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

DECISION

in Appeal under Section 42ZA(9) of the Solicitors (Scotland) Act 1980 as amended

by

PATRICK JOSEPH BAXTER, Solicitor, of Matthews Legal Limited, trading as AB&A Matthews, Bank of Scotland Buildings, Newton Stewart

Appellant

against

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

First Respondents

and

MR and MRS G

Second Respondents

1. An Appeal dated 31 July 2018 was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42ZA(9) of the Solicitors (Scotland) Act 1980 by Patrick Joseph Baxter, Solicitor, of Matthews Legal Limited, trading as AB&A Matthews, Bank of Scotland Buildings, Newton Stewart (hereinafter referred to as "the Appellant") against the Determination and Direction made by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the First Respondents") dated 4 April 2018 upholding a complaint of unsatisfactory professional conduct made by Mr and Mrs G (hereinafter referred to as "the Second Respondents") against the Appellant, censuring the Appellant and directing the Appellant to pay compensation.

2. In accordance with the Rules of the Tribunal, the Appeal was formally intimated to the First and Second Respondents. The First Respondents lodged Answers. The Second Respondents intimated to the Tribunal Office that they did not wish to participate in the proceedings.

3. Having considered the Appeal with the Answers, the Tribunal resolved to set the matter down for a hearing on 7 December 2018 and notice thereof was served upon the parties.

4. On 5 December 2018, the Chairman of the Tribunal due to convene proceedings on 7 December 2018, acting administratively under Rules 44 and 56 of the Scottish Solicitors Discipline Tribunal Procedure Rules 2008, adjourned the hearing to 24 January 2019.

5. The hearing took place on 24 January 2019. The Appellant was present and represented by Jonathan Brown, Advocate, instructed by William Macreath, Solicitor, Glasgow. The First Respondents were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Second Respondents were not present or represented. The Appellant gave evidence on oath. Both parties made submissions.

6. Having given careful consideration to the detailed submissions made by the Appellant and the First Respondents, together with the documents before it, the Tribunal quashed the Determination and Direction of the Law Society.

7. Having heard further submissions in relation to expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

> Edinburgh 24 January 2019. The Tribunal having considered the Appeal under Section 42ZA(9) of the Solicitors (Scotland) Act 1980 by Patrick Joseph Baxter, Solicitor, of Matthews Legal Limited, trading as AB&A Matthews, Bank of Scotland Buildings, Newton Stewart ("the Appellant") against the Determination of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh ("the First Respondents") dated 31 July 2018 upholding a complaint of unsatisfactory professional conduct made by Mr and Mrs G against the Appellant, Censuring the Appellant and Directing the Appellant to pay compensation; Quash the Determination, Quash the Censure accompanying the Determination, and Quash the Direction of the First

Respondents; Make no finding of expenses due to or by either party; and Direct that publicity will be given to this decision and that this publicity should include the name of the Appellant but need not identify any other party.

(signed)

Alan McDonald

Vice Chairman

8. A copy of the foregoing together with a copy of the Decision certified by the Clerk to the Tribunal as correct were duly sent to the Appellant and the First and Second Respondents by recorded delivery service on 18 FEBRUARY 2019.

IN THE NAME OF THE TRIBUNAL

[redacted]

Alan McDonald

Vice Chairman

NOTE

At the hearing on 24 January 2019, the Tribunal had before it the Appeal dated 31 July 2018, Answers for the First Respondents, a List of Witnesses submitted for the Appellant, a List of Witnesses for the First Respondents, two Inventories of Productions for the Appellant and one Inventory of Productions for the First Respondents. On the morning of the hearing, the Tribunal received copies of production 5 for the Appellant which had not been included in the electronic bundle of productions.

EVIDENCE FOR THE APPELLANT
WITNESS: PATRICK BAXTER

The witness gave evidence on oath. He confirmed that Production 6 for the Appellant was his witness statement and had been signed by him. He confirmed that he was willing to adopt the statement as his evidence. He explained that Production 4 for the Appellant was his file relating to the transaction in question.

The Appellant noted that the case arose from an executry. The Appellant was the executor. The beneficiaries were two brothers, Mr and Mr S. A property in Garlieston was to be sold. The Appellant described Garlieston as a small harbour village about 15 miles from Newton Stewart. There are two main estate agents in Newton Stewart. The Appellant's firm is one of them. The usual online estate agents also cover the area. Stranraer is about 30 miles away and has a larger population.

With reference to paragraph 11 of his statement, the Appellant confirmed that there was initial interest in the property from Mr and Mrs G and Mr and Mrs L. The Appellant sensed that the beneficiaries wanted to sell the property as soon as possible. The Appellant's firm quickly received two notes of interest. The Appellant confirmed that he fixed a closing date without consulting the beneficiaries. He told the beneficiaries he intended to do this. They did not object. Fixing the closing date was an attempt to encourage an offer for the property. In due course, one offer was received from Mr and Mrs G but no offer from Mr and Mrs L. This was not a surprise. However, the offer was lower than anticipated. The Appellant's property staff had reported that they thought the offer would be in the region of £190,000. However, the offer was for £175,000. The beneficiaries were disappointed. The Appellant spoke to Mr and Mrs G's solicitor at Rankin and Aitken and enquired whether Mr and Mrs G would increase their offer to £180,000. They were not prepared to do so.

With reference to paragraph 21 of his statement, the Appellant said that he negotiated missives with the solicitor for Mr and Mrs G. This was done in draft because he was waiting on Confirmation which would give him legal authority as executor to sell. He did not anticipate any difficulties getting Confirmation.

Mr Brown asked the Appellant about building warrants and listing buildings consent and whether an impasse had been reached regarding this issue. The Appellant answered that the beneficiaries felt that because they had accepted an offer substantially below the value of the property, they wanted to minimise expense. Therefore, they did not want to pay the costs of the indemnity insurance although this was less than £200. However, correspondence was still going back and forth. The Appellant got a quote for the insurance. Neither party threatened to withdraw over the issue. This was the only thing delaying the conclusion of missives. Title was displayed and the draft disposition prepared.

Mr Brown noted that the significant developments began at paragraphs 26 of the Appellant's statement. A competing offer was received from Mr and Mrs L. The Appellant said that he had no warning that this offer was to be made. Prior to the closing date Mr and Mrs L had said they were interested in the property and had tried to persuade the beneficiaries to accept an offer but this had been rejected. Mr Brown referred to Production 4/128 for the Appellant. This was a letter from Mr and Mrs L's agent to the Appellant noting that *"The sellers have indicated that they would accept a formal offer from our clients and therefore look forward to hearing from you when you have taken your clients instruction."* The Appellant confirmed that he was not aware of any contact between Mr and Mrs L and the beneficiaries.

With reference to paragraph 28 of his statement and Production 4/125 of the Productions for the Appellant, the Appellant explained that he emailed Mr S on 14 September 2016 at 11:04. He confirmed that the first part of the email was about the statutory consents and a query regarding Mr S's parents' purchase. He agreed that the email also discussed the competing offer. He set out in some detail the issues which arose. In particular, the Appellant wrote, *"I appreciate that you may now wish to accept the higher offer from Mr and Mrs L even though it is subject to mortgage. In that event my firm would have to withdraw from acting as Law Society Rules state that where a solicitor for a seller has intimated verbally or in writing to the solicitors for a prospective purchaser that their clients offer is acceptable, the seller's solicitor must not accept subsequent instructions from the seller to accept an offer from another party unless and until negotiations with the original offeror had fallen through for bona fide reasons unconnected with the possible offer from another party."*

The Appellant said that he did not feel he should take the decision for the beneficiaries. The second offer was £7,000 more and this was the beneficiaries' money. It was not for the Appellant to say that they should not have that extra £7,000. However, the Appellant noted that Mr L was self-employed and that it might be difficult for him to get a mortgage.

Mr Brown referred the Appellant to Production 4/123 for the Appellant. This contained an email query from Mr S. With reference to Production 4/122, the Appellant agreed that he responded to that email later the same day explaining that the withdrawal related only to the conveyancing and that he could still act as executor. Production 4/119 was a letter from the Appellant to the Professional Practice Committee of the Law Society of Scotland. Paragraph 31 of the Respondent's statement also referred. The question he posed to the Professional Practice Team is in the penultimate paragraph of his letter at 4/120. He was not sure at what stage he could become involved as a solicitor again. By 16 September 2016, the Appellant had not had any response from Mr and Mrs L's agent. He had also heard nothing from the beneficiaries. With reference to Production 4/118 which was an email from Mr S to the Appellant's firm on 17 September 2016 at 2331 hours, the Appellant explained that the beneficiaries intimated a wish to accept the offer from Mr and Mrs L. The Appellant explained that any emails received over the weekend are printed and given to him first thing on a Monday morning. He received this email on the morning of 19 September 2016.

With reference to his statement at paragraph 33, the Appellant explained that he made two telephone calls on Monday 19 September 2016. He referred to the notes of those telephone conversations which are contained at Production 4/116 of the Productions for the Appellant. One telephone call was to a solicitor, HS at Williamson & Henry and the other was to a solicitor DL at Rankin & Aitken. The Appellant explained that he has regular business dealings with Williamson & Henry. They are a reputable firm. Other businesses which were closer to the Appellant's firm geographically were also involved in this transaction. The Appellant said that he could not add any further detail to the file note regarding the conversation with the solicitor at Williamson & Henry. He recalled that he told her the reason for the conflict. He explained that he was the executor. He told her that he had already accepted an offer and could not accept another. He said that he would write to her with the details. Mr Brown asked whether there was any discussion between the Appellant and HS about the Law Society. The Appellant said that he had told her that if he was permitted to act again after missives were concluded, he would like to deal with the conveyancing. She was content with this arrangement. The Appellant said he "was fairly sure" that the call to Williamson & Henry took place before the call to Rankin and

Aitken. The Appellant said he "was fairly sure" he would have told DL that he was not acting due to Law Society Rules. The Appellant referred to Production 4/117. He said this was a memo from his executry clerkess. The memo was addressed to the property office and noted that another firm would have to deal with the transaction. He said therefore he must have mentioned this to her.

Mr Brown referred the Appellant to Production 4/115 for the Appellant which was a letter from Rankin & Aitken to the Appellant dated 19 September 2016 returning documents to him. Mr Brown asked the Appellant how well he knew the solicitors HS and DL. The Appellant said that he did not know them socially but has had lots of business dealings with them over the years. He has known DL for over 20 years and HS for over 10 years. He has good relationships with both their firms. He would deal with many transactions in a year involving them. The Appellant refers clients to both these firms.

Mr Brown asked the Appellant to look at Production 4/113 for the Appellant. This was the draft letter from the Appellant to HS at Williamson & Henry dated 20 September 2016. The Appellant agreed that this was a Tuesday. He agreed that it was marked "Draft". He could not say for sure when it was dictated or typed. The Appellant said that he would not generally ask for letters to be prepared in draft if they were straightforward. If the secretary is inexperienced, sometimes she will choose to type the letter in draft. The firm has a system of pigeonholes. Once the documents are typed, they are put there for the solicitor to uplift.

Mr Brown asked the Appellant about Production 4/107 for the Appellant. This was a draft email from the Appellant to the beneficiaries. Paragraph 34 of his statement referred. The email was prepared in draft by a secretary in a different office so it would be printed for him to check before sending. The email was sent on 20 September 2016 at 1001 hours. The Appellant said that it was probably dictated on Monday evening if it was being typed before 10am on Tuesday. The Appellant said that he usually gets into work at about 5am. He would have done both these pieces of dictation in one sitting. He was referred to Production 4/108 which was an email from Mr S to the Appellant's secretary at 0954 hours on Tuesday 20 September 2016. This was seven minutes before his draft email arrived from the secretary. The email contained at 4/108 from Mr S said that his email of Saturday night had been a mistake (paragraph 36 of his statement referred). The Appellant said it only fair to try and inform DL as soon as possible of the situation on the Monday. The Appellant said he had no contact with the agents for Mr and Mrs L. The Appellant said that he dictated the letter to HS on Monday afternoon or at the latest, Tuesday morning. He anticipated that HS would contact Mr and Mrs L.

Production 4/112 for the Appellant was a hard copy letter from Rankin and Aitken which had been sent by fax at 1048 hours on 20 September 2016. The Appellant agreed that this was little less than an hour after the email from Mr S. The letter referred to recent telephone discussions. These referred to the call on Monday 19 September 2016. The Appellant said that he had subsequently had another telephone call and this was what was referred to in the handwritten postscript. The second telephone call had taken place after the email from Mr S on 20 September 2016. The Appellant phoned DL to say that the beneficiaries would sell to Mr and Mrs G after all. DL said he needed to contact Mr and Mrs G to see if they wanted to proceed. This telephone call took place on 20 September 2016 between Mr S' email at 0954 hours and the faxed letter of 1048 hours.

Mr Brown referred the Appellant to the letter contained at 4/110 for the Appellant which was a letter from Rankin & Aitken to the Appellant. The letter confirmed that Mr and Mrs G did not want to proceed with the transaction. The fax header timed this letter at 1258 hours on 20 September 2016. The Appellant said he was surprised that Mr and Mrs G decided not to proceed with the transaction. They had already placed their solicitors in funds. The transaction could still go ahead on the date which had been arranged. The beneficiaries were willing to accept a lower price and pay for the indemnity insurance policy.

Mr Brown referred the Appellant to Production 4/106 for the Appellant which was an email from the Appellant's secretary to the beneficiaries on 20 September 2016 at 1441 hours. It was a report of what had happened. The Appellant suggested that the beneficiaries speak to Mr and Mrs G. The Appellant noted that he was due to be absent from the office and his colleague would cover for him.

The Appellant agreed that Production 4/105 for the Appellant was the withdrawal of the offer from Mr and Mrs L. The letter was dated 21 September 2016. Mr Brown referred the Appellant to Production 4/104 which was a letter by his colleague and partner to Mr and Mrs L's agents. The Appellant confirmed that there was no other contact by anyone in his firm with the agents for Mr and Mrs L. Nothing was done to take forward their competing offer.

Mr Brown referred the Appellant to Production 4/103. It is a letter from the Appellant to Rankin & Aitken dated 22 September 2016. It noted that the residuary beneficiaries were willing to drop the price by £5,000 and pay for the indemnity insurance. The email contained at Production 4/88 for the Appellant from Mr S to the firm gave instructions for that approach. There followed two emails on 22

September 2016 and 12 October 2016. Mr S asked if the firm had any response from Mr and Mrs G and confirmed that he had tried to contact Mr and Mrs G direct.

Mr Brown referred the Appellant to Production 4/101 for the Appellant. This was an email from the Law Society of Scotland sent on 22 September 2016 at 1010 hours. He quoted the fourth paragraph of this letter as follows:
"However, I think there is a substantial argument that the first proposed sale had "fallen through for bona fide reasons" in respect that the purchasers' solicitors were insisting on an indemnity policy and the residuary beneficiaries were totally opposed to it. That situation "of complete stalemate" by itself indicates that the sale had "fallen through" because it simply cannot proceed in both sides are entrenched in their position."

The Appellant said he did not agree with this advice. The issue about the indemnity policy was not going to imperil the transaction. If it had come to that, he as executor would have agreed to pay for the indemnity policy so that the transaction could proceed. Mr Brown noted that the email from the Law Society goes on to note that *"different considerations may apply however to sales of commercial property and to sellers owing statutory or fiduciary duties to others."* Mr Brown noted that this suggested that if the Appellant was wearing his executor's hat, he might not have to withdraw from the transaction. Mr Brown asked whether this was the question which the Appellant had asked the Professional Practice Committee. The Appellant said that it was not. His question was about conveyancing after another firm had dealt with the missives. He did not think that it would be appropriate to continue to act in relation to the second offer even if he was an executor owing fiduciary duties to the beneficiaries.

CROSS-EXAMINATION

Ms Motion asked the Appellant whether he had drafted the statement contained at Production 6 for the Appellant. The Appellant said that he had not but that he had revised it.

The Appellant said that when creating a telephone note he tries to make sure he includes all material facts. He agreed that this was because memories fade. He agreed that the file note is effectively a statement from the day. The Appellant confirmed that he will take handwritten notes of telephone calls and then dictate the handwritten note at the end of the day. The Appellant said it was not his practice

to put handwritten notes on the file. In his view, there is generally enough paper in the files. All emails, letters and significant telephone calls are recorded in the file.

Ms Motion suggested that the telephone call on 20 September 2016 to Rankin & Aitken after the clients said that they wanted to accept the higher offer was a "material conversation". The Appellant agreed. He was also going on holiday that week and dealing with a lot of work. Ms Motion referred the Appellant to paragraph 5 of his statement. He agreed that it detailed the process he adopted on this occasion with the beneficiaries.

With reference to paragraph 8, Ms Motion asked the Appellant why he did not ask his colleague and partner to deal with the conveyancing in this transaction. The Appellant explained that each solicitor in the firm keeps his own files. The Appellant said he supposed that in a policy of perfection that might be best but no particular difficulties arose here.

With reference to paragraph 18 of the Appellant's statement, Ms Motion noted that he telephoned DL. She asked whether this was his normal practice. The Appellant said that it depended to an extent on whom he was dealing with and the time available.

Ms Motion asked the Appellant to turn to Production 4/113 for the Appellant which was an email dated 12 September 2016 at 1834 hours from Mr S to the Appellant. Ms Motion read out the whole email. The Appellant was unable to point to any part of that email which noted that the beneficiaries were not prepared to pay for the indemnity policy. However, his recollection was that because they had accepted a low price, they did not want to pay for it.

Ms Motion referred the Appellant to Production 4/125 for the Appellant. This was an email from the Appellant to Mr S on 14 September 2016 at 1104 hours. He agreed that in this email he sought instructions from the beneficiaries regarding the second offer. The Appellant noted in paragraph 5 the suggestion that the beneficiaries were not willing to pay for the policy. He had said *"We could go back the solicitors for Mr and Mrs G and indicate that you are not willing to pay for the cost of the indemnity policy and leave it up to them if they wish to proceed."*

The Appellant's position was that the transaction had not broken down. With reference to paragraph 30 of his statement and Production 4/122 for the Appellant, Ms Motion confirmed that it was the Appellant's understanding that he would have to pass over the missives element of this transaction.

Ms Motion asked why he did not telephone the Professional Practice Team at the Law Society. The Appellant said that he had no concerns. He knew that he could not accept the offer from Mr and Mrs L.

Ms Motion noted that the Appellant never sought advice regarding what he could or could not do once the second offer was accepted. The Appellant said however that the offer was not accepted. He did not feel he needed to follow up with the Law Society. Ms Motion noted that in Production 4/119 for the Appellant which was the Appellant's letter to the Law Society, he had noted that Mr S was *"not happy about incurring that cost"* but that this was not reflected in the email correspondence between the Appellant and Mr S. The Appellant said that if the beneficiaries had been willing to pay, he would have been happy to complete the transaction. Ms Motion noted that the question being asked of the Law Society was not the question which was before the Tribunal. The Appellant agreed. He said that he knew the answer to the question which was before the Tribunal and did not require advice on that matter.

Ms Motion asked the Appellant to refer to Production 4/117 for the Appellant. He agreed that there was no time recorded in relation to that note. He said it was most likely done at the same time as the calls with DL and HS. Ms Motion also noticed that there was no time recorded in relation to file note of telephone calls contained at Production 4/116. The Appellant said that the time was not something he would normally put in a file note. He felt obliged to tell DL the situation "solicitor to solicitor" and to be fair to the clients. Ms Motion queried how sure he was that the call to HS was made before the one to DL. The Appellant said he could not be any more definite that he was "fairly sure". Ms Motion noted that the Appellant said he had recorded the material facts in the note. The Appellant said that he was fairly sure he told DL he was passing the case on. However, he acknowledged that this was not in the note and there was no handwritten note present in the file.

Ms Motion asked the Appellant if he had not made the call on 19 September 2016 to DL, what was the likely outcome. The Appellant said he had regretted dealing with the matter so quickly but delaying matters could have created difficulties too. Ms Motion suggested to the witness that he had acted on the instructions of the client by phoning DL at Rankin & Aitken.

Ms Motion referred to Production 1 for the First Respondents which was a letter by DL to his clients, Mr and Mrs G. It was sent on the date of the call between the Appellant and DL, namely 19 September 2016. The Appellant agreed that the first paragraph of that letter says that his firm had been "instructed

to accept" an offer in preference to theirs. The Appellant also noted however the wording of paragraph 5 which said that the sellers are "proposing" to accept the new offer. Ms Motion noted that this letter is confirmation that the transaction is at an end. The Appellant said "Yes, so far as Mr and Mrs G were concerned."

Ms Motion also referred to Production 3 for the First Respondents. The Appellant agreed that in many ways it was similar to the letter contained at Production 1. Production 3/1 was an email from DL to Ms Motion explaining his understanding of the situation. Ms Motion asked the Appellant whether there was any confirmation in that email that DL was aware that the Appellant was going to withdraw from the action. The Appellant asked whether DL was ever asked that question. Ms Motion indicated that she could only point to the email and the letter.

Ms Motion asked the Appellant whether the two draft letters dictated on 19 September 2016 were prepared on 20 September 2016. The Appellant replied that letters are typed by the secretaries in order. The Appellant indicated that Mr S had cancelled his instruction before 10am on the morning of the 20 September 2016. The Appellant agreed that Mr and Mrs G were extremely disappointed. He agreed that the response from the Professional Practice team was not received until 26 September. He said that he did not have any follow-up questions for the Professional Practice team because their advice came in after the event. He did not contact them to correct any inaccuracies because the transaction had fallen through and there was "no point".

Ms Motion noted that the Law Society's advice was incorrect because it ran on a factually inaccurate narrative. She noted that the letter made incorrect assumptions. The Appellant said that in order for him to have been comfortable continuing to act, he would have wanted a letter from the prospective purchasers indicating that the transaction had broken down.

The Fiscal made reference to Production 4/91 for the Appellant. The Appellant agreed that he did not reimburse Mr and Mrs G for their losses. He did not ask his clients if they were prepared to reimburse Mr and Mrs G. Mr and Mrs G did not request compensation from the clients.

RE-EXAMINATION

Mr Brown referred the Appellant to Production 4/133 for the Appellant. He noted that the Appellant had been referred to the top email on that page but that he wished the Appellant to look at the second

email. Mr Brown quoted the following paragraph from the email which was from the Appellant to the beneficiaries dated 12 September 2016:-

"I shall be grateful if you can confirm that I can proceed with this policy and I will then forward a draft to the purchasers' solicitors for approval. This will all hopefully enable us to conclude a contract for sale with a view to completion on 30 September."

The Appellant agreed that implicit in this paragraph was a request for instruction on the matter of the policy. However, the supervening offer was received the following day.

A member of the Tribunal asked a question regarding the Appellant's use of the term "conflict". The member asked whether the Appellant had meant the conflict between the responsibilities of solicitor and the interests of the beneficiaries. The Appellant said that he did not believe there was a conflict. There was no legal requirement on him to consult the beneficiaries but he felt obliged to do so. The beneficiaries wanted to accept the offer. The Appellant had no financial interest in the matter. He felt that he was accepting on behalf of the beneficiaries.

The Chair asked the Appellant whether the telephone call to DL came after he had decided that he could not act. The Chair wished clarification about whether in making that call the Appellant considered that he was "acting" or whether this was merely a courtesy call. The Appellant confirmed that he did not believe he was acting in those circumstances. The communication with DL was merely a courtesy call. The Chair noted the Appellant's position that he had made a decision that he could not act but then did something after that. The Appellant noted that the telephone call took place on 19 September. The proposed settlement date was 30 September. He felt he should let DL and Mr and Mrs G know the position as soon as possible. If he had sent the file to HS, this would not be dealt with for another two to three days.

Parties were asked whether they had any questions arising out of the matters raised by the panel. Ms Motion noted that settlement was due to take place on 30th and the Appellant was due to be on holiday between 21st and 26th. She suggested that this was also on his mind. The Appellant said he was sure that would have been a factor.

Ms Motion confirmed that she did not intend to call the only witness on her list, DL. Therefore, parties moved on to submissions.

SUBMISSIONS FOR THE APPELLANT

Mr Brown said that his primary motion was that the Tribunal should allow the Appeal and quash the finding of unsatisfactory professional conduct. His secondary motion was that if the finding was to stand, the Tribunal should look again at the compensation awarded.

Mr Brown asked the Tribunal to bear in mind the original complaint. He referred to Production 2/1 for the Appellant and quoted the agreed summary of complaint. According to Mr Brown, if the complaint was to be read as an allegation that the Appellant did anything at all to address the competing offer from Mr and Mrs L, the answer was "no he didn't". The Appellant had no contact with Mr and Mrs L or their solicitors. The only thing he did was prepare the ground with Williamson & Henry to take over the case. Mr Brown said that if the agreed summary of complaint was read more narrowly and it only referred to the conversation between the Appellant and the beneficiaries when the beneficiaries sent the Friday email saying they wanted to accept Mr and Mrs L's offer, then what could the Appellant do other than what he did?

Mr Brown asked the Tribunal to assume for a moment that the transaction involved a "bog-standard" solicitor relationship. The solicitor's duty is to say that his professional rules of conduct do not allow the solicitor to continue to act. A solicitor is prohibited from running second negotiations in tandem. It is obvious in these circumstances because the client is the contracting party. Mr Brown referred to "slightly disturbing overtones" in the guidance that "solicitors should tell clients what to do". However, it is a lawful instruction from the clients to accept a higher offer. The solicitor's job is to point out the consequences of their lawful instructions. It is inherent in the framework that a solicitor "accepts" the client's position from him. The solicitor must be able to entertain discussion with the client. The solicitor and his client need to work out what has to be done. Withdrawal from agency should not be done lightly and without thought. The solicitor needs to bottom out what he is being asked to do. Mr Brown submitted that if the question was whether the Appellant did progress the offer, then the Sub Committee had misunderstood the question. The Appellant did not do what he was accused of doing.

Mr Brown submitted that the complication in this case was that the client was the executor. However, in reality, the money rests with the beneficiaries. The solicitor executor has the standard duties of executor. It is a fiduciary office. It will call for the exercise of judgement in difficult cases. This case involved a lower but more certain offer and a higher but more uncertain offer. Sometimes the executor might just make a call on that for example if the beneficiaries are 20 different small charities or minor

children or adults with incapacity. However, in this case two adult sons were getting the money. It is difficult to say it was wrong for the solicitor to consult with them. They faced the consequences of the trade-off.

Mr Brown invited the Tribunal to look at the forks in the road for the Appellant. The Appellant could have said "I'm the executor. I'll make the decisions." However, this could potentially lead to disgruntled beneficiaries looking for an extra £7,000. Mr Brown submitted that once you are over that hurdle and accept that the beneficiaries' view should be taken into account and given weight, once the beneficiaries say they want to accept the offer from Mr and Mrs L, the Appellant either had to refuse the offer, or give weight to the decision of the residuary beneficiaries. He decided to give effect to the beneficiaries' wishes. Mr Brown posed the question of what the Law Society say the Appellant should have done differently? Mr Brown submitted there was a "misconception in expression" because the answer is that he could not do anything.

Mr Brown asked the Tribunal whether the telephone call to DL on 19 September 2016 (a single act on one day) should be treated as acting in furthering the competing transaction. In Mr Brown's submission it could not be. The obligation is not to delay breaking bad news. The longer time went on, the more arrangements the purchasers would have made in good faith.

Mr Brown invited the Tribunal to consider the mischief struck at by the guidance. It is designed to stop solicitors stringing potential purchasers on and "double dealing". It prevents concealment from the first purchaser. However, that is the reality of the commercial world. Until there is a binding contract, the seller can pull the deal and go elsewhere. Sometimes clients will do this for good reason. It happens. Mr Brown noted that this issue arose 11 days from settlement. The clock was ticking. Not telling Mr and Mrs G was also likely to engender criticism under this guidance. It was a matter of courtesy that the Appellant made the call. Mr Brown said he questioned how the Appellant could avoid at some point and in some form, giving notice to DL. He could have written. But he could not just "leave them hanging". In Mr Brown's submission it was not improper to ask Williamson & Henry to write, but it was not "misconduct" for the Appellant to call Rankin & Aitken.

Mr Brown asked the Tribunal to be careful that the complaint is not that he acted too early. He asked the Tribunal to bear in mind that this all took place in the space of one week. Rather, the complaint is that he accepted the instructions to progress the second offer. What did the Appellant do that he should not have done?

Mr Brown submitted that there was nothing wrong with the Appellant's advice to the beneficiaries. He "teed up" another solicitor. He thought about the situation. He considered whether he could do the conveyancing. He took advice on this matter from the Professional Practice Committee. The answer was awaited when he received written instructions from the beneficiaries on Monday morning indicating that they wish to accept another offer. The proper thing to do in the circumstances was to phone DL immediately and break the bad news. Literally the next day, the beneficiaries wanted to go back to Mr and Mrs G. This was communicated without delay. Within 24 hours Mr and Mrs G had decided not to purchase the property. Later, Mr and Mrs L's offer was withdrawn. The "cherry on the cake" was the Professional Practice advice which said the Appellant could act by which time the matter was academic.

Mr Brown said that the advice from the Law Society was wrong to the extent that it opined that the transaction had broken down. The objective reality was that it would be very unusual to lose a sale over £200. This was not the question on which the advice was sought. The Appellant received advice which says he does not have to pass the matter on if he is an executor. The Law Society advice regarding an executor's duties and the breakdown of a transaction is run together in an unsatisfactory way. However, Mr Brown submitted that the second half of the advice must be correct. By way of magnified example, he described a situation where an executor is selling a property. An indifferent price has been agreed with a prospective purchaser. There are no concluded missives. Another offer is received by someone who owns a neighbouring property thus giving the property in question great value to him. This potential purchaser offers to pay a million pounds. Mr Brown asked the Tribunal to imagine the fiduciary duty of an executor in these circumstances. An executor should have a single-minded duty to the interests of the beneficiaries. Fiduciary duties rank above the professional obligations of a solicitor. If that is correct, then it is absurd to say, "I'll give those instructions but someone else's name will have to go on the missives." It is nonsense to suggest that you can separate the instructions of the executor and the implementation of those instructions. The Appellant said he "was uncomfortable" and would have stepped back. However, the rules say that executors are not obliged to withdraw. If he was not obliged to withdraw, how could it possibly be a conduct offence to err on the side of caution.

Mr Brown submitted that the compensation issue was a classic jury question. Mr Brown said he could foresee a situation where potential purchasers are genuinely disappointed. However, in 24 hours, Mr and Mrs G could have got a cheaper home on time, and the indemnity policy paid. Theirs was a

conscious choice not to proceed. It was not an effect of anything done by the Appellant. He, therefore, should not have to pay for this.

Mr Brown suggested that the guidance was not satisfactory. He invited the Tribunal to make observations about this in its decision. He said guidance should be clear and able to be followed by competent lawyers. It should be far more explicit regarding executors. Mr Brown also posed the question why domestic conveyancing should be treated differently to other transactions. He submitted it was based upon a myth that once you have made an offer, you are bound. He said with certainty it would be negligence not to tell a client that he was not legally bound until missives were concluded. The guidance does not protect commercial property buyers or other transactions for moveable property, for example race horses, antiques or footballers. The underlying inference was that it was the duty of the solicitor to stop a legal way of proceeding. This was wrong. Mr Brown asked what the real deterrent effect was of getting someone else to complete the missives. The Appellant had complied, but this is an unsatisfactory state of affairs. The Tribunal should suggest that the Law Society revisits this issue. He noted that the Legal Defence Union had funded the case because they thought it was of importance to the profession. Regardless of the outcome, parties had agreed that neither would make a motion for expenses.

SUBMISSIONS FOR THE FIRST RESPONDENTS

Ms Motion asked the Tribunal to uphold the decision of the Sub Committee that the Appellant was guilty of unsatisfactory professional conduct. She said that this was the very situation which the profession is attempting to avoid by way of its rules. The real mischief was the Second Respondents faith in the legal profession was affected. On the ground, in residential conveyancing transactions, it is important that the public has faith in the profession. Mr and Mrs G's losses occurred only because of the actions of the Appellant. Therefore, the Appellant should compensate them.

In Ms Motion's submission, the case was really quite simple. The complaint was split into two bits. Ms Motion suggested that the Appellant took active steps having been instructed to accept a new higher offer. The guidance does not say that the only steps you would be criticised for are steps involving the solicitor for the new offeror. The Appellant took steps to prevent a transaction. He made a telephone call on the Monday. He had other things to do later that week. He said that he regretted making the call.

Ms Motion made reference to Hood-v-The Law Society of Scotland at paragraph 17 and submitted that it could not be said that the Sub Committee had erred in any of the ways which would justify the Tribunal interfering with its decision. As soon as the Appellant made the call to DL, the transaction fell through and that is what constituted unsatisfactory professional conduct.

Ms Motion submitted that the mischief is set out in Paterson & Ritchie's "Law, Practice and Conduct for Solicitors". One must keep one's word to colleagues. It is crucially important for the reputation of the profession. She suggested that there were two "lines in the sand". The first of these was the email from the beneficiaries. It is an instruction to accept an offer. At that point the Appellant should have "put his pen down", contacted HS at Williamson & Henry and given her instructions over the telephone and asked her to call DL. The second point was at the time of making the telephone call to DL. The notes of the telephone calls had to be taken at face value. In the making of the telephone call to DL, the Appellant took an active step in accepting the instruction from the beneficiaries. She noted that nowhere on the file does it say that the Appellant intended to withdraw.

Ms Motion submitted that the references to fiduciary duties are a "red herring". The telephone call of 19 September 2016 is from one solicitor to another solicitor. The Appellant was not sitting with his executor hat on at that time. He was taking instructions from the beneficiaries as clients. He was not acting in a "fiduciary capacity". If you are in the situation where you are acting in a fiduciary capacity, you must make that abundantly clear that it is in that capacity that you are so acting. Ms Motion made reference to paragraph 13.05.04 of Paterson & Ritchie and suggested that even if there was a fiduciary relationship, it was not relevant to these circumstances because the Appellant had not put the purchaser on notice that until missives were concluded the property was to remain on the market.

Ms Motion noted that the advice from the Professional Practice Team conflated two separate issues. However, it was an attempt to apply the guidance to a factual situation. Ms Motion noted that she had included Law Society of Scotland v Scott Allan in the Inventory of Productions for the First Respondent because that case had been put before the Sub Committee. She also referred to the recent Tribunal appeal case of Ian Donaldson v Law Society of Scotland. In that case the critical issue had been the focussing of the question for the Sub Committee in terms of the original complaint. She submitted that the question in this case was focussed so no such issues arose.

In summary, Ms Motion noted that the Appellant regretted making the call on 19 September 2016. She urged the Tribunal to accept the written *"de recenti"* evidence of the letter Rankin & Aitken sent to

their clients Mr and Mrs G. Where there is conflict in the evidence, she urged the Tribunal to prefer the letter sent on the day. She noted that the Appellant's evidence was given with hindsight after a long process. The file does not support what he says about withdrawal. She said that the Tribunal should consider what a fully appraised bystander would think of these events. In her submission such a bystander would think that that the solicitor had accepted and acted upon the beneficiaries' instructions.

The Chair clarified that Ms Motion's submission was that the Appellant had taken active steps to accept the offer and that this was constituted by the telephone call to Rankin & Aitken on 19 September 2016. Ms Motion said that this was both a professional and a courtesy call. The Appellant did not just telephone and say that he required to pass the case on or that there was an issue and that HS would call. He stepped over the line by taking these steps and having the conversation.

Another Tribunal member asked whether the Law Society's case hinged on the appropriate characterisation of that telephone call. Ms Motion said that the Tribunal knew the content of the call mainly from the letter by Rankin & Aitken to Mr and Mrs G. The content of that letter goes further than the courtesy call. She said it could not be argued that making any call would sufficient to constitute "acting" but the content in this case was certainly wrong.

The Tribunal member referred Ms Motion to the section of Paterson & Ritchie which she had quoted and noted that the exceptional circumstances applying to solicitors acting in a fiduciary capacity on the face of it would apply to executors. It was clarified that Ms Motion believed that the sentence regarding properties staying on the market should be read alongside that first sentence relating to fiduciary duties. She said they were not separate examples. If a solicitor wants a special circumstance to apply, she said they should bring themselves within the exception relating to properties remaining on the market. The Chair questioned whether the guidance and the section in Paterson & Ritchie could bear two interpretations. Mr Brown said that the section which excluded commercial property transactions or transactions where the seller had fiduciary duties applied as a blanket to all executors acting in a fiduciary capacity. He submitted that the guidelines do not apply where a seller has fiduciary duties for example to beneficiaries as was the case here. Ms Motion admitted that it might be helpful for the Law Society to revisit the guidance.

DECISION

The complaint made by Mr and Mrs G against the Appellant was as follows:-
"On or about 19 September 2016 Mr Baxter and/or Matthew Legal Limited accepted instructions from the seller of [Property 1] to accept an offer from another potential buyer, at a time when they had intimated (including by letters of 25 August 2016 and 7 September 2016) to our solicitors that our offer was acceptable, and at a time when negotiations with our solicitors for the sale of the property had not fallen through."

The Appellant was acting as executor and solicitor in the sale of a property. As was his practice he consulted the beneficiaries on matters of importance and gave weight to their views when taking decisions which affected them. The property was marketed. A closing date was fixed for 16 August 2016 at 12 noon. Mr and Mrs G were the only party to submit an offer. The Appellant issued a qualified acceptance to their agents, Rankin and Aitken, on 30 August 2016 proposing a date of entry on 30 September 2016. Rankin and Aitken sent a draft disposition to the Appellant on 31 August 2016 which was approved and sent back to them on 1 September 2016. On 2 September 2016, Rankin and Aitken sent the engrossed disposition for execution to the Appellant. During the exchange of missives there was correspondence regarding alterations to the property and building consents. Rankin and Aitken proposed that an indemnity policy was obtained by the sellers to protect Mr and Mrs G. The Appellant obtained a quote for a policy. No agreement was reached on who was to pay for the indemnity policy but the Appellant anticipated that this matter would resolve and the transaction would not break down as a result of disagreement on this issue.

On 13 September 2016, a higher offer from Mr and Mrs L was sent to the Appellant. On that date, the Appellant also received a letter from Rankin and Aitken saying that they were in funds from Mr and Mrs G. On 14 September 2016, the Appellant advised the beneficiaries of the higher offer. He informed them that it was subject to mortgage and there were certain risks in accepting that offer. He also told the beneficiaries that if they wished to accept the higher offer, due to Law Society Rules, he would have to withdraw from acting as solicitor (but not executor) and pass the work on to another solicitor. He had confirmed to Rankin and Aitken that Mr and Mrs G's offer was acceptable although no formal contract was yet concluded because he had been waiting for Confirmation as executor. On 16 September 2016, the Appellant wrote to the Professional Practice team at the Law Society seeking advice on whether he could deal with the conveyancing after another solicitor had dealt with the missives.

On Saturday 17 September 2016 by email at 2331 hours, the beneficiaries informed the Appellant that they wished to accept the higher offer from Mr and Mrs L. The Appellant received this email on Monday 19 September 2016. He spoke on the telephone with a solicitor at Williamson and Henry and she agreed to deal with the matter. He also spoke on the telephone with the solicitor at Rankin and Aitken. He told them that another higher offer had been received which the beneficiaries wished to accept. On file there was a memo from a member of the Appellant's staff dated 19 September 2016 which indicated that the Appellant had advised that he was unsure when the property would be sold as another offer had been received which would have to be dealt with by another firm. Also on the file was a draft letter from the Appellant to HS at Williamson and Henry dated 20 September 2016 giving instructions from the Appellant as executor to issue a qualified acceptance to Mr and Mrs L's agents. On 20 September 2016, the beneficiaries sent an email to the Appellant's firm at 0954 hours informing them that the previous email of 17 September 2016 was sent by mistake and that the beneficiaries wished to proceed with the offer from Mr and Mrs G. The Appellant spoke on the telephone to DL at Rankin and Aitken but they confirmed by letter of 20 September 2016 that Mr and Mrs G did not wish to proceed with the transaction. The Appellant wrote to Rankin and Aitken again on 22 September 2016 offering to drop the price by £5,000 and pay the indemnity insurance. Mr and Mrs G still did not wish to proceed with the transaction. They made a complaint.

The Professional Conduct Sub Committee of the Law Society of Scotland (the Sub Committee) made a determination that the conduct of the Appellant amounted to unsatisfactory professional conduct. Unsatisfactory professional conduct is defined in section 46 of the Legal Profession and Legal Aid (Scotland) Act 2007 as *"professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor"*. It lies on a spectrum between inadequate professional services and professional misconduct. The Sub Committee censured the Appellant and directed him to pay £1,500 compensation to Mr and Mrs G.

Section 42ZA(9) of the Solicitors (Scotland) Act 1980 provides that a solicitor may, before the expiry of the period of 21 days beginning with the day on which a determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the determination and/or direction. The Appellant appealed to the Tribunal against the determination and direction of the Sub Committee.

The Tribunal's powers when considering an appeal under section 42ZA(9) are contained within section 53ZB(1) which provides that it may quash or confirm the determination being appealed against. If it

quashes the determination, the Tribunal shall quash the censure accompanying the determination. It may also quash, confirm or vary the direction being appealed against. There are other provisions with regard to training, fines and compensation.

The Tribunal had regard to all the documents lodged by the Appellant and the First Respondent. In particular it referred to the Sub Committee's report contained at Production 2 of the First Inventory of Productions for the Appellant ("the report"), the Guidance issued by the Law Society of Scotland on "Gazumping, Gazundering and Closing Dates" contained at Production 3 of the First Inventory of Productions for the Appellant ("the guidance"), and paragraph 13.05.04 in Paterson and Ritchie's "Law, Practice and Conduct for Solicitors" contained at Production 5 in the Inventory of Productions for the First Respondent ("Paterson and Ritchie"). It paid careful attention to the submissions of the parties and the evidence of the Appellant. The Tribunal found him to be a credible and reliable witness.

The Sub Committee found the Appellant's conduct amounted to unsatisfactory professional conduct. In particular, the last paragraph on page two of their report notes that *"on 14 September 2016 the solicitor advised the beneficiaries that a higher offer had been received from Mr and Mrs L which was subject to a mortgage and they then instructed the Solicitor to accept this other offer which he then did."* On page three of the report, the Sub Committee said that the Appellant *"should not have accepted the beneficiaries' instructions to accept the offer from Mr and Mrs L and should have advised them that if they wished to proceed this way they would require to instruct another Solicitor in the sale."*

The Guidance on gazumping notes that where a solicitor for a seller has intimated verbally or in writing to the solicitors for a prospective purchaser that their client's offer is acceptable – whether after a closing date or otherwise – the seller's solicitor should not accept subsequent instructions from the seller to accept an offer from another party unless and until negotiations with the original offeror have fallen through for *bona fide* reasons unconnected with the possible offer from another party. The solicitor should advise the seller to instruct another solicitor if he wishes to accept the later offer. The guidance applies to solicitors acting as estate agents as well as solicitors acting in the conveyancing. However, the guidance notes that *"different considerations may apply however to sales of commercial property and to sellers owing statutory or fiduciary duties to others."*

Paterson and Ritchie note at paragraph 13.05.14 that *"Occasionally, there may be exceptional circumstances which can justify continuing to act. Those would include the position where the client*

has fiduciary duties to others to obtain the best possible price (e.g. a heritable creditor in possession or a trustee). If a purchaser is put on notice that until missives are concluded the property will remain on the market, this would entitle the selling solicitor to continue to act if a subsequent offer is received. The key element is upfront disclosure of the client's position to the solicitor acting for the other party."

The Tribunal noted that when dealing with appeals regarding unsatisfactory professional conduct it should apply the "balance of probabilities" standard of proof. It also had regard to the principles which it must apply when acting in an appellate role. According to Hood, Petitioner 2017 CSIH 21, the Tribunal should be slow to interfere with the Sub Committee's decision on an evaluative question and should only do so in three main situations. The first is where the Sub Committee's reasoning discloses an error of law, which may be an error of general law or an error in the application of the law to the facts. The second is where the Sub Committee has made a finding for which there is no evidence, or which is contradictory of the evidence. The third is where the Sub Committee has made a fundamental error in its approach to the case, as by asking the wrong question, or taking account of manifestly irrelevant considerations or arriving at a decision that no reasonable Tribunal or Sub Committee could properly reach.

The Tribunal noted firstly that the status of the Law Society's guidance is not equivalent to the Rules and there are circumstances in which the guidance can be departed from. Guidance is intended to assist with the interpretation of the Rules and the identification of good practice. This particular guidance is not clear when it comes to a solicitor acting in a fiduciary capacity. It says that *"different considerations may apply however to sales of commercial property and to sellers owing statutory or fiduciary duties to others"*. No further detail is provided as to the different considerations which might apply. On the face of it, the guidance states that it will not always apply to executors since they owe fiduciary duties to others. Competent and reputable solicitors are entitled to take that guidance at face value.

The Tribunal was not persuaded that the section in Paterson and Ritchie referred to by Ms Motion, bears the interpretation the Sub Committee ascribed to it. The Tribunal considered that in this passage, the authors provide two different examples of "exceptional circumstances", namely where fiduciary duties are owed or where a purchaser is put on notice that the property will remain on the market until missives are concluded. The Sub Committee appears to have conflated these examples whereby they say in their report that a client with fiduciary duties has to put the purchaser on notice that the property

will remain on the market until missives are concluded. The Tribunal did not consider that this was was the way this passage ought to be interpreted.

Therefore, the Tribunal was of the view that it was arguable that the guidance and the passage in Paterson and Ritchie could have supported the Appellant continuing to act in the circumstances. Be that as it may, the Appellant decided that he should withdraw from acting as solicitor and have another solicitor deal with the higher offer and conclude missives. He telephoned another solicitor and she agreed to deal with the case. He drafted a letter of instruction to her. He also telephoned Mr and Mrs G's solicitor to inform him that the beneficiaries intended to accept a higher offer.

The Tribunal considered the evidence in support of the Sub Committee's view that the Appellant had "accepted" the beneficiaries' instructions to accept the higher offer. He received an email instruction to that effect from the beneficiaries. However, he made no contact with the agents for Mr and Mrs L. He contacted another solicitor and secured her agreement to deal with the higher offer. He drafted a letter of instruction to her. The action which the First Respondents criticised was the telephone call to DL. They said that this constituted acceptance of instructions from the beneficiaries. Having heard the Appellant's evidence, considered his file note of the conversation, and the letter from DL to Mr and Mrs G reporting that conversation (Production 1 in the Inventory of Productions for the First Respondent), the Tribunal considered that the Appellant had not "accepted" the beneficiaries' instructions to accept the higher offer. He had regard to the guidance. He acted cautiously by instructing another solicitor despite him acting also as an executor. He informed the beneficiaries that he would have to pass the case on to another solicitor if they wished to accept the higher offer. His telephone call to DL was a matter of courtesy between fellow solicitors. It was also of benefit to Mr and Mrs G as they were informed of the situation quickly at a time when the entry date was fast approaching. The Tribunal had sympathy for the situation Mr and Mrs G found themselves in but considered that it did not arise through any fault of the Appellant and instead arose as a consequence of the instructions he had received.

The Tribunal bore in mind what a competent and reputable solicitor would have done in the circumstances. The Appellant's roles as solicitor and executor were intertwined. It was difficult to see what the Appellant should have done differently. A properly informed bystander would appreciate that he had received instructions but had not acted on these. The Tribunal considered the Tribunal cases of Law Society of Scotland v Scott Allan and the recent Section 42ZA appeal, Ian Donaldson v Law Society of Scotland. However, the circumstances in these cases were not easily comparable with

this present case. The Tribunal distinguished them on the basis that both these solicitors had continued to take further positive steps after a second offer had been received and there was no fiduciary relationship present.

The Tribunal had the advantage of hearing directly from the Appellant. This opportunity was not afforded to the Sub Committee. The Tribunal was aware that it should give appropriate deference to the Sub Committee's decision. It did not reach a conclusion to interfere with the Sub Committee's decision lightly. However, after considering the Appellant's evidence and the submissions made by both parties, the Tribunal considered that the Sub Committee had erred by misapplying the guidance to the facts. An exception in that guidance applied to the Appellant. In any case, the Appellant did not "accept" the instructions. He had not "acted" in pursuance of the beneficiaries' instructions. Contrary to the submissions made on behalf of the First Respondents, the Tribunal did not consider that his courtesy call to Rankin and Aitken was a step in the implementation of instructions. He was in the process of passing the instructions on to someone else. He was merely reporting the beneficiaries' position to the Second Respondents' solicitor. He had acted with fellow regulated persons in a way consistent with persons having mutual trust and confidence in each other. His call to DL demonstrated his respect for them and their clients. In short, the Appellant was not subject to the restrictions in the guidance due to the fiduciary duties owed. However, in any case, he did comply with the guidance. He did not "accept instructions…to accept an offer" which was the complaint upheld by the Sub Committee. His conduct was of the standard which could reasonably be expected of a competent and reputable solicitor.

Therefore, the Tribunal quashed the determination of the Sub Committee. Having done so, it also quashed the censure accompanying the determination and the direction that the Appellant pay £1500 compensation to Mr and Mrs G. On joint motion, the Tribunal made no finding of expenses due to or by either party. It directed that publicity will be given to the decision and should include the name of the Appellant and those identified in paragraphs 14 and 14A of the Solicitors (Scotland) Act 1980 but need not name anyone else as identifying them would be likely to damage their interests.

[redacted]

Alan McDonald

Vice Chairman