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

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND

against

MICHAEL LOUIS KARUS, Solicitor, 72 St Stephen Street, Edinburgh

1. A Complaint dated 4th August 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Michael Louis Karus, Solicitor, 72 St Stephen Street, Edinburgh (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 by the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard firstly on 8th December 2004, thereafter on 17th February and then on 15th March 2005 and notice thereof was duly served on the Respondent.

On 8th December and 17th February the case was adjourned on the motion of the Respondent who was not ready to proceed. On 15th March the case was adjourned to 12th April 2005 on the motion of the Complainers because the Respondent had lodged 15 pages of answers just before the hearing date.

4. When the case called on 12th April 2005 the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. The Respondent was not present but was represented by his solicitor, Mr M. Foster, Solicitor, Edinburgh.

5. A Joint Minute of admissions was lodged admitting the terms of the Complainers productions which obviated the requirement for witnesses to give evidence.

6. After hearing submissions from both parties the Tribunal found the following facts admitted or proved:

6.1 The Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 4th May 1961. He was admitted on the 14th and enrolled on the 25th both days in November 1986. The Respondent formerly carried on business as a Partner in the firm of Karus & Company, Solicitors, 14 Gloucester Place, Edinburgh. He became a Partner on 6th April 1987 and

became a sole practitioner on the death of his father in May 2001. He ceased to be a sole practitioner on 14th December 2001.

6.2 Karus & Company

The Respondent's Practising Certificate was restricted by the Scottish Solicitors' Discipline Tribunal preventing him from acting as a principal in private practice for a period of 5 years on 23rd May 2001. He appealed against said decision. The Hearing of the Respondent's Appeal was originally fixed for 25th October 2002. In light of that date, the Respondent formed the intention of continuing in practice until the end of his financial year, of then selling his business, of continuing with the Appeal as a matter of principle only, and of resigning from the Roll of Solicitors. On Wednesday 5th December 2001, the Respondent learned that there were attempts to accelerate the hearing of his Appeal, initially to a date later in that same week; the offer of a date later in that same week was rejected by the Respondent, on the basis that Senior Counsel, who had been instructed throughout the case, would not be available and because there would have been insufficient time for preparation. The Hearing fixed for 25th October 2002 was accelerated to 14th December 2001. A Motion to discharge that diet was rejected on

11th December 2001. On 13th December 2001 the Respondent withdrew instructions from Senior Counsel on the basis that, during a consultation that day, it was made clear that Senior Counsel would not be able to deal with the case on 14th December 2001 and new Counsel would need to be instructed. New Counsel was instructed that same day, but instructions were accepted only on the basis that Counsel would have to withdraw if the Court would not permit sufficient time for preparation. On 14th December 2001, the Court (on the motion of the Law Society) refused an adjournment to allow preparation and, thereafter, a separate Motion to adjourn for six weeks only to permit the Respondent to wind up his affairs and transfer his business during which period the Society would hold a duly executed Joint Minute consenting to dismissal of the Appeal or a Minute of Abandonment. In consequence, Counsel for the Respondent withdrew and Senior Counsel for the Society then moved the Court to dismiss the Appeal for want of insistence, which Motion was granted. Between 14th December 2001 and 28th February 2002, in the knowledge of this the Respondent continued to operate as a sole practitioner. Between those dates, he continued to operate the client account of Karus & Company, Solicitors. In that period, he made

intromissions from the client account of over £500,000. The Respondent believed that he was permitted to continue in practice until the Interlocutor of the Court was issued to him and that he was allowed an informal period of 6 weeks grace. He was made aware that this was an erroneous belief by the Complainers shortly after 14th December 2001. Although, technically, the Respondent operated the business of Karus & Co from 14th December 2001 until 28th February 2002, in fact the business was closed for holiday from 20th December 2001 until 11th January 2002 inclusive, so that the business re-opened on Monday 14th January. Apart from the factor of the status of the Respondent during the period 14th December 2001 until 28th February 2002, there was nothing sinister or untoward in the intromissions from the client account during that period. From Monday 17th December 2001 the Respondent, through agents, was in correspondence with the Society about the best method of resolving all issues arising from the disposal of his Appeal. He voluntarily provided the Society with records.

6.3 On 1st March 2002, Mr B & Company, Solicitors, assumed operation of the bank accounts of Messrs Karus & Company, including the client account.

6.4 Inspections 2002-2003

The Complainers attended to inspect the books of Messrs Karus & Company between 21st and 24th May 2002 inclusive. The Complainers found the Respondent's books to be in disarray. On several occasions between 20th December 2001 and 10th January 2002, there was a deficit on the client account ranging between £58,775.08 and £62,322.61. An analysis of the prints alone disclosed movement on client ledgers between 14th December 2001 and 28th February 2002 when the Respondent's Practising Certificate had been restricted and there was no principal.

6.5 The Complainers established that the Respondent had acted on behalf of Mr and Mrs A in relation to the sale of Property 1 and the purchase Property 2. He received a cheque for £138,500 from Murray Beith & Murray, acting for the purchaser of Property 1, for settlement on 20th December 2001. The transaction proceeded but the cheque was not banked until 11th January 2002 contributing to the shortage on the client account. The cheque was not received before the Respondent's office closed on Thursday 20th December 2001.

6.6 The Respondent failed to produce a bank reconciliation in relation to his client account to 14th December 2001

or as at 28th February 2002. The Respondent used the 5th day of each month to do reconciliations. The computerised list of the balances for the relevant period did not reconcile with the handwritten list of client balances. The two lists were complementary and not intended to reconcile with one another. There was no client list of balances as at either 14th December 2001 or 28th February 2002.

6.7 On 28th June 2002, the Complainers suspended the Respondent's Practising Certificate in terms of Section 40 of the Solicitors (Scotland) Act 1980 and on 1st October 2002, required him to makeover all his books and accounts and other material as specified in Section 38 of the said Act to their Compliance Officer.

6.8 In view of the disarray of the records of the former firm of Karus & Company, a final inspection was arranged to ensure proper accounting records had been produced to prove the surplus position of the firm. The Respondent's mother, who acted as Cashier, had made a large amount of postings, many of which were backdated through the client ledger, thus greatly reducing the credit balance position as at 31st July 2002. The Respondent was asked to have the records brought fully up-to-date by an Accountant and Mr B was fully aware of the position. The Accountant corresponded

with the Complainers until a Judicial Factor was appointed. Prior to an inspection on 2nd August 2002, Mr B contacted the Complainers to seek permission to pay the Respondent the sum of £70,000 from the surplus showing on the client bank. He was advised by the Chief Accountant and also by Ms E of the Interventions Department that on no account must he do so until the surplus position could be proved. He stated that he would be able to make good the £70,000 should this be required at a later date. The surplus position had arisen due to the Respondent's practice of not taking fees at the time business was concluded leaving credits in the client account. The Complainers were of the view that as at 31st July 2002 funds in the client bank were approximately £130,000 and balances to be covered were approximately £42,000 but this had still to be verified.

6.9 When the Complainers attended for inspection in January 2003, it was ascertained that when Mr B or Mr C, the cashier, had refused to pay this sum over to the Respondent, the Respondent on or about 6th August 2002, obtained a Bank of Scotland cheque on which he inserted the Karus & Company, Solicitors' client account number 00568586 by hand and made payable to his mother Mrs F in the sum of £70,000. Said cheque

was presented for payment and paid out of the Karus & Company Client bank account. Mr B did not authorise this transaction and did not advise the Complainers that it had taken place when he discovered it. The Respondent took the view that the funds were actually due to his mother as beneficiary of the estate of his late father. He required the funds for the purchase of his mother's house due to settle on 11th August 2002.

6.10 Mr D

By letter dated 17th September 2001, the Respondent's client, Mr D, invoked the aid of the Complainers in relation to concerns about a service provided to him by the Respondent. Correspondence was entered into between all parties and the Respondent and thereafter, on 27th June 2003, the Complainers determined that the Respondent had provided an inadequate professional service to his client. They further determined in terms of Section 42A(2)(d) that he should pay to the client compensation in the sum of £500.

6.11 The Determination was intimated to the Respondent by letter dated 17th July 2003 and by formal intimation with details of his right of appeal on 18th July 2003. The Respondent entered into correspondence with the Complainers about the Determination but did not lodge an appeal. On 3rd October 2003, the Complainers

issued a formal letter requiring him to produce confirmation of the steps he had taken to comply with the Determination. The Respondent has failed to do so and has failed to make payment of the compensation in terms of the Determination. The Respondent charged Mr D a fee of £375 for the work that gave rise to the complaint, in consequence of which the fees charged fall to be reduced by £875. The total fees charged (including outlays incurred by the Respondent on behalf of Mr D) for all work done amount to £1,772.28. Deduction of the amount equivalent to the Determination made by the Complainers (£875) means that Mr D still owes the Respondent £897.28. No amended fee note has been sent as the Respondent is unaware of Mr D's whereabouts.

7. Having considered the submissions from both parties the Tribunal found the Respondent guilty of professional misconduct in respect of:

7.1 His breach of Rules 4.1, 8, 9 and 10 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 by

(a) between 20th December 2001 and 10th January 2002, there being a shortage on the Karus & Company client account ranging between £58,775.05 and £62,332.61.

(b) His failure to deposit a cheque for £138,500 between 20th December 2001 and 11th January 2002.

(c) There being no client bank reconciliation produced by him to 14th December 2001 nor as at 28th February 2002.

(d) There being no client list of balances at either 14th December 2001 or 28th February 2002.

(e) During the period between 20th December 2001 and 28th February 2002, the books and accounts of the former firm of Messrs Karus & Company, Solicitors, were not properly written up in a manner which showed the true financial position of the practice.

7.2 His continuing to act as a principal Solicitor in private practice between 14th December 2001 and 28th February 2002, while his Practising Certificate was restricted to prevent him from acting as a principal for a period of 5 years and he continued to operate the client account of Karus & Company between said dates.

7.3 His uttering a cheque on or about 6th August 2002 in the sum of £70,000 payable on the Karus & Company client account and making a withdrawal therefrom without the authority of the principal and notwithstanding the suspension of his Practising Certificate.

8. Having heard the Solicitor for the Respondent in mitigation and having noted two previous findings of professional misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

> Edinburgh 12th April 2005. The Tribunal having considered the Complaint dated 4th August 2004 at the instance of the Council of the Law Society of Scotland against Michael Louis Karus, Solicitor, 72 St Stephen Street, Edinburgh; Find the Respondent guilty of professional misconduct in respect of his breach of Rules 4(1), 8, 9 and 10 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001, his continuing to act as a principal solicitor in private practice while his practising certificate was restricted during the period between 14th December 2001 and 28th February 2002 and his uttering a cheque in the sum of £70,000 payable on the Karus & Company client account and making the withdrawal without the authority of the principal and notwithstanding the suspension of his practising certificate; Suspend the Respondent from practice for a period of 10 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 a solicitor and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business and Direct that publicity will be given to this decision and this publicity will include the name of the Respondent but such publicity will be deferred until the conclusion of any criminal proceedings against the Respondent.

(signed) Malcolm McPherson

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

A Joint Minute of Admissions was lodged admitting the terms of the Complainers first and second inventory of productions. It was accordingly not necessary for oral evidence. A preliminary issue was raised by the solicitor for the Respondent who enquired whether any members of the Tribunal had been members of the Council of the Law Society at the time the decision to prosecute the Respondent was taken. Mr Foster submitted that if this was the case then even if the member in question had not been involved in the decision to prosecute it would be a breach of natural justice. Mr Foster referred to a recent Guardian article in connection with the proceedings before the bar council in England. The Tribunal noted the objection but indicated that it was not relevant to this particularly constituted Tribunal.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston stated that the Respondent had been a solicitor in practice since 1986 and a partner since 1987 and should have been aware of the importance of the Accounts Rules. The Respondent's practising certificate had been restricted by the Discipline Tribunal and it was incumbent on him to know the implications of this and to ensure that his clients were protected and that his books were properly attended to. The Respondent had stalled the commencement of the Restriction by appealing which gave him further time to ensure that proper arrangements were in place. Ms Johnston stated that it was accepted by the Law Society that the date for the appeal was accelerated and the Restriction came into force when the appeal was dismissed for want of instance on 14th December 2001. Ms Johnston stated that the Respondent should have known the implications of this and had arrangements in place. The Chief Accountant of the Law Society clarified the position in correspondence which was ongoing at the end of December 2001. The Respondent went on holiday at this time. The Respondent operated the business of Karus & Company continuing with transactions between 14th December 2001 and 28th February 2002 as was clear from Complainers production 2/7. Ms Johnston confirmed that there was no suggestion by the Law Society that there was anything sinister in connection with any of the transactions but the Respondent should not have been continuing to act as a principal

during this time. Mr B took over the Respondent's business as an asset acquisition but it was clear from production 2/3 that this did not happen until 1st March 2002. From that date the Respondent should not have been intromiting with client's funds or dealing with client's accounts. Initially the bank did cash cheques after the 1st March 2002 as can be seen from production 2/7. In connection with the averment of professional misconduct in Article 6.2(a) Ms Johnston stated that the shortage was as a result of a cheque which was not banked and the shortage was due to the fact that according to the books there was a credit balance which was not allocated to the firm and it had not been possible to establish what was due to the firm. In connection with Article 6.2(b) the Respondent had failed to deposit a cheque that had not arrived before he had gone on holiday but it was his responsibility to ensure the transaction was settled on time. In connection with Articles 6.2(c) and (d) it was accepted that the Respondent used the 5th day of the month to reconcile the accounts but the accounts should have been reconciled on the 14th December when the Restriction on his practising certificate took effect and on the 28th February when he ceased trading. Ms Johnston referred to production 2/7 and stated that it was difficult to establish the true position of the firm. In connection with Article 6.2(e) due to the state of the records it looked as if there was a deficit and there was no vouching. Ms Johnston stated that whilst there may have been a surplus on the account, at that particular time it could not be established because of the manner in which the books had been adjusted. In connection with Article 6.2(f) Ms Johnston said that she accepted that his being an executor had a bearing on matters. In connection with article 6.2(g) Ms Johnston stated that the Respondent accepted that he had not written up the books in a manner which showed the true financial position of the practice. Ms Johnston stated that it was his obligation to ensure they were written up and to close for three weeks was inappropriate. The appointment of the Judicial Factor was a last resort due to concerns about the books of the Respondent. In connection with Article 6.3 the correspondence from the Law Society was clear and there was a duty on the Respondent not to continue to work in contravention of the Restriction of his practising certificate. In connection with Article 6.4 Ms Johnston accepted that it was not possible to prove any dishonesty. In connection with Article 6.5 Ms Johnston referred the Tribunal to production 1/2 being a copy of the cheque which the Respondent wrote and signed made payable to his mother. At this point in time the Law Society was not satisfied that there was a surplus as this had not been verified

and the Respondent wrote the cheque and signed it when he was not entitled to do so and he uttered the cheque as genuine. In connection with Article 6.6 Ms Johnston confirmed that she accepted the figures contained in the Answers in connection with the money which was owed by Mr D to the Respondent in connection with other outstanding fees. Ms Johnston however stated that this was not raised with the Law Society at the time. Ms Johnston accepted that it would not be professional misconduct in the circumstances but still asked the Tribunal to issue an Order under Section 53C.

Ms Johnston stated that the Answers raised the issue of whether or not the Respondent was a solicitor when the Complaint was made to the Tribunal. The Respondent had written to the Law Society on 8th April 2002 requesting that his name be withdrawn from the Roll of Solicitors in Scotland. Ms Johnston produced a copy letter from the Law Society dated 13th June 2002 which indicated that the consideration of his request to have his name removed from the Roll would be deferred until a date to be fixed by the Council following the conclusion of the Tribunal proceedings against the Respondent in relation to this prosecution. Ms Johnston referred the Tribunal to the Petition of Julian Struther Danskin where Lady Cosgrove in the Court of Session had indicated that the terms of Section 9 of the Solicitors (Scotland) Act 1980 required the solicitor to satisfy the Council that he had made adequate arrangements in respect of the business which he had in hand. Ms Johnston stated that this case was different from the Danskin case as there were concerns in this case with regard to the Respondent's business and Ms Johnston referred the Tribunal to the passage in the Danskin case which indicated that the deferment of consideration to a specified date when a Tribunal hearing was due to take place may have been difficult to challenge. Ms Johnston stated that in this particular case the Council could not defer it to a particular date as no date had been set at that time.

SUBMISSIONS FOR THE RESPONDENT

Mr Foster stated that the Respondent had not been in practice since 28th February 2002. The Respondent had also been a Director of various companies but these were now in receivership so he was not presently employed. Until the Respondent's father had become ill in 2000 the Respondent had never had any difficulties with the firm.

The Respondent had been Restricted a week or so after he had become capable of being a signatory to cheques for the firm. The books of the practice had already been in a mess when the Respondent took over. Mr Foster pointed out that the Respondent appealed the previous Tribunal Restriction on the advice of senior Counsel. If the Respondent had not appealed the practice was that he would have been given about six weeks to sort his business out prior to the Restriction taking effect. Accordingly when the Court of Session appeal was dismissed on 14th December 2001 the Respondent initially thought that he had six weeks to get everything sorted out. Mr Foster stated that it was accepted that shortly after this it became clear from correspondence from the Law Society that this was not the case. After the Respondent had appealed the previous Tribunal Restriction he had decided that he did not wish to continue as a solicitor and was taking steps to arrange to dispose of his business in April 2002 prior to the original court date in respect of the appeal which had been set at 25th October 2002. When the case was accelerated to a date ten months earlier the Respondent's Counsel was not prepared which led to the appeal being dismissed for want of instance. In effect the Respondent was deprived of the opportunity to appeal. The Restriction came into place immediately on the 14th December and the Respondent did not want to let his clients down and so continued to service his clients cases although he did not take on any new cases, these were passed to Mr B. The Respondent was involved in discussions with Mr B with regard to a takeover but Mr B did not feel that he could step in immediately which was why the 1st March 2002 was fixed as a date. Mr Foster also asked the Tribunal to take account of the fact that for three weeks of the period from 14th December until 28th February the Respondent was actually closed for holidays. Mr Foster asked the Tribunal to take this into account in mitigation. Mr Foster also stated that the Respondent had written to the Law Society asking to have his name removed from the Roll and the Law Society's decision not to do this was not a valid one. Mr Foster argued that the Respondent was no longer an enrolled solicitor and that this would be important in connection with any sentence that could be imposed by the Tribunal. Mr Foster stated that, at the time the letter of resignation was tendered, there were no ongoing investigations into the business that the Respondent had in hand and the Law Society should accordingly have agreed to allow his name to be taken off the Roll. Mr Foster referred to a letter of 21st September 2004 written to the Tribunal suggesting that as

the Respondent had no wish to be a solicitor the proceedings should not proceed but should be left to lie on file.

Mr Foster stated that it was not correct that Mr B became the sole signatory after 1st March 2002, this may have been intended but was not what actually happened. The Respondent had never signed anything to say that he was no longer a signatory. After the Respondent's firm was wound up, the Respondent's mother continued to deal with the books in accordance with the Law Society's wishes in connection with reducing the surplus on the client account. Mr Foster explained that the way that Karus & Company operated was to produce a cash statement showing monies and a figure for fees and the client would pay fees which would go into the client account but these were not transferred to the firm account until a VAT invoice was issued and the fees were taken. The credit balances accordingly belonged to Karus & Company but still belonged to the clients as they had never been transferred to the firm account. This meant that the client account of Karus & Company was inflated. This was known to the Law Society and the Law Society wanted the position sorted out. Mrs Karus started doing this to the extent of £130,000-£140,000 as was clear from the Complainer's productions. Mr Foster stated that in reality there was accordingly no real deficit. In connection with Article 6.2(b) the Respondent could not deposit the cheque because it was not received until after the office had closed for the three week period. In connection with Article 6.2(c) Mr Foster pointed out that nothing happened between 28th February 2002 and 5th March 2002 when the bank reconciliation was done. The computer lists and manual lists were not meant to reconcile they were meant to be read together and complemented each other. In connection with Article 6.3 the Respondent did not realise that the Restriction took immediate effect and the suspension was ineffective as he had already resigned from the Roll. In connection with Article 6.5 an accountant was instructed and the Respondent's mother was backdating various entries. This may have been an error of judgement but she was doing what the Law Society had wanted. On 5th May 2003 a Judicial Factor was appointed with no warning which caused the Respondent all sorts of difficulties. It was not known why this was done as there was no reason to believe that client funds were at risk. The Respondent had to lodge funds with the Judicial Factor. In connection with the cheque for £70,000 Mr Foster submitted that there had never been any question that there was a surplus due to Karus & Company. There were

accordingly sufficient funds to cover the cheque which the Respondent wrote to his mother. The Respondent had been told that he could have these funds and he was put in an impossible situation as his mother's purchase was due to settle on this date. Mr Foster stated that at this time the Respondent was not acting in his capacity as a solicitor and this accordingly did not fall within the Tribunal's jurisdiction. Mr Foster asked for clarification in connection with Article 6.2(F) and Article 6.4 and Ms Johnston clarified that the Law Society was not proceeding with these averments. In connection with Article 6.6 there was no dispute that the Determination was made but it was now accepted that Mr D still owed the Respondent more in fees than the Respondent had been directed to refund or pay in terms of the Determination and Direction and accordingly the Respondent had not failed to comply with the Determination and Direction.

Mr Foster stated that the breach of the Accounts Rules was only a technical breach and there had been a surplus to cover any claims. It was accepted that the Respondent's books were in disarray but the Respondent had already been found guilty with regard to this matter in May 2001 and this was just a continuation of the disarray between May 2001 and February 2002. Mr Foster asked the Tribunal to take into account his earlier letter in considering any question of expenses.

DECISION

In connection with whether or not the Respondent's name was still on the Roll of Solicitors in Scotland, it was quite clear that the Law Society had not yet made a decision on his application which had been deferred until after the Tribunal proceedings. The Respondent's name was accordingly clearly still on the Roll of Solicitors at the present time. It was not a matter for this Tribunal whether or not the Law Society should or should not already have made a decision on the matter. As it stands at present the Respondent's name has not been removed from the Roll of Solicitors in Scotland and accordingly he is presently on the Roll for the purposes of this Tribunal's proceedings. In any event the Tribunal considered that the Law Society's decision to defer consideration of the application was a valid one open to them in terms of Section 9 of the Solicitors (Scotland) Act 1980. In connection with the averments in Article 6.2(a) the Tribunal was satisfied beyond reasonable doubt

that at that time there was a shortage on the Karus & Company client account ranging between £58,775.05 and £62,332.61 as is clear from the Complainers' productions. In connection with Article 6.2(b) the Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to deposit the cheque and his being on holiday was not sufficient excuse. A competent and reputable solicitor has an obligation to ensure that a cheque is deposited and should make arrangements to cover any holiday period. In connection with Article 6.2(c) and (d) the Tribunal were satisfied beyond reasonable doubt that the bank reconciliations, client reconciliations and client list balances were not done for the period to 14th December 2001 and 28th February 2002. These were important dates as they were dates when the Respondent became Restricted and when he ceased business. The Tribunal however considered it significant mitigation that the Respondent reconciled accounts to the 5th date the following month. In connection with Article 6.2(e) the Tribunal was not satisfied beyond reasonable doubt that there was a deficit on the client account of £70,000 as at 2nd August 2002. This was not clear from the Complainers' productions. In connection with Article 6.2(f) the Fiscal had indicated that she was not proceeding with this and no breach of the Accounts Rules was found. In connection with Article 6.2(g) the Tribunal was satisfied beyond reasonable doubt that during the period between 20th December 2001 and the date when the Respondent ceased trading on 28th February 2002 the books were not properly written up in a manner which showed the true financial position of the practice. The Tribunal did not consider that the Respondent could be held responsible from a date after which he ceased trading. The Tribunal considered that the breaches of Articles 6.2 (a), (b), (c) and (d) were technical breaches and would not be sufficient singly to amount to professional misconduct but do in cumulo with the other findings made by the Tribunal. In connection with Article 6.3 the Tribunal was satisfied beyond reasonable doubt that the Respondent continued to operate as a principal in private practice whilst his practising certificate was Restricted between 14th December 2001 and 28th February 2002. The Tribunal viewed this very seriously and did not find that it was mitigated by the Respondent going on holiday for a three week period during this time. The Respondent's position was that he continued to act as a principal in order to ensure the interests of his clients were protected but his going on holiday for a period of three weeks will not have helped facilitate arrangements for the transfer of business and the protection of his clients interests. The Fiscal indicated that she was not proceeding with Article 6.4 and no misconduct

was found. In connection with Article 6.5 the Tribunal was not satisfied beyond reasonable doubt that at this time Mr B was the sole signatory on the account although this may have been the intention. The Tribunal however was satisfied beyond reasonable doubt, on the basis of the productions produced by the Complainers, that the Respondent uttered the cheque in the sum of £70,000 without the authority of Mr B, notwithstanding the fact that he had ceased trading and his practising certificate had been suspended. In connection with Article 6.6 given that the Complainers accept that the Respondent is owed more money by Mr D than he owes under the Determination and Direction, the Tribunal do not find that this amounts to professional misconduct. The Tribunal considered the position with regard to set off in connection with whether or not it was appropriate to make an Order under Section 53C(2) of the Solicitors (Scotland) Act 1980. The Tribunal considered this was a matter between the Respondent and Mr D and that accordingly there would be nothing to prevent the Tribunal from making such an Order. In the event however the Tribunal noted the Respondent's undertaking to set off the sum due against the sum owed to him by his client and the Tribunal did not make a verbal declaration of such an Order on the day of hearing and accordingly in fairness to the Respondent no such Order will be made in these particular circumstances.

PENALTY

Two previous findings of misconduct were then laid before the Tribunal. The Tribunal was particularly concerned by the Respondent continuing to act as a principal in private practice despite the Restriction imposed by the previous Tribunal. The Tribunal took account of the fact that the Respondent was to some extent taken by surprise on the 14th December 2001 but he had had ample opportunity to put arrangements in place for the disposal of his business and should have been prepared for such an eventuality. The Respondent continued to practice as principal until 28th February 2002 despite letters from the Law Society setting out his obligations. This shows a disregard for the authority of the Law Society and the Tribunal. The Tribunal considered that this conduct is regretfully, disgraceful and dishonourable and brings the profession into disrepute. The Respondent also breached a number of provisions of the Accounts Rules, and of more serious concern, wrote a cheque without the authority of the principal which he uttered as genuine despite the fact that he was no

longer acting as a solicitor. The Tribunal takes a very serious view of such behaviour. In the circumstances the Tribunal Suspended the Respondent from practice for a period of 10 years.

The Fiscal moved that any publicity be deferred until the outcome of a pending criminal investigation against the Respondent. The Fiscal also asked for expenses to be awarded against the Respondent. Mr Foster agreed that publicity should be deferred but pointed out that the Respondent had already incurred a lot of expense due to what had happened. Mr Foster also asked the Tribunal to take account of the terms of his letter written to the Tribunal on 21st September 2004.

The Tribunal agreed that it would be appropriate to defer publicity until the outcome of any criminal proceedings against the Respondent and avoid any prejudice to the criminal proceedings. In connection with expenses the Tribunal was not persuaded it would be appropriate to depart from the usual practice of awarding expenses against the Respondent where a finding of professional misconduct is made.

Vice Chairman