THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(SSDT RULES 2024)

F I N D I N G S

in Complaint

by

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

Complainers

against

ERIC JOHN SCOTT, formerly of Campbell Smith LLP, 21 York Place, Edinburgh

Respondent

1. On 12 March 2025, a Complaint 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 Eric John Scott, formerly of Campbell Smith LLP, 21 York Place, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. The complaint was made by the Council on behalf of JS ("the Complaint Originator")

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, the Tribunal fixed a one-day, in-person, substantive Hearing for 26 September 2025.

5. At the hearing on 26 September 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Edinburgh. Evidence was led and concluded.

6. Having given careful consideration to all the evidence before it, the Tribunal found the following facts established:-

(a) The respondent is Mr Eric John Scott, Writer to the Signet, formerly of Campbell Smith LLP, 21 York Place, Edinburgh. His date of birth is 2 January 1958. He was enrolled as a solicitor on the 14 December 1981. He worked as partner in Campbell Smith WS/LLP between 1 October 1983 and the 31 March 2023 when he retired. The respondent did not provide a home address to the Society on retiral. He has communicated with the Society using a personal email address.

(b) The respondent acted for FP. In 2020 JS raised Family Court proceedings against FP who was her former partner. JS alleged FP was abusive. FP denied this. JS sought interdict on her own behalf and on behalf of her two sons. FP craved orders requiring the boys to attend with a psychologist, with a view to recommencing contact with him. FP initially had had contact with his sons on the breakup of the relationship (2013) but this ceased in 2019.

(c) A proof in the action took place in public before Sheriff Peter Paterson. He issued his decision on 7 March 2022.

(d) JS gave evidence and led evidence from her friend CG, and a Children 1st Charity employee, SA. She also relied upon the report prepared by the Court appointed reporter.

(e) FP gave evidence on his behalf and he led evidence from his partner and JF, a psychologist.

(f) The Sheriff considered JF's evidence to be the most important evidence.

(g) The Sheriff made findings in fact regarding the relationship between JS and FP. The Sheriff did not find that FP was abusive towards JS. He found in fact that JS was controlling of FP. The Sheriff found that JS deliberately alienated the two children from FP.

(h) The Sheriff refused all JS's craves and ordered that the children meet regularly with or under the supervision of a named psychologist in April 2022 and thereafter have contact with their father between May and September 2022 at the discretion of the psychologist.

(i) JS did not appeal the Sheriff's decision.

(j) On the 17 March 2022 the Respondent on behalf of FP wrote to Ms SA at Children 1st. In that letter, the Respondent wrote:-

"No doubt you will recollect that I act for Mr [FP] of [XX], and that we met on 19th January 2022 when you gave evidence at the hearing at Selkirk Sheriff Court.

The Sheriff has now issued his judgment and has given me permission to circulate it to interested parties. A copy is enclosed.

You may already be aware of the outcome of this case, namely that the Sheriff has ordered that [L] and [R] should be assisted by the psychologist in re-establishing a relationship with their father.

As you will see as you read the judgment, the Sheriff has found that [JS] has deliberately alienated [R] and [L] from their father (see para. 42). He has also found that unless the relationship with their father is restored there is a real risk of long-term damage to the boys' mental health and wellbeing (see para. 43).

I am aware that Children 1st exists to protect children and keep them safe from harm. In order to do that in this case, the boys require to be supported in re-establishing the relationship with their father. The purpose of involving a psychologist is to assist the boys in recovering from the ***abuse and trauma that they have suffered as a result of the alienating behaviour on the part of their mother***. (emphasis added).

Standing [JS]'s attitude before the court, which the Sheriff sets out in some detail in his judgment, it seems unlikely that [JS] is going to support the boys in re-establishing the relationship with their father. Could l suggest in your role with this family you could support [JS] and the children so that the boys get full advantage from the input of the psychologist.

This is important for the boys' future. As the Sheriff says in his judgment, the problems may not manifest themselves for these two youngsters until later on in life. All of us involved, therefore, owe it to them to do what we can to alleviate the very difficult circumstances in which they find themselves.

Should you wish to discuss this matter further then please do not hesitate to contact me.

Finally, I should say that I do not know the extent to which this judgment will have been shared with either [R] or [L]. Accordingly, if you are speaking to them the matter will have to be dealt with sensitively, as I am sure you are well aware."

(k) The Sheriff made no finding that the boys were abused. The Sheriff made no finding that the boys suffered from trauma. The Sheriff made no findings that JS inflicted abuse or trauma on the boys.

7. Having given the foregoing circumstances careful consideration, the Tribunal found the Respondent not guilty of professional misconduct and declined to remit the matter to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980.

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

Edinburgh, 26 September 2025. The Tribunal having considered the Complaint lodged on 12 March 2025 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Eric John Scott, formerly of Campbell Smith LLP, 21 York Place, Edinburgh; Finds the Respondent not guilty of professional misconduct; Finds the Complainers liable in the expenses of the Respondent chargeable as the same may be taxed by the Auditor of the Court of Session on a party and party basis in terms of Schedule 1 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 as amended with a unit rate of £18.00; and Directs that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Catherine Hart

Vice Chair

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 22 January 2026.

IN THE NAME OF THE TRIBUNAL

Catherine Hart
Catherine Hart (Jan 19, 2026 16:39:44 GMT)

Catherine Hart

Vice Chair

NOTE

At the Hearing on 26 September 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal had before it the Complaint, Answers, Joint Minute, two Inventories of Productions for the Complainers and an Inventory of Productions for the Respondent.

EVIDENCE FOR THE COMPLAINERS

The Fiscal stated that the Complainer's case was detailed in the Complaint before the Tribunal. The Joint Minute previously lodged contained admissions within the full extent of the Complainer's case. The Fiscal said that the Complainer's case rested there and there was no further evidence to be led on behalf of the Complainer.

EVIDENCE FOR THE RESPONDENT

WITNESS ONE: ERIC JOHN SCOTT (the Respondent)
Evidence-in-chief

The Respondent gave evidence on oath and confirmed his full name and employment history. He had spent his entire career with the same firm, apart from a two year apprenticeship at the beginning of it. Throughout his career, the Respondent had mainly dealt with family law; in particular dealing with cases involving children with learning support needs.

The Respondent recalled dealing with divorce cases when they were still heard in the Court of Session. He explained that he worked in family law before the Children (Scotland) Act 1995 ("the 1995 Act") was enacted and introduced the fundamental principle of the interests of the children as a paramount consideration in Scots law. Prior to the enactment of that legislation, the Respondent said that there had been no requirement for the court to take account of the views of children. Cases were usually sent to a Reporter for their input and that was taken into account by the courts. However, following the 1995 Act, there has been more awareness that children generally benefit from contact with both parents in most cases. The Respondent said that the 1995 Act brought children into disputes to some extent. He described this as a "massive sea change".

Mr Macreath asked the Respondent if he attended professional seminars covering how to deal with children caught up in family disputes. The Respondent replied that he had, of course, done so. He had completed Continuing Professional Development (CPD) in accordance with his professional obligations as a solicitor. He added that cases involving difficult contact issues with children were always an area of interest for him.

His view was that the courts had moved to recognise that the starting point in these cases was for both parents to have contact with the children.

When asked, the Respondent said that he was aware of the concept of triangulation in family cases. He first heard of it approximately 25 years ago when he became aware of a Forensic Psychiatrist from a university in America who "led the charge" in cases where children refused to see the "non-resident" parent without good reason. This sparked the Respondent's interest in the concept of triangulation. He added that every family lawyer has experience of dealing with triangulation and that it is very difficult for solicitors and the court to deal with.

Expanding further, the Respondent made reference to another expert in this narrow field and explained that the concept of triangulation was initially labelled as "parental alienation". However, women's rights groups objected to this phrase due to the implication of blame, predominantly on women as they are often the primary care giver. The topic evolved as a more complicated issue and the term "triangulation" was widely settled on as a better description of these situations.

The Respondent referred to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5") and described it as the psychologist's "bible". The Respondent explained that the DSM-5 contains a list of all recognised psychological disorders. He said that triangulation has never been introduced as an official psychological condition due to the amalgam of three parties in those situations.

The Respondent said that he was experienced in dealing with triangulation in family law. He had acquired a reputation as a legal practitioner who dealt with cases involving this issue. The Respondent explained that many solicitors would turn away cases involving triangulation as they are emotionally draining, complex and time consuming.

Mr Macreath asked the Respondent when he first received instructions from FP. The Respondent made reference to Production 1 (Judgment of Sheriff Paterson dated 7 March 2022) which contained court reference SEL-F106/20, denoting the year 2020. The Respondent concluded, therefore, that he was first instructed by FP in 2020 in relation to a dispute with his ex-partner, JS.

Mr Macreath asked the Respondent what FP's instructions were. The Respondent explained that FP had originally instructed another solicitor and had raised a court action against JS for contact to the children but that court action had been abandoned after a report was obtained in which it was stated that the children did not want to have contact with him. FP instructed the Respondent after a friend or relative had recommended

him. The Respondent had acted for the referrer in relation to a difficult divorce. The Respondent formed the view that it was unfortunate that the previous court proceedings had been abandoned. He drew a distinction between "alienation" and "estrangement" and gave an example of the latter. The respondent emphasised that parental alienation is very different from parental estrangement and that it was nuanced. He had to exercise his professional judgment in assessing situations that were described to him and several factors had "jumped out" at him in relation to FP's situation.

Firstly, the parties in FP's case had been separated for five years. The children had maintained regular contact with FP at the outset and that had ended after FP entered into a new relationship. He suggested to FP that it would be best to obtain a report from an experienced Psychologist. The Respondent advised FP that he risked incurring the wrath of a Sheriff if he raised a court action at this stage so soon after abandoning the other proceedings and suggested that he wait six months before considering court action again. The Respondent then described the tension between court procedure and contact with the children.

Thereafter, JS raised her own court action against FP. She was seeking interdict against FP. The Respondent advised FP that, in defending this action, there was also an opportunity to insert craves seeking contact with the children. FP gave instructions in line with this advice. The Respondent represented FP in court and invited the Sheriff to instruct a report from an independent Psychologist, JF. The Respondent explained that he had previously worked with JF and she had been successful in reconnecting children and parents. The Sheriff granted the Respondent's motion.

Mr Macreath referred to Production 1, namely Sheriff Paterson's Judgment dated 7 March 2022 and narrated the findings-in-fact. The Respondent confirmed that paragraphs 9 and 10 were in accordance with FP's initial instructions that FP's contact with his children eroded over time. Mr Macreath continued reading out the Sheriff's findings-in-fact. He described paragraph 13 thereof as "significant". It reads:

"In or around the beginning of December 2018 the defender [FP] began a relationship with Ms S. The defender [FP] and Ms S discussed how best to tell [the children] about the relationship and concluded it would be wise to tell them once they were satisfied that the relationship was a long term one."

When asked, the Respondent confirmed that Ms S gave evidence in court and stated her professional occupation. Mr Macreath noted the Sheriff's finding at paragraph 14 that JS chose to tell the children about the relationship between FP and Ms S "out of spite". The Respondent said that FP had hoped that things would "calm down" after the initial court proceedings were abandoned. However, if anything, they became more difficult. Mr Macreath read out the Sheriff's findings at paragraphs 18 and 19 which described a series of

events involving the parties and the children in a local park. Mr Macreath pointed out that the Sheriff found, at paragraph 21, that JS had "*contacted the police making a number of false allegations against [FP].*" He also noted that, at paragraph 23, the Sheriff found that *"If [the children] do not have contact with their father when children it is likely this will have a detrimental effect on their long term mental health."*

Mr Macreath asked the Respondent if, based on his experience in family law, it was unusual to see findings-in-fact of this nature from a Sheriff, particularly in relation to a female party to proceedings. The Respondent said it was unusual, adding that Sheriffs usually take a measured approach to such proceedings. He added that the Sheriff's criticisms of JS in this case were particularly unusual. The Respondent stated that Sheriffs would usually adopt a neutral tone given that such cases involve human emotion and difficulty. He observed that, in his experience, it was uncommon for a Sheriff to "come down so heavily" on one party, particularly on a Pursuer who is seeking an interdict. However, the Sheriff in this case came down very heavily on JS.

Moving on, Mr Macreath read out the Sheriff's Findings in Fact and Law. Paragraph 1 made reference to the requirements of the 1995 Act that, for an order to be made, it must be better that this order is made than that no order is made. Following on from that, the Sheriff refused to grant the interdicts sought by JS. In addition, the Sheriff made a Specific Issue Order in the case. The Respondent explained that Specific Issue Orders are typically requested where a particular order is required, for example, attendance at a particular school or activity, as opposed to a request for more something more general such as contact with children. Mr Macreath noted that JS did not appeal the Sheriff's decision and, therefore, the judgment remained in place. The Respondent confirmed that. He agreed that the Sheriff was highly critical of JS. He was asked to read out paragraph 27 of the judgment which states:

"I have no difficulty in accepting the defender's [FP] evidence over the pursuer's [JS] on points of dispute. I found the pursuer neither credible nor reliable. There are a number of reasons for reaching this conclusion. Initially, in her evidence she presented herself as a pleasant quiet well-mannered person who had been abused throughout her relationship with the defender [FP]. However, that mask very quickly slipped when she was cross-examined about various emails she had sent, for example 6/2/5 of process. She initially appeared to deny sending the message, then, when pressed grudgingly accepted she might have sent it. In my view she was reluctant to admit to being the author of the email as its language is inconsistent with the picture of a victim she was trying to portray to the court."

The Respondent confirmed that this passage referred to an email exchange purportedly between FP and one of the children. The emails had, in fact, been sent by JS and not the child.

Paragraph 28 of the judgment referred to the relationship between FP and Ms S which began five to six years after FP and JS had separated. Mr Macreath read out the paragraph and noted the Sheriff stated that:

"Her [JS] acting's are in direct contradiction to her evidence of supporting contact, her acts were designed to do the opposite."

The Respondent was asked to read out paragraph 32 of the Sheriff's judgment and did so. It commented on JS's evidence and stated:

"The text exchange..... gives further insight into the pursuer's [JS] true character..... this is an example of the pursuer [JS]attempting to deliberately undermine the father/son relationship."

Mr Macreath then read from paragraph 34 of the same judgment:

"This was a "proof in person" and accordingly I had the considerable advantage of being able to observe the pursuer [JS] carefully when the defender [FP] was giving evidence. Her reactions were insightful. There was no hiding her head or looking away when he was in the witness box. No trace of her being intimidated or cowed by him. Rather, she reacted to evidence that she appeared to disagree with the rolling of her eyes, shaking her head, stifled sighs. In my opinion this demonstrated as clearly as any other evidence the true nature of the relationship. The mask had slipped and her true character was revealed."

This was contrasted with the Sheriff's commentary on FP's evidence at paragraphs 35, 36 and 37. Although the Sheriff said that FP was "not beyond criticism", he agreed with Ms S's description of him as "overly passive". The Respondent said that description summed FP up very well. He made reference to his earlier comments regarding his discussions with FP at the outset of instruction; FP had abandoned the first court action in the hope of an improvement in relations with JS. On the contrary, the situation became more distressing.

At paragraph 38 of his judgment, the Sheriff turned to the evidence of the Psychologist (JF) who was a skilled witness in terms of the case of Kennedy v Cordia (Services) LLP [2016] UKSC 6. The Respondent read out paragraph 39 as follows:

"Overall I found [JF] to be a convincing witness. She was challenged under cross examination about errors and exaggerations in her report and dealt with these in a candid manner. For example, she explained that

English was not her first Language and as a consequence she would occasionally miss-spell words or names with unusual spelling such as [child R].".

Mr Macreath narrated the Sheriff's comments on JF's evidence at paragraphs 42 to 46 of the judgment. The Sheriff agreed with JF's conclusion that a process of triangulation had occurred in this case. Mr Macreath read out the Sheriff's decision and noted his consideration of whether it would be beneficial to make an order for therapeutic intervention. The Sheriff used the phrase "psychological harm" in paragraph 48 his decision in the context of accepting JF's evidence that, in cases of triangulation, this damage is likely to occur. When asked, the Respondent said it was unusual for a Sheriff to make such direct comments.

The Respondent's evidence was then directed to the letter that he had sent to SA at Children 1st. The Respondent was asked if he had sought the consent of the court to share its judgment when issued. In response, he explained the context by saying he had spoken to JF after the court proceedings. JS made a complaint about JF and this was causing JF some anxiety. JF emphasised to the Respondent that it was vital that JS was onboard with the therapeutic intervention ordered by the court to allow it to succeed. It was most important to have the engagement of both parents as that would lead to the children having more opportunity to engage with the psychological support. JF was unsure whether she could establish a successful relationship with JS following the complaint made by JS against her. In those circumstances, JF told the Respondent that there may be other professionals who could engage with JS successfully instead.

In addition, the Respondent said that the Sheriff had explicitly mentioned the risks to the children if therapeutic intervention did not occur. The Respondent said he would have preferred the Sheriff to make a contact order as that would have provided something specific to work with. If required, a Minute of Variation could have been added later. The Respondent said he was cautious about the Sheriff's judgment for a number of reasons. He explained that such court decisions are often anonymous and he considered he should let the Sheriff know he was referring to it in correspondence. Although it may not have been an issue, the Respondent explained that he thought it safer to obtain the consent of the court to sharing the judgment rather than "shooting from the hip". The Respondent confirmed that he received an email response from the clerk of the Sheriff Court confirming that he could share the decision.

The Respondent said that he later told FP over the phone about his proposed course of action i.e. sending a letter to Children 1st to try an obtain support for the therapeutic intervention ordered by the Sheriff and FP agreed that it was a good idea. The Respondent said that he wrote a separate letter to the children's school and had not used the word "abuse" in that correspondence as he did not consider that to be appropriate.

Mr Macreath directed the Respondent to Production 4, the letter dated 17 March to Ms SA at Children 1st. He noted that it made specific reference to the Sheriff's judgment. Mr Macreath highlighted that paragraph 5 was the "live issue" before the Tribunal. Paragraph 5 of the letter reads as follows:

"I [the Respondent] am aware that Children 1st exists to protect children and keep them safe from harm. In order to do that in this case, the boys require to be supported in re-establishing the relationship with their father. The purpose of involving a psychologist is to assist the boys in recovering from the abuse and trauma that they have suffered as a result of the alienating behaviour on the part of their mother."

Mr Macreath noted that the letter was addressed to SA and marked "Strictly Private and Confidential" as personal correspondence. The Respondent confirmed that SA had given evidence in the court proceedings raised by JS. The Sheriff referred to her evidence at paragraph 16 of his decision. Mr Macreath read this passage out and noted that the Sheriff stated that it was difficult for the court to place any weight to SA's evidence, given her function at Children 1st.

Mr Macreath asked the Respondent what he had intended by sending the letter to SA. He replied that Children 1st was an organisation which had been re-branded and was formerly known as the Scottish Society for the Protection of Children. He said that the home page of their website states that they assist children with "abuse and trauma". This is contained in their Mission Statement. The Respondent believed that Children 1st would be ideally placed to support this particular family, bearing in mind the potential implications for the children's health in the future if contact with their father was not re-established. He was aware that Children 1st had a good relationship with JS and said that his main motivation for writing to them was he considered they would be best placed to support JS and the children in implementing the Sheriff's order. It had been very clear from SA's evidence at the proof that she aligned herself closely with JS and the Respondent considered that if she encouraged JS to see the benefit of the therapeutic intervention that had been ordered, this would help the process. The Respondent said he had hoped that Children 1st would be able to help JS engage with the therapeutic intervention ordered by the Sheriff in view of what the Respondent had discussed with JF after conclusion of the court proceedings.

Mr Macreath stated that the Complainers alleged that the Respondent had misrepresented the findings of the Sheriff in his letter to SA by stating that JS had subjected the children to abuse and trauma when there was no actual finding of same. He asked the Respondent if he accepted, on reading the Sheriff's judgment, that the Sheriff had not made a ruling that JS had subjected the children to abuse and trauma. The Respondent stated that the Sheriff had not used those terms.

Following up, Mr Macreath asked the Respondent what had justified his use of the words 'abuse and trauma' in the letter to SA. The Respondent's reply was that, although the Sheriff did not use those exact words, what he had described in the judgment was abuse and trauma. The Respondent considered that what the Sheriff had described suggested that the children had been weaponised and that, for reasons which were no doubt complicated, JS had set out to destroy the children's relationship with their father. The Respondent added that research shows that such behaviour amounts to emotional abuse. He said that his understanding was that the "emotional abuse" was generally recognised as "manipulative behaviour on the part of the caregiver which may cause psychological damage to the child at some point in the future" and added that this was exactly the type of behaviour displayed by JS and described by the Sheriff in his judgment.

The Respondent went on to say that he did not use the expression "abuse and trauma" when writing to the children's school as he would not necessarily expect them to understand the finer points of types of behaviour which can amount to this. However, Children 1st hold themselves out as a leading charity in Scotland which assists children who have suffered abuse and trauma. Therefore, the Respondent considered it appropriate to use such language when corresponding with them as they would understand the meaning of it. He stated that there is a colloquial use of the term "abuse" and, in that sense, he could understand why JS found it so objectionable. However, there is a technical use of the word and the Respondent said that anyone with knowledge of this reading the Sheriff's judgment would understand that this was what he was describing. He added that he was using the phrase "abuse and trauma" in that technical context in the letter he wrote to SA. It was clear from the Sheriff's judgment that the children in this case had suffered emotional abuse and evidence such as that relating to the incident in the park showed how deeply the trauma had affected them. The Respondent said he was writing to someone he thought would understand the nuances of the expression.

Referring to Productions 2 (Report by JF dated 11 June 2021) and 3 (Report by JF dated 11 January 2022), Mr Macreath noted JF's comments on the likely effect of triangulation on the children and her opinion that the long term impact on them may not be known until they reach maturity. The Respondent replied 'yes'.

Mr Macreath said that the Fiscal may suggest to the Respondent that his actions in writing the letter to SA were a serious and reprehensible misrepresentation of the Sheriff's findings. However, he pointed out that the Sheriff found JS to be an incredible and unreliable witness, criticised JS for fostering a sense of resentment during the course of the 3 day proof and said that JS had acted out of spite. The Sheriff also agreed that there had been a process of triangulation in the case. Mr Macreath reminded the Respondent of his earlier evidence that judges use words very carefully, particularly in family law actions, as they wish to be balanced and avoid causing damage to family relationships. The Respondent agreed and said that, notwithstanding this, the Sheriff was very critical of JS in this particular case. The Respondent was asked about the words used in his letter to

SA. He stated that they were not flippant remarks made without justification. He thought carefully about the words he used in correspondence and did not use the same terminology when writing to the children's school.

Cross-examination

The Respondent accepted that allegations of child abuse were serious. He reconfirmed that he had been a family law practitioner for 42 years and was fully aware of the provisions of the Children (Scotland) Act 1995 which state that the welfare of the child is paramount. The Fiscal stated that he understood the Respondent's evidence to be that "best interests of the child" means that children have contact with both parents. The Respondent replied that he thought this was the starting point for the court. FP's instructions were that he wanted to re-establish contact with his children.

The Fiscal referred to the Sheriff's judgment and commented on the layout and different sections, observing that they had different meanings. Sections 11(7), (7A) and (7B) of the 1995 Act were quoted at page 5 of the Sheriff's judgment. The Fiscal read those out and noted that the word "abuse" was used in section 11(7B). Considering these provisions, the Respondent was asked whether any issue of abuse should have been put before the Sheriff. The Respondent conceded that it could have been but added that it depends on what is meant by the term "abuse".

The Respondent confirmed that he did use the word "abuse" in his letter to SA. He said that he thought that based on the Sheriff's findings, there had been abuse. The Fiscal asked the Respondent if he agreed that an allegation of "abuse" by one parent may benefit the other. The Respondent stated that he defined abuse as noted in the DSM-5, adding that he was talking about emotional abuse in this case. The Fiscal pointed out that the 1995 Act refers to emotional abuse. The Respondent said that he believed that JS had emotionally abused her children.

The Fiscal stated that it would be incumbent on the pleader in a court action to give fair notice of an allegation of abuse, describing this as a "basic rule of pleadings". Yet he observed that there was no averment of abuse in the pleadings. He asked the Respondent if the Record specified abuse. The Respondent said he would have to refer back to it and was invited to do so. He referred to Answer 3 in this context. The Fiscal said that the purpose of pleadings was to set out facts and asked the Respondent if the Sheriff made a finding in fact that JS had abused her children. The Respondent said that the Sheriff had not made such a finding but that alienation is a form of abuse.

At this point, Mr Macreath objected to the Fiscal's line of questioning in relation to the pleadings in the family action. He said that the Sheriff's judgment was before the Tribunal. It stated that there had been deliberate

alienation of the children by JS in this case and the "niceties" of pleadings were irrelevant. The matter before the Tribunal was contained in the Sheriff's judgment and the Complaint, not the pleadings in the family action.

The Chair confirmed that the Tribunal had heard the Respondent's evidence that he treated the Sheriff's finding in relation to emotional manipulation of the children as abuse, although that specific word had not been used. The Fiscal argued that the Tribunal was entitled to take the whole circumstances into account and noted that Mr Macreath had lodged the pleadings with the Tribunal. The Chair considered that it was not necessary to look at the pleadings as there was no dispute that the Sheriff had not made a finding using the word "abuse" in his written judgment, nor was there any disagreement about the terms of the findings made.

The Fiscal asked the Respondent if it would be in the best interests of a child to have questions of abuse dealt with by the court. The Respondent said that would be an over-simplistic approach and that it depends what is meant by 'dealt with'. Expanding, he described the court as a "blunt instrument" which can only make an order. When dealing with situations of abuse as decided by the Sheriff in his judgment, court intervention alone was not enough and "therapeutic input" from another source was required in this case.

The Fiscal noted that the Respondent's letter to SA was dated 17 March 2022 and the Sheriff's judgment was dated 7 March 2022. The Respondent agreed that he had sent the correspondence 10 days after the court decision. The Respondent was asked if JS had an opportunity to obtemper the court order. The Respondent said that he did not follow the question. The Fiscal stated that compliance with the court order would involve engaging with a psychologist, yet the Respondent wrote to SA only 10 days after the decision had been made. At the time of the Respondent's letter to SA, there was no extract decree. Although JS did not ultimately appeal the decision, the Fiscal asked whether, at the time of the Respondent's correspondence, JS had an opportunity to obtemper the order.

In response, the Respondent said that obtempering the court order involved engaging with the psychologist and this had not happened at that point in time. The Fiscal again suggested that it was still open to JS to appeal the decision of the court at the time of the Respondent's letter to Children 1st; in other words, it was not a final decision. Therefore, JS did not have to obtemper it at that point. The Respondent stated that the Fiscal was correct "in a technical sense". He added that the Sheriff gave a timeline as part of his decision. The court interlocutor dated 7 March 2022 was referred to and the Respondent noted that the Sheriff wanted measures to be put in place from 1 April 2022. He understood the point made by the Fiscal that his letter to Children 1st was dated and sent in advance of that date.

The Respondent confirmed that his letter to Children 1st was marked "Strictly Private and Confidential – Personal". He did not send a copy of the letter to JS as he considered that to be inappropriate. The Respondent was asked if the letter was the first time he had referred to "abuse" in this case. The Respondent said it was. The Fiscal asked the Respondent if he had given JS an opportunity to challenge the assertion that she was a child abuser. The Respondent replied that this was a very emotive term and he felt he had used the word "abuse" appropriately. The Fiscal repeated that there were no findings-in-fact from the Sheriff about abuse, although the Sheriff did find that there had been triangulation. The Respondent agreed that the Sheriff did not use the words "abuse and trauma" in his judgment.

The Fiscal referred to Production 2 (Report by JF dated 11 June 2021) and noted that, in this case, the word "triangulation" was first used in this report. He read aloud excerpts from the Report. The Respondent was asked if JF's report described triangulation as abuse. He replied that there were reasons for that. When pressed, the Respondent stated that JF had not described triangulation as abuse in this report. The Respondent was asked if JF described ill-treatment of the children in this report. He replied that this would depend on the meaning attributed to that phrase but agreed that the words "ill-treatment" were not used in JF's report.

Noting the date of the report, the Respondent agreed that he was in receipt of it around 8 months before the full court hearing (proof). The Fiscal asked the Respondent if he considered the behaviour described in the report to amount to abuse. The Respondent said it was difficult to divide this case into distinct parts. He added that, sometimes, points emerge during a proof which JF would not have known when writing the report. He stated that, if JF were to be asked for her opinion on the case now, she would possibly be able to provide more focused answers.

The Fiscal asked the Respondent if JF, in her report, described the actions of JS as abuse. A member of the Tribunal observed that the driver behind the questions being put to the Respondent appeared to be that words really matter. He asked the Fiscal to clarify his question to the Respondent; was he asking if the word "abuse" was actively used in JF's report? The Fiscal reframed his question to the Respondent and asked if JF had opined that the children were abused. The Respondent replied that JF had not used the word abuse. However, he stressed that if a psychologist observes that a child who is subjected to this sort of behaviour would face long term effects in their adulthood, that amounts to emotional abuse, which has consequences. The Respondent said that this was the point being made in JF's report, albeit she does not use those specific words.

Moving on, the Fiscal read out paragraph 23 of the Sheriff's findings-in-fact, namely:

"If [the children] do not have contact with their father when children it is likely this will have a detrimental effect on their long term mental health."

He asked the Respondent if he agreed that the Sheriff had not made a finding that the children's mental health would be damaged. Rather, the Sheriff had referred to a possible future difficulty. The Respondent agreed that the Sheriff made the above finding. The Fiscal went on to suggest that any detrimental effect referred to by the Sheriff appeared to be dependent on events which may, or may not, take place in the future. In other words, there was no detrimental effect on the children at the point when the Respondent sent the letter to Children 1st as there had been no lack of contact in terms of the court order.

Following from this, the Respondent was asked if a finding of possible future detrimental effect fell short of being abuse. The Respondent replied by referring to the DSM-5 which defines emotional abuse as "behaviour given by a caregiver that is manipulative and which may cause some sort of psychological damage in the future". The Respondent said that there had been manipulative behaviour by JS in this case and that was what he meant by using the term "abuse" in his letter to Children 1st. He added that the Sheriff had made a finding in fact that, on a balance of probabilities, if the relationship between the children and their father was not re-established, it was likely that this would have a detrimental effect on the children's long term mental health and wellbeing. JF had given evidence to that effect and research showed that children who go through this type of experience were more likely to be affected by suicidal intent, drug addiction, difficulties in their own relationships. There was a whole range of matters which could go wrong for children in the situation described in this case. The Sheriff's conclusion was that if the children were not to receive the type of assistance prescribed by the court order, they would be likely to suffer a detrimental effect in the future.

Referring to evidence-in-chief, the Fiscal noted that the Respondent commented on the Sheriff "coming down heavily" on JS. The Respondent confirmed that was his evidence. The Fiscal repeated that there was no finding of abuse in the Sheriff's judgment. The Respondent said that the Fiscal was revisiting the same point with this question; the Respondent expressed his firm view that the Sheriff's judgment was referring to abuse in that the children were deliberately alienated from one parent (FP) by the other (JS). The Respondent repeated that the Sheriff made a further finding that, unless addressed, this behaviour was likely to result in a detrimental effect on the children's wellbeing in the future. The Respondent said his strong view was that this firmly fell within the classic definition of abuse. Pressing the Respondent on this point, the Fiscal said that the Sheriff concluded that another event must occur before a detrimental effect might occur in the future. The Respondent's view was that the Sheriff had concluded that, if the situation remained as it was (i.e. no contact with their father), the children would likely suffer a detrimental effect to their psychological wellbeing.

The Fiscal asked the Respondent if he had asked the Sheriff to make a finding of abuse. The Respondent said he had not. When asked why he later described JS's behaviour as abuse in his letter to Children 1st, the Respondent replied that this was the "label" he put on it. The Respondent said that JS's behaviour did amount to abuse; the court heard evidence of an incident in which one child had been so distressed by encountering his father in the park that the police were called. The Respondent said that this was not a normal reaction to the circumstances, rather it was a display of the trauma suffered by the children. The evidence had demonstrated the depth of psychological damage to the children caused by JS's behaviour. It was "clear as a pikestaff" that a proper analysis of the judgment would lead to that conclusion.

The Fiscal repeated that the Sheriff had made no finding of abuse in the case and said that the word "abuse" was only used by the Respondent in his interpretation of events. The Fiscal added that this was an inaccurate interpretation. The Respondent acknowledged that there was no finding of abuse in the Sheriff's judgment but maintained that, having analysed the judgment, he considered that the word correctly described the behaviour which was found to be established by the court. The Tribunal Chair intervened and stated the Tribunal had already noted the Respondent's position. The Fiscal suggested that the Respondent's interpretation of the Sheriff's findings was not reasonable and said that the Respondent's letter to Children 1st misrepresented the decision of the court. The Respondent stated that he could not disagree more with that statement.

Re-examination

Mr Macreath once again read out paragraph 5 of the Respondent's letter to Children 1st (Production 4). He asked the Respondent if the phrase "abuse and trauma" could only be read in the context of the Sheriff making a finding of alienation. The Respondent replied, "that's exactly right".

Mr Macreath then referred to paragraph 42 of the Sheriff's judgment (Production 1). This came after the Sheriff's confirmation that he agreed with JF's conclusion that there was no rational basis for the children's rejection of their father and that there had been a process of triangulation. Paragraph 42 read:

"Sadly, I have come to the conclusion that this has been brought about by the pursuer [JS]. It matters not for the purpose of my decision whether this was done subconsciously or deliberately, however for the sake of clarity, I am of the opinion this was deliberate. It was the pursuer who chose intentionally to destabilise the relationship between the defender [FP] and his sons, by telling them about his new partner in an insensitive and provocative manner. In my opinion the pursuer knew exactly what she was doing when breaking the news in the way she did. It was the pursuer who prompted the reaction to the Spanish trip the defender enjoyed."

Noting that the Sheriff had accepted JF's evidence as an expert witness, Mr Macreath read paragraph 43 of the Sheriff's judgment as follows:

"I also accept [JF's] evidence that where a child has been triangulated that unless the relationship is restored then there is a real risk of long term damage to the child's mental health and wellbeing."

Mr Macreath said that this passage sets out the Sheriff's conclusion that, unless the relationship between parent and child was restored, triangulation (by its very nature) presented a very real chance of long term damage to the children's mental health and wellbeing. It also explains that the Sheriff accepted that these problems may not manifest until later in life. The Respondent agreed.

Reading the Respondent's letter to Children 1st in context (irrespective of time limits for appealing the Sheriff's decision), Mr Macreath observed that the Sheriff had issued a Specific Issue Order. That was an unusual step for the court to take. The Respondent agreed. The order encouraged parties to go through therapeutic intervention, starting with the children and then the parents. Mr Macreath said that this process would, presumably, take time. The Respondent agreed. Mr Macreath continued by asking the Respondent if he wrote to Children 1st as a specialist charity who held themselves out to be able to assist with this type of situation. The Respondent confirmed that to be the case. Mr Macreath added that the Respondent had not written to the other party in the case; instead he wrote a thoughtful letter to a person who gave evidence in the court case and who could be involved in the therapeutic process. The Respondent agreed and added that Children 1st had previously been involved with the family. He wrote to them after a lengthy discussion with the psychologist, JF, and following discussions with his client, FP.

Tribunal Questions

The Respondent was asked by a Tribunal member what the reference to "DSM-5" stood for. He explained that it was "Diagnostic Statistics Management" or similar. The Respondent understood it to be an American document which was widely used by courts in Scotland in relation to psychological matters. He further understood the DSM-5 to be a statistic-based system from which psychologists would draw conclusions on psychological conditions; for example, the DSM-5 may state that certain factors should be present to allow a particular diagnosis. A Tribunal member asked to what extent the DSM-5 could be considered as an authority. The Respondent said that it was used in the courts by psychologists during the course of their evidence and was authoritative in terms of diagnosing psychological conditions; he described it as "a psychologist's bible".

A Tribunal member had noted the Respondent's reference to a specific definition of emotional abuse contained within the DSM-5 and asked for further information on that. The Respondent explained that he knew the

definition existed and, when the Complaint before the Tribunal was served on him, he referred to the DSM-5 definition to reassure himself of it. The Respondent confirmed that he had not referred to the definition when he wrote the letter to Children 1st.

The same member referred to the Respondent's evidence that he had marked the letter to Children 1st as "Strictly Private & Confidential – Personal". The Respondent was asked to clarify in what capacity he was writing to the recipient; as a friend of JS or in her capacity as an employee of Children 1st? The Respondent stated that this was a good question and replied that he was writing to SA as an individual and an employee of Children 1st. The evidence given by SA at court had been very supportive of JS and the Respondent assumed that their relationship arose from the work that Children 1st had done with JS. His understanding was that they did not have a friendship as such but that the relationship had arisen from the professional involvement of SA. The Respondent's impression was that SA had a good relationship with JS who had engaged well with her. He wrote to SA to ask if she could facilitate the therapeutic input required by the court, whilst acknowledging that might not be easy. The Respondent hoped that SA would deal with the matter sensitively and bring JS to a position where she could engage via a supportive process. The Respondent said he was surprised to learn that SA had sent a copy of his letter to JS. He was aware of the sensitivity of the matter and his intention was that his letter would not be shared beyond SA herself. The Respondent said that was the "last thing he would have wanted" and described sharing the letter with JS as "counter-productive". Ultimately, the Respondent said he was hoping that the court order would be obtempered and that Children 1st would be able to provide support to help JS to engage with this aim in mind.

The chair then asked parties if there was anything arising from the Tribunal's questions that they wished to clarify.

Mr Macreath pointed out that the Tribunal had the benefit of Productions 2 and 3 (JF's Reports dated 11 June 2021 and 11 January 2022) and asked the Respondent if JF would have been well aware of the DSM-5. The Respondent replied that JF would certainly have had a copy of it. The Respondent reiterated that the definition in the DSM-5 was not uppermost in his mind when writing to Children 1st. The Respondent said he could understand the problem with the word "abuse". Separately, he had written to the children's school and stated that he had not used the word "abuse" when writing to them. He used it when writing to Children 1st as this was their area of expertise. The Respondent conceded that it was not always appropriate to say that a child is being abused; it was important to look at the raw experience of the child(ren). In this case the children were clearly "very, very" attached to their mother and, in using the word "abuse" the Respondent had not intended to be pejorative. He intended to send the Sheriff's judgment to SA inviting her to read it for herself.

The Fiscal asked the Respondent to confirm that the DSM-5 was a publication for professional psychologists and psychiatrists. The Respondent agreed with this. The Respondent said he did not have any qualifications in that field. The Respondent agreed that he was not qualified to make psychological diagnoses but said that he was able to read a definition.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal began submissions by highlighting that the majority of the Complaint was admitted. He invited the Tribunal to make findings-in-fact as detailed in the Complaint. The Fiscal also invited the Tribunal to conclude that the Respondent's conduct amounted to professional misconduct as a result of his failure to adhere to Rules B1.2 and B1.9.1 of the Law Society of Scotland Practice Rules 2011.

The Fiscal said that the Respondent had "done his best" to explain his recollection of events and, although he had no criticism of that, the Fiscal submitted that the Respondent had stepped beyond his ability in giving evidence and, therefore, placed his credibility and reliability in doubt. The Respondent had made reference to a psychological diagnostic tool to provide a definition of "emotional abuse" and the Fiscal argued that this was beyond the Respondent's professional capabilities and expertise as he was not qualified in the field of psychology. The Fiscal added that JF was a qualified Psychologist and said that her reports (Productions 2 and 3) presented the best professional evidence before the Tribunal. However, JF had not diagnosed emotional abuse in her reports.

In particular, the Fiscal criticised two main parts of the Respondent's evidence. Firstly, he argued that the Respondent's letter dated 17 March 2022 was premature in assuming that JS would not co-operate with the court order. He submitted that the letter was issued when it was still possible for JS to challenge the interlocutor by appealing the court decision.

Secondly, the Fiscal submitted that the risk of future damage referred to in the Sheriff's judgment was important. The Respondent's letter of 17 March 2022 objectively stated that the children had been abused and were subjected to trauma by JS which, the Fiscal contended, was inconsistent with the Sheriff's findings of a future risk. On the contrary, the Sheriff found that there had been triangulation in this case but no abuse and trauma. The Fiscal said that, importantly, JF had not characterised "triangulation" or "deliberate alienation" as emotional abuse. He argued that the Sheriff went beyond the norm in his findings which were unequivocal. However, the Sheriff had stopped short of saying that JS had abused her children. The Fiscal submitted that this was an important feature of the case as it was not appropriate for the Respondent to characterise a judgment by going beyond the terms of it.

Referring to the Sheriff's findings-in-fact, the Fiscal argued that there were no findings-in-fact or law of abuse in terms of section 11(7)(B) of the 1995 Act despite there being two opportunities for the Sheriff to make such a finding. Neither was there a finding of risk of abuse.

Making reference to the separate headings of the Sheriff's judgment, the Fiscal observed that the Sheriff included a discussion of the evidence. Taken at its highest, the Fiscal submitted that paragraphs 42 and 43 of the judgment concluded that JS's behaviour had destabilised her children's relationship with their father and that there was a possible future risk of damage to their mental health. There was no finding of actual harm or risk of abuse in the judgment. The Fiscal pointed out that the Respondent's letter made specific reference to those parts of the Sheriff's judgment.

The Fiscal submitted that it was incumbent on the Tribunal to make a finding that paragraph 5 of the Respondent's letter of 7 March 2022 did not accurately reflect the findings in fact and law and neither did it accurately reflect the discussion of the case as detailed by the Sheriff in his decision. Therefore, he argued that the Respondent's conduct was serious and reprehensible in terms of the definition of professional misconduct contained in the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313, namely:-

"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 Fiscal argued that the Respondent had a duty to accurately reflect the terms of the Sheriff's judgment in terms of the Sharp test. However, the Respondent had not done so and this demonstrated a lack of integrity. The Complainers alleged that the Respondent's conduct was in breach of Rule 1.2 which states that:

"[Solicitors] must be trustworthy and act honestly at all times so that [their] personal integrity is beyond question. In particular, [solicitors] must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful."

In support of that allegation, the Fiscal referred to the opinion of Rupert Jackson LJ at paragraphs 95-100 of Solicitors Regulation Authority v Wingate (CA) [2018] 1 WLR, in relation to integrity which was paraphrased as follows:

"Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than dishonesty……In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members……Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse."

The Fiscal also quoted paragraphs 102 and 103 of the same case which state:

"Obviously, neither courts nor professional tribunals must set unrealistically high standards……The duty of integrity does not require professional people to be paragons of virtue……

A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession. Accordingly such a body is well placed to identify want of integrity."

The Fiscal stated that the Respondent had written a letter which he addressed to the employee of a charitable organisation who was not legally qualified. The intention of that organisation was to protect children, not the parties involved in the dispute (in this case, the parents). The Fiscal argued that the Respondent's obligations when writing to such a lay person were (i) to set out the Sheriff's findings clearly and accurately in a manner which a lay person would understand and (ii) not to embellish or misrepresent the court's decisions. The Respondent should not have embellished the Sheriff's decision. The Fiscal added that, during both examination-in-chief and cross examination, the Respondent accepted that the Sheriff made no finding of abuse or trauma, therefore, he had no foundation for using that phrase in his letter to Children 1st. Therefore, the Respondent's letter was misleading; the wording he used in the letter went beyond the Sheriff's decision. The Respondent should not have assessed the Sheriff's conclusions as "abuse and trauma" as he had no foundation on which to do so.

The Fiscal referred to extracts from Law, Practice & Conduct for Solicitors (2nd edition) by Alan Paterson & Bruce Ritchie at paragraphs 1.05, 1.11 and 1.24 which cover "Professional Conduct", "Applying the Sharp Test: The Meaning of "Culpability"" and "Misleading Behaviour" respectively, noting that, at paragraph 1.05,

"in regulatory terms, conduct ranges along a continuum from aspirational conduct at one end through good practice, acceptable conduct, unsatisfactory conduct and finally professional misconduct at the other."

The Fiscal submitted that the Sheriff's judgment concluded that there was likely to be a future impact on the children's mental health. However, that was subject to future events happening. If the future events did not occur, there may not be damage to their mental health.

The Respondent had lodged definitions of abuse but not the DSM-5 to which he referred. The Fiscal said that none of the wording used by the Respondent was contained in the Sheriff's judgment or JF's reports. In addition, although the Respondent relied on JF's reports, she (as a qualified professional) did not refer to "emotional abuse". The Fiscal argued that there was no evidence of any physical or emotional abuse or trauma in the case considered by the Sheriff. He went on to describe the Respondent's letter to Children 1st as an "affront"; it was written to SA in a private and confidential personal capacity and stated that JS had abused her children.

The Fiscal directed the Tribunal to the Record and submitted that a court may only make findings in relation to the averments in the pleadings. The Respondent's letter was addressed and sent to a person who was supporting the children stating that they had suffered abuse and trauma but without allowing JS an opportunity to reply or challenge that. The Fiscal added that the Respondent did not give JS fair notice of the allegations of abuse and said that this was contrary to his obligations as a solicitor.

It was submitted that the allegation of abuse and trauma made by the Respondent were very serious. In making his decision on the case, the Sheriff operated the civil standard of proof. Section 11(7)(bb) of the 1995 Act required the court to take any future abuse into account when making any orders under that section.

The Fiscal referred to the Tribunal decision in the case of Law Society of Scotland v John Bunny McGeechan (2019), in particular paragraph 11 on page 15. At paragraph 11.2, it was recorded that the Tribunal found that Mr McGeechan had acted dishonestly and was guilty of professional misconduct in respect of four numbered points including that he had *"made allegations in correspondence with the solicitors and accountants, of dishonesty, for which he had no evidence in fact or evidence to support them"*.
The Fiscal stated that Mr McGeechan was found guilty of professional misconduct for making false statements without any evidence in support of those claims. The Fiscal also referred to the following passages on pages 29 and 30 of the McGeechan case:

"The Tribunal was satisfied that the Respondent had written the letters in question and drafted the relevant defences. In those letters and pleadings the Respondent said that the 1997 will was convenient and manufactured. He suggested it was not drafted until after the deceased's death. He claimed in correspondence that he held a valid signed will which he did not. He made accusations of collusion, fraud, dishonesty and deceit... ... ...

There are circumstances where an allegation of fraud can be justified, and a solicitor's duty is to make it without fear or favour. However, fraud should not be averred lightly. It should not be pleaded unless expressly instructed and unless there is in the papers clear and sufficient evidence to support it... ... ...

He should therefore have proceeded with care. He did not have clear and sufficient evidence to support an accusation of fraud... ...The Respondent's pleadings demonstrated a distinct lack of care."

The Fiscal submitted that the Respondent in the present case should have applied the same level of care described in McGeechan; specifically, that allegations of abuse and trauma should not be made lightly. The Fiscal also argued that the Respondent's duty of care linked in with the case of Wingate as well. He argued that McGeechan was authority to support the position that the Respondent's conduct in these proceedings went beyond acceptable conduct, given that his correspondence to Children 1st made an allegation of abuse and trauma which was inaccurate and without a factual basis. Although the Sheriff in the current case had made findings-in-fact that there had been triangulation and deliberate alienation of the children, the Fiscal argued that this was insufficient to amount to abuse and, therefore, Respondent had no basis to use the language he did in his letter to Children 1st. The fact that he chose to use those words indicated an unacceptable lack of care on his part.

In summary, the Fiscal submitted that the Tribunal should take account of the following points when assessing whether or not the Respondent in this case was guilty of professional misconduct:-

1. The Respondent did not plead, on instruction, that the children were subjected to trauma.
2. Allegations of abuse were not put to JS in cross-examination.
3. Allegation of trauma were not put to JS in cross-examination.
4. Having had sight of JF's reports prior to the proof, the Respondent had the opportunity to ask the Sheriff to categorise JS's behaviour as abuse and trauma but did not do so. Therefore, JS did not have an opportunity to refute such allegations.
5. When the Respondent wrote the letter to Children 1st, he did so on a private and confidential basis.
6. Again, that meant that JS did not have the opportunity to refute the allegations made.

7. The Respondent's characterisation of abuse and trauma were kept away from JS. The allegations against her were made secretly in a letter to a third party.
8. Therefore, the Fiscal argued that the Respondent's conduct was worse than that in the case of McGeechan.
9. The case of Wingate makes it clear that a higher standard is required of professional persons.
10. The Respondent should not have gone beyond the decision of the Sheriff.

In conclusion, the Fiscal invited the Tribunal to make a finding of professional misconduct in respect of the Respondent, failing which he asked for the matter to be remitted back to the Council for consideration of unsatisfactory professional conduct in terms of section 53ZA of the Solicitors (Scotland) Act 1980 ("the 1980 Act").

Tribunal Questions

A member of the Tribunal had noted that the Fiscal had characterised the Respondent's letter of 17 March 2022 as having been sent to a "lay person". However, the Respondent's evidence was that Children 1st were a charity specifically intended to support children through abuse and trauma. The Tribunal member asked the Fiscal if that made any difference from his perspective?

The Fiscal's reply was that he used the term "lay" to refer to someone who is not legally qualified. The Respondent had sent the letter knowing that the recipient was not legally qualified. His evidence was that he intended the words to be understood in a wider context. The Fiscal's position was that a non-legally qualified person would read the Respondent's letter as saying that JS abused her children.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath's motion was for dismissal of the Complaint. He asked the Tribunal to find the Respondent not guilty of professional misconduct. He also resisted the Fiscal's motion to remit the matter to the Council of the Law Society of Scotland under section 53ZA of the 1980 Act. Mr Macreath stated that it was for the Complainers to set out clear and unequivocal facts which would allow the Tribunal to draw an inference of serious and reprehensible behaviour amounting to professional misconduct. Referring to the Sharp test, Mr Macreath pointed to the words of Lord President Emslie who said that the conduct must be serious and reprehensible and that all facts, circumstances and individual culpability must be taken into account when determining the matter.

Mr Macreath began by stating that the facts in this case were much simpler than those in Sharp. The Complainers had argued that the Respondent misrepresented the Sheriff's findings. However, Mr Macreath argued that the Respondent's letter of 17 March 2022 must be read in context. It was sent to an individual who gave evidence in court in relation to an application for interdict. The letter explicitly referred to the Sheriff's judgment in paragraph 4 and, furthermore, the decision was attached to the letter.

The Complainers took issue with the words "suffered as a result of the abuse and trauma" used by the Respondent at paragraph 5 of the letter. However, Mr Macreath argued that this phrase must be read in the context of the Sheriff's clear finding of deliberate alienation of the children by JS. He submitted that it was not enough to consider the words "abuse and trauma" in isolation.

Mr Macreath highlighted to the Tribunal that the Sheriff's judgment followed a proof. Those family law proceedings were raised by JS who sought interdict and made allegations against her estranged former partner, FP. When initially instructed by FP, the Respondent advised him to wait for a reasonable period of time to lapse before raising a further court action. However, JS's subsequent interdict action provided an opportunity for FP to seek contact and ask the court to impose a Specific Issue Order. Ultimately, the Sheriff granted a Specific Issue Order but it was not for immediate contact. Mr Macreath observed that the Sheriff was very experienced and had formerly been a partner in a large law firm. He would have been conscious of the sensitivity of the case and the emotions of the parties involved. Nevertheless, he was highly critical of JS in his judgment. Mr Macreath reminded the Tribunal that, at paragraph 27 of his judgment, the Sheriff described JS as neither a credible nor reliable witness.

Mr Macreath added that the Sheriff's findings-in-fact were relevant to the Respondent's letter of 17 March 2022 and that was why he had spent time going over those with the Respondent during his evidence. He submitted that the most potent finding was that JS had "deliberately alienated" her children from their father. The Sheriff also found that if contact was not re-established with their father when the boys were children (this being important) then they were likely to suffer a detrimental effect to their mental health at a later stage. It was important to note that the Sheriff had rejected JS's craves in the court action. The Sheriff also made a Specific Issue Order for contact to be implemented with the involvement of a psychology practitioner and specifically referred to JF as part of that process. Mr Macreath submitted that the terms of the Sheriff's order were dramatic, unusual and certainly "not common". The Respondent's evidence supported that view and was not contradicted in cross-examination. The Respondent had a wealth of experience and was well qualified to comment on that point.

Mr Macreath pointed to the extensive experience of the Respondent in legal practice. He had spent his working life with a reputable firm in Edinburgh and had dealt with difficult family law cases. Indeed, that is why FP was initially referred to the Respondent for legal advice. The Respondent had been careful in giving his evidence to the Tribunal to put what he was trying to achieve in his letter into perspective.

Mr Macreath noted that the Respondent had spoken about JS's controlling behaviour and its effect and impact on FP; in particular in relation to finances and FP's contact with friends and family. Mr Macreath said that such behaviour can be isolating and deprive a person of freedom to act. He noted that the Sheriff had found that, prior to separation, JS required FP to sleep in the loft and that JS controlled the finances, leaving FP short of money. There was also a finding-in-fact that FP's contact with the children was eroded over a period of time, and eventually stopped. The Sheriff also decided that JS had fostered a sense of resentment in her own children by impersonating one of them in messages when FP went on a trip abroad.

Mr Macreath observed that words, of course, have meanings. He said that Sheriffs are generally cautious in their choice of words, particularly in family law actions. However, the Sheriff in this case was very explicit when drawing conclusions on JS's actions; in his findings, he said that JS acted "out of spite" in telling her children about FP's relationship with Ms S (which had begun 6 years after the separation of JS and FP) in a way which was designed to further alienate them from their father. The immediate response of the children to that news was that they did not want to see their father. The Sheriff went further to describe this as "deliberate alienation" by JS of her children towards FP. He also accepted the evidence of JF that lack of contact between the children and FP was likely to have a detrimental long term effect on the children's mental health. Mr Macreath invited the Tribunal to find that it was impossible not to infer that the Sheriff found that there was abuse in this case. He went on to say that abuse can take many forms and can include triangulation. He referred to paragraph 27 of the Sheriff's judgment.

Mr Macreath added that the Sheriff's finding was amplified by the conclusion that JS had deliberately alienated her children from their father. Although it is not a Sheriff's job to assail people, the Sheriff in this case was very clear in stating that he accepted that, without intervention to support re-establishing contact with their father, the children were very likely to suffer future damage. Mr Macreath asked the Tribunal to consider what else the Sheriff could have meant? The Sheriff discussed JF's professional evidence in his opinion (reference was made to paragraph 25) and fully accepted it. Mr Macreath reminded the Tribunal that JF's evidence was before it in the form of her two reports (Productions 2 and 3).

Mr Macreath also emphasised the words of the Sheriff at paragraph 42 of his judgment which, he said, showed the consideration given to the situation and the conclusions drawn. In particular, the use of the word "sadly" indicated that the Sheriff had encountered some difficulty in reaching his decision.

Mr Macreath reminded the Tribunal of the evidence presented in relation to a text message, purportedly sent by one of the children to FP but which JS admitted during cross-examination that she had written and sent.

Mr Macreath submitted that, exercising common sense, it was clear what the term "deliberate alienation" meant and the Sheriff recognised that. He argued that it was impossible to sensibly reach a conclusion other than that the finding of deliberate alienation by a senior Sheriff amounted to emotional abuse or manipulation by JS of her children. Mr Macreath said the Sheriff went further by accepting JF's evidence entirely and without qualification. Both reports prepared by JF were before the Tribunal (Productions 2 and 3) and formed the basis of JF's evidence given before the Sheriff which was unchallenged in court. He said that common sense allows us to understand what it means and highlighted the difference between someone being distanced from another as opposed to being deliberately alienated. Mr Macreath also referred to "estrangement" which can occur and which was referred to by the Respondent. Estrangement is not deliberate alienation and Mr Macreath argued that the latter occurred in this case.

Mr Macreath quoted the Sheriff's judgment which stated:

"I also accept [JF's] evidence that where a child has been triangulated that unless the relationship is restored then there is a real risk of long term damage to the child's mental health and wellbeing. As explained in evidence these problems often do not manifest themselves until a child's mid-twenties when they have reached the stage of emotional maturity to be able to recognise what has been lost by not having contact with one of their parents."

Noting that parties had agreed that JF's reports were accurate and reflected her evidence, Mr Macreath submitted that the Tribunal could not look beyond that or the Sheriff's findings. Although the Tribunal were considering a different issue in these proceedings (namely the letter written by the Respondent to Children 1st), Mr Macreath invited the Tribunal to ignore the Fiscal's comments regarding the pleadings. Mr Macreath stated that the Fiscal had to set out a case on which he could lead evidence and it was not appropriate for him to refer to the pleadings in the family case. In any event, the issue before the Tribunal was the content of the Respondent's letter to Children 1st dated 17 March 2022 which followed the Sheriff's judgment. The focus of this case was not the pleadings, the proof or any appeal of the Sheriff's decision.

The Fiscal had argued that JS still had time to appeal the Sheriff's decision at the time the Respondent wrote the letter to Children 1st. However, Mr Macreath said that Specific Issue Orders are implemented immediately until a party indicates that they intend to appeal the decision and, therefore, any appeal period was not relevant in this case.

Mr Macreath quoted paragraph 45 of the Sheriff's judgment as follows:

"I observed earlier today that [JF's] conclusions have the merit of according with common sense; it does not take a degree in psychology to appreciate that if both parents are "good enough" there must be a reason why a child moves away from one or other."

Mr Macreath said that this aligned with the Respondent's point about estrangement which can lead into something "much more sinister". Narration of the same section of the Sheriff's judgment continued:

"It makes sense that this can be done by undermining, which is what has happened in this case. It also makes sense for them to gravitate to the dominant parent and to adopt that parent's perception of the facts. The fact that the pursuer [JS] has made false allegations only serves to confirm my view on the defender's [FP] contention of alienation."

Mr Macreath described the Sheriff's comments as "stark". He contended that the Tribunal could only interpret the Sheriff's judgment as meaning that JS deliberately and intentionally undermined the relationship between the children and their father. Furthermore, it could only mean that this behaviour had damaged that relationship to the extent that the Sheriff considered a Specific Issue Order seeking therapeutic intervention was required to try and repair the relationship, to assess the psychological needs of the children and, if possible, to reintroduce contact.

Mr Macreath invited the Tribunal to find that it was impossible to conclude that such findings of a Sheriff amounted to anything other than abuse. Mr Macreath noted that the 1995 Act was silent on the meaning of "abuse" but argued that this was not the issue for consideration. He described "abuse" as an "emotive term" and said the plain meaning of the word does not only refer to terrible events including physical and sexual behaviour; he pointed out that the term can also refer to mental and emotional ill-treatment. With that in mind, Mr Macreath submitted that it was reasonable for a solicitor of some standing, competence and repute such as the Respondent to write to a person who gave evidence in court and refer to the Sheriff's judgment and, further enclose it for reference (to provide context) with a view to implementing the court order. He argued that the letter must be read as a whole. If not, then all legal correspondence could be criticised; for example a robust

"cease and desist" letter could potentially be construed as abusive by the recipient. Although that may sound "stark", Mr Macreath presented this argument by considering the background and context of this case. He argued that the Complainers' whole case was predicated on the fact that the Sheriff did not use the actual word "abuse" in his judgment. However, the Respondent had referred to the decision in his letter and formed the view that the conclusions drawn by the Sheriff could amount to abuse and could cause trauma to the children. The inescapable conclusion from JF's evidence and the Sheriff's judgment was that the children were likely to suffer damage as a result of JS's behaviour if the relationship with their father was not restored. In response to the Fiscal's suggestion that the Respondent could have written to JS instead of Children 1st, Mr Macreath observed that JS was separately represented throughout the court proceedings and would have received a copy of the court judgment via her agents. It would not have been appropriate for the Respondent to write directly to JS. Presumably JS's agents would have advised her to comply with the court order. The Respondent specifically wrote to Children 1st and did not intend JS to see his letter of 17 March 2022 – the letter was specifically marked "Personal, private and confidential" accordingly.

In addition to the careful consideration applied to his letter to Children 1st, Mr Macreath reiterated that the Respondent wrote a different letter to the children's school. This was an important point to note as the Respondent had recognised that the school had different expertise from Children 1st and, therefore, a different letter was required.

Mr Macreath reminded the Tribunal that, although SA of Children 1st gave evidence in support of JS, the Sheriff did not attach any weight to that.

In all the circumstances, Mr Macreath submitted that it was unfair to criticise the Respondent's letter which was written by a senior practitioner in good faith, to another party who had an interest in resolving matters. He pointed to the Tribunal principles of fairness, justice, transparency and independence in relation to these proceedings. Mr Macreath said that the Respondent had been "living and breathing" this case and had acted fearlessly in the interest of his client for some time when he wrote the letter. Mr Macreath asked the Tribunal to consider that a competent and reputable solicitor would write such a letter to another party involved with the case with a view to resolving matters. He submitted that the Respondent's letter of 17 March 2022 was written thoughtfully, responsibly and with consideration in the best interests of his client. Mr Macreath reiterated that the Respondent had enclosed a copy of the Sheriff's judgment with his letter and had the express consent of the court to do so.

Mr Macreath submitted that the Respondent's letter can only be read along with the Sheriff's judgment; in the particular context of this case, the Respondent had acted responsibly and exercised his professional judgment.

The terms of the letter were true based on the findings of the Sheriff, after he had heard evidence. Mr Macreath submitted that the Sharp test of "serious and reprehensible conduct" did not allow the Tribunal to make a finding against the Respondent in this case. It was submitted that the Respondent wrote the letter with good reason and, importantly, he believed in the best interests of the children affected by the court decision. Mr Macreath argued that the motivation for the letter was an important factor in this case and asked the Tribunal to take account of that. A finding against the Respondent would, in his submission, mean that every solicitor going forward must check each piece of correspondence in minuscule detail despite best intentions. That would arguably be "dancing on the head of a pin".

The Fiscal had mentioned the "integrity test" and cited applicable cases. Mr Macreath considered the significance of that. He said that the case of Bolton v Law Society [1994] 1 W.L.R. 512 held that a solicitor who has discharged his/her professional duties with anything less than integrity, probity and trustworthiness must expect severe sanctions to be imposed. He briefly outlined the facts of that case; the individual solicitor was a sole practitioner who used loan monies without securing the interests of the lender, intromitted them, and was accused of dishonesty. Mr Macreath added that then Lord President Gill referred to this in McMahon v Council of the Law Society 2002 S.L.T. indicating that there are "pardonable sins" but, in a professional setting, dishonesty was not one of them. Mr Macreath stated that there was nothing dishonest in the Respondent's conduct. Nor was there a lack of integrity, which he described as a basic moral quality expected of all members of society, but which places a greater expectation on professionals.

The facts of each case were important. In the McGeechan case which the Fiscal had referred to, Mr Macreath said that the Scottish Legal Complaints Commission ("SLCC") had initially determined that complaint to be ineligible on the basis that Mr McGeechan had instructions to make the statements that he included in correspondence. However, the case was eventually heard by the Tribunal and the Respondent was found guilty of professional misconduct. Mr Macreath argued that it was easy to distinguish McGeechan from the present case and said that to draw similarities between the Respondent's conduct and that of Mr McGeechan was "nonsense". Mr McGeechan corresponded directly with other solicitors and accountants, accusing other professionals of dishonesty repeatedly in letters and also in court pleadings, but without a basis in fact or evidence to support his allegations. Mr Macreath argued that McGeechan was not supportive of the Complainers' position as it dealt with extraordinary circumstances; on the contrary, that case allowed the Tribunal to balance the very different circumstances of the Respondent in present proceedings.

In conclusion, Mr Macreath said that the Respondent had been criticised for issuing a letter following a court judgment. The letter was supported by expert evidence which had not been contradicted in court. The Respondent had been criticised, by dint of these proceedings, for the last 2 to 3 years for following a court

judgment. He had dealt with the matter in a dignified manner and with a calm demeanour. The Respondent's evidence and responses to cross-examination indicated a man who took great care with his professional standing. Mr Macreath submitted that, ultimately, the Respondent had a basis on which to write his letter of 17 March 2022 and invited the Tribunal to acquit him. He also asked the Tribunal not to remit the matter under Section 53ZA of the 1980 Act.

Additional comments

Following Mr Macreath's submissions, the Fiscal stated that JS was not on trial, it was the Respondent who was facing allegations of professional misconduct. The Tribunal Chair confirmed this to be the case and stated there was no question of JS being on trial. The Fiscal said that much of the Respondent's position had commented on the behaviour of JS. The Tribunal Chair observed that there were clear reasons for that. The Fiscal said he simply wished to raise this point.

The Fiscal went on to say that expert evidence of JF did not categorise JS's behaviour, the Respondent did. The Tribunal must consider what the Sheriff found and why the Respondent thereafter used the words "abuse and trauma" in a letter. The Fiscal suggested that it would have been better to ask Children 1st to "facilitate" therapeutic intervention. However, the Respondent chose to characterise JS's behaviour and add emotion to his letter.

DECISION

The Tribunal considered the pleadings and the productions, together with the joint minute and the evidence of the Respondent. There was no dispute that the Respondent had written the letter of 17 March 2022 and had sent this to SA at Children 1st.

The Tribunal heard evidence to put the conduct of the Respondent into context. The issue for determination was whether or not the Respondent, when writing to Children 1st, misrepresented the findings of a Sheriff by stating that JS and FP's children were abused and suffered trauma at the hand of JS when there was no such finding. The Tribunal concluded that it did not require to look beyond the Sheriff's judgment dated 7 March 2022. The pleadings presented to the court prior to its decision were irrelevant to these proceedings.

The Respondent gave evidence and the Tribunal found this to be clear, well-reasoned and consistent. He demonstrated his experience in the field of family law and, in particular, difficult cases involving triangulation. The Tribunal was in no doubt that the Respondent was an experienced solicitor with an interest and expertise in this particular area of family law. The Respondent's evidence on the background to the case and his

instruction by FP was detailed and demonstrated his considerable insight into the challenges of the specific circumstances of FP's case. It also allowed the Tribunal to understand the wider context of the Respondent's letter which was important in relation to these proceedings.

During his evidence, the Respondent provided a full explanation for his intention in writing to Children 1st and demonstrated that he had applied thought and consideration when framing that letter. He had also taken steps to discuss the matter with JF, a qualified psychologist whose evidence to the court had been important, before writing to a specific individual employed by Children 1st. That individual was involved in the case, had given evidence in court and was well acquainted with JS and her children. The Tribunal accepted that, in those circumstances, it was reasonable for the Respondent to expect SA to understand the particular context of his correspondence.

The fact that the Respondent had sought and obtained written confirmation from the court before sharing the Sheriff's decision with a third party further indicated his foresight and professionalism. The Respondent had also enclosed a copy of the Sheriff's judgment with his letter to Children 1st and expressly referred to it. It was there for SA to read for herself.

During cross-examination, the Respondent robustly maintained that he had not inaccurately characterised the Sheriff's judgment in correspondence and that he had formed the view based on the findings of the Sheriff that what was described amounted to emotional abuse and trauma.

The Tribunal did not consider that the Respondent was holding himself out to be qualified in the field of psychology. On the contrary, the Respondent's evidence and cross-examination showed that he had suggested the instruction of a qualified professional (JF) and had referred to, and relied on, her opinion throughout the case. Nevertheless, in dealing with family cases over many years, and in particular, the issue of triangulation, it was clear that he had developed an understanding of how triangulation arises and the possible effects of this on those involved. The Respondent had discussed the matter with JF following the Sheriff's decision with a view to supporting the implementation of an unusual court order. It was noted that the Respondent had given his evidence in a calm, measured manner. Throughout proceedings, he maintained his position that his letter to Children 1st was carefully written and appropriate in all the circumstances. The Tribunal found the Respondent to be a credible and reliable witness, and accepted his evidence.

The Tribunal noted that the terms of the Respondent's letter do not expressly state that the Sheriff had found that the children had suffered abuse and trauma as a result of the alienating behaviour on the part of their mother. This might be inferred, but it is certainly not stated in the letter.

During evidence and submissions, parties had debated the meaning of the phrase "abuse and trauma" and the Tribunal carefully considered all points made. The Tribunal acknowledged that the suggestion that children had suffered abuse and trauma due to the behaviour of a parent was a very serious allegation and not one that should be made without careful consideration and a clear basis.

Having considered the Respondent's evidence the Tribunal concluded that he had indeed given very careful consideration to the terms of the letter and accepted that, based on his knowledge of that particular case, the terms of the Sheriff's judgment and the Respondent's own experience of dealing with cases involving triangulation, he had an appropriate basis for reaching the conclusion that he could make the assertion that he had included in the letter.

The context in which the letter had been written was important. The Respondent had detailed knowledge of the case and was aware that it was considered very important for the boys' future wellbeing that contact with their father be re-established if possible. He knew that this would be challenging and was considering both the best interests of his client and of the children in attempting to enlist support from SA. The letter was sent to SA in her capacity as an employee at Children 1st, a charity that supports children who have suffered from trauma and abuse. She had knowledge of the children and had worked with them. She had given evidence at the proof.

In contrast to the circumstances in McGeechan, this was not a case where the Respondent had made a statement that had no basis and was untrue. The letter to SA contained a serious allegation, and it was clear that the Respondent accepted this and had given careful thought to the terms of the letter. The Tribunal accepted the Respondent had concluded that it was appropriate to describe the children's experience as that of abuse and trauma in view of the terms of the Sheriff's judgment and that he had a basis for doing so.

The Tribunal emphasised that it is essential that solicitors use words carefully and with due consideration. While solicitors should be free to represent the interests of their clients in a robust manner without fear or favour, this does not entitle them to commit whatever they like to be writing and there must be a clear and solid basis for their words.

Giving careful consideration to the terms of correspondence is not, in itself, sufficient if the solicitor does not have a reasonable basis for statements or assertions made, but in this case, the Tribunal concluded that the Respondent was entitled to decide that he had such a basis.

In all the circumstances, the Tribunal was not satisfied that the Respondent's conduct met the Sharp test where he had exercised his professional judgment and had basis for using the language that he had included in the letter of 17th March 2022. Therefore, the Tribunal found the Respondent not guilty of professional misconduct.

SUBMISSIONS ON PUBLICITY AND EXPENSES

The Fiscal submitted that the Tribunal required to publish the decision in terms of Schedule 4, paragraph 14 of the Solicitors (Scotland) Act 1980 and asked that the parties to the family law action be anonymised in terms of paragraph 14A of the same Schedule due to the sensitive nature of the case. Mr Macreath did not raise any opposition to this.

In relation to expenses, the Fiscal referred to the case of Baxendale-Walker v The Law Society [2007] EWCA Civ 233 and submitted that the Complainer was under a statutory obligation to protect the profession and the public. As such, the Complainers were in a different position from a pursuer in general civil litigation. He argued that an award of expenses in favour of a successful Respondent was not necessarily automatic following a verdict of not guilty. The Fiscal said that the Baxendale-Walker decision was considered by the Supreme Court in the case of CMA v Flynn Pharma Ltd and Pfizer Inc [2022] UKSC 14 and was not overruled or criticised in any way. On that basis, he moved the Tribunal to order that no expenses were due to or by either party.

For the Respondent, Mr Macreath sought an award of expenses. He acknowledged that, according to Baxendale-Walker, the starting point is that, unless a complaint was improperly brought, or was as a *"shambles from start to finish"* when the regulator was discharging its statutory responsibilities, an order for costs should not ordinarily be made against it. In support of his motion for expenses, Mr Macreath cited the recent authority of Solicitors Regulation Authority Ltd v Tsang [2024] EWHC 1150 which was an appeal regarding costs and which considered the position set out in Baxendale-Walker that costs orders are not ordinarily made against regulators. However, the case also said that the Tribunal can conclude that an order for costs is appropriate in cases where there was inordinate delay, coupled with there being no proper legal basis for the allegations being brought. On that authority, Mr Macreath's position was that the prosecution against the Respondent had been brought on a fundamentally misconceived understanding of the law and, on that basis, an order for expenses against the Complainers was appropriate. Whilst he did not doubt that the case had been brought in good faith, he said that there should be a "filter" to process cases of this nature. He argued that, instead of bringing this matter to prosecution before the Tribunal, it should have been dealt with by the Complainers in-house. Mr Macreath would not describe the prosecution as a "shambles" in terms of Baxendale-Walker but submitted that it was misconceived and disproportionate. He added that the Tribunal

is entitled to conclude that it was not enough that the prosecution was brought in good faith. He argued that the facts of a case are important and said that the Baxendale-Walker case could be distinguished from these proceedings. The Baxendale-Walker case involved deceitful, dishonest behaviour. The facts greatly differed from the circumstances in these proceedings which, Mr Macreath argued, had unnecessarily put the entire career of the Respondent at risk and were misconceived. Mr Macreath invited the Tribunal to make an award of expenses in favour of the Respondent for those reasons.

DECISION ON PUBLICITY AND EXPENSES

The Tribunal has the discretion to make such order as to expenses as it sees fit. It took account of the position in Baxendale-Walker and applied it to the circumstances of this case. The Tribunal acknowledged the Complainers' statutory duties as regulator of solicitors and their duty to investigate complaints as appropriate. However, the Tribunal was persuaded by the submissions on behalf of the Respondent and concluded that this prosecution was misconceived. In all the circumstances, the Tribunal decided (and exercising their discretion) that the appropriate award of expenses was one in favour of the Respondent given the particular context of the Complaint and the not guilty verdict.

The Tribunal ordered that publicity should be given to the decision to include previous interlocutors and the name of the Respondent but agreed that parties and witnesses in the family law action determined by Sheriff Paterson on 17 March 2022 should be anonymised.

Catherine Hart
Catherine Hart (Jan 19, 2026 16:39:44 GMT)

Catherine Hart

Vice Chair