the Register of Solicitors in Scotland on 23 September 1997.

From 1 October 1997 to 31 March 2004 he was employed by the firm of Guild & Guild WS, Edinburgh. From 1 April 2004 he was a Partner in the firm of Guild & Guild WS and ceased to be a Partner on 31 July 2006. From 31 July 2006 he became a Partner in the firm now called Jardine Phillips, LLP.

6.3 The Complainers received a letter dated 12 September 2006 from Elizabeth A Watt, Solicitor, a Partner in the firm of Guild & Guild, WS, 51 Castle Street, Edinburgh. The letter intimated that Mrs Watt wished to make a formal complaint against both Respondents in respect of matters surrounding the dissolution of the then firm of Guild & Guild, WS as at 31 July 2006.

6.4 The Complainers carried out the necessary investigations into the Complaint. Following said investigations, a Reporter was instructed and on 19 June 2007 the Complainers wrote to the Respondents and to their Legal Advisor enclosing copies of the Report. The Complainers advised that the professional misconduct issues would be considered by a Client Relations Committee.

The issues were considered by a Client Relations Committee on 2 August 2007 and the Complainers wrote to the Respondents and their Legal Advisor on 22 August 2007 enclosing a copy of the Client Relations Committee Schedule and intimating that the issues would be referred to the Professional Conduct Committee.

A further outstanding issue was considered by the Client Relations Committee on 6 September 2007 and the Complainers wrote to the Respondents and their Legal Advisor

on 19 September 2007 enclosing a copy of the Client Relations Committee Schedule and advising that the issue would be referred to the Professional Conduct Committee.

The issues were considered by the Professional Conduct Committee on 27 September 2007 and the Committee considered that the issues appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor. The Committee decided that a Fiscal should be appointed. The Complainers wrote to the Respondents and their Legal Advisor on 25 October 2007 enclosing copies of the Professional Conduct Committee Schedule.

6.5 Prior to the dissolution, the firm of Guild & Guild, WS had three Partners. The said Elizabeth Watt had been a Partner for a number of years and was the only Equity Partner

The Respondent, Paul Jardine, had joined the firm as a Trainee in 1994 and was assumed as a Salaried Partner in the course of 2001.

The Respondent, Gordon Phillips, had been employed as a Trainee in 1996 and assumed as a Salaried Partner in the course of 2004.

There was no written Partnership agreement between the three partners. Both Respondents were entitled to an agreed annual salary.

6.6 Prior to 31 July 2006 there had been discussions and negotiations between the three Partners with a view to reaching agreement that Mrs Watt would sell the firm to the Respondents. Said discussions and negotiations were ongoing

in the course of 2005. They continued into 2006. Work was carried out to assess the value of the business and its assets and proposals were made by the Respondents to Mrs Watt for the purchase of the firm.

6.7 In or about March 2006 Mrs Watt consulted Messrs Lindsays, Solicitors in respect of a proposed agreement for the sale of the firm to the Respondents. At that point the Respondents had proposed a sale completion date of 1 May 2006

Communications continued between Messrs Lindsays and Gordon Phillips on behalf of the Respondents through April, May, June and into July 2006. Gordon Phillips requested a copy of the 2006 Accounts and a copy of the finalised unsigned Accounts was sent to him on 6 July 2006. Both Respondents wrote to Lindsays on 21 July 2006 querying aspects of the Accounts and referring in the said letter to having had a good meeting with their Bankers the previous week and stating that once they had clarification of the queries they had raised in respect of the Accounts, "we can move forward with a round table meeting and preparation of deal documents." By letter dated 24 July 2006 Lindsays wrote to the Respondents advising they would try to clarify the queries in respect of the Accounts.

6.8 On 31 July 2006 the Respondents delivered to the offices of Guild & Guild, WS at 51 Castle Street, Edinburgh a letter dated 31 July 2006 giving notice of dissolution of the Partnership "from today's date" i.e., 31 July 2006.

Said letter intimated inter alia that as at the same day, namely, 31 July 2006, they had,

(a) filed notification of the dissolution with the Edinburgh Gazette and the Law Society magazine;

(b) "written to all our clients which have an active matter and informed them of the dissolution.";

(c) written to all creditors, suppliers, HMRC and the Law Society of Scotland and informed them of the dissolution;

(d) "informed the firm's bank and asked them to liaise with you regarding managing the winding up process and asking them to take a note of all relevant credit and debit balances."

The said letter advised that the Respondents had taken client files and said that Mandate provisions had been put in place "as per the Law Society's notes for Dissolution of a Partnership."

The Respondents advised that as of "today", namely 31 July 2006, they had commenced trading as "Guild & Guild, LLP" at 205 Morningside Road, Edinburgh. They advised that they had "put in place a redirect on all mail."

6.9 The Code of Conduct for Scottish Solicitors, Rule 7, provides inter alia that Solicitors must act honestly at all times and in such a way as to put their personal integrity beyond question. Rule 9 provides that Solicitors shall not knowingly mislead colleagues or where they have given their word, go back on it. A Solicitor must act with fellow Solicitors in a manner consistent with persons having mutual trust and confidence in each other.

The Respondents, while still Partners in the firm of Guild & Guild, WS, removed documentation, including files and all of the firm's Titles and Wills, from the offices of the firm at 51 Castle Street, Edinburgh. They had no permission from the Equity Partner, Mrs Watt, nor from any of the clients whose

documentation was removed, for this removal. Neither Mrs Watt nor the clients were consulted or in any other way advised of the proposed removal.

The Law Society Guidance on Mandates provides guidance on Dissolution of Partnerships. It provides inter alia that if there is no agreement between the Partners as to which Partner should take particular files, the proper course is for the client to be advised of the position, told the new business addresses of all the relevant Partners and asked to choose which, if any, to instruct to hold files, etc.

There had been no discussion between the Partners of Guild & Guild, WS in respect of the removal of files, or any other documentation. The question of removal had never been raised by the Respondents with Mrs Watt and there was accordingly no agreement. The Respondents simply removed files and other documents from Guild & Guild, WS without regard to the Guidance on Mandates and in breach of Rules 7 and 9, as averred.

6.10 The Solicitors (Scotland) (Advertising & Promotion) Practice Rules 2006, Rule 4, provides that a Solicitor shall not make a direct or indirect approach, whether verbal or written, to any person whom he knows or ought reasonably to know to be the client of another Solicitor with the intention to solicit business from that person.

By letter dated 31 July 2006 the Respondents wrote to clients of Guild & Guild, WS enclosing Mandates seeking authority for the Respondents' new firm, at that stage named Guild & Guild, LLP, to retain the clients' documentation. The Respondents wrote to clients whom they knew or ought reasonably to have known to be clients of Mrs Watt with the

intention to solicit business from these clients. The letters sent by the Respondents failed to provide relevant information to the clients in terms of the Guidance on Mandates. Letters were sent to clients for whom the said Mrs Watt had been acting at the material time and misled the clients into believing that Mrs Watt had stopped practising following the dissolution of the firm of Guild & Guild, WS whereas the Respondents knew from prior negotiations that Mrs Watt intended to continue in practice as a Solicitor following any sale of the firm and in any event they had no cause to think that she would not continue to so practise.

6.11 The Code of Conduct for Scottish Solicitors 2002, Rule 2, provides inter alia that Solicitors must always act in the best interests of their clients and must not permit their own personal interests to influence their actings on behalf of clients.

Rule 7 provides inter alia that Solicitors must act honestly at all times and in such a way as to put their personal integrity beyond question. Solicitors' actions and personal behaviour must be consistent with the need for mutual trust and confidence among clients, the Courts, the public and fellow lawyers.

As averred, the Respondents removed documentation from the offices of Guild & Guild, WS prior to the dissolution of that firm. The letter sent by the Respondents to clients of Guild & Guild, WS gave no information in respect of the other Partner, Mrs Watt. It was not in the best interests of the clients for the documentation to have been transferred without any authority to the Respondents' new firm. The Respondents allowed their own personal interests to influence their actings.

The terms of the said letter gave a misleading impression to clients, and in particular clients of Mrs Watt and led clients to assume that the only option open to them was to sign the Mandate the Respondents enclosed with their letter of 31 July 2006, thereby authorising the Respondents to retain the clients' documentation.

6.12 The letter of 31 July 2006 sent by the Respondents to the clients of Guild & Guild, WS did not provide any business address for Mrs Watt. The Respondents knew that Mrs Watt intended to continue business as a Solicitor. The Respondents attempted to prevent clients from choosing which firm or which Solicitor they wished to instruct and to hold documentation. These actings by the Respondents were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.13 The Respondents attempted to deceive Mrs Watt by continuing to negotiate with her appointed Solicitors, Messrs Lindsays, for a period of several months prior to 31 July 2006. Said negotiations proceeded with the intention of the Respondents becoming profit sharing Partners in Guild & Guild, WS, taking over the running of the firm and with provisions whereby Mrs Watt would eventually retire.

At the same time as they continued to negotiate with Mrs Watt through her Solicitors, they made arrangements to set up a new firm. They acquired by purchase office premises for that firm at 205 Morningside Road, Edinburgh. The name of the new firm was Guild & Guild, LLP. The Respondents incorporated Guild & Guild, LLP on 2 May 2006.

The Respondents made arrangements for the removal of client documentation from Guild & Guild WS without the knowledge of Mrs Watt.

The Respondents' actings were contrary to the Code of Conduct for Scottish Solicitors 2002, Rules 7 and 9.

6.14 The Respondents advised suppliers of Guild & Guild WS that the firm had been dissolved. Inter alia the Royal Mail was instructed to redirect all Guild & Guild, WS mail to Guild & Guild, LLP. Mrs Watt had no knowledge of the Respondents' actings and mail addressed to Mrs Watt personally was itself redirected. DX mail was not delivered as the Respondents had cancelled the couriers who collected the DX for the firm.

On 31 July 2006 HM Revenue and Customs, the Edinburgh Solicitors Property Centre, the Guild & Guild, WS Bank and other organisations were advised that Mrs Watt was no longer practising.

The Respondents did not consult with Mrs Watt, did not refer any suppliers or other organisations to Mrs Watt and Mrs Watt had no opportunity to notify suppliers or any other organisations of her interest and intentions.

The Respondents' conduct was a serious and reprehensible departure from the standard of conduct to be expected of competent and reputable Solicitors.

6.15 The Respondents instructed a notice to be published in the Edinburgh Gazette which was published on Friday 4 August 2006. Said notice referred inter alia to the dissolution of the partnership of Guild & Guild, WS from commencement of business on Monday 31 July 2006 and to the Respondents commencing trading from Monday 31 July 2006 as Jardine Phillips, LLP.

The Respondents further instructed a notice which was published in the Law Society Journal of September 2006 referring to Guild & Guild, WS being dissolved as of 31 July 2006 and to the Respondents having commenced trading as Jardine Phillips, LLP.

Neither notice provided any contact details in respect of Mrs Watt nor gave any indication of Mrs Watt's position following the dissolution. Neither notice was an accurate representation of the position and further, amounted to a misrepresentation of the position in respect of the dissolution of Guild & Guild, WS.

The Respondents' actings in arranging for publication of the notices was in breach of the Solicitors (Scotland) (Advertising & Promotion) Practice Rules 2006, Rule 7, which provides that an advertisement of or by a Solicitor or promotional material issued by or on behalf of a Solicitor shall not contain any inaccuracy or misleading statement.

Separately, the Respondents' actings were in any event a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor in that the notices were incomplete and misleading in that they failed to disclose the position in respect of Mrs Watt.

6.16 The Solicitors (Scotland) (Incorporated Practices) Practice Rules 2001 provide inter alia under Rule 3 that a Solicitor, or an incorporated practice, can trade as a body corporate provided that the body corporate has been recognised by the Council of the Law Society of Scotland as an incorporated practice and under Rule 4 that an application to form an incorporated practice should be submitted to the Council of the Law Society of Scotland at least three months before the anticipated date of commencement of business.

The Respondents formed an incorporated practice, Guild & Guild, LLP which was incorporated on 2 May 2006. They commenced trading as an incorporated body, the limited liability partnership of Guild & Guild, LLP, on 31 July 2006. They had not obtained recognition from the Council and no application was made to the Council for recognition of Guild & Guild, LLP until 1 August 2006.

The Respondents accordingly had no permission under Rule 3 to operate as Guild & Guild, LLP and for a period from 31 July 2006 until 3 or 4 August 2006 traded as Guild & Guild, LLP.

6.17 Miss B and Mrs C

The Complainers received a letter dated 7 September 2006 and a Help Form dated 19 October 2006 from Miss B and Mrs C. Miss B and Mrs C complained that they had received a letter dated 31 July 2006 from the Respondents enclosing Mandates and seeking authority for the Respondents' new firm, at that stage named Guild & Guild, LLP, to retain their documentation

The said letter inter alia advised that the firm of Guild & Guild, WS had dissolved but it did not properly explain the position on dissolution.

The Respondents had transferred the clients' documentation to their new firm of Guild & Guild, LLP without obtaining any instructions from the clients to so transfer.

6.18 The said letter of 31 July 2006 did not fully explain the position to the clients. There was no reference to Mrs Watt, including no reference to any address for Mrs Watt or whether or not she intended to continue in practice. The clients were given no

opportunity to make a choice as to whether they wished to be clients of the Respondents' new firm, then called Guild & Guild, LLP, or to remain clients of Mrs Watt. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.19 The clients' documentation was removed from the offices of Guild & Guild, WS and transferred to the offices of the new firm of Guild & Guild, LLP without any authority from the clients.

The Law Society Guidance on Mandates provides inter alia that if there is no agreement between the Partners as to which Partner should take particular files, the proper course is for the client to be advised of the position, told the new business addresses of all the relevant Partners and asked to choose which, if any, to instruct to hold files, etc.

There had been no discussion between the Partners of Guild & Guild, WS in respect of the removal of files or any other documentation. The Respondents simply removed files, etc, from Guild & Guild, WS. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.20 The said letter of 31 July 2006 to the clients enclosed a Mandate asking the clients to sign and return it, authorising the Respondents to hold their documents. As averred, the letter did not provide any information in respect of Mrs Watt and was not in accord with the Law Society of Scotland Guidance on Mandates.

6.21 Ms D

The Complainers received a letter dated 4 November 2006 from Ms D. She complained that she had received a letter dated 31 July 2006 from the Respondents enclosing Mandates and seeking authority for the Respondents' new firm, at that stage named Guild & Guild, LLP, to retain her documentation.

The said letter inter alia advised that the firm of Guild & Guild, WS had dissolved but it did not properly explain the position on dissolution.

The Respondents had transferred the client's documentation to their new firm of Guild & Guild, LLP without obtaining any instructions from the client to so transfer.

6.22 The said letter of 31 July 2006 did not fully explain the position to the client. There was no reference to Mrs Elizabeth Watt, including no reference to any address for Elizabeth Watt or whether or not she intended to continue in practice. The client was given no opportunity to make a choice as to whether she wished to be a client of the Respondents' new firm, then called Guild & Guild, LLP, or to remain a client of Elizabeth Watt. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.23 The client's documentation was removed from the offices of Guild & Guild, WS and transferred to the offices of the new firm of Guild & Guild, LLP without any authority from the client. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

The Law Society Guidance on Mandates provides inter alia that if there is no agreement between the Partners as to which Partner should take particular files, the proper course is for the client to be advised of the position, told the new business

addresses of all the relevant Partners and asked to choose which, if any, to instruct to hold files, etc.

There had been no discussion between the Partners of Guild & Guild, WS in respect of the removal of files or any other documentation. The Respondents simply removed files, etc, from Guild & Guild, WS

6.24 The said letter of 31 July 2006 to the client enclosed a Mandate asking the client to sign and return it, authorising the Respondents to hold her documents. As averred, the letter did not provide any information in respect of Elizabeth Watt and was not in accord with the Law Society of Scotland Guidance on Mandates.

6.25 Mr and Mrs E

The Complainers received letters dated 27 September and 23 November 2006 from Mr and Mrs E. They complained that they had received a letter dated 31 July 2006 from the Respondents enclosing Mandates and seeking authority for the Respondents' new firm, at that stage named Guild & Guild, LLP, to retain their documentation.

The said letter inter alia advised that the firm of Guild & Guild, WS had dissolved but it did not properly explain the position on dissolution.

The Respondents had transferred the clients' documentation to their new firm of Guild & Guild, LLP without obtaining any instructions from the clients to so transfer.

6.26 The said letter of 31 July 2006 did not fully explain the position to the clients. There was no reference to Mrs Watt, including

no reference to any address for Mrs Watt or whether or not she intended to continue in practice. The clients were given no opportunity to make a choice as to whether they wished to be clients of the Respondents' new firm, then called Guild & Guild, LLP, or to remain clients of Mrs Watt. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.27 The clients' documentation was removed from the offices of Guild & Guild, WS and transferred to the offices of the new firm of Guild & Guild, LLP without any authority from the clients. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

The Law Society Guidance on Mandates provides inter alia that if there is no agreement between the Partners as to which Partner should take particular files, the proper course is for the client to be advised of the position, told the new business addresses of all the relevant Partners and asked to choose which, if any, to instruct to hold files, etc

There had been no discussion between the Partners of Guild & Guild, WS in respect of the removal of files or any other documentation. The Respondents simply removed files, etc, from Guild & Guild, WS.

6.28 The said letter of 31 July 2006 to the clients enclosed a Mandate asking the clients to sign and return it, authorising the Respondents to hold their documents. As averred, the letter did not provide any information in respect of Mrs Watt and was not in accord with the Law Society of Scotland Guidance on Mandates

6.29 Mr and Mrs F

The Complainers received a letter dated 2 September 2006 from Mr and Mrs F. They complained that they had received a letter dated 31 July 2006 from the Respondents enclosing Mandates and seeking authority for the Respondents' new firm, at that stage named Guild & Guild, LLP, to retain their documentation.

The said letter inter alia advised that the firm of Guild & Guild, WS had dissolved but it did not properly explain the position on dissolution.

The Respondents had transferred the clients' documentation to their new firm of Guild & Guild, LLP without obtaining any instructions from the clients to so transfer.

6.30 The said letter of 31 July 2006 did not fully explain the position to the clients. There was no reference to Mrs Watt, including no reference to any address for Mrs Watt or whether or not she intended to continue in practice. The clients were given no opportunity to make a choice as to whether they wished to be clients of the Respondents' new firm, then called Guild & Guild, LLP, or to remain clients of Mrs Watt. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.31 The clients' documentation was removed from the offices of Guild & Guild, WS and transferred to the offices of the new firm of Guild & Guild, LLP without any authority from the clients.

The Law Society Guidance on Mandates provides inter alia that if there is no agreement between the Partners as to which Partner should take particular files, the proper course is for the

client to be advised of the position, told the new business addresses of all the relevant Partners and asked to choose which, if any, to instruct to hold files, etc.

There had been no discussion between the Partners of Guild & Guild, WS in respect of the removal of files or any other documentation. The Respondents simply removed files, etc, from Guild & Guild, WS. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.32 The said letter of 31 July 2006 to the clients enclosed a Mandate asking the clients to sign and return it, authorising the Respondents to hold their documents. As averred, the letter did not provide any information in respect of Mrs Watt and was not in accord with the Law Society of Scotland Guidance on Mandates.

6.33 Mr and Mrs G

The Complainers received a Help Form dated 27 September 2006 from Mr and Mrs G. They complained that they had received a letter dated 31 July 2006 from the Respondents enclosing Mandates and seeking authority for the Respondents' new firm, at that stage named Guild & Guild, LLP, to retain their documentation.

The said letter inter alia advised that the firm of Guild & Guild, WS had dissolved but it did not properly explain the position on dissolution.

The Respondents had transferred the clients' documentation to their new firm of Guild & Guild, LLP without obtaining any instructions from the clients to so transfer.

6.34 The said letter of 31 July 2006 did not fully explain the position to the clients. There was no reference to Mrs Watt, including no reference to any address for Mrs Watt or whether or not she intended to continue in practice. The clients were given no opportunity to make a choice as to whether they wished to be clients of the Respondents' new firm, then called Guild & Guild, LLP, or to remain clients of Mrs Watt. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.35 The clients' documentation was removed from the offices of Guild & Guild, WS and transferred to the offices of the new firm of Guild & Guild, LLP without any authority from the clients.

The Law Society Guidance on Mandates provides inter alia that if there is no agreement between the Partners as to which Partner should take particular files, the proper course is for the client to be advised of the position, told the new business addresses of all the relevant Partners and asked to choose which, if any, to instruct to hold files, etc.

There had been no discussion between the Partners of Guild & Guild, WS in respect of the removal of files or any other documentation. The Respondents simply removed files, etc, from Guild & Guild, WS. The Respondents' actings were in breach of the Code of Conduct for Scottish Solicitors 2002, Rules 2 and 7.

6.36 The said letter of 31 July 2006 to the clients enclosed a Mandate asking the clients to sign and return it, authorising the Respondents to hold their documents. As averred, the letter did not provide any information in respect of Mrs Watt and was not

in accord with the Law Society of Scotland Guidance on Mandates.

7 Having heard submissions from both parties, the Tribunal found the First and Second Respondents guilty of Professional Misconduct in respect of:

7.1 Their breach and/or failure to follow the Code of Conduct for Scottish Solicitors 2002, Rules 2, 7 and 9.

7.2 Their breach of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 2006, Rule 4.

7.3 Their failure to follow the procedures in the Law Society Guidance on Mandates in relation to a number of clients to whom mandates were sent.

7.4 Their actings at the time of dissolution of the partnership Guild & Guild WS, in that they redirected firm mail without the knowledge and consent of their Partner and misrepresented the position about their Partner's practice to a number of organisations.

8. Having heard evidence by way of a proof in mitigation and then submissions from Mr Reid and Mr Burnside, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 December 2008. The Tribunal having considered the Complaint dated 15 April 2008 at the instance of the Council of the Law Society of Scotland against Paul Saunders Jardine, Solicitor, of Jardine Philips LLP, 205 Morningside Road, Edinburgh (hereinafter referred to as "the First Respondent") and Gordon Alexander Philips Solicitor, of Jardine Philips LLP, 205 Morningside Road, Edinburgh (hereinafter referred to as "the Second Respondent"); Find the First and Second Respondents guilty of Professional Misconduct in respect

of their breach and/or failure to follow the Code of Conduct for Scottish Solicitors 2002, Rules 2, 7 and 9; their breach of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 2006, Rule 4; their failure to follow the Law Society of Scotland's Guidance on Mandates and in relation to their actings at the time of the dissolution of the partnership in that they redirected firm mail without the knowledge and consent of their Partner and they misrepresented the position regarding their Partner's practice to a number of organisations; Censure both Respondents; Fine each Respondent in the sum of £5,000 to be forfeit to Her Majesty; and Find them 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 an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision but such publicity be deferred pending the outcome of any further proceedings arising out of this matter.

(signed)
David C Coull
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

A Joint Minute was lodged in which the facts and averments in the Complaint as amended were admitted. No evidence was required to be led in connection with the matters averred in the Complaint.

Mr Burnside requested that a proof in mitigation take place. Evidence was given by each of the Respondents and Mr Mark Michie of MBM Commercial, LLP, Solicitors.

NOTE OF THE EVIDENCE IN THE PROOF IN MITIGATION

Witness No. 1 – the First Respondent

The First Respondent confirmed his full name, age and date of admission and that he was formerly a partner in Guild & Guild WS along with the Second Respondent. He advised that he and the Second Respondent were salaried partners and there was one equity partner, Elizabeth Watt. The First Respondent's evidence was that there had been discussions regarding them buying Mrs Watt out of the business and that these discussions took place over a number of years between 2001 and 2003. In 2003 the discussions became more formalised, the witness advised that there was no significant progress in the discussions from 2003. He advised that his professional background was that he had carried out general private client and conveyancing work and also wills, trusts and executries. He advised that the Second Respondent did mainly residential conveyancing and commercial conveyancing. The witness advised that neither had commercial experience regarding business set up. He advised that they sought professional advice from Mark Michie of MBM Commercial. He advised they sought advice from him because they were a well regarded commercial firm and because Mark Michie was a friend of the Second Respondent. The witness advised that Mr Michie had a reputation as a good commercially minded lawyer and that his firm had won a number of accolades at that time. The witness confirmed that he and the Second Respondent engaged Mr Michie's firm to advise them towards the end of 2005 and that prior to that there had been informal discussions. The witness advised that they had reached a conclusion that they could not handle the negotiations on their own and engaged MBM on a commercial basis and were paying fees to the firm. All

meetings were held in MBM's offices and there were always staff members present. He advised that he was sure there was a letter of engagement.

The witness was referred to Production R1**,** an email dated 5 January 2006 from Mark Michie to the Second Respondent which referred to the witness also. In that email the purchase price for the business was discussed. The witness was asked what his reaction was on receiving the email and replied that he was surprised that it was so strongly commercial but that was what they had employed Mr Michie to do. The witness advised that at that stage he and the Second Respondent were still hoping to buy the business amicably. He stated that they had not asked Mr Michie what they could do, he was suggesting this and they were still negotiating with Ms Watt.

The witness advised that an alternative strategy (strategy 2) was suggested by Mr Michie and did not take centre stage until later on. The witness advised that Mr Michie went into a lot of detail about that strategy and that Mr Michie had first hand experience of the dissolution of a firm from his experience with Murray Beith & Murray and that he told them that he had advised clients on this issue before. The witness stated that Mr Michie said that he was planning to write an article for the Journal of the Law Society on dissolving partnerships. The witness was asked was he naïve and replied that nothing leapt out and said that we should not be doing this. He advised that strategy 2 was very much plan B and only came into play when they ran into a brick wall with the negotiations with Mrs Watt and at that stage Mr Michie brought it up again.

The witness advised that from a practical point of view MBM were dealing with the regulatory advice and they employed someone else to do the conveyancing but they personally did everything else to do with the start of the new business including the re-fit of the offices and all the practical work relating to that. The witness advised that Mr Michie was so confident that he and the Second Respondent did not think to question his advice. They had no reason to think that this advice was not correct and it was only after the partnership was dissolved that they questioned this advice. The witness stated that he was never advised that it was a risky strategy and that he and his partner had invested three quarters of a million pounds in the business and he stated that they would not have done that if they had known that it was a risky strategy. He

advised that he and the Second Respondent were so busy doing their jobs and setting up the business in their spare time that they never spoke to any other lawyers to query the advice they were given. The witness stated that looking back now it seemed crazy that they did not.

In response to a question from the Tribunal, the Respondent advised that wills were kept in boxes in an 8ft x 6 ft fire proof safe. He advised that all of the wills and the title deeds were stored in the same place and this was referred to by Mr Michie as the will box.

The witness was referred to page 2 of Production R2, an email of 15 February 2006 from Mr Michie to both Respondents regarding the discussions with Mr H who was acting for Mrs Watt. The witness advised that they had got to the point in March 2006 that a third set of advisors were involved now i.e. Lindsays and they felt that they were facing a renegotiation after 3 years of negotiations. He advised that they decided in May to switch to the second strategy.

The witness was referred to Production R3, a letter dated 10 May 2006 from Mr Michie to the Royal Bank of Scotland. The witness was referred to the second paragraph of that letter which indicated that the Respondents had lost faith in the negotiations with Ms Watt.

The witness was then referred to Production R4, a letter dated 11 May 2006 from Mr Michie to the Law Society's Records Department. The witness was asked if he was copied into that letter at the time and replied that he was not sure but he thought that they were. The witness confirmed that that letter indicated their intention to use the name Guild & Guild LLP.

The witness was referred to Production R5, a letter from the Law Society in response, confirming that there would be no difficulties in relation to what was suggested in the earlier letter.

The witness was then referred to Production R6, a letter from Mr Michie to the Law Society regarding the firm's name. The witness advised that they would be told at

meetings what Mr Michie was doing and that they did not see the majority of the correspondence. They saw some of the correspondence which was sent by email but that there was not a huge amount of correspondence passing between them. Mr Michie told them that he had looked into the use of the name on a "no name" basis. The witness advised that they pressed Mr Michie on this to see if there were any problems.

The witness was referred to Production R7, an email from the Second Respondent to Mr Michie dated 2 July 2006 in which they were double checking with Mr Michie that the advice he had given was correct. The witness advised that the only letters he and the Second Respondent drafted were the letters to clients; all the other letters were drafted by Mr Michie because they did not know what to say.

The witness was referred to Production R8, a note from Mr Michie to "David". The witness advised that the David referred to was David Calder, Mr Michie's partner at MBM. The witness was asked if it reassured him to see this note and the witness replied that he did not think that he saw it at the time as it was an internal memo within MBM but he advised that it does reinforce what Mr Michie told them at the time. The witness advised that Mr Michie assured them that there was no problem with the application to the Law Society applying for the name of Guild & Guild.

The witness advised that he and the Second Respondent did the new style letterheads themselves as Mr Michie had to have letterheads to take to the Law Society on the Monday to seek approval for use of the new name. The witness advised that Mr Michie told them that as long as they had the paperwork in order their application would be granted on the Monday morning and they believed him. The witness advised that he and the Second Respondent were not copied into correspondence with the Law Society so they did not know what the position was. He advised that they were not overly concerned about using the name Guild & Guild and that it was not even that key to them. He advised that if they had been told that it was a risk, they would not have used the name but they had no reason to doubt Mr Michie's advice.

The witness was referred again to Production R8 and the reference to "old Mr Guild". The witness advised that there were two retired partners, grandsons of the original

Guild & Guild, Mr H and Mr I who retired 20 years ago but they were still in contact with them and they came into the office from time to time. These were the men referred to by Mr Michie in that production.

The witness was then referred to Complainer's Production No. 2 (Production C2), an attendance note regarding a meeting of 5 July 2006. The witness was asked when he first saw this note and replied that it was when they recovered the file in March 2007. The witness was asked for his view regarding the contents of the attendance note. He replied that it does not reflect his recollection of what they discussed that day. The witness advised that there was no discussion or advice given about not removing papers. He advised that Mr Michie's advice from day one was to remove all active work in progress files, recent closed files, all wills and title deeds and to keep them together in one place. The witness advised that Mr Michie gave no advice about not removing papers or about their fiduciary duties. The witness advised he was shocked when he saw the file note as the third paragraph of that note does not contain the advice given at that meeting. The witness confirmed that at no stage between 5 January and 5 July that year was any different advice given about what he and the Second Respondent could do in either a letter, an email or given orally.

The witness advised that if he had been given different advice about mandates on 5 July, he would have remembered because it would have meant that they would have had to have changed their plans completely. The witness advised that he and the Second Respondent followed all of Mr Michie's advice in relation to all of the other aspects, for example the purchase of software and business advice. He stated that if they had been given other advice they would have followed it because they were paying for it. He advised that he would have asked Mr Michie why the advice had changed and said that he understood that that could have happened because Mr Michie could have checked out the position in detail and his advice would then have changed. The witness stated that had this happened he would have questioned it. The witness advised that he got no advice regarding the Mandate Rules as referred to in paragraph 2 of the Production C2. He advised that this did not happen. The witness confirmed that if he had been given different advice he would have followed it. He advised that he and the Second Respondent were putting in three quarters of a million pounds and they would not have taken the course of action which they did if they

knew it was wrong. The witness stated that he genuinely thought that Mr Michie thought that they could do everything that they did, either that or if there were huge risks he did not pass that information onto them. The witness stated that Mr Michie's rationale for the advice he gave was that as the firm was being dissolved no one had the right to the files, wills, titles, etc and because there were two of them leaving, they were in a better position to take them. They were advised by Mr Michie that they had to take everything and not to cherry pick.

The witness was asked if the phrase "fiduciary duties" was ever mentioned at the meeting and he replied in the negative. The witness was asked if this comprehensive file note was followed up by a letter advising that the original advice had changed. The witness replied in the negative. He stated that there was nothing in MBM's file when it was recovered to back up what was in the file note of 5 July. The witness stated that the file note of 5 July was saying that Mr Michie's advice had fundamentally changed. He stated that the advice given originally in the email of 5 January was key to what they were doing. He stated that Mr Michie knew that they were following that advice and that they continued to do that up until dissolution on 31 July. The witness stated that Mr Michie clearly knew that they were still intending to remove all the wills, files etc and he had plenty of opportunity in nearly a month to tell them that his advice had changed.

The witness was referred to Production C3, an email to the Second Respondent from Mr Michie dated 6 July 2006. The witness confirmed that he personally did not get that email but that the Second Respondent had mentioned it to him. The witness stated that they had a lot of paperwork to read at the time and they took it that Mr Michie was going to "read and digest" the information as he had stated, i.e. that Mr Michie would look at it and get back to them. He confirmed that Mr Michie never came back to them on this point.

The witness was then referred to Production C4, an email from Mr Michie to the witness dated 17 July 2006. The witness was asked what draft letters were referred to in that email. He advised that these were draft letters that Mr Michie had prepared to go to the Law Society, the firm's bank, to creditors, to the Edinburgh Gazette and a version of the dissolution letter to Mrs Watt.

The witness was referred to Production R10, a letter dated 19 July 2006 from Mr Michie to the Clydesdale Bank. The witness was asked if paragraph four of that letter was consistent with what Mr Michie had advised him. The witness replied in the affirmative and said that Mr Michie had advised him that what they were doing was in accordance with proper procedure and there was nothing to worry about. The witness then stated that there was no change of advice about this throughout the seven month period from January to July 2006.

The witness was next referred to Productions C5 and R30. The witness confirmed that Production R30 was his first draft letter to be sent to clients. Production C5 was an email sent to Mr Michie including later versions of various letters including the revised letter to clients. The witness advised that he drafted 2 types of letter, firstly a letter to existing clients for whom there was work in progress and secondly a general letter to clients that they held wills and titles for. The witness advised that Production R30 was revised by Mr Michie at a meeting with him and the Second Respondent. The witness stated that at the meeting Mr Michie had said that the letter wasn't upbeat enough. Mr Michie said they should not make reference to not reaching an agreement and told them not to make any reference to Liz Watt as they did not know what she would do. Mr Michie had said the letter had to be on one page and that he did not like the use of the word 'bought', he wanted that replaced with 'purchased'. The witness advised that Mr Michie went through the letter line by line and that this was the only letter drafted by him, the witness, personally. Mr Michie had drafted all other letters. The witness confirmed that he and the Second Respondent signed the final letters and sent them out following the final draft being signed off by Mr Michie just as they did for all the other letters. The witness confirmed that Mr Michie had complete authority over the terms of the letters which were sent out to clients.

In response to a question from the Tribunal, the witness advised that he didn't keep paper copies of the revisals. He stated that he and the Second Respondent did not keep detailed correspondence with Mr Michie as they did not forsee a need for it at that time. He stated that they did keep copies of the correspondence with the bank because they knew that was important. The witness advised that the letter which was emailed to Mr Michie on 27 July stated that they were intending to retain the wills,

and stated that if Mr Michie had changed his advice why did he not come back to us immediately saying "what are you thinking about guys"?

[After the lunch break a letter was produced which all parties agreed was the final version of the letter sent out to clients.]

The witness confirmed that the third paragraph of Production R11 was amended prior to entry and the name of the firm in the third paragraph was amended to Jardine Phillips and that was the case in respect of Production R12 also. In relation to Production R15, a letter from Mr Michie to Elizabeth Watt dated 1 August 2006, the witness stated that this may not have been faxed to him and the Second Respondent. The witness was referred to Production R16 and confirmed that this was evidence of Mr Michie still acting on his original advice and stating that Mrs Watt should stop acting for new clients.

The witness was referred to Production 17, a letter dated 2 August 2006 from Mr Michie to Lindsays who were acting for Mrs Watt before and after the dissolution. The witness advised that there was an action commenced in the Court of Session against them and that the writ was probably served on Tuesday or Wednesday (of the week following 31 July) and the hearing was on the Friday. He advised that by that time they had voluntarily stopped using the name Guild & Guild LLP and the hearing was really about the return of the papers etc. The witness stated that in that letter Mr Michie gave an undertaking on their behalf that the files would be returned and that mandates would be exhibited and on the second page Mr Michie quoted an excerpt from the Law Society's Guidance Note on Dissolution of Partnerships.

In response to a question from the Tribunal, the witness confirmed that the court action raised was for damages for various issues and for return of the papers. He stated that the files etc were returned on the Saturday morning to the premises in Castle Street.

The witness was referred to Production R18, an exchange of emails between Bruce Ritchie of the Law Society and Mr Michie. The witness was asked if he believed that the matter had been resolved at that stage and he replied in the affirmative. He was

then referred to Production R21 another exchange of emails between Bruce Ritchie and Mr Michie. The witness was asked if he traded and he replied that they did no legal work, they did not speak to clients, but they sent out the initial letters. He advised that they were told by Mr Michie and his partner David Calder that sending the letters was not trading. The witness said that the partners of MBM were specific on the advice they gave - they were not to note any interests or speak to any clients or anyone else regarding legal work etc. The witness stated that they were clear on the difference between sending out the agreed letters and carrying out legal work. The witness was asked if he waited until they got permission to trade and replied in the affirmative. He stated that the only action they took was to send out the initial letters with mandates which they were advised by MBM to send.

The witness was then referred to Production R24, an attendance note in relation to a phone conversation between Mr Michie and the Second Respondent on Sunday 6 August 2006. The witness was asked if he was aware of this conversation. He advised that the note did not tie up with his recollection of the meeting. The witness was asked if there were lots of attendance notes on the file and replied they were very few file notes in the file. He advised that from memory, prior to dissolution there was only one, the file note of 5 July, despite the fact there were very many meetings at MBM. He advised that the file note at Production R24 and the file note of 5 July run counter to all the advice given from January 2006 right up to dissolution. The witness stated that the third paragraph of the production refers to a number of files but stated that Mr Michie was aware from the court action that they had removed far more files than that, plus wills and titles. The witness stated that Mr Michie had offered to help remove the files and said he would keep the Friday afternoon free but they did not need him.

The witness was then referred to Production R26, a letter dated 8 August 2006 from Mr Michie to Bruce Ritchie where Mr Michie debates the issue of trading. The witness confirmed that this letter tied in with the advice given to him and the Second Respondent as Mr Michie had led them to believe that the approval from the Law Society was a formality and confirmed that neither he nor the Second Respondent had any contact with Mr Ritchie at any point.

The witness was then referred to Production R8, a letter to the Respondent from Mr Michie dated 13 August 2006 in which the conflict with Bruce Ritchie was mentioned. In that letter Mr Michie set out the steps that he had taken with the Law Society. The witness stated that Mr Michie did that work alone apart from the Second Respondent being involved in giving him the letterhead. The witness was referred to paragraph 13 on the final page of that letter and confirmed that Mr Michie's view in that letter was consistent with the advice he had given to the Respondents.

The witness stated that in relation to redirection of mail they were advised by Mr Michie to redirect all mail from the old office to their new premises on the basis that they were two thirds of the partners and needed the mail. He advised that they were not in DX and still are not. He advised that it takes a week for Royal Mail to redirect the mail. He advised that they went to arrange the redirection on Mr Michie's instructions and it was due to start on 7 August. He advised that they managed to cancel it on 4 August before it took effect.

The witness confirmed that the firm of Jardine Phillips was formed in August 2006 and have operated since from premises in Morningside Road. They currently have 5 part-time staff, one on maternity leave and one doing a paralegal course. He confirmed that they had not benefited from the departure from Guild & Guild and said that it had been a disaster. The witness stated that he and the Second Respondent had been at Guild & Guild for more than 20 years between them but because of the advice they were given only a handful of clients came with them and 99 % of clients stayed with Guild & Guild. He stated that after a week they took the decision to stop implementing mandates and anyone who asked where their papers were was told that their papers had been returned to Liz Watt. The witness advised that they just walked away from their clients. The witness confirmed that they had paid more than £20,000 in fees to Mr Michie. They have been in a Court of Session battle with Liz Watt for 2 and a quarter years and have paid over £24,000 in legal costs between them. In addition, they have paid fees to Simpson & Marwick and Counsel. The witness stated that they had to start from scratch and feel very much let down by the advice they got. The witness advised that there has been a great strain on the partnership but they have managed to get through it. He confirmed they provide a good service and their clients are mostly local obtained by way of recommendation and word of mouth. They open

long hours and have worked very hard. They have various debts. A number of letters of thanks were lodged which the witness confirmed were unsolicited. The witness confirmed he had had only ever had one complaint in relation to his professional work which had been resolved years ago.

Cross examination

Under cross examination the witness confirmed that strategy 1 was to negotiate with Mrs Watt and that strategy 2 was to leave the business. The witness was asked whether as at 5 January 2006 strategy 2 had been discussed. He replied that they had discussed leaving and walking away from the business but no detail had been discussed. The witness stated that they were surprised when they received the email of 5 January 2006. He stated that he and the Second Respondent had negative accounts with the business even though they were not profit sharing partners. He stated that the words "as discussed" referred to walking away but no detail of that had been discussed. The witness suggested that that might be why Mr Michie went into great detail, because it had not been discussed.

The witness was referred to Production R2, an email dated 22 March 2006 from Mr Michie to the witness. The witness was asked, whether by March were they already thinking of the "B" strategy? The witness replied that they were not and that the actions which they took were crushed into a small period of time after that. The witness was asked why Mr Michie was pushing strategy "B". The witness replied that maybe Mr Michie thought that was what they wanted. The witness advised that Mr Michie never said what his preferred strategy was.

The witness was then referred to Production R3, a letter of 10 May 2006. The witness was asked whether by this date it had been decided to go with strategy "B". The witness replied that they had been to the bank for funding of the purchase of the business and that Guild & Guild LLP was incorporated on 2 May 2006. He advised that Guild & Guild LLP was set up regardless of what was going to happen. The plan was originally to work from the witness' house then it was decided that it was not a good idea to do that, the premises came on the market and they decided to get finance and buy them.

The witness was then referred to Production C4, an email from Mr Michie to the witness dated 17 July 2006. The witness was asked if the reference to "changes at the weekend" meant the 5 July meeting. The witness replied in the negative. The witness was asked if there were other meetings between 5 and 17 July and replied that there were several over that period but he could not recall exactly how many. He advised that there were no other file notes in Mr Michie's file. The witness advised that he did not recall any material changes to the drafts apart from the reference to the Judicial Factor. The witness advised that his and the Second Respondent's input to these letters was minimal. The witness advised that Mr Michie's advice style was not committee style, he gave direct advice. The witness advised that he and the Second Respondent were relying on Mark Michie's advice and that their input was pretty pointless. He advised that it would have been more correct to say "changes I had made" but that Mr Michie probably thought that they had discussed them.

The witness was referred to Production C5, an email of 27 July 2006 from Mr Michie to the witness. He was asked whether this followed on from the meeting of 5 July when they were asked to supply various drafts. The witness replied that the original drafts were given at an earlier stage and that these were the final drafts. The witness advised that there was other activity regarding these drafts in the intervening period between 5 and 27 July.

The witness was then referred to Production R30 and confirmed that this was his initial draft letter to clients. The witness advised that between 5 and 27 July the drafts were emailed back and forward a few times with changes being made by Mr Michie. The witness stated that he thought that he had missed changing the word "bought" to the word "purchased" and confirmed that this production was the draft contained in the email of 27 July and was the almost final version.

The witness was asked about the removal of the reference to Mrs Watt from the letter and advised that he was advised to do that by Mr Michie.

The witness was then referred to Production C2. The witness advised that there was no discussion on 5 July regarding the Law Society's Mandate Rules. It was discussed

that the witness would draft the mandate letters for Mr Michie to approve. The witness confirmed that a large part of paragraph 2 of the attendance note was not correct. The witness was referred to the next paragraph and confirmed that there was no discussion about taking files pre- mandate. They had been advised before that as long as they got the mandates out immediately that that would be alright. The witness confirmed that his recollection of that meeting was that neither mandates nor taking of files was discussed. The witness confirmed that he had been advised at an earlier stage that they should not take the files from Mrs Watt's room. He advised that it was possible that that issue could have been discussed but could not remember at which meeting it had been discussed. The witness was asked about a discussion regarding work in progress files. He stated that it was discussed that they needed to make a list of work in progress files at one of the meetings, but he could not say whether it was at that meeting or another meeting.

The witness was referred to the part of the note regarding the will box and stated that what was stated in the attendance note did not happen. He advised that they were not told that to remove the will box would be theft. The witness stated that if Mr Michie says that that advice was given he is wrong and the witness stated that he could not say it any more bluntly than that.

In response to a question from the Tribunal whether or not it occurred to him that to totally remove the contents of the safe of Guild & Guild was wrong, he replied in hindsight yes, but that all of this happened over a period of a month - getting the shop, fitting it out and doing the dissolution of the partnership. He stated that what they did was to follow the advice from Mr Michie and he and the Second Respondent did not stand back and think about it. He stated that the advice was confidently given and that there was no reason to question that advice. He stated that Mr Michie's rationale was that as they were the majority of the partners, they could remove the documents. The witness was asked if that meant them removing title deeds or papers that Mrs Watt was working on and replied no, as anything she was working on would be in her room.

The witness confirmed that in advance of 31 July they did not want Mrs Watt to know what they were going to do and that the need for secrecy was a big driver.

The witness was referred to Production R24, an attendance note dated 7 August 2006 from MBM's files. The witness was referred to the third paragraph of that note and was asked for his comments on it. The witness stated that Mr Michie knew that there were much more than 30 – 50 files because of the court action. He advised that the note contradicts all the other correspondence in MBM's file apart from the file note of 5 July. The witness confirmed that his input to all the draft letters was minimal. He advised that Mr Michie did not seek their input and that Mr Michie seemed to know what he was doing.

The witness was asked what the position was as at 31 July and advised that the documents left the office the day before. He advised that Mr Michie went to the Law Society regarding the change of name. He advised that Mr Michie had told them that they would be able to trade that day in the name of Guild & Guild LLP. The witness stated that he was also specifically told that they had to send out the mandate letters immediately. He stated that they went out earlier in the day that Mr Michie went to the Law Society. He advised that the Second Respondent could confirm that. The witness stated that he could only assume that Mr Michie believed that the Law Society would approve the change of name. He advised that they were not told of any risk that the Law Society would not approve the change of name. The witness was asked if Mr Michie stated that he had told them not to issue the mandate letters until he called from the Law Society what would he say to that. The witness replied that the Second Respondent spoke to Mr Michie on Monday 31 July to ask if they should send the mandate letters out and he replied yes. The witness was asked did it occur to him that sending out the letters regarding the files might be construed as trading and he replied, not until later. He advised that they were told that they could not do any legal work, they could not discuss anything with clients, and that they were advised that they could send out the letters. He stated that it seems incredible now but that is what they believed.

The witness was asked if Mr Michie advised him to redirect the mail and he replied in the affirmative. The witness was asked whether it occurred to him that they would get Mrs Watt's mail too and he replied that they were told that a courier could go every

day with her mail, and that it was all part of the commercial strategy. Mr Michie's advice was that it was part of the continuity of the business for them to have the mail.

The witness was asked whether he considered that this was interfering with Mrs Watt's mail and the witness replied that it did not occur to anyone at that time.

The witness was asked if he would disagree if Mr Michie says that he (the witness) was deeply involved in drafting the letters. He replied that he did not remember either of them having much input to the drafts. The witness was asked whether it was critical that Mrs Watt did not find out and he replied in the negative as they would still have been in a position to mandate the clients and that they fully expected her to do that anyway. He stated that they would still have left and set up on their own. He stated that had they not followed the advice that they had been given they would have been left with more clients.

Questions for the witness from the Tribunal

Q1. Who suggested the new name of Guild & Guild LLP?
Answer – We discussed could we use the name. Mr Michie said that if the firm is dissolved you can apply and use the name because you are two of the three partners.

Q2. Who took that decision?
Answer – We asked can we use it and he said yes.

Q3. When?
Answer – Sometime in July, we double checked because the Second Respondent said if we had to re-brand then it would be a disaster.

Q4. If using the name Jardine Philips was not a big deal, why use the old name?
Answer – For continuity reasons.

Q5. At the time of the initial email in January 2006, was plan "B" already planned on the basis of prior discussions?

Answer – Mr Michie advised us what to do. We did intend to buy the business if we could reach agreement and had discussed walking away. Mr Michie came out of the blue with this idea. I remember him standing in his office with the Partnership Act saying, I have checked this for you.

Q6. What day of the week were the files removed?
Answer – Friday night to Saturday 28 July, while the office was closed.

Q7. Did it not strike you as a strange thing to do?
Answer – Not at the time, Mr Michie told us he had checked it out, he was so excited, he said he would write an article for the Journal and that excitement rubbed off on us.

Q8. Did you not think that taking files at night was unethical?
Answer – We did not.

Q9. Did you not have a gut feeling that it was unethical?
Answer – It was all part of the process of setting up the business – Mr Michie was saying, this will be ok, it is effectively a management exercise, we did not take a calculated risk to see if we would get away with it – we would not have taken such a risk.

Q10. Wasn't it true that by taking the name you hoped to capture the business?
Answer – Yes, to attract the business.

Q11. Did you think how that would leave Elizabeth Watt?
Answer – I regret that we did not think about that. It seemed to grow momentum after the initial email from Mr Michie. At no point did we pull ourselves up and jump off. I did not think that we had done anything that was not correct until we found out. Once we did, we did our best to sort it out.

Q12. Did Mr Michie offer to come and help you with the escapade on the Friday night?
Answer – Yes

Q13. With reference to Production C2 paragraph 6, was this said?
Answer – It took place at some point during discussions with Mr Michie, yes.

Q14. The generality of the discussion, is that accurate?
Answer – the issue of the furniture was discussed and discounted.

Q15. Do you intend to take action against MBM?
Answer – We have raised a claim and it is in the hands of the Master Policy insurers.

Q16. Have you reported the matter to the Law Society?
Answer – We have done our best to avoid reporting it to the Law Society but we think that it is so serious that we should consider reporting it to the Law Society but we will see how we get on with this hearing first.

Witness No. 2 – The Second Respondent

The Second Respondent advised that he has been in practice since 1996. He stated that he had heard his partner's evidence and confirmed that his evidence about what happened was the same as his partner's in general terms. The witness confirmed that he does private client work mainly residential conveyancing and executries. He advised he does not have experience of other types of legal work. The witness was asked what he would do if he was asked by a client to advise on a matter outwith his area of expertise. The witness stated that he would refer the client to a solicitor with experience in that field. The witness stated that he had followed the same practice regarding the negotiations with Mrs Watt because he had no experience of commercial work. He decided to instruct Mr Michie of MBM because he knew him personally and because he appeared to be very successful in the field of commercial work. The witness stated that he handed over the whole matter of the dissolution of the partnership to Mr Michie to advise him on. The witness stated that he did not think it was necessary to check Mr Michie's advice in any great detail as Mr Michie was a partner in a commercial firm with great experience in that field. However the witness confirmed that with hindsight he probably should have. The witness stated that Mr Michie had personal experience of the dissolution of a business and had acted in these matters before.

The witness was referred to Production R1, an email of 5th January 2006 and was asked did he ever have concerns that the strong advice given might not be good advice. The witness replied that he did have concerns and he asked Mr Michie on several occasions if the advice was correct. The witness stated that Mr Michie talked a good game and that he gave him a robust answer on each occasion and reassured him. The witness stated that Mr Michie appeared to know what he was doing.

The witness was asked whether at any time following the email of 5th January did Mr Michie communicate in any way to say that the advice he had previously given had changed. The witness replied that the only time he apologised to me was when he phoned me after the event, after the dissolution in August 2006. Prior to that he never changed his mind, he was supremely confident of his advice.

The witness was asked if the advice regarding the removal of the will box was ever varied. The witness replied in the negative stating that the advice had not varied at all.

The witness was referred to Production R7, an email from the witness to Mr Michie dated 2 July 2006. The witness was asked if he had concerns at that time about the use of the name Guild & Guild. The witness replied that he did have a concern about this and other concerns but it was late at night when he was drafting that email. He stated that Mr Michie reassured him and they continued on. The witness was asked if he followed all the other advice he was given and replied in the affirmative.

The witness was referred to Production R8, an undated internal memo from Mr Michie to David Calder, his partner in MBM. The witness was asked when he thought this would have been written. The witness replied that he would think that it was written after the email of 2 July, sometime in July. He advised that he could not be certain about that. The witness confirmed that the advice in the penultimate paragraph was consistent with the advice that they had been given from January by Mr Michie. The witness confirmed that what Mr Michie was saying to his partner was consistent with the advice that he had given to the Respondents.

The witness was referred to Production C2, an attendance note of a meeting on 5 July 2006. The witness confirmed that a meeting took place on that day between 1pm and 2.30pm with the attendees as stated. The witness was asked if he recalled anything being said consistent with what is stated in numbered paragraph 2 of that note. The witness stated that the issue of mandates was not discussed in the type of detail as is found in the note. The witness stated that he did not see the note until 2007, after MBM withdrew from acting for them and the file was mandated. He stated that he reviewed the attendance note at that time and that it does not reflect what he and his partner were told at the meeting. The witness was asked if he could have forgotten being told something different and replied in the negative. The witness stated that the Law Society's Guidance on Mandates was touched on at the meeting but that Mr Michie was still to investigate this. The witness stated that Mr Michie had not yet come to a view on the guidance. The witness was asked if he was told that he was getting a copy of the Mandate Rules sent to him and that the Respondents would be drafting the mandate letters. The witness replied that he recalled that they were asked to draft the mandate papers but that they would be checked by Mr Michie. The witness was asked if Mr Michie said he would amend them to reflect Law Society guidance. The witness replied that he did recall that at subsequent meetings the First Respondent had drafted papers but they were heavily revised by Mr Michie. The witness stated that he had concerns but Mr Michie was supremely confident and that made him (the witness) accept matters.

The witness was referred to the third paragraph of that file note which starts, "G & P asked about taking files pre mandate..." The witness was asked if there were any tentative discussions regarding this and replied in the negative stating that he did not think there were. The witness stated that what was in that paragraph was the opposite of what had been advised 6 months previously. He stated that if what was in the attendance note was accurate they would have queried the change in advice because it was the opposite of what had been said previously. The witness stated that in his view it was not an accurate description of the meeting as what is stated in that last paragraph of the first page of the note was not flagged up at the meeting either. The witness stated that he did not remember the word "fiduciary" ever being used and that had he been told that this was a risky strategy and potentially theft, he would never

have done it. The witness stated that it was put to them that they were managing the papers of the former firm and that this was permissible.

The witness was referred to Production C3, an email from Mr Michie to the witness dated 6 July 2006. He was asked if he expected Mr Michie to get back to him if there was any change of advice regarding the mandates. The witness replied in the affirmative stating that he expected him to advise them accordingly.

The witness was referred to Production R10, a letter to Marion Jaap, dated 19 July 2006 from Mr Michie. The witness confirmed that this letter backs up the advice that Mr Michie gave the Respondents.

The witness was then referred to Production R16, a letter from Mr Michie to Bruce Ritchie dated 1 August 2006. The witness confirmed that at this stage Mr Michie was still trying to argue the position that he had adopted previously. The witness stated that at that stage Mr Michie still thought he was right, he was pressing the Law Society regarding matters and his view in that letter backs up what he told them.

In response to a question from the Tribunal, the witness advised that the Court of Session action started on the Thursday or Friday following the dissolution of the partnership. The witness stated that MBM Commercial was acting for the Respondents in that action. The witness stated that they had a meeting in their offices with an advocate present and that MBM were still confident that their advice had been correct.

In response to a question from the Tribunal, the witness confirmed that he only realised that the advice had not been correct in the course of the court action a matter of days later.

In response to a question from the Tribunal, the witness advised that following the court action they wanted to give Mr Michie an opportunity to get them out of the mess and they continued to instruct MBM until 9 months after the dissolution. He stated that MBM were confident that they would be able to sort things out. The witness stated that he and his partner had no money and they came to an arrangement with

MBM that they could pay up their fees, as at that stage they had virtually no way of making money, no clients and no files. The witness stated that Simpson and Marwick took over in March 2007. In response to a question from the Tribunal the witness confirmed that MBM were not sacked earlier because he and his partner had not seen the file and they had not known what the full facts were.

In response to another question the witness stated that there were gaps in the file and he was devastated by that. He stated that it was not a true record of the transaction. The witness stated that there were meetings and conversations which they had with Mr Michie which were not recorded. The witness was asked if he thought the file had been filleted before it had been passed on. The witness replied that he was surprised by how much it had been tidied up.

The witness advised that there were numerous meetings between January and July 2006 but the only file note was the one of the meeting on 5 July. He stated that he and his partner had signed in at MBM's offices many times, although he accepted that they were not always signed in on every occasion. He stated that the firm records could be checked in this respect.

The witness advised that he did have doubts as to whether the file which was delivered to Simpson and Marwick was a full and accurate record of the transaction.

The witness was referred to Productions R22 and R24, two attendance notes. In relation to the second attendance note of a telephone call made on a Sunday afternoon, the witness confirmed that he did not have a discussion with Mr Michie during that call regarding the number of files taken. He stated that Mr Michie had offered to help with the removal of the files. The witness stated that his recollection of the call was that Mr Michie was apologising to him for the mess that he had got the First Respondent and him into. In relation to the reference to the will box and title deeds, the witness confirmed that the note was not an accurate record of the phone call. He stated that anyone looking at the paperwork could see that the notes are very detailed after the event. The witness stated that there were no attendance notes regarding meetings that they had regarding the mandates.

The witness was asked if he ever discussed removing only 30 to 50 files and replied that there were only 30 to 50 work in progress files but that Mr Michie knew that they were taking other files too. In relation to the list of files the witness stated that Mr Michie knew they were taking other things and that that list was not an accurate record of all files taken.

The witness was then referred to Productions R30 and C5. The witness confirmed that the letters were initially drafted by the First Respondent but all paperwork had to be run by Mr Michie for final checking. He stated that he remembered the meeting where Mr Michie amended the mandate letters and stated that the notes of that meeting were not in the file. The witness was asked whose decision was it that Mrs Watt was not mentioned in the letter and the witness replied that it was Mr Michie's decision. The witness stated that Mr Michie told them to be upbeat and tone the letter down. The witness stated that the letter which went out was as amended by Mr Michie.

The witness confirmed that Mr Michie was a personal friend of his. It was put to the witness that MBM's website indicates that Mr Michie has considerable experience in commercial matters and the witness was asked if that was borne out by his reputation in commercial matters. The witness replied in the affirmative. The witness stated that MBM are seen to be a very successful firm with plush offices. The witness stated that Mr Michie did not tell them that the strategy was risky and that they might be sued and end up before the Tribunal. He stated that he was angry with himself for not double checking the advice which was given.

The witness was asked if he and the First Respondent had just left the partnership and set up as Jardine Philips how did he think they would have done. The witness replied that he thought they would have done better as they had decided not to invoke most of the mandates anyway after what happened. They had started a new business from scratch and had to find work, which had not been easy. He advised that they have now made progress and employ 5 people. He stated that they have paid all their bills and make a small living. He stated that if Mr Michie had given them proper advice they would have been in a position to have done better.

In relation to inconvenience to clients, the witness confirmed that the wills and the title deeds were returned within a week so the inconvenience was minimal. The witness stated that it was not his intention to cause problems for clients and that he had done his best to resolve all the issues. He stated that Mrs Watt got back all the files.

In response to a question from the Tribunal the witness confirmed that the wills and titles were stored in a strong room in the basement of their new offices. The witness advised that the Court of Session action has been sisted, waiting for the outcome of the Tribunal. He advised that it was an action of damages. The witness confirmed that a claim has been intimated to the Master Policy in respect of MBM and it is hoped that once this hearing is over there will be progress in this matter.

Cross Examination

The witness was referred to Production R1 and confirmed that strategy 2 was the one which ultimately was pursued. The witness was referred to the wording in the fourth paragraph in that email which states "remove that information from Liz getting it both hard copies and electronic". It was put to the witness that he said that the Respondents were solicitors in a responsible position. He was asked does that paragraph reflect solicitors in a responsible position. The witness replied, "Obviously not".

The witness was asked if it was fair to say that it was envisaged that the client files would be removed without mandates. The witness stated that it was put to him that this was a way of furthering his career but at that stage he was still in negotiations with his former partner to buy out her share of the partnership. He wanted to reach agreement with her but Mr Michie talked a good game and persuaded them to go with that option. The witness stated that Mr Michie was keen on them progressing with the matter. There were some minor discussions regarding the appointment of a Judicial Factor at another stage, but then this strategy was pursued.

The witness stated that at the stage that the email was received (5 January 2006), he did not give it much consideration as he was putting everything into reaching

agreement with Mrs Watt. He stated that strategy 2 was presented as another way out. He stated that he does not see anything in the file which rebuts the advice given in that email. The witness stated that ultimately the discussions broke down and strategy 2 came in to play around May 2006. It was clear by then that negotiations had broken down and they looked for another way of moving on. The witness denied that the new offices were purchased in May 2006. He said the purchase took place in June. The witness stated that Mr Michie registered Guild & Guild LLP off his own bat and then told them. The witness was then asked if he was saying that Mr Michie unilaterally decided that strategy 2 was coming in to play and went off and did it. The witness replied in the affirmative and stated that it was Mr Michie's advice, and that he had no experience in this regard. The witness advised that Mr Michie thought that the retention of the name was important and that they had a right to the name. The witness was asked whether Mr Michie suddenly went for strategy 2 without any instructions from him or his partner. The witness replied that there was no definite meeting that he could remember when it was finally agreed.

The witness was then referred to Production R3, a letter dated 10 May 2006 to the Royal Bank of Scotland from Mr Michie. The witness was referred to the top of page 2 of that letter where Mr Michie states that the Respondents have decided to opt for strategy B. The witness was asked for his comments on that. The witness replied that he thought that it was an evolving thing rather than definitive. He stated that he did not think it was as clear cut as Mr Michie was saying. The witness was then referred to Production R7 an email sent to Mr Michie on 2 July by the witness. The witness confirmed that he set out concerns in that email. The witness was asked whether they were concerns as opposed to areas that he wanted further reassurance on. The witness replied that he was reassured by what he was told. The witness was asked whether the name Guild & Guild was an important part of the strategy. The witness replied that Mr Michie said it was important that they continued to trade with the name and told them why they could. The witness was asked if the old name would assist him when he set up the new business. The witness replied in the affirmative and stated that people knew him from that brand name but that he wanted Mr Michie to double check about the use of the name as he was concerned. The witness stated that the main problem was that the Guild & Guild name was not owned by them at all so the advice was not good advice. The witness was asked if it was important to strategy 2 that they

retained the Guild & Guild name to retain files and clients. The witness replied that they were told they were entitled to the name and based on strategy 2 it was important to get the name.

The witness was referred to Production C5. an email of 27 July 2006, sending various drafts to Mr Michie. The witness was asked if he and the First Respondent were involved in drafting the letters. The witness replied that they were to a certain extent, either copying a style or drafting for Mr Michie's approval. The witness stated that one need only to look at the file to see that Mr Michie was in control of matters.

The witness was referred to Production C2, an attendance note of the meeting of 5 July 2006. He was referred to point 2 in paragraph 1 and was asked if the question of mandates was discussed at all at this meeting. The witness replied that it may have been discussed but not discussed in any particular detail as stated in the attendance note.

The witness was then referred to Production C3 and confirmed that the next day an email was sent enclosing the mandate guidance.

The witness was referred back to the third paragraph of point 2 of Production C2 where it stated -

> "It was agreed that due to the risk of the work not being undertaken, the clients would take a number of active files which they regard as their relationships. G & P would construct a list of these files which were to be removed immediately prior to dissolution and that list would be attached to the Notice of Dissolution".

The witness stated that it was presented to them that they were preparing a list of work in progress files.

The witness was referred to Production R24, an attendance note dated 7 August 2006. He was referred to paragraph 3 of that note. He was asked what was removed and he replied the work in progress files, historic files, wills and titles. The witness was asked if the list to be prepared from the meeting on 5 July was the list of 30 to 50 work in progress files. The witness replied that there probably would be around 30 to

50 work in progress files and Mr Michie would have had the list. The witness was asked whether were there other historic files removed too. The witness replied in the affirmative and stated that that was why they prepared different types of mandate letters.

The witness was asked whether a list of historic files was also prepared. The witness stated that one was never asked for and therefore was never prepared.

It was put to the witness that when it came to historic files Mrs Watt would not know which files were removed. The witness stated that they were only taking their own historic files. It was put to the witness that Mrs Watt would not know which files were gone and he replied that the firm did not have very good records anyway and the advice they were given was that it was not up to them to advise her of such matters.

The witness was asked about his records of the transaction and he stated that they had no reason to expect that they needed to record matters because Mr Michie took detailed notes and seemed organised. The witness stated that he did not personally take many notes and he no longer has access to his emails.

The witness was referred to Production R24 and asked was whether his position is that there was no change from the original advice received regarding the removal of title deeds and wills etc. The witness replied in the affirmative. The witness was asked whether he had any qualms about acting on this advice and he replied that he had concerns but did not second guess the advice. The witness confirmed that the title deeds, wills etc were removed prior to dissolution. He was asked if it ever occurred to him and the First Respondent that they were wrong in removing these prior to dissolution. The witness replied that they were told that they would be ok because they would get mandates. The witness was asked if it was appropriate to remove documents prior to dissolution. The witness replied, with hindsight, no. The witness was asked if common sense should not have made him realise this at the time. The witness replied that he wished he had stepped back and thought about it. The witness was asked if secrecy was important and he replied, yes because they were not getting on. It was put to the witness that if word got out they would not have been able to do what they did and he replied that they were told it was a commercial action. The

witness was asked if secrecy was paramount and he replied that it was an important part of it but he would not say it was paramount. The witness was asked whether if word got out would strategy 2 be scuppered and he replied in the affirmative. The witness was asked whether in implementing strategy 2 everyone forgot about their professional obligations. The witness replied in the negative and stated that Mr Michie was researching and advising us.

Re-examination

The witness stated that there was a cost in relation to re-branding to the name Jardine & Phillips with the production of new letterheads and advising the Law Society etc.

The witness confirmed that he did not take any files belonging to Mrs Watt and that they only took their work in progress files and their own closed files.

The witness was asked if all the files were stored together at Guild & Guild and he replied no, that his files were stored in boxes on his office floor. He stated that the closed file list had not been updated for years and there were dead files in the basement but they did not take any of them. He stated that they had had dry rot in the premises and they all had their dead files in their rooms, therefore it was not difficult to identify which closed files were his and the First Respondent's. The witness confirmed that he did not delete any of Mrs Watt's records.

In relation to the notes of meetings, the witness confirmed that he was in a solicitor/ client relationship and was expecting Mr Michie to keep notes. In reply to a question from the Tribunal the witness stated that he did not remember what the reference to the favour referred to in paragraph 4 of Production C1 was.

In response to another question from the Tribunal the witness stated that he thought that when the file was passed to Simpson and Marwick, the email C1 was in the file.

Evidence for the Complainers

Witness 1 – Mark Michie

The witness confirmed that he is a partner in MBM Commercial and has been in the profession since 1998. He advised that he had purely commercial training at Paull and Williamsons and then went to work at Murray Beith and Murray and was consulted by Jardine & Philips to give them commercial advice. The witness stated he was comfortable in advising in connection with commercial negotiations. The witness was referred to Production R1 and was asked at what point he had been consulted before then. The witness stated that his recollection was that they had been discussing the matter for a number of months before that email was produced. The witness was referred to the words "as discussed" at the start of the email. He confirmed that over the Christmas period he and the Second Respondent had met socially and had been discussing a way of them becoming equity partners in their firm. The witness confirmed that strategy 2 was their departure from Guild & Guild and that strategy was ultimately adopted.

It was put to the witness that that suggestion came from him. He stated that it was fair to say that at some point he offered this advice and said that there may be a\ point in the negotiations where the price might be too high and another strategy might be needed. The witness stated that he now looks back at this email with slight horror as it is written in overly colloquial terms as he knew the Second Respondent socially. The witness stated that the advice given was inappropriate and the advice given on 5 July was far nearer the professional mark and clearer. The witness was referred to the words "will box" in Production R1 and to the rest of that sentence. The witness confirmed that he was merely repeating what the Second Respondent had told him he was going to do with the will box. The witness stated that he wished he had told the Second Respondent that he could not do that at that stage but confirmed that that advice was given at a later stage.

The witness was referred to the word "data" in the next paragraph of the email and stated that the Second Respondent had told him there was no electronic data in the

firm. He stated that the Respondents told him that they were going to build an e-data list themselves. The witness stated that he told them that if they built it they could take it and not leave a record of it behind them. In response to a question from the Tribunal the witness stated that it was his belief that if a partner produces a list of contacts it does not become a partnership asset if the partner does it in his spare time. He stated that this referred only to the list not the files. The witness stated that parts of the advice given in the email were wholly inappropriate and that advice was superseded at the meeting on 5 July.

The witness was then referred to Production R3, a letter of 10 May 2006 to the Royal Bank. The witness was referred to the second page of that letter where it states

> "after reaching the end of our collective tethers with Liz, Gordon and Paul have decided to adopt strategy B".

The witness was asked if it was implicit that by then that the Respondents had decided to follow strategy B. The witness replied that he did not have a timeline in front of him but he thought that by this time the Respondents had engaged his firm to enter into missives for their new premises, so the answer would be yes. The witness confirmed that Guild & Guild LLP were incorporated on 2 May 2006.

The witness was referred to Production R4, a letter of 11 May from him to the Law Society regarding the change of name. The witness was asked if the Law Society were unaware that it was Guild & Guild who were involved until 31 July 2006. The witness replied, in the affirmative. He stated that he was asked to keep it secret as there was a fear that the information would be leaked. The witness stated that secrecy was important here and the Respondents wanted to make sure that they could continue their relationship with their clients and that the Second Respondent feared that they would be locked out of the building as Mrs Watt owned it. The Second Respondent feared that even if mandates were sent to Mrs Watt they would not be obtempered. The witness stated that the Second Respondent had advised him that Mrs Watt had done that previously. The witness advised that the overriding strategy was to ensure that the Respondents could maintain their client relationships with their clients. They feared that the work which needed to be done for their clients would not be done competently or timeously.

The witness was referred to Production R7, an email dated 2 July 2006 from the Second Respondent to the witness. The witness was asked whether the use of the name Guild & Guild was critical to strategy B. The witness replied that he did not think that using the name was critical, it was their choice to apply for the name, and it was a wish rather than being critical. He stated that the final advice which he tendered on 5 July was very specific. That advice was contrary to the Mandate Rules and was only to take 30 to 50 work in progress files which were the property of the Respondents. He stated that as far as MBM was aware that was all they were going to take. He advised that this was contrary to the advice given on 5 January. He stated that only a list of 50 files was appended to the Notice of Dissolution.

The witness was referred to Production C2, an attendance note dated 5 July 2006. The witness advised that his partner David Calder was there for part of the meeting. It was suggested to the witness that the question of mandates was never discussed in detail and that this attendance note does not accurately reflect what was discussed at the meeting. The witness replied that that was not his recollection.

The witness was then referred to Production C3, an email of 6 July 2006. The witness stated that he had sent the Law Society Guidance on Mandates with that email as at the end of the meeting they delegated tasks. His clients were to produce a list of letters including the mandate letters and he was to produce a list of letters. On being referred to the words “read and digest later” the witness stated that he would prefer that he had not written that, and stated that he did not read and digest and that he did not advise the Respondents.

In response to a question from the Tribunal regarding his knowledge of the Mandate Rules, the witness stated that he knew that the partners should work together and if that did not occur he was aware of the Mandate Rules on dissolution. The witness conceded that the advice given on 5 January was wholly inappropriate; however he stated that 6 months later the correct advice was given.

The witness was asked if he was aware that historic files were to be removed also. The witness replied that that was certainly not his recollection of the meeting, or that of his partner. It was put to the witness that that conflicts with the email of 5 January

and the witness agreed with that. It was put to the witness that there is no particular indication from the file between 5 January and 5 July that there was any change in the original advice and the witness agreed with that.

It was suggested to the witness that the mention of theft was in stark contrast with the wording in the email of 5 January. The witness agreed with that and said that by July the correct research had been carried out and the correct advice was given.

The witness was asked when his view changed and replied that he truthfully could not put a date on it. He stated that he liaised with his litigation partner and discussed the possibility of a Judicial Factor. The witness stated that it was probably in the five to ten working days prior to 5 July that his view changed.

It was put to the witness that the Respondents say that the issue of the will box was never discussed at the meeting on 5 July. The witness confirmed that it was his clear recollection that it was. The witness confirmed that between 5 January and 5 July there were various meetings and telephone calls regarding the transaction. The witness agreed that not all were documented. The witness was asked what the reason for that was and the witness replied that the original piece of work started out more on a social basis and that it was habit for the Second Respondent to come to the witness' office at lunchtime with a sandwich and not all of those discussions got placed on the file and there were also lots of meetings at the weekend. It was put to the witness that something as important as a switch to strategy B should have been documented. The witness replied that he did not have this advice documented; all he had was the attendance note and the conduct of the Respondents.

The witness was referred to Production R9, an email from him to the First Respondent on 17 July. It referred to draft letters. The witness confirmed that the work had been divided up and that he did all the non mandate based letters. The witness was referred to Production C5, which was an email with 7 sheets of attachments. He confirmed that this included the mandate letters which the Respondents undertook to produce. He stated that these were the first drafts which were sent and that they were never reviewed. It was put to the witness that the Respondents say that the letters were heavily reviewed by him, sent back and forward and that the letters sent out were

approved by him. The witness replied that that was not his recollection and that that flies in the face of the "to do" list from 5 July. The witness stated that he has no records of earlier drafts in his system and that he received the first draft one day prior to dissolution.

The witness was referred to Production R30. It was suggested to him that this was the first attempt at the mandate letter which was then heavily revised by him. The witness stated that he has no recollection of that. The witness was asked if he was saying that the mandate letters were not at any time reviewed by him. The witness confirmed that that was what he was saying. The witness was asked whether he had the ultimate say and the witness replied that that was not his recollection. He stated that they did particular jobs and that is why he sent the mandate rules to the clients. The witness stated that it is his recollection that he had no involvement at all with the mandate letters.

The witness was asked if it was correct that the titles and files etc were removed prior to dissolution. The witness replied that what should have happened was that the Respondents were to remove specific active files which were listed on the list of work in progress files attached to the dissolution papers. The work done up till then was offered to be paid. The witness stated that he is sure that the Respondents also took their personal effects. He stated that he had had long conversations with his clients about why they wanted to remove certain files and that his clients stated that in certain files Mrs Watt could not carry out the work or did not know how to. He stated that Guild & Guild had been removed from the Royal Bank's list of solicitors who undertake security work. He stated that he had been advised that previous partners of the firm who had left found that work was not done after they had left. He stated that the Respondents wanted to ensure that the work for their clients would be done. He stated that he had told them that it would cost them and that they would have to pay for the work which they had done up to dissolution. He stated that the effect on working capital was discussed, they were offering to pay the work in progress within 24 hours and then they would have to wait until the end of the transaction to recover the fees in full. He stated that against that background his advice was that if you read the Law Society's Guidance it is the interest of the client and solicitor which are paramount if the partners cannot agree. The witness stated that he had advised the

Respondents that this was the reason he would be offering up if problems arose. The witness stated that the partners could not agree therefore they could not have the conversation about the interests of the client and they feared work wouldn't be completed including a large executry and an imminent house sale settlement. The witness stated that his clients speculated that Mrs Watt might not continue in practice as sole trader and files might be locked up for a period while the firm was in terminal decline. He stated that against that background the Mandate Rules were sidestepped. The witness stated that it was not his understanding that his clients would be building a firm on these 50 files and that they would have to hunt for work as soon as they started trading.

The witness was asked what was to be the position with the Law Society and the name of Guild & Guild. The witness stated that the Second Respondent had asked him to go to the Law Society for approval of the name Guild & Guild LLP. He stated that he tried to get a meeting with Bruce Ritchie at 9am on 31 July. However he was only able to get a 2pm slot and the Second Respondent was aware of that. He said that what was supposed to happen was that he was to phone once the name had been approved and then the letters were to be issued. He stated that his meeting lasted until 2.40pm and it was clear that the Law Society would not allow the name based on confusion. The witness stated that he called the Second Respondent from the steps of the Law Society to advise him. He said that the Second Respondent said "Oh shit, I've issued the mandate letters".

It was put to the witness that that was not what the Respondents say happened. They say that they were advised to issue the letters and not asked to wait for the approval of the Law Society. The witness stated that this was not his recollection and that their version flies in the face of the evidence. He stated that it was not cut and dried. He stated that he had been involved in two similar changes of name but at no time were his clients told that it was a foregone conclusion or a paper exercise. He stated that the Respondents were supposed to wait to issue the letters until he phoned to confirm that approval had been granted. He stated that the signage for the new building was not ordered because of this as it would have been expensive if approval was not granted. He stated that the Second Respondent had said that he had only ordered a short run of paper in the name of Guild & Guild LLP. He stated that he was aware

that letters sent out by his firm stated that the firm "will commence trading". He stated that these letters were wrong and should have said, "intend to commence trading".

The witness was asked whether as at 31 July when Guild & Guild was dissolved, he took the view that the taking and holding of the clients' files would not constitute trading. The witness confirmed that this was his view. The witness was asked how solicitors could hold clients' files and not be trading. The witness replied that the clients didn't even know the files had been removed The witness stated that he made it clear to the Respondents that they could not trade, open their doors or carry out any work at all until recognition was granted under the rules.

The witness was asked, whether if it took four days to get approval for Guild & Guild LLP, he was saying that holding on to the files for those four days would not be trading. The witness replied that that was a matter he had never considered. It was put to the witness that if his clients held files from the morning of 31 July and got approval at 2pm, that they were trading for five hours without approval. The witness confirmed that he had never considered that.

Cross Examination

The witness denied being an expert in the commercial field. He said he would not hold himself out as an expert, that he was a general commercial lawyer. It was put to the witness that he was described on his firm's website as a specialist commercial lawyer and he agreed that that was correct. The witness agreed that when compared to the Respondents he had significantly more commercial experience. The witness accepted that the Respondents were entitled to regard what advice he gave them as being correct.

The witness was referred to Production R1, and the "to do list". The witness stated that he accepted that he gave that advice and it was wholly inappropriate. When asked why he wrote it, he replied that it was a foolish email written in haste. He stated that it was written in overly colloquial terms and that some of it had been superseded.

The witness stated that the reference to "data" was a list of the Respondents' clients compiled in their own time. He stated that he had spoken to solicitors and advocates who regard their Microsoft Office contact list as theirs to take with them. It was put to the witness that he must have known that they could not take such a list and he stated that he saw a difference between a list produced by them and something produced by the firm. He stated that he may have got the law wrong but he believed that they could take their contacts list. He stated that he was under the misguided impression that a contacts list is not an asset of the firm.

The witness stated that he had no recollection of ever suggesting that he would write an article for the Journal and stated that he had no history of writing articles.

In relation to the references to the will box in Production R1, the witness stated that he was just recounting what the Second Respondent had said he intended to do and agreed that it was wholly inappropriate. The witness was asked whether he believed it to be wholly inappropriate advice in January and he stated that at that stage he had not turned his mind to it. The witness was asked at what stage he wrote an email saying that what he said on 5 July was wholly wrong. The witness stated that he could not point to any email he sent saying that. The witness was asked when he revisited the email of 5 January and realised it was nonsense. The witness replied that he suspected he did that in the couple of weeks prior to the 5 July meeting. The witness was asked whether he looked again at the email of 5 January and considered it was inappropriate. The witness replied in the negative. He stated that this is a level of bullshitting in it which is regrettable.

The witness was asked what made him realise that his advice was inappropriate. He advised that he looked at law books and discussed the matter with friends and colleagues etc. He stated that there was an increasing focus on specific things and then he spoke to David Calder, his partner. The witness was asked if he accepted that if he had not varied his advice that his clients would have been entitled to do as they did. The witness replied in the affirmative but stated that this was subject to meetings which took place and their conduct. The witness was asked whether a prudent lawyer would have committed to writing that the advice originally given was wrong. The

witness replied in the affirmative stating that there should have been something in writing, and that it was his failure. The witness was asked why he did not tell his clients in writing before 5 July that his original advice was incorrect. The witness replied that he suspected that the nature of the transaction was too informal at the earlier stage. He advised that he had had meetings with the Second Respondent when they discussed the mandate issues. He stated that he was tasked with finding a way round the Mandate Rules.

It was suggested to the witness that he should have said that the Mandate Rules could not be obviated and the witness replied that he agreed with that and that is what occurred on 5 July.

The witness was asked why other meetings were not minuted and the witness replied that this was due to the informal nature of the transaction. The witness was asked if he ever sent a copy of the attendance note of 5 July to his clients. The witness replied that he did not know if one was sent. He advised that it was in the working file which he supplied to Simpson and Marwick. The witness stated that he was not in the habit of sending copies of attendance notes to clients. The witness agreed that he had never sent a letter to his clients confirming the change of advice. The witness was asked if he accepted that the first his clients were aware of the attendance note was when the file was recovered and up till then they did not know the advice had changed. The witness denied this. The witness stated that the file note indicated that the action was for the clients to make a list of the files to be taken. He stated their action in doing so showed that they were aware of the advice given. He stated that he was not sure how they could claim that they thought that they could take more files. The witness denied that he offered to help move the files.

The witness was referred to Production C2, and in particular the third paragraph which starts “G & P”. It was put to the witness that the Respondents were astonished when they read this and claim that the file note is a later fabrication of what took place. The witness denied this. It was put to the witness that this attendance note was produced at a later stage, before the file was delivered to Simpson and Marwick, at a time when the witness knew the consequences for his firm. The witness denied this and said that he could not say exactly when the file note was prepared. He stated that

it may have been dictated a number of days after the meeting. It was put to him that it was not a contemporaneous note. The witness stated that he sometimes leaves it to the end of the week to dictate file notes. The witness was asked why this meeting was minuted and so many others were not. He stated that it was because this meeting was important and that it was poor practice on his behalf to do so few notes. The witness stated that the attendance note was an accurate reflection of what took place when Mr Calder was there.

The witness was referred to the phrase "fiduciary duties" and to the word "theft" in the attendance note. It was put to the witness that these words were never used. The witness stated that his partner Mr Calder had reviewed the file note and if called could confirm that these were the exact phrases used. The witness stated that the file note was reviewed by Mr Calder because the matter has been referred to the firm's insurers. He advised that Mr Calder has looked at the file for the benefit of MBM.

In response to a question from the Tribunal the witness stated that it was not his usual practice to note every telephone call or do an attendance note for contingent work as it was not worth it. He stated that of the £20,000 paid to the firm by the Respondents he expected a large proportion of that was for the property work carried out for the purchase of the new offices.

The witness was referred to Production R8 and was asked when that was written. The witness replied that it must have been at some point prior to the meeting of 5 July. He stated that he would have thought that it was written a week or two prior to the meeting. The witness was referred to numbered paragraph 3 of Production R8 and confirmed that there was no indication given that there was any doubt that the Law Society approval would be obtained. The witness was then referred to the last two paragraphs of that page and it was put to him that at no point did he say there that the Respondents could not issue the mandate letters until after dissolution. The witness stated that he was not advising the Respondents on the Mandate Rules and that these were given to his clients. It was put to him that he stated that he would read and digest them. The witness agreed that he did not ever read and digest them and give his clients feedback on them.

The witness was referred to the phrase “prepare letters to go to all clients” halfway down page 2 of Production R8. He was asked if the phrase “all clients” was again incorrect and replied in the affirmative. It was put to the witness that this note was written after he had thought the position through and intended to change his advice but that this still contained incorrect advice. It was put to the witness that this part of the note to his partner seems to be extracted from the earlier email to his clients and the witness confirmed that that was the case. The witness confirmed that this advice was incorrect but that he was not sure when it was sent to his clients.

The witness was then referred to Production R10, a letter sent by him to Marion Jaap at Clydesdale Bank, dated 19 July 2006. The witness confirmed that he said in that letter that the establishment of Guild & Guild LLP was being handled in accordance with the Mandate Rules. The witness was asked if he had read the Mandate Rules properly. The witness stated that he had read them before the meeting of 5 July. He advised that he believed they had been adhered to and that he had thought he had found a way around them. It was put to the witness that he had stated previously that he did not read and digest the Mandate Rules until after 6 July. The witness agreed with that but stated that he understood how they worked prior to then. The witness was asked if he still believed that the Mandate Rules had been followed. The witness replied in the negative.

It was put to the witness that his duty as a lawyer was to advise his clients that they could not do what they wanted to by taking the files. The witness agreed. It was put to the witness that he did not tell his clients that they could not take the files and the witness denied that and stated that they were told this. He said that he was quite sure that the Respondents were told that they could not take the files without a mandate. He stated that he was tasked to find a way round the Mandate Rules. He said “ if your clients say that they are going to take the files what do you do, cease working for them?” He stated that he was sure that the clients were told that it was contrary to the Mandate Rules. He stated that he discussed that with the Respondents and after reviewing the Law Society Guidance that he had said to them that if you cannot agree with your partner you are left with the interests of the solicitor and clients.

The witness was referred to Production R10 and the words "I am comfortable that what Gordon and Paul are doing under my advice is legal and competent and is being undertaken following best possible practice." The witness was asked if he still stood by that and he replied in the negative. On being asked the witness stated that he had absolutely no recollection of revising the mandate letters. The witness was referred to Production R30 and was asked whether he advised his clients to take out the reference to Mrs Watt. The witness denied this.

The witness was asked to explain how, given his area of expertise, that the mandate letters sent out were significantly different to those originally prepared by the First Respondent. The witness replied that they must have been amended by the clients. The witness was asked whether that was following input from him. The witness replied in the negative. The witness was asked whether he was denying that he had any input to the mandate letters despite the fact that he had a very hands on role in the transaction and did all the other letters. The witness replied that he had no recollection of working on these letters and no electronic copies of these. The witness stated that he never reviewed the drafts and did not know anything about the changes. The witness was asked whether he looked at the drafts sent to him on 27 July. The witness stated that he sometimes does not look at documents for days at a time. He stated that he did not even know where he was on 27 July and could have been in other meetings.

The witness was referred to Production R21 an exchange of emails between himself and the Law Society. The witness agreed that in those emails he was attempting to defend the position with regard to trading. He stated that the mandate letters were supposed to go out after he got the go ahead and that the mandate letters should never have been sent out. The witness was referred to Production R24. The witness stated that the matter that the Second Respondent referred to in that production regarding filling the van three times filled him with horror. It was put to the witness that he knew from the court case how many files had been removed. The witness said that he did not attend court as that that was dealt with by his litigation partner. He stated that he wrote a letter to the Law Society saying that they did not remove articles which he later found out that they had. Mr Burnside asked the Tribunal's permission to lodge a letter of 3 August to the Law Society. The Tribunal agreed to that letter being lodged.

It was put to the witness that the third paragraph of that letter indicates that he did know that they had taken wills etc, despite what he said in the attendance note dated 7 August 2006. The witness stated that he did not know that the First Respondent had filled the van three times. It was put to the witness that he knew on 6 August, by virtue of the letter of 3 August, that there were far more than 50 files. The witness replied that from the interpretation of the documents he must have been aware of that. In response to a question from the Tribunal the witness denied removing any items or adding any items to the file prior to delivery to Simpson and Marwick.

SUBMISSIONS FOR THE RESPONDENTS

Mr Burnside stated that after careful consideration of this very unfortunate situation and discussions with LDU colleagues, he concluded that there was not a statable defence to the various breaches of the regulations outlined in the Complaint and therefore he had advised his clients to enter into a Joint Minute accepting their guilt.

Mr Burnside stated that this was a situation where the Respondents worked in a very narrow area of practice and had no relevant experience of commercial issues outwith that practice. If they were asked to do anything outwith their area of expertise they would pass the work on to another firm. Similarly, they did the right thing and took specialist commercial advice themselves in relation to the dissolution of their partnership. The Second Respondent knew Mr Michie personally and was aware that Mr Michie had extensive commercial experience, which was borne out by the information on MBM's website. The Respondents received advice, particularly in an email of 5 January, which was astonishing to say the least. Mr Burnside stated that this advice has been said to be bullish and inappropriate however the email was written setting out the strategy for departure from the firm and was sent by someone with experience in that area. He submitted that the Respondents were entitled to rely on that advice.

Mr Burnside stated that all solicitors have had experience of wanting to revisit advice after looking up recent cases or changes in the law. However what happens in these circumstances is that a prudent lawyer will tell his clients that his advice has changed and have a record kept of that amended advice to ensure that his client does not rely

on the original advice. He would instruct his client to disregard the original advice and not to follow it. Mr Burnside submitted that in this case throughout the period between January and July 2006 professional advice was given through a number of meetings and telephone calls and that advice did not change one iota. Mr Burnside stated that all the letters in the file are consistent with the original advice until, we are asked to believe, that on 5 July Mr Michie looked at it again and changed his advice. Mr Burnside asked the Tribunal to consider what Mr Michie did then. Mr Burnside submitted that Mr Michie did nothing in advance of the meeting where he was apparently giving to his clients a complete change in his position. The first his clients were aware of this change was when they received, the MBM Commercial file containing this purported attendance note in March 2007. They were astonished to receive it.

Mr Burnside asked the Tribunal to consider whether Mr Michie, a solicitor with considerable experience and relevant expertise with MBM, would not have taken the step of bringing the information to the attention of his clients by copying the attendance note, which in itself was rare, or by writing a letter to them. Mr Burnside stated that although it pained him to say so, the inference he drew is that the attendance note is not a genuine one. He stated that in his opinion the note was self serving, as was Mr Michie's evidence in a situation where his incorrect advice has led to his clients being brought before this Tribunal. Mr Burnside asked that the Tribunal prefer the evidence of the Respondents, even though it might be said that they have more reason than Mr Michie not to be truthful. Mr Burnside stated that it must be apparent from their evidence that the Respondents would never have gone along with the strategy if they had been aware of the terrible consequences. He stated that they accept that they were naïve but they did what they considered to be correct and at significant cost, took professional advice. They have paid very dearly, not just £20,000 for advice but many thousands of pounds in defending the action in the Court of Session and the proceedings before this Tribunal. Mr Burnside submitted that this would not have happened but for the incorrect advice they received.

Mr Burnside stated that the solicitor members of the Tribunal may think that the advice was so extreme that it should not have been accepted. Mr Burnside accepted

that there was room for that view but submitted that great credit must be given to the source from where that advice came.

Mr Burnside stated that the Tribunal hears many cases where solicitors have been dishonest or are guilty of gross negligence leading to losses by clients and a loss of confidence in the profession. He submitted that solicitors who behave in this manner must be dealt with using the considerable powers that the Tribunal has at its disposal. Mr Burnside asked the members of the Tribunal to take into account that the inconvenience to clients in this case was minimal, with the papers being removed for only a week. He submitted that the conduct does not warrant a penalty anywhere near the limits that the Tribunal has. Mr Burnside submitted that the inconvenience suffered by Mrs Watt was minimised by the return of the papers to her very promptly and in any event she has her remedy in the Court of Session. Mr Burnside stated that both his clients have had previously unblemished careers and have not behaved in any way intended or calculated to damage the public interest and are not going to be in this position again. He urged the Tribunal to impose a penalty which took these factors into account.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that he had two brief points to make against the background of the admissions in the Joint Minute. Firstly, he stated that as far as what happened was concerned the firm of Guild and Guild was dissolved with no notice. Files, title deeds and documents were removed in advance and various suppliers were written to. He asked the Tribunal to imagine the consternation which must have been caused when these events became known to Mrs Watt. He stated that her remedies do not detract from that. Secondly, Mr Reid submitted that he gained the distinct impression from the evidence given in the proof in mitigation that professional obligations were swept aside by commercial interests. He submitted that the strategy employed by the Respondents meant that the need for secrecy was paramount and the commercial aspect played a major part.

DECISION

The Tribunal found the Respondents to be generally credible witnesses whose evidence was corroborated by each other and the documentary productions. The Tribunal found Mr Michie to be credible where his evidence coincided with that of the Respondents but where there was a conflict the Tribunal preferred the evidence of the Respondents.

The Tribunal noted the terms of the Joint Minute but did not consider that the Respondents were guilty of professional misconduct as averred in Article 9.3(d) of the Complaint. Rule 3 of the Solicitors (Scotland) (Incorporated Practices) Practice Rules 2001 provides that -

> "3. Subject to the provisions of these rules, a solicitor or an incorporated practice may trade as a body corporate in terms of section 34(1A) of the Act provided: -
>
> (a) any such body corporate has been recognised by the Council as an incorporated practice; "

The term "trade" is not defined in the Rules so the ordinary principles of construction must be applied. All the Respondents did prior to recognition was to issue circulars to persons they hoped might become clients. The Respondents each stated that they had been advised by Mr Michie to do nothing else until they had been advised by Mr Michie that recognition had been granted and they confirmed that they were careful to do nothing. There was no evidence averred or led of any further activity prior to recognition. Without evidence of any client centred activity such as a meeting with clients or taking instructions in respect of some business the Tribunal found it impossible to conclude that trading had commenced. The Tribunal considers that what the Respondents did was to put themselves in a position to trade when recognition was granted rather than actually trading.

The Tribunal was satisfied that the Respondents were guilty of the remaining breaches of their professional obligations as averred in the Complaint. These rules are designed to protect the interests of clients and to ensure that the business activities of solicitors are regulated.

When considering the appropriate penalty to impose in this case the Tribunal was influenced by five main factors. Firstly the Tribunal noted the devious behaviour of the Respondents towards Mrs Watt in the run up to the dissolution of Guild & Guild. Secondly the Tribunal had regard to the fact that documents and files were removed from the offices of Guild & Guild without the consent of the clients. Thirdly, the fact that mail was redirected from the offices of Guild & Guild to the Respondents' new offices. Fourthly, the issuing of circulars to clients which did not comply with the Law Society Guidance on Mandates and which gave no indication that Mrs Watt was continuing in business. Fifthly, the Tribunal took note of the actions of the Respondents in advising important parties such as the Guild & Guild bankers, Her Majesty's Revenue and Customs and the ESPC that Mrs Watt was not practising when they knew this to be false.

The Tribunal also took into account the advice the Respondents were given by the experienced solicitor they had instructed to advise them. In this connection the Tribunal had grave concerns about the apparent inaccuracy of this advice. However, the Tribunal considered that the Respondents should have acted on the doubts which they both had that what they were doing was not in accordance with the rules of their professional body. In the circumstances, they should have double checked the advice. The Respondents are bound by professional rules designed to regulate the business of the profession. It is important that these rules are strictly adhered to in order that public confidence in the integrity of the legal profession is maintained.

However, the Tribunal took into account the fact that in this case the Respondents acted quickly in returning all documentation and therefore the inconvenience to clients was minimal. In addition, the Tribunal noted that both Respondents had previously unblemished records in the profession. For all the above reasons the Tribunal considered that the appropriate penalty was one of Censure and a fine of £5000 in respect of each of the Respondents. The usual order was made for expenses

and publicity was ordered but it was agreed that it should be deferred pending any further proceedings arising out of this matter.

Vice Chairman