

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND
26 Drumsheugh Gardens, Edinburgh**

against

**VALERIE ELAINE MCKENZIE
MACADAM, Solicitor formerly of
Macadams, 57 Comiston Road,
Edinburgh and now at Flat 11, 121
Comiston Drive, Edinburgh**

1. A Complaint dated 30th April 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Valerie Elaine McKenzie Macadam, Solicitor formerly of Macadams, 57 Comiston Road, Edinburgh and now at Flat 11, 121 Comiston Drive, Edinburgh (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.

2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No answers were lodged for the Respondent.

3. A Complaint dated 12th January 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Complainers requesting that Respondent be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
4. The Tribunal caused a copy of this Complaint as lodged to be served upon the Respondent. No answers were lodged for the Respondent.
5. In terms of its Rules the Tribunal appointed the Complaints to be heard on 12th April 2005 and notice thereof was duly served on the Respondent.
6. When the Complaints called on 12th April 2005 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. A medical certificate had been received the day before the Tribunal hearing indicating that the Respondent was not fit to attend the Tribunal. The Complainers opposed the motion for an adjournment but the Tribunal determined that the hearing be adjourned to a preliminary hearing on 10th May 2005 and a substantive hearing on 9th June 2005.
7. When the Complaints called for a preliminary hearing on 10th May 2005 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. A fax was

received on the morning of the Tribunal from the Respondent's solicitor requesting an adjournment due to the Respondent's health difficulties. It was opposed and the Tribunal agreed that the matter proceed to hearing on the 9th June 2005 unless the Respondent was able to provide a medical certificate on soul and conscience stating she was unfit to attend on 9th June 2005.

8. The Complaints called for a substantive hearing on 9th June 2005. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. A medical certificate from the Respondent's doctor had been received at 4.00pm the day before the Tribunal. There was a written motion asking for an adjournment on the grounds of the Respondent's mental health difficulties and lack of representation. This was opposed by the Complainers. The Tribunal agreed to adjourn matters to a preliminary hearing on 17th August 2005 and a substantive hearing on 1st September 2005.
9. When the Complaints called for a procedural hearing on 17th August 2005 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present but was represented by Mr Knight, Solicitor, Edinburgh. Mr Knight made a motion for adjournment of the substantive hearing on 1st September 2005 on the grounds of the Respondent's ill health. No medical certificate

was lodged. The Complainers objected to the adjournment and the matters were continued to the substantive hearing on 1st September 2005.

10. When the Complaints called on 1st September 2005 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present but was represented by her solicitor, Mr Knight, Edinburgh. A medical report was lodged and Mr Knight made a motion for an adjournment. This was opposed by the Complainers and refused by the Tribunal. Mr Knight then withdrew from acting. The Tribunal proceeded to deal with the matters in the absence of the Respondent.

11. The Complainers led evidence and the Tribunal found the following facts established.

11.1 The Respondent is a solicitor formerly practising as a principal in her own firm from 57 Comiston Road, Edinburgh.

11.2 Estate of the Late Mr A (Deceased)

The Respondent prepared and retained the Will of Mr A. Mr A died on 31st July 1999. Shortly thereafter his widow contacted the Respondent and she was instructed to act in connect with the administration of the estate of the late Mr A. In terms of the Will of Mr A a Mr B, Solicitor of Messrs McArthur Stewart Solicitors was appointed executor along with Mrs C, the widow of the deceased. Mr B was formerly employed by the Respondent prior to his departure to obtain alternative employment with the firm Messrs

McArthur Stewart. Having been instructed by the widow to attend to the administration of the estate, the Respondent in early August 1999 sent the Will of the late Mr A to the Books of Council and Session for Registration. Thereafter the Respondent maintained that she communicated on three separate occasions with Mr B advising him as to the death of Mr A and reminding him that he was nominated as executor. In particular the Respondent maintained that she made enquiry of Mr B as to whether he wished to accept the appointment of executor. The Respondent maintained that she wrote to Mr B on 9th August, 20th August and 27th September all days in 1999. The Respondent maintained that Mr B did not respond to her enquiries. Thereafter the Respondent proceeded to administer the estate and made no further effort to contact Mr B. In particular the Respondent made no effort to communicate with Mr B during the currency of the administration of the estate by either telephone or in writing. The Respondent did not ask Mr B to peruse documentation relating to the inventory of the estate nor the application for Confirmation. The Respondent did not at the conclusion of the administration of the estate present to Mr B the account of charge and discharge. The Respondent did not seek or obtain the consent of Mr B to agree to the distribution of the estate.

- 11.3 On or about 13th March 2000 the Respondent wrote to the widow Mrs C advising that the administration of the estate was complete and enclosed with that letter a cash account together with a cheque in favour of Mrs C for the sum brought out in terms of the cash account as being due to her. The said Mrs C was unhappy in the manner in which the Respondent dealt with her

instructions. She sought advice from an alternative firm of solicitors. They made enquiries on behalf of Mrs C. Those enquiries revealed that the late Mr A still retained an interest in the former matrimonial home and that this interest had not been transferred during the course of the executry. Mrs C wished this to be rectified in order that she could realise capital using the former matrimonial home as security. On 5th June 2001 those instructed by Mrs C, wrote to the Respondent, they asked the Respondent to arrange for Mr B to execute a docquet to the Certificate of Confirmation which would have allowed the transfer of title to be complete. Following that request, on 22nd June 2001 the Respondent wrote to the said Mr B at his place of employment asking that he sign the docquet in his capacity as nominated executor in the estate of the late Mr A. Having received this request, Mr B contacted the alternative firm of solicitors then acting for Mrs C in terms of which he advised them that this request was the first occasion that he had learned of his appointment as executor. In particular he advised them that he would not have accepted the position of executor. The Respondent refuted the allegation that Mr B was unaware of the death of Mr A or of his appointment. In support of her stance she made reference to the three letters which she maintained she wrote to Mr B as referred to above.

11.4 The executry file in its entirety was delivered to those acting for Mrs C. Mr B queried why assets in the estate had apparently been dealt with without him having to execute documentation. In particular a part of the estate related to shares with Abbey National Plc. To facilitate the transfer of these shares it is necessary for a crest transfer form to be executed by

all executors nominated in terms of the Will. Accordingly this document should have borne the signature of Mr B. The said Mr B disputed that he had signed any documentation in connection with the estate of the late Mr A. A copy of a transfer form was obtained and copied to Mr B for his scrutiny. On 29th August 2001, he telephoned Murray Beith Murray Solicitors advising them that the signature on the transfer form was not his. Following this disclosure enquiries were made of the Respondent as to how this state of affairs arose. No explanation was tendered. A handwriting expert examined the documentation and on or about 20th May 2003 provided a report in terms of which the expert concludes, that the signature on the form was that of Valerie Macadam and not Mr B. The Respondent had therefore deliberately and falsely adhibited the signature of Mr B on the transfer form to facilitate the sale of Abbey National shares. The Respondent had deliberately committed a dishonest act.

- 11.5 The widow of the late Mr A, Mrs C, was unhappy at the manner in which the Respondent dealt with the administration of her husband's estate. The daughter of Mrs C is Ms D. Ms D encouraged her mother to seek alternative advice regarding the completion of the estate. As such Mrs C employed the firm Murray Beith Murray, Solicitors to act on her behalf. She invited Murray Beith Murray to act on her behalf in connection with the transfer of title of the former matrimonial home into her name alone. Murray Beith Murray indicated to Mrs C that their fee for carrying out this work would amount to £245. This fee was quoted on the basis that the work to be carried out involved the relatively simple transfer of the interest

of the late Mr A to that of his widow Mrs C. However, Mr B, the nominated executor, indicated that he would not wish in any form to act as executor. Mr B indicated that he would sign a Deed of Declinature of the office of executor allowing thereafter Mrs C to be the sole executrix. Murray Beith Murray wrote to Mr B asking that he execute the Minute of Resignation. Mr B declined to do so. He believed that agreeing to sign a Minute of Resignation would have meant that he had accepted his appointment as executor. Under no circumstances was he prepared to allow himself to be appointed or be perceived as having been appointed as executor in the estate of the late Mr A. He was only prepared to sign a Deed of Declinature as was his right. Given the stance adopted by Mr B the only option available was to raise a Petition in the Court of Session to have the original Confirmation reduced and thereafter make application for a fresh certificate of confirmation which would have Mrs C appointed as sole executrix. The feenote in respect of carrying out the instructions to transfer title to the sole name of Mrs C had risen dramatically from the original quotation to that of £3,000. Further, as a consequence of what occurred there was a substantial delay in bringing matters to a conclusion.

11.6 Ms D learned that a letter had been written by her father to the Respondent indicating that Mr B was to be removed from his Will as executor and that she, the said Ms D, was to take his place. This letter was dated 17th January 1997. The letter was addressed to Mr B who was then employed by the Respondent. The letter was sent nearly two years prior to the death

of Mr A. The request contained in the letter was not attended to by the Respondent.

11.7 The Respondent failed to properly discharge her responsibilities having been appointed to attend to the estate of the late Mr A. Throughout the currency of her appointment she failed to properly consult or to advise a nominated executor as to his position. She deliberately ignored the nominated executor and endeavoured to administer the estate without recourse to him. She failed to keep the nominated executor advised as to the currency of the administration of the estate. She failed to intimate proper and appropriate documentation to the nominated executor for his consideration. She deliberately completed a fraudulent transfer of shares by forging the signature of the nominated executor.

11.8 Mrs E

The Respondent acted on behalf of a Mrs E then of Property 1. On or about 22nd November 2001, Mrs E consulted with the Respondent in relation to matters arising from the breakdown of her marriage. The Respondent obtained instructions from the said Mrs E in connection with her matrimonial affairs and to send a letter to Mrs E's husband via his solicitors. Mrs E was unhappy with the manner in which the Respondent acted on her behalf. She invoked the aid of the Complainers. The file operated by the Respondent was recovered and reviewed by the Complainers. Mrs E believed the Respondent deliberately misled her. On or about 26th June 2003 on behalf of Mrs E, the Respondent corresponded with the firm then acting on behalf of Mr F. The Respondent provided to Mrs E a copy of a letter dated 26th June 2003. The Respondent misled Mrs E by

suggesting that the copy of the letter sent to Mrs E was indeed a true copy of the letter sent to the firm of solicitors acting on behalf of her husband. It was not a true copy. It had been contrived by the Respondent. The Respondent misled Mrs E into believing that the letter which she had sent to the firm of solicitors enclosed a copy personal letter from Mrs E when in actual fact it did not.

11.9

Ms G

Ms G resides at Property 2. She is an American citizen. Through an American Woman's Association she was referred to the office of the Respondent with whom she initially consulted in connection with her divorce and thereafter in relation to certain conveyancing matters. Ms G believed when she consulted with the Respondent that she was dealing with a firm of solicitors. Subsequent correspondence issued by the Respondent indicated that her business was being dealt with by a Limited Company. The Respondent wrote to the said Ms G on notepaper headed "Macadams Limited Commercial Division, Registered Office, 57 Comiston Road, Edinburgh, EH10 6AG". The Directors of this company are shown on the notepaper as being D B Macadam and V E M Macadam. Separately in connection with matters arising from her separation Ms G believed that she had consulted with a firm of solicitors. Subsequently she received correspondence from the Respondent which was headed "Macadams Limited, Divorce and Family Advice Division, Registered Office, 57 Comiston Road, Edinburgh, EH10 6AG". Ms G did not wish her affairs to be dealt with by a corporate entity. She wished her affairs to be dealt with by a solicitor. Ms G was not consulted by the Respondent

prior to the Respondent dealing with her affairs by apparently two separate corporate entities. No steps were taken at the time of instruction, by the Respondent to identify that Ms G's affairs may be dealt with by a Limited Company. No explanation was offered to Ms G as to why it was necessary to have a Limited Company to deal with her affairs. The Co-Director of Macadams Limited was the husband of the Respondent. At the time the Respondent was instructed her husband was not legally qualified. This raised the possibility that the affairs of Ms G were being dealt with by a non-solicitor or the possibility of professional charges being duplicated or additional expense being incurred. There was also the likelihood that the involvement of the Limited Companies would compromise the cover available in terms of the Master Policy provisions.

11.10 Solicitors (Scotland) Accounts Etc Rules 2001

In pursuit of their statutory duty the Complainers inspected the financial records and documentation kept by the Respondent on 8th, 9th and 10th December 2003. This inspection revealed to the Complainers a number of significant breaches of the Solicitors (Scotland) Accounts Etc. Rules 2001. In particular the inspection identified the following:-

11.11 The inspection revealed that various cheques totalling £73,817.82 which were made payable to clients and third parties on their behalf were paid by the Respondent into other accounts operated by the Respondent.

- 11.12 The Respondent acted on behalf of the client, Ms H. Ms H executed a Power of Attorney in favour of the Respondent which was registered on 2nd February 2001. An examination of the file operated by the Respondent in connection with the affairs of this client revealed a statement from the financial institution, CGU dated 31st December 1999 which showed certain premier investment bonds marked numbers R21215701 through to R21215720 as having a value of £24,042.60. The inspection further revealed on 6th July 2001 an entry being made to the client ledger operated by the Respondent for this client disclosed the sum of £1,490.33 being the surrender value received from the Norwich Union, which was the institution which merged with GGU. There was no explanation available as to why there was such a reduction in the value of the investment bonds which differed markedly from that which had been attributed previously.
- 11.13 Further in connection with the affairs of Ms H, the inspection revealed that certain sums were received into the client ledger from various bank accounts of the client including:-
- (a) 19th March 2001 by TSB - £319.98
 - (b) 7th June 2001 by Bank of Scotland - £517.00

A Bank of Scotland Statement dated 6th December 2000 was seen which disclosed a balance of £8,140.66. The inspection of the files operated by the Respondent on behalf of Ms H did not disclose bank statements in respect of the several accounts operated on her behalf. The Respondent was unable to provide documentation including the final statements for each of the accounts held in the name of Ms H to allow evidence to be obtained as to what sums were taken into the firm records.

11.14 Further in connection with the affairs of Ms H the client ledger showed two payments as follows:-

- (a) 30th April 2002 – Pd Investment into ISA - £7,000
- (b) 19th August 2002 – Pd Key Consulting for investment - £7,000.

The examination revealed on the file a returned cheque dated 14th March 2002 which was made payable to Company 1. No information was available as to what this cheque related to. It may have related to the first investment paid on 30th April 2002. Further the inspection revealed that Ms H was now deceased. The Executry was dealt with by the Respondent. The administration of the Executry for the Respondent was in its closing stages.

Examination of the paperwork surrounding the administration of the Executry revealed that neither of the two investments dated 30th April 2002 or 19th August 2002 had been brought into the Executry. The Respondent was asked to explain why these investments were not disclosed in the Executry estate. She was unable to do so.

11.15 During the administration of the Estate of Ms H the inspection revealed two cheques made payable to charities which were:-

- (a) 21st November 2003 – Muscular Dystrophy - £829.44
- (b) 23rd November 2003 – Multiple Sclerosis Society - £829.44.

The cheques in respect of these payments were not available. The Respondent was asked for these cheques and was unable to provide same.

11.16 In the course of the inspection, the inspectors requested the opportunity to examine files relating to the Executry 1 and the Executry 2. The Respondent indicated she was unable to make these files available as she had returned these files to the individual clients. The Complainers caused enquiry to be made with the individual clients who both stated clearly the files had not been delivered to them. The Respondent

was asked to make the files available for inspection or provide a receipt signed by the client. This has not been produced. A further two files relating to the Executry 3 and the Executry 4 were also requested of the Respondent. She was unable to provide these files for the inspectors and afforded no explanation as to their absence.

11.17 The inspection revealed a number of deficits on the client account operated by the Respondent which had arisen due to posting errors, delays in posting and delays by the Respondent in the uplift of certain invested funds. In particular the Respondent was in the practice of paying out monies prior to there being sufficient funds lodged in the client bank account. Examples of this included:-

- (a) Account 1. The inspection revealed two cheques for £50,000 were drawn on 3rd October 2003. The invested funds were not uplifted until 6th October 2003. A deficit occurred during this period.
- (b) Account 2. The inspection revealed a cheque for £102,767.27 was drawn on 3rd October 2003. The invested funds were not uplifted until 6th October 2003. A deficit occurred during this period.

(c) Account 3. The inspection revealed the purchase price of £27,065 was paid to Company 2 on 7th November 2003. The corresponding entry was posted on 7th November 2003. The invested funds were not uplifted and credited to the client bank account until 25th November 2003. A deficit occurred during this period.

11.18 The Respondent produced a client bank reconciliation with the Bank of Scotland. The reconciliation to 31st October 2003 had been incorrectly completed by the Respondent. The reconciliation listed £1,616.83 as outstanding cheques when the figure should have been Nil, as these cheques were cashed or cancelled throughout October 2003.

11.19 On behalf of clients, Mr & Mrs I the Respondent obtained a bridging loan from the Royal Bank of Scotland plc on 29th July 2003. The mandate for repayment signed by the clients was not available at the time of the inspection.

11.20 The Respondent did not have in place an adequate system to comply with the obligations imposed upon her by the Money Laundering Regulations. The financial records operated by the Respondent revealed that Mr J provided £17,884.63 in connection with the purchase of a house for Ms K. The file was

examined. There was nothing on the file to show that any evidence had been obtained by the Respondent regarding the source of funds.

11.21 The inspection revealed three out of date client cheques which were payable to clients as follows:-

(a) Account 4 - £21.00

(b) Account 5 - £334.91

(c) Account 6 - £171.78

The cheques had been cancelled but the sums had not been re-credited to the appropriate client ledger. Instead the Respondent had credited the sums to a firm ledger under the heading "house sale expenses". There was no explanation or documentation available to explain why these sums were due to the firm operated by the Respondent. Further the inspection revealed that as at 3rd November 2003 a balance of £4,657.38 which was held in the house sales expenses account was transferred to Yearly Clearance Suspense Account. There was no evidence or documentation to suggest that these monies which had been transferred were due to the firm.

11.22 Following the difficulty identified in the books and financial records kept by the Respondent, a Judicial Factor was appointed to manage the Estate of the Respondent. An inspection was carried out of the

financial records and documentation kept by the Respondent. The inspectors examined the rear of cheques and uncovered a number of cheques which had been written on the client account operated by the Respondent but had been transacted through bank accounts outwith the firm operated and controlled by the Respondent in a number of instances.

11.23 Following the appointment of a Judicial Factor the Executry files in relation to the Estates of Ms H and Mrs L were discovered. The Respondent had misappropriated substantial funds from both Estates. In relation to the Ms H Estate there was an investment with CGU under Bond Number R21215701 through to R21215720. These Bonds were encashed by the Respondent and the proceeds thereof were deposited into an account in the name of Company 3 which was an account operated by the Respondent and her husband in connection with a partnership which traded from the premises of the Respondent. These investments comprised the investments referred to at Paragraph 11.12.

11.24 The Executry 2 file was recovered. It was discovered to have been badly managed by the Respondent. Extensive work required to be carried out by the new law agents in order to resolve outstanding issues. An

accounting had been produced by the Respondent to Mrs L regarding her administration of the Estate. That accounting was deliberately misleading and did not identify the extent of the Estate ingathered or indeed the extent of the Estate to be distributed. Subsequent investigations by the Judicial Factor has revealed that the sum of £76,620.42 had been misappropriated from this Executry Estate by the Respondent. Certain of these sums form part of the monies which were embezzled by the Respondent referred to in Paragraph 11.22. The Judicial Factor is still concluding her enquiries.

12. Having heard submissions on behalf of the Complainers, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
 - 12.1 Her allowing a petition for confirmation in relation to the estate of the late Mr A to be presented and thereafter her proceeding to administer the estate without the knowledge or concurrence of the nominated executor Mr B.
 - 12.2 Her deliberately and fraudulently appending the signature of Mr B to a formal transfer document in relation to the sale of shares.
 - 12.3 Her failure to properly attend to the conclusion of the late Mr A's estate, all contrary to the code of conduct for solicitors holding practising certificates issued by the Law Society of Scotland in 1989.

- 12.4 Her acting in a dishonest fashion by deliberately misleading her client Mrs E as to the contents of a letter sent on her behalf to a solicitor.
- 12.5 Her acting in a covert fashion by failing to advise her client Ms G that she had any intention of acting for her as a limited liability company rather than as a solicitor.
- 12.6 Her acting in a dishonest fashion by embezzling client funds amounting to £73,817.82 by the presentation of various cheques.
- 12.7 Her acting in a dishonest fashion by embezzlement of funds from the Ms H estate and Mrs L estate.
- 12.8 Her breach of Rules 4, 6, 8, 9 and 24 of the Solicitors (Scotland) Accounts etc Rules 2001.

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

Edinburgh 1st September 2005. The Tribunal having considered the Complaints dated 30th April 2004 and 12th January 2005 at the instance of the Council of the Law Society of Scotland against Valerie Elaine MacKenzie Macadam, Solicitor, formerly of 57 Comiston Road, Edinburgh and now at Flat 11, 121 Comiston Drive, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of her allowing a petition for confirmation to be presented and then proceeding to administer an estate without the knowledge or concurrence of the nominated executor, her forging the signature of the executor on a stock transfer form, her failure to properly attend to the conclusion of an estate, her deliberately misleading a client as to the contents of a letter sent on her behalf, her acting in a covert fashion by failing to advise a client that she had any intention of acting for her as a limited liability company rather than as a solicitor, her embezzlement of client funds by the presentation of various cheques, her embezzlement of funds belonging to two executries and her breach of

Rules 4, 6, 8, 9, and 24 of Solicitors (Scotland) Accounts etc Rules 2001; Order that the name of the Respondent, Valerie Elaine MacKenzie Macadam, be struck off the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but will be deferred until the conclusion of any criminal proceedings against the Respondent.

(signed)

Alistair Cockburn

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

The case was scheduled for 12.00 noon but the motion for adjournment put forward by Mr Knight on behalf of the Respondent was heard at 10.00am. Mr Knight lodged a report from a chartered clinical psychologist with regard to the Respondent's state of mental health. He stated that this report had been received by email the day before and that although he did not have a signed copy he could confirm that it was written by Gillian Tyler, chartered clinical psychologist. Mr Knight stated that he had been instructed by the Respondent in connection with other matters since February 2004 but she had been represented by the Legal Defence Union in connection with the matters before the Tribunal at that time. Mr Knight confirmed that he had accepted service of the second Complaint in February 2005 on behalf of the Respondent but had not become instructed in connection with these Complaints until July 2005. He explained that the Respondent had been receiving treatment from the Royal Edinburgh Hospital and it had been recommended that she see a psychologist and she had attended the Keil Centre who had in turn recommended that she have long term psychological therapy and she had been referred to the Aaron Thistle Consultancy who had provided the report for today's hearing. Mr Knight stated that he had asked for the report to be on soul on conscience but accepted that it was not. Mr Knight pointed out that the report indicated that the Respondent would have difficulties with instructing a solicitor and also with following proceedings before the Tribunal. The clinical psychologist estimated that she might improve within the next six to eight weeks. Mr Knight indicated that he had discussions and if the Respondent's medical condition improved he was hopeful that a lot of the facts in the Complaints could be agreed.

The motion to adjourn was opposed by Mr Reid on behalf of the Complainers. Mr Reid pointed out that one of the Complaints had been sent to the Tribunal in April 2004 with allegations dating back to 1999 and the Complaint which had come to the Tribunal in January 2005 had allegations dating back to 2001. Mr Reid emphasised that there had been a delay in setting the first Complaint down for hearing as the Respondent's solicitor at that time had indicated that she was unwell. Thereafter the matters had called before the Tribunal on five occasions and there were always last minute motions to adjourn. Mr Reid referred the Tribunal to the case of Tait-v-The

Royal College of Veterinary Surgeons (PC (UK)) Privy Counsel (United Kingdom)
15 April 2003 and stated that this case could be differentiated as in the Tait case answers had been lodged disputing the facts whereas here there had been no answers lodged. Also in the Tait case it was only a second hearing whereas in this case it was the fifth hearing. Mr Reid asked the Tribunal to weigh up the Respondent's difficulties with the interests of the public in having matters brought to conclusion. Mr Reid stated that the original complainers in the cases were anxious that matters be brought to conclusion.

In response to a question from the Tribunal, Mr Knight confirmed that he had seen the Tribunal's letter of 16th June 2005 which had set out the requirement for a soul and conscience medical certificate to be lodged prior to the preliminary hearing on 17th August. Mr Knight also confirmed that the Respondent was presently working with Standard Life in the Customer Services Department and had been for the last year. Mr Knight accepted that there was nothing in the medical report which indicated that the Respondent was unfit to attend the Tribunal but indicated that he had advised her not to be present. Mr Knight also stated in response to a question that he was not sure whether or not the author of the medical report was a doctor.

The Tribunal took account of the medical report from the chartered clinical psychologist. The terms of this were not entirely satisfactory as it was not on soul and conscience, it was not clear whether the author was medically qualified and it did not fully comply with what was asked for in the Tribunal's letter of 16th June 2005. There was also nothing in the report to state that the Respondent was unfit to attend the Tribunal. The Tribunal however took the report at face value and noted that the Respondent had difficulty instructing a solicitor and concentrating. The Tribunal however also noted that the Respondent appeared to be well enough to work and had been working at Standard Life for the last 12 months. Although her solicitor indicated that she had had some absences there did not appear to have been any particular difficulties. The Tribunal also had to balance the interests of the Respondent against the public interest of having matters dealt with. In this case there was a long history and one of the Complaints had been with the Tribunal since April 2004. The Tribunal further noted that there had been four previous callings of the case and on each occasion there had been last minute motions for adjournment. The

Tribunal further took account of the fact that the Respondent had not lodged any answers disputing any of the facts in the Complaints. Although the medical report suggested that there may be some improvement in the Respondent's concentration in six to eight weeks time, this was by no means a certainty. The Tribunal accordingly considered that it was appropriate to refuse the adjournment. Mr Knight then indicated that he was withdrawing from acting and the case was adjourned until 12.00 noon to give the Respondent an opportunity to appear if she so wished. Mr Reid, for the Complainers, then indicated that he was not to be pursuing the matters set out in Articles 3.1, 3.2, 3.3 of the Complaint dated 12th January 2005 in respect of Mr M nor the matters set out in Articles 3.1, 3.2, 3.3 of the Complaint dated 30th April 2004 in respect of Mr N.

EVIDENCE FOR THE COMPLAINERS

The first witness for the Complainers was Tina Heywood, a Guarantee Fund Inspector with the Law Society of Scotland. Ms Heywood confirmed that she had inspected the books of the Respondent on 8th, 9th, and 10th December 2003. This was a special inspection which took place due to problems which had been highlighted at past inspections of the Respondent's books. She referred the Tribunal to Complainers Production 5 in the Inventory of Productions relating to the Complaint of 12th January 2005 and confirmed that they had discovered that there were cheques made out to clients which showed on the back of the cheque that the payments had actually been made into the Respondent's account. The sum of money involved was £73,817.32. Ms Heywood confirmed that she personally saw the cheques and thought it was odd that the bank let this happen. In connection with the Ms H executry, Ms Heywood stated that there were concerns with regard to this as a statement with CGU as at 31st December 1999 had a value of £24,042.60 and yet the client ledger on 6th July 2001 showed a balance of £1,490.33. This was raised with the Respondent who said that she would look into it. The Respondent at this time had a power of attorney. Ms Heywood also referred the Tribunal to Production 49 and stated that it was not normal to have as many different bank accounts. Ms Heywood stated that the Respondent's book keeping was chaotic and there were concerns with regard to the problems in reconciling the figures. Ms Heywood referred to the two investments in the Ms H estate being payments dated 30th April 2002 and 19th August 2002 which the

Respondent was unable to explain. There were also two cheques made payable to charities which were not available. They had asked for the files in connection with the Executry 1 and Executry 2 and the Respondent stated they were unavailable because they were with the client. The Law Society however had information that the Respondent still had the files. Ms Heywood stated that there were deficits on the client account due to delays and errors in the book keeping, for example in connection with Account 2, Account 3 and Account 4. Ms Heywood confirmed that these were book keeping problems rather than an actual deficit. The reconciliation produced by the Respondent at 31st October 2003 was incorrectly completed and in connection with the bridging loan for Mr I there was no mandate. Ms Heywood also confirmed that there was no evidence to show the source of the funds provided by Mr J in connection with a transaction. Ms Heywood referred to the house sale expenses ledger and balances being transferred to a yearly clearance suspense account. There was no evidence that the money was due to the firm and out of date cheques drawn to give money back to clients were not cashed and the Respondent used the funds of £4,657.38. As a result of the concerns a judicial factor was appointed. Ms Heywood confirmed that the Respondent's attitude was not helpful.

The Complainers then led the evidence of Norma Grandison, a Judicial Factor. She confirmed that she was appointed interim Judicial Factor on 16th December 2003. Ms Grandison confirmed that her investigations revealed that cheques made payable to third parties were cashed into the bank account of the Respondent. Some of these cheques were cashed into the bank account through Company 3, a partnership comprising the Respondent and her husband. Ms Grandison referred to Production 1 being a sample of the cheques and Production 2 which showed the total involved £73,817.82 and Ms Grandison confirmed that the Respondent had embezzled this money from clients. This was the figure as at the date of the Judicial Factor's appointment. Ms Grandison stated that the figure had grown since then. In connection with the estate for Davidson the investments with CGU involved two separate bond numbers and these were encashed by the Respondent and the proceeds went to Company 3. The amount was approximately £24,042.60. In connection with the Executry 2 the file was badly managed and Mrs L had complained with regard to the Respondent's handling of the estate. Mrs L was unable to understand the accountings produced by the Respondent. Ms Grandison stated that these accountings

made no sense and were set out in such a way as to produce a false balance. The information in the accounting was not backed up by the records. Ms Grandison stated that she discovered from the ledgers and the file that there were funds that were not paid to Mrs L and that the Respondent had stolen £76,620.42 from the Mrs L estate. This figure has since grown with further enquiry. Ms Grandison confirmed that her work was ongoing and that there were also sums missing from other clients. Ms Grandison stated that there were a great number of accounts and a lot of movement between accounts and this was used by the Respondent to disguise the sources of the money. Ms Grandison stated that the Respondent's husband was made a partner in her firm on 1st October 2003. In response to a question from the Tribunal, Ms Grandison confirmed that there was some duplication of monies in that part of the £73,817.82 obtained by the use of the cheques included money from the Mrs L estate.

The Tribunal then heard evidence from Faye Shortt, Case Manager with the Law Society of Scotland. Ms Shortt indicated that it was part of her job to investigate complaints from members of the public and collect evidence. She confirmed that Mrs E had complained with regard to the Respondent deliberately misleading her by saying that she had sent a copy of Mrs E's letter to Mrs E's husband's solicitor when in fact she had not. Ms Shortt also advised that Ms G had complained to the Law Society in connection with the way the Respondent dealt with her affairs. When Ms G consulted the Respondent she thought that she was consulting a solicitor but she then received correspondence from the Respondent with letterheads of Macadams Limited with a company registration number. Ms Shortt stated that Ms G was not aware of the implications of this in connection with the indemnity insurance cover. It was only when she complained to the Law Society that it became apparent that the Respondent had been acting for her as a limited company rather than as a solicitor. Ms Shortt stated that Ms G was very unhappy about this and it had never been explained to her. Ms Shortt also confirmed that the Law Society received a complaint from Mr B and Ms D in connection with Mr A's executry. Mr B and Mrs C had been executors of the estate of the late Mr A. Ms Shortt explained that Mr B used to work with the Respondent and thereafter worked with McArthur Stewart. The Respondent's position was that she had written to Mr B with regard to the estate but he was adamant that he had never received the letters. Mrs C was unhappy with regard to the way the Respondent had dealt with the estate and sought advice. Mr B's

position was that he had never accepted his appointment as an executor. Part of the estate included shares with Abbey National and it became apparent that a form had been signed by both executors. Mr B's position was that he had not signed it. Ms Shortt referred the Tribunal to the report from the handwriting expert which stated that the signature was not that of Mr B but had been attested by the Respondent. Ms Shortt confirmed that as a result of these difficulties Mrs C incurred a substantial increase in fees. It also became apparent that a letter had been written by the deceased removing Mr B as an executor and substituting Ms D, 18 months before. The Respondent had not complied with this request.

Mr Reid then referred the Tribunal to the affidavit evidence from Ms G together with the documentation attached. Ms G's affidavit confirmed that she consulted the Respondent because she wished her affairs to be dealt with by a solicitor and she was at no time told by the Respondent that a limited company would be acting on her behalf. Ms G's affidavit refers to the various letters from the Respondent on headed notepaper from Macadams Limited with a company registration number. Next Mr Reid referred the Tribunal to the affidavit from Mrs E which confirmed that she had requested the Respondent to send her letter to her husband's solicitor. The Respondent sent her a copy letter which purported to be a copy of the letter sent to her husband's solicitors but it later came to her attention that her instructions with regard to the letter had not been carried out and her letter had not been sent to her husband's solicitors. The affidavit refers to the copy letters which were produced. Mr Reid then referred the Tribunal to the affidavit from Mr B which confirmed that he had never been advised by the Respondent that Mr A had died and did not receive any communication from the Respondent that he had been appointed as an executor. Mr B's affidavit confirms that he did not sign the transfer form with regard to the shares with Abbey National PLC and confirms that he provided the consultant forensic document examiner with a specimen of his signature. Mr B also confirmed that he would not resign as an executor because that would infer that he had accepted the office of executor. Mr Reid next referred to the affidavit from John M McRae, Consultant Forensic Document Examiner which confirms that he examined the transfer form and specimen signatures of the Respondent and Mr B and was categorically able to state that the signature was forged by the Respondent. He refers in his affidavit to his report which was lodged as a production. Mr Reid also lodged

affidavits from Mrs C and Ms D. Mrs C confirms the increase in fees faced by her as a result of the petition which had to be raised in the Court of Session to have the original confirmation reduced and Ms D speaks to the letter sent by her father to the Respondent indicating Mr B was to be removed as an executor and she was to take his place. She also refers to the difficulties and increase in fees as a result of the problems.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid asked the Tribunal to find in connection with the Complaint dated 12th January 2005 that professional misconduct had been established. He stated that there was evidence of a repeated breach of the Accounts Rules from Tina Heywood and Norma Grandison who also both spoke to the fraudulent scheme devised by the Respondent which allowed her to embezzle clients' funds. Norma Grandison also spoke to the embezzlement of client funds from two executries. Mr Reid also referred to the evidence from Faye Shortt and the affidavit from Mrs E in connection with the failure to forward the letter to Mrs E's husband and the evidence of Faye Shortt and Ms G's affidavit in connection with the Respondent acting for Ms G as a company despite this not having been drawn to Ms G's attention. In connection with the Complaint dated 30th April 2004 Mr Reid submitted that the evidence of Faye Shortt together with the affidavits from Mr B, Ms D, Mrs C and the handwriting expert clearly showed that the Respondent had fraudulently signed Mr B's signature and failed to deal with the estate properly with a resultant increase in fees for Mrs C.

DECISION

The Tribunal found the witnesses for the Complainers to be credible and reliable. The Tribunal also accepted the affidavit evidence lodged. The Tribunal was satisfied beyond reasonable doubt that the majority of the facts and averments in the Complaints were established. In connection with the Complaint dated 30th April 2004 there was no evidence with regard to the Respondent's former employment history nor with regard to her failure to reply to Murray Beith Murray in connection with Mr

A's executry. The Tribunal accordingly did not find these matters established. In connection with the Complaint dated 12th January 2005 there was no evidence with regard to the Respondent's previous employment history and the evidence in connection with Ms G was that there were no steps taken by the Respondent at the time of instruction, to identify that Ms G may be dealing with a limited company rather than a solicitor. There was no evidence that the Respondent transferred the business from the Respondent qua a solicitor to a separate corporate entity with which she was connected. The Tribunal accordingly made Findings as appropriate in respect of this matter. In connection with the Ms H and Mrs L executries there was no evidence that the Respondent admitted to the Judicial Factor that these funds were misappropriated by her. The Tribunal agreed to conjoin the two Complaints and found that the Respondent's conduct singly and *in cumulo* amounted to professional misconduct.

As the Respondent was not present there was no mitigation put forward on her behalf. The Tribunal was extremely concerned by the Respondent's conduct. She had used her position as a solicitor in order to embezzle clients' funds using a calculated and devious scheme in order to do so. The Respondent also forged a signature, deceived a client and acted in a covert fashion. This conduct is completely contrary to what is expected of a solicitor and brings the profession into disrepute in the worst possible way. The Respondent's conduct is regrettably disgraceful and dishonourable and the Respondent is clearly not a fit and proper person to remain on the Roll of Solicitors in Scotland. The Tribunal had no hesitation in striking the Respondent's name from the Roll of Solicitors in Scotland. The Tribunal indicated that it was to order expenses on a solicitor and client indemnity basis in terms of Chapter Three of the last published Law Society Table of Fees for general business with a unit rate of £11.85 and there were no contrary submissions made. The Tribunal made the usual order with regard to publicity but ordered that publicity be deferred until the conclusion of any criminal proceedings against the Respondent so as not to prejudice the criminal proceedings.