

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

FINDINGS

in Complaint

by

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

against

**MERIDITH GRAHAM SYKES,
Solicitor, 25 Newton Place,
Glasgow**

1. A Complaint dated 5th March 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Meridith Graham Sykes, Solicitor, 25 Newton Place, Glasgow (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. A Complaint dated 29th June 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that the Respondent be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
4. The Tribunal caused a copy of the second Complaint, as lodged, to be served upon the Respondent. Answers were lodged for the Respondent

5. In terms of its Rules the Tribunal appointed the Complaints to be heard at procedural hearings on 8th and 26th October and notice thereof was duly served on the Respondent. Following those procedural hearings the substantive hearing in relation to both complaints was fixed for 19th December 2007.
6. The hearing took place on 19th December 2007. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented James McCann, Solicitor, Clydebank.
7. In relation to both Complaints, Mr Lynch made a motion to amend the Complaints. The Tribunal allowed the amendments. Thereafter Mr McCann advised that the Respondent pled guilty to both the Complaints as amended.
8. In respect of these admissions no evidence was led and the Tribunal found the following facts established.
 - 8.1 The Respondent was born on 24th September 1963. He was admitted as a solicitor on 29th October 1986 and enrolled on 10th November 1986. He is the principal of M G Sykes, Solicitors and Estate Agents, 25 Newton Place, Glasgow. The Respondent also has offices at 206 Kilmarnock Road, Shawlands, Glasgow, 522 Victoria Road, Queens Park, Glasgow, 116 Tollcross Road, Glasgow and 56 Cadzow Street, Hamilton. The Respondent was also until October 2005 a partner in a firm having a place of business at 32-34 High Street, Renfrew.
 - 8.2 Guarantee Fund Inspectors employed by the Complainers carried out an inspection of the books and records of the

Respondent between 4th and 7th July 2005. They found *inter alia* the following:-

- a) Mr. & Mrs. M sold Property 1. Settlement took place on 29th April 2004 and the borrowings were redeemed on that day. A cheque was issued to the Registers on 20th July 2004 in respect of the dues in recording the discharge. This was not cashed and was subsequently cancelled (on 31st May 2005) but had not at the date of the inspection been re-issued. The discharge remained unrecorded.
- b) Mr. & Mrs. N. sold Property 2. The sale settled on 2nd December 2004 and the borrowings were redeemed on that day. A cheque was issued to the registers on 10th December 2004 in respect of the recording dues of the discharge of £44.00. This cheque was also not cashed, and was cancelled on 31st May 2005. At the date of the inspection it appeared that it had not been re-issued and that the discharge remained unrecorded. Subsequent enquiries revealed that a fresh cheque had been issued but not until 27th June 2005.
- c) Mr. & Mrs. S purchased Property 3 with the assistance of a loan from Northern Rock PLC on 20th December 2004. As at the date of the inspection no recording dues had been paid and both disposition and standard security remained unrecorded. A balance of £198.00 was held on the client's ledger. The deeds remained unrecorded. An SDLT certificate had been applied for but the date on which this was done was not recorded on file.

- d) S. S. purchased Property 4. Settlement took place on 30th January 2005. The stamp duty was paid on 20th April 2005. No recording dues were paid and as at the date of the inspection the disposition appeared to be unrecorded. A balance of £692.50 was held on the client's ledger. In fact the recording dues had been paid on 17th June 2005 as became apparent after the inspection. The deeds nevertheless remained unrecorded for four and a half months after settlement.

- e) L S. sold Property 5 with settlement taking place on 30th September 2004 on which date the borrowings were repaid. A cheque in respect of the recording dues of the discharge in the sum of £22.00 was sent to Registers of Scotland on 15th October 2004. This cheque was not cashed and was cancelled on 31st May 2005 but as at the date of the inspection had not been re-issued. The discharge remained unrecorded.

- f) Mr. & Mrs. D purchased Property 6 on 16th July 2004 with the assistance of a loan from Royal Bank of Scotland PLC. The recording dues in respect of the disposition and standard security were not paid until 11th April 2005, and the deeds remained unrecorded until that time. The ledger recorded two payments of £200 being forwarded to the Inland Revenue as penalties but no stamp duty was payable in respect of this transaction.

- g) JL purchased Property 7 on 1st June 2005 with the assistance of a loan from Northern Rock PLC. As at the date of the inspection no recording dues had been paid and the disposition and standard security remained unrecorded.

- h) Mr. & Mrs. M B sold Property 8 on 27th May 2005. The borrowings were repaid on 2nd June 2005 but as at the date of the inspection no recording dues had been paid and the discharge remained unrecorded.
- i) Mr. K remortgaged Property 9 with funds from the Royal Bank of Scotland which were received on 31st May 2005 and which were used on 6th June 2005 to redeem borrowings with Abbey National. As at the date of the inspection no recording dues had been paid and the discharge and new standard security remained unrecorded.
- j) BL bought Property 10 on 26th May 2005 with the assistance of a loan from Northern Rock PLC. At the date of the inspection no recording dues had been paid. Both the disposition and the standard security remained unrecorded.
- k) TMcK and SMcT purchased Property 11 on 25th May 2005 with the assistance of a loan from Birmingham Midshires Building Society. As at the date of the inspection no recording dues had been paid and both the disposition and the standard security remained unrecorded.

8.3 A fee in the sum of £6409.62 was taken from the ledger relating to the D M Executry on 21st February 2005 but not rendered to the executor until 22nd February 2005. The fees taken included fees in respect of work carried out in connection with the sale of the deceased's property. The executor had not at that stage given authority for the property to be sold and no work in relation to the sale had taken place.

The executor later declined to instruct the Respondent in the sale. The Respondent subsequently undertook to refund the fees due to the estate.

- 8.4 Fees in the sum of £528.75 were taken in respect of clients MB and EL on 5th April 2005 but were not rendered to the client until 6th April 2005. A further fee in the sum of £308.75 was taken on 29th April 2005. No fee note was rendered in connection with this fee. The first fee note mentioned included outlays for Property Works (a trading name of the Respondent) and a factor retention but these sums did not appear in the client ledger. A payment of £650 was debited to the ledger to Mortgage Store which was another trading name of the Respondent up until the point where he deregistered from the FSA on 19th October 2004. That sum was not detailed on the fee note and appeared to have been transferred to a commission account. Subsequent enquiry revealed that the £308.75 was taken in error and should have been retained to meet vat on the estate agency fee and another outlay. The Respondent stated that he had sold the mortgage store business to Mr A the previous year.
- 8.5 WM and JC sold Property 12 on 24th December 2004. The Estate Agents fees were paid on 24th December 2004 as were fees to the Respondent which included a £500 retention. A further fee of £487.75 was taken subsequently in respect of conveyancing technicalities but no further work was noted on the client's file.
- 8.6 £7158.00 was received from DM and CN by bank draft. There was no evidence of the source of these funds.
- 8.7 As at the date of the inspection, the postings had been completed only up to 9th June 2005. A new cashier had

started work shortly before the inspection. At the end of the inspection, the Respondent stated that he expected the records to be up to date within two weeks.

- 8.8 A ledger which bore the name SW contained entries which related to a transaction in the name of AM
- 8.9 A ledger in the name of Mr. & Mrs TN related to a transaction in the name of Mrs N only.
- 8.10 Bank of Scotland account 382658 (a client account) was shown in the trial balance as having a credit balance of £2146.54 as at 31st May 2005 but this account had been closed on 2nd November 2005.
- 8.11 A ledger on behalf of SLS and suspense account contained various mispostings and banking differences.
- 8.12 A payment was made on 23rd December 2005 to GSPC in the sum of £676.83 which covered payments on behalf of several clients. The ledger for client M was debited twice with the relevant share of the cheque and the ledger for Client H, who should have borne part of the charge, had no debit entry in it at all in this connection.
- 8.13 In two cases (WM & JC and Mr & Mrs. T.N) discharges appeared to be unrecorded. It was subsequently found out that the Respondent's firm had acted on behalf of the purchasers as well as the sellers in relation to both properties and the recording dues had been listed in the purchasers' ledgers.
- 8.14 A number of ledgers reviewed contained multiple correcting entries without explanation which made it impossible to

follow the audit trail and to understand the circumstances. Examples were DB Executry, J M, S D, and GS.

- 8.15 No reconciliations were seen for Royal Bank of Scotland Client account, in respect of which the last available bank statement was issued on 1st April 2005. The Bank of Scotland client account was not reconciled either.
- 8.16 Balances for the following clients were not verified as at the quarter date 29th April 2005 and had not previously been verified quarterly: AA, AB, EC, Mr. & Mrs. C, JC & JW, Mrs. J R, LW, and DM. The last statements available for these clients were issued between March 2002 and March 2005. Very few of the firm's invested funds balances were verified at 29th April 2005.
- 8.17 No lists of balances were produced for the period between July 2004 and May 2005. Accordingly no quarterly reconciliations had been carried out over the previous year.
- 8.18 Royal Bank of Scotland statements were seen in respect of two separate investments for this client, as at 31st March 2004 and 1st June 2004 but nothing was listed in the ledger for the client at 31st May 2005. Closing statements were not available at the time of the inspection.
- 8.19 The statement for the Royal Bank of Scotland Account for these clients indicated that the account was closed on 11th April 2004 but the ledger continued to show a balance due of £18.99 at 31st May 2005. The Respondent suggested that this might be interest. On 27th May 2004 £3800 was paid into a Royal Bank of Scotland Account on behalf of these clients but no further information was given in the ledger. The Respondent believed that these funds had been invested and

subsequently uplifted but they had not been reaccredited to the client ledger. Despite the fact that the file for this client was closed on 9th August 2004 a balance of £100.36 remained on the ledger.

8.20 On 17th December 2004 Northern Rock PLC duplicated a payment of £18,500 in error. £18,500 was retained by the Respondent and was invested only on 11th May 2005. The funds were uplifted and returned to the society on 17th May 2005, some five months after their receipt.

8.21 Rule 11 (sums to be invested)

a) Funds belonging to Mr. AB in the sum of £151,905.50 had been received on 31st May 2005. As at the date of the inspection, the balance had reduced to £954.00 but no part of it had been invested.

b) Mr. & Mrs K had funds of £586.32 held by the Respondent as at 31st May 2005. A cheque had been issued to Property Works on 2nd September 2004, which had not been cashed and which had been cancelled but not re-issued. The funds had not been invested.

c) Mr & Mrs. McA had £57,119.82 held on their behalf by the Respondent from 27th May 2005 to the date of the inspection. The sum had not been invested.

8.22 A number of cheques payable to banks and building societies were not correctly designated with the account name, namely cheque paid to First National on 6th May 2005 in the sum of £9256.80 re client D; £89,618.15 paid to Bank of Scotland on 5th May 2005 re clients S & D; £8932.46 paid to Endeavour

Personal Finance on 22nd April 2005 re client M; £49,578.50 paid to Bradford & Bingley on 22nd April 2005 re client M; £20,526.34 paid on 18th April 2005 to Dunfermline Building Society re clients M & B; £27224.73 paid to Northern Rock on 15th April 2005 on behalf of client C; £33376.21 paid to Abbey National on 15th April 2005 re client McP; £75421.20 paid to Cheltenham and Gloucester on 15th April 2005 re Client McC and £32167.78 paid to Halifax PLC on 12th May 2005 re client A.

8.23 No letter advising client OS of a potential conflict of interest situation was issued. This also applied to Mr. & Mrs. T N and K J. In the case of SW and LMCL, letters were issued but the letters did not state that where a conflict of interest arose one or both parties would be required to seek separate legal advice.

8.24 Firm Trial Balance (as at 31st May 2005)

- a) The trial balance showed the firm's bank account with Nat West having a credit balance of £731.70 whereas the bank statement dated 3rd June 2005 showed a debit balance of £1264.93. The trial balance showed the firm's account with Bank of Scotland having a debit balance of £10,283.19 but the account had been closed in December 2005.
- b) The firm had another Bank of Scotland Account which was shown in the trial balance with a credit balance of £53.06 but this account had been closed in October 2004.
- c) According to the trial balance the firm had a mortgage with Bank of Scotland which was a liability of

£40,806.60 as at the date of 31st May 2005. In fact this account had been repaid in November 2004.

- d) The motor purchase account was shown as having a debit balance of £45,019.80 but the statement provided by Lombard showed the balance as being £50,307.87.
- e) No statement was available to vouch the office equipment purchase account with Lombard.
- f) The MBNA Credit card account was shown on the trial balance as having a debit balance of £4045.88 but the statement showed a balance due of £12369.77.
- g) The trial balance showed a figure due to Lloyds TSB Black Horse of £281.74 but the statement revealed that the sum due was £1616.46.
- h) A loan account with Royal Bank of Scotland was shown on the trial balance as £13,623.28 but the balance according to the statement was £14,416.68.
- i) There were other balances with Bank of Scotland (2) and MNBA Europe Limited but no statements were available to vouch these balances.
- j) The figure given in the trial balance relative to the Royal Bank of Scotland firm account as at 31st May 2005 was £57,599.60. The ledger figure per the bank reconciliation statement was £57,299.60.

8.25 At as the date of the inspection the records available to the inspector suggested that on 31st May 2005 there was a deficit

of £47,253.75 in the client account. The Respondent maintained that there appeared to be a deficit as a result of errors in the book-keeping and that there was in fact a surplus in the client account.

- 8.26 At the meeting of the Complainers Guarantee Fund Committee in August 2005 it was determined that there should be a reinspection of the books and records of the Respondent within a period of four months thereafter, at his expense.
- 8.27 On 13th September 2005, the Complainers' Guarantee Fund Director wrote to the Respondent reminding him that he had not until that point been able to produce evidence that there was indeed a surplus on his client account as at 31st May 2005. Between the date of that letter and 4th October 2005, the Complainers and Respondent engaged in correspondence. The Respondent was not able to indicate that there was a surplus in the client account. On 3rd October 2005 the Respondent sent a fax to the Complainers which disclosed a deficit on the client account of £16,436.07 as at 29th September 2005. On 4th October 2005 the Complainers Guarantee Fund director wrote to the Respondent requiring him to make good the deficit and provide evidence that he had done so. On 4th October 2005 the Respondent telephoned the Complainers and indicated that in his view the £16,000 deficit was not correct and that postings which required to be carried out would reveal a surplus. On or about 4th October 2005 the Respondent paid £20,000 into the firm which he borrowed from his father. The Complainers Guarantee Fund Committee met on 6th October 2005 and resolved that the Respondent's firm should be reinspected in early December 2005 at the Respondent's expense.

- 8.28 On 14th October 2005 the Respondent wrote to the Complainers. He stated that the postings were brought up to date to the end of September 2005 and a credit balance of £500 on the clients account had been verified. He maintained that steps were being taken to put his records on a proper footing, and he advised that his partnership with Alistair Blackwood at Renfrew had been terminated as of 6th October 2005. Although information was provided to the Complainers by the Respondent in a number of letters, as at 21st December 2005 a substantial number of enquires arising from the inspection of July 2005 remained outstanding. These were brought to the attention of the Respondent in a letter dated 21st December 2005, following upon the inspection next condended upon.
- 8.29 A guarantee fund inspector employed by the Complainers carried out a further inspection of the Respondent's books and records between 12th and 16th December 2005. The following was discovered:-
- 8.30 At the commencement of the inspection the client bank account had been reconciled only up until 30th September 2005. The reconciliation to that date was not however complete. Work carried out on the October client bank reconciliation during the days of the inspection visit identified transfers of £23,500 from the client bank account to the firm bank account which had not been posted. Only some postings were being made; others were being withheld. The withheld entries related to payments made where client funds were not available to cover the payments. As a result, the records did not show the true position in relation to the client account which appeared to be in deficit.

- 8.31 No identification was available for DR, AW, nor for an executrix (ML) in relation to the L executry.
- 8.32 The source of funds was not verified for the following:-
- a) TE, £12,250 received on 23rd November 2005
 - b) JTC and KME, £12,325 received on 30th September 2005.
 - c) AW, £7512 received on 30th September 2005.
 - d) DR, £18,694.22 received on 4th October 2005.
- 8.33 Mr & Mrs M's sale of Property 13 settled on 29th April 2004, A cheque was sent to the registers on 28th July 2004, was not cashed, was cancelled on 31st May 2005 and was not re-issued. This matter had been noted previously (paragraph 8.2(a)). The discharge remained unrecorded.
- 8.34 Miss K S purchased Property 14 on 30th June 2004 with the assistance of a loan from Northern Rock PLC. No recording dues were paid up until the date of the inspection and £851.00 had been held uninvested since 30th June 2004. The deeds remained unrecorded.
- 8.35 Mr A S purchased Property 15 on 25th July 2005 with the assistance of a loan from Birmingham Midshires. As at the date of the inspection no recording dues had been paid and £1097.00 was held on the ledger. The deeds remained unrecorded.
- 8.36 Mr. MMK and Miss S D purchased Property 16 on 30th September 2005 with the assistance from a loan from

Northern Rock PLC. AS at the date of the inspection no recording dues had been paid. The deeds remained unrecorded.

- 8.37 Mr. A MacD and Miss S MacL sold Property 17 on 30th September 2005. Their borrowings were redeemed on 14th October 2005 but no recording dues had been paid in respect of the discharge. The discharge remained unrecorded.
- 8.38 Mr & Mrs S S sold Property 18 on 2nd September 2005. Their borrowings were redeemed on 6th September 2005 but no recording dues had been paid on a discharge as at the date of the inspection. The same clients purchased Property 19 on 2nd September 2005 with the assistance of loan funds from Clydesdale Bank PLC. As at the date of inspection no recording dues had been paid in respect of either disposition or standard security. The deeds remained unrecorded.
- 8.39 Mr G S & Mrs L S sold Property 20 on 30th September 2005. On the same day they purchased Property 21 with the assistance of a loan from Alliance & Leicester PLC. Neither stamp duty nor recording dues had been paid as at the date of the inspection. The deeds remained unrecorded.
- 8.40 F and NF remortgaged Property 22 on 12th August 2005 on which date existing borrowings were redeemed and new borrowings from Bank of Scotland were drawn down. No recording dues had been paid as at the date of the inspection. The deeds remained unrecorded.
- 8.41 Miss A C sold Property 23 on 7th October 2005. Her borrowings were repaid on 18th October 2005. The free proceeds of the sale amounted to £75,625.17 were not paid over to the client until 20th December 2005 (after the date of

the inspection). No recording dues had been paid. The deeds remained unrecorded.

- 8.42 Mr & Mrs D sold Property 24 and purchased Property 25 on 31st August 2005. The discharge of the Halifax Loan which was redeemed on 31st August had not been recorded at the date of the inspection.
- 8.43 Mr & Mrs M & HA sold Property 26 on 20th October 2005 on which day their borrowings were redeemed. The recording dues had not paid as at the date of the inspection. The discharge remained unrecorded.
- 8.44 Mr R & Mrs J F purchased Property 27 on 7th October 2005 with the assistance of loan funds from Halifax PLC. As at the date of the inspection neither stamp duty nor recording dues had been paid. The deeds remained unrecorded.
- 8.45 M M & P M remortgaged Property 28. Loan funds were received from Alliance and Leicester on 25th October 2005. Existing borrowings were paid on 26th October 2005. At the date of the inspection no recording dues had been paid. The deeds remained unrecorded.
- 8.46 AM purchased Property 29 on 4th November 2005 with the assistance of loan funds. As at the date of inspection no recording dues had been paid. The deeds remained unrecorded.
- 8.47 JTC and KME purchased Property 30 on 30th September 2005 with the assistance of a loan from Alliance & Leicester PLC. As at the date of the inspection no recording dues had been paid. The deeds remained unrecorded.

- 8.48 AW purchased Property 31 on 30th September 2005 with the assistance of a loan from Birmingham Midshires. As at the date of the inspection neither stamp duty nor recording dues had been paid. The deeds remained unrecorded.
- 8.49 KG sold Property 32 on 2nd September 2005 on which date two secured loans were redeemed on her behalf. As at the date of the inspection no recording dues had been paid in respect of either. The deeds remained unrecorded.
- 8.50 B & CM sold Property 33 on 30th November 2005. On that date their secured borrowings were redeemed but as at the date of the inspection no recording dues had been paid. The deeds remained unrecorded.
- 8.51 R I purchased a property on 28th November 2005 with the assistance of a loan from Intelligent Finance. The ledger did not reveal the address of the property purchased. As at the date of the inspection no recording dues had been paid. The deeds remained unrecorded.
- 8.52 TE purchased Property 34, on 24th November 2005 with the assistance of a loan from Alliance & Leicester. As at the date of the inspection no recording dues had been paid. The deeds remained unrecorded.
- 8.53 BMcC remortgaged Property 35. Funds were received from Northern Rock PLC on 10th November 2005 and existing borrowings with Woolwich PLC were redeemed on 21st November 2005. As at the date of the inspection no recording dues had been paid. The deeds remained unrecorded.

- 8.54 In the case of HS the fee estimate seen in the file was £400 plus vat but the fee taken was £1200 and there was no evidence of a fee note having been rendered.
- 8.55 In the case of BM and CM the fee estimate provided to the clients was £400 plus vat. The actual amount taken was £605.13. There was no evidence of a fee note having been rendered.
- 8.56 Miss MB was given a fee estimate of £400 plus vat. On 10th November 2005 fees were taken of £663.88. The statement of account was not issued to the client until 15th November 2005. A charge of £22 appeared on the fee note in respect of a telegraphic transfer although no payment was recorded as having been made by that mechanism.
- 8.57 Fees in the sum of £822.50 were rendered to KG on 26th September 2005. No fee note appeared to have been rendered.
- 8.58 TG was debited with fees in the sum of £17,378.25 on 11th October 2005 and a further sum of £1186.75 on 7th December 2005. There was no evidence of any fee note having been rendered.
- 8.59 In the case of RI two payments were received from the client on 25th and 28th November 2005 amounting to £28,038. Fees were taken on 30th November 2005 in the sum of £528.75. There was no evidence of a fee note having been rendered. There was no evidence on file in relation to identification of the client or the source of the funds received.
- 8.60 In the executry of AH fees were taken in the sum of £1797.16 on 29th September 2005. There was no evidence of a fee note having been issued.

- 8.61 Mr & Mrs M H had fees debited in the sum of £1136.25 on 26th September 2005. There was no evidence of a fee note having been rendered to the clients.
- 8.62 The file in respect of Mr M and Miss S SL was closed on 17th June 2002. Fees of £271.96 were taken on 29th April 2005. No fee note appeared to have been rendered to the client and a balance of £11.00 was still held on the ledger account.
- 8.63 Month end bank reconciliations were not being carried out by the Respondent. The last reconciliation which was available as at the date of the inspection was for the end of September 2005. This was not completed to the correct month end balance, it having been brought down to 29th September 2005 whereas further entries were posted for 30th September 2005 after completion of the reconciliation. A number of old cheques (some of them out of date (being over six months old) were noted on the reconciliation to 30th September 2005 and there was an outstanding cheque in the sum of £49,420.81 from 5th August 2005. A list of the outstanding cheques was given to cashroom staff on the first day of the inspection with a request for the ledger prints to which the cheques related. These were not provided during the inspection. Postings were not up to date. They were not being made in correct chronological order. The bank reconciliation to 30th June 2005 showed a difference of £500 due to a bank error on 9th June 2005 which was not credited until 1st August 2005. No adjustment for this amount was seen on the bank reconciliation prior to 1st August 2005.
- 8.64 Many deficits were noted while completing the day book review. On 30th November 2005 the day book for that day reflected a shortage in the client account of £20,253.37. When

this was brought to the attention of the Respondent he produced further day books which demonstrated that a surplus was held as at the inspection date. The last day book produced by the Respondent, dated 9th December 2005, showed a surplus of £3230.43. A number of adjustments were noted on the client bank reconciliations for 30th September 2005 and 31st October 2005 which were provided during the period of the inspection which would alter surplus held. It was apparent from discussion with the cashier that postings were being delayed where insufficient funds were held to meet the payments.

- 8.65 A Bank of Scotland Client Account with a credit balance of £2121.54 and a Royal Bank of Scotland Client Account with a balance of £82.57 was shown in the firm trial balance of 30th September 2005 although at previous inspection it had been confirmed that both of these accounts had been closed. The firm's trial balance as at 30th December 2005 revealed partners' drawings of £312,004.74 but these included previous year's drawings.
- 8.66 The firm's bank account had last been reconciled on 30th September 2005.
- 8.67 A Nat West account showed a balance overdrawn on the trial balance as at 30th November 2005 of £3319.95 whereas the last available statement (18th November 2005) revealed it to be overdrawn by only £934.78. The firm bank account with Bank of Scotland was shown in the trial balance for 30th November 2005 as having a credit balance of £10,283.19, the account having been closed in December 2004. This had been noted at the previous inspection. A Royal Bank of Scotland firm account with a small balance of £53.05 was shown on the

trial balance condescended upon. This account had been closed in October 2004.

- 8.68 Bank of Scotland Mortgage Account in the sum of £39,699.47 appeared on the trial balance for 30th November 2005. A closing statement for 9th November 2004 revealed a nil balance on this account. This had been raised at the previous inspection.
- 8.69 A Royal Bank of Scotland account was shown on the trial balance as having a credit balance of £14,333.19 whereas the statement as at that date revealed a balance of £10,258.82.
- 8.70 A further Bank of Scotland Loan Account showed a balance of £10,562.18 in the trial balance for 30th November 2005 whereas the statement showed a figure of £14,270.22. There were twelve separate firm account balances showing substantial liabilities in respect of which no vouching was available.
- 8.71 The firm trial balance for 30th November 2005 showed cash in hand of £5526.60 although only a small amount of cash was held.
- 8.72 A Nat West Loan account statement was found showing a balance due of £105,000 but this was not recorded within the firm's records.
- 8.73 Miss G C purchased Property 36. The transaction settled in June 2005. It appeared that the recording dues on the disposition and the standard security were unpaid. Subsequent enquiries revealed that the Respondent acted for the seller as well as the purchaser and the payment of recording dues had been wrongly entered in the sale ledger.

- 8.74 On examination of a ledger in relation to CB in connection with a re-mortgage, a credit balance of £36.27 was taken to the firm on 26th October 2004. An entry was made in the ledger to cancel a cheque to the keeper for £33.00 on 2nd June 2005. The original cheque was not posted and it appeared that the deeds were unrecorded. In fact it was subsequently established that the credit balance related to a refund of recording dues which should have been refunded to the client. This was duly done after the inspection.
- 8.75 £1023.95 was held on behalf of JJ. A query had been raised in the July inspection regarding the uplift of this sum when the Respondent confirmed that a fee was taken in error in this ledger and that it had been cancelled and the funds reinvested. The funds were still held uninvested.
- 8.76 Mr. & Mrs D F had funds of £74,267.81 arising from the sale of a property which had been held uninvested from 1st November 2005 until the date of inspection.
- 8.77 SG and AL sold property which generated free proceeds of £89175.76 which had been held uninvested since 18th October 2005.
- 8.78 In the executry of JDS £70,953.23 was received from Royal Scottish Insurance on 18th November 2005 and £17651.58 was received from the same source on 25th November 2005. As at the date of the inspection these funds remained uninvested.
- 8.79 Mr. & Mrs. A J sold Property 37 on 9th September 2005 generating proceeds of £1431.75 which had been held uninvested since that date.

- 8.80 Mr. & Mrs. K had a balance of £561.32 held uninvested from 31st May 2005. This had been brought to the attention of the Respondent at the previous inspection but still remained uninvested.
- 8.81 I N sold property on 2nd September 2005 since which date £1363.04 had been held uninvested by the Respondent.
- 8.82 Mr R & AN remortgaged property on 8th July 2005. Since that date £599.88 had been held uninvested.
- 8.83 Ms L D purchased property on 9th August 2005 since which date £1178.62 had been held uninvested on her behalf.
- 8.84 In M B's executry £2193.56 had been held uninvested since 28th October 2005.
- 8.85 P & CD had a balance of £3158.88 in their ledger which had been held uninvested since 28th July 2005.
- 8.86 Mr. & Mrs. AB had a balance of £503.32 in their ledger which had been held uninvested since 10th August 2005.
- 8.87 Mrs. E D had £11,218.25 in her ledger which had been held uninvested since 30th September 2005.
- 8.88 MF had £772.80 on his ledger which had been held uninvested since 24th June 2005
- 8.89 Mr MA and Mr. IA were clients on whose behalf £54866.73 had been held uninvested since the 3rd November 2005.

- 8.90 R H and Mrs. KH had a remortgage transaction which settled on 14th October 2005. Since that date £1016.37 has been held uninvested on the client ledger.
- 8.91 Mr. & Mrs. L A had a transaction which settled on 30th September 2005. The free proceeds were not paid out until 4th November 2005 (although the cheque was dated 31st October 2005) and during that period the funds had remained uninvested.
- 8.92 No reconciliation of invested funds was being carried out by the firm at quarter ends. This had previously been brought to the attention of the Respondent at the July inspection but no remedial steps had been taken.
- 8.93 As at the date of the inspection no statement for Mrs. J R was available from Lloyds TSB.
- 8.94 Mr & Mrs A S had funds invested with the Respondent in the Royal Bank of Scotland account opened 23rd September 2005 which was not posted until 10th October 2005 and therefore did not appear on the list of invested funds as at 30th September 2005.
- 8.95 An Abbey statement was seen in relation to Company 1 and Mr B. The Respondent confirmed that this was an invested funds account but it was not recorded within the firm's records.
- 8.96 A number of cheques made payable to banks and building societies were noted which were not correctly designated with the account number on the payee line as required by the rule.

- 8.97 In the case of AW and MM/SD an inter client transfer was made on 30th September 2005 in the sum of £49,750.00. There was no conflict of interest letter as required by Rule 5 of the 1986 Practice Rules on either file.
- 8.98 The sum of £3379.04 was still held in a suspense ledger having previously been brought to the Respondents attention in July 2005. This still had not been dealt with.
- 8.99 The sum of £79,575 was received on 16th August 2005 and posted on 31st August 2005 to a ledger “miscellaneous unknown clients”. The entry detailing this read “unsure what matter it relates to” On 13th September 2005 the funds were returned to the Alliance & Leicester by Chaps payment. Enquiries suggested that the funds related to clients D & L H but they were not posted to them.
- 8.100 The Complainers wrote to the Respondent on 21st December 2005 detailing the matters in respect of which they required further information or clarification in respect of the December 2005 inspection. Under separate cover they wrote to him on that date reminding him of the outstanding correspondence in relation to July 2005 inspection as hereinbefore condescended upon.
- 8.101 In the light of the findings of previous inspections the Complainers resolved to re-inspect the Respondents’ books and records on 16th and 19th January 2006. The work undertaken on this occasion did not amount to a full inspection of the Respondent’s books and records. Rather, the scope of the inspection was limited to ascertaining the current position as regards remedial work to bring the Respondent’s records up to date and to show the true position of the practice in relation to both the client and the firm accounts. It was

noted that a substantial amount of work had been carried out to reconcile and post the entries arising from the client bank. The remaining difference was £67.70. The Respondent undertook that he would investigate this.

- 8.102 On 16th January 2006 the records as they then stood disclosed a deficit on the client account of £15,178.53. There were entries still to be processed and the December month end had not been closed off. It was anticipated that January entries not yet posted would clear the deficit. It appeared to the inspector that it was a correct statement.
- 8.103 The day book for 17th January 2006 showed the deficit of £1056.49. On 19th January a bank pay in slip was exhibited to demonstrate that £5000 would be paid into the client account to rectify the position.
- 8.104 It was noted that the Royal Bank of Scotland was making regular and substantial transfers from the client account to the firm account. Letters from the bank were seen which listed the sums taken and requested a signature as retrospective authority. The letters suggested that the transfers were made at the instigation of the bank and at times when the firm's overdraft limited was exceeded. The Royal Bank of Scotland subsequently confirmed in writing that they would not transfer funds from the client account to the firm account without authorisation from the Respondent.
- 8.105 A review of records on 19th January 2006 demonstrated a difference between the client credit balances used in the surplus calculation and that disclosed by the list of balances which amounted to £342.03. The Respondents' software suppliers were examining the reason for that.

- 8.106 Invested funds had not been reconciled and no up to date confirmation of balances was held. The firm bank accounts also required to reconcile the postings were required to update the records. The trial balance did not show the true position in relation to several matters and was not up to date in relation to firm bank transactions. The Respondent stated that he would in future undertake only estate agency work, and that all new conveyancing business would be referred to another firm.
- 8.107 A further inspection was carried out between 11th and 14th September 2006. The following matters were noted: -
- (a) The day book and surplus statement available for the month ending 31st August 2006 showing a deficit position of £2,736.11. Further deficits were shown in the day books 1st September (£790.17), and 2nd September (£3,770.54). The last posted day book for 6th September 2006 showed a surplus of £2,012.98. The books and records of the firm could not be relied upon to reflect the true position as many adjustments required to be posted and the records were not up to date at the date of inspection. A large number of postings were made on 28th August 2006; some of which related to transactions in June.
 - (b) Sums continued to be transferred from the client account to the firm account on a regular basis. In the period between June to August 2006, 18 such transfers were noted, of which 13 were not posted until 28th August 2006. The sums transferred ranged from £1,000 to £7,000 and totalled £63,500 in the three month period. Of those sums posted on 28th August 2006, £11,000 related to June, £18,500 to July and

£17,500 to August. A transfer of £2,000 was processed by the bank on 1st September 2006 even although the records of the firm show a deficit of £790.17 at that date.

- (c) The books and records of the firm were not being kept up to date. There were many incorrect posting dates and posting errors. The last posting date on the system was 6th September 2006. A cheque for £270,000 (Client B, cheque number 10442) which was issued on 24th August 2006 remained unposted at the conclusion of the inspection on 14th September. As previously condoned upon a large number of postings were made retrospectively.
- (d) The trial balance still did not show the correct liabilities for the firm. The position as at 31st May 2006 still had not been rectified.
- (e) Bank reconciliations were still not being carried out at each month end. Although reconciliations were provided at the inspection date to 31st August 2006 the last reconciliations prior to that were as at 31st May 2006. Many missed postings and errors were highlighted on the bank reconciliation as at 31st August 2006. Some had been carried forward from the previous reconciliation as at 31st May 2006.
- (f) There were outstanding lodgements of £10,700 from 19th January 2006, £2,000 from 19th January 2006 and £6,385.74 from 4th May 2006 which had not reached the client bank account. The Complainers believe and aver that the funds were not banked. The surplus was accordingly overstated by £19,085.74.

- (g) Cheques issued dating back as far as June totalling £20,232.85 which had cleared through the bank had not been posting in the firm's accounting records.
- (h) Incorrect posting dates were seen within the records of the firm. On three occasions sums of £80,030, £89,000 and £70,995 were posted one day, one day and seven days respectively prior to the funds being received into the client bank account. No shortages were caused on these occasions. There were however, continuous breaches of Rule 4 where funds were paid out prior to being received into the client account and where client funds received were not banked timeously.
- (i) The verification of invested funds balances was not being obtained at the quarter end dates. Neither were the invested funds being reconciled at the quarter ends.
- (j) In the case of S, Purchase of Property 38, no address was shown on the ledger in breach of Rule 8. The same ledger included transactions relative to the sale of the property by Mr. A S, believes to be the client's brother. No identification was seen in file for A. S.
- (k) In the case of Mr. and Mrs. B, an unspecified portion of the purchase price of £34,183.87 was received in case and there was no indication as to any steps having been taken regarding the identification of the source of funds.

8.108 Part II of the Legal Aid (Scotland) Act 1986 as amended provides, subject to Regulations made thereunder, that a

solicitor registered with the Scottish Legal Aid Board for that purpose may provide legal advice and assistance to clients who qualify financially according to the Act and Regulations and receive payment out of the public funds administered by the Board. Such advice and assistance is immediately available once the application form is completed and the first instalment of any contribution assessed as being due by the client has been paid. There is no need for any assessment of eligibility by the Board or by any other body. The grant of advice and assistance is made by the solicitor himself and registered by him with the Board to whom application for payment is made by the solicitor, normally at the conclusion of the subject matter of the advice and assistance.

8.109 On 17th December 2002 the Respondent granted an application for advice and assistance completed by Ms C, then aged seventeen years, who gave as her address at Property 39. Ms C was an employee of the Respondent and her mother was the Respondent's then current partner. The Respondent, Ms C, and her mother all lived at Property 39, aforesaid. The subject matter of the advice and assistance was stated to be "Benefits – Discretionary Housing application and Lease." The file note recorded attendance with Ms C, taking details regarding her proposed lease of subjects at Property 40, assisting with completion of lease, etc.

8.110 On 20th December 2002 the Respondent applied to the Board for an increase in authorised expenditure. In support of that application he stated:

"We will require to examine the client's lease on the basis of short assured tenancy and thereafter to provide information in respect of Discretionary Housing payment in view of her limited income. Client has also requested information on a pre

lease review from the Housing Department in order to ascertain an indication about the rent payable on her proposed let.”

(A request for a pre tenancy determination was submitted to the council who were unable to deal with it as Ms C did not have access to the subjects. A further such request was submitted on 7th January 2003 in which the referred rent was £494 per calendar month but this was withdrawn at the suggestion of the local authority because Ms C would not have access to the property until the end of January 2003.)

8.111 The application for an increase in authorised expenditure was refused by the Board. On 8th January 2003 the Respondent asked the Board to reconsider that decision. He stated that Ms C was aged seventeen years and pregnant, that she had identified a flat suitable for her purposes but due to her age only a proportion of the rent would be paid by way of housing benefit, and that it was therefore necessary to give advice about Discretionary Housing Benefit which was limited in availability and somewhat complex. That increase application was also refused by the Board as it was considered that the Respondent had sufficient authorised expenditure and there were other agencies available to assist.

8.112 The Respondent obtained an application form for Discretionary Housing Benefit which was completed by Ms C and signed by her on 20th February 2003. In it she said that she had fallen out with her mother and had gone to live with her boyfriend. When she became pregnant she was asked to leave and she returned to her mother's home while she looked for rented accommodation. She had borrowed the deposit and the first month's rent which she required to pay in advance. She had only become eligible to receive Income Support, in the amount of £32 weekly, from 31st January 2003. She stated that she was

worried that if the rent was not paid she would be evicted and therefore required Discretionary Housing Benefit to resolve the situation. The baby was due to be born in June. The Respondent wrote to the council enclosing the application and stated that he had assisted Ms C in drafting the application.

8.113 On 24th February 2003 the Respondent made two further grants of advice and assistance in respect of Ms C. The first of these recorded the subject matter as debt/council tax. There were two bills for council tax within the Respondent's file. Both were addressed to the Respondent rather than to Ms C. The file note records the following:-

“With client confirming her eligibility for Advice and Assistance and noting that in view of her receipt of Income Support she should not have been issued with a statement of demand from Glasgow City Council. Client is currently pregnant and we will be advising separately in relation to her debt matters and housing situation. Taking details of her current circumstances (she required to leave her boyfriend's home recently after the relationship with his mother broke down badly) and noting that we would contact Glasgow City council as a matter of urgency. Mr Sykes contacted the council and it was confirmed Ms C's liability for council tax was nil.”

8.114 The second grant recorded the subject matter as Notice to Quit and application for alternative accommodation. A copy of the application for housing, completed entirely by Ms C was retained within the Respondent's file. Ms C stated in that form that she had left her mother's house in August 2001, that she was estranged from her parents, and that she had lived at the home of her grandmother until January 2003. The Respondent's file note states:-

“MGS meeting with Ms C taking full details of her requirement to apply for Housing Association property. In view of her age she is unable to live at her current address and claim benefit as a result of her boyfriend having employment. Ms C is pregnant and wishes to reside with her boyfriend although this is not possible financially at her current home. A Notice to Quit has been served and assistance was provided in connection with completing the appropriate housing application form.

8.115 Despite the terms of the file note, the notice to quit was not sent to Ms C until 11th March 2003. The grounds mentioned in the notice related to non payment of rent.

8.116 On 5th March 2003 the Respondent wrote to the council to enquire whether an award of Discretionary Housing Benefit had been made. Also on 5th March 2003 the Respondent wrote to the council to advise that certain items which should have been in Property 40 (a fridge, washing machine, wardrobe and chest of drawers) but were not when the council had carried out their inspection, had now been made available to Ms C.

8.117 The Respondent met Ms C on 2nd April 2003. The file note is in the following terms:-

“Advising her that the landlord has confirmed that the landlord has confirmed that he would not repossess in view of her current medical condition and that it would be in order for her to stay.”

8.118 At all material times the owner of the premises at Property 40, and the landlord thereof, was the Respondent. He accordingly had a personal financial interest in procuring payment of Discretionary Housing Benefit for Ms C who was to be his tenant. To that extent and to the extent that he gave advice to

Ms C about her housing situation, he was acting in circumstances where a clear conflict of interest existed.

8.119 The Respondent subsequently submitted claims for payment to the Scottish Legal Aid Board in respect of the advice given to Ms C condoned upon. The claims were rejected by the Board and were later withdrawn by the Respondent. The making of the claims involved the completion of a *pro forma* certificate in the following terms:

“I certify to the best of my knowledge that the items charged in this account are accurate and represent a true and complete record of all the work done; that all the work done was carried out by the solicitor unless otherwise stated in the account and that the person carrying out the work was not engaged in any other business at the time and place except as apportioned in the account.”

8.120 The declaration in the foregoing certificate was inaccurate in the following respects (a) it implied a representation that the landlord was a third party (b) it implied a representation that the documentation relative to the lease or tenancy had been prepared otherwise than by or on behalf of the Respondent (c) it implied a representation that the Respondent was negotiating with and reporting back to Ms C the views of a third party landlord (d) it implied a representation that the Respondent had no personal financial interest in the subject matter of the advice (e) it implied a representation that the Respondent was not acting in a situation where a conflict of interest existed, particularly one which involved the Respondent himself.

8.121 Reference is made to complaint no. DC/07/11/M for the previous history of guarantee fund inspections of the Respondent's practice. A guarantee fund inspector employed

by the complainers carried out a further inspection of the Respondent's books and records on 22-24 January 2007. Although the client bank account was in surplus at the inspection dates, it had regularly been in deficit in the period prior to the inspection. In four cases (ALTE1/1, MCC29/1, BUTT3/1 and AHME9/1) there was a failure either properly to identify the client or to verify the source of funds. The firm trial balance still did not show the true financial position of the firm; payments were being made of loans which were not recorded within the firm's trial balance. The client bank account reconciliation contained many out of date cheques. No invested funds reconciliations were being carried out as required by the rules. Sums which should have been invested to gain interest for clients had not been so invested. Terms of business letters did not reflect fees actually charged nor did they accurately reflect the work being carried out.

9. Having considered the foregoing circumstances and heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct singularly and in cumulo in respect of:
 - 9.1 His unconscionable delay in recording deeds.
 - 9.2 His failure to keep the books of his practice properly written up in breach of Rule 8 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Funds Rules 2001.
 - 9.3 His failure to designate cheques as required by Rule 6 of the said Rules.

- 9.4 His taking fees before fee notes were issued in breach of Rule 6 (1) (d) of the said Rules.
 - 9.5 His failure to carry out monthly reconciliations of his client's bank account as required by Rule 9 of the said Rules.
 - 9.6 His charging excessive fees or fees for work which had not been carried out.
 - 9.7 His failure to comply with the Money Laundering Regulations 1993.
 - 9.8 His failure to carry out quarterly reconciliations of invested funds as required by Rule 10 of the said Rules.
 - 9.9 His failure to invest funds held for clients as required by Rule 11 of the said Rules.
 - 9.10 His failure to issue conflict letters as required by Rule 5 of the Solicitors (Scotland) Practice Rules 1986.
 - 9.11 His acting in a situation where there was a conflict of interest between him and his client, and where he had a personal financial interest in the subject matter of the advice given.
 - 9.12 His attempt to obtain payment from the Scottish Legal Aid Board by misrepresentation.
 - 9.13 His continued failure to obtemper the Solicitors (Scotland) Accounts (etc) Rules 2001 in relation to his practice.
10. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19th December 2007. The Tribunal having considered the Complaints dated 5th March 2007 and 29th June 2007 at the instance of the Council of the Law Society of Scotland against Meridith Graham Sykes, Solicitor, 25 Newton Place, Glasgow; Find the Respondent guilty of Professional Misconduct singularly and in cumulo in respect of his unconscionable delay in recording deeds, his failure to keep the books of his practice up to date, his failure to designate cheques, his taking of fees before fees notes were issued, his failure to carry out monthly reconciliations of his firm's clients' account, his charging of excessive fees or fees for work which had not been carried out, his failure to comply with the Money Laundering Regulations 1993, his failure to carry out quarterly reconciliations of invested funds, his failure to invest clients' funds, his failure to issue conflict letters, his acting in a situation in which there was a conflict of interest between him and his client where he had a personal financial interest in the subject matter of the advice given, his attempt to obtain payment from the Scottish Legal Aid Board by misrepresentation and his continued failure to obtemper the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 in relation to his practice; Censure the Respondent; Fine him in the sum of £2,500 to be forfeit to Her Majesty and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any Practising Certificate held or to be issued to the Respondent shall be subject to such Restriction as will limit him to acting as a qualified assistant to and to being supervised by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least three years; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity

will be given to this decision and that this publicity should include the name of the Respondent.

(signed)
Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

Mr Lynch moved to amend both Complaints. The Tribunal allowed the amendments. Mr McCann then indicated that the Respondent tendered pleas of guilty to both Complaints as amended. Accordingly there was no requirement to lead evidence. Mr McCann indicated that there had been last minute negotiations in this case and sought leave to lodge three letters of reference. The Tribunal agreed that the letters could be lodged.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch explained the reason that there were two Complaints was that the information in relation to the second Complaint came to light only after the first Complaint had been lodged. Mr Lynch stated that he wished to make clear that in relation to the reference to misrepresentation in Article 5 (1) (b) of the second Complaint that there was no suggestion that the work was not done. The position is that the work should not have been done in the first place. Mr Lynch acknowledged the assistance of the Respondent in agreeing the facts.

SUBMISSIONS FOR THE RESPONDENT

In relation to the first and main Complaint dated 5th March 2007, Mr McCann explained that the Respondent's failures arose as a result of sudden staff shortages and the illness of the Respondent. He stated that the Respondent had run a very busy conveyancing practice for sixteen years without significant difficulties either with the Law Society or anyone else. The Respondent's difficulties began in the spring of 2005 before the Law Society inspection. Mr McCann submitted that these were unusual circumstances and an example of how competitive the conveyancing business now is. The Respondent's competitors headhunted his staff and several key members of his staff left at the same time. Following their departure the cashier realised the difficulties the firm was in and also left, in this case to go to a separate firm. The Respondent was therefore left with a very busy practice and lots of obligations. When he managed to replace staff, the new staff he brought in made further mistakes which

is confirmed by the third letter of reference from a chartered accountant who had assisted the Respondent.

Mr McCann stated that after the first inspection there was regular correspondence between himself, the Respondent and the Complainers. Although the case was heading for prosecution, the Complainers elected to allow the Respondent time to rectify matters. Progress was very slow but the position was almost resolved by 31st October 2007. At that stage the Respondent had only three outstanding balances from over a thousand files. He transferred those balances to another firm and by the end of October the Law Society was satisfied that all matters were resolved and that there were no guarantee fund claims outstanding. The Respondent undertook that he wouldn't renew his practising certificate and would take time out of the profession after the stresses of resolving the difficulties with his practice.

Mr McCann stated that there is no suggestion of dishonest behaviour in the first Complaint, all that was alleged was disorder. Mr McCann urged the Tribunal to take into account the Respondent's previous good conduct and the work that he has carried out to resolve matters. He asked the Tribunal to accept that the more severe sanction of striking off or a suspension need not be applied in this case. He urged the Tribunal to impose some sort of restriction to allow his client to return to practice in future in view of the fact that he is a comparatively young man.

In response to a question from the Tribunal, Mr McCann confirmed that the Respondent's business was wound up and the Respondent has not renewed his practising certificate. Mr McCann stated that the Respondent has no income at present and that he would be looking for work.

In relation to the second Complaint, Mr McCann advised that this dealt with two separate matters, firstly the guarantee fund averments which arose out of the same picture he had just described. The second aspect of the Complaint arose out of the advice given to Ms C. Mr McCann advised that the Law Society had already resolved this Complaint. It arose from the Respondent operating an advice and benefits clinic. The Scottish Legal Aid Board (SLAB) raised an issue with claims he made in 2003. Mr McCann stated that on his advice, the Respondent withdrew the advice claims

which had been challenged by the SLAB. Mr McCann advised that the Respondent had acted where he should not have done. Thereafter a complaint was made by the SLAB which the Law Society carefully examined, appointed a reporter and referred the matter to the Client Relations Committee and then to the Professional Conduct Committee. The Law Society then determined the Complaint saying that the conduct was unsatisfactory and that it would be marked on the Respondent's record for five years. What happened then was that SLAB was not happy with this disposal and referred to the matter to the Ombudsman. The Ombudsman then advised the Law Society that the matter should be reopened. Mr McCann stated that he took Counsel's opinion as to whether this matter could come before the Tribunal and was informed that there is nothing in the Tribunal Rules to prevent this aspect of the complaint being considered.

Mr McCann advised that the circumstances were that Ms C was the daughter of the Respondent's partner. At the time the Respondent ran a specialist benefits advice agency. Ms C was the tenant of one of his properties. She was pregnant and had moved out of the one bed roomed flat in order to obtain a larger property. She required a notice to quit to demonstrate that the previous tenancy had ended. Mr McCann submitted that the Respondent made a mistake; he should not have given her advice because of the family relationship. The Respondent accepts that he acted when he should not have done but he withdrew the claims immediately when the matter was raised with him. Mr McCann submitted that in deciding upon sanction the Tribunal should take account of the fact that the case was already dealt with by the Complainers and a finding of unsatisfactory conduct was marked on the Respondent's record. In conclusion Mr McCann submitted that the Tribunal should recognise that the Respondent had immediately withdrawn his claims and after the action taken by the Society had every reason to expect that he had been dealt with for his unsatisfactory conduct.

DECISION

The Tribunal considered both parties submissions and the documentation which had been lodged. The Tribunal took into account the fact that the Respondent had co-operated with the Law Society in sorting out all the problems arising from his practice and had finally managed to close his practice without any claims on the Guarantee

Fund. The Tribunal also took into account the Respondent's previous good conduct and the particular difficulties which he found himself in with regard to staffing. The Tribunal also noted that the Respondent's failures arose out of disorganisation rather than dishonesty. However given the range of failures over a considerable period the Tribunal had no hesitation in finding that the Respondent's failures amounted to serious and reprehensible conduct. The accounts rules and other professional practice rules are there to protect the public and failure to comply with these is damaging to the reputation of the profession. The Tribunal was of the view that the Respondent must be supervised for a considerable period of time in order that he can gain experience whilst supervised and demonstrate that he can comply with all necessary requirements. The Tribunal therefore decided that it is necessary for the protection of the public to restrict the Respondent's practising certificate for an aggregate period of three years.

In considering the second Complaint the Tribunal decided that in relation to the claim made to SLAB an additional sanction of a fine was appropriate. The Tribunal was of the view that the Respondent should have recognised the obvious conflict of interest and should never have compounded that error by submitting a claim to SLAB for the provision of that advice. Accordingly the Tribunal considered that a fine of £2500 should be imposed. The Tribunal made the usual order for publicity and expenses.

Chairman