

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

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

**IAN GORDON DAVIDSON, 45 Clovis Duveau
Drive, Dundee**

Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Ian Gordon Davidson, 45 Clovis Duveau Drive, Dundee (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Alan Lindsay Davidson, 31 Comerton Place, Drumoig, St Andrews.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. The case called for procedural hearings on 9 September 2021, 16 December 2021, 17 March 2022 and 26 May 2022. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 24 June 2022 and notice thereof was duly served on the Respondent. A joint minute was lodged with the Tribunal. The Respondent lodged written submissions.
5. At the hearing on 24 June 2022 the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented. The hearing proceeded in the Respondent's absence. One witness gave evidence for the Complainers. The Fiscal made submissions.

6. The Tribunal found the following facts established:-

6.1 The Respondent is Ian Gordon Davidson. He was born on 3rd February 1962. He resides at 45 Clovis Duveau Drive, Dundee. The Respondent was enrolled as a solicitor on 17 December 1985. He was a partner of Cecil D. Findlay & Co., Solicitors between 10th June 1987 and 18th July 1991. He was successively an employee and then a partner in the firm of Campbell Boath, Solicitors, between 22nd July 1991 and 16th August 1994. He was an employee of Shepherds between 5th September 1994 and 26th July 1996. He was a partner in Ian Davidson & Co between 12th August 1996 and 13th December 2010. He was an employee of Muir, Myles, Laverty (MML Legal) between 14th December 2010 and 29th April 2016. He was a consultant to the firm of W & A.S. Bruce between 1st July 2016 and 31st October 2018. The Respondent is not currently employed by any legal firm.

a) Gordon Davidson (“the deceased”) died on 29th May 2011. He was the father of the Respondent. By will of the deceased dated 25th November 2009 both the Respondent and his brother Alan Lindsay Davidson (“the Secondary Complainer”) were appointed as Executors of the deceased. *Eo die* the deceased appointed the Respondent as his attorney. The Respondent did not register the Power of Attorney, but from the middle of 2009 until the demise of the deceased he had control of his parents’ finances and continued to control his mother’s finances after the deceased had passed away. The Secondary Complainer is also a solicitor although he does not practise as such. With the agreement of the Secondary Complainer, the Respondent alone undertook the administration of the deceased’s estate. Although the Respondent was employed successively by MML Legal and W. & A.S. Bruce during the period of his administration of the deceased’s estate neither of those firms was instructed in relation to the executry. In November 2016, the Secondary Complainer became aware of matters in relation to his mother’s financial position which caused him concern. He raised these concerns with the Respondent. The Respondent resigned from the office of executor by letter dated 25th November 2016. The Secondary Complainer obtained Confirmation in his favour from the Sheriff Clerk at Dundee on 17th March 2017. The total estate confirmed to was £161,521.56 of which £125,000 related to heritage and the balance of £36,521.56 was moveable.

- b) The Respondent failed to inform Royal Bank of Scotland of the death of the deceased, despite being aware that the deceased was the holder of two accounts with that bank, along with the widow of the deceased. With the consent of his mother the Respondent continued to operate these accounts from the date of the deceased's death until 2016.
- c) The Respondent failed to disclose to the Secondary Complainer that the deceased held a standard security over a property belonging to the Respondent and his wife which had been granted by them in security of money loaned by the deceased to the Respondent and his wife.
- d) The funds advanced to the Respondent and his wife were the proceeds of a loan obtained by the deceased in respect of which the deceased granted a standard security in favour of the lender. The Respondent agreed to pay a sum equivalent to the monthly mortgage payment into his parents' bank to enable the loan to be serviced. He failed to do so. As a result, between May 2011 and November 2016, mortgage payments were missed, and unnecessary charges were incurred. Moreover, repossession proceedings were brought by the lender. The Secondary Complainer made a payment of £40,000 to avoid repossession and avoid his mother being rendered homeless.
- e) The Respondent failed to disclose to the Secondary Complainer that in or around 11 July 2011 a death benefit sum of £25,000 had been paid by Aviva in relation to an insurance policy held by the deceased.
- f) The Aviva policy was the subject of an agreement within the Davidson family. The agreement was that the Respondent and the Secondary Complainer would each pay £25 per month towards the *premia* and that the deceased would pay the balance. From the policy proceeds the Respondent and the Secondary Complainer would each receive £10,000 and the balance would go to their mother. That agreement was modified to the extent that an additional sum of £4,000 was to be paid out of the Respondent's share to the Secondary Complainer in repayment of a loan advanced by him to the Respondent. Instead, the Respondent arranged for the sum of £25,000 to be paid into the client account of MML Legal, his employers

at the time, and thereafter arranged for this sum to be transferred into a joint account in the names of his mother and the deceased from which he subsequently withdrew the said sum of £25,000 which he then appropriated to his own use.

- g) When contacted by the Respondent, Aviva initially claimed, wrongly, that there was no minimum death benefit under the policy and they initially offered about £21,500 in settlement. The Respondent exhibited correspondence to this effect to the Secondary Complainer. After Aviva paid out on the policy in July 2011 the Respondent falsely represented to the Secondary Complainer and their mother firstly that he was in correspondence with Aviva and then that he had made a complaint to the Financial Ombudsman Service about the failure of Aviva to make payment.
- h) At the time of his death the deceased held National Savings Bonds with a value of £5,000. Shortly after the deceased died the Respondent and the Secondary Complainer agreed that the bonds should be retained in case their mother should have need of funds for any reason in the future. Contrary to that agreement the Respondent encashed the bonds.
- i) The Respondent failed to disclose to the Secondary Complainer that the value of the National Savings Bonds above condescended upon amounted to only £5,000, rather than £10,000 as the Secondary Complainer believed, because the Respondent had encashed bonds to the value of £5,000 prior to the deceased's death.
- j) The Respondent failed to ensure that appropriate buildings insurance cover was at all times in place for the property at 21 Sherbrook Gardens, Dundee, which formed part of the deceased' estate.
- k) The Respondent failed in 2016 for seven consecutive months to ensure that prompt payment was made to settle monthly gas and electricity bills for the said property at 21 Sherbrook Gardens, Dundee, which formed part of the deceased's estate.

- l) Between October 2010 and April 2016, the Respondent failed to account for sums totalling £44,563 paid into accounts held in the joint names of his mother and the deceased, over which the Respondent had control.
- m) In respect that the firm of MML Legal did not act in the executy of the deceased, the Respondent (i) acted inappropriately when he arranged that Aviva transfer £25,000 into that firm's client account on or around 11 July 2011 and then arranged for the said sum to be paid out of that account (ii) and thus acted in a manner which was reckless or intentionally misleading regarding the writing up of accounting records in respect of the firm's client funds, all in breach of Rule B6.12.1 of the Practice Rules, and consequently in breach also of Rule B6.2.3 of the Practice Rules insofar as the failure may be said to have affected the compliance with the Practice Rules of the practice unit.
- n) In respect that the firm of Muir Myles Laverty did not act in the executy of the deceased, the Respondent (i) acted inappropriately by arranging that Tesco Bank transfer £513 into the said firm's client account on or around 2 May 2012 and then arranged for this sum to be paid into his mother's account; and, by arranging that said transfer and payment, (ii) acted in a manner which was reckless or intentionally misleading regarding the writing up of accounting records in respect of the firm's client funds, all in breach of Rule B6.12.1 of the Practice Rules, and consequently in breach also of Rule B6.2.3 of the Practice Rules insofar as the failure may be said to have affected the compliance with the Practice Rules of the practice unit.
- o) On or around 17 April 2012, the Respondent, whilst acting as a solicitor, induced Tesco Bank to write off a debt of approximately £6,663.32 which was owed to Tesco Bank at the date of the deceased's death, on a credit card account held in the deceased's name, by falsely stating to Tesco Bank that the deceased had left no estate.
- p) The Respondent, whilst acting as a solicitor in or around April 2012, embezzled payments of £788.00 and £513.00 which had been refunded to the estate of the deceased by Tesco Bank.

- q) The Respondent, from May 2011, failed to disclose to the Secondary Complainer the existence of a Tesco Bank credit card account, held in the name of the deceased, despite the Secondary Complainer being both co-executor of the deceased's estate and a beneficiary of it.
- r) The Respondent destroyed copies of correspondence he exchanged with Tesco Bank in or around March and April 2012 and failed to maintain any file documenting his actions whilst acting as a solicitor, in an attempt to conceal his own fraudulent actings.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that he:

- (a) failed to inform The Royal Bank of Scotland of the death of the deceased;
- (b) failed to disclose to the Secondary Complainer the existence of the Standard Security;
- (c) failed to make the payments to the lender;
- (d) failed to disclose that the Aviva death benefit had been paid out;
- (e) failed to obtemper the agreement in relation to the Aviva policy and misappropriated the policy proceeds;
- (f) falsely stated that he was in correspondence with Aviva and the Financial Ombudsman Service;
- (g) encashed National Savings Bonds bonds contrary to the agreement with his co-executor;
- (h) failed to disclose to the Secondary Complainer the value of the National Savings bonds;
- (i) failed to ensure that appropriate Buildings Insurance cover was in place for the property at 21 Sherbrook Gardens, Dundee;
- (j) failed to settled gas and electricity bills in relation to said property;

- (k) failed to account for sums totalling £44,563.00 paid into accounts held in the joint names of his mother and the deceased over which he had control;
 - (l) acted inappropriately and in breach of Rules B6.12.1 and B6.2.3 in relation to the Aviva policy proceeds;
 - (m) failed to act appropriately and in breach of said rules in relation to the Tesco Bank transfer;
 - (n) induced Tesco Bank by fraud to write off a debt of £6,663.32;
 - (o) embezzled payments received from Tesco Bank;
 - (p) failed to disclose to the Secondary Complainer the existence of a Tesco Bank credit card account; and
 - (q) destroyed copies of correspondence and failed to maintain any file in order to conceal his own fraudulent actings;
- said findings of misconduct being found singly in respect of (a), (b), (c), (d), (e), (f), (i), (k), (l), (m), (n), (o) and (q) and *in cumulo* in respect of (g), (h), (j) and (p).

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

Edinburgh, 24 June 2022. The Tribunal, having considered the Complaint at the instance of the Council of the Law Society of Scotland against Ian Gordon Davidson, 45 Clovis Duvau Drive, Dundee; Find the Respondent guilty of professional misconduct in respect that he (a) failed to inform The Royal Bank of Scotland of the death of the deceased, (b) failed to disclose to the Secondary Complainer the existence of the Standard Security, (c) failed to make the payments to the lender, (d) failed to disclose that the Aviva death benefit had been paid out, (e) failed to obtemper the agreement in relation to the Aviva policy and misappropriated the policy proceeds, (f) falsely stated that he was in correspondence with Aviva and the Financial Ombudsman Service, (g) encashed National Savings bonds contrary to the agreement with his co-executor, (h) failed to disclose to the Secondary Complainer the value of the National Savings bonds, (i) failed to ensure that appropriate Buildings Insurance cover was in place for the property at 21 Sherbrook Gardens, Dundee, (j) failed to settled gas and electricity bills in relation to said

property, (k) failed to account for sums totalling £44,563.00 paid into accounts held in the joint names of his mother and the deceased over which he had control, (l) acted inappropriately and in breach of Rules B6.12.1 and B6.2.3 in relation to the Aviva policy proceeds, (m) failed to act appropriately and in breach of said rules in relation to the Tesco Bank transfer, (n) induced Tesco Bank by fraud to write off a debt of £6,663.32, (o) embezzled payments received from Tesco Bank, (p) failed to disclose to the Secondary Complainer the existence of a Tesco Bank credit card account, and (q) destroyed copies of correspondence and failed to maintain any file in order to conceal his own fraudulent actings, said findings of misconduct being found singly in respect of (a), (b), (c), (d), (e), (f), (i), (k), (l), (m), (n), (o) and (q) and *in cumulo* in respect of (g), (h), (j) and (p); Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person; and Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal office.

(signed)

Catherine Hart

Vice Chair

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on **23 AUGUST 2002** .

IN THE NAME OF THE TRIBUNAL



Catherine Hart
Vice Chair

NOTE

At the Hearing on 24 June 2022, the Tribunal had before it the Complaint, adjusted Answers, a Joint Minute, one Inventory of Productions for the Complainers, two Inventories of Productions for the Respondent, and written submissions from the Respondent's agent in the form of a letter dated 21 June 2022 with enclosures.

The Fiscal moved the Tribunal in terms of Rule 14(4) of the Tribunal Rules 2008 to hear and determine the Complaint in the absence of the Respondent. The Clerk gave evidence on oath regarding the service of the Notice of Hearing. It had been sent to the Respondent at the address in the Complaint by "Signed For" delivery letter of 11 April 2022. The Royal Mail Track and Trace service did not record that it had been signed for by the Respondent although it had not been returned to the Tribunal Office. The Respondent had been represented at the four procedural hearings on 9 September 2021, 16 December 2021, 17 March 2022 and 26 May 2022. The date of this hearing had been discussed at the last procedural hearing. The Respondent's agent had provided written submissions in a letter which referred to the hearing due to take place on 24 June 2022. The Tribunal was satisfied that the Respondent had been given proper notice of the hearing and was aware of it.

The Tribunal considered whether it was fair to proceed in the Respondent's absence. The Tribunal had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion in this matter "*with great caution and close regard to the overall fairness of the proceedings.*"

The Tribunal considered that if it heard the case in the Respondent's absence, there would be a disadvantage to the Respondent in being unable to give his account of events. However, the circumstances suggested that the Respondent made a deliberate choice not to appear and anticipated that the hearing would take place in his absence. It is in the public interest that regulatory proceedings take place within a reasonable time. The fair, economical, expeditious and efficient disposal of allegations against solicitors is an important consideration. In these circumstances, the balance lay in favour of proceeding in the Respondent's absence. Therefore, the Tribunal granted the Fiscal's motion to proceed.

EVIDENCE FOR THE COMPLAINERS**Witness One: Secondary Complainer Alan Davidson**

The witness gave evidence on oath. He is 64 years old. He is an IT consultant. He was formerly a solicitor but left the profession in 1999. His brother, the Respondent, is a solicitor. The Secondary

Complainer's complaint concerned the administration of their father's estate. Their father died on 29 May 2011. He left a will. The Secondary Complainer and the Respondent were executors.

While he was still alive, the Respondent had been looking after his father's affairs as he had Alzheimer's. He was deteriorating rapidly. The Respondent, with the Secondary Complainer's agreement, took over their father's financial affairs and bank accounts. After the death, the Secondary Complainer agreed that the Respondent should continue to look after their mother's affairs. Their parents' home had been owned by their father in his sole name. Their mother needed to live there. The Respondent took charge of administering the estate. He was in practice with a firm in Dundee as a consultant. By November 2016 the estate was still not wound up. The Secondary Complainer had become concerned. The Respondent resigned as executor. The Secondary Complainer instructed a solicitor and confirmation was obtained in March 2017.

The Secondary Complainer explained that the deceased had two accounts with the Royal Bank of Scotland. These were joint accounts with his wife. The Respondent did not inform the bank of the death. He continued to operate the accounts after the death.

The Secondary Complainer only became aware in November 2016 that the deceased had a standard security over the Respondent's house. He believed this related to a loan the deceased made to the Respondent to start his firm in Invergowrie. The Secondary Complainer was "vaguely aware" that the deceased had helped the Respondent but not to that extent, or that a security had been granted. The source of funds was a loan secured over the deceased's house. The Respondent had to make the mortgage payments. The Secondary Complainer asked the Respondent several times after their father's death if the mortgage was still being paid and he was assured that it was. The Respondent was paying £165 per month. However, he stopped paying it once he took over the deceased's accounts. The deceased's account was in arrears on his death. Repossession proceedings were instigated. The Secondary Complainer only became aware of this when he saw a letter to his mother from the Social Work Department. The Secondary Complainer instructed his solicitors to deal with the problem to allow his mother to stay in her home. The Respondent paid £10,000. The Secondary Complainer and his wife paid £42,000 plus court expenses. If they had not made this payment, the house would have been repossessed, their mother would have had to move out of her home, and the Secondary Complainer would have suffered a loss as the bank would be unlikely to get the best price for the property.

The deceased had three major heart operations, the last one occurring in the 1980s. He had life assurance with Aviva. As a perk of being an employee of General Accident he could obtain life insurance without

having to provide a medical report. He proposed that he took out a policy, that the sons both paid £25 per month, and he paid the balance of each monthly payment. On his death, the sons would get £10,000 each and their mother would get £5,000. This was a verbal agreement within the family. Later, the Respondent needed £5,000 for a work-related expense. The Secondary Complainer gave him a loan. The Respondent had indicated he could pay it back within weeks. This did not happen although he did pay back £1,000. The Secondary Complainer could not afford to lose £4,000. The Respondent proposed that the £4,000 could be paid from his £10,000 share of the insurance policy proceeds. The Secondary Complainer agreed as he thought this was the only way to recover the money.

After the death of their father, the Respondent showed the Secondary Complainer a letter from Aviva which offered £21,500 instead of £25,000. The claim was resubmitted. The Respondent said that the insurance company would not budge. The Respondent said he would raise a claim with the Financial Ombudsman Service. The Secondary Complainer discovered in November 2016 that the death benefit of £25,000 had been paid on 6 July 2011. It had been paid into Muir Myles Laverty's client account and then transferred to the deceased's wife's account which the Respondent controlled. She was not a beneficiary in the will. The Secondary Complainer said that the proceeds of the insurance policy were "swiftly spent" by the Respondent who went on a "spending spree".

The Secondary Complainer had been suspicious about the life assurance proceeds for a long time. His mother was constantly asking him about it. She said the Respondent was being short with her. On many occasions between July 2011 and November 2016, the Respondent misrepresented the position regarding the policy. He said that the insurance policy had not paid out and it was the subject of an appeal to the Financial Ombudsman Service. The Respondent was dodging the Secondary Complainer. If he saw him arrive at their parents' house, the Respondent would leave. His mother said the Respondent was a good son, visiting every day. However, with hindsight, the Secondary Complainer realised that these five-minute visits were for the purpose of removing mail from the house.

The Secondary Complainer knew that their father had £10,000 of premium bonds. These were in his father's name. After the deceased's death, the Secondary Complainer proposed that the bonds should be left until needed. The Respondent did not tell him that they had already been reduced to £5,000.

After the Secondary Complainer took over the executry and his mother's affairs in November 2016, he realised that the house had not been insured any year since his father's death. There were also seven months of arrears with the utility companies. The direct debits were bouncing because the account was overdrawn.

Once matters came to light in 2016, the Secondary Complainer spent some time going through the finances. He realised there were large sums going into his mother's account and then ATM payments going out. Large payments with a combined total of £44,000 went in and then over subsequent days there would be maximum ATM cash withdrawals from the account until the whole deposit had been withdrawn. The Secondary Complainer constantly asked the Respondent to account for the money. The Secondary Complainer was an executor and was entitled to know what was going on. The Respondent refused to discuss it. The Secondary Complainer raised a Sheriff Court action of account reckoning and payment as executor. Still no explanations were forthcoming. The Secondary Complainer was very concerned. The Respondent was hiding large sums of money in the account. The Respondent was still in practice. If he had a legitimate reason for his actions, he should be able to explain it to the Secondary Complainer. However, the Secondary Complainer was ignored or told he had no right to know.

The Secondary Complainer explained that the deceased had a credit card with Tesco Bank. There was a debit balance at the time of death. Two payments were made after death. The Respondent requested that Tesco Bank cancel the direct debit. He requested repayment of the final two payments. He also said the deceased was in overdraft at the date of death and that he had left no estate. The letters were sent on Muir Myles Laverty headed notepaper with the Respondent's reference. The final two payments were repaid. The first one for £788 was repaid into the joint RBS account. The second one of £513 was never accounted for.

When the Secondary Complainer took over the finances, he had many discussions with his mother about the situation. She knew nothing about what was going on. She never had any involvement in finances. Her husband had dealt with the money and then the Respondent had taken over. The Secondary Complainer said that the Respondent was responsible for the credit card balance. Following the raising of the Sheriff Court action, the Respondent and the Secondary Complainer had entered into a Minute of Agreement. This document set out that the Respondent was responsible for the credit card balance. The deceased could not have run up that kind of bill. He rarely left the house. He had Alzheimer's. It was true that the deceased was in debt at the date of death but that was because the Respondent had emptied his accounts. However, there was still estate in the form of the house, premium bonds and the insurance policy.

The Secondary Complainer described a meeting in November 2016 with the Respondent. The Secondary Complainer had opened mail and discovered the overdrawn accounts. He telephoned the Respondent and asked him what was going on. The Respondent dodged him for two weeks. There were

texts going back and forwards between them. The Respondent was evasive about meeting. The Secondary Complainer was very suspicious about the insurance policy. He decided to record the meeting. He told the Respondent to bring all the paperwork with him. He said that if he did not come to the meeting, he would inform the police of his suspicions. The meeting took place at the Secondary Complainer's house. The Respondent, the Secondary Complainer and his wife were present. The recording of the meeting was transcribed.

In the course of the meeting, the Respondent indicated that he had debts on leaving Campbell Boath. His father helped him. Business was difficult but then recovered for a while. The Respondent's wife was unwell. He went to a businessman in Dundee who lends money. The interest was high and had to be repaid within a year. When he did not pay, he was picked up and nearly killed but came to an arrangement whereby the money would be repaid with interest. The Respondent said to the Secondary Complainer, "*I've done everything you think I've done.*" By this, the Secondary Complainer understood the Respondent to mean that he had taken the proceeds of the insurance policy and the national savings certificates. The Secondary Complainer asked how much the insurance company had paid out and the Respondent said "*25, I just took it.*" The Respondent admitted he did not put a claim in to the Financial Ombudsman Service. There was nothing in the deceased's savings account. There should have been £2,000 there.

The Secondary Complainer said the Respondent should have explained the situation to the bank and offered to continue making the repayments. The deceased had a security over the Respondent's house for all sums due. The Secondary Complainer asked about the £10,000 premium bonds. The Respondent said they were "*Gone as well.*" The Respondent said that all the money had gone to business debts. He admitted he was a thief but said he would do it all over again. He said he had destroyed the documentation as he went. He referred to having had his inheritance early.

The Secondary Complainer said he only instructed solicitors when he realised the repossession was underway. He raised actions in the Sheriff Court. Decree was granted in his favour. There was a Minute of Agreement. The Secondary Complainer said he gave the Respondent every opportunity to resolve the situation and he would not respond.

The Fiscal noted the suggestion by the Respondent that in dealing with the estate, he was acting as a private individual, not a solicitor. The Secondary Complainer said this was nonsense. He wrote to Tesco Bank as a solicitor. Aviva wrote to him at Muir Myles Laverty. Everything was on the MML letterhead. The fact the Respondent was a practising solicitor was the reason why the Secondary Complainer let

him deal with the estate. He trusted him to look after their parents' affairs. The Respondent did not tell the Secondary Complainer he was not acting as a solicitor. Virgin Money said they tried to persuade him to deal with the problem for years before started repossession action.

In answer to questions from the Tribunal, the Secondary Complainer said he had no reason to believe the Respondent ever told the bank of his father's death. When the Secondary Complainer took over his mother's affairs, he had to take her in a wheelchair to the bank for an excruciating meeting where he had to try to explain what had happened. The Secondary Complainer did not know what the arrangements were with the Respondent acting as Attorney. The Tribunal asked about the Respondent's responsibilities to insure the home and pay the bills. The Secondary Complainer said the Respondent was looking after the account. Bills were not paid for seven consecutive months because the Respondent kept the account in overdraft. He was responsible for paying the insurance. Their mother was responsible for other outgoings. By not keeping the property insured, there could have been a major problem for the estate if there was a fire or other loss.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal submitted that the Tribunal should have regard to the legal principle that where a party leads no evidence, that party cannot complain if the most favourable inferences are drawn from the evidence that has been heard (ANM Group-v-Gilcomston [2008] CSOH 90 at paragraph 8).

The Fiscal highlighted the joint minute and the admitted documents. He referred the Tribunal to the adjusted Answers and the written submissions for the Respondent. He noted that the documents attached to the written submissions had not been spoken to. The Tribunal required to have regard to these under Rule 14 of the Tribunal's Rules but in his submission, they had no evidential value.

The Fiscal invited the Tribunal to find proved the averments of fact at paragraphs 4(a) to (r) in the Complaint. He said the question for the Tribunal was whether these amounted to professional misconduct. He noted that the Respondent had raised a question about whether he was acting as a solicitor. The Fiscal suggested that Alan Davidson's evidence along with the correspondence lodged proved that the Respondent was acting as a solicitor. He held himself out as a solicitor to Tesco Bank. He corresponded with institutions on his employer's headed notepaper.

The Fiscal referred the Tribunal to Law Society-v-David Hogg (2019). At page 30 of that case the Tribunal had said that although the Respondent had claimed in that case that he was not responsible

because he was the client and not the solicitor, the Tribunal rejected this argument. The Respondent in that case was both solicitor and executor. The public will often choose solicitors to be their executors due to their knowledge and skills. The Respondent in that case had been appointed because of his professional relationships. If solicitors accept appointment, they must carry out their duties diligently and without delay. Failure to do so brings the profession into disrepute. Solicitors must maintain standards in their private or commercial lives as well as in professional practice.

The Fiscal acknowledged that the circumstances of the present case are different to those in Hogg. The deceased in this case knew that the Secondary Complainer had been a solicitor and that the Respondent was a practising solicitor. The Secondary Complainer trusted his brother to deal with winding up the estate because he was a practising solicitor.

The Fiscal invited the Tribunal to find professional misconduct established in relation to all the averments of misconduct. However, he acknowledged he was on less solid ground in relation to the averment regarding payment of the gas and electricity bills. The Tribunal might have some difficulty determining to whom the duty was owed – the estate or the Respondent’s mother.

In answer to a question from the Tribunal, the Fiscal confirmed that he alleged fraud in relation to the Respondent inducing Tesco Bank to write off a debt of £6,633.32. He referred the Tribunal to what it had said about dishonesty in Law Society-v-Penman (2022) with reference to the test for dishonesty in Ivey-v-Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67.

In answer to a question about whether the Respondent was acting as a solicitor, the Fiscal referred the Tribunal to the letter written by the Respondent to Tesco Bank dated 17 April 2012 on MML headed notepaper. The Respondent had lied in this letter and as a consequence, the bank wrote off the debt. It did not matter whether the Respondent was acting as a solicitor. That level of personal dishonesty would amount to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

The Respondent’s agent provided written submissions in a letter dated 21 June 2022. He said the letter should be read alongside the Answers and the Productions lodged for the Respondent. It was noted that professional misconduct was admitted by the Respondent but only in respect of some of the conduct relied on by the Complainers.

The Respondent submitted that if it had been possible to sell his father's property the estate could have been wound up with no difficulty. However, both the Secondary Complainer and the Respondent knew that the estate could not be wound up as they could not sell the house to redeem the mortgage without dislodging their mother from the house.

The Respondent submitted that he was not engaged as a solicitor to act in the administration of the estate. He did not issue any terms of business, did not prepare an inventory of the estate and did not apply for confirmation. Matters did not come to a head between the brothers until five and a half years after the death. The Secondary Complainer would not have tolerated such a delay unless he knew there was a good reason. The Respondent had agreed to take steps to engather certain moveable items, including the proceeds of an Aviva policy. Although acting in a personal capacity, he used his employer's resources. The firm was not instructed in the administration of the estate.

The Respondent admitted that he secured a pay-out of £25,000 from Aviva. It was paid into MML's client account and then transferred to his mother's bank account. The Secondary Complainer was fully aware that the Respondent was attempting to ingather the proceeds. He had no reason to hide what he was doing. His wrongdoing was in failing to notify his co-executor that he had ingathered the funds, then misleading him about that issue and subsequently accessing these funds for his own purposes.

The Respondent admitted he had cashed £5,000 of premium bonds in his father's name. The proceeds were paid into his mother's account. The Respondent did not inform his co-executor of this. He subsequently utilised these funds for his own purposes.

The Respondent said there was no excuse for his conduct. He had convinced himself erroneously that this was a family matter, that he was taking part of his inheritance early and that the equal distribution of the estate could be addressed later. At the material time, the Respondent's financial circumstances were dire.

The Respondent attended a meeting which was secretly recorded by the Secondary Complainer. A transcript of the meeting was produced. Parties determined to to resolve matters within the family and the Respondent made every effort to do this. The Respondent offered to have his wife relinquish her interest in the estate. He agreed to resign as co-executor. He renounced his interest in his mother's estate. The Secondary Complainer obtained confirmation. He immediately raised an action for count, reckoning and payment. He raised another action seeing to call up the security the Respondent had granted in favour of the deceased. Decree was granted in favour of the Secondary Complainer. The

Respondent criticised the Secondary Complainer's actions. The Secondary Complainer reported the situation to the police but no action was taken.

The Respondent lost his job as a legal consultant. He incurred significant legal costs in the "unnecessary" legal proceedings. The Respondent is now impecunious and cannot afford to be represented at the Tribunal hearing. He has no desire to elongate the proceedings. By contrast, the Secondary Complainer is much better off. When the Respondent has fallen into arrears with monthly payments due under the Minute of Agreement, the Secondary Complainer has sought to have Sheriff Officers enforce the decrees.

Attached to the written submission was a letter said to be from the Secondary Complainer to the Respondent and an interim statement of liability.

DECISION

The Tribunal examined the Complaint and Answers, the Joint Minute, the productions lodged with the Tribunal and the submissions for the Complainers and Respondent. The Respondent had made admissions in respect of seven of the averments of misconduct. These were contained at 6.1 (c), (d), (e), (f), (g), (i) and (n) of the Complaint. The Tribunal considered the evidence of the Secondary Complainer. It found him to be a credible and reliable witness. The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in the findings in fact above.

The Respondent failed to inform the Royal Bank of Scotland of his father's death. Even if it was true that the Respondent's mother had decided to operate the account as her sole account after discussion with a member of staff at the branch, the Respondent still had a duty as executor to formally notify the bank of the death. He took steps to notify Tesco Bank and Aviva. There was a financial benefit to him in doing so. There was also a benefit to him in omitting to inform the Royal Bank of Scotland of the death.

The Respondent failed to tell the Secondary Complainer about the standard security the deceased held over the Respondent's property in respect of money the deceased had loaned to the Respondent. This affected the value of the estate. He ought to have informed his co-executor and beneficiary, the Secondary Complainer, of this highly relevant information.

The Respondent failed to make payments to the lender in respect of the loan the deceased had obtained by granting a security over his home. Failing to make the payments would result in repossession, affecting the value of the estate. The co-executor was entitled to trust his brother, a practising solicitor, to deal with this matter properly.

The Respondent failed to disclose that the Aviva death benefit had been paid out. He misappropriated the policy proceeds. He falsely stated he was in correspondence with Aviva and the Financial Ombudsman Service about a failure to pay the death benefit. He did this to conceal the fact he had misappropriated the money.

The Respondent encashed his father's premium bonds contrary to the agreement with the Secondary Complainer. He failed to disclose to the Secondary Complainer the value of the bonds, having previously encashed half of them. He concealed the true position from the Secondary Complainer, his co-executor.

He failed to ensure there was proper buildings insurance cover for the property. It was the Respondent's duty as executor to preserve the estate. He had assumed responsibility for his mother's affairs and the winding up of the estate.

The Respondent failed to settle gas and electricity bills. While this might not always fall within an executor's remit, the Tribunal was satisfied that in the circumstances of this case, this was the Respondent's responsibility. He had assumed responsibility for his mother's financial affairs. The direct debits were not paid because he had misappropriated the money that should be contained within the joint bank account held by himself and his mother. He hid mail from his mother and the Secondary Complainer.

He failed to account for sums totalling £44,563. This money was paid into accounts over which he had control and then withdrawn by the Respondent.

The Respondent acted in breach of the accounts rules in relation to insurance policy proceeds and payments from Tesco Bank. He allowed his employer's client account to be used as a way of accessing these payments. This affected the firm's ability to comply properly with the accounts rules. He induced Tesco Bank by fraud to write off a debt of £6,663.32 by telling them that the deceased had left no estate. This was a lie. He embezzled payments from Tesco Bank. He failed to disclose the existence of a Tesco Bank credit card to the Secondary Complainer. He had a duty to his co-executor to reveal the deceased's

debts. The reason he did not disclose this to the Secondary Complainer was that the debt had in fact been incurred by the Respondent.

The Respondent destroyed copies of correspondence and failed to maintain a file. The Respondent admitted he had destroyed correspondence. This was done to conceal the Respondent's fraudulent actions.

The Tribunal had regard to the test for dishonesty contained in Ivey-v-Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. According to that case, the Tribunal should first ascertain subjectively the actual state of the individual's knowledge or belief as to the facts. Once that is established, the question of whether his conduct was honest or dishonest is determined by applying the objective standards of ordinary decent people.

The Tribunal was satisfied on the basis of the admitted facts, the Secondary Complainer's evidence, and the Respondent's admissions, that the Respondent's conduct in misappropriating the Aviva funds, falsely stating that he was in correspondence with Aviva and the Financial Ombudsman Service, failing to account for sums totalling £44,563, inducing Tesco Bank by fraud to write off a debt of £6,663, embezzling payments received from Tesco Bank, and destroying copies of correspondence and failing to maintain any file in order to conceal his own fraudulent actings, was dishonest.

The Tribunal considered the conduct in the context of the test for professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313. According to that case,

"There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made."

Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. In particular, a solicitor must not behave whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful (Rule B1.2). Solicitors must not act, or omit to act, in a manner which is dishonest, reckless or intentionally misleading in respect of accounting records, balancing

books or the financial affairs of clients or the practice (Rule B6.12.1). Solicitors must not cause or knowingly permit a practice unit not to comply with Rule B6 (Rule B6.2.3).

The principles of honesty and integrity are fundamental to the profession. Members of the profession are in a very privileged position and members of the public must be able to trust that a solicitor will carry out his duties and obligations in an honest and trustworthy manner. Solicitors require to be persons of integrity. If the public is to have trust in the profession, then solicitors must observe high standards of conduct. The need to have integrity applies equally to a solicitor's private life as it does his professional conduct.

The Tribunal rejected the submission that the Respondent was not acting as a solicitor in this case. He had corresponded with Aviva and Tesco Bank on his employer's headed notepaper. He had received funds into his employer's client account. The Secondary Complainer had trusted him to deal with winding up the estate because the Respondent was still a practising solicitor. However, even if the Respondent was not acting as a solicitor, members of the profession are required to maintain standards in relation to their private or commercial lives as well as in their professional practice. The nature and extent of the dishonesty in this case was sufficient to fall within the ambit of professional misconduct.

The Respondent's conduct constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. Accordingly, the Tribunal found him guilty of professional misconduct. The Tribunal was satisfied that all averments of misconduct were capable of constituting professional misconduct singly with the exception of those at (g), (h), (j) and (p) which were found to be professional misconduct *in cumulo* with the other findings of misconduct.

The Fiscal confirmed that there were no previous conduct findings in relation to the Respondent. The Fiscal moved for the usual orders on publicity and expenses.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal considered the mitigating factors in the case. The Respondent had entered into a joint minute and admitted some of the facts. He experienced difficult financial and personal circumstances at the time of the misconduct.

The Tribunal considered the aggravating factors in the case. The misconduct persisted for a long period. It was of a repeated nature and applied to different sources of funds. There was a lack of remorse or

insight into his wrongdoing. He blamed the Secondary Complainer for a predicament entirely of his own making. Even at the meeting with his brother in November 2016, he said he would do it all again. The Respondent was dishonest and attempted to conceal his wrongdoing. The misconduct was planned. He breached his family's trust. He was a danger to the public.

The duty of honesty and integrity is a fundamental and underpinning obligation of the profession. Proven dishonesty is at the top end of the spectrum of gravity for misconduct. A finding of dishonesty will lead to a striking off in all but the most exceptional circumstances. (Bolton-v-The Law Society [1993] EWCA Civ 32 and SRA-v-Imran [2015] EWHC 2572 (Admin)).

Taking all this into account, the Tribunal was of the view that strike off was the only appropriate sanction in the circumstances. No other sanction would reflect the gravity of the offence, protect the public and sustain public confidence in the profession. The order will take effect on intimation of these findings in accordance with Section 53(6) of the Solicitors (Scotland) Act 1980.

The appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent and the Secondary Complainer. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. The Secondary Complainer will have 28 days from the date of intimation of these findings to lodge a written claim for compensation.



Catherine Hart
Vice Chair