

**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

LYNSAY KELLY, 29 St Vincent Crescent, Ayr

Respondent

1. A Complaint dated 22 October 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 Lynsay Kelly, 29 St Vincent Crescent, Ayr (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The complaint was made by the Council on behalf of three members of the public, namely Ms M, Ms B and Ms W (hereinafter referred to as "the Complaint Originators")
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent. The Tribunal fixed a virtual procedural hearing to take place on 20 January 2025.
4. At the virtual procedural hearing on 20 January 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Depute Clerk of the Tribunal gave evidence in relation to the intimation of the Notice of the Hearing. She stated that the Complaint and notice were sent to the Respondent by recorded delivery post to the address on the Complaint and that the Royal Mail track and trace system confirmed these were delivered on 8 November 2024, signed for by "Kelly". She confirmed that a notice of the virtual procedural hearing was sent by recorded delivery to the same address and that the track and

trace system of Royal Mail confirmed that this was delivered on 7 December 2024 and signed for by "Kelly". The Depute Clerk confirmed that no contact had been made by the Respondent with the Tribunal Office. The Fiscal invited the Tribunal to be satisfied that notice of hearing had been duly served within the terms of the Rules. He turned to the overriding objective set out in Rule 4 and referred to the case of GMC v Ageogba [2016] EWCA Civ 162 and submitted that it was appropriate for the Tribunal to proceed in absence of the Respondent. The Tribunal carefully considered the information before it. It noted the Rule 4 requirement to deal with cases "*fairly, justly and efficiently, always in accordance with the law and rules of natural justice.*" It noted that two notices had been served on the Respondent and there had been no communication received in response. The Tribunal considered the case cited by the Fiscal and also had regard to the case of R v Jones [2002] UKHL 5. It concluded that there seemed little to be achieved by delaying in proceeding with the Complaint. There was nothing to suggest that the Respondent would be likely to engage with further procedure. In these circumstances, the Tribunal concluded that the fair and appropriate order was to proceed in the absence of the Respondent and granted the Fiscal's motion in terms of Rule 9 of the 2024 Rules. The Fiscal invited the Tribunal to fix a virtual full Hearing of one day's duration. He anticipated leading evidence from 7 to ten witnesses. If the evidence was led by Affidavit, one day would be sufficient for the Hearing. The Fiscal moved the Tribunal, in terms of Rule 15 of the 2024 Rules, to be permitted to lead evidence by way of Affidavit. Having considered all the information before it, the Tribunal granted the Fiscal's motion to fix a virtual substantive Hearing for one day, to lead evidence by Affidavit in terms of Rule 15 of the 2024 Rules and, under Rule 22, waived the requirement of notices under Rule 15(2). The Complainers were directed to lodge the Affidavits no later than 14 days prior to the hearing. A virtual hearing was fixed for 8 April 2025 at 10am and notice thereof was duly served on the Respondent.

5. At the virtual hearing on 8 April 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Clerk of the Tribunal gave evidence in relation to intimation of the Notice of the Hearing. The Tribunal thereafter granted the Fiscal's motion to proceed with the hearing in absence of the Respondent in terms of Rule 9 of the 2024 Rules. The Fiscal referred to the Affidavits of four witnesses, together with productions previously lodged and made submissions.
6. Having given careful consideration to the terms of the Complaint, the Tribunal found the following facts established:-
 - 6.1 The respondent is Mrs Lynsay Kelly, she resides at 29 St Vincent Crescent, Ayr. Her date of birth is 28 October 1981. She was admitted as solicitor on the 15 October 2005. She was

employed by Brechin Tindall Oatts between 20 October 2005 and 31 May 2006. Then Todds Murray LLP between 5 June 2006 until 29 December 2006. Then McVey Hurricane between 8 January 2007 and 12 May 2008. Then the Criminal Injuries Compensation Authority between the 29 March 2010 and 31 January 2012. Then DW Shaw Ayr, between 1 February 2012 and 30 September 2012. Then Harper Macleod between 4 August 2014 and 26 June 2015. Then she joined JA Boyd as an employee on 15 July 2015, she then became partner in that firm in November 2017. She was the Cashroom Partner and Money Laundering Reporting Officer between 1 April 2018 and 20 May 2019 on which date she left JA Boyd. She became a consultant with McKinstry & Co Ayr on 30 May 2019 until 11 July 2019. She has not been employed as a solicitor since. She does not presently hold a practising certificate

6.2 **Miss AC's Executry**

Miss AC died on 16 February 2018. In her will dated 18 July 2018 she appointed her niece MM as executor together with the Respondent. Ms M and Ms B were the residuary beneficiaries of the estate.

6.3 Confirmation was obtained on 3 May 2018. Included within the heritable estate in Scotland was a plot of ground (hereinafter “the land”) which was valued at £3,500.

6.4 The Respondent acted in connection with the sale of the land, negotiations were protracted and the price changed during the transactions.

6.5 Ms M and Ms B made a complaint to the firm about the Respondent’s handling of the executry after she had left the practice. The person dealing with the complaint investigated the matter, set out the history of the case and noted that the Respondent had paid out too much to the beneficiaries and that the firm had written off the loss.

6.6 Ms M and Ms B made a complaint to the Scottish Legal Complaints Commissions (hereinafter “the SLCC”). The eligible complaint listed two issues in connection with (1) delay in the sale and (2) distribution of the executry funds from the sale.

6.7 The complaint was intimated by the Complainers to the Respondent on 10 July 2020. The Respondent did not reply. In the absence of a response within 21 days, formal Notices in terms of Section 48(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 and Section 15(2)(i) of the Solicitors (Scotland) Act 1980 were sent to the Respondent by email and recorded delivery on 7 August 2020. The Respondent did not reply. As the Respondent

did not engage with the Complainers, Ms M and Ms B agreed to add a complaint of lack of co-operation. This was intimated to the Respondent who did not reply.

6.8 The Professional Conduct Sub-Committee (hereinafter “the PCSC”) made no finding against the Respondent in respect of the sale and distribution of the estate funds. However, it noted that at no time had the Respondent replied to the original complaint intimated by the Complainant regarding her handling of the executry.

6.9 Mr L’s Estate – Mrs W/Ms W – Executors-Dative

Mr L died intestate on 5 October 2017. Ms W was appointed as executor dative. Mrs W instructed the Respondent to act in the administration of the Estate.

6.10 The Respondent made payment from the client account of J&A Boyd by cheque dated 14 March 2018, to SK in the sum of £276,322.36. The sum was credited to the joint account of the Respondent and SK at RBS Cumnock. The sum was debited from the executry account. The Respondent noted this in the firm account as a “payment to account”.

6.11 On 31 July 2018 the sum of £4,500 was transferred to SK. The money was debited to Mr L’s executry and the entry on the ledger was “refund of sums paid for funeral”. SK did not pay the funeral expenses. The Respondent instructed LM who prepared the firm accounts to implement the bank transfer. The Respondent noted this in the firm account as a “payment to account”.

6.12 On 22 February 2018 the Respondent sent a letter to the Bank of Scotland, headed “*Estate of the Late [WL]*” in relation to two bank accounts. She enclosed “*a letter from the executor of [Mr L’s] estate JMJ [the Respondent’s former partner in the firm] confirming that funds to be released should be paid to our client account, together with the relevant Certificate of Confirmation*”. The enclosed letter, apparently signed by JMJ stated: “*I confirm that I am the Executor Nominate of the above named deceased and funds from the abovementioned accounts should be transferred to the following account: [details of firm client account]*”. JMJ had not signed the letter. The Respondent requested “*remittance in settlement in early course*”. The copy Form C9 Certificate of Confirmation dated 12 January 2018 specified the two bank accounts as two items of the Estate and was in favour of JMJ as Executor Nominate of Mr L. The Respondent misled the bank.

6.13 In or around June 2019, JMJ, the remaining partner in the firm J&A Boyd, investigated a complaint from Mrs W regarding the handling of Mr L’s executry by the Respondent who,

by that time, had left the practice. A full search of the firm's premises was carried out but the relevant file could not be located. The Respondent was asked if she had removed the file from the practice and denied doing so. The file has not been located. Partial copy correspondence from the file was later obtained and considered by the Complainers as part of their investigations.

- 6.14 The internal firm investigation into Mrs W's complaint uncovered an apparent embezzlement of funds from the client account by the Respondent. The remaining partner of the firm made enquiries of the Respondent regarding this and both attended a meeting on 2 July 2019 to discuss matters. The Respondent initially denied taking money but, thereafter, admitted it. She stated an intention to repay the sums to the firm.
- 6.15 Employees of the Complainers were able to review some documents relating to the Executry at their Financial Inspection of the Practice Unit which took place on 3 and 4 July 2019. The documents included copy Confirmation for Mr L's Executry which purported to be signed by Mrs W on "05/18". Confirmation was sought on an Estate totalling £442,757.48. This Confirmation was not sent to the Sheriff Court. The inspection team also had sight of a further Confirmation in respect of an Estate amounting to £312,305.99 which was stamped by the Sheriff Court and signed by Mrs W on 20 April 2018; that signature was significantly different from the signature purportedly dated "05/18". The statement of intromissions provided to Mrs W did not correspond with the client ledger print out. There were a number of discrepancies and the statement did not include payments made to SK on 14 March 2018 (detailed at paragraph 6.10 above) and 31 July 2018 (detailed at paragraph 6.11 above). Many of the expenses on the statement did not bear any resemblance to the client ledger. The total sum credited to the client ledger was not detailed within the Account of Intromissions under estate ingathered. The confirmation signed on and stamped by the Sheriff Court of 26 July 2018 was not signed by Mrs W.
- 6.16 In respect of the Estate valued at £312,305.99 and described in paragraph 6.15 above, a copy of the declaration by Mrs W and the Confirmation application, on the face of it, had been signed by Mrs W. The Bond of Caution application was signed by the Respondent on 16 May 2018 and was in the sum of £318,042.59. The forms were forwarded to Ayr Sheriff Court. The declaration had not, in fact, been signed by Mrs W. The Respondent misled the court as to the true signatory. The Complainers had sight of an Eik to Confirmation dated 14 September 2018 which was with the partial copy correspondence available to them for

inspection. Mrs W did not sign that document. The Respondent held the signature out as Mrs W's on sending it to the court.

6.17 The Respondent misrepresented to the administrators of the shares of;

- a. Rank Group Plc
- b. J Sainsbury Plc
- c. Lloyds Banking Group Plc
- d. Royal Dutch Shell

That SK was the executor of the late Mr L and that SK should be registered as the shareholder and/or should be paid the proceeds following the sale of the shares. The administrators carried out these instructions.

6.18 On 19 May 2019, the Respondent sent the "completed cash account" in relation to the execruty together with a cheque for £192,721.45 "*being the total sum due to you to date*" to Mrs W. The Respondent noted that they had not yet received the balance due from the Experian shares but, rather than delay matters further, she would forward an additional cheque once funds were received. The Statement of Intromissions showed that the value of the Experian shares in the Inventory was £89,871.24 and the "Amount Realised" column in the cash statement was left blank. The statement of intromissions provided to Mrs W did not correspond with the client ledger printout. There was no mention of money received from the following companies in the statement of intromissions: Burberry Group, Santander and Royal Dutch Shell. The client ledger showed credit entries for these companies. There was no record of payments following the sale of shares.

6.19 The conduct complaint was intimated to the Respondent by email on 27 February 2020. The deadline for a response from the Respondent was 13 March 2020 but she did not reply. Thereafter, Notices in terms of Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007 and Section 15(2)(i) of the Solicitors (Scotland) Act 1980 were sent to the Respondent by email on 8 April 2020.

6.20 The Respondent did not respond to the Complainers by the date specified in the Notices sent on 8 April 2020. A further Notice in terms of Section 15 of the Solicitors (Scotland) Act 1980 was sent by email to the Respondent on 14 May.

6.21 The Complainers did not receive any communication from the Respondent following intimation of the conduct complaint in relation to Mr L's executry.

6.22 The Respondent was convicted at Ayr Sheriff Court on 19 April 2023. She received a two year custodial sentence. The extract conviction was produced and reads:-

- a. That between 14 February 2018 and 25 May 2019, both dates inclusive, at J & A Boyd Solicitors, 27 Newmarket Street, Ayr, and elsewhere Lynsay Kelly did while acting in her capacity as Solicitor of J & A Boyd Solicitors, 27 Newmarket Street, Ayr, embezzle the sum of £280,822.36 from the estate of the deceased [Mr L];
- b. That between 19 June 2019 and 5 August 2019 both dates inclusive at [address] and elsewhere Lynsay Kelly did pretend to Link Management Services Limited, 34 Beckenham Road, Beckenham; Equiniti Group PLC, Highdown House, Worthing; Scottish Windows Limited, 25 Gresham Street, London, and Barclays Bank, 1 Churchill Place, London that she and/or SK were the Executors-Dative for the estate of [Mr L], deceased, and she did submit falsified Certificate of Confirmations in her name and in the name of SK the truth being, as she well knew, that she and the said SK were not the Executor-Dative for the estate of said [L] and did thus induce said Link Asset Services Limited and Equiniti Group PLC to provide her with dividend cheques for shares held in the name of [L] with BP PLC to the value of £7,749.29; Rank Group PLC to the value of £4,669.80; J Sainsbury PLC to the value of £5,512.01; Lloyds Banking Group to the value of £865.92 and Royal Dutch Shell to the value of £4,347.67 and she did induce Scottish Widows Limited to authorise payment of £13,351.55 to SK from a Halifax Investor ISA in the name of [Mr L] and she did induce Barclays Bank to authorise payment of £18,128.34 to [SK] from an account held in the name of [Mr L] and did thus obtain dividend cheques and monies to the value of £54,624.56 by fraud;
- c. That on 26 July 2018 at Ayr Sheriff Court House, Wellington Square, Ayr, Lynsay Kelly did utter as genuine a SCTS Court Confirmation for [Mr L], deceased on which the name of [Mrs W] bore to be signed as Executor-Dative such signature being forged by presenting same to Scottish Courts and Tribunals Service, Ayr Sheriff Court House, Wellington Square, Ayr, and receive in exchange therefore Certificates of Confirmation for assets held by said [Mr L].

6.23 **Financial Compliance Inspection**

The remaining partner of the firm reported the Respondent's conduct to the Police, his insurers and the Complainers as the regulatory body on or around 28 June 2019. A Financial Compliance Inspection was thereafter conducted on 3 and 4 July 2019.

6.24 A copy of the Report produced following the inspection on 3 and 4 July 2019 was produced to the Tribunal. It concluded as follows:-

- a. The Respondent and SK used part of the sums dispersed to SK from Mr L's estate to purchase a house jointly. The Respondent acted in that purchase. The Respondent transferred the sum of £270,067.17 to the firm's client account on or around 28 March 2018. The Respondent misrepresented the source of those funds, stating that they were received in settlement of a claim against a local health board in respect of treatment received at Hospital. This was untrue.
- b. The Respondent provided fictitious settlement documentation purportedly from the Central Legal Office ("CLO"). The CLO has confirmed that there was no settlement.
- c. The Respondent was the practice unit Cashroom Manager in 2018 and 2019. The Respondent failed to produce an Accounts Certificate for the period to 31 March 2019.
- d. The Respondent did not co-operate with the Complainers' employees when they sought, under Rule B6.18.4 of the Practice Rules, to undertake an inspection of the practice unit's books and accounts in breach of her professional obligations. She did not attend the office during the inspection or the Client Protection Sub-Committee ("CPSC") hearing on 10 July 2019 to offer an explanation.
- e. The Respondent submitted an Accounts Certificate to the Complainers in respect of the accounting period ending 30 September 2018. Said certificate did not disclose any of the rule breaches resulting from the Respondent's conduct described above for the relevant period including *inter alia* breaches of Rules B6.3.1, B6.5.1 and B6.7 which resulted from her conduct.
- f. The conduct complaint was intimated to the Respondent by email on 17 October 2019 with a deadline for response of 7 November 2019. The Respondent did not reply. Thereafter, Notices in terms of Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) 2009 and Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 were sent to the Respondent by email and recorded delivery to her home address on 13 November 2019.

- g. The Respondent did not reply to the Complainers by the date specified in the Notices sent on 13 November 2019. Thereafter, a further Notice in terms of Section 15 of the Solicitors (Scotland) Act 1980 was sent to the Respondent by recorded delivery to her home address on 5 December 2019.
- h. The Respondent has not submitted any response to the Complainers in respect of the financial compliance conduct complaint.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct:-

- (a) Singly in that she acted dishonestly throughout the administration of Mr L's estate as averred and used client funds for the benefit of her and SK, and caused the funds paid to SK to be re-introduced to the firm and using them for the purchase of a property in the joint names of her and SK in contravention of Rules B1.2 and B6.12.1 of the Law Society of Scotland Practice Rules 2011.
- (b) *In cumulo*:-

 - By using client funds for the benefit of herself and SK she failed to act in the best interests of her client contrary to Rule B1.4; acted without proper authority contrary to Rule B1.5.1; and acted in a conflict of interest between her client and the firm contrary to Rule B1.7.1.
 - She acted dishonestly by denying the used of embezzled funds for her own use to her former partner contrary to Rule B1.2; and in breach of her duty to act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other and not to knowingly mislead other regulated persons in terms of Rule B1.14.1.
 - By failing to respond to the conduct complaints intimated to her by the Complainers in respect of three primary complaints; and by failing to engage with her regulator by not attending the financial compliance investigation or the Client Protection Sub-Committee, in breach of Rules B1.16, B1.18.4 and B1.18.7
 - Various breaches of the specific Accounts Rules, namely (i) allowing the client account to fall into deficit in breach of Rule B6.3; (ii) failing to remedy accounting errors in breach of Rule B6.4.1; using client funds contrary to Rule B6.5.1; failing to keep properly written records of both the Practice Unit's firm client account and the financial position of the practice, the client account and the firm account in contravention of Rules B6.7.1 and B6.7.3.

- By submitting erroneous accounts certificates and failing to submit further accounts certificates in contravention of Rule B6.15.1.

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

By Video Conference, 8 April 2025. The Tribunal having considered the Complaint dated 22 October 2024 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Lynsay Kelly, 29 St Vincent Crescent, Ayr; Finds the Respondent guilty of professional misconduct singly and *in cumulo* in respect of her breaches of Rules B1.2, B1.4, B1.5.1, B1.7.1, B1.14.1, B1.16, B6.3, B6.4.1, B6.5.1, B6.7.1, B6.7.3, B6.12.1, B6.15.1, B6.18.4 and B6.18.7 of the Practice Rules 2011; Orders that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; 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; and 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. Allow the Complaint Originator 28 days from the date of intimation of these findings to lodge a written claim for compensation, if so advised.

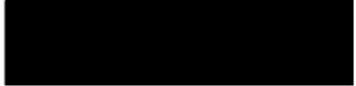
(signed)

Kenneth Paterson

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 2 OCTOBER 2025.

IN THE NAME OF THE TRIBUNAL

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Kenneth Paterson

Vice Chair

NOTE

At the virtual Hearing on 8 April 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented.

The Clerk of the Tribunal gave evidence under oath confirming that a Notice of Hearing dated 30 January 2025 was sent to the Respondent at the address in the instance of the Complaint by First Class Recorded Delivery Post. The “track and trace” system confirmed that the Notice was delivered on 3 February 2025 at 12.21pm and signed for by ‘Kelly’.

Thereafter the Fiscal invited the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. He referred to Rule 40 of the 2024 Rules and, in particular, Rule 40(4) which states that, where a party who is entitled to be present at a Hearing (including the Respondent) fails to appear, the Tribunal may proceed in their absence in terms of Rule 9 of the 2024 Rules. Rule 9 states that, where the Tribunal is satisfied that due notice of the hearing has been served, and it has taken account of the overriding objective in Rule 4, it may proceed in the absence of the Respondent.

In support of his motion, the Fiscal highlighted that the Respondent had not engaged with the proceedings at any point. No Answers were lodged in response to the Complaint and the Respondent did not attend the virtual procedural hearing on 20 January 2025. He added that it was in the interests of the public and the profession to proceed in the absence of the Respondent. The Fiscal argued that the Tribunal could consider the question of delay to proceedings and the cost of them. He submitted that further delay to the proceedings by adjourning the hearing would not serve the interests of justice.

The Tribunal accepted the evidence of the Clerk and was satisfied both in terms of its Rules and section 64 of the Solicitors (Scotland) Act 1980 that the Respondent had been given proper notice of the Hearing. Thereafter the Tribunal considered whether it was fair to proceed in the Respondent’s absence and had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion in this matter fairly.

The Tribunal noted the lack of engagement of the Respondent throughout proceedings and the fact that she had not answered the Complaint. The allegations in the Complaint were of a serious nature and these proceedings could have significant consequences for the Respondent. However, the Tribunal could not be confident that the Respondent would attend on another occasion if the Hearing were adjourned. It is in the public interest that regulatory proceedings take place within a reasonable time and important that allegations against solicitors are dealt with fairly, economically and expeditiously. In these circumstances, the Tribunal

concluded that the balance lay in favour of proceeding in the Respondent's absence and granted the Fiscal's motion.

As a preliminary issue, the Fiscal explained that the Affidavit of witness Lindsey Robertson (number 8 on the List of Productions for the Complainers) contained incorrect file reference numbers at paragraph 4. This had occurred as a result of the transposition process in preparing the document. The Fiscal had obtained another Affidavit from this witness which contained the correct references and amended the original production. The Fiscal invited the Tribunal to accept the additional Affidavit to supplement and correct the original document, albeit late.

The Tribunal considered that the correct file references were important in terms of following the evidence presented to it. The changes described by the Fiscal were numerical reference numbers and the evidence *per se* was not amended. On that basis, the Tribunal was content to receive the amended Affidavit to correct the information contained in the original production.

The Fiscal then proposed three minor amendments to the Complaint. Two were typographical errors and another was a deletion which did not prejudice the Respondent. The Tribunal noted that the proposed amendments did not change any substantial matters within the Complaint and, therefore, allowed it to be amended in those terms.

The Tribunal had before it the Complaint of 22 October 2024 (amended as detailed above) and a List of Productions lodged by the Complainers. The List of Productions contained Affidavits which were adopted by the Complainers as the witnesses' evidence-in-chief. There were no Answers or Productions lodged by or on behalf of the Respondent.

EVIDENCE FOR THE COMPLAINERS

WITNESS ONE: DENISE ROBERTSON

The Affidavit for this witness confirmed that she is employed at the Law Society of Scotland in the Member Registration Department. Her responsibilities include maintaining the Roll of Solicitors and all records of Solicitors including contact details. Paragraph 6 of the Affidavit confirmed the employment and professional practice history of the Respondent and stated that the Respondent had not held a practising certificate since 11 July 2019 but remained on the Roll of Solicitors.

WITNESS TWO: NATALIE COOKE

The Affidavit for this witness confirmed that she is employed at the Law Society of Scotland as a Financial Compliance Manager in the Regulation Directorate. Her responsibilities include managing a team of Financial Compliance Officers who visit firms regularly to ensure that solicitors are complying with the applicable regulations.

The Affidavit stated that, following contact with the Complainers from the Respondent's former firm regarding suspected financial irregularities in respect of the Respondent, the witness had attended the office of J&A Boyd Solicitors to carry out a Practice Inspection on 3 and 4 July 2019. The witness was accompanied by a colleague. The witness prepared an inspection report thereafter based on the limited paperwork available for Mr L's executry file. A copy of said report was annexed to the Affidavit and certified as a true copy. The report recorded "Key Findings" in respect of a number of breaches of the 2011 Rules as detailed in the averments of the Complaint. The report concluded that the "*risks and findings.....are of a serious nature, and.....merit submission of this report to the Client Protection Sub Committee*".

WITNESS THREE: IAN MESSER

The Affidavit for this witness confirmed that he is employed by the Law Society of Scotland as Director of Financial Compliance in the Regulation Directorate and that his responsibilities include managing a team of 16 people who carry out regulation of all financial and money laundering matters falling within the Society's statutory remit. The witness is line manager to the Solicitor to the Financial Compliance team. The Affidavit confirmed that, in 2019/2021, that position was held by Hugh Sanders and all the Client Protection Sub-Committee work involved in the Respondent's case was delegated by the witness to Mr Sanders.

The Affidavit confirmed that the witness instructed his colleague, Natalie Cooke, to carry out a Financial Compliance inspection of the firm J&A Boyd following a report of suspected embezzlement.

Attached to the Affidavit were the "Financial Compliance Committee Minutes" referred to therein. The Affidavit confirmed that the Minutes were taken from the Financial Compliance file relating to the Respondent's alleged conduct and that copies produced were true and accurate records of the Law Society of Scotland, showing the true state of the investigation carried out by the Financial Compliance Department and recorded by Mr Sanders.

WITNESS FOUR: LINDSEY ROBERTSON

The Affidavit for this witness confirmed that she is employed by the Law Society of Scotland as a Reporter to the Professional Conduct Sub-Committee ("PCSC") within the Professional Conduct team in the Regulation

Directorate. It also stated that the responsibilities of the witness' role include intimating and investigating conduct complaints which have been remitted to the Law Society by the SLCC. Following investigation, the witness considers the available facts in each case and provides her recommendation to the PCSC.

The Affidavit confirmed that the witness was given the task of intimating, investigating and providing recommendations in respect of three conduct complaints which formed the basis of the Complaint against the Respondent. Those complaints were raised by the three Complaint Originators.

The witness compiled reports in respect of each matter. "True and accurate" copies of those were annexed to the Affidavit. Each report narrated the background to the complaint, documentation considered and conclusions and recommendations drawn by the witness and presented to the PCSC.

The Affidavit stated that the Respondent was given "numerous opportunities" to engage with the investigations, and was reminded of her professional obligation to do so. The reports annexed to the Affidavit provided details of service of letters and statutory notices from the Complainers to the Respondent by post and recorded delivery. They stated that they received no response from the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal made submissions by narrating the averments contained within the Complaint and referring to specific sections of particular Affidavits and individual Productions which, in his submission, would allow the Tribunal to make individual findings in fact.

As an introductory submission, the Fiscal stated that the Tribunal would be unlikely to encounter a more clear and unambiguous case of professional misconduct than the one before it. The Respondent had been convicted of embezzling funds and the Complaint provided full details of how she did so. In addition, the Fiscal said that the Respondent had abdicated her professional responsibilities.

The Fiscal referred to the Full Extract Conviction in respect of the Respondent (number 2 on the List of Productions for the Complainers). He also referred to Rule 14(3)(a) of the 2024 Rules which states:-

"14(3) Where the respondent has been convicted of a criminal offence or offences in the United Kingdom.

(a) Production of an extract conviction, certified by a competent officer of the relevant court, will be conclusive proof of the conviction and will constitute evidence that the person in question was guilty of the offence, save in exceptional circumstances."

He explained that a delay in the criminal proceedings against the Respondent caused the original complaints regarding her conduct and individual failings in respect of the Accounts Rules to be made to the SLCC, as opposed to the Complainers being in a position to prosecute in terms of section 53(1)(b) of the Solicitors (Scotland) Act 1980. That resulted in the “technical nature” of the Complaint and the detailed narration of specific breaches of Practice Rules 2011. The Fiscal observed, however, that the conviction of the Respondent had now “caught up” with her; he submitted that the extract conviction was an admixture of evidence in support of the allegations against the Respondent in these proceedings.

The Fiscal submitted that the numerous reports lodged by the Complainers show that there were lists of specific complaints in respect of the Respondent presented to the SLCC. Those were referred back to the Complainers as conduct matters. He explained that, rather than deal with each specific issue, the Complaint was framed to group the Respondent’s conduct into “themes” to present the case to the Tribunal clearly. The Fiscal argued that a deliberate and lengthy period of dishonesty over 15 months on the part of the Respondent was at the heart of the Complaint against her. This involved the misappropriation of executry funds and the Fiscal said that one could only assume that the Respondent thought that there would be no careful consideration of her intromissions in respect of the said estate. The evidence-in-chief showed that the Respondent did eventually admit embezzling funds in excess of £300,000 and that she used several methods to do so.

Referring to paragraph A2 of the Complaint, the Fiscal said that the Respondent’s conduct represented a breach of Rule B1.16, failure to co-operate with Law Society investigations. He stated that the Respondent had failed to engage with all three conduct complaints before the Tribunal and that this prevented the fair, just and efficient investigation of alleged professional misconduct.

Paragraph A3 of the Complaint averred that the Respondent’s actions throughout the administration of Mr L’s executry were dishonest in a number of ways as described in paragraphs 6.9 to 6.22 above. The Fiscal submitted that this conduct was a breach of Rule B1.2 which requires solicitors to be trustworthy and act honestly at all times so that their personal integrity is beyond question. Acknowledging that the Tribunal may have more difficulty with this allegation, the Fiscal submitted that the evidence presented supported the assertion that the Respondent was the only person to intromit with Mr L’s executry file when she was with the practice unit. Thereafter, the file went missing when the Respondent left the business. The Fiscal added that it was a reasonable inference that the Respondent was in possession of the file and sought to cover up for her offences by removing (and possibly destroying) it. In the submission of the Fiscal, such behaviour was dishonest in terms of Rule B1.2.

With reference to paragraph A4 of the Complaint and in terms of Rule B1.4 of the 2011 Practice Rules, the Fiscal argued that embezzling funds was not acting in the best interests of the client, as required by that provision. Observing that this comment was perhaps otiose when referring to dishonesty, the Fiscal explained that he was required to look at the whole circumstances of the alleged conduct as presented to the SLCC. The Respondent did not have authority to transfer funds to SK and also acted in a conflict of interest (in breach of Rule 1.7) between her firm and the executry.

The Fiscal submitted that the conduct in paragraph A5 highlighted further dishonesty on the part of the Respondent in breach of the both Rules B1.2 (duty to act with trust and integrity) and the Rule B6.12.1 duty not to act in a dishonest, reckless or intentionally misleading manner with regard to writing up accounting records in respect of client monies, balancing books or the financial affairs of clients or the firm. The Fiscal asked the Tribunal to take into consideration that the Respondent was the designated Cashroom Partner at the time of the alleged conduct.

In relation to averments A5 and A6, the Fiscal referred again to breaches of Rule B1.2 and also B1.14.1 (relations between regulated persons and the obligation of solicitors to act in a manner consistent with such persons having mutual trust and confidence in each other). The Respondent misled her former partner by initially denying the embezzlement, which she later admitted.

The Fiscal described the specific averments in paragraph A7 as “more technical” allegations regarding the Respondent’s used of funds and breaches of the Accounts Rules contained in Rule B6.3. He submitted that the Financial Inspection Report (annexed to Natalie Cooke’s Affidavit and lodged as number 6 on the List of Productions for the Complainers) supported the allegations contained in paragraph A7. In addition, the evidence supported a breach of Rule B1.16, namely a duty to deal with the Law Society of Scotland in an open, timely and co-operative manner, so as to enable the proper exercise of their regulatory functions.

In terms of the test in the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313, the Fiscal submitted that the actions of the Respondent were serious and reprehensible, involving an egregious breach of trust which has brought the legal profession into disrepute.

DECISION

Firstly, the Tribunal had to determine what, if any, conduct had been proved by the Complainers. The Respondent had not entered proceedings or provided any explanation for her alleged conduct but, regardless

of that, it was for the Complainers to prove their case and the conduct had to be established beyond a reasonable doubt.

The starting point for the Tribunal was the Respondent's embezzlement of funds as evidenced by the Extract Conviction lodged by the Complainers. This was at the most serious level of conduct and, when considered along with the other evidence in support of the facts and circumstances, it revealed a prolonged and deliberate course of dishonesty conduct by the Respondent. The Complainers had produced Affidavits for four witnesses together with a number of documentary productions. These supported the averments of fact in the amended Complaint. They presented a cohesive and consistent picture of events. The Affidavit (and report annexed thereto) of Natalie Cooke and also that of Ian Messer supported the averments of fact in relation to the Complainers investigations, conclusions, and action taken to engage with the Respondent. The papers annexed to Ian Messer's Affidavit contained a statement from the Respondent's former partner which recorded his meeting with the Respondent and another when they met to discuss financial discrepancies on 2 July 2019. That statement confirmed that the Respondent had initially denied the alleged conduct but she later admitted it.

Lindsey Robertson's Affidavit contained copies of the complaints from all three Complaint Originators and supported the averments in relation the Respondent's conduct and also the subsequent recommendations by the Professional Conduct Sub-Committee. It also made clear reference to the Respondent's lack of engagement in response to notices served by the Complainers as part of their inspections and investigations.

The Respondent's conduct in relation to the administration of Mr L's executry and the embezzlement amounted were displayed serious dishonesty in terms of Rules B1.2 and B1.12.1, as did her actions in using the embezzled funds to purchase a property in the joint names of her and SK. The Respondent's misuse of client funds in these ways constituted a failure to act in her client's best interests and in a conflict of interest in breach of Rules B1.4.1 and B1.7.1. The Respondent had no proper authority to transfer funds to the bank account in the name of her and SK in breach of Rule B1.5.1.

The statement recording a meeting between the Respondent and her former partner (annexed to Ian Messer's Affidavit) was evidence of her failure to act in a manner consistent with regulated persons having mutual trust and confidence in each other and, therefore, a breach of Rule B1.14.1 and also constituted a lack of trust and integrity in breach of Rule B1.2.

In addition, the Financial Inspection Report attached to Natalie Cooke's Affidavit concluded that the Respondent had breached multiple Accounts Rules in a number of specific ways, namely B6.5.1, B6.12.1, B6.3, B6.15.1, B6.7.1, B6.7.3 and B6.4.1. The Tribunal accepted this evidence.

On the basis of the evidence presented to it, together with the submissions of the Complainers, the Tribunal was satisfied beyond a reasonable doubt that the Respondent had acted in the manner detailed in the averments of fact in the amended Complaint and, therefore, found the facts to be established.

The Tribunal went on to consider whether what had been established before it amounted to Professional Misconduct.

The definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313 states:-

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

The Tribunal was satisfied that the conduct described fell below the standard to be expected of a competent and reputable solicitor to a serious and reprehensible degree.

The Tribunal considered that dishonesty with clients' money is one of the most serious matters it deals with. Solicitors belong to a profession which requires high standards of ethical conduct. Members of the public must have confidence that solicitors are trustworthy and honest and that their integrity is beyond question. As was noted in McMahon v Council of the Law Society of Scotland 2002 SC 475, a solicitor who has been guilty of dishonesty with clients' money forfeits the respect and trust of the public and his colleagues and disgraces his profession. Membership of the profession is a privilege. Solicitors undertake a duty throughout their professional lives to conduct their client's affairs to their utmost ability and with complete honesty and integrity. Clients and colleagues should be able to expect these qualities of every solicitor as a matter of course. The Respondent's conduct fell far short of the accepted ethical standards of the profession.

A solicitor must retain responsibility for the books and records of his/her firm. It is essential that books and records are properly kept and that the Law Society of Scotland can ascertain the true financial position of the firm at any time. The public must have confidence that the profession will comply with the Accounts Rules and can be trusted with their money. Solicitors must also render all fees to clients. Failure to do so demeans the trust the public places in the profession.

Cashroom Managers must retain responsibility for the books and records and compliance with anti-money laundering procedures including documenting compliance. It is essential that the public can have confidence that the profession can be trusted to comply with the Accounts Rules. The Tribunal had regard to previous decisions of the Tribunal where it was held that in holding funds for clients, a solicitor is in a privileged position of trust. In order to fully protect clients, a solicitor must comply with the Accounts Rules. If solicitors are to continue to enjoy the public trust in regard to their financial affairs, they must have careful regard to all the requirements and obligations encumbered on them as contained in the Accounts Rules.

A solicitor should always be able to account to every client and this requires the solicitor to maintain full and accurate records. The detailed provisions of the Accounts Rules ensure that the funds of each client are separately safeguarded but also enable the solicitor and the Complainants to satisfy themselves at any time that the clients funds are securely held and accounted for.

Accounts certificates are one of the means by which the Law Society monitors compliance with the rules and risk to client money. The Law Society is entitled to rely on accounts certificates as showing the matters which have been identified and the measures taken to deal with them. Failure to record breaches on the Accounts

Certificates called the Respondent's integrity into question. Accounts Certificates are not a formality. They must be completed properly so that the Society can use the information to monitor compliance and assess risk.

Failure to respond to the Complainants or co-operate with its investigations and inspections hampers the Law Society in performance of its statutory duty and brings the profession into disrepute.

The Respondent's conduct included serious and reprehensible departures from those standards at the most serious end of the scale. Accordingly, the Tribunal found her guilty of professional misconduct.

SUBMISSIONS ON SANCTION, PUBLICITY AND EXPENSES

The Fiscal moved for expenses, on the basis that these usually follow success together with the usual order for publicity. He confirmed that there were no previous findings of Professional Misconduct against the Respondent.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

When considering the correct sanction to be applied, the Tribunal was mindful of the serious and deliberate nature of the Respondent's conduct over a prolonged period of time together with the need to protect the public. In addition, the Respondent's conduct was likely to seriously damage the reputation of the legal profession. The Respondent had not engaged with the Tribunal proceedings or shown any remorse. These were significant aggravating factors.

The evidence presented to the Tribunal had confirmed that the Respondent had not been employed as a solicitor since 11 July 2019 and did not presently hold a practicing certificate. This meant that the risk to the public was low. The Tribunal had regard to the case of *Bolton v The Law Society [1994] 1 WLR 51* which states that it is important ensure protection of the public and the profession when applying sanctions. When considering all the circumstances before it in this case, the seriousness of the conduct involved and protection of the public and the reputation of the profession, the Tribunal concluded that the only option was to strike off the Respondent from the Roll of Solicitors.

The Tribunal decided that it was appropriate to award expenses in favour of the Complainers due to the costs incurred in prosecuting this serious matter and the fact that the Respondent had been found guilty. The Tribunal ordered that publicity should be given to decision to include previous interlocutors and that Complaint Originators would have a period of 28 days to lodge a claim for compensation.



Kenneth Paterson
Vice Chair