

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

**FINDINGS**

**in Complaints**

**by**

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

**Complainers**

**against**

**JOANNA WENDY ELIZABETH MILLAR,  
Anderson Strathern LLP, George House, 50  
George Square, Glasgow**

**First Respondent**

**and**

**LAURA RAY CAMPBELL, Carters, Eldo  
House, Monkton. Road, Prestwick**

**Second Respondent**

1. A Complaint dated 2 August 2024 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Joanna Wendy Elizabeth Millar, Anderson Strathern LLP, George House, 50 George Square, Glasgow (hereinafter referred to as "the First Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Hamza Sheikh, Cottam, 1 Thornthwaite Road, Preston.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the First Respondent. Answers were lodged for the First Respondent on 9 September 2024.
4. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a virtual Procedural Hearing on 6 November 2024 and notice thereof was duly served upon the First Respondent.

5. At the virtual Procedural Hearing on 6 November 2024, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The First Respondent was absent but was represented by Nicola Irvine, Solicitor, Glasgow. Ms Irvine moved the Tribunal to allow the First Respondent 14 days to lodge adjusted Answers and to fix a further virtual Procedural Hearing. She drew the Tribunal's attention to the Answers previously lodged by the First Respondent and noted that reference was made to her not having access to materials to allow her to answer the Complaint appropriately. Ms Irvine confirmed that voluminous materials had been produced to her by the Fiscal and she required time to consider these. The Fiscal indicated that he had no objection to the First Respondent's motion but he sought an award of expenses for this hearing. He submitted to the Tribunal that he had provided documents to Ms Irvine on 17 October 2024, allowing the First Respondent almost three weeks to lodge adjusted Answers. He argued that this hearing could have been avoided if the First Respondent had indicated at an earlier stage that she required further time to adjust her Answers. Accordingly, the Fiscal invited the Tribunal to make an award of expenses in favour of the Complainers in relation to the Procedural Hearing. Having given careful consideration to all of the information before it, the Tribunal fixed a further virtual Procedural Hearing for 17 December 2024 and awarded the expenses of the Procedural Hearing to the Complainers.
6. Revised Answers were lodged on behalf of the First Respondent on 20 November 2024.
7. A Complaint dated 2 August 2024 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers averring that Laura Ray Campbell, Carters, Eldo House, Monkton. Road, Prestwick (hereinafter referred to as "the Second Respondent") was a practitioner who may have been guilty of professional misconduct.
8. There was a Secondary Complainer, Hamza Sheikh, Cottam, 1 Thornthwaite Road, Preston.
9. The Tribunal caused a copy of the Complaint as lodged to be served upon the Second Respondent. Answers were lodged on behalf of the Second Respondent on 19 September 2024.
10. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a virtual Procedural Hearing on 6 November 2024 and notice thereof was duly served upon the Second Respondent.

11. At the virtual Procedural Hearing on 6 November 2024, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Second Respondent was absent but was represented by William Macreath, Solicitor, Glasgow. A joint motion was made for the Tribunal to fix a virtual substantive Hearing. The Fiscal indicated his intention to lodge an Affidavit for the Secondary Complainer, which he intended to use as the Secondary Complainer's evidence-in-chief, with the Respondent having an opportunity to cross examine the witness. The Fiscal confirmed that he intended to lodge the firm's file for the transaction as a production. Mr Macreath noted that there was another Complaint before the Tribunal, connected to this one, involving a different Respondent, which might have a bearing on this case. Having considered all of the circumstances, the Tribunal fixed a virtual Procedural Hearing for 17 December 2024, to enable this Complaint and the related Complaint to call on the same day, with a virtual substantive Hearing to be set down on a date to be afterwards fixed.
12. The date of 29 January 2025 was identified as a suitable date for the substantive Hearing. Notice thereof was duly served upon both parties.
13. At the virtual Procedural Hearings on 17 December 2024, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The First Respondent was not present but was represented by Nicola Irvine, Solicitor, Glasgow. The Second Respondent was not present but was represented by William Macreath, Solicitor, Glasgow. The two Complaints initially called separately for each of the Respondents to confirm that it was appropriate for the Complaints to call together. Thereafter, both Complaints called together and a joint motion was made by all parties to conjoin the two Complaints. In terms of Rule 40 of the Tribunal Rules 2008, the Tribunal granted this motion. On joint motion, the Tribunal converted the substantive Hearing previously set down for the Second Respondent on 29 January 2025 to a virtual Procedural Hearing for the conjoined Complaint, with a virtual substantive Hearing of two days' duration to be set down on dates to be afterwards fixed. The Fiscal undertook to lodge a Record by 10 January 2025 and requested that he be allowed to lodge Affidavit evidence no later than seven days prior to the virtual Procedural Hearing.
14. The dates of 14 and 15 April 2025 were identified as suitable for the virtual substantive Hearing and notice thereof was duly served upon all parties.
15. At the virtual Procedural Hearing on 29 January 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. Both Respondents were absent. The First

Respondent was represented by Nicola Irvine, Solicitor, Glasgow. The Second Respondent was represented by William Macreath, Solicitor, Glasgow. The Fiscal invited the Tribunal to allow the Record to be received late. This was granted. Thereafter, he invited the Tribunal to fix a Procedural Hearing on 25 March 2025. He undertook to lodge the full working file for Gilson Gray within 14 days of today and all Productions together with a List of Witnesses by 3 March 2025. He clarified that he was intending to lodge two Affidavits, one from the Secondary Complainer and the other for a witness from Gilson Gray. It was his intention to use these as the evidence-in-chief of the two witnesses, with both witnesses being made available for any cross examination. He explained that his reasoning behind this proposed procedure was to avoid as much inconvenience to the witnesses as possible. He advised that he had arrangements to meet both witnesses in the following week for the Affidavits to be completed. He stated that he was now aware that both Respondents had expected the Affidavits to be lodged in advance of this hearing but he had noted that the Tribunal had not made such a direction at the last hearing. He had therefore not given the Affidavits any priority. The Fiscal also invited the Tribunal to direct both Respondents to submit a written note of any objections to the Affidavits in advance of the next hearing. He drew the Tribunal's attention to paragraphs 3.1, 3.2 and 3.11 of the Record where he said that Answers were incomplete. He invited the Tribunal to make directions for the Respondents in relation to the lodging of Productions and Lists of Witnesses.

Ms Irvine invited the Tribunal to fix a procedural hearing on 24 February 2025, with the Affidavits to be lodged 14 days in advance. She confirmed that she had no objection in principle to the suggestion of Affidavit evidence being used in the manner suggested. However, she considered that issues of relevancy and competency might arise and that was why she had understood the Affidavits were in fact supposed to have been lodged in advance of this hearing. She explained that she would not be in a position to intimate her Lists of Witnesses or Productions until she had had a full opportunity to consider the Productions and Affidavits for the Complainers. She had expected to have the Affidavits before the hearing and to be in a position to make any submissions regarding relevancy or competency at this hearing. She invited the Tribunal to make an award of expenses in favour of the First Respondent. She confirmed that the Fiscal had already provided her with a copy of the Gilson Gray file although it was her understanding that he had not provided the file to Mr Macreath.



Mr Macreath supported Ms Irvine's motion for a Procedural Hearing to be fixed for 24 February 2025 and to order that any Productions and Affidavits be lodged by 10 February 2025. He too had expected the Affidavits and Productions to have been lodged in good time for them to be considered prior to this hearing. He also supported Ms Irvine's motion that, given the lack of progress made, expenses should be awarded to the Respondents for this hearing but he considered that this issue was best reserved to the end of the case.

The Tribunal asked Mr Stewart if it was his understanding that Productions and Affidavits were to be lodged in advance of this hearing. He conceded that there had been discussions to that effect but explained that, as the Tribunal had not made an order to that effect in the Minute, he had only concentrated on preparing the Record. He expected to be in a position to lodge the Affidavits within two weeks of today's date. He was in a position to provide Mr Macreath with the full file today but considered it might take him some time to paginate the file appropriately for it to be used as a production at the hearing.

The Tribunal gave careful consideration to all of the submissions and issued an Interlocutor as follows:-

- (1) Allows the Record to be received;
- (2) All parties having waived the formal period of notice, fixes a virtual Procedural Hearing to call at 9:45am on 24 February 2025;
- (3) Directs the Complainers to:
  - (a) Lodge any List of Witnesses, Productions or Affidavits to be relied upon at the substantive hearing no later than 5pm on 12 February 2025; and
  - (b) To provide a copy of the file for Gilson Gray, as previously requested, to the solicitor for the Second Respondent no later than 5pm on 30 January 2025;
- (4) Directs both Respondents to lodge a written note of any issues of competency or relevancy to be raised in relation to the Affidavits lodged by the Complainers no later than 5pm on 21 February 2025;
- (5) Allows the parties until 21 February 2025 to make any adjustments considered necessary to the Record; and
- (6) Reserves the question of expenses for today's hearing to the conclusion of the cause.

It was emphasised to all parties that the hearing on 24 February 2025 was a virtual procedural hearing only and that any debate regarding the competency or relevancy of the Affidavit evidence would require to be set down for a separate preliminary hearing. The Tribunal emphasised that it was keen to preserve the dates of 14 and 15 April currently set for the Virtual Hearing.

16. At the virtual Procedural Hearing on 24 February 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. Both Respondents were absent. The First Respondent was represented by Nicola Irvine, Solicitor, Glasgow. The Second Respondent was represented by William Macreath, Solicitor, Glasgow. The Fiscal referred to the Interlocutor issued by the Tribunal dated 29 January 2025 which placed obligations on him to deal with certain matters in advance of today's hearing. He stated that he had complied with the requirement in paragraph 3(b) of the interlocutor (namely production of a file from Gilson Gray to the Second Respondent by 5pm on 30 January 2025). However, the Complainers had not complied with the requirements in paragraph 3(a) of same (namely to lodge any List of Witnesses, Productions or Affidavits to be relied upon at the substantive hearing by 5pm on 12 February 2025). Mr Stewart took personal responsibility for this non-compliance, stating that he had not engaged with support staff timeously. He then moved for an extension of 14 days to allow compliance with the requirements. The Tribunal heard detailed submissions from all parties. In summary, the Fiscal stated that the Tribunal must balance its decision having consideration to the public interest, delay and cost. Mr Stewart acknowledged a significant psychological cost to the Respondents in terms of lack of information on the allegations facing them and confirmed that he would not formally respond to any motion for expenses which may be advanced on their behalf. Both Respondents opposed the Fiscal's motion for further time to lodge the outstanding documents. They both indicated that it was likely that they would have objections to the relevancy and admissibility of parts of the affidavits and that this might delay the substantive Hearing. Both parties submitted that an award of expenses to the Respondents was not a remedy for the prejudice caused to the Respondents. Having fully considered all circumstances and submissions presented to it, the Tribunal:-

- (1) Granted the Fiscal's motion for an extension of 14 days within which the Complainers must lodge any List of Witnesses, Productions or Affidavits to be relied upon at the substantive hearing.;

- (2) Granted expenses in favour of the Respondents from the date Answers were lodged except insofar as not already determined;
- (3) Fixed a further Virtual Procedural Hearing for 14 March 2025 at 9.30 am;
- (4) Dispensed with the notice period required for the Hearing fixed at paragraph (3) above in terms of Rule 41(3)(a) of the Scottish Solicitors' Discipline Tribunal Rules 2008.

17. At the virtual Procedural Hearing on 14 March 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. Both Respondents were absent. The First Respondent was represented by Nicola Irvine, Solicitor, Glasgow. The Second Respondent was represented by William Macreath, Solicitor, Glasgow. The Fiscal confirmed compliance with the interlocutor of the Tribunal dated 24 February 2025 and submitted that the case could proceed to the substantive hearing previously set down for 14 and 15 April 2025. The Tribunal heard detailed submissions. Both Respondents made submissions in relation to relevancy and admissibility of two Affidavits lodged and asked the Tribunal to partly redact them. Both Respondents noted that the Inventory of Productions lodged by the Complainers ran to around 3,500 pages and, whilst disclosure was helpful to some extent, asked the Complainers to identify particular sections to which they were likely to refer. Having carefully considered all of the submissions and information before it the Tribunal made the following directions:-

- i. That the Affidavit of Rosemary Walker be redacted from the second sentence of paragraph 10 to the end of paragraph 14 inclusive.
- ii. The Affidavit of Hamza Sheikh would not be redacted.
- iii. In terms of Rule 40 of the SSDT Rules 2008, that a clearly marked and paginated bundle of productions (to include hyperlinks where appropriate) be produced by the Complainers to facilitate the smooth running of proceedings.
- iv. The matter was continued to the substantive virtual Hearing already set down of 14 and 15 April 2025.

18. At the virtual Hearing on 14 and 15 April 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The First Respondent was present and represented by Nicola Irvine, Solicitor, Glasgow. The Second Respondent was present and was represented by William Macreath, Solicitor, Glasgow. The Fiscal had lodged a Third Inventory of Productions as requested by the Tribunal at the last Procedural Hearing. This represented a Joint Bundle of Productions, consisting of pages extracted from the client files previously lodged with the

Tribunal. On the first day of the hearing, the First Respondent lodged a further List of Productions, encompassing further pages from the files that the First Respondent intended to refer to. A Joint Minute between the parties, agreeing the Productions, was allowed to be received. Evidence was led for all three parties. At the conclusion of the evidence, on the suggestion of the Tribunal, all three parties agreed that submissions could be made in writing. The Tribunal directed that written submissions be lodged by 5pm three weeks from 15 April 2025. Thereafter, the hearing was adjourned to two dates to be afterwards fixed; the first for the Tribunal members only to meet to complete their deliberations and the second for all parties to be present and proceedings to be concluded.

19. The dates of 19 May 2025 for deliberations to take place and 11 June 2025 for the case to be concluded were identified as suitable. Notices thereof were duly served upon the parties.
20. On 19 May 2025, the members of the Tribunal met by way of video conference in order to consider the evidence and written submissions and conclude their deliberations.
21. The Tribunal found the following facts established:-
  - 21.1 The First Respondent is Ms Joanna Wendy Elizabeth Millar, Anderson Strathern LLP, George House, 50 George Square. Her date of birth is 13 June 1973. She was admitted as a solicitor on the 13 November 1997. She was employed by Harper MacLeod between 1 December 1997 and 23 April 2004; then Boyds Solicitors between 26 April 2004 and 4 August 2006; then Lindsays between 7 August 2006 and 30 November 2007; then Andersons Solicitors LLP between 3 December 2007 and 15 April 2009; then Young & Partners between 20 April 2009 until 30 November 2009 when she became a partner at Young & Partners until 12 September 2012. She became the principal of Millar Campbell Legal Ltd on the 18 September 2012 until the firm ceased on the 31 October 2019. She became an employee with Gilson Gray between 1 November 2019 and 13 October 2023, when she moved to become an employee of Anderson Strathern LLP on the 16 October 2019.
  - 21.2 The Second Respondent is Miss Laura Ray Campbell, of Carters, Eldo House, Monkton Road, Prestwick. Her date of birth is 28 October 1985. She was admitted as a solicitor on the 24 August 2017. Prior to that she was a registered paralegal employed by Millar

Campbell Legal Ltd. She was employed as a trainee by Millar Campbell Legal Ltd between 4 August 2015 and 4 August 2017 and then as an assistant until 31 October 2019. She was then employed by Gilson Gray LLP and thereafter began working for Carters. She holds a full practising certificate.

- 21.3 Millar Campbell Ltd was owned and operated by the First Respondent, she was in effect the principal. At Millar Campbell Ltd, from 11 December 2017, the Second Respondent was the First Respondent's only qualified employee, they worked closely together.
- 21.4 In or about October 2019, while the First and Second Respondents practised at Millar Campbell Ltd, the First Respondent received a business referral from Solicitor A of Firm A in Glasgow. Solicitor A acted for Company 1, a company with interests in commercial property. Company 1 wished to purchase the "Hurlet" a former licensed premises at 2 Glasgow Road, Hurlet, Glasgow. A tenant had been lined up and Solicitor A acted for the Tenant Company.
- 21.5 Millar Campbell Ltd accepted the instruction from Company 1. The First Respondent delegated the day to day commercial lease work to the Second Respondent. Company 1 purchased then leased the Hurlet to the Tenant Company. The Second Respondent acted in the purchase and lease transaction under the supervision of the First Respondent. That transaction settled in October 2019.
- 21.6 In due course, Company 1 offered the Hurlet for sale by way of commercial auction/roup. Solicitor A of Firm A acted for Company 1 in drawing up the Articles of Roup. The auction was advertised and took place on 19 May 2020. The auction was held by the Auctioneers. The Inventory of Writs with Articles of Roup included the Lease between Company 1 and the Tenant Company of October 2019. The Secondary Complainer was successful in the auction. His bid was £710,000. Solicitor A at Firm A acted for Company 1 throughout the sale of the property.
- 21.7 As at May 2020, the First and Second Respondents were both employed by Gilson Gray LLP, the First Respondent as Legal Director and the second Respondent as a solicitor.

- 21.8 In May 2020, the Secondary Complainer was referred by Solicitor A at Firm A to the First Respondent. On 18 May 2020 there were numerous emails sent between the secondary complainer and First and Second Respondents. There has also been the involvement of a property consultant.
- 21.9 In the first email from the Secondary Complainer to the First Respondent he wrote that he was interested in purchasing an investment commercial property in an online auction the next day and had downloaded the legal pack, etc., but wondered if he could instruct her for the transaction and what her fees would be.
- 21.10 On the 18 May 2020 the secondary complainer spoke with the First Respondent. He did not instruct her to consider and advise on the legal pack. The First Respondent advised that the Second Respondent would deal with the property transfer and she (the First Respondent) would advise on commercial corporate aspects re shareholders agreement/partnership agreement.
- 21.11 On 19 May 2020, the First Respondent e-mailed the Secondary Complainer (cc'd to the Second Respondent) to say it had been good to speak to him the day before and acknowledged that the Second Respondent had spoken to him too. She gave certain preliminary legal advice around areas of VAT/registration; TOGC; registration of title; limited companies and LLPs as vehicles for purchase and the taxation of these relative to as a sole trader or partnership. She concluded by saying that if they wished any of the options of limited company, LLP or partnership set up, then she could deal with that and recommended that he did so at this stage rather than via his accountant.
- 21.12 Over the following days and further exchange of emails, the Secondary Complainer declined to instruct Gilson Gray regarding the commercial corporate aspects; he instructed that title to Hurlet should be taken in the name of his and his sister's existing partnership - HPP. The Second Respondent was also instructed to obtain an assignation for the personal guarantee (for the rent up to and including 2026) granted by a director of the Tenant Company.



- 21.13 Various letters of engagement were sent. They were dated 22 May 2020. Letters of engagement were sent to the Secondary Complainer and separately to his sister. In each the Second Respondent was noted as the “person primarily responsible for the work” and the First Respondent would “oversee, supervise and co-ordinate work done for you”. The letters were signed off as from JF designated as “Partner Gilson Gray LLP”. JF was a commercial property partner at Gilson Gray.
  - 21.14 The First Respondent accepted responsibility for completing the identity checks for the Secondary Complainer and his sister. The Second Respondent opened a commercial property file for the partnership of the secondary complainer and his sister.
  - 21.15 The First and the Second Respondent have not kept any record of the factors that they considered or the checks they made in relation to conflict of interest.
  - 21.16 As at 22 May 2020, the date instructions were accepted by the First Respondent and when she referred the property transaction to the Second Respondent, Company 1 were an established client of Gilson Gray, having first instructed them in February 2020.
  - 21.17 Neither the First nor Second Respondent advised the Secondary Complainer that they had acted for Company 1 in the purchase of Hurlet in October 2019. Neither the First nor the Second Respondent advised the Secondary Complainer that Gilson Gray acted for Company 1 in other matters.
  - 21.18 The Respondents did not approach the seller to enquire whether they could reveal to the secondary complainer and his sister that they were clients of the firm.
  - 21.19 The Respondents did not discuss the issue of conflict.
  - 21.20 Gilson Gray did not as of May 2020 have a written policy on who should carry out a conflict check at the point of accepting instructions.
22. Having considered the foregoing circumstances, the Tribunal found the Respondents not guilty of professional misconduct and remitted the complaints to the Council of the Law Society of

Scotland under Section 53ZA(1) of the 1980 Act, in relation to paragraph 5.2.3 of the averments of professional misconduct only, namely their failure to communicate effectively with the Secondary Complainer in contravention of rule B1.9.1 of the Law Society of Scotland Practice Rules 2011.

23. At the continued virtual Hearing on 11 June 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The First Respondent was present and represented by Nicola Irvine, Solicitor, Glasgow. The Second Respondent was present and was represented by William Macreath, Solicitor, Glasgow. The Tribunal pronounced its finding at paragraph 22 above to the parties. The Tribunal proceeded to hear submissions from all parties with regard to expenses and publicity.
24. The Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 11 June 2025. The Tribunal having considered the conjoined Complaints at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Joanna Wendy Elizabeth Millar, Anderson Strathern LLP, George House, 50 George Square, Glasgow and Laura Ray Campbell, Carters, Eldo House, Monkton Road, Prestwick; Finds both Respondents not guilty of professional misconduct; Makes no award of expenses, beyond those already pronounced; Remits the complaint to the Council of the Law Society of Scotland in terms of section 53ZA of the Solicitors (Scotland) Act 1980 in relation to paragraph 5.2.3 of the Record only; and Directs that publicity will be given to this decision and that this publicity should include the names of both Respondents and the Secondary Complainer but need not identify any other person.

**(signed)**

**Catherine Hart**  
**Vice Chair**

25. 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 First and Second Respondents by recorded delivery service on  
8 SEPTEMBER 2025 .

IN THE NAME OF THE TRIBUNAL



Catherine Hart  
Vice Chair

## NOTE

These conjoined Complaints were set down for a two-day virtual substantive Hearing to commence on Monday 14 April 2025. On Friday 12 April 2025, the Fiscal lodged a Third List of Productions, in response to the Tribunal's Direction of 14 March 2025. At the hearing on 14 April 2025, an Inventory of Productions for the First Respondent and a Joint Minute between the parties were lodged. The Tribunal allowed all of these to be received. The Tribunal also had before it Affidavits for two witnesses, expected to be called by the Complainers to give evidence in the course of the hearing. The Chair drew parties' attention to a paragraph in the Affidavit for the Secondary Complainer which appeared to extend beyond the pleadings contained in the Record and reminded parties that the evidence led from witnesses should be confined to what is contained within the Record. Both Respondents submitted that they were content for the Affidavit to stand, subject to their cross-examination and submissions on relevancy. Evidence was led by all parties over the two days.

## EVIDENCE FOR THE COMPLAINERS

### **Witness One: Hamza Tahir Sheikh (the Secondary Complainer)**

The Secondary Complainer identified the Affidavit and confirmed it was accurate and truthful. The Fiscal invited the Tribunal to accept the Affidavit as the Secondary Complainer's evidence in chief and to allow the other parties to cross-examine him. The Affidavit was as follows:-

1. [...]

2. My parents have a history of property investment. My sister, my partner in the Hurlet Property Partnership, is a solicitor. She is predominantly in immigration law but has experience in the family property business.
3. I began to look at the investing in property in 2020; you will recall that was when Covid was prevalent. My dental (sic) business had been forced to shut its doors. I was looking to diversify and have a second income stream. I considered property investment with my sister, and we agreed we would jointly invest in property.
4. My purchase of the Hurlet was my first property investment with my sister and it was my first personal property investment other than the investment in my dental business which has

commercial premises. During the purchase of the Hurlet, I was the one who carried out all investigations and online property searches.

5. The purchase was made at my first auction. [The Auctioneers] are a London-based auctioneer and at that time all of their auctions were online. I had made some investigation of [the Auctioneers] and I considered them to be a large and busy auctioneer firm of good standing.
6. When I identified the Hurlet, I had been looking through online auctions for several months. I observed the information on the auctioneers site about the Hurlet. I considered the property to be a good investment property. The sales information showed a good rental return. It was in the busy city of Glasgow, there was a new lease with 15 years to go, and the property was of significant size.
7. I obtained the purchaser documents from [the Auctioneers] and noticed they were drafted by [Solicitor A] of [Firm A] who acted for the sellers [Company 1]. I called [Solicitor A] who indicated that the landlord was of good standing, the tenant was reliable and the rent was up to date and there was a personal guarantee in place as security.
8. I asked if I could speak to the tenant, but [Solicitor A] indicated it was not possible. He further assured me everything was in place and I asked if he had any recommendations as to who could act on my behalf if I were successful at the auction.
9. [Solicitor A] recommended Joanna Miller at the Gilson Gray. I did not have any personal contact with any property consultant. [Solicitor A] did not tell me that Joanna Miller and Laura Campbell acted for [Company 1] in the purchase and lease of the Hurlet nor that he had acted for the tenant.
10. I had sight of the full papers from [the Auctioneers]; I did my best to read them but I did not fully understand everything. I did not ask my sister to read and give me advice. I considered [the Auctioneers] were a reputable auctioneer and [Solicitor A] was a reputable solicitor and that if [the Auctioneers] were putting forward these documents then they must be must be proper.
11. I made some investigations at the time other than what was in the auctioneers papers; I looked online with Companies House and noted [Company 1] were a large company. I do not

recall checking online in relation to the tenant.

12. I then called Joanna Miller. In my first conversation with her, she asked if I wished Gilson Gray to act for me in advance of the auction. I also spoke with Laura Campbell. She had a detailed conversation with me as to what she could do before the auction. Speaking to Laura she confirmed she could carry out some pre auction checks and that would cost £300. She indicated she could carry out the title search some personal searches. I declined this service because (sic) I considered my own investigations and the documentation available to be reliable and were sufficient.
13. It was during the first conversation with Joanna Miller that she said Gilson Gray could act in the purchase if I was successful. She highlighted her services with regard to establishing a corporate vehicle to purchase it. Joanna did not at that time say that she required to make some checks to ensure they could act in the purchase. Joanna indicated that she would be my first point of contact and it would be Laura Campbell who would be leading the purchase should the matter proceed.
14. I confirm that after being successful at property at auction it was Joanna who confirmed the price of the property transfer was going to be £900 plus VAT. The price was not agreed with Laura but Joanna.
15. Neither prior to the auction or after the auction did Laura or Joanna tell me that they had been involved in the purchase and lease of the Hurlet on behalf of [Company 1]. They did not tell me that [Solicitor A] previously acted for the tenant of the Hurlet.
16. At no time prior to the auction nor during the period when Laura completed the conveyancing did Laura or Joanna advise me that Gilson Gray also acted on behalf of [Company 1].
17. I was and am aware that I had entered into a contract to purchase the Hurlet at the auction. That contract required me to pay a deposit of £71,000 and allowed me six weeks to complete the purchase.
18. I see that the letters of engagement dated 22 May 2020 and 8 June 2020 indicate that I instructed Gilson Gray "to advise in connection with existing instructions already provided and to future instructions which will be agreed with you".



19. I considered that during the period of the conveyancing that Gilson Gray, Laura and Joanna would carry out further due diligence on my behalf. I considered if that was not satisfactory, I could pull out of the purchase and lose £71,000 being my deposit. I expected that a solicitor acting on my behalf would be fully satisfied the property I was buying had a proper lease and that they would answer all my questions. I considered they would act in my best interest during that six weeks. It was not my understanding that I'd instructed Laura and Joanna merely to carry out the conveyancing.
20. I expected Gilson Gray to obtain documented proof that the rent had been paid, confirm that the tenants personal guarantee was worth the paper it was written on and confirm that the tenant (the company) was still an existence and protect my investment generally.
21. It is now my understanding in hindsight that was not Joanna and Laura's expectation of the instruction. I asked numerous questions to Laura regarding this for due diligence, however she did not answer.
22. I recognise I would lose my deposit if I pulled out, however, I considered Gilson Gray required to act in my best interests and ensure the property I was buying had a fully viable tenant. By that I mean, they were paying rent fully and without fail, that the tenant was not insolvent, only eight months after moving into the property, that they had internally sold the business to another company who were illegally occupying the property and that the personal guarantee from the director of the tenant company that existed was not worth the paper it was worth.
23. As mentioned above I confirm that I told Joanna the name of the property when I first talked to her. I confirmed that it was [Solicitor A] recommended her. During no conversation did Joanna tell me she acted previously for [Company 1] nor did she advise me that she previously acted in the purchase of the Hurlet.
24. I told Laura the name of the property I was trying to purchase in our first conversation. At no time in that conversation any following conversations did Laura tell me she acted for [Company 1] in the purchase of the property and the lease of the property.
25. Neither Laura nor Joanna during the period from the first conversation to the conclusion of the purchase that Gilson Gray were presently acting for [Company 1] on other matters.

26. I understand reading the emails exchanged and with hindsight that Gilson Gray were carrying conveyancing only, I do not consider that to be the full extent of the obligations to me. I considered that they were required to act in my best interests.
27. Had Joanna or Laura confirmed to me that they had acted for [Company 1] in the purchase and lease of the Hurlet I would not have instructed them to act in my purchase from [Company 1]. I consider that they would have information about the lease and more detailed information about the finances of the tenant when the lease was signed.
28. Had Joanna or Laura advised me that Gilson Gray presently acted for [Company 1] on other matters I would not have had them act for me in this matter.
29. I recognise I am saying this with hindsight. I recognise there may be some positives in having previous knowledge of the property in a transaction. What if that knowledge was detrimental to my interest or if it was in [Company 1]'s interest for me not to have that information, my solicitor could not tell me because it was private to her previous client.
30. I have not been given the opportunity to consider this before I instructed Joanna and Laura. I am content even with the experience I have had, that had I been told of the previous and ongoing relationships I would not have instructed them at the time.
31. The knowledge I have now that Gilson Gray acted for [Company 1] on other matters causes me further concern.
32. I am of the view that Joanna and Laura can be reasonably accused that they had the best interests of [Company 1] at heart. They had acted for them previously. They had received previous referrals from [Solicitor A] to act for [Company 1]. Gilson Grey were acting in more than one matter. [Company 1] was a big player, who had brought business to Joanne and Laura previously, was doing so at the same time as my instruction, and not doubt is doing so after the conclusion of the sale of Hurlet. [Company 1] would have more instructions to give to solicitors and it would be in the interests of Joanna and Laura to be in a position to act for them in the future. It is also clear that they received referrals from [Solicitor A] at least twice, it would be in their interest to continue that relationship and act when there is a referral. Joanna and Laura's sole objective was to appease their 'regular clients', [Company 1], above anyone else.

33. I was not given the opportunity to consider all that information and objectively make a decision as to whether or not I would instruct Gilson Gray. In my view, Gilson Gray, Laura Campbell and Joanna Miller acted in a clear conflict of interest. Their firm could not act in the best interests of both purchaser and seller.
34. After a few weeks following completion and I spoke to the director of the tenant and it became clear he was a man of straw and he was facing sequestration proceedings. The new people he had put into the property were thugs and they threatened me when I attended the property.
35. Overall it took me 18 months and several legal actions carried out by Miller Samuel LLP and liquidators to act on my behalf at the cost of £40,000 to remove the tenants. It took me a further year to get a new tenant for the property following the eviction. I have lost approximately £140,000 in rent and court costs, and around £25,000 of expenditure in trying to secure a new tenant. Furthermore, when the illegally occupying tenants were removed, they had left £50,000 worth of damage to the property, by completely stripping out the property prior to their departure (including carpets, walls, radiators, doors, floorboards, skirting boards, removal of lights, fixtures and fittings, etc). I was left with a vacant, delapidated (sic) property that was now of much lower value than the £710,000 that was paid.
36. I consider Joanna Miller and Laura Campbell acted in the best interests of Company 1 during the whole transaction."

## **CROSS EXAMINATION BY FIRST RESPONDENT**

The Secondary Complainer confirmed he contacted the First Respondent the day before the auction and told her that he had seen the legal pack, which included the titles, articles of roup and lease. The articles of roup were put to him and he confirmed that he recalled seeing these. He was asked to look at articles 3.9, 3.11, 3.12 and 3.13 and stated that he could not remember reading them. He was asked if he understood them and responded that five years on, in hindsight, he did. In particular, he accepted that article 3.13 confirms that the seller gave no warranty in relation to the tenant of the property.

He agreed that he had spoken to both Respondents the day before the auction. He insisted that it was only the Second Respondent who offered to give him pre-auction advice. A note of a telephone conversation of 18 May 2020, prepared by the First Respondent, was put to the Secondary Complainer. He accepted that the note reflected the conversation, apart from the reference to any advice being given

before the auction, a conversation he insisted did not take place with the First Respondent. The Secondary Complainer insisted that it was the First Respondent who first quoted him fees to be charged for the purchase and not the Second Respondent.

The Secondary Complainer insisted that it was the Second Respondent who offered to do “due diligence” before the auction and not the First Respondent. He accepted that he refused this offer as he considered that it would not provide any more information than was already included in the auction legal pack. He said the “personal searches” had all been carried out seven months prior to the auction, according to the paperwork, and he did not think it made sense to pay £300 for the same thing to be done again.

The Secondary Complainer accepted that he did not ask his sister to look at the paperwork. He agreed that he knew it was the Second Respondent who was doing the conveyancing work. Ms Irvine drew the Secondary Complainer's attention to paragraph 9 of his Affidavit, where he stated that he did not have any contact with a property consultant and reminded him of his contact with Property Company A. He explained that he had forgotten that they were property consultants and had considered them to be joint auctioneers. He was unable to recollect who was first to recommend the First Respondent to him, he recalled both Solicitor A and Property Company A recommending her to him.

The Secondary Complainer insisted he had asked Solicitor A, before the auction, if the rent was paid up to date. Ms Irvine drew his attention to the terms of the lease for the property where it indicated that the rent commencement date was seven months after the date of entry, meaning that the first payment date for rent was 28 May 2020, a date after the auction had taken place. The Secondary Complainer insisted he had “posed the question” to Solicitor A and that the latter had responded.

Ms Irvine referred the Secondary Complainer to an email from his sister dated 2 June 2020, which referred to the agreed fee, sent to both Respondents but addressed “Dear Laura”. The Secondary Complainer stated that he considered that both Respondents were acting together and that the fee was agreed with both of them. His attention was drawn to an email dated 1 June 2020 from him, addressed “Dear Laura” which referred to “Your verbally agreed fee.” He explained that by this point, the fee was agreed with the Second Respondent.

The Secondary Complainer was asked why he expected the checks relating to the lease, which he referred to in paragraph 20 of his Affidavit, to be carried out. He stated that he expected a lawyer acting for the

purchaser of an investment property to do these. He considered that it was the fair and right thing to do, to check that everything in the legal pack was truthful, especially where the Second Respondent had acted before in relation to the property. He had considered that all of the checks referred to in paragraph 20 of his Affidavit were things that should form part of any conveyancing process. If that was wrong, then this might be a lesson learned. He accepted that his expectations were wider than the simple transfer of title. He was referred to an email from his sister dated 3 June 2020 to the First Respondent, which referred to the description of work as consisting of “work in relation to the purchase of the property” and nothing else, and two emails of 4 June 2020 from the First Respondent to him and his sister, emphasising the agreed fee “is re transfer of title only”. He accepted that he had received these emails.

The Secondary Complainer was asked to confirm whether an email of 4 June 2020 was his last communication with the First Respondent, prior to the settlement of the transaction. He said he would require to check his records to confirm that. He did recollect that the First Respondent contacted him three months after the settlement date.

Ms Irvine asked the Secondary Complainer if his expectation had been that this was a “proper lease” and put to him that in fact there was nothing improper about it. The Secondary Complainer responded that he believed that the tenant never truly existed and that the lease was “a phantom” one which existed in order to increase the value of the property. Ms Irvine reminded the Secondary Complainer that the tenant was the Tenant Company, referred him to the legal pack which gave the company registration number and asked if he was saying that the company did not exist. He stated that this was a “nice” document but “nothing exists in reality”.

The Secondary Complainer confirmed that it was his expectation that the information given in the legal pack would be checked as part of the transfer of title and it was not. The guarantor of the rent, a director of the Tenant Company, was sequestered in September. The Second Respondent was aware of these issues. He insisted that the Respondents knew that the lease had been assigned from the very beginning, that the Tenant Company was not in occupation and “they” disclosed nothing to him. He stated that the guarantor had already advised the Second Respondent that “he” was not in occupation of the property and that he was going bankrupt. He conceded that the tenant was in fact the limited company and that, six months after settlement, he took steps to remove it from the property. He conceded that he had concluded the contract to purchase the property before he instructed Gilson Gray but suggested that, if he had been given this information, he could have withdrawn from the contract and opted to lose his

deposit. Ms Irvine asked if his loss might not have been more because of the possibility of the seller suing for damages. He responded that this was unlikely, where there was only a supposed tenant which did not really exist, with a director that was going bankrupt, meaning that the personal guarantee which he had granted was worthless.

## **CROSS-EXAMINATION BY THE SECOND RESPONDENT**

The Secondary Complainer accepted that neither he nor his sister had previously bought property at auction. He conceded that he did not read the terms and conditions of the purchase and only looked at the headlines, financials and rental yield. He now understood that the contract was concluded when the hammer went down. He confirmed that he took everything at face value and did not seek independent financial advice. His sister had experience in property investment. His parents were more involved in residential property rather than commercial property.

He had considered the auctioneers to have a good reputation and had been impressed by the legal pack. He did not know if the auctioneers did their own due diligence and could not say if they verified all of the documentation provided by the sellers.

He explained that he only contacted Gilson Gray 24 hours before the auction because he needed a solicitor's name to be able to register with the auctioneer. The Secondary Complainer insisted that he was given all of the information in paragraph 7 of his Affidavit by Solicitor A and at the time there was no reason for him to doubt its accuracy. He did not take notes of his telephone calls but insisted he had asked Solicitor A if the rent was paid up to date. The telephone call with Solicitor A was on 18 May 2020. The list of properties for sale came out two weeks prior to auction. He and his sister had narrowed down the properties they were interested in. He believed that he could not have received the legal pack for the property much more than two or three days prior to his call with Solicitor A. He did not ask his sister to read the pack and had considered the auctioneers to be reputable.

He stated that only checking the company that was the seller, and not the tenant, was a mistake.

He remembered that he first spoke to the Second Respondent after he had spoken to the First Respondent, although he couldn't remember exactly when that had been.



Mr Macreath asked the Secondary Complainer why he expected due diligence to be done after the auction when he had turned it down before the auction. The Secondary Complainer explained he believed that the Second Respondent would not provide anything more before the auction than was already available in the legal pack. His expectation was that the checks, referred to by him in his Affidavit, would be carried out as part of the conveyancing process. He considered these things to be simple. He was asked, if in fact, he was now making accusations against others, without evidence, because he was unhappy at the loss he had sustained as a result of this purchase. The Secondary Complainer insisted that there was evidence; that the guarantor had had a discussion with the Second Respondent and that the Respondents were only interested in getting the sale “over the line”.

The Chair intervened and reminded Mr Macreath of the limitation of the pleadings in the Record.

Mr Macreath asked the Secondary Complainer if he had expected the Respondents to go beyond what he had “signed up to”, including all the checks referred to and vouching of the financial viability of the purchase. The Secondary Complainer explained he did not expect vouching of the financial viability but had expected the Second Respondent to check that the personal guarantee was “proper” and that the tenant truly existed. He conceded that he now does not have that expectation, but he did then.

## **RE-EXAMINATION**

The Fiscal took the Secondary Complainer back through correspondence discussing the agreement of the fixed fee. The Secondary Complainer agreed with the Fiscal that the letter of engagement of 22 May 2020 placed no restriction on the documents that Gilson Gray would look at.

The Secondary Complainer had understood that both Respondents would be working together. His belief was that he was instructing both Respondents. He confirmed he received a number of letters of engagement but they all suggested both Respondents were “contracting to assist” in the transaction.

## **Witness 2: Rosemary Clare Walker**

The witness identified her Affidavit and confirmed that its contents were true and accurate to the best of her belief. The Fiscal invited the Tribunal to accept the Affidavit as the witness’s evidence-in-chief and to allow the Respondent an opportunity to cross-examine her. The Affidavit was as follows:-

“



1. My full name is Rosemary Clare Walker. I am 48 years old. I am a partner at Gilson Gray LLP solicitors and have been since October 2015. I have been the Client Relations Manager since 2017.
2. I confirm I received a complaint about the services provided by Gilson Gray to the Hurlet Property Partnership from Mr Hamza Sheikh, one of the partners, on Saturday 10th April 2021. I answered that complaint on behalf of the firm. As part of that process I asked Joanna and Laura (as hereinafter defined) on 12th April 2021 to confirm that the electronic files were uptodate. Both confirmed that they were.
3. Mr Sheikh thereafter made a complaint to the Scottish Legal Complaints Commission. "the SLCC". Part of the process in dealing with the SLCC is that I provided them with my firm's file.
4. In order to provide the full file to the SLCC, I began by asking Joanna Miller (Joanna) and Laura Campbell (Laura) again to confirm the file on our case management system was complete. I asked this by email of 16 December 2021. On receipt of confirmation that it was, I asked my IT team to upload the file from our case management system to our secure file storage and transfer system. I then asked one of my litigation colleagues to transfer the full files by way of egress to the SLCC. To the best of my knowledge the files sent to the SLCC are my firm's full file in connection with the services we provided to Mr Sheikh although I make that statement in reliance on Joanna, Laura and others in my firm as I did not act for Mr Sheikh and did not personally transfer the files to the SLCC.
5. Mr Sheikh's letter of complaint is dated 9th of April 2021 although it was emailed to me on 10th April 2021 and my reply is by e-mail dated 14th of May 2021.
6. In my reply I set out the factual position as I came to understand it following discussions with Joanna, Laura and my fellow partners and consideration of the files. I set out 11 paragraphs of the facts I considered relevant to the complaint. I consider these to be accurate in accordance with the file and the information I was told by Joanna and Laura. I cannot comment on whether any information they gave me, which was not independently recorded on the file, was accurate. I then addressed the complaint made.

7. I confirm that both Laura and Joanna had an opportunity to review and comment upon the complaint but did not see my response to Mr Sheikh before it was issued.
8. It was clear to me that both Joanna and Laura had, in 2019 while at Miller Campbell, acted for [Company 1] in the purchase of the Hurlet and the granting of the lease by [Company 1] (the "2019 transaction"). The tenant in the 2019 transaction remained in occupation of the Lease in 2020. It was clear Joanna and Laura knew that [Solicitor A] of [Firm A] had acted in the 2019 transaction for the tenant who had leased the property and provided a director's personal guarantee. In 2020 [Solicitor A] of [Firm A] was acting for [Company 1] who were selling the property with the lease and Personal Guarantee in place, to the Hurlet Property Partnership, for whom Gilson Gray now acted.
9. It was clear that in the 2020 transaction in which Joanna and Laura were now instructed, the roles in the sale were reversed. [Solicitor A] at [Firm A] had changed from acting for the tenant to now acting on behalf of [Company 1] in the sale while Laura and Joanna had changed from acting for Company 1 to now acting for the purchaser, albeit this time doing so while employed by Gilson Gray. Further I understood that Mr Sheikh was referred to Joanna by [Solicitor A]. This information came from Joanne's file note of her initial call with Mr Sheikh dated 18 May 2020.
10. I upheld Mr Sheikh's complaint that Joanna and Laura had failed to disclose to Mr Sheikh that they had acted for [Company 1] in purchasing and leasing the Hurlet before they acted for Mr Sheikh.
15. I confirm I have had sight of the summary of complaint reference 202100696 from the Scottish Legal Complaints Commission against Laura, Joanna and the firm of Gilson Gray LLP. I confirm my letter of the 26 October 2021 addressed to the Scottish Legal Complaints Commission is my response on behalf of the firm at the eligibility stage.
16. I confirm that both Laura and Joanna had sight of my proposed response before it went to the SLCC. I asked both of them for their comments and advised Laura and Joanna that they could lodge their own response to the SLCC at the eligibility stage if they wished to. Neither wished to make any comments on, or changes to, my proposed response and neither chose to lodge their own submissions with the SLCC. The same is true of my later submission on the merits of those parts of the complaint held to be

eligible for investigation by the SLCC, which both Joanna and Laura saw in advance and made no comment on.

17. I refer to the e-mail chain which ends with Joanna's email to me of 26 of April 2021 at 15.13 hours. That chain contains Joanna's annotated comments to my queries contained in my email of the 15 April 2021 timed 00.17hrs.
18. I have consulted our case management system and note that [Company 1] was created as a client on the system on the 10th of February 2020. The client entry shows that the first file was opened on the same date, 10th February 2020. and the second file was opened on 20th February 2020. Both files were opened as Licensing files, which is the team Joanna was in. One was opened as a Real Estate matter and the other as a Corporate matter. The matter manager (ie the supervisor with overall responsibility for the work) for both of those files was Joanna. Joanna was the fee earner on the first file and Laura was the fee earner on the second. Joanna is noted as the source of business. I cannot say who physically opened the files but the letter of engagement on the first file, which is the first substantive document issued, was in the name of Joanna and she has reported to the client. She may have had the file manually opened by another member of staff.
19. I confirm that [Company 1] continued to instruct Gilson Gray. On my last check there were 10 instructions noted on our system - 3 licencing, 2 real estate, 1 corporate, 2 general litigation and 1 debt recovery. Although there are 2 files opened as general litigation and these do appear to involve disputes, neither were opened or managed by our litigation team. In both files, Joanna was the fee earner and the matter manager was Derek Hamill, who is a partner and was then the Head of the Corporate team. In both files, most of the work was done by Joanna. This can be seen from looking at the time recording figures on the case management system.
20. I confirm the (sic) Laura Campbell was a solicitor employed in our Real Estate department in Glasgow. Her direct supervising partner was John Fulton who acted under the head of Real Estate, Murray Stewart.

21. Joanna Miller was a Legal Director employee. She briefly worked in the Real Estate team in Glasgow and then transferred to our Corporate team in Glasgow.
22. A Legal Director is considered analogous to a partner in the service and technical capability they provide. The title is used in Gilson Gray either when the individual does not have a sufficient client following to become a partner or is considered on track to becoming a partner.
23. I have discussed Joanna and Laura's working relationship with my colleagues in Gilson Gray's Glasgow office. My colleagues tell me that Joanna and Laura worked closely together, particularly on Miller Campbell's legacy clients. There was a close working relationship. It was common for them to work together on files.
24. I observe that Joanna Miller had the more senior employee role and had greater experience. My colleagues advise that she took the lead role when they worked together and this can be seen in the files I have reviewed, where she frequently gives instructions and delegates tasks to Laura.
25. There were 2 files opened for the Hurlet Property Partnership. The first was a Real Estate file for the purchase. The second was a corporate/licensing file for associated work. I have been shown the two Terms of Business letters dated the 22nd of May 2020 and the 8th of June 2020 addressed to Mr Sheikh. Both relate to the Real Estate purchase. I note the terms state Laura Campbell was primarily responsible for the work in relation to the purchase of property with Joanna Miller supervising that work. The 22nd May version appears to have Joanna Millar's name at the bottom as being the person issuing it. This version seems only to have gone out by post so I can only view the file copy. The client then questioned part of the fee quote by email to Laura, copying in Joanna. On 3rd June, Joanna emailed the client in response to that query stating, *"I will arrange for the letter of engagement to be resent stating the fixed fee. I have almost completed the partnership agreement and propose to charge a fixed fee of £1000 plus VAT. Can you confirm you are happy with that? If so I will have that added to the letter of engagement too and resend that to you by email and mail tomorrow."* She then exchanged several follow up emails with the client discussing the fees. On 4th June, Joanna asked Laura in an email to amend both letters of engagement. I understood by that she meant the fees for the purchase file and the

licensing/corporate file which Joanna was dealing with. In that email Joanna asked Laura to put John's name on the purchase loe and just hers on the licencing/corporate one. John is John Fulton. I was later told by him that he was unaware of the file at that time. Laura then amended the loe for the purchase and issued it on 8 June 2020. This continued to state that Laura would do the work and Joanna would supervise it but this time it was issued in John Fulton's name.

26. I confirm during email exchanges with Joanna, it was her position that she did not supervise Laura in connection with the property transaction. This position is in conflict with the letter of engagement.
27. I have been asked about written procedures regarding conflict-of-interest checks within Gilson Gray. I have spoken to Glen Gilson, a founding partner, and he confirmed that there was a written policy, but I have been unable to locate it. However, the firm has operational policies and procedures covering this and did in 2020.
28. When opening a new client or file, there was and is an operational policy which requires the use of our case management system, Envision, to carry out a conflict check. A check is carried out as part of the onboarding of potential new clients. I am advised by my HR team that training of new employees includes training in the operation of Envision and carrying out conflict checks.
29. I am advised by the heads of the Corporate and Real Estate teams that they expect any qualified solicitor when onboarding a client to carry out the conflict check through our practise management system. I confirm we as a firm also expect all employees to comply with the solicitor's Practice Rules.
30. Prior to this case, Derek Hamill, who was the Head of Corporate and Joanna's line manager, considered Joanna an experienced solicitor, who had previously been a principal in private practice and was confident that she understood the necessity of carrying out conflict checks.
31. I am content that when the client matter was opened for Mr Sheikh/Hurlet Property Partnership, that [Company 1] was a client of Gilson Gray and this information would have been on our case management system. It would have shown up in a conflict check. The 2019 transaction where Miller Campbell acted would not have shown up on our system but the new matters Joanna had opened for [Company

1] referred to above would have shown up.

32. I believe Joanna onboarded the Hurlet Property Partnership or was at least responsible for the onboarding. She took the initial call with the client. She instructed Laura to issue the loans. She dealt with the fee queries. She was the matter manager and fee earner for the licencing/corporate file, albeit that was not progressed. She instructed Laura to put John Fulton's name on the letter of engagement for the purchase file. She is noted as the source of business.

33. Joanna would have known [Company 1] was a client of Gilson Gray at time she onboarded the Hurlet Property Partnership. I conclude this as it was she who created and worked on [Company 1]'s first two client matters. She was noted as the source of business for both the Hurlet Property Partnership and [Company 1]. She and Laura would also have been aware that they acted for [Company 1] in 2019 in the purchase of the Hurlet. That would not have been knowledge available to anyone else from our case management system."

## **CROSS EXAMINATION FOR THE FIRST RESPONDENT**

The witness confirmed that she reviewed the file for this transaction in her role as Client Relationship Manager when dealing with the Secondary Complainer's complaint. Her review showed that the First Respondent took the initial call, gave him preliminary advice and indicated that the Second Respondent would deal with the purchase. The purchase went ahead primarily carried out by the Second Respondent. She confirmed that the First Respondent was not part of the real estate department. The advice given by the First Respondent related to the vehicle to be used in order to purchase the property, how to put that into place, and whether the client wanted advice on the articles of roup prior to the auction. The only work that in fact proceeded was the conveyancing work, carried out by the Second Respondent. The witness could not say whether in fact the First Respondent had supervised the Second Respondent. She confirmed that the First Respondent told her that she did not supervise the Second Respondent. She was unable to confirm, without seeing the file itself, that the First Respondent had no contact with the Secondary Complainer from 4 June 2020 up to the date of settlement.

The witness confirmed that in May 2020, the firm had two files open for Company 1. One was a file containing caveats and the other was a general file. Both of these files were opened within approximately 10 days of each other. The First Respondent was noted as fee earner on one and



the Second Respondent was noted as fee earner on the other. She could not remember which way round it was. She had not looked at the general file to any great degree.

To her knowledge, the First Respondent did not undertake any conveyancing work while she was at Gilson Gray. For the bulk of her time with the firm, the First Respondent was in the corporate department, although she did start in the real estate department.

The witness only became aware of this particular matter on receipt of the complaint in April 2021. She recalled that it was the First Respondent's position that she did not in fact supervise the Second Respondent.

The witness explained that the head of the real estate department was in charge overall, but, on a day-to-day basis, the Second Respondent worked with the First Respondent and John Fulton, who was then a conveyancing partner of the firm. The witness agreed that the First Respondent being placed within the real estate department was an anomaly, as she was not actually part of the conveyancing department. The witness stated that the file had correspondence between the First and Second Respondents where the First Respondent had asked the Second Respondent to arrange for a second set of letters of engagement to be issued. The client had asked the First Respondent to amend the fixed fee. The First Respondent was anticipating being instructed in the corporate matter. The First Respondent emailed the Second Respondent asking her to arrange for two letters of engagement to be sent to her for her to issue them to the client. The witness remembered seeing an email sent by the First Respondent referring to an error in the initial letters of engagement.

The witness confirmed that she had been unable to locate a written operational policy regarding conflict of interest checks. However, the witness had spoken to staff who confirmed that conflict checks were part of the induction training.

The witness was asked what she meant by the "onboarding" of the client. The witness explained that this was the process of "taking on a new client" which included things like issuing a letter of engagement; risk assessment; the client being set up on the Envision system; conflict checks; and setting up the matter. Not all steps are taken by the same person, for instance, the witness herself often delegates the manual set up of the file to her secretary. The witness was asked why she had reached the conclusion that the First Respondent had "onboarded" the Secondary

Complainer. The witness explained that there were a number of factors on the file that she had taken account of: the First Respondent had the initial discussion and agreed to act; the First Respondent had asked the Second Respondent to issue the initial letters of engagement; when the client queried the fee, it was the First Respondent who replied; a corporate file was set up at the same time as the purchase file and the letter of engagement re the purchase file says that the First Respondent would be supervising it. Additionally, the First Respondent was noted as the “introducer” of the business and she would gain from that. The First Respondent was noted as the source of business, the matters partner and the supervising partner.

Ms Irvine asked the witness if it was possible that she was wrong about the First Respondent being responsible for the onboarding of the client and the witness conceded that it was a possibility.

The witness confirmed that she had taken into account the nature of this transaction, namely that it was the transfer of title following on a sale at roup. Whilst the nature of the transaction did impact upon her conclusion, it did not address the duties of the two Respondents regarding the conflict of interest.

## **EVIDENCE FOR THE FIRST RESPONDENT**

### **Witness: Joanna Wendy Millar**

The witness confirmed that she is now a consultant with Firm A, working predominantly in the field of licensing, corporate and with some commercial work.

She confirmed that she was the principal of Millar Campbell. The Second Respondent and some administrative staff worked for the firm. The firm dealt with commercial property, a small amount of residential property, licensing and corporate work. The Second Respondent was an assistant who did commercial and residential property work. The Second Respondent had predominantly been trained by an individual who was then a consultant to the firm.

The witness confirmed that both she and the Second Respondent moved to Gilson Gray on 1 November 2019. They were both placed in the real estate team at that time. The First Respondent confirmed that she was to be involved in licensing and corporate work. Derek Hamill did some corporate work and following discussions, it was agreed that it was better if

both she and the Second Respondent started off in the same team for their induction. It was always the intention that, after six months, the First Respondent would move to the corporate department.

She said that the firm of Gilson Gray was very departmentalized. She was taken on by the firm principally to do licensing work. It was made very clear to her that she was to stay within her “tracks” of corporate and licensing. She recollected that she moved departments around six months after her starting with the firm, approximately April 2020.

The witness was referred to an email from the Secondary Complainant addressed to her dated 18 May 2020. The witness confirmed that that this was the first time she had heard of the Secondary Complainant, although she did recollect that he had left a voicemail for her. She could not be sure which came first, the email or the voicemail.

She confirmed that she knew the Property Consultant of Property Company A. She explained that he knew what her area of work was and would often refer work to her to pass on to others. She would get credit for the introductions when it came to the firm’s appraisals. So whilst he might know that she would not do the work herself, he would still refer the work to her for her to get credit.

After she received the email from the Secondary Complainant, she contacted him. He had left a telephone number in his voicemail. She confirmed that the attendance note on the file accurately recorded the discussion. It was her recollection that the Secondary Complainant had mentioned in his voicemail that Solicitor A had referred him to her. She herself was not contacted by Solicitor A. She has seen an email from Solicitor A addressed to the Second Respondent asking her to contact the Secondary Complainant. The Property Consultant knew that any property work would be done by the Second Respondent.

The witness confirmed that she emailed the Secondary Complainant the day following her telephone conversation with him setting out areas for him to consider. She confirmed that the email of the 19 May 2020 within the Third Inventory of Productions was the email to which she was referring. In it she had discussed both high level and general information. She recommended that the Secondary Complainant obtained financial advice.

The witness explained that the work done in setting up a limited company or a limited liability partnership was normally done by trainees. However, during the COVID lockdown she would have dealt with that.

Following receipt of the email from the Secondary Complainer of 19 May, the witness confirmed that she had contacted the Second Respondent about how to practically go about setting up the client. His email had not indicated whether he wanted to set up a limited company or an LLP, so she had contacted him to ask what vehicle he wanted to go ahead with. He responded that he and his sister would proceed with their existing partnership.

She confirmed that she emailed the Secondary Complainer's accountant to confirm his ID. She would not usually have been involved in this process, but during COVID the trainees were on furlough. She considered that she should not have said in that email that she was instructed but should have used the word "we". There was a very short time scale for work here and she believed that this was a typing error on her part due to her haste. At no stage was she ever going to do the conveyancing work. Derek Hamill would not have allowed that.

She confirmed that she sent an email to the Second Respondent asking how to set up the files for a partnership. In that email she was referring to the Envision system. The witness said she was not normally involved in the set up of files and had asked the Second Respondent how the firm created a client where it was a partnership. The queries were about the practical steps to set up the file.

During the COVID lockdown people were picking up different tasks who did not normally perform these. The Second Respondent was picking up the issuing of letters of engagement for her team. There were two sets of letters of engagement on this file. The first set was issued around the end of May and the second in June. The witness had not seen the first before they were sent out to the clients. The procedure during lockdown was for the Second Respondent to send the letters of engagement to Peter Scanlon who would print them out and take them to someone in Glasgow for signing. The heading of the letter of engagement of 22 May namely "partnership agreement – purchase of property" was not accurate. The witness confirmed that she would have dealt with the partnership agreement and the Second Respondent, supervised by John Fulton, would have carried out the purchase. The real estate team were meeting daily or at least three times a week. New instructions were discussed at a Teams meeting. John Fulton

should have been aware of this transaction. The letter of engagement should have said that John Fulton would supervise the Second Respondent's work. The witness emphasised that she did not provide any supervision at all in relation to the Second Respondent. She emphasised that the Second Respondent was a very able practitioner who understood things such as letters of engagement very well. The witness was referred to an email from the sister of the Secondary Complainer dated 2 June 2020 sent to the First Respondent's email address but addressed "Dear Laura". The First Respondent was insistent that she did not quote the fee referred to. She insisted that the Second Respondent quoted the fee for the purchase work. It would not be possible for her to quote a fixed fee for the work of another department. She did not think that John Fulton would have been impressed if she had tried to quote for work being done in his department.

The witness was taken through correspondence regarding fees quoted. She confirmed that she had believed she was going to be instructed regarding the partnership agreement and as a result she emailed the Secondary Complainer quoting a fee of £1000. That had sparked the response from the Secondary Complainer regarding an apparent increase of £100 on a fixed fee agreed with the Second Respondent the day previously. Ultimately, the clients decided to deal with the partnership agreement themselves.

She recalled seeing a draft of the letters of engagement. She emailed the Second Respondent confirming that the letter of engagement relating to her work should refer to John Fulton as her supervisor and that the witness's letter of engagement should simply refer to the First Respondent. That of course was superseded by the clients saying that they did not want her to proceed with the partnership agreement. The First Respondent expected the letter of engagement to be amended. The letter of engagement of 8 June was still not accurate. The First Respondent said she did not see this before it was issued.

The First Respondent confirmed that she had no contact with the Secondary Complainer after 4 June 2020 prior to the completion of the purchase. The First Respondent insisted that she was not in communication with Solicitor A about this transaction. She recalled contacting the Secondary Complainer in September 2020 making a query about what she recollected was a liquor licence issue. She had initially emailed the Second Respondent about the transaction involving the Hurlet. She had no involvement in the purchase of the property beyond that and

had not recalled who had purchased it. She recollected speaking to the Secondary Complainer and believed that the liquor licence was surrendered.

With regard to the earlier transaction involving Company 1, the First Respondent recalled Millar Campbell being instructed by Company 1 as a referral either from the Property Consultant or Solicitor A. At the time Solicitor A was on “gardening leave”. He had instructions to purchase a portfolio of four properties of which the Hurlet was one. The work was carried out predominantly by the Second Respondent. The First Respondent confirmed that she oversaw the work as principal. She recalled that a fairly standard style of lease was put in place for the property. It would have contained the tenant’s name, address and contact details. She did not think they were likely to have any further information about the tenant. She recalled that a personal guarantee was granted. They did not have access to credit checks for the granter.

With regard to other work for Company 1 at Gilson Gray, the First Respondent confirmed that a caveat file had been opened, on the face of it as a referral through her, and then passed on to the litigation department. It was her recollection that it was not unusual that, when she asked for a file to be set up, it was not set up correctly. The firm was very cautious about storing emails. During COVID, people were working from home. There were reporting obligations on her regarding what work she had completed that month. Files were opened in order to store correspondence to confirm work was introduced by her. There may have been a query about caveats under her reference. She insisted that she did not do litigation work. The firm of Gilson Gray had someone who dealt with caveat work. She had no idea what the general file for Company 1 related to.

The First Respondent explained that she was not familiar with the term “onboarding” until she joined Gilson Gray. She conceded that, in her letter to the reporter to the Law Society, she accepted “onboarding” the Secondary Complainer. She explained that the term to her just meant getting some of the information needed to make sure her side of the transaction was dealt with. She had requested the ID for the clients. She would not have dealt with having the client opened on the system. The Second Respondent was dealing with the letters of engagement. At the point that she was instructed, there would have been a letter of engagement in her name only for the partnership agreement.



The First Respondent emphasised that she did not give instructions to the Second Respondent. She considered that she worked with her as a colleague. She stated that the Second Respondent was very capable and that she would have “got her jotters” if she had tried to instruct the Second Respondent to do something.

Working during COVID times was difficult. The First Respondent emphasised that she did carry out a conflict check. She stated that every fee earner required to do a conflict check for their own files. She had done a conflict check on both of the clients in relation to drawing up a partnership agreement. Therefore, she would only check for any issues regarding acting for the Secondary Complainer and his sister.

### **CROSS EXAMINATION BY THE COMPLAINERS**

The witness confirmed that Millar Campbell was instructed by Company 1 in 2019 in relation to a purchase and lease of the property known as the Hurlet. She was unsure whether this was the first instruction from Company 1. She confirmed that Millar Campbell were not the principal solicitors for Company 1. She accepted that due diligence of Company 1 was done by Millar Campbell. She was asked if she received any confidential information as a result. She confirmed that she would have completed the necessary work to know her client. She may have acquired the bank account details and the VAT registration number for the company. She could not recall precisely what she might have known six years ago, but she would have obtained all of the information required to carry out her instructions.

She explained that Company 1 were a well-known company in the property market which held a large portfolio of Scottish properties. She was asked whether she was aware if a director of Company 1 was entitled to sign documents on behalf of Company 1 or whether a director could authorise others to act on behalf of Company 1 and responded that she had not checked that information. She was asked if she had information regarding the tenant. She believed that they would have received information from the solicitors of the tenant, but not the information that a solicitor would normally require for “know your client” purposes.

She was asked if confidential information had been given to her regarding the Tenant Company and responded that she did not think that was necessarily the case. She believed the information

they received was likely to be available from Companies House or from any registered lease. This issue was not in the Record and so she had not checked that detail for today's hearing.

The First Respondent agreed that she was a legal director in Gilson Gray, but did not accept that this was analogous to being a partner in relation to expertise. She explained that directors do not attend partnership meetings and do not have the same say in the management of a firm. She considered that being a legal director was one step below being a partner.

She was referred to the telephone note of 18 May 2020 and agreed that she had agreed in principle that Gilson Gray could act in the purchase by the Secondary Complainer. The Fiscal asked if there was anything to stop the First Respondent from acting. She explained that she would not have done any conveyancing. She accepted circumstances may have arisen to prevent the firm acting. The Fiscal drew the witness's attention to the lack of any reference in the note to further checks that might be required before proceeding to accept instructions. She explained that they did not discuss such issues with the clients before they were instructed. There were subsequent emails. She was not instructed on the 18 May 2020 as no purchase had taken place yet. The Secondary Complainer declined to instruct them to do due diligence either through she herself or through the Second Respondent. The Secondary Complainer confirmed that he would carry out due diligence himself. The Fiscal pointed out that the First Respondent's email to the Secondary Complainer the following day made no reference to them not carrying out any pre-auction checks. The First Respondent answered that that had already been discussed. The Fiscal referred the witness to the email of 19 May 2020 and she confirmed that she was communicating with the Secondary Complainer with regard to the future instructions in relation to the property purchase. The Secondary Complainer was going to auction. He had not indicated what vehicle he wanted to use in order to purchase the property. "Potential purchase" is included in the heading of the email because the whole point of setting up a vehicle was that he needed one in order to purchase the property.

The First Respondent confirmed that a letter of engagement was sent to the Secondary Complainer after the auction, although she explained that she had not seen it before it was issued. She was asked if she delegated the preparation of the letters of engagement to the Second Respondent. She insisted that she neither delegated to nor instructed the Second Respondent. She explained that she had asked the Second Respondent if she could assist. She described this as a request in the same way as any solicitor would ask another colleague. She explained that

all of the firm's administration team were on furlough. She confirmed that she sent an email to the Second Respondent with regard to how to set up a partnership as a client on the system. She also asked the Second Respondent if she would prepare the letters of engagement. Although the letters of engagement say that she would supervise, that was incorrect and they should not have said that.

The Fiscal asked the First Respondent if she asked the Second Respondent to deal with the property transaction. She responded that she had not asked the Second Respondent to carry out the transaction but rather had referred the matter to her. She indicated that Gilson Gray had instructions and she asked the Second Respondent to carry out those instructions as a referral to the real estate team.

She was referred to the exchange of emails regarding the fees to be charged. She explained that there was discussion about the fees that she was going to charge. She did not agree a fee for the work to be completed by the Second Respondent. She referred to the email from the Secondary Complainer where he stated that he accepted the fee quoted by the Second Respondent.

She was asked by the Fiscal if she accepted that the Secondary Complainer thought he was dealing with both her and the Second Respondent. She responded that the Secondary Complainer had said in evidence that he believed the instructions were joint, but then accepted that in fact he dealt with the Second Respondent. She emphasised that the Secondary Complainer sent emails to the Second Respondent direct.

The Fiscal asked her if the contract in the letter of engagement of 8 June 2020 was that she would supervise and coordinate. She stated that this was not the case and that she only became aware of the content of the letter of engagement when the complaint came in. The Fiscal asked again if the contract stated that she would supervise and coordinate. The witness did not provide a direct response. The Fiscal again repeated the question. After an exchange with the witness, he rephrased the question emphasising that the letter of engagement was the contract with the Secondary Complainer. The First Respondent responded that the letter of engagement was never changed. The Fiscal asked if it was reasonable for the Secondary Complainer to assume that the First Respondent was going to supervise the Second Respondent in relation to the purchase, given that he had a letter stating this. She agreed that it would be reasonable for him to assume that she would supervise but only because there was a mistake in the letter. She added

“that’s why we have insurance”. She stated that she only required to discuss the property transaction with the Secondary Complainer because he mistook the quoted fee of £900 as including her work. She had to explain to him that the fee quoted by the Second Respondent was for the work to be done by the Second Respondent and that her own work would be £1000.

The First Respondent explained that, in the firm, any work a solicitor did themselves was credited to them as fee earner. If the business was referred by the solicitor, that solicitor would have been on the file as a referral source. The solicitor would then, theoretically, get acknowledgement for fees received.

The Fiscal asked the First Respondent if “onboarding” was identifying the client. She explained that client “onboarding” was part of the process of setting the client up on the system. She was asked if the Hurlet Property Partnership was her client and responded that it was Gilson Gray’s client. She explained that she was the referral source. She agreed that she asked her colleague to create the client entity within the system.

The Fiscal asked the First Respondent if she had considered at the time whether she could act for the Hurlet Property Partnership. She stated that she had considered it appropriate for her to act for the Secondary Complainer and his sister. She had been instructed in relation to the preparation of a partnership agreement. She gave advice that the relationship should be regulated including matters such as the split of profits. The Fiscal drew the First Respondent’s attention to her email to the Secondary Complainer of 19 May and stated that there was no general advice in that email relating to a partnership. She explained that she had already discussed this with the Secondary Complainer and had explained why she thought it best to have a partnership agreement even though it was a family business. The Fiscal asked the First Respondent if the main reason she wrote to the Secondary Complainer on 19 May 2020 was the purchase of the property. She responded that the main goal of the email was engaging Gilson Gray with the purchase. The Fiscal asked a series of questions directing the First Respondent’s attention to the heading of that email which referred to “Potential instruction/property purchase”. She explained that the reference to “potential instruction” in the heading related to her role in drafting the partnership agreement. The Fiscal repeated the question whether the reasons for the email of 19 May 2020 was the purchase of the property. The witness responded that her role related to the vehicle to be used in the purchase.

The Fiscal drew the First Respondent's attention to her written response to the witness Walker in relation to the complaint made to the firm by the Secondary Complainer and asked her if she had considered whether her previous instructions for Company 1 presented a conflict for her in taking instructions from the Secondary Complainer. She responded that her earlier involvement with Company 1 did not have any relevance to her instructions relating to a partnership agreement. The Fiscal asked her if she had regard to the wider issues of conflict for Gilson Grey when she agreed to act for the Secondary Complainer. She responded that her responsibility was to consider her role in relation to the partnership agreement. She said it was the Second Respondent who acted in the purchase. The Fiscal asked if she had effectively washed her hands of her responsibility and obligations to Company 1. She responded that she did not have any live instructions for Company 1 at the time and did not know if Gilson Gray had active instructions for Company 1 at the time. She explained that a general file could include anything and that the caveat file was a litigation matter. She did not know whether there was a live matter at the time she was contacted by the Secondary Complainer. The Fiscal asked if the general file would include emails that might contain confidential information. The First Respondent indicated that without more details she could not say and she would have expected that file to be produced. The Fiscal asked if she accepted that Company 1 was an existing client at the time of the Secondary Complainer's instruction. She responded that she did not accept that. She explained that the general file may have been opened for one enquiry that did not go any further. In the absence of any other information, she did not know what was in the general file. She insisted that she did a conflict check in relation to the Secondary Complainer and his sister limited to her role in giving advice on the vehicle for purchasing the property. She did not do a check in relation to the purchase as she was not dealing with that. The Fiscal emphasised that the contract said that she was. She responded that she was not dealing with it in practice. She denied that she was overseeing or supervising the Second Respondent as a matter of fact.

The Fiscal asked if it was the First Respondent who brought Company 1's business to Gilson Gray and she responded that she would require to see the files to answer the question. She said she could not comment as she did not have access to the Gilson Gray system. She recollected that the witness Walker had said one of the files was under her reference and the other was under that of the Second Respondent. She could not say if the introducer was herself or the Second Respondent. She did not accept that she was matter manager on both files. She recollected that she was matter manager on one and the Second Respondent was matter manager on the other. The Fiscal drew the witness's attention to the witness Walker's Affidavit where

it is said that the First Respondent was matter manager on both of the existing files. She responded that she did not know whether that was on the system and that she would never have been a matter manager on a real estate file. She explained that mistakes were often made when files were opened.

The Fiscal pointed out to the First Respondent that in her Affidavit, the witness Walker states that the First Respondent was noted as the source of business. She responded that she thought that was on one file. She explained she did not have access to the Gilson Gray system to check. The Fiscal asked her if she knew. She said she did not have any recollection of what was on the system. She explained that each matter would have a source noted. She had no recollection of who introduced Company 1. She accepted she was the source of business for the caveat file and thought that would either have come through Solicitor A or a director of Company 1. She did not recall whether she had any discussions with Solicitor A. She was noted as the source of work on one of the files and so accepted that.

The First Respondent stated that she had no expectation that due diligence would be done in connection with the purchase. The purchase contract was concluded at auction. The Secondary Complainer never expressed to her his expectation that due diligence would be carried out after the auction. He specifically rejected this before the auction and this was not discussed after the auction. The Fiscal drew the witness's attention to the letter of engagement of May 2020 and suggested that there was no restriction therein excluding due diligence. The First Respondent explained that the letter of engagement was a standard letter and indicated that email correspondence covered the scope of the work to be done. The Fiscal asked if there was any restriction on the work to be done set out in the letter of engagement. She replied that the words "existing instructions" restricted the scope of the work. She explained that the restriction is formed by other correspondence with the client.

The First Respondent accepted that she had acted for Company 1 previously. She accepted that Gilson Gray had files opened for Company 1, although whether they contained actual instructions or active matters she could not comment upon. She was unable to comment on what other files were opened by Gilson Gray in relation to Company 1. She did not accept it was in her interests to prefer Company 1 over the interests of the Secondary Complainer. She insisted she did not know if there was an active instruction from Company 1 at the time the Secondary Complainer made contact.



The Fiscal asked if at any point the real estate partners of Gilson Gray came to her and said she should not be supervising the Second Respondent and she replied that she never supervised the Second Respondent. She explained that the issue of the content of the letter of engagement was not raised until the Secondary Complainer's complaint came in. The Fiscal asked the First Respondent if any of the partners in the real estate department came to her at any time to tell her that her name should be removed from the letter of engagement. She said that had not happened. She explained that the partners would not be aware of what was in the letter of engagement.

### **CROSS EXAMINATION BY THE SECOND RESPONDENT**

The First Respondent agreed that she had met the Second Respondent some years ago at Andersons and that the Second Respondent had joined as a paralegal. She had moved to the firm of Young & Partners and the Second Respondent came with her. The First Respondent had then set up her own business and the Second Respondent joined her. The Second Respondent qualified in 2017 and worked for her. The First Respondent was a principal solicitor at Millar Campbell and the only qualified solicitors were her and the Second Respondent, apart from a brief period when there was a consultant. When the First Respondent moved to Gilson Gray, the Second Respondent moved too.

The First Respondent was asked whether it was Solicitor A who referred Company 1 to Millar Campbell regarding the purchase of the Hurlet. She could not recall whether the referral came from Solicitor A or a director of Company 1. Mr Macreath drew the First Respondent's attention to her Answers in the Record where she accepted that the referral came from Solicitor A and she conceded that would be the correct position. She confirmed that she asked the Second Respondent to deal with the purchase of the Hurlet and that, at that time, she supervised insofar as she was the Second Respondent's principal.

She was asked whether she had come into possession of confidential information regarding Company 1 and she said she had.

She agreed that in May 2020 Solicitor A and/or the Property Consultant referred the matter regarding the purchase of the Hurlet. She was asked if the Secondary Complainer was wanting

to have a solicitor's name in order to register for the auction. She responded that his enquiry was not to her specifically, but was an enquiry regarding whether the firm of Gilson Gray could act if he was successful at the auction.

She was asked if she had considered the previous instructions and responded that she was aware that Company 1 were the sellers of the property, but she was not aware of whether or not Gilson Gray had active instructions. She was asked if she had given that any consideration and responded that Millar Campbell was not acquired by Gilson Gray. She was asked if at May 2020 she was holding any information that demonstrated that the interests of Company 1 were contrary to those of the Secondary Complainer. She confirmed that she did not hold any such information and said she did not consider that there were any active instructions. She agreed that on Monday 18 May 2020 the Secondary Complainer was already in touch with the Second Respondent regarding the proposed purchase. She knew he had the legal pack. No advice was given on the legal pack although she had offered that. The Secondary Complainer specifically declined that offer.

She was not then aware of the terms of the articles of roup but now is aware that there were no warranties being provided and that the purchasers required to satisfy themselves in relation to various matters before bidding.

She agreed that to some extent she tried to deal with the "onboarding" of the client insofar as she could. She agreed that she made contact with the Secondary Complainer's accountant with regard to identification documents as that was part of the overall process. She was asked who she considered would supervise the Second Respondent and replied that she expected it to be John Fulton. He was the Second Respondent's line manager. The Second Respondent was working under someone else's supervision in Gilson Gray.

She stated that she did not hold confidential information regarding Company 1 relating to this transaction. The VAT registration number for the company was public information. In the transaction relating to the leasing of the property, the tenant was represented by Solicitor A and Millar Campbell acted for Company 1. In May 2020, Solicitor A acted for Company 1 and Gilson Gray acted for the purchaser. Solicitor A at no stage raised any issue of confidential information with her. She explained that the vast majority of information was already in the

legal pack produced prior to the auction. Most of the information in the legal pack was public information.

She did not accept that she held any confidential information regarding Company 1 which was adverse to the interests of the Secondary Complainer in the purchase of this property. Solicitor A acted for Company 1 in the sale and at no stage took any objection to either Respondent acting in the purchase. None of the information that they held in relation to the purchase/lease transaction from October 2019 was relevant to the purchase in 2020 at auction.

Mr Macreath asked the First Respondent about the Secondary Complainer's expectation that due diligence would be carried out. She confirmed that the Secondary Complainer declined pre-auction checks. She believed that doing checks after the auction put the Secondary Complainer at risk of losing his deposit if information was discovered that led to a decision to withdraw from the purchase. Pre-auction checks were offered by both the Second Respondent and herself. She did not think any due diligence carried out after the auction would have picked up the financial problems of the personal guarantor.

She accepted that she was the principal of Millar Campbell and as such she supervised the Second Respondent. She stated that Company 1 were established clients of Solicitor A. In October 2019, Solicitor A was prevented from working for Company 1 by a restrictive covenant.

She agreed that the Secondary Complainer was recommended to Gilson Gray by Solicitor A and a property consultant.

She was asked what the contract of service to the Hurlet Partnership covered. She stated that it covered the transfer of title, and that was made clear in the email from her to the Secondary Complainer copied to the Second Respondent. The Secondary Complainer had wanted to include the assignation of the personal guarantee and the Second Respondent quoted an increased fee to include that. The First Respondent believed that the extent of services to be provided was made clear in the emails of 3 and 4 June and that was the registration of title and assignation of the personal guarantee.

She explained that the letters of engagement were the standard style, approved by senior members of the firm. Letters of engagement were taken seriously at Gilson Gray. The scope of work set out in the letter was informed by the detail agreed with the individual client. To her mind, the scope of work was agreed in correspondence over 3 and 4 June.

She stated that the Secondary Complainer at no time conveyed to her that he expected due diligence to be done after the auction. She was of the view that a lot of what he wanted to know was not information they would have access to. The Secondary Complainer clearly declined the offer of due diligence before the auction and the subsequent correspondence referred only to the registration of title and, later, the assignation of the personal guarantee.

She explained that a caveat is something lodged at court. Although the caveat file was referred to as a corporate matter, in reality, it was a litigation matter. The general file could have been opened simply as a place to store correspondence.

## **RE-EXAMINATION**

The First Respondent confirmed that the Law Society did not ask her to produce the Millar Campbell file.

She confirmed that the letter of engagement of 8 June should have contained changes. Only the signatory was changed from the version sent in May and not the content. John Fulton was in fact the supervisor of the Second Respondent.

She confirmed that her email to the Secondary Complainer of 19 May 2020 had a two part heading and “Potential Instruction” referred to her role in advising and setting up a vehicle to purchase the property. She had to refer to the property purchase in the heading because the vehicle she was discussing would be the purchaser. In the event, the Secondary Complainer decided that he and his sister would deal with the partnership agreement themselves and so she did not receive any further instructions.

## **QUESTIONS FROM THE TRIBUNAL**

The First Respondent was asked how it arose that she was included in the letter of engagement as supervisor. She explained that the letter of engagement was prepared at a time when there were issues caused by COVID. She had pointed out on 4 June 2020 that she should not have been included in the letter of engagement for the purchase as the supervisor for the Second Respondent. She believed that in haste the Second Respondent arranged the change of the signatory but not the content. She emphasised that she was not involved after 4 June 2020, apart from the later issue regarding a transfer of licence for the premises.

The First Respondent was asked if she could explain the two files referred to by the witness Walker where the First Respondent was noted as matter manager, referrer and, on one, the fee earner. She responded that this did not mean that there were actual instructions. The general file should not have contained actual instructions. Actual instructions should be on a separate and distinct file. She was asked if she could remember how Company 1 became a client of Gilson Gray. She explained that Solicitor A was the principal solicitor for Company 1 and only instructed Millar Campbell at a time when he could not act. She could not comment on how Company 1 was introduced to Gilson Gray.

She was asked if it was a reasonable inference, as she had acted for Company 1 only seven months previously, that in fact these referrals came through her. She responded that she “couldn’t tell you how they were introduced”.

The First Respondent was asked if the fact that Millar Campbell had acted for Company 1 in the purchase of the Hurlet and that Gilson Gray had opened a file in respect of caveats, had caused her to pause for thought. She said the question for her had been whether she was conflicted in acting for the Secondary Complainer and his sister in relation to the purchase vehicle. She would not have acted if there was an actual conflict. She was asked about whether she had confidential information which could not be disclosed and replied that a large amount of the information held was available online. She agreed that she had not noted her thought process on the file and explained that was because of the issues with the Envision system. She had not used Envision before joining Gilson Gray and found it a difficult system. She believed that the system would record the conflict check but she accepted that she did not record it on the file.

She accepted that she was in a senior role to the Second Respondent but stated that she would not have presumed to give her instructions.

She accepted that she had supervised the Second Respondent in general terms when they had been at Millar Campbell as she was the principal of the firm. She explained that changed when they joined Gilson Gray as they were in different roles.

She was asked if she had ever experienced an instance of “pushing back” when being given instructions to do something. She said that she had, but this transaction was taking place during the COVID lockdown and everyone “mucked in”.

## **EVIDENCE FOR THE SECOND RESPONDENT**

### **Witness: Laura Ray Campbell**

The Second Respondent confirmed that she first met the First Respondent at Andersons when she was training to be a paralegal. She assisted the First Respondent in the licensing department. Then when they moved to Young and Partners she was the licensing paralegal supervised by the First Respondent. She then moved with the First Respondent to Millar Campbell. Her training there involved commercial property work and leases. She had concluded that she could not do Licensing Boards and had to be office based. She worked mainly on commercial matters but also did a small amount of residential conveyancing for existing clients.

She confirmed that she acted for Company 1 in 2019. She understood that Company 1 were Solicitor A’s biggest client. In 2019, Solicitor A had an issue involving a restrictive covenant with his employer. As a result, he referred Company 1 to Millar Campbell in relation to the Milton portfolio. This portfolio involved four properties, one of which was the Hurlet.

She explained that Millar Campbell operated out of one office, shared by both Respondents. She stated that they discussed ongoing transactions and could overhear each other. She stated that it was in October 2019 that they were told by either Company 1 or their agent, the Property Consultant, that they had found a tenant for two of the properties, including the Hurlet. The tenant was the Tenant Company and one of the directors was to give a personal guarantee. The terms of the lease had already been agreed by the time Millar Campbell were instructed and so they were not involved in the checks carried on the tenant’s covenant by the agents for Company



1. Their role was to simply draft the lease with a personal guarantee. She did not believe that they received any confidential information as their role was restricted to drafting and preparing documents.

She confirmed that Millar Campbell ceased business in November 2019 and she went to Gilson Gray where she worked in the real estate department, supervised by John Fulton.

She said she had nothing to do with the caveat file referred to by the witness Walker. She conceded that she may have opened the general file but explained that would have only been as a place to store general documents.

She agreed that she had not had any instructions for Company 1 since October 2019.

She stated that the first time she heard about the Hurlet coming up for auction was when she received an email from the Property Consultant on 18 May 2020. She stated that she did not have any contact with Solicitor A. She agreed that she quoted a fee of £900 to cover drafting and registering the disposition. She confirmed she had not seen the legal pack. She offered to carry out due diligence before the auction but the Secondary Complainer said that he had done his own. She was not asked to check the “provenance” of the tenant company, or its directors. She explained that she would not have been able to do that and would have had to refer the Secondary Complainer to an agent. She thought she did explain to the Secondary Complainer the risk of buying at an auction. The Second Respondent stated that she had not recalled that she acted for Company 1 previously at the time of the first telephone call. However, after an exchange of emails, she did.

She explained that Gilson Gray were a busy firm and that this transaction occurred during COVID when she was splitting her working hours between the office and home.

She was asked if the Secondary Complainer had told her that he had spoken to Solicitor A at the time that he declined due diligence and she responded that he had not. She said that the first referral to her came from the property consultant and not Solicitor A.

She confirmed that from the onboarding process, it looked like the First Respondent was in charge of the client. She confirmed that she had dealt with the identification documents when

they arrived, uploaded all of them on to the system and then emailed the money laundering officer to confirm that had been done, so that the money laundering flag could be lifted and she would be able to proceed with the transaction.

She was asked if she considered a conflict of interest and responded that she had no information relating to Company 1, and had not acted for Company 1 for some time. She considered the transaction to be a straightforward matter of drafting the disposition for the Secondary Complainer. She was aware that the title and lease were fine.

She did not remember drafting the letters of engagement of 22 May 2020 but she did send them to Peter Scanlon whose job it was to print them off, get them signed and then sent to the clients.

The scope of work in the letter of engagement was "as discussed" which was just the drafting and registration of the disposition. It was later that the work was agreed to include the assignation of the guarantee.

She agreed that the legal pack was sent to her after the auction. She did not remember exactly what it contained.

She stated that she had no discussions with Solicitor A about whether or not the tenant was trustworthy. She confirmed that the Secondary Complainer asked her to check if the rent was paid up to date. She emailed Solicitor A, he told her it was up to date.

She did not know why it had not occurred to her to tell the Secondary Complainer she had previously acted for Company 1. She recalled the 2019 transaction being fine. The 2020 transaction was a simple cash purchase and the Secondary Complainer had declined any other advice.

She was aware Solicitor A represented Company 1. Solicitor A knew she had previously acted for Company 1 and never raised this as an issue in the purchase by the Secondary Complainer and his sister.

She stated that she did not have information about Company 1 which could be contrary to the interests of the Secondary Complainer. She had no information about Company 1 itself or any

other records relating to the tenant. She stated that she did not think about it at the time, whether she might have information that might have put her in a difficult position.

She was not aware that Gilson Gray were acting for Company 1. She was not aware of the caveat file. Although she did think that she opened the other file, she believed that it was simply to store documents.

She stated that she was never asked to do any financial due diligence on the tenant. She did not think that was part of her role. She believed that she acted in the best interests of the Secondary Complainer. At the time of the transaction, the lease did not need to be formally assigned, the personal guarantee did and that was done.

### **CROSS EXAMINATION BY THE COMPLAINERS**

She was asked by the Fiscal about the onboarding of clients moved from Millar Campbell to Gilson Gray and responded that Company 1 was a client of Solicitor A. She believed that the general file opened at Gilson Gray was a place to put things that followed on from the earlier transaction. She stated that did not mean that she and the First Respondent were continuing to act and did not in her view amount to "client care". Anything sent on to Company 1, after the transaction had concluded, would be information about something already done. She had no idea what was on the general file. She said that the file was opened for their records.

She agreed that she carried out the "know your client" and anti-money laundering procedures for Company 1. She insisted that involved public information and nothing private.

She agreed that she obtained identification documents for the directors. She agreed that she had the VAT registration number for Company 1. She agreed that she was aware that Company 1 built up a portfolio of properties to sell on, but said that this was widely known. She did not accept that she had any confidential information relating to Company 1. She accepted that she knew the details of the individuals who were in control of Company 1, such as passport numbers, and conceded that was private information.

She agreed that at Gilson Gray she had carried out the same checks for the Secondary Complainer.

She agreed that, prior to the 2020 transaction, she last dealt with Company 1 seven months previously.

She agreed that she did not speak to anyone about a potential conflict. She thought that, when she set up the file, she searched the address "the Hurlet". She did not believe Company 1 was a Gilson Gray client. She did not believe she carried out any conflict checks. She did not recall opening the file. She did not check if Gilson Gray had any ongoing instructions from Company 1.

She agreed that the Property Consultant asked her to call the First Respondent as he was unable to contact her. She believed the First Respondent spoke to the Secondary Complainer first. She agreed that it was her understanding that the First Respondent agreed that Gilson Gray would undertake the commercial property transaction but that the work would be done by her.

She stated that the First Respondent did not ask her to carry out a conflict check. She was not sure whether she had relied upon the First Respondent having done a conflict check. The Fiscal asked if it was incumbent upon her to carry out a conflict check of her own if she was not relying upon the First Respondent having done so. She stated that she thought "we" would have known if there were any live instructions for Company 1. She stated that the First Respondent would have been the first to know if any Millar Campbell client was introduced to Gilson Gray.

The Second Respondent agreed that she did not tell the Secondary Complainer that she had previously acted for Company 1. The Fiscal asked her if she would have been able to tell the Secondary Complainer if asked and she responded that the Secondary Complainer was referred to them by Solicitor A who was Company 1's solicitor. The Fiscal put it to her that she had said in her evidence that the client was referred to them by the Property Consultant and she responded that, as Solicitor A and the Property Consultant were very close, she assumed that they had discussed it, but she did not know if they did.

The Fiscal asked if what happened here was that Company 1 had bought a property and then sold it quickly having put a poor tenant in it and the Second Respondent replied that she did not accept that it was a poor tenant. The Fiscal asked if the tenant company went into administration only months after "that happened" and she responded that she did not remember when the

company went into administration. She accepted that the “matter did not work well” for the Secondary Complainer.

The Second Respondent stated that the scope of business was set out within the exchange of emails. She explained that she had put the First Respondent in the letter of engagement as supervisor of her work because the work had come from the First Respondent. She knew that she might have been wrong with that information and she was asked to change it.

The Fiscal asked her to look at the letters of engagement dated 8 June 2020 and she replied that she was not sure that this was the final version of the letters of engagement. She confirmed that she was advised to change the contents of the letters of engagement.

She did not accept that it was a reasonable expectation of the Secondary Complainer that due diligence would be done during the conveyancing transaction. She referred to her email of 4 June 2020 where she broke down the costs of work she was to complete. She explained that the only additional check she was asked to carry out was if the rent was paid up to date. She did not believe there were any other checks she could have carried out and agreed that she could have referred the Secondary Complainer to a credit checking agency but explained that the Secondary Complainer had already stated that he had carried out his own checks.

She did not accept that she had the interests of Company 1 at heart when acting in this transaction. She stated that Miller Campbell had only acted for Company 1 for a small amount of time. She did not recall if Gilson Gray received further instructions from Company 1 after this transaction. She stated that she was not more interested in receiving further instructions from Company 1 than acting for the Secondary Complainer.

#### **CROSS EXAMINATION BY THE FIRST RESPONDENT**

The Second Respondent said she thought that if there was a referral to Gilson Gray, the First Respondent would know about it. She stated that normally Solicitor A and the Property Consultant made referrals to the First Respondent. It was possible on occasion that they did this through her, but credit for it would go to the First Respondent.

The Second Respondent confirmed that the letter of engagement of 8 June 2020 contained the First Respondent as a supervisor in error. It should have read that John Fulton was the supervisor. Although it was recorded that the First Respondent was the client care partner, the Second Respondent was not sure that was correct. She could not explain why the letter of engagement was issued with the First Respondent still named as the supervisor. She was asked if there was any possibility that there were other versions of the letter of engagement which the Tribunal had not seen and responded in the negative. She stated that she could not understand why the letter of engagement in June went out in the terms that it did. She agreed that the First Respondent had no involvement in the transaction after 4 June 2020. She said that after 4 June 2020, she dealt with the Secondary Complainers and his sister entirely under the supervision of John Fulton. The witness was referred to the email of 18 May 2020 from Solicitor A which forwarded an email from the Property Consultant and conceded it was possible that she phoned the Secondary Complainers because of this.

The Second Respondent confirmed that she would not require to seek approval in order to do work on behalf of the Secondary Complainers.

In response to a question from the Tribunal, the Second Respondent confirmed that the letter of engagement of 8 June 2020 sent to the client still listed the First Respondent as supervisor even though she had attempted to change that.

Evidence was concluded on 15 April 2025. Given the late time of day, the Tribunal indicated that it was inappropriate to attempt to commence submissions. All parties agreed that it was possible for their submissions to proceed by way of writing. With the agreement of all parties, the Tribunal continued the hearing to two dates to be afterwards fixed, the first where the members of the Tribunal would meet on a virtual platform to consider their deliberations and the second for a virtual hearing when the decision would be intimated to the parties. The parties were to submit their submissions in writing within three weeks of the present date.

All three parties lodged written submissions. These were as follows:

## **WRITTEN SUBMISSIONS FOR THE COMPLAINERS**

### **"Introduction"**



Intuition - concern – grappling – fair minded onlooker – troubled. Were all appeared in the discussion of Lord Malcolm's opinion in Ecclesiastical Insurance v Whitehouse-Grant -Christ at para15 of et seq (2017 SC 884 at 690). (The second respondent's list of authorities)

The same considerations arise here. The respondents were instructed by [Company 1] to purchase the Hurlet in June 2019, they were again instructed by way of confidential "deal sheet" to lease the Hurlet to [the Tenant Company]. Those pieces of work were referred to them by [Solicitor A], now of [Firm A].

In June of the following year [Solicitor A] at [Firm A] acted for [Company 1] by drafting Articles of Roup etc. for the public sale of the Hurlet by auction. The secondary complainer was successful at the Auction. He concluded a contract for the purchase of the Hurlet. The secondary complainer (Mr Hamza Sheikh – "Sheikh") was put in touch with the first respondent by a third party and [Solicitor A]. The respondents accepted instruction from Sheikh to act for him in connection with the purchase of the Hurlet from [Company 1] their former client, who now acts for [Company 1].

Now add to that picture the first respondent now works for [Solicitor A] at [Firm A].

I submit this should raise concern in a fair-minded onlooker, that it should trouble the intuition of the Tribunal and lead you to make a finding of professional misconduct as fully set out at per para 78 below

### **Credibility and reliability**

#### **Mr Sheikh**

1. On the whole in cross examination, he answered the direct questions asked of him. When there was difference between his recollection and the documentation before the tribunal he made the appropriate concession. His evidence with regard to the averments of professional misconduct was credible and reliable. He was drawn by Mr Macreath to discuss matters which were out with and beyond the present cause. That evidence is not relied upon by the Society. The Society invite the Tribunal to accept Mr Sheikh as credible and reliable on matters before it.
2. The first respondent gave the impression in examination in chief of trying to assist the Tribunal, speaking eloquently and thoroughly in reply to the questions. However, in cross examination by me, she prevaricated, did not answer the questions asked of her often going off on a tangent and having to be brought back on numerous

occasions. She would not concede matters which were right in front of her and agreed on her behalf. It took four attempts at asking her if the letter of engagement of the 8 June 2020 recorded that she was to supervise the second respondent. Further in cross examination by me the respondent indicated the instruction re corporate matter was needed for the benefit of partner to prevent arguments re whereas in answers to Mr Macreath I noted she conceded the corporate vehicle was required for the purchase of the Hurlet. I invite the tribunal to treat the first respondent's evidence with care and hold she was not wholly credible and not wholly reliable.

3. The Second respondent was clear in her evidence, and I would suggest there is the least available grounds to criticise her evidence. There is one point her evidence does need to be considered as unreliable – that is which letter of engagements were sent out. She suggested the second letter of engagement of 8 June was not sent – yet her agent had agreed the 3rd inventory as being true and accurate, which is contrary to her oral evidence – on the whole however she made the appropriate concessions in cross examination.

Propose findings in fact **bold**.

4. **Make the findings of fact as admitted per the record.**
5. **The 1st and 2nd respondents as, principal and employee respectively, of Millar Campbell acted for [Company 1] in 2019**
6. **They acted in the purchase by [Company 1] and lease of The Hurlet – a property which name is unusual. The purchase instruction was a purchase portfolio of which the Hurlet was one of three properties.**
7. **The respondents would have had private and confidential information regarding [Company 1] through know your client/anti-money laundering checks of [Company 1] – for example who the persons with significant control were, who had authority to bind the company and its bank account details. They would have known the source of wealth of those people and strategies goals of the [Company 1]. They would have the deal sheet containing the instruction -which was privileged.**
8. **None of that information could be shared with anyone else as it was given**

to the respondents in connection with the transaction, it was confidential, and parts would be privileged.

9. The respondents completed the purchase of the Hurlet and lease on behalf of [Company 1].
10. The work had been referred to the respondents by [Solicitor A].
11. [Solicitor A] acted for [the Tenant Company] – the tenant in the lease transaction.
12. In May 2020 [Solicitor A] “switched” sides and acted for [Company 1] the owners and landlords of the Hurlet. He prepared Article of Roup for the sale of the Hurlet.
13. In June 2020 Solicitor A & another were involved in the referral of Sheikh to the first respondent – emails at 4/184 in 3rd inventory of productions for the Council.
14. The first and second respondents then at Gilson Gray accepted instructions from Sheikh, and acted on the other side of the Commercial transaction to Company 1, in respect of same property which they bought for their former client.
15. [Company 1] were at the time instructions were accepted – May /June 2020 an established client of Gilson Gray.
16. The first respondent accepted the instruction for Gilson Gray to act for Sheikh and his partnership in connection with the purchase and the corporate advice. We say the first file note supports the creation of the solicitor client relationship. The enquiry was about the purchase of the Hurlet and how the title would be held. That creates an obligation upon a solicitor to keep the exchange of that information confidential.
17. The file note created by the first respondent is headed “purchase of Hurlet property auction” and first email from the first respondent is headed “Potential Instruction/Property transaction”- the instruction to Gilson Grey accepted by

the first respondent is the purchase of the Hurlet and corporate advice. The first respondent made no mention in either that she required to make any check to see if the instruction can be accepted. There is no mention of conflict check.

18. The first respondent offered Gilson Gray's service to carry out title investigations before the Roup. Sheikh declined.
19. The first respondent did not advise Sheikh, she the first respondent had been instructed in the conveyance of the property the previous year on behalf of the now sellers. The first respondent did not advise Sheikh, [Company 1] was an established client of Gilson Gray. She did not advise Sheikh she was the source of [Company 1]'s business at Gilson Gray. There is no file note to support she told him, she said in evidence she did. Sheikh's evidence was clear in chief and cross he was not told.
20. The first respondent advised Sheikh she would do the corporate work and her colleague the second respondent would carry out the commercial transaction.
21. The first letter of engagement (10/184 3rd Inventory of productions for the Council) is headed PURCHASE OF PROPERTY – THE HURLET, 2 GLASGOW ROAD. Gilson Gray thus contracted with Sheikh that *"The person primarily responsible for the work in relation to the purchase of property will be Laura Campbell. Joanna Millar, Legal Director, will oversee, supervise and co-ordinate work done for you,"*
22. The first respondent assumed the role of primary client contact for Sheikh. Sheikh's evidence, Rosemary Walker's evidence,
23. The first respondent passed the commercial work directly to the second respondent. She did not pass it to a partner in the Gilson Gray commercial Property department to be delegated but directly to the second respondent who she worked closely with -R Walker's evidence.
24. The First respondent controlled who did the commercial work- the

**second respondent.** Not the commercial department partners.

25. **The first respondent coordinated with Sheikh regard to the fees chargeable –**  
(see 3rd Inventory of production entries No.11 and 12) We say that the evidence of the first respondent that she did not supervise is (1) contrary the contract and (2) not fatal to the Councils' position that she accepted the instruction on behalf of Gilson Gray to act in connection with the Property Purchase.
26. **The first respondent was the source of Sheikh's client work. She instructed the creation of the client entry on the Gilson Gray's case management system and obtained client details from Sheikh. She would be credited with the fees recovered from the client –** R Walker's evidence and the first respondent's own evidence re her responsibilities and monthly meetings.
27. **The first respondent was the source of [Company 1]'s work.** R Walker evidence that the respondent created the client on the firm database. See also page 2281 of 3441 the first list of productions for the Council (it is accepted this was not put to the first respondent and the correspondence was subject to agreement by joint minute. The respondent's evidence was she could not remember if she was the source of business for [Company 1]).
28. **The first respondent did not carry out a conflict check re the property transaction. She did not consider whether Gilson Gray could act on the other side of a commercial property transaction to its own client ([Company 1]). She did not consider whether her confidential knowledge of [Company 1] or the previous transaction created a conflict or a potential conflict. She only considered whether she could offer Sheikh and his sister advice on creating a corporate vehicle.**
29. **The second letter of engagement of the 8 June 2020 (page 41 of 184 of the 3rd Inventory for the Council) did not change the first respondent's role in the property purchase transaction.**
30. **The responses in red at pages 144 and 145 of 184 of the 3rd inventory for the Council are the first respondent's comments.** -In cross examination by the Fiscal she accepted these were her comments.
31. **The first respondent noted**

- a. ..we would have had to indicate that we could not act as we were conflicted but under no circumstances would we disclose any such information to Mr Sheikh.
  - b. That is direct breach of confidentiality
  - c. Client confidentiality requires that we did not disclose any information...
32. The description at the bullet point accurately reflects the description of a conflict of interest. That if the first or the second respondent knew of something contrary to Sheikh's interest which they gained for the previous instruction they could not tell him.
33. The second respondent did not consider that she and [Solicitor A] swapping sides on the purchase transaction needed further pause or reflection.
34. No Chinese walls were set up within Gilson Gray to prevent confidential information being passed between the solicitors acting for [Company 1] and the solicitors acting for Shiekh.
35. The first respondent did not give Sheikh information upon which he could make an informed decision that Gilson Gray could act simultaneously for him and [Company 1].

Second respondent

36. The second respondent was an employee of the first respondent, the principal of Miller Campbell. She acted for [Company 1] in purchasing the Hurlet and lease to [the Tenant Company].
37. The second respondent had the confidential information set out in Para 7 above.
38. The second respondent did not carry out a conflict check – admitted in cross- examination.
39. The second respondent did not advise Sheikh she acted for [Company 1] the year before in the purchase and lease of the Hurlet.
40. The second respondent did not advise Sheikh that [Company 1] were an



established client of Gilson Gray. She did not give Sheikh sufficient information to allow him to make an informed decision that Gilson Gray could act.

41. The second respondent had a discussion with Sheikh about further searches she could carry out after the Roup. Sheikh declined this service.
42. The letters of engagement do not have any restriction on the nature of the commercial work to be carried out by the second respondent. It does not exclude giving advice on the viability of the tenant. It does not say we will not carry out any checks for you. Does not explain what the full extent or any restriction on the service Gilson Gray would provide. A reasonable observer would expect Gilson Grey to act in Sheikh's best interest – to make sure the investment was protected.
43. Sheikh expected that having been successful at the Roup his agent would carry out the conveyancing and give general advice on the investment in effect to act in his best interest. If he pulled out of the transaction he accepted he would lose his deposit. However, that loss is small, compared to his actual loss - £170,00. Sheikh's evidence.
44. A reasonable purchaser of legal services would expect that their solicitor would offer advice on the viability of their investment and act in their sole best interests. Sheikh's expectation was reasonable.
45. Sheikh would not have instructed the respondent had he been told (1) they had acted for [Company 1] before and (2) Gilson Gray acted contemporaneously for [Company 1]. Had he been told he would not have instructed the respondents. Sheikh believes the respondents placed the best interest of [Company 1] ahead of his. He considered that [Company 1] would offer more instructions. That the respondents wanted that ongoing relationship to continue to their and Gilson Gray's benefit – Gilson Gray received more instruction from [Company 1].
46. A reasonable bystander observing the past instruction and continued instruction from [Company 1] may objectively reach the same conclusion- that Gilson Gray and the respondents were trying to protect that

relationship.

47. **The second respondent did not consider that she and [Solicitor A] swapping sides on the purchase transaction needed further pause or reflection.**

48. In short in the respondent's

- a. Acted for [Company 1] in the purchase and lease of the Hurlet in 2019.
- b. Accepted instruction to act for Seikh on the opposite side to [Company 1] in 2020.
- c. [Solicitor A] acted on the other side in both transactions.
- d. Conflict checks failed to pick up that transaction and ongoing instruction for [Company 1].
- e. No protections were put in place to ensure that confidential information of [Company 1] was not shared in/advertently.
- f. Did not advise Sheikh they had acted previously for [Company 1] generally nor in the purchase of the same property he was now purchasing.
- g. Did not advise Sheikh, [Solicitor A] acted previously
- h. Did not advise [Company 1] was an established client of Gilson Gray.

### **The Law**

49. Professional misconduct – Sharp v The Law Society of Scotland 1984 SC 129 at 135 states

*"There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions the same question 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"*

50. Law Society of Scotland Practice Rules

2011 Rule B1.7. Conflict of Interest

1.7.1 You must not act for two or more clients in matters where there is a conflict of interest between the clients or for any client where there is a conflict between the interest of the client and your interest or that of your practice unit.

1.7.2 Even where there is only a potential conflict of interest you must exercise

caution. Where the potential for conflict is significant, you must not act for both parties without the full knowledge and express consent of the clients

#### Rule B1.9.1 Effective Communication

1.9.1 You must communicate effectively with your clients and others. This includes providing clients with any relevant information which you have and which is necessary to allow informed decisions to be made by clients...

#### 51. Past Discipline Tribunal decision - LSS v Vaughan

In that case the respondent acted for accused 1. Accused 1 went to trial on an indictment with other accused. Accused 1 initially sought to incriminate accused 2. Accused 1 pled to reduced charges – accused 2 did not appear at the trial diet. Accused 2 later appeared having been arrested. Accused 2 instructed the respondent and his firm.

The Tribunal found that the respondent's involvement in the earlier but now completed representation of accused 1, and then representation of accused 2 amounted to acting in a conflict of interest and made finding of professional misconduct.

#### 52. My proposition from Vaughan is that if a solicitor acts in a legal advice situation (here a trial and in the case before the tribunal a commercial property transaction) for 1 client in which they gain confidential information then seek to act for second client in a very similar legal advice situation for another client they cannot do so. The decision records there is a continuing professional duty to respect the previous client's confidence.

#### 53. Bolkiah v KPMG [1999] 2 WLR 215. In this case the KPMG had acted for Prince Bolkiah obtaining confidential information of the extent and location of his assets.

They now sought to act for the Govt of Brunei to investigate the activities of the Govt agency Prince Bolkiah ran. The House of Lords noted at 236 E

*"it is a matter of perception as well as substance. It is of the highest importance to the administration of justice that a solicitor or other person in possession of confidential and privileged information should not act in any way that might appear to put that information at risk of coming into the hands of someone with an adverse interest"*

That the Law Society does not need to establish *"there is a reasonable probability of real mischief."* We say there is conflict if the risk is more than de minimis.

At page 336 F – the Lordships considered the question of privilege. *“It is of overriding importance for the proper administration of justice that a client should be able to have complete confidence that what he tells his lawyer will remain secret.”*

There was evidence for Chinese wall before their Lordships – which was insufficient for KPMG to continue to act and interdict was granted

54. Murray Petitioner 2019 SC 403. In this case [TC] sought to act for Mr M in divorce proceedings raised by Mrs M. Mrs M sought interdict due to conflict on the grounds a partner F had acted in the prenuptial agreement- at a different firm- and partner L had advised her on trust and tax matters. The petitioner said F and L had confidential information.

55. The court observed at para 51

*[51] In my opinion, where a firm of solicitors wishes to act in a matter for a party with an interest adverse to that of a former client, and where they hold information confidential to the former client, an adequate and effective information barrier must exist to protect the position of the former client. I respectfully agree with the observations of Lord Millet in Bolkiah that ad hoc arrangements made retrospectively, that is after a potential conflict between existing client and past client have emerged, are unlikely to be as robust as permanent arrangements which operate automatically and are already in place and operative when a conflict emerges. The reason for this is plain, ad hoc arrangements can take time to put into place. During any period before an ad hoc security arrangement or information barrier is erected and is operative there is the potential, by means of either deliberate or inadvertent action for confidential information to leak. In the present case the most important information barrier was the ‘lockdown’ system of electronic files. For reasons which, as I have already said, no explanation was forthcoming, lockdown did not operate for a period of something in the order of three-and-a-half months after there was an obvious risk created by the petitioner ceasing to instruct TC and that firm correspondingly informing her that they could not act on her behalf in divorce proceedings against her husband. I am bound to state that my view is that a conflict, or at least potential conflict, and, therefore, the need to have an effective information barrier, should have been obvious to TC from the date of the service of the summons in the action of divorce by the petitioner against her husband, a continuing client of the firm, on 22 May 2018.*

*That said, the relatively short lapse in time between that date and early June is probably of no particular materiality in the context of the present petition. The significant gap in time between the emergence of a conflict and the operation of lockdown would of itself cause me significant concerns. I do however take into account the fact that after the respondents ceased to act for the petitioner Mr Littlefield accessed the relevant file on one further occasion. As I have already observed the lack of adequate explanation for that intervention causes me concern.*

### **Application**

56. The potential for conflict ought to have jumped out to both respondents' immediately.
57. The first respondent introduced [Company 1] to Gilson Gray. She was the client manager for [Company 1] at Gilson Gray.
58. She knew and had received referrals from [Solicitor A] before. She knew [Company 1] and their place in the market.
59. She had acted the year before having had the referral from [Solicitor A]. The property had a unique name. The instructions she received the year before were confidential and privileged.
60. She could not, per her note to Rosemary Walker, tell Sheikh anything about the previous instructions. The narration in that email matches the example given in the guidance see the top of page 17 of the record.
61. We submit the first respondent was instructed by Sheikh – she discussed pre-roup investigations; the cost; she acknowledged the corporate instruction was for sole benefit of the property transaction; she entered into negotiations round the price of the work; she coordinated whom within Gilson Gray carried out the work – the second respondent, and she was Sheikh's primary contact leading upto and the issuing of the letter of engagement in which she was contracted to supervise the instructions
62. The second respondent was in the same position. She had received referrals from [Solicitor A] before. She knew [Company 1] and their place in the market.

She had acted the year before having had the referral from [Solicitor A]. The property had a unique name. The instructions she received the year before were confidential and privileged

63. Conflict – consider the para 4.6 at top of p17 of the record

...three elements that need to be considered. First, if you would give different advice to different clients about the same matter there is a conflict of interest between them. It does not matter that the clients may be agreed about what they wish to do. Second, if your actings on behalf of one client would have an adverse impact on a matter you are dealing with for another client, there is a conflict, even if on the face of it the matters are unrelated. Third, if you are unable to disclose relevant information to one client because of a duty of confidentiality to another client there is a conflict of interest. This also means that if you cannot act for one of them you cannot breach confidentiality in telling them about that.

64. A solicitor cannot offer both sides in a transaction the same advice they are bound to protect the different interests of one side, there was advice to Sheikh to carry out pre- Roup investigation. Sheikh suffered an adverse impact he took over perilous position – [Company 1] would extricate themselves from perilous position. The tenant's imminent default. Their interests conflicted. The respondents could not disclose the instruction they had received the year before in respect of the property. They could not tell Sheikh about any information about [Company 1] or the tenant which they had gained in the earlier transaction.

65. We submit the respondents (which failing the second respondent) acted in a conflict-of- interest situation.

66. We say accepting instruction and acting contrary to the Rules in this conflict interest situation meets the Sharp test – the transaction was significant - over £700,000; the Property was newly tenanted, the tenant had enjoyed a rent free period all the way to the roup and the changing roles of the two respondents and [Solicitor A] is of significant concern. There is a clear perception that the respondents preferred [Company 1]'s interests.

67. Returning to the introduction [Intuition - concern – grappling – fair minded onlooker – troubled] and now add the perception [Bolkiah] of the whole circumstances the failure to disclose this information and act in a conflict of interest was both serious



and reprehensible.

68. If the respondents did not act in a conflict situation, then there was clear potential conflict, which Sheikh was entitled to be informed about and given sufficient information to allow him to make an informed choice as to whether to instruct the respondent and Gilson Gray to act on his behalf.
69. The respondents had knowledge of the 2019 transaction, purchase price, lease, the rent-free period, information about the tenant. They were bound not to discuss and advise on any of that information to Sheikh. Sheikh has bought a perilous investment the respondents did not and could not have advised of the potential peril – this would have been against the interests of [Company 1]. [Company 1] was an established client of Gilson Gray
70. For the same reasons per the conflict, we say the breach was serious and reprehensible.
71. The conflict situation could have been avoided if either the first or second respondent had complied with obligation in Rule B1.7.2 and B1.9.1. If either had given Sheikh the relevant information, which we say is, [Company 1] was an established client and a client for whom they had worked for in purchasing and leasing the property just few months before. Had they done so Sheikh would have been able to make an informed decision. They did not advise him he was prevented from being allowed to make an informed decision.
72. Sheikh's evidence that he would not have instructed the respondent's assists the Tribunal further to make finding of professional misconduct, that the failure to inform was both serious and reprehensible. Sheikh suffered a significant loss in light of the lack of communication.
73. The respondent had an ongoing duty to act in the best interest of their client. In this case both Sheikh and [Company 1]. Sheikh's evidence that in his view they were biased toward [Company 1] see his affidavit para 32 , can objectively be supported by the following
  - a. They did not tell them of the previous instruction re the Hurlet while at Millar Campbell.

- b. They did not a tell him of the relationship where they had previously received further instruction on behalf of [Company 1] – the three other properties in the 2019 while at Millar Campbell.
- c. They did not advise Sheikh that Company 1 had already instructed Gilson Gray on the introduction of the first respondent.
- d. [Company 1] did continue to instruct Gilson Grey
- e. Sheikh did not continue to instruct Gilson Grey.

74. [Company 1] has provided further instructions to Gilson Gray to the benefit of the first respondent.

75. We say the reasoned perception, which would trouble a fair-minded onlooker, is that the respondent wished to secure the fee income from Sheikh and ensure they would continue to get instruction from [Company 1] is damning .

76. We say that perception along with Sheikh's evidence he expected ongoing advice re the viability of his investment is sufficient for the tribunal to make finding that the respondents' preferred the interest of [Company 1] to the detriment of the interests of Sheikh.

77. Bear in mind the first respondent was noted as the source of instruction and would be given the credit for the fees.

78. The Council invite the Tribunal to make finding that each of the first and second respondent's conduct was serious and reprehensible, find that their conduct met the test for professional misconduct on the following grounds

The respondents, accepted instruction from the secondary complainer on or about the 19 May, issued terms of business on the 22 May and 8 June all 2020. The respondents did so having previously accepted instruction to purchase and lease the Hurler, some 12 and 7 months earlier, on behalf of the now seller, they did so when the seller was an established client of their employer Gilson Gray in doing so they

Accepted instruction when there was conflict of interest in relation to both/either  
(i) each respondent's previous instruction from the seller (ii) ongoing instruction of Gilson Gray from the seller in breach of B1.7.1.

and/or

Accepted instruction when there was a potential conflict in relation to both/either (i) each respondent's previous instruction from the seller (ii) ongoing instruction of Gilson Gray from the seller in breach of B1.7.2.

The respondents failed to communicate effectively with the secondary complainer. Each respondent failed to advise Sheikh of her previous involvement in the purchase and lease of the Hurlet and the ongoing instruction of her firm in order to allow the secondary complainer to make an informed decision as to whether to instruct the respondent contrary to the Guidance issued by the Law Society of Scotland on Conflict of interest.

79. If the tribunal is unconvinced of each head of complaint then the Council invite that an in cumulo finding is made."

## **WRITTEN SUBMISSIONS FOR THE FIRST RESPONDENT**

### **"Introduction**

It is for the Council to make out a compelling case for professional misconduct by First Respondent, Joanna Millar ("JM"). The conduct must satisfy the test set out in *Sharp v Council of the Law Society of Scotland 1984 SLT 313*. I will return to that later.

In determining whether there was a breach of the conduct standards, I invite the Tribunal to consider the following:-

1. What evidence can be relied upon
2. Nature of the transaction
3. JM's involvement
4. JM's state of knowledge
5. Conflict of interest
6. Informed consent

### **Assessment of evidence**

#### **Hamza Sheikh – secondary complainer ("HS")**

HS is a well-educated man who runs his own business. The transaction related to his first commercial property investment purchase. The Tribunal should be slow to accept his evidence as credible and reliable. He was unhappy because the sitting tenant did not pay rent. But that is not relevant. He accepted in cross examination that he agreed a fee with the Second Respondent, Laura Campbell ("LC"). He then contradicted that in re-examination, saying that JM agreed the fee initially. His evidence about due diligence was contradictory and implausible. On the one hand he said that he did not want pre-auction due diligence done, because he

thought it had been done 7 months earlier and not much would have changed. I noted him as saying “they would have done due diligence 7 months before, so what was the point of doing it again?” On the other hand, he said that he expected a conveyancing solicitor to undertake due diligence just before settlement. Separately, he says in his affidavit that, if due diligence was not satisfactory, he could pull out of the purchase and forfeit his £71,000 deposit, yet he did not want to spend £300 on pre-auction due diligence. He says that [Solicitor A] told him before the auction that rent payments were up to date. However, he accepted that the lease terms provided that the first payment of rent was due after the auction. Interestingly, he said that although he expected his solicitor to undertake searches and carry out due diligence prior to settlement in relation to this transaction, he no longer has that expectation of solicitors. When asked what had formed the basis of his earlier expectation, I noted that he did not answer that question. Instead, he said that it was simple things, such as making sure the tenant was up to date and he expected the solicitor to verify that. The fact is that he had no basis to hold the expectation that LC would do this work. JM made it very clear to him by email that the fee quoted was for the purchase of the property and nothing else. He imputed responsibility on the Respondents for losses which were created by him taking on transactional risk and not carrying out due diligence. He accepted in cross examination from Mr. Macreath that he hadn’t read the contract fully. He also accepted that he had not carried out any online checks regarding the tenant. There is no evidence that that if checks were carried out up to settlement that he would not have sustained loss anyway. It appears that he did not understand the contract he agreed when he made the successful bid for the property. There is no causal link between what he complained about and any losses he might have sustained by way of unpaid rent. Lawyers are encouraged not to use Latin these days, but *post hoc ergo propter hoc* seems very apt when one considers his evidence – because his tenant did not pay rent shortly after Gilson Gray (“GG”) acted for him in the purchase, his losses must have been caused by their acting. It is a fallacy. He is casting aspersions on the Respondents’ professional conduct with no basis for doing so. His evidence lacked credibility and reliability and the Tribunal should be slow to make an adverse finding against a solicitor based on it.

#### Rosemary Walker

I do not take issue with the credibility of this witness. However, she was unable to assist in relation to the work undertaken by the Respondents. She was not best placed to give evidence about the work undertaken by JM. She worked in a different office and did not know what type of work JM undertook. She had no knowledge of this transaction until a complaint was received by GG. She made enquiries following receipt of that complaint. Her evidence was that the scope of work and fee was agreed on 4 June 2020. In cross examination I noted she said that she would not have expected JM to supervise LC. She was told numerous times that there

were errors in the letters of engagement. Rather than accept that position, she took a neutral stance. Despite evidence to the contrary, she would not accept that JM was not involved in the conveyancing work for HS. She relied on the terms of the letter of engagement, despite what she had been told about the errors. The two files which had been opened for [Company 1] related to a caveat and the other was a general file. The caveat file concerned the preparation and lodging of caveats. She did not look at the general file. Those files were not before the Tribunal. There was no evidence about the work on them having any bearing on the interests of HS. There was no clear evidence of who was responsible for conflict checking. The operational policy could not be located by her.

#### Joanna Millar

JM undertakes licensing, corporate and commercial legal work. She does not do conveyancing. Her evidence about this was not challenged. Her evidence about her knowledge of the conveyancing transaction is supported by her attendance note and email correspondence. She provided initial advice in relation to the vehicle by which the purchase would be made, although ultimately, she was not instructed to do that work. HS never gave JM any information about his expectations. JM made it clear to him in her email of 4 June 2020 what work would be carried out by LC. The two people best placed to know who was undertaking the work are JM and LC. They were at one in relation to LC taking instructions on the conveyancing transaction and quoting HS a fee for that work. They were at one in relation to the errors in the letters of engagement and the supervision of LC by John Fulton. I invite the Tribunal to find that JM was a credible and reliable witness.

#### Laura Campbell

LC does commercial and residential conveyancing. She provided a quote to HS on the basis that she would prepare the disposition and register it. An additional fee was quoted for the assignation of a personal guarantee. There was no dispute that LC had offered to undertake work for HS prior to the auction and that he declined. LC was not asked to check the provenance of the tenant's credit rating. During her work on the purchase transaction, LC asked the seller's solicitor if rent was up to date and was advised that it was up to date and was being paid monthly. LC had no information about [Company 1] which was adverse to the interests of HS. LC had no information about [Company 1] that was not public information. I invite the Tribunal to find that LC was a credible and reliable witness.

#### Nature of the transaction

HS declined the offer of advice about the legal pack during his first contact with JM and LC. He instructed GG to implement the contract he concluded. This is important. He had already

concluded the contract himself at auction. This is different from other property purchases which involve the exchange of offers and qualified acceptances, advice about standard and non-standard clauses and ultimately the conclusion of missives and the contract. In this case, there was no exchange of correspondence about the terms of the contract. There was no ability to negotiate on the terms of the contract. This point was made to Rosemary Walker by John Fulton in an email of 12 April 2021 (*First Respondent's inventory of productions – production 2*). All that could be done was implementation of the contract. HS accepted that he was bound by the terms of the articles of roup. There was no warranty given about the title or the tenant and by bidding in the auction, he was deemed to have satisfied himself on these matters. In my submission, the nature of the transaction is very important when considering whether there was a conflict of interest or potential conflict of interest.

#### JM's involvement

JM contacted HS on 18 May 2020 before the auction took place. She noted that he declined advice on the legal pack contained in the articles of roup. She noted that he had undertaken his own due diligence. He did not want GG to undertake due diligence. JM advised him that her colleague, LC, would undertake the conveyancing work to implement the contract he concluded. JM undertook a conflict check on HS and his sister. She noted that HS did not wish to instruct her to have a partnership agreement concluded. JM had no supervisory role in relation to LC, notwithstanding the terms of the letters of engagement. JM did not undertake any legal work for HS. The full GG file has been produced and there is no evidence of any contact between JM and HS or anyone else connected to the purchase transaction after 4 June up to the date of settlement.

#### JM's state of knowledge

There is no evidence that JM had any confidential information about [Company 1] which may be prejudicial if disclosed to HS.

HS did not complain about the title that he obtained. He has a complaint because the sitting tenant did not pay rent. The complaint against JM may have been very different if she had ever acted for the tenant and knew of the tenant's financial position. However, that is not what we are dealing with.

There was an absence of evidence that JM possessed any knowledge about [Company 1] which had any bearing on HS implementing his contract to purchase the property. JM may have had information about [Company 1] concerning a caveat, but that had no bearing on the transaction with HS.



In the absence of evidence about the nature and extent of any confidential information contained in the two files GG had for [Company 1], one cannot speculate as to the contents of those files.

#### Conflict of interest

The common law rule is that a solicitor may not act for two parties where their interests conflict or where there is a serious possibility that a conflict may arise. I will comment on rules B1.7.1 and B1.7.2 later.

Situations where a solicitor acts for purchaser and seller in the same transaction have resulted in rules and guidance being issued by LSS.

The critical test is whether the solicitor can adequately discharge all duties to their client.

There is no evidence before the Tribunal that there was a conflict or potential conflict of interest.

#### Informed consent

Should JM have obtained consent of [Company 1] to disclose to HS that GG acted for [Company 1] in other matters? In my submission, this was not required in the circumstances of this case. Informed consent means consent given in the knowledge that there is a conflict and that as a result the solicitor may be disabled from disclosing to each party the full knowledge which he or she possesses as to the transaction or may be disabled from giving advice to one party which conflicts with the interests of the others. That was not the position here.

#### Legal Framework

The test to be applied in determining a complaint of professional misconduct is of course set out by Lord Emslie 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 made."*

Although there is no statutory requirement, the standard of proof is beyond reasonable doubt. To find JM guilty of professional misconduct, the Tribunal must be satisfied that her conduct would be regarded by competent and reputable solicitors as being in all the circumstances, serious and reprehensible. The Tribunal must also consider what degree of culpability should be attributed to JM.

### **The Complaint**

The Council contends that the Respondents have been guilty of acts or omissions which singly and in cumulo constitute professional misconduct on his (sic) part within the meaning of Section 53 of the Solicitors (Scotland) Act 1980 (as amended) Section 53. They aver that the Respondents were guilty of professional misconduct in that they:-

Accepted instruction when there was conflict of interest in relation to both/either (i) each respondent's previous instruction from the seller (ii) ongoing instruction of Gilson Gray from the seller in breach of B1.7.1.

Accepted instruction when there was a potential conflict in relation to both/either (i) each respondent's previous instruction from the seller (ii) ongoing instruction of Gilson Gray from the seller in breach of B1.7.2.

Failed to communicate effectively with the secondary complainer. Each respondent did not advise him of her previous involvement in the purchase and lease of the Hurlet and the ongoing instruction of her firm in order to allow the secondary complainer to make an informed decision as to whether to instruct the respondent contrary to Guidance issued the Law Society of Scotland on Conflict of interest.

It is submitted that there is a lack of specification in the Complaint. The Council does not detail in what respect a conflict or potential conflict is said to exist. The position of the Council appears to be that the mere fact that GG acted for [Company 1] must mean that there was a conflict or potential conflict of interest. GG represented [Company 1] apparently in relation to a caveat and other unspecified work. There was no evidence that the work undertaken by GG for [Company 1] conflicted with HS's interest in purchasing a property from [Company 1].

In section 5 of the Complaint, under the heading *Averments of Professional Misconduct* there is no averment that the Respondents were guilty of professional misconduct by reason of any failure to act in the best interests of the secondary complainer. Mr Stewart questioned witnesses about acting in the best interests of clients. Should the Council submit that JM and LC failed to act in the best interests of the client, that should not be considered by the Tribunal due to lack of fair notice. If the Council rely upon this to establish professional misconduct, that should have been averred at section 5 of the Complaint.

### **The Rules and Regulations said to have been breached are in the following terms:-**

The *Law Society of Scotland Practice Rules 2011*, at *B1 Standards of Conduct*, provide:-

B1.7.1

You must not act for two or more clients in matters where there is a conflict of interest between the clients or for any client where there is a conflict between the interest of the client and your interest or that of your practice unit.

#### B1.7.2

Even where there is only a potential conflict of interest you must exercise caution. Where the potential for conflict is significant, you must not act for both parties without the full knowledge and express consent of the clients.

#### B1.9.1

You must communicate effectively with your clients and others. This includes providing clients with any relevant information which you have and which is necessary to allow informed decisions to be made by clients.

### **Does the evidence support the contention that the Respondent has breached practice rules?**

#### Rule B1.7.1

Is there evidence that supports a breach of this rule by JM? In my submission, there is not. In relation to the earlier transaction carried out by Millar Campbell on behalf of [Company 1], there is no evidence about relevant information known to JM about that transaction and about [Company 1]. In cross examination, JM and LC were asked whether Millar Campbell received information about [Company 1]'s VAT registration number, bank details and personal identification of directors. None of that information has any bearing on the interests of HS. The Council has no evidential basis to contend that there was a conflict of interest. The fact that Millar Campbell had acted in the purchase of the Hurlet for [Company 1] does not mean that the interests of [Company 1] conflicted with those of HS. Similarly, the mere fact that GG acted for [Company 1] in two matters does not mean that the interests of [Company 1] conflicted with those of HS. *Res ipsa loquitur* does not apply here. These facts do not speak for themselves.

#### Rule B.1.7.2

It is submitted that there is no evidence supporting a breach of this rule. The comments made in respect of rule B1.7.1 apply equally here. Beyond the fact that Millar Campbell acted for [Company 1] in the purchase of the Hurlet and that GG acted in two matters, there is no evidence that there was a potential conflict of interest. To breach the rule, the potential for conflict must be significant.

#### Rule 1.9.1

It is accepted that JM did not disclose to HS that her former firm was involved in the purchase of Hurlet for [Company 1], nor that GG had two files for [Company 1]. In the absence of evidence of a conflict of interest or potential conflict of interest, there was no obligation on JM to advise HS about these matters. To do so would have been a breach of the duty of confidentiality owed to [Company 1]. It is submitted that there is no evidence to support a breach of this duty.

### **Comments on authorities lodge by the Council and Second Respondent**

#### *Bolkiah v KPMG [1999] 2 WL 215*

The factual background to this case is very different from the present case. In *Bolkiah*, the accountants had knowledge which could have been prejudicial to the plaintiff if disclosed. The accountants, apparently with good intentions, tried to put up a Chinese wall to enable them to continue acting. That is a very stark example of a case in which there was actual knowledge which could have been prejudicial. In my submission, this case can be distinguished from the present case. What is helpful about this case is the test as set out by Lord Millett (p235D-E) *"Accordingly, it is incumbent on a plaintiff who seeks to restrain his former solicitor from acting in a matter for another client to establish (i) that the solicitor is in possession of information which is confidential to him and to the disclosure of which he had not consented and (ii) that the information is or may be relevant to the new matter in which the interest of the other client is or may be adverse to his own. Although the burden of proof is on the plaintiff, it is not a heavy one."*

#### *Murray v Turcan Connell WS [2019] SC 403*

This case does not assist in determining the present case. It involved a firm of solicitors who wished to act for a party with an interest adverse to that of a former client, and where they held confidential information about the former client. The criticism of the firm of solicitors came from the Pursuer, who was the former client of the firm of solicitors. That firm held confidential information about the Pursuer. This can be distinguished from the present case because JM and LC did not hold confidential information about [Company 1] which had any bearing on the interests of HS.

#### *The Council of the Law Society of Scotland v Iain John Smith Vaughan 2007*

This case involved a stark example of a conflict of interest whereby the solicitor acting for a client, had previously acted for a co-accused and had sought to incriminate the client whilst acting for the co-accused. The solicitor clearly had knowledge about the co-accused whose interests could be adverse to that of the client. The key difference between Vaughan and the present case is the state of knowledge by JM and LC.

*Ecclesiastical Insurance Office Plc v Whitehouse-Grant-Christ [2017] CSIH 33*

This case is of assistance. The Court found that no conflict of interest existed and the motion to exclude a solicitor from representing a party was refused. The test identified by the Court was whether there was any real risk that relevant confidential information might come into the hands of a person with an adverse interest. The Court opined (at paragraph 60): *“If it was clear that there was no risk of misuse of confidential material a fair-minded member of the public, with an adequate understanding of the facts, would see no threat to the proper administration of justice.”*

**Is the Sharp test met?**

If after considering the evidence, the Tribunal consider that JM has breached a rule, that does not necessarily lead to the conclusion that she is guilty of professional misconduct. In *Sharp* at page 316, Lord Emslie considered Section 20(3) of the Solicitors (Scotland) Act 1949 which contains the same provision we now see in Section 35(3) of the Solicitors (Scotland) Act 1980 which *“means precisely what it says. A failure on the part of a solicitor to comply with a relevant rule may be treated as professional misconduct. The subsection introduces nothing new to the law. Such failure might have been so treated before it was enacted, and it may well be that the true purpose of the subsection is to draw the attention of practitioners to the importance attached to compliance with the rules. However that may be, whether such a failure should be treated as professional misconduct must depend upon the gravity of the failure and a consideration of the whole circumstances in which the failure occurred including the part played by the individual solicitor.”*

If JM is found to have breached one of the practice rules, one must assess her culpability to determine whether the *Sharp* test is met.

There is evidence that JM did not undertake conveyancing work, and there is no evidence of any contact between JM and HS or any other party involved in the purchase transaction after 4 June 2020. The transaction settled on 30 June 2020. So fleeting was her involvement with HS that by September 2020, she did not remember who had purchased the Hurlet and she had to ask LC.

It is submitted that in the whole circumstances, even if the Tribunal find that there has been a breach of the practice rules, the *Sharp* test is not met. JM may be considered to have misjudged how she dealt with the initial contact with HS and the “onboarding” of the client. However, her conduct neither singly nor in cumulo has the degree of culpability or the taint of serious reprehensibility required to constitute professional misconduct.”

## WRITTEN SUBMISSIONS FOR THE SECOND RESPONDENT

“

1. The conduct giving rise to the complaint is that the Second Respondent in or around October 2019, whilst practising at Millar Campbell Limited, acted for [Company 1] a company with interests in commercial property, in the purchase of a portfolio of properties including “the Hurlet” a former licensed premises, at 2 Glasgow Road, Hurlet, Glasgow (“the Hurlet”).
2. That the Second Respondent then acted for [Company 1] in the negotiation, adjustment and completion of a commercial lease and personal guarantee in connection with the lease of “the Hurlet” to [the Tenant Company], the tenants then represented by [Solicitor A] of [Firm A].
3. That [Company 1] offered the Hurlet for sale by way of auction/roup and [Solicitor A] of [Firm A] acted for [Company 1] in the preparation of the Articles of Roup and the auction was advertised and took place on the 19th of May 2020. The auction was held by [the Auctioneers] and an inventory of writs attached to the Articles of Roup included the disposition in favour of [Company 1], the lease between [Company 1] and [the Tenant Company] and the Personal Guarantee and Property and Personal Searches.
4. That Secondary Complainer through a property partnership “The Hurlet Property Partnership” (“the property partnership”) was successful at auction in its bid. [Solicitor A] of [Firm A] acted for [Company 1] in the sale of the property at auction.
5. That the Second Respondent , In May 2020, now an employee with Gilson Gray LLP, acted for the Secondary Complainer and the property partnership in the purchase at auction.
6. That the Secondary Complainer on behalf of the property partnership contacted [Solicitor A] of [Firm A] and a property consultant representing [Company 1] and was recommended to telephone Gilson Gray LLP and to speak to the First Respondent.
7. That on the 18th of May 2020, the day before the Auction was to take place on 19<sup>th</sup> May 2020, the Secondary Complainer was referred by [Solicitor A] at [Firm A] to the First Respondent and in turn to the Second Respondent. The Second Respondent offered legal advice on the legal pack which the Secondary Complainer had downloaded from [the Auctioneers]’s Auction website. The Secondary Complainer declined any legal advice on the legal pack. The Second Respondent acted in the conveyancing work only in the Secondary Complainer's and the property partnership's successful bid at Auction
8. That the Secondary Complainer did not seek advice on commercial property aspects nor on commercial corporate aspects of the purchase other than instructing that title to the Hurlet be taken in the name of the property partnership. The Second Respondent was instructed to obtain an assignation of the personal guarantee granted by the director of [the Tenant Company], the tenants.
9. That the Second Respondent sent a letter of engagement dated 22nd May 202 to the



Secondary Complainer and to his sister. The letter of engagement was revised on the agreed set fee and a further letter of engagement was sent by the Second Respondent on the 8th of June 2020 to the Secondary Complainer and his sister as partners of the property partnership.

10. That the Law Society complaint proceeds on certain formulations which are contained within the averments of misconduct in Article 5 of the complaint.
11. The Council avers that the Second Respondent is guilty of professional misconduct in terms of Article 5 of the Complaint. Article 5 provides that the Second Respondent has been guilty of acts or omissions which singly and *in cumulo* constitute professional misconduct on her part within the meaning of Section 53 of the Solicitors (Scotland) Act 1980 (as amended). The Council avers that the Second Respondent is guilty of professional misconduct in that:
  - i. The Second Respondent accepted instruction from the Secondary Complainer on or about 19th May 2020 and issued terms of engagement/business on the 22nd of May 2020. The Council avers that the Second Respondent did so having previously accepted instruction to purchase and then to lease a property known as the Hurlet, some seven months earlier on behalf of [Company 1] and the Second Respondent did so when her employer Gilson Gray already acted for [Company 1]. Article 5.2.1 provides that in accepting an instruction **when there was a conflict of interest** in relation to both/either (i) the second respondent's previous instruction from [Company 1] (ii) ongoing instruction of Gilson Gray from [Company 1] that is a breach of Rule B1.7.1 of the Law Society of Scotland Practice Rules 2011.
  - ii. The Second respondent having accepted instruction where there was a potential conflict in relation to both/either (1) the second respondent's previous instruction from [Company 1] (2) an ongoing instruction of Gilson Gray from [Company 1] that that was a breach of Rule B1.7.2 of the Law Society Practice Rules 2011 - see Article 5.2.2 of the Complaint .
  - iii. The Second Respondent failed to communicate effectively in her dealings with the secondary complainer: that the Second Respondent did not advise the secondary complainer of her previous involvement in the purchase and lease of the subjects the Hurlet and of an ongoing instruction of Gilson Gray by [Company 1]; that such disclosure and effective communication was necessary to allow the secondary complainer to make an informed decision on whether the secondary complainer could act contrary to **"Guidance issued by the Law Society of Scotland on conflict of interest"** - See Article 5.2.3 of the Complaint.

The second respondent denies accepting instruction in circumstances where she acted in a conflict or potential conflict and denies there was a failure on her part to communicate effectively with the secondary complainer.

## The Law

The law applicable has been discussed in two recent Scottish cases.

*Ecclesiastical Insurance Office Plc -v- Lady Whitehouse-Grant-Christ*<sup>1</sup> and *Murray -v- Turcan Connell*<sup>2</sup>.

In each case the court endorsed the approach taken in an earlier English case: – *Bolkiah -v- KPMG*<sup>3</sup>. In that case Lord Millet described at 235-C-D the key questions as follows.

***“Accordingly, it is incumbent on a plaintiff who seeks to restrain his former solicitor from acting in a matter for another client to establish (i) that the solicitor is in possession of information which is confidential to him and to the disclosure of which he has not consented and (ii) that the information is or may be relevant to the new matter in which the interests of the other client is or may be adverse to his own. Although the burden of proof is on the plaintiff, it is not a heavy one”.***

In *Ecclesiastical* Lord McGhie questioned why the former client who has succeeded on question (i) should bear any onus as regards question (ii). Lord McGhie suggested a practical approach: the court ought not to intervene *“where confidential information could have no realistic bearing on issues in dispute”* see para [67]

12. The Second Respondent submits that where it has been demonstrated that a solicitor continues to hold or has access to confidential information belonging to a former client and that former client does not agree to its disclosure, the solicitor requires to demonstrate that the information held has no realistic bearing on the issues now in dispute or that effective information barriers are in place. Information might comprise files, but retention of knowledge acquired by a solicitor in connection with the former client on the part of a solicitor may also be relevant. There is no complaint made by [Company 1] – the former client.

It is against that legal background the Tribunal should consider the relevant circumstances and the evidence provided by the witnesses for the Council (1) the Secondary Complainer and (2) Rosemary Walker, partner and client relations manager of Gilson Gray. A Joint Minute was lodged on the 14<sup>th</sup> April 2025 restricted to agreement (a) on the extracts from the Gilson Gray file and that each production was true and accurate and (b) that at the time Miller Campbell carried out commercial work on behalf of [Company 1] in 2019 re the Hurlet that Roy Provan was not employed by Miller Campbell, his employment having ceased in December 2017.

**The evidence of the secondary complainer.** The second respondent recognises it is for the Tribunal to assess the evidence of each witness and draw such inferences as the Tribunal deems appropriate.

1. The Secondary Complainer adopted the evidence in his affidavit (the 4th Inventory for the Council item 3). That evidence confirms that the Secondary Complainer received the legal pack from the auctioneers [The Auctioneers] and noted the name of [Solicitor

<sup>1</sup> *Ecclesiastical Insurance Office Plc v Lady Whitehouse-Grant-Christ* [2017] SC 684

<sup>2</sup> *Murray -v- Turcan Connell* 2019 SC 403

<sup>3</sup> *Bolkiah -v- KPMG* [1999] 2 AC 222

A] of [Firm A] acting for [Company 1]. The Secondary Complainer telephoned [Solicitor A] and was informed that the landlord [Company 1] was of good standing, the tenant was reliable, the rent was up to date and there was a personal guarantee in place.

2. The Secondary Complainer in para 9 of his affidavit says that the First Respondent was recommended to him by [Solicitor A]. [Solicitor A] did not tell the Secondary Complainer that the First and Second Respondent had acted for [Company 1] in the purchase and lease of the Hurlet in 2019 or that [Solicitor A] had acted for the tenant [the Tenant Company] in the commercial lease and personal guarantee.
3. In paras 10 and 11 of the affidavit, the secondary complainer reviewed the legal pack, did not ask his sister to read it or provide advice though she was a solicitor. He considered that the auctioneers were reputable, that [Solicitor A] was reputable and that if the documents were being put forward by these parties, they must be proper.
4. The Secondary Complainer had made investigations, had looked online on the Companies House website noting [Company 1] as a large company but does not recall any check on the tenants [the Tenant Company].
5. The Secondary Complainer accepts that pre auction checks were offered to him by the Second Respondent which he declined, which services included a title search and personal searches. The Secondary Complainer declined those services on the basis that his own investigations and reading of the documentation were sufficient. His wish was to be able to register with [The Auctioneers] a solicitors' firm to handle the conveyance and if successful at the auction he would wish Gilson Gray to act in the purchase.
6. There was evidence regarding a special purpose vehicle for the purchase. The Secondary Complainer's evidence was that on the day before the auction his first contact was with Gilson Gray on 18<sup>th</sup> May 2020 . He wished and anticipated that the purchase would be documented and there was an expectation of "further due diligence". The secondary complainer had declined any legal advice on the legal pack beyond suggesting "further due diligence". His expectation was that the Second Respondent would obtain "documented proof that the rent had been paid and the tenant's personal guarantee was worth the paper it was written on". He wished confirmation that the tenants were in existence.
7. In para 21 of his affidavit the Secondary Complainer accepts that in hindsight this was not the Second Respondent's expectation of the instruction though he claims he did ask the Second Respondent about due diligence but she did not answer.
8. In para 26 of his affidavit the Secondary Complainer appears to accept with the benefit of hindsight that the Second Respondent was only carrying out conveyancing. He suggests that the Second Respondent was to act "in his best interests".

There is no specific averment of professional misconduct of failing to act in "best interests". There is reference in article 4.5 that the Second Respondent has a fiduciary duty to act in clients' best interests and owes an obligation of loyalty.

The Law Society of Scotland Practice Rules 2011 in Section B under the heading “**Fundamental Principles and Client Care**”, have Rules 1.4.1 and 1.4.2 which provide that solicitors must act in best interests of their clients subject to preserving their independence, complying with the law, the Practice Rules and principles of good professional conduct. Solicitors must not permit their own personal interests or those of the legal profession in general to influence advice to or actings on behalf of clients.

The Second Respondent submits that there is no averment of professional misconduct about acting in best interests.

9. In para 29 of the Secondary Complainer's affidavit he was speaking with the benefit of hindsight and there would be positives in the Second Respondent having previous knowledge of the Hurlet property.

The Secondary Complainer did not say what information was available to the Second Respondent which could be described as “confidential”, and that this information was confidential to [Company 1] and could only be shared with the consent of [Company 1] The Second Respondent submits that there is no evidence to suggest that any confidential information was held in respect of [Company 1] for the purchase and subsequent lease of the Hurlet which would prevent the Second Respondent acting. It is submitted that any evidence given by the Secondary Complainer on consequences arising from the failure of the tenants and the failure of the director to obtemper the personal guarantee are not relevant matters before this Tribunal for consideration. The second respondent submits that the secondary complainer's evidence in paras 34, 35 and 36 of his affidavit are irrelevant to the considerations of the Tribunal.

### **The Evidence of Rosemary Walker**

1. The witness adopted her affidavit ( The Council's Third Inventory of Productions). That affidavit has been redacted in respect of paragraphs 10, 11, 12, 13 and 14.
2. The evidence is restricted to receipt of a complaint from the Secondary complainer on 10th April 2021. See paragraph 2 of said affidavit.
3. A complaint was made to the Scottish Legal Complaints Commission (“SLCC”). The witness provided the files to SLCC in course of investigation of the complaint made by the secondary complainer. The witness in para 6 of her affidavit provided a response to SLCC setting out a factual position by reference to the file and information informed by the First and Second Respondents.
4. In para 8 the witness confirmed that the First and Second Respondents at Millar Campbell Limited in 2019 had acted for [Company 1] in the purchase of the Hurlet at auction and acted in the lease by [Company 1] in favour of [the Tenant Company]. The witness confirmed in para 8 of her affidavit the tenant remained in occupation in 2020.
5. The witness said that the First and Second Respondents knew that [Solicitor A] of [Firm A] had acted for the tenant [the Tenant Company] when the commercial lease was negotiated, adjusted and executed as between [Company 1] and [the Tenant Company]

together with a provision of a personal guarantee by a director of the tenants. [Solicitor A] acted for [Company 1] when the property known as the Hurlet with the lease and personal guarantee was sold at auction to the Secondary complainer.

6. The witness at para 18 of her affidavit refers to the case management system of Gilson Gray and that two files were created in February 2020 whilst the First and Second Respondents were employees. The first file was created on 10th February 2020 and the Second on 20th February 2020. So far as the first file, a letter of engagement was in name of the first Respondent and in connection with the Second file whilst the first Respondent was noted as source of business the Second Respondent was shown as fee earner.
7. The evidence discloses that the first file was in relation to caveats for [Company 1] and the witness described the Second file as a real estate file. (This was clarified by the Second Respondent who confirmed that the file contained archive material relating to the transaction from 2019 and was a file created for storing material in relation to the first transaction which had been completed whilst the Second Respondent was an employee of Millar Campbell Limited).
8. The witness confirmed in para 20 of her affidavit that the Second Respondent was employed in the real estate department and her supervising partner was John Fulton. The witness confirmed that the Second Respondent was not responsible for the onboarding of the Hurlet Property Partnership as clients of Gilson Gray and the first Respondent was noted as the source of business in terms of para 33 of the affidavit. Both the First and Second Respondents would have been aware they acted for [Company 1] in 2019 in its purchase of the Hurlet at auction.

The evidence of the First and Second Respondents was provided and the evidence of the Second Respondent was consistent with her Answers.

The evidence is a matter for the Tribunal.

It is for the Council to prove the averments of misconduct beyond reasonable doubt applying the tests adumbrated in *Sharp -v- The Law Society of Scotland*<sup>4</sup> that the Second Respondent is guilty of misconduct by accepting the instruction from the Secondary complainer in around 19th May 2020 and issuing terms of engagement on 22nd May 2020. The Council must demonstrate that the Second Respondent had not only accepted instruction to purchase and lease the Hurlet some seven months earlier on behalf of [Company 1] but acted for the secondary complainer in May 2020 in the purchase of the Hurlet when she knew or ought to have known that her employer Gilson Gray was already acting for [Company 1]. The Council must prove that there was a conflict of interest in relation to both or either (1) the previous instruction from [Company 1] and (2) an ongoing instruction by [Company 1] of Gilson Gray in breach of Rule B1.7.1 of the Law Society of Scotland Practice Rules.

Further, Council must prove that the Second Respondent accepted instruction when there was a potential conflict in relation to both or either (1) the Second Respondent's previous

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<sup>4</sup> 1984 SC 129



instruction from [Company 1] and (2) an ongoing instruction of Gilson Gray by [Company 1] again in breach of rule B1.7.2.

Further, the Council must prove there was a lack of effective communication with the Secondary Complainer by not advising him of the Second Respondent's previous involvement in the purchase and lease of the Hurlet seven months before the Secondary Complainer's instruction on 19th May 2020 and that there was an ongoing instruction of the Second Respondent's firm by [Company 1] to enable the Secondary Complainer to make an informed decision whether to instruct the Second Respondent.

Effective communication is guided by Practice Rule 1.9.1 in that solicitors must communicate effectively with clients and others including providing clients with any relevant information which a solicitor has, or which is necessary to allow informed decisions to be made by clients such as the Secondary Complainer. Rule 1.9.2 amplifies that generality in that a solicitor must advise clients of any significant development in relation to their case or transaction and explain matters to the extent reasonably necessary to permit informed decisions by clients regarding instructions which were required to be given by them.

The law requires that, if the Secondary complainer was in possession of information confidential to [Company 1] and to disclosure of which [Company 1] did not consent, and that the information is or may be relevant to the new matter in which the interest of the Secondary Complainer is or may be adverse to [Company 1], the Second Respondent must set that out. Only if it is demonstrated by the Council that the Second Respondent continued to hold or had access to confidential information belonging to [Company 1] and [Company 1] did not agree to its disclosure then the onus passes to the Second Respondent to demonstrate the information had no realistic bearing on the issues in dispute or that effective information barriers were in place.

However, it is for Council to establish what confidential information was in the possession of the Second Respondent which identified information was confidential to [Company 1] and to the disclosure of which [Company 1] did not consent and that that information retained by the Second Respondent was relevant to the transaction for the secondary complainer.

### **The Relevant Circumstances**

1. The Second Respondent does not suggest there were information barriers within the firm of Gilson Gray. To the contrary, the Second Respondent accepted that she had acted for [Company 1] in the acquisition by [Company 1] of a portfolio of properties in 2019 one of which was the Hurlet. The Second Respondent also acted for [Company 1] in the October of 2019 when [Solicitor A] of [Firm A] acted for [the Tenant Company] in the negotiation, adjustment and completion of a commercial lease between [Company 1] and [the Tenant Company] in the respect of the Hurlet.
2. The Second Respondent maintained in evidence that beyond that she did not hold information relevant to the Secondary complainer's acquisition of the Hurlet at auction in May 2020. The Second Respondent submits there was neither evidence to infer that the Second Respondent's possession of information confidential to [Company 1] was relevant to the secondary complainer's purchase at Auction nor was there evidence that that



information may be adverse to the interests of the Secondary complainer.

3. The Council has not demonstrated that the “confidential information” would have a realistic bearing on any issues in dispute. In the case of “*Ecclesiastical*” Lord McGhie questioned why the former client who has succeeded on question (1) namely, that a solicitor such as the Second Respondent is in possession of information which is confidential to a client (in this case [Company 1]) and to the disclosure of which the former client ([Company 1]) has not consented to disclosure, should bear any onus as regards question (2) namely is the information relevant to the new matter in which the interest of the other client is or may be adverse to his own. Lord McGhie suggested a practical approach at para 67 that the court ought not to intervene “*where confidential information could have no realistic bearing on any issues in dispute*”.
4. Only if it is demonstrated by the Council that the Second Respondent continued to hold or have access to confidential information belonging to [Company 1] which company did not agree to its disclosure would the Second Respondent be required to demonstrate that the information had no realistic bearing in the issues now in dispute.
5. The Second Respondent submits that Council has not demonstrated that she held confidential information relevant to the Secondary Complainer on this new matter, namely, the Secondary complainer's purchase at auction where the Secondary Complainer declined any advice on the legal pack.
6. The legal pack contained all relevant information regarding the title to the property, including searches conducted some seven months earlier.
7. The Council assert there were two files opened by Gilson Gray on the 10th and 20th of February 2020 but have not shown either file had any bearing or relevance to the new matter in which the Secondary Complainer was instructing the Second Respondent or Gilson Gray.
8. The Council led evidence to demonstrate that the Second Respondent acted for [Company 1] in the purchase at auction in 2019 of a portfolio of properties including the Hurlet and in a lease by [Company 1] in favour of [the Tenant Company] in the October of 2019. The Council argue that by onboarding the client [Company 1] that provided confidential information regarding [Company 1]. That [Company 1]'s business model of acquiring property, finding tenants and then reselling (generally at auction) was confidential information whereas the evidence demonstrates that information onboarded regarding a company client such as [Company 1] is information available in the public domain and on Company House filings and that the business model of [Company 1] was well known . The Secondary Complainer confirmed that he had knowledge of the nature of the business conducted by [Company 1].
9. The Secondary complainer declined advice on the legal pack and could only indicate that he understood that “further due diligence” would be carried out. When asked what “further due diligence” he expected, this appeared to be some comfort or guarantee or warranty regarding the reliability and creditworthiness of the tenants. The Second Respondent was “expected” to obtain “documented proof the rent had been paid and the

tenant's personal guarantee was worth the paper it was written on". He also wished confirmation that [the Tenant Company] was in existence and that Gilson Gray ought "to protect his investment generally".

10. There is no averment of misconduct about not acting "in best interests of the Secondary complainer". There is also no evidence on the part of the Council to demonstrate there was an obligation on the Second Respondent to advise on the prudence of proceeding with this transaction. The Secondary Complainer's evidence disclosed that he had considered entering the Scottish property market, saw this as an opportunity, had reviewed the legal pack which contained the lease, the personal guarantee and he accepted it was for him to check the financial worthiness of the tenants.
11. The Secondary complainer instructed the Second Respondent having already bid at auction, been successful and had accepted the terms of the Articles of Roup.
12. A solicitor is not a general adviser on matters of business unless a solicitor such as the Second Respondent specifically agrees to act in that capacity. A solicitor is generally not under a duty to advise whether the transaction which the solicitor is instructed to carry out is a prudent one.
13. The Privy Council in "*Clarke Boyce -v- Mouat*<sup>5</sup>" confirmed this general proposition when Lord Jauncey of Tullichettle opined at 437D ***"when a client in full command of his faculties and apparently aware of what he is doing seeks the assistance of a solicitor in the carrying out of a particular transaction that solicitor is under no duty whether before or after accepting instructions to go beyond those instructions by proffering unsought advice on the wisdom of the transaction"***
14. There have been other cases where the courts have held there is no duty on a solicitor to advise on the solvency of a counterparty or whether guarantees should be sought. The Opinion of Justice Rimer in *Football League -v- Edge Ellison*<sup>6</sup> at Para 270 refers ***"is the solicitor supposed to review the whole range of commercial considerations that underlie a particular deal, work out which ones he is concerned the client may not have given sufficient thought to and remind him about them? In my judgement the answer is no"***.
15. There may be some aspects of a transaction which will be easy to identify as commercial. Is a debtor likely to repay? Will the property be a good investment, but these are grey areas and to distinguish between legal and commercial advice may prove difficult.
16. In this case the tenant had entered a full repairing and insuring commercial lease which had been checked by the Secondary Complainer. There was also a personal guarantee from a director of the tenant. The Secondary Complainer did not seek from the Second Respondent or Gilson Gray advice on the prudence of his investment. There is no evidence before the Tribunal that the Second Respondent had any knowledge of the financial status of the tenant or its director beyond the documentation created in October 2019.
17. There may be situations where property is purchased with a view to improvement and

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<sup>5</sup> [1994] 1 AC 428

<sup>6</sup> [2006] EWHC – 1469 (CH)

development. An example is subjects being purchased for redevelopment with a car park which can only be accessed across neighbouring land with an existing licence agreement with the local authority which provided the access. When the developer seeks to sell the property, he discovers the right of way was precarious because the licence could be withdrawn at any time. In such a case, one would anticipate that the solicitor would recognise the significance of the access, the terms of the licence agreement and the precarious nature of the agreement which could be withdrawn at any time by the Local Authority and that must be drawn to the attention of the purchaser.

18. The Council has not established what due diligence was expected of the Second Complainer. Nor have they set out what confidential information was available to the Second Respondent regarding [Company 1] which was confidential to [Company 1] and which was adverse to the interests of the Secondary Complainer. The Council has not established that [Company 1] did not consent to information held by the second respondent being communicated to the secondary complainer.
19. The Second Respondent accepts that if she were aware of any risk or potential risk so far as the lease was concerned, she would have been under a duty to inform the Secondary Complainer. She would not have been going beyond the scope of instructions by doing extra work not covered by the letter of engagement but merely reporting on issues of concern.
20. In *Credit Lyonnais -v- Russell Jones and Walker*<sup>7</sup> Justice Laddie at [28] used the analogy of a dentist asked to treat a patient's tooth and in looking into the patient's mouth noticed that the adjacent tooth needed treatment. It was the dentist's duty to warn the patient. By extension, in course of carrying out instructions within an area of competence if the Second Respondent had noticed or ought to have noticed a problem or risk the Second Respondent would have been under a duty to warn the client. However, unlike the dentist looking into the open mouth of the patient and noting the decayed tooth beside the tooth needing treatment, the Second Respondent was not asked in terms of the scope of engagement to carry out due diligence upon the tenants and its director. That was not part of the engagement and in any event, there was no information available to the Second Respondent to suggest any risks or problems which should be warned to a Secondary complainer.
21. In summary, the Secondary complainer and his sister were both professional people who were carrying out their own due diligence in relation to a purchase at auction.
  - The secondary complainer had the advantage of reviewing the legal pack containing the relevant information and he made some investigation to satisfy themselves on any risks involving a bid at auction of the subjects at the Hurler.
  - The nature and amount of advice that any solicitor may be expected to give a wholly unacquainted client with a business operation may differ from what a solicitor would offer to an experienced businessman who will naturally decide for themselves the course they think it is in their interest to take. The Second Respondent was in no better

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<sup>7</sup> [2002] EWHC 13110

position than the Secondary Complainer to appreciate any risks involving the Hurlet. It was a matter for the Secondary Complainer to carry out such due diligence before bidding at auction having received the legal pack.

- Matters on whether the Hurlet was a good investment or not were matters which the Secondary complainer was expected to be in a better position than the Second Respondent to assess and these were matters for the secondary complainer's commercial judgement.
  - Matters which may impact upon commercial viability may be matters which a solicitor such as the Second Respondent would be expected to identify and point out to enable the client to assess commercial risk. An obvious one would be an access right or in connection with a lease does the rent review mechanism work.
22. It is the Second Respondent's submission that she did not hold confidential information relating to her former clients [Company 1] to which disclosure [Company 1] had not consented and further that any information held in any event was irrelevant to the new matter in which the interests of the Secondary Complainer were or may have been adverse to those of [Company 1]. It is the Second Respondent's submission that if any confidential information were held, which is denied, it would have had no realistic bearing on the issues in dispute.
23. The Council founds upon a decision of the Tribunal in the Complaint by the Council against *Iain John Smith Vaughan*<sup>8</sup>. In that case, the Respondent was found guilty of professional misconduct in respect of his acting in a conflict of interest situation by acting for a client when he had previously acted for a co accused in circumstances where his firm had sought to incriminate the client when acting for the co accused and where the Respondent acted throughout the prosecution of the co accused and by accepting instructions to act for the client at a later date he had access to confidential information in respect of the case against the co accused which could be relevant to the defence of the client.
24. The *Vaughan* decision can be distinguished from the facts and circumstances of the present complaint. In that case, there had been an appeal following upon the conviction of the client. The solicitor owed a continuing professional duty to the co accused whom he had acted for and when acting for had incriminated the client for whom the solicitor then acted.
25. The Crown had proceeded against the co accused with the client absent having a warrant outstanding and he was not included in the indictment. The co accused was represented by Mr Vaughan and he pled guilty to certain charges with his not guilty pleas accepted in connection with drug supply charges which were the charges in respect of which the client had been incriminated by the co accused. The client was arrested at a later stage, served with an indictment and the solicitor following consultation with the client though explaining he had previously acted for the co accused proceeded to act. There was no mention that in acting for the co accused the solicitor on instructions had incriminated the client or that the co accused might have given information to the solicitor in connection

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<sup>8</sup> SSDT 7<sup>th</sup> November 2007

with the client which would be adverse to the interests of the client. The client was informed there was no evidence available to incriminate the client. The trial proceeded with only a special defence incrimination against another person but not the co accused despite evidence suggesting the co accused should have been incriminated. The client was convicted and immediately lodged an appeal against conviction based on defective representation by the solicitor. The conflict arose because the co accused for whom the solicitor acted incriminated the client and the solicitor then acted for the client despite having a continuing professional duty to respect the co accused's confidence. The solicitor was compromised by not being able to disclose confidential instructions given to him by the co accused and could not advise the client on the matter of his incrimination by the co accused and the reasons for that defence. The conflict was stark and in wholly different circumstances to the material presented by Council to this Tribunal.

## Conclusion

The Tribunal must reflect upon the whole circumstances of the complaint. The Council conceded that any loss of the secondary complainer does not relate to the misconduct alleged. The Tribunal must assess the degree of culpability and blameworthiness of the Second Respondent. The spectrum of outcomes includes professional misconduct and unsatisfactory professional conduct. It is open to the Tribunal to hold that there is no evidence of breach of any fiduciary duty. No evidence was led by Council on that issue.

The Tribunal must identify what facts have been established. The standard of proof is beyond reasonable doubt and the burden of proof rests with the Council.

The Tribunal will consider the Joint Minute, the productions in the Council's Third Inventory, the evidence of witnesses called by the Council and the evidence of the First and Second Respondents.

The test for professional misconduct is set out in *Sharp -v- Council of the Law Society of Scotland* 1984 SLT 313. The Tribunal may consider whether the Second Respondent's conduct amounts to a serious departure from the standard to be expected of a competent and reputable solicitor but hesitate to hold that the conduct was reprehensible. If the Tribunal were to so consider, then the Tribunal should not be satisfied that professional misconduct has been made out in terms of the averments in Article 5.

If the Tribunal were to consider that there has been a departure from the standard of conduct to be expected of a competent and reputable solicitor, the Tribunal must consider where in the spectrum the conduct falls. There is a clear boundary between unsatisfactory professional conduct and professional misconduct. If the Tribunal considers the conduct of the second respondent falls short of professional misconduct the Tribunal can remit the matter to the Law Society under section 53 ZA of the Solicitors (Scotland) Act 1980.

However, the secondary complainer submits that the Council has not made out a case of conflict of interest, potential conflict or lack of effective communication."



## DECISION

The members of the Tribunal met, by way of the virtual platform Zoom, on 19 May 2025 in order to consider all of the evidence before it together with the written submissions.

The first step for the Tribunal was to assess which facts had been established in the course of the hearing. The standard of proof for these proceedings is that of beyond reasonable doubt. The onus of proof rests with the Complainers. The majority of the facts were admitted within the Answers for both Respondents and most of the evidence led related to context.

The Tribunal heard parole evidence from four witnesses. It considered that the Secondary Complainer was trying his best to give his evidence but concluded that some of his evidence was coloured by his emotions given the problems that had subsequently arisen in relation to the property. The evidence of Ms Walker was principally based on hearsay or reflected evidence already before the Tribunal. The First Respondent was at times evasive. On several occasions, the Fiscal repeatedly asked her to confirm the wording of some of the documents produced, including the various letters of engagement and emails. The First Respondent replied with explanations rather than direct answers to the questions, which appeared to be designed to minimise her responsibility. The Second Respondent gave her evidence in a straightforward manner. The correspondence produced greatly assisted in the fact-finding exercise.

Having found the facts at paragraph 21 to be established, the Tribunal then required to consider the averments of professional misconduct. The Tribunal can only consider the averments of misconduct within the Record. A great deal of time was spent on evidence relating to the content of the letters of engagement and the scope of the instructions to the Respondents. It is important to note that there were no averments of misconduct relating to the adequacy of the letters of engagement or that the Respondents did not act in accordance with the instructions given. The averments of misconduct were as follows:-

*5.2 The respondents, accepted instruction from the secondary complainer on or about the 19 May, issued terms of business on the 22 May all 2020. The respondents did so having previously accepted instruction to purchase and lease the Hurlet, some 7 months earlier, on behalf of the*



*now seller, they did so when her (sic) employer Gilson Gray already acted for the seller. In accepting the instruction, the respondents*

*5.2.1 Accepted instruction when there was conflict of interest in relation to both/either (i) each respondent's previous instruction from the seller (ii) ongoing instruction of Gilson Gray from the seller in breach of B1.7.1.*

*5.2.2 Accepted instruction when there was a potential conflict in relation to both/either (i) each respondent's previous instruction from the seller (ii) ongoing instruction of Gilson Gray from the seller in breach of B1.7.2.*

*5.2.3 Failed to communicate effectively with the secondary complainer. Each respondent did not advise him of her previous involvement in the purchase and lease of the Hurlet and the ongoing instruction of her firm in order to allow the secondary complainer to make an informed decision as to whether to instruct the respondent contrary to Guidance issued the Law Society of Scotland on Conflict of interest.*

In the course of evidence, a great deal of time was spent on the issue of "supervision" of the Second Respondent by the First Respondent. Averment 5.2.1 and 5.2.2 aver that both Respondents "accepted instruction". The Tribunal accepted that on a day-to-day basis it was unlikely that the First Respondent would have supervised the conveyancing work carried out by the Second Respondent, but that was not directly relevant to the issues at hand. The first point of contact with the Secondary Complainer was the First Respondent. She clearly referred the matter of the purchase on to the Second Respondent. It was the First Respondent who obtained the necessary identification documents for the clients and, in that process, stated that she had been instructed. The issue of fees to be charged was discussed by both Respondents. The First Respondent was the senior member of staff. She had been the Second Respondent's employer at Millar Campbell and her supervisor there. The Second Respondent followed her to Gilson Gray. Early emails from both of the Respondents to the clients were copied into each other. The distinction that the First Respondent attempted to draw between instructions for the "partnership agreement" and the "purchase" appeared to the Tribunal to be, at best, artificial when it came to consideration of the question of conflict of interest. The Secondary Complainer and his sister were instructing Gilson Gray because of the purchase and the nature of any purchase vehicle was only an issue because of the proposed purchase. The First Respondent in

her evidence conceded that the headings in the correspondence required to include reference to both the partnership agreement and purchase because they were interconnected. The Tribunal was satisfied that both Respondents accepted instructions.

Paragraph 5.2.1 refers to an actual conflict of interest and 5.2.2 to a potential conflict of interest. The Tribunal carefully considered if the Complainers had established that either an actual or potential conflict of interest existed. The Law Society guidance with regard to conflicts refers to three elements that need to be considered.

*“First, if you would give different advice to different clients about the same matter, there is a conflict of interest between them. It does not matter that the client may agree with what they wish to do. Second, if your acting on behalf of one client would have adverse impact on a matter you are dealing with for another client, there is a conflict, even if on the face of it the matters are unrelated. Third, if you are unable to disclose relevant information to one client because of a duty of confidentiality to another client, there is a conflict of interest. This also means that if you cannot act for one of them, you cannot breach confidentiality in telling them about that.”*

The Tribunal concluded that in order to give the three elements proper consideration, it required to determine the scope of instructions in this case. The Secondary Complainer in his evidence discussed his expectations of the Respondents. He gave evidence suggesting that both Respondents deliberately did not disclose information or carry out due diligence in order to serve the interests of Company 1 rather than his. There were no averments of fact or misconduct within the Record to that effect and that evidence was not relevant to the matters before the Tribunal. The Tribunal gave careful consideration to all of the parole evidence and the documentary productions. This was a sale at auction. The Respondents were not involved in any negotiations. The Secondary Complainer refused any pre-auction diligence. The terms and conditions of the auction clearly set out that no warranty was provided in relation to the lease and consequently the personal guarantee. As soon as the Secondary Complainer's bid was accepted, there was a concluded contract to purchase. The correspondence between both Respondents, the Secondary Complainer and his sister clearly set out that the Second Respondent was acting to transfer the title of the property to the Secondary Complainer and his sister and to assign the personal guarantee to them. It is unfortunate that the letters of engagement are not clearer in their terms relating to the scope of work to be completed and the

whole evidence relating to the various letters of engagement disclosed a somewhat chaotic process. However, the Tribunal was satisfied from the parole evidence and a detailed consideration of the correspondence that the Respondents' instructions were limited to the transfer of title of the property and assignation of the personal guarantee.

The Tribunal assessed the very narrow scope of the Respondents' instructions against the three elements of conflict referred to above. With regard to the first element, the Respondents were acting where there was already a concluded contract to purchase the property. The work to be done was the formal transfer of title and assignation of personal guarantee. There was no evidence that the issue of conflicting advice could arise in these circumstances.

With regard to the second element, the Tribunal required to consider the contemporaneous instructions that Gilson Gray held for Company 1 at the time of this transaction. The Tribunal was told that there were two existing files, one relating to caveats and one called a general file. There was nothing in the evidence to suggest that the acting of Gilson Gray in these matters would have an adverse impact on the Secondary Complainer in this transaction, or vice versa.

In relation to the third element, there was no evidence that the Respondents held information that they could not disclose to the Secondary Complainer due to a duty of confidentiality to Company 1. The types of information put to the Respondents in evidence appeared to be information that would be publicly available. Reference was made to the Respondents holding confidential information relating to the tenants. At no time did the Respondents act for the tenants or for the guarantor and there was no evidence that the Respondents held any confidential information in relation to either that they could not disclose to the Secondary Complainer.

In conclusion, the Tribunal determined that the Complainers had not established that there was either an actual or potential conflict of interest in the particular circumstances of this case.

The third averment of misconduct was that the two Respondents failed to communicate effectively with the Secondary Complainer in that they failed to advise him of their previous involvement in the purchase of the property by Company 1 and that their firm had ongoing instructions for Company 1. It was not disputed that the Respondents had acted previously and the Tribunal was satisfied that Company 1 was an existing client of Gilson Gray in relation to

other matters. The Tribunal was satisfied that this was information that any client would want to know in exercising a decision on whether or not to instruct the Respondents. The Tribunal considered that their recent involvement in the purchase of Hurlet by Company 1, combined with the ongoing relationship between Gilson Gray and Company 1, would clearly be of relevance to the Secondary Complainer. The Tribunal accepted that this information could not be released to the Secondary Complainer without first seeking the agreement of Company 1, but the Respondents did not attempt to do that.

The Tribunal was satisfied that the Complainers had established that both Respondents breached Rule B1.9.1 of the 2011 Practice Rules.

The next step for the Tribunal was to consider whether this breach amounted to professional misconduct. The test for professional misconduct is well recognised and is set out in Sharp v Council of the Law Society of Scotland 1984 SLT 313 where it is said:-

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

The Tribunal gave careful consideration to the whole circumstances of this case. Having regard to the particular circumstances of this case, the Tribunal concluded that the conduct, although serious, did not meet the Sharp Test and found the Respondents not guilty of professional misconduct. However, given that the Tribunal considered that the conduct might amount to unsatisfactory professional conduct, it determined that the complaints should be referred back to the Council of the Law Society of Scotland under Section 53ZA of the 1980 Act, only in relation to paragraph 5.2.3.

**CONTINUED HEARING – 11 JUNE 2025**

The Tribunal pronounced its decision to the parties and invited submissions in relation to expenses and publicity.

### **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal had no submissions with regard to publicity and he invited the Tribunal to adhere to its statutory duties.

With regard to expenses, the Fiscal referred the Tribunal to the case of Baxendale-Walker v The Law Society [2008] 1 WLR 426. He stated that the obligations upon a regulator are quite different to other proceedings. A regulator has a duty to ensure the protection of the public interest. Awarding expenses against the Complainers in all cases where there was no finding of professional misconduct would have a chilling effect upon the exercise of this duty. He submitted that there was an indication that there was some culpability on the part of both Respondents because the Tribunal had made a referral back to the Law Society.

The Fiscal emphasised that a Sub Committee made up of both qualified and lay members had taken a careful decision to refer this matter to a Fiscal for prosecution. He invited the Tribunal to make no award of expenses beyond those already made.

### **SUBMISSIONS FOR THE FIRST RESPONDENT**

Ms Irvine invited the Tribunal to make an award of expenses in favour of the First Respondent on an agent and client basis. She submitted that it was not appropriate in this case to simply follow the case of Baxendale-Walker without further consideration.

She stated that in normal circumstances, expenses should follow success. She argued that the First Respondent was successful in defending the allegations of professional misconduct. She indicated that in the Minute of the Sub Committee considering the complaint by the Secondary Complainer on 11/1/2024 the Sub Committee stated "it was satisfied that the conduct more than met the standard for professional misconduct". She stated that this demonstrated that the Council's view of the First Respondent's conduct was blinkered and had been reached without proper consideration. She emphasised that the Sub Committee did not have the raw materials that the parties had in this case. The Law Society have had some time since the hearing before

the Sub Committee to consider all of the evidence but it had taken the same blinkered approach.

She emphasised that an award of expenses had already been made against the Law Society on the basis that the conduct of proceedings, up to the date of that award, had not been what it should have been. She explained that the Gilson Gray file, extending to some 3500 pages, was intimated to her on 7 March 2025. She submitted that this should have been disclosed many months before. She argued that this caused a lot of work that might have been avoided if better analysis had been carried by the Law Society.

As a result of the above, she argued that an award of expenses against the Complainers was appropriate.

Ms Irvine sought clarification of the basis upon which the earlier award of expenses was granted.

## **SUBMISSIONS FOR THE SECOND RESPONDENT**

Mr Macreath adopted the submissions made by Ms Irvine. He invited the Tribunal to award expenses on the usual scale of agent, client with a unit rate of £18.00.

Mr Macreath emphasised that the proceedings before the Sub Committee are a “paper driven” process. They submitted a *prima facie* case of professional misconduct to the Fiscal. Thereafter, it is for the Fiscal to assess all of the evidence. Baxendale-Walker, an English case, recognises that specialised tribunals are best able to assess the issues of professional misconduct. It says that where a regulator proceeds in good faith, but fails to prove their case, there may be circumstances where the regulator should be protected from an award of expenses. Both Respondents had been found not guilty of professional misconduct. Remitting the complaints in terms of the third averment of misconduct did not save the Law Society from the vindication of both Respondents in relation to the question of professional misconduct.

Mr Macreath emphasised that the Second Respondent had been called upon to vindicate her reputation since the complaint was made. More than 3000 pages of documents were intimated



late in the day. Thereafter, there was a much restricted number referred to in terms of the Inventory of Productions 3 and 4 for the hearing.

Mr Macreath conceded that publicity would follow these proceedings.

### **RESPONSE BY THE COMPLAINERS**

The Fiscal disputed that he had discretion in relation to proceeding with this prosecution.

He argued that productions only required to be lodged 14 days prior to the hearing.

Although this was a case proceeding under the 2008 Rules, he emphasised that the Lord President had given an indication that expenses should be on a party/party basis rather than agent/client.

### **DECISION ON EXPENSES AND PUBLICITY**

Paragraph 19 of Schedule 4 to the Solicitors (Scotland) Act 1980 gives the Tribunal discretion to make any order in relation to expenses as it thinks fit. This discretion must be exercised fairly and, in order to do that, the Tribunal requires to consider the whole circumstances of the case.

The normal starting point in civil proceedings is that expenses follow success. The Tribunal recognised that these are regulatory proceedings where the Law Society has a duty to act to protect the public interest.

The Tribunal considered that this case had not involved a simple matter. The Respondents' conduct had merited scrutiny. The Tribunal's decision had eventually turned on the very specific facts of this case and the nature of the transaction involved. One of the averments of misconduct was remitted back to the Law Society for a consideration of unsatisfactory professional conduct. In all of these circumstances, the Tribunal considered that the fair and appropriate approach was to make no award of expenses beyond those already made.

The Tribunal clarified that, in relation to the earlier award of expenses, it was on the usual basis which, for pre-2024 Rules cases, is on an agent/client basis with the current unit rate of £18.00.

The Tribunal directed that publicity be given to this decision and that publicity should include the names of both Respondents and the Secondary Complainer but need not identify any person, falling within the terms of Paragraph 14A of Schedule 4 to the 1980 Act, whose interests are likely to be damaged by that publicity.



**Catherine Hart**  
**Vice Chair**