

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

FINDINGS

in Complaint

by

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

Complainers

against

**GRAHAM ROBERT BRYSON, Bryson's
Legal Services, 3/1, 1534 Maryhill Road,
Glasgow**

Respondent

1. A Complaint dated 27 January 2020 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Graham Robert Bryson, Bryson's Legal Services, 3/1, 1534 Maryhill Road, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Ms D.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal set a procedural hearing. It ordered that this should take place by video conference due to the ongoing coronavirus pandemic. The procedural hearing was set down for 29 July 2020 and notice thereof was duly served upon the Respondent.

5. At the virtual procedural hearing on 29 July 2020, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented himself. The Respondent having no objection, the Tribunal granted the Fiscal's motion to amend the Complaint. The Tribunal continued the virtual procedural hearing to 15 September 2020. Notice of the virtual procedural hearing was served on the Respondent.
6. At the virtual procedural hearing on 15 September 2020, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented by Michael Foster, Solicitor, Glasgow. On the Respondent's motion, the Tribunal fixed a virtual preliminary hearing for 18 November 2020. The Tribunal allowed a period of adjustment of the pleadings. Notice of the virtual preliminary hearing was served on the Respondent.
7. At the virtual preliminary hearing on 18 November 2020, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was not present but was represented by Michael Foster, Solicitor, Glasgow. The Respondent having no objection, the Tribunal adjourned the preliminary hearing. Parties indicated that the issues raised in the adjusted Answers as preliminary pleas could be dealt with at a substantive hearing rather than a preliminary hearing. The Tribunal fixed a virtual hearing for 2 March 2021. Another period of adjustment of the pleadings was allowed. Notice of the virtual hearing was served on the Respondent.
8. At the virtual hearing on 2 March 2021, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Michael Foster, Solicitor, Glasgow. In advance of the hearing, the parties lodged a Joint Minute of Admissions. On the Fiscal's motion, which was unopposed, the Tribunal received an amended Complaint. Parties confirmed that the Joint Minute referred to the Complaint as amended. On the Respondent's motion, which was unopposed, the Tribunal received an Inventory of Productions for the Respondent which had been lodged after the time limit for lodging documents. The Fiscal did not lead any evidence. The Respondent gave evidence. Parties made submissions. Due to lack of Tribunal time to complete its

deliberations, the Tribunal continued the virtual hearing to 25 March 2021 at 2pm. Notice of the continued virtual hearing was served on the parties.

9. At the continued virtual hearing on 25 March 2021, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Michael Foster, Solicitor, Glasgow.

10. The Tribunal found the following facts established:-

10.1 The Respondent is Graham Robert Bryson who was born on 5 June 1955. He was enrolled as a solicitor on 16 November 1982. The Respondent was a partner with the firm The MMFW Partnership (which incorporated the firms McIntosh Maclachlan and Finlayson Wise), Glasgow from 1984 to December 2015. The Respondent was the sole principal of the firm from 1997 to 2010. On 1 July 2010, the Respondent assumed Steven Murray as his partner. From 1 July 2010 onwards Steven Murray had some responsibility for the Ms A Trust file referred to below. On 1 February 2012, the Respondent's firm acquired another practice and the firm changed its name to the MMFW Partnership. On 1 January 2014, the Respondent collapsed and was absent from work due to ill health for a period of months. On his return, he worked part time, and was mostly engaged in court work until his return to full time work in the latter half of 2014. He resigned from the firm on 31 December 2015. Since January 2016 he has been a sole practitioner in the firm Bryson's Legal Services, Glasgow G20 9AD. He holds a current practising certificate.

The Ms A Trust (The Trust)

10.2 The Secondary Complainer, Ms D, is the granddaughter of the late Ms A. Ms A provided in her will that her estate was to be held in trust for her husband. In the event of his death the residue was to be held for the equal benefit of their two children Ms B (the Secondary Complainer's mother) and Ms C (the Secondary Complainer's aunt). On the death of either the share of the Trust belonging to the

deceased would pass to their own children in equal shares.

- 10.3 Ms A died in 1946 and her husband died in 1952. The MMFW Partnership (previously McIntosh Maclachlan) dealt with the administration of the Trust. The trustees were required to pay the income from the Trust to each of the beneficiaries during their lives. On the death of either Ms B or Ms C the share of the trust belonging to the deceased was to pass to their own children in equal shares.
- 10.4 The Trust was administered by a partner and then consultant in the firm until his retiral on 31 October 1997. Thereafter the Trust was administered by the Respondent.
- 10.5 By the beginning of 1998 the three trustees were Ms B, Ms C and Mr E (the Secondary Complainer's great uncle). By Deed of Assumption and Renunciation dated 29 January 1998 the Secondary Complainer was assumed as a Trustee and her great uncle resigned as a Trustee.
- 10.6 On 17 April 2002 the Respondent sent a letter to Ms C in relation to a rights issue cheque which had been issued by one of the investment companies in the name of the Secondary Complainer's late great uncle. The Respondent advised Ms C that there was a note on his file indicating that intimation of Mr E's death had been sent to the registrars of the company and he surmised that there had been a breakdown in communication within the different departments of the company in relation to the change of circumstances in respect of the Trustees. No such note or correspondence to the registrars of the company appears on the client file.
- 10.7 In 2003 the following tax vouchers were received by the Respondent in relation to the Trust:
 - a) Tax voucher in respect of Diageo plc shares dated 7 April 2003. The named shareholders were Ms B and Ms C.

- b) Tax voucher in respect of Astra Zeneca plc shares dated 7 April 2003. The share registrar was Lloyds TSB. The named shareholders were Ms B and Ms C.
- c) Tax voucher in respect of Aviva plc shares dated 16 May 2003. The share registrar was Lloyds TSB. The named shareholders were Ms B, Ms C and Mr E.
- d) Tax voucher in respect of Syngenta plc shares dated 26 May 2003. The share registrar was Lloyds TSB. The named shareholders were Ms B, Ms C and Mr E.
- e) Tax voucher in respect of Royal Dutch Shell plc shares dated 17 September 2003. The share registrar was Lloyds TSB. The named shareholders were Ms B, Ms C and Mr E.
- f) Tax voucher in respect of Barclays plc shares dated 1 October 2003. The named shareholders were Ms B, Ms C and Mr E.

The Trustees from 29 January 1998 were the Secondary Complainer, Ms B and Ms C and their names should have been registered with each of the share registrars as the shareholders. Four of the six companies still had Mr E recorded as a shareholder and none of the companies had the Secondary Complainer recorded as a shareholder.

The Respondent did not write to the said share registrars to correct the position regarding the Trustees.

The Respondent did write to the Registrar at Barclays plc on 17 May 2006 regarding a missing dividend payment and advised that "*[Mr E] died some time ago but we note that on the shareholding he is still listed amongst the shareholders.*"

However, the Respondent said nothing further about this in the letter. He did not advise the registrar that the Secondary Complainer had been assumed as a Trustee and was, accordingly, a shareholder.

10.8 The Respondent wrote to the Secondary Complainer on the same

date and advised her that he had written to Barclays plc regarding the missing dividend payment. He made no mention of the erroneous information which Barclays held regarding the shareholders.

- 10.9 The Secondary Complainer's mother Ms B died on 12 October 2012.
- 10.10 A Job Account Enquiry document printed by the Respondent on 28 November 2013, which is a ledger in respect of the Trust covering postings from 30 September 2008 to 14 November 2013, disclosed that the firm received share dividends from six companies after the date of Ms B's death. The companies were Diageo plc, Astra Zeneca plc, Aviva plc, Syngenta plc, Royal Dutch Shell plc (subsequently Equiniti) and Barclays plc. There is nothing on file from 12 October 2012 to indicate any intimation had been made to any of said companies.
- 10.11 The Respondent did not write to the registrars of these companies informing them of the death of Ms B.
- 10.12 On 2 May 2014 Diageo plc sent a letter to the Respondent's firm marked with the reference of the Respondent's partner referring to his recent correspondence regarding the shareholding in the name of Ms B and Ms C. They advised that they could not reissue a dividend dated 7 April 2014 because they had not yet been informed of the death of Ms B. They sought sight of the death certificate and advised that on receipt of this they would remove Ms B from the shareholding. The Secondary Complainer was not noted in this letter as a shareholder.
- 10.13 Having received a copy of Ms B's death certificate Diageo plc sent a letter to the Respondent's firm on 5 March 2015 confirming that the shares were now held in the name of the surviving shareholder Ms C.
- 10.14 On 31 March 2015 Diageo plc sent a further letter to the

Respondent's firm confirming that, having checked their historical records, the shares were originally registered in the names of Mr E, Ms C and Ms B and that Mr E had been removed from the record on 26 November 1999 leaving the holding in the joint names of Ms C and Ms B.

- 10.15 The Respondent did not notify any of the share registrars that the Secondary Complainer had been assumed as a trustee in January 1998 and that Ms B had died on 12 October 2012.

Tax Returns in Respect of the Trust

- 10.16 The earliest correspondence on the Respondent's file relating to the submission of tax returns for the Trust was a letter from HMRC dated 14 September 2004 acknowledging receipt of the Trust and Estate Tax return for the year ending 5 April 2004. The letter confirmed an overpayment of £2.06.
- 10.17 Tax returns in respect of the Trust were thereafter sent by the Respondent to the Secondary Complainer for signature and return to him for the years ending April 2005, 2006, 2007, 2008. The Secondary Complainer signed them and returned them to the Respondent for submission to HMRC. Said tax returns were duly submitted to HMRC by the Respondent.
- 10.18 The Respondent's file contains a partially completed tax return for the year ending April 2009. The signatory was to be the Secondary Complainer but the form is unsigned and undated. There is no correspondence on the Respondent's file sending the tax return to the Secondary Complainer for signature or sending the completed form to HMRC. The Respondent did not submit a timeous tax return to HMRC in respect of the Trust for the period ending April 2009.
- 10.19 The Respondent's file contains a principal tax return for the Trust for

the year ending April 2010. The document has not been completed and there is no correspondence on the Respondent's file regarding the completion, signing or submission of said tax return. The Respondent did not submit a tax return for the Trust for the period ending April 2010.

- 10.20 HMRC sent a Self-Assessment Statement number 20 dated 23 June 2010 to the Respondent's firm in respect of the Trust indicating an amount of £95.45 as being overdue for payment. A handwritten note on said statement suggests that this sum was paid on 15 July 2010.
- 10.21 On 3 August 2010 HMRC sent a Self-Assessment - Late Tax Return Penalty Notice to the Respondent's firm in respect of the Trust. The penalty due for payment was £100 in respect of the tax return for the year ending April 2009. The Penalty Notice stated that "*I did not receive your Tax Return by 6 months after the due date so you are liable to a further penalty*".
- 10.22 Ms C wrote to the Respondent's firm on 4 February 2011 stating "*I think I mentioned Tax Certificates for the Trust in a previous letter. I would be glad to have the Certificates up to April 2009 and to April 2010.*" The Respondent did not reply to this letter.
- 10.23 On 15 February 2011 HMRC sent a Self-Assessment - Late Tax return Penalty Notice to the Respondent's firm in respect of the late Tax return for the year ending April 2010. The Notice stated that "*I did not receive your Tax return by the due date so you are liable to a penalty*". The penalty payable was £100.
- 10.24 On 22 February 2011 HMRC sent a Self-Assessment Statement number 23 to the Respondent's firm. The total sum, which was due for payment by 22 March 2011 was £200 comprising £100 brought forward from a previous statement and the £100 fixed penalty for the late tax return "*09/10*".

- 10.25 Ms C wrote to the Respondent's firm again on 11 April 2011 stating *"I mentioned Tax Receipts for the Trust a month or two ago in a letter. The receipts up to April 2009 and April 2010 are required for my income Tax returns and I should be glad if I could have them as soon as possible"*. The Respondent did not reply to this letter.
- 10.26 On 20 June 2011 the Respondent sent a letter to the Secondary Complainer enclosing the accounts for the Trust and the tax return form for the year ending 5 April 2011. The Respondent asked the Secondary Complainer to sign the tax return form and return it to him. The Secondary Complainer returned the signed tax return to the Respondent on 8 August 2011 apologising for the delay due to holidays. The Respondent thereafter submitted said tax return to HMRC.
- 10.27 On 22 June 2011 HMRC sent a Self-Assessment Statement number 24 to the Respondent's firm stating that the sum now due was £202.36 comprising the sum of £200 brought forward from the previous statement and interest due thereon of £2.36.
- 10.28 On 2 August 2011 HMRC sent a further Self-Assessment - Late Tax Return Penalty Notice to the Respondent's firm in respect of the late tax return for the period ending April 2010. The penalty was £100.
- 10.29 HMRC sent a Self-Assessment Statement number 25 to the Respondent's firm. The Statement bore the date 23 August 2011. The total sum due was £285.01 which comprised £202.36 brought forward from statement number 24, interest of £0.75 on 23 August 2011, a second fixed penalty of £100 for the late Return 09/10 on 6 September 2011 less £18.10 which was an overpayment from the Return for 10/11 credited on 31 January 2012.
- 10.30 On 12 April 2012 the Respondent sent a letter to the Secondary Complainer advising that he was preparing the Trust income tax

return which he would forward to her in due course.

- 10.31 On 4 December 2012 HMRC issued a Self-Assessment Statement number 28 to the Respondent's firm. The total sum due was £296.98 comprising £293.21 brought forward from the previous statement and interest due as at 4 December 2012 of £3.77.
- 10.32 On 20 December 2012 the Respondent sent a further letter to the Secondary Complainer advising that that he had drawn up provisional accounts for the Trust for the year to 5 April 2012 and the period to 12 October 2012. This letter made no mention of the Trust tax return for the period ending April 2012.
- 10.33 The Respondent did not submit a tax return to HMRC in respect of the Trust for the period ending April 2012.
- 10.34 On 12 February 2013 HMRC sent a Self-Assessment late tax return Notice of penalty assessment to the Respondent's firm in respect of the Trust issuing a penalty of £100 for failing to submit a timeous tax return for the period ending April 2012.
- 10.35 On 19 June 2013 HMRC issued a Self-Assessment Statement number 30 to the Respondent's firm in respect of the Trust. The sum due was £401.52 comprising £398.96 brought forward from a previous statement and interest of £2.56 due as at 19 June 2013.
- 10.36 On 27 June 2013 the Respondent sent a letter to the Secondary Complainer stating that he was in the process of preparing the latest Trust tax returns and management accounts which he hoped to forward to her shortly. The Respondent did not send this to the Secondary Complainer and did not submit the tax return to HMRC prior to his absence from work at the end of December 2013 nor when he returned to work in March/April 2014.
- 10.37 The Respondent did not submit timeous tax returns to HMRC in respect of the Trust for the years ending April 2009, 2010, 2012 and

2013 and allowed the penalties therefor and the interest thereon to accumulate and remain unpaid. The Trust continued to hold income generating assets during those periods.

10.38 The Secondary Complainer only became aware that the aforementioned tax returns had not been submitted and that penalties were accruing when she was advised in 2016 by the new agents she had instructed to administer the Trust.

Ms B's Executry

10.39 Ms B died on 12 October 2012. In terms of her will, dated 21 November 2005, the Secondary Complainer was appointed sole executrix of her estate. Ms B left a number of pecuniary bequests and the residue of her estate was to be divided equally among her four children. There was also a codicil dated 5 May 2009 in the form of a letter by Ms B to the Respondent instructing a further legacy to be paid to a friend.

10.40 On 29 October 2012 the Secondary Complainer wrote to the Respondent. She referred to a letter from the Respondent and stated that she had also assumed that confirmation would be required to wind up her mother's estate. She advised that she was in the process of listing the estate and looking out copies of share certificates and investments and had closed her mother's bank account and notified the DWP. She confirmed that she would call to arrange an appointment with the Respondent shortly. She thereafter met with the Respondent on 16 November 2012.

10.41 The Secondary Complainer wrote to the Respondent on 19 November 2012 referring to their meeting and enclosing a letter from the DWP and asked the Respondent to correspond with them. There is no correspondence on the Respondent's file from him to the DWP.

10.42 On 3 December 2012 the Respondent sent a letter to the Secondary Complainer enclosing the firm's letter of engagement in respect of

the executry. He enclosed a schedule identifying the items comprising the late Ms B's estate and stated that he would obtain valuations or the appropriate certificates in respect of the items. He also enclosed a second schedule detailing debts and funeral expenses. The Respondent asked if the Secondary Complainer had made any progress in identifying an investment held by the Royal Bank of Scotland in relation to the sale proceeds of Ms B's house.

The Respondent also stated that he was making up the accounts for the Ms A Trust to the date of Ms B's death and hoped to be in a position soon to confirm the balance due to her estate.

- 10.43 The Secondary Complainer provided the Respondent with details of the aforementioned RBS investment the following day. She also enclosed a letter dated 29 November 2012 from the Pension Protection Fund confirming the sum due to Ms B's estate.
- 10.44 On 20 December 2012 the Respondent sent a letter to the Secondary Complainer advising that the provisional accounts for the Trust had been prepared up to the date of Ms B's death. He advised that there was a sum due to her estate in respect of an underpayment of income from the Trust and he had now transferred this to the executry ledger account.
- 10.45 The Secondary Complainer sent a further letter to the Respondent on 20 December 2012 enclosing a letter from the Pension Service and asked the Respondent to correspond with them. There is no correspondence on the Respondent's file from him to the Pension Service.
- 10.46 At some point after 4 December 2012 the Respondent prepared a statement of assets and liabilities for the estate of Ms B as at the date of death. This was only partially completed and revealed various companies who required to be contacted for valuations and date of

death figures including Legal and General, BT plc, HSBC plc and Friends Life. There is no correspondence on the Respondent's file from him to these companies.

10.47 The only correspondence on the Respondent's file in 2013 in respect of Ms B's executry is the following:

- (a) On 26 April 2013 the Secondary Complainer sent an email to the Respondent referring to their telephone conversation and confirming that she wanted the Respondent to pay a legacy from the estate to Ms B's granddaughter.

The Secondary Complainer provided the granddaughter's bank details and advised that she would like the money to be paid by the following week.

- (b) On 13 November 2013 the Secondary Complainer sent a letter to the Respondent enclosing a letter dated 16 September 2013 and tax form from HMRC in respect of income tax due to or by the estate of the late Ms B which the Respondent had advised he would deal with.

The Secondary Complainer also enclosed copy emails dated 22 July 2013 between herself and Mr Phillip Harker (of Messrs Harker & Co, International Probate and Genealogical Researchers) in respect of an unclaimed asset which he had identified as being due to the estate of Ms B. The Secondary Complainer noted that the Respondent had agreed to contact Mr Harker to see what he had found.

The Secondary Complainer stated that *"It would be good if we could get Mum's estate wrapped up in the near future and the payments made to the beneficiaries."*

10.48 There is no correspondence on the Respondent's file from the Respondent in 2013 dealing with the estate of Ms B. Neither the Respondent nor his former firm has provided a file to show that during that time the Respondent took any action to progress the executry to enable confirmation to be obtained.

10.49 The Law Society of Scotland Financial Compliance Department undertook an inspection of the Respondent's firm in October 2013. Files were uplifted from the firm by one of the Inspectors on 17 October 2013. Included among the files was the executry file for Ms B. The files were returned to the firm on 3 December 2013.

10.50 The firm ledger in respect of the executry shows a fee raised by the Respondent on 31 December 2012 and payment taken on the same date and a further fee raised on 1 July 2013 and payment taken on the same date. Both fee notes were then cancelled on 25 November 2013. A fee was then not rendered in respect of administration of the executry until 24 April 2014.

10.51 The Respondent continued to be instructed to deal with Ms B's executry until the end of December 2013. Thereafter the Respondent was absent from work for a period of time before returning in March/April 2014. Another partner in the firm, Steven Murray, dealt with said executry from January 2014.

11. Having considered the foregoing circumstances, the Tribunal found the Respondent not guilty of professional misconduct but considered the Respondent may be guilty of unsatisfactory professional conduct.

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

By Video Conference, 25 March 2021. The Tribunal having considered the Complaint dated 27 January 2020 at the instance of the Council of the Law Society of Scotland against Graham Robert Bryson, Bryson's Legal Services, 3/1, 1534 Maryhill Road, Glasgow; Find the Respondent not guilty of

professional misconduct; Remit the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Make no finding of expenses due to or by either party; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Nicholas Whyte

Chair

13. 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

29 APRIL 2021

IN THE NAME OF THE TRIBUNAL



Nicholas Whyte

Chair

NOTE

At the virtual hearing on 2 March 2021 which was continued to 25 March 2021, the Tribunal had before it: the Complaint as amended, Answers as adjusted, a List of Witnesses for the Complainers, an Inventory of Productions for the Complainers, an Inventory of Productions for the Respondent, and a signed Joint Minute of Admissions. By way of the Joint Minute, the Respondent admitted the statements of fact and the averments of duty in the Complaint as amended. It was agreed that all documents in the Complainers' Inventory of Productions were to be treated as principals and accepted as evidence without the necessity of a witness speaking to them. It was agreed that all correspondence was to be assumed to have been sent by the person, to the person and on the date upon which it appeared to have been sent. The Answers lodged in response to the Complaint raised five preliminary pleas. These were all withdrawn by the Respondent and therefore were not considered by the Tribunal.

EVIDENCE FOR THE RESPONDENT**WITNESS: RESPONDENT**

The witness gave evidence on oath. His full name is Graham Robert Bryson. He is 65 years old. He gave details of his career history.

The Respondent explained that the Ms A Trust had been dealt with by various solicitors and he "inherited" it upon the retiral of one of his partners. The Respondent was the sole principal in his business from 1997 to 2010. He dealt with the Ms A Trust throughout that period. There were no difficulties and he had a good business relationship with the trustees and beneficiaries who were longstanding clients.

On 1 July 2010, the Respondent assumed Steven Murray as his partner. From that time onwards, the Respondent carried out most of the litigation work and Mr Murray did the chamber work as this suited their respective strengths, although the division of labour was not strictly applied. Steven Murray took over responsibility for the Ms A Trust file on his assumption as partner. This was discussed before he became partner. He had previous experience of dealing with trusts.

The Respondent said a meeting was arranged for Ms D and Ms C to meet Mr Murray. However, the meeting did not take place because Ms C tripped and fell in the office and had to be taken to hospital. The Respondent was not sure if another meeting was arranged after that or if the introductions were

dealt with in correspondence. The Respondent said it was clear to him and Steven Murray that responsibility for the file was transferred to Mr Murray. However, he did not know if the trustees were made aware of this. Steven Murray dealt with receiving and distributing funds and queries from the trustees and beneficiaries. The Respondent also continued to be involved. He had spreadsheets on his computer pertaining to the trust. He continued to update these until 1 January 2014. He also dealt with an issue regarding share certificates. The Respondent dealt with tax returns and supplementary documents such as forms R185E. The Respondent estimated he spent one or two evenings a year dealing with the tax returns. He would take the cash ledgers and tax vouchers and populate the spreadsheets. He would produce the figures required and transfer these to the tax return forms. He would make up the R185E forms. He kept all papers for the year together in an envelope and put that envelope in the Ms A Trust tax return file. That file is missing. He could not remember if he made the tax return or if that was Steven Murray's responsibility. He accepted that some tax returns were not made. However, he could not give an explanation for that in the absence of the file. He is satisfied that he did the preparatory work for the 2009 and 2010 returns because the vouchers for those years are no longer in the file. This suggested they had been moved to the envelopes.

In 2012, the Respondent's firm took over another legal practice. The amalgamation was not a success and very significant difficulties arose which affected the management of the practice. On 1 January 2014, the Respondent collapsed as a result of heart failure. On his return, his working relationship with Mr Murray deteriorated. The Respondent was unhappy and the situation affected his health. The firm had significant problems. The Respondent intimated that he was going to retire. The relationship between the partners broke down and litigation commenced following the dissolution of the partnership. The Respondent now operates as an agency solicitor under the name Bryson's Legal. Other solicitors instruct him to conduct criminal hearings for them.

The Respondent's firm was inspected by the Law Society in 2012 and 2013. Files were sent to the Law Society but they were not returned timeously. The Respondent was not involved in sending the tax returns. He does not know if they went missing at this stage or after that or whether Steven Murray, by accident or design, did not forward them to the Secondary Complainer's new agents. The Respondent did not see any of these files after mid-2013.

The Respondent said he accepted responsibility for failing to make the tax returns in 2009 and 2010. However, he did not deliberately ignore the requirement to make a return. The later returns were Steven Murray's responsibility. However, the Respondent did the preparatory work for these on his spreadsheet at home. He does not know why the returns were not submitted. He accepted that in

hindsight he should have checked Steven Murray's understanding. However, there was no deliberate intention not to submit. He would not have gone to the length of producing the spreadsheet if he had no intention of making the return. Any correspondence pertaining to the trust would have been passed to Steven Murray. The Respondent was never aware of the trustees saying they had not received their forms. There was no advantage to the Respondent or the firm in failing to make the returns. The firm would have had to meet the penalties and they risked losing long established and valued clients. The Respondent has seen the penalty notices. He authorised payment of a demand. He did not realise at that time that it related to a penalty. He assumed he had made a mistake on the return.

With regard to identification of the trustees to the share registrars, the Respondent noted that when he took over responsibility for the file he met the trustees. He noted that nothing had been done regarding the structure of the trust for years. Mr E was nominally the lead trustee. The Respondent prepared the deed of resignation and assumption but there were some difficulties having that executed. At that time, transfers of shares had to be done by hard copy share transfer forms. Mr E died before this could be done. The remaining trustees were not keen on incurring the significant expenditure involved in taking out probate on Mr E's estate purely to get the shares transferred. The change of names had no effect on the trust because the money came into the firm and income distributed. The Respondent had suggested a review of the assets. The trustees wanted to delay re-registration until the review but kept putting off the review. They said they wanted to combine the work to save money. The Respondent said he had no authority to inform the share registrars of any changes. Some of the Scottish companies updated their records easily. However, things stalled with the English companies. The Respondent said that in hindsight he ought to have chased this up.

With reference to the executy, the Respondent said he was instructed in late 2012. He anticipated on Ms B's death he would be instructed and he met the Secondary Complainer on 16 November 2012. He noted the file note for that meeting was not within the file. He made some preliminary enquiries regarding assets but he did not know the extent of the estate. He knew the Secondary Complainer had sold the deceased's house and kept the funds in liquid form to be used for her mother's benefit. However, he did not know how much was left. Initially, it seemed to be a small estate. He was not aware of the Legal & General asset when dealing with the file. The Respondent was referred to various letters contained within the Inventory of Productions for the Complainers. He noted he last dealt with the executy file in 2013. At that stage, further enquiries were required regarding the trust. He explained that after his collapse on 1 January 2014, he returned to full time work towards the end of August 2014, although before that he was doing some "very light legal work" mostly court

appearances. When he stopped dealing with the file in 2013, he was not in a position to deal with confirmation.

With reference to the averments of misconduct, the Respondent said it might have been in the client's best interests to notify the share registrars of the assumption of a new trustee. However, they had given him clear instructions not to do so. He had no authority to communicate with the share registrars.

He did not notify the share registrars of Ms B's death and did not communicate with them. However, this would have been done in the course of the executry. There was no prejudice to the estate. He was not given any particular instructions to deal with the trust. He could not do anything until he had instructions.

The Respondent accepted that tax returns were not filed timeously in 2009, 2010, 2012 and 2013. He was responsible for the file for the 2009 and 2010 returns. He could not say if it was he or Steven Murray who was responsible for the 2012 and 2013 returns. However, it was not a wilful act not to submit. He did the preparatory work for all four years.

He disagreed that his actions raised any issues with regard to his integrity. He did not mislead his clients or anyone else. It is not a case where he told the client falsely that he had made the returns. He said he may have been inept but he is honest.

The Respondent noted that in relation to the delay in dealing with the executry, that he was not instructed on the date of death. In addition, the files were at the Law Society for a period and not available to him to make progress. Quite a lot of work was done between November 2012 and January 2013. However, matters got more difficult after that. The assets were obscured and some were not identified until 2015.

The Respondent disagreed that a lack of integrity arose in relation to the executry. He was not dishonest. He never claimed to have done anything he did not do. He did not mislead. He did not benefit in any way, financial or otherwise.

The Respondent said he was deeply distressed regarding the Secondary Complainer's unhappiness and anxiety arising as a result of this case. He had high regard for the Secondary Complainer, her mother and her aunt. He hoped that if he had been approached in 2016, he might have been able to resolve these issues.

In answer to questions from Tribunal members, the Respondent indicated that the trust income was paid to the firm. He was not aware of the firm receiving any reminders or chasers from the executors from the date of instruction to the date he was admitted to hospital apart from one letter which he did not see until after October 2013.

During cross-examination, the Respondent confirmed he was firstly a sole practitioner and then partner of the firm during the period libelled. He had responsibility individually and for the firm. He ran the trust from 1997 to 2010. He did everything during that period. From 2010 onwards, he did tax work and carried out enquiries regarding a missing asset. The Respondent was asked if he could point to any evidence of transfer of the file to Steven Murray. He said there was no evidence contained in the documents provided. Their agreement was not reduced to a formal written document. There are no emails about this because they were working in the same office. They could communicate easily. The draft partnership agreement did not detail particular areas of responsibility. The Respondent agreed he had detailed knowledge of the trust and in those circumstances it was in the best interests of the clients to share that knowledge with Steven Murray.

The Respondent confirmed he had taken no legal steps to recover any papers he said were missing. He said he would be very surprised if they still existed or could be located.

The Respondent agreed with the proposition that as partner of the firm, he had the same responsibility for the trust as Steven Murray.

The Respondent agreed that he could not point to any evidence supporting his contention that Ms C and Ms B had given him an instruction not to undertake certain pieces of work. He clarified that the instruction was to the effect that they did not want to incur further expenditure. He noted that the file for 1997 to 2000 was not available.

The Respondent was referred to Productions 1/44 and 1/49 for the Complainers which were letters from Ms C dated 4 February 2011 and 11 April 2011. He said he had no memory of receiving these letters. They were not marked for his attention. They would not necessarily have been shown to him. He agreed that his reference was on letters from 2011. He was dealing with a particular issue for the trust at that time.

In relation to the executry, the Respondent was referred to Production 5/172 for the Complainers which was a letter from the Secondary Complainer dated 29 October 2012. He agreed he was aware of Ms B's death in 2012. The note on the letter asking for the will to be looked out was written by him. However, it was still open at that stage for the Secondary Complainer to instruct another agent. He disagreed that the reference to money laundering documents in that letter meant that he had already received instructions in the matter. The Respondent was referred to Production 5/152 for the Complainers which was a letter from the Secondary Complainer dated 19 November 2012. He agreed he met the Secondary Complainer on 16 November 2012.

The Respondent agreed that the notes at Production 7/200 for the Complainers were taken by him but said these were an incomplete record. He would normally have used a pre-printed form to fill in when taking executry instructions. He did not include trust assets but these were known and obvious.

The Fiscal asked the Respondent if he accepted if he did not do something and did not tell the client, that could demonstrate a lack of integrity. The Respondent said it might if he was under an obligation or if he was falsifying a document. However, there was a vast range of conduct within that. She asked if failure to respond to a request for tax certificates and hiding that could show a lack of integrity. The Respondent said it might, but he had no recollection of seeing these. If he had seen them, he would have responded.

The Respondent was referred to Production 1/54 for the Complainers which was a demand for payment from HMRC dated 23 June 2010. He agreed he had instructed that the HMRC bill should be paid. He did not investigate the matter. He agreed it was his responsibility to check the bill was valid and due in the best interests of the clients. This also applied to the tax returns and tax certificates.

The Respondent accepted there was no correspondence in the documents produced from the Respondent to the trustees informing them that Steven Murray was going to have any involvement with the trust. He expected Steven Murray to write and introduce himself to them or do it at a meeting.

The Respondent said he did not accept that he did not correspond with the Secondary Complainer in 2013. He has no particular memory of it, but it was seven years ago.

In re-examination, the Respondent confirmed he did not draft the inventory of the estate. He had nothing to do with it. An error was made by the firm, but he did not have any personal involvement.

The Respondent explained he did not think there was any point attempting to seek documents from Steven Murray. He had already applied for commission and diligence in respect of another action and Mr Murray has not complied with the order. He also ignored orders from the Law Society. The Respondent does not think the files still exist. He understands that papers were destroyed by the firm's former landlord.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal asked the Tribunal to note the Respondent's concessions that he was a partner throughout the period in question. He admitted the tax returns were not sent in on time and penalties were imposed. There is no evidence of any work done in 2012. She urged the Tribunal to be careful regarding the Respondent's "one-sided" evidence about missing files. He has had every opportunity to find any missing documents. The files contain plenty of other tax returns, share certificates and correspondence regarding shareholdings. The Respondent has provided no corroborative independent evidence. He chose not to call Steven Murray as a witness. The Respondent accepted he did not advise his clients. Nothing he said has detracted from his fundamental obligation to look after the best interests of the clients. He failed to do so.

The Fiscal suggested that the Respondent acted without integrity. She referred the Tribunal to Wingate and Evans-v-SRA and SRA-v-Malins [2018] EWCA Civ 366. She did not suggest the Respondent had acted dishonestly. He failed in his obligations through ineptitude or incompetence. He was a partner in the firm. He had handled both matters. His behaviour amounted to professional misconduct. The Fiscal referred to the Law Society of Scotland-v-John Rankine Smith [SSDT 2009]. She said this was an example of misconduct in similar circumstances. She said at the very least in relation to the present Complaint, there was a singular failure to deal with the trust and the other averments of misconduct were professional misconduct *in cumulo*.

In answer to questions from the Tribunal, the Fiscal said she sought a finding of professional misconduct *in cumulo* at the very least. There was a course of conduct of failing to deal with material matters. It caused undoubted stress and financial consequences for the Secondary Complainer. There would have been extra expense to the trust in corresponding with the companies.

The Chair asked the Fiscal about the penalties and interest arising as a result of the tax return issues. He asked if there were financial consequences for the estate. She said these did not arise during the period in question. However, the Respondent "did not walk away with clean hands". Steven Murray

was left to pick up the pieces. Steven Murray lodged the application for confirmation on the basis of the information in the file. The Respondent must accept responsibility. However, she accepted that he ceased to have involvement in January 2014 and the application for confirmation was not made until June 2015.

SUBMISSIONS FOR THE RESPONDENT

Mr Foster said the Productions clearly showed that for a long time Steven Murray was involved in investigating the estate. He gathered information which was not available to the Respondent. The vast bulk of the estate was discovered after the Respondent stopped dealing with the file. Any defects in confirmation are not down to the Respondent. It is not fair to say Steven Murray made errors because of the Respondent. Confirmation was not the Respondent's responsibility.

With regard to the executry, Mr Foster said no duties arose before instruction. Obligations do not arise from date of death. If he had written saying he had the instructions of the executrix, that would have been wrong. He had no authority to act until 16 November 2012. In addition, the Law Society held the files for three months. It cannot be said the Respondent behaved inappropriately while they had the files. Most executries will not be wound up within six months because of the executor's personal liability for debts. The Tribunal should place in context the time the Respondent had actual control of the file. He cannot be guilty of failing to make progress when the Legal & General investment was not known to him. The estate could not be wound up during this period.

Mr Foster said the Respondent accepted he did not deal with the files perfectly. He gave evidence that helped and hindered his case with candour. The Respondent said he was instructed not to do certain things. It would have been unacceptable if he had acted without instruction. There is no reason to believe the instruction was not given. There is no requirement to corroborate the Respondent's word.

With regard to the missing documents, the Fiscal said he did not suggest that the Law Society was responsible but he said anyone who had read the Productions would know items were missing. There are references in the correspondence to letters which are not included.

Mr Foster noted the Respondent does not have to prove his innocence. The onus is on the Complainers to prove beyond reasonable doubt that the Respondent is guilty of professional misconduct. He asked the Tribunal to accept the Respondent's evidence. The files prove he did work despite the

chamber/court division in the office. He does not say he left everything to Steven Murray. This enhances his credibility.

Mr Foster submitted that the Respondent's conduct was not so heinous to meet the Sharp test. However, it might be inadequate professional services or unsatisfactory professional conduct. He noted the suggestion that the Respondent had been wrong in his advice regarding trust capital as it related to the executry. No evidence was provided to prove he was wrong. The Respondent accepts he might have been incorrect. However, he says he would have confirmed the position before applying for confirmation.

Mr Foster accepted that partners are responsible for their firms in relation to the law of negligence or when considering inadequate professional services. However, errors by Steven Murray cannot found the basis of a finding of professional misconduct against the Respondent. He noted that inadequate professional services, unsatisfactory professional conduct and professional misconduct are on a continuum and it can be difficult to draw the line. He asked the Tribunal to treat the cases referred to in Smith & Barton's "Procedures and Decisions of the Scottish Solicitors Discipline Tribunal" with care as these pre-dated the creation of inadequate professional services. Mr Foster said the admitted averments amounted to no more than inadequate professional services, except for the failure to inform the share registrars which was precisely the service the client asked for. There was no lack of integrity or heinous component to satisfy the Sharp test. His behaviour did not put the whole reputation of the profession at stake. The vast bulk of the population would not consider this conduct to lack integrity.

Mr Foster said it was important to note the Respondent was contrite. He acknowledged the errors he made and his potential responsibility. He expressed sympathy for the Secondary Complainer. An offer of compensation was made but not accepted.

The Chair asked whether the Respondent insisted on the preliminary plea at paragraph 9.5. Mr Foster said it was no longer insisted upon. He could not say that proceedings as a whole were unfair as a result of the missing documents.

A Tribunal member asked why there was no communication with the trustees regarding the division of work. Mr Foster said the division of labour reflected the position within the firm as a whole, and not this specific trust file. In an ideal world, the trustees should have been told Steven Murray was the point of contact. There was no decision not to do it, rather it just was not done. The Respondent had a

connection with Ms B. The Respondent only did two executries, this one and his own father's. Many small firms have a civil/criminal division.

A member asked some questions regarding lack of integrity. He noted that the Malins case referred to adherence to the ethical standards of one's profession. He asked whether it was being submitted by the Complainers that the conduct referred to in averments (f) and (h) was unethical in some way, and if so, in what sense. The Fiscal referred to paragraph 101 of the Malins judgement and the examples given there. In the present case, two elderly ladies trusted the Respondent to do his job. He did not carry out his obligations. He let them down. Lack of integrity is a nebulous concept but she asked the Tribunal to take into account the clients, the nature of the work and the reliance placed on the Respondent. Ms C requested documents. She did not get them. The office system was in disarray. She asked the Tribunal to be careful in accepting the Respondent's evidence regarding his client's instructions. Any solicitor worth his salt would have put that in writing.

Mr Foster highlighted the examples of lack of integrity given at paragraph 101 of Malins. The conduct of Wingate and Malins was very serious. One forged a document and the other entered into what was clearly a fraudulent contract. Acting with integrity does not mean acting without making a mistake. The Fiscal assumes the Respondent was aware of Ms C's letters. His evidence is that he has no recollection of receiving it, and by that time there was a division of labour in place. The Respondent may not have been diligent. He may have been careless or negligent. This does not mean he lacked integrity.

A Tribunal member asked what the Complainers said was the most material error in the Respondent's conduct. The Fiscal said the Tribunal should not accept the Respondent's evidence regarding instruction from the trustees. Sixteen years of failing to update the share registrars was open to question. Failure to make the tax returns was also important. He ought to have had an office system to keep track of commitments. Mr Foster said this was way beyond the scope of the Complaint. The office system might have been bad but there was no lack of integrity. The system worked from 1997 to 2009.

The Chair asked for submissions on unsatisfactory professional conduct. The Fiscal said if the Tribunal was not with her on professional misconduct, the behaviour would fall within unsatisfactory professional conduct. Mr Foster said his argument was a diluted version of that made in relation to professional misconduct.

DECISION

The Complainers alleged that the Respondent was guilty of professional misconduct in a number of respects. It was said that he failed to act in the best interests of his clients and communicate effectively between 29 January 1998 and 1 January 2014 by failing to notify trust share registrars that the Secondary Complainer had been assumed as a trustee (averments of misconduct (a) and (b)). It was claimed that the Respondent failed to act in the best interests of his clients and communicate effectively by failing between 12 October 2012 and 1 January 2014 to notify trust share registrars of the death of Ms B (averments of misconduct (c) and (d)). It was alleged that the Respondent failed to act in the best interests of his clients and failed to act with integrity by failing to submit tax returns to HMRC in respect of the trust for the years ending April 2009, 2010, 2012 and 2013 and failed to deal with penalty notices and brought, or was likely to bring, the profession into disrepute (averments of misconduct (e) and (f)). It was said that the Respondent had failed and/or unduly delayed between 12 January 2012 and 1 January 2014 to undertake work in the administration of the Ms B estate to enable confirmation to be obtained and in so doing failed to act with integrity and acted in a way which brought, or was likely to bring, the profession into disrepute (averments of misconduct (g) and (h)).

The Tribunal noted the applicable standard of proof in professional misconduct cases was beyond reasonable doubt. The burden of proof remains on the Complainers throughout the case.

The Tribunal carefully considered the evidence in this case. It heard evidence about some extraneous matters but only gave regard to matters relevant to the allegations contained in the Complaint. Although there were some shortcomings in his evidence, the Tribunal found the Respondent was mostly credible and reliable. He gave evidence which was sometimes contrary to his interests, for example, by admitting he had continued to be involved in the administration of the trust following the transfer of the file to Mr Murray. However, some of his evidence was vague and he appeared to have memories of some things and not others. This may be partly explained by the passage of time. It was impossible for the Tribunal to determine some things, for example, if, when and how responsibility for the file had transferred to Mr Murray. It was unhelpful that there was no written record of the actions the Respondent claimed he had carried out. The division of responsibility between the parties remained unclear but it was obvious that both were still involved in the file to some extent during the periods libelled. It was not possible to determine which partner had primary responsibility for any particular stage. However, on the basis of the admitted facts and the Respondent's evidence, the Tribunal was satisfied that the Respondent had acted in the manner libelled in the averments of fact in the

Complaint. The Tribunal adopted the admitted facts in the Complaint as the basis for its own findings in fact and supplemented these with additional facts established on the basis of the Respondent's evidence.

The Respondent had failed to notify the trust share registrars that the Secondary Complainer had been assumed as a trustee. This was the Respondent's responsibility. He told the Tribunal that he had been instructed not to carry out this work. There was no written record of this instruction. However, regardless of the clients' instructions on this matter, notifying the trust share registrars was essentially an administrative task with no significant ramifications for the trust. The dividends continued to be paid to the firm and the income of the trust paid to the beneficiaries. It was not ideal that the trust share registrars were not updated. However, this is not particularly unusual. Often, these matters are attended to at a point when there are other changes to the trust or its shareholdings. In the whole circumstances, the failure was not particularly serious and in any event, the Respondent's evidence about the client's instructions raised a reasonable doubt about whether he had authority to intimate these changes to the share registrars

The Respondent failed to notify the share registrars of the death of Ms B. The Tribunal accepted the Respondent's position that this matter would have been dealt with as part of the executry and that this was a reasonable approach.

The Respondent failed to submit tax returns to HMRC and failed to deal timeously with penalty notices. The repeated nature of this failing was an aggravating factor. The Respondent arranged for one penalty to be paid. The Respondent accepted that he had failed to make the 2009 and 2010 returns. The 2011 return was made. It was not clear to the Tribunal who was responsible for making the 2012 and 2013 returns. The Respondent said his partner was to do this. However, the Tribunal considered in the circumstances the Respondent had a responsibility to ensure the tax returns were made. He had administered the trust alone for 13 years, there was no written record between the solicitors or to the trustees as to the transfer of responsibility for the file, and the Respondent continued to work on the trust even after the handover.

Confirmation was not obtained during the period libelled but some work was carried out. There was evidence that the Respondent was dealing with the case in December 2012. For example, he wrote to various parties to obtain valuations of assets. The executry was said to have been simple but the Tribunal noted that even after the Respondent ceased to have involvement in January 2014, it took until June 2015 to lodge the application for confirmation. A large asset was only identified after the

Respondent had stopped working on the file. The period of delay the Respondent was responsible for was about 10 months (adjusting for the time the files were with the Complainers between October and December 2012). Progress ought to have been made during that time. However, the Tribunal agreed that it is prudent to wait six months before winding up an estate. Executries frequently take over a year to complete. Mr Foster referred the Tribunal to the cases described in Chapter 14 of Smith and Barton's "Procedures and Decisions of the Scottish Solicitors' Discipline Tribunal". The Tribunal noted that it had criticised delays in winding up estates, particularly where the delay was said to be gross and persistent or unconscionable. However, the length of delay in those cases far exceeded that in the present case. More recent cases of established professional misconduct also tended to involve delay of years rather than months (Law Society v Donald Murray, Law Society v Jane Chisholm, Law Society v David Hogg, Law Society v Garry Pirrie and Law Society v David Dickson). The Fiscal referred the Tribunal to Law Society v John Rankine Smith. The Tribunal noted that the two and a half year delay in that case was "borderline" but did constitute professional misconduct in the context of the ten year delay which had already occurred in the case between 1993 and 2003.

The Tribunal carefully considered the averments of professional misconduct contained in the Complaint and applied the test for professional misconduct in Sharp v Council of the Law Society of Scotland 1984 SLT 313. According to that case,

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

The Tribunal was careful to assess the evidence against the Respondent's individual conduct. As noted in Sharp, a conviction for professional misconduct depends on all the circumstances and the culpability of the individual solicitor.

As well as seeking a conviction for professional misconduct, the Complainers alleged that the Respondent's conduct had lacked integrity. The principles of honesty and integrity are fundamental to the profession. Members of the profession are in a very privileged position and members of the public

must be able to trust that solicitors will carry out their duties and obligations honestly and with integrity.

Lack of integrity was discussed in Wingate & Evans v SRA: SRA v Malins [2018] EWCA Civ 366. According to that case integrity is a broader concept than dishonesty. It was said that 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 members. Integrity connotes adherence to the ethical standards of one’s own profession and involves more than mere honesty. A professional disciplinary tribunal has specialist knowledge of the profession and its ethical standards and is therefore well placed to identify a want of integrity. In that case Mr Wingate had signed a loan agreement knowing he could not meet its terms. Mr Malins had backdated a letter and sent it to another firm of solicitors. Other examples of lack of integrity given in the case were a sole practice giving the appearance of a partnership and deliberately flouting the conduct rules; recklessly allowing a court to be misled; subordinating the interests of the clients to the solicitor’s own financial interests; making improper payments out of the client account; allowing the firm to become involved in conveyancing transactions which bear the hallmarks of mortgage fraud; and making false representations on behalf of the client. The Tribunal considered that the Respondent’s conduct in the present case could be subject of criticism but did not involve a lack of integrity as is defined in Wingate & Evans v SRA: SRA v Malins [2018] EWCA Civ 366.

Having taken into account all the circumstances, the Tribunal considered that the Respondent’s conduct represented a departure from the standards of conduct to be expected of competent and reputable solicitors. However, it did not consider that the departure was serious and reprehensible. The Tribunal had regard to its functions of protecting the public and upholding the reputation of the profession. The Respondent’s conduct did not create a risk to the public or bring the reputation of the profession as a whole into disrepute. However, it may constitute unsatisfactory professional conduct which is defined as professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor but which does not amount to professional misconduct and which does not comprise merely inadequate professional service. Accordingly, the Tribunal found the Respondent not guilty of professional misconduct and remitted the case to the Law Society under Section 53ZA of the Solicitors (Scotland) Act 1980. The Secondary Complainers’ claim for compensation will be a matter for the Complainers to deal with as part of the remitted complaint.

The Tribunal invited submissions on publicity and expenses. Both parties confirmed that publicity should be given to the decision. The Respondent did not seek expenses and Mr Foster asked that no

award was made against the Respondent. In this light of that submission, the Fiscal asked the Tribunal to make no award of expenses to or by either party.

The Tribunal decided that publicity will be given to the decision. The Respondent and Mr Murray will be named in accordance with paragraph 14A of Schedule 4 of the Solicitors (Scotland) Act 1980. All other individuals' names can be anonymised as publication of their personal data may damage or be likely to damage their interests. In accordance with the parties' submissions, the Tribunal made no award of expenses.



Nicholas Whyte
Chair