

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND**

against

**ANDREW ROBERT WALKER
MILLER, Solicitor, Campbell
Boath Solicitors, Bank House, 1
Stirling Street, Dundee**

and

**EILEEN WINGATE MORRISON,
Solicitor, Briardeane, Aytounhill,
Newburgh**

1. A Complaint dated 24 September 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, ANDREW ROBERT WALKER MILLER, Solicitor, Campbell Boath Solicitors, Bank House, 1 Stirling Street, Dundee (hereinafter referred to as "the First Named Respondent") and EILEEN WINGATE MORRISON, Briardeane, Aytounhill, Newburgh (hereinafter referred to as "the Second Named 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 on both Respondents. Answers were lodged for the Second Named Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 6 January 2005 and notice thereof was duly served on both Respondents.
4. The hearing took place on 6 January 2005. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The First Named Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Second Named Respondent was present and represented by Elizabeth McGilvray, Solicitor, Dundee.
5. An amended Complaint was lodged together with a Joint Minute in which both Respondents admitted the facts, averments of duty and averments of professional misconduct contained therein so far as relating to them. No evidence was led.
6. After hearing submissions the Tribunal found the following facts established
 - 6.1 The First Named Respondent was born 17th December 1961. He was admitted as a solicitor 4th December 1984. He was

enrolled as a solicitor in the Register of Solicitors in Scotland on 21st December 1984. He was employed with the firm Barlas & Sharpe from 17th November 1986 until 18th August 1989. Thereafter he was employed with Messrs Kippen Campbell, Solicitors from 21st August 1989 until 29th July 1994. Thereafter he was employed with the firm of Anderson, Solicitors from 15th August 1994 until 31st October 1997. Thereafter he secured employment with the firm Lamont, Miller & Company, Solicitors which subsequently became the firm of Morrisons, Solicitors of 4 Panmure Street, Dundee. He executed a Trust deed as a consequence of which his Practising Certificate was suspended on 29th October 1999. Thereafter he made application to the Complainers to secure their approval for his employment with the firm of Morrisons, Solicitors of 4 Panmure Street, Dundee. His application was approved by the Complainers on 25th November 1999. At present the First Named Respondent is employed by the firm, Messrs Campbell Boath, Solicitors of Bank House, 1 Stirling Street, Dundee.

- 6.2 The Second Named Respondent was born 5th April 1950. She was admitted as a solicitor on 18th November 1986. She was enrolled as a solicitor in the Register of Solicitors for Scotland on 1st December 1986. Initially she was employed by the firm Watt Morrison & Company from 5th April 1988 until 5th April 1991. Thereafter she was employed by Messrs Drew-Paul & Murray from 6th April 1991 until 30th December 1993. She thereafter secured employment with Elliott & Company from 4th January 1994 until 29th April 1997. She secured employment with the firm Anderson from 19th June 1997 until 31st October 1997. Thereafter with the firm Lamont Miller & Company from 1st November 1997 until 29th January 2004. The firm Lamont Miller & Company became the firm Morrisons of 4 Panmure Street, Dundee. The Second Named Respondent was a principal with the firm of Morrisons from 5th

January 1998 till 29th January 2004. The Second Named Respondent is currently employed by the firm of Messrs Bowmans, Dundee.

- 6.3 Estate of the Late Mrs A (Deceased) Mrs A died on 14th October 1999. She had executed a Will in terms of which she appointed Mr B (then her partner) as Executor along with the solicitor Stephen Lamont, formerly of the firm Lamont Miller & Company of 10 Panmure Street, Dundee which firm was subsequently incorporated under the firm name of Messrs Morrisons, Solicitors, 4 Panmure Street, Dundee. The First Named Respondent was employed as an assistant with the firm of Morrisons. The administration of the estate of the late Mrs A was dealt with by the First Named Respondent. Having been instructed to attend to the administration of the estate the First Named Respondent wrote to various financial institutions to obtain from them a valuation of the investment with that institution. The First Named Respondent held a meeting with the co-executor Mr B. On 3rd December 1999 the First Named Respondent wrote to the said Mr B advising that a number of replies had been received and that it was hoped to make application for Confirmation in respect of the estate in the course of the next two weeks. The gross estate of the late Mrs A was in excess of £320,000. Mr B, at the behest of the First Named Respondent, signed the application for Confirmation on 14th January 2000. Despite the date of his signature Confirmation was not granted until 8th May 2000. The majority of the estate of the late Mrs A was made up of payments to be received from insurance companies following her death. As a consequence substantial sums were able to be collected from these institutions without the requirement of a formal certificate of Confirmation being exhibited. Having acknowledged correspondence from the First Named Respondent various financial institutions sent to the First Named Respondent forms of Discharge which they required to be completed to allow the

funds to be released. These forms of Discharge were sent to Mr B on 11th February 2000 by the First Named Respondent with a request that he sign these forms and return them to him. Subsequently on 24th March 2000 the First Named Respondent wrote to Mr B enclosing a payment to account in respect of the residue of the estate of the late Mrs A for the sum of £20,000.

6.4 The First Named Respondent was responsible for the administration of the estate of the late Mrs A. An interim fee note dated 28th February 2000 was processed by the First Named Respondent for the sum of £5,000 plus VAT. A further fee note, which contained the narrative as being “to account of executry fees” was dated 27th June 2000 for the sum of £2,500 plus VAT. Following the administration of the estate the First Named Respondent, by letter dated 29th June 2000, sent to Mr B a cheque for the sum of £156,095.39 being a payment in respect of the residue of the estate. Thereafter a number of matters of formality required to be completed by the First Named Respondent, including the transfer of various shareholdings into the name of Mr B and the transfer of National Savings Certificates, also into the name of Mr B. The said Mr B was dissatisfied with the manner in which the First Named Respondent attended to the administration of the estate. He consulted an alternative firm of solicitors. That firm, on 8th February 2001, wrote to the First Named Respondent requesting a report in connection with the administration of the estate. The First Named Respondent replied on 23rd February 2001 indicating the only outstanding matters to be attended to was that of an Inland Revenue repayment. After certain reminders had been sent, a final cheque for the sum of £1,601.79 was sent to Mr B by the First Named Respondent by letter which, although dated 27th September 2001, was not actually posted until 10th October 2001.

6.5 In the course of the administration of the estate the Respondent required to correspond with certain financial institutions to

recover from them monies which the late Mrs A had invested with them. The First Named Respondent corresponded with the institutions who, prior to agreeing to release the funds which they held sought the completion of a withdrawal form in terms of which the Executor in the Estate of the late Mrs A would sign the form of discharge thereby allowing the proceeds of the investment to be paid to the Estate for subsequent distribution. In the course of administering the Estate in this fashion the First Named Respondent deliberately forged the signature of Stephen Lamont who was one of the Executors on a number of withdrawal forms and thereafter returned this documentation to the institution involved pretending same was genuine. In particular:-

- (a) On 17th February 2000 the First Named Respondent forged the signature of the co-executor, Stephen Lamont on a withdrawal form which had been received from Standard Life in connection with a policy with that organisation. Having forged the signature on the form, the First Named Respondent thereafter returned the form to Standard Life uttering same as being genuine.
- (b) On 4th June 2000 the First Named Respondent forged the signature of the co-executor, Stephen Lamont on a withdrawal form received from Allied Dunbar plc in connection with an investment with that organisation. In addition the First Named Respondent, having forged the signature of the co-executor, thereafter purported to witness the signature in his own capacity. Thereafter having completed the form in this fraudulent fashion the First Named Respondent returned the form to Allied Dunbar plc uttering same as genuine.
- (c) On 4th June 2000 the First Named Respondent forged the signature of the co-executor on a withdrawal form

received from Nationwide Building Society in respect of the proceeds of account number 07003050440668. Having completed the withdrawal form in this fraudulent fashion, the First Named Respondent thereafter returned the withdrawal form to the Nationwide Building Society uttering same as genuine.

- (d) On 4th June 2000 the First Named Respondent forged the signature of the co-executor, Stephen Lamont on a withdrawal form in relation to a number of policies held by the organisation Allied Dunbar plc. Having completed the withdrawal form fraudulently, the First Named Respondent thereafter returned the withdrawal form to the said Allied Dunbar plc uttering same as genuine.
- (e) On 31st October 2000 the First Named Respondent forged the signature of the co-executor, Stephen Lamont on a withdrawal form which had been received from National Savings in respect of investments with that institution. Having completed the withdrawal form in this fraudulent fashion the First Named Respondent thereafter returned the withdrawal form to National Savings uttering same as genuine.

6.6 Supervision of the First Named Respondent

The First Named Respondent executed a trust deed on 29th October 1999. As a consequence on that date his Practising Certificate was suspended. He made application to the Complainers to allow him to work as an Assistant subject to the supervision of the Second Named Respondent. The Complainers approved his employment with the Second Named Respondent on 25th November 1999. As a consequence of that decision, the suspension preventing the First Named

Respondent from practising as a solicitor was uplifted and he was allowed to work as an Assistant subject to the supervision of the Second Named Respondent within the firm, Morrisons of 4 Panmure Street, Dundee. The Second Named Respondent, as employer, was responsible for the supervision of the First Named Respondent and the work carried out by him. In particular the Second Named Respondent was required to take reasonable care that the First Named Respondent did not intromit with client funds or monies. The Second Named Respondent was responsible for the supervision of the First Named Respondent whilst he dealt with the Estate of the late Mrs A. The Second Named Respondent failed in her duty to properly supervise the First Named Respondent. If she had carried out her duties properly then she would have taken reasonable care that the fees taken on 28th February 2000 were not excessive, she would have taken reasonable care that the fee note of 28th February 2000 was properly intimated, she would have taken reasonable care that the cash account produced at a later date by the First Named Respondent was accurate.

7. Having considered the foregoing circumstances the Tribunal found the First Named Respondent guilty of professional misconduct in respect of:

- (1) His fraudulently completing withdrawal forms which he had received from financial institutions by appending thereto the signature of one of the executors, his fraudulently completing withdrawal form by alleging he witnessed the signature of one of the executors and his thereafter returning these withdrawal forms which he knew to be dishonestly completed to the financial institutions involved uttering them as genuine

and found the Second Named Respondent guilty of professional misconduct in respect of:

- (1) Her failure to adequately supervise and have regard to the work being carried out by the First Named Respondent during the time he was employed by her in the capacity of an assistant.
9. Having heard the Solicitor for the First Named Respondent and the Solicitor for the Second Named Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6 January 2005. The Tribunal having considered the amended Complaint dated 5 January 2005 at the instance of the Council of the Law Society of Scotland against Andrew Robert Walker Miller, Solicitor, Campbell Boath Solicitors, Bank House, 1 Stirling Street, Dundee (First Named Respondent) and Eileen Wingate Morrison of Briardeane, Aytounhill, Newburgh (Second Named Respondent); Find the First Named Respondent guilty of professional misconduct in respect of his fraudulently completing withdrawal forms which were received from financial institutions by appending thereto the signature of an executor, fraudulently completing a withdrawal form by alleging that he witnessed the signature of an executor and thereafter returning these withdrawal forms which he knew to be dishonestly completed to the financial institutions involved uttering them as genuine; Find the Second Named Respondent guilty of professional misconduct in respect of her failure to adequately supervise and have regard to the work being carried out by the First Named Respondent who at the time was employed by her in the capacity of an assistant; Order that the name of the First Named Respondent Andrew Robert Walker Miller be struck off the Roll of Solicitors in Scotland; Censure the Second Named Respondent; Find the First Named Respondent liable in respect of three quarters and the Second Named Respondent liable in respect of one quarter of the expenses of the Complainers and of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity will include the name of both Respondents.

(signed)
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

An amended Complaint was lodged with the Tribunal on the morning of the hearing. A Joint Minute was also lodged in which both Respondents admitted the facts, averments of duty and averments of professional misconduct so far as relating to them. Two further amendments were made to the Complaint at the suggestion of the Tribunal which were agreed by all parties.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid explained that the First Named Respondent had signed a Trust Deed for creditors which had resulted in his Practising Certificate being suspended. Thereafter the First Named Respondent was working under supervision of the Second Named Respondent on a restricted practising certificate and required to ingather funds from various financial institutions. He forged the signature of an executor on documents which were then tendered to the institutions. The Complainers were concerned with regard to the apparent abandon of the Respondent in respect of this matter. The Second Named Respondent failed to properly supervise and discharge her duty of care. Mr Reid stated he was grateful to the solicitors for both Respondents for entering into a Joint Minute and co-operating from an early stage. Mr Reid confirmed that there was no loss to the estate and no personal financial benefit to the First Named Respondent.

SUBMISSIONS FOR THE FIRST NAMED RESPONDENT

Mr Macreath pointed out that the matter had been outstanding and hanging over the Respondents for some time. The First Named Respondent had demonstrated a lack of restraint but Mr Macreath pointed out that the fraud was an administrative fraud although he accepted that it did cause substantial damage and had implications for the Second Named Respondent. Mr Macreath explained that the First Named Respondent had entered into a partnership with Paul Anderson and had then left and joined with Mr Lamont in the firm of Lamont Miller & Co. The Respondent and Mr Lamont had fallen out and Mr Lamont had moved to a rival firm. The Second Named Respondent

was also a partner with Lamont Miller & Co. Due to crown creditors from the First Named Respondent's previous partnership with Paul Anderson he had to sign a Trust Deed for Creditors and then had to work on a restricted practising certificate for the Second Named Respondent. There was a great deal of animosity between the First Named Respondent and Mr Lamont and Mr Lamont was an executor in Mrs A's executry. Mr B, the other executor, did not wish Mr Lamont involved. Mr B had signed the withdrawal forms which were also signed with what purported to be Mr Lamont's signature which was forged by the First Named Respondent who accepted that this was grave and reprehensible behaviour. Mr Macreath emphasised that there was no evidence of any loss. The First Named Respondent joined the firm of Campbell Boath in 2001. He had been working in a branch office but was now working under the close supervision of the partners of Campbell Boath who were aware of the allegations and were prepared to retain him as an assistant depending on what happened at the Tribunal. Mr Macreath stated that there had been a finding of inadequate professional service and fees had been abated and compensation paid. In response to a question from the Tribunal, Mr Macreath confirmed that there was no correspondence from the First Named Respondent to Mr Lamont with regard to the executry and it was a presumption by the First Named Respondent that Mr Lamont would not co-operate due to the animosity between them. The First Named Respondent did not wish to lose the executry business.

SUBMISSIONS FOR THE SECOND NAMED RESPONDENT

Ms McGilvray stated that the Second Named Respondent was her employee and explained that the Second Named Respondent had joined Paul Anderson in 1997, she had then joined Lamont Miller as an Associate and had become a Partner in 1998. Mr Lamont and Mr Miller then fell out. Mr Lamont left in 1999. The First Named Respondent was a more senior partner but due to financial problems from being a partner with Paul Anderson he had to sign a Trust Deed and on advice from the Law Society the firm's name was changed to Morrisons and the Second Named Respondent became the First Named Respondent's employer. Ms McGilvray stated that the Second Named Respondent did not know that Mr Lamont was the second executor in connection with Mrs A's estate. She thought that the fee for the executry had been audited. The fees had been abated by 50% and there had been an order for

compensation to Mr Lamont. There had also been other inadequate professional service orders made in connection with work done by the First Named Respondent which the Second Named Respondent had had to settle. He also had to sign a Trust Deed for Creditors and had health problems. It was accepted that the Second Named Respondent did not provide the level of supervision that she should have done but Ms McGilvray stated it was difficult when an assistant had previously been a senior partner. The Second Named Respondent had no idea that there had been any forgery done by the First Named Respondent. Money had correctly been put into the client account. Ms McGilvray stated that the Second Named Respondent had been naive but was entitled to expect another solicitor to act with integrity and the First Named Respondent had breached her trust. The Law Society had inspected her books and there had been no financial irregularities. The Second Named Respondent was presently working on a restricted practising certificate and Ms McGilvray indicated that she would not wish to practice again as a principal. In response to questions from the Tribunal Ms McGilvray confirmed that there were regular meetings between the First Named Respondent and the Second Named Respondent and that only the Second Named Respondent and a cashier could sign cheques.

DECISION

The essential qualities of a solicitor are honesty, truthfulness and integrity. The First Named Respondent acted in a dishonest fashion by fraudulently completing withdrawal forms from financial institutions and forged the signature of Mr Lamont on five occasions. The First Named Respondent thereafter uttered these as genuine to the financial institutions. He also acted in a dishonest fashion by purportedly witnessing the forged signature which he had appended to the form delivered by Allied Dunbar Plc. The conduct of the First Named Respondent in returning the documentation to the financial institutions and uttering them as genuine was dishonest. The First Named Respondent's conduct amounted to criminal behaviour and was regrettably disgraceful and dishonourable. The public are entitled to expect solicitors to be persons of integrity. The Tribunal noted that there had been no financial gain to the First Named Respondent and that the First Named Respondent had entered into a Joint Minute. However given that the First Named Respondent had deliberately forged a signature on five occasions without having made any attempt to

contact Mr Lamont with regard to the executry, it would appear because he did not want to risk losing the business, the Tribunal felt that there was no place in the solicitor's profession for someone who would act in this way and considered that there was no option but to strike the Respondent's name from the Roll of Solicitors in Scotland.

In connection with the Second Named Respondent, she should have paid more attention to this correspondence especially when she was aware that there was animosity between Mr Lamont and the First Named Respondent. It was however clear that the Second Named Respondent was placed in a difficult situation and was carrying out some level of supervision. The Tribunal accepted that the Second Named Respondent did not know that Mr Lamont was an executor and had no reason to suspect that the First Named Respondent would be forging his signature. It is clear that the Second Named Respondent is now working competently as an assistant there is no reason to think that there would be any likelihood of anything similar happening in future. The Tribunal accordingly considered that in the circumstances a Censure would be sufficient penalty. Given the far more serious nature of the First Named Respondent's actions the Tribunal considered it appropriate to award 75% of the expenses against the First Named Respondent and 25% against the Second Named Respondent. The usual order was made with regard to publicity.

Vice Chairman