

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

**FINDINGS**

**in Complaint**

**by**

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

**Complainers**

**against**

**MORAG WILSON YELLOWLEES, Lindsays,  
Caledonian Exchange, 19a Canning Street,  
Edinburgh**

**Respondent**

1. A Complaint dated 30 August 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Morag Wilson Yellowlees, Lindsays, Caledonian Exchange, 19a Canning Street, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A.
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 heard on 12 December 2019 and notice thereof was duly served on the Respondent.
5. At the hearing on 12 December 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented by Greg Sanders, Advocate. The Tribunal received a signed Joint Minute of Admissions. Said Joint Minute admitted the averments of fact and duty contained in the Complaint except

for the words "*represented by the Respondent until early 2011 and was*" where they appeared in paragraph 4.24 of the Complaint. The Tribunal indicated that it would proceed as if those words had been deleted from the Complaint. The Joint Minute also admitted Productions 1-4 for the Complainers and Production 1 for the Respondent. No evidence was led.

6. Having given careful consideration to the terms of the Complaint, and the Joint Minute of Admissions, the Tribunal found the following facts established:-

- 6.1 The Respondent is Morag Wilson Yellowlees who was born on 8 September 1967. She was enrolled as a solicitor on 14 December 1990. The Respondent was an employee of the firm Aitken Nairn WS from January 1991 to April 1995 and then a partner of said firm from May 1995 to January 2018. On 22 January 2018 the firm of Aitken Nairn WS merged with the firm Lindsays, Caledonian Exchange, 19a Canning Street, Edinburgh. The Respondent has been a partner of the firm Lindsays since January 2018. She holds a current practising certificate.
- 6.2 The Respondent was instructed by Mr DD and Mrs MD in 2008 in relation to the preparation of Powers of Attorney for each of them which appointed their daughters ET and PR as joint Attorneys.
- 6.3 In December 2009 ET corresponded with the Respondent regarding a new will for her mother MD. MD signed the new will in January 2010. ET and the Respondent were appointed as co-executors in said will.
- 6.4 Mr DD died on 26 January 2010. ET was appointed as his executor and she instructed the Respondent to wind up her father's estate and to sell the property at Property 1 in which he had resided with MD but title to which was in his sole name.
- 6.5 In February 2010 ET instructed the Respondent in relation to the purchase, by ET and her partner MB, of the property at Property 2. On 10 February 2010 the Respondent sent a letter to ET confirming her acceptance of ET's instructions. ET also instructed the Respondent in relation to the sale of her house at Property 3.

- 6.6 On 4 March 2010 the Respondent sent a letter to ET and MB confirming that missives had been concluded for the purchase of Property 2 with a date of entry of 4 June 2010.
- 6.7 A mortgage offer dated 25 March 2010 in the sum of £90,000 was issued by the Royal Bank of Scotland to ET and MB for the purchase of the property at Property 2.
- 6.8 On 20 May 2010 ET sent a letter to the Respondent enclosing cheques from her partner MB and her mother MD in relation to the purchase of Property 2. ET stated that:

*“We have calculated the following will cover the purchase price and the buying fees of [Property 2] and the selling fees of [Property 3]. £55,000 Dad’s estate £10,000 my legal right – which I am not taking so it’s Mum’s. £232,000 from Morrisons on 4/6/10. £90,000 RBS mortgage available 3/6/10. £94,000 (approx) Mum’s cheques (enc). £1,500 [MB]’s cheque (enc).”*

The Respondent sent a letter to ET on 24 May 2010 confirming the position regarding the money and advising that she would draft an Agreement relating to the monies being invested by MD in the property. The Respondent advised that she would send the Agreement out shortly for ET to discuss with her Mother.

- 6.9 On 28 May 2010 the Respondent sent a letter to ET referring to a recent meeting and email correspondence and enclosing a draft Minute of Revocation of MD’s Power of Attorney and a draft Minute of Agreement between ET, MB and MD regarding the purchase of Property 2. The Respondent stated in the letter:

*“Could you please discuss the terms of these draft Deeds with your Mother to check that she is happy with the wording of them and understands the implications of them. Please give me a ring to let me know if she is happy to proceed with them and we can arrange for a time for your Mother to call into the office to arrange for the principal documents to be signed.”*

- 6.10 On 31 May 2010 the Respondent spoke to ET on the telephone who advised the Respondent that she had discussed the terms of the draft documents with her Mother and her Mother had confirmed that she was happy with the wording of them. The Respondent arranged with ET that she would bring her Mother into the Respondent's office on 1<sup>st</sup> June 2010 to sign the principal paperwork.
- 6.11 The Minute of Agreement was between ET and her partner MB as the purchasers of the property at Property 2 and MD. The property was to be purchased in the joint names of ET and MB with a settlement date of 4 June 2010 and MD was investing £159,538.25 towards the purchase price of the property. The Agreement stated that the investment by MD was from monies received from her own personal funds and monies inherited from the estate of her late husband.

The Agreement further stated that if MD died before the date of the resale of the property any monies due from her estate to ET would be reduced by the sum of £159,538.25 on the understanding that no monies would require to be repaid to said estate by ET and she would not be required to sell the property. Further, in the event of the resale of the property prior to the death of MD, after deduction of the expenses of the sale of the property, MD would be repaid the monies invested by her.

The Minute of Agreement did not provide MD with a right to reside in the property at Property 2.

- 6.12 MD attended at the Respondent's office on 1 June 2010 with her daughter ET. The Respondent's file notes from that date noted that the Respondent met with MD on her own for 18 minutes discussing her late husband's executry and the purchase of Property 2. The Respondent noted that:

*"You are due to inherit the residue of the estate of your late husband, [DD]. You wish to transfer from your late husband's estate to your daughter, [ET], a sum of £64,951.85. This is made up of a payment to account to you from your late husband's estate of £55,000 and also [ET]'s legal rights to her late father's estate of £9,951.85. [ET] does not wish to claim her legal rights but wishes these monies*

*which she could claim to be passed to you and for the monies to go towards the purchase of the property at [Property 2] which is due to settle on Friday 4<sup>th</sup> June.”*

The Respondent also met with both MD and ET on 1 June 2010 for 24 minutes. The Respondent noted as follows:

*“Attendance with [MD] and [ET]. Discussing with you the terms of the Minute of Agreement prepared between [ET] and [MB] as the purchasers of [Property 2] and MD with regard to monies being invested by MD in the property at [Property 2]. Advising you that the Agreement has been prepared to protect [MD] with regard to the monies being invested by her. The property is being purchased in the joint names of [ET] and [MB] and [MD]’s name is not being put on the Title Deeds. Advising you that we are concerned that if the monies are simply gifted by [MD] then there could be a claim, if MD were to die, from MD’s son [Mr A] and possibly also from the children of [MD]’s late daughter, [PR]. You advised that there is an intention for further monies to be invested by MD in the property at a later stage and the monies used will go towards the building of a granny flat on the property. Advising you that MWY feels that there is a conflict of interest. She feels that she cannot advise both [MD] and [ET] in this connection as the interests are very different.”*

Despite this the Respondent further noted:

*“Agreeing that the Minute of Agreement as prepared could be signed at this stage as there are sufficient monies in [MD]’s estate at present to allow [ET]’s share of [MD]’s estate to be reduced by the amount being invested by MD in the property and for there to be sufficient funds to pay [Mr A] his share of the residue of the estate at the time of [MD]’s death. However, if further monies are to be invested following the sale of the property at [Property 1] then there would be insufficient cash available for [Mr A] to receive a full one-half share of [MD]’s estate. Suggesting to you that if further monies are invested at a later stage that [MD] will need to take separate legal advice with regard thereto.”*

ET and MD signed the Minute of Agreement on 1 June 2010 and the Respondent asked ET to take the deed to her partner MB for him to sign.

- 6.13 Although the Respondent identified a conflict of interest, she continued to act on behalf of all three parties.
- 6.14 In terms of the relationship between ET and MD the Respondent did not issue MD with a letter under Rule 5(2) of the Solicitors (Scotland) Practice Rules 1986 advising that the Respondent was acting on behalf of ET, MB and MD in relation to the preparation, drafting and finalisation of the Minute of Agreement between the said parties and that should a dispute arise then MD would require to consult an independent solicitor.
- 6.15 The purchase of Property 2 settled on 3 June 2010. MD was not named on the title deeds to the property and had no security in her favour in respect of the sums which she had invested.
- 6.16 On 3 June 2010 the Respondent sent an internal office memorandum to Andrew Stevenson, another partner in the firm, referring to a conversation which they had had and providing him with a file in relation to MD. The Respondent referred to her file note of her meeting with ET and MD and the Minute of Agreement which had already been signed by all parties. The Respondent stated:
- “As I mentioned to you at the meeting, my concern is that if further monies are invested by [MD] in the property there may be very little money left in [MD]’s own name and her son, [Mr A], may question this on her death as he is a residuary beneficiary of the estate.”*
- 6.17 Mr Stevenson met with MD on 8 June 2010 for 10 minutes. Mr Stevenson noted on his attendance note from that date that, although he had stated to MD that he understood that she wanted to discuss the situation regarding her investment of funds in her daughter’s purchase of Property 2 or future investment in the property, MD advised that she only wanted to talk to him about changes to her will. MD advised that she wanted to alter her will so that the residue of her estate would go to her daughter ET whom failing ET’s three children.

Mr Stevenson provided the Respondent with a copy of his attendance note and a note to her advising that it was rather odd that MD wished to speak only about changing her will and was not willing to discuss the monies which she had invested or was to invest in her daughter's property.

- 6.18 The Respondent arranged for a member of staff in her firm to place the principal Minute of Agreement with MD's will which was held by the firm.
- 6.19 On 29 September 2010 ET sent an email to the Respondent advising her that MD had paid in full the Royal Bank of Scotland mortgage which had been obtained by ET and MB in relation to the property. She also sought an appointment with the Respondent for herself and MB to update their wills.
- 6.20 On 29 October 2010 ET and MB met with the Respondent to draft new wills and a further Minute of Agreement.
- 6.21 The Respondent sent a letter to ET and MB on 2 November 2010 referring to their meeting on 29 October 2010 and enclosing their new wills and stating:

*"I have also drafted, as we discussed, a Minute of Agreement dealing with the ownership of [Property 2] and to cover the fact that [ET] has contributed a substantially larger part of the purchase price. Finally, I have drafted Codicils for you both granting a liferent in favour of [ET]'s mother".*

The Respondent asked them to confirm that they were happy with the terms of said documents.

- 6.22 The Minute of Agreement between ET and MB was signed by them on 22 November 2010. The Agreement provided that whereas ET had contributed 86% of the purchase price of Property 2 and MB had contributed 14% of said purchase price, the parties agreed that in the event of the sale of the property ET would receive 86% of the net sale price and MB would receive 14% thereof.

MD was not a party to this Agreement and was not referred to therein. The Minute of Agreement does not record MD's investment in the property which, after

repayment of the RBS mortgage, totalled £249,538.25 and makes no reference to the earlier Minute of Agreement to which MD was a party and in terms of which MD was to be repaid the sum of £159,538.25 upon the sale of the property.

There was a conflict of interest between the interests of ET, MB and MD in respect of the said Minute of Agreement.

6.23 In 2010 when the Respondent acted on behalf of ET, MB and MD in relation to the purchase of Property 2 by ET and MB and the preparation of the aforementioned Minutes of Agreement by all three parties and ET and MB respectively, ET and MD were related by blood and were established clients of the firm. MB was not an established client of the firm or a blood relative of MD.

6.24 There was a conflict of interest between the interests of MD and ET and MB in respect of the purchase of Property 2 and the terms of the Minute of Agreement which was signed by all parties. The Respondent identified that there was a conflict of interest but did not advise MD to obtain independent legal advice and representation before signing the Minute of Agreement and MD signed the said Minute of Agreement without the benefit of separate legal advice and representation.

6.25 MD continued to be a client of the firm until at least 2015.

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

7.1 She acted in a conflict of interest situation by acting on behalf of all parties in the preparation, drafting and finalisation of a Minute of Agreement between ET, MB and MD in respect of which ET, MB and MD all had separate conflicting interests in breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986 and Rule 6 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008;

7.2 She acted in a conflict of interest situation by acting on behalf of ET and MB in the preparation, drafting and finalisation of a further Minute of Agreement, dealing with the free proceeds of sale of the property at Property 2, which was



contrary to the interests of MD in breach of Rule 3 of the said Practice Rules 1986 and Rule 6 of the said Practice Rules 2008;

7.3 She failed to provide MD with a letter advising that the Respondent was acting on behalf of ET, MB and MD in relation to the preparation, drafting and finalisation of the Minute of Agreement between the said parties and that should a dispute arise then MD would require to consult an independent solicitor in breach of Rule 5(2) of the said Practice Rules 1986;

7.4 She failed to act in the best interests of MD in breach of Rule 3 of the said Practice Rules 2008.

8. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 12 December 2019. The Tribunal having considered the Complaint dated 30 August 2019 at the instance of the Council of the Law Society of Scotland against Morag Wilson Yellowlees, Lindsays, Caledonian Exchange, 19a Canning Street, Edinburgh; Find the Respondent guilty of professional misconduct in respect of her breaches of Rules 3 and 5(2) of the Solicitors (Scotland) Practice Rules 1986 and Rules 3 and 6 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008; Censure the Respondent; Fine her in the sum of £5,000 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 and the Respondent's partner but need not identify any other person; and Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation.

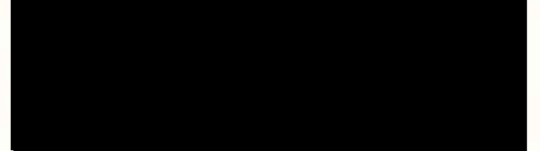
(signed)

**Beverley Atkinson**

**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 17 January 2020.

**IN THE NAME OF THE TRIBUNAL**



**Beverley Atkinson**

**Vice Chair**

**NOTE**

At the hearing on 12 December 2019, the Tribunal had before it a Complaint, Answers, a Joint Minute of Admissions, one Inventory of Productions for the Complainers, two Inventories of Productions for the Respondent, three Lists of Authorities for the Complainers, and one List of Authorities for the Respondent.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal noted that the Respondent admitted all averments of fact and duty in the Complaint. She thanked Mr Sanders and the Respondent for their cooperation in narrowing the issues in contention down to the question of professional misconduct. With reference to various Productions and Authorities, the Fiscal summarised the agreed facts.

The Fiscal submitted that the Respondent's conduct was not in accordance with the Practice Rules. She acted for three parties whose interests clearly conflicted. No reference was made in the first Minute of Agreement to MD residing in the property. MD had no legal right to reside there. She had no security regarding the sums she had invested and therefore that investment was at risk. No special advice was given to her. No suggestion was made to her that she ought to take independent legal advice. Sending MD to the Respondent's partner did not constitute independent advice and in any case, was too late. At one stage, the Respondent identified the conflict of interest but continued to act for all the parties. Matters were compounded by the second Minute of Agreement. MD was not included at all in this Minute which contradicted the first Minute of Agreement.

The Fiscal submitted that the Respondent's conduct was sufficiently serious and reprehensible to meet the test for professional misconduct. She completely failed to address an obvious conflict of interest leaving an elderly lady's interests unprotected.

A Tribunal member asked to whom letters of engagement were sent. Neither party was able to answer this question.

## SUBMISSIONS FOR THE RESPONDENT

Mr Sanders submitted that the Respondent's conduct was serious and she had never sought to deny that. However, he suggested that the conduct should properly be categorised as unsatisfactory professional conduct and the matter remitted to the Council of the Law Society of Scotland.

Mr Sanders highlighted that the Respondent did apply her mind to conflict of interest at the material time as shown by her file notes. This is not a case where a solicitor ignored the issue. Unfortunately, the Respondent did not take the necessary steps to avoid a conflict. She tried to resolve it by asking her partner to meet MD. However, this was not sufficient.

Mr Sanders noted that there was very little disagreement regarding the facts. He explained that MD continues to reside with ET and that position was last checked in September 2019. The averments of duty in the Complaint were admitted under explanation that Mr Stevenson met MD on 8 June 2010. MD at that stage was emphatic that she did not wish to discuss further the funding of the house.

Mr Sanders submitted that such agreed breaches of duty do not have to constitute professional misconduct. He made reference to the Law Society of Scotland v J 1991 SLT 662 and Sharp v The Law Society of Scotland 1984 SLT 313. Breaches of Rules *may* amount to professional misconduct. The Tribunal must take into account the gravity of the conduct and the whole circumstances. He submitted that lack of prejudice was a relevant factor.

Mr Sanders noted that the Respondent "has not covered herself in glory". However, she did identify the conflict and recorded it in a file note. She took steps to deal with it although these were inadequate and non-compliant. The matter should not have been left inhouse. Regardless of what the clients wanted or were indifferent about, it was accepted that the Respondent should have been proactive and ought to have suggested a standard security in favour of MD.

Mr Sanders submitted that fortunately, there was no prejudice to MD. She continues to reside in the property. While MD was not a party to the second Minute of Agreement, the first Minute of Agreement was not revoked. None of the Respondent's actions were malicious, for self-interest, or to deliberately

prejudice the Secondary Complainer. This was an isolated incident which occurred nine years ago. It has not been repeated before or since.

The Chair asked Mr Sanders whether he accepted that the Tribunal was entitled to consider the risk of prejudice. He agreed that it had to do so. The Chair noted that the existence of two Minutes of Agreement in conflicting terms could potentially cause a scenario in future where MD might be prejudiced. Mr Sanders said he accepted that. Enquiries carried out on his behalf reveal that there was no actual prejudice, but he could not get around the fact that if the Rules had been followed, this situation could have been avoided.

## **DECISION**

The Practice Rules provide that solicitors must not act for parties whose interests conflict. Provided no dispute arises or might reasonably be expected to arise between the parties, some exceptions apply. However, parties must be advised by the solicitor at the earliest practicable opportunity that the solicitor or firm has been requested to act for all parties and if a dispute arises, they or one of them will require to consult an independent solicitor. This advice must be confirmed in writing as soon as possible. Solicitors must also act in the best interests of their clients.

The Respondent breached these Rules. She accepted instructions to act on behalf of three parties in connection with the purchase of property and its financing. There was a clear conflict of interest between the interest of the parties. MD was providing a substantial sum of money towards the purchase price but was not to be named on the title deeds of the property and no security was granted in respect of the money she contributed. MD received no legal right to reside in the property. The Respondent identified a conflict of interest between the parties but continued to act for them all. MD was not advised that she ought to seek independent legal advice as to the implications and consequences of signing the Minute of Agreement. Instead, she was referred by the Respondent to another partner in the firm and no such advice was tendered. This case does not fall within the exceptions in which solicitors may in some cases act for connected parties. Although ET and MD were related by blood and were established clients of the firm, a dispute could reasonably have been expected to arise. In any case, the Respondent did not provide the parties with a letter in terms of the relevant Rule. The Respondent subsequently acted on behalf of ET and MD in relation to the preparation of another Minute of Agreement which did not include MD and did provide for repayment of any sums to her in the event of resale of the property. The second Minute of Agreement contradicted the terms of the first. MD was at that time still a client of the firm and her interests conflicted with those of ET and MB.

The Respondent's conduct constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. The conflict of interest between these parties was obvious and the fact that the Respondent identified it, yet failed to take appropriate steps, was an aggravating factor. This was not a mistake or a solicitor failing to apply his or her mind to a potential conflict. The Tribunal was concerned that MD might still be prejudiced as a result of losing the opportunity to take independent legal advice on the matter.

The Fiscal indicated that the Respondent's record card did not disclose any previous conduct findings.

### **SUBMISSIONS IN MITIGATION**

Mr Sanders noted that the Respondent had no disciplinary record. He said that this professional misconduct case was a very sad way to mark her 30<sup>th</sup> anniversary in the profession. The Respondent cooperated fully with the Law Society and the Tribunal. She found the proceedings stressful and embarrassing. They had been hanging over her for a number of years. Even the hearing on 12 December 2019 might not draw a line under matters.

Mr Sanders referred to the references lodged on the Respondent's behalf. He asked the Tribunal to deal with the Respondent as leniently as possible. He noted that there was no malice in her actions. The circumstances, he submitted, merited a "kinder disposal". In answer to a question from the Chair regarding the Respondent's means, Mr Sanders said that the Respondent was in a position to pay a fine but he hoped the Tribunal would consider a Censure.

The Fiscal moved for expenses. Mr Sanders indicated that these were conceded. Submissions on publicity were invited but none were made.


### **DECISION ON SANCTION, EXPENSES AND PUBLICITY**

The Tribunal had regard to its indicative outcomes guidance and the references lodged on behalf of the Respondent. It noted that the Respondent appeared to be respected professionally. The conduct was an isolated incident in a lengthy career. There was no malice or dishonesty. The Tribunal was satisfied that the conduct was unlikely to be repeated and a restriction was not necessary to protect the public.

However, the Respondent identified the conflict yet took insufficient steps to deal with it. Drafting the second Minute of Agreement has made the situation worse. There was a concern that MD's investment could still be at risk. This would be a significant amount of money for her to lose. The situation remains unresolved, with two competing Minutes of Agreement in place. The Respondent did not appear to have full insight into the seriousness of her conduct.

In all these circumstances a Censure and Fine was the appropriate disposal. The failure to deal with the initial conflict made this case more serious than other conflict cases as did the risk of prejudice to the client.

The appropriate award of expenses was one in favour of the Complainers. The decision will be given publicity but only the Respondent and her partner need to be named in terms of paragraphs 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. There was no requirement to name any other person as publication of third parties' personal data was likely to be detrimental to their interests. The Tribunal allowed the Secondary Complainer 28 days from the date of intimation of these findings to lodge a claim for compensation if so advised.



**Beverley Atkinson**  
**Vice Chair**