

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

**FINDINGS**

**in Complaint**

**by**

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

**Complainers**

**against**

**CHARLOTTE JOY PLATT, c/o Inksters  
Solicitors, 10 Sinclair Street, Thurso**

**Respondent**

1. A Complaint dated 20 January 2023 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Charlotte Joy Platt, c/o Inksters Solicitors, 10 Sinclair Street, Thurso (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. Following sundry procedure, on the joint motion of both parties, the Tribunal set the Complaint down for a virtual hearing on 28 June 2023.
5. At the virtual hearing on 28 June 2023, the Complainers were represented by their Fiscal, Jamie Foulis, Solicitor, Edinburgh. The Respondent was present and represented by John Macmillan, Independent Adviser. A Joint Minute of Admissions between the parties had been lodged. On the unopposed motion of the Fiscal, the Tribunal allowed five Affidavits to be received. The Tribunal heard evidence from one witness for the Complainers and from the Respondent. Both parties made submissions. Given the late hour of the day, the Tribunal continued the virtual hearing to a

date to be afterwards fixed. Thereafter, 6 September 2023 was identified as a suitable date for the continued virtual hearing.

6. The Tribunal met at 10am on 6 September 2023 to continue deliberations. Parties attended at 12 noon. The Complainers were represented by their Fiscal, Jamie Foulis, Solicitor, Edinburgh. The Respondent was present and represented by John Macmillan, Independent Adviser.
7. Having given careful consideration to all of the information before it, the Tribunal found the following facts established:-
  - 7.1 The Respondent is Charlotte Platt. She was born on 24 January 1990. She was enrolled and admitted as a Solicitor on 31 July 2013. She was employed by Drever & Heddle LLP (hereafter referred to as “the firm”) from 10 June 2012 until 10 August 2018, as a trainee until 18 June 2014 and thereafter as a solicitor. The Respondent had previously worked for the firm from May 2007 on a temporary basis, as summer work each year and then from 01 April 2012 to 10 June 2012 as an administrative assistant. The Respondent has been employed as a consultant with Inksters since 06 December 2018. The Respondent holds a practising certificate.
  - 7.2 On or around 16 February 2015 the Respondent was instructed by the Secondary Complainer to act for her in connection with the purchase of a property in Thurso (hereinafter referred to as “the Property”).
  - 7.3 On or around 22 June 2015 the Secondary Complainer signed a Standard Security and a Declaration under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (as amended) and Civil Partnership Act 2004 (hereinafter referred to as a “Declaration”). The execution by the Secondary Complainer of both documents on or around 22 June 2015 was witnessed and both documents were signed as so by the Respondent. The Respondent knew these documents to bear the true signature of the Secondary Complainer.
  - 7.4 The Secondary Complainer’s conveyancing transaction in respect of her purchase of the property settled on 26 June 2015. On that date the Respondent emailed the Secondary Complainer advising her that settlement of the transaction had taken place.

- 7.5 The Standard Security and Declaration referred to at paragraph 7.3 above and other documentation necessary to properly register the Secondary Complainer's title to the property were not submitted to the Registers of Scotland by the Respondent or any of her colleagues following completion of the conveyancing transaction. The procedure in the firm was that the paperwork was put in a Legal Post tray for that paperwork to be sent from Thurso to Kirkwall for the staff there to process it for registration.
- 7.6 The practice at the firm, as set up by the firm's principals, was that documents necessary for the registration of a client's title were sent from the Thurso office to the firm's Kirkwall office for processing and submission to the Registers of Scotland for registration.
- 7.7 On 11 January 2016 an Administrative Assistant of the firm (a remote worker) emailed the Respondent, copying in the firm's Principal, Serena Sutherland, requesting an explanation as to why funds had been held since June 2015 for registration of the Disposition and Standard Security in relation to the purchase.
- 7.8 On 8 April 2016, a Receptionist at the firm's Orkney office, emailed the Secondary Complainer requesting her National Insurance number. The Secondary Complainer replied to the Receptionist on 28 April 2016, copying in the Respondent, asking for an explanation as to why the number was required. The Receptionist advised the Secondary Complainer that it was required for everyone for whom the firm had purchased a property. The Respondent did not advise the Secondary Complainer that her title had not yet been registered and that her National Insurance number was required for that purpose. The Respondent did not ask her colleague in Orkney so to advise the Secondary Complainer. The Respondent did not take any steps to ascertain the reason why the Secondary Complainer's National Insurance number had been requested at that time.
- 7.9 On or around 19 May 2016 a letter was sent to the Secondary Complainer in the Respondent's name, but in circumstances where that letter was not prepared by the Respondent, advising that it was extremely important that the Secondary Complainer provide her National Insurance number as soon as possible. The letter did not explain the reason for the request. The letter did not explain that the Secondary Complainer's title or Standard Security was yet to be registered.

- 7.10 On or around 1 July 2016 the Respondent signed as a witness to the purported signature of the Secondary Complainer on a Standard Security and Declaration under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (as amended). The Secondary Complainer did not sign the said Standard Security or Declaration. The Respondent had not witnessed the Secondary Complainer sign the said Standard Security and Declaration. No meeting between the Respondent and the Secondary Complainer for the purposes of execution of these documents had been arranged for 1 July 2016 and no such meeting took place. Clients routinely attended in Thurso without appointments.
- 7.11 On or around 4 July 2016 a Finance Assistant at the firm emailed a Conveyancing Assistant at the firm's Kirkwall office, noting that the Disposition in respect of the transfer of the Property had been registered and asking what the position was regarding the Standard Security. The Conveyancing Assistant responded, copying in the Respondent, on the same date indicating that she had not been given a Standard Security to register. The Respondent responded by email on the same date indicating that she had the Standard Security on file and would send it to her to register. The Respondent then sent the Standard Security and Declaration to her for registration.
- 7.12 By letter dated 15 November 2016 the Secondary Complainer received a penalty notice from Revenue Scotland regarding a Penalty Assessment Notice for Lands and Building Transaction Tax for a failure to declare any tax liability for the transaction timeously. The Secondary Complainer emailed the Respondent in this respect on 28 November 2016. The Respondent responded to that email on 29 November 2016 advising that "...firm will deal with this directly" with Revenue Scotland. The firm did pay the penalty.
- 7.13 The Respondent did not inform the Secondary Complainer of the delay in submission of her Disposition, the Standard Security, or the Declaration to the Registers of Scotland. She did not ask a colleague so to advise the Secondary Complainer. The Secondary Complainer was unaware of the delay in submission of the documents until she was provided with copies of same under cover of a letter dated 26 July 2019 by the firm in Kirkwall long after the Respondent had left.
- 7.14 The Respondent owed a duty to the Secondary Complainer to lodge her Disposition for registration promptly and she owed a duty to follow the direction of the firm's principals.

- 7.15 The Respondent owed an obligation to the lender to register the Standard Security promptly and she owed a duty to follow the direction of the firm's principals.
- 7.16 The staff member who submitted documents for registration with the Registers of Scotland was based in the firm's Kirkwall office. The documents to be registered would be sent to her by the solicitor dealing with the transaction placing them in the Legal Post tray, whence they were routinely transmitted to Kirkwall. As part of her role, if a document had been omitted from those which were sent to her, the staff member would raise that with the solicitor dealing with the transaction. The staff member retained a database of documents submitted for registration.
- 7.17 The Respondent's desk at the Thurso office was located in the reception area of the office, but in such a location that the Respondent could not see the front door from her seat, nor could anyone coming in that door see her.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct:-

- (a) Singly in respect that she signed as witness to a Standard Security and Declaration under the Matrimonial Homes (Family Protection)(Scotland) Act 1981 (as amended) when she knew that she had not correctly witnessed the signature of the Secondary Complainer on them in non-compliance with the terms of Section 7 of the Requirements of Writing (Scotland) Act 1995, contrary to Rules B1.2 and B1.4 of the Law Society of Scotland Practice Rules 2011 ("Practice Rules 2011");
- (b) *In cumulo* in respect that-
- (i) She failed to act in the Secondary Complainer's best interests by failing to ensure that the Disposition was submitted to the Registers of Scotland to allow title to the property to be registered in the Secondary Complainer's name, contrary to Rule B1.4 of the Practice Rules 2011;
  - (ii) She failed to ensure that the Secondary Complainer was advised that there had been a delay with registration of important documents with the Registers of Scotland, namely the Disposition, Standard Security and Declaration under the

Matrimonial Homes (Family Protection)(Scotland) Act 1981 (as amended), contrary to Rule B1.9 of the Practice Rules 2011;

- (iii) She failed to ensure that the Secondary Complainer was advised of the true basis for requesting her National Insurance number on 28 April 2016, namely that it was an attempt to register said documents late, contrary to Rule B1.9 of the Practice Rules 2011; and
- (iv) She failed to act in the best interests of the heritable creditor by permitting said Standard Security and Declaration under the Matrimonial Homes (Family Protection)(Scotland) Act 1981 (as amended) with the fraudulent signature of the Secondary Complainer to be sent to a colleague for submission to the Registers of Scotland and so allowed the documents to be submitted for registration, contrary to Rule B1.4 of the Practice Rules 2011.

9. The Tribunal found the Respondent not guilty in relation to the averments of misconduct at paragraphs 5.2 (iv), (vii) and (viii) of the Complaint.
10. Having heard further submissions in relation to sanction, publicity and expenses, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 6 September 2023. The Tribunal having considered the amended Complaint dated 20 January 2023 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Charlotte Joy Platt, c/o Inksters Solicitors, 10 Sinclair Street, Thurso; Find the Respondent guilty of professional misconduct singly in respect that she signed as witness to the signature on a Standard Security and Declaration under the Matrimonial Homes (Family Protection)(Scotland) Act 1981 (as amended) when she knew that she had not witnessed the Secondary Complainer signing these documents in non-compliance with the terms of Section 7 of the Requirements of Writing (Scotland) Act 1995 and *in cumulo* that she failed to (i) act in the Secondary Complainer's best interests by failing to ensure that the Disposition was submitted to the Registers of Scotland to allow title to the property to be registered in the Secondary Complainer's name, (ii) ensure that the Secondary Complainer was advised that there had been a delay with registration of important documents with the Registers of Scotland, namely the Disposition, Standard Security and Declaration under the Matrimonial Homes (Family Protection)(Scotland) Act 1981 (as amended), (iii) ensure that the Secondary Complainer was advised of the true basis for requesting her National

Insurance number on 28 April 2016, namely that it was required so that the documents could be registered late, (iv) act in the best interests of the heritable creditor by permitting the Standard Security and Declaration under the Matrimonial Homes (Family Protection)(Scotland) Act 1981 (as amended) with the fraudulent signature of the Secondary Complainer to be sent to a colleague for submission to the Registers of Scotland and so allowed the documents to be submitted for registration; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of two years, any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit her to acting as a qualified assistant to such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and the partners of the firm but need not identify any other person.

(signed)

**Catherine Hart**

**Vice Chair**

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 *5 December 2023*.

**IN THE NAME OF THE TRIBUNAL**



**Catherine Hart**  
**Vice Chair**



**NOTE**

At the Hearing on 28 June 2023, the Tribunal had before it a Record, unsigned Joint Minute of Admissions, a List of Productions for the Complainers, a List containing one Production for the Respondent and five Affidavits for the Complainers.

Mr Foulis, of consent, invited the Tribunal to receive the Record, unsigned Joint Minute and five Affidavits. The Chair indicated that the Tribunal was prepared to accept the unsigned Joint Minute on the basis that both parties confirmed that this reflected their agreed position. Mr Macmillan drew attention to an error in paragraph 8 of the Joint Minute. Mr Foulis moved to amend the first line of that paragraph to read "8 April 2016" and to insert in line 3 of that paragraph the date "28 April 2016" in place of the words "same date". The Tribunal allowed the amendment and allowed the Joint Minute to be received.

The Chair sought clarification of the Affidavits lodged. Mr Foulis explained how each was prepared and invited the Tribunal to accept these into evidence. Mr Macmillan confirmed that if Mr Foulis was happy that each Affidavit had been signed by the appropriate deponent, he was happy. The Tribunal granted Mr Foulis' motion.

The Chair confirmed to the Respondent that she should request a break at any time in proceedings when she felt it necessary.

Mr Foulis confirmed he was leading one witness and proceeded to call Serena Sutherland.

**EVIDENCE FOR THE COMPLAINERS****Witness: Serena Sutherland**

The witness confirmed signing the Affidavit on each page and adopted it as her evidence. In her Affidavit, she set out the Respondent's work history with the firm (as noted in paragraph 7.1 above). She described how supervision of the Thurso office was mainly the responsibility of her former partner, Archibald Miller, although she also would "come and go to the Thurso office". She stated in the Affidavit that the Respondent settled between 10 to 15 transactions per month. She stated that the Thurso office had a Receptionist from 2014 to 2016 who was a young school leaver. She stated that the Respondent had struggled to deal with post transaction work and so staff in Kirkwall dealt with it for her instead. She stated that the responsibility for ensuring registration took place remained with the solicitor. Any balances on the client ledger or issues with the registration process would be referred to the solicitor. She

did not specifically remember the email of 28 April 2016 asking for the Secondary Complainer's National Insurance number. She stated that clients "routinely" came into the Thurso office without appointments.

In her parole evidence, the witness confirmed that it would be fair to describe the atmosphere in the firm as difficult in the period 2015 to 2016.

She described how she qualified in 2009 and became a partner of the firm quickly thereafter. In 2015/16, she had another partner with whom the relationship was breaking down. That partner left the firm and the witness became a sole trader in August 2016. Whilst she had tried to prevent the atmosphere affecting the staff, she considered that it did, and that was especially the case for the Respondent who was considered quite senior in the firm at the time. The Respondent had been involved in management discussions and so the witness imagined that the atmosphere would have been particularly difficult for her.

The witness did not remember the Respondent directly telling her about the impact of this difficult atmosphere on her, but the witness did remember having discussions about difficulties and, in particular, around August 2016 they discussed starting with a clean slate, recognising that difficulties had affected the staff and how to move on from that.

Mr Foulis drew the witness's attention to paragraphs 8 and 9 of her Affidavit. She explained that she would have expected the solicitor involved in the file to keep an eye on the process to ensure that deeds were properly recorded. In her view, there was a responsibility on the solicitor concerned to ensure that the deeds were recorded, even though a paralegal was involved in the process.

### **CROSS EXAMINATION OF SERENA SUTHERLAND**

The witness confirmed that before he left the firm in August 2016, Mr Millar was involved with a firm in Fraserburgh. She was unable to remember the specific dates but confirmed that there was a time when he was physically in the office in Fraserburgh and therefore less involved in the other two offices. She agreed that before Mr Millar went to Fraserburgh he spent time in the Thurso office. She recalled that at times he was there full time but she would not disagree with the proposition that he was usually there two days a week. She did not agree that after Mr Millar went to Fraserburgh he was hardly in Thurso, but did accept it was not as often.

The witness stated that to her recollection she was generally in the Thurso office once a week, even before Mr Millar left the firm. She did not recall her attendances in Thurso increasing after he left the firm but recalled that it continued once a week or every two weeks.

The witness confirmed that the Respondent was considered a senior member of staff in the firm even though she was only one year qualified. The Respondent had worked in the firm as a summer student and then as a trainee.

The witness described that in 2015 the person dealing with the registration of deeds was based in the Kirkwall office and deeds required to be transferred to that office for them to be sent for registration. She did not accept that the responsibility for overseeing the process shifted to the Kirkwall office. The witness confirmed that the Respondent had been instructed to put deeds in an out-tray for a member of the administrative staff to collect to then transmit them by legal post to the Kirkwall office. She confirmed that the Kirkwall office staff would then deal with the registration process. If more information was required or anything was missing, the staff would go back to the solicitor responsible for the file. The firm had a member of staff who would check the client ledger and, if registration dues remained on the ledger, an email would be sent to the solicitor in charge of the file querying this. Prior to Mr Millar leaving the firm another partner had left the firm.

Mr Macmillan referred the witness to two emails dated 11 January 2016 and 27 January 2016. The emails discussed a credit balance on the client ledger. The witness described that it was the normal procedure to email the solicitor concerned and copy the witness in. She could then contact the solicitor to ask if anything needed to be done to ensure that registration was dealt with. She could not recall whether she herself did anything further after her email of 27 January 2016. She did not accept that nothing else was done. The member of staff who sent this email of 11 January 2016 raising the issue of the credit balance was a diligent member of staff and she would have kept a close eye on the issue.

The witness was asked what she meant when she referred to the atmosphere in the office being difficult. She explained that the business relationship between her and Mr Millar had broken down and discussions had been ongoing regarding how to proceed. Prior to Mr Millar leaving the firm another partner had left the firm. Mr Millar had then gone to the Fraserburgh office. These things contributed to the difficult atmosphere. The tension between the witness and Mr Millar would not have been pleasant for the people in the office, particularly the Respondent. The Respondent was a confidante of Mr Millar. The Respondent was present at the meetings discussing the future of the firm. These things were not pleasant for the witness herself so she was sure they could not have been pleasant for the Respondent.

The witness confirmed she had not seen Mr Millar's Affidavit. The witness was not aware that the young Receptionist in the Thurso office was terrified of her and did not believe that there was a blame culture in the firm. She did not recall it being as many as five trainees who left the firm before the end of their training contract. She did accept that a number of trainees had left the firm before completing their traineeships, but there was a specific reason for this in each case. Mr Foulis objected to this line of questioning. Mr Macmillan explained that the atmosphere in the office was relevant to the rest of the Respondent's defence. The Chair questioned the time frame of the various trainees leaving the firm and whether that affected the relevancy. The Chair allowed the line of cross examination to proceed subject to relevancy.

The witness accepted that there were resourcing issues in the Thurso office by 2015.

The witness was not aware that members of staff in Thurso were not taking comfort breaks or lunch breaks due to resourcing issues. She always encouraged staff to take breaks regardless of what else was happening in the firm. She accepted that the office was understaffed. She did not accept that resourcing issues got worse after Mr Millar left the firm.

The witness accepted that the Respondent had tried her best to do what needed to be done and that the witness had tried her best to resolve any issues. She did not recall being made aware of any effect the atmosphere had on the Respondent's mental health.

The witness recognised that the Respondent always worked hard and tried her best. She did not accept that the Respondent did not cut corners. Mr Macmillan referred the witness to the letter dated 19 May 2016 asking the Secondary Complainer for her National Insurance number. The witness confirmed that the letter was prepared by the Receptionist in Kirkwall but she could not say whether the Respondent knew the letter was being prepared. The witness explained that the firm needed the National Insurance number to complete the LBTT form, which was part of the registration process. The firm's normal procedure was to get the National Insurance number in advance in order to avoid requiring to chase it after settlement. The author of the email was not part of the registration team so the witness believed that someone must have instructed her to send the letter. If the letter had come from the witness, it would have had her reference on it.

The witness confirmed that it was her decision to pay the LBTT penalty.

The witness indicated that she did not have any significant dealings with the young Receptionist in Thurso. She did not consider it fair to call him untrustworthy or unreliable. It was her view that he was a young person just out of school, trying his best.

## **RE-EXAMINATION OF SERENA SUTHERLAND**

Mr Foulis referred the witness to the emails dated 11 January 2016 and 27 January 2016 and she confirmed that between the two dates discussions had taken place between her and the Respondent. She thought this was probably either a telephone conversation or an in-person discussion.

In response to a question from the Chair, the witness confirmed that the Finance Assistant in Kirkwall monitored credit balances and that she would flag these to the solicitor concerned. If the Finance Assistant was concerned that there had been a lack of action then she would flag that to the witness. The witness would only be copied in if it was felt that there had been no appropriate response. The witness did not accept that her email of 27 January 2016 meant she had taken over responsibility for the registration process. The responsibility to ensure that deeds had gone to the Registers remained with the Respondent. The witness explained that the firm used checklists on files that included registration.

At the time of this transaction, she believed that she herself was doing some conveyancing, as was Mr Millar, but she could not remember who the other members of staff were at that time. She explained that most of the support staff was based in Kirkwall and so deeds required to be transferred to Kirkwall for onward submission to the Registers.

Mr Foulis confirmed that he had no further witnesses and invited the Tribunal to formally admit the Affidavits into evidence.

## **AFFIDAVIT EVIDENCE**

### **Affidavit of Conveyancing Assistant**

This witness describes her role as assisting with conveyancing administrative work. She was based in the Kirkwall office. She does not recall this transaction. She stated her job was to complete forms for online submission to the Registers of Scotland and collate the relevant conveyancing documents which the solicitor dealing with the transaction would have put together. She did not deal with clients directly. For transactions in the Thurso office, staff there would get the necessary documents signed by their clients. The Respondent was doing the majority of the conveyancing there on her own and was dealing with a

heavy workload. There was what she called “front of house staff” in the Thurso office with the Respondent, who would cover the reception and carry out administrative work.

#### **Affidavit of Assistant Solicitor**

This witness confirmed that she worked in the Thurso office from May 2015 to June 2022. She worked in the upstairs office. She was involved in archiving until 2016 and then dealt with executries. After the Respondent left the firm, she worked with wills and powers of attorney as well. She recalled that when she first worked in the Thurso office there was a young receptionist and two girls who job-shared doing estate agency work. She had no involvement in conveyancing transactions at all. Clients would pop into the Thurso office without appointments. The Respondent sat in the reception area of the office and so would hear people come in. The witness was never asked to sign a document for a client and she never did so.

#### **Affidavit of the Receptionist in Kirkwall**

The receptionist confirmed that she did some work for the conveyancing department. She recalled only attending the Thurso office on two occasions. She recollected that the Respondent’s desk was out of sight of the entrance and she did not think the Respondent would have been able to see clients come into the office. She has no recollection of this transaction. She did not sign any documents for the Secondary Complainer. She might have sent the email to the Secondary Complainer asking for her National Insurance number herself or she may have been asked to do so by someone else. She may have responded to the Secondary Complainer herself or she may have been instructed by another.

#### **Affidavit of Archibald Millar**

Mr Miller confirmed that he was a partner of Drever & Heddle until August 2016. Between 2014 and his departure, the Thurso office was poorly resourced and he assisted the Respondent with the conveyancing in Thurso. He knew the Respondent was very busy and under resourced. There were management difficulties with Ms Sutherland who liked to work in a “resource rich atmosphere in Kirkwall” but was reluctant to resource for the Thurso office. Mr Millar spoke to the Respondent on a daily basis while Ms Sutherland and the Respondent spoke weekly. When he was based in the Kirkwall office he would work in the Thurso office on a Thursday and Friday. The Respondent dealt with all of the conveyancing in the Thurso branch, had no legal assistants and very few administrative assistants. She dealt with a significant volume of work. If she was struggling it was his opinion that this must have been because she was dealing with a heavy workload. He considers the Respondent to be diligent and that she did not cut corners. He had no involvement in the post-settlement of Thurso transactions and could not comment on what happened after completion. There was a “fair turnover” of staff in the Thurso office. The Respondent

worked in the office with another solicitor, who only did private client work, and the property manager. This was a reduction of staff from when Drever & Heddle took over the Thurso office. There was a blame culture in the firm that Drever & Heddle had taken over and he had tried to change that. The young receptionist employed in Thurso was terrified of Ms Sutherland. He was totally unreliable. The Respondent trained with Mr Millar. He considered her to be a great trainer of people herself. He has no recollection of this transaction. He considered the Respondent to be "phenomenally ethical". In Thurso she suffered from a lack of resources. Those resources that were provided were inadequate. The young receptionist needed constant management.

## **EVIDENCE FOR THE RESPONDENT**

Mr Macmillan confirmed that he would only lead one witness, the Respondent herself.

### **Witness: The Respondent**

The Respondent confirmed that she had worked for the firm as work experience the summer before going to university and whilst she was at university. She had started her traineeship in the Kirkwall office but she moved to Thurso to live and work to take over after another solicitor left the firm. This had been around September 2012. Her training contract started late June/early July 2012. There had to be discussions with the Law Society about her supervision as there was no resident solicitor in Thurso. Mr Millar used to come to Thurso by ferry on a Thursday morning. He slept in the office overnight before returning to Kirkwall on Friday.

The witness was asked to confirm who had worked in Thurso. She indicated that initially Serena Sutherland and Archibald Millar had worked in the office. An Assistant Solicitor joined the firm but she specialised in executry and guardianship work. Until Mr Millar left the firm it was him and the Respondent who were the qualified solicitors in the Thurso office.

In 2014, in Kirkwall the solicitors would only have been Ms Sutherland and Mr Millar when he was there.

Mr Millar supervised the Respondent during her traineeship. He became involved in a firm in Fraserburgh. In early 2015 he physically relocated to Fraserburgh to run that firm. His involvement with the Thurso files was significantly reduced as a result. A trainee moved to Fraserburgh with Mr Millar. After that, the Respondent only saw Mr Millar in the office very infrequently. She recalled that it was perhaps three times a year at most but really thought it was closer to twice a year. She agreed that Mr

Millar left the firm in August 2016. She explained that the firm had been in a bad way for at least a year before that. There was a clash of philosophies between the two partners who wanted to take the firm in different directions and this had placed a lot of strain on everyone. There was also strain on the finances of the firm. There were times when the staff did not know if they were going to get paid or if the firm was going to close down.

Ms Sutherland was in the Thurso office only for any court appearances. Her attendance in the office was therefore “erratic”. She did not appear in the office more regularly until 2017.

The atmosphere was difficult and pressured. There was a feeling that the firm was on the brink. The Thurso office could not get petty cash. The Respondent had paid some £2,000 into the firm at £100 per month because the Kirkwall office would not provide petty cash for stamps and the like. Everyone was trying their best and working very hard as a team. The Thurso office was really only two people, herself and a young Receptionist who was often out of the office. That meant that the Respondent had to keep an eye on the front of the office herself. She had on average 30 settlements per month. It was difficult to keep up with things like file openings. Everyone wanted to support Ms Sutherland. Ms Sutherland herself was under a lot of strain and that displayed itself in inappropriate ways in the office, for example Ms Sutherland screaming at people. On one occasion Ms Sutherland screamed at a trainee down the phone and then immediately phoned the Respondent to ask her to check up on him. That trainee was struggling with his traineeship anyway and Ms Sutherland regretted behaving in the way she did. The environment was volatile.

The Respondent described how this affected her physical and mental health.

The transaction in this case concluded “without hiccup” on 26 June 2015. At that time Mr Millar was still a partner in the firm but was based in Fraserburgh.

The Respondent’s instructions were to send documents for registration to Kirkwall. The relevant members of staff were based there and the form for documents to be submitted to the Registers had to be signed by a solicitor and the Respondent did not have the authority to do that.

Documents would be put in a metal tray to be sent to Kirkwall. The tray was in a “post nook”. She would usually put documents in the tray herself. The documents would then be put into a sealed postbag and taken to the local office that dealt with legal post. This was usually done by the young Receptionist. Sometimes the Respondent would do it if necessary. The mail in Kirkwall was opened by the



administrative staff and divided out appropriately. It was normally the same Conveyancing Assistant who dealt with the Respondent's transactions. This whole process was set in place by Ms Sutherland. It was a necessity because the Respondent did not have the authority to sign things off and Kirkwall was also the main office.

Checks carried out on credit balances on client ledgers were the main way issues were identified. The Respondent could not say that she recollected any conversation with Ms Sutherland in January 2016 regarding the credit balance for this transaction. She could not say that there was not a conversation, but it did not stick out in her mind that they had had one. She could not remember anything else happening regarding the credit balance.

The Respondent said she did not author the letter sent to the Secondary Complainer regarding her National Insurance number. She explained that the reference on the letter suggested that it had been the member of staff in Kirkwall. It was reasonably common practice within the firm for letters to be sent in solicitor's names, using electronic signatures. The Respondent was not aware of this request for the National Insurance number being made at the time. She is aware that she was copied into some correspondence at some stage but it did not fire up on her radar at the time. She did not recall any conversation with anyone about it.

The Respondent admitted signing the documents on 1 July 2016 as a witness, even though she did not see the Secondary Complainer sign or see her acknowledge the signatures as her own. Quite of a lot of people would drop into the office to see if something was ready for signing without an appointment. Clients commonly would try to do everything they could when they came into town because of the distances they had to travel. She said *"If I had been told that someone had nipped in just to sign something I probably would have believed that. Usually there was an awareness that if it was a significant document like an Affidavit or Security, the person should be asked to wait or make an appointment in the diary. It was not uncommon if it was something like a mandate or something that did not formally need to be witnessed by a solicitor, then someone who was in front of house would see them sign."* The only person she could think of at that time who could have brought the documents to her was the young Receptionist. He was the only person who was regularly in the office with the Respondent.

On 4 July, the witness had gone to look in the cabinet. There were eight filing cabinets in the office containing files that needed to be closed. She went to check if this file had been passed to Kirkwall. The file was still there and she found the Standard Security on it. She then passed the Standard Security to Kirkwall. She had not placed the deed on the file herself. She was not aware at that time that the signature

was not the signature of the Secondary Complainer. She did not become aware of this until the original SLCC complaint was intimated to her, which she thought was in Spring 2019.

With regard to the LBTT penalty, the Respondent believed that she wrote a letter to the Revenue asking them to waive the penalty. Revenue Scotland was not content to do so.

The Respondent knew that there was an allegation of forgery and wanted to address that as soon as possible. She had confirmed to the Law Society that she was not responsible and that she would cooperate with enquiries. She had given handwriting samples. The first handwriting report came back and found that it was her signature as witness. The Respondent had never denied that. The matter had to go back to the report writer and the report then came back saying that the handwriting of the forged signature did not appear to match the Respondent's handwriting. She was aware that charge was no longer before the Tribunal.

Mr Macmillan put Mr Millar's Affidavit to the witness. The Respondent said that she was not surprised that he called her a control freak. She had regularly controlled the diary when he was in Thurso and accepted that she was probably a demanding trainee but explained that, as she was only semi-supervised, this was necessary. Mr Millar still often seeks the Respondent's view on ethical issues. She believed that he considered her overly cautious.

Mr Macmillan asked the Respondent how this situation arose if that was the case. She explained that she had been in a situation where she should have walked away, but she felt she could not. She accepted that she should not have signed as witness and that it was a massive mistake. She always explained to clients why the witnessing of deeds by solicitors required a solicitor to be present etc. The thought of doing this thoughtlessly frustrated her. There was a "maelstrom" of an environment in the firm and she thought she had done this "ridiculously rather than thinking properly".

## **CROSS-EXAMINATION OF THE RESPONDENT**

The Fiscal indicated that he wished to start his cross examination in connection with the delay in registration of the disposition.

The Respondent did not agree entirely with the suggestion that the responsibility for the recording of deeds rested with the solicitor dealing with the transaction, even after the deeds had been transmitted to Kirkwall. She agreed that it was her position that once the documents were sent to Kirkwall she did not

have any ongoing responsibility unless she heard from a member of staff in Kirkwall with regard to a query. She agreed that deeds required to be sent to Kirkwall for registration as soon as possible after conclusion of the transaction. She agreed that as fee earner it was her responsibility to ensure that deeds were passed to Kirkwall for registration. She agreed that there was nothing on this file in June 2015 to show that the deeds had been sent to Kirkwall. She explained that this was not unusual as deeds were physically put in the legal post. She conceded that it was possible that she had forgotten to send the documents to Kirkwall. She explained that there was a file review procedure where files were discussed with Ms Sutherland but these discussions were not set in stone and only took place perhaps once a quarter. Only transactions involving novel or complex issues were discussed. This case was not likely to have been included as it did not involve such an issue. She explained she had spoken to the Conveyancing Assistant in the Kirkwall office reasonably frequently in the course of her work. She agreed that she had not done anything after June 2015 to chase up the registration of the Secondary Complainer's title. She explained that unless there was something irregular, it would not have been in her mind to do that.

The Fiscal indicated that he wanted to move on to the question of delay in advising the Secondary Complainer of the delay in registration of the title. The Respondent explained that if she had been aware of the delay in registration, she would have ascertained why there had been a delay and then advised the Secondary Complainer. She explained that, generally, she would expect that a client would want to come into the office to speak to her about any such delay. Therefore, she would expect that it would be her who would explain to the Secondary Complainer that there had been a delay. The Respondent agreed that she was aware that there had been some problem with the registration process by 11 January 2016, but she was not necessarily aware that the Disposition had not been registered. The Respondent accepted that the period between June 2015 to January 2016 amounted to a delay.

The Respondent confirmed that she did not update the Secondary Complainer about the delay in registration of her title and explained that she did not think she was aware that there was an issue that was not being dealt with by the Kirkwall office. She agreed that the Disposition was accepted by the Register on 9 June 2016. The deed was probably posted from the Kirkwall office a few days earlier. She agreed that there was nothing on the file to show that the Secondary Complainer had been advised of the delay in registration.

The Fiscal referred the Respondent to an email from the Secondary Complainer to her sent on 28 November 2016 and the witness's response to that email. She accepted that she had not advised the Secondary Complainer about the delay in registration and explained that she was focussed on dealing

with the Revenue issue as it was a scary situation for the Secondary Complainer. She accepted that she had never advised the Secondary Complainer that there had been a delay in the registration of her title.

The witness accepted that it was her position that the Secondary Complainer was not told the real reason for asking her for her National Insurance number, but she considered this was not her responsibility. The Respondent explained that she was not aware of the email sent to the Secondary Complainer on 8 April 2016. The Respondent was not the one who asked for it to be sent. The Respondent accepted that she was aware of the email sent by the Secondary Complainer dated 28 April 2016 asking why the firm required her to provide her National Insurance number. The Respondent could not recall making any enquiry as to why the National Insurance number was being requested. It was not unusual for members of staff to contact clients for missing information from the file.

The letter of 19 May 2016 to the Secondary Complainer would not have been run past the Respondent before being sent out. It would have been signed by Ms Sutherland.

She accepted that the delay in registration of the Disposition potentially exposed the client to risk.

The Respondent accepted that she signed the Standard Security and Matrimonial Homes Act Declaration as a witness when she had not seen the Secondary Complainer sign the documents. She agreed that in signing as a witness she was representing that she had seen the Secondary Complainer sign the documents when she had not in fact done so. The Respondent insisted that she did not know that the signature was not that of the Secondary Complainer. She did not accept that she should have known that the signature was not genuine. It did not occur to her that someone would sign the document for someone else. That seemed "alien" to her.

The Respondent agreed that the documents actually signed by the Secondary Complainer were signed in June 2015. The replacement documents were dated July 2016. She did not think there was a copy of the Secondary Complainer's signature on the file that could have been compared with the signature of 2016.

The Fiscal referred the witness to an exchange of emails dated 4 July 2016. She thought that it was the young Receptionist who had filed the Standard Security. He was preparing to leave the firm and was trying to catch up on his filing. He put documentation on files which caused issues later. She would not have put the deed in the tray to be sent via legal post if she had signed the documents after 11:30am on a Friday as the mail tray was not secure enough to leave the mail in over the weekend.

The Respondent accepted that she has no recollection of the Secondary Complainer having an appointment to come in to sign further documents but she did not have her diary to confirm that. The Respondent had no recollection of being told that the Secondary Complainer had come into the office to sign further documents. She was not aware of the Secondary Complainer being asked to come into the office to sign more documents. The Respondent explained that she was aware of an ongoing issue and so she would not have been surprised if the Secondary Complainer had been asked to attend the office to sign a second Standard Security. She did not accept that she knew or ought to have known that the Secondary Complainer had not signed the documents.

The Respondent agreed that she had also acted for the lender in the transaction and that the Standard Security could have been set aside because of the forged signature putting the lender at risk.

### **RE-EXAMINATION OF THE RESPONDENT**

The Respondent explained that she did not take any part in the recording of the Disposition in June 2016. This was done entirely by the Kirkwall office. It was the Conveyancing Assistant there who submitted the Disposition to the Registers of Scotland.

In response to a question from the Chair, the Respondent explained that the second Standard Security would require to be created if the original could not be found. This could be done by either office as they had a joint file system. The Standard Security would need to be printed off in Thurso in order to be signed there. Anyone in the firm could ask for a document to be printed off. Printing off was usually done by the front of house staff. She would have expected the Disposition and Standard Security to be registered at the same time. If for some reason this did not happen, it would not be unusual for a fresh Standard Security to be prepared. The Respondent would not have been surprised that a second Standard Security was created if the original could not be found. The Matrimonial Homes Act Declaration should have been witnessed by a solicitor. For the Standard Security, the signature could be witnessed by anyone. Clients would pop into the office spontaneously to sign documents. If the witness required to be a solicitor then the client should have been asked to wait or to come back at a time when a solicitor was available. It was unusual for her to be asked to sign as witness to a document where she had not seen the signature applied.

In response to a question from the Tribunal, the Respondent explained that June, July and August were the busiest months for the completion of transactions. She could not say that this transaction was in the forefront of her mind when the second Standard Security was signed, despite the Revenue Scotland issue.

She believed she would have checked the details within the Standard Security before signing it. If this was signed after 11:30am on a Friday, the document should have been put in a locked drawer in her desk to be kept safe for the weekend. The Respondent confirmed that she had looked through closed files in order to find the Standard Security on the Monday. The Security must have been taken from her desk drawer over the weekend by the young Receptionist. She did not speak to him specifically about this. The drawer would have contained all sorts of signed post including certified ID so she would not be surprised by him accessing the drawer for filing.

In response to a question from the Fiscal, the witness indicated she would not necessarily have expected to be advised by the Kirkwall office that a replacement Standard Security had to be prepared. She explained that it was not unusual for one of the paralegals to deal with such matters. The file was an electronic one.

Mr Macmillan clarified with the Respondent that the Revenue penalty arose in November 2016.

Mr Macmillan confirmed that he had no further witnesses to call and invited the Tribunal to receive the one Production for the Respondent.

## **SUBMISSIONS FOR THE COMPLAINERS**

Mr Foulis referred the Tribunal to his short bundle of Authorities.

He invited the Tribunal to find the Respondent guilty of professional misconduct on the basis of the reasons set out in the sub-paragraphs of averment 5.2. He understood that in relation to sub-paragraph iv to viii of that averment the dispute was whether or not the Respondent knew or ought to have known that the signature was not genuine. With regard to sub-paragraph i to iii, he understood that the dispute related to the extent of the Respondent's responsibility at the material times.

With regard to the finding of facts, he submitted that the burden of proof rested with him and that the standard of proof was that of beyond reasonable doubt. He invited the Tribunal to bear in mind the standard direction given to juries in relation to the standard of beyond reasonable doubt which he said was:

*"A doubt arising from the evidence based on reason not on sympathy or prejudice or fanciful doubt or theoretical speculation. It is the sort of doubt that would make you pause or hesitate before taking an*

*important decision in the practical conduct of your own lives. Proof beyond reasonable doubt is less than certainty but more than a suspicion or probability of guilt. This does not mean that every fact has to be proved beyond reasonable doubt. What it means is, looking at the evidence as a whole, you have to be satisfied of the guilt of the accused beyond reasonable doubt."*

He referred the Tribunal to the test for professional misconduct set out in Sharp-v-The Council of the Law Society of Scotland 1984 SLT 313. He submitted that the use of the word "reprehensible" has connotations which he likened to extremely bad, worthy of reprehension, blame-worthy.

The Fiscal turned to the averments at 5.2. In relation to sub-paragraph i), he submitted that it was not disputed that there had been a failure to record the disposition timeously. The dispute was whether the blame lay with the firm's system or with the Respondent. He submitted that there was no evidence that the Respondent had passed the documents to Kirkwall for registration. Even if she had passed these documents to the Kirkwall office, the responsibility for registration still rested with her. The Fiscal invited the Tribunal to consider the evidence of Ms Sutherland in that regard. He submitted that the Respondent retained responsibility for registration, could have checked and did not do so. He submitted the lack of any follow-up by the Respondent was sufficient to establish this averment.

With regard to sub-paragraph ii), he submitted that, if not before, it was clear that the Respondent was aware of the delay in the registration of the Disposition at least by January 2016 and he referred the Tribunal to the emails produced. At that point, the Respondent did not advise the Secondary Complainer of the delay, nor did she ask a colleague to do so. The Respondent said in her Answers that she was not aware of the delay in registration until July 2016 and he submitted that that was sufficient to make out the averment of misconduct as the Secondary Complainer was not advised of the delay at that time. There was no evidence that the Secondary Complainer was ever alerted to the delay in registration. The obligation to ensure that the Secondary Complainer was told that there had been an issue with the registration of her Disposition lay with the Respondent. This averment of misconduct was made out even on the Respondent's own version of events.

With regard to sub-paragraph iii), the Respondent was copied into an email from the Secondary Complainer asking why the National Insurance number had been requested. He submitted that this alone was enough to make out this averment of misconduct. The Respondent was alerted to the Secondary Complainer's request for an explanation and the Respondent had a duty to provide one. Whilst there was an issue with regard to who wrote the letter to the Secondary Complainer on 19 May 2016, and the Tribunal had heard various accounts of who the author was, the critical point was that at the point of

receipt of the email reply from the Secondary Complainer, the Respondent was aware that the Secondary Complainer was asking for information and no steps were taken to offer any explanation.

The Fiscal submitted that the remaining sub-paragraphs in 5.2 involved a dispute as to whether the Respondent knew or ought to have known that the signatures on the second Standard Security and Matrimonial Homes Act Declaration were not genuine. The Fiscal submitted that these averments were made out by what was on the file, the sequence of events and significantly what was missing from the file. He submitted that the facts admitted by the Respondent were sufficient to make out these averments of misconduct. The Respondent did not meet the client in July 2016. There was no evidence that the Respondent was told by anyone that they had seen the Secondary Complainer execute the documents.

There were two factors significant here. The first was that there was nothing to suggest that the Secondary Complainer had been asked by anyone to come in to sign the deed. The second was that there was no reason for the Secondary Complainer to pop into the office to sign anything as she had no knowledge that would be necessary. As far as the Secondary Complainer was concerned, documents had been signed in June 2015 and had gone off for registration.

The Fiscal submitted that the Tribunal was entitled to hold that, at the very least, the Respondent ought to have known that the signatures of July 2016 were not those of the Secondary Complainer.

The Fiscal invited the Tribunal to hold that the averments that were established met the test for professional misconduct set out in Sharp. He submitted that the Tribunal was entitled to hold that Practice Rules B1.2, B1.4, B1.9 and B1.10 were not complied with.

In relation to B1.2, he submitted that the failure to advise the client of a delay in registration, with the consequent risk of an LBTT penalty, and the claim to have witnessed the two signatures amounted to a breach of B1.2.

With regard to B1.4, he submitted that the failure to ensure timeous registration of the disposition was not in the interests of the Secondary Complainer and the failure to ensure the processes with regard to the Standard Security were not in the interests of the lender.

With regard to B1.9, he submitted that the absence of any update or explanation to the Secondary Complainer regarding the delay in registration of the disposition, the incomplete explanation offered for



the need to request the National Insurance number and the Respondent's failure to act in preventing the false Standard Security being recorded, all amounted to a breach of B1.9.

With regard to B1.10, he submitted that the failure to take the necessary care and exercise the necessary skill regarding the registration of the Disposition and the failure of the Respondent to advise the client regarding the delay in recording the Disposition amounted to a breach of B1.10.

The Fiscal referred the Tribunal to Paterson & Ritchie Law, Practice and Conduct for Solicitors Second Edition (hereinafter Paterson and Ritchie) at paragraphs 1.24, 1.25 and 7.16.01. He referred the Tribunal to the case of Bolton v Law Society [1994] 1 WLR 512 which he stated emphasised the importance of honesty in regard to the reputation of the profession.

He submitted that the conduct made out was sufficiently serious to amount to professional misconduct. Whilst there was no dispute that the working conditions within the firm were challenging at the time and these conditions had an impact on the Respondent, he submitted that inexperience and ill-health only go to mitigation of penalty and not culpability. The Fiscal referred the Tribunal to paragraphs 1.17 and 1.13 of Paterson & Ritchie.

The Fiscal emphasised that there were factors of seriousness including the Respondent's evidence that she recognised possible harm could be caused to the lender and the Secondary Complainer. Whilst the evidence indicated that this might be considered an isolated incident in as much it related to one transaction, the conduct covered a considerable period of time where matters were allowed to lie, and the Secondary Complainer was not alerted to the issues.

The Fiscal submitted that the Tribunal should consider the element of trust put on conveyancers to ensure that documents submitted to the Register for recording are valid, in particular here in relation to the Standard Security. The failure to follow procedures in that regard, he submitted, were significant and should not be dismissed.

He invited the Tribunal to hold that all of the matters within averment 5.2 were established and that on the basis of these averments the Tribunal should find that professional misconduct had been established.

## SUBMISSIONS FOR THE RESPONDENT

Mr Macmillan submitted that the test for professional misconduct set out within the Sharp case was entirely accepted. He submitted that the critical issue in this case was assessing whether the conduct was serious and reprehensible taking into account all of the circumstances in play at the time.

He submitted that the Respondent had accepted from the very beginning that she had failed in relation to the necessary responsibilities in relation to witnessing the signatures in 2016. This acceptance was noted in the Respondent's Answer in paragraph 3.09 and had resulted in the agreement of the Joint Minute.

Mr Macmillan submitted that the Tribunal required to bear in mind the context in which this conduct occurred. This was an office in complete chaos. The witness, Ms Sutherland, had described it as a difficult atmosphere. He submitted that it was perfectly clear that this was a partnership heading to divorce, with an unbelievable bad odour, leading to a catastrophic effect on the Respondent's health. Mr Macmillan agreed that the question of the Respondent's health was something relevant to mitigation but in this case, he submitted that the context in which the breakdown in health arose was relevant to the question of misconduct. He asked the Tribunal to consider the issue of a number of trainees being unable to fulfil their training contracts. The Respondent was a junior solicitor who no longer had Archibald Millar's support and the support of Ms Sutherland was token at best.

He invited the Tribunal to consider the evidence of the Respondent herself and the contents of the Affidavits for Archibald Millar and the Conveyancing Assistant. He referred the Tribunal to the Respondent's Answer at paragraph 3.09 which indicated that even the Law Society were concerned about the level of trainee turnover. He invited the Tribunal to accept that the Respondent by her own nature was a very careful lawyer and that this was supported to some degree by the evidence of Ms Sutherland.

Mr Macmillan explained that the original suspicion that the Respondent was responsible for the forging of the signatures came to nothing as a result of the Respondent's full cooperation given from the outset.

The Respondent's failure to comply with the legal requirements of witnessing the documents came as a result of that chaotic situation for which the firm and the principals were entirely responsible.

He invited the Tribunal to hold that professional misconduct was not made out given the circumstances in the firm at the time which created an atmosphere that was PTSD-inducing, coupled with an

extraordinary lack of resources in the Thurso office. He submitted this proposition was supported by the Affidavits of Archibald Miller and the Conveyancing Assistant.

Mr Macmillan invited the Tribunal to look firstly at the averments of misconduct in paragraph (iv) and (v) of 5.2. He submitted that sub-paragraph (v) was a ‘slam-dunk’ on the facts. He stated that sub-paragraph (iv) was pretty much the same. The Respondent knew she had not seen the signature or had it acknowledged to her. He submitted that this in the circumstances amounted to unsatisfactory professional conduct.

He submitted that sub-paragraph (i) and (ii) were largely bracketed together. He had been taken aback by the disclosure in the course of this hearing that the disposition itself was sent for registration on or around the 9 June 2016 by the Kirkwall office. This had not previously been disclosed to the Respondent. The conclusion that could be drawn from this was that the Disposition had been the Kirkwall office the whole time, were it was found and sent it for registration. There is no suggestion that the Disposition was fabricated. The conclusion to be drawn from all of this was that the Respondent had in fact transmitted the Disposition to the Kirkwall office as she had been instructed to do by her principals. It was general practice that firms have a system of post-transaction conclusion work. He invited the Tribunal to conclude that the Respondent in relation to averment sub-paragraph (i) had done exactly as she was instructed. With respect to sub-paragraph (ii) which was the failure to tell the Secondary Complainer of any delay, the first alert to the Respondent was in January 2016 when the question was raised regarding recording dues. From the evidence of Ms Sutherland, she responded to the original email and then did nothing herself. Mr Macmillan invited the Tribunal to hold that the Respondent was in ignorance of the delay and so any failure in this regard could not be seen to be serious and reprehensible.

With regard to sub-paragraph (iii) of averment 5.2, the alleged failure to advise the Secondary Complainer of the reason for asking for her National Insurance number, the Respondent’s only involvement in this was being copied into an email reply sent to a colleague by the Secondary Complainer. This email was followed up by a letter sent to the Secondary Complainer by someone other than the Respondent. Mr Macmillan submitted any failure to advise the Secondary Complainer of any delay lay with the principal of the firm. It was miles short of the Sharp test to attempt to lay the responsibility for conduct in the Kirkwall office at the feet of the Respondent.

With regard to sub-paragraphs (vi) and (vii), Mr Macmillan submitted that there was no proof that the Respondent knew or ought to have known that the signatures were fraudulent. The Respondent accepted that she had made a bad error in signing as a witness when she had not witnessed the original signatures.

He submitted that this amounted in the circumstances to unsatisfactory professional conduct. He submitted that it was a quantum leap to stretch this to the Respondent knowing that the signatures were fraudulent. The Respondent had no reason to suppose that the signatures were forged.

He submitted that the Sharp test was not made out either on a singly or *in cumulo* basis. At the worst, he submitted that the Respondent's signing as witness amounted to unsatisfactory professional conduct.

With regard to Rule B1.2, he submitted that the cross-examination of the Respondent was not sufficient to suggest that the Respondent acted dishonestly or without integrity. At its highest, the Respondent had acted with a lack of judgement.

He invited the Tribunal to hold that there was no breach of Rule B1.4 as the Respondent was doing what she was instructed to do by her firm.

Given the state of knowledge of the Respondent, he submitted that there was no breach of Rule B1.9.

With regard to Rule B1.10, he submitted that there was no evidence that the Respondent acted outwith her competence. She was guilty of an error in the signing as a witness. He referred the Tribunal to Archibald Millar's Affidavit with regard to the level of competence of the Respondent.

No intentional failure was established anywhere in this case. There was nothing analogous in this case to the Bolton decision. There was no issue of trustworthiness. The Tribunal requires to maintain the standards of the profession. It is not the Tribunal's purpose to mete out punishment.

## **RESPONSE BY THE COMPLAINERS**

With regard to the issue of the case being a "quantum leap", the Fiscal invited the Tribunal to consider that in order to accept the Respondent's position it would have to be satisfied that the Respondent had a reasonable basis to believe that the documents had been signed by the Secondary Complainer. He submitted that there was simply no evidence of that. He submitted that this was not a document witnessed and then hastily posted to the Kirkwall office. The documents were signed by the Respondent as witness on 1 July 2016. The Respondent had the weekend to contemplate matters. She retrieved the document from the file and then sent it to the Kirkwall office to be sent for registration.

The Fiscal submitted that dishonesty was established in this case on the evidence of the Respondent herself when she accepted, that by signing as a witness, she was representing that she had seen the signatory of the deed apply their signature when in fact she had not.

## **DECISION ON PROFESSIONAL MISCONDUCT**

The first step for the Tribunal was to ascertain which facts had been established. Parties had entered into a substantial Joint Minute agreeing the majority of the facts. The Respondent had not agreed in the Joint Minute that she had not sent the deeds to the Kirkwall office for onward transmission to The Registers of Scotland. Nor had she agreed that she knew or ought to have known that the signatures on the Standard a security and Declaration had been forged. These were matters to be determined by the Tribunal. The onus of proving the averments of fact rested on the Complainers and the standard of proof was that of beyond reasonable doubt. The Tribunal had the benefit of the parole evidence, Affidavits and Productions.

With regard to the parole evidence, the Tribunal was satisfied that both witnesses were attempting to do their best in assisting the Tribunal. The Tribunal considered that the witness Ms Sutherland downplayed the bad atmosphere in the firm caused by the partnership split. The Tribunal accepted that Miss Sutherland herself had been under a great deal of pressure at the time. With regard to the Respondent, the Tribunal considered that it was difficult for her to be objective about exactly what had taken place and for her to revisit the circumstances. The Affidavits of the other witnesses added little in relation to these disputed facts.

Having regard to the whole circumstances, the Tribunal determined that there was insufficient evidence to establish that the Respondent had failed to take the appropriate steps to send the deeds to the Kirkwall office. To the contrary, the fact that the Disposition was sent to the Registers of Scotland in 2016 would suggest that at least that document had been transferred to Kirkwall following settlement of the transaction.

Nor was the Tribunal satisfied that there was sufficient evidence to establish that the Respondent knew or ought to have known that the signatures were forged. The evidence regarding the preparation of these documents, how they came to be signed and then “witnessed” by the Respondent was extremely unsatisfactory. Whilst the evidence might raise suspicions, that was insufficient to establish these serious averments of fact.

The next step for the Tribunal was to consider whether the established facts supported the averments of breaches of duty.

The first averment was that the Respondent had failed to act in the Secondary Complainer's best interests by failing to ensure that the Disposition was sent to the Registers of Scotland for registration. In her Answers, the Respondent admitted that there had been a failure but explained this was caused by the procedures put in place by Drever & Heddle and not by her. The Respondent admitted that she owed a duty to the Secondary Complainer to send her Disposition for registration promptly and she had a duty to follow the direction of the firm's principals. These duties are not mutually exclusive. The solicitor's duty to the client should not take second place to the firm. The Disposition was not sent for registration until June 2016. An email was sent to the Respondent on 11 January 2016 disclosing that the recording dues for the Disposition remained on the client ledger, suggesting that it had not gone for registration. Despite being alerted to this, the Respondent took no steps to ensure that the Disposition had gone for registration. The Respondent was copied into an email from the Secondary Complainer that should have further alerted the Respondent that the it had not gone for registration. In these circumstances, the Tribunal was satisfied that the facts supported the averment of a breach of rule B1.4 of the Practice Rules 2011. The Respondent had failed to act in the best interests of the Secondary Complainer by failing to ensure that the Disposition was sent to the Registers of Scotland for registration.

Paragraph 5.2(ii) averred that the Respondent failed to ensure that the Secondary Complainer was advised that there had been a delay with the registration of important documents with the Registers of Scotland, namely a Disposition and Standard Security and Declaration under the Matrimonial Homes Act. It was admitted that there had been delays and that the Secondary Complainer was not advised of these delays. On a number of occasions, the Respondent should have been alerted to these delays and yet took no steps to provide the relevant information to the Secondary Complainer. The Tribunal was satisfied that the established facts supported a breach of rule B1.9 of the Practice Rules 2011 and that the Respondent had failed to communicate effectively with the Secondary Complainer.

Paragraph 5.2(iii) averred that the Respondent failed to ensure that the Secondary Complainer was advised of the basis for requesting her National Insurance number. The Secondary Complainer copied the Respondent into her email asking the firm for an explanation for the request. The Respondent made no inquiry and took no steps to provide the information to the Secondary Complainer. This was in contrast to the Respondent writing to the Inland Revenue with an explanation for the late LBTT return. The Tribunal was satisfied that the established facts supported that the Respondent had breached rule B1.9 of

the Practice Rules 2011 and that the Respondent had failed to communicate effectively with her client in this regard.

Paragraph 5.2(iv) averred that the Respondent signed as witness to the Secondary Complainer's purported and, in fact, fraudulent, signature on a Standard Security and Declaration when she knew or ought to have known that they did not bear the true signature of the Secondary Complainer. As noted above, the Tribunal determined that there was insufficient evidence to establish that the Respondent knew or ought to have known that the signatures were forged. This averment was therefore not supported by the established facts.

Paragraph 5.2(v) averred that the Respondent signed as witness to a Standard Security and Declaration when she knew that she had not correctly witnessed the signature of the Secondary Complainer. The Respondent admitted that in signing as a witness she was representing that she had seen the Secondary Complainer sign the document when in fact she had not done so. The Tribunal had regard to the test for dishonesty set out in the case of Ivey-v-Genting Casinos (UK) Limited [2017] UKSC 67. According to that case, the Tribunal should first ascertain subjectively the actual state of the individual's knowledge or belief as to the facts. When that is established the question whether his conduct was honest or dishonest is determined by applying the objective standards of ordinary decent people. The Tribunal was satisfied that the established facts met the test for dishonesty and that the Respondent had acted in breach of rule B1.2 of the Practice Rules 2011. This conduct was clearly not in the best interests of the lender and also breached Rule B1.4 of the Practice Rules.

Paragraph 5.2(vi) averred that the Respondent failed to act in the Secondary Complainer's best interests or in the best interests of the heritable creditor by permitting a Standard Security and Declaration with the fraudulent signature of the Secondary Complainer to be sent to a colleague for submission to the Registers of Scotland and so allowing the said documents to be submitted for registration. The Tribunal considered that this averment flowed on from paragraph 5.2(v). The Respondent had signed as a witness when she had not in fact witnessed the signatures. She admitted that she sent the documents to the Kirkwall office for them to be sent for registration. Whilst it was not established that the Respondent knew that the signatures were fraudulent, it was established that the signatures were, in fact, fraudulent and her conduct permitted these deeds to be forwarded to the Registers of Scotland. The Standard Security was open to reduction, potentially leaving the lender/heritable creditor unprotected. The Tribunal was satisfied that the facts supported a breach of rule B1.4 of the Practice Rules 2011 and that the Respondent failed to act in the best interests of the lender/heritable creditor.

Paragraph 5.2(vii) depended on the averment that the Respondent knew or ought to have known that these signatures on the Standard Security and Declaration were fraudulent. Accordingly, this was not established.

Paragraph 5.2(viii) appeared to be a duplication of paragraph 5.2(vi) and the Tribunal therefore considered it inappropriate to find that established.

The Tribunal went on to consider whether the conduct that had been upheld amounted to professional misconduct. The Tribunal had regard to the test for misconduct as set out in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313,

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

The Tribunal had found the Respondent guilty of dishonesty in relation to paragraph 5.2(v). A finding of dishonesty is extremely serious. Solicitors are in a privileged position of trust and it is essential that solicitors act with honesty in order to maintain public trust in the profession. The Tribunal concluded that this breach of rule B1.2 was in itself sufficient to amount to professional misconduct.

The Tribunal considered the remaining breaches of duty to be so interconnected that it was appropriate to consider them together. The Respondent had been held to have failed to communicate effectively with the Secondary Complainer and to have failed to act in the best interests of both the Secondary Complainer and the lender who was also her client. These failures extended over a significant period of time. The Tribunal was satisfied that *in cumulo* these breaches were serious and reprehensible and met the test for professional misconduct.

In assessing the question of professional misconduct, the Tribunal gave very careful consideration to the evidence of the Respondent and her explanations for how this had occurred. The Tribunal accepted that the Respondent was working in a difficult and unpleasant atmosphere, in an office which was greatly



under resourced. It accepted that this had an effect upon the mental health of the Respondent. The Tribunal considered that these matters were relevant to mitigation and not to the question of guilt.

An objection was taken by the Fiscal to the line of questioning by Mr Macmillan in relation to a number of trainees leaving the firm's employment before the expiry of their training contract. The Tribunal allowed the questions subject to the issue of relevancy. The Tribunal considered that, given the lack of detail, in particular in relation to the time frame and reasons for leaving, at best this evidence was support for the averment that there was a problem in staffing the office in Thurso.

The Tribunal invited both parties to make further submissions in relation to sanction, having particular regard to the finding of dishonesty. The Tribunal asked Mr Macmillan whether he would wish some time to consider his submissions and he responded that he would. The Fiscal confirmed he had no objection to an adjournment. It was agreed that the case would call later in the afternoon.

#### **SUBMISSIONS FOR THE COMPLAINERS REGARDING SANCTION**

The Fiscal invited the Tribunal to have regard to his earlier submissions in relation to the issue of professional misconduct, which he submitted continued to be relevant to the issues of sanction.

He emphasised the importance of the duty of honesty, the onus of solicitors to ensure proper forms of execution and the solicitor's duties to a lender client. He reminded the Tribunal of the remarks of Lord Justice Bingham in the case of Bolton-v-The Law Society [1994] 1WLR512. He submitted that, as the Tribunal had found that the Respondent had breached rule B1.2, removal from the Roll of Solicitors would be in the mind of the Tribunal.

He stated that it was not disputed that the Respondent's working conditions were challenging and that this could go to mitigation. The documentary evidence produced by the Respondent regarding her health could also mitigate sanction, although he invited the Tribunal to bear in mind that the evidence makes no mention of whether the Respondent's health impaired her decision-making at the time.

The Fiscal referred the Tribunal to its indicative sanctions guidance. He stated that there was nothing to suggest that this was anything other than an isolated incident in the Respondent's career, but it was open to the Tribunal to take into account the sustained time period of the Respondent's failure to inform the Secondary Complainer of the issues that had arisen.

He noted that the Respondent had admitted signing as a witness when she had not witnessed the signatures, but she had not accepted a breach of rule B1.2. The Respondent had disputed averments 5.2(i), (ii) and (iii).

He submitted that the Respondent's admissions being only partial admissions could be taken to dilute issues of remorse and insight. However, he accepted that the Respondent expressed remorse in her evidence and that she had given frank evidence regarding the risk to which the lender was exposed.

The Fiscal accepted that the Respondent had cooperated from the very outset of proceedings. She provided handwriting samples for analysis during the Complainers' investigations.

The Fiscal stated that he had no evidence of any repetition of such conduct.

He suggested that the Affidavits produced by the Complainers could be taken to be evidence of good character of the Respondent as they provided a generally favourable picture of her honesty and professionalism.

He submitted that the general risk to the public presented by the Respondent was a question for the Tribunal to assess. However, he reminded the Tribunal that the Respondent had exposed the Secondary Complainer and lender to risk by delaying in the registration of the Disposition and Standard Security.

The Fiscal submitted that a finding of dishonesty contradicted any suggestion that the conduct lay at the lower end of the scale, but suggested that it was open to the Tribunal to consider that the conduct lay on the lower end of the spectrum of dishonest conduct having regard to the mitigating circumstances here. He reminded the Tribunal that it had found that the Respondent did not know and nor ought she to have known that the signatures were forged.

He submitted that no evidence was produced of any rehabilitative steps taken by the Respondent but emphasised that the Tribunal did have an expression of remorse given by the Respondent in her evidence.

With regard to the impact of the conduct on the Secondary Complainer, he reminded the Tribunal that the fine in relation to the LBTT return was paid by the firm. He stated that the Secondary Complainer had made no application for compensation and that there was no evidence of any ongoing impact upon her.

The question of whether the conduct was deliberate or premeditated was, in his submission, a complicated question on the evidence. He suggested that the Tribunal might consider that the Respondent did not set out a plan to act in this way. However, he stated that the Respondent knew when she signed the documents that she had not witnessed the signatures and she had a period of the weekend to correct her error of judgement before sending the deeds to Kirkwall.

### **SUBMISSIONS FOR THE RESPONDENT IN RELATION TO SANCTION**

Mr Macmillan invited the Tribunal to take from the case of Bolton that the purpose of a disposal of strike off is not punitive but rather to “stamp out” such conduct and to maintain the reputation of the profession at large.

He urged the Tribunal to conclude from the evidence that the chance of repetition of such conduct by the Respondent was “zero”. He submitted the Respondent was by nature conscientious and careful. He confirmed that this incident had been a hard lesson for her to learn and she was regretful.

He invited the Tribunal to consider that the lack of integrity in this case was at the lower end of the scale and not of the type that would smear the reputation of the profession at large.

Mr Macmillan referred the Tribunal to the case of SRA-v-Sharma [2010] EWHC 2022 (Admin) which referred to exceptional circumstances where a strike off could be considered disproportionate. He submitted that the Tribunal required to consider (i) the nature, scope and extent of the dishonesty; (ii) whether the conduct was momentary or over a lengthy period; (iii) whether there was a benefit to the solicitor; and (iv) whether it had an adverse effect on others, which here would include the lender.

He submitted that the critical issue in this Complaint was the act of the Respondent signing as a witness when she had not in fact witnessed the signatures. He submitted that, if not for that matter, the other issues would not be before the Tribunal. He emphasised that the context in which the conduct had occurred was relevant. The procedure whereby documents were processed in Kirkwall had resulted in the Respondent becoming distant from the process. He submitted that the nature, scope and extent of the dishonesty here were at the lower end of the scale.

He invited the Tribunal to hold that this was a moment of madness. This was not a series of acts.

He stated that there was no benefit to the Respondent, other than perhaps one of convenience.

Mr Macmillan emphasised that there was no evidence of any adverse effect on the Secondary Complainer. The fine imposed by the Inland Revenue had been paid by the firm.

He invited the Tribunal to hold that, on the factors described in Sharma, the present case was one of those where it would be disproportionate to strike off the Respondent.

Mr Macmillan submitted that the working conditions were relevant. The Respondent was working under severe pressure. Ms Sutherland was known to have temper tantrums. There was a high turnover of trainees. The working conditions affected the Respondent's health and continued to do so.

The Respondent conceded from the very beginning that she had signed as a witness when she ought not to have done. She cooperated fully with the investigation. The Affidavits produced by the Complainers were evidence of her otherwise good character.

Mr Macmillan urged the Tribunal to accept that this conduct was not premeditated. It occurred on a busy Friday, when the Respondent was over stretched. It was a moment of madness.

He invited the Tribunal to deal with the Respondent by way of a censure and if necessary, fine.

## **DECISION RE SANCTION**

The Tribunal had found the Respondent guilty of professional misconduct involving dishonesty.

The duty of honesty and integrity is a fundamental and underpinning obligation of the profession. It has been made quite clear by this Tribunal that dishonesty must be seen at the top end of the spectrum of gravity for misconduct. It has also been said on a number of occasions that a finding of dishonesty will lead to a striking off in all but the most exceptional circumstances. (Bolton-v-The Law Society; SRA-v-Imran [2015] EWHC 2572 (Admin)).

In the case of Bolton the Court of Appeal noted that the essential issue is "*the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.*" The reputation of the profession is more important than the fortunes of any individual member. Similarly, in McMahon v Law Society of Scotland 2002 SC 475, it was noted that membership of the legal profession is a privilege. Those who exercise

that privilege undertake a duty throughout their professional lives to conduct their clients' affairs to their utmost ability and with complete honesty and integrity. Clients and colleagues should be able to expect these qualities of every solicitor as a matter of course. If the public is to give the profession its respect and trust, it must be assured that when solicitors fail in these duties, they will be suitably dealt with by the profession's disciplinary system.

The question for the Tribunal was whether the Respondent's conduct fell into the category of exceptional circumstances that meant that a strike off was not necessary. The case of Sharma recognised that *"There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances."* That case then states that *"Relevant factors will include the nature, scope and extent of the dishonesty itself."* In Imran, the court stated *"At the heart of any assessment of whether there are exceptional circumstances, and the fact of which is bound to carry the most significant weight in that assessment is an understanding of the degree of culpability and the extent of the dishonesty which occurred."* The case of Imran emphasised the importance of the impact of the dishonesty on the wider reputation of the profession and how it might impact upon the public's perception of the profession as a whole.

Mr Macmillan described the Respondent signing the documents as a witness as "a moment of madness". There was no evidence before the Tribunal of any premeditation on the part of the Respondent. In her evidence, the Respondent explained that she could not recall the exact circumstances in which she was asked to sign these documents. The 1<sup>st</sup> of July was a Friday. She was extremely busy. She said that she had no reason to believe that the signatures of the Secondary Complainer were fraudulent. However, the deeds were not forwarded by the Respondent to Kirkwall until the following Monday. The Tribunal considered that, whilst this suggested the conduct was more than momentary as there had been a period in which the Respondent could have reflected on her actions, it could not be said that the conduct was over a lengthy period of time.

The conduct was of little benefit to the solicitor. It could not be said that the conduct had an adverse effect on the Secondary Complainer as the documents would have been appropriately granted if signed and witnessed legitimately. However, the fraudulent execution of the document did open the possibility of the Standard Security being reduced and that placed the lender at potential risk. There was no evidence before the Tribunal as to whether or not the lender had in fact been prejudiced.

In all of the circumstances, the Tribunal concluded that there were exceptional circumstances here that would allow the Tribunal to consider a disposal other than striking off.

In considering the appropriate disposal, the Tribunal required to take into account all of the established averments of professional misconduct including the act of dishonesty, failing to act in the best interests of her two clients, and failing to communicate effectively with the Secondary Complainer. The Tribunal gave careful consideration to the mitigating circumstances including the difficult conditions in the workplace and the effect that this had on the health of the Respondent. The Respondent had been poorly supported, and treated as a senior member of staff when she was in fact newly qualified. However, the Respondent had been found guilty of dishonesty and that required to be treated seriously having regard to the reputation of the profession and public trust. A solicitor's role in ensuring the proper form of execution of legal documents cannot be understated. By failing to take the appropriate steps in witnessing the signing of the deeds, the Respondent had permitted fraudulently executed deeds to be sent for registration. The Respondent had opened the Secondary Complainer to risk by failing to ensure the registration of the Disposition and her lender client to risk as a result of wrongly signing as a witness to the Standard Security.

Whilst the Tribunal had held that exceptional circumstances existed in this case, the conduct was serious and the Tribunal considered it important to mark that seriousness and to emphasise the Tribunal's approach to such conduct to members of the profession.

The Tribunal accepted that the Respondent was otherwise of good character and was unlikely to act in a similar dishonest manner in the future. However, the Tribunal was concerned about a risk to the public and to the reputation of the profession. Taking into account the seriousness of the breach of rule B1.2, her breaches of rules B1.4 and B1.9 and the risks to which she exposed both the Secondary Complainer and the lender, the Tribunal considered the appropriate disposal was to restrict the Respondent's practising certificate for an aggregate period of two years so as to limit her to acting as a qualified assistant to such employer or successive employers as may be approved by the Council of the Law Society of Scotland.

The Tribunal invited submissions with regard to expenses and publicity.

The Fiscal made a motion for expenses to be awarded in favour of the Complainers and reminded the Tribunal of its duties in terms of paragraph 14 and 14A of Schedule 4 to the 1980 Act in respect of publicity.

Mr Macmillan invited the Tribunal to restrict the award of expenses to a date to commence on the date when Mr Foulis was first instructed as Fiscal. He explained that the prosecution had originally been allocated to another Fiscal. Mr Macmillan stated that he had attempted to communicate with that Fiscal without success and unnecessary delay had been caused. With regard to publicity, Mr Macmillan understood that the Respondent would be named but invited the Tribunal otherwise to have in mind the Respondent's right to a private life.

In all of the circumstances, the Tribunal considered that the appropriate award of expenses was one in favour of the Complainers. Whilst not all of the averments of misconduct were held to be established, the averments that were not established did not add to the length or complexity of the proceedings. The Tribunal did not consider it appropriate to limit the date of the award of expenses and considered that any question regarding unnecessary delay is something that could be dealt with at taxation. With regard to publicity, the Tribunal was concerned that it might be considered that allegations of dishonesty were being made against others who were not party to the proceedings. The identities of the other people referred to in the proceedings were not essential to these findings. The Tribunal accordingly directed that publicity should be given to this decision and that this publicity should include the name of the Respondent, and the partners of the firm, but need not identify any other person. The Fiscal confirmed that the Secondary Complainer was not making a claim for compensation.



**Catherine Hart**  
**Vice Chair**