

**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**

**MARGARET ANNE HORSLEY, 4 Clackmae  
Grove, Edinburgh**

**Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Margaret Anne Horsley, 4 Clackmae Grove, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were no Secondary Complainers.
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 the matter down for a virtual procedural hearing on 11 January 2023 and notice thereof was duly served upon the Respondent.
5. At the virtual procedural hearing on 11 January 2023, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented herself. The virtual procedural hearing was continued to 2 March 2023.
6. At the continued virtual procedural hearing on 2 March 2023, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented herself. The Tribunal set the matter down for a two-day hearing on

dates to be afterwards fixed, that hearing to take the form of a proof before answer. In due course the matter was set down for a hearing in person on 9 and 10 May 2023 and notice thereof was duly served upon the Respondent.

7. On 25 April 2023, the Respondent lodged a motion for production of documents under Rule 13 of the Tribunal's Procedure Rules 2008. A date was fixed for a procedural hearing to argue the motion, but the motion was withdrawn on 26 April 2023.
8. At the hearing on 9 and 10 May 2023, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by John Macmillan, Dundee. Two witnesses gave evidence for the Complainers. The Respondent gave evidence on her own behalf. Due to lack of Tribunal time the hearing was continued to 26 June 2023, to take place online.
9. At the continued virtual hearing on 26 June 2023, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by John Macmillan, Dundee. Parties made submissions.
10. Having given careful consideration to the submissions and documents before it, the Tribunal found the following facts established:-
  - 10.1 The Respondent is a solicitor enrolled on the Roll of Solicitors. Her date of birth is 12 June 1962, and she was enrolled on 17 January 1986. From 15 August 2013 to date she has been employed as a solicitor with South Ayrshire Council, County Buildings, Wellington Square, Ayr.
  - 10.2 The Respondent was appointed as Welfare & Financial Attorney to her father, James Campbell (hereafter "JC") by Power of Attorney dated 15 January 2016 and registered on 9 February 2016. Said Power of Attorney was executed by JC whilst he was in hospital. His signature was witnessed by his Consultant Geriatrician. He had capacity to understand and execute said Power of Attorney, as confirmed by the said Consultant in Schedule 1 to the said Power of Attorney.  
  
The deed of Power of Attorney was drawn up by JC's solicitors, Connolly and Yeoman, on 14 January and executed on 15 January 2016 in the presence of Dr

Lowdon. The Respondent was also appointed as Welfare & Financial Attorney to her mother, Mavis Anne Campbell (hereafter “MAC”) by Power of Attorney.

The powers exercisable by the Respondent as Attorney included:-

*Clause A(1) “To open, operate and overdraw any account with any Bank, Building Society or other Institution or person in my name alone, in my name along with others or in name of my Attorney.”*

*Clause A(10) “To buy, lease, sell and otherwise deal with any interest in property heritable or moveable and either in my own name or in my name jointly with others or in name of any person as nominee or Trustee for me, and to sign all declarations Dispositions and all other documents required in connection therewith.”*

*Clause (Three) “My Attorney shall be entitled to exercise the welfare powers under this deed only when my Attorney has first obtained from one Medical Practitioner responsible for my treatment, a Certificate to the effect that I am unable by reason of mental or physical inability to personally exercise the powers set out in this deed and shall otherwise be entitled to exercise the powers under this deed during my lifetime or until any earlier date on which my Attorney receives written notice of the recall of this appointment; In anything of importance he/she should consult me unless I am unable to comment in any way...”*

*Clause (Six) “My Attorney shall be bound to account to me for all intromissions in virtue hereof subject to payment of all fees and expenses due to my Attorney on the usual professional scale, and subject to my Attorney being relieved of all obligations and liabilities undertaken or incurred on my behalf.”*

- 10.3 JC and his wife, MAC, operated two joint bank accounts with the Royal Bank of Scotland Branch in Arbroath under account numbers 00125144 and 00131438. The former of these accounts was a Gold Cheque Account held in their joint names. The latter was a Savings Account held in their joint names. JC and MAC had an arrangement with the Royal Bank of Scotland whereby sums were

transferred automatically between their accounts depending on pre-determined thresholds being met. On 22 January 2016 a sum of £25,000 was credited to account number 00125144 being a payment from Redmayne Bentley, a firm of Stockbrokers. Said payment represented the sale of shareholdings held in the name of JC and MAC. On 22 January 2016 a sum of £22,500 was transferred to account number 00131438. On 2 February 2016 a sum of £16,400 was transferred into account number 00125144 from account number 00131438.

On 2 February 2016 a sum of £17,540 was debited from account number 00125144 by way of a debit card transaction carried out at a motor dealership, Dundee Mercedes. Following said transactions on 2 February 2016 the balance at credit on account 00125144 was £90.95.

The sale of the shareholdings was instructed by MAC. The debit card transaction on 2 February 2016 was carried out by MAC. All of said transactions were carried out during the period following the date when JAC's Power of Attorney was signed, but before registration of the deed.

- 10.4 On 2 February 2016, the Respondent along with MAC attended the car dealership, Dundee Mercedes. They had with them when they attended a Mercedes C180K motor vehicle registration number H7AJC registered in the name of JC. Said vehicle was utilised as part exchange for the purchase of a new Mercedes A class motor vehicle registration number SP65HDG. In addition to the trade-in value of vehicle registered number H7AJC, a sum of £17,450 was provided towards the purchase price of the new vehicle. The V5 registration document for vehicle registration number H7AJC was signed by the Respondent. She believed she was acting under the Power of Attorney for JC. The V5 registration document for the vehicle registration number SP65HDG was put in the name of the Respondent. The Respondent did not discuss the sale of motor vehicle registered number H7AJC with her father before signing the V5 but did have a conversation with him about it after the event.
- 10.5 The Respondent did not seek permission, discuss, or obtain instructions from JC before executing the said V5 registration document of the Mercedes motor vehicle registered number H7AJC which was registered in his name.

During the period when she held Powers of Attorney for JC and MAC, the Respondent divided various savings accounts held jointly by JC and MAC. This occurred after MAC had spent £5000 on a new boiler. The Respondent did not seek permission, discuss, or obtain instructions from JC before taking steps to carry out said splitting exercise on said bank accounts. JC had capacity to discuss and provide instructions in relation to all of the said above transactions.

JC and MAC were physically separated due to different health circumstances affecting each of them, from January 2016 and separated from a marital perspective by early May 2016.

- 10.6 JC instructed his solicitor, Barry Dewar of Connelly & Yeoman, at a meeting on 20 April 2016 to revoke the Power of Attorney in favour of the Respondent and execute a fresh Power of Attorney in favour of Jane Campbell and John Charles Campbell, his two other children. By letter dated 21 April 2016 the said solicitor wrote to the Respondent, as instructed by JC, to seek an explanation of the Respondent's actings and intromissions as Power of Attorney. The Respondent sent emails dated 21 and 22 April 2016 to Mr Dewar. JC wrote himself to the Respondent on 22 August 2016 seeking an explanation for her actings and intromissions as his Power of Attorney.
- 10.7 The Mercedes motor vehicle registration number SP65HDG remained in the name of the Respondent until the death of her mother on 23 June 2016. Motor vehicle registration number SP65HDG was not included in the Confirmation to the late MAC's estate.
- 10.8 By Will dated 13 May 2016, MAC appointed the Respondent as Executor Nominated to her estate. MAC died on 23 June 2016. The Respondent and her daughter were the beneficiaries in said Will. JC was not a beneficiary. Following upon her death, the Respondent entered into correspondence with agents acting for JC in relation to the deceased's estate. By letter dated 20 October 2016, the Respondent wrote to the said agents setting out her understanding of the estate.

- 10.9 The Respondent completed a “Checklist for Applicants” being a pro-forma document provided by the Scottish Court Service to individuals seeking to apply for Confirmation. Said checklist has no legal status. In said document the Respondent included the following as items to be incorporated within the estate namely £1000 of jewellery, £5000 being a 50% share of movables, £5000 being a 50% share of motor vehicles, and a Royal Bank of Scotland account with a balance of £9329.49.
- 10.10 The Respondent completed a Form C1 Application for Confirmation on the estate of the late MAC on 26 February 2018. The only item included within the deceased’s estate was the said Royal Bank of Scotland account with a balance of £9329.49. Provision was made for funeral expenses of £3,659.32 and other debts of £6,500. In said letter dated 20 October 2016, the Respondent had advised that said debts included legal fees of £3,000 and a utilities account of £3,450. JC died on 4 September 2018. Prior to his death the Respondent as Executor to MAC raised proceedings against him in August 2018 alleging *inter alia* fraud on his part in relation to the title to the former matrimonial home at Lea Rigg, East Haven. Said proceedings were dismissed on 26 June 2019. On 13 January 2021 the Respondent as Executor to MAC raised proceedings against the Executors of the said JC seeking *inter alia* delivery of a Disposition for one half of the title to the former matrimonial home, and certain other financial orders. Said proceedings were similarly dismissed. The administration of the estate of the late MAC remains unconcluded.
- 10.11 The Respondent retained the said motor vehicle registration number SP65HDG and the V5 document remained in her name as at the date of JC’s death.
11. Having considered the foregoing circumstances, the Tribunal found the Respondent not guilty of Professional Misconduct in relation to the averments of misconduct contained at paragraphs 4.1(a) and (b) of the Complaint. The Tribunal considered that the Respondent’s actions may amount to unsatisfactory professional conduct in relation to the averment of misconduct at paragraph 4.1(a) of the Complaint to the extent that the Respondent had allowed her integrity to be called into question. Accordingly, it remitted the Complaint in relation to averment of misconduct 4.1 (a) under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Council of the Law Society of Scotland.

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

By Video Conference, 26 June 2023. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Margaret Anne Horsley, 4 Clackmae Grove, Edinburgh; Finds the Respondent not guilty of professional misconduct in relation to averments of misconduct (a) and (b); Remits the Complaint in relation to averment of misconduct (a) to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Finds the Complainers liable in 75% of the expenses of the Respondent, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £7.00; and Directs that publicity will be given to this decision and that this publicity should include the name of the Respondent, members of her family and the witnesses who gave evidence before the Tribunal, but need not identify any other person.

**(signed)**

**Kenneth Paterson**

**Vice 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

**IN THE NAME OF THE TRIBUNAL**

**Kenneth Paterson**  
**Vice Chair**



**NOTE**

At the Hearing on 9 and 10 May 2023, the Tribunal had before it the Record as amended, the preliminary motion for the Respondent dated 3 November 2022, a List of Witnesses for the Complainers, two Inventories of Productions for the Complainers and one Inventory of Productions for the Respondent. At the Hearing on 26 June 2023, in addition to the papers above, the Tribunal had before it written submissions and lists of authorities for both parties.

**EVIDENCE FOR THE COMPLAINERS****Witness 1: Barry George Dewar**

The witness affirmed he would tell the truth.

**Evidence-in-chief (Barry Dewar)**

The witness is a director and partner of Connelly and Yeoman in Arbroath. He took instructions from JC and MAC to prepare Powers of Attorney. He had no concerns about JC's capacity. The Respondent was to act as Attorney for both her parents. After the initial meeting, the Respondent contacted Mr Dewar to say that she was going to visit JC in hospital and his doctor had advised that he should sign the Power of Attorney document. Mr Dewar prepared the Power of Attorney and JC signed it on 15 January 2016. It was witnessed by Dr Lowdon. It was registered with the Office of the Public Guardian on 9 February 2016. According to Mr Dewar, when signed and executed, a Power of Attorney is a valid legal document. However, banks and other institutions will not act on it until it is registered.

Mr Dewar was referred to the Power of Attorney in question (Production 1 in the First Inventory of Productions for the Complainers). He confirmed that from the date of execution, the Attorney could deal with finances and property. However, the welfare powers would not be triggered until there was written confirmation from a medical practitioner that the granter was no longer capable of making informed decisions themselves. Mr Dewar was referred to paragraph (Three) which was on page 5 of the Power of Attorney. His initial view was that this paragraph related only to the welfare powers. However, when pressed, he said that it could apply to both the welfare or financial provisions. In his view, it would cover the sale of a car. He agreed that paragraph (Six) provided that the Attorney should account to the Granter for all actions taken on his behalf. He noted that there was a Code of Conduct available to Attorneys on the website of the Office of the Public Guardian.

Mr Dewar was contacted again in April 2016. He went to JC's house. He knew that MAC was staying in a care home. JC's daughter, Jane Campbell, was present. She left Mr Dewar with JC. JC was agitated and had a lot to say. He was rattling off things. He had concerns about the way the Power of Attorney was being handled. His main worry was the sale of his car which had a private registration plate. JC believed it had been used as a part-exchange for the purchase of a new car. He also had concerns about shares which had been sold without his knowledge. He said his Rolex watch was missing.

Mr Dewar was referred to his file note completed after his meeting with JC on 20 April 2016 (Production 1 in the Second Inventory of Productions for the Complainers). He said he felt he had to get the meeting down on paper as "alarm bells were going off". He agreed that he was shown bank statements during the meeting. His note reflected the obvious concern that the sale of the shares to purchase a new car for the Respondent was in no way acting in the best interests of her parents. That was a concern to both JC and the witness. The Respondent was obliged to act in the best interests of both parties. There was a concern that other items were missing from JC's home. To Mr Dewar, the concerns seemed genuine. He decided to raise the issues with the Respondent. Mr Dewar sat with JC for over an hour. Although sometimes repetitive, Mr Dewar was not concerned about JC's capacity. Mr Dewar said that the family law issue was raised by JC. He said his relationship with his wife was at an end. Mr Dewar suggested another solicitor in Arbroath might be able to assist with that matter.

Mr Dewar prepared a new Power of Attorney (Production 2 in the Second Inventory of Productions for the Complainers). It was signed by JC at home on 21 April 2016 and witnessed by Mr Dewar. It was registered on 29 April 2016. Mr Dewar explained that to revoke a Power of Attorney, the Granter must sign a revocation notice. A new Power of Attorney can be submitted online.

Mr Dewar was referred to Production 4 of the First Inventory of Productions for the Complainers which was his letter to the Respondent dated 21 April 2016. Mr Dewar agreed that at that time, JC had signed the revocation and a new Power of Attorney but the Office of the Public Guardian was still processing them. In the letter of 21 April 2016, Mr Dewar raised concerns about the sale of JC's shares, the purchase of a Mercedes motor car, and the missing Mercedes motor car H7 AJC.

Mr Dewar was referred to Production 3 of the Second Inventory of Productions for the Complainers which was the Respondent's email to him dated 21 April 2016 at 1615 hours. Mr Dewar did not remember receiving this email. He was asked about the proposed action for division and sale and he said that he thought that a conflict existed.

Mr Dewar was referred to an email to him from the Respondent dated 22 April 2016 (Production 5 in the First Inventory of Productions for the Complainers). He believed this was the Respondent's reply to his letter of 21 April 2016. Mr Dewar was concerned about the Respondent buying that type of car at that cost. He wondered how it could be viewed as acting in the best interests of both parties. He could not remember if he spoke to JC again after this email. When he met JC in April 2016, he could not recall if JC said he had discussed these matters with the Respondent. He could only remember that JC was angry, upset and wanted to get things off his chest.

Mr Dewar did not continue to act for JC. Other solicitors gave advice about the separation. Mr Dewar could not deal with any changes to JC's will since he had received joint instructions from JC and MAC on the original wills. When MAC died, Mr Dewar believed that the Respondent engaged a different firm of solicitors to assist with that estate.

Mr Dewar was referred to a letter of 20 October 2016 from the Respondent to Connelly and Yeoman (Production 8 in the First Inventory of Productions for the Complainers). He could not remember receiving this.

Mr Dewar was referred to a letter of 9 March 2017 from the Respondent to Connelly and Yeoman (Production 6 in the First Inventory of Productions for the Complainers). He remembered that there was some correspondence but not the specific terms of this letter. He might have passed it on to the family law solicitors acting for JC. In paragraph 5 of that letter the Respondent referred to splitting the sums in her parents' savings accounts between them. Mr Dewar said the issue there was ownership of the funds. A question arose as to whether the Respondent was acting in the best interests of both parties.

Mr Dewar was aware that there was an issue regarding title to JC and MAC's home. He thought that perhaps title was just in JC's name but MAC had assumed it was in joint names. He was not involved in any litigation on this point. JC died in 2018. Another firm dealt with the administration of his estate.

### **Cross Examination (Barry Dewar)**

Mr Dewar indicated that he had met JC and MAC in 2015 when he prepared their wills which were in favour of their granddaughter. JC and MAC wished to instruct the Respondent as their Attorney, with their granddaughter as a substitute. He did not really know the family background. The poor relationship was highlighted at the point JC began raising concerns.

Mr Dewar was referred to a letter from the Respondent to Connelly and Yeoman dated 9 March 2017 (Production 6 in the First Inventory of Productions for the Complainers). In that letter it was suggested that JC had sought advice on how he might thwart any attempt by the siblings to exercise their legal rights over the couple's shares and savings. MAC had reported that Mr Dewar's advice had been to spend money on improving the house. Mr Dewar said that he remembered discussions about things which needed done to the home. Potentially, it needed a new heating system and boiler. Mr Dewar could not say whether he gave advice about thwarting legal rights claims. He could not remember if he replied to this letter.

Mr Dewar agreed that he was instructed in January 2016 with regard to Powers of Attorney for JC and MAC. He did not know the trigger for that instruction. He could not remember the date of the visit. At first, Mr Dewar said that the Power of Attorney was signed by JC at home, but later agreed that it was signed at Ninewells Hospital, Dundee. He did not know why JC was in hospital. He had no communication with Dr Lowdon.

Mr Dewar was referred to paragraph (Three) which was on page 5 of the Power of Attorney (Production 1 in the First Inventory of Productions for the Complainers). He was questioned about whether this related only to welfare powers. Mr Dewar said it could be interpreted that way, but it was best practice for an Attorney to consult the Granter if they had capacity. He would refer Attorneys to the Code of Conduct. An Attorney could act without consulting the Granter but best practice was to consult. The Office of the Public Guardian will automatically inform an Attorney of a revocation.

Mr Dewar was referred to an email from the Respondent to a mortgage adviser dated 18 March 2016 (Production 1 in the Respondent's Inventory of Productions). Mr Dewar did not recall seeing this email but he did recommend this mortgage adviser.

Mr Dewar was referred to the Respondent's letter to Mr Dewar dated 21 April 2016 at 1615 hours (Production 3 in the Complainers' Second Inventory of Productions). Mr Macmillan suggested that it was conceivable that the division and sale proposal was an attempt to find a solution for both parents. Mr Dewar said both parties were taking separate advice on the matter, and he was not part of that conversation.

Mr Dewar was asked about the meeting on 20 April 2016 and indicated that most of the meeting was with JC alone. Mr Macmillan asked about the reference to "potential" separation and divorce in Mr Dewar's file note (Production 1 in the Complainers' Second Inventory of Productions). Mr Dewar did

not consider JC and MAC to be separated at that point. JC raised the concern about the sale of shares. JC asked Mr Dewar to put his concerns in a letter to the Respondent. The correspondence went back and forward and moved into an area which was not Mr Dewar's field. He was comfortable writing the letter but anticipated that another suitable firm might need to explore the circumstances later. Mr Dewar did not deal with JC's executry. He did not find out what happened to the golf medals, the Rolex watch or the premium bonds. He did not carry out any investigations. His firm was not suitable for this kind of family dispute.

Mr Dewar was referred to the Respondent's letter to Connelly and Yeoman dated 20 October 2016 (Production 8 in the Complainers' First Inventory of Productions). Mr Dewar said this was a letter from the Respondent as executor for MAC. It appeared to be a response to a query regarding the assets of MAC at date of death. Mr Dewar could not remember if he responded to this letter.

### **Re-examination (Barry Dewar)**

There was no re-examination.

### **Tribunal's Questions**

A member asked a question about the presence of Jane Campbell at the meeting of 21 April 2016. Mr Dewar said he just wanted to have a conversation with JC. He was not paying too much attention to the documents shown to him. That was clear to Jane Campbell, and she offered to leave him alone with JC.

A member asked whether there were documents in relation to the car. Mr Dewar said that he assumed the bank statement showed payment for the new car. JC and Jane Campbell talked him through the potential part exchange for the Mercedes motor car. However, he could not recall the specific documents.

A member noted that Mr Dewar was the family solicitor, and asked how he was to resolve the conflict of interest between JC and MAC. Mr Dewar said the letter was an attempt to do so. He felt it was appropriate to raise the concerns of one party. A family solicitor took over that aspect. The member noted that correspondence was ongoing into 2017. Mr Dewar said that by that time MAC was separately represented. The member asked why Mr Dewar did not wait on a response to the letter of 21 April 2016 before lodging the revocation. Mr Dewar said that was the client's instruction. The member asked whether Mr Dewar had an open mind on the letter. Mr Dewar said he could not remember. It must have been a firm instruction from the client for him to have written the letter. The member asked whether it was for the solicitor to communicate a revocation of a Power of Attorney. Mr Dewar said the appointee

was not the firm's client. The Office of the Public Guardian will automatically write to the Attorney. It is not necessary for the solicitor to write too. Mr Dewar said there was no way around the problem of occasionally having two Powers of Attorney in existence if they are valid on execution. Mr Dewar confirmed he had reviewed his attendance notes and the Power of Attorney before his attendance at the Tribunal.

**Witness 2: Jane Campbell**

The witness gave evidence on oath.

**Evidence-in-chief (Jane Campbell)**

The witness explained that in 2015/2016, she was living in Golspie. Her brother lived in Manchester. JC was her father. MAC was her mother. She was in regular contact with her parents until the end of October 2015. She would speak to them on the phone and would attend when they needed help, for example for hospital appointments. The witness explained that her mother fell out with her over arrangements for Christmas 2015 and they did not speak after that. She thought her brother had visited her parents in October 2015. The witness has had very limited contact with her sister for over 20 years.

JC fell at home around Christmas time 2015. He had concussion. He was admitted to hospital and then stayed in a care home for a period. In February 2016, the witness discovered her father was in a care home when he called her and asked her to take him home. She was not able to help him at that time.

When JC returned to live at home in April 2016, he found that his wife had left the house. JC told the witness that her mother had gone to a care home "for a rest". He did not know which care home. No one would tell him what was going on. He said he was "haemorrhaging money". The witness had no concerns about her father's capacity at that time. JC asked her to look into his finances. He gave her his account number and password. He was struggling with his eyesight. She thought he usually received paper documents, rather than viewing his accounts online. He could read physical bank statements but found it very difficult to log on due to his eyesight and the physical tremors he was experiencing which were subsequently found to be due to Parkinson's disease. The witness was aware that both her parents had given her sister Power of Attorney over their affairs. She understood that her father had signed the Power of Attorney at Ninewells Hospital, Dundee.

The witness was referred to a printout of her parents' joint account (Production 1 in the First Inventory of Productions for the Complainers). She had viewed these transactions online. She could access all JC's accounts. She noted large sums coming in from Redmayne Bentley, then going out to another account,

then coming in from that account and then going out to Mercedes Benz in Dundee. She also noted a cheque for £1,000. Money had come in from a savings account and then the same day the cheque cleared. Her father did not know what the cheque was for. JC was a very prudent man with a decent pension. Being in debt was anathema to him.

The witness discussed the banking entries with her father. At her suggestion, he spoke to the Respondent. He was unhappy with her response. The Respondent told him that she needed a car to drive up and down from Edinburgh to carry out duties pertaining to the Power of Attorney because her husband had objected to her using her own car for that purpose. JC had suggested that she could have used the Mercedes in the garage. The Respondent had said that car was for her daughter. Her father had not realised that the car was missing. After his conversation with the Respondent, the witness checked the garage and found it was not there. JC was not happy about this. The witness suggested he might want to rethink the Power of Attorney.

The witness drove down to visit JC. She contacted Barry Dewar and explained the situation to him. She telephoned him after finding Connelly and Yeoman correspondence in her father's house. Mr Dewar came out to visit JC at home on 20 April 2016. He spoke to the witness and JC. There was a general discussion between the three of them. Her father wanted to cancel the Power of Attorney. Mr Dewar indicated that it would be better if he could chat to her father in private, so the witness went off to another part of the house. JC and Mr Dewar spoke for some time. Mr Dewar was content that JC had capacity and agreed to revoke the Power of Attorney. JC gave instructions for a new Power of Attorney to be drawn up with the witness and her brother as Attorneys. The witness thought that she might have shown Mr Dewar the bank statement with the Mercedes payment on it. The only private discussion she had with Mr Dewar concerned her father's capacity. Mr Dewar returned to JC's home with the new Power of Attorney for signature the next day.

The witness was referred to Mr Dewar's letter of 21 April 2016 to the Respondent (Production 4 of the First Inventory of Productions for the Complainers). The letter outlined her father's concerns.

When the witness saw her father in April 2016, JC considered himself to be physically separated from his wife but not legally separated. He asked when she was coming back. He did come to the view that she was not going to return around the end of May.

The witness was referred to the Respondent's email to Mr Dewar dated 21 April 2016 (Production 3 in the Second Inventory of Productions for the Complainers). She said that the suggestion that JC was

starving his wife out of her care home would have come as a surprise to him. He was under the impression that his wife was at the care home for a rest. He had difficulty taking her absence on board. The witness discussed the email with JC at the time. The email was the first intimation JC had about a potential equity release in his home. JC was stunned. He wanted to know “what the hell was going on”. The witness understood from the email that Thorntons were representing her mother and that her mother wished to divide the assets and sell the property.

The witness was referred to an email from the Respondent to Mr Dewar dated 22 April 2016 (Production 5 in the First Inventory of Productions for the Complainers). She saw this email around the time it was sent. In that letter, the Respondent suggested JC made enquiries with Redmayne Bentley. JC contacted them himself. The witness also met with an employee later and was informed that her mother had called and asked them to sell the shares. It was a joint account. Two chunks of shares had been sold.

The witness was asked about the Respondent’s explanation for the purchase of the Mercedes. She said that she was wildly insulted at the suggestion that she would take her father’s car. While JC was not fit to drive, that in itself did not mean he did not have a need for a car. Neither of her parents could use her car comfortably. JC’s Mercedes was a source of great pride to him. With reference to the implication that the Respondent only had the new Mercedes until her mother’s health improved, the witness noted that their mother used a wheelchair and had cataracts. The witness said the Respondent’s explanations were inconsistent. The witness did not know how it was in JC’s best interests to sign the V5 document without discussing it with him. At the time, the witness had thought that the personal numberplate had been sold with the car. The witness noted that her own Mercedes had been bought by her without assistance from her parents.

The witness could not remember if she made any further inquiries with Mr Dewar after she was appointed as her father’s Attorney. Her brother went to the police, but they were not interested. They said it was a civil matter. A complaint was raised with the SLCC. JC raised a court action.

The witness was referred to Production 2 in the Second Inventory of Productions for the Complainers. She confirmed it was the Power of Attorney signed by JC on 21 April 2016 and registered on 29 April 2016.

The witness was referred to a letter of 22 August 2016 from JC to the Respondent (Production 4 in the Second Inventory of Productions for the Complainers). The witness said it was a letter from her father to her sister explaining his displeasure at the way she had behaved regarding the Power of Attorney, her



actions in relation to her mother and his anger and distress that the Respondent had not informed him of her mother's death. Her father noted that the Respondent had failed to account for why she had used the Power of Attorney when both parents were of sound mind. The witness believed that JC was referring to the purchase of the new Mercedes car. He set out what he wanted to resolve matters. As of August 2016, JC was still looking for a breakdown from the Respondent of her actions as Attorney. He wanted his Mercedes and private plate returned as well as other property. JC dictated the letter for her brother to type. She proof-read the letter for typographical and grammatical errors.

The witness was referred to a letter from the Respondent to Connelly and Yeoman dated 9 March 2017 (Production 8 in the First Inventory of Productions for the Complainers). She said she spoke to the solicitors after discussion with her father. She understood the last two paragraphs of the letter to mean that the Respondent was not going to provide verification or valuations of her mother's estate unless they waived their legal and prior rights.

The witness was referred to a letter from the Respondent to Mr Dewar dated 9 March 2017 (Production 6 in the First Inventory of Productions for the Complainers). The witness said that by then, JC had moved his instructions to Bruce and Co. The witness assumed from the terms of the letter that the number plate was still in the Respondent's possession. It did not form part of their mother's estate. The witness said her father's woodworking equipment had very little value by that stage. The witness said that she felt "rage" that the Respondent had split her parents' savings in the way she had described. For her father to be left with £12,000 was not an equal sharing. The Respondent was supposed to be looking after JC's money, not dividing it up without discussion with JC who had capacity. The witness had understood that her parents' home was owned jointly with a survivorship. JC discovered that the house was in his sole name a couple of days after his wife's funeral. His solicitor explained that there was no survivorship clause. The house was only in JC's name. A genuine mistake had been made when the house was purchased in 1982. JC did not know what had happened. He was genuinely taken aback to discover that the house was not jointly owned. Up until four weeks earlier his will left everything to his wife anyway.

The witness explained that after she and her brother were made Attorneys, JC continued to live at home for about another year. Then he went into a care home. He died on 4 September 2019.

Before his death, JC raised an action at Forfar Sheriff Court regarding his car. It was subsequently discovered that the matter had been raised in the wrong court. JC wanted an explanation and an apology as well as the return of his car but realised he was not going to get this. There was no point wasting money on lawyers and raising the action in Edinburgh.

The Respondent also raised court actions. The witness was referred to a note by Lord Arthurson dated 30 July 2019 (Production 5 in the Second Inventory of Productions for the Complainers). The case was dismissed. The Respondent was liable for the expenses. The Respondent raised another court action at Forfar Sheriff Court. Production 6 in the Second Inventory of Productions for the Complainers was the initial writ in that case. The action was withdrawn. The Respondent agreed to pay the expenses. The witness was of the view that the Respondent had cost their mother's estate two awards of expenses. The Respondent was her mother's executrix and she and her daughter were the beneficiaries. The witness said she was not given any information as to how the Respondent administered the estate. She obtained a copy of the confirmation application from the court. The Mercedes car had not been included.

The witness was referred to a copy of confirmation in relation to her mother's estate (Production 10 in the First Inventory of Productions for the Complainers). It was recorded that there was no heritable estate. The only asset was the bank account which had £9,329.49 in it. The witness was surprised because she expected to see jewellery, premium bonds and other bank accounts listed. She was not sure if the car ought to have been listed. She did not expect to see the house since title was in her father's sole name. She was aware that her mother had replaced the boiler in the house when her father was in hospital. The witness was harassed for payment. The witness believed that her mother had a lot more money than was recorded in the confirmation document. She believed that she had an account with Santander. She had large sums of money secreted around the house. The witness did not know where the Respondent got the money to pay the two awards of expenses. The witness explained that JC's estate cannot be settled until their mother's estate is finalised.

The witness was asked about the concerns she raised with the SLCC about the Power of Attorney and whether she had separate concerns about the Respondent's actions as executor. The witness said that did not cross her mind. Her brother was the principal driver of the complaint. He submitted it to the SLCC. Her issue was the Respondent using JC's Power of Attorney to benefit herself and her mother. Pretty much everything the Respondent did was to the detriment of their father. It showed a contempt for him that he did not deserve. JC was very distressed when papers were served on him. The witness said she had a desire for a form of justice. She had experienced no success with the police or the courts. The last resort was the SLCC and the Law Society. It was something her father wanted.

The witness was asked whether she had any similar concerns about the Respondent's actions in dealing with MAC's executry. The witness said her legal rights claims cannot go ahead because she presumes

that the Respondent has wiped out the money. She was dishonest about their mother's estate because she had money for expenses.

### **Cross Examination (Jane Campbell)**

Mr Macmillan asked whether the SLCC complaint included a complaint about the sale of shares. The witness said she could not remember. Her brother raised the complaint, and she supported it by signing it after reading over it.

Mr Macmillan noted there was an allegation that the Respondent had induced JC to make her Attorney. The witness said that the Respondent had got the documents drafted and she took it to the hospital for him to sign. The witness said she never disputed that her father had capacity to sign the Power of Attorney.

The witness was referred to a bank statement (Production 2 in the First Inventory of Productions for the Complainers). She agreed that £25,000 had been introduced to the account by her mother. On the same date £25,500 exited to another account. It was suggested to the witness that her father had set up a system whereby money was moved to a savings account. The witness agreed that it was possible some transactions were auto-generated. The witness agreed that the purchase of the new Mercedes was implemented by her mother. She assumed she did this by a PIN machine transaction with her own debit card. The witness agreed that the £16,400 coming into the account might be an auto-transfer from savings. She was aware something was set up to sweep money in and out of the account.

The witness agreed that the personalised registration plate reflected her parents' names. The witness was referred to a renewal notice for car insurance pertaining to H7 AJC (Production A9 in the Inventory of Productions for the Respondent). The witness said that her mother arranged the insurance.

The witness said she did not accept that her mother sold the car. The Respondent had the Power of Attorney and signed the V5 using that. She had no idea if her mother had instructed the sale. She presumed her mother decided to put the car in the Respondent's name. The Respondent was still driving it at the time their mother died.

The witness said there was no suggestion the Respondent was responsible for the disappearance of their father's watch. She was asked to account for its whereabouts. The witness believed her mother had taken it. Indirectly, the Respondent was asked to get the watch back from their mother.

The witness said she did not know anything about missing golf medals. Her father was concerned about these and the National Savings Bonds certificates. At that time, her father still had capacity and was looking after his own affairs.

The witness was referred to a letter from JC to the Respondent (Production 4 in the Second Inventory of Productions for the Complainers). The witness had marked some typographical errors. She talked about the significant care home fees incurred by her mother. There was a discussion about the various cars mentioned in the letter. The witness said she did not check ownership of the personalised plate with DVLA. The witness was fairly sure the Respondent did not give JC paperwork regarding his continuing ownership of the plate.

The witness spoke of her parents' physical separation from early January 2016. When her father was about to return home, her mother moved out to a care home. The witness did not know which care home at that stage. They continued to be physically separated until MAC's death in June 2016. JC accepted in May 2016 that he was also maritally separated from JC. She said the Respondent had been arrogant to pursue equity release without discussing the options with JC. Mr Macmillan asked whether the email of 21 April 2016 was an attempt to discuss the issue. The witness was of the view that discussions ought to have taken place before the Respondent started requesting quotes. It was a bit late in the day.

The witness agreed that her mother arranged for boiler repairs. She did not agree it was a significant sum. It was insubstantial compared to the cost of the new car or the care home fees. A replacement boiler was bought and installed contrary to JC's wishes. The concept of separating their finances was not unreasonable but the reality was the JC did not see any of the money.

With reference to the Corsa motor car, the witness accepted that the car was a 21<sup>st</sup> birthday present for the Respondent's daughter. She did not accept it was "impounded" in JC's garage. It might have remained there for four years.

The witness was referred to a checklist for applicants for confirmation (Production 9 in the First Inventory of Productions for the Complainers). The witness disputed the value of the assets on the form. She believed there were more bank accounts. She had no idea what constituted the debts but did not quarrel with them.

**Re-Examination (Jane Campbell)**

The witness explained her understanding of the difference between a physical and marital separation. She said the former suggested a temporary situation where the marriage was still functioning and there was communication between the parties. A marital separation suggested that a party was not going back to the other.

The witness said she was present in the home when Mr Dewar met JC. She did not remember Mr Dewar suggesting family law advice. When all three of them were present, it was all small talk or functional chat. A family lawyer also came to the home.

The witness did not pass the piece of paper with the Santander bank details to the lawyers acting for her or her father. The witness did not see any bank statements to demonstrate the splitting of savings which the Respondent said she had carried out.

**Tribunal's Questions**

A Tribunal member asked on reflection to what extent was the witness blaming the Respondent rather than their mother for the sale of the car. The witness said that if the Respondent was taking her role as Attorney seriously, she would have refused to comply with MAC's wishes to sign the V5. Their mother needed a wheelchair outside of her home. The suggestion she needed a new car was "ludicrous". H7 AJC had low mileage. It was 7-8 years old. It was in pristine condition. It was more than adequate to meet their needs. The witness took issue with the things which the Respondent did which were only to her benefit. MAC could not drive. The Respondent had to take her to the Mercedes dealership. The whole thing screamed self-interest and self-benefit. Why did she not use H7 AJC for her purposes?

A Tribunal member asked if it had been established when the joint shares account had been established. The witness thought it was the previous year. The only person who had ever previously dealt with Redmayne Bentley was JC.

A Tribunal member asked about the various cars which were a feature of the case. The witness explained that at one time her parents had three cars. One was given to her brother in around 2014. This did not affect the witness directly. The witness' own car was purchased by herself without reference to her parents.

Mr Macmillan asked another question about the condition of H7 AJC and suggested it was barely roadworthy. The witness said it was in pristine condition in October. There was no reason to believe it would be any different in January.

## **EVIDENCE FOR THE RESPONDENT**

### **Witness 1: Respondent**

The witness gave evidence on oath.

### **Evidence-in-chief (Respondent)**

The Respondent is a solicitor. She has worked for South Ayrshire Council for ten years. She deals with conveyancing work, commercial leases and planning agreements for major developments.

In January 2016, the Respondent was appointed as Attorney for her father, JC. Her father was in hospital. Dr Lowdon called her and said it was urgent that JC signed a Power of Attorney. The Respondent explained the situation to Mr Dewar. She collected the document from his office and made her way to the hospital. She met her father there with his care manager. Her father signed the document “rather reluctantly”. He was then taken to a care home.

At this time, the Respondent’s mother was also physically unwell. She had undergone surgery five months before this. She had poor mobility. She had a heart bypass when she was 55. She was on a lot of medication. The Respondent said her father had various eyesight issues. His mobility was poor. He had broken his shoulder the previous September. When he returned home, he was extremely sedentary. He was querulous, had ceased to do things and had become discontented with everything.

The Respondent’s understanding was that both her siblings were entirely estranged from both parents in October and November 2015. Her parents changed their wills disinheriting the three siblings and making their granddaughter their sole beneficiary. The Respondent was not aware of this until after it had been done.

The Respondent visited her mother in the third week of January 2016. Her mother said she did not want the Respondent to drive from Ayr to Arbroath. The Respondent did not want to use their Mercedes. She had driven it 6 months earlier. It made an appalling sound every time she turned a corner. Her father said the engine mountings were a problem. The Respondent said she would speak to her husband about upsizing her car. Her mother said she wanted a new Mercedes anyway. The next weekend MAC said

she had decided on a budget of £15,000-£20,000. She wanted a blue A class Mercedes less than two years old. She asked the Respondent to look for one. On her way back to Edinburgh, the Respondent stopped by the Mercedes garage. There was a suitable car and it could be reserved for £100 deposit. It sounded sensible to the Respondent. Her parents' current car had no service history. It was not taxed. There was no SORN. There was no sense that the Respondent's mother only had six months to live. MAC wanted to trade-in H7 AJC. The Respondent said, "You're going to square that with Dad", and MAC said that she would. The garage offered £3,000 for H7 AJC. The Respondent arranged short term insurance and drove the car to the garage. She signed the V5. Her mother had said the new car should be put in the Respondent's name. She got the sense that she wanted JC to have to go through the Respondent regarding the car. MAC paid for it using her debit card.

The Respondent was referred to a bank statement (Production 2 of the Complainers' First Inventory of Productions). She identified the Mercedes purchase transaction. She said the credit of £16,400 looked as if it had been triggered automatically. Her father had told her that he had a system whereby any debit for more than was available in the joint account triggered a transfer from savings. The Respondent said she had no part in the sale of the shares. Her mother said she had closed the Redmayne Bentley account. She believed that the joint account would also auto transfer monies above a certain figure to the savings account.

The Respondent said she used the car when she came up to visit her parents and for travel from Edinburgh to Ayr. When her daughter left her car in her parents' garage there was a sense that she couldn't collect it. MAC said she could use the Mercedes. That was in late March or early April 2016. She is still using it.

The Respondent said she had a conversation with her father about the car in mid-March 2016. It also came up in conversation in a later visit when his friend noted that she had the same car and was pleased with it.

With reference to her parents' living arrangements, the Respondent said her father had been admitted to hospital and then to a care home. He returned home between 1 and 14 March 2016. While he was in the care home, her mother was living at home. When her father went into the home her mother had not understood this to be a temporary arrangement for respite. She could not look after him. He was very disruptive in the care home. He was unhappy and wanted to go home. Her mother had lost the capability to look after him. She was quite unwell and had been in hospital for 2-3 weeks while he was in the care home. When she came out of hospital, she said she could not live with him again. He had capacity and

wanted to go home. By the time he came home, MAC had gone. She went into a nursing home for an interim period while arrangements were made. Her parents were against the idea of divorce. She wanted to have an allowance which would allow her to rent or buy another property. She was thinking long term of living separately. Her parents never lived together again. Her mother lived in a nursing home for 10 weeks and then rented a residential caravan. The nursing home was expensive but it was for a short period and block-booked for discount.

The Respondent discussed two options with her father's care manager. One was to pursue equity release and buy her father a one bed cottage and employ carers to help him. The alternative was to look for a space in an ultra-safe development with a warden but there was a long waiting list for these facilities. There was no help from the care manager regarding the forms or getting her father priority. Therefore, the Respondent looked more seriously at equity release. She spoke to her father, and he agreed to meet the adviser. However, by the time he was home he had lost interest in equity release. While the Respondent had originally started to think about it for her father it seemed more realistic for her mother. However, the plan never came to fruition. She barely mentioned it to her father and he flew into an appalling rage. The bottom line was that her mother was to get nothing. At this time, the Respondent thought their house was in joint names.

From this point, the Respondent considered her parents to be maritally separated. Until her father's rage, her mother had ensured JC was visited by private carers. When the Respondent explained to her mother that JC never had any intention of supporting her, she consulted a solicitor. She needed an appropriate level of support. If he could give no consideration to that then she might have to consider the marriage to be at an end. This was in late April or early May. The separation discussions did not make much progress before MAC's death. She had fees to pay to her solicitor for work relating to the marriage and the drafting of a new will. The Respondent said that at the time of the sale of shares and the purchase of the new car, she did not consider her parents to be maritally separated. The marriage ended when JC separated his pension payments into his sole account in May 2016.

The Respondent made the application for confirmation following her mother's death. She included the money in her mother's account in the application. She said that when she went for confirmation, this was the only information she had. MAC had an Alliance and Leicester credit card and she thought Santander took over Alliance and Leicester.

The Respondent said Connelly and Yeoman kept asking her for details of MAC's estate. The Respondent said MAC was entitled to half the marital assets. They were not divorced or formally separated. They



said that was not their understanding. The Respondent wrote to them again saying that if she did not hear from them she would pass everything on to Blackadders and leave them to sort it out. She did not receive a reply to her letter of 20 October 2016.

The Respondent said her mother's estate had debts. There were funeral expenses, legal fees and the new boiler. The new boiler had been her mother's idea. Her parents were of an age that they would not make any savings on a more efficient boiler. The Respondent had thought at this stage that her father was likely to remain in a home. He would have expenses. He would need money put aside. MAC agreed to that. Therefore, the Respondent put into his sole account and her sole account an equal amount. That was about £6,000-£8,000 each. The Respondent said the boiler was about £4,200.

The Respondent said she gave the Sheriff Clerk the checklist and paperwork. He asked if there was heritage. He only wanted verifiable numbers so he could calculate the fee. The threshold was way above anything which could be verified.

With regard to the title to her parents' house, the Respondent said that she thought it was jointly owned and to the survivor. The home was purchased in 1982. She did not remember her father ever talking about the mortgage. She assumed they had a joint mortgage. When her mother was dying, her father's behaviour was terrible. The Respondent enquired as to whether her mother could transfer a half share of the home to her daughter. The solicitor informed her that the house was not in MAC's name. The house and mortgage had been in JC's sole name.

The Respondent raised actions at the Court of Session and Forfar Sheriff Court. She abandoned the latter case. She met the awards of expenses personally. They were not met from the estate. The total expenses were about £52,000.

### **Cross Examination (Respondent)**

During cross examination, the Respondent confirmed that the Power of Attorney was organised at the instance of Dr Lowdon. When she was mooted for Attorney, she was content to fulfil that role. Her mother intended to do the same thing. The Respondent has never worked in private practice and never dealt with a Power of Attorney. She knew she would have to act as her father's Attorney but her mother was in no need of an Attorney at all. The Respondent understood the full legal consequences of being at Attorney.

The Respondent was referred to the Power of Attorney (Production 1 in the First Inventory of Productions for the Complainers). She understood that she was to consider JC's best interests in anything she did while acting as his Attorney. She understood the powers to come into force when the document was signed. She thought the financial powers took effect immediately. She did not give the welfare powers much thought because his physical health was stable. She did not know whether it was the case that the financial powers could be exercised immediately but that the welfare powers could only be utilised if the granter had lost capacity. Her understanding now was that while JC had capacity she could act under the Power of Attorney, but in order to act when he ceased to have capacity, the Power of Attorney would have to be registered.

The Fiscal said that when she agreed to act as Attorney, the Respondent had a duty to consult the granters on any action of importance affecting their interests. The Respondent said she thought she had a duty to consult them if it was in their best interests to be consulted. That was still her understanding.

The Fiscal asked the Respondent about her duties to account to the granter. She said if she was called to account, she would account. She spoke to her father at the point at which she thought he needed to know about the car.

The Respondent confirmed she had been qualified since 1986. She understood what a conflict of interest was. She accepted a solicitor should not act in a conflict of interest. She did not consider that there was ever a situation where the interests of JC and MAC conflicted while she acted as Attorney for both.

The Respondent accepted JC had capacity on 15 January 2016. She was less convinced about whether he had capacity to revoke the Power of Attorney. His capacity fluctuated during the three months when she was Attorney. There were times when he seemed quite reasonable and times when he spoke absolute nonsense. Her defences set out that Dr Lowdon recognised JC's ability to see reason was not what it could be.

The Respondent was asked about the state of JC's capacity when she sold his car. The Respondent said that when she signed the V5 on 2 February 2016, JC was in a state of extreme distress. He believed he was only in the nursing home because of his wife's machinations. He said the Respondent should be aware of her mother because she told lies.

The Respondent was asked when she discussed with her father that she was going to sign the V5. She said she did not discuss the matter with him beforehand. He was already upset that he was in a nursing

home because of what he thought was MAC's trickery. The Respondent would have to tell him why she signed the V5 which was to reduce the cost of a new car. He saw the nursing home as a temporary arrangement. He would expect to see his home exactly as he left it when he returned. The Respondent felt it would upset him even more to discuss this with him. This was due to his distress, not his capacity.

The Respondent agreed that JC discussed with her his concerns that MAC's behaviour had not been fair to him prior to the transaction. She did not consider that trading in the car in JC's name to buy another car in these circumstances was a conflict of interest. JC was talking nonsense. Dr Lowdon thought so too. It would reduce the number of cars. It would reduce the cost of the car MAC wanted to buy. It would unnecessarily upset JC to be part of that discussion.

The Fiscal asked how the sale of the car was to JC's benefit. The Respondent said that it reduced the cost of the car MAC was going to buy anyway. JC was never going to drive. There was no point in keeping it. Their finances were joint. Rather than having a redundant car and a new car, this would relieve the financial situation on the upkeep of the redundant car and reduce the cost of the new one. It was to their joint benefit.

The Fiscal asked how she could act in the best interests of her parents. The Respondent said that they were a married couple. There was no conflict. JC would regularly say that MAC spoke for both of them.

The Fiscal noted that JC had expressed his view that MAC was up to no good and he did not trust her. He suggested that in those circumstances there was therefore a conflict. The Respondent disagreed because she said that there was no justification for JC not trusting MAC.

The Respondent said she did not consider there to be a conflict of interest at any point. She knew her father would say no if she asked him. She knew what his preference was likely to be. However, he was behaving so unreasonably that it was not in his interests to bring up this subject with him. Knowing the granter would not agree, she went ahead anyway. To facilitate the transaction, she had to use the Power of Attorney to sign the V5.

The Fiscal read part of the Respondent's Answers to her. The Fiscal asked about the part of the transaction the Respondent said had been carried out under her mother's Power of Attorney. The Respondent said this related to her mother's instruction to put the car in the Respondent's name. The Respondent arranged this with the garage before her mother attended.

The Fiscal asked how it could be in JC's best interests to sign the V5. The Respondent said she did not see their vehicles as "his car" and "her car". She saw them as "their cars". MAC wanted a newer and smaller car. If she got it, the car would be used to run them about. Without trading in the older car, there would be two redundant cars in the garage. It was in their joint interests. It was not a question of his and her interests, but their interests.

The Respondent said neither parent drove the new car. The car was registered initially in the Respondent's name. It is now registered in the Respondent's daughter's name. She is the ultimate beneficiary of the car. It was transferred to her about three years ago, after MAC's death.

The Fiscal suggested that the only person to benefit from the sale and purchase of the Mercedes cars was the Respondent. The Respondent said she thought her mother really enjoyed going out and about in the car. She took pride in it. It was not a car she would buy for herself, but it was better for travelling between Edinburgh and Arbroath than the car that she had. At the end of the day, while she might have benefitted, she did not instigate the purchase. There was no sense that her mother only had six months left to live.

The Respondent said that she paid to have the private plate retained. It is still registered to JC. It will form part of his estate.

The Respondent said she told JC she had sold his car when he returned to his home in mid-March 2016. She gave him the retention certificate. She did not consider the plate to have any value after discussions with the garage. She said the purchase was funded by the sale of the Redmayne Bentley shares. She did not check the account. She did not consider she had a duty to check how the car was being funded. She saw it very simply as her mother closing the Redmayne Bentley account. If she had access to joint funds, she was entitled to spend them as she saw fit.

The Respondent was referred to a bank statement (Production 2 in the First Inventory of Productions for the Complainers). The Fiscal asked about the suggested auto-transfers. The Respondent said that she thought the limits were set so that there was never more than £2,500 in the joint account and the account never went into overdraft. She had no part in the inter-account transfers. The Respondent did not know if her mother was able to operate online banking. She could use a debit/credit card. She never spoke about having to pay off her credit card, so the Respondent assumed she had an arrangement whereby the balance was paid off in full each month.

The Fiscal asked why the Respondent waited until March to discuss the car with JC. She said that whenever she visited there was sufficient nonsense so as to make it unhelpful to him to discuss it. She spoke to her mother. She was the only person who had any sway over JC. Her mother said she would speak to her father. She then went into hospital. There was a risk JC was going to arrive home and find the car missing. The Respondent was busy settling her mother into the care home. She did not catch her father until he was back at home.

The Respondent said there was one discussion about the car and then a subsequent chat in front of her father's friend. The Fiscal suggested that those conversations did not take place. If she had told him twice that the car had been sold, his solicitor would not be writing asking what had happened to car. The Respondent said her sense was that her sister was involved and wanted the Respondent's position in writing. Her assumption was that JC wanted a written statement from her because he was seeking legal advice about what the Respondent had done.

The Respondent was asked about the April 2016 correspondence between her and Mr Dewar. She said she knew at that stage that her mother had sold the shares. She did not respond to the queries about the shares because she interpreted the letter as an accusation. Her response was intended to firmly rebut that accusation. Her father already knew MAC had sold the shares. The Respondent had gone through the bank statement with him. The Fiscal asked the Respondent about details which were not in her email of 22 April 2016. She said that the correspondence was more about her being asked about what she had done.

The Fiscal said one interpretation was that the Respondent was "getting her inheritance early". The Respondent answered, "yes and no". She had no idea that her mother was going to die so quickly. She had plans but it became apparent she was not going to get the medical prognosis she anticipated. The Respondent agreed with the Fiscal that on one reading, if MAC died, she was leaving the car to the Respondent. The Fiscal asked how that benefitted JC. The Respondent said the car was of no benefit to him if he did not use it. There was a lot of optimism at the time of purchase. However, when the email of 22 April 2016 was sent, MAC was in a nursing home knowing that her operation was not to be reversed, and JC was back at home. Her consideration of how the situation benefitted her father was different then compared to when the transaction took place.

The Respondent agreed that if she had not signed the V5, the car would still have been in her father's possession and then part of his estate. The Respondent said the other choice was to keep the car. The choice was to keep £2,500 of free funds or keep a redundant car.

The Fiscal asked why the Respondent did not explain in the letter of 22 April 2016 that the plate had been retained and the certificate passed to JC. The Respondent said her sense was that the letter was not asking for information, rather it was asking for her position. JC knew fine well the plate and certificate had been retained. It was a rhetorical question. They needed something in writing to consider their position. She thought her integrity was being called into question. With hindsight she agreed it would have been in her interest to give a fuller explanation.

The Respondent was referred to her father's letter to her dated 22 August 2016 (Production 4 in the Second Inventory of Productions for the Complainers). The Fiscal asked why JC was asking the same questions regarding the car and the plate if he already knew about the sale and the circumstances. The Respondent said she did not know. He had written before, and she had replied. The letter contained nonsense and inaccuracies. She suspected her siblings' involvement.

The Respondent was referred to her email to Mr Dewar on 21 April 2016 (Production 3 in the Second Inventory of Productions for the Complainers). The Respondent said she was aware JC had contacted Mr Dewar. She knew her father intended to make no provision for her mother. She had only four weeks left at the nursing home. This email was a reply to Mr Dewar about MAC's position. At that time, she was still her father's Attorney. She said her father's behaviour was unacceptable. However, she did not consider there to be a conflict of interest. It was in her father's interests that someone set out to him that he still had obligations to MAC. If no one could persuade him, her mother would have to seek her own legal advice and enforce her rights. She was hoping Mr Dewar would persuade JC to see sense.

The Fiscal asked why the Respondent, as Attorney, was not having these discussions with JC himself. The Respondent said that at certain points JC would not listen to anyone and would not listen to any sense. She had a conversation with JC where he said MAC was getting nothing. The Respondent was anxious about MAC. She thought she could persuade Mr Dewar to speak to JC. She thought it was in both their interests. It was not a conflict of interest if she was trying to achieve an equilibrium.

The Fiscal asked if it was in JC's interests to suggest MAC sued him and raised an action for division and sale. The Respondent said that by that time, JC's attitude had crystallised. She thought the reference to division and sale would make Mr Dewar point out to JC that it was a real prospect. The Fiscal asked why the Respondent suggested the grantor should be sued by his spouse. The Respondent said she was explaining the legal advice her mother had received. She wished to jog JC into an awareness that he had to act.

The Fiscal asked at what point the Respondent's personal obligations became muddled with her professional obligations. The Respondent said she did not think they were different. Whether or not they were her parents, they were a married couple. She was attempting to get over to one spouse that he could not abandon his obligations to the other spouse.

The Fiscal asked why the Respondent had made reference to her sister's car. She said she assumed that because her brother had been given a Mercedes from JC, her sister had also benefitted in a similar way. Her sister received a lot of financial assistance from their parents.

The Respondent said she could not remember if she had ever advised her father or any of his legal representatives that she had retained the private plate.

The Respondent said she split her parents' money in late February 2016. She did it when she found out her mother had bought a boiler. The Respondent carried out the transactions online. She said to her mother it would be helpful to put a certain amount aside in their own accounts to meet their own personal spending desires. She could not remember if she had a discussion with JC about splitting the accounts.

The Fiscal asked how splitting the accounts was in JC's best interests. The Respondent said she made the suggestion to MAC, and she agreed. The Respondent thought it was in JC's interests. She was concerned MAC was going to run through the Redmayne Bentley money. At that point, the Respondent did not know how much money her parents had. She did not go online until MAC was in hospital.

The Fiscal noted that MAC died on 23 October 2016 leaving her estate to the Respondent and her daughter. The Respondent explained that her mother had made this will after separation from JC. As she was not the owner of her home, the will would have cost virtually more than she had in her estate.

The Respondent was referred to her letter of 20 October 2016 (Production 8 in the First Inventory of Productions for the Complainers). She agreed that she wrote it. She said that she did not include the new Mercedes car in MAC's estate because by that time it was used by her own daughter as MAC had allowed. It did not seem to be something that could be identified as having a value. Her daughter was using it then.

The Fiscal asked why the Respondent asked her father and siblings to waive their legal rights claims. The Respondent said it seemed to be a short cut to wind up the estate in exchange for overlooking the moveables within the house.

The Respondent said she did not know if she was able to wind up her mother's estate. The money in her bank account is all gone. The value of the estate is likely to be just over £0 but she could easily afford to make good the legal rights.

The Respondent said she had not included certain items in the application for confirmation after discussion with the Sheriff Clerk. She wanted advice from him. He cut her short and said the purpose of the form was just to calculate fees. She needed confirmation as executor to raise the action regarding ownership of the home. She agreed that if she had succeeded in that action, it would have been for the principal benefit of herself and her daughter. However, it has cost £50,000 and with hindsight she regretted doing this.

The Fiscal asked some questions about the V5. The Respondent said she did not think the acquisition of a new car was to JC's benefit. It was very much for the benefit of MAC. She did not consult him because of his state of mind. He did not want to pay his own care home fees because he hoped they would throw him out. The Respondent exercised her judgement. She was neutral on whether it was best for him to keep the car or use a new car. JC was angry, unreasonable and easily distressed.

### **Re-Examination (Respondent)**

The Respondent was referred to the Record. She was of the view that she had answered the call at paragraph 2.4 of the Complaint by explaining that there had been two discussions with her father.

### **Tribunal's Questions**

A member of the Tribunal asked whether the Respondent had kept any records of what she had done as Attorney. She said she had not. The financial transactions were recorded in the bank statements, and she could speak to them. She had invoices for the care home sent to her. Everything had a record of sorts and was traceable. She did not do anything without speaking to her mother first.

A member asked about the invoices which JC said should not be paid. The Respondent said her mother directed that they should be paid and so JC was overruled.



A member asked about the V5. The Respondent said she was acting as Attorney for her father when she signed the V5. She did not have the document with her as it had been sent for registration. She explained the situation to the garage but they did not express any interest.

## **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal referred the Tribunal to his written submissions and made some comments about the submissions for the Respondent. The Fiscal invited the Tribunal to treat the Respondent's submissions with caution, saying that several passages were an irrelevant attempt to add to the evidence and gloss over the lack of cross-examination of the Complainers' witnesses. He said the comments about one of the Complainers' witnesses were unfounded and bordering on outrageous. He criticised the submissions as containing sweeping generalisations. Criticisms of a witness' credibility should set out what part of the evidence is attacked so that the Tribunal can assess it.

The Fiscal noted that the Respondent had included in her authorities the Lord President's statement of reasons in the reclaiming motion by MAC's Executrix-v-JC's Executors (A136/18). He said this was an attempt to lead further evidence for the Respondent in submissions. It was not an authority in support of a legal argument. To be considered, it ought to have been lodged and spoken to in evidence.

He commended the Complainers' witnesses' evidence to the Tribunal. He criticised the Respondent's evidence. He noted that she had given evidence of two meetings with her father at which she had discussed the sale of motor vehicle registered H7AJC and had given him the certificate relating to the personalised numberplate. She had not volunteered this information to her father's solicitor, the SLCC, the Law Society or in her Answers to the Complaint before this Tribunal. It was only on the second day of evidence that she revealed this. Her position was not put to Jane Campbell. The Respondent's deceit stretches back to April 2016 and continues to the present day. Pleadings should give notice of the Respondent's position.

The Fiscal noted that the averments of misconduct in the Complaint mirror the complaint remitted to the Law Society by the SLCC. This is done out of practicality and fairness. The Fiscal described Rule B1.2 and said that questions of dishonesty, deceit or lack of integrity were "jury" questions for the Tribunal.

The Fiscal said the Respondent's reference to the Tribunal's minute of 2 March 2023 was irrelevant. The Tribunal can only make findings in fact based on the evidence it has heard. Decisions taken at a procedural hearing are not relevant.

The Fiscal accepted that there was no reference to conflict of interest in the averments of misconduct. This is because there was no reference to conflict of interest in the complaint remitted to the Law Society by the SLCC. However, the Respondent had a duty to act in the interests of her father. It is important to consider when her father's interests came into conflict with her mother's interests. When that happened, the Respondent ignored the conflict and favoured her mother. The consequences were that MAC benefitted and the Respondent and her daughter benefitted. However, at no point did JC benefit. At the very least, this demonstrates a lack of integrity.

The Tribunal asked the Fiscal to clarify which separate acts the Complainers said were executed under JC's Power of Attorney. The Fiscal referred the Tribunal to paragraph 3.4 of the Complaint.

The Tribunal asked the Fiscal to indicate what was inaccurate about the application for confirmation. The Fiscal said the information provided by the Respondent is vague at best. She prepared a checklist of what she said comprised the items of the estate. The Fiscal accepted the checklist had no legal significance. The application for confirmation did not mirror the list and the only reason she applied was to allow her to sue her father. She says the Sheriff Clerk only told her to include verifiable items, but this was another new version of events. The whole circumstances are somewhat clouded by the Respondent's judgement and actions. She did not properly set out the situation regarding the car. The Tribunal asked if the Complainers relied on any other inaccuracies. The Fiscal noted again that items on the checklist were not on the application for confirmation. He said that if he could have led evidence, he would have done so but there was little information available about what should have been included. The Complainers suggested that motor vehicles and jewellery were missing from the application.

The Tribunal asked to what extent, if at all, the Complainers say the Respondent benefitted from her actions in relation to the application for confirmation. The Fiscal said it all stemmed from the falsity of the Respondent acting as Power of Attorney for both parents. There was a lack of openness about all of that. The whole reason to apply for confirmation was to sue her father. The Respondent lacked integrity.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Macmillan referred the Tribunal to his written submissions. He said that Mr Dewar's evidence was unreliable. He repeatedly said he could not recall details. He admitted he had not read the file in detail. Mr Macmillan's concern was not so much credibility as reliability. He was evasive about clause 3. Mr Macmillan said that similarly, Jane Campbell was frequently inclined to say that she could not recall or

remember things. She even on occasion would look at the Fiscal for assistance. She could not remember things that should have been clear to her.

Mr Macmillan said the issue about judicial expenses only emerged during the evidence-in-chief of Jane Campbell. She was cross examined about this because the critical point was that the award was made personally against the Respondent. There was no diminution of the estate. Mr Macmillan had no idea earlier that this was going to be a problem. He drew the Tribunal's attention to the Lord President's characterisation of the issue as a "family feud". He noted that Jane Campbell wanted to distance herself from the letter said to have been sent by James Campbell to the Respondent. He noted that the typist of that letter was present during the Tribunal hearing but did not give evidence.

Mr Macmillan said that it was for the Law Society to prove its case and in his submission it had failed to do so. It had access to all the bank accounts in question. It only produced evidence about the car transaction.

Mr Macmillan confirmed that the Respondent admitted that she signed the V5 document. She did so because her mother wanted to trade-in her old car and buy a new one. The Respondent facilitated that transaction. The Respondent had set out her position in the Answers.

In Mr Macmillan's submission the Law Society dared not bring in conflict of interest because the SLCC did not consider this issue. However, the Complaint tries to introduce it by the back door. The Complaint cannot turn on conflict of interest.

Mr Macmillan said that the Complaint was defective. The Complainers alleged that the Respondent sold the car when in fact it was MAC who sold it. This was put to Jane and was not challenged. The Fiscal has said that the Respondent was aware her parents' relationship was fractious. This is wholly unwarranted. All the evidence shows that JC and MAC were in a married state in February 2016. There is no evidence that the relationship was fractious at that time. This is a critical point which the Tribunal must consider carefully. Barry Dewar's evidence was that when he wrote the file note of 20 April 2016, it was still only a "potential" separation. It obviously had not yet happened. Jane Campbell said the date of separation was May 2016. The Respondent's parents' interests were therefore not in conflict. MAC's decision to sell and buy a car in February 2016 exhibited no conflict, although it might have done if it had happened in May 2016.

Mr Macmillan noted that the Fiscal did not put to the Respondent in cross-examination that JC's friend had not been present during the conversation with her father about the car. There are no denials of the Respondent's position on this in the Answers.

With regard to the checklist and confirmation, Mr Macmillan said there was no dishonesty whatsoever. The checklist was a draft working document. It was not intended to be binding or authoritative. There are obvious differences between them. For example, Jane Campbell's car was erroneously included in the checklist. The checklist was corrected. Jane Campbell says that MAC must have had another bank account but there is no evidence of this.

Mr Macmillan urged the Tribunal to find that there had been no proof of dishonesty, deceit or lack of integrity. JC was unwell in a home. His wife decided to sell their car. The Respondent facilitated that and did not tell her father about it until later. She obtained no benefit from it. There is nothing arising from the application from confirmation. The Respondent wanted Mr Macmillan to draw to the Tribunal's attention that the personal award of expenses against her was as a general rule of law.

A Tribunal member noted that Mr Macmillan said there was no conflict of interest at the time of the car sale. However, the Respondent had said in the Answers that,

*"JC had only recently and extremely reluctantly moved into a care home, staff had advised the Respondent that his behaviour there was disruptive and he had expressed the view to the Respondent and her daughter that he was there as a result of MAC's machinations."*

The Respondent had also said in evidence that if she had asked the Respondent about the car, he would have refused to sell it. The member asked whether that was suggestive of a conflict of interest.

Mr Macmillan said the question of how JC came to be in the care home was not tested at all. JC did not think he should be in a home. His wife thought he should be there. There was disagreement between them but it did not cause the marriage to falter. The Respondent was not confident that the Respondent would agree to the sale of the car. However, this does not prevent her acting to fulfil MAC's wish. It was not necessarily against JC's interests. It might not have been what he wanted but the Respondent was entitled to help her mother achieve it.

## **DECISION ON PROFESSIONAL MISCONDUCT**

The Tribunal carefully considered the admitted facts and the witnesses' evidence. In general, it had no concerns about credibility and reliability. However, the alleged conduct had taken place seven years ago, and the witnesses' ability to recall events was somewhat diminished by the passage of time.

Mr Dewar provided background regarding the relationship between Mr and Mrs Campbell. He described how the Power of Attorney came to be arranged and the concerns Mr Campbell raised with him. He spoke to the correspondence passing between him and the Respondent. There were some gaps in his testimony. His evidence about Clause 3 of the Power of Attorney was contradictory.

The evidence of Jane Campbell and the Respondent was assessed in the context of their complex family situation. Some of Jane Campbell's assertions had no substantial basis in fact. For example, no evidence was led to support her belief that her mother "must have had" another bank account.

The Respondent admitted that she had signed the V5 document. She explained the family dynamic as she saw it. It was clear to the Tribunal that even now she still had an imperfect understanding of the responsibilities of someone exercising a Power of Attorney.

The burden of proving professional misconduct is on the Complainers. The Tribunal must be satisfied beyond reasonable doubt of the facts supporting an allegation of professional misconduct. Due to deficiencies in some parts of the evidence, the Tribunal had some reasonable doubts and the benefit of these must be given to the Respondent. Having considered all the evidence in the case, the Tribunal found the facts which are set out in its findings at paragraphs 10.1-10.11 above.

The Tribunal considered the duties incumbent on the Respondent and set out in the Complaint. Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. They must not act in a way which is fraudulent or deceitful (Rule B1.2). A solicitor must act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other. A solicitor must not knowingly mislead other regulated persons or, where they have given their word, go back on it (Rule B1.14.1).

According to the definition of professional misconduct contained in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313,

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

The principles of honesty and integrity are fundamental to the profession and apply even when solicitors are not actively engaged in their professional lives. The Tribunal had regard to the test for dishonesty described in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. According to that case, the Tribunal should first ascertain subjectively the actual state of the individual’s knowledge or belief as to the facts. When that is established the question whether his conduct was honest or dishonest is determined by applying the objective standards of ordinary decent people.

According to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366, 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 and involves more than mere honesty.

The Tribunal considered the allegations against the Respondent. It did this in the light of the facts found and the relevant duties.

The first averment of misconduct contained the very serious allegation that the Respondent had acted dishonestly, with a lack of integrity, and deceitfully, when utilising her father’s Power of Attorney. This was said to be in breach of Rules B1.2 and B1.14.1. The averments of fact in the Complaint hinted at impropriety regarding the sale and purchase of motor vehicles (including the signing of a V5 document), transfers of money between accounts, the sale of shares, and the disappearance of some of JC’s possessions. However, there was insufficient evidence led to support these sometimes-veiled criticisms, other than the circumstances surrounding the sale and purchase of the motor vehicles on 2 February 2016, which is discussed below. The evidence tended to show that the transfers of money between accounts had been as a result of an automatic banking system set up by the Respondent’s parents. The Respondent admitted splitting her parents’ money between their accounts at one stage but beyond the admission, there was no evidence led about the circumstances in which this had occurred. It was clear

that the sale of shares had been carried out by the Respondent's mother. There was no evidence that the Respondent was responsible for the disappearance of her father's possessions from his house.

With regard to the sale and purchase of the motor vehicles, the Tribunal was satisfied that MAC had wished to sell the jointly owned Mercedes motor car. MAC sold the shares to facilitate the purchase of a new vehicle. MAC carried out the debit card transaction in question. The Respondent made arrangements with the garage, drove the car and her mother there, signed the V5, and dealt with the registration number H7 AJC. She entered into correspondence with Mr Dewar about her actions. However, she failed to set out some matters as plainly as she might have done. For example, she did not clarify that it was her mother who had sold the shares, or that the Respondent had arranged for the retention of the registration number H7 AJC.

An Attorney should ensure every measure is taken to support the granter to make their own decisions on any matter, or otherwise allow them to exercise their legal capacity. Decisions should respect the granter's rights, will and preferences. The Attorney should consult with the granter, and take account of their views. They should keep records of the decisions they have taken.

The Respondent should not have acted before the Power of Attorney was registered. She should not have signed the V5 document on her father's behalf without discussing it with him. The Respondent admitted that she did not speak to him about it because she knew he would not agree to the sale. That should have given the Respondent cause to pause and consider the situation. She ought to have consulted the guidance for Attorneys which is readily available and sought advice if necessary. She failed to identify the problem which arose and take appropriate action. She failed to keep proper records. She breached her father's trust. She failed to properly describe to her father and his solicitor all the actions she had taken under the Power of Attorney. Her actions therefore raised questions about her integrity.

However, on the other hand, the Respondent was not acting as an Attorney as part of her professional life. She had taken on the role because she was JC's daughter. She was not familiar with private client work and did not have experience of acting as Power of Attorney. The family dynamic was difficult. The Respondent had been alienated from her sister for many years. Her parents were recently estranged from the Respondent's sister. Both parents had recently been in hospital, and her father had latterly been unhappy to be accommodated in a care home. The Respondent's mother wished to sell a joint asset and purchase a new car. The Respondent also had responsibilities to her. To the Respondent's knowledge at that time, her parents' marriage was still functioning. The Respondent believed that her mother was going to discuss the situation with her father. Both JC and MAC had capacity. The Tribunal also had

regard to the effect of the Respondent signing the V5 document. Her signature was the difference between the old car remaining in the garage or reducing the price of the new car. If the Respondent had not signed the V5, an additional £2,500 of joint money would have been used on the purchase. There was no personal gain to the Respondent if her mother was going to buy the new car anyway. The Respondent had attempted to be even-handed to both parents and maintain good stewardship of her parents' money. It is disappointing that differences of opinion within a family have resulted in a professional discipline complaint.

There is no doubt that the Respondent failed in her duties as Attorney. However, her failings appeared to be due to lack of experience and competence in this area of the law, and the difficult situation which arose, rather than as a result of dishonesty or deceitfulness. The Tribunal accepted that the Respondent was attempting to do her best for both her parents. Having regard to all the circumstances, the Tribunal did not consider that the Respondent's behaviour represented a serious and reprehensible departure from the standards of competent and reputable solicitors. She was therefore not guilty of professional misconduct in relation to the first averment of misconduct.

However, the Tribunal was of the view that the Respondent's behaviour in relation to the first averment of misconduct may constitute unsatisfactory professional conduct which is 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 remitted the case to the Law Society under Section 53ZA of the Solicitors (Scotland) Act 1980.

The second averment of misconduct was that the Respondent, in her capacity as Executor Nominated on the estate of her late mother, applied for Confirmation on 26 February 2018 knowing that the application was inaccurate, false and misleading thereby acting dishonestly, with a lack of integrity and deceitfully, all in breach of Rules B1.2 and B1.14.1 of the Law Society of Scotland Practice Rules 2011.

The Complainers relied on the difference between the checklist and the application. However, the checklist has no legal significance. The Complainers led no positive evidence about what they said should have formed part of MAC's estate and what they said was therefore missing. The Complainers led no evidence about ownership of the items in question. The Tribunal considered that there was insufficient evidence to prove that the application was inaccurate, false or misleading. The allegation that the Respondent had acted dishonestly, deceitfully or with a lack of integrity was unsupported. The Tribunal noted that even if all items on the checklist had been included in the application, the total value



of the estate would still have been way below the tax threshold. All potential beneficiaries had knowledge of the existence of the items which the Respondent had included on the checklist. There was no consequence proved to have flowed from the differences between the checklist and the application. In short, the Complainers did not demonstrate why these items should have been included in the application for confirmation, and the effect of failing to add them.

Therefore, the Tribunal found the Respondent not guilty of professional misconduct in relation to the second averment of misconduct. The Tribunal was of the view that just as the factual situation was incapable of supporting a finding of professional misconduct, similarly, it could not provide a basis for unsatisfactory professional conduct. Therefore, the Tribunal declined to remit the second averment of misconduct to the Law Society of Scotland under Section 53ZA of the Solicitors (Scotland) Act 1980.

### **SUBMISSIONS ON PUBLICITY AND EXPENSES**

The Fiscal invited the Tribunal to follow its usual procedure with regard to publicity. He moved for expenses on the basis of the “semi-positive” outcome for the Complainers. However, if the Tribunal took the view that there should be an award in favour of the Respondent, he said expenses should not be awarded on the usual scale but should rather be left to the discretion of the Auditor of the Court of Session, to take account of the fact that Mr Macmillan is not currently a practising solicitor.

Mr Macmillan said publicity should follow the usual pattern. With regard to expenses, he said the Respondent had been entirely successful with regard to one head of complaint. He moved for expenses. He had been on the roll of solicitors until last year but is currently operating as an independent legal adviser. He was content to be guided by the Tribunal with regard to expenses.

### **DECISION ON PUBLICITY AND EXPENSES**

Reflecting the relative success of the parties, the Tribunal found the Complainers liable in 75% of the expenses of the Respondent. The Tribunal decided that only 50% of the usual unit rate should be applied to the expenses since the Respondent’s representative was not a solicitor. It therefore directed that the expenses should be chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society’s Table of Fees for general business with a unit rate of £7, rather than £14. Publicity will be given to the Tribunal’s decision. The Respondent, members of her family and the

witnesses who gave evidence before the Tribunal will be named in the decision, but no other person need be identified.

**Kenneth Paterson**  
**Vice Chair**