

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

**F I N D I N G S**

**in Complaint**

**by**

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

**Complainers**

**against**

**KENNETH D WOODBURN, 16 Forth Street,  
Edinburgh**

**Respondent**

1. A Complaint dated 5 December 2024 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Kenneth D Woodburn, 16 Forth Street, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The complaint referred to one Secondary Complainer, Ms M, care of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged on behalf of the Respondent.
4. Following sundry procedure, the Tribunal set down a Hearing to take place in person on 9, 10 and 11 July 2025. Notice thereof was duly served on the Respondent.
5. On 18 June 2025, on the unopposed application of the Complainers under Rule 18 of the 2024 Rules, the Tribunal designated Ms M as a vulnerable witness and directed that her evidence be facilitated by the use of a screen, such as to prevent her from seeing the Respondent during the course of her evidence.

6. At the Hearing on 9, 10 and 11 July 2025, the Complainers were represented by their Fiscal, Jamie Foulis, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Evidence was led and concluded by both parties. The Hearing was continued to two further days, exact dates to be afterwards fixed, and both parties were invited to lodge written submissions.
7. The dates of 11 and 12 August 2025 were identified as suitable and notices thereof were served upon both parties.
8. At the continued Hearing on 11 and 12 August 2025, the Complainers were represented by their Fiscal, Jamie Foulis, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Both parties had lodged outline written submissions in advance of the hearing. Both parties made supplementary oral submissions.
9. The Tribunal found the following facts established:-
  - 9.1 The Secondary Complainer commenced a traineeship with a firm specialising in criminal defence (hereinafter referred to as “the Firm”), in March 2022. The Firm consisted of one partner and one qualified assistant, the Respondent. The Respondent was at that stage approximately 10 years post-qualified. The Secondary Complainer assigned her traineeship to another firm in November 2022. During her employment with the Firm, the Secondary Complainer shared an office with and was supervised by the Respondent.
  - 9.2 On various occasions between May and October 2022 in the agents’ room at the local Sheriff Court and in the office of the Firm the Respondent referred to the Secondary Complainer as looking “hot” and being “the hottest trainee in the room”, or words to that effect.
  - 9.3 On or around 07 to 09 September 2022 the Respondent discussed with the Secondary Complainer the breast augmentation and mastopexy surgery which she had undergone and asked her what colour her nipples were, or words to that effect; asked her what her nipples looked like when she masturbated and whether they got hard, or words to that effect; and spoke about occasions where he had engaged in sexual intercourse with other women commenting on the fact that his nipples had become erect when doing so.
  - 9.4 On or around 07 October 2022, whilst conducting a discussion with the Secondary Complainer about whether a female could commit the crime of rape against a male, he substituted himself and the Secondary Complainer for the hypothetical male and female and

stated “for example, if you were to drug me, jump on top of me and ride me whilst I am hard, that would be rape” or words to that effect.

- 9.5 On or around 06 November 2022 the Respondent communicated with the Secondary Complainer by text message regarding arrangements for attendance at a client meeting the following day. The exchange of text messages was in the following terms:-

Secondary Complainer: “[Mr A] text to say the client will be there at 0845.”

Respondent: “Ok....maybe make it 8.15 at the [...]...not sure what the traffic will be like so play it safe !”

Secondary Complainer: “I wonder if it may be quicker getting the bus? Traffic will be horrific tomorrow being a Monday... I have checked Google maps. I would be typically 14-35 minutes for me to head to the [...] from my flat tomorrow morning. It may be an idea if I can meet you at [...] police station and then we can drive back?”

(Secondary Complainer attached a screenshot of google maps journey showing time and traffic to text message)

Respondent: “Forget it...I will go to [...]...you go to Court and check on custodies.”

Secondary Complainer: “[Mr C] has asked me to do it and [Mr A] has also asked. It will be good experience for me to go? I will still go as I don’t want to let [Mr C] or [Mr A] down. I’m just saying that’ll take me forty minutes longer to go and get you so it may be easier meeting you there”

Respondent: “If you want to go...Pick me up at 8.15 [...]”

Secondary Complainer: “They have asked me. [Mr A] was happy for me to go on my own, all I am saying is that it is going to be an extra 40 minute drive, and then a drive down there as well. So it may make more sense to make our own way and then head back together!”

Respondent: “Not debating this...8.15 at [...] or Court!”

Secondary Complainer: “[Mr C] has asked me directly as we have been texting about it on Friday and today. [Mr A] has said it was fine for me to go by myself. I cannot let either of

them down by not going and going to court, that is not an option. The drive to pick you up for 8:15 is an extra 35 minutes it's predicted or it could be longer. I am happy to meet you there and we can drive back together.

Respondent: "No...I want to see what happens...for the last time [...] at 815!"

Complainer: "Ok"

9.6 On or around 12 October 2022, the Respondent said, when the Secondary Complainer confirmed her name and date of birth on a telephone call, that "I was shagging Margo/ Maggie on your birthday" or words to that effect.

10. Having given careful consideration to all of the information before it, the Tribunal found the Respondent guilty of professional misconduct in respect of his contraventions of Rules B1.2 and B1.15 of the Practice Rules 2011 *singly* in respect of the conduct established in each of paragraphs 9.2, 9.3, 9.4 and 9.6 above.
11. The Tribunal found the Respondent not guilty of professional misconduct in respect of the conduct narrated at 9.5 above.
12. The Tribunal heard submissions from both parties in relation to sanction, publicity and expenses.
13. The Tribunal pronounced an Interlocutor in the following terms:-

Glasgow, 12 August 2025. The Tribunal having considered the Complaint dated 5 December 2024 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Kenneth D Woodburn, 16 Forth Street, Edinburgh; Finds the Respondent guilty of professional misconduct in respect of his contraventions of Rules B1.2 and B1.15 of the Practice Rules 2011 *singly* in relation to the conduct narrated in each of paragraphs 9.2, 9.3, 9.4 and 9.6; Finds the Respondent not guilty of professional misconduct in respect of the conduct narrated at 9.5; Censures the Respondent; Directs in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as prohibits him from mentoring, managing or supervising any person in a professional capacity for a period of three years; Fines him in the sum of £5,000 to be Forfeit to His Majesty; Finds the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable as the same may be taxed by the Auditor of the Court of Session on a party and party basis in terms of Schedule 1 of the Act of Sederunt (Taxation of Judicial



Expenses Rules) 2019 as amended with a unit rate of £18.00; Directs that publicity will be given to this decision and that this publicity should include only the name of the Respondent; and Allows the Secondary Complainer, Ms M, 28 days from the intimation of this decision to lodge a written claim for compensation.

**(signed)**

**Catherine Hart**

**Vice Chair**

14. 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 9 DECEMBER 2025.

**IN THE NAME OF THE TRIBUNAL**



**Catherine Hart**  
**Vice Chair**

## NOTE

At the commencement of the Hearing on 9 July 2025, the Fiscal moved the Tribunal to receive a List of Witnesses, containing one additional witness, late, together with an Affidavit for that witness. The Tribunal noted that the Fiscal had lodged a number of Affidavits and drew his attention to Rule 15 of the SSDT Rules 2024 (“the 2024 Rules”). The Fiscal apologised for overlooking the requirements of Rule 15 and explained that he intended to use the Affidavits as the evidence-in-chief of the relevant witnesses, in order to make efficient use of Tribunal time. Mr Macreath confirmed that he had no objection to the motion for the late List of Witnesses and Affidavit. He considered that the use of Affidavits, as proposed by the Fiscal, helped him, narrow the issues and would assist the Tribunal. He invited the Tribunal to overlook the Fiscal’s non-compliance with the Rules.

Mr Macreath made a motion for a List of Witnesses, containing one additional witness, to be received late. He intimated his objection to Productions 1 and 2 for the Complainers (the report and supplementary report prepared for the Professional Conduct Sub Committee). He submitted that the conclusions expressed in these reports could be seen as usurping the function of the Tribunal. He also noted that Productions 13 and 14 did not appear to be relevant to any of the averments within the Complaint and he considered that it would only be open to the Fiscal to refer to these Productions if the Respondent raised issues relevant to them in the course of giving evidence. The Fiscal had no objection to the late List of Witnesses being received. He explained that he intended to only use Productions 1 and 2 to put responses said to have been made by him to the Respondent.

Having considered all of the submissions, the Tribunal allowed both Lists of Witnesses to be received late, and allowed all of the Affidavits to be received, including the late additional one. The Tribunal noted the Respondent’s position with regard to the Productions and advised that these issues could be dealt with as the matters arose in the course of the Hearing.

Both parties confirmed that the Record reflected the adjusted pleadings accurately.

## EVIDENCE FOR THE COMPLAINERS

### **Witness One: Secondary Complainer**

The Secondary Complainer confirmed that she commenced her traineeship with the Firm on 28 March 2022. She believed that her last day with the Firm was 25 November 2022 and that she assigned her traineeship to another firm on 28 November 2022.

She explained that she applied to a number of criminal firms before applying to the Firm through the Law Society jobs website. While she was employed at the Firm, it consisted of Mr A, who was the “boss”, the Respondent, who she saw as her supervisor, and herself. She considered that the Respondent took more of a role in mentoring her than Mr A had done. She was subject to regular reviews which were conducted by Mr A. In the early days, she found her traineeship to be exciting. That began to change around May or June, when her experience was “slowly getting more negative”. She eventually spoke to Mr A in the office about her concerns and this was followed up in writing later that same evening. She identified her signature on Production 3 and confirmed that this was the letter she wrote setting out her formal complaint. She confirmed that its contents were truthful. She described how it had been difficult for her to write the letter and she remembered feeling distressed, disappointed and a bit “lost” when writing it. She believed she had started a traineeship that she had really wanted and now she was having to write this letter.

The Fiscal asked her about her complaint that the Respondent had made comments to her whilst at the Sheriff Court and in the agents’ room which she had found distressing and he asked her if she remembered what these comments were. She responded that she could not now remember all of them but one had “stuck” with her, which was along the lines of her being “the hottest trainee in the room”. Most of the trainees at the Sheriff Court at that time were female. She stated that these comments began early in her traineeship and went on throughout her time with the Firm. At first, she had treated it as banter. She explained that the criminal bar is very male dominated and the nature of the work required you to have a thick skin. She stated that these comments were always made early in the morning. She recollected that she usually got to court between 8:45am and the “back of 9”. The Respondent was always there before her. At that time in the morning not many people would be in the agents’ room, as court could start at 9:30am for deferred sentences. In the beginning, she had “brushed it off” on the basis that she was working in a male dominated sector. The Fiscal asked her to describe what it was that made her feel uncomfortable about these comments. She explained that the Respondent was the same age as her father and she would not like to think of her father making similar comments to someone her age. She felt the comments “objectified and sexualised” her. At first, she had tried to brush it off, but around May or June she began to “push back”.

The Fiscal asked her about her complaint relating to comments made by the Respondent in relation to a surgical procedure she was due to undergo. The witness was asked how the discussions with the Respondent had arisen. She explained that she had told Mr A about the surgical procedure for health and safety reasons, so that appropriate measures could be taken at work following her operation. She believed she must have told the Respondent about the procedure too, because she did not believe that Mr A would have shared that information with the Respondent, as Mr A was professional and discreet. She was asked if there had been a discussion with the Respondent which had made her feel uncomfortable. She explained that the Respondent sometimes asked her how she was feeling, after the surgery, and she had not minded that as he was showing

concern for her wellbeing. Then he had asked her how the procedure had been carried out and she had considered he was asking about the mechanics of the procedure and had described it to him. But then he had asked her what colour her nipples were. She could not recall what he said verbatim but remembered he had asked her “do your nipples get hard” and “I know that, when I have been shagging women before, their nipples get hard, so do yours get hard when you masturbate”. She did not think she had responded to that. She could not remember the precise date of the conversation but estimated it had taken place in September or the beginning of October. She remembered that the discussion took place in the office when only she and the Respondent were present. She had felt sexualised, “grossed out” and really uncomfortable. She had considered that she was in a place where she was training and should have been safe, but felt that was taken away from her. She described how there had originally been a screen in the office, placed between her and the Respondent, because of a comment he had made to another female, but by the time he made this remark the screen had been taken out. She told him that she did not want to hear about his sleeping with other women. She told her mother about this discussion that night, and also told her friend, Ms B, her therapist and a friend who lived next door.

The Fiscal drew the Secondary Complainer’s attention to his Production 10 and she confirmed that this was a screenshot of her mobile telephone showing a WhatsApp exchange between her and Ms B dated 12 September and, in that exchange, the Secondary Complainer had written “and he asked me my nipple colour”.

The Fiscal directed the Secondary Complainer to her complaint regarding a discussion with the Respondent relating to the offence of rape, and asked her how that discussion had come about. The Secondary Complainer stated that she thought she had been reading one of the Firm’s cases involving a man who was about to go to trial for, or had just been convicted of, raping four different women. She believed she had been looking at the Sexual Offences (Scotland) Act and had seen something about whether an incident could be rape if it involved a surgical penis and she had wondered if a woman could rape a man. The conversation took place in the office when only she and the Respondent were present. She could not remember the precise date but thought it could have been in October. She described how the Respondent had made a gesture with his hips, simulating sexual intercourse and had said “If you were to jump on top of me, after you had drugged me, then that would be rape”. She had felt uncomfortable, the person saying this to her was her mentor. The comments were all accumulating and adding up to making her feel “gross and uncomfortable”. She thought she was in her traineeship to learn but instead was placed in an awkward sexualised situation, which she had not experienced since leaving the Firm. She believed she told the Respondent that she did not want to be referred to in this way. She thought that by this stage she was trying to be stronger but she was also trying to tread carefully because of her position in the Firm. Her experience since leaving the Firm had hit home that this was a really inappropriate way to behave.

The Fiscal asked the witness about her complaint relating to the Respondent making a remark that he was having sex on the date of her birthday. The Secondary Complainer described how she and the Respondent were walking in the street when she was on the phone to her doctor's surgery and had to give her date of birth. The Respondent had remarked "I was shagging Margot McDonald" or "Margot McLellan" or somebody like that "on your birthday". Only she and the Respondent were present. The Respondent did not say things like this when they were with anyone else. She could not recall the date of this comment but guessed it was in September or October. This had made her feel really uncomfortable. It made her feel "really gross". She and the Respondent were not friends, they were work colleagues. She believed she would have told her mother about this incident as she told her mother everything. She believed she also told her therapist and Ms B. The Fiscal drew the witness's attention to his Production 12 which she confirmed was a screenshot of messages dated 12 October on her mobile telephone where she disclosed this remark to Ms B.

The Fiscal asked the Secondary Complainer about a matter relating to her attending at a police interview and drew her attention to his Production 9 which was an exchange of text messages. The Secondary Complainer described how all three, herself, the Respondent and Mr A, were in the office one Friday afternoon at the beginning of November. Mr A came off the telephone saying that another solicitor, Mr C, was asking if she could cover a police interview for him on the following Monday. Mr A said that he was "fine" with that. The Respondent had stated that he did not think that the Secondary Complainer should do this on her own. Mr A responded that the Respondent could not go into the interview with her anyway, and she now thought that referred to the interview room not being big enough. Mr A had said that they should sort it out between themselves but that he was fine with her going on her own.

There was no discussion between her and the Respondent on the Friday about her driving the Respondent to the police station. At that point in her traineeship, she had not yet covered a police interview on her own but she was not aware of anything to prevent her from doing so. In fact, she was aware that many trainees had covered police interviews on their own, especially where the interviews were to be "no comment". She was nervous but excited at the prospect of covering her first police interview. She identified Production 9 to be a screenshot of a text conversation between her and the Respondent. She had felt uncomfortable because the car was her space and having him in her car seemed invasive. The Respondent had insisted she pick him up, which was a considerable detour to her journey, adding at least 15 to 20 minutes to it. She had considered the Respondent's tone to be aggressive and controlling. She believed that by the time of this exchange, she had confronted the Respondent and told him that she was not comfortable with the way he was talking to her, following which the Respondent's tone had changed; it was aggressive but more like "anger" than sexual comments. She reminded the Respondent that Mr A had said that she could go on her own, and the Respondent did not refute that in the text messages. The messages made her feel upset and frustrated. She believed she



was being forced to pick the Respondent up in her car or lose a valuable opportunity. The Firm was not a busy one, and she did not know when she would get the chance to cover an interview again.

The Fiscal asked the Secondary Complainer to describe how she raised her unhappiness, at the way he was speaking to her, with the Respondent. She said she recollected that the conversation took place on Halloween 2022 when she said to the Respondent that she was really uncomfortable with the things he was saying to her. She told him that she did not think it was appropriate, particularly given his age, and that she did not think she would be able to maintain her working relationship with him. The Respondent had replied that he did not think he had been inappropriate and she thought he had said something like he would bear it in mind. She stated that even though these issues were going on in the background, she could not fault the Respondent for the way he tried to train her. However, she felt she had to leave. She knew that, if she raised these issues with Mr A, she might be asked to leave the Firm.

The Fiscal referred the witness to his Production 11 and she confirmed that this contained messages between her and her mother. She confirmed the date was shown as 28 September and confirmed that would have been in 2022. These messages included reference to her feeling uncomfortable and anxious. She explained that she would mostly have shared her problems with her mother over FaceTime.

The Fiscal asked the witness why she had confided in her mother, Ms B, Ms D, Ms E and her therapist. The witness explained that she confided in her mother because they had a really good relationship. She confided in Ms C, who was her next door neighbour, because they had got on and gelled really well. She had gone to university with Ms B and felt they had grown up together. She had confided in her therapist because her therapist knew her really well, was unbiased and did not judge her, and she had considered this to be a safe space.

The Secondary Complainer was asked to describe the impact this conduct had upon her. She stated that the impact had been a really negative one and that it had significantly impacted upon her career. Her current employers were very supportive of her, but she had to tell them why she was required to come to this Hearing in order to get time off.

## **CROSS-EXAMINATION**

The Secondary Complainer confirmed that she was 28 years old when she commenced her traineeship.

She confirmed she had not spoken about these issues to Mr A before their conversation on 9 November 2022. She agreed that Mr A had been on leave and returned on 9 November 2022. She thought their conversation



took place in the afternoon and that she sent her letter by email to him that night, as well as sending her complaint to the Scottish Legal Complaints Commission.

The Secondary Complainer agreed that she had been excited but slightly anxious about the police interview she was going to cover. She confirmed that Mr C, who was the solicitor for the accused in that case, had spoken to Mr A. She could not remember what the charge was, but explained that she had known the details at the time. She agreed that the interview was likely to be significant and that she had not met the accused before. She confirmed that it was Mr A who told her that it was to be a “no comment” interview. She accepted that if the charge related to sexual offences then this would be a serious interview. She explained that it was her understanding that Mr C had met with his client and had already discussed the client’s instructions. She agreed that it was necessary to meet with a client to discuss instructions before deciding whether it might be a good idea to give a statement to the police. She insisted that Mr A was content for her to attend at the police station on her own. She accepted that police interviews were a serious matter, but insisted that Mr C had already spoken to his client about the interview. She accepted that she met the client at the police station before the interview, but explained that she had already been given instruction on what to do at the interview by Mr A. She agreed that the Respondent was present when she met the client. Mr Macreath asked the Secondary Complainer if she considered it reasonable for the Respondent to be present to supervise her. She responded that she thought it was but that she did not think it was very common.

She confirmed it had taken her some two or three hours to prepare her letter of 9 November 2022. She could not remember if Mr A had told her to go home after their discussion that day.

Mr Macreath directed the Secondary Complainer’s attention to the Complainers’ Production 8 which she confirmed was a screenshot of her mobile phone and showed a call made by her to the Respondent lasting two seconds and a call made by the Respondent to her lasting two minutes. Mr Macreath asked what she had discussed during this call and she responded that it would have been the police interview. She stated that she had told the Respondent that she wanted to go to the interview and she thought he had said he was going. She was upset because he was insisting on intruding into her personal space. She agreed with Mr Macreath that she asked the Respondent about sections 1 and 2 of the Sexual Offences (Scotland) Act. She agreed that section 1 dealt with offences involving penile penetration and section 2 defined offences not involving penile penetration. Mr Macreath asked her why she raised this matter and the Secondary Complainer explained that she had not been sure about it. Mr Macreath asked the Secondary Complainer why she had telephoned the Respondent on a Sunday and she explained that she had phoned to discuss the interview the following day. She recalled telling the Respondent that she was happy to go herself and that it would be great experience for her. She agreed that the Respondent had said he was going with her. She agreed that she was aware that the Respondent did not drive and that she had suggested to him that he take public transport.

Mr Macreath referred the witness to Complainers' Production 9 and she confirmed making the text responses to the Respondent. She was asked if she had exchanged text messages with Mr C, as she had suggested in her text messages to the Respondent. She replied that she would not have said so if she had not.

The Secondary Complainer agreed that the atmosphere in the agents' room at the Sheriff Court was robust and that conversations could include a wide range of subjects, including the cases that people were dealing with. She agreed that the bar common room was open to other people but explained that it was a very big room.

She agreed that she was employed under the Government funded scheme for trainees. She accepted that she had not mentioned her pending surgery when she was interviewed by Mr A. She agreed that Mr A was taken aback when she told him that she needed to be off work for a week. She agreed that she had discussed her pending surgery with others. She agreed that she had told Mr A about the nature of the surgery for health and safety reasons and she accepted that she had also told the Respondent. She did not accept that she had told the Respondent of her personal reasons for the surgery. She agreed that the Respondent asked her why she was undergoing the procedure and she did not take issue with that question. She denied that she was anxious about the upcoming surgery. She agreed that after the surgery, adjustments required to be made to allow for her recovery. She accepted that she had discussed the surgery with another male agent, as she had been covering a High Court case, where he was appearing, and she had to explain to him why she could not open heavy doors and why she had to put a jacket in front of her. Mr Macreath asked the Secondary Complainer if the Respondent was concerned about her because she was clearly affected both before and after the surgery. The Secondary Complainer responded that she was not affected before the surgery and that she had continued to go to work as normal.

Mr Macreath asked the Secondary Complainer why she had asked the Respondent if a man could rape a woman, when section 1 of the Sexual Offences (Scotland) Act clearly requires penetration to occur for the offence of rape to be committed. She explained that she had thought it was a grey area when considering the trans community. She was adamant that the Respondent had used her and him as an example and he had graphically demonstrated this.

She was insistent that the comment regarding the Respondent having sex on her birthday was made by him. Mr Macreath referred the Secondary Complainer to her letter of complaint and asked her if the conversation she had with the Respondent where she told him his conduct was inappropriate had been in a telephone call on 5 November. She said she was sure the conversation took place in person, in the office, before she made her complaint to Mr A.

## RE-EXAMINATION

The Secondary Complainer confirmed that it is common for a solicitor's first meeting with an accused to be on the day of a police interview.

### **Witness Two: Mother of Secondary Complainer**

The Fiscal moved formally to lodge a fresh Affidavit for this witness, which was in the same terms as the original, but was in a better condition to read. The Tribunal allowed the replacement Affidavit to be received.

The witness identified her Affidavit and confirmed she was content for it to be used as her evidence-in-chief.

The Affidavit was in the following terms:-

“

1. [ . . . ]
2. *I am providing this affidavit in connection with the complaint made by my daughter, [the SC], in relation to her former colleague, Kenneth Woodburn.*

#### *Background*

3. *I would say that, as a mother and daughter, [the SC] and I are close. We are very close. We speak on the telephone pretty much every day. I know that a lot of children don't tell their parents everything but if things are worrying [the SC], then she would phone me first.[....] [The SC] studied at[...], but we remained close throughout that.*
4. *[The SC's] interest in criminal law started when she was a student. She did placements[...]. Criminal law was what always interested her.*

#### *The start of [the SC's] traineeship*

5. *I remember that she started her traineeship with [the Firm] on 28 March 2022. That is my son's birthday, and I can remember it being strange because he was starting a new contract then and [the SC] was doing so as well. [The SC] was excited, and she was looking forward to it.*
6. *I went down to visit [the SC] in April 2022, from 22 to 25 April, and I bumped into Kenneth Woodburn then. That was on 22 April. He said to me that [the SC] had great potential. He did say some strange things, things like "oh is that your mum, don't you mean your sister". I am 40 years older than [the SC]. I do appreciate that things that were acceptable in my generation when I was young are not*

acceptable now, and I felt like some of the things that were said fitted with that description. I can tell that it was April when I visited from my diary. I met [the SC] so that she could take my bags when she was on her way back from court. We walked to her offices, and I met Kenneth Woodburn there walking with bags. I then went and had coffee and when [the SC] finished work, I met her and we got the bus to her flat. That was the only time I can remember meeting Mr Woodburn. At that time in Spring 2022, [the SC] was still enjoying the work. I remember Kenneth Woodburn talking about [the SC] having great potential while we were walking up towards [...].

[The SC's] enjoyment of the work seemed to change in summer of 2022. In May 2022 things seemed to be fine, although at the time she did say that some of the things that Kenneth said to her were a bit strange. When she mentioned this at that time, I said to her that he was the same age as her dad, that they were part of a different generation, and that you could do things then like wolf whistle to women and that what was deemed acceptable then wasn't now. I think it was around the July time that things started becoming more personal. I went down and stayed with [the SC] for a week in August 2022, from 24 to 30 August. That was around the time that she got her operation and I stayed with her while she was recovering. It wasn't an operation that was for anything other than comfort and I won't go into that. When [the SC] was back at work she had to tell them that she couldn't open the big court doors and carry heavy files and then he started to get very personal and ask intrusive questions. They were the sort of questions that might be okay for a friend, yes, but not for a boss or someone working with you and who was superior to you. [The SC] actually did go for a walk with Kenneth once, but on the way, she bumped into [Ms B] – one of her friends – and I can't remember the dates of that. At that stage she felt that he was her boss, and she was learning a lot from him, but then he started becoming inappropriate and I said to her that she should say that he was being inappropriate and to stop. At some point [the SC] removed Kenneth from her Instagram as I think that she told me that he had made comments about her in a bikini. She told me but I can't remember the date of that. From what [the SC] said to me, when she tried to get Kenneth to stop speaking to her like that, it became quite nasty. I am asked if I can remember examples of the comments. There was one time when they were discussing a rape case and [the SC] had asked him whether a woman could rape a man, and he started answering the question using him and [the SC] as an analogy of a woman raping a man. I don't know the full details of the discussion but what [the SC] told me was totally inappropriate and she was on her own with him when she had this discussion. He was never doing this in front of anyone.

I remember [the SC] telling me about that, and I remember her telling me about something disgusting about women he used to sleep with. [The SC] said to me that he was telling her things like that. I remember [the SC] telling me that he made a comment about her nipples and asked whether her

nipples turned hard when she masturbated and to me that was a completely out of order thing for him to say to [the SC]. The nipple comment, was after [the SC's] operation in August. I think that she did tell me about this around the time that it was being said. [The SC] and I speak nearly every day, and it was about the August/September that she was saying that she didn't want to go in to work. I said to her that she needed to leave. I also remember [the SC] being very upset after Kenneth made comments about her lack of a future career, or something like that, after a trainee review possibly in September 2022.

7. She mentioned that she was uncomfortable about this to Kenneth and she mentioned it to Mr [A] and I don't think Mr [A] handled it well. She spoke to me at the time about wanting to move and she said that if she wanted to move somewhere else, she wanted to be somewhere where there were more people.

#### *Visit of November 2022*

8. I remember that I went down to see her from 12-15 November 2022 with my grandchildren. It was the November weekend, and my grandchildren were off school. I couldn't discuss everything in detail with her then, because they were with her, but she had an interview with [...] around then and she was offered a job, and she was so relieved.

#### *Incident re police interview in [...]*

9. I also remember that there was an incident when she was going to cover a police interview in [...] and she said that Kenneth was just awful and that afterwards he slammed her car door and was being difficult and aggressive that day, and a few things that were said that day were dreadful. [The SC] phoned me the night before and on the morning of that. She said that her boss had said that she could conduct the interview and that she was pleased about that, she told me that Kenny was insisting that she had to come and meet him, that she had to park on the main road near the [...], and that he was very angry that she wasn't doing that and was being really quite aggressive. I said to her that he just can't do that. [The SC] had mentioned that her boss had told her that [Mr C] had said that it was okay, as I don't think it was for [Mr A] to decide. [The Sc] told me that after the interview Kenny slammed her car door when he was getting out of the car when they were back in [...].

#### *Comments made at court*

10. I am asked about whether [the SC] ever spoke about comments being made to her in the agents' room at the court. I know that there were incidents when someone offered to go for a coffee and Kenneth would say things like, "no I am going to keep you to myself". I know that she said that he was making comments and he often did make comments, but not so much when people were there.



*[The SC] did tell me about being upset at court at times because of what was going on and about speaking to Fiscals about it in the toilets. I think that there definitely were comments before the operation that [the SC] told me about. That comment that Kenneth made to me in May made me think "for goodness sake" and there were other things that [the SC] told me about around then. Timewise I told her that Kenneth was from a different generation, and he was making comments about her looking "hot" and that she was the "hottest trainee" or something and that is not appropriate. It doesn't matter what age you are you didn't say that. I think that that was maybe prior to the operation.*

*Timing of disclosures made to me by [the SC]*

11. *My recollection is that [the SC] seemed to be telling me about these things as they happened. When she was speaking to me, she was very distressed, very anxious, really upset. [The SC] phoned the Law Society, and she spoke to someone who she said she was really very supportive. They had said that they understood that if that was their daughter then they would want something done about it. I remember [the SC] saying to me that she was going to put in an official complaint to the Law Society and I think it was October or November maybe that she said that.*
12. *[The SC] definitely told me about these things as they happened, or at least that was my impression. I remember that when she told me about the description of the analogy of rape, that seemed shocking. [The SC] did say to me when she was telling me about that that she would never have accepted a job if she knew what Kenneth Woodburn had been in court for before.*

*The Impact on [the SC]*

13. *When [the SC] was telling me she was very upset, she felt that it was affecting her work. She was a trainee; this was her first trainee job in the field of criminal law. I think that now if someone said one thing to her, she would turn around and say that that was out of order and if the carried on then it would reported. This was her first job though. [The SC] can stick up for herself, she has always been able to. She is very strong minded. I think that initially she got on well in the job and that Kenneth was good with her and she felt like she was learning stuff from him.*
14. *When [the SC] was discussing making the complaint to the Law Society with me, she was saying that this is awful, that it has affected her, that it had – I don't know the exact words she used – but tainted her attitude towards criminal law. She went to [...] but I think she found the whole thing difficult and distasteful, and she came out of the field of criminal law. She is now going back. If she had started with [...] I don't think she would have ever left. She got on well with [...] when she worked with him, and he advised her to do both sides – prosecution and defence – if she was interested in*

*crime and I think that that is what she would have done. I think that with everything that happened though she felt like she needed a break from it as it had been overwhelming. I think that it has impacted on her career quite drastically.*

15. *When she was thinking about making the complaint, I did discuss it with her and asked if she really wanted to do this. I understood that it was likely to be denied and that she was a trainee at the time. I understood that it would be said/she said. However, I said to her that if she was really sure and she knew that it could take a long time then she should do it. [The SC] is someone who is stickler. She has a lot of integrity.*
16. *I changed my phone last year, so I don't have the messages that we exchanged about it, but this all had a huge impact on her. She has practiced in the field of personal injury for a while – my friend's husband does that and [the SC] was willing to try working in that area. She says it is not for her though and that is why she is going back to do crime. She just wanted to get on with work. Criminal law is what she always wanted to do, and it has had a huge impact on her career. That is what I feel about it."*

## **CROSS-EXAMINATION**

The witness agreed that much of her evidence was what she was told by her daughter and that she did not witness it directly herself.

She confirmed that her daughter had been keen to be a criminal defence practitioner.

The witness agreed that the first time she met the Respondent was the occasion referred to in her Affidavit where she had met her daughter and the Respondent in the street.

She stated that her daughter changed the way she felt about her traineeship as time went on. She confirmed that her daughter told her that she intended to assign her training contract. She stated that her daughter had originally wanted to assign to Crown Office, but she was not allowed to do that and would have had to start her traineeship again. She stated that her daughter was concerned about assigning so early in her traineeship and how that would look. The witness recalled that her daughter had an interview with another criminal firm on 14 November and that she was successful.

She confirmed that she and her daughter had discussed her daughter raising her concerns with her "boss". The witness stated that she had told her daughter to speak to the Respondent and tell him that he was being



inappropriate. She understood that her daughter had done that, but it did not work and so she spoke to Mr A. Her daughter's written complaint followed that.

The witness thought that her daughter felt Mr A was not taking her complaint seriously. She thought that her daughter was asked to work from home and her daughter felt that she had done something wrong.

The witness stated that her daughter had phoned her about being told by her boss that she could conduct a police interview. Her daughter seemed pleased that she was getting to do the interview on her own. Her daughter had phoned her on the morning of the interview and told her that the Respondent was insisting on coming and that she had to pick him up. Her daughter phoned again that morning to say that the Respondent was being aggressive and rude and asked her to pick him up at a spot where she was not allowed to park the car. It was the witness's recollection that her daughter considered that Mr A thought she could do the interview on her own.

She confirmed that her daughter attended a therapist. Her daughter never exaggerated matters.

### **Witness Three: Ms E**

The witness identified her Affidavit and confirmed she was happy to adopt it as her evidence. Her Affidavit was in the following terms:-

"1. [...].

2. *This affidavit is provided in connection with the discipline tribunal proceedings which arise from the complaint which [the SC] has made about Kenny Woodburn.*

#### *Background*

3. *I met [the SC] in September 2022, when I first started working for [...]. I met her at court. I am sure that I was introduced to her by my boss, [...]. Around then, I would have seen [the SC] 3 or 4 times a week. We would be in court together and we then developed a friendship quite quickly. I would say that was about a month or two after being at court together. We were both trainees and we were both women working in the field and so we came together quite a bit. I am still friends with [the SC], and I now probably see her once or twice a week.*

#### *Discussions with [the SC] about her experiences during her traineeship*

4. *To start with, [the SC] and I would speak about our firms, and the bosses that we were working for. I think that that is pretty normal for trainees. Shortly after me starting at [...], I can't remember exactly when but*

maybe towards the end of September, [the SC's] behaviour started to change. She was more down and not as cheery as when she was first introduced to me. I can't remember the date, but I think that she had an argument with Kenny who she worked with. That is Kenny Woodburn. It was something to do with her personal phone and it being on silent and she was upset about what Kenny had said to her. She felt that what he was saying to her was disrespectful.

5. After that, it continued, and I think she knew because she could confide in me that she could tell me things. She started to tell me things frequently.

6. I am asked about how I could tell that [the SC] was more down. One of the things is that when you walk into the agents' room in [...] Sheriff Court, you first come to a cafe area with loads of seats where most people sit in the main sort of foyer part of the agents' room. In a room off of that there is a library. Everyone tends to sit with their firms in the foyer, but my firm sit in the library where we can get a bit of peace and do work. That is where I usually sit with my bosses, [...]. I noticed that [the SC] started sitting more frequently in the library with me than with her firm. She would tell me about arguments that she had had with Kenny or [Mr A], or after her trainee review with [Mr A] where she felt that he was being unreasonable with how he was grading her PQPR, and weird comments that Kenny was making on which she felt that she was being leered at by him.

7. From what [the SC] said, sometimes Kenny was a bit of an arsehole towards her with the thing that he would say. [The SC] would make comments - joking - but saying about how she was going to kill herself or throw herself off a bridge or how it was just another day. She was dealing with it, she was putting up with it, and she was saying "where would I go".

8. I am asked about what I can remember of the comments. From my memory of what she told me I think that there was a time when he had found her on Instagram – at that time her Instagram account was open – [...]. [...] Sometimes Kenny would go through her pictures on Instagram from years ago and like the pictures. [The SC] told me about a time when they were in court together and Kenny was zooming in on the pictures and talking about the size difference in [the SC's] breasts between them, saying that they had looked fine to him. I think it was that type of scenario that was bothering [the SC]. In relation to Kenny making inappropriate comments and [the SC's] body and liking her Instagram pictures, I am not certain where this took place, however, I am certain that he only tended to make these crude comments when they were alone or away from the general vicinity of others.

9. I know that there were was a time when they were both in the office - I don't think [Mr A] was there and I don't think that Kenny made these sorts of comments in front of [MrA] - and Kenny was asking [the SC] what

she was doing at the weekend and she had been saying that she was staying at home with her dog, Woody. Kenny would make comments like how she was a sweet young thing, and she should be in the bath playing with herself or out finding people to have sex with. [The SC] said that these sorts of comments made her feel uncomfortable.

*Discussion with [the SC] re disagreement about covering a police interview*

10. Another thing that [the SC] mentioned to me - it is a bit cloudy in my mind exactly what happened but there was a solicitor named [ Mr C] who worked on his own. There was a police interview, and I can't remember if [the SC] had been to an interview before this, but as a trainee doing criminal defence work you get told to do interviews and then are punted into them and you sink or swim. On this occasion, [the SC] said that he had asked if [the SC] could do this police interview as a trainee. She wasn't due to be in court, he was. I think the discussion took place in the agent's room.

11. When it came to the time of the interview, Kenny had said that she had had to go, and he told [Mr A] that that was what was going to happen. I think that it was okay with [Mr C]. [The SC] had to drive from [...] to pick up Kenny, I don't think she was too happy about being told. In the car, I think that [the SC] said that Kenny was doing things like touching the gearstick and touching around her knee and trying to touch her hand, and I think that she said to him to stop, that that was inappropriate. That was around the time of things coming to a head.

12. [The SC] also said that Kenny would consistently touch her hands. If they were conversing, he would lay one of his hands over hers or would reach out and try to hold her hand. One example of this is when she was attending the police interview with Kenny in [...], along with touching her knee, gearstick etc I believe he was trying to hold her hand or placed his hand over hers. This affected [the SC] mentally, not only due to the other sexual harassment, but also due to her severe OCD. She does not like to touch things with her hands that she does not know is sanitary, she also wouldn't go out of her way to hold or touch someone else's hand due to the germs/bacteria that could be there.

*Discussions [the SC] had with others regarding the issues*

13. I think that maybe [ the SC] might have disclosed these things to [Ms F], who is a friend of hers, shortly after the time as well.

14. I think that things were difficult with [Mr A] as well and he maybe wasn't the best boss. When it came to a head, I think [Mr A] made her work from home and initially [the SC] was happy with that and dealt with it in a practical way. She was a trainee, and she thought that she could get through her work at home, but she shouldn't have been forced to leave the office.

15. I know that [the SC] did disclose what was happening to certain members of the [...] Bar Association and decided she couldn't take it anymore. At the time, my boss, [...], was head of the [...] Bar Association and I think she contacted him and a couple of others to see if work elsewhere was available. By then, I think a complaint had been made and she was getting hassle from other members of the Bar. [...] didn't have funding to take her on, but eventually there was a space at [...] and she went there. At the time, [...] put a message on the chat used by members of the [...] Bar Association about the ethics concerning solicitors and colleagues and relationships between them, and he said at the time that there was only one male trainee with the rest being female and if any trainees wanted to discuss any concerns then the main body was the Law Society but they could reach out to the [...] too as there was some concern for [the SC's] wellbeing.

*The period after [the SC] moving firm*

16. Even after [the SC] moved to [...], I think that there was some residual hatred towards her from [Mr A] and Kenny. Comments were made to members of the [...] Bar Association about her, saying that she was a gold-digger and that she was only making the complaint for money and things like that. Even in the last few weeks I have been told by multiple people that Kenny is saying that [the SC] has been asking for compensation. I believe that [Mr A], [...], and Kenny had been having discussions about it. I haven't told [the SC] about that. I don't want her to think that people are still speaking about her. I honestly think that had it not been for support from the [...] she would have left the profession.

*The impact on [the SC]*

17. I am asked about the impact that this had on [the SC]. I saw how she was getting stick from everyone and dealing with Kenny and [MrA] on a daily basis made it a really hard time for her. She moved from criminal law to civil law to stay away from [...] Sheriff Court. She is very paranoid that people are still talking about her and that is justified. I know that she has accepted a job with the COPFS. Initially she thought that job would be based in her local court, and she was going to turn it down out of fear of having to speak to and see Kenny again. The harassment that she went through is a major part of her life. It isn't something that she should have had to put up with and it has affected her in her daily life. She works from home now, she has cut herself off from people and she doesn't have to go into the office. At the COPFS she will be in a unit so she will be very limited in the dealings that she has with him, if any. I think the whole thing has affected [the SC] more than she probably would admit. She is dissatisfied with how long the process is taking. She made jokes about it things like jumping off the nearest bridge, and while it was a joke, she was under immense stress and those sorts of jokes were her only way of getting through it."

**CROSS-EXAMINATION**

The witness confirmed that she was familiar with the agents' room referred to and that as a general rule she sat in the main section. She confirmed that she had not heard the Respondent say anything inappropriate to the Secondary Complainer, but explained that it was a very large L-shaped room. She agreed that her evidence is based upon what she had been told by the Secondary Complainer.

The witness stated that in her experience it was not unusual for a first year trainee to attend a police interview in relation to a charge of a serious sexual offence, even as a first interview for the trainee. Before she attended her first interview in relation to a rape charge, her boss had gone through it with her, and, as it was a no comment interview, it was not complicated. She said that the normal pattern is that a solicitor speaks to the police and then tells the accused what the charges are. A rough statement is taken from the accused and then you go straight into the interview which is usually no comment. The Secondary Complainer had told the witness that Mr A said she could do the interview herself.

The witness was referred to paragraph 12 of her Affidavit and confirmed that this was what she was told by the Secondary Complainer.

#### **Witness Four: Miss B**

The witness identified her Affidavit and confirmed she adopted it as her evidence. Her Affidavit was in the following terms:

“

1. [...].
2. *This affidavit is provided in connection with the proceedings before the discipline tribunal which arise from the complaint by [the SC] against Kenneth Woodburn.*

#### *Background*

3. *I have known [the SC] since 2016. We met when we started our law degree together at [...]. [The SC] and I lived together when we started our traineeships and so we would see and speak to each other every day.*

#### *The start of [the SC's] traineeship*

4. *At the time of starting our traineeship with [the Firm], [the SC] and I spoke regularly about our traineeships and our careers. We had worked together at [...] and when [the SC] was offered her traineeship with [the Firm], she was very excited about it. She had had a few interviews, and she was excited that she had got something. Criminal law was something which she was interested in going in to.*

5. *I remember that the first indication that either of us had that there might be an issue at the firm was when we were speaking to our friend, [Ms F]. We had met her at a coffee shop by chance and [the SC] told her that she had been offered the traineeship with [the Firm]. [Ms F] said to watch out for Kenny Woodburn. [Ms F] worked at [...], and I think that they shared an office space with [Mr A's] firm. I think that [Ms F] said something along the lines that Kenny was a bit of a creep. I think that I said in response to that that [the SC] could handle herself, and we spoke about it after that. [The SC] said that she would take it as it comes, she was sure that it would be fine, and that everybody had a different opinion.*
6. *I remember that initially [the SC] was enjoying being at [the Firm]. She got on well initially with [Mr A] and Kenny. I think that the first indication that things were starting to go sour was not long after that, but for the first few weeks or month or so, things were fine. She wasn't there for all that long in total.*

*Issues arising during [the SC's] traineeship*

7. *I think that initially the first problem was Kenny's attitude with him being quite mean and rude to her. I think that the first episode of this was when she was supposed to go to a police station in ...] to deal with a police interview and he was very rude to her over text message. This was the start of instances which [the SC] described where Kenny was behaving like a child. He would be off with her and cold with her if things did not go his way. He would be fine one minute and then he would not be., And that gives people a lot of anxiety. That was the sort of first issue. Initially, her complaints were about Kenny's attitude.*
8. *There came a point when that shifted. Things would go back to being okay, Kenny would be back on [the SC's] good side, I guess and then I can remember her texting me at work, or maybe she came home and told me about the things that he had said. One of the main episodes was – [the SC] was speaking about her breast augmentation operation and the comments that Kenny made about that were disgusting. He said something along the lines of asking her if her nipples got hard when she was masturbating. I said to [the SC] that that was absolutely inappropriate, not acceptable, and I probably swore when I was speaking to her about it. I would say that that was maybe about 4 or 5 months into our traineeship. It would be around then.*
9. *I am asked about whether I can remember other comments. [The SC] would come home and relay her day to me. There was one other comment she told me about when coming home where Kenny was talking about shagging loads of women. There was another occasion I can remember when he gestured*



to her across the office him having sex with her. These were very inappropriate things to say in the context of him being an older male alone in the office with her.

*[The SC's] response to the issues*

10. *[The SC] was very distressed about this, but she did not know what to do. She was the type of person who would laugh this sort of thing off, but it got to the point where she couldn't. Initially, [the SC's] reaction was to say that maybe she was just being dramatic, but over time she became very anxious about going to work. She was calling in sick when there was not too much wrong with her, she would be finding an excuse not to go into the office, she would be working out whether she was due to be working with Kenny that day and doing her best to avoid being around him. [The SC] never used to be anxious before this, but with this experience I saw it develop. She started going back to her therapist. She was texting me all through the days saying that she hated being here, she hated being around Kenny, she was not in a good place at all working there.*
11. *[The SC] and I talked about her moving. I pushed her a lot to speak to [Mr A] about this and to make a complaint. It took [the SC] a wee while to do this because there was a lot of backlash at court for people who are friends with Kenny. [The SC] was anxious that that would happen. Eventually, I think that she decided that she had to make a complaint. It put her in a very bad place mentally.*

*The impact on [the SC]*

12. *[The SC] and I are still in contact. We had not spoken for a few months before she reached out to me asking if I was willing to give a statement. We have now spoken a bit more now. I think that back then we were more friendly and speaking regularly, but things have gone on for so long and they have really dragged on. Previously, [the SC] was a very confident person. Since this happened, she has had various positions with firms where she reports to me that her confidence has been knocked., and she is not as sure of herself. She had to go back to therapy. She is a lot less trusting of men. I saw a massive difference and change in her from the person I had been friends with for four or five years at that point. She has had a lot of change in her life, and I think that everything was a lot for her, and she was dealing with this ongoing. She experienced a lot of backlash at court, to the extent that she wanted out of the world of criminal defence. That was what she had always wanted to do. However, she felt so victimised that she felt that there was no point but to leave it entirely.*

*Recollection re remarks made at court*

13. *I am asked about whether I can remember her talking about comments that had been made to her at court. I can't remember off the top of my head. There were so much, we would sit down at the end of the day, and she would recount Kenny's behaviour towards her on a daily basis.*



*Overall observations*

*14. Overall, I cannot state enough how much her time at that time has impacted on her confidence, her emotional well-being, and her mental well-being. It took a huge, huge toll on her. I cannot emphasise that enough. We lived together at the time, and I saw the effects of that on her in real time."*

The witness confirmed that Production 10 was an exchange of messages between her and the Secondary Complainer. She believed the date of these messages to be 12 September 2021.

She confirmed that Production 12 was messages exchanged between her and the Secondary Complainer.

**CROSS-EXAMINATION**

The witness could not remember the date of the Secondary Complainer's operation.

She remembered that the first incident the Secondary Complainer complained of was the police interview. She accepted she had difficulty remembering the details. She believed that the conversations referred to in paragraph 8 and 9 of her Affidavit occurred after the incident involving the police interview.

**RE-EXAMINATION**

The Fiscal drew the witness's attention to the dates on the screenshots of the telephone messages. She confirmed that the Secondary Complainer was telling her about these things at the time they were happening.

**Witness Five: Ms D**

The witness identified her Affidavit and adopted it as her evidence. Her Affidavit was in the following terms:

"

1. [...]
2. *This affidavit is provided in connection with the proceedings arising from the complaint made by [the SC] against the solicitor, Kenneth Woodburn.*
3. *I know [the SC] as I used to live next door to her. I moved into the flat where I lived beside [the SC] in around August 2021 and I think maybe a few months after that I met [the SC] when she moved in. I cannot remember exactly when this was.*

4. *Quite quickly after [the SC] moved in, we met, and we would speak together in the hallway. We both have dogs, and we started to go for walks with the dogs together. We would see each other quite frequently.*
5. *When we met and spoke, [the SC] would speak about her work. I think that when she first started, we would talk about what her work involved, and she would mention things about going to court. She would take about the type of work that she was having to do in that seemed to be going okay from what she said.*
6. *At some point - I can't recall exactly when - there started to be discussions that a lawyer who worked in the same firm as her was having with her that she was uncomfortable with. I cannot Remember the order in which everything happened, but when I would meet her with her, I would ask her how things were going at work, and she would give examples of the types of things that were being said that were making her uncomfortable. There is one specific comment which sticks in my head even now because I can remember being really shocked that someone had said that. The solicitor who she was working with had asked her what colour her nipples were when she was masturbated. I cannot remember any other specific comments. She reported making now, but this was the one that stayed with me.*
7. *I can remember another time when she was a bit upset at the end of a day where I think the solicitor had forced [the SC] to pick him up somewhere in her car. She had tried really hard not to, and I remember seeing her and she wasn't OK. She said that she had been trying not to have to pick this person up in her car and had been saying that she didn't want to, but he had been really forceful, and she felt that she had to. When [the SC] was describing these things to me, she was upset. She was very conflicted because she was so new in the job., and it was something that she hadn't expected to deal with and what she didn't know where that act on.*
8. *I think that there were a few times when I would say to her that she should tell someone and she would be hesitant to do that. I think because she was so new in her career, she was worried about what would happen if she did anything If she was unable to work with that person, then she didn't know what that would mean for her training. She didn't know what would happen if she made a complaint.*
9. *I know that [the SC] was really upset about these things at the time. She seemed emotionally distressed when she was speaking to me about them, and that was the case even when she was at the point of going to a different firm. I think that she still felt uncomfortable because she was still going to have to go to court and see him. She reported the matter to her boss or a manager, but she felt that he had taken the other person's side and she ended up wishing that she hadn't done anything as she felt like*

*she was getting the blame and that that was emotionally bothering her meaning that she couldn't stay in the situation."*

She confirmed that the lawyer she was referring to at paragraph 6 was known to her as "Kenny".

## **CROSS-EXAMINATION**

The witness confirmed that she was aware that the Secondary Complainer's boss, Mr A, arranged for an HR investigation following the Secondary Complainer's complaint. She confirmed she was not interviewed for that investigation. She could not remember whether the Secondary Complainer told her she had been interviewed.

The hearing was adjourned until 10 July 2025. Prior to calling his next witness, the Fiscal moved to amend the Record in paragraph (d) by changing October to November and in paragraph (e) by amending the date to read "on or around 12 October 2022" and to delete reference to the statement being made after the Secondary Complainer had spoken to the Respondent about his conduct. Mr Macreath confirmed he had no objection to the change of date in paragraph (d), as the date was clear from the text messages produced. With regards to the amendment to paragraph (e), he had no objection to the deletion of reference to the Respondent's comment being made after discussion with the Secondary Complainer, but he stated he did not agree to the amendment to the specific date. He submitted that, in her evidence, the Secondary Complainer had not given a specific date, but had said that it occurred in September or October. In her letter of complaint, the Secondary Complainer said "beginning of October". The Fiscal indicated that he was attempting to balance the accuracy of the pleadings with the evidence given, and the text messages with Ms B contained a date of 12 October. He confirmed he wished to retain the qualification "on or around" which he submitted encompassed the early part of October.

Having carefully considered the parties' submissions, the Tribunal allowed the Fiscal's motion to amend.

### **Witness Six: Secondary Complainer's Therapist**

The witness identified her Affidavit and confirmed she was happy to adopt it as her evidence. The Affidavit was in the following terms:-

*"1. [...]*

*2. I am providing this affidavit in connection with the hearing before the Scottish Solicitor's Discipline Tribunal which relates to a complaint made by [the SC] against a solicitor named Kenneth Woodburn.*

*Professional relationship with [the SC]*

3. I know [the SC] as I am her therapist. I have been working with her for 5 years. I saw her first in January 2020. [The SC] has given me permission to break the duty of confidentiality which I owe to her in order to provide this statement.

4. I started working with [the SC] when she was a student, and I still do work with her. I have not been working with her constantly throughout that time.

5. I was working with [the SC] when she started her legal traineeship in 2022. I destroy my notes after two years, and so I depend on my recollection of our discussions for what I say in this affidavit, but I think during that time I would probably have been seeing her about once every fortnight. That is normal. I would say that at the least I would have been seeing her once a month.

*The start of [the SC's] traineeship.*

6. I can remember. That when [the SC] started her traineeship, she was very excited about it. It had taken her a while to find it and she was really looking forward to it. During the early months of her traineeship, she seemed to be really enjoying the work. At the early stage, she didn't say anything about the people that she was working with that I can particularly remember. That wasn't the focus of our work.

*Concerns expressed by [the SC] during her traineeship.*

7. That sense of enjoyment changed during the course of her traineeship. My recollection is that that was something which she discussed with me roughly in the October/ November time. She definitely said that there was somebody in her work making her feel uncomfortable. She gave me the name of the person, but it would have been a first name. I am pretty sure that it was somebody called Kenny. I think that [the SC] speaking about this with me was mostly her checking out whether what was being said and done was appropriate in my opinion.

8. [The SC] did give me examples of the types of things that were being said, and there is one which I can remember which made me say that that was enough and that she had to speak to her line manager. I can remember that the person saying these things was senior to her, and I think that he was meant to be mentoring her. I cannot remember what his specific job title was.

9. The comment that I felt clearly stepped over the line was when he was discussing the colour of her nipples. [The SC] had said to me during one of our sessions that this comment had been made to her by Kenny. I

remember that we had been discussing how she could find the right words to say to him that this was not OK, and we did work on her finding her voice as it can be difficult for a young woman to do that in that position.

10. I am asked about whether there have been comments before that that [the SC] had mentioned to me. I think that it had gradually built up in that she had kind of brushed off earlier stuff as things that were uncomfortable but that she could put up with and then she got to the point where it was not OK. I think she tried to dismiss or let go earlier stuff because there was an age gap and there were things that he said that she put down to him not knowing what was politically correct, but it seemed to be getting to a point where it was more difficult for her to manage.

11. Some of these earlier comments which she reported to me were things like her being "hot" or "the hottest trainee". Things like that kind of sound like a compliment or that kind of thing and I think that that was why she had tried to let it go.

*My impression of the impact on [the SC]*

12. I can remember that what was being said to her was really distressing her. I remember her being very distressed in our sessions. She was tearful, saying that it was distracting her, saying that she couldn't concentrate as she was constantly thinking about what the next thing that he was going to do would be, so she was being hypervigilant. Mostly what I have worked on with [the SC] is OCD traits and her thinking around that and this became very difficult for her to handle.

13. I think that [the SC] said to me that she tried to deal with it by saying to Kenny that she was not comfortable, please don't do that, and then she was looking at when and if it should be taken up the chain in the office with her making a formal complaint. She said that she was nervous about complaining. It can be very nerve wracking for somebody that is at that junior a level to say something about somebody.

14. I am asked about what impact this had on [the SC]. I think from what she said to me that it made her feel less trusting that the people in authority would do their job properly. I think that now that she is more established, she feels more able to stand up for herself, but I think she had a hard time from other lawyers about the fact that she had made a formal complaint. What she said to me felt like low level bullying, so the trajectory of her career was altered by it. It put her of course for a while. It had quite an impact on her emotionally, thinking about what other people and colleagues were thinking about her.

15. From the discussions that we had I do think that [the SC] tried her very best to keep it informal and to try to persuade Kenny to behave better and it did not work. She tried very hard not to escalate it and she only did it when she felt that there was no other opportunity to resolve it. My recollection is that that happened when

*I said to her out right that I did not like what was being said and that comments which were continuing to be made were not even just sexual, but were bullying. It had the feel of someone saying "I am in a position where I can make you do something you don't want to".*

## **CROSS-EXAMINATION**

The witness was not sure when the first discussion regarding the Respondent took place. She recollected "it was slow at the beginning".

The witness was asked to explain what she meant by "low level bullying" and responded that she would describe that as encompassing a situation where a person told another not to do something because it made them feel uncomfortable but the other person continued to do it.

She was asked about the text exchanges in relation to the police interview and responded that she could not comment on their tone as these messages did not have much in the way of nuance.

The witness was unable to confirm the date that the Secondary Complainer had told her about the Respondent discussing the colour of her nipples.

## **RE-EXAMINATION**

The witness confirmed that she was seeing the Secondary Complainer once a fortnight or once a month at the longest, during the Secondary Complainer's traineeship with the Firm.

### **Witness Seven: Ms F**

The witness identified her Affidavit and confirmed she was happy to adopt it as her evidence. The Affidavit was in the following terms:-

*"1. [...]*

*2. This affidavit is provided in connection with the proceedings before the Scottish Solicitors Discipline Tribunal which arise from a complaint made by [the SC].*

### *Background*

*3. I knew of [the SC] when we were on the Diploma together at [...] in 2020 to 2021. She wasn't a friend then, but I knew of her.*



4. I then came to speak to her when she took over the role that I had had at [...], where I used to work, in around September 2021, and we would speak when I met with ex-colleagues from [...]. Not long after we initially started speaking to one another, [the SC] went to work with [the Firm]. At that point I was working in the same building, with [...].

5. During the period when [the SC] worked with [the Firm], and I worked for [...], I worked part-time from home and part-time in the office. I saw [the SC] regularly when we were in the office at the same time. I would say that we would see each other once or twice a week, and once every couple of weeks minimum.

#### *The start of [the SC's] traineeship*

6. When [the SC] first started her traineeship, we would just have general chit chat about how we were getting on, as we were both at similar stages in our careers. Initially, [the SC] seemed to be getting on okay. I remember [the SC] saying was that she was keen on criminal defence work and liked the type of work that she was doing. There wasn't much said that suggested there were any issues working with [Mr A] or Kenny.

#### *Concerns expressed by [the SC] during her traineeship*

7. As time went on, I can recall [the SC] mentioning Kenny making comments and questions of a personal/intimate nature. However, it's really hard to remember the specifics because of how much time has passed. When [the SC] mentioned these, she described the comments as being weird and inappropriate, particularly because of Kenny's age. She generally appeared to try to shrug these comments off as a joke and had spoken about wanting to maintain a good working relationship with Kenny.

8. [The SC] had then messaged me in September 2022, to say she was sick of Kenny asking about her masturbating and talking about his sex life. She had mentioned potentially looking for a job elsewhere. She had spoken about wishing that [MrA] and [...] had an actual office room together, so that I could sit in with them. I had said to her that I could start coming through to check in with her more often. [The SC] had responded asking me to do that. She mentioned that Kenny had been speaking down to her again, after she hadn't answered her phone to him straight away and that he had since ignored her. She described it as being similar to a tantrum and said it had made her uncomfortable.

#### *[The SC] making a complaint*

9. At the start of November 2022, [the SC] messaged me to say she had initiated a conversation with Kenny about the things he had been saying to her. She said she had told him that she felt some of the comments he had made to her were inappropriate, and she found it weird because he was of a similar age to her dad. She said that the conversation had gone better than expected, and that whilst Kenny didn't think he had been



inappropriate, that he had apologised if he had made her uncomfortable and agreed to be more cautious in the future with what he said.

10. A few days later, [the SC] had messaged me and asked me if I would be in the office on particular dates. When I confirmed I would be in, she had asked me to sit in [Mr A's] office with her on those dates because she felt uncomfortable being around Kenny. She told me that he had mocked her for confronting him by following up something he had said with "now don't say I've been inappropriate". I had suggested speaking to [Mr A] about working from home, but I believe he was on annual leave at the time, so she advised she would speak to him when he got back.

11. In the following days, I had kept in touch with [the SC] to see how she was doing. [The SC] spoke about the idea of going into work making her feel anxious and sick, and wanting to reassign her traineeship. She had said that she didn't feel able to work with Kenny anymore and it had become too much for her. On one of these days, [the SC] had messaged me when she had finished up at court to ask if I was in the office, saying that she was too anxious to go back to the office because it was just Kenny who was in.

12. She had messaged me again when [Mr A] had returned to work, to say that she had told [Mr A] she needed to speak to him and that she was a bag of nerves. She said she had felt sick and hadn't been able to eat. She messaged me afterwards to say [Mr A] had sent her home and had that he had told Kenny not to contact her. She told me that he had offered her the option of making a formal complaint and asked her for suggestions on her working arrangements moving forward. She said she had suggested working in different rooms, but I think she ended up working from home quite a lot.

13. I didn't keep in touch with [the SC] about What she had specifically done after that. When I was contacting her, I was more asking her as a friend how she was feeling than about what was happening. I cared about how she was getting on and how she was feeling rather than the mechanics of the situation. I know that [Mr A] later employed a HR person because they had asked to speak to me about my understanding of the situation. The information I gave to them was a lot closer to the time, so is likely to be more detailed.

[The SC] moving firm

14. [The SC] eventually assigned her traineeship to another criminal defence firm. I still saw [the SC] up at court fairly regularly after this.

The impact on [the SC]

15. I am still in touch with [the SC], and we are still friends. I am asked about the impact that this has had on her. [The SC] had always spoken about liking criminal defence and wanting to pursue a career in criminal

*law, but the dynamic that the situation with Kenny created, had pushed her away. When she finished her traineeship, she took up an NQ role in civil work. She spoke not enjoying this type of work as much but said that it gave her a break from the difficulties she had working in criminal defence.*

*16. The whole process has taken a long time, and [the SC] still talks about the situation having an impact on her. [The SC] has spoken to me about it impacting her openness to interacting with other people in and out of work. She has said that she is more guarded and wary of other people. She has spoken of having a different perception of romantic relationships and in her ability to interact with others."*

## **CROSS-EXAMINATION**

The witness confirmed she gave a statement to the HR company instructed by Mr A. She agreed that she asked to be anonymised in that report and believed the information she gave for that report was likely to be more detailed as it was closer in time to the events being discussed. She accepted that she had not wanted to be part of the complaint. She confirmed that the information that she had given came from the Secondary Complainer. She believed that the relationship between the Secondary Complainer and the Respondent had deteriorated over time.

Mr Macreath asked the witness if she remembered telling the HR investigator that the Secondary Complainer was thinking of assigning her traineeship at the end of September. He asked the witness if the information she provided at the time was more accurate. The witness stated that the information she had given would have been more detailed but that she tried to be accurate in both her statement then and her Affidavit now. Mr Macreath asked the witness about paragraph 9 of her Affidavit where she said that the Secondary Complainer messaged her at the start of November 2022 to say she had initiated a conversation with the Respondent about the things he had been saying to her. The witness confirmed the message was at the beginning of November 2022 and explained that she and the Secondary Complainer had exchanged text messages about it. She said she had reviewed these messages for this Hearing and could confirm that these texts were exchanged in November 2022.

## **RE-EXAMINATION**

The witness explained that at the time the HR investigator spoke to her she was still working for the firm that was next door to the Firm where the Respondent and the Secondary Complainer worked. She felt awkward about being involved in the HR investigation and was conscious of the possible impact this could have upon her. In hindsight, she accepted that may not have been the right thing.

The Fiscal invited the Tribunal to accept the Affidavits lodged as the evidence of his witnesses and closed his case.

## **EVIDENCE FOR THE RESPONDENT**

### **Witness One: The Respondent**

The Respondent confirmed that he is 67 years old and has been an enrolled solicitor for 13 years.

He described in detail his path to becoming a solicitor, later in life. He explained that he had worked in the Sheriff Court for the Citizens Advice Bureau and had appeared in court as part of his role. He emphasised his pride in his work and said that he still pinches himself as he can't believe that he is a solicitor. He is proud of what he has achieved. He described how he was employed as an assistant by the Firm in 2018. The Firm operated from a serviced office and had no staff, other than himself and Mr A.

The Respondent stated that he had worked with young women in his time with Citizens Advice Bureau and that there had never been any complaint about his conduct.

The Respondent explained that the Firm had been successful in applying for Government funding for the employment of a trainee. He and Mr A had looked at the applications the Firm received and had conducted the interviews together. At the end of the process, they both considered that the Secondary Complainer was the best candidate, although it was Mr A who made the final decision. The Respondent stated that he "had no sway over" Mr A and was content to be employed as an associate. He described Mr A and himself as being "cock-a-hoop" at the prospect of taking on a trainee as the idea of training someone really appealed to him. He set himself the goal of making sure that the trainee enjoyed their traineeship.

Mr Macreath asked the Respondent what the Secondary Complainer's role was in the Firm. The Respondent stated that when she started, one of her first tasks was to cover a High Court trial with counsel. He said that "we" wanted to indicate to the Secondary Complainer that her role was not going to be just clerical and wanted to make it exciting. He explained that the Secondary Complainer shadowed him. He had not been told that he was to be her mentor, but she was with him, he took her to see clients in prison, and he took her to court. He wanted her to see what the work involved. He tried to let her do the sort of things that he would have liked to have done as a trainee. The Respondent explained that he could not drive and that they would travel by bus when necessary. He thought that he was mentoring her well. He had explained to her why he approached cases in a certain way and why it was important to remain neutral.

He recalled that the Secondary Complainer commenced her traineeship at the end of March, beginning of April 2022.

The Respondent described the agents' room at the Sheriff Court being an L-shaped room in the basement of the building. He explained that it is a large, open plan room, with nicknames for different areas within it. Groups of solicitors would sit in the same area every day. Discussions in the agents' room could be "robust". It was an area where solicitors who were angry or frustrated, either with clients or decisions, could "sound off". The vast majority of solicitors using the room were criminal defence lawyers.

The Respondent was asked if he had ever referred to the Secondary Complainer as "hot" in the agents' room. The Respondent stated that he had never referred to her in such terms. He stated that he had the utmost respect for women and had been brought up not to speak in that way. He stated that he and Mr A both wanted to encourage more female solicitors to join the criminal bar as there was a dearth of female agents in this area of practice and taking on a female trainee supported that in a small way. He was adamant that he had not said anything to the Secondary Complainer that could have been interpreted in that way. He stated that, at that time, his Firm sat beside three other female solicitors in the agents' room. He stated that, if he had said anything of this nature, it was likely that others in the room would have heard it. He stated that he was embarrassed that it was suggested that he had used these words and said "that is not me".

Mr Macreath directed the Respondent's attention to the allegation from September 2022 and asked the Respondent if he could explain the circumstances relating to discussions about the Secondary Complainer's surgery. The Respondent stated that the Secondary Complainer had not mentioned her impending surgery when "we employed her". He believed that she told Mr A about it first, but she had referred to it regularly when speaking to him.

The Respondent explained that the Firm occupied one room, approximately 20 feet by 20 feet, in a block of serviced offices. He, Mr A and the Secondary Complainer all shared this room. Mr A's desk sat on its own, but the Respondent and the Secondary Complainer sat facing each other. He stated that they could all hear what each other was saying on the telephone. He was adamant that at no time had he said the things suggested by the Secondary Complainer. He could offer no explanation for why the Secondary Complainer was saying this, he stated he was "flummoxed" and that he "was not that type of person".

Mr Macreath directed the Respondent's attention to the allegation relating to the conversation that took place on 7 October 2022. The Respondent stated that a conversation did take place at that time, but not in the terms described by the Secondary Complainer. He explained that, out of the blue, the Secondary Complainer had asked him if it was possible for a woman to rape a man. He had tried to answer the question in the best way

he could and had said “I suppose if you drug a man” and “he would have to be aroused”. He was adamant that he did not personalise his explanation in any way. He accepted that in Scots Law it is not possible for a biological woman to rape a biological man, given the terms of the Sexual Offences (Scotland) Act, but he stated that at the time he had not given it thought, but had tried to answer the question as honestly as he could.

He could not see where the Secondary Complainer’s question came from and did not understand the relevance of the file referred to by the Secondary Complainer. He stated that her question was simply put as “Is it possible for a woman to rape a man?” and was not expanded to any issues relating to trans-women. He denied that his response to her was “graphic”. He emphasised that his position had been consistent from the beginning.

Mr Macreath directed the Respondent to the allegation relating to the exchange of text messages in November 2022. The Respondent explained that he was not present when Mr C asked Mr A if the Firm could cover a police interview for him. The Respondent could not recall if they knew that the interview related to a sexual offence or whether they only found this out at the police station. He said that there had been some concerns about how the Secondary Complainer interacted with clients. He stated that he was happy for the Secondary Complainer to conduct the interview herself, but was not comfortable with her taking instructions from the client on her own. He was asked if he would describe his behaviour as bullying and responded that he was not happy for her to do this on her own, as she could be unpredictable. He made reference to her turning up at the wrong court on the wrong day and her switching off her mobile telephone when she needed to be contacted.

The Respondent emphasised that Mr A did not want the Secondary Complainer to go to the police station on her own and had wanted the Respondent to go with her. The Respondent was satisfied that the Secondary Complainer could do the interview on her own, particularly if it was a no comment interview, however, he wanted to see how she explained to the client what his rights were.

The Respondent was referred to the screenshot at Production 8 for the Complainers. Mr Macreath asked the Respondent why he had thought the Secondary Complainer was calling him on a Sunday. The Respondent replied that he had thought it was to do with the interview the following day. He stated that they had made travel arrangements to go to the police station on the Friday. He was going to wait for her at a bus stop where she could pull in and he would get in the car. She had called him on the Sunday and when he called her back, she asked about the difference between sections 1 and 2 of the Sexual Offences (Scotland) Act. He could not see any urgency in her call and said they could speak on the Monday morning. The call had been short and they had not discussed the travel arrangements at all.

The Respondent was referred to Production 9, the text messages referred to in the Complaint, and was asked why he had made the response “forget it”. He responded that he felt that he was being challenged by the



Secondary Complainer. They had made travel arrangements which he believed she was trying to change for financial reasons, basically the petrol costs. He was not trying to bully the Secondary Complainer, but was indicating that, if she did not want to do what had been agreed, he would cover the police interview on his own.

The Respondent was adamant that Mr A did not want the Secondary Complainer to do this interview on her own and had not said that she could do so. The Respondent believed that the Secondary Complainer was trying to change the arrangements to suit herself. He believed that she needed to have direction in her traineeship.

He recalled that they attended at the police station, the police advised them of the nature of the allegation, and they both met with the client and advised him of his rights. The client opted to make no comment in the interview. As he had only attended the police station with the Secondary Complainer to see how she gave advice to the client, when he saw that the interview room only had two seats, he was happy to leave her on her own.

The Respondent denied putting his hand on the Secondary Complainer. He accepted that he did not speak to her in the car on the way back to the office and that she did not speak to him. He denied slamming the car door and said that his perception of events was quite different to that of the Secondary Complainer. He insisted that he had not issued the Secondary Complainer with a direct order to travel with him, but had given this to her as an option. He believed that the Secondary Complainer wanted to do the police interview on her own terms.

The Respondent denied making the alleged comment of 12 October 2022. He could offer no explanation for why the Secondary Complainer was saying that he did. He explained that they walked back to the office from court together every working day.

The Respondent was referred to the Affidavit of Ms E. He stated that he was unaware of any mood change on the part of the Secondary Complainer. He stated that he could not remember any argument with the Secondary Complainer. There were occasions when the Secondary Complainer did not keep her phone on, despite having been asked to do so. He recalled one occasion, in September, when a police interview was missed from the diary. Both he and Mr A were in court. He had tried to call the Secondary Complainer to ask her to attend the interview, but she had switched her phone off. They missed the interview and the Respondent felt disappointed. He was not sure what Ms E was referring to when she said there were arguments regarding the Secondary Complainer's quarterly reviews. He denied making inappropriate comments. It was his recollection that the Secondary Complainer continued to sit with the Firm in the agents' room until after she made her



formal complaint, when she then sat in the library. He did not accept the witness's description of events around the attendance at the police interview. He denied ever trying to place his hand on the Secondary Complainer.

The Respondent was referred to the Affidavit of the Secondary Complainer's mother. He accepted that he said to her mother that the Secondary Complainer had great potential. He accepted that he made the comment about the witness being the Secondary Complainer's sister and explained that he was trying to "break the ice". He had not meant to be offensive in any way. He denied that the Secondary Complainer had a conversation with him "about not speaking like that". He conceded there was a discussion about whether a woman could rape a man, but it was not personalised in any way. The Secondary Complainer had asked the question and he had tried to give a practical answer. He was asked why a trainee would make up these allegations. He responded that he had no idea and that the allegations came as a "bombshell" to him. As far as he was concerned, until two or three days before the letter of complaint, he had considered the Secondary Complainer to be a friend and he had been interested in the development of her career as a solicitor.

The Respondent stated that whilst with the Firm he had worked with a number of "work experience girls" and there had never been any complaints about him.

He was asked about a comment in one of the Affidavits referring to him having appeared in court as an accused and he denied that he had ever been prosecuted in court.

The Respondent was referred to the Affidavit of the Secondary Complainer's therapist and he restated his denial of having said anything inappropriate to the Secondary Complainer.

Mr Macreath directed the Respondent to the Affidavit for the witness Ms F, and he denied having said anything "inappropriate or weird" to the Secondary Complainer. He denied that the Secondary Complainer had ever indicated that she had wanted to be kept separate from him in the office. He accepted that a meeting had taken place in the office where the Secondary Complainer had said that he had made inappropriate comments. He accepted that this conversation could have been on 31 October or at the beginning of November. He said that the conversation related solely to the discussion about whether a woman could rape a man, that he had not accepted that he had said anything inappropriate and that he did not apologise. The Secondary Complainer had not raised any other conversation or remark with him.

With regard to the Affidavit of Ms B, the Respondent stated that he was at no time mean or rude to the Secondary Complainer and did not say anything "disgusting" to her.

With regard to the Affidavit of Ms D, the Respondent denied making the comment referred to and insisted his position was consistent throughout.

The Respondent disputed that the agents' room at court was quiet between 9am and 9:30am. He explained that the Sheriff Clerk's Office opened at 9am, court can start at 9:30am for deferred sentences, and solicitors require to pick up reports which they need to read before any deferred sentence calls.

He could not recall when the Secondary Complainer had asked for time off work for the surgical procedure. He explained that she had asked Mr A rather than him. He recalled that she was off for about a week and that when she returned to work, the Firm made such adjustments for her as were practical.

## **CROSS EXAMINATION**

The Respondent confirmed that he was 63 years old when the Secondary Complainer started work for the Firm as a trainee. He stated that he had spent his whole career as a solicitor in criminal defence and, at the time the Secondary Complainer started with the Firm, he had been qualified for around 10 years. He was asked if it was fair to describe him as senior and experienced. He responded that it was fair to say he was senior but he "was not sure about being experienced". The Respondent was asked if he took an active role in the supervision of the Secondary Complainer. He responded that his role was more of a mentor and not so much as a supervisor. He reached this conclusion as he was not involved in her quarterly reviews. He accepted that he took on a greater role mentoring the Secondary Complainer than Mr A. He accepted that he was in a position of trust in relation to the Secondary Complainer. The Respondent emphasised that Mr A carried out the quarterly reviews and that he did not seek the Respondent's feedback in that process. The Respondent insisted that he had no dealings with the Secondary Complainer's quarterly reviews.

The Respondent did not consider there was a power imbalance between him and the Secondary Complainer. He accepted that there was an age difference. He stated that the power was with Mr A. He said that he had wanted to "incorporate" the Secondary Complainer into the Firm and give her the best traineeship that he could. He explained that he considered that he had a responsibility to make sure that the Secondary Complainer did things properly but that he did not "boss her about".

The Respondent could not remember whether he had seen the Secondary Complainer's formal letter of complaint during the disciplinary process carried out by Mr A, but he accepted that he was familiar with its terms by the end of 2022.

The Fiscal directed the Respondent's attention to the series of text messages at Production 9. The Respondent denied that it was his own idea to go with the Secondary Complainer to the police station. He accepted that it appeared from the chain of messages that the Secondary Complainer had exchanged messages directly with Mr C. He accepted that there was no practical reason why the Secondary Complainer could not conduct the police interview on her own. He emphasised that the reason he attended the police station with the Secondary Complainer was not to sit in on the interview, but to see how she interacted with the client and how she conducted herself in advising him of his rights. The Fiscal reminded the Respondent that he had given evidence about an occasion in September 2022 when the Respondent had tried to contact the Secondary Complainer to get her to cover an interview on her own and he stated that he thought that was correct.

The Respondent explained that the travel arrangements for getting to the police station were made between him and the Secondary Complainer. He accepted that he made no reference in the course of the text messages to the reason for him attending the police station with her. He did not recall there being any discussion about the reason for him attending the police station with her. He accepted that he could have taken public transport. He denied that he had insisted that the Secondary Complainer drive him to the police station. He explained that, if the Secondary Complainer had not wanted to pick him up, then he was content to attend the police station himself. He accepted that he did not challenge the Secondary Complainer when she had said in the messages that Mr A was happy for her to go to the police station alone. He did not accept that the tone of his messages was demanding, bullying or aggressive. The Fiscal put to the Respondent paragraph 4.16 of the reporter's report to the Professional Conduct Sub Committee which quoted the Respondent's written response to the Law Society. The Respondent did not accept that this was an admission by him that he had exhibited aggressive behaviour. He denied that he was issuing the Secondary Complainer with an order to pick him up and drive him to the police station in her car and explained that he was giving her the option to do that or to go and cover the custodies instead. He accepted that the Secondary Complainer did not raise anything in the messages about her petrol costs, but referred to the Secondary Complainer's comment about it being a longer journey. The Respondent insisted that the Secondary Complainer was trying to "usurp" him and rearrange everything to suit herself. He emphasised that it was Mr A who stated that she was not to go to the police station on her own.

The Respondent accepted that there were times when he and the Secondary Complainer were in the agents' room at court together. He stated that even before 9am, the agents' room was never empty. He accepted that there were times when he was first in. He accepted that things could have been said from time-to-time which others would not have heard, but was adamant he had not said the things that the Secondary Complainer had accused him of. He accepted that comments such as those alleged, if made, would have been inappropriate, would have made the recipient feel uncomfortable and could be categorised as sexual in nature. He stated that

he did not dispute the veracity of the other witnesses when they said that they had been told things by the Secondary Complainer, but it was his position that the Secondary Complainer was not being truthful.

The Respondent accepted that he and the Secondary Complainer frequently walked back to the office together from court unaccompanied by anyone else and that there were occasions when she and he were alone in the office together. He confirmed that when the Secondary Complainer started with the Firm there was a partition in place between his desk and hers. He believed the screen was in place to prevent the Secondary Complainer from being distracted by him. He understood that it was Mr A's decision to remove it. He accepted that conversations took place between him and the Secondary Complainer that others could not hear.

The Respondent accepted that it was reasonable for the Secondary Complainer to raise the surgical procedure with the Firm for practical reasons. He took the view that the Firm had a duty of care towards the Secondary Complainer. He stated that this impending surgical procedure had clearly played on the Secondary Complainer's mind and it was constantly referred to by her. He insisted that the subject was always raised by her and not by him.

The Fiscal directed the Respondent to paragraph 4.16 of the reporter's report to the PCSC, which referred to a letter from the Respondent dated May 2023 and asked the Respondent if he accepted that he should not have engaged in conversations with the Secondary Complainer about the surgical procedure. The Respondent insisted that the surgical procedure affected her and her work to the extent that she had become fixated about it. He explained that the reference in his letter to the Law Society stating that he should not have engaged in such conversations with the Secondary Complainer referred to the conclusion that had been drawn by the reporter and was not an admission by him. The Respondent insisted that the topic of the Secondary Complainer's surgery was raised by her and that he had taken the view that, if the person he was mentoring had anxieties affecting her work, they should be addressed. He had tried to deal with these issues in a mature way. He was trying to do the best he could for her as she was clearly anxious and that remained his position.

The Respondent denied that he had spoken to the Secondary Complainer on 7 – 9 September 2022 in the terms suggested in the Complaint. He agreed "whole-heartedly" that the things alleged to have been said were inappropriate. He stated that he would have expected them to be reported to his "boss" and for him to have been fired. He was referred to the chain of text messages said to be sent to Ms B. He accepted that the Secondary Complainer had sent the messages, but disputed that the Secondary Complainer was telling the truth in them.

With regard to the allegation relating to a conversation on 7 October, he denied that the conversation was in the terms alleged. He admitted that the Secondary Complainer asked him if a woman could rape a man and he had explained how he thought it could be done. He had not personalised it in any way. The Fiscal asked the

Respondent if he had been aware of the terms of the Sexual Offences (Scotland) Act when this conversation had taken place. The Respondent explained that the Secondary Complainer had asked the question and he had replied giving the answer of the only way he thought such an act could take place. He accepted that the conversation described by the Secondary Complainer, if it had taken place, would have been completely inappropriate, would have caused the recipient to feel uncomfortable, and that it was sexual in nature. He accepted that the Secondary Complainer had sent messages to her mother and to others about this alleged conversation, but he said these messages did not represent the situation as it had happened.

The Respondent denied making the comment alleged to have been made on 12 October 2022. He accepted that the Secondary Complainer had sent messages and told others about this alleged conversation, but stated that the Secondary Complainer was not being truthful when she said that these things had occurred. He accepted that the alleged comment, if it had been made, would have been inappropriate, would have made the recipient feel uncomfortable, and that it was sexual in nature.

The Respondent stated that up until she made these allegations, he had regarded the Secondary Complainer as his friend; they had walked her dog together, and he had visited her when she was ill. He had been “gobsmacked” when he found out what she was alleging, as these allegations could ruin his career and there was no substance to them whatsoever.

The Respondent agreed that discussions in the agents’ room could be robust and involve dark humour. He was asked if comments could sometimes be uninhibited and replied that his were not. He explained that he had heard all sorts of comments, including racist and sexist ones, but insisted that he did not participate in that himself. He stated that he prefers to get on with his work and not sit about in the agents’ room if he does not have to.

He was asked if he was annoyed on the occasion when he could not reach the Secondary Complainer on her mobile telephone. He responded that “both of us were”. He denied raising his voice about it and stated that he did not see the point in being aggressive.

The Respondent accepted that the Secondary Complainer had a conversation with him, where she said to him that she thought what he had said, about a woman raping a man, was inappropriate. He stated that his response had been “I don’t think there was anything inappropriate in what I said”. He had not asked her to explain what she thought had been inappropriate. She had not raised with him any other alleged conversation.

## **RE-EXAMINATION**



The Respondent confirmed that his letter to the Law Society of May 2023 referred to the conclusions reached in the investigations conducted on the instruction of Mr A, and in that letter he was rejecting the allegations made. He confirmed that remained his position.

### **QUESTIONS FROM THE TRIBUNAL**

The Respondent was asked to comment on the suggestion in the Affidavit of witness Ms B that Ms F had warned the Secondary Complainer that the Respondent was a “creep”. He stated that he and Ms F did not get on and that they had previously shared a room at one point.

The Respondent was asked to clarify his position in relation to the incident in September 2022 when he had tried to contact the Secondary Complainer on her mobile telephone to arrange for her to attend a police interview. He explained that he was trying to get her to go to the police station, even if it was to rearrange the interview, not to conduct the interview herself.

In response to a question from the Tribunal, the Respondent explained that the screen that had been placed in the office was installed so that the Secondary Complainer could work in a small office without being distracted. He stated that it turned out not to be needed.

In answer to a question from the Tribunal, the Respondent explained that he asked the Secondary Complainer to pick him up at a bus stop as there was no parking nearby. He said he was going to be ready to jump in the car and that the Secondary Complainer would not have required to park, so that it would not have involved parking illegally at a bus stop.

The Respondent was asked if the Secondary Complainer’s travel expenses were refunded. He recalled on one occasion when the Secondary Complainer “demanded” her petrol money upfront. The Respondent stated that the Secondary Complainer was the only driver “we have”. He did not know how Mr A dealt with the payment of her travel expenses.

### **Witness Two: Mr C**

Mr C confirmed that he is 52 years old and a solicitor, having completed his traineeship in 2004. Since 2006 he has specialised in criminal law.

He explained that he has known the Respondent since before the Respondent was a solicitor, through football and social gatherings. He had always found the Respondent to be conscientious. He considered that the Respondent did not “dwell” in the agents’ room or “hang about” and spend time in idle gossip. Mr C



considered the Respondent to be quiet, although he has seen the Respondent challenge another person in the agents' room for making racist comments, something which Mr C considered took a strength of character.

Mr C described the agents' room as a "decompression area", used mainly by criminal practitioners. He explained that the same faces could be seen in the agents' room every day. The Respondent generally sat in an area that is nicknamed the "shallow end" beside Mr C and Mr A. He could recall the Secondary Complainer. He had never seen anything untoward involving the Secondary Complainer or had any problems interacting with her. The Secondary Complainer had not told Mr C about her surgical procedure, but he had heard about it second or third hand. He had not noticed "anything inappropriate in any way" from the Respondent. Mr C stated that the Respondent is not one of those who joins in with dark humour or "banter".

He recalled asking Mr A for help in covering a police interview, although he could not remember the date. The Secondary Complainer had previously asked him if she could help in any way. Mr C had a client who was to be interviewed by the police on a day when Mr C had other commitments. He asked Mr A if the Secondary Complainer could help. He told Mr A to take the case to interview and to keep the legal aid funding for it. Mr C was happy for the Secondary Complainer to go to the interview herself. He asked Mr A if someone was available to assist and told Mr A that the Secondary Complainer had previously asked if she could help. Ultimately, however, it was up to Mr A to decide if the Secondary Complainer could do the interview, as she was his trainee and it was not for Mr C to interfere.

## **CROSS EXAMINATION**

Mr C confirmed that he had never been in the office of the Firm and could not comment on how the Respondent conducted himself there. He accepted that, during the working day, he would be in and out of the agents' room and would not have been present for all conversations involving the Respondent and the Secondary Complainer, but he stated that he was there for some conversations which were all work related.

He stated that the Secondary Complainer appeared to be a keen trainee who had helped him with intermediate diets previously. When he contacted Mr A, he believed either the Respondent or the Secondary Complainer would cover the interview, the choice was that of Mr A. Mr C did not prescribe that the Secondary Complainer should be accompanied.

Mr C was asked if he and the Secondary Complainer had exchanged text messages regarding the interview and he responded that if the Secondary Complainer said that they did then he could not deny it. He said it would be quite normal, in these circumstances, for her to ask for information, such as the client's telephone

number. He had no problem with her attending the interview herself, but she was Mr A's trainee and Mr A knew what training she had had.

He believed that he heard about the Secondary Complainer's surgical procedure from overhearing a conversation between some of the Secondary Complainer's peer group. He did not hear about it from the Respondent.

**Witness Three: Mr A**

Mr A confirmed that he is 42 years old, and has been a qualified solicitor since 2008. He started his own business, as a sole practitioner, in 2016. He has been a solicitor advocate since 2023 and practises mainly in criminal law, with some "offshoots".

Mr A confirmed that he employed the Respondent in 2018. He had known the Respondent from a time when the Respondent was a trainee. He continues to employ the Respondent.

Mr A considered the Respondent to be a very diligent and hardworking man, who came to the law later in life. He stated that the Respondent is good with clients and that he believed the Respondent was viewed as an honest man by the local Sheriffs.

He advised that the Firm operates from a room in a building containing serviced offices. The Firm has no secretarial staff. They moved to a slightly bigger room around the same time as the Secondary Complainer commenced her traineeship. The room contained three desks. The Secondary Complainer's desk faced that of the Respondent, with a partition in between. He stated that the partition was originally installed as he felt the Secondary Complainer might need privacy. A little later, the Respondent and the Secondary Complainer decided that the partition was not necessary. It was his recollection that it was a joint decision for the partition to be removed.

The Firm applied for a Scottish Government trainee grant. At first they were unsuccessful, but later on, in late January 2022, they were successful. The Firm advertised for a trainee through the LawScot portal. The Diploma concludes in summer, so the candidates for the traineeship were generally people who had not managed to secure one. Mr A had been concerned but there was a dearth of candidates with the skill set he was looking for. The person required to be able to absorb information and take decisions quickly, be robust and be able to speak in public.

Mr A had considered that the Secondary Complainer's curriculum vitae was quite good. She had experience working for another firm. He agreed that the Secondary Complainer had mentioned another criminal practitioner, who had been her tutor in the Diploma, within her CV. Mr A knew this criminal practitioner was

a solicitor advocate and had spoken to him during the interview process. Mr A agreed that the Secondary Complainer had quoted her former tutor as saying that she was very good, although he could not recall the precise words that she had used. Mr Macreath asked Mr A what the tutor had said. The Fiscal objected to this line of questioning as it had not been previously put to the Secondary Complainer. Mr A agreed that there had been a second interview of the Secondary Complainer, following which he had employed her. He was asked how he had found the management of the Secondary Complainer and Mr A responded that she was a very difficult trainee. Mr Macreath asked Mr A to expand on what he meant by that. The Fiscal objected to this question. The Fiscal submitted that no issues of poor performance had been put to the Secondary Complainer and that the Respondent himself had not suggested this in his evidence. Mr Macreath explained that it was his intention to simply elicit from the witness whether or not the Secondary Complainer's letter of complaint had come out of the blue. The Chair indicated a concern with Mr Macreath pursuing this line of evidence, relating to potential poor performance by the Secondary Complainer, as this had not been put to the Secondary Complainer and was not referred to in the pleadings. Mr Macreath agreed he would restrict his question to eliciting whether the Secondary Complainer's complaint had come out of the blue. He then asked Mr A if he had raised any issues with the Secondary Complainer. The Fiscal restated his objection. The Chair indicated to Mr Macreath that this question continued to raise the potential of poor performance by the Secondary Complainer when this had not been put to the Secondary Complainer. Mr Macreath confirmed that he did not intend to pursue that line of evidence.

Mr Macreath asked Mr A if the Secondary Complainer had told him in the interview process that she was to undergo surgical procedure. Mr A stated that the Secondary Complainer told him about it "a couple" of months after she started work.

He agreed that he had meetings with the Secondary Complainer to carry out quarterly reviews.

Mr A was asked what he thought of the relationship between the Respondent and the Secondary Complainer and responded that it appeared very good. He stated that the Respondent was mentoring the Secondary Complainer more than he was. He agreed there had been an issue between the two of them relating to a dangerous dog case. He had not been aware of any other issue between them.

Mr A agreed that there had been a quarterly review of the Secondary Complainer held at the end of September. He said that the Secondary Complainer stated that she was glad of the help provided by the Respondent. She did not raise any issue with him about the Respondent. Mr A did not agree with Mr Macreath that the Respondent did most of the mentoring and considered that he himself "did his fair share", although the Respondent did more.

Mr A agreed that he was on holiday sometime in October 2022 and that he was on leave on the weekend of 4 November 2022. He confirmed that Mr C phoned him on Friday 4 November and asked if the Firm could cover a police interview for him on the following Monday. Mr C had said that it was something that the Secondary Complainer could cover. Mr A had received the telephone call when he was out of the office and, when he returned to the office, he said to the others that Mr C had asked the Firm to cover a police interview and had said that it was something that the Secondary Complainer could cover. However, subsequently, Mr A had received information that the interview related to either an alleged rape or serious sexual assault, and he had concluded that the Secondary Complainer could not cover this on her own. He considered that the Secondary Complainer did not have sufficient experience to do this. He decided that the Respondent should attend the police station with the Secondary Complainer to supervise. Mr A was asked if the Secondary Complainer had objected to that and he responded that he thought the Secondary Complainer believed that she could do the interview on her own, probably because Mr C had said it was something she could do. However, Mr A believed that the Secondary Complainer did not have sufficient experience and, as she was his trainee, it was his decision.

Mr A confirmed that he returned to work from his weekend off on 9 November. He confirmed that the Secondary Complainer asked for a meeting with him and that meeting took place after lunch, in a kitchen area of the building. He had not been given any formal notice of what she wanted to discuss. During that discussion, the Secondary Complainer set out effectively what was contained in the letter he later received. Mr A was referred to the Complainers' Production 3, the Secondary Complainer's letter of 9 November, and he recollected that he received this letter by email on the evening of the 9<sup>th</sup>.

Mr Macreath asked Mr A what his reaction had been at the meeting. Mr A advised that he had been shocked and surprised. He agreed that the Secondary Complainer had not raised any issues at her review at the end of September. He stated that the atmosphere in the office on 4 November had been jovial and that the Secondary Complainer and Respondent were getting on well. The Secondary Complainer gave Mr A a birthday present. She had discussed a night out she was due to go to, that she was nervous about, and invited both Mr A and the Respondent to accompany her. His discussion with the Secondary Complainer on 9 November came as "a bolt out of the blue".

Mr A was aware that there had been discussions regarding the travel arrangements for attending at the police interview between the Secondary Complainer and the Respondent, but he had not paid any attention to them. He considered that the travel arrangements were a matter between the two of them. He confirmed that the Respondent did not have a driving licence but the Secondary Complainer did. He stated that the Secondary Complainer used her own vehicle for business purposes and she had told him she did not like public transport.

He explained that the Firm met the Secondary Complainer's travel costs, and that the only issue that had arisen in relation to these was about when she wanted them paid and not about the actual payment of them.

At the end of the meeting, Mr A asked the Secondary Complainer how she wanted to proceed. She stated that she wanted to make a formal complaint and he told her that needed to be put in writing. He was concerned that, in the immediate term, he required to make arrangements to keep her and the Respondent apart. Mr A took advice from employment lawyers on how to proceed. He made arrangements with a firm in a neighbouring office so that the Secondary Complainer could sit apart from the Respondent, if necessary. However, on 15 November the Secondary Complainer advised him that she was assigning her traineeship to another firm. The Secondary Complainer continued to work for the Firm until 25 November and was back in the office between 9 November and then. The Secondary Complainer was keen to get court experience but, unfortunately, it was not a busy time. Mr A thought the Secondary Complainer felt she was not getting to do as much in court as she would have liked.

Mr Macreath referred Mr A to Complainers' Production 4, a report from a firm of human resource consultants, which Mr A confirmed he had instructed. He stated that the report he received had also had a number of statements attached. Mr A confirmed he provided the HR consultants with the complaint letter from the Secondary Complainer together with the text messages that she had attached. He confirmed that he did not carry out any investigation himself. He confirmed that he read the report carefully and accepted its terms. Mr Macreath took the witness through the terms of the report.

Mr Macreath directed Mr A to Complainers' Production 5, Mr A's letter to the Respondent of March 2023. Mr A could not recall what he had done between the report being received and his letter to the Respondent in March and explained he was taking guidance on how to proceed from the HR consultancy. He confirmed that his final decision was to issue a final written warning with a requirement that the Respondent complete training on diversity.

Mr Macreath took Mr A through the terms of his letter to the Respondent and Mr A confirmed that he had upheld parts of the Secondary Complainer's complaint and rejected others. His decision was taken on the basis of the contents of the report and its attachments. Mr A confirmed that the Respondent had appealed by letter and that Mr A responded affirming his decision.

Mr A confirmed that the Respondent undertook a course on equality, diversity and sexual harassment.

He confirmed that the Firm had not employed a trainee since the Secondary Complainer. He explained that the workload did not require it.



Mr A explained that he had taken the decision not to dismiss the Respondent on the basis of the advice he had received. He had judged that a final written warning was a proportionate way to deal with the matter.

## CROSS EXAMINATION

Mr A accepted that the Respondent spent more time with the Secondary Complainer than he did. He thought there had been three quarterly reviews of the Secondary Complainer. He confirmed that he sought input from the Respondent regarding how the Secondary Complainer was getting on. He agreed that the Respondent was in a position of trust in relation to the Secondary Complainer.

Mr A could not remember who raised the initial suggestion that the partition in the office be removed.

He confirmed that he did not share the Secondary Complainer's letter of complaint with the Respondent, but left that to the HR consultancy to do. He did not ask the Secondary Complainer to provide any supporting statements, but left this to the HR consultancy. He understood that the Secondary Complainer was not suggesting that he himself had been present during any of the alleged incidents.

He agreed that the letter sent by the Secondary Complainer reflected the terms of the discussion they had had. He agreed that it appeared that it was not easy for the Secondary Complainer to make her complaint.

He confirmed that it was his understanding that the Respondent accepted that a conversation had taken place with the Secondary Complainer where she had told him she thought he had been inappropriate. He confirmed that he would have expected the Respondent to tell him about that conversation but the Respondent had not mentioned it to him. He recollected the Respondent saying something about them having had a dispute over the weekend of the 4 November, but the Respondent did not go into any specifics.

Mr A accepted that there would be occasions when the Secondary Complainer and the Respondent would be in the office on their own and that he was not privy to all of their conversations in the agents' room.

He agreed that the agents' room was a robust environment, involving dark humour and the like. He agreed it was probably fair to say that, given his years as a defence solicitor, his view of what was inappropriate might be different to someone less experienced in the environment in the agents' room.

Mr A said he was not aware of any conversation having taken place between the Secondary Complainer and Mr C before he himself had received the telephone call about the police interview. He accepted that Mr C did



say that it was something that the Secondary Complainer might do, but stated that it was for him to take the decision based on how he judged her experience. Mr A's concern was that the allegation was a serious one and the decision on whether the accused should make any comment was an important one. The wrong advice to the accused could have adverse repercussions for Mr A's firm. Mr A could not remember if he said it specifically, but it was his position that the Respondent was to be there to give the Secondary Complainer advice if required. He believed that he was clear on what was to happen and that his decision was that the Secondary Complainer was not to go to the police station on her own. He had left the travel arrangements to the two of them, but would probably have assumed that they would travel together. He agreed that the Respondent normally travelled to a police station by bus.

He confirmed that his view of the text messages exchanged between the Respondent and Secondary Complainer regarding the police interview remained the same as in his original decision.

He left it to the Respondent to decide how best to proceed at the police interview and what supervisory role was required. Mr A considered the Respondent to be a very experienced solicitor who would be in the best position to decide what was required on the day.

Mr A was shocked by the allegations made by the Secondary Complainer. He confirmed that his assessment of the allegations remained the same as in his decision letter. He stated that he would have expected the Respondent to be aware of the terms of section 1 of the Sexual Offences (Scotland) Act and that, under the law, a woman cannot rape a man.

The Fiscal asked the witness if he could provide any clarification in relation to the remark said to have been made by the Respondent to three females at an event, referred to in the HR consultancy report. Mr A explained that three "ladies" had been commenting on how attractive an older Sheriff was when the Respondent had said "If it was 30 years ago, I would have railed the three of you". The Fiscal asked if this was the Respondent's position and Mr A confirmed that this was the Respondent's evidence during the disciplinary process.

## **RE-EXAMINATION**

Mr A was asked to clarify some of the findings he had made as a result of the HR investigation.

## **QUESTIONS FROM THE TRIBUNAL**

Mr A did not think the impending surgery was something that a candidate would normally disclose before being interviewed.

He agreed that it was reasonable to characterise the Respondent's role as mentor/supervisor, but explained that it appeared to be more of a friendship between them as he himself was the "boss". He said that they seemed to have quite a warm friendship, prior to all of this being thrown up.

**Witness Four: Mr F**

Mr F confirmed he is 56 years old and has been a solicitor for 32 years. He is currently co-director of a firm which was set up last year and includes Mr C as a co-director.

Mr F confirmed that he has known the Respondent for some 20 – 25 years. He believed that he met the Respondent when the Respondent was a manager of the Citizens Advice Bureau in the Sheriff Court building, although they have a mutual friend and it was possible that he had met the Respondent through that person. Mr F stated that he saw the Respondent three or four days a week.

He agreed that the atmosphere in the agents' room was a good collegiate one. He explained that groups of firms tended to congregate together. He confirmed that the Respondent normally sits in the same area of the agents' room as he does, in an area nicknamed the "shallow end". He was asked if he had ever heard the Respondent speak to anyone in an inappropriate manner in the agents' room and responded that "it is not his style". Mr F stated that the Respondent would be one of the few who would speak up if someone crossed the line. Mr F had never heard the Respondent say someone was "hot". He stated that this was not the Respondent's type of language. He believed that the Respondent was always courteous, straightforward and trustworthy.

Mr F stated that the Respondent was always the first person in the agents' room. He explained that sometimes it was just the Respondent and him in the room, if he was there early. He had never heard the Respondent raise his voice. He considered that the Respondent kept himself to himself a lot of the time. Mr F had never heard anyone say a bad word about the Respondent, including females.

He stated that he recalled the Secondary Complainer and that she sat beside them sometimes. He stated that she tended to sit with people of her own age, although now and then, sat in the same part of the agents' room as he did. He did not hear anything inappropriate being said to her by the Respondent at all.

**CROSS EXAMINATION**

Mr F confirmed he had never shared an office with the Respondent. He agreed that he would be in and out of the agents' room during the normal working day. The Fiscal asked if he agreed there were times when things could be said when he was not present and he responded "no idea, I wasn't there".

He described his relationship with the Respondent as more of a colleague than a friend. He did not socialise with the Respondent.

Mr F confirmed that he practised exclusively in criminal defence work. He accepted that the agents' room was a place for dark humour and expressions of frustration. He was asked if he had developed a thick skin as a result of the nature of his work and responded that he could not say if he had developed a thick skin, or always had one. However, he stated that "an intemperate remark is an intemperate remark" and that he could tell the difference. He stated that in his view everyone's view of what is inappropriate might be different, but that he knew where the lines were drawn.

## **RE-EXAMINATION**

Mr Macreath asked Mr F if the Respondent knew where the lines were drawn and he responded that the Respondent did. He was asked if he had seen the Respondent take issue with remarks being made in the agents' room and he stated that he had. He said a solicitor in the agents' room had made a remark about one of the female solicitors and the Respondent had said "reel your neck in".

### **Witness Five: Mr G**

Mr G confirmed that he is 69 years old and has been a solicitor since October 1978. He agreed that he was one of the most senior members of the criminal bar.

Mr G explained that he first met the Respondent in approximately 1995 when the Respondent was an unqualified worker for the Citizens Advice Bureau within the Sheriff Court building. He became friendly with the Respondent because they have a shared interest in aviation. He came across him more while the Respondent was completing his traineeship. He considered the Respondent to be conscientious and methodical. The Respondent sometimes asked Mr G for advice.

Mr G confirmed that the agents' room was in the basement of the Sheriff Court building, was a large L-shaped room and had no natural light. It has a kitchen area, that used to be a canteen run by the WRVS. He confirmed that it was mainly criminal practitioners that used the agents' room, particularly since COVID. He agreed that there can, on occasion, be robust discussions. He agreed that different firms occupied different areas within the agents' room. He explained that his firm and the Respondent's firm occupy a corner of the room. This area

was nicknamed the “shallow end”. He had never heard the Respondent say anything untoward to anyone. He considered that the Respondent was always very measured, straightforward and a bit subdued compared to others.

He could remember the Secondary Complainer. He had not been aware of any tensions between the two of them. He agreed that he had not seen anything indicating any problems between the Secondary Complainer and the Respondent between April 2022 and November 2022. He stated that he was quite surprised when he became aware of these allegations.

He recalled an incident when he was passing by a local bar when he noticed Mr A, the Respondent and the Secondary Complainer sitting inside. Mr A waved for Mr G to go in. They all sat together and had a drink. He recalled someone asking if people wanted another drink. The Secondary Complainer had responded that she was not allowed to drink. Mr G asked her why and she explained that she had been given medical advice. He enquired further and she told him that she was due to have an operation involving a general anaesthetic. He had not heard before that having a drink weeks before having a general anaesthetic was an issue and so asked her what sort of operation she was having. The Secondary Complainer described the surgical procedure she was due to have. Her physique had always seemed perfectly normal to him and so he had asked her why she was having the procedure. She explained why. He had said to her that she should ask the doctor why he had told her not to drink.

He accepted that he had never been in the Firm’s office. He had never heard the Respondent say anything untoward to the Secondary Complainer and would have been very surprised and disappointed if he had done. He had never known the Respondent to act inappropriately. Mr G said he would have been very surprised and disappointed if the Respondent had acted inappropriately towards a woman in his presence.

## **CROSS EXAMINATION**

Mr G did not know how the Respondent and the Secondary Complainer travelled to court.

He accepted that during the working day he would be in and out of the agents’ room and stated that there was potential for the Respondent to have many conversations outwith his presence.

Mr G explained that due to the nature of the work of a criminal defence agent, discussions were often robust. These discussions could include the use of bad language and dark humour.

During his career, he has had many trainees. When his firm takes on a trainee, it is made clear to the trainee that they will see and hear things that can be very upsetting. He did not accept that the consequence was that his assessment of whether something was untoward would be rather different to that of a young female. He insisted that he knew what was inappropriate. He was aware that younger practitioners, particularly trainees, required additional protection. He became aware of the allegations being made by the Secondary Complainer long after she had left the Firm. He thought he had heard about it in the course of conversation regarding why she had left the Firm.

Evidence was concluded on 11 July 2025. Given the time of day, the Tribunal considered it fair to both parties to continue the hearing to two further days, to be afterwards fixed, for the parties to make their submissions. Both parties were invited to lodge written outline submissions.

### **PROCEEDINGS on 11 and 12 AUGUST 2025**

Prior to the continued hearing, both parties had lodged written outline submissions and Lists of Authorities. Both parties made supplementary oral submissions.

### **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal adopted his written submissions which were in the following terms:-

#### **"Motion"**

1. *The complainer's motion is for the Tribunal to find the allegations established as amended on 10 July, and to find professional misconduct to be established on that basis.*

#### **Structure of Submissions**

2. *These Submissions will consider the applicable law; the issue of credibility and reliability; the evidence insofar as it relates to the individual allegations; and then the question of misconduct.*

#### **Legal Framework**

##### **Law on fact-finding – burden and standard of proof**

3. *It is accepted that the burden of proof rests with the complainer and that the relevant standard of proof is beyond reasonable doubt.*

4. *In the circumstances of the present case, it is emphasised that although “beyond reasonable doubt” is often referred to as the “criminal standard of proof”, that does not mean that allegations require to be corroborated. The tribunal is entitled to find allegations to be proved, beyond reasonable doubt on the basis of evidence that comes from a single source. McAllister v General Medical Council [1993] 1 All ER 982 – civil proceedings and therefore no requirement for corroboration unless specifically provided*
5. *Insofar as a definition of beyond reasonable doubt goes, the Tribunal is invited to give consideration to the standard direction from the jury in criminal proceedings, which is adopted from the appeal court authority of MacDonald v HM Advocate [1996 SLT 723] and states that a reasonable doubt is “a doubt, arising from the evidence, based on reason, not on sympathy or prejudice or some fanciful doubt or theoretical speculation. It is the sort of doubt that would make you pause or hesitate before taking an important decision in the practical conduct of your own lives. Proof beyond reasonable doubt is less than certainty, but it is more than a suspicion of guilt and more than a probability of guilt. This doesn’t mean that every factor has to be proved beyond reasonable doubt. What it means is that, looking at the evidence as a whole, I have to be satisfied of the guilt of the accused beyond reasonable doubt.”*

#### Law on professional misconduct

6. *The case law in relation to this is Sharp v The Council of The Law Society of Scotland. The Tribunal will be familiar with this dicta from 1984 SLT at 317: “there are certain standards to be expected of competent and reputable solicitors. A departure from these standards which would be regarded as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made”*
7. *There is submitted to be some assistance in also considering dictionary definitions of the term “reprehensible” when applying this test: -*

*Cambridge Dictionary – “If someone’s behaviour is reprehensible, it is extremely bad or unacceptable”;*

*Merrian Webster – “worthy of or deserving reprehension: culpable”;*

*Collins English Dictionary – “open to criticism or rebuke; blameworthy”;*

#### Definition of Sexual Harassment



8. *It is not anticipated that it will be disputed that the conduct referred to in allegations a), b), c) and e) would amount to conduct which is sexually harassing in nature, having regard to the position given by the Respondent in his evidence.*
9. *If consideration requires to be given to whether the conduct meets that description, it is submitted that the definition used in s26 of the Equality Act 2010 is appropriate.*
10. *Useful guidance can also be found in the Employment Tribunal case of Megan Bratt v. JGQC Solicitors Ltd. [Case number 2601388/2022; [https://assets.publishing.service.gov.uk/media/66866d254a94d44125d9ccb6/Miss Megan Bratt v JGQC Solicitors Limited 2601388.2022 Judgment.pdf](https://assets.publishing.service.gov.uk/media/66866d254a94d44125d9ccb6/Miss_Megan_Bratt_v_JGQC_Solicitors_Limited_2601388.2022_Judgment.pdf)]*
11. *From the terms of s26 and the cited authority, the test has three essential elements per para 18 of Bratt v JGQC Solicitors Ltd: -*  
  
*“a) Unwanted conduct b) That has the proscribed purpose or effect and c) The unwanted conduct is of a sexual nature”*
12. *Per Bratt, para 20 “whether conduct is unwanted is subjective”.*
13. *With regards to the purpose or effect, there are subjective and objective elements to the test [para 21-24 of Bratt]. The subjective element is whether it had the effect, taking into account the recipient’s perception and the other circumstances of the case, and the objective element is whether it is reasonable for the conduct to have had that effect [para 23]*

#### Definition of remaining material terms of the allegations

14. *The terms of “inappropriate behaviour”, “bullying” and “intimidation” ought, it is submitted, simply to be given their usual meaning applied. It is not intended the to address the definition of these terms further in these submissions. Should the Tribunal wish to be addressed further on this, this can be done in oral submissions.*

#### Admissibility

*Raised by Respondent in submissions. No objection taken, but will deal with as I go through.*

*Only invite to find misconduct established on basis of allegations. Would observe that framed with rider “or to that effect”.*

#### Assessment of credibility and reliability

15. *The case, and the Tribunal's determination, is likely to turn on their assessment of the credibility and reliability of the Secondary Complainer and the Respondent.*
16. *Where it is necessary to do so, the Tribunal is invited to prefer the account of the Secondary Complainer, [...].*

*Credibility of the Complainer's witnesses other than the Secondary Complainer*

17. *It is not understood to be disputed that [Ms B, Ms D, Ms E, Ms F, the Secondary Complainer's mother or the Secondary Complainer's therapist] were telling the truth when they reported to the Tribunal what they recall being told to them by [the SC]. That concession is, it is submitted, properly made. There is no conceivable reason for these 6 individuals, 3 of whom are giving evidence to the Discipline Tribunal of their professional body, giving anything other than their best and most truthful recollection.*
18. *Reliability - if a lack of accuracy or certainty in chronology, in my submission that does not diminish the weight to be attached. Remind that dealing with a series of reports made in a window of c 5 months, and in reality 2-3 months, 3 years ago. They are clear that, at this distance, remembering specifics is hard. The significant thing is that these disclosures were made at or around the time.*

*Assessment of the Secondary Complainer's credibility*

19. *The Tribunal is invited to accept the Secondary Complainer's evidence. The following are factors which are submitted to reflect positively on her credibility for the following reasons:*
- (a) *The manner in which she gave her evidence. She was measured, and answered questions clearly and directly from her own knowledge and recollection.*
  - (b) *The consistency of the accounts given by her. She has given, in her complaint letter and in her oral evidence, consistent accounts to the extent that it is reasonable to expect given the passage of time.*
  - (c) *The terms of the complaint letter found at part 3 of the bundle. This is, it is submitted, a powerful account that speaks compellingly to the difficulties which she was encountering. It is clear, detailed, and a heartfelt articulation of what she had experienced and was experiencing.*
  - (d) *The concessions made by her in her oral evidence where appropriate. She accepted that her recollection was not perfect at times, understandably given the passage of time. She does not take issue in principle with having been asked about the surgical procedure; she accepted in principle that it would be normal for a mentor to supervise meetings; she accepted that at times she was provided*

with a good quality of training and support by the Respondent. If anything, her tendency was to downplay conduct exhibited towards her;

- (e) Any imperfection in her recollection now does not, it is submitted, undermine her credibility or reliability when she is being asked to recall unrecorded discussions in passing from 2 ½ to 3 years ago.
- (f) The reluctance and difficulty that she had in reporting the matter. It is apparent that this is something which she found hard to do. See:

- the complaint letter at production 3 in the final 2 paragraphs;
- [Ms E's] Affidavit, para 7 "she was saying "where would I go"";
- [Ms B's] Affidavit, para 10 "[the SC] was very distressed about this, but she did not know what to do" and para 11 "It took [the SC] a wee while to do it because there was a lot of backlash at court for people who are friends with Kenny. [the SC] was anxious that that would happen. Eventually, I think that she decided that she had to make a complaint. It put her in a very bad place mentally.";
- [Ms D's] Affidavit – para 8 "I think because she was so new in her career, she was worried about what would happen if she did anything. If she was unable to work with that person, then she didn't know what that would mean for her training.";
- [The SC's mother's] evidence at para 15 of her affidavit was "When she was thinking about making the complaint, I did discuss it with her and asked if she really wanted to do this."

- (g) The evidence of her reporting these issues and concerns to her peers, and how she was when doing so. It is consistent with the text messages lodged. It is narrated in the affidavits that were adopted on oath. For example:

- [The SC's mother's] affidavit at para 11 "When she was speaking to me, she was very distressed, very anxious, really upset."
- [Ms F's] affidavit at para 11 "[The SC] spoke about the idea of going into work making her feel anxious and sick, and wanting to reassign her traineeship. She had said that she didn't feel able to work with Kenny anymore and it had become too much for her."
- [Ms E's] affidavit who recalls at para 4 [the SC] presenting as more "down" over time and says at para 7 "[The SC] would make comments – joking – but saying about how she was going to kill herself or throw herself off a bridge or how it was just another day. She was dealing with it, she was putting up with it, and she was saying "where would I go""
- [The SC's therapist's] affidavit at para 12 "I can remember that what was being said was really distressing her. I remember her being very distressed in our sessions. She was tearful, saying that I was distracting her, saying that she couldn't concentrate as she was constantly thinking about what the next thing that he was going to do would be, so she was being hypervigilant."

- [Ms B's] affidavit at para 10 "[The SC] was very distressed about this, but she did not know what to do. She was the type of person who would laugh this sort of thing off, but it got to the point where she couldn't".
- [Ms D's] affidavit at para 9 "I know that [the SC] was really upset about these things at the time. She seemed emotionally distressed when she was speaking to me about them, and that was the case when she was at the point of going to a different firm. I think that she still felt uncomfortable because she was still going to have to go to court and see him."

- (h) The presence of documentation that supports her position – the text messages regarding the police interview which are consistent with her analysis and description of them; the text messages [the SC] reporting comments to friends.
- (i) There is no reason for [the SC] making these allegations up. None has been given, or even hinted at, in the evidence led in the Tribunal hearing.

#### Assessment of the Respondent's credibility

20. The following are factors which the Tribunal is invited to consider when assessing the credibility of the Respondent, and which are submitted to undermine the credibility of his account in relation to the matters before the Tribunal:

- (a) The Respondent's position regarding the arrangements for the police interview and the communication that related to it. He claimed that [the SC] was motivated by concerns about petrol costs, which was unsupported by any of the communication/ correspondence that related to it, and from that featured nowhere in the communication of when, as was covered in questions from the tribunal, she would have been entitled to be reimbursed for those as he was keen to emphasise the firm had previously done. It is an account, and an assertion in relation to the Secondary Complainer, that is unsupported and wholly lacking in credibility;
- (b) The unwillingness to accept that the messages were demanding and aggressive in tone and content stretches credibility. They are clearly orders and instructions which permit no room for discussion or debate;
- (c) The position previously conveyed to the Society's Reporter [as recorded at para 4.16 of the Report produced at Production 1 in the hearing bundle] is, at best, opaque and lacking in transparency;
- (d) The suggestion that a criminal practitioner of his experience was endeavouring to give as truthful an answer as he could in response to a question regarding the necessary components of the criminal offence of rape and did not take the care to correctly define the offence of rape is submitted to be one

*that is lacking in credibility.*

- (e) *The evidence that the tribunal has heard from Mr [A] about the incident at the bar dinner which he was taken to the reference to in the investigation report from [...] Human Resources [production 4]—where the Respondent made a remark to three women “if I was 30 years younger I would rail the three of you” or words to that effect”, which conflicts with the Respondent’s position that he would never make remarks of that nature.*
- (f) *Character evidence to support him, none from people from a similar demographic to that of [the SC]. Is a suggestion that their’s differs. It is legitimate for the Tribunal to take that into account when assessing the weight to be attached to character evidence.*

*Final 2 both admissible in my submission. First arises from chief, where Mr [A] was taken through the report and the question in cross simply asked him to clarify one aspect of the report.*

*Second – as I say entitled to have regard to the fact that character evidence comes from a particular demographic, and views from another are different.*

### **Assessment of the evidence in relation to the individual allegations**

#### **Evidence as to general context**

- 21. *The Tribunal is invited to consider the evidence that it has heard from several sources that the environment in which criminal practitioners operate is and was at the time of the alleged conduct one in which robust, salacious comments were made and dark humour used. Mr Woodburn confirmed in his evidence in cross examination that remarks of the kind that feature in the allegations were ones that he had heard being made in that environment.*
- 22. *They were not remarks which would be alien to that working environment and the evidence supports that.*

#### **Allegation (a)**

- 23. *The Tribunal is invited to accept the account of the Secondary Complainer which supports this allegation, as given in her oral evidence. She spoke to how remarks about her physical appearance would be made in the agents’ room, often early in the morning. The Tribunal has evidence about the Respondent being someone who was often the first at court. As I have noted, [the SC’s] evidence was that the remarks were always made at these times.*



24. *[The SC's] account in her oral evidence is consistent with that given in her complaint letter which she has confirmed in her oral evidence as having been a truthful account as given by her at the time. The account appears on the first page of production 3, and begins "Several times in the agents, room first thing in the morning, Kenny would comment that I looked "hot" and was the "hottest trainee in the room"".*
25. *[The SC's] position is supported by the recollections of other witnesses of these or analogous comments being mentioned to them by her:-*
- *[The SC's mother] in her affidavit at para 10 – "...he was making comments about he rlooking "hot" and that she was the "hottest trainee" or something..."*
  - *[The SC's therapist] in her affidavit at para 11 – "Some of these earlier comments which she reported to me were things like her being "hot" or "the hottest trainee""*
  - *[Ms E] in her affidavit at para 9 – "Kenny would make comments like how she was a sweet young thing..." – that is analogous*
26. *It is not understood to be disputed that these comments would, if make, be inappropriate and sexually harassing in nature. the Respondent has, quite properly, not disputed these comments would have been sexual in nature, would have been improper, and would cause an individual in the position of the Secondary Complainer to feel uncomfortable.*

### ***Allegation (b)***

27. *The Tribunal is invited to accept the account of [ the SC] which supports this allegation, as given in her oral evidence.*
28. *[The SC's] account regarding this incident and the circumstances in which it arose is consistent with that given in her complaint letter [production 3, starting on the final paragraph on the first page and continuing to the first paragraph of the second page].*
29. *The Tribunal also have the text messages sent to [Ms B] on 12 September 2022 [ production 10] where [the SC] says to her friend in the exchange "And he asked me my nipple colour".*
30. *[The SC's] account is also supported by the accounts of the contemporaneous or near-contemporaneous disclosures made by her to others which have been recalled in oral evidence:*
- *[The Sc's mother] at para 6 of her affidavit "I remember [the SC] telling me that he made a comment about her nipples and asked about whether her nipples turned hard when she masturbated and to me that was a completely out of order thing for him to say to [the SC]".*



- [Ms F] at para 8 of her affidavit "[The SC] had then messaged me in September 2022 to say she was sick of Kenny asking about her masturbating and talking about his sex life".
- [The SC's therapist] at para 9 of her affidavit "The comment that I felt clearly stepped over the line was when he was discussing the colour of her nipples. [The SC] said to me during one of our sessions that this comment had been made to her by Kenny".
- [Ms B] at para 8 of her affidavit "One of the main episodes was – [the SC] was speaking about her breast augmentation operation and the comments made by Kenny about that were disgusting. He said something along the lines of asking her if her nipples got hard when she was masturbating".
- [Ms D] at para 6 of her affidavit "There is one specific comment which sticks on my head because I can remember being really shocked that someone had said that. The solicitor who she was working with had asked her what colour her nipples were when she masturbated".

31. The tribunal has the evidence of Mr [A] that his position is that even discussing the procedure in the manner which Mr Woodburn accepts having done was inappropriate.

32. Reference to Mr [G's] evidence – my notes are that the disclosure arose from him probing, rather than [the SC] bringing it up. He asked why not drinking, she said anaesthetised, he asked what kind of operation.

33. Again, Mr Woodburn has accepted that a comment of this nature would be wholly inappropriate, would be sexual in nature and would cause an individual to feel uncomfortable. It is submitted to clearly be inappropriate and sexually harassing in nature.

#### ***Allegation (c )***

34. There is no dispute that a discussion took place about the circumstances in which the offence of rape could be committed. The Respondent denies referring to a hypothetical scenario involving him and [the SC].

35. The Tribunal has the clear account of the Secondary Complainant regarding this as given in her oral evidence, and is invited to accept that account and reject the account of the Respondent that the discussion was limited to a best attempt to discuss the constituent parts of the offence of rape, wrongly as it transpired. For the reasons that I have already given, I invite the Tribunal to reject that account as one which is lacking in credibility.

36. Again, then account is consistent with the detailed one given in her complaint letter which appears at production 3 [paragraph 4 of the second page]. Both are clear, coherent accounts.

37. *[The SC's] account is again supported by the accounts of the contemporaneous or near-contemporaneous disclosures made by her to others which have been recalled in their evidence:*
- *[The SC's mother] in her affidavit at para 6 "there was one time when they were discussing a rape case and [the SC] had asked whether a woman could rape a man, and he started answering the question using him and [the SC] as an analogy of a woman raping a man"*
  - *[Ms B] at para 9 of her affidavit "There was another occasion I can remember when he gestured to her across the office him having sex with her".*

38. *Again, there is not understood to be any dispute from the evidence given regarding this being sexually harassing and inappropriate in nature in the event that it occurred.*

#### ***Allegation (e)***

39. *The Tribunal is invited to accept the evidence of the Secondary Complainer regarding this.*

40. *Gaian, what was spoken to in her oral evidence was consistent with the account given in her written complaint [Production 3, in the second paragraph on the fourth page] which reads "I gave him examples such as...telling me who he used to shag. (When I was on the phone to the Dr's regarding my tonsilitis whilst you were on holiday at the beginning of October, I confirmed my name and DOB to the. After the call Kenny then told me, along the lines of – I was shagging Margo/ Maggie (surname I cannot recall) on your birthday. I said that is gross ad I don't want to think of you shagging someone it makes me feel sick."*

41. *The Tribunal has the message sent by [the SC] to [Ms B] recalling a remark to this effect being made [production 12] "He also told me. I was shagging morag McLeod on your birthday".*

42. *With this allegation, the Tribunal also has the accounts of individuals who [the SC] reported remarks of this nature being made to:*

- *[The SC's mother] at para 6 of her affidavit – "I remember her telling me about something disgusting about women he used to sleep with".*
- *[Ms B] at para 9 of her affidavit "There was one other comment she told me about when coming home where Kenny was talking about shagging loads of women".*

43. *Again, there is no apparent dispute from the evidence regarding this being a remark which, if made, would be wholly inappropriate and sexually harassing in nature.*

#### ***Allegation (d)***

44. The messages are before the Tribunal at production 9. It is not disputed that they were exchanged between [the SC] and the Respondent. It is a matter for the panel how it assesses them.

45. It is submitted on behalf of the Complainer that they are clearly bullying in tone. The panel is invited to consider the following:-

- (a) No willingness to compromise;
- (b) A demand that a junior member of staff collect a more senior colleague in their personal car in circumstances where that was unnecessary to address any professional concerns that may have existed in relation to the cover of a police interview;
- (c) The impatient/directive language and tone eg "Forget it"; "Not debating this"; "If you want to go...Pick me up at 8.15 [...]" "...for the last time [...] at 8 15!";
- (d) The absence of time urgency justifying the impatience of the communication.
- (e) [The SC] offering a solution that would have addressed any legitimate concerns – the Respondent getting the bus and them meeting in [...];

The fact that this is done at a time where, as a matter of agreement, she had raised concerns about how the Respondent had conducted himself towards her – during the week prior, is telling.

It is an inappropriate way for any one in a position of responsibility to speak to a junior colleague. That is apparent from the messages. It is clear that there is a training and experience opportunity that [the SC] was excited about – Mr [C] said she had asked – and she is threatened with it being removed if she does not do as the Respondent wishes.

46. The Tribunal has the evidence of [the SC] as to her reaction regarding this as well as the evidence of:

- [The SC's mother] [para 9 of her affidavit] "being really quite aggressive"
- [Ms E] [para 10 of her affidavit]
- [Ms B] [para 7 of her affidavit]; "very rude"
- [Ms D] [para 7 of her affidavit]

about what they recall of her reaction. That reaction is submitted to be a genuine one.

47. The reaction is submitted to be a reasonable one having regard to the content and tone of the messages, and the context in which they were sent.

48. In my submission, little turns on whether [the SC] was told she could go alone or not. From my notes, Mr [A] acknowledged she may have taken this from the discussion. In any event, what is clear is that there was no direction from Mr [A] that she required to drive Mr Woodburn there. Again, in the context of the discussion which we know had taken place earlier in the week, this legitimately raises concerns in my submission.

49. The communications sent are bullying and intimidating in nature, They are sent by an experienced, senior member of the firm training the Secondary Complainer to a trainee regarding a professional opportunity which she has identified as offering potentially good training and experience for her. They are abrupt, directive and rude. They are an inappropriate way for an individual in the Respondent's position to communicate with an individual in the position of [the SC]. They make the Secondary Complainer's attendance at a police interview, which she had identified as being a good training experience, conditional upon her agreeing to drive the Respondent there and refuse to countenance any reasonable alternative suggestions. They are reasonably read as being intended to require the Secondary Complainer to do as the Respondent wished.

### **Misconduct**

50. In my Submission of the allegations are established there is no doubt that it satisfies the Sharp test, and amounts to professional misconduct.

51. The following is relevant context to this assessment:

- The Respondent was involved in the supervision and training of [the SC] during the early months of her traineeship.
- [The SC] was a young female solicitor entering the profession, and entering a sector which was and is male-dominated.
- The Respondent was an experienced practitioner in his early 60s who had a significant level of control over her work and how she would progress during her traineeship. He was in a position of trust in respect of the Secondary Complainer.
- The conduct had a significant impact on [the SC], resulting in her assigning her traineeship and then moving to practice in a different field for a time.

### **Relevant conduct in disciplinary cases**

The Council of the Law Society of Scotland v. Kevin Frederick MacPherson  
<https://www.ssdtr.org.uk/media/vlNyomr/1821-kevin-macpherson.pdf> –

52. The cases is not identical to the present one. The parallels are submitted to be as follows:-

- (a) Conduct by a senior practitioner in relation to a trainee;
- (b) Comments of a sexual nature made about the trainee (but in that case not to them).

53. The Tribunal found that “the Respondent allowed his independence to be impaired and his conduct was discriminatory on the grounds of sex. He could not objectively carry out his duties of supervision



and properly assess TS”

*The Bar Standards Board case concerning Robert Kearney [case reference 2021/4962/D5 and 2020/0928 D5 <https://www.tbts.org.uk/wp-content/uploads/hearings/137374/KEARNEY-Report-on-Sanction.pdf>]*

54. Again, it is not contended that this case is identical, but it considered allegations of sexualised comments to a junior colleague. The analysis of the factors relevant to “Culpability” and “Harm” which appear at paragraphs 51, 52 and 60 are submitted to be of assistance in an analysis of the conduct here.

#### Relevant professional practice rules

55. It is contended that the allegations would amount to a breach of rules B1.2 and B1.15 of the Professional Practice Rules of the Law Society of Scotland, which are narrated at paras 2 and 3 of the Record.

56. With regards to the application of B1.2, the Tribunal is invited to apply the test in Wingate & Evans v. The Solicitors Regulation Authority; [2018 EWCA CIV366] regarding lack of integrity – “integrity connotes adherence to the ethical standards of one’s own profession. This involves more than mere honesty...the duty to act with integrity applies not only to what professional persons say, but also to what they do.” The conduct, if found to have occurred, meets that test and is lacking in integrity.

#### Conclusion

57. The comments referred to in allegations a, b, c, and e were crude and salacious. They were clearly sexual in nature. The communications referred to in allegation d was bullying and intimidating. The conduct all can properly be described as wholly inappropriate, and the comments are and were sexually harassing in nature.

58. The Tribunal is entitled on the basis of the account of [the SC] and the range of disclosures she made verbally and by text to others to find these allegations established beyond reasonable doubt.

59. The conduct had the effect of discouraging a young member of the profession from persisting in her chosen area of practice, and could reasonably be expected to have such an impact. They represent a clear failure to observe professional boundaries and to draw the line between what may be comments which are appropriate or at least tolerable in someone’s personal life, and what are appropriate between a senior professional and a more junior colleague.

60. In the event of finding the allegations established, the conduct referred to clearly justifies being marked with a finding of professional misconduct.”

The Fiscal emphasised that there was no dispute that if the comments at paragraph (a), (b), (c) and (e) were in fact made, that they were sexually harassing in nature.

He invited the Tribunal to only have regard to the PCSC Reporter's report in so far as it referred to the Respondent's statements made in relation to the allegations.

He reminded the Tribunal that no objection had been taken to the Affidavits themselves, but accepted that it was a matter for the Tribunal to consider the admissibility of hearsay evidence contained therein and whether it was fair to have regard to it.

He submitted that, whilst on one view this was a complex and sensitive matter, in reality this was a simple question of credibility.

The Fiscal emphasised that, whilst the Respondent had led character evidence that he would not have conducted himself in the manner alleged, the Tribunal ought to have regard to the demographic of the character witnesses, all experienced, male criminal practitioners. The Complainers led evidence from witnesses from the same demographic as the Secondary Complainer. These witnesses did not give positive evidence as to the character of the Respondent nor were they invited to.

The Fiscal submitted that the lack of clarity or recollection of the witnesses did not reflect on their credibility, given the passage of time since the date of these incidents. He emphasised that all of the Affidavits were clear on the effect of the alleged conduct upon the Secondary Complainer and that the disclosures by the Secondary Complainer were made to the witnesses at or around the time of the conduct.

He emphasised that the parole evidence given by the Secondary Complainer was not prompted by her letter of complaint either being put before her or read out to her.

He emphasised that there were no allegations of a lack of honesty. He submitted that if the Tribunal was satisfied that the conduct had in fact occurred, it was a clear example of the Respondent failing to obtemper the standards of the profession and this brought into question his integrity.

He clarified that it was his position that each of the incidents described in paragraphs (a) to (e) singly amounted to professional misconduct.



With regard to his reference to the approach taken in the case of Kearney, he accepted that that case involved a wider set of criteria from a different regulatory regime, but he submitted that it could be helpful in the Tribunal's assessment of the question of professional misconduct.

## SUBMISSIONS FOR THE RESPONDENT

Mr Macreath referred to his outline submissions which were in the following terms:-

### *"Introduction*

1. *This is a complaint by the Council against the Respondent. The Council avers that the Respondent is guilty of professional misconduct in that he subjected the Complaint Originator, during her time as a first year trainee at [the Firm] to sexual harassment, inappropriate behaviour, bullying and intimidation.*
2. *The Respondent maintains he is not guilty of the allegations of misconduct.*
3. *The Respondent submits that the Council must rigorously and fairly investigate every reported complaint and following that investigation the complaint must be carefully drafted.*
4. *Article 6(3)(a) of the European Convention on Human Rights provides that a Respondent has a right "to be informed promptly in a language which he understands and in detail of the nature and cause of the accusation against him". This is applicable to professional disciplinary hearings. In "[Albert and Le Compte -v- Belgium \(1983\) 5EHRR 533](#)" the European Court of Human Rights held that the principles in Article 6 are applicable *mutatis mutandis* to disciplinary proceedings, which are civil proceedings, in the same way as in the case of a person charged with a criminal offence. It is axiomatic that any Respondent accused by a regulatory body of an allegation or charge is entitled to detailed particulars of the acts which he or she is alleged to have committed.*
5. *On that basis the Respondent submits that this Tribunal has before it a complaint which is particularised so that the accusations are clear. The Respondent submits that the finalised particulars of the allegations must be sufficiently particularised to enable him to understand the allegations he is addressing.*
6. *To that end the Respondent submits that the allegations which the Tribunal must consider are those particularised at statement of facts for Council 1(a) , 1(b), 1 (c) , 1(d) and 1(e) of the Closed Record.*

7. Reference is made by the Council to a breach of Rule B1.2 in which the integrity and honesty of the Respondent is challenged. It is essential that if dishonesty is alleged it must be pleaded. It is a fundamental principle of fairness that a charge of dishonesty should be unambiguously formulated and adequately particularised. In [Singleton -v- Law Society \[2005\] EWHC 2915](#) the Divisional Court held that failure to allege or to particularise dishonesty in disciplinary proceedings against a solicitor constitutes a serious procedural flaw. Accordingly, the Respondent takes issue with any submission alleging that he is dishonest as he submits that there are no pleadings or evidence to justify an allegation that includes dishonesty in terms of Rule B1.2.
8. The Respondent accepts that the cardinal rules of natural justice and the burden of standard of proof are matters for the Tribunal. Just as the evidence is a matter for the Tribunal the burden and standard of proof rests upon the Council and each allegation must be treated separately and subjected to careful analysis of the evidence and the Council is bound to discharge the burden and standard of proof.
9. The Respondent accepts that evidence can be admitted notwithstanding it would not be admissible in criminal or civil proceedings. The [Tribunal Rules 2024](#) refer and in terms of [Rules 4\(1\) and 4\(2\)](#) the overriding objective of the Rules is to enable the Tribunal to deal with cases fairly, justly and efficiently always in accordance with the law and the rules of natural justice and the Tribunal shall give effect to this objective in exercising its powers under these rule. The evidence includes the testimony of the Complaints Originator and Council witnesses who spoke to their affidavits, the Respondent and the Respondent's witnesses. [Rule 14\(1\)](#) of the Tribunal Rules 2024 allows the Tribunal to admit oral, documentary or other evidence, whether such evidence would be admissible in other civil or criminal proceedings and in terms of [Rule 14\(2\)](#) at any hearing the Tribunal may depart from the strict rules of evidence. The Council relies upon affidavit evidence and agreement was reached that despite non-compliance with [Rule 15](#) of the SSDT Rules 2024 the affidavits could be admitted even though not intimated to the Tribunal 14 days prior to the Hearing. Productions of Council were relied upon although objection was taken to productions 1 and 2 and productions 13 and 14 were not referred to in evidence nor proven or admitted.
10. The Respondent recognises that this Tribunal is a skilled and expert body well able to reach its own conclusions uninfluenced by irrelevant material or the opinions and conclusions reached by others. However, the Tribunal must ensure that irrelevant prejudicial matters are not included in its consideration.

11. Reference will be made to the affidavit evidence in this regard as parts of affidavits led in evidence have no relationship to the fair notice allegations under Articles 1(a) to 1(e) of the Closed Record.
12. The Tribunal recognises that amongst the productions lodged by the Council was a report prepared by the reporter to the Professional Conduct Sub Committee dated 3<sup>rd</sup> January 2024 and a supplementary report prepared by the same reporter dated 19<sup>th</sup> March 2021 contained in the First Inventory of documents for the Council in terms of Rule 18 of the 2024 Tribunal Rules being items 1 and 2 of said inventory. Submissions made at the commencement of the hearing were made that such material is not part of the evidence available and that the Tribunal must not be influenced by such extraneous material, that the opinion or recommendation of a reporter to a Professional Conduct Sub Committee of Council is irrelevant to the considerations of this expert Tribunal.

#### *The Issues*

13. The Council avers that the Respondent is guilty of professional misconduct in that he did subject the Complaints Originator, during her time at [the Firm], to sexual harassment, inappropriate behaviour, bullying and intimidation including:
  - (a) On various occasions between May and October 2022 in the agents' room at the Sheriff Court at [...] and in the office of the firm refer to the Complaints Originator as looking "hot" and being "the hottest trainee in the room", or words to that effect;
  - (b) on or around 07 to 09 September 2022 discussed with the Complaints Originator the breast augmentation and mastopexy surgery which she had undergone and asked her what colour her nipples were, or words to that effect; asked her what her nipples looked like when she masturbated and whether they got hard, or words to that effect; and spoke about occasions where he had engaged in sexual intercourse with other women commenting on the fact that his nipples had become erect when doing so;
  - (c) on or around 07 October 2022, whilst conducting a discussion with the Complaints Originator about whether a female could commit the crime of rape against a male, he substituted himself and the Complaints Originator for the hypothetical male and female and stated "for example, if you were to drug me, jump on top of me and ride me whilst I am hard, that would be rape" or words to that effect;
  - (d) on or around 06 November 2022 communicated with the Complaints Originator by text message in a bullying and aggressive manner regarding arrangements for attendance at a client meeting the following day. The exchange of text messages was in the following terms:-



*Complaints Originator: "Iain text to say the client will be there at 0845."*

*Respondent: "Ok....maybe make it 8.15 at the [...]...not sure what the traffic will be like so play it safe !"*

*Complaints Originator: "I wonder if it may be quicker getting the bus? Traffic will be horrific tomorrow being a Monday... I have checked Google maps. I would be typically 14-35 minutes for me to head to the [...] from my flat tomorrow morning. It may be an idea if I can meet you at [...] police station and then we can drive back?"*

*(Complaints Originator attached a screenshot of google maps journey showing time and traffic to text message)*

*Respondent: "Forget it...I will go to [...]...you go to Court and check on custodies."*

*Complaints Originator: "[...] has asked me to do it and [...] has also asked. It will be good experience for me to go? I will still go as I don't want to let [...] or [...] down. I'm just saying that'll take me forty minutes longer to go and get you so it may be easier meeting you there"*

*Respondent: "If you want to go...Pick me up at 8.15 [...]"*

*Complaints Originator: "They have asked me. [...] was happy for me to go on my own, all I am saying is that it is going to be an extra 40 minute drive, and then a drive down there as well. So it may make more sense to make our own way and then head back together!"*

*Respondent: "Not debating this...8.15 at [...] or Court!"*

*Complaints Originator: "[...] has asked me directly as we have been texting about it on Friday and today. [...] has said it was fine for me to go by myself. I cannot let either of them down by not going and going to court, that is not an option. The drive to pick you up for 8:15 is an extra 35 minutes it's predicted or it could be longer. I am happy to meet you there and we can drive back together.*

*Respondent: "No...I want to see what happens...for the last time [...] at 815!"*

*Complainer: "Ok"*

- (e) On or around 12 October 2022, after the Complaints Originator had indicated to the Respondent that she considered him to have spoken to and behaved towards her inappropriately, the Respondent said when the Complaints Originator confirmed her name and date of birth on a telephone call that "I was shagging Margo/ Maggie on your birthday" or words to that effect.*

*The Council moved for amendment to the dates contained in Article 1(d) substituting the 6<sup>th</sup> of November 2022 for the 6<sup>th</sup> of October 2022 without objection. Similarly, in connection with Article 1(e) Council moved without objection to amend the date of 6<sup>th</sup> November 2022 and substitute therefor the 12<sup>th</sup> of October 2022.*

14. *In relation to the complaint sub-heading 1(a), despite the evidence of the Complaints Originator as to occasions between May and October 2022 in the agents' room at [...] Sherif Court there are no direct witnesses led by the Council to speak to such behaviour. Despite evidence that the agents' room is busy no witnesses were led by Council in oral evidence confirming that such comments were made. Whilst the evidence is for the Tribunal to consider the Respondent led evidence from Mr[A], Mr[C], Mr [F] and Mr [G] that none heard such comments made and gave evidence that the Respondent generally took issue with inappropriate comments being made by professional colleagues in the agents' room when he heard such comments made. The Respondent denies the allegation in Article 1(a).*
  
15. *In respect of sub-head 1(b) no direct witnesses beyond the complaints originator were led by the Council to the inappropriate comments. The Respondent in his evidence confirmed that the topic of the Complaints Originator's surgery was raised by the Complaints Originator in conversation and the Respondent attempted to deal with it in a mature manner. There is evidence from [MrG] who confirmed that the topic was raised by the Complaints Originator with him in course of a conversation in a Public House near to [...] Sheriff Court. It appears that the Respondent was not present during that discussion. The Respondent denies any inappropriate comments.*
  
16. *In respect of sub-head 1(c), the Respondent confirmed in oral evidence that a discussion took place with the Complaints Originator regarding the issue of whether a woman could commit the crime of rape against a man, the matter having been raised by the Complaints Originator. The Complaints Originator confirmed in evidence that she raised the matter with the Respondent. The Council did not lead witnesses of direct witnesses beyond the complaints originator to this conversation. The Council relied upon affidavit evidence. The Respondent denies that he substituted himself and the Complaints Originator for the hypothetical male and female and stated "for example, if you were to drug me, jump on top of me and ride me whilst I am hard, that would be rape" or words to that effect. The Respondent in evidence avers that he attempted to answer the questions as best he could although he accepts that he erred in his interpretation of the law.*
  
17. *In respect of sub-head 1(d), the Complaints Originator stated in evidence that both [Mr C]and [MrA] had said that she could attend at [... Police Station on her own to conduct the meeting and interview. Mr [A] gave evidence that this was not the case. Mr [C] confirmed that he had asked Mr [A's] firm to deal with the interview on Monday, the 7<sup>th</sup> of November 2022. Mr [C]maintained that Mr [A's] firm*

would obtain any fee payable under the Scottish Legal Aid Scheme and Mr [C] confirmed that it was for Mr [A] and Mr [A] alone to determine who should cover the interview and he would and could not dictate who should attend. The text messages from the Respondent, whilst admittedly robust and borne out of frustration, do not amount to bullying or intimidation.

18. In relation to sub-head 1(e), the Respondent denies making such comments in a public place while walking back from court to the offices of [the Firm].

### *The Affidavits*

19. There are affidavits of [Ms E], [the SC's mother], [the SC's therapist], [Ms F], [Ms B] and [Ms D] which contain allegations not included in the averments of Council. It is the Respondent's submission that these should be disregarded for the reasons outlined in paras 4, 5 and 6 of this outline submission.
20. The Tribunal will review the affidavits against the heads of complaint 1(a) to 1(e): on reviewing the affidavits the Tribunal may wish to consider in relation to 1(a) that [...] (the mother of the Complaint Originator) at para 10 states "timewise I told her that Kenneth was from a different generation and he was making comments about her looking "hot" and that she was "the hottest trainee" or something and this is not appropriate". [Ms F] in her affidavit makes no comments regarding this part of the complaint. [Ms E] in her affidavit says nothing in relation to this head of complaint. [The SC's therapist] at para 11 of her affidavit states "some of these earlier comments which are reported to me were things like her being "hot" or the "hottest trainee".

[Ms B] at para 13 of her affidavit states "I am asked about whether I can remember her talking about comments that had been made to her at court. I can't remember off the top of my head, there was so much, we would sit down at the end of the day and she would recount Kenny's behaviour towards her on a daily basis."

[Ms D] in her affidavit at para 6 indicates "at some point – I can't recall exactly when, there started to be discussions of a lawyer who worked in the same firm as her was having with her that she was uncomfortable with. I cannot remember the order in which everything happened but when I would meet with her I would ask her how things were going at work and she would give examples of the type of things that were being said that were making her uncomfortable". Her affidavit does not refer to the words "hot" or "hottest trainee" or words to that effect.



*In the respect of allegation 1(b) [...] (the mother of the Complaint Originator) states "I remember [the SC] telling me that she had made a comment about her nipples and asked whether her nipples turned hard....." [Ms F] at para 8 of her affidavit makes reference to "...[the SC] then messaged me in September 2022 to say she was sick of Kenny asking her about....." This does not specify the conversation relied upon by Council.*

*[Ms E] at para 9 of her affidavit states "Kenny would make comments like how she was a sweet young thing and she would be in the bath playing with herself or finding people to have sex with. [The SC] said these sorts of comments made her feel uncomfortable".*

*There is nothing specific in Ms [E's] affidavit related to the allegation in 1(b).*

*[The SC's therapist] at para 9 of her affidavit states "the comment I felt clearly stepped over the line was when she was discussing the colour of her nipples. [The SC] had said to me that during one of our sessions this comment had been made to her by Kenny".*

*[Ms B] at paras 8 and 9 of her affidavit makes reference to the allegations in 1(b) and [Ms D] in her affidavit makes reference in para 6.*

*In respect of allegation 1(c) [the SC's mother] at para 6 states "I am asked if I can remember examples of the comments. There was one time when they were discussing a rape case and [the SC] had asked whether a woman could rape a man and he started answering the question using him and [the SC] as an analogy of a woman raping a man".*

*The affidavits of Miss [F], Miss [E], [the SC's therapist], Miss [B] and Miss [D] contain nothing in their affidavits in relation to 1(c).*

*In relation to 1(d) regarding the [...] police interview [the SC's mother's] affidavit at para 9 is referred to. [Ms F] has nothing in her affidavit in respect of this complaint. [Ms E] at para 11 of her affidavit refers to the [...] interview but says in para 11 the following "when it came to the time of interview Kenny had said that she had to go and he told [Mr A] that that was what was going to happen. I think it was okay with [Mr C]. [The SC] had to drive from [...] to [...] to pick up Kenny. I don't think she was too happy about being told. In the car, I think that [the SC] said Kenny was doing*

*things like touching the gear stick and touching her about her knee and trying to touch her hand. I think that she said to him to stop, that that was inappropriate”.*

*The Tribunal will note that in the letter of complaint of 9th November 2022 being the formal complaint item three of the Inventory of Productions for the Council there is no mention of alleged touching by Mr Woodburn of the Complaints Originator.*

*In respect of 1(d) [the SC’s therapist] has nothing in her affidavit in relation to this element of the complaint. [Ms B’s] affidavit at para 7 refers to this incident saying “I think that initially the first problem was Kenny’s attitude with him being quite mean and rude to her. I think that the first episode of this was when she was supposed to go to a police station in [...] to deal with a police interview and he was very rude to her over text message. This was the start of instances which [the SC] described where Kenny was behaving like a child.....initially her complaints were about Kenny’s attitude”. This element of Miss [B’s] affidavit raises timings issue and if the averments are correct the incident occurred in October.*

*In respect of issue 1(e) [the SC’s mother’s] affidavit contains nothing in respect of this element of the complaint.*

*[Ms F’s] affidavit has no comment on this part of the complaint. [Ms E’s] affidavit contains nothing regarding this element of the complaint.*

*There is nothing in [the SC’s therapist’s] affidavit on this element of complaint and there is nothing in [Ms B’s] affidavit on this element of the complaint.*

*The affidavit of [MsE] (Signed and Dated 19.06.25):*

- *20(a) In paragraph 4 refers to an argument between the Complaints Originator and the Respondent, stating the argument was ‘something to do with her personal phone and it being on silent’. Mention of this alleged argument is not included in the allegations brought by the Council and should be disregarded.*
- *20(b) In paragraph 6 refers to the Complaints Originator choosing to sit in the library at [...] Sheriff Court rather than with her firm in the body of the agents’ room. The witness recalls being told by the Complaints Originator that this was to avoid ‘weird comments’ that the Respondent would make and*

to avoid being 'leered at'. This was not included in the allegations and there is no evidence of this provided by the Complaints Originator.

- 20(c) In paragraph 7 the witness recalls the Complaints Originator jokingly stating she would deal with the Respondent's behaviour by committing suicide and she was 'putting up' with the behaviour of the Complaints Originator. This was not included in the allegations and there is no evidence of this provided by Complaints Originator.
- 20(d) In paragraph 8 the witness describes how the Complaints Originator told her that the Respondent would 'go through her pictures on Instagram from years ago and like the pictures', particularly a picture of the Complaints Originator in a bikini, commenting on her breasts, saying they 'looked fine to him'. The Complaints Originator has not included this in her evidence, and it has not been included in the allegations.
- 20(e) In paragraph 9 the witness refers to the Complaints Originator telling her that the Respondent would tell her she was a "a sweet young thing" and she should be "in the bath playing with herself or out finding people to have sex with" and that this made the Complaints Originator uncomfortable. It is for the Tribunal to consider this evidence and determine whether this links with the allegations at sub-head 1(b). The Respondent has denied such statements.
- 20(f) In paragraph 10 -11 the witness recalls the Complaints Originator mentioning the police interview in [...]. She states that the Respondent 'had said that she had had to go and he told [Mr A] that that was going to happen. I think that it was okay with [Mr C]'. This evidence conflicts with the evidence of Mr [A] and Mr [C] who clarify that it was ultimately Mr [A] who would make the decision. This evidence of Mr [A] and Mr [C] in general and the evidence of the witnesses led for the Respondent should be preferred.
- 20(g) In paragraph 11 the witness states the Complaints Originator had told her that the Respondent, in relation to the police interview in [...], had been 'touching the gearstick and touching around her knee and trying to touch her hand'. This links with the complaint at sub-heading 1(d), however, the touching aspect is not mentioned in the allegations, nor in the evidence of the Complaints Originator and therefore should be excluded from consideration.
- 20(h) In paragraph 12 the witness recalls the Complaints Originator saying that the Respondent would hold her hand or would try to hold her hand. This is not included in the allegations and is not part of the evidence of the Complaints Originator. Again, this is not referred to in the general allegations and was not part of the evidence of the Complaints Originator.

21. The affidavit of [the SC's mother] (Signed and Dated 24.06.25):

- 21(a) In paragraph 6 the witness recalls the Complaints Originator telling her that the Respondent had made comments about her in a bikini. This evidence has not been led by Council nor led from the Complaints Originator in her evidence and therefore paragraph 6 should form no part of the Tribunal's consideration.
- 21(b) In paragraph 6 the witness mentions that the Complaints Originator told her that the Respondent 'made a comment about her nipples and asked about whether her nipples turned hard when she masturbated'. This paragraph relates to allegations under sub-head 1(b) which the Respondent denies.
- 21(c) In paragraph 6 the witness states that the Complaints Originator had told her about one occasion in which the Respondent had been discussing a rape case with her and the Respondent 'started answering the question using him and [ the SC] as an analogy of a woman raping a man'. This evidence correlates with the complaint at sub-heading 1(c). The Respondent has provided his evidence which the Tribunal should prefer even though he accepts that his interpretation of the Law was inaccurate.
- 21(d) In paragraph 7 the witness describes the Complaints Originator mentioning that she was uncomfortable about comments made by the Respondent regarding her lack of a future career following a trainee review on the 22<sup>nd</sup> September 2022 to Mr [A], saying he hadn't 'handled it well'. This is contrary to the position of Mr [A] who is clear that nothing was said to him of this nature by the Complaints Originator until the 9<sup>th</sup> November 2022. This must be considered against the evidence of Mr [A] who indicated that there were no such comments made by him as he had control over the peer review for the trainee and that for the first time he was informed of the allegations on the 9<sup>th</sup> of November 2022 at a meeting some time in the afternoon of that day then by the formal email later that evening.
- 21(e) In paragraph 9 the witness states that the Complaints Originator, when recounting the events of the police interview in [...], had said that "her boss had told her that [Mr C] had said it was okay, as I don't think it was for [Mr A] to decide". This evidence conflicts with the evidence of Mr [A] and Mr [C] who clarify that it was ultimately Mr [A] who would make the decisions. They clarify that it was Mr [A] who would make the decision as to who would attend and the evidence of Mr [A] was that both the Respondent and the Complaints Originator should attend together.
- 21(f) In paragraph 9 the witness mentions that the Complaints Originator told her about the police interview in [...], in which the Respondent 'slammed her car door and was being difficult and aggressive that day'. The Complaints Originator had said that he was 'very angry' and was 'being really quite aggressive'. This links to the allegations at sub-heading 1(d).

- 21(g) In paragraph 10 the witness refers to the Complaints Originator telling her that the Respondent had described her as 'looking 'hot' and that she was 'the hottest trainee' or something that is not appropriate'. This links to the allegation at sub-head 1(a).

22. The affidavit of [the SC's therapist] (Signed and Dated 24.06.25):

- 22(a) In paragraph 9 the witness states that the 'comment that I felt clearly stepped over the line was when he was discussing the colour of her nipples', which the Complaints Originator had told the witness the Respondent had asked her. This evidence relates to the allegations at sub-heading 1(b).
- 22(b) In paragraph 11 the witness refers the Complaints Originator telling her that the Respondent had told her 'some of the earlier comments which she reported to me were things like her being "hot" or "the hottest trainee". This evidence correlates with the complaint at sub-heading 1(a).

23. The affidavit of [Ms F] (Signed and Dated 23.06.25):

- 23(a) In paragraph 8 the witness mentions that the Complaints Originator messaged her that the Respondent was 'asking about her masturbating and talking about his sex life' in September 2022. This evidence correlates with the allegations against the Respondent at sub-heading 1(b).

24. The affidavit of [Ms B] (Signed and Dated 24.06.25):

- 24(a) In paragraph 5 the witness states that she and the Complaints Originator had met witness [Ms F] prior to the Complaints Originator starting her traineeship. The witness recalls [Ms F] describing the Respondent as 'a bit of a creep'. This is not part of the evidence provided by [Ms F] in her affidavit, nor is it part of the allegations against the Respondent.
- 24(b) In paragraph 7 the witness refers to the police interview in [...] as the 'first episode' in which the Complaints Originator felt there was an issue with the Respondent. This timeline does not correspond with the evidence of the Complaints Originator and does not correlate to the allegations against the Respondent. Similarly, where paragraph 8 and 9 are placed after the police interview in [...], this timeline differs to the one asserted by the Complaints Originator.
- The evidence of the witness in paragraph 7 relating to the police interview in [...], in which the Complaints Originator has said the Respondent was 'behaving like a child' and does correlate with the allegations at sub-heading 1(d).

- 24(c) In paragraph 8 the witness recounts the Complaints Originator had told her the Respondent had asked 'if her nipples got hard when she was masturbating'. This evidence correlates to the complaint at sub-heading 1(b).
- 24(d) In paragraph 9 the witness states that the Complaints Originator had told her that the Respondent had told the Complaints Originator about 'shagging loads of women'. This evidence correlates to the complaint at sub-heading 1(b).

25. The affidavit of [Ms D] (Signed and Dated 04.07.25):

- 25(a) In paragraph 9 the witness describes that the Complaints Originator had told her that she had reported feeling upset to her boss but 'she felt he had taken the other person's side'. This is contrary to the evidence of Mr [A] and is not part of the allegations against the Respondent.

#### HR Investigation Report

- 26. The HR Report which forms item 4 of the First Inventory of Documents for the Council is referred to for its terms. That Report was conducted to investigate four instances of sexual harassment and six instances of bullying by intimidating, controlling and aggressive behaviour.
- 27. The HR report notes there were no direct witnesses to the alleged incident so it required that the allegations be examined and considered at a disciplinary hearing. Due to the absence of witnesses it was for the disciplinary manager to consider evidence gathered and then determine what events took place.
- 28. The HR report finds that on allegations of bullying through intimidating, controlling aggressive behaviour there were sufficient grounds to consider allegations from 27th September 2022 which are not part of the complaint by Council, the 6th of November 2022 which relates directly to sub-heading 1(d) of the Closed Record and 7th of November 2022 which relates directly to sub-head 1(d) of the Closed Record. The recommendation of the HR report was these matters should be examined at a disciplinary hearing.
- 29. The HR report refers to a "witness B" who has now been identified for the tribunal as [ Ms F]. That witness is cited in the HR report as stating that the Respondent had made "inappropriate comments" about the Complaints Originator prior to employment at [the Firm] but this is not referred to in the affidavit provided by [Ms F].



30. Additionally, witness B is said to have stated the Respondent made inappropriate comments to three females at an event in [...] whilst the Complaints Originator was a trainee and this is not referred to in the affidavit provided by [MsF].
31. Regarding the allegations of sexual harassment, the HR Report notes there were no witnesses to the alleged incidents and so it recommended that the allegations be examined further at a Disciplinary Hearing. It was found that in the absence of any witnesses, it was for the Disciplinary Manager to consider evidence gathered and determine what events took place.
32. Regarding the allegations of bullying through intimidating, controlling and aggressive behaviour the HR Report found there were sufficient grounds to consider the allegations from the 27<sup>th</sup> September 2022 (not part of Complaint), 6<sup>th</sup> November 2022 (Complaint sub-heading 1(d)) and 7 November 2022 (Complaint sub-heading 1(d)). The HR Report states these should be examined at a full Disciplinary Hearing.
33. The HR Report refers to a 'Witness B' who has been identified as [Ms F]. The witness is cited in the report as stating that the Respondent had made 'inappropriate comments' regarding the Complaints Originator prior to her employment at [the Firm]. This is not mentioned in the affidavit provided by [Ms F].
34. Additionally, Witness B/[...] is said to have stated that the Respondent made inappropriate comments to 3 females (including herself and the Complaints Originator) at an event while the Complaints Originator was a trainee. This is not mentioned in the affidavit provided by [Ms F].

#### The Law

35. [S.26](#) of the Equality Act 2010 provides that harassment occurs where there is 'unwanted conduct relating to a relevant protected characteristic' (e.g. sex) which has the purpose or effect of violating a person's dignity or creating an 'intimidating, hostile, degrading, humiliating or offensive environment'. The harassment becomes sexual harassment where the unwanted conduct is of a sexual nature. This definition is replicated in [Law Society Guidance](#) and Guidance published by the [Equality and Human Rights Commission](#).

36. Sharp v the Law Society of Scotland 1984 SLT 313 sets out the test for professional misconduct as 'a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors.' This was followed in Law Society v Kevin Frederick MacPherson in which the Tribunal cited the fundamental principle and standard of conduct that a solicitor requires to be a person of integrity, this requirement applying equally to a solicitor's private life as it does their professional conduct. The Tribunal stated that solicitors:

- 'Must not allow their independence to be impaired.'
- 'Must not allow their personal interests to influence their advice or actings on behalf of clients.'
- 'Must not discriminate on grounds of sex in their professional dealings with employees.'
- 'Keep their professional distance from their trainees.'
- 'Must not allow their personal interests to affect their decision-making.'
- 'Maintain their independence particularly as they are asked to confirm that a trainee is a fit and proper person to be a solicitor.'

*Failing to carry out these duties or objectively carry out duties of supervision were found to draw the integrity of a solicitor into question and the profession into disrepute.*

## Summary

*The Respondent has provided evidence to the Tribunal regarding his career to date which the Tribunal will consider. Evidence was also led from Mr [A] who confirmed that the first he was aware of an issue between the Complaints Originator and the Respondent was at the meeting on 9th November 2022 and then particularised in the e-mail of 9th November 2022 received by him that evening. Mr[A] sought employment law advice and instructed independent HR advisers to carry out an independent investigation and to report. The terms of the report are contained within the productions as are the decisions reached by Mr [A] regarding the conclusions he reached on balance of probabilities and his decision to issue a final warning with the requirement that Respondent undertake training in diversity, equity and inclusion etc. Evidence was also taken from Mr [C] regarding sub-head 1(d) and he confirmed that he had not given a direct instruction that the Complaints Originator could attend at[...] on her own. There is evidence of the screenshot of the phone call on the 6th of November 2022 made by the Complaints Originator to the Respondent at 11:49 and the incoming call of two minutes at 11:50 where it is said that the Complaints Originator in that call sought guidance on the distinction between Section 1 and Section 2 of the Sexual Offences (Scotland) Act 2009. The Tribunal may wish to consider the terms of that phone call, its purpose as*

*it seems nothing in the phone call indicated any resistance in the part of the Complaints Originator to have Mr Woodburn attending the next day at [...].*

*It is for the Tribunal to assess the evidence led by the Respondent and his witnesses [Mr C], [Mr G], [Mr A] and [Mr F] who all spoke of the Respondent being an honest, hard working, "straight up and down" person and who provided information regarding the atmosphere in the [...] agents' room and the nature of the discussions there .*

*The Respondent has maintained throughout his position that for the Tribunal to make findings it must be satisfied beyond reasonable doubt of the issues arising in 1(a) – 1(e).*

*The Respondent accepts that the Complaints Originator was a first year trainee working under his supervision and that there is a duty not to discriminate."*

Mr Macreath invited the Tribunal to hold that none of the allegations in the Complaint had been proved. He reminded the Tribunal that reliability and credibility are two different issues.

Mr Macreath invited the Tribunal to exclude the two PCSC Reporter's reports from its consideration. He submitted that they contained matters that went beyond the matters spoken to by the Secondary Complainer.

He accepted that the case of Wingate stood as good law in Scotland.

Mr Macreath submitted that the Affidavits required to be viewed with caution, as they all relied upon one source of evidence, namely the Secondary Complainer.

He emphasised that, even if the Tribunal were satisfied that the facts brought into question the Respondent's integrity, it still had to consider whether the conduct met both parts of the serious and reprehensible test for professional misconduct.

He invited the Tribunal to consider that the evidence did not reach the required standard of beyond reasonable doubt. He asked the Tribunal to have regard to the evidence of the Respondent and the views expressed by other senior members of the bar.

## **RESPONSE BY COMPLAINERS**

The Fiscal invited the Tribunal to have regard to the details given in the Secondary Complainer's letter of complaint when considering the individual allegations.

He urged the Tribunal to bear in mind that Mr A had made no requirement that the Secondary Complainer transport the Respondent to the interview in November 2022.

With regard to the demographic of the defence witnesses, he submitted that he recollected that Mr A stated in evidence that he would not be in a position to assess what the Secondary Complainer might have considered to be inappropriate.

## **DECISION**

The first step for the Tribunal was to consider what conduct had been proved by the Complainers. The onus of proof rests with the Complainers throughout. The appropriate standard of proof is that of beyond reasonable doubt. Corroboration is not required. The Tribunal's deliberations on the question of misconduct were confined to the allegations within the Complaint.

The Tribunal heard evidence from 12 witnesses, including the Respondent and Secondary Complainer. It had before it a List of Productions for the Complainers and Affidavits for the six witnesses led by the Complainers, other than the Secondary Complainer.

Mr Macreath objected to Productions 1 and 2 for the Complainers, the Reporter's reports to the Professional Conduct Sub Committee. The Fiscal had only referred to part of Production 1, which referred to statements made by the Respondent. The Tribunal restricted its consideration of those Productions to the parts referred to by the Fiscal in his cross examination of the Respondent.

Evidence was led regarding the conclusions of an investigation made by an HR consultancy and the decision taken by Mr A on how to deal with the complaint made by the Secondary Complainer. The Tribunal considered that the assessment of whether there was a sufficiency of evidence and the conclusions to be drawn from that evidence were matters for the Tribunal.

The Tribunal required to assess the reliability and credibility of the witnesses.

The Tribunal considered that the Secondary Complainer gave her evidence succinctly, and in a composed and understated manner. She had made unprompted concessions, such as her remark that she thought that the training given by the Respondent was good. There was nothing about the way in which she gave evidence to



cause the Tribunal to doubt her honesty. Her occasional lack of recollection of details supported her credibility rather than undermining it, given the passage of time since events. The Tribunal found the Secondary Complainer to be both reliable and credible.

There appeared to be no attack on the credibility of the other witnesses for the Complainers. The Tribunal accepted that much of their evidence was hearsay and relied upon what they had been told by the Secondary Complainer. Hearsay evidence is admissible in Tribunal proceedings, although it is important for the Tribunal to assess the weight that should be given to such evidence. The Tribunal considered that the inconsistencies as to detail within the witnesses' Affidavits did not undermine their credibility, or reliability. In some cases, there were messages exchanged with the Secondary Complainer at the time of some of the incidents that supported the Secondary Complainer's evidence.

Not all of their evidence was hearsay. They spoke of a change of mood and attitude to work on the part of the Secondary Complainer, which they had witnessed. They spoke of her assigning her traineeship. There appeared to be some implied criticism of Ms F, on the basis that she had been an anonymous witness in the HR investigation. The Tribunal could understand why she had been reluctant to get involved in the process, given that she was at an early stage of her career. The Tribunal found all of the Complainers' witnesses to be credible and reliable.

The Tribunal did not find the Respondent to be a credible witness. It considered that he had downplayed his role in supervising the Secondary Complainer, for instance denying that he had any input into the quarterly review procedure, despite being the one who had most day-to-day contact with the Secondary Complainer and contrary to the evidence of Mr A. His evidence about the conversation regarding whether a woman could rape a man was unconvincing. The Respondent is an experienced criminal law practitioner who ought to have been well aware of the relevant statutory provisions. Much of the Respondent's evidence related to his character, emphasising that he was brought up not to say things like this and that no one had complained about him previously. This evidence was clearly undermined by the evidence of Mr A when he described the remark made by the Respondent to three "ladies" at an event. This evidence was given in cross-examination and was not challenged.

The Tribunal considered Mr C gave his evidence in a straightforward manner. However, his evidence relating to the character of the Respondent was undermined by the remark made by the Respondent as described by Mr A.

The Tribunal considered the evidence of Mr A to be coloured to some extent by his willingness to support the Respondent. Despite having been involved in the disciplinary process that took place after the Secondary



Complainer made the allegations against the Respondent, he was able to provide very little detail and appeared to be seeking to distance himself from the events that followed the Secondary Complainer's meeting with him.

Much of the evidence of Mr F and Mr G was character evidence supporting the picture that the Respondent was not the sort of person who would make the type of comments that the Secondary Complainer had alleged. However, this was undermined by the evidence of the remark made by the Respondent referred to above. Both witnesses accepted that they had not been in the Firm's office and that they were not privy to all discussions between the Respondent and the Secondary Complainer.

The Tribunal considered that the evidence of the Secondary Complainer, the other witnesses for the Complainers, and the texts/WhatsApp messages all painted a compelling picture. These witnesses spoke of the Secondary Complainer's mood and attitude to work changing as time progressed, referred to contemporaneous texts/WhatsApp messages and to the Secondary Complainer assigning a traineeship, she had been excited to get, within eight months of starting.

In all of the circumstances, the Tribunal found that the averments in relation to the remarks alleged to have been made by the Respondent in paragraphs (a), (b), (c) and (e) and the text messages referred to in paragraph (d) had all been proved beyond reasonable doubt.

Having held the facts to be established, the Tribunal went on to consider whether each averment amounted to professional misconduct either *singly* or *in cumulo*.

The test for professional misconduct is that set out in the case of Sharp, referred to by the Fiscal.

The Respondent accepted in his evidence that if the things alleged to have been said in paragraphs (a), (b), (c) and (e) had in fact been said, they would be inappropriate, likely to make the recipient feel uncomfortable and were sexual in nature.

With regard to paragraph (a), the Tribunal had particular regard to the relationship between the Respondent and the Secondary Complainer. He was a senior colleague in a position of trust. There was a power imbalance between him and the Secondary Complainer. The comments were made over a period of several months and were sexual in nature. The Tribunal concluded that these comments brought into question the Respondent's integrity. They amounted to a breach of Rules B1.2 and B1.15 which was serious and reprehensible and the Tribunal found the Respondent guilty of professional misconduct.

With regard to paragraph (b), the Tribunal's comments with regard to the relationship between the Respondent and the Secondary Complainer applies equally to this conduct. The remarks made were grossly offensive and shocking. The remarks made were a breach of both Rules B1.2 and B1.15. They called into question the Respondent's integrity. The Tribunal considered the conduct to be both serious and reprehensible and found the Respondent guilty of professional misconduct.

In relation to paragraph (c), the comments were grossly offensive, shocking and entirely inappropriate. The Respondent was in a position of trust. This conduct clearly called into question the integrity of the Respondent and amounted to a breach of Rules B1.2 and B1.15 which was serious and reprehensible. The Tribunal found the Respondent guilty of professional misconduct.

In relation to paragraph (e), having regard to the Respondent's position of trust, the comment was offensive and inappropriate. The Tribunal considered this to be a serious and reprehensible breach of Rules B1.2 and B1.15 and found the Respondent guilty of professional misconduct.

With regard to the conduct at paragraph (d), the Tribunal noted that this was restricted to the texts sent to the Secondary Complainer by the Respondent. The Tribunal recognised that texts are an imperfect means of communication. The Respondent's tone was sharp and he should have had regard to the tone of his messages when dealing with a trainee. The Tribunal accepted that there had been a misunderstanding between the Respondent and the Secondary Complainer about the arrangements that had been made. The Secondary Complainer's responses were in part motivated by her discomfort at the prospect of having the Respondent in her car, which the Respondent had not been aware of. On the face of it, therefore, her responses may have appeared to be an attempt to go against the instruction of a more senior colleague. In the circumstances, the Tribunal hesitated to find that the messages were bullying and aggressive to the extent that could be assessed as misconduct either *singly* or *in cumulo* with the other allegations. The Tribunal found the Respondent not guilty in relation to this averment of misconduct.

## **SUBMISSIONS IN RELATION TO SANCTION, EXPENSES AND PUBLICITY**

### **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal invited the Tribunal to make an award of expenses in favour of the Complainers under the 2024 Rules, on a party party scale.

He invited the Tribunal to anonymise the Secondary Complainer, and any information which could lead to her being identified, in the decision. He submitted that this approach was supported by (1) comparison to the

protection given to complainers in criminal cases, (2) the consideration that matters were sensitive in nature and had a significant impact on the Secondary Complainer, and (3) the possible impact of publicity of this type of case on any one else making a similar complaint.

He submitted that the question of sanction was not really a matter for him but he wished to draw certain factors to the attention of the Tribunal. He submitted that the Respondent had made no admission of guilt nor expressed remorse or insight. He conceded that the Respondent had acknowledged that if the conduct had occurred then it would have been inappropriate, made the Secondary Complainer uncomfortable and was sexual in nature and the Fiscal accepted that this could be seen as a degree of insight. This was a course of conduct over approximately five months. This was the first time the Respondent had found himself subject to disciplinary proceedings. The Respondent had completed a training course in equality and diversity. Although he wanted to emphasise that he made no submission that the conduct had a sexual motivation, nonetheless, he invited the Tribunal to construe the conduct as serious. The comments were sexual, graphic and mostly made in a private setting. There was a degree of power imbalance between the Respondent and the Secondary Complainer. The conduct had a significant impact upon the Secondary Complainer as spoken to by a number of the witnesses who had seen her exhibit distress. Criminal law had been an area in which she wanted to practise but this had been soured for her. He submitted that the Tribunal ought to have regard to the public interest and the expectations that the public have of the profession. He invited the Tribunal to consider access to the profession by young lawyers. He acknowledged that there was no indication, in the evidence led before the Tribunal, of any intention on the part of the Respondent to cause the Secondary Complainer harm. The Fiscal acknowledged that it was relevant for the Tribunal to consider the evidence of the Respondent regarding his progress through his career and the evidence of the Respondent's witnesses in relation to his general professional conduct and character.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath conceded that expenses would normally follow success and that the appropriate basis for an award of expenses was that of party party. However, he invited the Tribunal to modify the award of expenses to reflect that it had not upheld one of the averments of misconduct.

He agreed with the Fiscal that it was appropriate to anonymise the decision to prevent revealing the identity of the Secondary Complainer.

He submitted that it was significant that the Fiscal recognised that there was no evidence of sexual motivation or any intention to cause harm. He distinguished the cases of MacPherson and Kearney. He referred to the

case of Wingate and emphasised that although the expectation of the profession is that members are held to a higher standard than others, they are not expected to be paragons of virtue.

He reminded the Tribunal that Mr A had issued the Respondent with a final written warning and confirmed that the Respondent had taken training on equality and diversity.

He reminded the Tribunal that all of the defence witnesses had been taken aback by these allegations, knowing what they did about the Respondent. The witnesses maintained their position of shock.

He submitted that the Respondent is an assistant solicitor and is unlikely to be a frontline practitioner operating on his own account. He urged the Tribunal not to impose a strike off particularly given the evidence of the defence witnesses. He reminded the Tribunal of the Respondent's efforts in training to become a solicitor. He accepted that the findings were not minor and were likely to damage the reputation of the profession, but submitted that there was no evidence of damage to the public. At no point in the cross examination of the witnesses for the Complainers had it been suggested that they were wrong to be there to speak to their evidence. He confirmed there were no previous findings against the Respondent. The Firm had not had another trainee and had no intention of taking on another.

He accepted that traineeships were important and that an individual's career can be damaged by the approach taken. He noted that following the completion of her traineeship with another firm, the Secondary Complainer had left criminal defence for a time. He submitted that it was much to her credit that she had put this situation behind her.

The Fiscal responded to Mr Macreath's submissions. He invited the Tribunal to have regard to the public interest in young people, particularly young females, entering the profession and the possible deterrent effect conduct such as this could have.

## **DECISION**

The Tribunal had regard to the nature of the conduct, which it considered to be at the more serious end of the scale of misconduct. However, having considered both parties' submissions carefully, the Tribunal concluded that the conduct was not serious and reprehensible to the degree requiring the Respondent to be struck off. However, the Tribunal considered the conduct to be serious and to be damaging to the reputation of the profession. It is important that the public have confidence in the profession and it is in the interest of the public to have a diverse profession.

The Tribunal noted the determination that the Respondent had displayed in progressing through his career. It appeared that he was a capable and otherwise respected solicitor.

Whilst the Tribunal recognised that the Respondent had completed a course on equality and diversity, given the nature of the conduct, it was concerned that there was an element of protection of others to be considered. The Tribunal concluded that it was appropriate to deal with this concern by censuring the Respondent and imposing a restriction on his practising certificate so that he did not mentor, manage or supervise any person in a professional capacity for a period of three years.

The Tribunal considered there were a significant number of aggravating factors, as described by the Fiscal and determined that it was appropriate to underline the seriousness with which the Tribunal regarded the conduct. It concluded that this was best done by imposing a financial penalty, in addition to the restriction. The Tribunal considered it appropriate to fine the Respondent in the sum of £5,000.

With regard to expenses, the Tribunal agreed that in this case expenses should follow success. It did not consider it appropriate to restrict the award of expenses in any way. The deletion of one of the averments of misconduct did not materially change the nature or seriousness of the Complaint.

Having regard to the issue of publicity, the Tribunal agreed with both parties and determined that publicity should only name the Respondent. The Secondary Complainer was given 28 days from the date of intimation of these findings to submit a claim for compensation.



**Catherine Hart**  
**Vice Chair**