

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

FINDINGS

in Complaint

by

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

Complainers

against

**KEVIN JOHN BOYD, Mathie Morton Limited,
4 Alloway Place, Ayr**

Respondent

1. A Complaint dated 22 November 2023 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 Kevin John Boyd, Mathie Morton Limited, 4 Alloway Place, Ayr (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were two Secondary Complainers, "H" and "D".
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 23 February 2024 and notice thereof was duly served on the Respondent. On 22 February 2024, the Complainers lodged an amended Complaint and parties lodged a Joint Minute of Agreement whereby the Respondent admitted the averments of fact in the amended Complaint and accepted the averments of misconduct.

5. At the virtual hearing on 23 February 2024, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.

6. Having given careful consideration to the terms of the Complaint as amended and the Joint Minute of Admissions, the Tribunal found the following facts established:-
 - 6.1 The Respondent is Mr Kevin John Boyd, Mathie Morton Limited, 4 Alloway Place, Ayr. He was born on the 29 December 1961. He was admitted as a solicitor on 20 July 1984. He became a partner in D Briggs & Co Maybole in December 1987. He became an employee of McKinstry & Co Ayr, on the 1 October 2005. He remained as an employee until 29 September 2017 when he became partner in Mathie Morton. He remained a partner until 31 October 2021 when he became an employee of Mathie Morton where he continues to practise.

 - 6.2 The Respondent was instructed by the Secondary Complainers (H & D) to assist in dealing with their father's "F" estate. The Secondary Complainers first met with the Respondent on 25 October 2018. F died intestate. He died while cohabiting with "C". He had children with C. It was anticipated C would make a claim in respect of her cohabitation rights. F owned the property he and C had resided in together. The Respondent began communication with F's creditors and debtors in November 2018.

 - 6.3 Before the end of 2018, the Respondent received replies from Scottish Provident, Aviva, B&CE, Equitable Life, Standard Life Avon, Insurance and F's mortgage provider RBS (who confirmed F's debt was £41,750 and his direct debit had been cancelled). In some of that correspondence the Respondent was asked to provide further information.

 - 6.4 In November 2018, the Respondent sent a petition for the appointment of the Secondary Complainers as executors dative to F's estate. He received a claim from C's solicitors in terms of Section 29 of the Family Law (Scotland) Act 2006 ("the s29 Claim") specifically to retain the property. The letter sought clarification about a life insurance policy particularly regarding the entitlement of F and C's two children (not the Secondary Complainers) to that insurance policy.

- 6.5 In December, the Respondent reverted to C's agents, F's employers and acknowledged the return of his term of business letters to the complainers. The terms of business included the term, *"I will advise you at regular intervals of the progress of the estate and keep you informed of all significant developments. If you are uncertain about what is happening at any time, please ask."*

2019

- 6.6 In the first quarter of 2019 the Respondent did little. His file shows further correspondence from B&CE asking for information. No answer was sent. No replies were sent to the companies mentioned in para 6.3 above. The Respondent acknowledged a court action raised by C's solicitors against the Secondary Complainers as executors.
- 6.7 In the second quarter of 2019 the Respondent sent a Notice of Intention to defend to the court and C's agent. The finance company of F's car chased the Respondent for payment. C's agent sent copies of the Initial Writ, productions and paperwork re F's bank account. In June 2019, the Respondent received correspondence from RBS. He had an email from the Secondary Complainers referring to emails and phone calls that had not been met with a reply. An update regarding Confirmation was sought. None was given.
- 6.8 C's agent intimated the record re the court action. There was no defence in the record as the Respondent had not intimated defences on behalf of the Secondary Complainers. C's agents intimated C would seek decree at the Options Hearing on 27 June 2019.
- 6.9 On the 20 June 2019, the Respondent replied to C's agent to the effect that the Confirmation application was being finalised and he planned to meet with the executors (the Secondary Complainers) to have it signed. The Respondent suggested sisting the court action to allow Confirmation to be granted and thereafter negotiation, he confirmed he was trying to keep expenses at a minimum and he was aware of RBS seeking updates about the mortgage.
- 6.10 In the third quarter of 2019, RBS sought an update and Equitable Life referred to correspondence of 29 November 2018 to which they had not received a reply. C's agent sought an update about Confirmation and settlement proposals. Correspondence from RBS's agent (Aberdein Considine Debt Recovery) sought an update about the property. No reply was sent to these enquiries.

- 6.11 In September 2019 the Respondent received a letter from C's agent noting the motion seeking to recall the sist and for Decree, served in August, (which was not on the Respondent's file) was due to be granted if no opposition was lodged by close of business the following day. C was willing to negotiate settlement but did not wish progress to be slow. The Respondent lodged opposition. A hearing was fixed for the 19 September 2019. The Respondent did not lodge defences. At the end of September, C's agent pressed again for a settlement offer. No reply was sent. F's car finance company sought further information re settlement but the Respondent gave none.
- 6.12 In the fourth quarter of 2019 the Respondent intimated defences (having been due in February of 2019). The motion for decree was not pressed by C's agent on the 3 October 2019. A further options hearing was fixed for the 12 December 2019. C's agent pressed regarding the insurance policy and whether the sum of £70,000 was due to be paid to C or, her and F's children. The Respondent did not reply. The file next holds an internal email (5 December 2019) referring to H having called, and a contact number was provided. A written annotation referred to a call with H the note is illegible it appears to have a house valuation, monies due to and from the estate.
- 6.13 On the 9 December 2019, C's agent intimated a Specification of Documents seeking all draft wills of F. An interlocutor of 18 December 2019 confirmed the unopposed motion had been granted.

2020

- 6.14 In the first quarter of 2020 the Respondent sent a copy of F's draft will to C's agent. H called again. The Respondent appears to have called back but no note of the conversation is on the file.
- 6.15 On the 28 January 2020, C's agent wrote referring to contact with the Sheriff Clerk. C's agent had been told no application for confirmation had been made. The agent expressed concern that 16 months had elapsed since F had died. If the proof diet required to be discharged, expenses would be sought from the estate or the executors personally.
- 6.16 C's agent wrote to the senior partner of the Respondent's firm on 20 February 2020 noting the lack of progress despite "*numerous attempts to discuss matters with [the*

Respondent]” with a view to settling matters. The lack of response from the Respondent was considered to be unacceptable.

- 6.17 On the 5 March H emailed the Respondent asking if there was a conclusion “*to sorting out my father’s estate*”.
- 6.18 On 12 March 2020, the Respondent replied to F’s employer regarding payment of his final salary. The Respondent met with H & D on the 16 March. He noted:
*“Discussing their father's estate and the claim against it by [C] cohabitee. After discussion, noting their instructions to agree to paying the whole net estate to [C] subject to her not making any claim on the pensions/policies which do not form part of the estate which appear under the Discretionary Trust.
 Eng.30mins”*
- 6.19 Over the next two weeks the Respondent relayed the valuation of the Equitable Life policy to C’s agent; sought information to assist making the Bond of Caution application; agreed to assist the court action; wrote to RBS and another creditor; wrote to RBS agents regarding the current status of executry that an agreement had been reached between the complainers and he sought that no action be taken as it was expected the RBS mortgage could be repaid. RBS agents wrote back on 23 March 2020 and the Respondent was asked to provide updates as the “*Calling Up Notice period remains live*”. The Respondent wrote to H & D noting the instruction re the transfer of the net estate to C, that changes required to be made and signed by them. He wrote of new to Scottish Provident and to Standard Life & Aviva replying to their earlier enquiries.
- 6.20 It is proper to observe that the first Covid lockdown occurred during the following period.
- 6.21 In the second quarter of 2020 the Respondent received an email from D. He did not reply. He communicated with C’s agent re Standard Life. The next activity on his file was receipt of a letter from RBS on the 27 June. He took no other active steps to conclude the executry.
- 6.22 In the third quarter of 2020 the Respondent received the annual mortgage statement on 7 September 2020. It noted charges of £3,004 of interest and fees, and £45,942 was outstanding. The Respondent took no action to conclude the executry.

6.23 In the fourth quarter of 2020 the Respondent received an email from C's agent on the 29 October 2020 intimating a court motion. The motion is not saved on the Respondent's file. Receipt spurred the Respondent into action. He advised he was trying to obtain Bond of Caution. He advised the Insurer required the signed agreement. C's agent advised she would draft this. There was no further activity on the file in 2020.

2021

- 6.24 In the first quarter of 2021 (now 2 years and 2 months since instruction) the first correspondence on the Respondent's file is a letter from RBS advising the mortgage arrears were increasing and now stood at £13,490.21. The Respondent took no action. The next entry of the Respondent's file is a letter from C's agent dated 22 March 2021 asking for a reply to their email of the 9 February 2021 to which was attached a draft joint minute for the Respondent's comment. There is no response to this letter on the Respondent's file.
- 6.25 In the second quarter of 2021 the Respondent's file holds a letter from BCE dated 5 April 2021. It noted documentation required to be returned to them within two years of date they were notified of the deceased's death. It noted that was 18 months before. No action was taken by the Respondent.
- 6.26 On the 7 May 2021, H emailed the Respondent to state she had attempted to contact both the Respondent and the firm and had not received a response. H & D were seeking "an ending" to a "long process". They had obtained alternative legal advice and would be contacting the SLCC if no response was received within a week. The Respondent did not reply.
- 6.27 The file holds a letter from RBS advising the increased mortgage arrears dated 21 May 2021.
- 6.28 On 15 May 2021, the Respondent received an email from D noting there had been no contact since March 2020 (14 months) and it had been three years since the first meeting with the Respondent. She advised she and H had attempted to contact the Respondent by telephone and email on several occasions with no response. She advised a complaint had been submitted to the Scottish Legal Complaint Commission (SLCC).

- 6.29 In the same email, D referred to correspondence from RBS agents regarding the house and the outstanding balance. She thought the property had been transferred to C. D recalled that it had been the Respondent's advice to agree to that transfer with the pensions/insurances being split between the D & H. D was concerned that RBS agents had not been notified of the transfer. There was reference to the distress that had been caused by the lack of communication.
- 6.30 The Respondent replied by email on 18 May 2021 apologising for the delay. He explained he had been absent due to ill health frequently recently. He advised he had adjusted a Minute of Agreement with C's agent to finalise the court action and then to finalise the estate. The Respondent advised he would email a copy of the agreement the following day and he suggested a telephone call.
- 6.31 The Respondent sent a draft minute of agreement to H on the 19 May 2021. H acknowledged receipt.
- 6.32 The Respondent emailed both H & D setting out assets and debts of the estate on the 26 May 2021 he narrated them as follows:

Assets

Arrears of wages	£1,334.26
Equitable life policy	40,332.93
RBS accounts	1,004.00
House (estimated value)	70,000.00

Debts

RBS mortgage balance	£45,942.54 (this figure was the last notified to us and will now be higher)
Funeral expenses	6,002.01 (paid by [X] who is not seeking repayment)
PSA finance loan	2,778.26

- 6.33 In the third quarter of 2021 the court action was due to call in the last week of June. This caused a flurry of emails in the last ten days of the month between the Respondent and C's agent revising the Minute of agreement. C's agent advised she would have the minute of agreement signed by C by July 2021.

- 6.34 On the 17 July, D emailed the Respondent copying H, seeking an update “*regarding our previous conversation*”. The Secondary Complainers were awaiting contact about meeting the Respondent to sign documents. D provided a partial screenshot of a letter received from RBS agents and she referred to the possibility of court action. D wished to know why the correspondence was being sent to her and if she ought to respond to it.
- 6.35 There was some email correspondence between the Respondent in late July ending with the Respondent sending a letter to H enclosing a Minute of Agreement for signing by H & D on the 30 July 2021.
- 6.36 The Respondent received the signed Minute of Agreement from C’s agent on the 24 August 2021. He sent it to D&H’s brother by letter dated 7 September 2021.
- 6.37 The Respondent received another reminder about the increasing RBS mortgage arrears on or about the 31 August 2021. The Respondent received a chaser from C’s agent on 21 September 2021. He did not reply.
- 6.38 In the fourth quarter of 2021 on the 4 October 2021, the Respondent wrote to C’s agent advising he awaited the return of the signed Minute of Agreement from the brother of D and H. The Respondent pressed D by email as to whether her brother had signed the Minute of Agreement. The Respondent received the Minute of Agreement on the 6 October 2021 and sent it to C’s agent on the 7 October 2021. D asked for confirmation of the next step in the process in an email of the 6 October. The Respondent did not reply.
- 6.39 D and H chased the Respondent to reply with the next steps in an email of the 27 October 2021. The Respondent confirmed he had the signed minute of agreement back from C’s agent and had sent it to the solicitor acting for F & C’s children.
- 6.40 The Respondent’s next action was on the 29 November 2021 when he emailed an update to RBS agents to the effect that the Minute of Agreement was “*in the course of being signed by all the parties*” and thereafter a Bond of Caution and Confirmation would be obtained by the executors. That would lead to the mortgage redemption.

6.41 On the 30 November D & H sought an update as to whether the minute of agreement had been signed. He advised he had not. There is no correspondence pressing for its return.

2022

6.42 In the first quarter of 2022 (now 3 years and 2 months since instruction) the Respondent received the signed Minute of Agreement on the 25 January 2022. It was not immediately registered as agreed into Books and Council of Session. The Respondent did not advise receipt to his clients H & D.

6.43 H pressed for an update on the 21 February 2022. The Respondent did not reply. Both H & D pressed for an update on the 28 March 2022.

6.44 In the second quarter of 2022 the Respondent replied (to the 28 March 2022 email) on the 26 May 2022 apologising and explained about his absence for cancer treatment. He advised the application for Bond of Caution was ready for signature and he asked that one of D or H call to arrange signature.

6.45 In the third quarter of 2022 the next entry on the file is an internal email of the 11 August 2022 to the Respondent asking him to return D's call. A handwritten note referred to a call on same date to discuss the agent's motion for decree and that it would not be opposed. No motion is on the file.

6.46 On the 17 August 2022, the Respondent wrote to H & D enclosing and asking them to sign documents for the application for the Bond of Caution, three months after his letter of 26 May 2022.

6.47 On the 23 August 2022, RBS confirmed the mortgage arrears were £22,526.93 and the mortgage balance was £50,007.78.

6.48 On 22 August 2022, the sist of the court action was recalled, decree was granted for transfer of the property to C, and the Secondary Complainers as executors-dative were to deliver a valid disposition within one month and:

“in the event of the [complainers] failing to make, execute am deliver such Disposition and other deeds Authorises and Ordains the Sheriff Clerk at Ayr to subscribe on behalf of the [complainers] the Disposition of the said subjects and such other deeds as may be necessary to give the pursuer a valid title to the said subjects all as adjusted at the sight of the Sheriff Clerk; Finds the [complainers] liable to [C ., the expenses of the action, as taxed and Allows an account thereof to be given in and Remits same, when lodged, to the auditor of court to tax and to report; Meanwhile reserves to pronounce further.”

- 6.49 On 24 August 2022, the Bond of Caution documentation was signed and dated by the Secondary Complainers and a witness.
- 6.50 On 30 September 2022, D emailed the Respondent (copied to H) noting that the Respondent had told H he had received the signed bond of caution and sought an update about the status of the executry was requested. In addition, the Respondent was asked to confirm the position regarding policies in the name of F.
- 6.51 In the fourth quarter of 2022 on 28 October 2022, D emailed the Respondent (copied to H) asking him for an update. No reply was sent.
- 6.52 On 12 December 2022, an email from D to the Respondent and copied to H referred to the complainers attempts to contact the Respondent “*on numerous occasions to no avail*” and not having had an update since September 2022. An update about the status of the executry was sought particularly regarding the bond of caution and the policies in the name of F.

2023

- 6.53 In the first quarter 2023 (now 4 years and 2 months after instruction) on Friday 20 January 2023, the Respondent emailed and explained to D that he had been unable to return her call due to him having to leave the office for personal reasons and that he intended to contact her on the Monday. By email 21 January 2023, D asked the Respondent to call her the next working day to discuss correspondence received from C’s agent due to their failed attempts to contact the Respondent.
- 6.54 In the evening of 23 January 2023, D advised the Respondent that she had tried to call him twice due to a lack of contact and she asked for a call the following day.

- 6.55 On 24 January 2023, the Respondent advised D that he intended to contact her later that day and that he had had to “leave the office quite a bit for hospital appointments”.
- 6.56 On 10 February 2023, D asked the Respondent to contact her without delay due to her failed attempts to reach him by email and telephone. D referred to emails being sent to her by C’s agent and that this was due to the Respondent not replying to the agent.
- 6.57 On 14 February 2023, D notified the Respondent of H’s change of personal details and referred to a previously discussed form which D intended to sign and return once provided by the Respondent.
- 6.58 On 20 February 2023, D referred to a discussion with the Respondent on 14 February and recalled that she was to be copied into the Respondent’s email to C’s agent but that that had not occurred. D asked for confirmation of the current position.
- 6.59 On 1 March 2023, D made a further update request of the Respondent.
7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect of his delay in dealing with an executry for over four and a half years in breach of Rules B1.4 and B1.9.1 of the Law Society of Scotland Practice Rules 2011.
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 23 February 2024. The Tribunal having considered the Complaint as amended which was lodged on 22 February 2024 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Kevin John Boyd, Mathie Morton Limited, 4 Alloway Place, Ayr; Find the Respondent guilty of professional misconduct in respect of his delay in dealing with an executry for over four and a half years in breach of Rules B1.4 and B1.9.1 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine him in the sum of £2,000 to be Forfeit to His Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society’s Table of Fees for

general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

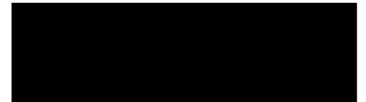
(signed)

Beverley Atkinson

Vice Chair

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on **5 MARCH 2024**.

IN THE NAME OF THE TRIBUNAL



Beverley Atkinson
Vice Chair

NOTE

At the Hearing on 23 February 2024, the Tribunal had before it the Complaint as amended which was lodged on 22 February 2024, an Inventory of Productions for the Respondent and a List of Authorities for the Complainers. The Fiscal moved the Tribunal to receive the Complaint as amended and the Joint Minute. He noted that the Secondary Complainers were seeking compensation, and that a separate compensation hearing would be required to deal with their claims in the event of a finding of misconduct.

SUBMISSIONS FOR THE COMPLAINERS

With reference to the Complaint, the Fiscal described the delays which had occurred in the executy amounting to four and a half years. He highlighted that the Respondent did not take instructions about the distribution of the estate until 18 months after the death. He did not attempt to work out the assets and liabilities of the estate until May 2021, which was two years and seven months after the death. The application for the Bond of Caution was not signed until August 2022. Decree passed against the executors. Expenses were awarded against the Secondary Complainers. The Fiscal noted that the present case involved a delay of four and a half years. The executy was still not completed at the time the Complaint was lodged. The estate was worth less than £100,000. It was relatively simple. The Secondary Complainers and C's agent were all pressing for contact.

The Fiscal submitted that the Respondent's conduct breached the rules on acting in clients' best interests (Rule B1.4) and effective communication (Rule B1.9.1). He said that the behaviour was a serious and reprehensible departure from the standards of competent and reputable solicitors and therefore constituted professional misconduct. He noted that some of the period had been subject to the coronavirus lockdowns. However, the delay went beyond these. The profession had been brought into disrepute. The Secondary Complainers had received a very poor service. During the period of delay, C did not know what was going to happen with the deceased's house which she was living in. It is not very complicated to deal with an intestacy and a s29 Claim is not very unusual nowadays. Competent and reputable solicitors should know how to deal with these issues.

The Fiscal referred the Tribunal to Law Society-v-John Tait (2015) where a delay of eight months and a lack of effective communication was held to be professional misconduct. He also referred the Tribunal to Law Society-v-McGuire (2023) which involved misconduct relating to complaint of delays and lack of communication.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath said that the Respondent accepted that the delay in the case was unconscionable, although there were difficulties with the case. The intestacy was not straightforward. The deceased had left a long-term partner and child. His partner was pregnant at the time of the death. There were complex family relationships. The s29 Claim was lodged within six months of the date of death by an experienced practitioner. The mortgage had been maintained by the deceased during his life. Ms C could not maintain the payments. There was not a lot of free cash in the estate. There were some pensions in trust, but these did not form part of the estate. Arrears built up during the delay.

Progress has been made since March 2023. The estate is now being wound up appropriately by Mathie Morton who are negotiating with Ms C's agents on behalf of the Secondary Complainers. It is likely that the house will have to be sold. The Minute of Agreement cannot be implemented because it was based on Ms C acquiring the house. The situation was not as simple as it looked. Mathie Morton will bear the cost of the mortgage arrears and the expenses of the court action. The arrears are still to be negotiated with RBS but the balance of the estate will go to Ms C. The service matters with the SLCC are still to be sorted out.

Mr Macreath indicated that at one time there were three regulated professionals in Mathie Morton. One of those solicitor left in December 2019. The Respondent and his partner had to take over his work. The post-Covid-19 conveyancing boom left them very stretched. However, the composition of the firm is now better structured.

DECISION

Based on the admitted facts, the Tribunal was satisfied that the Respondent had acted in the manner set out in the revised Complaint and reflected in the findings in fact above. The Complainers alleged that the Respondent had breached Rules B1.4 and B1.9.1 of the Law Society of Scotland Practice Rules 2011. These rules provide that solicitors must act in the best interests of their clients and communicate effectively with their clients and others. The Respondent accepted that he was guilty of professional misconduct. However, that was a matter for the Tribunal to determine, independent of parties' agreement.

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

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

The Respondent admitted that he had failed unconscionably over a period of four and a half years to complete the winding up of an executry and had repeatedly failed over that period to communicate with the Secondary Complainers and the agent for Ms C. The Respondent had not acted in the Secondary Complainers’ best interests. The executry should not have taken four and a half years to complete. The Tribunal was troubled that the matter was not yet completed.

The Tribunal was satisfied that the Respondent’s conduct was in breach of Rules B1.4 and B1.9.1 of the Law Society of Scotland Practice Rules 2011 and that it constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. It is not acceptable to delay dealing with a matter for so long and to ignore requests for information from clients and other solicitors. The Fiscal and the Mr Macreath disagreed about the complexity of the case. However, it was rightly conceded that the delay in this case was unnecessarily lengthy. It was likely to bring the profession into disrepute. There were numerous periods where absolutely nothing happened despite the best efforts of the clients and Ms C’s solicitor.

SUBMISSIONS IN MITIGATION AND ON EXPENSES AND PUBLICITY

The Fiscal indicated that the Tribunal had previously made a finding of professional misconduct against the Respondent in 2005. That case concerned failure of the Respondent to reply to the Law Society. The Fiscal moved for expenses. He asked that the matter be given publicity but noted that it would not be in the Secondary Complainers’ best interests to be identified.

Mr Macreath noted that the previous finding of the Tribunal was 19 years old. It was not directly analogous although the Tribunal might consider that there were similarities. Mr Macreath described the current constitution of the firm. He referred to a medical report he had lodged with the Tribunal. He described the complexities of the executry which included a delay in signing the Minute of Agreement

between September 2021 and January 2022 which was not occasioned by the Respondent, and the involvement of a curator ad litem.

Mr Macreath referred to the Respondent being in his fortieth year of practice. He had experienced some health and family difficulties. However, his professional situation had improved. An assistant solicitor has been engaged by the firm. Most residential conveyancing work is undertaken by the bespoke residential conveyancing department. A new practice manager has been appointed to oversee the Ayr office. All of the Respondent's work is reviewed. The directors have full sight of his inbox. He cannot sign on behalf of the partnership. The firm has modernised its IT systems.

Mr Macreath noted that the directors of Mathie Morton have met with the Secondary Complainers. The gathering of the estate is well underway. Confirmation has been obtained. Funds are in hand, especially the life policy. There was no allegation of dishonesty or lack of integrity. There is now additional support for the Respondent within the firm. In all the circumstances, Mr Macreath suggested that a censure and a fine would be sufficient to meet the Tribunal's purposes. Mr Macreath apologised unreservedly to the Secondary Complainers on the Respondent's behalf.

In answer to questions from the Tribunal, Mr Macreath confirmed that it was the partnership's decision that the Respondent should cease to be a partner from 31 October 2021 but this was a decision made with the Respondent's consent. He was able to pay a fine. The Respondent was absent from the office for periods during treatment for his illness. He was not able to work as many hours as he was working before his diagnosis. The Respondent is guilty of professional misconduct, but the mitigation tempers the issues. The firm now has the situation under control.


Mr Macreath said that expenses were conceded, and publicity was mandatory. The Respondent had no issues to raise regarding these matters.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

The Tribunal considered the aggravating and mitigating factors in the case. It noted the Respondent's previous conviction which had analogous elements, and the sanction imposed in that case. The Tribunal was troubled that the Respondent had failed in his duties for such a long period. It was concerned about the effect on the Secondary Complainers as well as the reputation of the profession. However, the Tribunal also noted the health, family and professional difficulties experienced by the Respondent. The Tribunal took account of the fact that the present case did not involve dishonesty or lack of integrity. It

noted that the Respondent's firm had taken steps to prevent repetition, support the Respondent and supervise him. The Complaint involved one case only. The Tribunal took account of the Respondent's apology and the steps which had been taken by him and his firm to wind up the executry and ensure that the Secondary Complainers and Ms C were reimbursed for any potential losses incurred. In all the circumstances, a censure and fine of £2,000 were appropriate to reflect the seriousness of the misconduct.

The Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests given the personal information which had been disclosed during the case. The Secondary Complainers will have 28 days from the date of intimation of these findings to lodge an updated claim for compensation with the Tribunal Office if they wish to do so.



Beverley Atkinson
Vice Chair