

**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

**THOMAS C STEEL, Brunton Miller, Herbert
House, 22 Herbert Street, Glasgow**

Respondent

1. A Complaint dated 22 November 2022 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Thomas C Steel, Brunton Miller, Herbert House, 22 Herbert Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal set the matter down for a virtual procedural hearing on 6 June 2023 and notice thereof was duly served on the Respondent.
5. At the virtual procedural hearing on 6 June 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal fixed a virtual hearing for 29 August 2023.

6. A revised Complaint dated 4 August 2023 and a Joint Minute of Admissions were lodged with the Tribunal.
7. At the virtual hearing on 29 August 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. No evidence was led. Parties made submissions.
8. Having given careful consideration to the terms of the revised Complaint and the Joint Minute of Admissions, the Tribunal found the following facts established:-
 - 7.1 The Respondent is Thomas C Steel of Brunton Miller, Solicitors, Herbert House, 22 Herbert Street, Glasgow. The Respondent's date of birth is 4 February 1959. He was enrolled as a Solicitor on 11 January 1983. He practises as a Solicitor. He has been a Partner in Brunton Miller, Solicitors, since 1 July 1987 and the Cash Partner since 1 July 2016.
 - 7.2 AM died on 18 January 2011. In terms of AM's will, the Respondent was appointed as the sole executor of his estate. The residuary beneficiaries of the estate were AM's sister, MM, and AM's partner, LH.
 - 7.3 Prior to his death, AM lived with LH in a property at Nithsdale Road, Glasgow. The title for the property was in AM's name alone. There was an outstanding mortgage secured over the flat in favour of Halifax plc.
 - 7.4 In addition to the aforementioned property, AM had also owned another heritable property in Sauchiehall Street, Glasgow, which also had an outstanding mortgage with Halifax plc. At the time of AM's death this property was tenanted via a firm of letting agents.
 - 7.5 AM was also the sole director and sole shareholder of two limited companies which operated licensed trade businesses.
 - 7.6 Prior to AM's death and using the services of a different firm of solicitors for a property purchase, AM had concluded missives to buy a property in Broomhill Gardens, Glasgow at a price of £315,000 with a date of entry of 25 February 2011.

- 7.7 On the day after AM died, the Respondent contacted the firm of solicitors who had been acting for AM regarding the Broomhill property, the bank through which AM had operated his business bank accounts and the firm of solicitors (“SM”) who were acting for the seller of the Broomhill property. The Respondent advised SM that due to the death of AM they would be unable to meet their obligations in relation to the completion of the purchase of the property in Broomhill Gardens, Glasgow.
- 7.8 The Respondent met with both the residuary beneficiaries on 16 February 2011 and throughout March 2011. The Respondent commenced investigation of the estate and sought information by contacting financial organisations and all other relevant parties to advise them of AM’s death and to seek details regarding assets and debts. This included writing to Halifax plc on 22 March 2011 about the mortgage over the flat.
- 7.9 Throughout April and into May 2011 the Respondent received responses to the various enquiries made relating to the estate. This included a letter from Halifax plc on 7 May 2011 advising there was an outstanding amount of £351.84 on the flat’s mortgage.
- 7.10 On 2 June 2011, SM sent written notification to the Respondent, insisting that the purchaser implement the missive by paying the price and all other sums due within 14 days and failing payment they gave notice of an intention to rescind the missives.
- 7.11 By letter dated 2 June 2011, the Respondent advised LH about the notice issued by SM. The Respondent also raised the need for valuations of the flat and the Sauchiehall property.
- 7.12 The Respondent contacted Halifax plc on 2 June 2011 to clarify mortgage information for both the flat and the Sauchiehall property. Halifax plc faxed a statement on 3 June 2011 for the flat’s mortgage showing that the amount due on 7 June 2011 would be £122,528.44. A separate statement was provided for the Sauchiehall property.
- 7.13 By September 2011, the Respondent had ingathered most of the information needed to complete the Inventory to apply for Confirmation in AM’s estate.

- 7.14 On 10th October 2011, agents acting for MM contacted the firm seeking information about what stage the administration of the estate was at and what the updated situation was with his assets. The Respondent did not respond to MM until 12 December 2011.
- 7.15 By letter dated 21 October 2011 regarding Broomhill, SM wrote *"Our client requires payment of his debt by implementation of his contract and considers there has been an unacceptable delay in applying for Confirmation occasioned by the interests of the beneficiaries being favoured to the prejudice of the creditors. We will accordingly proceed with a Petition for the appointment of an Executor Creditor without further intimation."*
- 7.16 The Inventory (Form CI) and associated Inheritance Tax form IHT 400 with schedules were all prepared and submitted to H M Revenue & Customs on 25 October 2011. Once stamped by HMRC, same were submitted to Glasgow Sheriff Court on 3 November 2011
- 7.17 Confirmation was granted in favour of the Respondent as executor on 8 November 2011.
- 7.18 MM's agents sent reminders regarding their letter of 10 October 2011 on 9 November 2011 and 1 December 2011.
- 7.19 The Respondent replied to MM's agent on 12 December 2011 explaining that *"this particular Estate is proving to be somewhat complex"*. He provided a copy of AM's will and gave details of AM's property interests being the flat, and the Sauchiehall and Broomhill properties. In addition, he gave information about the trading outlets, other assets, details of the mortgages and debts and a copy of the Confirmation. He asked that matters be discussed with MM. He also stated: *"Matters will require to be agreed in relation to the two heritable properties owned by the deceased and also his shareholding in the two Limited Companies which run the commercial interests."*
- 7.20 Having received Confirmation, steps were taken by the Respondent in December 2011 to ingather funds and payment of some outstanding invoices and debts were then made.

- 7.21 On 18 December 2011, the Respondent approached SM to enquire if their client would consider rescinding the concluded missive with AM and take back responsibility for the property and its ongoing marketing under reservation of the claim due to SM's client by AM's estate. SM rejected same and reiterated that their client sought implement of the contract. However, on 12 January 2012 SM wrote saying notwithstanding the letter of the 10, their client would give them 6 weeks to finalise matters provided they used an estate agent nominated by them to market Broomhill and that the executor accepted any reasonable offer.
- 7.22 By letter dated 23 December 2011, regarding the flat, MM's agent asked "*Our client has asked us to ascertain what the position is with regard to the payment of the mortgage and the other utility bills. Would you ascertain whether [LH] is considering purchasing the property and if not, would she give consideration to the property being placed on the market?*" The Respondent and MM's agent then exchanged correspondence on various matters pertaining to the estate during January 2012.
- 7.23 By the end of January 2012, SM were warning that if matters regarding Broomhill were not progressed as the seller expected, they anticipated "*more decisive action being instructed.*" They also sought a proposal on interim payments with interest to date to be paid in full and then monthly.
- 7.24 On 6 February 2012 SM served a Writ relating to an action for specific implement of the Broomhill missives raised against the Respondent as executor of AM. The Respondent instructed one of his litigation colleagues in the firm to act for him in this matter. Defences to same were lodged in early March 2012.
- 7.25 On 11 April 2012 MM's agents sent a reminder to an unanswered letter of 6 February 2012.
- 7.26 On 12 April 2012 the Respondent sought updated redemption statements for the mortgages affecting the flat and the Sauchiehall property.
- 7.27 By late April 2012 the beneficiaries wanted to change the estate agents who were marketing Broomhill and the Respondent contacted estate agents who were based in the West End of Glasgow to ascertain if they were interested in taking same on.

- 7.28 In April 2012, the Respondent approached several mortgage lenders to ascertain if loan finance could be secured to enable completion of the purchase of Broomhill. No lender was found.
- 7.29 The Respondent replied to MM's agent on 26 April 2012 and updated them as to Broomhill, PAYE and NI issues relating to the businesses, the flat and the Sauchiehall property. Regarding the flat he advised that no rent had been paid during LH's occupation since AM's death. He also said:
"While this is a somewhat delicate matter, we are addressing this with [LH] as some form of agreement will require to be reached to deal with this particular matter. With the consent of the lenders, who are Halifax, Bank of Scotland no mortgage repayments have been made and we await an up to date settlement figure...so we are aware of the current position with regard to these borrowings."
Regarding the Sauchiehall property, he advised that rental income was being paid to the firm, that certain small debts due by the estate had been paid and the mortgage position was the same as for the flat i.e. that no payments were being made.
- 7.30 A letter was also sent to LH on 26 April 2012. Regarding the flat, the Respondent stated:
"As you will be aware one of my duties as Executor is to ingather and realise all items of Estate which were held by [AM]. If any assets are not to be realised as they are tenanted by a third party, then the Estate requires to ensure that rent is being paid. I have been specifically asked by [MM]'s solicitors and also in the Court pleadings with [SM] to confirm the basis on which your occupation of [the flat] is regulated. ...the matter does require to be addressed now and perhaps you can let me have your comments here."
- 7.31 At the end of April 2012 new estate agents were instructed to market Broomhill Gardens.
- 7.32 MM's agents wrote again to the Respondent on 16th May 2012. Regarding both the flat and the Sauchiehall property they recorded MM's concern that no mortgage payments had been paid nor any rental paid by LH. Their view was that if LH wanted to remain in the flat then her residence would have to be put onto a formal footing.

- 7.33 On 1 June 2012 the Respondent made a proposal to SM for the estate to pay the penalty interest relating to Broomhill to date and then make monthly payments to account of same, that the estate agents be instructed to aggressively market the property and for the Court action to be sisted with a further review on 30 September 2012. The penalty interest to date was paid on 20 June 2012 and the action sisted.
- 7.34 The Respondent gave a further update to MM's agent on the various issues on 20 June 2012. Regarding the flat he advised that he had asked LH on a couple of occasions to be in touch to discuss regulating her occupancy but that she had not reverted to him. He also advised he was in touch with Halifax plc to bring the mortgage account up to date although in fact he did not contact them until 17 July 2021. Similarly, re the Sauchiehall property he was contacting Halifax plc to bring the mortgage up to date. He further reported that the tenant had served notice to quit Sauchiehall so the letting agents had been asked to find another tenant.
- 7.35 MM's agents wrote again on 6 July 2012. Regarding the flat they advised that MM was becoming increasingly concerned at the lack of progress insofar as the nature of LH's occupation was concerned. They sought LH's views on whether she might want to purchase the flat but that her continuing to live there without paying rent was untenable.
- 7.36 On 17 July 2012 the Respondent wrote to Halifax plc about the mortgages affecting both the flat and the Sauchiehall property saying that in the administration of the estate they had realised funds and would wish to make a payment to account of the two mortgages to cover interest from the date of AM's death.
- 7.37 The Respondent wrote to LH on 17 July 2012 seeking a meeting of all interested parties to discuss the various issues including her occupation of the flat.
- 7.38 On 2 August 2012 Halifax advised that the arrears on the mortgage for the flat were £5994.04. The arrears on the mortgage for the Sauchiehall property were £4565.08.

- 7.39 As no steps were then taken to pay the arrears on the two mortgage accounts, Halifax issued further letters on 20 August 2012 saying that further action would be taken. On each account an arrears management fee of £35 was debited to the accounts.
- 7.40 A meeting was then held at the firm's offices on 9 August 2012 attended by the Respondent, MM and her agent, and a friend of AM who was assisting with the running of AM's businesses. LH did not attend the meeting.
- 7.41 MM's agent wrote to the Respondent on 23 August 2012 in which they advised that MM was concerned about the expense to the estate relating to Broomhill. With regard to the flat:
- "...our client is of the view that [the flat] should be placed on the market as a matter of urgency.... Our client would wish Estate Agents to be instructed and the preparation of the Home Report undertaken as a matter of some urgency."*
- MM was also of the view that Sauchiehall should be placed on the market. MM's agent also said:
- "Our client is of the view that we ought to be in a position before the next Court appearance relative to [Broomhill] of being able to indicate to the Court that ... [the flat] and [Sauchiehall] have been placed on the market so that the Court is satisfied that steps have been taken to address the balance of funds owed to the seller of [Broomhill]."*
- 7.42 On 28 August 2012 the firm paid the monthly interest to SM for Broomhill and the arrears on the mortgages for the flat and Sauchiehall.
- 7.43 An annual mortgage statement for Sauchiehall was issued by Halifax plc on 31 August 2012 which disclosed that between December 2011 and August 2012 the account had been debited with 10 arrears management fees of £35 each (totalling £350) and one field agent's costs of £100.
- 7.44 Despite clearing the arrears on the two Halifax mortgages, no steps were then taken to ensure the monthly payments on both mortgages were made on time and in September 2012 arrears letters were issued again on both mortgages for the monthly payments

which were not paid on time and again on each account further fees of £35 were incurred. Payments on both were made at the end of September 2012.

- 7.45 MM's agent wrote again on 25 September 2012 following a telephone conversation with the Respondent. They had noted that the Respondent had had no contact with LH. The letter noted that as regards Broomhill a price reduction was being considered though this was causing MM serious concern. It also noted:
"...you have not yet put either of the properties owned by the deceased at [the flat] or in [Sauchiehall] onto the market. Our client remains very concerned at this situation and has instructed us to advise you that it would be her position that she would wish both properties marketed as a matter of some urgency."
- 7.46 Halifax plc issued arrears letters again in early October 2012 for both mortgages and again further fees of £35 were debited to both accounts. Reminders on both were sent by Halifax plc later in October 2012. Payments of the monthly amounts on both mortgages were made on 27 November 2012.
- 7.47 On 22 November 2012 the Respondent emailed both LH and MM's agent to advise of a verbal offer that had been made for Broomhill. In the email to LH the Respondent made no reference to the flat or her occupation of same.
- 7.48 In early December 2012, Halifax plc again wrote regarding arrears accruing on both mortgages – at this stage the arrears for the flat were £895.96 and for Sauchiehall £1172.94. The letters again referred to arrears management fees of £35 being debited to the accounts. Reminder letters on both were sent at the end of December.
- 7.49 Halifax plc sent further arrears letters in January 2013 on both mortgages – the flat's arrears were now £1328.97 and Sauchiehall's £1759.41. Again, arrears management fees were charged.
- 7.50 In February 2013, agents acting on behalf of Halifax plc wrote to the Respondent advising that if the arrears for Sauchiehall were not paid they were instructed to recover the property. The Respondent then sent a cheque to settle same on 13 February 2013 and wrote to Halifax plc's agents to advise that same had occurred due to a decrease in rental income but that it was his intention to market the property for sale.

- 7.51 Halifax plc issued their annual mortgage statement for the flat on 31 January 2013 which disclosed that between August 2012 and January 2013 nine arrears management fees of £35 had been debited to the account totalling £315. In addition, a fee of £100 was charged in February 2013 for an external field agent instructed to call.
- 7.52 On 18 February 2013 Halifax plc wrote to the Respondent regarding the arrears on the flat's mortgage which were now £1771.96 and warning that legal action would start in a couple of weeks.
- 7.53 On 25 February 2013 LH paid £442.99 into the firm's client account and an internal email records it was "*to account of rent for [the flat]*". A payment of £442.99 was then sent to Halifax plc for the flat's mortgage on 1 March 2013.
- 7.54 MM emailed the Respondent on 27 February 2013 looking for an update on the various matters and asked if the flat and Sauchiehall are "*now being sold as agreed at the meeting on 9th August 2012 and if so, when?*"
- 7.55 Until December 2012 all the work for the executry had been recorded on general "Correspondence" files but in December a separate file was opened for the sale of Broomhill.
- 7.56 The sale of the property at Broomhill Gardens, ultimately settled on 15 March 2013 after the property had been marketed for nearly two years and had had repairs carried out to it. Two offers were eventually received for same. Both were substantially less than the price AM had committed to. The higher offer was accepted at a price of £250,000.
- 7.57 The shortfall was addressed by the Respondent as executor granting a personal bond to bind AM's estate to pay SM's client the shortfall of £86,500 with interest thereon at 8% per annum within two years of the execution of same on 13 March 2013. The funds were therefore due to be paid no later than 13 March 2015.
- 7.58 By late March 2013 arrears of £1172.94 had accrued on the Sauchiehall mortgage but a payment equal only to one month's instalment was paid on 27 March 2013. On the

same day a monthly payment was made on the flat's mortgage although the funds for that had been with the firm since the 1 March 2013. A further monthly payment was made on 16 April 2013.

7.59 By 4 April 2013 the arrears on the flat's mortgage were £1165.12 and a further fee had been charged but a payment equal to one month's instalment was only sent on 16 April 2013.

7.60 On 17 April 2013 the Respondent wrote a lengthy letter to MM to answer queries that MM had raised about various aspects of the estate. As regards the flat the Respondent reported that LH had started making payments in relation to the mortgage instalments but that same did not equate to a market rent and that same would have to be considered on a final distribution of the assets. He advised that LH would prefer to remain in the flat and that subject to the sale of Sauchiehall and the business this might be achievable *"always bearing in mind that you and [LH] are equal beneficiaries in the Estate with the appropriate adjustments requiring to be made to ensure that both parties are treated fairly."*

7.61 As matters moved from April 2013 through to July 2013, there remained arrears on the mortgages for both the flat and Sauchiehall. LH continued to make monthly payments but there was a disconnect between the funds being paid to the firm and then onto the lender, for example, LH paid funds in on 3 May for the flat but the Halifax acknowledged a payment received only on the 22nd and in July LH paid her funds again in on the 3rd but there was no payment to the Halifax until 5 August when two months instalments were paid together. By July the flat had arrears of £1547 and the Sauchiehall arrears were £2314.80. Every time Halifax plc wrote about arrears further fees of £35 were debited to the mortgage accounts.

7.62 The Respondent emailed LH on 5 August 2013 regarding Sauchiehall advising: *"As I need income to pay the outstanding mortgage, I cannot settle the monthly payments. I have written to Halifax to advise them of the position, but they will no doubt want to know what is happening with the property. Can you confirm if the property is now being marketed for sale or if not, when will it be ready for marketing?"* He explained a meeting was arranged with MM and invited LH to join them.

- 7.63 On 6 August 2013 the Respondent wrote to Halifax plc regarding Sauchiehall to advise there was no rental income being received for it and that the estate was not able to pay the monthly instalments but that the property was now to be marketed for sale.
- 7.64 Halifax sent a statement to the Respondent in relation to the flat on 11 August 2013 showing all credits and debits from 1 October 2012 to 12 August 2013 and which detailed the current arrears as £1083.64. The statement also narrated that the amount of arrears fees charged to the account in that period totalled £485.
- 7.65 On 5 July and 23 August 2013 SM emailed the Respondent asking when they might expect payment of the outstanding sum in relation to the Broomhill property. As they got no reply a further reminder was sent on 25 September 2013.
- 7.66 By 1 September 2013, the accrued arrears relating to Sauchiehall were £2893.50 with arrears fees of £170 charged between May and September 2013.
- 7.67 On 24 September 2013, the Respondent emailed LH to advise that Sauchiehall required to be sold as soon as possible as there were no funds to pay the mortgage and that by selling it the mortgage would be repaid and should also release funds to enable the payment of a further sum towards the Broomhill debt.
- 7.68 On 1 October 2013, MM emailed the Respondent referring to a meeting on 27 September at which it was agreed that *"All outstanding matters regarding the Estate to be completed and finalised well before the 3rd anniversary."*
- 7.69 During October 2013, mortgage arrears still affected both properties although LH continued to make monthly payments for the flat. Solicitors then instructed by Halifax plc wrote to the firm on 14 October 2013 about the flat's mortgage. As there was no response a reminder was sent on 24 October 2013.
- 7.70 On 29 October 2013, the Respondent wrote to Halifax plc enclosing a further payment and referring to a payment made on 8 October 2013 which he believed would clear the arrears. He also copied same to Halifax plc's solicitors.

- 7.71 The Respondent also emailed LH on the 29 October 2013, principally regarding Sauchiehall. Work needed to be carried out to the property and the Respondent was anxious to see it marketed as he had concerns about the growing mortgage arrears as there was no income to meet same. He suggested a meeting with her and MM to discuss ongoing matters which would include the businesses and the flat.
- 7.72 On the 29 October 2013 the Respondent also updated SM advising as to the realisation of assets and referred to the arrangements being made to market Sauchiehall.
- 7.73 Halifax plc's agents wrote further re the flat's mortgage on 30 October 2013 with a reminder sent on 8 November 2013. While they noted payments to clear the arrears had been made, they pointed out that the outstanding balance on the mortgage became due when AM died.
- 7.74 The Respondent replied to the Halifax's agents on 15 November 2013. Regarding the flat he advised it was the executor's intention to have the mortgage redeemed in due course. Regarding the property on Sauchiehall Street, the Respondent explained that estate agents had been instructed to market the property.
- 7.75 MM had chased for an update on 28 December 2013 and again on 14 January 2014. The Respondent replied on 29 January 2014 saying: *"I have various matters to report to you and [LH] ...I feel I need to meet with you and [LH] to discuss matters further. I am going to have to insist on [LH] being present this time as it is important that I speak to you both to move certain matters forward."*
- 7.76 The Respondent sent a detailed email to MM on 9 February 2014 on the various issues. He reported that Sauchiehall had not valued as high as expected and that if it sold around the value, it would repay the mortgage but not release any capital to the estate. As regards the flat he confirmed he continued to receive monthly payments from LH which were paid to Halifax plc, but that Halifax plc were looking for the repayment of the mortgage and that he would be advising LH of this.
- 7.77 He also advised that he was firmly of the view that the business should be sold as he was becoming increasingly concerned as to the running of same. He said he felt it was

important that he and MM had an early meeting with LH to reach agreement as to the realisation of all remaining assets in the estate.

- 7.78 Halifax plc's agents issued a calling up notice regarding the Sauchiehall property on 12 March 2014.
- 7.79 The Respondent updated MM on 13 March 2014 to advise that estate agents had been instructed re Sauchiehall and that he had had no further contact from LH but that he was pressing her as he needed to convene the joint meeting.
- 7.80 A payment equivalent to two month's mortgage payments for the flat was sent to Halifax plc on 14 March 2014. On the same day the Respondent wrote to Halifax plc's agents to advise that Sauchiehall was now on the market. He also enclosed a copy of the Home Report and sought a reasonable time to enable the property to be marketed.
- 7.81 A lengthy email was also sent by the Respondent on 14 March 2014 to LH updating her as regards Sauchiehall and an issue relating to the accounts for the business. As regards the flat he said: *"Not surprisingly, after 3 years, Halifax are looking for the mortgage in respect of this property to be redeemed. Frankly I am surprised they have not requested this before. We require to have a discussion as to what should happen in relation to the property. I know from our previous discussions that you were keen to remain there, and I am happy to support that if that is at all possible. It will, however, be dependent on other matters falling into place. I think the sale of the business requires to be addressed as well as it is important that funds are realised as soon as possible to settle the outstanding debts which lie in the Estate – these are principally the Halifax mortgages and the balance due to [SM's client]."*
- 7.82 LH replied on 15 April to say she did not want to leave the flat and *"will do what I have to stay"*.
- 7.83 The Respondent replied the same day stating the following: *"I have no difficulty with you remaining in [the flat] but my primary function is to have the debts of the estate paid. There will not be a lot realised from the sale of [Sauchiehall] so we have to look at the other assets – whichever way we look at this I think the business has to be sold –*

this should realise sufficient to pay the remaining debts and allow matters to be resolved with you and [MM] and allow me to finalise matters.”

- 7.84 The Respondent met with MM on 16 April 2014. LH did not attend. Following same MM emailed the Respondent to record what had been agreed, namely, that all remaining assets of the estate would be put up for sale and that LH would be asked to advise within 14 days whether she intended to purchase the flat. The Respondent acknowledged the email and said he would progress matters accordingly.
- 7.85 However, the Respondent did not contact LH until the 24 April 2014. His email expressed regret but said they had to consider selling the business as *“I cannot see that sufficient funds could be raised in any other way.”*
- 7.86 On 30 April 2014 SM wrote to the Respondent asking when they might expect settlement regarding Broomhill. No response was sent to same until 10 June 2014.
- 7.87 MM chased the Respondent on 18 May 2014 asking if he had heard from LH within the fourteen day period and what action had been taken. MM also sought updates regarding Sauchiehall Street and the business. She sent a reminder on 6 June 2014 as the Respondent had not replied.
- 7.88 The Respondent replied to MM on 9 June 2014. The email covered various matters including financial matters relating to the business. He advised he had spoken to LH and advised her that the remaining property and business required to be sold. He reported that LH was keen to hang onto the business and that she would be prepared to see the flat sold. He stated that if the sale of the flat resolved the debts in the estate, then consideration could be given to how the business would be structured between LH and MM but that should be left until matters progressed with the flat. He updated her also regarding the marketing of Sauchiehall.
- 7.89 MM was not satisfied at the Respondent’s response. She demanded to know if LH had replied within the fourteen days and why action was not taken following the meeting to progress the sale of the flat and the business as agreed. The Respondent sent a placatory email to MM on 10 June 2014 saying he had had discussions with LH within the fourteen day period and that: *“I have to try and be fair to you both and certainly*

listen to and consider proposals from both parties. However, if there is no agreement between the parties then I have to revert to the original function of executor and that is to realise the assets in the estate and settle the debts. In light of your email that is what I now intend to do, and I shall be writing to both you and [LH] confirming this. As regards the proceeds of sale from [the flat] the valuation obtained earlier suggested a market value of £210,000 and there is an outstanding mortgage debt of approximately £120,000. Allowing for sale expenses etc while there may not be enough to settle the [Broomhill] debt in full I would expect there to be a substantial sum available.”

- 7.90 On 10 June 2014 the Respondent wrote to SM to advise that AM’s assets were being marketed for sale and that they were requesting funds from AM’s business to enable interim payments to be made to the indebtedness.
- 7.91 The Respondent also wrote to LH on 10 June 2014. The letter covered matters relating to the business and the marketing of Sauchiehall. Some work needed to be done to the courtyard at the property at Sauchiehall Street which would benefit the marketing of same. The Respondent asked if LH would arrange this or would she want him to engage contractors. Turning to the other assets he said: *“I had also mentioned previously the realisation of the other assets in [AM]’s estate, namely [the flat] and the business. I note your preference to hold onto the business if at all possible. If that is the case, then [the flat] does require to be marketed. I am under pressure from Halifax to redeem the outstanding Mortgage and I am hoping that a sale of [the flat] would not only achieve that but also leave a sizeable sum which would be applied to [Broomhill]. If we could also manage to sell [Sauchiehall] (and again there is pressure ongoing from Halifax to that effect) then the debts would be paid and that would certainly relieve pressure and allow the business to be retained meantime”.*
- 7.92 The disconnect between the payments being made by LH and the onward payment to Halifax plc for the flat’s mortgage continued in July 2014 and August 2014 – LH made payments on 9th July and 4th August 2014, but the onward payments were not made until 18th July and 14th August respectively and arrears letters (with associated fees) continued to be triggered from Halifax plc.
- 7.93 On 6 August 2014, MM sought an update. The Respondent replied on the 14 August 2014 to say he had not heard from LH regarding the sale of the flat nor in relation to

the business but had asked her to be available for a meeting. He advised that Sauchiehall continued to be marketed but there had been no notes of interest.

- 7.94 The email from MM triggered the Respondent into emailing LH a letter which very much mirrored the letter he sent her on 10th June 2014. He again said a meeting was necessary.
- 7.95 LH did not contact the Respondent, so he emailed her on 1 September 2014 enclosing a copy of his letter. He said: *"I am coming under severe pressure to move matters forward and need to hear from you urgently. The [flat] and the business have to be marketed for sale as soon as possible. In addition, Halifax wish to take over the sale of [Sauchiehall] as after months of marketing the property is still not sold. I would like to have your co-operation to progress the matter and if not, then I will have to act accordingly."*
- 7.96 LH did not reply but made her monthly payment to the firm on 12 August 2014 which was not paid to Halifax plc until 4 September 2014.
- 7.97 SM sent a reminder on 15 September 2014 in which they reminded the Respondent that: *"It is now 6 months until the end date for payment in terms of the Personal Bond and we should be grateful if you would advise us as to progress with regard to settlement of the debt due to our client."*
- 7.98 The Respondent replied on 19 September 2014 to advise that progress was being made with the realisation of the remaining assets *"with a view to settling your client's outstanding liability as soon as circumstances allow."*
- 7.99 As the Respondent had received no response from LH, he sent a first class recorded delivery letter to her on 19 September 2014. In same he recorded his disappointment that LH had not contacted him. He said that he had no option but to take the following steps: *"The [flat] requires to be marketed for sale. As you have failed to respond to previous correspondence, I require you to remove yourself and your belongings from the property immediately and to deliver the Keys of the property to my office, to enable me to pass these to Estate Agents for the property to be marketed. If you fail to do so,*

I will have no alternative but to raise court proceedings with a view to obtaining vacant possession of the property.

Similarly, the property and business also require to be marketed for sale at the earliest possible opportunity. As you know you are sole Director of P M Limited. In my capacity as Executor, I have control over the shareholding of the Company and will require to take steps to have you removed as a Director and to appoint alternate Directors in your place. A Board Meeting will then be convened, at which point, the proposal that the business be sold with immediate effect will be tabled for consideration.

I also have to tell you that I require to consider my position in remaining an Executor of this Estate as the lack of co-operation makes it impossible for me to fulfil that role, which I have indicated to you previously involves realising the assets with a view to settling debts and distributing free proceeds between yourself and your co-beneficiary. I am seeking some guidance on this matter from the Law Society and will confirm my position in due course."

- 7.100 LH emailed the Respondent on 26 September 2014 on receipt of his letter. She said she had not received any emails in August or September and asked if they could meet. The Respondent emailed her on 30 September 2014 with suggested dates for a meeting and copied the earlier emails to her.
- 7.101 During October 2014 LH made her monthly payments on 6 October 2014 and same is sent to Halifax plc on the 17 October 2014. There is also an updated statement from Halifax plc received for Sauchiehall showing the current arrears at £5787.
- 7.102 Towards the end of October 2014 MM contacted the Respondent seeking information on the current position. The Respondent replied on 28 October 2014 and referred to a recent meeting with LH when it had been agreed the business had to be marketed for sale. He advised that he had told LH that the flat had to be marketed as well – LH had indicated there were some decorative and minor repair works required to be carried out to same. The Respondent also updated MM regarding Broomhill as to the accruing interest and that he had had a discussion with LH whether there were funds available from the business that could be used to make payments to account of the Broomhill debt. He further advised that there had been little movement regarding the sale of Sauchiehall – he advised he was to speak to the estate agents about this.

- 7.103 On 28 October 2014 the Respondent also instructed a firm of leisure and hospitality surveyors to market the business property and the business operating from same.
- 7.104 In early November the agents for Halifax plc wrote regarding the Court action they previously raised to call up the security over Sauchiehall. The Respondent updated MM on this at the end of November and also provided her with the sales particulars for the sale of the business.
- 7.105 An offer was received for the Sauchiehall property in December 2014. That prevented any further action being taken by Halifax plc in terms of the Court action however that offer was withdrawn in February 2015 as the purchaser could not secure a mortgage. The property then remained on the market.
- 7.106 By the middle of January 2015 there had been some interest in the business and its premises. The Respondent updated MM on 15 January 2015 saying that he had advised LH that the flat needed to be dealt with. LH emailed the Respondent on the same day saying: *“Please do everything you can not to market [the flat]. The flat needs new windows and a ceiling has fallen down with the bad weather so might not be the easiest to sell anyway.*
- 7.107 The Respondent replied: *“I note your comments about [the flat] – my main concern here is [Broomhill] and the deadline we are facing in March. As regards the ceiling, did we not agree that the business should fund the works required here?”*
- 7.108 At the beginning of February 2015, following a closing date an offer was accepted for the business and its premises. This transaction completed a year later on 5 February 2016 and released net sale proceeds of circa £347,000.
- 7.109 On 16 February 2015 new agents acting for MM wrote to the Respondent noting that AM had been dead for over four years, but the estate was not yet wound up though they understood there was movement in the sale of the business and Sauchiehall. They sought updates on all matters including clarification of LH’s occupation of the flat.

- 7.110 On 3 March 2015 SM issued a demand for payment of all sums due under the personal bond for Broomhill. The Respondent replied immediately to advise of the receipt of the offer for the business and that same would release more than sufficient to pay the sums due. On 5 March 2015 SM wrote to say their client demanded payment on or before 13 March 2015 failing which a charge would be executed and on expiry of same, they would present a petition for sequestration of the estate.
- 7.111 The Respondent also replied to MM's agents on 3 March 2015. Regarding the flat he said: *"We have requested that this property be put on the market for sale and understand that certain works of a cosmetic/repair nature are required to the premises."*
- 7.112 The Respondent also referred to the adjustment in the distribution of the residue that would be carried out to reflect LH's occupation/rental position.
- 7.113 As payment of the outstanding sum was not made by 13 March 2015 a charge was served relating to the Broomhill matter. The Respondent wrote to SM on 8 April 2015 updating them as to the sale of the business and asked their client to consider an offer to secure the sum over assets in the estate.
- 7.114 The arrears on the Sauchiehall mortgage continued to grow and were in excess of £9000 by April 2015. LH continued to make monthly payments relating to the flat which were paid to Halifax plc. However, in May 2015 Halifax plc wrote saying there were arrears equal to one month's payment for the flat.
- 7.115 MM's agents sought an update towards the end of April 2015 and the Respondent replied on the 24 April 2015. He explained what stage matters were at for the sale of the business and that a charge had been served re Broomhill. Regarding the flat, he said he awaited further information and updates from LH about the work to be done to the flat and a matter relating to some business expenditure. He said it had been promised for months and he was disappointed it had not been forthcoming.
- 7.116 In May Halifax plc's agents sought an update regarding the sale of Sauchiehall – no reply was sent to that letter.

- 7.117 On 18 June 2015 SM sent a draft standard security for revisal and a request for sight of the title of the business premises. As there was no response to this letter SM sent a reminder on 2 July 2015.
- 7.118 The Respondent replied on 3 July 2015 to advise that the sale of the business was progressing, that there was a prospective purchaser for Sauchiehall and that he was in discussions with SM regarding security that might be granted for the sum due.
- 7.119 In July 2015 the Respondent sent copies of the land certificates pertaining to the business premises to SM for examination. He did not return the draft security duly revised, so SM wrote seeking signed securities on 14 and 28 July 2015. Due to the existing charges over the property the Respondent had to seek the consent of the existing creditors.
- 7.120 On 29 July 2015 an offer for £150,000 was made for Sauchiehall and although it would create a shortfall (the balance on the mortgage was by this time over £189,000) it was accepted but the purchaser withdrew in August 2015.
- 7.121 On 3 September 2015, another offer was received for Sauchiehall for £152,000. As this would not produce enough to meet the secured debt the Respondent had to discuss same with Halifax plc's agents which delayed progression of the missives and transaction. There were also concerns about some roof works that needed to be done but by early February 2016 the Respondent was able to proceed with the transaction (by this time the business and its premises had been sold so funds were by then available to meet the shortfall) and matters quickly progressed to settlement on 26 February 2016.
- 7.122 In September 2015, the Respondent had sought the consent of the heritable creditors over the business property and the brewery who were secured over same were agreeable to a charge in favour of SM's client however, they wanted a revisal to the draft security to address fluctuating advances (because of the business trade account) but that was unacceptable to SM.
- 7.123 On 2 November 2015 SM drew up a Petition to sequestrate the estate. The case was due to call in Court on 14 December 2015. On 5 January 2016 SM wrote to the

Respondent referring to discussions in Court on 14 December 2015 with one of the Respondent's partners when it was agreed that a full report on the executry would be provided within a week which had not occurred. SM were given an update on 20 January 2016 of the imminent sale of the business and that funds would then be available.

- 7.124 Regarding the flat, there had been no developments and no steps taken to place same on the market. On 7 January 2016 LH asked the Respondent for details of what was outstanding on the mortgage for same.
- 7.125 Following settlement of the sale of the business on 5 February 2016 the outstanding sums due for Broomhill were paid to SM on 9 February 2016.
- 7.126 By the end of February 2016 once Sauchiehall had been sold the only remaining asset of the estate to be realised was the flat.
- 7.127 No action was taken in relation to the sale until May 2016 beyond LH paying funds to the firm and payments being made to Halifax plc although again arrears equal to one month's payment were raised by Halifax up on 8 May 2015.
- 7.128 By letter dated 19 May 2016 the Respondent wrote to MM's agent in which he gave details as to the sale of the business, the sale of Sauchiehall and the payment of the balance due to SM's client. He advised that they were presently holding funds in the region of approximately £188,000. Regarding the flat he said: *"The remaining asset which requires to be dealt with is [the flat]. You are aware that [LH] resides within that property. She has expressed a wish to remain in that property but appreciates that there are insufficient assets within the Estate to enable this property to be transferred to her as part of any settlement arrangement. She continues to pay the mortgage sum on a monthly basis which is then settled by this firm. The principal sum outstanding on the mortgage is in the region of £122,000. This property was valued some years ago at a figure of £250,000. [LH] has already received approval in principle in relation to a mortgage to be granted and is extremely keen to continue to reside within the property if that can be agreed."*

- 7.129 MM's agent responded on 3 June 2016 saying the flat should be marketed for sale and that if LH *"now wishes to make an offer to purchase at market value and no doubt you will advise if such an offer is received. As no offer has been made our client's instructions are to proceed with the sale."* There was in addition an issue over unauthorised expenditure by LH from the company bank account to be resolved.
- 7.130 The Respondent emailed LH on 17 June 2016 to advise of MM's position. He strongly advised her to seek independent legal advice but to also firm up her mortgage arrangements and have an offer submitted to him as soon as possible. He said: *"You will appreciate that as executor I cannot be seen to be taking sides and have to be impartial – there is already comment that I have been too accommodating as far as your position is concerned and that to [MM]'s detriment."*
- 7.131 In an email exchange between the Respondent and MM's solicitor on 17 June 2016 it was disclosed that LH was settled in the flat with a new partner and a baby. MM's agent said: *"The estate and therefore our client as beneficiary have been deprived of a market rent and the realised sale proceeds....If this is allowed to drag on any longer and the house is not marketed until later this year it may not achieve the best price."*
- 7.132 The Respondent replied to MM's agent on 22 June 2016 to advise he had spoken to LH and said she was aware that the flat would require to be marketed for sale. LH had considered buying the flat from the estate but her recent change of circumstances had led to a change of heart. He then advised that there were substantial roof repairs required and that newly appointed factors were seeking quotes for the work to be done. Due to the poor state of the roof the flat had suffered water ingress causing damage to ceilings and walls in some of the rooms which would also have to be repaired.
- 7.133 On receipt of the information about the roof repairs, MM's agent said that if there was a liability for the work then the estate would need to play its share of the work so that same could be done now and the property marketed by the end of the summer or it would fall to be deducted by any purchaser from the offered price.
- 7.134 The Respondent then corresponded with the factors which he copied to MM's agents together with photos of the damage but nothing substantive happened until 1 September

2016 when the factors sent documentation about the proposed roof repairs. No further action was taken in this regard.

- 7.135 On 1 November 2016 the factors wrote to advise they had not yet received all owners' agreement or pre-funding for the work and if not already done so to provide same.
- 7.136 The Respondent replied to MM's agent on 11 November 2016 to say he had recently spoken to the factors and that agreement regarding the work was now in place and the work would start imminently. He advised he would pay the flat's share from the executory funds. He also mentioned the internal damage to the flat: *"the condition of the roof had led to damage to the ceilings within the flat and as the works on the roof progress this will enable the necessary repairs to the ceiling to be attended to. Concern had been expressed at marketing the property in its current condition as this would have had a depressive effect on the sale price that could be achieved. Completion of the roof works and the internal repairs required will allow the property to be marketed and sold for its best price."*
- 7.137 The Respondent signed (as executor of AM) the instruction to the factors to proceed with the work on 9 December 2016 and wrote to the factors on 12 December enclosing a cheque for the flat's share of the costs.
- 7.138 In July 2017 the mortgage over the flat was redeemed from the executory funds.
- 7.139 The Respondent wrote to the factors in November 2017 referring to a recent conversation with LH who had indicated there were still ongoing problems with water ingress although the roof repairs had been completed and seeking clarity as to the position.
- 7.140 On 19 January 2018 MM wrote a letter of complaint addressed to the Complaints Partner of the firm related to the failure to properly administer and wind up AM's estate. This letter stated: *"After more than 7 years and despite my repeated requests you have failed to progress the winding up of the Estate and in particular have refused or unduly delayed to market and sell my late brother's flat. The other beneficiary has been allowed to live there with [her partner] and their child, while my requests to sell are always met with the Executor's excuses that this other beneficiary may buy the flat*

and/or repairs are being used as an excuse. The property could and should have been marketed in the condition it was in."

- 7.141 The complaint prompted the Respondent to contact LH on 8 February 2018 asking firstly if the repairs had now been completed and secondly, regarding MM's complaint to which he said: *"Indeed, she has submitted a letter of complaint principally in respect of the delays in dealing with the sale of the flat...The implication is that I have shown bias and favouritism to you in allowing you to continue to reside in the property. The fact that there were major repairs to be carried out appears to have been dismissed. However, I need to address this. When we spoke you indicated that you might be in a position to revert to your original plan to purchase this property from the Estate and I wonder if you could give me an update here."*
- 7.142 By October 2018, MM had submitted a complaint to the Scottish Legal Complaints Commission (SLCC). This complaint was categorised by the SLCC as a series of service complaints.
- 7.143 MM's complaint to the SLCC had been disposed of by the SLCC on an informal basis following upon successful mediation. The result of this was that the Respondent had, on 10 December 2018, signed a settlement agreement on behalf of his firm in which the firm undertook to ensure that the property was put on the market by 21 January 2019.
- 7.144 The property was not put on the market by 21 January 2019. The Respondent sent an email to LH on 21 January 2019 asking: *"Could you come back to me regarding the marketing of the flat please?"*
- 7.145 The Respondent sent an email to LH on 29 January 2020 which stated that he was disappointed not to have heard from LH regarding the marketing and sale of the flat. He advised he was under increasing pressure from MM and that if agreement could not be reached, he would be left with no choice but to force the issue. He required a response within 7 days. The email also noted that no regular payments had been received from LH for some time and that also needed to be addressed. The Respondent also emailed MM the same day.

- 7.146 On 6 March 2020 the Respondent reported to MM that LH had responded and was still interested in buying the flat and that a mortgage had been secured. He went through various options as to whether to sell to LH or put the flat on the open market and sought MM's views.
- 7.147 The Law Society consequently submitted a complaint on its own behalf to the SLCC on 6 August 2021. The SLCC categorised the complaint as a conduct complaint, remitted it to the Law Society for investigation and it was intimated to the Respondent on 14 October 2021.
- 7.148 After the settlement period expired, MM sent the following emails to the Respondent:
- 21 January 2019 – MM enquired if the flat was on the market and what the current valuation was.
 - 20 February 2019 – MM noted disappointment not to have heard from the Respondent and reiterated to him that the flat should have been on the market in terms of the Settlement Agreement.
 - 3 April 2019 – MM refers to a phone conversation on 20 March 2019 and states she awaits an email confirming information given during that call with copies of the correspondence regarding repairs and asking for what action had been taken since 20 March 2019.
 - 17 May 2019 – MM records disappointment having not heard from the Respondent and that it was over 4 months since the flat should have been on the market and over 3 years since the other assets were disposed of.
 - 23 August 2019 – MM notes it was over 7 months since the flat should have been on the market and that MM still had not received confirmation that that had happened.
 - 5 September 2019 – MM refers to the email of 23 August and asks for a reply.
 - 9 October 2019 – MM expresses extreme disappointment at the lack of reply.
 - 11 December 2019 – MM emails the following: *"I cannot understand why you have still not replied to, or even acknowledged, the emails I have sent you since 23 August. It is now over 12 months since the Mediation Agreement was signed and almost 11 months since [the flat] should have been on the market under the terms of that Agreement. This means that the Executry has now been running for almost*

9 years which is totally unacceptable. As a beneficiary...I require a full explanation for the continued delay in dealing with this matter ...”

The Respondent did not in fact reply to MM until 29 January 2020 when he apologised for the delay in reverting to her. He reported that LH was not engaging with him and that he had given her 7 days to respond failing which:

“I will have no alternative but to raise the necessary proceedings on behalf of AM’s estate to have the property vacated and then put on the market for sale. I am not prepared to accept any further delays or excuses and will be keeping this monitored.”

9. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect that he failed or at least delayed unduly since the death of AM in 2011 in progressing the winding up of the executry, in particular with regard to the marketing and sale of the property at Nithsdale Road, Glasgow, owned by the deceased.
10. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 29 August 2023. The Tribunal having considered the revised Complaint dated 4 August 2023 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Thomas C Steel, Brunton Miller, Herbert House, 22 Herbert Street, Glasgow; Find the Respondent guilty of professional misconduct in respect that he failed or at least delayed unduly since the death of AM in 2011 in progressing the winding up of the executry, in particular with regard to the marketing and sale of the property at Nithsdale Road, Glasgow, owned by the deceased; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of three years, any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; 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; and

Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Ben Kemp

Vice Chair

11. 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 SEPTEMBER 2023 .

IN THE NAME OF THE TRIBUNAL



Ben Kemp
Vice Chair

NOTE

At the Hearing on 29 August 2023, the Tribunal had before it the revised Complaint and the Joint Minute of Admissions. On the Fiscal's unopposed motion, the Tribunal made certain amendments to the Complaint to correct typographical errors. In paragraph 4.95 "4 September 2014" was deleted and "12 August 2014" substituted and vice versa. In paragraph 4.122, references to "January 2015" were deleted and "January 2016" substituted. Parties confirmed that although the copy of the Joint Minute lodged by email with the Tribunal only had one signature, it had been signed by both and reflected the terms of their agreement.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the sole averment of misconduct related to a failure or delay to progress the winding up of an executry, in particular the marketing and sale of a residential property. The Complaint was extensive and provided a chronology of the actions of the Respondent as executor during a period of over nine years.

The Fiscal conceded that the executry was not straightforward. There were three residential properties. Two of these had mortgages. The deceased also owned businesses. Confirmation was obtained on 8 November 2011. The estate was properly administered up until this point. The first problem was the property at Broomhill Gardens. The selling agent did not make the situation any easier. Debts accumulated on all the properties. The mortgages fell into arrears. The Fiscal said that the properties should have been marketed in 2012. The property in Sauchiehall Street was sold in 2014 but the price was lower than expected. It was recognised at that stage that the businesses needed to be sold but they were not marketed for nine months. LH avoided contact with the Respondent. The property she was living in was put to one side while the businesses were sold. In 2017 and 2018 the Respondent continued to engage with LH. Even after he had committed to putting the flat on the market in 2018, he did not follow through.

The Fiscal said the Respondent was guilty of breaches of Rules B1.4 and B1.9.1. These relate to acting in the best interests of the client and communicating effectively with clients and others. The beneficiaries were not clients but the Respondent ought to have taken their interests into account and protected them. He had duties as an executor to act diligently.

The Fiscal referred the Tribunal to the test for misconduct. He submitted that the Respondent's conduct was serious and reprehensible. He invited the Tribunal to make a finding of professional misconduct.

The Tribunal noted that it was not inevitable at the outset that the Nithsdale Road property would have to be sold and asked when the Respondent ought to have sought to dispose of the property. Mr Macreath referred the Tribunal to paragraph 4.130 of the revised Complaint and suggested that action should have been taken in June 2016. The Fiscal said that when the Respondent came to know about the state of disrepair to the property, that should have provided an impetus. The Tribunal referred parties to paragraph 4.98 of the Complaint which noted that the Respondent wrote to LH on 19 September 2014 stating that the Nithsdale Road property required to be marketed for sale. The Fiscal said that after confirmation was obtained in November 2011, things started to get delayed overall, but that action should have been taken regarding the Nithsdale Road property about 2016.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath noted that the files in this case were extensive. The Respondent was the solicitor-executive of the estate. There were two residuary beneficiaries, MM and LH. Immediately on the death of AM, LH had herself appointed as director and secretary of his companies. Confirmation was applied for timeously. The estate was asset rich but cash poor. The deceased had been due to buy a property in Broomhill Gardens and the seller sought implement of the missives. The deceased had agreed to pay £315,000 but the property was eventually sold for £250,000. Expenses were incurred in furnishing the property to assist with the sale. The interests of the residuary beneficiaries were in competition. LH was involved in the businesses. She had rights as a cohabitant to make a claim on the estate within 6 months of the death of her partner. The Respondent concentrated on the Sauchiehall Street property. The Halifax was pressing him. Eventually the businesses were sold. There was a shortfall on the Sauchiehall Street property of £30,000. There was also a significant shortfall on the Broomhill Gardens property. There were lengthy negotiations with the agents for the sellers of the Broomhill Gardens property. Ultimately, the Respondent had to grant a personal bond. Interest was due. The Respondent sought advice from the Professional Practice Team at the Law Society. He was encouraged to wind up the estate. MM became more and more concerned. LH set her face against moving out of the flat she was living in. She had rights to take value from it. Eventually she was able to raise a mortgage and buy it. The whole situation was not helped by her actions. However, the Respondent should have dealt with the executry at a much earlier stage, by application for the appointment of a judicial factor if necessary. The Respondent accepted at an early stage that the behaviour constituted professional misconduct in terms of the revised Complaint.

The Tribunal asked about the clients in this case. Mr Macreath said that the executor was the client. He had a responsibility to ingather the assets timeously and expediently. An executor is a court appointed, onerous role. Duties are owed to the beneficiaries, although the executor is the client. Delays led to deterioration of the fabric of the properties. The value of the properties and therefore the estate fell. It was the Respondent's duty to present bad news to LH.

The Tribunal asked about the property at Nithsdale Road. Mr Macreath said it was retained by LH for value. The estate was then able to make payments to MM. There is still a small amount remaining on the ledger card. A final cash account needs to be prepared. Fees have to be assessed. This will finalise the estate.

The Tribunal asked about the complexities of evicting LH. Mr Macreath said that it could have been done although LH was in a good negotiating position and courts are slow to evict. A competent and reputable solicitor would have taken a much firmer stance with LH.

The Tribunal asked when Mr Macreath accepted that the Respondent ought to have marketed the Nithsdale Road property or pushed matters on to effect sale. Mr Macreath said that should have occurred after confirmation. A competent and reputable solicitor would not have let matters drift. By 2015, the property should have been sold. The sellers of Broomhill Gardens sought sequestration of the estate in 2015. This should have been anticipated and moved matters on. The matter had drifted since 2011. Whether the house should have been sold in 2013, 2014 or 2015, did not really matter because the executry had drifted when it ought not to have done.

DECISION ON PROFESSIONAL MISCONDUCT

Based on the admitted facts, the Tribunal was satisfied that the Respondent had acted in the manner set out in the revised Complaint reflected in the findings in fact above. The Complainers alleged that the Respondent had breached Rules B1.4 and B1.9 of the Law Society of Scotland Practice Rules 2011. These rules provide that solicitors must act in the best interests of their clients and must communicate effectively with their clients and others.

In this case the Respondent acted as solicitor and executor. As executor he owed duties to the estate. He had a responsibility to administer the estate in the interests of the beneficiaries and to wind up the executry as soon as practicable. He had duties to all the beneficiaries. One of these was to communicate

effectively with them. The Respondent admitted that he was guilty of professional misconduct. However, professional misconduct was a matter for the Tribunal to determine, independent of parties' agreement.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

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

The Respondent admitted that he unduly delayed in winding up an estate for over nine years. There were some challenges such as the action for specific implement of the missives in relation to the Broomhill Gardens property and LH's failure to engage with the Respondent. However, these were not insurmountable, and they do not excuse or explain the inordinate amount of time it has taken to wind up the executry. The Respondent's actions caused bank fees and penalties to be charged to the estate. The delay in selling the properties meant that repairs were necessary. The Respondent ought to have discharged his functions as executor much more quickly. He should have been much more vigilant and followed up his correspondence to LH with action. There were things he could have done to expedite matters. He did not take control of the situation, even when it became clear that there might be a petition to sequester the estate. The Nithsdale Road property ought to have been marketed for sale at a much earlier stage. It was of great concern to the Tribunal that the Respondent agreed following SLCC mediation in December 2018 to market the property in January 2019, that this was not done by the agreed deadline, and that in 2021, this matter was still outstanding. The Respondent delayed in answering the Secondary Complainer's correspondence. This kind of conduct brings the profession into disrepute, not just with the individual beneficiaries in this case, but also to the wider public. The Respondent's failure to act was a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct.

SUBMISSIONS ON SANCTION, PUBLICITY AND EXPENSES

The Fiscal explained that there was a finding of unsatisfactory professional conduct and a finding of professional misconduct on the Respondent's record.

Mr Macreath noted that the Respondent was one of four partners in a well-established firm which mostly deals with licensing and litigation. The Respondent is the only real estate and private client partner. He has a busy practice. At the time of the misconduct, the Respondent had little support. However, the firm has now engaged a qualified assistant to deal with some of the private client work. Mr Macreath had spoken with the managing partner of the firm and confirmed that this person was properly assisting with the private client case load which is now being managed in an office identified for this purpose.

With reference to the previous findings, Mr Macreath noted that the periods when the misconduct occurred in the previous case and the present case were similar. The previous findings related to a delay in paying a client funds held by the solicitor. The present case involved delay but as before, there was no dishonesty or lack of integrity. Mr Macreath highlighted the complex and nuanced nature of the executry in the present case while acknowledging the failure on the part of the Respondent to "grasp the nettle". Mr Macreath expressed his disappointment that this case and the previous misconduct complaint had not been brought to the Tribunal at the same time. Mr Macreath said the profession's reputation was vindicated by the action the Respondent has taken to rectify the situation by winding up the estate. This was addressed in 2021.

The Tribunal asked about the risk to the public should complex matters arise again. Mr Macreath said that the Respondent knew that he could approach the Legal Defence Union or the Professional Practice Team at the Law Society. The managing partner of the Respondent's firm is aware he has to supervise the firm's work.

The Fiscal moved for expenses and had no submission to make regarding publicity. Mr Macreath said expenses were conceded on the usual basis and that publicity was probably mandatory.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal noted the aggravating and mitigating factors in the case. There was an ongoing course of conduct over a long period of time. The Respondent's conduct affected the reputation of the legal profession. It had a direct impact on the estate and the residuary beneficiaries. The Respondent had previous findings of unsatisfactory professional conduct and professional misconduct on his record. In his favour, the Respondent had cooperated with the Fiscal and the Tribunal.

The Tribunal considered the appropriate sanction. It censured the solicitor but was of the view that censure alone was insufficient in the circumstances. It considered a fine in addition to a censure but was of the view that this was not sufficient to address the risk of repetition, the reputational damage to the profession, and the public protection concern. It was clear that the Respondent had been struggling and required supervision and support. The Tribunal noted that the Respondent had sought advice from the Professional Practice Team in this case but had not followed it. A period of supervision was necessary to protect the public. The appropriate period of restriction was an aggregate period of three years. The Tribunal noted that there was an overlap between the periods of misconduct in the present case and the previous case. Although they had both involved an element of delay, this case was much more serious. The Tribunal was not persuaded that a different sanction would have been applied if the Complaints had been conjoined.

The Tribunal decided that the appropriate award of expenses was one in favour of the Complainers following the principle that expenses follow success. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests given the financial and personal nature of the information contained in the findings in fact.



Ben Kemp
Vice Chair