

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

**FINDINGS**

**in Complaint**

**by**

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

**Complainers**

**against**

**LEO McGARVEY, 8 Millhall Court, Plains,  
Airdrie**

**Respondent**

1. A Complaint dated 5 March 2024 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Leo McGarvey, 8 Millhall Court, Plains, Airdrie (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were three Secondary Complainers: Janet Brand, 12 Ochilview Road, Bo'ness; Robert Gordon Marshall, former director of RGM Solicitors, Unit 5 Gateway Business Park, Beancross Road, Grangemouth; and Emma McIntyre, 46 Old Bellsdyke Road, Larbert.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 29 May 2024 and notice thereof was duly served on the Respondent.
5. At the virtual hearing on 29 May 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Tribunal proceeded in his absence. One witness gave evidence for the Complainers. The Fiscal made submissions.

6. Having given careful consideration to the terms of the Complaint, the oral testimony of the Complainers' witness and the productions spoken to by him, the Tribunal found the following facts established:-

6.1 The Respondent is Leo McGarvey. He was born on 2 June 1968. The Respondent was employed as a solicitor with RGM Solicitors ("the firm") from 24 February 2009 until 23 February 2018.

#### Incident 1

6.2 Janet Brand instructed the Respondent in September 2010. The instruction related to her separation from her husband.

6.3 The Respondent, on behalf of the Secondary Complainer, made an application for legal aid which was refused on 23 March 2011. The reason for the refusal was that Janet Brand was financially ineligible. She was advised by the Respondent that because of this refusal, all future work undertaken on her behalf would have to be funded on a private basis.

6.4 Between December 2011 and February 2017, the Respondent wrote to Janet Brand on seven occasions requesting that she make cash payments relating to work undertaken. These payments ranged from £200 to £600. By February 2017, Janet Brand had paid the Respondent approximately £5,500. After each payment was made directly to the Respondent, Janet Brand received compliments slips. These slips were handwritten by the Respondent and on several occasions the handwritten annotations included the words "Payment to Account".

6.5 The firm has no record of the cash payments to which the compliments slip refer being credited to Janet Brand's client bank account.

#### Incident 4

6.6 The Firm was contacted by a client, MD, who instructed the firm to prepare a Power of Attorney on 7 March 2017. A letter was sent from the Respondent to MD advising that a total of £314 was to be paid in cash for the work undertaken in relation to the Power of Attorney. This was paid by MD to the Respondent. The cash sum accepted by MD was never lodged with the firm.

6.7 On 5 March 2018, the firm wrote to the Respondent to advise of their findings in respect of the firm's disciplinary hearing of 22 February 2018 into the solicitor's employment. The letter narrated the following sequence of events:

*"in that you accepted and issued a receipt for a cash payment of £314 made to you by MD on 7 March 2017 for services carried out by you on behalf of RGM to prepare and register a power of attorney. To date, you have not banked the payment of £314 you received from the client. Following receipt of the funds you did not register the Power of Attorney timeously in breach of your duty to your client and to her possible prejudice. In July/August when MD's granddaughter asked for an update on the progress of the Power of Attorney you avoided her phone calls over a period of some weeks to the extent that she contacted [H]. The receipt that was issued to her by you was then produced and you admitted that you had kept the funds and had not registered the power of attorney. You suggested that the client should be given a false explanation as to the reason for the delay in the Power of Attorney not having been registered. After all this came to light you subsequently attended personally at the Public Guardians Office to have the Power of Attorney registered. The Public Guardians fee was paid by yourself but you have failed to bank the balance of £240 (being the fee of £200 plus VAT) from the sum received from the client as full payment, resulting in a loss to the firm of fee income and for your own personal gain, as well as potential reputational damage to the firm."*

6.8 The letter went on to advise that the firm's cash room had confirmed that the monies received from MD had not been banked in the firm's accounts. The letter went on to advise it was the firm's view that the solicitor had misappropriated the funds for his own personal gain and put the firm at risk by failing to register the Power of Attorney timeously.

6.9 The Power of Attorney in respect of MD's instructions was eventually registered on 21 August 2017.

#### Incident 5

6.10 On 15 August 2017, ZC attended at the offices of the Respondent along with a relative in order to instruct the firm. Upon arrival ZC was informed that the fee for the Respondent's services would be £300 with an initial payment due at the first visit of £100. This was paid in cash with a handwritten receipt provided to the relative of ZC who paid the sum on her behalf.

- 6.11 ZC attended again at the office of the Respondent on 24 August 2017. The Respondent informed ZC that the total fee for his services would be reduced by £100. Therefore a balance of £100 remained outstanding which he again requested to be paid on that visit which ZC did and received a handwritten receipt.
- 6.12 Neither the £100 received on 15 August 2017 or the £100 received on 24 August 2017 was paid into the firm's accounts.
- 6.13 In relation to the cash sums fraudulently obtained from clients between 2011 and 2017, whilst working as a solicitor for the firm, the Respondent was found guilty of embezzlement at Falkirk Sheriff Court on 22 December 2022 and received a custodial sentence totalling ten months.
7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect that he:
- 7.1 Failed to act with honesty and integrity by fraudulently taking payments from the Secondary Complainer Janet Brand, totalling approximately £5,500 between December 2011 and February 2017.
- 7.2 Inappropriately accepted a £314 cash payment from a client on 7 March 2017 in advance payment of the service provided by him, on behalf of the firm, and issued a receipt to the client, despite this being contrary to the firm's policy.
- 7.3 Failed to bank a £314 cash payment that he had inappropriately accepted from a client on 7 March 2017 in advance payment of the service provided by him, on behalf of the firm, in registering a Power of Attorney, and thereby misappropriated the funds for his own personal gain.
- 7.4 Failed to register a Power of Attorney timeously, in that despite accepting an advance cash payment of £314 from a client for carrying out this service, on behalf of the firm, the Respondent failed to register the Power of Attorney until after the client contacted the firm in July 2017/August 2017 requesting an update, and hence, making the firm aware of the matter, at which point the Respondent admitted to the firm that he had not registered the

Power of Attorney and thereafter proceeded to contact the Office of the Public Guardian to do so, and it was registered on 21 August 2017.

- 7.5 Failed to bank the balance of £200 plus VAT from the sum he received from a client in advance payment of the service provided by him, on behalf of the firm, in registering a Power of Attorney, in that following the client's request for an update on the progress of the Power of Attorney in July 2017/August 2017, and the firm's discovery of the matter, the Respondent applied to the Office of the Public Guardian to have the Power of Attorney registered, but despite paying the fee himself, he failed to bank the balance of £240 from the sum received from the client as full payment.
  - 7.6 Acted in breach of the Law Society of Scotland accounts rules, in that he received more than £50 in payment from a number of clients between December 2011 and August 2017, and despite that money not belonging to the Respondent, he failed to lodge the funds in the relevant client bank account.
  - 7.7 Inappropriately received payment from several other clients between 7 December 2011 and August 2017, including receipts dated 15 August 2017 and 24 August 2017 for £100 respectively, and failed to account to the firm for such funds.
8. Having considered the foregoing circumstances, the Tribunal found the Respondent not guilty of professional misconduct in respect of the averments that he:
- 8.1 Inappropriately misled his fellow solicitors regarding his whereabouts during his period of employment with the firm, including on one occasion on 23 June 2017, when the Respondent advised his fellow solicitors that he was in Court for a Child Welfare Hearing.
  - 8.2 Inappropriately accepted a loan from a former client of the firm, in that the former client raised a complaint against the Respondent to the Scottish Legal Complaints Commission (SLCC) in 2017 alleging that they gave a loan to the Respondent for £300 in November 2016.
  - 8.3 Inappropriately misled a former client of the firm to believe that work was being undertaken on behalf of the firm, in that the Respondent stated that a £300 payment he received from a former client of the firm was in relation to professional legal services

undertaken by him, however, the firm stated that the only client record they have for the particular client dates back to 2009 and so question the capacity in which the Respondent carried out the work for the client.

8.4 Failed to cooperate with the Law Society's investigation in relation to the complaint by the Secondary Complainer Emma McIntyre and failed to respond to any correspondence sent to him by the Law Society including formal Notices in terms of Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007 and Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980.

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

By Video Conference, 29 May 2024. The Tribunal having considered the Complaint dated 5 March 2024 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Leo McGarvey, 8 Millhall Court, Plains, Airdrie; Find the Respondent guilty of professional misconduct in respect of breach of Rules B1.2, B1.4, B1.9 and B6.3 all of the Law Society of Scotland Practice Rules 2011; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainers but need not identify any other person; and Allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office if so advised.

**(signed)**

**Vincent McGovern**  
**Acting Vice Chair**

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

26 JUNE 2024.

**IN THE NAME OF THE TRIBUNAL**



**Vincent McGovern**  
**Acting Vice Chair**

**NOTE**

At the Hearing on 29 May 2024, the Tribunal had before it the Complaint, a List of Witnesses for the Complainers and a List of Productions for the Complainers.

The Fiscal made a motion in terms of Rule 14(4) of the Tribunal's Procedure Rules 2008 for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Tribunal heard evidence on oath from the Clerk regarding service of the Complaint and the Notice of Hearing. Both documents were served at 8 Millhall Court, Plains, Airdrie by Sheriff Officers posting them into the property. The address had been provided by the Law Society at the request of the Tribunal Office when it was discovered that the firm the Respondent had worked for was no longer present at the business address provided in the Complaint. The residential address was confirmed by Sheriff Officers to be that of the Respondent. The Complaint was served on 18 March 2024 and the Notice of Hearing on 25 April 2024. Sheriff Officers noted that the property had a "Casa de Leo" plate beside the door. The Tribunal was satisfied that the Respondent had received proper notice of the hearing.

The Tribunal considered whether it was fair to proceed in the Respondent's absence. It had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion "*with great caution and close regard to the overall fairness of the proceedings*". If the Tribunal heard the case in the Respondent's absence, there would be a disadvantage to him in being unable to give his account of events. However, there was no reason to be confident the Respondent would attend on another occasion if the hearing was adjourned. It is in the public interest that regulatory proceedings take place within a reasonable time. It would be improper for a solicitor to avoid professional misconduct proceedings by failing to cooperate with the Tribunal. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. Failing to hear the case would not be in the public interest, or in the interests of the Secondary Complainers. A fair hearing was possible. The Tribunal had to be satisfied regarding the question of misconduct, whether or not the Respondent was present. In all these circumstances, the balance lay in favour of proceeding in the Respondent's absence. Therefore, the Tribunal granted the Fiscal's motion to proceed.

On the Fiscal's motion, the Tribunal amended the Complaint to insert the word "client" before "bank account" in paragraph 4.4. The Fiscal noted that he was no longer insisting on the averment of professional misconduct at paragraph 6.1.2 which related to incident 6. On the Fiscal's motion, the Tribunal also amended the Complaint to substitute the word "employee" for "client" in paragraph 4.25.



## EVIDENCE FOR THE COMPLAINERS

### Witness 1: David Simpson

The witness gave evidence on oath. He is a Reporter to the Law Society of Scotland's Professional Conduct Sub Committee (PCSC). He has been a solicitor for 10 years and employed by the Law Society since 2017. He explained that a Reporter to the PCSC deals with conduct complaints remitted to the Law Society by the Scottish Legal Complaints Society (SLCC). The Reporter investigates the complaints and makes a recommendation to the PCSC. However, it is for the PCSC to determine the outcome.

The witness confirmed that he had been involved with the complaints against the Respondent. Initially, two colleagues were dealing with the reports but due to sick leave, he picked up the Janet Brand and Robert Marshall complaints in January 2023. They had been running for a long time.

The witness was asked about the process of investigation. He said that Reporters take the evidence from the complainer which was remitted to the Law Society by the SLCC. Reporters ask solicitors for the firm's files. They will also take evidence from external sources such as Crown Office, Sheriff Courts, and other Tribunals. Reporters consider precedents of this Tribunal and make recommendations.

The witness confirmed that he had seen the Complaint to the Tribunal dated 5 March 2024 against the Respondent. It involved three Secondary Complainers. The witness spoke to various productions.

Production 1 was an extract conviction produced on 24 January 2023. The Respondent's date of birth was recorded as 2 June 1968. His address was 8 Mill Hall Court, Plains, Airdrie. The Respondent was convicted at Falkirk Sheriff Court on 16 November 2022 and sentenced on 22 December 2022. The charge to which the Respondent pleaded guilty was,

*"Between 7 December 2011 and 25 September 2017, both dates inclusive, at {redacted} LEO ADAIR MCGARVEY did while acting as solicitor of {redacted} embezzle fees payable to the firm amounting in total to £7,016 by requesting that clients paid him in cash."*

The Respondent received ten months imprisonment. The witness confirmed that he obtained the extract from Falkirk Sheriff Court.

Production 2 was a news article from STV news dated 22 December 2022. The headline was "A lawyer who admitted embezzling £7,000 from his own firm has been jailed". The report noted that "McGarvey, from Airdrie, took the cash payments from at least eight clients but failed to put them through the firm's

books". The article noted that the Respondent had pleaded guilty, and the witness said that he had confirmed this with his contact at Crown Office and Procurator Fiscal Service.

The Fiscal referred the witness to "Incident 1" at paragraph 4.1 of the Complaint which referred to Janet Brand's complaint. The witness said that he was aware of the contents of the report regarding that complaint, but did not write it himself. He was aware that Janet Brand had approached the Respondent in 2010 regarding a separation. She was refused legal aid and the matter proceeded as a private client case. The Respondent asked for various amounts of cash by email before client meetings. Ms Brand would bring cash into the office and the Respondent issued compliments slips with his initials or squiggle on them. Ms Brand presented a four-figure sum in total to the Respondent. He did not bank this with the firm.

Production 4 was Janet Brand's case file. Page 270 contained a letter from the firm to Ms Brand dated 2 September 2010. It included the terms of engagement. The Respondent was the named contact. Page 273 was a letter from the firm to Ms Brand dated 2 November 2010. That letter explored the possibility of the Secondary Complainer receiving legal aid. Page 208 was a letter from SLAB dated 23 March 2011 rejecting Ms Brand's application for legal aid.

Production 8 was Robert Gordon Marshall's case file. Page 443 contained an email from Mr Marshall to the SLCC. Mr Marshall said in that email that he had proof that the Respondent had accepted £5,500 from Ms Brand in 11 transactions. It was noted that Mr Marshall said in that email that,  
*"It was after further investigation, when Mr McGarvey was absent from work ill, that the transaction for Mrs Brand was completed and an account was sent to her. She contacted us to advise that she had paid several sums direct to Mr McGarvey for her divorce action. She has, since that date, been producing receipts/bank statements to confirm her payments."*

Production 4 at pages 297-299 contained the compliments slips the witness had spoken about earlier. Those related to Janet Brand and noted receipt of various sums of cash. Some were signed and some contained the initials "LMcG". The witness confirmed that a large proportion of the embezzled sum which was the subject of the criminal conviction related to the sums received from Janet Brand.

The Chair asked the witness to confirm when Janet Brand's cash payments began. The witness was not sure. The Fiscal referred him to Production 8 at page 443. This was an email from Robert Marshall setting out the payments he said Janet Brand had made to the Respondent. These started on 7 December 2011 and ended on 7 February 2017.

The Fiscal indicated that he wanted to discuss "Incident 2" in the Complaint which related to the Child Welfare Hearing. The witness said his involvement was restricted to writing the report. Mr Marshall had complained that the Respondent had advised colleagues that he had attended court when he had not. He had misled his colleagues.

Production 8 at page 409 was a letter from the firm to the SLCC dated 19 October 2017. It was noted that Mr Marshall had written that

*"Mr McGarvey has continually misled his fellow practitioners as to his whereabouts. One example being on Friday 23<sup>rd</sup> June 2017 he advised that he was in court for a child welfare hearing. At 1.20pm he advised the office that he would have to go back into court at 2pm, so his appointments were cancelled for that afternoon. The court advised there was no court hearing on that Friday afternoon. Furthermore, we received a letter from Fraser Shepherd Solicitors, Falkirk confirming that they attended in the morning for both parties. Mr McGarvey therefore was not at court that day. We are of the opinion this is not an isolated incident."*

Production 8 at page 420 was a letter from the firm to the Respondent dated 5 March 2018. It was noted that Mr Marshall had written that

*"you advised you were in court all day to represent [TD] on Friday 23<sup>rd</sup> June 2017 when [MF] of Fraser Shepherd has since confirmed she attended for both sides to represent [TD]. In addition, Falkirk court has confirmed that there was no court held on that afternoon".*

The Fiscal referred the witness to "Incident 3" in the Complaint. The witness said that he was not directly involved in this complaint. He understood that there was a friendship between Emma McIntyre and the Respondent. She gave a loan of money to the Respondent. The Respondent said he had carried out work for her in a personal capacity. The Respondent also claimed he had paid the Secondary Complainer for a three piece suite.

Production 6 at page 340 was a letter from the SLCC to the client relations manager at the firm dated 12 October 2017. The SLCC had received a complaint from Emma McIntyre about the Respondent. Production 6 at page 342 was Emma McIntyre's SLCC complaints form. On page 345 she had written that she was complaining about a loan given to the Respondent in November 2016 of £300. The Secondary Complainer noted that she had loaned the Respondent money on several occasions which he had always previously paid back. She trusted him as they had been friends for about 17 years and the Respondent was a solicitor. The witness confirmed that he had never seen this document before.

Production 6 at page 350 was a letter from Blackadder and McMonagle to the Respondent dated 8 August 2017. That firm represented Ms McIntyre and wrote to the Respondent attempting to recover the money paid to him by her as a loan. Production 6 at page 351 was a letter to Blackadder and McMonagle from the Respondent in which he said that the sum of £300 was for payment of professional legal services undertaken by him for the Secondary Complainer. Production 6 at p353 was a letter from Blackadder and McMonagle dated 21 August 2017 questioning the capacity in which the Respondent had acted and the basis upon which he was paid. Production 6 at page 354 was a letter from the Respondent to Blackadder and McMonagle dated 23 August 2017. The Respondent denied receiving money in return for legal work. He said that on 28 January 2017, he uplifted a three piece suite from the Secondary Complainer and on that same occasion repaid the loan he had been given. Production 6 at page 348 was a handwritten letter from Emma McIntyre to the SLCC complaining about the Respondent. It was received by the SLCC on 7 September 2017.

The Fiscal referred the witness to "Incident 4" in the Complaint in which Robert Marshall was the Secondary Complainer. Production 8 at page 409 was a letter from the firm to the SLCC dated 19 October 2017. Mr Marshall wrote that

*"We have been advised by our client [MD] that she instructed Mr McGarvey to prepare a Power of Attorney which he carried out on her behalf and which he insisted on being paid in cash. Not only did he keep the money, but he did not register the Power of Attorney until the client contacted our [Mr W] to request when she would receive the registered Power of Attorney. [MD] produced a receipt signed by Mr McGarvey for the sum of £314. Despite admitting this, Mr McGarvey has made no effort to repay this money to the firm. We have also had a client who regrettably no longer uses our services due to the fact that when she consulted Mr McGarvey in respect of a simplified divorce he advised her that he would not carry out any work until she paid him in cash. We do not allow pre-payments in any form for work to be carried out."*

The witness said that he relied on the information from Mr Marshall regarding MD. After a period of months the Respondent did pay for the registration but he did not bank the remainder of the funds. Production 8 at page 419 was a letter from the firm to the SLCC dated 5 March 2018 noting that the Respondent had been dismissed from the firm. Production 8 at page 420 was a letter from the firm to the Respondent dated 5 March 2018. It noted that the Respondent

*"accepted and issued a receipt for a cash payment of £314 made to you by [MD] on 7<sup>th</sup> March 2017 for services carried out by you on behalf of RGM to prepare and register a power of attorney. To date, you have not banked the payment of £314 you received from the client. Following receipt of the funds you*

*did not register the Power of Attorney timeously in breach of your duty to your client and to her possible prejudice. In July/August when [MD's] granddaughter asked for an update on the progress of the Power of Attorney you avoided her phone calls over a period of some weeks to the extent that she contacted [H]. The receipt that was issued to her by you was then produced and you admitted that you had kept the funds and had not registered the Power of Attorney. You suggested that the client should be given a false explanation as to the reason for the delay in the Power of Attorney not having been registered. After this all came to light you subsequently attended personally at the Public Guardian's Office to have the Power of Attorney registered. The Public Guardian's fee was paid by yourself but you have failed to bank the balance of £240 (being the fee of £200 plus VAT) from the sum received from the client as full payment, resulting in a loss to the firm of fee income and for your own personal gain, as well as potential reputational damage to the firm."*

The witness confirmed that this conformed with his understanding that the Respondent paid for the registration but did not bank the balance.

The Fiscal referred the witness to "Incident 5" in the Complaint. The witness confirmed that the client in this case was ZC. She had made some cash payments but there was no evidence of slips being provided, just a verbal narration.

Production 8 at page 420 was a letter from the firm to the Respondent dated 5 March 2018. Mr Marshall wrote that

*"In addition there are several other clients from which you have received money and failed to account to the firm for such monies, namely as evidenced follows:-*

1. *[ZC] receipt dated 15<sup>th</sup> August 2017 and 24 August 2017 for £100 respectively..."*

The witness said that the receipts may have formed part of Mr Marshall's investigation, but he had not seen these.

Production 7 at page 357 was the Reporter's recommendation to the PCSC in the Robert Marshall complaint. Page 380 contained a quote from an email from ZC as follows:

*"I met with Mr McGarvey during August 2017; my aunt (SB) accompanied me to the appointment. My aunt paid the fees for the solicitor's services provided by Leo McGarvey. We were informed that the fee was £300, an initial payment of £100 was requested on the first visit. My aunt asked if we could pay by debit card or cheque, to which he replied the card machine wasn't working, so requested that we pay in cash. My aunt explained that she didn't have any cash with her, to which he replied that there was an ATM machine at the bank across from the solicitors. Mr McGarvey said that he was happy to wait for*

*her to return with the payment. My aunt received a hand written receipt for the amount of £100 that was paid to Mr McGarvey.*

*On the second visit he informed us that because we had completed some of the work the total fee would only be £200, therefore leaving the remaining £100 to be paid on that visit, which again he requested to be paid in cash. We received another hand written receipt. I have both receipts and can provide copies if need be."*

The witness said that his colleague had written to many potential witnesses and obtained statements and productions. These formed part of the initial materials but he did not have sight of these although the email itself was available to him at the time of the report.

The Tribunal retired to consider if there were any points requiring clarification. On its return, the Tribunal noted that the extract conviction related to embezzlement of £7,016. The Complaint noted that Janet Brand had paid the Respondent approximately £6,400. Mr Marshall had identified payments of £5,500. The Tribunal asked whether the witness could assist with how the figures were composed. The witness was unable to say whether the £300 in Incident 3, the £314 in Incident 4 or the £200 in Incident 5 formed part of the sums covered by the conviction. He assumed they were all included but the charge simply contained a general reference to "clients". The witness confirmed that the payments by Janet Brand started in 2011.

## **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal suggested that the certified copy extract conviction should be given a significant degree of weight. It had been proved that the Respondent had acted in the manner libelled. He referred the Tribunal to the STV news report contained at Production 2 for the Complainers. David Simpson had given hearsay evidence of the productions presented. The Respondent had elected not to challenge this evidence. In the Fiscal's submission, Mr Simpson was credible and reliable, and his evidence was more than sufficient as a basis to find professional misconduct.

With regard to incident 1, the Fiscal noted that the sum concerned comprised the majority of the embezzled funds in the criminal case. The firm had carried out a tallying exercise. They had discovered that it was only after legal aid was refused that the Respondent requested cash from the client. Production 4 contained a list of the embezzlement transactions discovered by the firm. The Tribunal had seen copies of the compliments slips. None of that money had been banked with the firm.

Incident 2 concerned the Respondent misleading colleagues. This went to his trust and integrity and breached Rule B1.2. The Fiscal referred the Tribunal to the evidence contained in Mr Marshall's letters to the Respondent. This incident formed one of the grounds for the Respondent's dismissal. This evidence was unchallenged.

Incident 3 involved Emma McIntyre. The Tribunal had seen evidence of her agent's letters sent to the Respondent attempting to recover money she had loaned to him. The Tribunal was aware of the Respondent's changing position on the matter.

Incident 4 related to paragraphs 6.4-6.7 of the Complaint. These averments were supported by the evidence of Mr Marshall's letters.

The evidence for incident 5 was contained in the report and in Mr Marshall's letters.

The Fiscal noted it was for the Tribunal alone to decide with the Respondent's behaviour met the conjunctive "Sharp test" for professional misconduct. He suggested that the reputation of the profession was at stake and a finding of professional misconduct was very much warranted.

Following a question from the Tribunal, on the Fiscal's motion, the Tribunal amended the Complaint by substituting "2011" for "2013" in paragraph 4.3. The Tribunal refused the Fiscal's motion to amend the Complaint by inserting the word "Falkirk Sheriff" before the word "Court" in paragraph 4.5. The Tribunal asked whether the Fiscal could clarify the various figures said to have been embezzled by the Respondent. The Fiscal noted that the Crown accepted a plea to embezzlement of £7,016. Mr Marshall's email identifies cash payments of £5,500. Janet Brand says she paid the Respondent £6,400. ZC said she paid the Respondent £200. The Tribunal asked for clarification regarding paragraphs 6.8 and 6.9 of the Complaint. The Fiscal confirmed that both averments of misconduct related to the same £300 and that this was the total amount concerned.

## **DECISION**

The Tribunal carefully considered the evidence presented in this case. To find professional misconduct established, it would have to be satisfied that the facts were proved beyond reasonable doubt. It assessed Mr Simpson to be a credible witness but found some of the evidence to be lacking in certain respects and insufficient to meet the standard of proof. Accordingly, it found the facts established in relation to

incidents 1, 4 and 5, subject to some minor amendments, but did not find the facts established in relation to incidents 2 and 3. The Fiscal did not seek a conviction in relation to incident 6.

Incident 1 referred to the Respondent embezzling a substantial sum of money from the Secondary Complainer Janet Brand. The Tribunal was satisfied based on the extract conviction, that the Respondent had pleaded guilty to embezzlement of £7,016. This was made up of money from various clients. Mr Simpson spoke to Ms Brand's complaint that she had paid the Respondent £6,400 and Mr Marshall's email identifying payments of £5,500. The Tribunal noted the compliments slips spoken to by Mr Simpson (Production 4 at pages 297-299), and the reports of emails where the Respondent requested that the Secondary Complainer make payments to account in cash. Based on the evidence presented to the Tribunal, it was satisfied that £5,500 was paid by the Secondary Complainer to the Respondent. However, the Tribunal was unable to identify any further evidence spoken to by the witness to support the higher sum. Therefore, it substituted the sum of £5,500 for the sum of £6,400. The Tribunal was satisfied on the basis of Mr Simpson's evidence that the facts described in Incident 1 in the Complaint as amended were proved beyond reasonable doubt.

Incident 2 referred to the Respondent inappropriately misleading his fellow solicitors regarding his whereabouts during his period of employment with the firm. The only specification of this allegation related to an incident on 23 June 2017 when the Respondent was said to have advised his fellow solicitors that he was in Court for a Child Welfare Hearing. Mr Simpson spoke to Production 8 at pages 409 and 420 which were letters from Mr Marshall outlining this complaint. There is no specification in this letter of whom the Respondent advised that he had been in court or that he was returning there. There was no specification of the court he was said to be attending. Mr Marshall was of the view that this was not an isolated incident but there was no additional evidence presented to the Tribunal to support that view. The Tribunal was therefore not satisfied beyond reasonable doubt that these facts were established.

Incident 3 referred to the Respondent inappropriately accepting a loan from a former client, Emma McIntyre, and then misleading her by making false and contradictory explanations about the circumstances in which the money was paid to him. The Fiscal indicated to the Tribunal that both the averments of misconduct in paragraphs 6.8 and 6.9 of the Complaint were capable of being true and that both related to the same sum of £300. As a result of the quality of the evidence led on this matter, and the existence of the competing accounts of the Secondary Complainer and the Respondent, the Tribunal was not satisfied beyond reasonable doubt that these facts were established.



Incident 4 referred to the Respondent receiving a cash payment, contrary to the firm's policy, failing to bank it, failing initially to register a Power of Attorney and then once he had registered it, failing to pay the balance to the firm. The evidence of this was spoken to by Mr Simpson reporting on Mr Marshall's investigation. Mr Simpson had directly investigated this incident. The Tribunal was satisfied beyond reasonable doubt that the facts in relation to Incident 4 were established.

Incident 5 referred to ZC paying £200 cash to the Respondent which he did bank with the firm. Mr Simpson spoke to this incident. The Tribunal also noted the terms of the extract conviction. The Tribunal was satisfied beyond reasonable doubt that the facts in relation to Incident 5 were established.

The Tribunal made no findings in relation to the facts of Incident 6. The Fiscal had indicated at the start of the hearing that he did not seek a conviction in relation to this incident.

The facts in Incidents 1, 4 and 5 raised the question of dishonesty. According to Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67, the Tribunal should first ascertain subjectively the actual state of the individual's knowledge or belief as to the facts. When that is established the question whether his conduct was honest or dishonest is determined by applying the objective standards of ordinary decent people. The Tribunal was satisfied that the Respondent had acted dishonestly by embezzling money given to him by clients.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

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


Competent and reputable solicitors are trustworthy and honest. They do not act in ways which are fraudulent and deceitful (Rule B1.2). They act in the best interests of their clients (Rule B1.4). They communicate effectively with clients and others (Rule B1.9). They ensure that clients' money is properly accounted for (Rule B6.3). The Respondent breached of all these rules. The principles of honesty and integrity are fundamental to the profession. Members of the profession are in a very privileged position

and members of the public must be able to trust that a solicitor will carry out his duties and obligations in an honest and trustworthy manner. The Respondent's conduct was a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct in relation to Incidents 1, 4 and 5. The relevant averments of misconduct were contained at paragraphs 6.2, 6.4, 6.5, 6.6, 6.7, 6.10 and 6.11.

The Fiscal confirmed that there were no previous findings on the Respondent's record card. The Fiscal moved for the usual orders regarding expenses and publicity.

The Tribunal considered its indicative sanctions guidance. It noted that the Respondent was involved in dishonest, criminal behaviour. He had not shown any remorse or insight. There was an ongoing course of conduct involving a number of clients. The conduct was a danger to the public and was likely to seriously damage the reputation of the profession. The Respondent was not a fit person to be a solicitor. In these circumstances, the only appropriate sanction was to order that the name of the Respondent be struck off the roll of solicitors in Scotland.

The Tribunal found the Respondent liable in the expenses of the Complainers and of the Tribunal on the usual basis. It directed that publicity would be given to the decision and that this publicity should include the name of the Respondent and the Secondary Complainers but need not identify any other person. It allowed the Secondary Complainers 28 days from the date of intimation of the findings to lodge written claims for compensation with the Tribunal Office if so advised.



**Vincent McGovern**  
**Acting Vice Chair**