

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

FINDINGS

in Complaint

by

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

Complainers

against

**JADE HELOISE DUPONT, Dupont Legal Solutions
Limited, Gordon Chambers, Third Floor, 90 Mitchell
Street, Glasgow**

Respondent

1. A Complaint dated 28 January 2025 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Jade Heloise Dupont, Dupont Legal Solutions Limited, Gordon Chambers, 90 Mitchell Street, Glasgow; (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Complaint listed the details for two individuals who claimed to have been directly affected by the alleged misconduct and who wished to seek compensation, Ms O and Mr F.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. Following sundry procedure, the Tribunal set down an in-person Hearing to take place on 24 July 2025. Notice thereof was duly served on the Respondent.
5. At the hearing on 24 July 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Johnston Clark, Solicitor, Dundee. Prior to the hearing, the parties had lodged a Record, Lists of Productions and a Joint Minute. The Joint Minute agreed all of the averments of fact within the Complaint. No evidence was led and both parties made submissions.

6. The Tribunal found the following facts established:-

- 6.1 The Respondent is Ms Jade Heloise Dupont of Dupont Legal Solutions Limited, Gordon Chambers, Third Floor, 90 Mitchell Street, Glasgow. Her date of birth is 1 December 1968. She was admitted as a solicitor on the 1 July 2004. She was employed by Tods Murray Edinburgh between 16 May 2005 and 30 December 2005. Then employed by Grant & Wylie Mitchell Street Glasgow between the 27 March 2006 and 31 October 2014. She then commenced practice in her own right practising as a Director of Dupont Legal Solutions Limited where she continues to practise.
- 6.2 On the 6 July 2001, JPO died. His date of birth was 25 September 1929. He left a will dated 4 June 2001, it appointed Ms O (his widow) and Mr F (his long-time solicitor) as his Executors. The will was recorded in the Books of Council and Session on the 20 August 2002. The Executors confirmed to his estate on the 21 January 2004 at Airdrie Sheriff Court. The Confirmation included Confirmation to a property which was adjacent to an area which had been developed for residential housing (the property).
- 6.3 The Executors could not find a registered title to the property. The Executors subsequently found a delivered but unrecorded disposition from many years before the deceased's death. The disposition was presented for registration to preserve the estate's rights. The deceased's title to the subjects was registered in the Land Register on the 20 December 2004, notwithstanding his having died in 2001. His interest was as proprietor of the property. In 2021/2 the Executors entered into negotiations to sell the property for development. The Executors did not take title to the property.
- 6.4 The Respondent met with TM in August 2021. Her file note records that TM was referred to her by an existing client. TM presented a handwritten note which he described as a Promissory Note. The Promissory Note narrated the granter as JO, not including a middle name, and the address of the grantor as 138 Main Street Baillieston. The Respondent was not provided nor did she ask for proof of payment of the sums narrated in the Promissory Note.
- 6.5 At the same meeting, TM produced a death certificate purportedly for JO. It was not JO's death certificate. A copy of the purported death certificate was taken by the Respondent and the original returned to TM at the meeting. The certificate narrated that:
 - a. the deceased died on 10 January 2004,

- b. JO had a different address to that narrated in the Promissory Note
 - c. the deceased was single,
 - d. the death was registered by GO, designed as his brother, residing at the same address as the deceased.
- 6.6 The Respondent returned the copy of the purported death certificate to TM at some point in November or December 2022.
- 6.7 At the meeting in August 2021, TM also produced a copy of the land certificate for the property narrating JO as owner. TM advised the Respondent that his family solicitor had downloaded the title sheet, and his solicitor only did conveyancing. The Respondent should have noted the title was registered in December 2004 – some 11 months after the date of death in the certificate presented by TM. This should have put the Respondent on notice that some person was intromitting with JO's property after the given date of death.
- 6.8 The Respondent asked TM if he knew whether JO had been married or had children. TM advised he did not think JO had been married but did not know of any children. The Respondent advised TM that they should seek to locate GO. She checked Scotlis to see if JO or GO (the person who purportedly registered the death) still owned the address given for JO in the Promissory Note. It was in new ownership. She carried out no other investigations as to whether JO had owned the property or whether he or his Executor sold it. She carried out no investigations on the address noted in the death certificate.
- 6.9 During the meeting with TM the Respondent set out the obligations of an Executor Qua Creditor. She explained that full enquires would require to be made about next of kin, existing Executors and the fiduciary obligations re the full estate and debts.
- 6.10 The Respondent made a call to the Sheriff Clerk at Airdrie on the 31 August 2021. Her file note records she provided the erroneous date of death (from the purported death certificate provided by TM), correct name and last known address for JO. The Respondent noted no Confirmation was found by the Sheriff Clerk.
- 6.11 The Respondent delegated to her secretary the task of calling the Registers of Scotland to enquire whether a will had been registered in the Books of Council and Session. The secretary advised that the answer was a negative.

- 6.12 The Respondent provided TM with a Terms of Business letter dated 2 September 2021. It narrated:

“You have instructed [the firm] to appoint you as Executor Qua Creditor of the late [JPO] to assist you with recovery of a debt due to you by the deceased's estate.”

It should be observed that the terms of the Promissory Note do not narrate the middle name of the debtor.

- 6.13 In the period between September and November 2021 the Respondent wrote to

- a. The witness to the Promissory Note.
- b. The “Executors of JO” and “occupiers” at the address in the death certificate
- c. Various GOs in Glasgow at 8 addresses
- d. “The proprietor” of the address narrated in the Promissory Note

(b-d) were in an attempt to establish the existence of Executors to JO’s estate. The Respondent did not receive any response and did not send any chasing letters or make new enquiries.

- 6.14 The Respondent did not

- a. Obtain her own copy of the death certificate.
- b. Search for a wedding certificate.
- c. Search for a copy disposition for the sale of either of the two addresses for JO, which would have revealed whether the properties remained in his family.
- d. Instruct tracing agents to ascertain whether JO left a widow or children.
- e. She did not place an advertisement in the Law Society of Scotland Journal seeking the whereabouts of a will.

- 6.15 A year later, in August 2022, TM pressed the Respondent for action. During the discussion, the Respondent reminded TM of his obligations as Executor Qua Creditor, specifically that he could only secure from the estate the sums due in terms of the debt and reasonable expenses. The Respondent noted it was unlikely that she could locate JO’s brother as he could have died or relocated. She had taken no steps other than those in para 6.13 above to trace the brother and took no further steps to trace any surviving relative or Executor of JO.

- 6.16 At this meeting the Respondent assessed the value of the subjects at £50,000 referencing a conveyancing transaction from 2006 (16 years earlier).

- 6.17 On the 12 September 2022 the Respondent submitted a Petition/Initial writ for the appointment of TM as Executor Qua Creditor. The Petition was returned as the Respondent had referred to JO as “her”. The Petition was re-drafted and re-submitted.
- 6.18 The Petition/Initial Writ contained the following averments.
- a. JO “*died intestate at Glasgow on 10 January Two thousand and twenty-one.*”
 - b. JO “*was predeceased by his spouse and did not remarry or have a surviving civil partner.*”
 - c. JO “*died without issue or other heirs on intestacy*”.
- 6.19 JO died testate. He was survived by his widow Ms O. JO was survived by 5 children.
- 6.20 The Respondent had sight of a death certificate signed by a “brother”.
- 6.21 The Respondent had no evidence upon which to base her averments that JO had been married and that his wife had predeceased him, nor that the couple had no children. She had knowledge the death certificate narrated a brother- he would have been entitled as heir to be appointed Executor to the estate. She knew the title for the subjects had been registered after JO’s purported date of death. It was reasonable to infer that the registration had been sought by, or on instructions of, either surviving family or JO’s Executors. The pleadings lacked candour and good faith.
- 6.22 The petition was founded upon the debt created by the Promissory Note dated 1 March 2003. That debt had on the face of it prescribed per Section 6 and Schedule 1, para 1(e) of the Prescription and Limitation (Scotland) Act 1973. The Respondent had no evidence that the debt had been constituted/ continued.
- 6.23 The application to appoint TM as Executor Dative Qua Creditor was granted by the Sheriff at Airdrie on the 3 October 2023. The Respondent completed a Bond of Caution application following receipt of the interlocutor. The Bond of Caution narrated the total value of the estate as £50,000. This is believed to refer to the property only. The Respondent did not conduct any investigation of JO’s other assets or his debts nor did she ask TM about the same. The Respondent ticked the box to confirm that JO had been in receipt of state benefit. There was no evidence available to her to allow her to tick this box. The Respondent did not tick the box narrating a brother survived JO. This was contrary to the death certificate in her possession. The Respondent ticked the box that JO was not a widower. This is contrary to her averment

in the application for the appointment of TM as Executor Dative Qua Creditor. The Respondent signed the application.

- 6.24 The Respondent submitted the Inventory of Confirmation to Airdrie Sheriff Court on behalf of TM. It was dated the 14 October 2022. The inventory only narrated the property as the deceased's Estate. The inventory valued the property at £50,000. It narrated a debt of £40,000. It narrated the net value of the estate as £10,000.

- 6.25 The Respondent did not make investigation as to the ownership of either of the addresses given for JO at the purported date of death both of which had a *prima facie* connection with JO. This was the minimum investigation re the potential estate beyond the property which ought to have been carried out to allow inclusion in the inventory, albeit TM would not have confirmed to those properties.

- 6.26 On receipt of Confirmation in respect of the property the Respondent took no steps to verify the value of the subjects. TM had fiduciary duties as Executor. The Respondent should not have carried out instructions which were contrary to these duties. To meet the fiduciary duties a professional valuation should have been obtained. TM was *prima facie* only entitled to seek to recover the debt due under the "Promissory Note". He was obliged to account for the balance. Without a valuation this accounting could not take place. The property was adjacent to a large new housing development. The true value was significantly more than that given.

- 6.27 The Respondent drafted a disposition of the property. The disposition was granted by TM, as Executor Dative Qua Creditor of JO, in favour of Company A. The disposition was signed on the 24 November 2022 in the presence of the Respondent, who witnessed TM's signature. The disposition is confusing. There appears to be no consideration created in respect of the transfer of the property from TM in his capacity of Executor to the donee Company A. The Respondent acted for both TM as Executor and Company A.

- 6.28 Company A's registered office was TM's address. Company A had been incorporated on the 24 November 2022 (the same day as the disposition was signed by TM). It had a single share issued which was to be held by TM.

- 6.29 The disposition was presented to the Keeper of the Registers. It bore to be granted by TM as Executor Dative Qua Creditor in favour of Company A. The disposition was registered on the 25 November 2022.

- 6.30 The disposition in Company A's favour narrated that it had been granted in satisfaction of the (pretended) debt owed by the JO to TM. That debt had not been constituted.
- 6.31 At the time of drafting the disposition, witnessing the execution of the same and registering the disposition, the Respondent had no knowledge of the value of the subjects. She was not in a position to assess whether TM as an individual was entitled to the full property.
- 6.32 The Respondent submitted the Application for registration. It narrated the value as £40,000. A figure 20% less than narrated in the Inventory for Confirmation.
- 6.33 On 19th December 2022 TM resigned as a director of the Company A and appointed SJB a known associate of his. At the same time TM transferred the single issued share in Company A to SJB.
- 6.34 Neither the Respondent nor TM have accounted to any other party, eg KLTR for the difference in value between the value of the land and the purported debt created by the Promissory Note.
- 6.35 The Respondent facilitated a fraudulent scheme. TM had no right to be appointed Executor Dative Qua Creditor nor to dispose the subjects. The Respondent accepted the scheme was a "fraud" in correspondence dated 10 January 2023.
- 6.36 By interlocutor dated 20 April 2023 the Court of Session reduced the following: -
- a. The decree appointing TM as Executor Qua Creditor of 3 October 2022
 - b. The Confirmation granted on or around 27th October 2022 in favour of the TM as Executor Qua Creditor over the estate of JO, which included the property,
 - c. The disposition of the property by TM in favour of Company A, of around 24th November 2022.

7. Having given careful consideration to the above, the Tribunal found the Respondent guilty of professional misconduct:

- (a) *Singly*, in that she, on accepting and acting on instructions for TM to seek his appointment as Executor Qua Creditor to the estate of JO, failed to make sufficient and adequate investigations to confirm TM's legal right to be appointed qua Creditor, there being an

Executor already confirmed to the estate, in contravention of Rule B1.10 of the Practice Rules 2011;

- (b) *In cumulo* with (a) above, in that she, having only noted and returned the “principal” extract death certificate provided to her by TM, failed to make reasonable investigation as to the validity of same, in contravention of Rule B1.10 of the Practice Rules 2011;
- (c) *In cumulo* with (a) above, in that she advised TM that he could be appointed as Executor Qua Creditor to the estate of JO on the grounds of the Promissory Note dated 2003, without any intermediate action, the debt having prescribed, in contravention of Rule B1.10 of the Practice Rules 2011;
- (d) *Singly*, in that she made reckless, misleading averments in the petition to have TM appointed as Executor Dative Qua Creditor in contravention of Rules B1.2, B1.10 and B1.13.1 of the Practice Rules 2011; and
- (e) *Singly*, in that she acted for both transferor and transferee when preparing, witnessing and submitting the disposition of the subjects from TM as Executor to JO’s estate to Company A (a Company wholly owned and controlled by TM),
 - i) without a professional valuation of the land,
 - ii) at prima facie undervalue, the debt being £40,000 and the value of the land noted as £50,000 in the Confirmation and
 - iii) without ensuring that the executry retained sums equivalent to the balance between the purported/true valuation and the purported debt
 in contravention of Rules. B 1.5.1, B1.10 and B2.1.2 of the Practice Rules 2011.

8. The Tribunal heard submissions from both parties relating to sanction, publicity and expenses. The Respondent lodged a testimonial.
9. Having given careful consideration to all of the information before it, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 24 July 2025. The Tribunal having considered the Complaint dated 28 January 2025 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Jade Heloise Dupont, Dupont Legal Solutions Limited, Gordon Chambers, 90 Mitchell Street, Glasgow; Finds the Respondent guilty of professional misconduct (1) *Singly*, in that she, on accepting and acting on instructions for TM to seek his appointment as Executor Qua Creditor to the estate of JO, failed to make sufficient and adequate investigations to confirm TM’s legal right to be appointed qua Creditor, there being an Executor already confirmed to the estate, in contravention of Rule B1.10 of the Practice Rules 2011; (2) *In cumulo* with (1) , in that she,

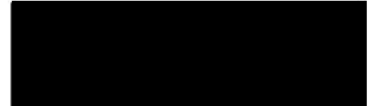
having only noted and returned the “principal” extract death certificate provided to her by TM, failed to make reasonable investigation as to the validity of same, in contravention of Rule B1.10 of the Practice Rules 2011; (3) *In cumulo* with (1), in that she advised TM that he could be appointed as Executor Qua Creditor to the estate of JO on the grounds of the Promissory Note dated 2003, without taking any intermediate action, the debt having prescribed, in contravention of Rule B1.10 of the Practice Rules 2011; (4) *Singly*, in that she made reckless, misleading averments in the petition to have TM appointed as Executor Dative Qua Creditor in contravention of Rules B1.2, B1.10 and B1.13.1 of the Practice Rules 2011; and (5) *Singly*, in that she acted for both the transferor and transferee when preparing, witnessing and submitting the disposition of the subjects from TM as Executor to JO’s estate to Company A (a Company wholly owned and controlled by TM), (a) without a professional valuation of the land, (b) at prima facie undervalue, the debt being £40,000 and the value of the land noted as £50,000 in the Confirmation and (c) without ensuring the executry retained sums equivalent to the balance between the purported/true valuation and the purported debt in contravention of Rules. B 1.5.1, B1.10 and B2.1.2; Censures the Respondent; Fines her in the sum of £1,000 to be Forfeit to His Majesty; Directs in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit her to acting as a qualified assistant to such employer or successive employers as may be approved by the Council the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least two years; Finds the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable as the same may be taxed by the Auditor of the Court of Session on a party and party basis in terms of Schedule 1 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 as amended with a unit rate of £18.00; Directs that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not include the names of anyone other than the Respondent; and Allows Ms O and Mr F 28 days from the date of intimation of these Findings to lodge a written claim for compensation.


(signed)

Catherine Hart
Vice Chair

10. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 29 OCTOBER 2025.

IN THE NAME OF THE TRIBUNAL



Catherine Hart

Vice Chair

NOTE

At the hearing on 24 July 2025, the Tribunal had before it a Record, a List of Productions for the Complainers, two Lists of Productions for the Respondent and a Joint Minute between the parties. At the commencement of the hearing, the Respondent lodged what was referred to as a “timeline”.

The Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Johnston Clark, Solicitor, Dundee.

Mr Clark made a motion to be allowed to take a plea to the relevancy to the second averment of misconduct late. He submitted that, taking this averment at its highest, it did not amount to professional misconduct.

The Fiscal opposed this motion. He submitted that it came too late in proceedings, was not in writing and he had not been given an opportunity to properly address it. Furthermore, he stated that the plea lacked merit.

Mr Clark explained that he had only been able to look at the Complaint in detail the previous day and that the matter was not new, it having been raised before the Professional Conduct Sub Committee.

The Chair asked Mr Clark if this was something that could be addressed in the round when considering whether the conduct amounted to professional misconduct. Mr Clark agreed that the matter could be dealt with at that stage and withdrew his motion.

The Joint Minute agreed: all of the averments of fact; and that the Productions were true copies, with exception to the Confirmation, which was said to be a copy of the Confirmation on the Respondent’s file which had the date altered by manuscript. No evidence required to be led and the parties proceeded to make submissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal drew the Tribunal’s attention to the admissions made by the Respondent in the Joint Minute. In relation to the fourth averment of misconduct, the Respondent admitted a breach of Rules B1.2, restricted to integrity, B1.10 and B1.13.1, although she disputed that it amounted to misconduct. In relation to the fifth averment of professional misconduct, the Respondent admitted professional misconduct “in that she ought not to have acted as she did for both the transferor and transferee in relation to the transfer of the property.” The Fiscal invited the Tribunal to have regard to all of the Productions when considering matters.

The Fiscal stated that this case involved a plan hatched by TM well before he knew the Respondent. TM instructed the Respondent in August 2021, presented a “fake” document of debt, and a “fake” death certificate and asked the Respondent for advice. The Respondent proceeded to carry out instructions culminating in the transference of the title to a property of significant value to a company owned by TM. The Fiscal submitted that the Respondent facilitated this fraud committed by TM. The truth was that JO died 20 years before TM met the Respondent. He submitted that no competent and reputable solicitor would have accepted and carried out these instructions. He submitted that this conduct amounted to a serious and reprehensible departure from the standard of conduct expected and clearly met the test set out in Sharp v Council of the Law Society of Scotland 1984 SLT 313.

The Fiscal stated that the Respondent’s position was that she was “duped”. He submitted that there were numerous warning signs, errors of law and a lack of accuracy on the part of the Respondent which all illustrated a clear lack of integrity on her part. He referred the Tribunal to SRA v Wingate (CA) [2018] 1WLR 3969 which he stated set out the duty of integrity required of solicitors.

The Fiscal invited the Tribunal to consider what he described as red flags, errors of law and the failures of the Respondent.

He submitted that the Respondent had acted upon a false death certificate and had not retained a copy of it on her file. He argued that a competent and reputable solicitor would have kept a copy of the death certificate, even in a run of the mill executry. He conceded that there was no specific averment in the Complaint to that effect but he invited the Tribunal to consider, as the foundation of the averments of misconduct, what a competent and reputable solicitor would have done in the circumstances.

The failure to keep a copy of the death certificate resulted in the Tribunal now being unable to consider the character of the document produced to her.

The Fiscal stated that TM attended the Respondent’s office with a copy of the title sheet for the property, which TM stated he had obtained from his family solicitor. He stated that the Respondent made no enquiry of that solicitor. He conceded there was no averment in the Complaint that the Respondent ought to have contacted the family solicitor, but he submitted that he was entitled to refer to all of the conduct contained in the Productions.

The Fiscal drew the Tribunal’s attention to the date of the Promissory Note. This was apparently granted by JO more than 17 years prior to TM’s meeting with the Respondent. The interest due on the debt was £168,800. The document was on a page taken from a Filofax. On the face of it, the debt had prescribed. No proof of

payment of the money by TM to JO was produced. There was no suggestion by TM that the debt had been acknowledged by the Executors or the family of JO.

He noted that the address in the death certificate was different to the address given in the Promissory Note. He stated that the only evidence that the deceased was the same person as the granter of the Promissory Note came from TM.

He referred the Tribunal to the Respondent's file note which stated that TM did not know if JO had been married or had children. There was no discussion on whether the deceased had a partner.

He argued that the basis for the Promissory Note was itself suspicious. TM stated that the deceased had no property, but he needed cash amounting to £40,000. TM could not name any business associates of the deceased. TM said he had lost touch with the witness to the Promissory Note. There was no explanation for the delay in seeking repayment of the sum. There was no receipt produced to show that the original sum was paid to JO. TM suggested that this was the only property owned by the deceased, despite the two addresses given for the deceased in the Promissory Note and death certificate. TM's keenness to be given back all of the documents he had produced at the initial meeting was suspicious.

The Fiscal emphasised that the Respondent had noted in her file note an obligation to make enquiries (a) to trace next of kin, (b) whether or not there had been Executors appointed and (c) to identify the extent of JO's estate. Whilst he accepted that the Respondent stated she had made contact with the Sheriff Clerk at Airdrie, he emphasised that she had not done so in writing. He submitted that the red flags highlighted that there should have been a paper trail. Neither was the contact with the Registers of Scotland in writing. The Fiscal argued that it was suspicious that neither the Sheriff Clerk nor the Registrar traced the true Confirmation and will of JO and he suggested that this might call into question the accuracy of information given to the Sheriff Clerk and the Registrar in order to conduct the search.

He submitted that the Respondent's efforts to trace next of kin for JO were entirely inadequate. All she had done was to write 11 letters. He understood that no reply was received to any of them, but no further letters were sent. He stated that the Respondent took no further steps to trace the next of kin, or to check whether there had been an Executor or whether there had been any other estate.

The Fiscal advised that the terms of business letter sent by the Respondent to TM only referred to getting him appointed as Executor Qua Creditor. In fact, the Respondent went much further than that, she lodged an application for Confirmation and then distributed the estate. He emphasised that the Respondent had proceeded with an application for Confirmation that stated there was no other estate.

The only step the Respondent took to trace the brother of JO, named in the death certificate, was to write to the address given there. He submitted that the least the Respondent should have done was to instruct tracing agents.

The Fiscal drew the Tribunal's attention to the note of the second meeting between the Respondent and TM in August 2022. The Fiscal said there was no note there of any enquiries carried out to trace the brother of JO, nor any discussion about any other debts or assets of the deceased. He drew the Tribunal's attention to the valuation placed on the property by the Respondent, which was based on a transaction 16 years earlier. He invited the Tribunal to place little credence on this valuation. He submitted that the property was an area of ground next to a development that had already commenced by 2021 and had many homes upon it. He suggested that the valuation of £50,000 was conveniently close to the amount of the debt of £40,000. He stated that a competent and reputable solicitor would have instructed a professional valuation of the property.

The Fiscal referred the Tribunal to Section 6 and Schedule 1 of the Prescription and Limitation (Scotland) Act 1972 and submitted that the debt in the Promissory Note had been extinguished by prescription. The Respondent should have advised TM that it was necessary to constitute the debt before applying for his appointment as Executor Qua Creditor. The Fiscal referred to paragraph 6.91 of *Currie on Confirmation of Executors, the 9th edition*, which clarifies that the debt requires to be "liquid" to be used as a foundation for an application of an Executor Qua Creditor. He submitted that the Respondent should have raised an action for payment of the sum due under the Promissory Note. Prescription does not have to be raised as a preliminary plea in any defence and the court can raise this *ex proprio motu*. If an action for payment had been raised, then there would have been the proper oversight by a court on the question of prescription. The Fiscal emphasised that there was no evidence that the debt has been acknowledged. He submitted that there was a clear conflict between TM as creditor and TM as Executor. The Fiscal drew the Tribunal's attention to the Respondent's admission that the debt had not been constituted.

He submitted that, despite these red flags, the Respondent proceeded to lodge a petition for TM to be appointed as Executor. He drew the Tribunal's attention to the petition and stated that it contained significant errors and statements of fact that were not within the Respondent's knowledge at the time it was drafted. He stated that the Respondent did not know that JO died intestate. He noted that the petition contained a statement of where JO was domiciled, where no investigation had taken place to determine which of the two addresses for him was his domicile. He noted that the interest rate in the petition was wrong. He noted that the date of death was wrong. He advised that the petition stated that JO was predeceased by his spouse, had not remarried and did not have a surviving partner. The Respondent had no information as to whether he was married or had a surviving partner. He noted that the petition stated that the deceased had no children, when the information

TM had given her was that he did not know whether JO had children or not. He noted that the petition stated that JO died without heirs, even though the Respondent was aware from the death certificate that the deceased was survived by a brother. The Fiscal referred to paragraph 9.12 of *Macphail Sheriff Court Practice*. In his submission, the majority of the averments in the petition were a fiction.

The Fiscal invited the Tribunal to consider the next step taken by the Respondent, namely the application for caution. He submitted that this application similarly contained incorrect information. He stated that Respondent then went on to take the next step, which was to apply for Confirmation. He submitted that it is an Executor's obligation to narrate the full estate of the deceased when applying for Confirmation. He stated that the Respondent had no information about the extent of the deceased's estate. He emphasised that the Respondent had taken no steps to ascertain if there was any other estate; she had been aware of two addresses linked to the deceased and carried out no checks in relation to them. He submitted that, in circumstances as unusual as these, a solicitor would be expected to be inquisitive.

The Fiscal directed the Tribunal's attention to the Confirmation. He highlighted that the debt noted there was £40,000, when in truth, with interest, the debt was £208,000. He noted that there was no record in the file note to the Respondent having instructions to restrict the amount of debt to the original sum in the Promissory Note. He suggested to the Tribunal that, if the full sum had been included in the Confirmation, with a property value of £50,000, the executry would have been bankrupt and the Executor would have been under a duty to apply to appoint a trustee in bankruptcy. If that had happened, TM would have lost control of the executry. In response to a question from the Tribunal, the Fiscal conceded that there were no averments in the Complaint relating to this suggestion but he submitted that this was "a background observation".

The Fiscal highlighted that the date of death in the Confirmation was changed by handwriting to match the date of death in the death certificate. The Respondent then used the Confirmation as a link in title to transfer the title for the property to company A, which has no fiduciary duties to the executry, and without obtaining a consideration for the property, the asset of the executry. The Respondent acted for TM as debtor and as Executor and for company A. In his submission this transaction was improper. He submitted that TM had duties as Executor that conflicted with his interests as creditor. He submitted that the Respondent had facilitated TM in putting his own interests ahead of his duties as Executor. He stated that Respondent should have declined to accept these instructions.

The Fiscal advised the Tribunal that, in due course, the deceased's family became aware of what happened and proceedings were taken in the Court of Session to reduce all of this.

The Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct either “individually” or *in cumulo*.

In relation to the first averment of misconduct, he listed what he said were “red flags”: the unusual nature of the instructions; the age of the debt; that the debt was cash; that no receipt for payment was produced; that the Promissory Note was written on a page of a Filofax; that the client brought in a death certificate and a certificate of title which he said he had obtained from his family solicitor who had declined to act; and the client asked for the documents to be returned to him at the first meeting. He submitted that the Respondent failed to properly consider that the debt had prescribed. He suggested that a competent and reputable solicitor would have recognised that the debt required to be constituted. He submitted that there was a clear conflict between TM as debtor and TM as Executor. He argued that a competent solicitor would have kept a copy of the death certificate and would have questioned why TM did not want the documents kept in safe keeping. He stated that a competent solicitor would have made proper enquiries to see if there had been a will, phone calls were not sufficient. He stated that a competent solicitor would have taken better steps to investigate the whereabouts of the surviving brother; whether the deceased had been married and left any issue; if the deceased had owned either of the addresses given for him in the death certificate and the Promissory Note. The Fiscal drew the Tribunal’s attention to the Respondent’s file note where she recorded that the title to the property was recorded 11 months after the date of death of JO and yet the Respondent took no steps to investigate with the Registrar who had submitted the deed for recording. If she had done, then that would have led to the true Executors. He stated that the Respondent took no steps to investigate if the deceased had any other assets or debts. He submitted that a competent solicitor would have instructed tracing agents. The Fiscal invited the Tribunal to hold that all of these failures taken together demonstrated a lack of competence and a breach of Rule B1.10.

The Fiscal invited the Tribunal to consider the same red flags when considering the second averment of misconduct. He submitted that a competent solicitor would have obtained a further extract death certificate so that they could be satisfied the deceased was in fact dead. He submitted that a competent solicitor would have kept a copy of the certificate produced by TM as a record of his instructions.

In relation to the third averment of misconduct, the Fiscal submitted that a competent solicitor would have paused to consider how to proceed, where, as here, the debt in the Promissory Note had prescribed. He stated that the Respondent had used the debt as foundation to have TM appointed as Executor Qua Creditor. Then the Respondent had used the appointment as Executor to set up the debt. A competent solicitor would have taken steps to properly constitute the debt before applying to have TM appointed as Executor.

With regard to the fourth averment of misconduct, the Fiscal reminded the Tribunal that the Respondent admitted breaching Rules B1.2, B1.10 and B1.13.1. He submitted that a proper consideration of the information on her file would not have allowed her to make the averments she did in the petition to have TM appointed as Executor. He submitted that all of her pleadings were a fiction. Whilst the Complainers accepted that there was no dishonesty on the part of the Respondent, he submitted that the nature of the pleadings was such as to demonstrate a lack of integrity on her part. He stated that the inaccuracies in the pleadings were not just a mistake and the same incorrect information was also relied on in the Respondent's application for caution. He submitted that the Respondent misled the court and that "she had the knowledge before her to see that she had misled the court".

The Fiscal reminded the Tribunal that the Respondent accepted professional misconduct, to a limited extent, in relation to the fifth averment of misconduct. He submitted that the Respondent's misconduct went further than acting in a conflict of interest but was also a breach of Rule B1.5. He stated that the failure to obtain a proper valuation of the property, and using a Confirmation that contained the wrong date of death which as a consequence did not give the Executor power to transfer the property, resulted in the instructions to transfer the property to company A being "improper" in terms of Rule B1.5.

He emphasised to the Tribunal that the conduct complained of took place over a period of 14 months and he stated that this conduct fell below the standard of conduct to be expected of a competent and reputable solicitor and was serious and reprehensible.

In response to a question from the Tribunal, the Fiscal confirmed that it was his position that the Confirmation as obtained could not be used as a link in title because it contained the wrong date of death. He explained that the Respondent should have obtained an Eik, correcting the date of death and her failure to do so fell within the averment of misconduct.

In response to further questions from the Tribunal, the Fiscal confirmed that it was his submission that a competent solicitor would have kept a copy of the "fake" death certificate on file until at least the end of instructions. He suggested that by returning the only copy of the certificate to TM, the Tribunal was deprived of the opportunity of assessing whether or not it had been reasonable for the Respondent to rely upon it. He stated that all he could say was that the death certificate was fake and it was his position that it was for the Respondent to establish that she had no knowledge of that.

In answer to a question from the Tribunal, the Fiscal confirmed that his submission regarding the cost to the real Executors of putting all of this right was intended as background information.

SUBMISSIONS FOR THE RESPONDENT

Mr Clark began by addressing issues raised by the Tribunal at the end of the Fiscal's submissions.

He referred to the Fiscal's submission that the Complainers did not aver that the Respondent knew that the death certificate was "fake" and that it was for the Respondent to prove that she did not know that it was fake. Mr Clark emphasised that the onus of proof was on the Fiscal and that under Section 53(1)(a) of the 1980 Act the Tribunal required to be satisfied that the Respondent was guilty of professional misconduct.

With regards to the issues of the expense incurred by the real Executors in putting matters right, Mr Clark noted that the Fiscal had gone even further and had referred to correspondence with the Executors. Mr Clark questioned the evidential value of this.

Mr Clark drew the Tribunal's attention to paragraph 9 of the Joint Minute and highlighted that the Respondent's file notes were agreed by the Complainers only to be "true copies" of file notes found on the Respondent's files and it was not agreed that "they are what they bear to be". He emphasised that the Respondent was not obliged to give evidence and that the Tribunal should not draw any inference from her decision not to give evidence. He submitted that it appeared to him that the Fiscal's position went further than simply not agreeing the file notes but in fact was an invitation to the Tribunal to hold that they were untrue. He submitted that this resulted in an issue for the Fiscal in relation to his own factual averments in the Complaint because they were based on what happened at these meetings. He submitted that it is the Law Society's usual position that if something is not in a file note then it did not happen. Therefore, in his submission, detailed file notes, which were literally textbook behaviour, should not be deemed to be incredible.

He submitted to the Tribunal that the question here was not whether the Respondent had made errors in relation to both law and practice, but whether these errors, in the whole facts and circumstances, in particular with regard to the degree of culpability, met the test for professional misconduct. He invited the Tribunal to find the Respondent not guilty, either separately or *in cumulo*, of averments of professional misconduct 1, 2 and 3. With regard to the fourth averment of misconduct, he stated that the Respondent's actings did not meet the standard expected of a competent and reputable solicitor but did not meet the threshold for professional misconduct. With regard to the fifth averment of misconduct, he submitted that the Respondent had made a mess of the disposition. He explained, that if the Tribunal accepted that this file note of the meeting of 4 October 2022 was true, then the disposition should have been into a bare trust and that would not have been a conflict of interest. However, a "change of mind" resulted in the matter not being "exempt". He submitted that this was a careless error.

Mr Clark emphasised to the Tribunal that there was no averment of dishonesty in the Complaint. Rule B1.2 only arose in relation to the fourth averment of professional misconduct, and that was restricted to “integrity”.

Mr Clark asked the Tribunal to resist starting at the conclusion of “this sorry tale” and working back. He stated that the Sub Committee’s approach was to look at events as if they were, in effect, the same issue. However, the Complaint prosecuted each step separately.

He stated that, once the Respondent had accepted that the death certificate was genuine, “the fox was in the chicken coop”. He argued that there were a number of “but for” moments that he submitted “interfered with the causal chain”. He drew the Tribunal’s attention to the Sub Committee’s conclusion that the Respondent had been a victim of fraud and submitted that, if the Tribunal agreed with that conclusion, that had a bearing on culpability. He invited the Tribunal to look at the question of causation “*in cumulo*” and to ask if the causal chain was broken as a result of the conduct of others.

The first “but for” moment, he stated, was the registration of the disposition of the property to JO several months after he had died. He explained that the Respondent did not “twig” that the registration of title post dated the date of death. The disposition should not have been registered but should have been used as a link in title. If the property had been transferred to the Executors of JO, the Respondent would not have made this mistake. He referred to the Tribunal the case of Bruce De Wert, SSDT 2019 and submitted that carelessness, negligence or error do not on their own amount to professional misconduct.

Mr Clark drew the Tribunal’s attention to the Promissory Note, and emphasised that it was holograph and attested which meant, under Section 3 of the Requirements of Writing (Scotland) Act 1995, it was self proving. He submitted that paragraph 6.93 of *Currie* suggested that a self proving document was sufficient to prove a debt. He said that the issue of prescription was a difficult area and he emphasised that the question was not whether the Respondent made an error but whether her error made her culpable.

Mr Clark submitted that the Respondent accepted the death certificate as genuine and what she was trying to do thereafter was to establish if Executors had been appointed or if there had been a will. He stated that the Respondent had “set off on a road” that any ordinary solicitor would have done.

He submitted that the second “but for” moment was a telephone call to the Sheriff Clerk to ask if an application for Confirmation had been received. He submitted that it was normal practice in such circumstances to phone “a friendly Sheriff Clerk”.

He submitted that checking title sheets for the two addresses given for the deceased would only have shown that these addresses were “outwith” the family of JO. He said this would not have proved either the existence of a will or the appointment of Executors.

Mr Clark emphasised that tracing whether the deceased had children was a difficult matter. He explained that birth certificates in Scotland often do not name the father of the child and so even if the Respondent had instructed a search of the Registers, the results would not have been determinative of whether the deceased had children.

He submitted that it was not the professional obligation of a solicitor to keep on investigating the “story” of a client in order to establish whether it was true or not. He invited the Tribunal to consider the sufficiency of the Respondent’s investigations based on her taking the death certificate and Promissory Note as *ex facie* valid documents. He asked the Tribunal not to measure her conduct by the outcome.

Mr Clark reminded the Tribunal that a will does not require to be registered in the Books of Council and Session and, if Confirmation is granted, this would normally be recorded in the relevant Sheriff Court’s records.

He submitted that the first and second averments of misconduct did not meet even the test for unsatisfactory professional conduct.

With regard to the Promissory Note, he submitted that the Respondent had provided the Sheriff Clerk with the original Promissory Note, and this was another “but for” moment. This was on the basis that the sheriff considering the petition for appointment as executor would have had an opportunity to consider the Promissory Note, which was the basis on which TM claimed that he was entitled to be appointed Qua Creditor. Yet no issue had been raised at that stage about the debt having prescribed.

Mr Clark submitted that the errors of fact made by the Respondent in the petition to appoint an Executor, would not have made any difference to the result. He said that the Fiscal talked about the Respondent’s pleadings being reckless and misleading, which Mr Clark suggested meant that the Respondent was trying to get the Sheriff to come to a wrong conclusion. He submitted that the Tribunal could not infer, from the nature of the errors made in the petition, that the Respondent was deliberately misleading the court. The only explanation Mr Clark said he could suggest for the errors in the petition was that the Respondent had used a template or style application that had been previously used for another client, without changing the details.

With regard to the handwritten change to the date of death in the certificate of Confirmation, he submitted that there were no averments in the Complaint covering when the Respondent noted that the date of death in the Confirmation was wrong. Mr Clark submitted that the date of death would not normally be included in a disposition. He drew the Tribunal's attention to the Respondent's Answers in relation to her position regarding valuation of the property.

Mr Clark reminded the Tribunal that the Respondent's plea of guilty to professional misconduct in relation to the fifth averment of professional misconduct was on the basis only of acting in a conflict of interest, as a result of her preparing the disposition to transfer the property to Company A, rather than a bare trust. He suggested that the real intromission with the property was when TM transferred his single share in Company A to a third party. He emphasised that there was no averment in the Complaint that the Respondent knew anything about that. Mr Clark invited the Tribunal to consider whether this met the threshold for professional misconduct. He submitted that the instructions to transfer title were not improper, they were perfectly proper, but the Respondent had not carried out the instructions properly. He emphasised that there was no breach of Rule B1.5.

In answer to a question from the Tribunal regarding the date of registration of the disposition of the property to JO, Mr Clark accepted that the Respondent had noted that it was registered after the date of death, but he explained that she had not given that fact the appropriate weight.

The Tribunal asked Mr Clark if the unusual circumstances of the instructions should have given the Respondent pause for thought in relation to TM's production of the death certificate. Mr Clark responded that it was not unusual for solicitors to refer their clients to other solicitors in specialist practices and the Respondent's firm was a specialist practice.

Mr Clark was asked if the Respondent accepted that the debt had prescribed and he responded that she did. He stated that in normal circumstances the Promissory Note would have been put to the Executors of the estate to have it established, but here there were, on the face of it, no Executors. He submitted that the Respondent had not thought the matter through properly and she had thought that the Sheriff looking at it, in the course of the application to have TM appointed Executor, was sufficient.

The Tribunal asked Mr Clark to clarify his position regarding the Respondent's pleadings in the petition to have TM appointed as Executor. He submitted that the solicitor's duty to the court was to not knowingly provide false information. He stated that a breach required the solicitor to know that the information was not correct. He said the question was not whether the Respondent did the wrong thing but whether her conduct met the threshold. He submitted that the Respondent did not deny that she had breached the Rules and that

there was “no argument” about that. He stated that it was accepted that some of the information in the petition and in the application for the bond of caution was factually incorrect, even on the basis of the death certificate produced by TM.

In answer to a question from the Tribunal, Mr Clark stated that the Respondent’s error regarding the Promissory Note was in considering that a self proving document established the debt. The Tribunal asked if the context in which the Promissory Note was produced would put a competent and reputable solicitor on alert. He responded that the approach to be taken is subjective and he accepted that it was easy to see the various problems with the benefit of hindsight. He invited the Tribunal to consider each step as it occurred and ask whether each step was one that a competent and reputable solicitor would have taken.

COMPLAINERS’ RESPONSE

The Fiscal submitted that there was no *ex facie* legal document in this case. He reminded the Tribunal that the Joint Minute did not agree that the contents of the file notes were true. He emphasised that the Respondent accepted that the Promissory Note was a “fake”.

He submitted that the errors committed by others should not be accepted as an excuse for the Respondent’s conduct.

DECISION

The Respondent admitted all of the averments of fact in the Complaint and, accordingly, the Tribunal found these established.

The next step for the Tribunal was to consider each of the five averments of professional misconduct, and assess whether they were supported by the facts. Thereafter, the Tribunal required to consider if these averments amounted either *singly* or *in cumulo* to professional misconduct.

The test for professional misconduct is set out in the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313 where it is said:

“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and

answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made."

The first averment of misconduct in the Complaint was:

"The Respondent on accepting and acting on instructions from TM to seek his appointment as Executor Qua Creditor to the estate of JOD (sic), failed to make sufficient and adequate investigations to confirm TM's legal right to be appointed qua creditor, there being an Executor already confirmed to the said estate, which failure was a serious and reprehensible breach of Rule B1.10."

Mr Clark had invited the Tribunal not to look at the conduct here in hindsight but to look at it as it occurred. The Tribunal considered there were a number of "red flags" from the first meeting with TM.

This was an extremely unusual set of instructions. The Promissory Note was granted in March 2003. The explanation given by TM for lending JO the money was unusual. This was a large sum of money, lent to someone who he seemed not to know much about, for an unknown purpose. The Promissory Note, for a large sum of money, was written on a page taken from a Filofax. The granter had died more than 17 years before the Respondent's first meeting with TM, with no steps apparently having been taken to recover the sum due. TM was able to give little information about JO, beyond the contents of the death certificate and Promissory Note. He was unable to provide contact information for the witness to the Promissory Note. TM was not previously known to the Respondent. At the first meeting, he produced a title sheet which he said his "family" solicitor had obtained for him, although there was no explanation for how he discovered JO owned the property. The Tribunal considered that all of this should have caused the Respondent to pay closer attention to her instructions.

The Respondent's detailed file note identified the issues which required to be investigated and yet she carried out only the most basic of investigations. There were two addresses in the papers linked to JO. The Respondent only carried out a cursory check of one. The disposition of the property to JO was only recorded several months after the date of his death but the Respondent carried out no enquiries in relation to that. Enquiries made with the Sheriff Clerk regarding the Confirmation and with the Registers of Scotland regarding the will, were very informal in nature, despite the significant size of the debt involved.

The Tribunal did not accept that mistakes made by others along the way relieved the Respondent of her duties and obligations as a solicitor.

The Tribunal concluded that the Respondent's investigations were wholly inadequate and that her conduct amounted to a breach of Rule B1.10 of the Practice Rules 2011. She failed to take simple steps to investigate matters properly for more than a year before submitting an initial writ to have TM appointed as Executor. The Tribunal concluded that this conduct fell well below that to be expected of a competent and reputable solicitor and that it was serious and reprehensible. The Tribunal found the Respondent guilty of professional misconduct.

The second averment of professional misconduct was:

"The Respondent, who only noted and returned the "principal" extract death certificate provided to her by TM failed to make reasonable investigation as to the validity of the same, the said failure is serious and reprehensible breach Rule B1.10."

Mr Clark suggested that a solicitor is entitled to accept an apparent extract death certificate produced by a client at face value. The Tribunal considered that this depended upon the facts and circumstances of every case. The circumstances here were highly unusual. This was not a run of the mill executry, where a relative of the deceased might produce a death certificate. The Tribunal was satisfied that the Respondent had not made reasonable investigations as to the validity of the death certificate and that this was a contravention of Rule B1.10. However, the Tribunal considered that this averment was closely linked to the first averment of misconduct and that it was appropriate to find the Respondent guilty of professional misconduct *in cumulo* with that.

The third averment of professional misconduct was:

"The Respondent advised TM that he could be appointed as Executor Qua Creditor to the estate of JOD (sic) on the grounds of promissory note dated 2003 without any intermediate action, the debt having prescribed, this was a serious and reprehensible breach of B1.10."

The Respondent noted at her first meeting with TM that the debt had prescribed. She took no steps to constitute the debt before applying to have TM appointed as Executor. Mr Clark pointed to the mistake made by the Sheriff Clerk, in accepting the initial writ based on the Promissory Note, as somehow excusing the Respondent's conduct. The Tribunal did not accept that this excused the Respondent's conduct in any way, particularly given the misleading content of the pleadings in the initial writ. The Tribunal considered that a competent and reputable solicitor would have identified the significance of the prescription of the debt and would have advised TM of the need to take steps to constitute the debt before applying for his appointment as Executor. The Tribunal determined that this was a contravention of Rule B1.10 but considered that it was

closely connected to the first averment of professional misconduct and therefore it was appropriate to find the Respondent guilty of professional misconduct *in cumulo* with that.

The fourth averment of professional misconduct was:

“The Respondent in making reckless misleading averments in the petition to have TM appointed as Executor dative qua Executor was in breach of one or more of Rules B1.2 (restricted to lack of integrity), B1.10 and B1.13.1.”

The Respondent admitted in the Joint Minute that she had breached Rules B1.2 (restricted to lack of integrity), B1.10 and B1.13.1. The initial writ gave a date of death not even consistent with the “fake” death certificate. It stated that the deceased was predeceased by his spouse, and did not remarry or have a surviving partner. The “fake” death certificate described the deceased as single, according to the Respondent’s file note, and TM did not know if he had a partner. The initial writ stated that the deceased died without issue or other heirs on intestacy. At their initial meeting, TM could not say whether the deceased had any children and the Respondent had carried out little or no investigation into that. The “fake” death certificate was apparently signed by a brother of the deceased, who would have been an heir. The Respondent carried out little investigation into whether or not the deceased had left a will. The initial writ contained pleadings that were either contrary to the information held by the Respondent or were averments for which the Respondent had no evidence.

Macphail’s Sheriff Court Practice states at paragraph 9.12 that in drafting pleadings

“It is of cardinal importance that he should draft the pleadings in good faith. He should state matters as fact only if he has before him evidence to support the averment, and he should never make averments for which he has no evidence in the hope that something may turn up in the course of the case to justify them.”

A solicitor is an officer of court, and as such owes a duty to the court, which includes the accuracy of his pleadings. It is said in *Macphail* in paragraph 9.12 that

“The pleader’s signature of the pleadings will be understood by the court as a voucher that the case which he has pleaded is not a mere fiction.”

The Tribunal was satisfied that the Respondent was in breach of all three Rules averred by the Complainers, in particular that the Respondent had brought her integrity into question. The Respondent’s conduct brought the profession into disrepute and disrespected the court. The Tribunal determined that this averment of misconduct, *singly*, amounted to professional misconduct.

The fifth averment of professional misconduct was:

“The Respondent in acting for both the transferor and transferee when preparing, witnessing and submitting the disposition of the subjects from TM as Executor to JOD’s(sic) estate to MVDL (Company wholly owned and controlled by TM),

- a. Without a professional valuation of the land,
and/or as an alternative*
- b. At prima facie undervalue, the debt being £40,000 and the value of the land noted as £50,000 in the Confirmation
And/or*
- c. without the (sic) ensuring executry retained sums equivalent to the balance between the purported/true valuation and the purported debt*

is a serious and reprehensible breach of all or some of Rules. B 1.5.1, B1.10 and B2.1.2.”

The Respondent admitted this averment of professional misconduct, restricted to acting in a conflict of interest. The Tribunal was satisfied that the Respondent had acted in a conflict of interest in acting for TM as Executor, TM as creditor, and Company A as transferee and was in breach of Rule B2.1.2.

The Tribunal was also satisfied that the Respondent’s conduct was a breach of both Rules B1.5.1 and B1.10. In particular, the Tribunal noted that the Respondent had recorded in her file note of her attendance with TM on 4 October 2022 that she required to obtain a “proper valuation of the land” before taking any steps to sell it, and yet she had prepared a disposition of the property to Company A and TM “in full satisfaction” of the debt due to TM, when no professional valuation of the property had taken place. Accordingly, the Tribunal considered the instructions to be improper. Her conduct in this regard fell below that to be expected of a competent and reputable solicitor to such a degree that it was serious and reprehensible and accordingly the Tribunal found her guilty of professional misconduct in respect of this averment of misconduct.

SANCTION, EXPENSES AND PUBLICITY

Both parties were invited to make further submissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal confirmed that the Respondent had no previous findings of misconduct or unsatisfactory professional conduct.

He moved for expenses and invited the Tribunal to anonymise the deceased, his surviving family and the property involved.

SUBMISSIONS FOR THE RESPONDENT

Mr Clark lodged a testimonial for the Respondent.

He advised the Tribunal that the Respondent had been in practice for more than 20 years, without any previous conduct issues, and that she was “mortified” by these events. He explained that she recognised what she had done wrong and had cooperated fully with the proceedings before the Tribunal, as demonstrated by the Joint Minute. He stated that she was contrite and wanted to do the right thing. The plea of not guilty was tendered so that the Tribunal could be allowed to assess the culpability of the Respondent. He indicated that the Respondent intended to pay the deceased’s widow compensation. He understood that the Respondent may not stay in the profession following these events. He confirmed that she was in a position to pay a fine. He believed that she intended to bring others in to look after her clients’ interests and confirmed that the Respondent had a co-director in the firm who was two years post-qualified. Mr Clark confirmed that the Respondent was not involved in the court proceedings taken by the true Executors to put matters right.

He accepted that expenses follow success and agreed with the Fiscal’s submissions on publicity.

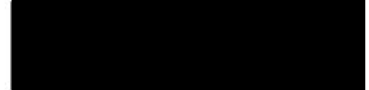
DECISION

The Tribunal gave careful consideration to all of the information before it, including the testimonial for the Respondent, which was in favourable terms.

The Tribunal considered the conduct in this case to be at the more serious end of the scale of misconduct. There had been a number of failings on her part, over a period of some 14 months. A breach of Rule B1.2, even if restricted to integrity, is an extremely serious matter. The Tribunal considered that her conduct was likely to damage the reputation of the profession. She had put the public at risk. The Respondent’s failure to take the appropriate steps at various stages had allowed TM to perpetrate a fraud. However, the Tribunal also had regard to the Respondent’s insight, and remorse, demonstrated by her cooperation with the proceedings and the Joint Minute. The Respondent had been in practice for more than 20 years without any other incident. Given that there was no averment of dishonesty, the Tribunal considered that it was not necessary to consider strike off or suspension. However, the Tribunal was concerned that the public should be protected and that the seriousness of the misconduct should be appropriately marked. The Tribunal determined to censure the

Respondent, impose a fine of £1,000, and Restrict her practising certificate for an aggregate period of two years so that she would be appropriately under supervision.

The Tribunal considered it appropriate to award the Complainers' expenses on the normal scale. Given the personal nature of the information contained in these Findings, the Tribunal considered it appropriate to anonymise the deceased, his family and the property involved. Ms O and Mr F will have 28 days from the intimation of these Findings to lodge written claims for compensation.



Catherine Hart
Vice Chair