

**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, 26  
Drumsheugh Gardens, Edinburgh  
Complainers**

**against**

**KAREN STEDWARD  
PATERSON, Brown & McRae,  
Anderson House, 9-11 Firthside  
Street, Fraserburgh,  
Aberdeenshire**

**Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Karen Stedward Paterson, Brown & McRae, Anderson House, 9-11 Firthside Street, Fraserburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer namely Mr A.
3. The Tribunal caused a copy of the Complaint, as lodged, to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal fixed a hearing in respect of the Complaint for 4 November 2015 and notice thereof was duly served upon the Respondent.

5. When the matter called on 4 November 2015 the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and was represented by William Macreath, solicitor, Glasgow. The Fiscal moved to amend the Complaint and, there being no objection to that Motion on behalf of the Respondent, the Tribunal granted the amendments. A Joint Minute between the parties agreeing the averments of fact, duty and professional misconduct of the amended Complaint was lodged with the Tribunal. Three Inventories of Productions were lodged by the Respondent. The Tribunal heard submissions from both parties.

6. The Tribunal found the following facts established:-

6.1 The Respondent is a solicitor enrolled in the Registers of Solicitors in Scotland. She was enrolled as a solicitor on 4 December 1978 and has been a Principal in private practice since 6 April 1983 as a Partner of Brown & McRae, Solicitors, Fraserburgh. She became the Anti Money-Laundering Partner on 25 October 2006.

**Mrs B**

6.2 On or around 24 July 2013 Mr C sought advice from the Respondent in relation to his wife Mrs B who was terminally ill with a brain tumour and unlikely to live much longer. Mr C believed that his son Mr A (the secondary complainer) may have had Mrs B sign a Power of Attorney, as a solicitor from Stronachs LLP had visited her possibly on 22 July 2013. He confirmed to the Respondent that Stronachs were the solicitors who had represented Mrs B concerning the issue of a Divorce from Mr C a couple of years prior. He was also of the view that the secondary complainer was trying to get hold of Mrs B's money. He wished the Respondent to check with the Office of

the Public Guardian (OPG) as to whether or not there was a Power of Attorney. The Respondent agreed to do so.

- 6.3 The Respondent checked the position as indicated in the preceding paragraph and was notified that the secondary complainer and Mrs B's sister were named in a continuing Welfare Power of Attorney registered 24 July 2013. Stronachs were the solicitors who registered it.
- 6.4 On 25 July 2013 Mr C instructed the Respondent to approach Stronachs to find out if they had obtained a medical report at the time of the execution of the Power of Attorney to ascertain capacity. The Respondent on the same date e-mailed the OPG and in that e-mail correspondence indicated that Mr C was adamant that Mrs B was in such a poor condition and on such heavy medication that she would not have been capable of understanding the meaning or purpose of a Power of Attorney.
- 6.5 On 31 July 2013 the Respondent sought the advice of a Consultant Neurosurgeon as to Mrs B's capacity on 22 July 2013 when Mrs B signed the Power of Attorney. On the same date she issued a terms of business letter to Mr C headed "advice on Power of Attorney." Said terms of business were executed by Mr C on 6 August 2013.
- 6.6 On 6 August 2013 Mr C contacted the Respondent indicating that he had visited Mrs B that morning and she had been very alert. He advised that, in addition to the Power of Attorney, a Will had also been signed by Mrs B leaving everything to the secondary complainer. Mrs B had been quite unaware of this and was not happy about it. A file note on the Respondent's file stated:-  
"Advising Mr C that his wife can make a replacement Will or can sign a letter revoking the Will that she has but pointing out

that if he wants her to do this he cannot then at a later date try to argue that she was not fit to sign the Power of Attorney when she did. Noting that he would be agreeable to her signing a replacement Will on the basis that Mr A [*the secondary complainer*] need not know about this. Confirming that if she wants to revoke her existing Will and not make another one, the Notice of Revocation would have to be given to her Attorneys and probably Mr A [*the secondary complainer*] would then just have her make a replacement Will. Agreeing to have a Will document made up”.

- 6.7 The Respondent proceeded to prepare a draft replacement Will in the name of Mrs B and pass it to Mr C for execution by Mrs B.
- 6.8 On 8 August 2013 Mr C contacted the Respondent to advise that Mrs B had signed the Will on 7 August 2013. Mr C advised he had taken the Will to the hospital on 7 August 2013. He had advised Mrs B that he did not trust the secondary complainer and the only way to be sure that her instructions would be carried out was by having her sign a new Will. He reported that she had said “get me a pen I’ll sign it right now.” Mr C advised the Respondent he would hand the Will into the Respondent’s firm for safe keeping. He did so.
- 6.9 The Respondent then issued a fee to Mr C dated 12 August 2013 with the narrative “taking your instructions to prepare a Will on behalf of your wife, having same drawn up ...”
- 6.10 At the time of Mr C’s instruction to the Respondent and thereafter at the time of the Respondent’s preparation of a draft Will as passed to Mr C, Mrs B was:-
1. Vulnerable.
  2. Not the Respondent’s client.

3. Was known to be the client of another firm, namely Stronachs

6.11 The Respondent proceeded to act in the matter narrated above despite the fact that the Respondent:-

- a) Knew that the main beneficiary in the draft Will was her client Mr C who was named as sole executor and beneficiary;
- b) Did not take any steps to check with Mrs B that the Will represented her wishes prior to preparing it.
- c) Did not prior to the signing of the Will check that Mrs B had capacity to sign said Will.
- d) Had been advised that the relationship between Mr C and the secondary complainer was strained given Mr C's initial comments to her that he was concerned that the secondary complainer was trying to get hold of his mother's money.
- e) Had acted for Mr C in an abortive divorce action brought by Mrs B against Mr C in 2011.
- f) Knew that Mrs B's agents in the divorce action, the Power of Attorney and Will was Stronachs.
- g) Knew that there were concerns (raised by Mr C himself) as to Mrs B's capacity to understand and sign legal documents and
- h) Knew that in providing the draft Will to Mr A the secondary complainer and Mrs B's own agents would, in all likelihood, be unaware of this new Will until Mrs B had died

6.12 The Respondent's explanation for her actions was that Mr C would have in all likelihood prepared a document himself and it would not have been correct. As at the date of this Complaint

there had been no acceptance that her actions were inappropriate in any way.

7. The Tribunal heard submissions from both parties in connection with whether or not the Respondent's conduct amounted to professional misconduct. After careful consideration of the submissions, together with the productions lodged by the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect that the Respondent:

- 7.1 Acted in a way that called into question her personal integrity;
- 7.2 Gave advice which was not free from external influence;
- 7.3 Accepted improper instructions to draft a Will in favour of her client for execution by his wife who was not her client;
- 7.4 Accepted improper instructions to draft a Will in the knowledge that other agents had acted very recently (and in all probability continued to act) in the preparation of a Power of Attorney and Will for the testator and in doing so she failed to act in a manner consistent with mutual trust and confidence; and
- 7.5 Enabled her client to have his wife sign a Will drafted by the Respondent and she took no steps to advise the testator either of the legal consequences of signing the Will or that she should seek independent legal advice before signing.

8. Mr Macreath confirmed that he had nothing to add to his earlier submissions and no submissions in relation to expenses or publicity. Having careful regard to the earlier submissions including the productions that had included references for the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 4 November 2015. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Karen Stedward Paterson, Brown & McRae, Anderson House, 9-11 Firthside Street, Fraserburgh; Find the Respondent guilty of professional misconduct in respect that the Respondent; 1) Acted in a way that called into question her personal integrity 2) Gave advice which was not free from external influence 3) Accepted improper instructions to draft a Will for execution by someone not her client 4) Failed to act in a manner consistent with mutual trust and confidence by accepting improper instructions to draft a Will in the knowledge that other agents had acted very recently in other matters and in all probability continued to act and 5) Enabled the signing of a Will drafted by her while she took no steps to advise the testator either of the legal consequences of signing the Will or that the testator should seek independent legal advice before signing: Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

**(signed)**

**Alistair Cockburn**

**Chairman**

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

**IN THE NAME OF THE TRIBUNAL**

**Alistair Cockburn**  
**Chairman**



**NOTE**

At the hearing on 4 November 2015, the Fiscal for the Complainers lodged an amended Complaint and moved the Tribunal to allow these amendments. Of consent, the Tribunal granted the Motion to Amend. A Joint Minute was lodged for the parties which agreed all of the averments of fact, duty and professional misconduct. Additionally the Respondent had lodged three Inventories of Productions. As all of the averments of fact were agreed by the parties, no evidence required to be led. The Tribunal heard submissions from both parties. The Secondary Complainer was present for these submissions.

**SUBMISSIONS FOR THE COMPLAINERS**

Ms Motion indicated that all matters were agreed between the parties. Accordingly, she had not lodged any productions. She confirmed to the Tribunal that she had the Respondent's files should the Tribunal require access to them. She confirmed that the Secondary Complainer was present and that should a finding be made he had paperwork that he wished to produce to the Tribunal in pursuance of his claim for compensation.

Ms Motion indicated that she had no intention to go through the Complaint in detail and would proceed by drawing out a number of points to the Tribunal.

In her submission this was not a situation where the Respondent had reacted to one telephone call. She referred the Tribunal to paragraph 3.2 of the Complaint. The telephone call set out in that averment should have raised warning signs for the Respondent. Ms Motion had once heard it said that not all peoples' personal smoke alarms are as sensitive. In this case she wondered whether the Respondent's personal smoke alarm had been switched off or was simply permanently turned down.

From paragraph 3.2 of the Complaint it could be seen that the Respondent was aware of another firm of agents' involvement – they had already prepared a Power of Attorney and Will.

From paragraphs 3.3 to 3.5 of the Complaint it could be seen that the Respondent was aware of the incapacity of Mrs B. Specifically on 31 July 2013 the Respondent had sought the advice of a consultant neurosurgeon regarding Mrs B's capacity. The Respondent was generally aware of the existence of other agents, as set out in paragraph 3.6 of the Complaint.

Ms Motion indicated to the Tribunal that she wanted to specifically draw its attention to paragraphs 3.10 and 3.11 of the Complaint. Mrs B was vulnerable, not the Respondent's client and was known by the Respondent to be the client of another firm. Ms Motion's position was set out in full in paragraph 3.11. The Fiscal submitted that she was conscious that the Respondent was just trying to do her best in the circumstances. She wondered if the Respondent's desire to help, in a misguided way, was higher on the Respondent's settings than the risk associated with drafting something that should not have been done. Even up until the date of the Complaint the Respondent had not accepted that her actions were inappropriate.

The averments of professional misconduct were set out in paragraph 3.14 of the Complaint. The Fiscal wanted to draw the Tribunal's attention to what she described were aggravating factors.

1. The Respondent had demonstrated a lack of insight into her conduct.
2. There was a potential risk of repetition of this type of conduct, which flowed from this lack of insight. The Fiscal was not aware of the Respondent having taken any remedial steps.
3. The Respondent could be described as a risk to the public if this conduct were to be repeated.

It was submitted that it was not disputed that the decision taken by the Respondent to draft the Will was a deliberate one.

The Fiscal accepted that there was mitigation in this case. An early plea had been tendered. The conduct had occurred over the period of one month. There had been full cooperation with the Fiscal in moving the matter forward swiftly. The Fiscal was not aware of any repetition of this kind of behaviour nor of any previous problems.

Whilst the Fiscal accepted that this was a matter for the Tribunal, she submitted that she did not consider this matter to be at the higher end of the scale. The Respondent had been completely misguided and her actions wholly inappropriate. It was for the Tribunal to conclude if the conduct amounted to professional misconduct but it was the Fiscal's submission that the conduct of the Respondent in this case met the standard set out in the Sharp case.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath indicated that he had first been consulted by the Respondent in July 2015. He had been recommended to her by the firm of agents in Edinburgh who had acted on behalf of Mr C in the reduction of the Will of 8 August 2013.

Mr Macreath had introduced himself to the Secondary Complainer, Mr A, this morning and had explained to him Mr Macreath's role in the proceedings. The Secondary Complainer had indicated that it was easier for him to come to this venue than attend court proceedings.

Mr A, the elder son of the deceased and Mr C, made the complaint to the SLCC in August of 2013. The SLCC immediately recognised that these were eligible complaints and intimated the conduct matters to the Law Society. Service issues remain outstanding before the SLCC including the question of compensation. The SLCC have greater powers than the Tribunal in relation to compensation.

The Heads of Complaint before the SLCC were:-

1) Mrs Paterson had inappropriately accepted instructions in August 2013 from Mr C to draft a Will for his terminally ill wife in which Mr C was the sole executor and beneficiary. Within this Head there were two Sub Heads of Complaint, a) that Karen Paterson had failed to take instructions to ensure the testator's wishes and b) the Respondent had failed to check that the testator had capacity "to sign the Will".

2) The Will was therefore inappropriately drafted by reason of the Respondent having acted for Mr C "in an aborted divorce" against Mrs B in 2011. This was a turbulent

relationship that the Respondent was aware of. Therefore the contents of the Will should have been questioned.

3) The Respondent made arrangements for the Will to be witnessed in August 2013 by Mr D despite being aware that Mr D was a friend of Mr C and therefore not impartial.

The Law Society has no right in law to amend the terms of the complaint. The SLCC deemed complaint head number 3 ineligible and so two issues were taken to the Law Society. That complaint was intimated in October 2014. The complaint's procedure here has unusually had some speed to it. As soon as Mr Macreath had been instructed he had, with alacrity, accepted the issues.

When Mr Macreath had first contacted the Fiscal the Complaint had not yet been drafted. Parties were able to discuss the issues and that, together with consideration of the Secondary Complainer's issues, resulted in the complaint before the Tribunal.

The Respondent had responded to the complaint intimated by the Law Society well within the required time limit. She said that she had no knowledge of the actual circumstances in which the Will was signed. A day or two after the signing of the Will Mr D had provided a statement of his own volition in which he confirmed to the Respondent that in his view Mrs B had had capacity to subscribe the Will.

It is clear that Mr C and his wife had had difficulties in their marriage and it was accepted that Mr C had instructed the firm of Brown and McRae following the service of the divorce action upon him in February 2011. Mrs B had averred an irretrievable breakdown of marriage on the basis that Mr C had formed a relationship with another woman in a foreign country. The couple continued to live together in the matrimonial home and, to the outside world, as man and wife. At a later stage parties reconciled and the divorce action was dismissed. The firm's file was closed. Parties continued as man and wife.

There were three children: Mr A, Mr E, and a daughter who had unfortunately predeceased her parents. Mr A lives in Peterhead and Mr E remained with his parents.

In July 2013 Mr C had consulted the Respondent and confirmed to her that his wife had been diagnosed with an inoperable brain tumour and that her condition was terminal. Mrs B had been admitted to Aberdeen Royal Infirmary in June 2013 and then transferred to Fraserburgh Hospital in July for palliative care. Mrs B's GP was the author of the report listed in the Third Inventory of Productions for the Respondent.

Mr C had wanted the Respondent to make enquiries as to whether or not a Power of Attorney had been drawn up following a visit by another solicitor on his wife on 22 July 2013 in the favour of his older son. It was clear from this conversation that the relationship between the father and older son was an unhappy one. Mr C had wanted the Respondent to check with the office of Public Guardian to confirm whether or not a Power of Attorney had been drawn up. The Respondent was able to confirm that the Power of Attorney had been drawn up in favour of Mr A and one of Mrs B's sisters. The Respondent had suggested to Mr C that it was likely that a Will had also been prepared and signed at the same time. Mr C had advised the Respondent that up until his wife had been admitted to hospital neither of them had prepared a Will although the house was in joint names with a survivorship clause.

Mr C had asked his son why it had been necessary for a Power of Attorney to be drawn up in these terms behind his back and no satisfactory explanation had been given. Mr C directed the Respondent to contact the other agents to ask if they held a Will for Mrs B and they confirmed that they did. According to the statement for Mr C he had told the Respondent that there had been no relationship between his wife and her son Mr A for several years before she was admitted to hospital. Mr C told the Respondent that she had given Mr A some funds at the time of the divorce – cash from an investment – for safe keeping. Mrs B had tried to recover these funds from her son at a subsequent stage but without success. The estrangement from Mr A had endured two years prior to Mrs B being admitted to hospital. Only then would Mr A visit his mother in hospital. Mr C advised the Respondent that since the couple had

reconciled their relationship had become stronger. Mrs B had been very supportive of her husband. There had been no reason for Mrs B to appoint her son as Attorney, particularly as Mr A had been estranged from the family for so long.

Mr C felt that the Will was likely to be for the benefit of Mr A to the exclusion of others including himself and his other son. Mr C was of the view that Malcolm had “unduly influenced his mother” who was vulnerable. Mr C explained to the Respondent that Mrs B had periods of lucidity and periods where there was a lack of comprehension.

On 6 August Mr C informed the Respondent that he had visited his wife that morning. Mr C would visit the hospital early by agreement with the staff before he started work. His wife was alert and on speaking to her she had stated that she had no recollection of signing documents, particularly the Will, and was unhappy with the arrangements.

In the telephone call of 6 August the Respondent had indicated that if Mrs B was discontent then a replacement Will could be prepared providing Mrs B was capable of giving instruction. Mr RCoss intimated to the Respondent that it was his wife’s wishes that her estate pass to him, whom failing, her two sons. He indicated that he did not want to make contact with the other firm of solicitors as he believed that his son Mr A would be informed and that Mrs B in her vulnerable state would be manipulated. He advised the Respondent that Mrs B was alert, aware and had capacity. He believed it was only a matter of time until she succumbed to her illness and wanted the matter resolved without delay. It was made clear to Mr C that he could have prepared the Will himself and dealt directly with his wife. The Respondent had told him that Mrs B was not her client and that she could not take instructions from her. The Respondent had then gone on to agree to draft a Will on the basis of what Mr C was telling her and that Will was collected that afternoon.

Mr C contacted the Respondent on 8 August and advised that he had made contact with his wife and that she had agreed to the terms of the Will. His wife still maintained that she had no recollection of signing the Will on 22 July. Mr C had suggested to his wife that she discuss this with Mr A and at that point he had left his

wife to do that. He had gone back the next morning with his son Mr E and Mr D. Mr Macreath referred the Tribunal to Productions 6 and 7 of Inventory Number One which were statements from these two individuals.

It appeared clear that Mr C was aware that there may well be a dispute regarding his wife's capacity as he himself had already disputed the question of influence.

Mr Macreath drew the Tribunal's attention to the GP's report in his Third Inventory of Productions. Mr C had not involved the medical staff at the hospital at the time of the signing of the Will as he had believed that the staff were on notice from Mr A to tell him what was going on and that Mr A would simply have tried to have another Will prepared.

After the episode of the divorce in 2011 the parties had reconciled and were in a happy marriage. After Mrs B was diagnosed the relationship had become even closer. After 2 years of estrangement Mr A had gained control of his mother's affairs. Mr C had direct concern regarding the influence put upon his wife.

It had previously been claimed that the Respondent's husband was a friend of Mr C. This was denied. The Respondent's husband was acquainted with Mr D through his former employment but it was only an acquaintanceship.

Mr D is a friend of the family and was once a very close friend of Mr A. The relationship between Mr D and Mr D broke down as Mr D perceived Mr A to have acted badly regarding the matters of July 2013.

Mrs B passed away having borne her illness with a degree of courage. The other agents had asked if a certificate of capacity had been obtained. The Respondent advised them she had not obtained such a certificate but that the GP would be written to. The Tribunal have his report. The Respondent's request for this report had been issued much earlier than the letter by the doctor was provided.

Despite exhibiting the Will of 7 August 2013, the other firm of solicitors continued to administer Mrs B's estate, relying on the Will of 22 July. Once the GP wrote at the

beginning of November that firm had written indicating that Mr A did not accept the Will, did not accept that it had been obtained legitimately and did not agree to Brown & McRae administering the estate.

It was not until January 2014 that the other firm of solicitors enclosed the Will allegedly dated 8 August 2014. It was alleged that the Will had been independently witnessed and that the Will had been delivered to their office by the witness before Christmas. They had been told that the witness was related to Mrs B's sister. According to this witness Mrs B had claimed to have been coerced into signing the Will on 7 August and so she had proceeded with the Will of 8 August. Mr Macreath referred the Tribunal to the handwriting report lodged with the First Inventory of Productions. He submitted that that report was in unusually definite terms. The expert had stated that this signature was definitively simulated. In particular the Will appeared to have been photocopied prior to signature. Mr C was concerned that this was not a genuine Will and was aware of the possible legal fallout and consequences.

The estate was not a materially large one. The matrimonial home went to the spouse. The balance of the estate at date of death was approximately £75,000 although due to a failure in a subsequent investment the value had fallen by about £40,000. Taking expenses of approximately £3,000 at best the estate would have had a value of £72,000. Thereafter having deducted the legal rights claims of the other parties the maximum claim for Mr C was £48,000.

Offers to settle the matter had gone to and fro. No sensible solution could be reached in particular as Mr A would not accept that £30,000 required to be repaid by him.

Mr C instructed solicitors to proceed with a summons to reduce the Will of 8 August. No appearance was made in connection with those matters and so that Will of 8 August was reduced. The prevailing Will therefore is that of 7 August although it was still open to Mr A to challenge that. Proceedings still remain outstanding regarding the repetition of monies, some £25,000, and the return of a car. The Secondary Complainer is represented in relation to that matter.



Efforts had continued by correspondence to have the Will of 7 August recognised, legal rights claims resolved and the funds repaid to the estate. When the handwriting report had been exhibited to Mr A's solicitors they had expressed disappointment although Mr Macreath could not understand how there could be any reason for them to express "disappointment".

The Respondent had never prepared a Will for a third party on the instructions of a client before nor will she ever do it again. Mr Macreath submitted that these were unusual circumstances. The Respondent felt that she was not able to take direct instructions from Mrs B as Mrs B already had other solicitors. If Mrs B had written to the Respondent asking to see her that would have resolved the matter and this is commonly done in the profession. It was a great pity that the Respondent had not spoken to someone else about this matter before acting. Mr C had been anxious to proceed quickly and consequently the Respondent had been under pressure.

Mr Macreath explained to the Tribunal that in the course of seeking references for the Respondent he had discussed the matter with Sheriff F. In those discussions the Sheriff had thought the matter would be raised under Rule B2.1.7 and if so there was an argument that the document had not been issued to the other party but to the Respondent's client Mr C. On considering the matter in detail however Mr Macreath had concluded that the real weight of the issue was not the preparation of the document but the issuing of it to a party set against the Law Society's Vulnerable Client Guidance. Sheriff F had noted that what the Respondent had done in these circumstances was not far removed from what the Professional Conduct Sub Committee had said would have been acceptable ie issue the style of a document to Mr C for him to complete together with his wife. Mr Macreath did not however accept that that would be good advice. The Respondent should have told Mr C that she required instructions from Mrs B to enable her to go and see Mrs B, to satisfy herself on the woman's capacity to provide instructions and to confirm the instructions to prepare the necessary document.

Mr Macreath indicated that he had sympathy for the Secondary Complainer as these discussions were involving reference to his mother. These were very difficult proceedings for Mr A.

Mr Macreath then moved on to address the aggravating factors referred to by the Fiscal.

1. Lack of insight. He asked the Tribunal to accept that this was a quickly moving matter on 6 August. It was clear that Mr C had made arrangements on 7 August with his son and Mr D to ensure protection that he was not unduly influencing his wife.
2. Repetition. The Respondent has been in practice for many years. She is 60 years of age. Her father was a founding partner of the well known firm of Brown & McRae. She joined the firm in 1980. She carried out private client work involving a range of chamber practice. There has been no previous failure on her part.
3. Risk to the public. Any reasonable solicitor appearing before this Tribunal will never want to go through the experience again. Her partners have been hugely supportive. One of her partners helped Mr Macreath to organise the gathering of independent statements and references from other Fraserburgh solicitors.

Reasonable steps could have been taken to resolve this matter. It was open to Mr A to take issue with the Court of Session action to reduce the Will of 8 August. Although it could be said that this court action was necessitated by the Will of 7 August, there is no doubt that Mr C would have taken issue with the earlier Will of July. Mr Macreath referred to the Respondent's Third Inventory of Productions containing the GP's report. The Chairman asked whether it might have been difficult for Mr C to challenge the capacity of Mrs B given the presumption of capacity. Mr Macreath pointed to the GP's report in referring to Mrs B as a vulnerable individual.

The Respondent's failures in this case in Mr Macreath's submissions were:

- 1) Calling her personal integrity into question. The Respondent had previously acted in divorce proceedings and so should have been wary.

- 2) Mrs B was clearly not her client. She accepted these instructions in the knowledge of another firm of solicitors. This matter could have been dealt with on a simple basis on 6 August.
- 3) Solicitors should not let documents out of their control without ensuring proper advice regarding the consequences of signing the documents.

All of this was set against a difficult backdrop involving a lady in her last days. If the Respondent had dealt with this in a different way then there would have been no problems.

It was submitted that what happened subsequently with regard to the Will of 8 August could not be laid at the door of the Respondent.

In response, the Fiscal submitted to the Tribunal that much of what had been said by Mr Macreath related to issues other than the question of misconduct. She submitted that the circumstances here were not particularly exceptional. Whilst the Respondent had written on 31 July to a consultant regarding the testators capacity, she had not received any report at the time of drafting the Will.

The Chairman asked Mr Macreath for some clarification. If the Respondent had not thought it appropriate to deal directly with Mrs B because of the involvement of other solicitors, what had allowed her to think it was in order for her to prepare a Will for execution by a non client?

Mr Macreath stated to the Tribunal that the purpose of the references obtained in this case were to demonstrate that the Respondent would not normally behave in this manner. She had since demonstrated insight and contrition. She along with others in the profession had had a misconception about what the rule says regarding the drafting of the document.

## **DECISION**

The Respondent had admitted preparing a Will to be signed by someone who was not her client. The Respondent was aware of a difficult background where at one point

marital relations had been strained and Mr A had been estranged from the family. She was aware of the involvement of another firm of solicitors. She was aware that there were questions regarding the vulnerability and capacity of Mrs B to give instructions for such a document. She knew the document would be signed by Mrs B but took no steps to advise her either of the legal consequences of such signature or that Mrs B should seek independent legal advice before signing. This was conduct that clearly fell below the standard to be expected of a reasonable solicitor which was serious and reprehensible.

The Tribunal therefore found the Respondent guilty of professional misconduct.

However, the Respondent had demonstrated insight into her conduct by giving full cooperation with the Complaint and intimating through her agent that there would be a plea of guilty at an early stage. The Respondent had been in practice for many years without any other incident. There was no suggestion of any previous or subsequent complaints against the Respondent. Given these factors, together with the references prepared for the Tribunal, the Tribunal did not feel that the protection of the public would require any steps to be taken to supervise the Respondent. Given what had been said to the Tribunal it did not feel that the Respondent was any danger to the public. It was always a concern for the Tribunal when a solicitor with such vast experience comes before it towards the end of his/her career. In all of the circumstances the tribunal held that the appropriate penalty was to Censure the Respondent.

Mr Macreath confirmed that he had no submissions with regard to expenses or publicity and so the usual orders were made.

The Tribunal addressed the Secondary Complainer directly and asked his position with regard to his claim for compensation. It had been stated by Mr Macreath that the Secondary Complainer had a complaint and claim for compensation outstanding before the SLCC. The Tribunal asked if it was the Secondary Complainer's position that he wished to proceed with his claim for compensation before the tribunal or whether he would prefer to leave the matter for the SLCC to deal with. The Tribunal indicated that it would give the Secondary Complainer time to consider his position.

After a short period, the Secondary Complainer returned to the hearing and indicated that he had spoken to his solicitor and that he had been advised to leave the matter for the SLCC. He confirmed that he was withdrawing his claim for compensation.

**Alistair Cockburn**  
**Chairman**