

**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

**DONALD STEWART MURRAY,
Solicitor, 31 David Street,
Kirkcaldy**

Respondent

1. A Complaint dated 13 June 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Donald Stewart Murray, Solicitor, 31 David Street, Kirkcaldy (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Complaint detailed a Secondary Complainer, Mr Steven Anderson, then of 10 Bonaly Avenue, Edinburgh, who was said to be claiming compensation on behalf of the beneficiaries of the estate of the late Mrs A.
3. In accordance with the Rules of the Tribunal the Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged on behalf of the Respondent.

4. In terms of its Rules the Tribunal fixed a substantive hearing to be heard on 29 September 2014 and notice thereof was duly served upon the Respondent.
5. At the hearing on 29 September 2014, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was neither present nor represented. The Fiscal confirmed to the Tribunal that two essential witnesses had failed to appear and made a motion to adjourn the Complaint. The Tribunal adjourned the Complaint to a new hearing on 9 December 2014 at 10.30am
6. At the hearing on 9 December 2014 the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was neither present nor represented. The Fiscal confirmed that he had previously lodged with the Tribunal two lists of witnesses. He made a motion to the Tribunal to be allowed to add an additional production which had been intimated to the Respondent on 19 September 2014. Thereafter, the Fiscal asked the Tribunal to allow to be admitted an amended Complaint. He confirmed that this Complaint had been intimated to the Respondent by letter dated 20 November 2014, and also by Sheriff Officers. Both motions were granted. Thereafter, the Fiscal made a motion to the Tribunal in terms of Rule 14(4) of the Tribunal Rules 2008 for the Tribunal to hear and determine the Complaint in the absence of the Respondent. After hearing evidence from the Depute Clerk to the Tribunal that the notice of the hearing had been intimated to the Respondent in accordance with Rule 11(2) of the 2008 Rules, the Tribunal granted that motion. Evidence was led from three witnesses.
7. The Tribunal found the following facts established:-
 - 7.1 The Respondent's date of birth is 12 May 1958. His address is 31 David Street, Kirkcaldy. He was admitted as a Solicitor on 18 January 1982. From 1 October 1989 to 26 January 2012 he was a Partner of the firm of McKenzies Solicitors, 26 East

Fergus Place, Kirkcaldy. He is no longer on the Roll of Solicitors.

7.2 Mrs A died on 30 November 2010. In her will she had appointed the Respondent as sole executor to her estate. Prior to 7 December 2010, the Respondent was instructed on behalf of the beneficiaries to deal with the administration of her estate. Steven Anderson is the son of the late Mrs A, was a beneficiary of her will and was ultimately appointed as executor to her estate. Catriona Jerrett is the daughter of the late Mrs A and was a beneficiary of her will.

7.3 In May 2011 Catriona Jerrett telephoned the Respondent asking for an update with regard to progress on the administration of the estate. The Respondent advised that he expected matters to be wrapped up in four to six weeks. The said Catriona Jerrett telephoned the Respondent again at the end of June and was advised that matters would take another four to six weeks to conclude, with an explanation that there was some issue to do with the deceased's flat that required to be resolved. Catriona Jerrett telephoned the Respondent again at the end of August 2011. The Respondent gave an explanation that he was hoping to uplift some funds shortly but that he was about to go on holiday. He confirmed to Catriona Jerrett that there was no problem with the estate. Catriona Jerrett telephoned the Respondent again in October 2011. Again the Respondent advised that it would take a further four to six weeks to conclude matters. In December 2011, shortly before Christmas, Catriona Jerrett attended at the Respondent's office and met with him. The Respondent advised that he would get in touch with her between Christmas and New Year to confirm progress. On each of these occasions the Respondent advised Catriona Jerrett that he would get back in touch with her. No such contact was made by the Respondent.

7.4 Catriona Jerrett telephoned the firm of McKenzies on several occasions in January 2012. She received a telephone call from Mr C, a Partner of that firm, indicating that the Respondent was absent on sick leave and that Mr C would be taking over the executry in the meantime. Catriona Jerrett received a further phone call from Mr C confirming that the Respondent was not going to return to work and confirming that the Respondent had done little or nothing in connection with the executry.

7.5 In an undated letter, Steven Anderson wrote to the Complaints Partner at McKenzies Solicitors on behalf of the beneficiaries stating inter alia:

“Having originally been assured by Mr Donald Murray that the estate of Mrs A would be settled in full by late June 2011, we were informed by Mr C on 26th January 2012 that, some 14 months following her death, little or no action has in fact been taken. In addition, not one query has been answered or call returned by Mr Murray during this time.”

A letter dated 8th February 2012 in response was received by Steven Anderson from Mr D, Client Relations Partner at McKenzie Solicitors, Kirkcaldy. The response stated inter alia:

“You indicate that queries raised with Mr Murray have not been answered and telephone calls placed here to Mr Murray have not been returned. In such circumstances, I can do no more than offer the firm’s apologies as I am quite aware of the inconvenience caused when telephone calls placed are not returned.”

McKenzies Solicitors withdrew from acting in the administration of the estate and a new firm of Solicitors was appointed.

7.6 Steven Anderson was appointed executor to the estate and the Respondent resigned as executor. A mortgage in the name of the deceased was redeemed on 18 January 2013, including interest charged from the date of death of £4651.70. That property had been valued in June 2011 at £135,000. The property was subsequently sold by the beneficiaries in November 2013 for £180,000. The executry was finalised by 2 April 2013.

7.7 Steven Anderson made a complaint to the Scottish Legal Complaints Commission (SLCC) dated 28 February 2012 in respect of the delay and/or failure of the Respondent to conclude the administration of the late Mrs A's estate.

The summary of the complaint was:-

“I, Mr Steven Anderson on behalf of Catriona Jerrett and Mr E, the beneficiaries of the estate of Mrs A wish to complain about the inaction of Mr Donald Murray of McKenzies as evidenced by:

1. Mr Donald Murray failed to undertake any work in an attempt to conclude the estate of my late mother in 14 months of dealing with the matter.
2. Mr Donald Murray failed to respond to telephone enquiries made on... (please provide dates).”

7.8 On 8 February 2013 the SLCC referred the matter to the Complainers.

The summary of the complaint was:-

“1. Mr Donald Murray failed to undertake any work in an attempt to conclude the Estate of Mr Anderson’s late mother in 14 months of dealing with the matter.”

7.9 By letter dated 22 March 2013, the Complainers wrote to the Respondent informing him that a complaint had been received from the SLCC which the Complainers required to investigate.

The Complainers received a letter from the Respondent’s representative Mr James A McCann of FMC Solicitors, dated 15th April 2013 in response to the Complaint. This letter stated inter alia:-

- “1. It is accepted that Mrs A had appointed Mr Murray as executor in her Will. When she died on 30th November 2010 the intention was that Mr Murray would act as executor in winding up the estate, and the legal work would be done within his own firm i.e. Messrs McKenzies acting as Solicitors for the executor.
2. It is accepted that there was then a regrettable delay, which was due to Mr Murray having being quite unwell during a significant part of 2011. We understand that there is no contemporaneous medical evidence, but it was simply a situation of Mr Murray feeling depressed, stressed out, and unable to cope with work. His partners seem to have acknowledged that. Obviously, with the wisdom of hindsight, it would have been preferable if Mr Murray had resigned as executor, and assumed someone else. As a result of his not coping with his work, and not getting any better, he eventually retired from the partnership and from

practice of the law generally, with effect from 31st January 2012.”

- 7.10 The Complainers investigated the matter and prepared a Report in respect of the Complaint. A copy of the Report was issued to the Respondent by letter dated 7 August 2013, and the Respondent was advised the matter would go before the Complainers’ Professional Conduct Sub Committee for consideration
- 7.11 The complaint was considered by the Complainers’ Professional Conduct Sub Committee on 16 January 2014.

The Sub Committee determination was:-

“Having carefully considered all of the information before it, the Sub Committee determined that the conduct of Mr Donald Murray in respect that he failed to undertake any work in an attempt to conclude the estate of the complainers’ late mother in fourteen months of dealing with the matter, appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct”

The Sub Committee determined that a Fiscal should be appointed to prosecute the complaint in terms of the Solicitors (Scotland) Act 1980 Section 51.

By letter dated 29 January 2014 the Complainers sent the Respondent a copy of the Professional Conduct Sub Committee Determination.

7.12 In the course of the period from December 2010 to January 2012 virtually no work at all had been carried out by the Respondent on the executry. The Secondary Complainers, Steven Anderson and Catriona Jerrett, were caused significant inconvenience as a direct result of the Respondent's failure to progress the executry.

8. After hearing submissions from the Fiscal, the Tribunal found the Respondent guilty of professional misconduct in respect that he failed and / or delayed in undertaking any work in an attempt to conclude the administration of the late Mrs A's estate for 14 months. The Tribunal held established that the two Secondary Complainers, Steven Anderson and Catriona Jerrett, had both suffered significant inconvenience as a direct result of the Respondent's misconduct.

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

Edinburgh 9 December 2014. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Donald Stewart Murray, Solicitor, 31 David Street, Kirkcaldy; Find the Respondent guilty of Professional Misconduct in respect that he failed and / or delayed in undertaking any work in an attempt to conclude the administration of the late Mrs A's estate for 14 months; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors(Scotland) Act 1980 that for an aggregate period of 4 years any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub-Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Council of the Law Society of Scotland 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; 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

10. Edinburgh 9 December 2014. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Donald Stewart Murray, Solicitor, 31 David Street, Kirkcaldy and determined that the Respondent was guilty of professional misconduct considered whether it was appropriate to award compensation to the Secondary Complainers; Ordain the Respondent in terms of Section 53A(2) (d) of the Solicitors (Scotland) Act 1980 to pay to Steven Anderson of 12/10 Waverley Park, Edinburgh and Catriona Jerrett, 182 Redcraigs, Kirkcaldy, Fife each the sum of £500 by way of compensation in respect of inconvenience resulting from the misconduct within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

(signed)

Alistair Cockburn
Chairman

11. 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 9 December 2014 the Tribunal had before it the original Complaint, two lists of Productions for the Complainers and a List of Witnesses for the Complainers. Prior to the hearing the Fiscal for the Complainers had intimated to the Tribunal an intention to move to amend the Complaint and lodged an amended Complaint itself. He had also intimated to the Tribunal an intention to lodge an additional Production and an Amended List of Witnesses. At the hearing the Fiscal confirmed that the proposed amendment to the Complaint had been intimated to the Respondent by letter dated 20 November 2014 and by Sheriff Officers. He confirmed that the additional Production had been intimated to the Respondent by letter dated 19 September 2014. He indicated that he was not seeking to pursue the Amended List of Witnesses. He explained that the amendment to the Complaint was simply to add in Mrs Catriona Jerrett as an additional Secondary Complainer. In the original Complaint the only Secondary Complainer specified had been Steven Anderson, albeit he was designed as claiming on behalf of the beneficiaries to the estate. As part of the claim for compensation was matters personal to the Secondary Complainers such as issues of distress and the like, the Fiscal had felt it appropriate to design the Secondary Complainers individually.

The Tribunal allowed the Fiscal to lodge the additional Production, which was to be numbered 18 and allowed the amended Complaint to be received.

The Fiscal made a motion to the Tribunal that the Secondary Complainers be allowed to give evidence in relation to their claims for compensation in the course of their evidence relating to the issue of misconduct. He submitted that as both Secondary Complainers were witnesses to the facts in relation to the substantive matter, it would be reasonable for their evidence to encompass both the question of misconduct and compensation at one time.

In the circumstances of this particular case, the Tribunal considered that it would be appropriate for the witnesses to give their evidence in relation to both issues.

Mr Reid confirmed that he had had no contact from the Respondent at all, despite attempting to invoke the assistance of a colleague of the Respondent. The Respondent had not attended the last hearing. The Fiscal therefore moved the Tribunal to hear and determine the Complaint in the absence of the Respondent in terms of Rule 14(4) of the 2008 Rules.

Having heard evidence on oath from the Depute Clerk that a Notice of Hearing had been sent by recorded delivery post to the Respondent at the address on the Complaint on 1st October 2014 and that the Royal Mail track and trace system disclosed that this item was delivered on 2 October 2014, the Tribunal granted the Complainer's motion.

The Fiscal indicated that he intended to lead evidence from three witnesses.

WITNESS NO 1: IAN RITCHIE

Mr Ritchie confirmed that he is employed by the Law Society as clerk to the Professional Conduct Sub-Committee. He confirmed that Production 18 for the Complainers was the Law Society Internal Status Report relating to Donald Stewart Murray. This indicated that his address was 31 David Street, Kirkcaldy, that his date of birth was 12 May 1958 and that he was enrolled as a Solicitor in January 1982. This disclosed that his previous business addresses included the firm of McKenzies from July 1989 until January 2012, latterly as a Partner.

In the course of dealing with a conduct complaint against the Respondent the Law Society had received the file from the firm of McKenzies regarding the executry of the late Mrs A. He identified Production 1 for the Complainers as the file. Mr Ritchie explained that the nature of the Complaint against the Respondent was that there had been undue delay in winding up this executry. The witness confirmed that the file contained a signed will by Mrs A appointing the Respondent as sole executor (Production 1B7). The file disclosed that Mrs A died on 30 November 2010 and a letter from McKenzie's bearing the Respondent's reference was sent to the deceased's daughter, Mrs Catriona Jerrett, sending copies of the will on 7 December 2010.

He confirmed that the file disclosed only 1 piece of work from December 2010 and January 2012. This was a letter from surveyors Company 1 in June 2011, which was Production 1A6.

Production 1B 11 was an extract from the Registry of Deaths. Production 1B 9 was a valuation of property dated 30 June 2011. The file disclosed that at the end of January / beginning of February 2012 the executry was transferred to another firm (Lindsays). The file also disclosed a flurry of activity on the part of Messrs McKenzies in January and February of 2012. The witness indicated that this was the type of activity he would have expected to see at a far earlier stage. The file appeared to disclose that the only activity between the date of death of Mrs A and the transfer of the file in February 2012 was the instruction of the valuation of the deceased's heritable property. There had been no communication with banks or building societies. Mr Ritchie confirmed that Production 17 was the Account of Charge and Discharge for Lindsays and given the list of assets of the estate noted there it was strange that there had not been communications with people like banks which would be standard practice in cases such as this.

The witness confirmed that the Complaint against the Respondent had made its way through the usual process which had resulted in a recommendation of prosecution of the Respondent. He confirmed that Production 16 was the Professional Conduct Subcommittee Schedule dated 16 January 2014 in relation to this Complaint.

WITNESS NO 2: STEVEN ANDERSON

The witness confirmed that he is the son of the late Mrs A who died on 30 November 2010. He confirmed from the Productions that Production 1B 11 was an extract of the Registry of Deaths, confirming his mother's death on 30 November 2010. Production 1B 7.1 was a copy of his mother's will appointing the Respondent as sole executor. He confirmed that he himself was later appointed executor.

He confirmed that Production 1A 2 was a letter to his sister enclosing three copies of his mother's will indicating that the Respondent had by 7 December 2010 been

instructed to deal with the estate. He confirmed that there were three beneficiaries to the estate, himself, his sister, Mrs Catriona Jerrett, and his brother Mr E.

The witness was asked why the executry was transferred to the firm of Lindsays. He responded that his sister had attempted to contact the Respondent in January 2012 to find out what progress had been made with the executry. His sister had previously spoken to the Respondent in December and he had not called her back. Eventually one of the other solicitors from the firm had called her and advised that the Respondent had resigned from the firm and on checking the file it appeared that no progress had been made in connection with the affairs of the estate.

Following that, Mr Anderson had written to McKenzies seeking clarification and stating that if there was no satisfactory reply then he would take his case to the Scottish Legal Complaints Commission. The witness had received a letter in response saying that the firm of McKenzies could no longer act in the executry and advising him to get new representation. He confirmed that Production 1A 11 was his letter to McKenzies, stamped as having been received on 7 February 2012.

He confirmed that it was his sister who had been in touch with the Respondent most often to attempt to obtain information. Mr Anderson indicated that he had been inclined to have faith in the Respondent. He indicated that he had contacted the Respondent on one occasion in June 2011 when he was told that the Respondent would call him back. The Respondent had called him back and had confirmed that he would obtain the information necessary and call the witness back when he had received the information. The Respondent had not phoned him back. In the course of 2011 it had been his sister who had made contact with the Respondent and she had then reported back to him.

Earlier in 2011 the witness's stepfather, Mr F, had been receiving correspondence in relation to his mother's affairs from banks and building societies and the like. His stepfather had contacted the Respondent to enquire as to why he was still receiving this correspondence. In the end, his stepfather had written to all of the places that had corresponded, advising them of his mother's death.

Throughout the year 2011 his sister had reported to him that she had been in touch with the Respondent. She always reported that the Respondent had said he had done certain things and was waiting for something else to happen. The Respondent had indicated repeatedly that matters would be completed in 4 to 6 weeks. Mr Anderson had spoken to friends and relatives about the delay and believed that it could take a year or there about for the estate to be wound up.

It was made apparent to Mr Anderson in 2012 that little or nothing had been done by the Respondent and this was confirmed when the new firm of solicitors received McKenzie's file. The witnesses letter, Production 1A 11, produced a response from Mr D, Production 1A 12. By the time he received the letter from Mr D, MR C of McKenzies had already advised the family that no work had been done.

He could not remember the precise order of things but was able to confirm that he was appointed executor and the Respondent resigned as executor. He confirmed that Production 1A 21.2 was a letter from him dated 20 February 2012 to the firm of Lindsays giving his consent to being appointed executor.

Mr Anderson confirmed that Production 17 at page 6 disclosed interest paid in relation to a mortgage held by his late mother. This disclosed mortgage interest of £4651.70 had been paid. His mother had died on 30 November 2010. The estate was transferred to Lindsays in February 2012. It took Lindsays 13 months to wind up the estate. The Respondent had had the executry for a similar period of time during which the mortgage interest had not been paid off.

The witness indicated that he had been really upset at discovering this, he was "gutted". He had considered the Respondent to be a friend of his late mother. The witness's sister had had concerns earlier in the year about the lack of progress but the witness had been content that the family could trust the Respondent. During that period of time there had been many outstanding issues hanging over the family's head. They had included issues of inheritance tax and where the witness's step father was going to live. This had meant that it was difficult for the family to move on and had had an adverse effect on their personal lives.

The Tribunal asked the witness if the house had been transferred to the beneficiaries. The witness confirmed that the beneficiaries had been given the choice of putting the property on the market straight away or of taking ownership of the property. Given the collapse of the property market, and tax issues, they had been advised to delay in the sale. Between the death of his mother and the transfer of the property to the beneficiaries, the witness's stepfather had remained living in the home. The property was eventually sold in November 2013 for a price of £180,000. The witness accepted that the firm of Company 1 had valued the property at £135,000 in June 2011. The witness indicated that he had disputed the value put on it by the surveyor. He felt that the surveyors had not given adequate weight to the precise nature of the property, in particular that it was a penthouse apartment. There had been concerns whether inheritance tax would be payable but it was later confirmed that as his mother's estate had included the witness's father's estate, the inheritance tax threshold had been doubled.

The witness indicated that he had been prescribed antidepressants in February 2013 which he had taken for the best part of a year. He did not have any confirmation from a medical practitioner as to the cause of his depression. He accepted, in response to a question from the Tribunal, that many things can cause depression, including the death of a relative.

In clarification to a further question from the Fiscal, the witness confirmed that his Complaint related to the length of time the estate was paying interest on the outstanding mortgage.

WITNESS NO 3: MRS CATRIONA JERRETT

The witness confirmed that she is the daughter of the late Mrs A who died on 30 November 2010. She confirmed that the Respondent was to deal with the estate as sole executor in terms of her mother's will. In January / February 2012 the winding up of the estate was transferred to the firm of Lindsays. The Respondent resigned as executor and her brother Steven Anderson was appointed in his place. There were three beneficiaries in the will, herself, her brother Steven Anderson and her brother Mr E.

Between the time of her mother's death in 2010 and the transfer of the executry in 2012, no information had been offered to the witness by the Respondent without her instigating contact. After her mother died the witness contacted the Respondent and he said that he would begin to wind up the estate and gave her a general timescale. She contacted him 4 or 5 months later, approximately May 2011 to ask for progress. The Respondent confirmed that he would wrap up the estate in some 4 to 6 weeks. The witness phoned him back at the end of June. She was told that matters would take a further 4 to 6 weeks as there was some issue to do with her mother's flat that required to be resolved. She was not clear what the issue was. She waited until the end of August and telephoned the Respondent again. The Respondent said that he was looking to uplift some funds shortly but that he was going on annual leave. The witness had asked him if there was a problem with the estate and he said that there was not. The Respondent did not get back to her and so she phoned him in October. He again stated that it would take some 4 to 6 weeks to resolve the estate.

Around Christmas time of 2011 the witness went to the offices of McKenzies to speak to the Respondent. She had had enough of phoning him. The Respondent said that he would get back in touch with her between Christmas and New Year. He did not. She phoned the office in January on several occasions. The next thing she heard was a telephone call from Mr C indicating that the Respondent was off work sick and that Mr C would be taking over the executry. They were going to wait for the Respondent to come back to work. Then Mr C phoned to say that the Respondent was not coming back to work. The witness asked Mr C if anything had been done and he responded that literally nothing had been done. She had felt that as Mr Murray was someone the family knew that he would be honest and upfront. She had become concerned by August of 2011. She had felt mixed emotions. Losing her mother had been the worst thing she had had to go through. It was upsetting to her that the Respondent was someone that her mother had trusted and yet her mother's wishes were not being carried out. They were trying to grieve as a family but they could obtain no closure. The whole thing had dragged on and she could not grieve properly because this was always in the back of her mind. In the course of 2011 she had started to wonder if there was something that the family were not being told about by

the Respondent. She was worried that there was a bigger issue with the estate that was causing the delay.

She confirmed that she received a copy of the account charge and discharge from Lindsays which was Production 17 for the Complainers. She confirmed that this disclosed that mortgage interest of £4651.70 had been paid in relation to her mother's mortgage. The mortgage was paid off from the sale of the estate. She did not have much to do with the winding up of the estate. She felt the extra expense in relation to the mortgage interest was incurred by the delay on the part of the Respondent.

She confirmed that Production 1B 9 was a Valuation Report showing a property value of £135,000 in June 2011. She confirmed that the property had been transferred to beneficiaries and then sold in November 2013 for £180,000. When asked if she accepted that on one view it appeared that the property value had increased between June 2011 and 2013 the witness responded that she had queried the valuation of the property. Her mother had bought the property for £165,000 and she had asked the Respondent why the value given by the surveyors was so low.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal Mr Reid asked the Tribunal to hold as established that nothing had been done between December 2010 and January 2012 despite beneficiaries phoning up the Respondent to no effect. Beneficiaries were advised repeatedly that matters would take 4 to 6 weeks and this was not the case. Although this Complaint involved only one executry, he submitted the conduct here amounted to professional misconduct in terms of the Sharp Test. Nothing had been done in 13 months apart from a valuation of heritable property. Beneficiaries had been fobbed off.

DECISION

Having considered the evidence for the Complainers, including the whole evidence and documentary productions, the Tribunal was satisfied beyond reasonable doubt that the Respondent had been appointed sole executor to the estate of Mrs A, that he had been instructed to deal with the executry following her death on 30 November

2010, and that between her death and January 2013 the only piece of work carried out by the Respondent in relation to the executry was obtaining the value of the deceased's home.

The issue for the Tribunal was whether the conduct proved was sufficient for a finding of professional misconduct. The Sharp Test had described professional misconduct as conduct which would be seen as serious and reprehensible when considered by competent and reputable solicitors.

The Respondent had failed to progress the executry for a period of 14 months. In that time he had been contacted repeatedly by beneficiaries. On these occasions he had either misled or deceived the beneficiaries. In these circumstances the Tribunal had no hesitation in holding that the Respondent's conduct amounted to professional misconduct.

The Tribunal was most concerned by the Respondent's dishonest responses to the beneficiaries. A Solicitor is expected to be honest and truthful. The Respondent's conduct in this case clearly did not live up to the accepted ethical standards expected of a member of the profession. The Respondent's responses to the beneficiaries of the estate disclosed that the public could be in danger should the Respondent continue to work with a full practising certificate. The Respondent had failed to engage at all with the Tribunal proceedings. There was no indication that he had any insight into the consequences of his conduct. There was no indication that he had taken any rehabilitative or corrective steps. His conduct had had a significant impact on the Secondary Complainers and, in particular, having regard to his dishonest responses was considered to be in the middle of the scale of misconduct.

Whilst the Tribunal had regard to the fact that the Law Society's records did not disclose any previous involvement with the Tribunal, the nature of the misconduct and his lack of engagement led the Tribunal to the conclusion that should the Respondent attempt to practice as a solicitor in future he should be restricted to working as an assistant for a period of time. Having regard to the length of time that his misconduct had lasted, and the serious nature of the conduct, the Tribunal concluded that the appropriate period for supervision was 4 years.

With regard to the Secondary Complainer's claims for compensation, it appeared to the Tribunal that it was not appropriate to look at the extended period of mortgage interest in isolation from the rest of the estate. The question for the Tribunal was whether or not, in relation to the estate as a whole, there had been a loss sustained as a result of the Respondent's delay. Given the sale of the property in November 2013 for a value of £180,000, where the property had been valued in June 2011 in relation to the executry at a figure of £135,000 and the absence of any expert evidence to counter the report on valuation, the Tribunal were unable to hold that there had been such a loss.

In relation to the question of distress, the Secondary Complainer Steven Anderson indicated in evidence that he had been in receipt of a prescription for antidepressants. The witness had conceded in evidence that depression can have multiple causes and without some further information it was impossible to say that his depression was a direct result of the Respondent's misconduct.

It was however clear to the Tribunal that the Respondent's misconduct had caused significant inconvenience to the Secondary Complainers. The inconvenience had lasted for a significant period of time, had caused the Secondary Complainers concern and the Respondent had taken no steps to rectify matters. In all of these circumstances, the Tribunal held that the appropriate sum in compensation to each Secondary Complainer was £500.

The Fiscal made a motion for expenses which were awarded to the Complainers. The usual order was made in relation to publicity.

Alistair Cockburn
Chairman