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

JOHN BUNNY MCGEECHAN, c/o JBM Solicitors Ltd, 91 Graham Street, Airdrie

Respondent

1. A Complaint dated 3 October 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that John Bunny McGeechan, c/o JBM Solicitors Ltd, 91 Graham Street, Airdrie (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was a Secondary Complainer, Firm1.

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.

4. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a procedural hearing on 11 February 2019 and notice thereof was duly served upon the Respondent.

5. On 5 February 2019, of consent and on the Respondent's motion, the Tribunal adjourned the procedural hearing fixed for 11 February 2019. A procedural hearing was fixed for 6 March 2019 and notices thereof were duly served upon the parties.

6. At the procedural hearing on 6 March 2019, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present. Mr Lynch

appeared for the Respondent on behalf of James McCann, Solicitor, Clydebank. The Tribunal granted the Fiscal's motion to amend the Complaint. The amendments were intimated to Mr McCann and he had indicated in an email to the Tribunal Office that he had no objection to them being made. On joint motion, the Tribunal fixed a hearing for 21 June 2019. The Tribunal allowed the Respondent 28 days to adjust his Answers if so advised.

7. On 18 March 2019, of consent and on the Respondent's motion, the Tribunal adjourned the hearing fixed for 21 June 2019. A hearing was fixed for 11 July 2019 and notices thereof were duly served upon the parties.

8. At the hearing on 11 July 2019, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and was represented by James McCann, Solicitor, Clydebank. Of consent, the Tribunal granted the Complainer's motion to receive two additional productions for the Complainers. A Joint Minute was lodged. Of consent, the Respondent lodged originals of four Affidavits that had previously been lodged in copy form. The Complainers accepted that these were the Affidavits in the possession of the Respondent. Of consent, the Tribunal granted the Respondent's motion to receive late a List of Witnesses. The Tribunal heard evidence from one witness on behalf of the Complainers. The Complainers closed their case. Mr McCann confirmed that he was not leading any evidence. The case was continued to 17 September 2019 for submissions and deliberations.

9. At the continued hearing on 17 September 2019, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present but was represented by James McCann, Solicitor, Clydebank. The Tribunal was content to proceed in the Respondent's absence as he was represented and Mr McCann indicated that he was fully instructed and able to proceed. The Tribunal allowed the parties to amend the Joint Minute of Admissions by adding an additional paragraph. Parties made submissions based on their written submissions which had been provided in advance to the Tribunal.

10. The Tribunal found the following facts established:-

10.1 The Respondent's date of birth is 2nd April 1969. He was enrolled as a solicitor on 28th August 2002. Between September 2002 and June 2005 the Respondent was

either an employee or a partner of Beaumont & Co, Solicitors, Balnaguard, Pitlochry. Between June 2005 and December 2006 the Respondent was an employee of S J Hamilton & Co, Solicitors, Airdrie. Between December 2006 and August 2010 the Respondent was an employee of Nigel Beaumont & Co, Solicitors, Edinburgh. From September 2010 until October 2015 the Respondent was respectively partner and director of JBM Solicitors Ltd, Airdrie. Since 1st March 2015 the Respondent has been an employee of Bruce McCormack Limited, Solicitors, 1st Floor, 91 Graham Street, Airdrie.

10.2

a. Firm 1 acted for Mr LW who died in March 2008. In the circumstances set forth at sub paragraph (o) below, his estate was wound up by Firm1 on the basis of intestacy and in accordance with a deed of variation agreed by his four children, one of whom was JW. JW was the son of the deceased and a former co-habitee, CC.

b. Firm 1 received a letter, dated 5 March 2014, from the Respondent who stated that he was acting for both JW and CC. The letter was headed "Action for reduction of deed of variation". It referred to a will of the deceased which dated from 1990, and asserted that at a meeting at which the Deed of Variation was signed, and at which a solicitor from Firm 1 was present, JW had given a copy of this 1990 will to the deceased's accountant, who had ignored it. The letter stated:

"The Will of [LW] was prepared by your firm and appears to be properly executed. Your firm would, therefore, be aware of the existence of the Will whilst acting in the Deed of Variation.

It appears that the Deed of Variation was a fraud that resulted in [CC] being cheated of her rights under the will……

We are instructed to raise an action of reduction and to seek damages against all parties involved. We are also instructed to lodge complaints with various professional bodies, the police and HMRC."

c. The letter continued:

"It may be that our clients are misinformed or that there is a genuine and legal explanation or reason. If this is the case please provide it as soon as possible".

In a letter sent on the same day to Firm 3, who acted for another member of the family, the Respondent stated that:

"The solicitors who prepared the will and the Deed of Variation, the accountants and your client were aware of the existence of the will."

d. It asserted that the Deed of Variation:

"...appears ...to be evidence of fraud on the part of those who benefited from the Deed significantly and it raises questions about the actions of the law firm... involved."

e. It concluded by stating:

"We are further instructed to lodge formal complaints with the professional bodies regarding the firm of solicitors and the accountant and will be lodging a formal complaint with HMRC and the police about the deliberate undervaluing of the estate and the theft of moveable items from the estate...We would be interested to know if your client can assist us as a witness in what will be a larger action regarding the Deed of Variation and the will, in order that we can correct the fraudulent distribution of the estate of [LW]"

f. It was apparent from this letter that CC was claiming to have been married to the deceased at the time of his death.

g. A further letter was sent to the deceased's accountants, in which it was stated that

"... [CC] has been cheated out of her rights under the will and that a fairly substantial fraud has been committed."

h. That letter also indicated that complaints would be lodged with professional bodies, the police and HMRC.

i. Firm 1 received a further letter from the Respondent dated 24 March 2014 in which, after referring to the 1990 will, he stated:

"Your firm also thereafter acted for various parties in a Deed of Variation which clearly contradicts the will and which stated in paragraph 1 that [LW] died intestate. He obviously did not die intestate and your firm would have had to be aware of that, having drafted and attended to the execution of his will"

j. The Respondent further asserted that JW

"was deceived into signing the Deed of variation when a solicitor from your office was present.....The Deed of variation would therefore appear to be a fraudulent document by claiming that [LW] died intestate".

k. On the same date a further letter was sent by the Respondent to the accountants in terms which stated:

"We also note that you refer to another will and that this appears to have been unsigned. This may be viewed as a convenient and manufactured document that was created by various parties who were not happy about the will of [LW]. We are concerned to note that the solicitors who acted in the original will and the Deed are the same firm. It seems very strange that there was no reference to the validly executed will and we note that [CC], who was a beneficiary in that will, is not a signatory to the Deed. This therefore makes the Deed invalid and the whole circumstances give the impression of a deliberate fraud."

l. That letter also states *"we hold a valid signed and executed will"* (a claim which Firm 1 asserts is false, the Respondent having had sight only of a copy will).

m. On 24 April the Respondent wrote to the Institute of Chartered Accountants of Scotland intimating a complaint against the accountants. In that letter it was asserted that:

"...through a combination of actings of [Firm 1]...[JW] was deceived into signing a Deed of variation."

n. In a letter, dated 7 May 2014 and sent to Mr Ian Anderson, solicitor, by then acting for Firm 1, the Respondent stated:

"There appears to be collusion between professional parties and other members of the family".

o. At the time of the 1990 will the deceased was co-habiting with CC who was named as a beneficiary in the will. That relationship foundered in acrimonious circumstances in 1994, apparently in consequence of CC having commenced a relationship with a friend of the deceased, BB, whom she married in 1999. In about December 1997 the deceased contacted Firm 1 to make further testamentary arrangements. He considered that the provision for CC was no longer appropriate, and that provision should be made for JW who had not been born until after the execution of the 1990 will. Accordingly, on 18 December 1997 he instructed Firm 1 to destroy the 1990 will and gave instructions for the preparation of a new will. In accordance with those instructions the old will was destroyed and a new will prepared and sent to the deceased who kept it with his papers but did not sign it. The deceased contacted his accountants shortly before his death to review his will of which they held a copy. They read over to him the terms of the 1997 will. They failed to notice that it had not been signed. In those circumstances the deceased died intestate.

p. Prior to the issuing by the Respondent of the letter of 24 April 2014 condescended upon Firm 1 had informed the Respondent by the letter dated 3rd

April 2014 condescended upon at sub paragraph (u) below (i) that CC had never been married to the deceased; (ii) that at the time of his death she was in fact married to someone else; and (iii) that the 1990 will had been destroyed *animo revocandi.*

q. On 5th March 2014 the Respondent wrote to the accountants a letter which contained the following passage:-

"We understand that a meeting was convened at your offices on 11th December 2008 at which a deed of variation was signed by various beneficiaries to the estate of [LW]. We also understand that [the accountant] was present at that meeting and our client [JW] gave a copy of the will of [LW] to [the accountant]. This will appears to have been ignored by [the accountant].

We also understand that the estate of [LW], in particular the value of [Company 1] was then significantly undervalued by [the accountant]. The net result is that CC has been cheated out of her rights under the will and that a fairly substantial fraud has been committed. You will also appreciate that under valuing the estate to avoid inheritance and other taxes would be of interest to HMRC.

We are instructed to raise an action of reduction and to seek damages against all parties who enabled this fraud. We are also instructed to lodge complaints with professional bodies, the police and HMRC. This includes a complaint about [the accountant] and your firm.

It may be that our clients are misinformed, our that there is a genuine and legal explanation or reason. If this is the case then please provide it by return."

r. The accountants replied to the Respondent by letter dated 11th March 2014. They explained that the deed of variation gave effect to LW's will, which had been left unsigned in the circumstances above condescended upon. Regarding the valuation of the company, the accountants asked for better specification of the allegation, but as a generality stated that they could not see how inheritance tax fraud could be an issue given the availability of business property relief.

s. On 24th March 2014 the Respondent wrote a further letter to the accountants in which he said:-

"We also note that you refer to another will and that this appears to have been unsigned. This may be viewed as a convenient and manufactured document that was created by various parties who were not happy about the will of LW. We are concerned to note that the solicitors who acted in the original will and the deed are the same firm. It seems very strange that there was no reference to the validly executed will and we note that CC who was a beneficiary in that will is not a signatory to the deed. This therefore makes the deed invalid and the whole circumstances give the impression of a deliberate fraud.

We are also instructed that [the accountant] was personally given a copy of the valid and executed will of [LW] at or shortly after the meeting to sign the deed of variation. Within a few minutes of him receiving this will [JW] was telephoned by [SW] who discussed the will with him. It appears therefore that your firm, [Firm 1] and your client were aware of the valid will and that the deed should not have stated that LW was intestate when he died.

Notwithstanding the fact that we hold a valid signed and executed will we would be grateful if you could forward a copy of the unsigned will you refer to as this may affect our clients position. We would also be grateful if you would advise [SW] that our clients are amenable to discussing this matter and putting the situation right. Time is of the essence however as we are raising proceedings to reduce the deed and seek substantial damages from those involved."

t. On 31st March 2014 the accountants wrote to the Respondent confirming that they did indeed act for the company but otherwise the terms of the letter of 5th March 2014 were incorrect. They stated that JW had not provided a copy of the 1990 will at the meeting at which the deed of variation was signed.

u. On 3rd April 2014 Firm 1 wrote a letter to the Respondent in which they say they pointed out the following:-

"I note that you state that [CC] was married to the late [LW] at the time of his death. From the information on file that was not the case. It appears that between 1985 and 1994 [CC] had a relationship with, the late [LW]. The parties separated and the relationship appears to have been highly volatile.

In 1996 [CC] raised an Action of Declarator of Marriage and Divorce at the Court of Session. This Firm was partially involved in connection with matters. From the file it would appear that Decree was never granted and a settlement was reached.

Furthermore, on 31st July 1999 [CC] married [BB] and they lived together as man and wife at 29 Campbell Crescent, Bothwell.

I understand that [CC] subsequently divorced [BB] and I take this opportunity of enclosing a copy of the Extract Decree of Divorce which I obtained from General Register Office. The date of Decree is 14th December 2010. I also take this opportunity of enclosing a copy of the Marriage Licence Application by [CC] and [BB] and you will note that the box in connection with marital status for [CC] is ticked "never married".

This Firm had acted for [LW], who had been previously married and divorced according to our files. He had indicated clearly that he did not wish to remarry. This Firm was instructed by [LW] to make a Will which was done and the Will was dated 6th November 1990.

I note that you have forwarded a copy of the Will to [the accountants] but I would point out that the Firm subsequently received instructions from [LW] to have that Will destroyed. The Firm, as is normal practice, had retained the principal signed Will dated 6th November 1990 in the Firm's safe for safekeeping.

The copy which you forwarded to [the accountants] is just a copy, it is not the original.

[LW] also instructed the Firm in connection with the preparation of a new will which was forwarded to him on 6th January 1998. The Will which was forwarded to [LW] was not subsequently signed by him and as such, as far as I am aware, he died intestate.

As [LW] had died intestate and had been divorced, the four children of the late [LW] were entitled to succeed to his Estate hence the Deed of Variation was drawn up with the children's uncle, GW...being appointed as Executor-dative with the express intention of carrying out the late [LW]'s intentions from the unsigned (1998) Will.

I note that you state that you are acting for [JW] and [CC]. However, from the information contained in the documentation and letters which you have produced there appears to be an inherent conflict of interest between you acting for [JW] and [CC]. Please review your position and confirm if you are continuing to act.

I have checked the Firm's records and have also heard from [the accountants] and neither of us have any record of [JW] producing a Will at the meeting when the Deed of Variation, etc was discussed. If such a Will had been produced then investigations would have been carried out to check the validity or otherwise of the Will.

The Estate of the late [LW] was divided in terms of Intestate Succession taking account of the wishes of the late [LW] as per the unsigned 1998 will.

To sum up therefore, [LW], in so far as I am aware, died divorced. He was never married to [CC]. [CC] was in fact married to another at the time of [LW]'s death and as such she has no legal rights under Scots Law to any of [LW]'s Estate. [LW] had made a number of Wills previously. The will to which you refer, namely dated 6th November 1990, was destroyed under the instructions of the late [LW].

Please note that it would appear that the Firm retained a copy of the destroyed Will in the Office safe - presumably to avoid any ambiguity at a later date!

From the information which the Firm has, no fraud was perpetrated against [CC] nor [JW].

It would appear that the information contained in your letters, which has been given to you by [CC], is erroneous at best or simply fraudulent.

I am quite comfortable with the way this Firm dealt with matters on behalf of [LW] during his life and creation of the Deed of Variation following his death. As a consequence, the Firm has no proposals.

I note that [JW] had previously approached [Firm 2] raising similar matters. The matters were not pursued by that Firm.

Please note that I am not intending to become involved in protracted correspondence in connection with this matter. It would appear to me that you have been misinformed by [CC] at best!"

v. On 24th April 2014 the Respondent wrote to [the accountants] in the following terms:-

"We refer to the above and your letter of 31 March received 04 April. We have been investigating the matter further and we are continuing to obtain evidence.

Dealing first with your misunderstanding about defamation. We have a position to represent from our clients and they each instruct us with allegations of fraud. Our communications questioned the actions of your staff or partners in this matter and we are therefore raising a complaint along the appropriate chain of command within your firm. This is not defamation and we will be repeating our allegations in other communications to the authorities and in legal papers to follow.

The explanations in your letters raise as many questions as they purport to answer. Is it actually your position that you had no knowledge of the valid, signed and executed will of [LW], dated 06 November 1990 before you

convened a meeting at your office on 11 December 2008? Our clients instruct that you were very well aware of that will and that when it was presented to you at your office you went upstairs and telephoned [SW] who telephoned our client to persuade him away from using that will.

You have asked about how the estate was undervalued. We are instructed that the value of the vehicles alone in [Company 1], at the time of [LW's] death, was approaching £900,000. We note that the inventory re the distribution of the estate between the parties to the Deed has figures that show a deliberate undervaluing. We now have paper evidence to dispute your figures.

You have not explained your acting for all parties in this Deed and the estate, when clearly one of the parties benefitted to a significantly greater extent than the others and our client, who was 18 at the time, was persuaded in the meeting in your offices to sign away significant sums of money from his entitlement to the estate of [LW]. You then charged accountancy fees to our client for that. You were therefore acting for [JW] and acting to his considerable detriment.

We agree however that the correspondence has been protracted. We have asked for explanations and unfortunately the explanations are not satisfactory. We have forwarded papers to the Institute of Chartered Accountants in Scotland."

w. On 24th April 2014 the Respondent wrote to the Institute of Chartered Accountants in Scotland and said *inter alia*:-

"We are writing to your office to lodge a formal complaint on behalf of our clients about matters of fraud in the actions of [the accountant] during his actions in the affairs of the late [LW] and the distribution of the estate.

We were consulted about this matter originally by [JW] who had discovered during December 2013 that he had been deceived about the testamentary intentions of his late father and about the distribution of his late father's estate. [JW's] complaint is that through a combination of actings by [Firm 1], [the

accountants] and his older brother, [SW]. He was deceived into signing a Deed of Variation, which he was told was based on a new will created by his father.

We have written in similar terms to the Law Society of Scotland about the actions of [Firm 1] ..."

10.3 The Respondent in this letter conceded that CC was not married to LW at the time of his death but alleged that both the accountant and his firm had been complicit in fraud and by acting for all parties to the deed of variation had acted in a conflict of interest situation. The Respondent further wrote:-

"We are further instructed that from the figures prepared by [the accountant] and [Firm 1] re the distribution of the estate. There has been a deliberate under-valuing of the assets. The company...owned a significant number of motor vehicles and our client was aware that the value of these alone was approaching £900,000."

10.4 GM and AW raised an action for division and sale of the property. The defender was JW. The Respondent was instructed on behalf of the defender and CC who wished to enter the process as minuter. That notwithstanding, either in the defences as originally framed or in the pleadings as adjusted on or about 24th August 2014 the Respondent made averments as follows:-

(a) That the testator died testate with the 1990 will being valid and effectual.

(b) That the Deed of Variation was legally invalid and ineffectual.

(c) That the Deed of Variation was part of a fraudulent scheme.

(d) That the Deed of Variation was created by Firm 1, that Firm 1 knew of the existence of the 1990 will, and that Ms A of Firm 1 attended the meeting at which the Deed of Variation was executed.

(e) That the Deed of Variation was induced by facility and circumvention (in the presence of a solicitor from Firm 1 who must necessarily have stood by doing nothing).

(f) That AW was "deceived" by the combined actions of the professional firms involved (i.e. including Firm 1).

(g) That Firm 1 were complicit in a scheme to prepare the Deed of Variation without instructions from all parties to do so.

(h) That Firm 1 did not tell the parties to the Deed to take independent legal advice.

(i) That Firm 1 acted in a conflict of interest and in circumstances contrary to the rules of the profession.

(j) That the so called "fraud" has been reported to the SLCC.

(k) That the SLCC were engaged in investigating complaints against Firm 1 at the time of lodging the defences (i.e. 24 June 2014).

(l) That Firm 1 claimed the unsigned will had been lying in their safe.

(m) That the assertion in the Deed of Variation that the deceased died intestate was untrue and that this was evidence of fraud, facility and circumvention (in which Firm 1 were impliedly implicated).

10.5 The Respondent further averred that:-

"[LW] did not create or instruct the creation of any will other than the will he executed on 6 December 1990 and any purported will and the Deed of Variation referred to by the pursuers is (sic) a fraudulent creation on the part of the various parties referred to in the Answers for the Defender".

10.6 None of the allegations made by the Respondent either in correspondence or in the court pleadings had any basis in fact. The allegations about tax fraud were unsupported by professional opinion. The Respondent made the assertions in the

correspondence and the averments of fact in the pleadings in the knowledge that he had no evidence to substantiate them.

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

1. Repeatedly resorted to undignified and intemperate language in correspondence with a firm of solicitors and a firm of accountants;

2. Made allegations in correspondence with the solicitors and accountants, of dishonesty, for which he had no basis in fact or evidence to support them;

3. Having been put on notice by the solicitors of the correct position, continued to make such unfounded allegations;

4. Made similar unfounded allegations in court proceedings where he had no evidence to support them and had been put on notice of the contrary position.

12. Having heard the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 17 September 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against John Bunny McGeechan, c/o JBM Solicitors Ltd, 91 Graham Street, Airdrie; Find the Respondent guilty of professional misconduct in respect that he repeatedly resorted to undignified and intemperate language in correspondence with a firm of solicitors and a firm of accountants; made allegations in correspondence with the solicitors and accountants, of dishonesty, for which he had no basis in fact or evidence to support them; having been put on notice by the solicitors of the correct position, continued to make such unfounded allegations; and made similar unfounded allegations in court proceedings where he had no evidence to support them and had been put on notice of the contrary position; Censure the Respondent; Fine him in the sum of £3,000 to be Forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of

Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify the Secondary Complainer or any other person whose details will be anonymised; and Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation.

(signed)

Nicholas Whyte

Chair

13. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 28 OCTOBER 2019.

IN THE NAME OF THE TRIBUNAL

[redacted]

Nicholas Whyte

Chair

NOTE

11 JULY 2019

At the hearing on 11 July 2019, the Tribunal had before it a Record, A List of Witnesses for the Complainers, two Inventories of Productions for the Complainers, two additional productions for the Complainers (Productions 12 and 13), a List of Witnesses for the Respondent, two Inventories of Productions for the Respondent, various legal references for the Respondent, and a Joint Minute of Admissions. The Respondent lodged four original affidavits. The copies had previously been lodged as productions in the First Inventory of Productions for the Respondent. The Fiscal accepted that these were the affidavits in the possession of the Respondent. He submitted that any evidential value to be attached to these would be canvassed at a later stage in the hearing. The Complainers led one witness.

EVIDENCE FOR THE COMPLAINERS
WITNESS ONE: MS A

The witness was a solicitor in private practice. She had been a solicitor since 2005 having worked as a paralegal before that. She worked for Firm 1 from 2000-2015. She confirmed that Firm 1 had acted for Company 1. She only became aware of LW when he passed away. There was a request that the staff in her office check the will safe for a will. However, the firm only held a destroyed will. It was the firm's practice to hold destroyed wills together with any new will. The destroyed will was marked as such. This would have been done by JM, a partner in the firm. He acted for LW and she thought his initials were marked on the destroyed will.

She confirmed that a firm of accountants were winding up the estate. The accountants acted for the deceased and his company. She understood that they had been speaking to JM about the will and he had pointed out that the copy they had was a draft and not a signed will. The accountant told her that the deceased had telephoned him from the hospital to ask him to read out the will to him. The deceased was satisfied with it. The accountant had not noticed that the will was unsigned.

The witness was referred to Production 12 of the Complainers' First Inventory of Productions. She read this out and confirmed it was a letter dated 6 January 1998 bearing the reference of JM and sent to the deceased following a meeting with JM. The letter confirmed that the will was not signed. She did not know if the letter had been followed up. The deceased had given the will to his accountant to put with his papers. The deceased and his former partner had an acrimonious separation. There were various

court actions. The witness believed that the draft will was a result of an action going on at around that time.

The witness confirmed that Production R3 in the Respondent's Inventory of Productions was a copy of the 1990 will. This appointed the former partner and two others as executors. It made a bequest of property to the former partner. Shares in Company 1 were to be given to SW and AW. There was a bequest of £10,000 to GM and other specific bequests. 40% of the residue was left to CC, 40% to SW and 20% to AW. JW was not born at the time of the execution of this will. At the time of the instructions for the new will, JW had been born and the deceased and CC had split up.

The witness confirmed that Production R5 on the Respondent's List of Productions was the draft will from 1997. This appointed the deceased's brother and another as executors. All of the company shares, a car and a watch were left to SW. The deceased's home was to be sold and the free proceeds shared between his children, JW, AW and GM. The deceased's son SW was to have no interest in the proceeds of sale.

JM asked the witness to speak to the accountant and to prepare a Deed of Variation based on the terms of the draft will. She understood the family wanted to honour the deceased's intentions in the draft will. The accountant instructed a few changes. The house was not to be sold. The Deed of Variation was to provide for the house being transferred into the three beneficiaries' names rather than the net free proceeds split between them. The draft Deed of Variation was sent to "them all". She said that the firm could not advise the beneficiaries.

The witness was asked to look at Production 1 in the Complainers' Second Inventory of Productions. She confirmed that this was a copy of a letter dated 2 December 2008 addressed to JW enclosing the draft deed. This letter bore her reference. She confirmed that she had not been present at the meeting referred to within the letter and that the content of the letter was based on her understanding of that meeting.

The witness confirmed that Production 13 of the First Inventory of Productions for the Complainers was a copy of an extract of the Deed of Variation. This was signed by all parties on 11 December 2008. She was a witness. The deceased's brother was to be appointed as executor. Clause 3 set out the position under the Succession (Scotland) Act 1964. The legacies referred to within the deed were a variation to the unsigned will but the deed was more or less in the same terms as the draft will. The deed was signed at the offices of the accountants. Present at the meeting were the accountant, the beneficiaries' uncle, the

four children, the witness and one of the accountant's secretaries was present for part of the time. The witness recalled asking if everyone was happy to sign the deed. All of the signatories had nodded agreement and then gone on to sign it. She remembered exchanging a few pleasantries and then she left. There was no mention of any other will and no copy of any other will was produced while she was there. There was no discussion of the 1990 will. Once the Deed of Variation was signed the witness sent it for registration.

The witness confirmed that Production R1 for the Respondent was an Initial Writ seeking to have GW appointed as Executor Dative. This had been granted. Production R7 for the Respondent was a copy of the Confirmation valuing the total estate at £521,995.34. This was presented by the accountants and was signed by GW on 6 July 2009. Once confirmation was obtained, Firm 1 conveyed the title of the house into the name of the three children. This was their only involvement. The accountants were winding up the estate. The witness had been made aware from correspondence from the Respondent that CC had moved back into the house.

She remembered Firm 1 had also received a letter from Firm 2, a firm of solicitors, in about 2009. That letter had said that they could not find a will. They said that JW had gone to look for the will in his father's safe but could not find it. Firm 2 had asked why the firm had wound up the estate as intestate. The firm had responded explaining that the deed of variations was based on the draft will prepared in 1997/98 but never signed resulting in intestacy. There was no further communication from that firm.

The witness was referred to Production 1 in the First Inventory of Productions for the Complainers which she confirmed was a letter dated 5 March 2014 from the Respondent. She was shocked by the tone of the Respondent's letter and was angry. The accountant received a letter in the same vein. These letters displayed a lack of professional courtesy. This was an allegation of fraud and she was "beyond enraged". This letter still makes her speechless.

She confirmed that Production 2 in the First Inventory of Productions for the Complainers was a letter sent by the Respondent to Firm 3. Firm 3 represented GM and AW who were the pursuers in the action for division and sale. The witness noted that CC and the deceased were not in fact married, despite the claim in the letter. There had been an action for Declarator and Divorce but the parties reached a settlement. The letter also contained allegations of fraud against the firm and the accountant.

The witness confirmed that Production 7 in the Complainers' First Inventory of Productions was a letter from the Respondent to the firm of accountants dated 5 March 2014 and Production 4 in that same

inventory was a letter from the Respondent to the firm of accountants dated 24 March 2014. The second paragraph of that letter makes an allegation of fraud against Firm 1. She asked whether the author chose to ignore the possibility that a draft will can be prepared and sent out but not signed. The letter suggested that Firm 1 had fabricated the draft will in order to defraud CC. The Respondent held a photocopy of a will. The original was still in the will safe along with other superseded wills.

The witness confirmed that Production 5 in Inventory 1 for the Complainers was a letter addressed to the Institute of Chartered Accountants in Scotland (ICAS) by the Respondent dated 24 April 2014. That letter alleged that Firm 1 deceived the beneficiaries into signing the Deed of Variation. The witness noted that contrary to the claims in the letter, Firm 1 did not deal with the inventory of the estate or its valuation.

Firm 1 instructed Firm 4, Solicitors, to represent them. Production 6 was another letter from the Respondent, dated 7 May 2014 and addressed to Ian Anderson Solicitors. This letter suggested that there had been collusion between professional parties and that the Respondent had not been provided with any satisfactory explanation. This was simply not true.

The witness confirmed that Production 10 in the First Inventory of Productions for the Complainers was a letter dated 3 April 2014 from the firm to the Respondent. The firm had obtained a copy of the application by CC for a marriage certificate and thereafter an application for a divorce. When CC got married to another the application for the marriage certificate states that she had never been married before. Her relationship with her husband did not break down until after LW died. CC was divorced in 2010. In his letter to Firm 3, the Respondent said he had written to obtain a copy of the decree in the action of Declarator of Marriage, but he should have been aware from this letter of 3 April 2014 that there was no Declarator. The Respondent chose to ignore this letter and instead continued to make allegations of fraud and collusion.

The witness confirmed that Production 8 in the Complainers' First Inventory of Productions was a letter from the accountants to the Respondent dated 11 March 2014. Production 4 in that same inventory was the Respondent's reply and is dated 24 March 2014. Production 11 was a letter from the Respondent to the accountants dated 24 April 2014. The witness explained that no supporting factual basis for the suggestion that the vehicles were valued at £900,000 was ever made. She confirmed that Production 9 in the Complainers' First Inventory of Productions was a letter from the accountants to the Respondent dated 31 March 2014 and reflected her understanding of the circumstances.

The witness understood that the action for Division and Sale had prompted these letters. Such an action is difficult to defend. She understood that GM needed capital and AW also wanted to sell his share in the home. Their proposal that JW and CC buy them out did not come to anything. The Respondent represented JW in the action which was raised between January and March 2014. She believed the Respondent had written these letters so that he could say he was investigating the matters in the defences.

She confirmed that Production 6 in the First Inventory of Productions for the Complainers was a letter from the Respondent to Firm 4 dated 7 May 2014. She confirmed that Firm 1 had asked the Respondent to apologise for his allegations. She took the view that the last paragraph of this letter represented blackmail.

The witness confirmed that Production 4 in the Respondent's Second Inventory of Productions related to the action of Division and Sale and included a Minute for Decree which was granted on 9 September 2014. Since then, JW had bought out his siblings and was the sole proprietor of the house. Looking at the Record, the Respondent in Answer 2 refers to a fraudulent scheme. In Answer 3 he refers to CC as the former wife of the deceased when by this time he had been made aware that they were not married. There was no reference in these pleadings to the information given to the Respondent by Firm 1. The Respondent had had plenty of time to adjust his pleadings. In Answer 3(b), the Respondent does not explain that he had been told the original will had been destroyed. At Answer 3(c), the Respondent repeats his allegations of fraud.

The witness was referred to Production 5 in the Complainer's First Inventory of Productions. It was a letter from the Respondent to ICAS dated 24 April 2014 and her attention was drawn to paragraph 5. She confirmed that this disclosed that the Respondent was aware that CC and the deceased were not married. She also confirmed that the letter from Firm 1 in April 2014 made it clear that the two were never married. The property was never a matrimonial home. The Respondent knew that but in the pleadings in the action for Division and Sale, he continued to refer to CC as the ex-wife of the deceased. In Answer 3(c), the Respondent says that the offices of the accountants and Firm 1 were situated in adjoining streets. This is not true. The accountants' offices are more than a mile away. This answer makes specific reference to the signature of JW being obtained by fraud, facility and circumvention. This had particularly annoyed the witness.

The witness took the view that Answer 3(f) made a specific allegation of deception against her. Paragraph 3(g) suggested that Firm 1 only obtained instructions from SW and this was not correct. She had sent a letter with the draft to all of them. Contrary to Answer 3(h), that letter had invited JW to take

legal advice. She had asked the people present at the meeting if they were happy to sign the deed before they did. The suggestion that she had deliberately delayed in having the deed signed by JW until he was eighteen was ridiculous. With regard to Answer 3(i), this seemed to her to suggest that there was some sort of financial benefit to the firm by being engaged in this fraud. The firm had never acted for GM.

With regard to answer 3(j), Firm 1 would have charged a set fee. They were asked to complete parts of the estate winding up that the accountants could not undertake. JW was advised to seek independent legal advice. There was no conflict. Firm 1 were asked to put a Deed of Variation in place on the basis of the will. She had sent letters to each of the beneficiaries. She was not aware if the Respondent had ever asked for the letter to JW to be produced.

The witness said that Answer 3(j) appeared to be the Respondent stating a fact as he saw it. Answers 3(k) and 3(l) also refer to fraud. Answer 3(m) refers to a complaint to the Scottish Legal Complaints Commission (SLCC) which the Respondent should have known by then had been dismissed. ICAS was also content that there was no wrongdoing. No complaint was ever made to the police although this Answer implied that there was criminal activity.

The witness said that Answer 3(n) was wrong. It was the accountants that sent a copy of the draft will to the Respondent. This answer refers to Firm 1 "claiming" that LW had instructed the second will. In fact, he did give those instructions. The Respondent had no evidence upon which he could have rebutted these explanations. The accountants were holding the copy of the draft will. Answer 3(o) is wrong. The draft will was in the accountants' safe. Answer 3(p) appears to suggest that the Respondent does not believe the explanations given by Firm 1 and the accountants and is continuing to accuse them of fraud with no evidence. His fourth plea-in-law makes specific reference to fraud.

The Fiscal drew the witness's attention to a minute lodged on behalf of CC in the course of the action for Division and Sale which was included in Production 4 of the Respondent's Second Inventory of Productions. She agreed that the contents of this minute indicated that the Respondent must have been aware that CC was not married to the deceased and yet he maintained that position in his pleadings. She also agreed that this minute adopted for CC all of the allegations of fraud made on behalf of JW.

The witness was not aware of any enquiry undertaken by the Respondent. The first communication received was the letter in March claiming that the firm had committed a fraud. He also claimed he was holding a valid will.

The witness said that all solicitors have clients who give their version of events, but the solicitor should investigate these claims. Here, the Respondent adopted his position from the outset. The witness was asked if there was material in the Respondent's possession that should have made him refrain from these allegations. The witness responded that apart from being aware that all he had was a photocopy will, being aware that his client was not married to the deceased but in fact married to someone else by the date of death, the Respondent also had the responses from Firm 1 and the accountants. He was not in a position to contradict the explanation that the older will had been destroyed.

CROSS-EXAMINATION

The witness confirmed that she sent out the draft Deed of Variation and advised parties to take independent legal advice. She did not accept that JW was a client of the firm. She explained that the deed was drawn up on behalf of the estate.

Mr McCann drew the witness's attention to Production 13 in the Complainers' First Inventory of Productions which was the Deed of Variation. He suggested there was a conflict between the will and the position under the Succession (Scotland) Act. Assuming the 1990 will was not valid, JW would have been entitled to a quarter of the whole estate. The Deed of Variation reduced his entitlement. The witness insisted that JW was not a client of the firm. The firm was instructed by the estate. The deed was simply sent to him.

Mr McCann stated to the witness that JW was 17 when his father died and 18 when he signed the Deed of Variation. He asked whether there was a conflict between what SW and JW were to receive. The witness explained that the Deed of Variation was prepared before any inventory of the estate had been prepared and she did not have any knowledge of the value of the estate. The firm had done what they were asked to do which was to put in place the terms of the will. It did not occur to her that there was any issue. The accountants were instructed by the family in the winding up of the estate and the deed was prepared on their instruction. She did not meet any of the beneficiaries individually. She did not consider the case to be complex.

Mr McCann asked some questions which led the Chair to intervene to remind him that whether Firm 1 had acted in a conflict was not the issue before the Tribunal. Mr McCann believed that the Firm's actions in relation to JW were relevant. The witness repeated that she did not consider JW to be a client of Firm 1. The Firm had dealt with the disposition of the property by the executor to the three beneficiaries on the instructions of the executor.

Mr McCann asked the witness if there was a question of provenance of the will. The witness insisted that the firm had been instructed to destroy the older will. Mr McCann asked if the second will was not signed that meant that an anticipated revocation of the older will had not taken place. The witness disagreed and because there were instructions to destroy the will. When she drew up the deed she was aware that the will was not signed. The deceased had been sent a draft, had not signed it but had sent it to his accountant. Mr McCann asked the witness if she had questioned whether this was a case of intestacy. She responded that the firm had instructions to destroy the will. The deceased had not signed a new will and so he was intestate.

The Chairman indicated that there was a difference between destruction and revocation. Mr McCann asked the witness whether the instructions to destroy the will fly off if the instrument of revocation was subsequently reduced. The witness replied that if there are instructions to destroy a will then it should be destroyed. If a new will is not signed, then intestacy results.

Mr McCann drew the witness's attention to Production 5 in the Respondent's First Inventory of Productions and pointed to a revocation clause. He suggested that as the second will remained unsigned then there should have been a question raised as to the status of the original will. The witness again emphasised that the instructions were to destroy the original will. The revocation clause in the draft will is a standard clause.

The witness was not aware that there was acrimony between SW and JW. She was asked about the other brother. She reiterated that the brothers were not her clients.

RE-EXAMINATION

The witness agreed that receiving instructions from accountants in the winding up of an estate at that time was not something she had regularly encountered. It was not however unusual to obtain instructions from accountants in other similar circumstances such as where a member of family where the family members are partners in a business want something drawn up. She agreed that the process would be the same and that whatever was drawn up would be sent out with some standard letter telling them to take advice. She also agreed that as a matter of fact there was a business in LW's family.

The Chairman asked the witness to clarify the firm's practice with regard to the destruction of wills. The witness explained that the will was marked as destroyed. The practice was to mark "destroyed" or score

through the pages, marking that the will was destroyed as instructed and including initials. This was the standard practice of the firm and she believed that the destroyed will would have had JM's initials marked on it. She accepted that different firms have different practices with regard to what they do with regard to a destroyed will. Some will rip it up. Many firms follow the same practice as her firm, mark it as destroyed but keep it.

Mr Lynch closed his case and Mr McCann indicated that he was not leading any evidence.

The Chair asked what the Tribunal was to do with the affidavits lodged by the Respondent which had not been agreed or spoken to by any witness. Following a short adjournment, the parties indicated they agreed that the affidavits at R10 and R11 of the Respondent's First Inventory of Productions were not before the Tribunal. So far as the affidavits at R8 and R9 were concerned, the parties agreed that the Respondent had those affidavits on the dates that they were said to be executed and that those affidavits reflected the instructions the Respondent had been given by his clients. The hearing was continued to 17 September 2019 for submissions.

17 SEPTEMBER 2019

At the hearing on 17 September 2019, the Respondent was not present, but the Tribunal was content to continue in his absence as invited by his representative. The parties, with the consent of the Tribunal, amended the Joint Minute by adding the following paragraph:

"5. The documents produced as R8 and R9 are true copies of the affidavits of [JW] and [CC] which were held by the Respondent and which were executed on 9 September 2014."

The Tribunal had the benefit of having read the written submissions of the Complainers and the Respondent. These were amplified by the parties' oral submissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal said that in general terms, where a party sets out a case and his opponent offers no contradictory evidence, the inferences most favourable to the party who has presented that evidence are to be drawn. Even if it were not for that presumption, he commended the evidence of Ms A and invited the Tribunal to reject the criticisms made by the Respondent of her evidence in his written submissions.

The Fiscal submitted that the case was not about the actings of Ms A or Firm 1. It was about the Respondent and the way he expressed himself in correspondence and court proceedings. He had made and persisted in making allegations of dishonesty without foundation and in intemperate fashion.

The Fiscal noted the criticism in the Respondent's supplementary submissions that Firm 1 or the Fiscal failed to provide information. He noted that the Respondent had not attempted to use Rule 13 of the Tribunal Rules or raise an action for specification. There was no evidence that enquiries had been made and not answered.

The Fiscal invited the Tribunal to make findings in fact based on the averments of fact in the Complaint. He referred to the relevant rules. He highlighted similar Tribunal case law (Law Society v Cushnie and Law Society v Docherty). He referred to the responsibilities of a pleader referred to in Grant Estates Plc v Royal Bank of Scotland PLC 2012 SCOH 133 at paragraph 93. In that case it was noted that fraud is not something to be lightly inferred. Nor should it be lightly averred. It was said that *"Allegations of dishonesty can have very serious consequences for people, particularly those engaged in regulated professions and can blight careers, at least temporarily, even if they are eventually not substantiated."* He also relied on paragraph 9.12 of MacPhail's "Sheriff Court Practice" where it is noted that, *"allegations of fraud, bad faith or immoral conduct should not be pleaded unless expressly instructed and unless there is in the papers before the pleader clear and sufficient evidence to support them."* He noted that the Inner House had considered the same correspondence and had come to the view that it was impossible to read it as other than implying fraud (McSparran McCormick v SLCC [2016] CSIH 7 at para 34).

The Fiscal referred to the Respondent's file notes which were agreed by the Joint Minute. He submitted that these do not provide a basis for allegations of fraud. The Respondent did not give evidence and the Tribunal must construe what he had written in file notes and correspondence. He submitted that the affidavits did not take the Respondent any further. He invited the Tribunal to make a finding of professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann submitted that the pleadings reflected the affidavits the Respondent had taken. It was clear that the information came from JW and CC. He referred to McSparran McCormick v SLCC [2016] CSIH 7 at paragraph 39 where it says that *"the key part of a solicitor's duty is to represent his client*

without fear or favour, even when to do so involves imputations of serious wrongdoing against others." He submitted that this was correct, even although it creates an unpleasant duty for solicitors.

Mr McCann noted that he had asked for information from the Complainers which was not made available. However, viewing that matter broadly, there was substantial justification for what the Respondent wrote. The Complainers' submissions did not warrant a conviction for professional misconduct.

Mr McCann attempted to distinguish Law Society v Cushnie on the basis that Mr Cushnie did not have a client alleging any fraud or malfeasance. He had adopted his own extreme and eccentric view and had expressed himself in florid language.

Mr McCann explained that JW and CC consulted the Respondent in November 2013 regarding the threatened eviction from their home which was in triple joint title. This was virtually impossible to defend. He was involved for at most a year, in a case which already involved events ten years previously.

When someone dies there is a period of time where no information is available. There can be conflicting or uncertain streams of information. There needs to be an investigation into whether there is a will, whether it is valid and whether it is the most recent testamentary writing. Many people will be interested in the will. Solicitors become holders, custodiers or havers of documents. They belong to the deceased and can only be released to the person identified as executor. In circumstances of disarray the solicitor is in a position of trust. Mr McCann said substantial criticism of Firm 1 arose.

Mr McCann submitted that if the instrument of revocation (the 1997 will) was not signed, it could not revoke the original will. Therefore, the clause leaving the house to CC would still be in force. The Chair noted that the evidence was that the will had been destroyed. He asked Mr McCann for his submisisons on the meaning of "marking as destroyed." Mr McCann referred to Gloag and Henderson "The Law of Scotland" 11th Edition at p738-739. Those authors say an unsigned will is not effective to revoke an earlier will. He noted that it was not for the Tribunal to rule on the law of wills and estates. However, it was clear that Firm 1 should not have become involved in this case. They were involved in a decision to exclude CC's claim in law. There was no suggestion that she was told to take advice, or was involved at all. JW was affected because his share on intestacy would have been a quarter of the whole estate. This justified the serious criticism of Firm 1 by the Respondent. He claimed that it was fraudulent to have claimed intestacy when there was a will. Even if there's a benign motive, this Tribunal has

repeatedly held that it is unacceptable to aver intestacy where there is a will. Mr McCann submitted that there was a will because it had never properly been revoked.

The Chair asked why, if the Respondent was seeking to argue the 1990 will was still valid, he did not raise an action for reduction of confirmation. Mr McCann said the immediate problem was the Deed of Variation. The Chair noted that this depended on confirmation. Mr McCann said the Respondent was trying to save his clients' home. The Chair asked if any steps were taken to put forward the validity of the 1990 will. Mr McCann said that the Respondent had tried to avoid eviction and on losing, advised his clients to settle.

Mr McCann said he criticised the actions of Firm 1 to show the predicament of the Respondent. It was the Respondent's perception that the 1990 will was valid. He was not bound until the destroyed will was produced. The circumstances justified his belief that something illegal had happened. Perhaps with the benefit of hindsight or other information, the position might have been different.

The Chair asked about the Respondent's perception of CC's marital status. It was clear from her affidavit that she was never married to the deceased. Mr McCann said that the Respondent "got it wrong".

DECISION

The Tribunal noted that its function in this case was to consider the actions of the Respondent and not those of the Secondary Complainer or others. It decided that in the absence of a motion under Rule 13 or use of the procedure in Paragraph 12 to Schedule 4 of the Solicitors (Scotland) Act 1980, it could not consider the Respondent's submissions regarding the Complainers' alleged failure to disclose material.

The Tribunal considered the evidence and the facts proved. The evidence in the case came from the Joint Minute and Ms A. The Tribunal considered the submissions of the Fiscal with regard to the most favourable interpretation of the evidence but did not need to follow this course of action as it was satisfied that Ms A was a credible and reliable witness and accepted her evidence. She clearly felt passionately about the accusation of dishonesty, but the Tribunal did not think she exaggerated her evidence. She confirmed in cross-examination what she had said in examination in chief. She no longer worked for Firm 1 and there appeared to be no motive for her to lie.

The Tribunal was satisfied that the Respondent had written the letters in question and drafted the relevant defences. In those letters and pleadings the Respondent said that the 1997 will was convenient and

manufactured. He suggested it was not drafted until after the deceased's death. He claimed in correspondence that he held a valid signed will which he did not. He made accusations of collusion, fraud, dishonesty and deceit. He involved Firm 1, the accountants, ICAS, and other solicitors. This was bound to have an effect on the reputation of Firm and the solicitors involved.

There are circumstances where an allegation of fraud can be justified, and a solicitor's duty to make it without fear or favour. However, fraud should not be averred lightly. It should not be pleaded unless expressly instructed and unless there is in the papers clear and sufficient evidence to support it. The Respondent's clients came to him with a problem. A question arose as to whether the 1990 will had been destroyed. This could have been grounds for further investigation. The proper course of action would have been to write to Firm 1, asking questions to set up the case. If the Respondent was unsatisfied with the response, he could have raised a court action for reduction of confirmation. If he gathered affidavit evidence of facts providing the basis to draw an inference of fraud, he could have made that averment.

However, the Respondent did not investigate. In November 2013, he was aware that Firm 1 reported that the will had been destroyed. He might not have agreed, but he was aware of their position. It was therefore a huge leap to make accusations of fraud in these circumstances, particularly when he had only ever seen a copy of 1990 will. The evidence from the affidavits and the file notes of the meetings did not support such a contention. The scenario suggested by the Respondent was unlikely. Destruction of a will after an acrimonious separation and court case would not be unusual. He should therefore have proceeded with care. He did not have clear and sufficient evidence to support an accusation of fraud. It is also unclear from the file notes and affidavits that the instruction came from his clients. Even if the Secondary Complainers were mistaken or had acted incorrectly with regard to a conflict, as the Respondent claimed, that did not mean that they were acting dishonestly and did not justify an allegation of fraud. The Respondent's correspondence and pleadings demonstrated a distinct lack of care. For example, CC's affidavit, which the Respondent drafted, makes it clear that she was never married to the deceased.

In considering the question of professional misconduct, the Tribunal required to assess the Respondent's conduct in the light of the test set out in Sharp v The Law Society of Scotland 1984 SC 129. At page 134 of that case, it was said:-

"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 made."

The Tribunal was satisfied that the Respondent's conduct in making repeated allegations of dishonesty and fraud, without proper evidential basis, to fellow regulated professionals and others, and repeating these in court pleadings which required even more care, was a serious and reprehensible departure from the standards of competent and reputable solicitors. The Tribunal noted the number of letters involved which were sent to different parties. It had regard to the strength of the language used. It took into account that in the face of information to the contrary, the Respondent did not investigate further or alter his position. The rider present in some of the letters did not negate the accusations made in those letters.

The Tribunal considered the authorities highlighted by parties. The Tribunal did not think that Law Society v Cushnie could be distinguished on the basis that the Respondent in that case did not have a client. The case turns on the statements which were made.

SUBMISSIONS FOR THE RESPONDENT IN MITIGATION

Mr McCann noted that the Respondent was a late entrant to the profession. He has been a solicitor for seventeen years. He has no record with the Law Society regarding conduct matters. This case has been very stressful for him and has taken a long time to resolve. He has learned his lesson and the way he used language and the way he reacted will not be repeated. To his credit, he is undertaking exams to qualify as a solicitor in England and Wales. He is a carer for his wife who is currently unwell. Mr McCann invited the Tribunal to restrict the penalty to Censure. However, if a fine was appropriate he would be in a position to pay it. He is not a member of the Legal Defence Union and has had to fund his own defence.

DECISION ON PENALTY

The Tribunal considered that the repeated nature of the conduct which involved court pleadings and a number of different firms meant that this conduct was not at the lowest end of the scale justifying a censure. To mark the seriousness of the offending to the Respondent and the profession, the Tribunal also imposed a £3,000 fine. The Tribunal did not consider that a restriction or any more serious sanction

was required in the circumstances which related to a single case and did not appear to be part of a course of conduct.

Following submissions on expenses and publicity, the Tribunal awarded expenses to the Complainers. Publicity will be given to the decision but need not name the Secondary Complainers, the accountants or anyone other than the Respondent. The Secondary Complainer will have 28 days from intimation of the findings to lodge a claim for compensation with the Tribunal Office

Nicholas Whyte

Chair