

**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, formerly at 26 Drumsheugh
Gardens, Edinburgh and now at Atria One,
144 Morrison Street, Edinburgh**

against

**EUAN MAXWELL TERRAS, Sprang Terras,
64 Kyle Street, Ayr**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Euan Maxwell Terras, Sprang Terras, 64 Kyle Street, Ayr (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Secondary Complainers are Ms Isobel Mulholland and Ms Lesley Screaigh, both of Torrylinn Farm, Kilmory, Isle of Arran. The Secondary Complainers were represented by John Paterson, Solicitor, Beith. A claim for compensation was made by the Secondary Complainers.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed a procedural hearing for 15 March 2016 and notice thereof was duly served on the Respondent.
5. The hearing took place on 15 March 2016. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented by Jonathan Brown, Advocate instructed by David Clapham, Solicitor, Glasgow.

6. Ms Motion lodged an adjusted Complaint and moved the Tribunal to receive the same. She confirmed that discussions had taken place between the parties and that the issue in dispute had been narrowed as to how the second Will came to be executed. Parties indicated they would enter into a Joint Minute with regard to the remainder of the Complaint. The Fiscal made a motion to be allowed to lead evidence of two witnesses by way of Affidavit. Mr Brown consented to that motion. The Tribunal indicated a concern relating to the leading of evidence by way of Affidavit for the Complainer being challenged in evidence for the Respondent. Mr Brown confirmed that the Respondent intended to lead evidence from one witness in addition to the Respondent himself. He indicated that it was unlikely that there would be any challenge to the contents of the Affidavits. The Tribunal granted the motion for evidence by way of Affidavit for the Complainers subject to the Respondent's agent notifying the Fiscal no later than the end of April 2016 that there would be no challenge to the contents of the Affidavits. The case was continued to 31 May 2016 for a full hearing.
7. The full hearing took place on 31 May 2016. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented by Jonathan Brown, Advocate instructed by David Clapham, Solicitor, Glasgow. The Secondary Complainers were represented by John Paterson, Solicitor, Beith.
8. A Joint Minute was lodged agreeing the majority of the averments of fact in the Complaint as amended and all but two of the averments of professional misconduct. Evidence was led from three witnesses in relation to the two disputed averments of professional misconduct. Mr Sprang gave evidence for the Respondent. In the course of his evidence he stated that certain documents had been discovered in a search of the firm's records. It became apparent that these may be relevant to the main issue in the case and had not been disclosed either to the Respondent's legal team or to the Fiscal. Mr Brown moved that the Tribunal adjourn the hearing to allow this to be investigated. Ms Motion agreed with this motion. The Tribunal decided that it was in the interests of justice for the hearing to be adjourned part-heard to allow the parties to investigate matters and to lodge any additional productions. The Tribunal noted that depending on the outcome of the investigation Ms Motion may require to make a motion to recall witnesses. The hearing was adjourned part-heard to a date to be fixed.

9. In terms of its Rules, the Tribunal appointed the adjourned hearing to take place on 29 August 2016 and notice thereof was duly served on the Respondent.
10. The adjourned hearing took place on 29 August 2016. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was present and represented by Jonathan Brown, Advocate instructed by David Clapham, Solicitor, Glasgow. The Secondary Complainers were represented by John Paterson, Solicitor, Beith.
11. Further evidence was led from Mr Sprang and the Respondent in relation to the two disputed averments of fact and professional misconduct. Both parties then made submissions regarding the disputed evidence.
12. The Tribunal found the following facts established:-

12.1 The Respondent is a solicitor enrolled since 19 November 1993 in the Registers of Solicitors in Scotland. He has been a Principal in private practice since 1 November 1995 as a Partner of Sprang Terras, Solicitors, Ayr.

Miss M.M. Purchase of the property

12.2 The Respondent and his wife Mrs Kathleen Terras (Mrs Terras) had known Miss MM for many years. Miss MM had rented the property in which she resided from Kirk Care Housing Association (Kirk) for a considerable time. Kirk was a social landlord and as such Miss MM was entitled to purchase the property under a statutory 'right to buy' scheme from it at a discounted value of £24,000. The market value was in fact £60,000.

12.3 The Respondent acted for Miss MM from about March/April 2003 in the purchase of the property. Prior to acting and throughout the period of his acting he was aware that the purchase price of £24,000 would be provided to Miss MM by himself and Mrs Terras. In addition he was aware throughout the whole period that, in fact, the property would after the discount period in terms

of the relevant legislation had expired then be transferred into the name of himself and Mrs Terras for no consideration.

- 12.4 The property was purchased for £24,000 in favour of Miss MM.
- 12.5 A Minute of Agreement, drafted by the Respondent, was entered into between Miss MM and Mrs Terras, dated 8 and 13 September 2003. This confirmed that Mrs Terras lent £24,000 to Miss MM to enable her to purchase the property. The main conditions of this were that:
- (a) interest would not be charged on the loan;
 - (b) Miss MM would convey the property to Mrs Terras at the end of the discount period for no further consideration;
 - (c) Miss MM would bequeath the property to Mrs Terras; and
 - (d) if Miss M.M. died without leaving the subjects to Mrs Terras, or without having conveyed them to her, Mrs Terras would discharge the Standard Security, if Miss MM's executors paid her the market value of the subjects.
- 12.6 Notably the Minute of Agreement:-
- (a) contained no provisions relative to Miss MM's continued occupancy of the property;
 - (b) made no reference to Miss MM as having security of tenure;
 - (c) contained no details of the arrangements for meeting the costs of insuring, maintaining and repairing the subjects; and
 - (d) was silent as to the rent, if any, to be paid.
- 12.7 Miss MM, as the registered proprietor, then granted a Standard Security over the property in favour of Mrs Terras in implement of the Minute of Agreement. The Standard Security bears to have been signed on 13 September 2003, and

the date of registration was 13 October 2003. The Respondent drafted and ensured this was executed by his client Miss MM. In fact the Respondent acted as the witness to said security. Allan McDougall solicitors, Edinburgh acted for the Respondent in registering said standard security. The Keeper of the Registers wrote to Allan McDougall on 26 May 2005, enclosing the Charge Certificate, following completion of registration, and returning that firm's Form 4, which bears the reference, '*DAW/ENTerras*'. The reference DAW is that of a Mr Damian White (Mr White) a solicitor with Allan McDougall at the time in question.

- 12.8 In or around June/July 2006 the property was transferred into the joint names of the Respondent and Mrs Terras. The Respondent wrote to Mr. John Hodge of Messrs. Wallace Hodge on 10 July 2006, referring to an earlier telephone conversation, and enclosing "*Disposition and [Matrimonial Homes] Affidavit for Miss MM's signature*".
- 12.9 In doing so he explained that Miss MM had purchased the property, "*the full price for which was provided by [him]self and Kathleen*", that the discount period had now expired, "*and [that] the property [was] to be transferred into [their] names*": he asked Mr Hodge to "*meet with Miss MM to discuss the legal consequences, etc.*".
- 12.10 Mr Hodge faxed the Respondent on 12 July 2006, asking him to provide Miss MM's telephone number, to enable him to take her instructions; he asked whether the solicitor intended to take an Insolvency Affidavit.
- 12.11 The Respondent replied the same day, providing Miss MM's telephone number and enclosing an Affidavit. As the transaction was *ex facie* gratuitous, the Affidavit would have been obtained to minimise the risk of any challenge by creditors, were Miss MM to have become insolvent.
- 12.12 Mr Hodge wrote to the Respondent on 13 July 2006, acknowledging receipt of the Affidavit; he wrote to him again on 17 July 2006, enclosing the signed Disposition and Affidavit, both duly sworn, "*along with a copy of a letter to*

Miss MM for [his] information" and advised that he would be in touch with the Respondent, to discuss his costs.

- 12.13 The Disposition, drawn in favour of the Respondent and Mrs Terras, bears to have been subscribed by Miss MM on 15 July 2006, before Mr Hodge. It was subsequently registered.
- 12.14 By letter 21 August 2014, the Respondent affirmed that it had been agreed *"that we (myself and my wife) [would] buy the house"*, and that *"my wife and I would put up the funding"*; he referred to *"our involvement in financing the purchase"*, and in several other places used the pronoun "we", thereby confirming that he had a pecuniary interest in the purchase of the property, as well as his wife.
- 12.15 There is no evidence at any stage that the Respondent, in acting for Miss MM in the purchase and the execution of Minute of Agreement, advised Miss MM in writing that he:-
- (a) could not act for her in the purchase given his personal interest and/or his wife's interest;
 - (b) was conflicted due to his personal interest and/or his wife's interest;
 - (c) gave her any advice to seek separate legal advice/representation at any stage;
 - (d) gave her any advice /set out the risks of entering into the Minute of Agreement;
 - (e) gave her any advice of the financial benefit to her of purchasing the property with funding on an arms length basis.

Miss MM - Will

- 12.16 Miss MM granted a Will, which bears to have been subscribed on 17 November 1990, in the presence of Ms. JSS, a head teacher, and Ms. MMH, a householder. Miss MM appointed Ms IC (the first secondary complainer) and Ms LC (the sister of Ms IC and the second secondary complainer) as her executors and, having made a specific legacy in favour of Mr CC, she bequeathed the residue of her estate equally between Ms IC and Ms. LC.
- 12.17 In terms of a letter 27 March 2014 the Respondent advised that in about 2001 Miss MM raised "*a question of drawing up a Will around 2001*", at which time she wished to divide her estate between the first secondary complainer, the second secondary complainer and Mrs Terras. He further advised that: when Mrs Terras "*replied that she did not wish to be a beneficiary*", Miss MM said she would leave her share to the Respondent and wife's son.
- 12.18 By letter 3 April 2003 the Respondent wrote to Miss MM, enclosing a mandate, which instructed Stewart & Osborne to forward the Will referred to in paragraph 12.16 above to the Respondent's firm, asking her to sign the mandate and return it to him.
- 12.19 Stewart & Osborne wrote to Miss MM on 8 April 2003, advising that they had implemented the mandate. The following day, the Respondent wrote to her, confirming that he had received her Will, and had placed it in the firm's safe. He enclosed a copy of the Will, for Miss MM's information.
- 12.20 The Respondent then proceeded to draft a further Will (the second Will) for Miss MM. It appointed himself and his wife as Executors and his son (a minor) as one of three equal share residuary beneficiaries. The other beneficiaries were the two secondary complainers. It also bequeathed the property to Mrs Terras. The Respondent's position is that he provided the draft second Will to Mr White at Allan McDougall & Co (Allan McDougall). The second Will, executed and unchanged from the draft, was later placed in the Respondent's Will safe for safe keeping. The backing on the second Will as executed details the firm of Allan McDougall.

- 12.21 The second Will was signed on 20 September 2003 in the presence of Ms. JSS, who had witnessed her earlier Will. As at the date of execution of the second Will Miss MM was still heritable proprietor of the property; the Minute of Agreement had been executed by her only ten days earlier and the Standard Security in favour of Mrs Terras had not been registered.
- 12.22 Miss MM died on 13 April 2013 without having executed any further Will. Accordingly:-
- (a) the Respondent and his wife proceeded to act as executors to wind up Miss MM's estate;
 - (b) the Respondent obtained a Certificate of Confirmation granted by the Commissariat of North Strathclyde dated 20 May 2013, which indicated that the total estate for Confirmation was £54,687.49, and that Miss MM owned no heritable property at the time of her death;
 - (c) the Respondent and his wife distributed the residue of Miss MM's estate with one third being paid to their son for whom they were guardians.
- 12.23 The first secondary complainer was concerned about the turn of events and sought advice from Mr Paterson of Stewart & Osborne. He then corresponded with Allan McDougall and Mr Damian White to try to clarify the circumstances surrounding the preparation and execution of the second Will. In that process Mr. White wrote to Stewart & Osborne on 1 October 2013, saying that he could not recall preparing Miss MM's Will, although he had been involved in registering a security [namely, the Standard Security in favour of Mrs Terras]; he affirmed that he *"would not have been involved in the creation of the Will as this was not [his] area of [.....] expertise"* and that, whenever he was asked to draft a Will, he would ask a colleague to carry out the work.
- 12.24 By letter to Stewart & Osborne dated 19 October 2013, Allan McDougall identified Mr White as *"the only party who might know something"* about the matter.

- 12.25 In a further letter to Stewart & Osborne, dated 7 November 2013, Allan McDougall advised that they *"could simply find no record of this firm having prepared the Will of [Miss MM]"*, although the writer said she had spoken with *"all those parties in this firm involved with the preparation of Wills at the time Miss MM's Will was prepared"*, no-one could recall Miss MM, nor could they remember preparing her second Will: *"indeed the style of the Will is not one anybody here recognises"*.
- 12.26 By letter of 8 November 2013 Stewart & Osborne called upon the Respondent to advise *"which firm took instructions from Ms MM to prepare her Will and which firm actually prepared it"*.
- 12.27 By letter dated 29 November 2013 the Respondent replied indicating that he did take initial instructions from Ms MM with regards to a Will and then indicated that he could not proceed further. He thereafter passed the matter to Allan McDougall and presumed that they had proceeded with the final preparation and execution of the Will.
- 12.28 By letter dated 4 December 2013 the first Secondary Complainer wrote to the Respondent setting out her understanding of conversations with the Respondent indicating she was going to make a formal complaint to the Scottish Legal Complaints Commission (SLCC) but if new evidence could be found in the meantime the complaint could be withdrawn.
- 12.29 By letter dated 24 April 2014 the Respondent replied indicating that he had *"fulfilled any duty placed upon me as a Solicitor and in my capacity as an executor"*.
- 12.30 Furthermore, on 14 October 2014, Allan McDougall's Mr. David Nicol said he thought it extremely unlikely that his firm had prepared Miss MM's second Will, given that the style of that second Will was not one it used; the typeface not one it employed; it held no client file for Miss MM; and its accounting records contained no reference to any work transacted for Miss MM. Whilst Mr. Nicol accepted that the backing bore that the second Will had been prepared by his firm, the implication was that it had been prepared by another

firm and/or solicitor, using his firm's address. No covering letter was been produced by the Respondent to show it was sent to Allan McDougall nor indeed any letter evidencing that it was returned to him by that firm.

12.31 The Respondent proceeded to draft the second Will:

- (a) despite being aware that one of the residuary beneficiaries was his son, who was a minor;
- (b) despite being aware that the second Will sought to bequeath the property to his wife;
- (c) without advising Miss MM that he could not act given his son was a residuary beneficiary and given that the second Will bequeathed the property to his wife;
- (d) without advising Miss MM in writing, when allegedly sending the draft second Will to Allan McDougall that she should seek separate legal advice in relation to it.

13. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his acting in a purchase of a property with the ancillary execution of a Minute of Agreement and in the drafting of a Will where his son was a residuary beneficiary and found that in doing so:-

- (1) he acted in an actual conflict of interest situation in the purchase of the property and the execution of the Minute of Agreement where he had a personal and/or financial interest in both;
- (2) he did not insist that Miss MM consult other solicitors either in the purchase of the property or the execution of the Minute of Agreement when both were actual conflicts of interests;

- (3) he could not discharge his professional obligations to solely look after the interests of Miss MM both in the purchase of the property and the execution of the Minute of Agreement given the actual conflict of interest in both between him and Miss MM;
 - (4) he called into question his personal integrity/independence in taking instructions and/or drafting the second Will which benefitted members of his family and in terms of which they would derive significant benefit; and
 - (5) his advice, given the terms of the draft second Will, was not free from external influence and placed him in a conflict of interest.
14. Having heard submissions from the Fiscal regarding sanction and the Solicitor for the Respondent in relation to mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 29 August 2016. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Euan Maxwell Terras, Sprang Terras, 64 Kyle Street, Ayr; Find the Respondent guilty of professional misconduct in respect of his acting in the purchase of a property with the ancillary execution of a Minute of Agreement and the drafting of a Will where his son was the residuary beneficiary and found that in doing so (1) he acted in an actual conflict of interest situation in the purchase of the property and the execution of the Minute of Agreement where he had a personal and/or financial interest in both; (2) he did not insist that Miss MM consult other solicitors either in the purchase of the property or the execution of the Minute of Agreement when both were actual conflicts of interests; (3) he could not discharge his professional obligations to solely look after the interests of Miss MM both in the purchase of the property and the execution of the Minute of Agreement given the actual conflict of interest in both between him and Miss MM; (4) he called into question his personal integrity/independence in taking instructions and/or drafting the second Will which benefitted members of his family and in terms of which they would derive significant benefit; and (5) his advice, given the terms of the draft second Will, was not free from external influence and placed him in a conflict of interest; Censure the Respondent; Fine the Respondent the sum of £8,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a

time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent; allow the Secondary Complainers to withdraw their claims for compensation and find no expenses due to or by the parties in respect of the said claims.

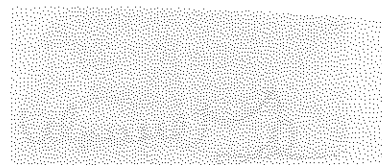
(signed)

Nicholas Whyte

Chairman

15. 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 28 SEPTEMBER 2016.

IN THE NAME OF THE TRIBUNAL



Nicholas Whyte
Chairman

NOTE

The following Productions were lodged:

1. List of Documents for the Complainer.
2. Second List of Documents for the Complainer.
3. Third List of Documents for the Complainer.
4. Fourth List of Documents for the Complainer.
5. Fifth List of Documents for the Complainer.
6. First Inventory of Productions on behalf of the Respondent.
7. Second Inventory of Productions on behalf of the Respondent.
8. Third Inventory of Productions on behalf of the Respondent.
9. Fourth Inventory of Productions on behalf of the Respondent.
10. Supplementary Inventory of Productions for the Respondent.

NOTE OF EVIDENCE**Evidence for the Complainers****Witness One: Damian White**

Mr White stated that his name was Damian Andrew White and that he is a partner with Digby Brown based in Ayr. He confirmed that he had signed an Affidavit in relation to this case. Ms Motion referred him to the Affidavit and Mr White confirmed that this was the Affidavit he had signed on 12 February 2016. In answer from a question from Ms Motion, Mr White confirmed that the information contained in the Affidavit remained true and correct to the best of his belief. Ms Motion referred the witness to the Third List of Documents for the Complainers and in particular to the letter at item 8 of that List, a letter from the Respondent to Allan McDougall dated 25 September 2003. The witness was asked whether there was any mention of conflict of interest in that letter and responded in the negative.

The witness was then referred to item 9 of the said List of Documents, a letter dated 3 October 2003 from the Respondent to the witness at Allan McDougall and to item 10, a letter from the witness to the Respondent dated 6 October 2003 and the witness confirmed that the latter document acknowledged receipt of both letters from the Respondent.

The witness was then referred to item 11 of the said List of Documents, a letter from the witness to the Respondent dated 29 October 2003 and the witness confirmed that this letter was sending a copy of a Form 4. The witness was asked if he recalled if there was any other correspondence sent by the Respondent in connection with Miss MM. The witness responded that he did not remember as it was 13 years ago.

Ms Motion referred the witness to the Third Inventory of Productions on behalf of the Respondent and to the first letter in that Inventory, a copy letter dated 2 October 2003. Ms Motion asked the witness if there was any mention in that letter of the security documentation. The witness replied in the negative. Ms Motion asked the witness if there was any file reference on this letter and the witness replied that there was no file reference other than his name "D White". Ms Motion said that the witness may be asked if he had received a draft Will for Miss MM. She asked if he could remember receiving a draft will and he replied in the negative.

Ms Motion said to the witness that it could be suggested that he put a backing on the Will and sent it to Miss MM for signature. The witness replied no, he would not have done that. The witness was asked if he took the file with him when he left Allan McDougall and the witness replied in the negative.

Cross-Examination

Mr Brown asked the witness to give the Tribunal some idea of the sort of frequency in which he and the Respondent would have been in professional correspondence around 2003 as best he could after all this time. The witness replied that he could not say he was either in frequent or infrequent professional correspondence with the Respondent. He stated he undertook a number of transactions for the Respondent, for example, obtaining copy deeds from Meadowbank House and some work for corporate clients, for example, registering deeds and securities etc. The witness stated that this was not a unique or isolated incident but he could not give a specific number of instances per annum. The witness was asked whether he was talking about a handful of transactions and the witness replied that there were no more than half a dozen.

Mr Brown asked if the witness and the Respondent were friends and the witness replied yes they had been friends since university having met there.

Mr Brown asked the witness whether at this point (i.e. 2003) when he was in Edinburgh and the Respondent was in Ayr, was this all one way traffic or did he ever need the Respondent's assistance professionally. The witness replied yes, in relation to securities for properties. Mr Brown asked if these instructions were formal instructions or more in the nature of favours. The witness responded in the affirmative and stated that these were favours, goodwill gestures, one friend helping another. In response to a question from Mr Brown the witness advised that generally no fee would have been charged and no file would have been opened. Mr Brown asked the witness where any resultant correspondence would have been saved. He asked if it was saved in a general file or in a file with the Respondent's name on it. The witness responded in the negative that he did not know. He said if any one-off correspondence was generated it would be stored on a computer file. In answer to the question of how that would have been filed on the computer, the witness responded that he did not know and that it was above his pay grade and that it was an admin issue as to how filing was stored.

Mr Brown asked the witness what kind of work he was doing at that point. The witness answered that he was a jack of all trades at that point and then moved into litigation later. The witness was asked if he would have submitted an application for registration himself and he stated no, he would have delegated that to someone else in the firm.

Mr Brown referred the witness to Third List of Documents for the Complainers and specifically to document 8, a letter of 25 September 2003 from the Respondent to the witness. Mr Brown stated that the letter referred to Kathleen in the third line of that letter and he asked if the witness was aware of who Kathleen was. The witness replied that he knew that Kathleen was the Respondent's wife.

Mr Brown asked whether the witness recalled if this letter had been preceded by any discussion between the Respondent and the witness replied that he could not remember.

Mr Brown asked the witness if he had any knowledge of the underlying transaction. The witness replied in the negative, just that he knew that Kathleen had lived and worked on Arran as a teacher and may have boarded with Miss MM.

Mr Brown referred the witness to the reference "D White" on the letter of 25 September 2003 and asked if this was how the reference was usually shown. The witness replied in the affirmative stating that if it was an initial piece of correspondence then this would be how it was shown and that the instructions would come to him direct.

Mr Brown asked if this was likely to be an initial instruction and not a reply to correspondence sent by him and the witness answered in the affirmative.

Mr Brown referred the witness to document 8 in the said List of Documents, a letter of 3 October 2003 from the Respondent to the witness. The witness agreed that it was the same reference on that letter. He was referred to documents 10 and 11 and confirmed that on those letters the reference was that of himself and his paralegal, Elaine Arnott.

Mr Brown asked if the submission of the form would have been done by Elaine Arnott and the witness responded yes, completing the documentation would have been done by her. He advised he would have had no involvement in this.

Mr Brown referred the witness back to document 8 of the said List of Documents and stated that it enclosed an application ready to go to Registers of Scotland by Miss MM. He asked the witness if the Tribunal could take it that this involved both a Disposition in favour of Miss MM and the Standard Security in favour of the Respondent's wife. The witness replied yes, there would have been a saving of registration dues if both documents were submitted together. He advised that at that time they could have both been submitted together for £22.

Mr Brown asked the witness if he would have charged a fee for this and he stated that he would not have thought so as that would not have been his practice at that time.

Mr Brown then referred the witness to the Third Inventory of Productions on behalf of the Respondent, and to the letter of 2 October 2003. Mr Brown asked if the witness had any recollection of this letter and the witness replied in the negative. The witness agreed with Mr Brown that it appears to be a file copy of a letter sent on the Respondent's firm's notepaper.

Mr Brown stated that no one has found any letter of 30 September 2003 to which the letter of 2 October 2003 refers. The witness stated that he could not remember that letter. Mr Brown asked the witness to tell the Tribunal if the letter of 30 September 2003 could have been sent and the witness responded that the letter suggests that he had sent a letter on behalf of Allan McDougall to the Respondent on 30 September 2003.

Mr Brown stated that the Tribunal was concerned about the arrangements for the Will for Miss MM. He stated that at the time it appeared that the Respondent was seeking the witness' assistance

regarding the preparation of a Will by Miss MM and asked would this have been dealt with by him. The witness responded that he would not have known how to do a Will and that he would have referred it on to an executry paralegal, at the time it was a lady called Jenni Bruce. Mr Brown asked the witness if he could recall anything about the preparation of the Will. The witness responded that he could not remember. He stated that if instructions had been sent to him he would have asked someone else to do this as he was focusing on litigation at the time.

Mr Brown asked the witness if the instructions had been along the lines that the lady wants to make a Will and my son is a beneficiary, here is a Will, would the work have been done by him? The witness responded that he would not have dealt with it himself.

Mr Brown stated that there is a Will that bears to have a backing on it indicating that it emanated from Allan McDougall & Co. and that there is no trace of any such Will in the records of Allan McDougall & Co. and no trace of any file or fee note for Miss MM. He asked if these sort of instructions had come in in the manner he described i.e. as doing a favour would this have resulted in a file being opened and a fee being charged. The witness stated that he could not say with any certainty that would have happened. The witness was asked what he would have done if he had been sent a draft Will and the witness responded that he could not say what he would have done.

Mr Brown asked the witness if he had any dealings with Miss MM and the witness replied in the negative. Mr Brown asked if anyone else in Allan McDougall had dealt with Miss MM and the witness replied that he could not answer that.

Mr Brown stated that it may be suggested to the witness that the Will came in in draft form and then Allan McDougall attended to its execution and then just sent it back to the Respondent and that could not have happened without a paper trail. The witness responded that it was possible that it could have been done from one friend to another without the generation of a paper file and a fee.

Re-Examination

Ms Motion asked the witness if he agreed that the best person to speak to about any Will would be someone in the private client department at Allan McDougall at that time. The witness replied in the affirmative. Ms Motion asked the witness if he accepted that an agency file in the name of the Respondent's firm was held by Allan McDougall. Ms Motion asked if he knew anything about it and he replied that he did not know if one existed, when it may have been opened or closed or anything

about it. Ms Motion asked if he had previously received instructions from the Respondent's firm regarding registering documents and copying deeds and he stated yes and that he also received instructions to register Inhibitions. Ms Motion suggested that these would be typical Edinburgh agent's instructions and the witness replied in the affirmative.

Ms Motion asked him if he had ever had instructions to prepare a Will for any other client. The witness he did not recall that but he was not saying that it did not happen.

Questions From The Tribunal

The Chairman referred the witness to the letter of 25 September 2003 enclosing the Standard Security and asked why the witness thought it was sent to him for registration. The witness replied because it involved a member of the Respondent's family. The Chairman asked what the witness thought was achieved by his lodging the documents. The witness answered that it was a permitted transaction. The Chairman asked was it his evidence that he had nothing to do with the transaction and the witness replied in the affirmative.

The Chairman referred the witness to the said letter of 25 September 2003 and stated that the letter in the last sentence contained the words "enclose our cheque" and then the next letter of 3 October 2003 also encloses a cheque. The Chairman asked the witness to explain this. The witness stated that he could only think that the cheque was not enclosed and that a phone call had been made to the Respondent to get him to send the cheque.

The Chairman asked if a Will ready for signature had come in, what would he have done with it. The witness responded that he would have passed it to Jenni Bruce because she had a greater understanding of what to do with it.

A member of the Tribunal asked if it was common practice for no fees to be charged or files set up when work was done as a favour for a friend. The witness stated that it was common practice for himself and that the Respondent would do things for him for free and he would reciprocate. The witness was asked if this was a common practice at the firm generally and he responded that did not know, other staff at Allan McDougall would need to be asked. The witness was asked if he saw anything wrong in this practice and if was something that Allan McDougall would not have sanctioned and he responded in the negative.

A member of the Tribunal referred the witness to the Affidavit by Claire McCarroll at page 3, paragraph 7 where it states

“I should also add that in 2003, when it is suggested that this matter was passed to Allan McDougall to prepare a Will, I was the only person in the main office doing this. My recollection is that Jenni the paralegal was not preparing any Wills at this time. There would always be the possibility that the branch office would receive instructions in for new clients but as will become clear later the connection here appeared to be with the partner Damian White who was based in the Edinburgh office with me and therefore I would expect that I would have been instructed by him rather than him going to one of our branch offices.”

It was put to the witness that this statement is contradictory of his position and the witness was asked which one was correct. The witness responded that his practice would have been to send instructions to Jenni Bruce because she spent a lot of time creating Wills for the Transport and General Workers Union and would have been in a position to do this as it was a straightforward matter.

A member of the Tribunal referred to the witness to paragraph 9 of the said Affidavit which states:

“The backing would not be set out in the way that it is on the one I have been shown. Allan McDougall Wills generally have the reference of the person, or branch, who prepared it and indeed the client reference at the bottom. So even if a Will was prepared by somebody in a branch office I would expect to see those references on it. I was used to seeing the style of other fee earners in other branches and this style does not fit with any of those nor does it contain the standard clauses that I would include. In short the style is unfamiliar to me.”

A member of the Tribunal referred the witness to Mr Nicol’s Affidavit in the Second List of Documents for the Complainers which has attached to it Miss MM’s Will. It was noted that there was no client reference on that. The witness was asked if he could explain why there was no client reference and whether he would have expected to see a reference on it. The witness responded he was never involved in preparing Wills.

In response to a further question from a member of the Tribunal as to whether he had any recollection of seeing a Will transferring property to the Respondent’s family, the witness replied in the negative. The witness was asked by a member of the Tribunal do you still do favours for each other now and

the witness responded there is no real requirement now because he now only does personal injury cases.

The Chairman referred the witness to the copy letter of 2 October 2003 and asked if there was any special way in which such documents were filed. He pointed out that this was an important document because it enclosed a Will and asked if there was any special way of such a letter being filed. The witness responded that he did not recall what the procedure was.

The witness was asked how long files were kept for and the witness responded that he did not know.

EVIDENCE FOR THE RESPONDENT

Witness One: The Respondent

The Respondent gave evidence that he is a partner in Sprang Terras in Ayr who was enrolled as a solicitor in 1993 and has been a partner since 1995. He does mainly private client work, Wills and executries. It is a two partner firm with no other solicitors and they employ four paralegals. Mr Brown asked the witness how he first met Miss MM. The Respondent stated that before he and his wife got together she trained as a primary school teacher and her first post was on Arran and she boarded with Miss MM. He stated that when she later moved to the mainland she kept up the friendship and stayed in contact with Miss MM who she referred to as "her Arran mum". He advised that Joyce Scott, the head teacher of the school had introduced his wife and Miss MM and that Joyce and Miss MM were friends.

Mr Brown asked the witness when he and his wife first got together and the witness responded at the end of 1993/beginning of 1994. Mr Brown asked what the frequency of contact was between the Respondent's wife and Miss MM and the Respondent replied that before he and his wife were together she saw her about once a month and then thereafter they saw each other maybe three times a year at weekends and again in the summer for four to five days. He said that they would go to stay with her in Arran and when the kids came along they would also go and stay with Miss MM.

Mr Brown asked how the subject of Miss MM buying her house from the housing association came up in 2003. The Respondent stated that one of Miss MM's neighbours had suggested to Miss MM that it would be a good idea to buy her house. Mr Brown asked if she was entitled to a significant discount as a tenant and the Respondent stated yes as she had lived there for many years. Mr Brown

asked what Miss MM's view was about the purchase. The Respondent stated Miss MM did not think that she had enough money to buy the house. However, she had a concern that the housing association might move her to a smaller house on the island as property was in short supply.

Mr Brown asked how the idea of the Respondent and his wife funding the purchase came up. In response the Respondent stated that it came up when discussing the possible purchase and he was not sure which of them mentioned it first. The idea was that she would have security of tenure and that they would fund the purchase.

Mr Brown asked what age Miss MM was at this time. The Respondent stated that Miss MM was in her late 60s or early 70s in 2003. Mr Brown asked if Miss MM had ever married or had any children. The Respondent answered in the negative. Mr Brown asked if Miss MM had any siblings or relatives and the Respondent stated that so far as he knew she had a cousin abroad but it was a fairly distant relationship.

Mr Brown asked if Miss MM was keen on his and his wife's idea and the Respondent stated that it was not their idea at the end of the day. Mr Brown asked the Respondent to tell the Tribunal how it came to be that he acted in the purchase when this was impermissible as he and his wife were lending the money. The Respondent replied that Arran is an informal community and it is a very laid back and relaxed part of the world. He stated that when he had the discussions he was in holiday mode and was not thinking with his professional head on.

Mr Brown asked if he charged a fee to Miss MM and the Respondent responded in the negative. Mr Brown suggested that at the stage of the drawing up of the Minute of Agreement the conflict should have been fairly stark and there was some suggestion that Miss MM could take advice if she wanted do. He asked the Respondent what led him to take that approach. In response the Respondent stated that he accepted that the transaction was a bit too close and he suggested to Miss MM that she should take advice, but she was a very straight talking woman and she knew her own mind and unfortunately he accepted that. Mr Brown asked what level of discussion there was about the question of Miss MM getting separate advice. The Respondent stated that he had said that Miss MM might want to speak to someone else. He stated that he explained the terms of the Minute of Agreement and she knew what she was doing and was very sharp mentally. She said she did not want to take separate advice. He stated that in retrospect he should have insisted and now realises that.

Mr Brown stated that it may be put to the witness that the Minute of Agreement as framed lacks provisions to deal with some of the more obvious risks which Miss MM was facing. It does not confer security of tenure and is silent as to maintenance obligations. It did not provide protection against singular successors so if he or his wife was hit by a bus or if there was a falling out she might be left exposed. Mr Brown asked what discussions if any were there about what protection she required. The Respondent stated because she was such a close family friend there were no discussions like these. He stated that the closeness of the relationship blinded him to the issues. The Respondent stated that it was agreed that Miss MM would pay the council tax and utility bills and that he and his wife would insure and maintain the property and he stated that he did that.

In answer to a question as to the size of the house, the Respondent stated it was a semi-detached bungalow with two bedrooms, a living room, kitchen and bathroom erected in the 1950s. He stated that it was in a fair condition at the time as the local authority had put in new windows and doors. He stated that Miss MM wanted to do extra work to it to install a new bathroom and a new kitchen and stated that he and his wife paid for that.

In response to a question from Mr Brown as to how the relationship was after the purchase, the Respondent stated that it continued to be very strong and that his children grew up calling her "Aunt M". He stated that his wife phoned her regularly and they continued to visit her and remained very close.

Mr Brown asked when there were discussions regarding the making of a Will. The Respondent replied that this was instigated by Miss MM and that she talked about it before the house purchase. He stated that Miss MM wanted to change her Will and leave everything to her three girls, that is the two Secondary Complainers and his wife.

Mr Brown asked the Respondent what the relationship was between Miss MM and the two Secondary Complainers. The Respondent stated that the Secondary Complainers' mother had been a close friend of Miss MM and had passed away some years previously and she had a close relationship with the two girls. Mr Brown asked the witness if he was aware of the terms of Miss MM's Will. The Respondent replied yes he was, she had asked for her Will to be uplifted from her previous solicitor and transferred to his firm and she signed the mandate for that earlier that year.

Mr Brown referred the witness to document 5 of the Third List of Documents for the Complainers, a letter of 7 April 2003 from the Respondent's firm to Stewart and Osborne Solicitors asking for the Will. The Respondent confirmed that he had written that letter.

Mr Brown asked where this was in the timeframe in relation to the conveyancing transaction and the Respondent stated that this was about the time of the settlement of the transaction. Mr Brown stated it might be suggested to the witness that by now he had seen the problems and stepped away from the Will but he had not stepped away from the Minute of Agreement. Mr Brown asked how he could explain that. The witness stated that he thought that the terms of the Will were obviously a conflict when he saw his wife's and son's names as beneficiaries.

Mr Brown asked what steps he took to deal with the situation. The witness stated he was fairly sure he phoned Miss MM and said that he was passing the Will to another firm to deal with on her behalf. He stated that he was pretty sure that he did not meet with Miss MM at this stage. He then passed the matter to Mr White. Mr Brown asked about the Respondent's relationship with Mr White and the Respondent advised that he had been at university with him and then they had been trainees together in Ayr and they were still friends. He stated that they did favours for each other for example Mr White passed family conveyancing matters to him to act for the mortgage lenders.

Mr Brown asked what the practice was about charging for these sorts of favours and the Respondent stated that they did not charge for favours and that extended to the conveyancing for their own properties.

Mr Brown asked what discussions if any he had with Mr White regarding the registration of the security. The Respondent replied that he did not think that there was anything formally in writing. He advised that he and Mr White were on the phone each week. He advised that they normally discussed favours during these calls. He advised that he did not normally send Mr White anything out of the blue.

Mr Brown referred the witness to the Third Inventory of Documents for the Complainers and in particular to production 8, the letter of 25 September 2003. He asked if this letter would have been sent following a telephone conversation. The witness replied in the affirmative and stated that this would not have been discussed in any special call and that they called each other regularly over the years.

Mr Brown asked the witness to explain his reasoning regarding why the documents should not be registered by him and why Allan McDougall should do it. The witness replied that because Mr White was registering the deed in favour of Miss MM he thought the same firm should act in the registration of the Standard Security. Mr Brown asked if the Respondent accepted now that this was wrong and the Respondent responded in the affirmative. Mr Brown asked if Mr White provided advice to the Respondent's wife and the Respondent replied that he would say not.

Mr Brown asked the Respondent to reflect on the timing of matters and asked him to place the discussions regarding the Will in the time frame between April and September 2003. The Respondent stated that it would have been nearer September than April. Mr Brown asked what happened after the Respondent spoke on the telephone with Miss MM when he said to her that he would pass the Will on to a friend. The Respondent stated that he would probably have mentioned it to Mr White in the course of a telephone call and followed it up with an email. He stated that he was fairly certain he would have attached the draft Will with the email. Mr Brown asked the witness if he accepted that the Will was executed as drafted and the witness replied in the affirmative.

Mr Brown asked about the backing on the Will and the Respondent stated that normally his paralegal would have put his firm's backing on it. He stated that she would have substituted Allan McDougall's details on the backing and removed his firm's details. Mr Brown asked if that paralegal was still with his firm and the Respondent responded in the affirmative. Mr Brown asked if she had any recollection of this and the Respondent responded in the negative.

Mr Brown asked where the agency instructions that he spoken of receiving from Allan McDougall were filed and the Respondent responded that these would be filed in a file for each of the particular matters. He stated that in relation to Wills they did not always open a particular file and that they had a miscellaneous Will file which was opened annually and stated that all possible files were checked at the time. Mr Brown asked if they had checked the conveyancing file for Miss MM to see if the correspondence regarding the Will ever made it on to that file. In response to the Respondent stated that file was destroyed and it may have been on that file. Mr Brown asked the witness when he said to Miss MM he would pass the file on to another solicitor would you have spoken to that solicitor first. The Respondent stated that he would have spoken to Miss MM first.

Mr Brown asked the witness if he was fairly certain that the draft Will was emailed. The Respondent stated that he was and that the emails would have been destroyed. He stated that these were kept for a few years and qualified that to say five or six years.

Mr Brown asked the witness what he understood or expected that Mr White would do having got the Will. The Respondent responded saying that he expected him to write to Miss MM and have a conversation with her regarding the instructions and either use the draft Will as a basis or draft a Will and have it signed using the normal procedure.

Mr Brown stated to the witness that he may be criticised for not explaining to Miss MM in writing why he could not act for her and getting her to take other advice. The witness stated that he did explain but it was in the course of a conversation. Mr Brown asked the witness why there was no evidence of that on the file. The witness stated that he thought it was okay because he sent the matter on to Mr White. He stated that he believed that Allan McDougall would know what to do. He said that he did not recall giving Allan McDougall specific instructions because that would be for Allan McDougall to take instructions.

Mr Brown asked the witness if the Will was executed by Miss MM in the presence of the former headmistress, JSS. The Respondent responded in the affirmative.

Mr Brown asked how we got from the draft Will to the execution of the Will. The Respondent stated that he did not receive any update regarding this from Allan McDougall.

Mr Brown referred the witness to the file copy of the letter of 2 October 2003. Mr Brown asked if there had been any previous discussions regarding who was to keep the Will when it was signed. The witness replied in the negative. The witness was asked if he had any memory of the terms of the letter of 30 September 2003. The Respondent replied no, he only had a vague recollection of the executed Will coming in.

Mr Brown stated that the file copy of the letter of 2 October 2003 was not with the papers originally identified and asked the witness to explain how the papers in the productions came to be put together. The witness responded that when the complaint came in they had a file opened for the property transaction and all of the papers were in that one file. He stated that these papers were in relation to the subsequent transfer of the property in 2006. He stated that the 2003 file had been destroyed.

Mr Brown asked if the file copy letter of 2 October 2003 was on the 2006 file. The Respondent replied in the negative. Mr Brown asked how this copy letter was discovered and the Respondent stated that they searched through miscellaneous filing and it turned up as a result of that search. He

advised that they had checked through a number of bankers boxes found when new shelving was installed. He stated that it was found in a generic file rather than a file which was client specific, which contained a jumble of papers which were likely to have been placed there to be filed. He stated the responsibility for filing was that of the office junior.

Mr Brown asked what happened to the letter of 30 September 2003 and the Respondent stated that there was no trace found of that. The Respondent stated that checks were done on the hard drive of the computer system and they also asked their IT supplier to check the server. They also checked all of the office PCs. Mr Brown asked the Respondent if the office still had the same PCs as in 2003 and he stated no, that they had been replaced and the previous PCs had been erased for security reasons.

Mr Brown then asked the Respondent about the transfer of title in 2006. The Respondent stated that John Hodge had taken over a firm with a lot of Arran clients and he visited the island every week or so. He said that it was recognised that there was a need for separate representation so he asked him to act for Miss MM. The Respondent stated that he wrote to John Hodge in 2006 and that John Hodge went to visit Miss MM and attended to the transfer of title. Mr Brown asked the Respondent if he himself provided any advice to Miss MM regarding that and he replied in the negative. He stated that it was Mr Hodge's remit to act on Miss MM's behalf.

Mr Brown said that drawing all this together it may be suggested to the Respondent that there is no hard verifiable evidence that Allan McDougall had any involvement in the execution of Miss MM's Will. He stated that it might be put to the Respondent that his evidence was a cover-up of his serious breach of professional standards. Mr Brown asked the Respondent to comment on that. The Respondent stated that he did recognise a professional conflict with the Will and that he is sure in his own mind that he did hand over the Will to Allan McDougall.

Mr Brown stated that the argument against him might be made that if Allan McDougall did this, the Tribunal have from Claire McCarroll's Affidavit that as partner in charge of this side of things she would have insisted on seeing a client such as Miss MM. However the Respondent's position is that he does not know what happened and it is not unlikely that there was no paper trail. Mr Brown asked for the Respondent's comments on this. The Respondent answered that there were no discussions of any fee being charged so he would not have expected any record of that. He stated that it was all done by telephone conversations. It would not be a surprise that there was no written correspondence. The Respondent stated that the witness, Ms Scott, was a resident on Arran and that if a person had

attended from Allan McDougall it would have been more likely that they would have witnessed the signature.

Mr Brown stated that they were dealing with a case of admitted professional misconduct and that the Tribunal in considering sanction would need to have regard to the reputation of the profession and possibility of recurrence and asked what the Respondent could say to the Tribunal regarding this. The Respondent stated that there was no possibility of any kind of recurrence of professional misconduct. Mr Brown asked how he could say that. The Respondent stated that this matter arose from a conveyancing transaction involving a close family connection and that given that it was 13 years ago he at the time was probably a little inexperienced. He stated that he has never identified any other subsequent conflict situations and he is certain there would not be any recurrence.

Cross-Examination

Ms Motion asked the Respondent if he had seen and approved the Answers and he responded in the affirmative. He confirmed that these were true and correct. He confirmed that he had been qualified for 22 years plus his two year traineeship and had spent most of his professional life in his current firm. Ms Motion stated that as at 2003 he had 10 years' experience plus his traineeship. She asked him whether he considered that to be inexperienced. The Respondent stated no, not inexperienced but not as experienced as he is now though.

In answer to a question from Ms Motion, the Respondent stated that he was a member of the local Faculty and attended seminars on topics such as conflict of interest. In answer to a question from Ms Motion he confirmed that at the time of the incident in 2003 he knew that they were about 12 to 15 other local firms and that he had relationships with them. In answer to a question he stated that he got occasional referrals from these firms and kept up to date with guidance. Ms Motion asked if he agreed that since 2001 the guidance stated that deeds or documents evidencing rights should be preserved indefinitely. The Respondent replied in the affirmative. Ms Motion stated that the guidance was to keep complete files and formal documents, file notes of meetings etc., emails and letters and that this was basic and fundamental to good practice and also crucial because colleagues might have to pick up the files and progress matters and also it was crucial to protect yourself as a solicitor. The Respondent accepted that this was the case.

In response to a question from Ms Motion as to how many Wills he had prepared in the last ten years, the Respondent said it was difficult to say quite a few, and into the hundreds. Ms Motion asked if he

met clients to take instructions and he responded usually. She asked if this was needed to test capacity and he stated that this was the case. Ms Motion asked whether in the last ten years he had any experience of a conflict of interest situation. The Respondent stated yes and that he was acting in a conveyancing transaction for a seller and the purchaser approached the firm and asked them to act and they had to refer them to another firm.

Ms Motion asked the Respondent whether as at 2003 was he aware of the Professional Practice Department at the Law Society. The Respondent replied in the affirmative. Ms Motion asked when did he last look at the Professional Practice Rules and he stated within the last six months. She asked when he had looked at them before that, he stated that on an annual basis. She asked if he was very familiar with the conflict of interest rules and he replied in the affirmative.

Ms Motion asked if he accepted that he was in a conflict of interest situation in this case and he replied in the affirmative. Ms Motion asked if the Standard Security and the Minute of Agreement were signed on the same day and the witness replied that he did not know. Ms Motion asked if he wrote to Allan McDougall about the conflict. He stated that he did not but he probably would have mentioned it to them.

Ms Motion asked if he referred Miss MM to Allan McDougall regarding the Minute of Agreement. The Respondent stated that he did not. Ms Motion asked whether this was because he did not think he was conflicted at the time. The Respondent stated that in his view there was a community of interest. Ms Motion asked was it fair to say that he did not realise that he had breached any professional rules. The Respondent stated that if he had realised he would have done something about it. Ms Motion asked the Respondent whether it was correct that even when the Secondary Complainers lodged a complaint he did not think he was conflicted. In response he stated that he did not realise what their point was.

Ms Motion reminded the Respondent that he had said to the Tribunal that he had sent the deeds to Allan McDougall to register for him and asked why that was. The Respondent stated that was because he was acting for Miss MM. Ms Motion suggested that at 2003 he knew that he was in a conflicted position. In response, the Respondent stated no and that he thought that would be okay. Ms Motion asked whether that was an attempt by him to legitimise the Standard Security position. In response the Respondent stated no, he thought he was doing the right thing.

Ms Motion referred the Respondent to items 8 to 11 of the Third List of Documents for the Complainer. She asked was it fair to say that the letters were short and to the point. The Respondent agreed. Ms Motion stated that he had already confirmed that the letter of 25 September 2003 did not go into the details of the Standard Security. The Respondent explained that was because this issue had already been raised.

Ms Motion stated that the witness had given evidence that the whole point of the purchase was to give Miss MM security of tenure and to carry out an update to the house. She stated that he had known her for a long time and she had shown him many kindnesses and suggested it would have been easier to give her the money. In response the Respondent stated that the two things were separate that they could not have updated the house without the housing association's consent. The Respondent agreed with Ms Motion that they could have updated the house without purchasing it with the housing association's consent.

Ms Motion asked when the Respondent carried out work in relation to Mr White's mortgage. The Respondent replied that Mr White had moved several times and that he had acted on each occasion. The Respondent stated that the first time he acted for Mr White was in 1999. He stated that Mr White knew that he had to get someone else to act in his own personal affairs and that he did too. Ms Motion asked the witness when he first instructed Allan McDougall and he stated that he moved house in 2002.

Ms Motion referred the Respondent to his letter of 11 September 2003 which was contained in the First Inventory of Productions on behalf of the Respondent. She asked if he accepted that the terms of the letter do not provide a defence to his acting in a conflict of interest situation. The Respondent responded in the affirmative. Ms Motion referred the Respondent to paragraph 3.17 of the Complaint regarding his taking instructions for the Will from Miss MM and asked whether this was admitted. The Respondent replied in the affirmative. The Respondent confirmed that he had mandated the earlier Will. Ms Motion asked had it always been his position that he admitted drafting the second Will. The Respondent responded in the affirmative and said that he did this towards the end of the conveyancing transaction. Ms Motion asked the Respondent if it was always his position that the issue of the drafting of the second Will came up in the lead up to September 2003. The Respondent responded in the affirmative. Ms Motion asked him if he wanted to reconsider his position given that he had mandated the Will in April. The Respondent stated that he did not have instructions at that stage. Ms Motion asked if the Respondent accepted that in a response to the Complainers in 2014 he said something to the contrary.

The Chairman indicated that if this document was to be put to the witness it needed to be lodged with the Tribunal. There was no objection from Mr Brown. The letter of 21 August 2014 was lodged along with a letter of 24 April 2014, a letter of 29 November 2013 and a letter of 24 March 2014.

Ms Motion referred the Respondent to the second page of the letter dated 21 August 2014 at point 2 on page 2 where it states

“The question of reviewing MM’s Will arose after the purchase of the property as in the event of her death, M’s house, with the title being in her sole name, would then pass to the beneficiaries of her Will namely Isobel and Lesley Mulholland. M was concerned to ensure that the house was left to my wife, as in her words, “the house was ours anyway” and so a discussion took place concerning a review of her Will. The question of the house aside, M wished her estate to be split “equally between her three girls”. When my wife commented to M that she did not wish to be left anything, M countered that she would then instead leave my wife’s share to our son AB who was at that time aged 4. M then asked me if I could draw up a Will in these terms. As was the norm with M she was quite forthright and determined as to what her wishes were. She was certainly not someone who would be easily influenced by others. I realised I could not proceed further with drafting the Will given the close relationship to a potential beneficiary. At that stage I advised M that I could not proceed with the preparation of a new Will and suggested an alternative firm of solicitors, namely Allan McDougal (sic) & Co. We have long had an existing relationship with Damian White, then a partner in the Firm, whom we have instructed in previous cases involving conflict situations. I passed details of this Firm to M and likewise passed her details to them. I had no further involvement with the drafting or execution of any Will however sometime later (I cannot remember the exact timescale but certainly many months) I received the finalised executed Will to place in our Firm’s safe and to hold on her behalf. I cannot recall whether this was received from a Firm of solicitors or from M herself.”

Ms Motion asked the Respondent if he accepted that this letter does not fit with what he has told the Tribunal today. The Respondent explained that when he wrote that letter he had not seen the letter of 2 October 2003 and so the information contained in the 2014 letter was his recollection at the time. Ms Motion stated that his evidence today was that he sent an email to Mr White with the draft Will. The Respondent explained that what he meant in the letter of 2014 was that he had no further involvement after he emailed the Will. The Respondent stated that his explanation for the difference

in the letter and his evidence today was that when he wrote the letter in 2014 that was his recollection at the time. Ms Motion asked the Respondent if he knew what had happened to the draft after it was sent to Allan McDougall and he responded in the negative. Ms Motion asked if the draft Will could have been sent in May 2003 and the Respondent responded that he did not think so. He stated that it was only when the conveyancing transaction was progressing that it was raised as an issue.

Ms Motion put it to the witness that he had said that he sent a draft Will with a backing with Allan McDougall details on it and that this would lead people to think that it was from Allan McDougall. The witness accepted this but said that the document was sent to Allan McDougall.

Ms Motion put to the witness that paragraph 3.20 of the Answers is not correct. The Respondent stated that the Answers should be read in the context of paragraph 3.20 of the Complaint. In response to a question from Ms Motion, the Respondent accepted that he sent a draft Will with Allan McDougall's details on the back to Allan McDougall by email. He confirmed he no longer has that email and that it would have been on the file which was destroyed. He stated he did not have the draft Will. Ms Motion put to him that a draft Will evidences rights of an individual and that he had accepted that these should be kept. She asked him whether it was not extremely important that he kept such a draft in case the original goes missing, in case he needed to prove the terms. The Respondent stated that he possibly did not keep it because he had passed it onto another firm.

Ms Motion asked the Respondent to tell the Tribunal when the files were destroyed. He stated that they were usually destroyed at the start of the year after they fell to be destroyed. Ms Motion asked him what he understood to be the correct length of time for the files needing to be kept for and he stated ten years.

Ms Motion referred the witness to item 21 in the Third List of Documents for the Complainers, a letter dated 14 August 2013 from Stewart & Osborne to the Respondent's firm. The Respondent confirmed that he was familiar with that letter and that it raised questions regarding the Will. Ms Motion asked whether he still felt able to destroy the file at that stage following this letter. The Respondent replied that it was the conveyancing file which was destroyed and that he could not say which documents relating to the Will were destroyed. Ms Motion asked him to explain why these documents would have been destroyed prior to September 2013 particularly when issues were raised by Mr Paterson. The Respondent stated that he was presuming that they were destroyed. He could not find them so he was presuming that was the case. He stated that if the documents were in the conveyancing file then they were destroyed.

Ms Motion stated that in his Answers at point 3.27 the Respondent has stated that the firm retained email messages for only 3 or 4 years however in his evidence today he said 5 or 6 years. The Respondent stated in response that material emails are printed off and put on the file. Ms Motion asked if he would consider an email of instructions to Allan McDougall material especially when he was in a conflict of interest situation. The Respondent stated that he did. Ms Motion asked whether he had kept that email and he responded in the negative. The witness stated that he could not quite remember what was in the email but he thought he would have given a flavour of what was required to be done. Ms Motion asked if he gave Allan McDougall details and he responded that he was not entirely sure what was in the email that he sent to them.

Ms Motion put to the witness that it was usual for a client to be seen when a client gives instructions for a Will. This was accepted by the Respondent. Ms Motion stated that he knew Allan McDougall's office was in Edinburgh and that someone would have had to go and visit Arran and suggested that surely it would have been more logical to use local agents. In response the Respondent stated that he always used Allan McDougall for personal matters. Ms Motion suggested that Mr Paterson would have been the obvious choice. The Respondent stated that normally for conflict situations he used Damian's firm.

Ms Motion referred to the Respondent's Answers at paragraph 3.27 and asked him if he was sure that it was correct that this correspondence would have been sent by email. The Respondent responded in the affirmative. Ms Motion stated that he had produced a copy letter of 2 October 2003 and stated that letter was not an email. The Respondent explained that correspondence with Mr White was not exclusively by email and that he would use other methods as well. Ms Motion put it to the witness that he was wrong in what he stated at 3.27 of the Answers. The Respondent explained that correspondence would usually be by email.

Ms Motion referred to the letter of 2 October 2003 and asked if it is possible to tell when the letter was created. The Respondent stated that the date on it says 2 October 2003. Ms Motion stated that he had said that he had had an IT consultant check his system and asked why that person is not here to give evidence as to when the document was created. The Respondent stated that the company had given a letter. Ms Motion asked why his secretary was not here to give evidence and the Respondent stated that she was no longer with the firm.

Ms Motion stated that he did not produce the letter of 2 October 2003 to the SLCC in 2014 and asked why that was. The Respondent explained that he did not have the letter at that stage and that it only came to light in May 2014. Ms Motion put to the witness that the copy letter could have been created at any time. She asked about the original copy of that letter which is in the Respondent's possession and asked what type of paper it was printed on. The witness stated that it was on normal A4 paper rather than thinner copier paper. Ms Motion asked if the original was tinged in any way to show age. The Respondent stated that it was not but it was slightly crumpled. Ms Motion put it to the witness that the evidence of this letter is down to his evidence only and there is nothing independent to back up what he is saying. The Respondent stated that this was due to the passage of time and it would have been easier to verify earlier.

Ms Motion referred to the following timeline:

- 2001 – Respondent aware of Miss MM's intention to bequeath 1/3 of the estate to his son.
- 2003 – Respondent obtains the Will from another firm.
- April to September 2003 – Respondent drafts the second Will.
- 8 & 13 September 2003 – minute of agreement executed.
- 22 September 2003 – standard security signed.
- 20 September 2003 – new Will executed.

Ms Motion put to the witness that he realised he had a conflict of interest before the conveyancing transaction settled. The witness responded that he was not aware of exactly when the conveyancing transaction settled. Ms Motion asked if he recognised the issue of a conflict with the Minute of Agreement and Standard Security. In response the Respondent stated that as he had said before it was probably too close and this was overlooked. Ms Motion put it to the witness that the execution of the second Will was not witnessed by a member of Allan McDougall's staff and that the normal practice is two visits are required. She asked the witness whether the fact that it was not a member of Allan McDougall's staff who witnessed the signing of the Will supports the assumption that he sent the Will to Miss MM for execution and then sent it to Allan McDougall. The Respondent responded in the negative.

Ms Motion asked about the other Affidavits lodged and whether he accepted that they were accurate. The Respondent responded in the affirmative. Ms Motion asked if it was not fanciful to suggest that

Allan McDougall was involved in this matter and suggested that he sent the Will to Miss MM to sign with Allan McDougall's backing. The Respondent stated that he disputed that.

Ms Motion put to the witness that the positions in the letter of 24 April 2013 and in the letter of 29 November 2013 are not the same. The Respondent stated that in his view they were along the same lines. Ms Motion then referred the witness to the third letter in the Fourth List of Documents for the Complainer, the letter to the SLCC dated 27 March 2014. Ms Motion asked what the Respondent's comments were in relation to the difference between what was stated in that letter and his evidence today. The Respondent responded that he did not know the timescale at that stage. Ms Motion asked the Respondent whether he obtained consent from third parties when producing these documents and whether he raised data protection issues. The Respondent indicated that he had obtained advice from Mr Brown and Mr Brown stated that these documents are what they are. Mr Brown stated that the lodging of the third party letters was his own responsibility.

There was no re-examination.

Questions From The Tribunal

The Chairman asked the Respondent was it his evidence that when he sent the Standard Security to Mr White that he thought that it solved the conflict at this stage regarding the recording of that document. The Respondent responded in the affirmative. The Chairman asked the Respondent if Mr White had any concerns regarding this course of action. The Respondent responded in the negative saying that Mr White would have spoken to him if he had.

In response to a question from the Tribunal as to whether the witness to the Will was known to the Respondent, he responded in the affirmative. He advised that she is still alive but does not keep good health. In answer to a question as to whether she would have had relevant input into this case, the Respondent stated that he thought there was a precognition taken from her.

In answer to a question about what happened to the Will when it was received from Mr White, the Respondent stated that he would have written to Miss MM to say that the Will had been received and that she should keep the letter as evidence. He confirmed that letter would have been on the conveyancing file.

In response to a question from a member of the Tribunal as to what the Respondent considered that the public would have thought about the effect on the reputation of the profession arising from this case, the Respondent replied that he thought that the public would not be impressed with what he had done. He stated he was prepared to put his hands up to what he had done wrong.

In response to a question as to whether the public could continue to trust him. The Respondent stated that he had learned a lot from this and the public could trust him.

In response to a question as to whether he would email copy letters, he replied no, he usually typed email messages.

At this stage Mr Brown indicated that the witness to the Will is in her 80s and has onset of dementia.

Witness Two: Mr Sprang

The witness gave evidence that his name is Alan Kenneth Sprang and he is a partner in the Respondent's firm. He stated that he was aware of the details of the allegations against his partner and the extent of his admissions in relation to professional misconduct. The witness stated that in 2003 his partner had advised him that he was involved in purchasing Miss MM's property and that this had been done by her purchasing her council house. In answer to a question, the witness stated he had no involvement in this transaction.

In answer to a question, the witness stated that he accepted that in this case the Tribunal is dealing with a fairly significant departure from the conduct rules. The witness stated that his partner had been uncharacteristically naïve in this transaction. He advised that they had been in practice since the mid-1990s and his experience is that his partner is solid and dependable and that they had not had a problem with each other or their clients. He stated that his partner's work was always done to a high standard and that he could only think of one complaint in that time. He advised that there were no claims against his partner at all. He stated that there were systems in place for reviewing each other's work and that they discussed ongoing work. He advised that they opened the mail together so they see each other's correspondence and know what is going on. The witness stated that this was an uncharacteristic mistake for his partner and that he did not foresee it happening again. He said that things have changed with the conflict of interest rules since 2003 and that they now have their own software which flags up conflict of interest issues with clients. He stated they regularly refer such cases to other solicitors to deal with.

Mr Brown asked if he could tell the Tribunal about searching the records. He said that they had trawled through the computer system and they came across an instruction sheet regarding the Will and the signing details of the standard security from 2003 and the draft Will as well. Mr Brown asked him if these documents were to hand and he indicated that the signing details and the draft Will are on his office PC.

At that stage Mr Brown requested an adjournment to take instructions.

Following the adjournment Mr Brown indicated that in his view he was now in a situation where there may at the very least be relevant documents which the Tribunal has not seen which may have a bearing on the Tribunal's deliberations. He stated that this was not a satisfactory state of affairs but suggested that the Tribunal adjourn and reconvene at a future date once an opportunity has been given to obtain all the necessary documentation. Alternatively he suggested he could continue with his cross examination and at the adjourned hearing Ms Motion could decide if she wanted to recall the Respondent and his partner.

Ms Motion stated that her view was that it was necessary to see these documentation as credibility was an issue. She stated that depending on what is in the documents she may have to recall the Respondent and would have to reserve her right to cross examine Mr Sprang on the basis of these documents. She agreed with Mr Brown that it was possible to continue with Mr Sprang's evidence today or to adjourn at this stage to give both parties an opportunity to lodge the documentation.

The Tribunal adjourned to discuss this matter and decided that it was in the interests of justice for the hearing to be adjourned part-heard to allow the parties to investigate matters and to lodge any additional productions. The Tribunal noted that depending on the outcome of the investigation, Ms Motion may require to make a motion to recall witnesses. The hearing was adjourned part-heard to a date to be fixed.

FURTHER EVIDENCE - 29 AUGUST 2016

Mr Sprang's Evidence Continued

The Chairman reminded the witness that he was still on oath. Mr Brown referred the witness to the Supplementary Inventory of Productions for the Respondent, documents A1 to A19. Mr Brown asked

the witness if documents A1 to A5 which were a note or memorandum at A1, and a copy of the Will at A2 to A5, were documents which the witness had indicated on the last occasion that he had found following a search of his computer systems. The witness indicated that these were the documents which he had referred to on the earlier occasion. In relation to documents A6 to A19, Mr Sprang indicated that these were not documents which he had seen as part of his initial search.

Mr Brown referred the witness to the next section of the Inventory which concerned documents starting with B. Mr Brown indicated that these documents related to post-transaction correspondence. Mr Brown asked the witness if he was looking for such material in his initial search. The witness responded that he was not looking for such material at that stage. The witness looked through the bundle and confirmed that he was not aware of these documents previously.

Mr Brown then referred the witness to the C Inventory which related to the remortgage file by Mr and Mrs Terras. The witness indicated that he had not been searching for these documents. Mr Brown said to the witness that when he was last giving evidence he referred to an instruction note and asked which document that was. The witness replied that that document was document A1 in the Inventory.

Mr Brown asked the witness to give the Tribunal an indication of how the firm's work is allocated. The witness replied that they each have their own bank of clients but that certain types of work are done by the Respondent. The witness advised that he personally does not do court work or divorce work and he passes any work of that type to the Respondent. Mr Brown asked the witness what arrangements there were for monitoring or reviewing and checking each other's work. The witness responded that they open the mail together each morning and they see each other's correspondence in that way. He stated that they discussed issues and review a sample of files after transactions had finished. Files are reviewed together. Mr Brown indicated that there may be concerns raised by the Tribunal that there is nothing to stop a reoccurrence of the failures. He asked whether there was any control mechanism in place. The witness replied that it was difficult for him to answer but he would say that the Respondent's failures were a complete aberration. He stated that generally he and the Respondent discuss conflict of interest cases and gave an example of a recent conflict where his own in-laws needed their Wills updated and indicated that these were passed to another firm to update.

Mr Brown asked if the view was taken by the Tribunal that there needed to be more formal supervision in place what would his view be of that and the witness responded that he would be prepared to supervise the Respondent. Mr Brown asked if there was any formal process which would flag up potential conflicts. The witness responded that the firm has a checklist at the start of a

transaction and a system which identifies conflict of interests on their computer system. Mr Brown asked if that mechanism was directed at conflicts of interest regarding acting for two parties in the one transaction. The Respondent replied in the affirmative. Mr Brown asked if there was any monitoring in place to prevent personal or family conflicts. The witness replied that he was the cashroom partner and that he needed to prepare an annual report auditing all work that the partners do on a personal basis. He stated that the Tribunal has his assurance that a failure like this would not happen again.

Cross Examination

Ms Motion asked if the system of end of year reporting was in place at the end of 2003. The witness replied that it was. Ms Motion asked why these failures were not picked up. The witness replied that was due to an oversight. He stated that he was unaware that the conveyancing transaction was being undertaken in-house.

Ms Motion asked what hours the secretaries in the firm work. The witness replied that they work between the hours of 9 and 5. Ms Motion stated that one document which has been produced has the reference "LC" on it and asked whose reference that was. The witness replied LC was a cashier. Ms Motion asked if she was a secretary at any time and the witness replied yes at one time she was. Ms Motion asked if she was still working at the firm. The witness replied that she was not. She asked if she was still alive and the witness replied that she was not.

Ms Motion asked if there were any paralegals dealing with private client work. The witness replied no, there were paralegals but they all deal with conveyancing.

Ms Motion asked whether standard securities can be sent direct from the firm to Register House for registration without going through Edinburgh agents. The witness replied in the affirmative. Ms Motion asked if there was a public holiday in Ayr on the third Friday in September and if that was called Gold Cup weekend. The witness replied that was correct. Ms Motion asked what time the office would be open that weekend. The witness indicated that sometimes they would close for the whole of the weekend but sometimes they would ask the staff to work on the Friday morning.

Ms Motion asked the witness when he was first aware of the allegations regarding the Respondent. The witness replied that he received a telephone call from the husband of one of the Secondary Complainers to say he was concerned regarding the Will and asking was he aware that the

Respondent had prepared it. He stated that he had been told the Will had been prepared by Allan McDougall. The witness clarified that the Respondent had told him that the Will was prepared by Allan McDougall. Ms Motion asked the witness when the telephone call was. The witness replied that from his recollection was it was after the executry had been completed.

Ms Motion asked when the witness carried out a search of his computer system. The witness replied on the Thursday or Friday before the first Tribunal hearing at the end of May 2016. Ms Motion asked the witness if he located the letter of 2 October 2003. The witness replied in the negative.

Ms Motion asked the witness if he discussed his search with the Respondent. The witness responded that when the Respondent found the letter of 2 October 2003 he came to show him it and he said that he would look for other documents. The witness said that he showed the Respondent what he had found on the system before the last Tribunal. Ms Motion asked did you show him the draft Will. The witness said yes he showed him it on the system and scrolled through it. Ms Motion asked if they had a conversation about it. The witness stated they had a short conversation and then the Respondent went to carry on with his physical search. Ms Motion asked if the Respondent had spoken to him about these documents or the case since he last gave evidence and the witness responded in the negative.

In response to a question from the Tribunal regarding how conflict of interest checks were done in 2003 and now, the witness responded that it was hard for him to remember how it was done in 2003, but said that now there is a link between the accounting system and the word processing system. He stated that he thought in 2003 there was only a check done on the accounting system not the word processing system.

A member of the Tribunal asked how the firm flags up when private business is done for a partner. The witness replied that he goes through all the files when he goes through the accounting system and that flags this business up.

A member of the Tribunal asked would there have been any way of checking in the MM case that there was a Standard Security granted to the Respondent. The witness replied in the negative.

A member of the Tribunal asked if the witness randomly sampled the Respondent's work. The witness replied that they covered each other's work while they were on holiday and also when clearing out files they look at each other's work.

A member of the Tribunal asked whether using friends to do legal business of a personal nature is something that happens on a regular basis. The witness responded that he had personally been asked to do Wills for other solicitors and had very recently been asked to do such work. He stated that it was usually done on a grace and favour basis but in other cases a fee may be charged.

A member of the Tribunal asked when work was done on a grace and favour basis and no fee was charged how that type of work would be reviewed. The witness replied that a file would be opened and everything would be entered onto the system. However he stated that was not the practice in 2003. A member of the Tribunal asked if the 2003 system involved paper files and the witness replied in the affirmative.

A member of the Tribunal asked if there was a general Will file and the witness responded in the affirmative and stated that it would also be normal to have Will correspondence filed in a conveyancing file if it was carried out at the same time.

Further Evidence From The Respondent

Mr Brown recalled the Respondent to give further evidence. The Chairman reminded the Respondent that he was still on oath.

Mr Brown stated that he wanted to ask the Respondent some questions about the documents which had been produced since the adjourned hearing. He asked the Respondent to explain what had been done. The Respondent stated that the documents which had been lodged initially were the documents which he had thought were relevant to the matter. He stated that he could not find the draft Will but because the completed Will was available he did not pursue that any further.

He advised that in relation to document A1, the notes, he thought that these had already been included in the bundle. He stated that these notes were typed up by one of the secretaries based on handwritten notes made originally on two or three sheets of paper. He stated that the secretary would have typed them up and placed them in the file. He stated that he was not sure when they had been typed up and they could have been notes made at separate times but all typed up at the one time.

In relation to the insurance policy, he stated that he had been corresponding with Miss MM's insurance company at the time and that she had given him a cheque to pass to them. In relation to the

details of signing he suggested that this could be either the Standard Security or the Minute of Agreement. He stated that the secretaries typed up his handwritten notes because his handwriting was not very legible.

Mr Brown asked about the entry headed "Will Details". The Respondent replied that this recorded a discussion with Miss MM regarding what she wanted in her Will. Mr Brown asked if there were fuller records of the notes of instructions regarding the Will and stated that he would normally have expected to see details of executors and other matters depending on how complicated the Will was. The Respondent advised that there were no other notes.

Mr Brown referred the Respondent to the rest of the A documents. He asked if the Respondent could tell the Tribunal what came to light when. The Respondent stated that hard copies of some of the documents had been found. Mr Brown referred the witness to document A11, a letter to Miss MM which had the date on it as 21 June 2016 and then handwritten on it "9 April 2003" and asked the witness to explain. The Respondent stated that this was a document found on the server and when you open some word documents the original letter is saved including the date, but if you ask it to print it it prints out with the date on which it is printed. The Respondent indicated that it was printed on 21 June 2016 and he hand wrote the actual 2003 date on it so that it would be clear.

Mr Brown asked the Respondent to explain what searches were undertaken before and after the last hearing at the Tribunal in May. The Respondent advised that the first search was done searching for Allan McDougall related documents. He stated that the search done after the hearing in May was far more wide ranging and was done against the address of the property and Miss MM's name. Mr Brown asked the witness to tell the Tribunal what search methodology was used initially. The witness replied that the IT company was asked to carry out a search on the server and they did that remotely through the server. They sent the results to the firm using screen shots from their computer and the second search was carried out in the same way. Mr Brown asked the witness to explain why some documents from that time had been able to be traced and some had not. The witness replied that if the person had saved the documents to her own PC rather than to the server this could mean that the documents were lost and not able to be recovered. He stated that at that time in 2003 there was no uniform rule of what had to be saved where. Mr Brown asked what the primary record keeping medium in 2003 was. The Respondent confirmed that the primary record keeping medium then was paper files. Mr Brown asked if that included emails printed off and placed on the file. The Respondent stated that did not happen all the time and that electronic emails were only kept for a

couple of years depending on server capacity. He stated that the server tends to delete older correspondence. He advised that the server now captures all documents.

Mr Brown asked if a hard copy letter is generated is that kept. The Respondent replied that some files are deleted if there is not enough space on the PC. He stated there was no uniform practice in 2003 of where documents were saved either on the server or the member of staff's own PC. He stated that most documents were saved on the server but some secretaries saved documents to their own folders.

Mr Brown referred the witness to the B documents and asked if all of those documents had also been kept in hard copy. The witness replied that he was not sure if that was the case. He stated these documents came to light after a search on the address of Miss MM's property. The witness advised that initially he did not think that these B documents were relevant to the complaint but this time after the further search he erred on the side of overproducing all the letters referring to the property and Miss MM. The witness was referred to the C documents and confirmed that these were copies of an actual paper file relating to his remortgage.

The witness was referred to the E documents starting with the letter from Microtech dated 28 June 2016. The witness confirmed that this narrative accorded with the instructions given for the additional search. He stated that this search was done remotely as the software allows Microtech to access the server remotely. He stated that the rest of the E1 to E8 documents were the list of screenshots which the firm received back from Microtech and stated that these screenshots related to the documents which have been produced and discussed earlier.

Cross -examination

Ms Motion referred the witness to the documents attached to the Affidavit from Andrew James Rankine and to page 4 of the printout attached to that which shows a screenshot of documents found on the firm's server. She asked him to look at page 4 of that document and to a document entitled "box 471.doc". She stated that the reference to that document was "D:\users\userb\JULIE\Closed File Boxes" and asked him what that meant and he stated that this was a document filed in folder Julie. She then asked him to look at the reference to a document on the sixth line of that screenshot entitled "ALLANMCDUGALLmandateltr.doc" and asked him where the screenshot indicated that document was saved within the server. He stated that this was saved in folder "Euan" which was his folder. She asked him if he was the creator of that document and he stated no, it was merely saved in his folder. He stated that anyone has access to that folder.

Ms Motion referred to Mr Rankine's affidavit and suggested that the documents attached to that show the date and time that a document was created. The witness replied in the negative and said that it is not the time the document is created, it is the time that the document is modified which is shown and the time is not always accurate. That date refers to the time on the computer and he stated that could vary by up to 12 hours and he stated that his own computer is four hours out.

In response to a question from the Tribunal regarding the Productions, Ms Motion confirmed that the documents contained in the Affidavit are the same as contained in document list E but in a different order.

Ms Motion referred the witness to page 3 of the documents attached to Mr Rankine's Affidavit and referred to the tenth document down and asked what the information in line 10 of that printout is telling us. The witness replied that it records that the document was typed by Elaine and saved in his folder.

Ms Motion then referred the witness to a document two-thirds of the way down that page relating to Miss MM's Will. She asked the witness whether this was the draft Will. The witness replied in the negative and stated that he had checked that document and that document contains the Will notes. He stated that the Will is on another sheet. Ms Motion asked which sheet and the witness stated that it was on page 5 of the list attached to the Affidavit, which is also the same document as E8. Ms Motion suggested that the Will notes were contained in the document on the fifth line of page 5 of the documents attached to the Affidavit. She stated that the document which the Respondent said was the draft Will was a smaller document than the document he said was the Will notes. She stated that the second document was 19kb instead of 47kb which is the size of the document that the witness said was the Will notes. The witness stated that he was sure that the 19kb document was the draft Will because he printed it off himself.

Ms Motion referred the witness to document A1 and asked if there was a date on that. The witness replied that there was no date on that document. Ms Motion asked if the notes were typed up after the Will was prepared. The witness stated that they would have just been typed up when someone had time. Ms Motion referred the witness to page 5 of the documents attached to the Affidavit and asked if this was the Will being drafted or being modified. The witness replied that he did not know. Ms Motion asked was it fair to say that it was still being worked on at that stage. The witness replied in

the affirmative. Ms Motion asked if he knew when the Will was executed. The witness replied that he did not know.

Ms Motion referred him to Claire McCarroll's Affidavit and stated that document indicated that the Will was signed on 20 September 2003 and the computer records indicated that the Will was being worked on 16 September 2003. Ms Motion asked if the witness had any comment to make on that and he stated that he accepted that there were no emails sending the draft to Allan McDougall. Ms Motion stated that 16 September 2003 was the Friday of the Gold Cup weekend and the office would have been closed from that date and on the Monday. She asked if the witness took the Will to Arran that weekend. The witness replied that he did not take the Will to Arran. Ms Motion asked if anyone took the Will to Arran that weekend and the witness replied that they did not. Ms Motion asked the witness to explain how Allan McDougall could have possibly taken instructions and had the Will signed by 20 September 2003. The witness replied that if he had emailed it on the 16th they could have sent it to Miss MM and she could have signed it on the 20th. Ms Motion asked the witness whether his position regarding this remains the same after seeing the printouts. He stated that the printout shows that the draft Will was worked on at 6:18am. He stated that was not right. There was no-one ever in the office at that time and certainly not him.

In response to a question from the Tribunal, the witness confirmed that he had a computer on his desk in 2003 and would have sometimes sent his own emails. He advised that at that stage emails were not always saved on the server.

In answer to a question from the Tribunal regarding what was meant by his folder, he stated that he had a folder called "Euan" and sub folders with Wills, leases, individual instructions and client folders and that secretaries saved documents to these folders.

In answer to a question regarding the column marked "date modified", the witness stated that he did not know if there was any way of knowing what in the document was modified.

In answer to a question from the Tribunal, the witness stated in relation to document A1 which was typewritten notes created from handwritten notes, that this was likely to have been three separate handwritten notes typed up on the one file note. It was likely that the secretary typed them all at the one time. The witness also confirmed that the order in which they were typed were not necessarily the order in which the handwritten notes were made.

A member of the Tribunal referred the witness to document B3, a letter to North Ayrshire Council and asked whether it was normal practice to write a letter on your own behalf. The witness replied yes that was normal, it is the way that lawyers write letters on behalf of the firm.

In response to a question from the Tribunal as to whether date modified means date altered or the date that the document was opened, the witness replied that he thought that it means the date the document was altered.

There were no further questions or re-examination.

SUBMISSIONS FOR THE COMPLAINERS REGARDING THE DISPUTED AVERMENTS OF FACT

Ms Motion indicated that the Tribunal had only one matter to determine regarding the execution of the Will and that the rest of the averments of fact in the Complaint were admitted. Ms Motion stated that the evidence of Ms McCarroll and Mr Nicol should be accepted as credible evidence of how the firm of Allan McDougall would go about receiving instructions to prepare a Will. She stated that their evidence is not contested and is accepted and is clear and cogent.

She stated that the Tribunal should accept Mr White as a credible and reliable witness but that he was unsure about the drafting of the second Will and the backing on that. Ms Motion stated that what we do know is that the Respondent has produced a copy letter of 2 October 2003 but no documents have been produced to support his position. Ms Motion stated that the Respondent's position is that the documents supporting that have been destroyed. He had searched but they had been destroyed. Ms Motion submitted that this was a quite extraordinary position particularly when he had already identified a conflict about this matter. Ms Motion stated that the Respondent's evidence could be regarded as at best unsatisfactory and at the worst untrue. She submitted that it was the latter. She submitted that the Respondent knew that the draft Will was on his system and that it existed before he gave evidence at the first hearing in May. She suggested that he did not flag this up despite being asked about it. She stated that his position now is that the backing was created by a paralegal. She asked why he would suggest that. She submitted this was because in his Answers at paragraph 3.20 to 3.30 the Respondent indicated that he would not have placed the details of another solicitor on the backing of the Will. He had given authority for these Answers to be lodged when he knew this to be untrue. Ms Motion submitted that the Respondent knew the backing had been put on and that his partner had located the document. He had also seen the Affidavits of Mr Nicol and Ms McCarroll

setting out why the backing of Allan McDougall would not have been on the draft Will so he had to think of a plausible explanation. Ms Motion stated that she did not think that it was plausible and submitted that the printouts from the computer system confirm that.

Ms Motion suggested that to state that the timings on the computer spreadsheet could be out so remarkably that they are out by up to 12 hours is frankly incredible. She argued that even if this was the case the document could not be worked on by a secretary because they only work 9 to 5. Ms Motion stated that the computer printout shows there was a document likely to be the draft Will worked on 19 September 2003 and not on 16 September 2003 as stated by the Respondent. She stated that he was the one who said he sent the draft Will to Allan McDougall and he is responsible for the situation. Ms Motion suggested that he added the backing of Allan McDougall to give the document the appearance of Miss MM having received independent advice.

Ms Motion stated that it was clear that there was no evidence whatsoever of the letter of 2 October 2003 on the system. Ms Motion stated that letter appeared just before the last Discipline Tribunal hearing in May. She submitted there was no reason for that document not to be on the system. She stated that the Respondent was not credible and reliable regarding the material facts of this case. She stated that he is asking the Tribunal to believe him and him alone on the crucial facts.

She submitted that his version of events has altered at various stages in the investigation of this complaint. Ms Motion submitted that the Respondent's explanation of how the question of the conflict of interest regarding the Will did not come up whilst he identified the conflict of interest regarding the Minute of Agreement and Standard Security is quite incredible given that the Minute of Agreement was signed in September, the Will was signed on 20 September and the documents were sent for registration on 25 September. Ms Motion stated that the Respondent maintained his defence to this complaint until shortly before the complaint was served. She stated that even then it was not until an agent was involved that matters progressed. Ms Motion submitted that he maintained that he protected his client's interests. Ms Motion stated that it was clear the Respondent had protected his family's interests, the value of the property purchased was £24,000 and the value is now at least £140,000.

Ms Motion asked the Tribunal to find the either (e) or (f) at article 3.31 of the Complaint were proved. She submitted that (f) has been proved. She stated that there was no doubt that the Will is not one prepared by Allan McDougall. She submitted that the Tribunal should weigh the evidence of Ms McCarroll, Mr Nicol and Mr White and the uncontroversial evidence that the Will was created on 16

September and signed on 20 September. She stated that in her submission (f) is proved beyond any reasonable doubt.

SUBMISSIONS FOR THE RESPONDENT REGARDING THE DISPUTED AVERMENTS OF FACT

Mr Brown stated that on no view is this a happy picture and that it is accepted that the Respondent is guilty of misconduct. However he submitted that the Tribunal in considering the disputed facts is concerned only with the precise scope and gravity of the misconduct. Mr Brown submitted that it is for the Complainers to prove the disputed facts beyond reasonable doubt. He asked whether the Complainers have proved the sinister version of events which they contend are correct. He stated that the Tribunal cannot be satisfied beyond reasonable doubt that this is so. On the one hand there are a range of anchor points of more or less weight bearing capacity and these can be used to test the Complainers' contentions.

Mr Brown suggested that it is proved that there was an established and reoccurring practice of Mr White and Allan McDougall attending to professional duties on behalf of the Respondent and that this was reciprocated. He stated that it was clear that this was done on a number of occasions, for example remortgages and registering securities and that there were other examples given. He submitted that there was nothing sinister regarding that. He stated that there are prohibitions on solicitors acting for family members and it is entirely unremarkable and unreasonable for this to be done on the basis of a favour.

He submitted that this is an expert Tribunal able to put the evidence into a day to day context. He suggested that it is almost never the case that borrowers and lenders have separate representation. He submitted that a solicitor may buy a flat for an adult child but ask a friend or colleague to act for the lender. He stated that there was nothing out of the ordinary in this. Mr Brown stated that Mr Nicol and Ms McCarroll's affidavits are accepted and their evidence is not challenged. He said that he was not suggesting that Ms McCarroll is wrong. He stated that it remains open on the evidence and on the evidence of Mr White that something slipped through the cracks. He said he was not suggesting that Allan McDougall is a shambolic organisation. The evidence of Mr White was clearly that he would have delegated the work and his evidence was that the filing system was not entirely perfect. Mr Brown submitted that on the evidence it is entirely possible that the Will came in and was passed down the line to be attended to. The Tribunal will understand that the legal dynamics of law firms

and it could be passed on by saying "this is for my friend, please deal with it in the way that we know that other transactions are done". Mr Brown stated that Mr White said it was not his area of specialty and that he would have just passed the work on.

Mr Brown submitted that it is clear that Miss MM did not get the service she should have got and that no-one at Allan McDougall took her instructions beginning with a blank piece of paper. He stated that there was no suggestion in the evidence that there was any deliberate attempt on the part of Mr White. He stated that the fundamental question is has it been proved beyond reasonable doubt that the Respondent just drew up the Will and got it signed knowing that he should not have and then created a dishonest cover story which was elaborate and at the same time cack-handed. Mr Brown suggested that the evidence does not come near the standard of cogency required.

Mr Brown submitted that there is not a scrap of evidence that what was contained in the Will was not in accordance with what Miss MM wanted. He stated that the Tribunal has had had a clear and cogent explanation of why she should have wanted what was contained in the Will. He advised there has been no challenge to the validity of the Will by the Secondary Complainers. He stated there is no assertion of undue influence or facility and circumvention. He submitted that the Respondent had nothing to fear from external solicitors being involved and stated that we know that external solicitors were engaged when the transfer of the title was done in 2006. Mr Brown stated that in his submission the case put forward by the Complainers is an improbable hypothesis which cannot be proved. He invited the Tribunal to accept the cock up theory is more likely than the conspiracy theory. He stated that the evidence shows that the draft Will was created, sent by email and executed. He stated there was no evidence before the Tribunal or within judicial knowledge regarding the size of the data files or which document was which. He submitted it has only been established that the draft Will was last worked on on the 16th and the date of execution was the 20th. He advised that we do not know what the modification was on the 16th; we do not know if the document was open and then closed if that would be a modification. Mr Brown submitted that the timeline is entirely unremarkable leading to the physical document being in Arran by 20th September.

Mr Brown acknowledged there was no evidence at all of any agency in any real sense by Allan McDougall and no evidence of instructions being taken from Miss MM or consideration of her wishes clause by clause. He stated that the evidence is entirely consistent with the Will being emailed on 16 September and signed on 20 September. He stated that clients sometimes sign draft Wills even with a letter attached saying this is a draft. He submitted that the Tribunal could not know from the evidence what actually happened and should not speculate. He stated that there was little that could

be taken from the evidence of the screenshots without an understanding of the technical specifications and the type of software run on the server regarding the timings. He stated that there was no basis on which to fix any sort of certainty regarding time. He submitted that there was no evidence of timings of the creation of documents from the screenshots. He said there was only evidence of the date that they were modified. He submitted that on any view of the evidence the account the Respondent has given is entirely consistent with the central verified facts.

Mr Brown stated that this is not an edifying story on any view of it, however he submitted that the idea that there is a dishonest cover story is simply not made out given the anchor points in Mr White's evidence and the testimony of the Respondent. He suggested that the Tribunal cannot be satisfied beyond reasonable doubt on either (e) or (f).

Mr Brown submitted that if the Respondent was going to construct a dishonest cover story, one might have expected him to pick a much better one and have a comprehensive record to back that up. Mr Brown stated that he accepted that the storage of documents was not being done with as much formality as was appropriate. He suggested that the Respondent's explanation does have a ring of truth in it. That some documents were saved to the hard drive to the server and some to individual PCs is a good explanation of why some documents could not be found. He stated this was not a big firm like Dundas & Wilson as was, or even a relatively large firm, this was a small two partner firm with traditional record keeping. Those records were based on paper records in 2003. He stated that it is entirely plausible that some documents could be saved to the hard drive or the secretary's PC. He submitted that since the complaint has been served there has been a search of computer data and full production of everything which was found. Mr Brown stated that in order to accept the Complainers' version the Tribunal would have to accept that the Respondent came to the Tribunal in a pre-meditated dishonest fashion to perjure himself to construct a cover story which at its highest would only give him a little mitigation. Mr Brown submitted that the Respondent's evidence should be accepted as being credible and the Tribunal should find it proved that the Respondent drafted the Will and sent it to Mr White and not prefer the sinister version alleged by the Complainers.

In response to a question from the Tribunal, Mr Brown stated that he accepted there is no evidence at all of any sort of correspondence explaining to Allan McDougall the relationship between Miss MM and the Respondent. He asked the Tribunal to accept that this was covered in a phone call. He submitted that there was no evidence of any suggestion to Allan McDougall from the Respondent that they should cut any corners. Mr Brown stated that if one is trying to land on the most likely

explanation for what happened, the Will came to Mr White, he gave it to a paralegal and it was just signed. He stated that this is an entirely plausible explanation of the known facts.

A member of the Tribunal asked Mr Brown if he accepted that there is an obligation on the Respondent to draw the apparent conflict to the attention of another solicitor. In response Mr Brown stated that it was apparent from the plain terms of the Will who the beneficiaries were and what the relationship was to the Respondent. He stated that it was obvious and that is why Allan McDougall was being asked to attend to the Will.

Mr Brown stated that it would have been better to write a very full letter and the gold standard would be a file which explained that the Respondent wanted nothing to do with that Will and asking other solicitors to take her instructions.

DECISION OF THE TRIBUNAL REGARDING THE DISPUTED AVERMENTS OF FACT

The decision of the Tribunal was that the facts in paragraphs (e) and (f) at article 3.31 were not proved to the required standard. The Tribunal was of the view that there was no evidence that the Respondent had the Will signed. The Tribunal noted that the onus was on the Complainers to prove either (e) or (f) beyond reasonable doubt and after hearing lengthy evidence and considering several Affidavits the Tribunal could only conclude that the Respondent advised on the Will and after Miss MM's death it was in the possession of his firm. The Tribunal was of the view that it was left in significant doubt as to how that occurred. The Tribunal had some concerns about the evidence of the Respondent on these matters but was left with serious doubts about what happened. The Respondent's record keeping and gaps in the evidence, together with the passage of time since the Will was signed have contributed to that doubt.

The Tribunal was of the view that it was being asked to make too many assumptions and felt that it had been placed in a difficult position regarding this matter in view of the amount of conflicting evidence. The Tribunal noted that the onus is on the Complainers. The Tribunal considered that this Will could have been completed by the Respondent in the way that the Complainers aver or in the way that the Respondent suggested.

The Tribunal did not find the computer data to be helpful. There was no explanation given about what the data should mean and therefore the Tribunal was left in doubt as to what they could take from this evidence. The Tribunal was left with questions regarding record keeping and whether the

Respondent followed best practice. However the test is beyond reasonable doubt and it is the conclusion of the Tribunal that they have been left in serious doubt regarding both (e) and (f) and therefore cannot accept that either have been proved on a beyond reasonable doubt basis. The Tribunal noted that it was not a matter for them to decide which was more probable. Therefore the Tribunal concluded that the disputed averments of fact were not proved beyond reasonable doubt.

SUBMISSIONS ON BEHALF OF THE COMPLAINERS REGARDING SANCTION

Ms Motion stated that the facts admitted are of sufficient gravity as to be capable of bringing the profession into disrepute. She submitted that there is a clear and direct risk to the public and the Respondent was in a position of trust and authority and breached that. She stated that the purpose of sanction is not purely punitive in nature and the purpose of sanctions is to protect the public and the reputation of the profession. Ms Motion stated that the Respondent acted for Miss MM and himself and his wife in a clear conflict of interest situation and he knew or ought to have known that this was wrong. In relation to risk of repetition, Ms Motion submitted that there was a clear risk of repetition as Mr Sprang's evidence did not alleviate this risk. Ms Motion stated that Mr Sprang did not pick up these issues in 2003, although the firm allegedly had a system in place to do that. Ms Motion submitted that the Respondent's conduct was likely to bring the reputation of the profession into disrepute and referred to the case of Bolton-v-The Law Society 1 WLR 512 where it states:

"The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."

Ms Motion submitted that if a suitable sanction is not imposed the reputation of the profession could be adversely affected. She stated there was nothing to say that if the Respondent was under the same temptation again that he would not do the same thing again. She submitted there was no sign of true remorse or significant insight into his lack of judgement. Ms Motion stated that there was not a true acceptance of his wrongdoing and therefore there was a risk of further lapse. Ms Motion submitted that the Tribunal had not seen any true acceptance of fault by the Respondent or displayed any genuine regret to the Complainers or the Secondary Complainers.

SUBMISSIONS ON BEHALF OF THE RESPONDENT REGARDING SANCTION

Mr Brown stated that he accepted absolutely that the guiding principles are to be found in the case of Bolton. He stated that the purpose of the Tribunal's decision on sanction was to protect the public and the preservation of the good name of the profession. He advised that it is accepted that Lord Bingham said that if there is a harsh consequence for the solicitor so be it. He stated that Bolton also says that many solicitors guilty of professional misconduct can continue in practice with a cogent plea in mitigation regarding the effect on them of the sanctions. He advised that he did not suggest this is other than a serious departure from the Respondent's professional standards. He stated this was not at the margins or a borderline case.

Mr Brown submitted that one has to ask what is the mischief to which the rule is directed at. He stated that is that the client's interests are subverted by the personal interests of the solicitor. He stated that this is particularly acute in testamentary cases because the client usually is not available to give an account of the circumstances of the preparation of the Will.

Mr Brown stated that he accepted that it is no answer to the charge for the solicitor to say that he did look after the interests of the client scrupulously. He stated that he accepted that is not a defence. He said that the foreseeable possibilities which could have led to problems for Miss MM included death, insolvency and falling out with the Respondent and his wife where the lack of enforceable protection for her could have been very relevant. He submitted that there is no evidence other than the lady got exactly what she wanted with continued tenure and repairing and maintenance burdens met by the Respondent and that this provides a degree of mitigation. He stated that the relationship between the Respondent and Miss MM was akin to a familial relationship and there were bonds of affection. He submitted that many clients in this situation would say don't be daft I trust you implicitly. However he submitted it was not for the client to agree to that it is for the lawyer to say that he cannot do it.

Mr Brown stated that there is no suggestion or evidence of any element of impropriety, coercion, facility or circumvention or anything of that nature. Also there is nothing to say that the outcome would have been different had Miss MM received separate advice.

Mr Brown stated that Miss MM did receive independent legal advice at the point of the property being conveyed to the Respondent and his wife in 2006. Mr Brown accepted that is not sufficient to have that advice at that stage when there was no advice when the agreement was entered into. However Mr Brown submitted that if there were any issues on the part of Miss MM it would have

been expected that her solicitor would have taken that up in 2006. Mr Brown stated that he simply mentioned that for what it was worth.

Mr Brown submitted that in relation to the Will, given the findings made by the Tribunal, something went wrong regarding its execution. He stated that it was not proved that the Respondent attended to the execution of the Will and the question is to what extent he bears responsibility. Mr Brown stated there is no evidence of any sort of specific instructions to Allan McDougall to cut a corner and for whatever reason advice was missed and he submitted that the Respondent is not responsible for the omissions regarding that. Mr Brown stated that the Tribunal was left with admitted misconduct which strikes at confidence in the profession. Mr Brown advised that there was a well-known escalating scale of sanctions and he suggested that it was not necessary to consider sanctions at the upper end of the scale and that the Tribunal should be satisfied that the Respondent can remain in practice.

Mr Brown submitted that this was a failure in the particular context of a close relationship and want of detachment because of that. Mr Brown stated was that it was not a serial failure on behalf of the Respondent to identify conflict of interests generally and that the Tribunal can be satisfied that it is not going to happen again. The Tribunal can be satisfied that there is no-one more aware than the Respondent and his partner about conflicts of interest now and this is not likely to happen again in the future.

Mr Brown lodged a number of testimonial letters on behalf of the Respondent. He submitted that these show that the Respondent is a man who is held in a degree of esteem by his professional peers. He stated that three of the letters are from senior members of the profession in Ayr and one is from a senior member of the profession in Kilmarnock. There is also a letter from the Convenor of the Ayr Faculty, a Council member of that Faculty, a minister of religion and a local councillor. Mr Brown submitted that the Respondent is a man for whom his peers will go on record and that if he was thought to be disreputable or untrustworthy that would not be so.

Mr Brown stated that he was saying that the Tribunal should dispose of this in a manner that leaves the Respondent in practice and therefore he submitted that it was not a strike off or suspension case. Mr Brown submitted that where that leaves the Tribunal recognising that it is not at the lower end of professional misconduct is an upper limit fine or a restriction. Mr Brown invited the Tribunal to take the view in the entire circumstances that this is a matter which could be dealt with by way of an upper limit fine. However, he also noted that restriction could be a practical possible sanction. Mr Sprang's evidence is that he could supervise the Respondent and he submitted that this could be

worked out to the satisfaction of the Complainers. Mr Brown stated that he was not suggesting that a restriction was needed but was submitting that there was no need to go beyond that because there is no compelling need for the public to be protected further.

Mr Brown stated he was making no motion for expenses as it was hard to criticise the Complainers' decision that the facts were so unclear that the decision should be left to the Tribunal rather than the Complainers.

Ms Motion made a motion for expenses and asked that the usual order for publicity be made but that Miss MM should be continued to be referred to as such and not by her full name.

The Tribunal asked Mr Paterson if he had any submissions to make regarding publicity and he confirmed that he did not having been advised of the legal situation that there must be good reasons for parties not to be named and Mr Paterson said that he did not have any further submissions to make.

DECISION

The Tribunal noted the Respondent's admission of professional misconduct; however it required to be satisfied that the facts admitted met the Sharp test. The Tribunal considered the terms of the Complaint as admitted, the submissions made by both parties and the documents lodged. The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal considered that to act for the purchaser of a property where he had a personal interest in the purchase in that his wife was lending the funds for the purchase was a clear conflict of interest. In addition the Tribunal was satisfied that in the same circumstances the acceptance of instructions to draft the purchaser's Will naming members of his family as beneficiaries was also a very clear breach of the Code of Conduct for Solicitors.

In all the circumstances the Tribunal considered that such clear breaches of professional rules would be viewed by the profession as serious and reprehensible departures from the standard expected of a competent and reputable solicitor. The Tribunal therefore considered that the Respondent's conduct amounted to professional misconduct.

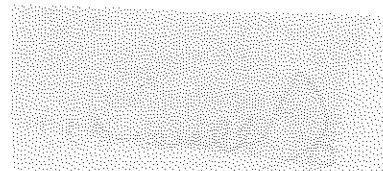
The Tribunal noted that the Respondent had failed to recognise two very obvious conflicts of interest. However, the Tribunal noted that there was no allegation of dishonesty and the Tribunal took into account that the relationship between the Respondent and Miss MM was akin to a close familial relationship. The Tribunal would have taken a very different view of the matter if the Respondent had taken advantage of a client who he did not know for purely personal gain. The Tribunal noted that there were advantages for Miss MM in having the property purchased for her and upgraded. The Tribunal also took into account the fact that in 2006, three years after the purchase, when the title of the property was transferred to the Respondent and his wife that Miss MM was represented by another solicitor and there was no suggestion at that stage that she was unhappy with the situation.

The Tribunal therefore considered that what happened was an isolated incident which arose out of a particular set of circumstances in a transaction which took place 13 years ago. The Tribunal took into account that the Respondent has been a solicitor for over 20 years and apart from this case has had an unblemished record. The Tribunal therefore considered that there is a low risk of repetition on the basis of the evidence which was heard regarding the circumstances of the transaction.

However, the Tribunal was of the view that the reputation of the profession has been adversely affected by the Respondent's significant lapse of judgment. The Tribunal had regard to the testimonials produced on behalf of the Respondent which provided evidence of good character and reputation. The Tribunal considered that the Respondent had demonstrated insight by his admissions and accepting that what he did was wrong. The Tribunal noted that there had been no issues with his practice since 2003. The Tribunal also noted that the Respondent had appeared personally before the Tribunal, admitted his failures and had taken steps along with his partner in the firm to prevent a reoccurrence of such failures.

The Tribunal considered whether the imposition of a restriction on the Respondent's practising certificate was necessary to protect the public. However the Tribunal was persuaded by the evidence it had heard that the Respondent has shown full insight into his failures and has taken steps to ensure that he and his firm are now taking a robust view in relation to all potential conflicts of interest and so decided that it was not necessary to impose such a restriction. However, the Tribunal considered that in all the circumstances a substantial fine of £8,000 should be imposed in addition to a Censure. The Tribunal ordered that the Respondent be liable for the expenses of the Tribunal and of the Complainers in respect of this Complaint and made the usual order in relation to publicity. The Tribunal noted that the Secondary Complainers' claim for compensation was withdrawn on their behalf by Mr Paterson. The Tribunal considered that in view of the issues in this case the publication

of the full names of the Miss MM , JSS and AB (who at the relevant time was a minor) would or may be likely to damage their interests and so refrained from publishing their full names. There was no application from the solicitor for the Secondary Complainers to refrain from publishing their names and in any event the Tribunal considered that as they were parties to the Complaint this was not appropriate.



Nicholas Whyte
Chairman